



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: 13 September 2024

Language: English

Classification: Public

**Decision on Prosecution Request for Video-Conference Testimony for W02135
and Related Request**

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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 80, 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 3 September 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request seeking the Panel’s authorisation for the testimony of W02135 to be received by a video-conference link from an appropriate location (“SPO Request”).¹ Also in the Request, the SPO seeks a modified sitting schedule for W02135’s testimony.²

2. On 10 September 2024, pursuant to an order from the Panel for expedited submissions,³ the Registry filed its assessment on the SPO Request and confirmed the feasibility of the video-link testimony (“Registry Assessment”).⁴ The Defence teams for Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi do not oppose the SPO Request.⁵ The Defence for Hashim Thaçi (“Thaçi Defence”) does not oppose the SPO Request, but requests a modification to the sitting schedule in addition to that requested by the SPO.⁶

¹ F02527, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W02135 and Related Request*, 3 September 2024, strictly confidential and *ex parte* (public and confidential redacted versions were filed on the same day, F02527/RED and F02527/CONF/RED).

² SPO Request, para. 3.

³ CRSPD565, Panel, *Email from Trial Panel II to CMU re Response to F02527*, 4 September 2024, confidential.

⁴ F02547, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W02135 and Related Request*, 10 September 2024, strictly confidential and *ex parte* (a confidential redacted version was filed on the same day (F02547/CONF/RED) and a public redacted version was filed on 11 September 2024 (F02547/RED)).

⁵ CRSPD565, Specialist Counsel, *Emails from the Veseli, Selimi, and Krasniqi Defence Teams to CMU, Parties and Participants regarding Response to KSC-BC-2020-06_F02527*, 9 September 2024, confidential.

⁶ CRSPD565, Specialist Counsel, *Email from Thaçi Defence Team to Trial Panel re Response to F02527* (“Thaçi Response”), 4 September 2024, confidential.

II. APPLICABLE LAW

3. 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.

4. 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

5. 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.⁷ 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 availability and security of the witness; and (iv) the complexity and duration of any logistical travel and other arrangements to be made.⁸

⁷ See e.g., F02396, Panel, *Decision on Prosecution Request for Video-Conference Testimony of W04445 and W04501* (“Decision on W04445 and W04501”), 20 June 2024, para. 6.

⁸ Decision on W04445 and W04501, para. 7; 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.

A. VTC REQUEST

6. The Panel notes the SPO's submissions that, for the reasons set out in the confidential version of the Request, permitting W02135 to testify via video-link from a specified location is consistent with minimising the risk of harm and improving the quality of the witness's testimony.⁹

7. Having carefully considered the SPO Request, and noting the absence of objection by the Defence, the Panel is satisfied that the SPO has established that video-conference testimony is more conducive to W02135's well-being and quality of his testimony than transferring the witness to The Hague to testify in person. The Panel is also satisfied that W02135's video-conference testimony will not cause prejudice to the Accused and is compatible with the effective protection of their rights, as W02135 will be examined under the same conditions as those in the courtroom. Notably, the Panel and the Parties will be able to see and hear the witness testifying in real-time and will have the opportunity to ask questions of the witness.

8. In addition, the Panel also considers the Registry's preliminary assessment that it is feasible to conduct the testimony of W02135 via video-link.¹⁰ The Panel notes that, according to the Registry Assessment, following this decision a request for assistance will be issued to the relevant authorities and the Registry will arrange for the testimony to take place from a suitable location under specific conditions.¹¹ The Panel instructs the Registry to provide an update if, in its estimation, it foresees any difficulty with meeting those conditions or any general concerns about complying with the requirements of Rule 144(2) or (3).

⁹ SPO Request, para. 8.

¹⁰ Registry Assessment, para. 22.

¹¹ See Registry Assessment, paras 12-13.

9. In light of the foregoing, the Panel grants the SPO Request to present the testimony of W02135 via video-conference from a suitable location recommended by the Registry.

B. REQUEST FOR ADJUSTED SITTING SCHEDULE

10. The Panel further notes the SPO's request that, for the reasons set out in the confidential version of the SPO Request,¹² the sitting schedule be adjusted such that W02135's testimony commence at 10:00 CET. The Thaçi Defence adds that if the Panel grants this aspect of the SPO Request, the Panel should also order that an extra hour be added to the end of the hearing to compensate for lost time ("Thaçi Request").¹³ The Registry submits that W02135, through the Witness Protection and Support Office, requests a further adjustment of the hearing schedule, namely to start no earlier than 11:00 CET. Finally, the Registry recommends that the first day of testimony commence at 12:00 CET, so that pre-testimony courtroom familiarisation could take place immediately prior to the commencement of the hearing.¹⁴

11. The Panel finds that the SPO and the Registry have presented sufficient reasons warranting a modification of the regular hearing schedule for W02135's testimony. Consistent with the recommendation of the Registry and the concerns of the witness himself, the Panel orders a modification to the regular hearing schedule such that the testimony of W02135 commence at 12:00 CET the first day, and then at 11:00 CET each subsequent day. However, in the interest of taking full advantage of available courtroom time, the Panel instructs the SPO to endeavour to call a reserve witness who can testify the morning of W02135's first day of testimony, and each subsequent day of W02135's testimony if necessary, from 9:00

¹² SPO Request, para. 11.

¹³ Thaçi Response.

¹⁴ Registry Assessment, paras 18-19.

until 10:30 CET. The Panel will inquire with the SPO on this matter during the hearing currently scheduled for Monday, 16 September 2024.

12. Given that the schedule envisaged above will entail a full day of testimony and potentially two witnesses for each hearing day, the Panel considers that extending the close of the hearing each day would be a strain on the Court's resources and would ultimately be unnecessary to economise courtroom time. Therefore, the Thaçi Request is dismissed without prejudice at this time.

V. DISPOSITION

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

- a) **GRANTS** the SPO Request;
- b) **DISMISSES** the Thaçi Request, without prejudice;
- c) **AUTHORISES** W02135 to testify via video-conference;
- d) **ORDERS** the Registry (i) to make the necessary arrangements for W02135's testimony via video-conference and pre-testimony familiarisation; (ii) to provide an update, if necessary, in accordance with paragraph 8 above; and (iii) implement the modifications to the regular hearing schedule set out in paragraph 11 above; and
- e) **ORDERS** the SPO to provide an update at the start of the hearing scheduled on Monday, 16 September 2024 on its efforts to schedule a reserve witness.



Judge Charles L. Smith, III
Presiding Judge

Dated Friday, 13 September 2024

At The Hague, the Netherlands.