



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:** 6 November 2024

**Language:** English

**Classification:** Public

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**Decision on Prosecution Request for Video-Conference Testimony for W04393**

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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 8 October 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request seeking the Panel’s authorisation for the testimony of W04393 to be received by video-conference from an appropriate location (“Request”).<sup>1</sup> The SPO submits that, in light of the witness’s personal circumstances, video-conference testimony: (i) will ensure the witness’s physical and psychological well-being; and (ii) would not result in undue prejudice to the Accused, as the Defence will be fully able to cross-examine the witness.<sup>2</sup>

2. On 23 October 2024, the Registry filed its assessment on the Request and confirmed the feasibility of the video-link testimony of said witness (“Registry Assessment”).<sup>3</sup>

3. The Defence did not respond.

## 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.

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<sup>1</sup> F02627, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W04393*, 8 October 2024, confidential, para. 1 (a public redacted version was filed on the same day, F02627/RED).

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

<sup>3</sup> F02670, Registry, *Registry Assessment Regarding Specialist Prosecutor’s Request for Video-Conference Testimony for W04393*, 23 October 2024, confidential and *ex parte*, para. 16.

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>4</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 availability and security of the witness; and (iv) the complexity and duration of any logistical travel and other arrangements to be made.<sup>5</sup>

8. 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 personal and health situation warrant his video-conference testimony. The Panel considers in particular: (i) W04393's age and health situation; (ii) the fact that video-conference testimony is more conducive to W04393's well-being than transferring the witness to the Hague to testify in person; (iii) the

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<sup>4</sup> 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.

<sup>5</sup> 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.

limited scope, nature and expected length of W04393's testimony (one hour); (iv) the expeditious conduct of the proceedings; and (v) the witness's ability to provide truthful and open testimony.

9. The Panel is also satisfied that W04393's video-conference testimony will cause no prejudice to the Accused and is compatible with the effective protection of their rights, as W04393 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.

10. In addition, the Panel also considers the Registry Assessment that it is feasible to conduct the testimony of W04393 via video-conference from the appropriate location with the necessary logistical, technical, and security arrangements, including the implementation of in-court protective measures.<sup>6</sup>

11. The Panel therefore grants the SPO's request and authorises the testimony of W04393 to take place via video-conference.

#### IV. CLASSIFICATION

12. The Panel notes that the Registry Assessment has been submitted as confidential and *ex parte*. The Panel therefore orders the Registry to submit a confidential redacted and/or public redacted version of the Registry Assessment by **Tuesday, 12 November 2024**.

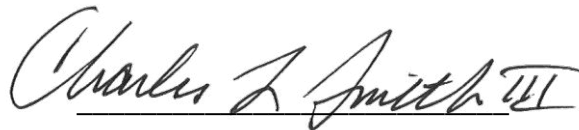
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<sup>6</sup> Registry Assessment, paras 7-14, 16.

## V. DISPOSITION

For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;
- b) **AUTHORISES** W04393 to testify via video-conference;
- c) **ORDERS** the Registry to make the necessary arrangements for W04393's testimony via video-conference; and
- d) **ORDERS** the Registry to file confidential and/or public redacted versions of the Registry Assessment no later than **Tuesday, 12 November 2024**.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Wednesday, 6 November 2024

At The Hague, the Netherlands.