



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: 5 September 2024

Language: English

Classification: Public

**Public Redacted Version of
Decision on Prosecution request for video-conference testimony of W04600 and
W04366**

Specialist Prosecutor

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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 18 July 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request seeking the Panel’s authorisation for the testimony of W04600 and W04366 to be received by a video-conference link from an appropriate location (“Request”).¹ The SPO submits that the video-conference testimony: (i) is needed to ensure the witnesses’ physical and psychological wellbeing; 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 W04600 is tentatively anticipated to testify in the block commencing [REDACTED] and W04366 is tentatively anticipated to testify in the block commencing [REDACTED].³
2. On 1 August 2024, the Registry filed its assessment on the Request and confirmed the feasibility of the video-link testimony of said witnesses (“Registry Assessment”).⁴
3. The Defence did not respond.

¹ F02456, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony of W04600 and W04366*, 18 July 2024, strictly confidential and *ex parte*, para. 1 (a confidential redacted version and a public redacted version was filed on the same day, F02456/CONF/RED and F02456/RED).

² Request, paras 1-2, 6, 10, 12.

³ Request, paras 2, 8, 11, and fn. 4.

⁴ F02482, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W04600 and W04366*, 1 August 2024, confidential and *ex parte* (a confidential redacted version was filed on the same day, F02482/CONF/RED; and a public redacted version was filed on 9 August 2024, F02482/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.⁵

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

⁵ See e.g., F02396, Panel, *Decision on Prosecution Request for the Video-Conference Testimony of W04445 and W04501*, 20 June 2024, public, para. 6; 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.⁶

A. W04600

8. The Panel notes the SPO's submission that: (i) W04600 is affected by a number of serious ailments detailed in the SPO's Request; (ii) W04600's ability to move and travel is severely restricted; and (iii) W04600 requires assistance for the most basic activities in his daily life.⁷ The SPO further submits that the expected duration of direct examination of W04600 is one hour.⁸

9. The Panel also notes the Registry Assessment that it is feasible to conduct the testimony of W04600 via video-conference from the appropriate location with the necessary logistical, technical, and security arrangements, including the implementation of in-court protective measures.⁹

10. 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 health situation warrants his video-conference testimony. The Panel also considers that receiving this witness's testimony via video-conference might help expedite the proceedings.

11. The Panel is satisfied that W04600's video-conference testimony will cause no prejudice to the Accused and is compatible with the effective protection of their rights, as W04600 will be examined under the same conditions as those in the courtroom. Notably, the Panel, the Accused, the Parties and participants will be

⁶ 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.

⁷ Request, paras 6-7.

⁸ Request, para. 8.

⁹ Registry Assessment, paras 7-15, 17.

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

12. The Panel therefore grants the SPO's request that W04600 testify via video-conference.

B. W04366

13. The Panel notes the SPO's submissions that: (i) the use of video-conference is necessary to ensure W04366's well-being and that of his immediate family members; (ii) [REDACTED]; and (iii) the expected duration of direct examination of W04366 is 30 minutes.¹⁰ In particular, the Panel heeds to the SPO's submission regarding W04366 [REDACTED] and the potential consequences if W04366 testifies in person.¹¹

14. The Panel additionally notes the Registry Assessment that it is feasible to conduct the testimony of W04366 via video-conference from the appropriate location with the necessary logistical, technical, and security arrangements including the implementation of in-court protective measures.¹²

15. Having carefully considered the Request, the Panel is attentive to the personal situation of the witness, [REDACTED].¹³ The Panel also takes into account that [REDACTED], making clear that this factor alone does not narrow the Panel's discretion. Moreover, the Panel takes note of the absence of Defence objections to the present Request.

16. The Panel is satisfied that W04366's video-conference testimony will cause no prejudice the rights of the Accused and is compatible with the effective protection of their rights as the Defence will be able to examine the witness under the same conditions as those in the courtroom. Notably, the Panel, the Accused, the Parties

¹⁰ Request, paras 10-11.

¹¹ Request, para. 10.

¹² Registry Assessment, paras 7-15, 17.

¹³ See para. 7 of this Decision.

and participants will be able to see and hear the witness testifying in real-time and will have the opportunity to ask questions to the witness. As with W04300, the Panel also considers that receiving this witness's testimony via video-conference might help expedite the proceedings.

17. The Panel therefore grants the SPO's request that W04366 testify via video-conference.

IV. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W04600 and W04366 to testify via video-conference; and
- c) **ORDERS** the Registry to make the necessary arrangements for W04600 and W04366's testimony via video-conference.



Judge Charles L. Smith, III

Presiding Judge

Dated Thursday, 5 September 2024

At The Hague, the Netherlands.