



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 September 2024

Language: English

Classification: Public

Decision on Prosecution Request for Video-Conference Testimony for W01163

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Counsel for Jakup Krasniqi
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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 5 September 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request seeking the Panel’s authorisation for the testimony of W01163 to be received via video-conference (“Request”).¹
2. On 16 September 2024, the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”) jointly responded to the Request (“Response”).²
3. On 18 September 2024, the SPO replied to the Response (“Reply”).³ On the same day, the Registry filed its assessment regarding the feasibility of facilitating the Request (“Registry Assessment”).⁴

II. SUBMISSIONS

4. The SPO requests the Panel to authorise W01163’s testimony to take place via video-conference from an appropriate location.⁵ The SPO submits that video-

¹ F02533, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W01163*, 5 September 2024, confidential (a public redacted version was filed on the same day, F02533/RED).

² F02577, Specialist Counsel, *Joint Defence Consolidated Response to Prosecution Request for Video-Conference Testimony for W01163 (F02533) and W04422 (F02543)*, 16 September 2024, confidential.

³ 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).

⁴ F02584, Registry, *Registry Assessment Regarding Specialist Prosecutor’s Request for Video-Conference Testimony for Witness W01163*, 18 September 2024, confidential and *ex parte* (a confidential redacted version was filed on the same day, F02584/CONF/RED; a public redacted version was filed on 19 September 2024, F02584/RED).

⁵ Request, paras 1, 11.

conference testimony would ensure the witness's physical and psychological well-being and improve the quality of the witness's evidence.⁶ In addition, the SPO avers that video-conference testimony would minimise the risk of disruptions to the court schedule and would not result in undue prejudice to the Accused.⁷

5. The Defence responds that they are willing to agree to W01163's testimony via video-conference in the interest of expediency and due to the specific nature of the witness's evidence.⁸ The Defence, however, observes that the bases underlying the Request amount to mere inconveniences and are, therefore, insufficient to claim that testimony via video-conference is necessary for the protection of W01163's physical and psychological well-being.⁹

6. The SPO replies that: (i) the Response artificially isolates and mischaracterises the circumstances presented in the Requests;¹⁰ (ii) in-person testimony would have a significant and disproportionate impact on W01163;¹¹ and (iii) considering that the Defence does not oppose the Request, the Request should be granted.¹²

7. The Registry preliminarily assesses that it is technically feasible to conduct the testimony of W01163 via video-conference.¹³ The Registry further submits that the competent authorities have confirmed their willingness and ability to facilitate the testimony of W01163 in line with certain conditions.¹⁴

⁶ Request, paras 2, 7.

⁷ Request, paras 2, 7-8.

⁸ Response, paras 5, 7.

⁹ Response, paras 6-7.

¹⁰ Reply, para. 1.

¹¹ Reply, para. 2.

¹² Reply, para. 3.

¹³ Registry Assessment, paras 9, 17.

¹⁴ Registry Assessment, para. 14. These conditions include the following: (i) the video-link location is on secure premises free from interference, to the extent possible, within the control of the competent authorities, where the confidentiality of the proceedings can be assured; (ii) the video-link 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 authorities provide suitable in-situ cabled or 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-link room. *See* Registry Assessment, para. 11.

III. APPLICABLE LAW

8. 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.

9. 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.

IV. DISCUSSION

10. 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.¹⁵

11. 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.¹⁶

¹⁵ See, e.g., F02572, Panel, *Decision on Prosecution Request for Video-Conference Testimony of W02135 and Related Request* (“13 September 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*, IT94-1-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.

¹⁶ 13 September 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.

12. The Panel notes the SPO's submissions that being absent for the time required for in-person testimony would risk harm and disruptions to the lives of the witness and the witness's family, due to W01163's personal circumstances, including, but not limited to, work and family obligations.¹⁷ The Panel additionally notes the SPO's submission that video-conference testimony would be more conducive to: (i) the witness's ability to provide truthful and open testimony, considering also the concerns expressed by W01163;¹⁸ and (ii) the expeditious conduct of the proceedings, in light of the expected length of W01163's testimony and the current witness schedule.¹⁹

13. The Panel further notes: (i) the preliminary assessment of the Registry that it is feasible to conduct the testimony of W01163 via video-conference;²⁰ and (ii) the assurances of the relevant authorities that they will be able to facilitate the necessary logistical, technical, and security arrangements.²¹

14. The Panel agrees with the Defence that, while video-conference testimony should not be considered only on an exceptional basis,²² 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 W01163 may be conducted via video link,²³ the Panel is satisfied that, in the present circumstances, the SPO has established that: (i) the witness's personal situation warrants his

¹⁷ Request, para. 6; Reply, para. 2.

¹⁸ Request, para. 7; Reply, para. 2.

¹⁹ Request, para. 7.

²⁰ Registry Assessment, paras 9, 17.

²¹ Registry Assessment, para. 14.

²² See, e.g., F02308, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W04305 and Related Request*, 14 May 2024, confidential, para. 8, and references therein (a public redacted version was file on the same day, F02308/RED).

²³ Response, paras 5, 7.

video-conference testimony; and (ii) receiving W01163's testimony via video-conference may help expedite the proceedings.

15. In addition, the Panel is satisfied that hearing W01163's testimony via video-conference would not be prejudicial to or inconsistent with the rights of the Accused, as 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 examine the witness.

16. For these reasons, the Panel finds it appropriate to hear the testimony of W01163 by way of video-conference.

V. CLASSIFICATION

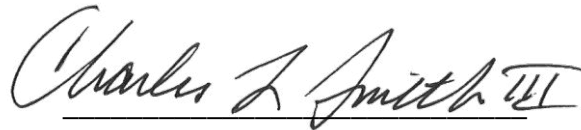
17. The Panel notes that the Response was filed confidentially. The Panel orders the Defence to file a public redacted version or request the reclassification of the Response by **Friday, 27 September 2024**.

VI. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W01163 to testify via video-conference;
- c) **ORDERS** the Registry to make the necessary arrangement for W01163's testimony via video-conference; and

- d) **ORDERS** the Defence to file a public redacted version or request the reclassification of the Response no later than **Friday, 27 September 2024**.

A handwritten signature in black ink, reading "Charles L. Smith, III", written over a horizontal line.

Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 20 September 2024

At The Hague, the Netherlands.