

In: KSC-BC-2020-06

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: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi
Specialist Counsel for Kadri Veseli
Specialist Counsel for Rexhep Selimi
Specialist Counsel for Jakup Krasniqi

Date: 18 November 2024

Language: English

Classification: Public

Public Redacted Version of 'Joint Response to Prosecution consolidated request for protective measures and video-conference testimony for W02677' dated 18 November 2024

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I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi ("the Defence") hereby responds to the Consolidated request for protective measures and video-conference testimony for W02677 filed on 14 November 2024.¹ The Specialist Prosecutor's Office ('SPO') requests the Trial Panel to: (i) order necessary and proportionate in-court protective measures for W02677; and (ii) authorise his testimony to take place by video-conference from [REDACTED].

2. The Defence objects to the protective measures sought, which are neither necessary nor proportionate and are prejudicial for the Defence. The Defence is willing to agree that the testimony of witness W02677 may be conducted via video link but raises concerns as to the basis upon which these Requests have been submitted.

II. SUBMISSIONS

A. In-Court Protective Measures

3. The SPO requests, for W02677, the following in-court protective measures: the use of pseudonym, redaction of the witness's name and 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.²

4. The above-mentioned protectives measures are said to be necessary and justified considering that, [REDACTED]; W02677 is [REDACTED]; W02677 is not willing to testify without protective measures.³

5. The Conduct of Proceedings, aside from the requirement of specificity, indicates that the Trial Panel "...will not grant protective measures based on generic

¹ KSC-BC-2020-06/F02721, Trial Panel II, Prosecution consolidated request for protective measures and video-conference testimony for W02677, 14 November 2024, confidential, paras. 4-6.

² F02721, para. 4.

³ F02721, para. 5. *See also* footnote 12.

claims or allegations that do not specifically pertain to the witness concerned or which have not been adequately established.”⁴ The Trial Panel has consistently held that the party seeking protective measures for one or more of its witnesses (or other persons at risk on account of testimony given by witnesses, e.g. family members of a witness) 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.⁵

6. The Defence submits that the SPO has failed to demonstrate that any protective measure is necessary, justified and proportionate. W02677 belief that [REDACTED],⁶ [REDACTED]⁷ are insufficient to justify the protective measures sought and do not reveal the existence of any objective risk for this witness or his family.

B. Video-Conference Testimony

7. The SPO asserts that subject to the protective measures requested, W02677 is willing and available to testify.⁸ However, in April 2024, W02677 [REDACTED].⁹

8. The Prosecution provides the following information in support of its argument that video conference is appropriate for W02677:

[REDACTED].¹⁰

[...] video-conference testimony would be more conducive to: (i) the witness’s ability to provide truthful and open testimony, also considering the concerns he has expressed; and (ii) the expeditious conduct of proceedings, considering the anticipated limited scope and length of his testimony and the witness schedule.

⁴ KSC-BC-2020-06/F01226/A01, Trial Panel II, Annex 1 to Order on the Conduct of Proceedings, para. 68.

⁵ KSC-BC-2020-07/F00303, Trial Panel II, Decision on the Prosecution Request for Protective Measures, 7 September 2021, para. 11; KSC-BC-2020-06/F01494, Trial Panel II, Decision on the Prosecution Request for Protective Measures (F01365), 1 May 2023, para. 6.

⁶ KSC-BC-2020-06-120855-120856, p. 1.

⁷ *Ibid*, p. 1.

⁸ F02721, para. 7.

⁹ KSC-BC-2020-06-120855-120856, p. 1.

¹⁰ F02721, para. 7.

9. The practice of video link conference testimony is governed by Articles 23(1) and 40(2) of the Law. Article 40(2) allows for the presentation of evidence by alternative modalities to facilitate the fair and expeditious conduct of proceedings,¹¹ whilst Article 23(1) allows for the presentation of evidence by electronic means for the protection of witness' "safety, physical and psychological well-being, dignity and privacy".¹² While video-conference testimony should not be considered only on an exceptional basis, the presence in the courtroom of a witness during testimony remains the preferred option.¹³

10. The Defence is willing to agree that the testimony of witness W02677 may be conducted via video link, considering its reserve witness status, given the "limited scope and length of [their] testimony"¹⁴ and to ensure the efficient conduct of proceedings. However, the Defence observes that the underlying reasons given by the Prosecution are particularly weak, merely amount to [REDACTED] and do not meet the threshold for warranting video-conference. The Defence also does not accept the submission of the SPO that there is any link between the ability of this witness to provide truthful testimony and the granting of any video-conference application.

11. While in the interests of expediency the Defence would agree for W02677 being called by video link, the Defence wishes to make clear to the Panel that it does not consider the reasons outlined as the justification for this request sufficient or that video-link is needed to ensure the witness's wellbeing, and to facilitate his testimony in an expeditious manner.¹⁵

¹¹ Article 40(2) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("Law").

¹² *Ibid*, Article 23(1).

¹³ KSC-BC-2020-06/F01558, Trial Panel II, Confidential Redacted Version of Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337, para. 16.

¹⁴ F02721, para. 7.

¹⁵ *Ibid*, para. 2.

III. CLASSIFICATION

12. This filing is submitted confidentially because it responds to filings with the same classification.¹⁶

IV. CONCLUSION

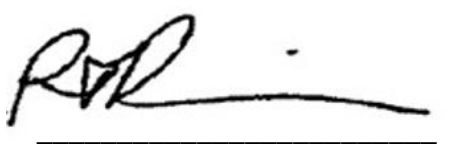
13. For the foregoing reasons, the Defence respectfully requests the Trial Panel to **DENY** in part, as set out above, the SPO Request.

[Word Count: 1022 words]

Respectfully submitted on Monday, 18 November 2024, at The Hague, the
Netherlands.



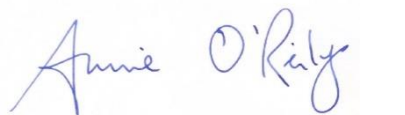
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¹⁶ Rule 82(4) of the Rules of Procedure and Evidence on the Kosovo Specialist Chambers.



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