



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: 9 December 2024

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**Public Redacted Version of
Decision on Prosecution Consolidated Request for Protective Measures and
Video-conference Testimony for W02677**

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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

1. On 14 November 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request seeking: (i) the Panel’s order for protective measures for witness W02677 (“Protective Measures’ Request”) and (ii) authorisation for the testimony of W02677 to be received by video-conference from an appropriate location specified in the request (“VTC Request”, collectively “Request”).¹
2. On 18 November 2024, the Defence teams for the four Accused (collectively, “Defence”) responded to the Request (“Response”).²
3. The SPO did not reply.
4. On 29 November 2024, the Registry filed its assessment on the Request and confirmed the feasibility of the video-link testimony of said witnesses (“Registry Assessment”).³

II. SUBMISSIONS

A. PROTECTIVE MEASURES REQUEST

5. The SPO requests the Panel to order the following in-court protective measures for W02677: the use of pseudonym, redaction of the witness’s name and

¹ F02721, Specialist Prosecutor, *Prosecution Consolidated Request for Protective Measures and Video-Conference Testimony for W02677*, 14 November 2024, confidential, para. 1 (a public redacted version was filed on the same day, F02721/RED).

² F02731, Specialist Counsel, *Joint Response to Prosecution Consolidated Request for Protective Measures and Video-Conference Testimony for W02677*, 18 November 2024, confidential.

³ F02754, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for Witness W02677*, 29 November 2024, confidential and *ex parte* (a confidential redacted version and public redacted version were filed on the same day, F02754/CONF/RED and F02754/RED).

identifying information from the court's public records, non-disclosure to the public of any records identifying the witness, face and voice distortion, and private session for in-court discussion or testimony identifying the witness ("Protective Measures").⁴ The SPO submits that W02677 is a Rule 154 crime-base witness, whose material evidence primarily concerns crimes alleged to have occurred in a KLA detention site in Kosovo in 1999, [REDACTED].⁵ The SPO submits that: (i) [REDACTED]; (ii) [REDACTED]; (iii) W02677 is also involved in an ongoing private dispute in Kosovo; (iv) W02677 is particularly susceptible to intimidation due the prevailing climate of witness interference and intimidation in Kosovo; and (v) W02677 and W02677's family face concrete risks, in particular, if W02677 testifies publicly which is consistent with the fears and concerns W02677 recently expressed to the SPO.⁶ The SPO asserts that the requested in-court protective measures are necessary in light of concrete, objective risks to the security and well-being of the witness and his family.⁷

6. Furthermore, the SPO submits that: (i) the Accused have access to W02677's identity and prior statements, and will be able to cross-examine him; and (ii) the requested measures are the least restrictive available to provide appropriate protection to W02677 and his family.⁸ The SPO asserts that the requested in-court protective measures are proportionate, taking into account the rights of the Accused and the principle of publicity.⁹

7. The Defence objects to the protective measures sought. It submits that they are neither necessary nor proportionate, and are prejudicial for the Defence.¹⁰ It avers that: (i) W02677's belief that his participation in court proceedings before the

⁴ Request, para. 4.

⁵ Request, para. 3.

⁶ Request, para. 5.

⁷ Request, para. 2.

⁸ Request, para. 6.

⁹ Request, para. 2.

¹⁰ Response, paras 2, 6.

SPO could negatively affect a private dispute ; (ii) hypothetical future threats; and (iii) the absence of any prior specific security incidents are insufficient to justify the protective measures sought and do not reveal the existence of any objective risk for the witness or his family.¹¹

B. VTC REQUEST

8. The SPO submits that W02677 is [REDACTED] and being absent for the time required for in-person testimony would risk undue harm and disruption to the lives of W02677 and his family.¹²

9. The SPO argues that W02677's personal circumstances and W02677's reserve witness status warrants video-conference testimony to ensure the witness's wellbeing, and to facilitate his testimony in an expeditious manner.¹³ The SPO further asserts that granting the request would also not be prejudicial to or inconsistent with the rights of the Accused because the available technology allows for W02677 to be examined under the same conditions as he would be in the courtroom.¹⁴

10. The Defence responds that it is willing to agree that the testimony of W02677 may be conducted via video link, considering the witness's reserve status, the limited scope and length of the anticipated testimony, and the need to ensure the efficient conduct of proceedings.¹⁵ However, the Defence argues that the underlying reasons given by the SPO are particularly weak and do not meet the threshold warranting video-conference.¹⁶ Furthermore, the Defence rejects any

¹¹ Response, para. 6.

¹² Request, para. 7.

¹³ Request, para. 2.

¹⁴ Request, para. 8.

¹⁵ Response, para. 10.

