



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: Dr Fidelma Donlon

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**Public Redacted Version of “Registry Assessment Regarding Prosecution’s
Request for Video-Conference Testimony for W04448 and related matters”**

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1. Pursuant to Rules 23(2) and 144 of the Rules,¹ and Article 3 of the Practice Direction on Video Links,² the Registrar hereby submits her assessment of the feasibility of facilitating the testimony of witness W04448 via video-link from [REDACTED].

I. PROCEDURAL HISTORY

2. On 2 October 2023, the Specialist Prosecutor's Office ('SPO') filed a request for the testimony of witness W04448 to be heard via video-link from [REDACTED] ('Request').³ The SPO has also provided⁴ information on: (a) when the witness is expected to testify;⁵ (b) the expected duration of examination (15 hours);⁶ (c) the country details [REDACTED];⁷ (d) whether protective measures have been or will be ordered,⁸ and (e) the language the witness will testify in [REDACTED].⁹

¹ Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

² Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 ('Practice Direction on Video Links'); *see also* Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2013, art. 34(3).

³ KSC-BC-2020-06, F01826, Prosecution request for video-conference testimony for W04448, 2 October 2023, confidential.

⁴ This information is in the Request itself, para. 11, or the case file record (where indicated).

⁵ Request, para.11(i): "W04448 is anticipated to appear the week of 16 October 2023", as well as paras 2 and 7 ("during the 9 – 19 October 2023 block"). SPO also noted that if current Defence estimates for the cross-examination of the first three witnesses in the 9 – 19 October block are accurate, W04448 will not be called during the mentioned evidentiary block – Request, para. 9.

⁶ Request, para.11(ii): "the expected duration of direct examination is 3 hours (the total estimate for cross-examination is 12 hours)."

⁷ Request, para.11(iii): "the SPO requests W04448 to appear via video-link from [REDACTED]." *See also* Request, fn. 4: "The [REDACTED] authorities are currently in the process of confirming whether a suitable [REDACTED], with appropriate technical and security capabilities is available. If not, the [REDACTED] authorities will assist in identifying another suitable location."

⁸ Request, para.11(iv): "W04448 does not have in-court protective measures and the SPO is not aware of any special needs."

⁹ Request, para.11(v): "W04448 will testify in [REDACTED]." *See also* Request, fn. 16: "He is fluent in [REDACTED]"

II. APPLICABLE LAW

3. Pursuant to Rule 144 of the Rules, the Panel may order that testimony be received via video-conference, provided that such technology permits the witness to be properly examined. The Registrar shall ensure the efficient and expeditious implementation of any such order.

4. Pursuant to Article 3(1) of the Practice Direction on Video Links, “[t]o ensure the efficient preparation and organization of the Video Link, the Party requesting a Video Link shall, prior to or at the time of the request, inform the Registrar, in writing” of certain specified information.

5. Pursuant to Article 3(3) of the Practice Direction on Video Links, the Registrar may seek additional information, if required, to complete the assessment.

6. Pursuant to Article 3(4) of the Practice Direction on Video Links, the Registrar’s assessment shall be filed with the Panel within two weeks of receipt of the required information and shall address:

- a. any necessary measures to be taken as a result of a potential risk to ensure:
 - (1) the safety, well-being, dignity and privacy of individuals expected to participate in the planned Video Link; and
 - (2) in the event that the Video Link is intended for the taking of witness testimony, that the Video Link is conducted in a venue conducive to the giving of truthful and open testimony;
- b. information on consultations with a State, where applicable;
- c. the time required by the Registry to implement the order for the use of the Video Link; and
- d. the general feasibility of conducting the Video Link.

III. SUBMISSIONS

A. Feasibility assessment of video-link testimony

7. The Registry has conducted a preliminary assessment in accordance with Article 3(4) of the Practice Direction on Video Links, in light of the envisaged scheduling of the testimony of witness W04448, the expected duration of testimony, the country and location details, the applicable protective measures, and the language of the witness.

The Registrar notes that the [REDACTED] authorities are currently in the process of confirming the exact location that would be suitable for facilitating video-conference testimony.¹⁰ This information will enable a full Registry assessment of the location and technical specifications that would be required to facilitate the testimony of the witness via video-link at a venue conducive to giving truthful and open testimony, and with necessary measures to ensure the safety, well-being, dignity and privacy of the witness.

