



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 1 December 2023

Language: English

Classification: Public

Decision on Prosecution Request for Video-Conference Testimony for W01140

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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 November 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request (“Request”)¹ in which it seeks the Panel’s authorisation for the testimony of W01140 to take place by video-conference link from an appropriate location in his country of residence.² It argues that the Panel should grant the Request as it is necessary and would not result in undue prejudice to the Accused.³

2. On 29 November 2023, pursuant to an order from the Panel for expedited submissions,⁴ the Registry filed its preliminary assessment (“Registry Assessment”)⁵ indicating that it is feasible to conduct the testimony of W01140 via video-link.⁶

3. The Defence did not respond.

II. APPLICABLE LAW

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

¹ F01942, Specialist Prosecutor, *Prosecution Request for the Video-conference Testimony of W01140*, 20 November 2023, confidential (a public redacted version was filed the same day, F01942/RED).

² Request, para. 1.

³ Request, para. 2.

⁴ CRSPD370, Email from Trial Panel II to Parties and Participants Regarding Expedited Responses to F01942, 21 November 2023.

⁵ F01969, Registry, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W01140*, 29 November 2023, confidential and *ex parte* (a confidential redacted version, F01969/CONF/RED, and a public redacted version, F01969/PUB/RED, were filed the same day).

⁶ Registry Assessment, para. 9.

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

5. 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 his or her testimony remains the preferred option.⁷ 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”.⁸

6. In determining whether to grant the Request, the Panel notes that W01140: (i) suffers from serious health conditions that are exacerbated by travel;⁹ and (ii) has constant and persistent problems that impairs his mobility and has necessitated numerous medical interventions and continuous monitoring.¹⁰ Lastly,

⁷ 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; F01910, Panel, *Decision on Prosecution Request for the Video-Conference Testimony of W01493*, 8 November 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.

⁸ 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.

⁹ Request, paras 6-7.

¹⁰ Request, para. 6.

the Panel observes that the witness's health condition could deteriorate suddenly, making it important for him to be in close proximity to his treating physicians.¹¹

7. Having carefully considered the Request, the Panel is satisfied that the SPO has established that the witness's medical issues, as presented in the Request, warrant allowing W01140 to testify via video-link. 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 adequate reason to grant a request for testimony by means of video conference. It is the calling Party's responsibility to ensure that a witness appears in the courtroom in The Hague for testimony.¹² However, in the present case, the information supplied by the SPO is sufficiently detailed to enable the Panel to conclude that allowing W01140 to provide testimony via video-link from an appropriate location in his country of residence would be more conducive to W01140's well-being than transferring him to The Hague to testify in person.

8. The Panel additionally considers the preliminary assessment of the Registry that it is feasible to conduct the testimony of W01140 via video-conference¹³ and that the use of facilities offered by an international organisation in the country concerned will facilitate the necessary logistical, technical, and security arrangements.¹⁴ 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 measures¹⁵ 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.

¹¹ Request, para. 8.

¹² F01910, Panel, *Decision on Prosecution Request for the Video-Conference Testimony of W01493*, 8 November 2023, confidential, para. 14.

¹³ Registry Assessment, paras 8, 16.

¹⁴ Request, para. 4; Registry Assessment, para. 14.

¹⁵ Registry Assessment, para. 11.

9. The Panel does not consider that the hearing of the testimony of W01140 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 will have the opportunity to ask questions to the witness.

10. For these reasons, the Panel finds it appropriate to hear the testimony of W01140 by way of video-link.

IV. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W01140 to testify via video-conference; and
- c) **ORDERS** the Registry to make the necessary arrangement for W01140's testimony via video-conference and to report to the Panel, the Parties and the participants as described in paragraph 8 of this decision.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 1 December 2023

At The Hague, the Netherlands.