¹⁶ Response, para. 10.

link between the ability of this witness to provide truthful testimony and the granting of any video-conference application.¹⁷

11. The Registry confirmed the feasibility of the video-link testimony of W02677.¹⁸

III. APPLICABLE LAW

A. PROTECTIVE MEASURES

12. Pursuant to Article 23(1) of the Law and Rules 80(1) and 108(1)(b) of the Rules, a Panel may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses, provided that the measures are consistent with the rights of the Accused.

13. Pursuant to Rules 80(4)(a) and (b) and 108(1)(b) of the Rules, such measures may include: redacting names and other identifying information from the Specialist Chamber's ("SC") public records; giving testimony with face and voice distortion; the assignment of a pseudonym; and giving testimony in private or closed session. These measures aim to prevent disclosure to the accused and/or the public of the identity and/or whereabouts of a witness, a victim participating in the proceedings, or a person related to or associated with them.

B. VTC

14. 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

¹⁷ Response, para. 10.

¹⁸ Registry Assessment, para. 17.

of video-conference pursuant to Rule 144 in a way not prejudicial to or inconsistent with the rights of the Accused.

15. 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

A. PROTECTIVE MEASURES REQUEST

16. The Panel recalls that publicity of proceedings is a fundamental right of the Accused under Article 21(2) of the Law and a necessary component of a fair trial.¹⁹ This right is not absolute and is subject to exceptions, including those associated with the protection of victims and witnesses, as stipulated by Articles 21(2) and 23.²⁰ Rule 80(1) further provides that, consistent with Article 23(1), a Panel may, *proprio motu* or upon request by a Party, the Witness Protection and Support Office, a witness, or Victims' Counsel, where applicable, order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings and others at risk on account of testimony given by witnesses, provided that the measures are consistent with the rights of the Accused.

17. As this Panel has previously held, a party seeking protective measures for one

¹⁹ See e.g. European Court of Human Rights ("ECtHR"), *Riepan v. Austria*, no. 35115/97, [Judgment](#), 14 November 2000, para. 27; *Krestovskiy v. Russia*, no. 14040/03, [Judgment](#), 28 October 2010, para. 24; *Sutter v. Switzerland*, no. 8209/78, [Judgment](#), 22 February 1984, para. 26

²⁰ F00133/COR, Corrected Version of *First Decision on Specialist Prosecutor's Request for Protective Measures*, 14 December 2020, strictly confidential and *ex parte*, para. 114. A confidential redacted version was issued the same day (citing ICC, *Prosecutor v. Ongwen*, [ICC-02/04-01/15-612-Red](#), Trial Chamber IX, *Decision on the 'Prosecution Application for In-Court Protective and Special Measures'*, 29 November 2016, para. 5; *Prosecutor v. Bemba Gombo et al.*, [ICC-01/05-01/13-1306](#), Trial Chamber VII, *Decision on Prosecution Request for In-Court Protective Measures*, 28 September 2015, para. 3).

or more of its witnesses for reasons of security must demonstrate that there is a real likelihood that the person for whom the protective measures are sought may be in danger, or at risk of being interfered with or intimidated.²¹ This requires proof of some objective basis underlying the claim that the safety, security, or well-being of the individual concerned is at risk.²²

18. In assessing whether the SPO has established these requirements in the present case, the Panel has considered, *inter alia*, the following factors: (i) W02677 is in a position to provide material evidence regarding the alleged abduction and mistreatment of W02677's relatives at a KLA detention site in Kosovo;²³ (ii) [REDACTED]; (iii) [REDACTED]; (iv) the basis underlying W02677's expression of concerns regarding the possibility of testifying publicly; and (v) the general climate of witness interference and intimidation prevailing in Kosovo.²⁴ The Panel agrees with the Defence's submission that hypothetical but unsubstantiated future threats would not on their own meet the requisite threshold relevant and sufficient to granting protective measures. In the present case, however, the Panel has accounted for the particular circumstances of this witness, in particular [REDACTED], as well as the fact that W02677 [REDACTED] and [REDACTED] as well as the general climate of witness interference and intimidation prevailing in Kosovo to this day.²⁵ Having considered all these factors, the Panel finds that an objective basis exists for the conclusion that disclosure of the identity of W02677 to the public would pose a risk to the safety, security, physical, psychological well-being and privacy of W02677 and his family.

²¹ KSC-BC-2020-07/F00303, Trial Panel II, *Decision on the Prosecution Request for Protective Measures* ("Decision of 7 September 2021"), 7 September 2021, para. 11.

