



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: 8 November 2023

Language: English

Classification: Public

**Public Redacted Version of
Decision on Prosecution Request for the Video-Conference Testimony of W01493**

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

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

1. On 16 October 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request for video-conference testimony for W01493 (“Request”).¹
2. On 19 October 2023, the SPO filed a supplement to the Request (“Supplement”).²
3. On 26 October 2023, the Defence filed a response to the Request (“Response”).³
4. On 30 October 2023, the Registry filed its assessment regarding the feasibility of facilitating the Request (“Registry Assessment”).⁴
5. On 31 October 2023, the SPO filed a reply to the Response (“Reply”).⁵

II. SUBMISSIONS

6. The SPO requests the Panel to authorise that the testimony of W01493 take place by video-conference from a government building or other appropriate

¹ F01859, Specialist Prosecutor, *Prosecution Request for the Video-Conference Testimony of W01493*, 16 October 2023, strictly confidential and *ex parte* (a confidential redacted version was submitted on the same day, F01859/CONF/RED).

² F01867, Specialist Prosecutor, *Prosecution Supplement to Video-Conference Request F01859*, 19 October 2023, confidential.

³ F01891, Specialist Counsel, *Joint Defence Response to Prosecution Request for the Video-Conference Testimony of W01493*, 26 October 2023, confidential.

⁴ F01894, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W01493*, 30 October 2023, confidential.

⁵ F01895, Specialist Prosecutor, *Prosecution Reply Relating to Video-Conference Request F01859*, 31 October 2023, confidential.

location in [REDACTED].⁶ The SPO submits that video-conference testimony: (i) is necessary and appropriate to ensure the witness's health and well-being, and to facilitate the testimony in an expeditious manner; and (ii) will not result in undue prejudice to the Accused because the Defence will be able to properly cross-examine the witness.⁷

7. The Defence responds that the Request: (i) is untimely;⁸ (ii) is unsubstantiated and, if granted, will cause undue prejudice to the rights of the Accused.⁹ The Defence therefore requests that the Panel reject the Request and direct the SPO to take the necessary measures to facilitate W01493's in-person testimony.¹⁰

8. The Registry preliminarily assesses that it is feasible to conduct the testimony of W01493 via video-conference.¹¹ However, it submits that a final assessment is dependent on the formal confirmation by relevant state authorities of their willingness and ability to facilitate the testimony of W01493 via video-conference in line with certain conditions.¹²

9. The SPO replies that: (i) the Response does not engage with the Request;¹³ (ii) the Request was made in a timely manner in light of W01493's current circumstances, following consultations with relevant national authorities, and

⁶ Request, para. 1.

⁷ Request, paras 2, 5-8, 10. After filing the Request, the SPO communicated that it: (i) decided not to call W01493 during the 30 October to 16 November 2023 evidentiary block; and (ii) will confirm W01493's anticipated testimony dates as soon as possible after a decision on the Request and related practical arrangements have been made. Supplement, para. 1. *See also* Supplement, para. 2.

⁸ Response, paras 1-6.

⁹ Response, paras 1, 7-13.

¹⁰ Response, para. 15.

¹¹ Registry Assessment, para. 10.

¹² Registry Assessment, paras 10, 17. These conditions include the following: (i) the video-conference location is on secure premises free from interference (to the extent possible, within the control of the competent state authorities), where the confidentiality of the proceedings can be assured; (ii) the video-conference 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; (iii) the competent state authorities provide suitable in-situ cabled or wireless open internet connection that is stable and supports video streaming; and (iv) the witness would not be permitted to take any electronic devices into the video-conference room. Registry Assessment, para. 12.

¹³ Reply, para. 1.

sufficiently in advance of his testimony;¹⁴ and (iii) the Defence's "strong preference" for W01493 to be brought to The Hague is wholly inadequate to undermine the well-founded medical, security and related grounds underlying the Request.¹⁵

III. APPLICABLE LAW

10. 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.

IV. DISCUSSION

11. At the outset, the Panel notes that the SPO has indicated that it will not call W01493 during the 30 October to 16 November 2023 evidentiary block, and will confirm W01493's anticipated testimony dates as soon as possible after a decision on the Request and related practical arrangements have been made.¹⁶ The Panel is of the view that, in light of this indication, the Request is not untimely and afford all concerned parties a fair opportunity to meaningfully address this matter. The Panel therefore dismisses the Defence's suggestion that the Request is late and capable of rejection on this ground alone.¹⁷

¹⁴ Reply, para. 2.

¹⁵ Reply, para. 3, *referring to* Response, para. 8.

¹⁶ Supplement para. 1.

¹⁷ Response, paras 1-6.