8. Based on the available information, the Registry preliminarily assesses that it is feasible to conduct the testimony of the witness via video-link. Although a final assessment is dependent on the formal confirmation by relevant state authorities of their willingness and ability to facilitate the testimony of W04448 via video-link in line with the required measures identified below, the SPO has already indicated that the [REDACTED] authorities have indicated their willingness to facilitate W04448's video-conference testimony from a suitable [REDACTED].¹¹ Should the Panel grant the Request, the Registry will expeditiously transmit a formal request for assistance to the [REDACTED] authorities in this regard.

9. The Registry notes that the witness does not have in-court protective measures,¹² and it is expected that W04448's testimony will take place in open session. Nevertheless, part of the witness's statements remain classified as confidential,¹³ and the proceedings could thus require some testimony in private session. Therefore, based on the information currently available, the Registry has assessed that secure video-teleconference ('VTC') facilities, or their equivalent, are required.

10. In addition, the Registry assesses that to facilitate the testimony of this witness, the identified location would also need to comply with the following requirements:

¹⁰ See fn. 7 above.

¹¹ Request, para. 7.

¹² See fn. 8 above.

¹³[REDACTED].

- a. the video-link location is on secure premises free from interference (to the extent possible, within the control of the competent authorities [REDACTED]), where the confidentiality of the proceedings can be assured;
- b. the video-link testimony would take place in a room that is sound proof, with appropriate lighting, and where the risk of disruption from outside noise is minimised;
- c. the authorities [REDACTED] provide suitable in-situ cabled or wireless open internet connection that is stable and supports video streaming; and
- d. the witness would not be permitted to take any electronic devices into the video-link room.

11. [REDACTED]. [REDACTED].

12. In addition, Registry staff would ensure that the video-link has the minimum technical functionality set out in Article 4 of the Practice Direction on Video Links.

13. Following receipt of formal confirmation from the relevant [REDACTED] authorities that they are willing and able to facilitate the video-link testimony of W04448 in line with the conditions outlined above, the minimum amount of time required by the Registry to arrange for video-link testimony would be [REDACTED] working days from the moment the relevant authorities grant the Registry's request for assistance or the moment a suitable location is identified, whichever is later.¹⁴ This timeframe is required to allow for travel to the location, the set-up and testing of the technical equipment in [REDACTED], and to allow for the Witness Protection and Support Office ('WPSO') to complete the necessary witness information and familiarisation process, adapted to the location of testimony, as required.

B. Health and Special Needs

14. Following completion of the WPSO assessments and familiarization process before the commencement of testimony, WPSO will inform the Panel immediately

¹⁴ The indicated timeframe is also subject to [REDACTED].

should any special measures be recommended, in accordance with the Registry's relevant internal regulations.¹⁵

C. Altered Sitting Schedule

15. The SPO notes that in light of the time difference between the premises of the Specialist Chambers in The Hague and the possible location of video-conference testimony in [REDACTED], an altered sitting schedule would be required. In line with the Request, [REDACTED] authorities have indicated that the earliest start time that can be facilitated for testimony is [REDACTED] (15:00 The Hague time).¹⁶

16. Should the Panel so order, the Registry can facilitate, on an exceptional basis, this altered sitting schedule, provided that hearings do not last longer than [REDACTED]. [REDACTED].

D. Conclusion

17. In conclusion, at this time, the Registry preliminarily assesses that it is feasible to conduct the testimony of the witness W04448 via video-link, should the Panel so order, in line with the above specifications and the Practice Direction on Video Links. Should the Panel grant the Request, the Registry will expeditiously engage with the competent [REDACTED] authorities and inform the Panel should any changes to the above assessment occur.

¹⁵ [REDACTED].

¹⁶ Request, para.12.

IV. CONFIDENTIALITY

18. This submission is filed as confidential pursuant to Rule 82(4) of the Rules.

Word count: 1686

A handwritten signature in cursive script, appearing to read "Fidelma Donlon", written over a horizontal line.

Dr Fidelma Donlon

Registrar

Thursday, 5 October 2023

The Hague, the Netherlands