²² Decision of 7 September 2021, para. 11 (citing, *inter alia*, ICTY, *Prosecutor v. Popović et al.*, IT-95-5/18-T, [Decision on Urgent Prosecution Motion for Additional Protective Measures for Witness KDZ084](#), 10 May 2012, p. 3; *Prosecutor v. Boškoski*, IT-04-82-T, *Decision on Prosecution's Motion for Protective Measures*, 2 May 2007, para. 2; ICTR, *Prosecutor v. Simba*, ICTR-01-76-I, [Decision on Defence Request for Protection of Witnesses](#), 25 August 2004, para. 5).

²³ Request, para. 3.

²⁴ Request, para. 5.

²⁵ Request, para. 4.

19. Regarding the necessity of the requested Protective Measures, the Panel notes the general climate of witness interference and intimidation relating to criminal proceedings against former KLA members, which results in the risk of intimidation or interference for witnesses and/or their family members as well as interferences with the dignity and privacy of those concerned.²⁶ Further, the Panel finds that no less restrictive measures would sufficiently address the security concerns mentioned above. As such, the Panel finds that the Protective Measures are necessary.

20. The Panel notes that the identity of W02677 has been disclosed to the Defence by the SPO²⁷ and therefore the ability of the Defence to prepare for the questioning of the witness is not materially affected by the requested protective measures, and no prejudice is caused to the Defence. The Panel finds that the Protective Measures sought by the SPO are consistent with the effective protection of the rights of the Accused and proportionate in light of the demonstrated need for such measures.

21. The Panel therefore grants the SPO's request for the Protective Measures.

B. VTC REQUEST

22. 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.²⁸

23. The Panel emphasises that, when considering whether to allow video-conference testimony, a number of factors may be considered, including:

²⁶ KSC-BC-2020-05, F00494/RED/COR, Trial Panel I, *Corrected Version of Public Redacted Version of Trial Judgment*, 24 January 2023, para. 57; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of Trial Judgment*, 18 May 2022, para. 577; KSC-BC-2020-04/F00847/RED, Trial Panel I, *Public Redacted Version of Trial Judgment and Sentence*, 16 July 2024, para. 97.

²⁷ See Request, para. 6.

²⁸ See e.g., F02396, Panel, *Decision on Prosecution Request for the Video-Conference Testimony of W04445 and W04501*, 20 June 2024, public, para. 6; 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.

(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.²⁹

24. The Panel notes the SPO's submission that: (i) W02677 has responsibility over other members of the family;³⁰ (ii) W02677 and W02677's family expressed fears and concerns regarding W02677's testimony;³¹ and (iii) W02677 has been notified as a reserve witness.³² The Panel further notes the Defence's willingness to agree to W02677's testimony via video link, as well as the Registry's assessment that it is feasible to conduct the testimony of W02677 via video-conference from the appropriate location with the necessary logistical, technical, and security arrangements, including the implementation of in-court protective measures.³³

25. Having carefully considered the Request, the Panel is satisfied that the SPO has established that the witness's situation warrants hearing the witness's evidence by means of 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 W02677's family situation and expressed fear, video-conference testimony is more conducive to W02677'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.

26. The Panel is further satisfied that W02677's video-conference testimony will cause no prejudice to the Accused and is compatible with the effective protection

²⁹ F02396, Panel, *Decision on Prosecution Request for the Video-Conference Testimony of W04445 and W04501*, 20 June 2024, public, para. 7; KSC-BC-2020-07, Transcript of Hearing, 14 January 2022, p. 3034, lines 6-10; 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.

³⁰ Request, para. 7.

³¹ Request, para. 5.

³² Request, para. 9.

³³ Registry Assessment, paras 7-16.

of their rights, as W02677 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.

27. The Panel therefore grants the SPO's request and authorises the testimony of W02677 to take place via video-conference.

V. CLASSIFICATION

28. The Panel notes the Response was submitted as a confidential filing. The Panel therefore orders the Defence to request the reclassification or submit a public redacted version of the Response by Monday, 16 December 2024.

VI. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **ORDERS** the following protective measures for W02677:
 - (i) use of a pseudonym;
 - (ii) redaction of the witnesses' names and identifying information from the KSC's public records;
 - (iii) non-disclosure to the public of any records identifying the witness;
 - (iv) face and voice distortion; and
 - (v) private session for any in-court discussion or testimony identifying the witness;
- c) **AUTHORISES** W02677 to testify via video-conference;

- d) **ORDERS** the Registry to make the necessary arrangements for W02677's testimony via video-conference; and
- e) **ORDERS** the Defence to request reclassification or submit a public redacted version of the Response by no later than Monday, 16 December 2024.



Judge Charles L. Smith, III
Presiding Judge

Dated Monday, 9 December 2024

At The Hague, the Netherlands.