



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA 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:** 11 October 2024

**Language:** English

**Classification:** Public

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**Decision on Prosecution request for video-conference testimony for W00344**

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**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 25 September 2024, the Specialist Prosecutor's Office ("SPO") filed a request seeking the Panel's authorisation for the testimony of W00344 to be received by video-conference from an appropriate location ("Request").<sup>1</sup> The SPO submits that the video-conference testimony: (i) is needed to ensure the witnesses' health and well-being; and (ii) will not result in undue prejudice to the Accused because the Defence will be able to effectively cross-examine the witness.<sup>2</sup> The SPO further submits that W00344 was notified as an additional reserve witness for the 21 October - 7 November 2024 evidentiary block, which requires his availability at short notice and makes his actual testimony date contingent upon unanticipated changes in the schedule.<sup>3</sup>

2. On 9 October 2024, the Registry filed its assessment on the Request and confirmed the feasibility of the video-link testimony of said witnesses ("Registry Assessment").<sup>4</sup>

3. The Defence did not respond.

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<sup>1</sup> F02595, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W00344*, 25 September 2024, confidential, para.1 (a public redacted version was filed on the same day, F02595/RED).

<sup>2</sup> Request, paras 1-2, 6-8.

<sup>3</sup> Request, paras 5, 7.

<sup>4</sup> F02631, Registry, *Registry Assessment Regarding Prosecution's Request for Video-Conference Testimony for W00344*, 9 October 2024, confidential and *ex parte* (a confidential redacted version was filed on the same day, F02631/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.<sup>5</sup>

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

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<sup>5</sup> 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.<sup>6</sup>

8. The Panel notes the SPO's submission that: (i) W00344 is affected by a number of serious ailments detailed in the SPO's Request;<sup>7</sup> (ii) W00344 requires assistance in his daily life;<sup>8</sup> (iii) the expected duration of direct examination of W00344 is no more than one hour;<sup>9</sup> and (iv) W00344 has been notified as a reserve witness.<sup>10</sup>

9. The Panel also notes the Registry's assessment that it is feasible to conduct the testimony of W00344 via video-conference from the appropriate location with the necessary logistical, technical, and security arrangements, including the implementation of in-court protective measures.<sup>11</sup>

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. 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 W00344's health situation, video-conference testimony is more conducive to W00344's well-being and allows for the scheduling flexibility required of a reserve witness. The Panel also considers that receiving this witness's testimony via video-conference might help expedite these proceedings.

11. The Panel is satisfied that W00344's video-conference testimony will cause no prejudice to the Accused and is compatible with the effective protection of their

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<sup>6</sup> 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.

<sup>7</sup> Request, para. 6.

<sup>8</sup> Request, para. 6.

<sup>9</sup> Request, para. 9.

<sup>10</sup> Request, para. 2.

<sup>11</sup> Registry Assessment, paras 7-16.

rights, as W00344 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.

12. The Panel therefore grants the SPO's request and authorises the testimony of W00344 to take place via video-conference.

#### IV. CLASSIFICATION

13. The Panel notes that the Registry Assessment has been submitted as confidential and *ex parte* and a confidential redacted version was filed on the same day. The Panel therefore orders the Registry to request the reclassification or submit a public redacted version of the Registry Assessment by Monday, 21 October 2024.

#### V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W00344 to testify via video-conference
- c) **ORDERS** the Registry to make the necessary arrangements for W00344's testimony via video-conference; and

**ORDERS** the Registry to submit a public redacted version of the Registry Assessment by no later than Monday, 21 October 2024.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated Friday, 11 October 2024

At The Hague, the Netherlands.