



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi, and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaël Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 14 May 2024

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Request for Video-
Conference Testimony for W04305 and Related Request**

Specialist Prosecutor

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Counsel for Kadri Veseli

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Counsel for Rexhep Selimi

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TRIAL PANEL II (“Panel”), pursuant to Articles 21(2) and (4)(f), 23(1) and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 141(1) and 144 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 19 April 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request for video-conference testimony for W04305 and for an altered sitting schedule (“Request”).¹
2. On 6 May 2024, the Registry filed its assessment regarding the feasibility of facilitating the Request (“Registry Assessment”).²
3. The Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”) did not respond to the Request.

II. SUBMISSIONS

4. The SPO requests the Panel to authorise the testimony of W04305 to take place by video-conference from a government building or other appropriate location in [REDACTED].³ It argues that video-conference testimony is necessary for the witness’s security and well-being and to facilitate the testimony in an expeditious manner, and would not result in undue prejudice to the Accused.⁴ The SPO further requests that the sitting schedule for W04305’s testimony be altered to account for

¹ F02253, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W04305 and Related Request*, 19 April 2024, confidential (a public redacted version was filed on the same day, F02253/RED).

² F02290, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W04305 and Related Request*, 6 May 2024, confidential and *ex parte* (a confidential redacted version was filed on the same day, F02290/CONF/RED).

³ Request, paras 1, 13. *See also* Request, para. 10.

⁴ Request, para 2. *See also* Request, paras 7-9.

the time difference between the proposed video-link location and The Hague, and to ensure the witness's well-being.⁵

5. The Registry preliminarily assesses that it is technically feasible to conduct the testimony of W04305 via video-conference from [REDACTED].⁶ The Registry further submits that the competent state authorities have confirmed their willingness and ability to facilitate the testimony of W04305 in line with certain conditions.⁷ The Registry also submits that it can facilitate, on an exceptional basis, an altered sitting schedule, provided that hearings end no later than 19:30 hours, if the Accused attend the hearings in person, or 20:00 hours, if the Accused attend the hearings via video-conference from the Detention Management Unit.⁸

III. APPLICABLE LAW

6. Pursuant to Rule 141(1), the testimony of a witness at trial shall in principle be given in person. The Panel may also permit the testimony of a witness by means of video-conference pursuant to Rule 144 in a way not prejudicial to or inconsistent with the rights of the Accused.

7. Pursuant to Rule 144(1) and (3), the Panel may order that testimony be received via video-conference, provided that such technology permits the witness to be properly examined. The Panel shall ensure that the video-conference permits

⁵ Request, paras 3, 13. *See also* Request, para. 11.

⁶ Registry Assessment, paras 9, 19.

⁷ Registry Assessment, para. 10. These conditions include the following: (i) the video-conference location is on secure premises free from interference (to the extent possible, within the control of the competent state authorities), where the confidentiality of the proceedings can be assured; (ii) the video-conference testimony would take place in a room that is sound proof, with appropriate lighting, and where the risk of disruption from outside noise is minimised; (iii) the competent state authorities provide suitable in-situ cabled or wireless open internet connection that is stable and supports video streaming; and (iv) the witness would not be permitted to take any electronic devices into the video-conference room. Registry Assessment, para. 12.

⁸ Registry Assessment, para. 18.

the witness to be examined by the Parties and the Panel at the time the witness so testifies.

IV. DISCUSSION

A. VIDEO-CONFERENCE REQUEST

8. The Panel recalls that, while video-conference testimony should not be considered only on an exceptional basis, the presence in the courtroom of a witness during testimony remains the preferred option.⁹ When assessing whether to allow video-conference testimony, the Panel may consider a number of factors, such as the “location, personal and health situation, availability and security of the witness, as well as the complexity and duration of any logistical travel and other arrangements to be made”.¹⁰

9. The Panel notes the SPO’s submissions that: (i) due to [REDACTED], W04305 does not possess valid travel documents; (ii) travel to The Hague could prevent W04305 from returning to his place of residence, resulting in separation from his family, and pose security risks; and (iii) as W04305 is a [REDACTED], his absence from work might result in him [REDACTED].¹¹

⁹ F01851, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W04448 and Related Matters* (“11 October 2023 Decision”), 11 October 2023, para. 9 (a public redacted version was filed on the same day, F01851/RED); F01776, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W03827*, 8 September 2023, confidential, para. 12 (a public redacted version was filed on 1 November 2024, F01776/RED); F01558, Panel, *Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337*, 26 May 2023, strictly confidential and *ex parte*, para. 16 (a confidential redacted version was filed on 30 May 2024, F01558/CONF/RED); KSC-BC-2020-07, Transcript of Hearing, 14 January 2022, p. 3034, lines 2-5. *See also* ICTY, *Prosecutor v. Tadić*, IT-94-1-T, Trial Chamber II, [Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link](#), 25 June 1996, para. 19.

¹⁰ 11 October 2023 Decision, para. 9; KSC-BC-2020-07, Transcript of Hearing, 14 January 2022, p. 3034, lines 6-10. *See also* KSC-BC-2020-04, F00482/RED, Trial Panel I, *Public Redacted Version of Decision on the Specialist Prosecutor’s Request for Video-Conference testimony for TW4-04, TW4-10 and TW4-11*, 13 April 2023, paras 13-14.

¹¹ Request, para. 7.

