



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

**Filed by:** Registrar

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**Public Redacted Version of 'Registry Assessment Regarding Prosecution's  
Request for Video-Conference Testimony for W01493', filing F01894**

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1. Pursuant to Rules 23(2) and 144 of the Rules,<sup>1</sup> and Article 3 of the Practice Direction on Video Links,<sup>2</sup> the Registrar hereby submits her assessment of the feasibility of facilitating the testimony of witness W01493 via video-link from [REDACTED].

## I. PROCEDURAL HISTORY

2. On 16 October 2023, the Specialist Prosecutor's Office ('SPO') filed a request for the testimony of witness W01493 to be heard via video-link from an appropriate law enforcement or other government building in [REDACTED] ('Request').<sup>3</sup> On 19 October 2023 the SPO supplemented the Request ('Supplement').<sup>4</sup> The SPO has also provided<sup>5</sup> information on: (a) the expected duration of examination (16-18 hours, including cross examination);<sup>6</sup> (b) the country details [REDACTED];<sup>7</sup> (c) whether protective measures have been or will be ordered;<sup>8</sup> and (d) the language the witness will testify in [REDACTED].<sup>9</sup>

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

<sup>2</sup> 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).

<sup>3</sup> KSC-BC-2020-06, F01859, Prosecution request for the video-conference testimony of W01493, 16 October 2023, strictly confidential and *ex parte* (*see also* F01859/CONF/RED).

<sup>4</sup> F01867, Prosecution supplement to video-conference request F01859, confidential, 19 October 2023.

<sup>5</sup> This information is in the Request itself, para. 4, the Supplement, or the case file record (where indicated).

<sup>6</sup> Request, para.4(ii): "the expected duration of direct examination is 4 hours (the total estimate for cross-examination is 14 hours)". *See also* Request, fn.6 where the SPO indicates it "is mindful of the Panel's instructions regarding the direct examination estimate for this witness and will confirm that its direct examination can be limited to two hours as soon as practicable." A revised direct examination estimate will reduce the overall expected duration of testimony to 16 hours.

<sup>7</sup> Request, para.4(iii): "the SPO requests W01493 to appear via video-link from a suitable law enforcement or other government building in [REDACTED]." *See also* Request, fn. 4: "Based on preliminary consultations, the [REDACTED] authorities have indicated 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."

<sup>8</sup> Request, para.4(iv): "W01493 has been granted in-court protective measures"; *see also* F01057, Decision on Prosecution Rule 102(2) Submission and Related Requests, 27 October 2022, strictly confidential and *ex parte*, para. 48(d) (*see also* F01057/CONF/RED).

<sup>9</sup> Request, para.4(v): "W01493 will testify in [REDACTED]"

3. Regarding the time frame for when the witness is expected to testify, it was initially envisaged in the Request that the witness would appear the week of 13 November 2023.<sup>10</sup> The SPO informed the Trial Panel and the Parties, however, in the Supplement, that it had decided to no longer call the witness during the 30 October to 16 November evidentiary block, and that it will confirm the new anticipated testimony dates as soon as possible after a decision on the Request and related practical arrangements have been made.<sup>11</sup>

4. The Defence for Messrs Thaçi, Veseli, Selimi and Krasniqi filed a joint response opposing the Request, and asked the Panel to direct the Prosecution to take the necessary measures to facilitate the witness's in-person testimony.<sup>12</sup>

## II. APPLICABLE LAW

5. 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.

6. 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.

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

8. 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:

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<sup>10</sup> Request, para. 4(i).

<sup>11</sup> Supplement, para. 1.

<sup>12</sup> F01891, Joint Defence Response to Prosecution Request for the Video-Conference Testimony of W01493, 26 October 2023, confidential.

- 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

9. The Registry has conducted a preliminary assessment in accordance with Article 3(4) of the Practice Direction on Video Links, in light of the expected duration of testimony of W01493, the country and location details, the applicable protective measures, and the language of the witness. The Registry has also taken into account that the SPO has indicated it will confirm W01493's anticipated testimony dates as soon as possible after a decision on the Request and related practical arrangements have been made.<sup>13</sup> The Registry further notes that the [REDACTED] authorities have indicated to the SPO that, upon receipt of a formal request for assistance from the Registry, they would identify an appropriate location taking into account any necessary technical, security, and other requirements, and confirm feasibility of specific dates for the testimony.<sup>14</sup>

10. As described below, the Registry preliminarily assesses that it is feasible to conduct the testimony of the witness W01493 via video-link from the requested location; however, a final assessment of feasibility is dependent on the formal confirmation by the [REDACTED] authorities of their willingness and ability to facilitate the testimony of W01493 via video-link in line with the required measures

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<sup>13</sup> Practice Direction on Video Links, art. 3(1)(a).

<sup>14</sup> See Request, fn. 4; Supplement, fn. 5.

identified below, including providing a venue that is conducive to giving truthful and open testimony, and with necessary measures to ensure the safety, well-being, dignity and privacy of the witness. Should the Panel grant the Request, the Registry will expeditiously transmit a formal request for assistance to the [REDACTED] authorities in this regard.

11. The Registry notes that the witness benefits from in-court protective measures, [REDACTED].<sup>15</sup> As it can be expected that W01493's testimony may thus take place, at least in part, [REDACTED], the Registry assesses that secure video-conference ('VTC') facilities are required.

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

- a. the video-link location is on secure premises free from interference (to the extent possible, within the control of the competent [REDACTED] authorities), 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 [REDACTED] authorities 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.

13. [REDACTED]. [REDACTED].

14. 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.

15. Following receipt of formal confirmation from the relevant [REDACTED] authorities that they are willing and able to facilitate the video-link testimony of W01493 in line with the conditions outlined above, the minimum amount of time

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<sup>15</sup> See fn. 8 above.

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 and the specific dates of testimony are confirmed by the [REDACTED] authorities, whichever is later. This timeframe is required to allow pre-mission coordination with the [REDACTED] authorities and internal Registry preparations, including travel to the location, the set-up and testing of the technical equipment in [REDACTED], as applicable, and to allow for the Witness Protection and Support Office ('WPSO') to complete the necessary witness information and familiarisation processes, adapted to the location of testimony, as required.

### **B. Health and Special Needs**

16. Following completion of the WPSO assessments and familiarization process before the commencement of testimony, WPSO will inform the Panel immediately should any special measures be recommended, in accordance with the Registry's relevant internal regulations.<sup>16</sup> In this respect, some health-related factors have already been indicated by the SPO in the Request, and WPSO takes note of the health and [REDACTED] concerns raised therein.<sup>17</sup>

### **C. Conclusion**

17. In conclusion, at this time, the Registry preliminarily assesses that it is feasible to conduct the testimony of the witness W01493 via video-link from [REDACTED], 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

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<sup>16</sup> See Registry Practice Direction on Psychological Assessments and Support to Facilitate Testimony, KSC-BD-19-Rev1, 9 February 2022, LIMITE; *see also* Registry Instruction, WPSO Guidelines on Services to Witnesses Appearing Before the Specialist Chambers, KSC-BD-42-Rev2, 7 October 2022, LIMITE.

<sup>17</sup> Request, paras 6-7.

Panel should any changes to the above assessment occur. The Registry will also keep the Panel informed of any significant developments regarding the outcome of the Registry's formal request for assistance.

#### IV. CONFIDENTIALITY

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

**Word count: 1750**



**Dr Fidelma Donlon**

**Registrar**

Monday, 30 October 2023

The Hague, the Netherlands