12. Pursuant to Rule 144, the Panel has the discretion to authorise testimony by means of video-conference when the criteria of that Rule are met, although presence in court of a witness remains the preferred option.¹⁸ The Panel emphasises that, when considering whether to allow video-conference testimony in a given case, the Panel may consider a number of factors, including: (i) the location, personal and health situation; (ii) the availability and security of the witness; and (iii) the complexity and duration of any logistical travel and other arrangements to be made.¹⁹

13. The Panel notes the SPO's submissions that: (i) W01493 suffers from serious health conditions which are likely to be exacerbated by travel to The Hague;²⁰ (ii) [REDACTED];²¹ (iii) W01493 has indicated on multiple occasions that, while he is available and willing to testify via video-conference, he would not want to travel to The Hague; and (iv) W01493's [REDACTED].²²

14. Having carefully considered the Request, the Panel finds that the SPO has established that W01493's serious health conditions warrant allowing W01493 to testify via video-conference. The Panel notes in this regard that the Defence did not challenge any of the assertions made by the witness or on his behalf regarding the state of his health. The Panel also recalls that, as a general matter, the unwillingness of a witness to travel to The Hague to testify in person is not an

¹⁸ 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; 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.

¹⁹ 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.

²⁰ Request, para. 6.

²¹ Request, para. 7.

²² Request, paras 7-8.

adequate reason to grant a request for testimony by means of video conference.²³ It is the calling Party's responsibility to ensure that a witness appears in the courtroom in The Hague for testimony. However, in the present circumstances, the Panel is satisfied that, contrary to the Defence's submissions,²⁴ the information supplied by the SPO establishes that having W01493 give his testimony via video-conference is more conducive to W01493's well-being than requiring him to travel The Hague to testify in person.

15. The Panel additionally considers: (i) the competent state authorities' indication that, upon receipt of a formal request for assistance, they would identify an appropriate location taking into account any necessary technical, security, and other requirements;²⁵ and (ii) the preliminary assessment of the Registry that it is feasible to conduct the testimony of W01493 via video-conference.²⁶ The Panel further notes that a final assessment will be conducted by the Registry following a decision by the Panel regarding the present matter. In this regard, the Panel encourages the Registry to work expeditiously to ensure that the relevant measures²⁷ are implemented without delay to make the proposed venue suitable for video-conference testimony within the meaning of Rule 144(2) and (3) and to report any difficulties it has to the Panel, if any arises. The Registry is further ordered to report to the Panel, the Parties, and participants once an appropriate

²³ See e.g. F01593, Panel, *Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block*, 9 June 2023, confidential, para. 28 (a public redacted version was filed on 31 October 2023, F01593/RED); F01558, Panel, *Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337*, 26 May 2023, strictly confidential and *ex parte*, para. 20 (a confidential redacted version was filed on 30 May 2023, F01558/CONF/RED).

²⁴ Response, paras 1, 4-5.

²⁵ Request, footnote 4. See also Request, para. 5; Supplement, footnote 5. In this regard, the Panel also notes that the Registry has indicated that, should the Panel grant the Request, the Registry will expeditiously transmit a formal request for assistance to the [REDACTED] authorities. Registry Assessment, para. 10.

²⁶ Registry Assessment, paras 10, 17.

²⁷ Registry Assessment, para. 12.

venue in [REDACTED] is chosen and all preparations have been made for such video-conference.

16. The Panel is not persuaded by the Defence's argument that testimony by way of video-conference will cause undue prejudice to the rights of the Accused.²⁸ The Panel, the Accused, the Parties and participants will be able to see and hear the witness testifying, and the Panel, the Parties and participants will have the opportunity to question the witness. Furthermore, contrary to the Defence's submissions,²⁹ the Panel will be able to adequately instruct the witness, assess his demeanour and control the proceedings throughout his testimony.

17. For these reasons, the Panel finds it appropriate to hear the testimony of W01493 by way of video-conference.

V. CLASSIFICATION

18. The Panel notes that the Request was filed strictly confidentially and *ex parte* and confidentially, and the Registry Assessment, the Response and the Reply were filed confidentially. The Panel orders the Parties and the Registry to file public redacted versions of the Request, the Registry Assessment, the Response and the Reply, by Friday, 17 November 2023.

VI. DISPOSITION

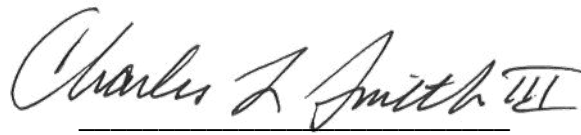
19. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;
- b) **AUTHORISES** W01493 to testify via video-conference;

²⁸ Response, paras 1, 13.

²⁹ Response, paras 9-11.

- c) **ORDERS** the Registry to make the necessary arrangements for W01493's testimony via video-conference and to report to the Panel, the Parties, and participants as described in paragraph 15 of this decision; and
- d) **ORDERS** the Parties and the Registry to file public redacted versions of the Request, the Registry Assessment, the Response and the Reply, by **Friday, 17 November 2023**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 8 November 2023

At The Hague, the Netherlands.