10. Having carefully considered the Request, the Panel finds that the SPO has established that W04305 does not have valid travel documents allowing him to travel to The Hague and testify in person. As a general matter, the mere absence of travel documents would not constitute good cause justifying a request for a witness to testify by video-conference.¹² It is the calling Party's responsibility to ensure that a witness has the documents necessary to travel to The Hague for testimony.¹³ However, considering W04305's other personal circumstances, the Panel is satisfied that allowing W04305 to testify via video-link from an appropriate location in [REDACTED] would be more conducive to W04305's safety and well-being than transferring him to The Hague to testify in person.

11. Considering that the Defence did not object to the Request, the Panel is also of the view that hearing W04305's testimony via video-conference would not be prejudicial to or inconsistent with the rights of the Accused. The Panel, the Accused, the Parties and participants will be able to see and hear the witness testifying in real-time and the Panel, the Parties and Victims' Counsel will have the opportunity to ask questions to the witness.

12. The Panel has also given consideration to the following: (i) the preliminary assessment of the Registry that it is feasible to conduct the testimony of W04305 via video-conference;¹⁴ and (ii) the assurances of the relevant state authorities that they will be able to facilitate the necessary logistical, technical, and security arrangements.¹⁵ The Panel further notes that a final assessment will be conducted by the Registry following a decision by the Panel.¹⁶ In this regard, the Panel encourages the Registry to work expeditiously to ensure that the relevant measures are implemented without delay to make the proposed venue suitable for

¹² 11 October 2023 Decision, para. 11.

¹³ 11 October 2023 Decision, para. 11.

¹⁴ Registry Assessment, paras 9, 19.

¹⁵ Registry Assessment, para. 10. *See also* Registry Assessment, para. 12.

¹⁶ Registry Assessment, para. 10.

video-conference testimony and to report to the Panel once all preparations have been made for such video-conference.¹⁷

13. For these reasons, the Panel finds it appropriate to hear the testimony of W04305 by way of video-conference.

B. ALTERED SITTING SCHEDULE REQUEST

14. The Panel notes that the relevant state authorities have indicated that the earliest time testimony can be facilitated is [REDACTED] (16:30 hours in The Hague).¹⁸ The Panel observes that, as a general matter, it is the responsibility of the calling Party to ensure that a witness who testifies by video-conference does so during ordinary courtroom hours in The Hague, regardless of the location of the witness.¹⁹ However, the Panel notes the exceptional nature of the Request, and the Registry's submission that the Request can be facilitated.²⁰ The Panel therefore finds it appropriate to alter the sitting schedule. For these reasons, the Panel schedules the hearings for W04305's testimony to commence at 16:30 hours and to continue until 19:30 hours, with a 15-minute break between 18:00 hours and 18:15 hours, on Monday, 27 May 2024, and, if necessary, Tuesday, 28 May 2024. Noting the limited expected duration of W04305's testimony,²¹ the Panel requests that the SPO be prepared to call further witnesses on Tuesday, 28 May 2024, according to the regular sitting schedule, should W04305's testimony be

¹⁷ Registry Assessment, paras 11-14.

¹⁸ Registry Assessment, para. 17.

¹⁹ 11 October 2023 Decision, para. 17.

²⁰ Registry Assessment, para. 18.

²¹ F02195/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of Witnesses for 22 April to 18 July 2024*, 22 March 2024, confidential, p. 199; F02272/A03, Specialist Counsel, *Annex 3 to Joint Defence Consolidated Response to F02204, and the Remaining Witnesses in F02195*, 29 April 2024, confidential, p. 1; F02295, Victims' Counsel, *Victims' Counsel's Thirteenth Notification of Wish to Cross-Examine Witnesses*, 8 May 2024, confidential, p. 4. See also Registry Assessment, paras 2-3; Request, para. 10.

completed on Monday, 27 May 2024 or should only a limited amount of questioning be outstanding.

15. Considering the limited time available for W4305's testimony, the Panel orders the Parties to revise their examination estimates for this witness by Friday, 17 May 2024.

V. CLASSIFICATION

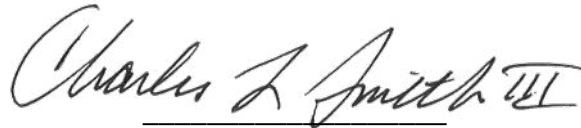
16. The Panel notes that the Registry Assessment was filed confidentially. The Panel orders the Registry to file a public redacted version of the Registry Assessment by Friday, 24 May 2024.

VI. DISPOSITION

17. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;
- b) **AUTHORISES** W04305 to testify via video-conference;
- c) **ORDERS** the Registry to make the necessary arrangement for W04305's testimony via video-conference;
- d) **ALTERS** the sitting schedule for W04305's testimony and **SCHEDULES** the relevant hearings to commence at 16:30 hours and to continue until 19:30 hours, with a 15-minute break between 18:00 hours and 18:15 hours, on **Monday, 27 May 2024**, and **Tuesday, 28 May 2024**;
- e) **REQUESTS** the SPO to be prepared to call further witnesses on **Tuesday, 28 May 2024**, according to the regular sitting schedule, should W04305's testimony be completed on Monday, 27 May 2024 or should only a limited amount of questioning be outstanding in respect of this witness;

- f) **ORDERS** the Parties to revise their examination estimates for W04305 by **Friday, 17 May 2024**; and
- g) **ORDERS** the Registry to file a public redacted version of the Registry Assessment by **Friday, 24 May 2024**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 14 May 2024

At The Hague, the Netherlands.