



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 Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 20 June 2024

Language: English

Classification: Public

Decision on Prosecution Request for the Video-Conference Testimony of W04445 and W04501

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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 AND SUBMISSIONS

1. On 12 June 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request seeking the Panel’s authorisation for the testimony of W04445 and W04501 to be received by a video-conference link from an appropriate location (“Request”).¹ The SPO submits that the video-conference testimony: (i) is necessary and appropriate to ensure the witnesses’ health and well-being, and to facilitate the testimony in an expeditious manner; and (ii) will not result in undue prejudice to the Accused because the Defence will be able to effectively cross-examine the witnesses.² The SPO submits that, as reserve witnesses, W04445 may appear as early as 27 June 2024, and W04501 as early as 4 July 2024.³
2. On 19 June 2024, pursuant to an order from the Panel for expedited submissions,⁴ the Registry filed its assessment on the Request and confirmed the feasibility of the video-link testimony of said witnesses (“Registry Assessment”).⁵
3. The Defence did not respond.

¹ F02378, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W04445 and W04501*, 12 June 2024, confidential, para. 1 (a public redacted version was filed on the same day, F02378/RED).

² Request, paras 1-2.

³ Request, paras 10, 14.

⁴ CRSPD525, *Email from Trial Panel II to Parties and Participants Regarding Expedited Responses to F02378*, 13 June 2024, confidential.

⁵ F02392, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W04445 and W04501*, 19 June 2024, confidential and *ex parte* (a confidential redacted version was filed on the same day, F02392/CONF/RED).

II. APPLICABLE LAW

4. 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.

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

III. DISCUSSION

6. The Panel recalls that it has discretion to authorise testimony by means of video-conference when the criteria of Rule 144 are met, although the presence of a witness in court remains the preferred option.⁶

7. The Panel emphasises that, when considering whether to allow video-conference testimony, a number of factors may be considered, including: (i) the location; (ii) personal and health situation of the witness; (iii) the

⁶ See e.g., F02308, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W04305 and Related Request*, 14 May 2024, confidential, para. 8 (a public redacted version was filed on the same day, F02308/RED); F02181, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W04571*, 15 March 2024, public, para. 7; F01851, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W04448 and Related Matters*, 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 Decision"), 8 September 2023, confidential, para. 12 (a public redacted version was filed on 1 November 2023, F01776/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.

availability and security of the witness; and (iv) the complexity and duration of any logistical travel and other arrangements to be made.⁷

A. W04445

8. The Panel notes the SPO's submissions that: (i) W04445 is of an advanced age and suffers from serious health issues; (ii) W04445 is willing to testify but is not able to travel by plane due to the health condition;⁸ and (iii) the expected duration of direct examination of W04445 is no more than one hour.⁹ The Panel also notes that W04445 is a reserve witnesses for the upcoming evidentiary block, thus rendering the exact timing of his testimony somewhat uncertain.¹⁰

9. Having carefully considered the Request, and noting the absence of any objection by the Defence, the Panel is satisfied that the SPO has established that the witness's personal and health situation warrant his video-conference testimony. While the reserve status of the witness is not, in and of itself, reason to grant a request for testimony by means of video-conference, the Panel considers that, in these particular circumstances, in light of W0445's health situation, video-conference testimony is more conducive to W04445's well-being than transferring the witness to the Hague to testify in person. The Panel also considers that receiving this witness's testimony via video-conference might help expedite these proceedings.

10. The Panel is also satisfied that W04445's video-conference testimony will cause no prejudice to the Accused and is compatible with the effective protection of their rights, as W04445 will be examined under the same conditions as those in the courtroom. Notably, the Panel, the Accused, the Parties and participants will

⁷ 8 September 2023 Decision, para. 12; KSC-BC-2020-07, Transcript of Hearing, 14 January 2022, p. 3034, lines 6-10. *See similarly* 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.

⁸ Request, para. 7.

⁹ Request, para. 10.

¹⁰ Request, para. 3.

be able to see and hear the witness testifying in real-time and will have the opportunity to ask questions to the witness.

11. The Panel therefore grants the SPO's request that W04445 testify via video-conference.

B. W04501

12. The Panel notes the SPO's submissions that, while W04501 is willing and available to testify, however W04501's extended absence, if testifies in The Hague, might create security concerns for W04501 and additional stress.¹¹ The Panel also notes that W04501 is a reserve witnesses for the upcoming evidentiary block, thus rendering the precise timing of the testimony uncertain.¹²

13. The Panel recalls that the security of the witness is one of the factors the Panel considers when assessing whether to allow a video-conference testimony.¹³ The Panel finds that the SPO submission does not provide detailed information as would enable it to conduct a full assessment of the witness's potential security concerns. However, the Panel takes note of the absence of Defence objection to the present application. In addition, there is no indication that the requested video-link would prejudice the rights of the Accused as the Defence will be able to examine the witness under the same conditions as those in the courtroom. As with W04445, the Panel also considers that receiving this witness's testimony via video-conference might help expedite the proceedings.

14. The Panel therefore grants the SPO's request that W04501 testify via video-conference.

¹¹ Request, para. 12.

¹² Request, para. 12.

¹³ See para. 7 of this Decision.

IV. CLASSIFICATION

15. 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, no later than **Friday, 28 June 2024**.

V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W04445 and W04501 to testify via video-conference;
- c) **ORDERS** the Registry to make the necessary arrangements for W04445 and W04501's testimony via video-conference; and
- d) **ORDERS** the Registry to file a public redacted version of the Registry Assessment no later than **Friday, 28 June 2024**.



Judge Charles L. Smith, III
Presiding Judge

Dated Thursday, 20 June 2024

At The Hague, the Netherlands.