



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The 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:** 10 October 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Prosecution Request for Video-Conference Testimony for W00208**

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**Counsel for Victims**

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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 20 September 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request (“Request”)<sup>1</sup> in which it seeks the Panel’s authorisation for the testimony of W00208 to take place by video-conference link from the witness’s residence.<sup>2</sup> It argues that the Panel should grant the Request as it is necessary, proportionate and would not result in undue prejudice to the Accused.<sup>3</sup> The Defence did not respond.

2. On 4 October 2023, the Registry filed its submission (“Registry Assessment”)<sup>4</sup> indicating its preliminary assessment that it is feasible to conduct the testimony of W00208 via video-link. However, it submits that a final assessment is dependent on the formal confirmation by the relevant state authorities of their willingness and ability to facilitate the testimony of W00208 via video-link in line with certain conditions.<sup>5</sup>

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<sup>1</sup> F01803, Specialist Prosecutor, *Prosecution Request for Video-conference Testimony for W00208*, 20 September 2023, confidential.

<sup>2</sup> Request, para. 1.

<sup>3</sup> Request, para. 2.

<sup>4</sup> F01835, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W00208*, 4 October 2023, confidential.

<sup>5</sup> Registry Assessment, para. 8. These conditions include the following: (i) the competent authorities of [REDACTED] do not envisage any security concerns with regard to carrying out the video-link testimony from the envisaged location; (ii) the video-link testimony takes place in a room within the witness’s residence that is, to the extent possible in the circumstances, sound proof with appropriate lighting and where the risk of disruption from outside noise is minimised; all family members present in the residence will be requested to not be in the immediate vicinity; (iii) the relevant authorities of [REDACTED] will provide an in-situ cabled or wireless open internet connection that is stable and

## II. APPLICABLE LAW

3. Pursuant to Rule 141(1), the testimony of a witness at trial shall 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. 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

4. The Panel recalls that, 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.<sup>6</sup> The Panel emphasises that, when considering whether to allow video-link testimony, the Panel may consider a number of factors, such as the “location, personal and health situation, availability and security of the witness, as well as the complexity and duration of any logistical travel and other arrangements to be made.”<sup>7</sup>

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supports video streaming; and (iv) the witness and household occupants will be requested to remove all electronic devices from the designated video-link room. Registry Assessment, para. 10.

<sup>6</sup> F01558, Panel, *Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337*, 26 May 2023, strictly confidential and *ex parte*, para. 16 (a confidential redacted version was filed on 30 May 2023, F01588/CONFRED); F01776, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W03827*, 8 September 2023, confidential, para. 12; 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>7</sup> 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.

5. In determining whether to grant the Request, the Panel notes that W00208: (i) is 91 years old; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; and (v) takes a variety of medications and vitamins.<sup>8</sup>

6. Having carefully considered the Request, the Panel is satisfied that the SPO has established that the advanced age and [REDACTED] of the witness, as presented in the Request, warrant allowing W00208 to testify via video-conference. The Panel further considers that the information supplied by the SPO is sufficiently detailed to enable the Panel to conclude that allowing W00208 to provide testimony via video-conference from his residence would be more conducive to W00208's well-being than transferring him to The Hague to testify in person.

7. The Panel additionally considers the assurances of the relevant state authorities that they will be able to facilitate the necessary logistical, technical, and security arrangements<sup>9</sup> and the preliminary assessment of the Registry that it is feasible to conduct the testimony of W00208 via video-conference.<sup>10</sup> The Panel notes that a final assessment will be conducted by the Registry following a decision by the Panel. In this regard, the Panel encourages the Registry to work expeditiously to ensure that the relevant measures<sup>11</sup> are implemented without delay to make the proposed venue suitable for video-link testimony and to report to the Panel once all preparations have been made for such video-conference.

8. The Panel does not consider that the hearing of the testimony by way of video-link would prejudice the Defence. The Panel, the Accused, the Parties and participants will be able to see and hear the witness testifying in real-time, and the

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

<sup>9</sup> Request, para. 1.

<sup>10</sup> Registry Assessment, paras 8, 16.

<sup>11</sup> Registry Assessment, para. 10.

Panel, the Defence and Victims' Counsel will have the opportunity to ask questions to the witness.

9. For these reasons, the Panel finds it appropriate to hear the testimony of W00208 by way of video-link.

#### IV. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W00208 to testify via video-conference; and
- c) **ORDERS** the Registry to make the necessary arrangement for W00208's testimony via video-conference.



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

Dated this Tuesday, 10 October 2023

At The Hague, the Netherlands.