



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 January 2025

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Motion for Admission of
Evidence of W04500 Pursuant to Rule 154 and Request for Video-Conference
Testimony**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21, 23(1), 37 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-138, 141(1), 144 and 154 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 19 December 2024, the Specialist Prosecutor’s Office (“SPO”) filed a motion (“Motion”) seeking admission pursuant to Rule 154 of W04500’s statement (“W04500’s Statement”),¹ together with an associated exhibit (“W04500’s Associated Exhibit”)² (collectively, “W04500’s Proposed Evidence”).³ The SPO also requested the Panel to authorise W04500’s testimony via video-conference.⁴
2. On 20 December 2024, the Panel informed the Parties and participants, and the Registry, *inter alia*, that: (i) any response to the Motion and the Registry’s assessment regarding the Video-Conference Request shall be filed by Thursday, 2 January 2025, at 16:00; and (ii) no reply will be entertained.⁵
3. On 27 December 2024, the Defence for Hashim Thaçi indicated that it does not intend to respond to the Motion.⁶

¹ 069880-TR-ET Parts 1-4 RED2 and 069880-TR-ET Part 5 RED3, including any translations thereof.

² 069878-069879.

³ F02806, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of W04500 Pursuant to Rule 154 and Request for Video-Conference Testimony*, 19 December 2024, confidential, with Annexes 1-2, confidential, paras 1, 4-14, 22 (a public redacted version was filed on the same day, F02806/RED). *See also* Annex 1 to the Motion.

⁴ Motion, paras 3, 15-20, 22.

⁵ Correspondence 694.

⁶ Correspondence 694.

4. On 2 January 2025, the Registry filed its assessment on the Video-Conference Request and confirmed the feasibility of the video-conference testimony of W04500 (“Registry Assessment”).⁷

5. On the same date, the Defence for Kadri Veseli and Rexhep Selimi indicated that they do not object to the Motion.⁸ The Defence for Jakup Krasniqi did not respond.

II. APPLICABLE LAW

6. The Panel incorporates by reference the applicable law as set out in the Panel’s first decision regarding the admission of evidence under Rule 154,⁹ and in a previous decision regarding a video-conference testimony request.¹⁰

III. DISCUSSION

A. RULE 154 REQUEST

7. The SPO submits that W04500’s Proposed Evidence is: (i) relevant;¹¹ (ii) *prima facie* authentic and reliable;¹² and (iii) suitable for admission under Rule 154.¹³

⁷ F02814, Registry, *Registry Assessment Regarding Specialist Prosecutor’s Office’s Request for Video-Conference Testimony for Witness W04500*, 2 January 2025, confidential and *ex parte*.

⁸ Correspondence 694.

⁹ F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, paras 11-25 (a public redacted version was filed on 7 November 2023, F01380/RED).

¹⁰ See e.g. F02761, Panel, *Decision on Prosecution Consolidated Request for Protective Measures and Video-Conference Testimony for W02677* (“Video-Conference Decision for W02677”), 9 December 2024, confidential, paras 14-15 (a public redacted version was filed on the same day, F02761/RED).

¹¹ Motion, paras 5-11.

¹² Motion, para. 12.

¹³ Motion, para. 14. See also Motion, para. 4.

8. The Defence does not object to the admission of W04500's Proposed Evidence pursuant to Rule 154.¹⁴

9. Regarding relevance, W04500 was allegedly arrested, detained, interrogated, beaten by Kosovo Liberation Army ("KLA") members in 1999, in a location and at a time relevant to the charges in the Indictment.¹⁵ The SPO relies upon W04500's Proposed Evidence in respect of, *inter alia*: (i) W04500's abduction, detention and mistreatment; (ii) his knowledge of the detention and mistreatment of other detainees by the KLA; (iii) W04500's interactions with a KLA commander and guards; and (iv) W04500's release.¹⁶ The Panel is satisfied that W04500's Statement is relevant to the charges in the Indictment.¹⁷

10. Regarding *prima facie* authenticity and reliability, the Panel notes that W04500's Statement consists of verbatim transcripts of the audio-video recording of the SPO interview of the witness.¹⁸ In addition, W04500's Statement contains multiple indicia of authenticity and reliability, including: (i) indication of the date, time and place of the interview and the attendees present;¹⁹ (ii) the witness's personal details;²⁰ (iii) the requisite witness warnings, rights and/or acknowledgments;²¹ and (iv) confirmation by W04500 that the statement is true, accurate, and was given voluntarily.²² In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04500's Statement.

¹⁴ Correspondence 694. *See above* paras 3, 5.

¹⁵ Motion, paras 5-9.

¹⁶ Motion, paras 5-10. *See also* Annex 1 to the Motion.

¹⁷ *See* F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential (a public lesser redacted version was filed on 27 February 2023, F01323/A01), paras [REDACTED]; *see also* F01594/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of the Pre-Trial Brief* ("SPO Pre-Trial Brief"), 9 June 2023, confidential (a public redacted version was filed on 3 April 2023, F01415/A01), paras [REDACTED].

¹⁸ 069880-TR-ET Parts 1-4 RED2; 069880-TR-ET Part 5 RED3.

¹⁹ *See e.g.* 069880-TR-ET Part 1 RED2, p. 1.

²⁰ *See e.g.* 069880-TR-ET Part 1 RED2, pp. 1-2.

²¹ *See e.g.* 069880-TR-ET Part 1 RED2, pp. 1-2.

²² *See e.g.* 069880-TR-ET Part 5 RED3, p. 18.

11. Having found W04500's Statement to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04500's Statement has *prima facie* probative value.

12. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W04500's Statement is relatively limited in size, with a total of 97 pages in length (in English). The Panel is satisfied that admission of W04500's Statement under Rule 154: (i) would contribute to the expeditiousness of the proceedings, as it would reduce the time required for direct examination from three hours to 40 minutes;²³ and (ii) would not cause unfair prejudice to the Defence, as the Defence will have an opportunity to cross-examine the witness. In addition, the Panel notes that the Defence does not object to the admission of W04500's Statement under Rule 154.²⁴ The Panel therefore finds that the *prima facie* probative value of W04500's Statement is not outweighed by any prejudicial effect, and that W04500's Statement is suitable for admission pursuant to Rule 154.

13. The Panel observes that W04500's Associated Exhibit consists of two drawings made by the witness to explain the location where he was detained.²⁵ W04500's Associated Exhibit was discussed in W04500's Statement.²⁶ The Panel considers that the drawings constitute an indispensable and inseparable part of W04500's Statement as, without it, the relevant portions of the statement would become incomprehensible or of lesser probative value. The Panel further observes that the drawings were dated and signed by the witness.²⁷ The Panel is thus satisfied that W04500's Associated Exhibit is relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine the witness, the *prima facie* probative value of

²³ See Motion, para. 1, footnote 5, para. 14. See also F01594/A01, Specialist Prosecutor, *Amended List of Witnesses*, 9 June 2023, strictly confidential and *ex parte*, pp. 12, 365.

²⁴ Correspondence 694.

²⁵ 069878-069879. See also Annex 1 to the Motion.

²⁶ 069880-TR-ET Part 2 RED2, pp. 13-27; 069880-TR-ET Part 3 RED2, pp. 2-8.

²⁷ 069878-069879.

W04500's Associated Exhibit is not outweighed by any prejudicial effect. In addition, the Panel notes that the Defence does not object to the admission of W04500's Associated Exhibit.²⁸ Accordingly, the Panel finds that W04500's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

14. In light of the above, the Panel finds that W04500's Proposed Evidence is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

B. VIDEO-CONFERENCE REQUEST

15. The SPO requests the Panel to authorise W04500 to testify via video-conference.²⁹ The SPO argues that using video-conference for W4500's testimony would: (i) further minimise the risk of harm to W04500 (including by reducing the time he would be required to be absent, and the disruptions to his life and security and that of his family); (ii) support W04500's ability to provide truthful and open testimony; (iii) improve the quality of his evidence; and (iv) ensure his physical and psychological well-being.³⁰ The SPO further submits that permitting W04500 to testify via video-conference: (i) would facilitate efficiency in the court schedule;³¹ and (ii) would not be prejudicial to the rights of the Accused because the available technology allows for W04500 to be examined under the same conditions as if he would be in the courtroom.³²

²⁸ Correspondence 694.

²⁹ Motion, paras 3, 17-20, 22.

³⁰ Motion, para. 17.

³¹ Motion, para. 18.

³² Motion, para. 19.

16. The Defence does not object to the Video-Conference Request.³³ However, the Veseli Defence notes that it considers that the reasons outlined to justify the Video-Conference Request are insufficient to meet the threshold for video-conference.³⁴

17. The Registry confirmed the feasibility of the video-conference testimony of W04500.³⁵

18. 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.³⁶

19. 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.³⁷

20. Having carefully considered the SPO's submissions, and given the Defence's absence of objection to W04500's testimony via video-conference,³⁸ as well as the Registry's assessment that it is feasible to conduct the testimony of W04500 via video-conference from the appropriate location with the necessary logistical, technical, and security arrangements, including the implementation of in-court

³³ Correspondence 694. *See above* paras 3, 5.

³⁴ Correspondence 694.

³⁵ Registry Assessment, para. 17. *See also* Registry Assessment, paras 8-9.

³⁶ *See e.g.* Video-Conference Decision for W02677, para. 22. *See also* F02396, Panel, *Decision on Prosecution Request for the Video-Conference Testimony of W04445 and W04501* ("Decision on Video-Conference Testimony of W04445 and W04501"), 20 June 2024, 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.

³⁷ Video-Conference Decision for W02677, para. 23. *See also* Decision on Video-Conference Testimony of W04445 and W04501, 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.

³⁸ Correspondence 694. *See also above* paras 5, 16.

protective measures,³⁹ the Panel is satisfied that the SPO has established that the circumstances warrant hearing W04500's evidence by means of video-conference testimony. While the reserve status of the witness is not, in and of itself, reason to automatically grant a request for testimony by means of video-conference, the Panel considers that, in these particular circumstances, video-conference testimony is more conducive to W04500's well-being and allows for the scheduling flexibility required for a reserve witness and thus contributes to the expeditiousness and effectiveness of proceedings.⁴⁰

21. The Panel is further satisfied that W04500's video-conference testimony will cause no prejudice to the Accused and is compatible with the effective protection of their rights, as W04500 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.

22. The Panel therefore grants the SPO's request and authorises the testimony of W04500 to take place via video-conference.

IV. CLASSIFICATION

23. 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 **Monday, 13 January 2025**.


³⁹ Registry Assessment, paras 8-15, 17.

⁴⁰ See *similarly* Video-Conference Decision for W02677, para. 25.

V. DISPOSITION

24. In light of the above, the Panel:

- a) **GRANTS** the Motion;
- b) **FINDS** W04500's Proposed Evidence, as set out in footnotes 1 and 2, to be appropriate for admission once the requirements of Rule 154(a)-(c) are met;
- c) **AUTHORISES** W04500 to testify via video-conference;
- d) **ORDERS** the Registry to make the necessary arrangements for W04500's testimony via video-conference; and
- e) **DIRECTS** the Registry to file a public or confidential redacted version of the Registry Assessment (F02814) by **Monday, 13 January 2025**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Monday, 6 January 2025

At The Hague, the Netherlands.