



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 September 2024

Language: English

Classification: Public

Decision on Prosecution Request for Video-Conference Testimony for W04422

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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 10 September 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request seeking the Panel’s authorisation for the testimony of W04422 to be received by a video-conference link from an appropriate location (“Request”).¹ The SPO submits that, in light of the witness’s personal circumstances, video-conference testimony: (i) will ensure the witness’s wellbeing and security; and (ii) would not result in undue prejudice to the Accused, as the Defence will be fully able to cross-examine the witnesses.²

2. On 10 September 2024, the Panel altered the briefing schedule, informing the Parties and participants and the Registry that: (i) any response to the Request shall be filed by 17 September 2024; and (ii) any reply thereto and the Registry’s assessment regarding the witness’s video-link testimony shall be filed by 18 September 2024.³

3. On 16 September 2024, the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”) responded to the Request (“Response”).⁴ The Defence submits that it is willing to agree that the testimony of W04422 may be conducted via video-link, given the

¹ F02543, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W04422*, 10 September 2024, confidential, para. 1 (a public redacted version was filed on the same day, F02543/RED).

² Request, paras 2, 6-8.

³ CRSPD570, *Email from Trial Panel II to CMU Regarding Briefing Schedule for F02543*, 10 September 2024, confidential.

⁴ F02577, Specialist Counsel, *Joint Defence Consolidated Response to Prosecution Request for Video-Conference Testimony for W01163 (F02533) and W04422 (F02543)*, 16 September 2024, confidential.

specific nature of his evidence and to ensure the efficient conduct of proceedings.⁵ However, the Defence raises concerns as to the basis upon which the Request has been submitted.⁶

4. On 17 September 2024, the Registry filed its assessment on the Request and confirmed the feasibility of the video-link testimony of said witnesses (“Registry Assessment”).⁷

5. On 18 September 2024, the SPO replied to the Response (“Reply”).⁸ The SPO submits that: (i) the Response artificially isolates and mischaracterises the circumstances presented in the Request;⁹ (ii) in-person testimony for W04422 would have a significant and disproportionate impact on his life;¹⁰ and (iii) considering that the Defence does not oppose the Request, the Request should be granted.¹¹

II. 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 Response, para. 5.

⁶ Response, paras 5-7.

⁷ F02581, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W04422*, 17 September 2024, confidential and *ex parte* (a confidential redacted version was filed on the same day, F02581/CONF/RED; a public redacted version was filed on 19 September 2024, F02581/RED).

⁸ F02582, Specialist Prosecutor, *Prosecution Reply Relating to Video-Link Requests F02533 and F02543*, 18 September 2024, confidential (a public redacted version was filed on the same day, F02582/RED).

⁹ Reply, para. 1.

¹⁰ Reply, para. 2.

¹¹ Reply, para. 3.

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

III. DISCUSSION

8. 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.¹²

9. 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 availability and security of the witness; and (iv) the complexity and duration of any logistical travel and other arrangements to be made.¹³

10. The Panel notes the SPO's submission that, while W04422—who will testify with protective measures—is willing and available to testify, he recently informed the SPO that he is unable to travel due to his work, and an extended absence for in-person testimony would be impractical, attract unnecessary attention, and could be detrimental to the witness's livelihood.¹⁴ The Panel also notes the SPO's submission that W04422 is a Rule 154 crime-base witness who will provide evidence limited in scope and nature.¹⁵ In addition, the SPO submits that: (i) the expected duration of direct examination of W04422 is one hour; and (ii) the timing

¹² See e.g. F02572, Panel, *Decision on Prosecution Request for Video-Conference Testimony of W02135 and Related Request* ("13 September 2024 Decision"), 13 September 2024, para. 5; 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.

¹³ See e.g. 13 September 2024 Decision, para. 5; 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.

¹⁴ Request, para. 6.

¹⁵ Request, paras 5-6.

of W04422's testimony, which is anticipated to take no more than a day, is dependent on the completion of witnesses scheduled before him.¹⁶

11. The Panel further notes the Registry Assessment that it is feasible to conduct the testimony of W04422 via video-conference from the appropriate location with the necessary logistical, technical, and security arrangements, including the implementation of in-court protective measures.¹⁷

12. The Panel agrees with the Defence that, while video-conference testimony should not be considered only on an exceptional basis,¹⁸ the inevitable inconveniences of providing in-person testimony do not in principle amount to sufficient reasons for granting requests for video-conference testimony. However, having carefully considered the Request, and noting that, in the interests of expediency, the Defence is willing to agree that the testimony of W04422 may be conducted via video link,¹⁹ the Panel is satisfied that, in the present circumstances, the SPO has established that: (i) the witness's personal situation warrants his video-conference testimony; and (ii) receiving W04422's testimony via video-conference may help expedite the proceedings.

13. In addition, the Panel is satisfied that W04422's video-conference testimony will cause no prejudice to the Accused and is compatible with the effective protection of their rights, as W04422 will be examined under the same conditions as those in the courtroom. Notably, the Panel, the Accused, the Parties 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.

¹⁶ Request, para. 9.

¹⁷ Registry Assessment, paras 10-17, 19.

¹⁸ See e.g. 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 2023, 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 2023, F01558/CONF/RED).

¹⁹ Response, paras 5, 7.

14. The Panel therefore grants the SPO's request that W04422 testify via video-conference, and orders the Registry to make the necessary arrangements for W04422's testimony via video-conference.

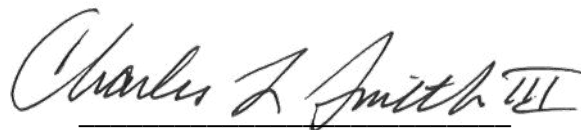
IV. CLASSIFICATION

15. The Panel notes that the Response was filed confidentially. The Panel orders the Defence to file a public redacted version or request the reclassification of the Response by **Friday, 27 September 2024**.

V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W04422 to testify via video-conference;
- c) **ORDERS** the Registry to make the necessary arrangements for W04422's testimony via video-conference; and
- d) **ORDERS** the Defence to file a public redacted version or request the reclassification of the Response by **Friday, 27 September 2024**.



Judge Charles L. Smith, III

Presiding Judge

Dated Friday, 20 September 2024

At The Hague, the Netherlands.