



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: 15 March 2024

Language: English

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Decision on Prosecution Request for Video-Conference Testimony for W04571

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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 12 March 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request (“Request”)¹ in which it seeks the Panel’s authorisation for the testimony of W04571 to take place by video-conference link from an appropriate location.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 13 March 2024, pursuant to an order from the Panel for expedited submissions (“Order”),⁴ the Defence for Hashim Thaçi indicated that it does not oppose the Request, while the other three Defence teams indicated that they do not intend to respond to the Request.⁵
3. On 14 March 2024, pursuant to the Order, the Registry filed its preliminary assessment (“Registry Assessment”)⁶ indicating that it is feasible to conduct the testimony of W04571 via video-link.⁷

¹ F02175, Specialist Prosecutor, *Prosecution Request for Video-Conference Testimony for W04571*, 12 March 2024, confidential (a public redacted version was filed the same day, F02175/RED), with Annexes 1-3, confidential.

² Request, paras 1, 12.

³ Request, paras 2, 7-9.

⁴ CRSPD451, *Email from Trial Panel II to CMU Regarding F02175 (“CRSPD451”)*, 12 March 2024, confidential.

⁵ CRSPD451.

⁶ F02177, Registrar, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W04571*, 14 March 2024, confidential and *ex parte* (a confidential redacted version was filed the same day, F02177/CONF/RED).

⁷ Registry Assessment, paras 11, 21.

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 inconsistent with the rights of the Accused.

5. Pursuant to Rule 144(2), the Panel, with the assistance of the Registrar, shall ensure that the venue chosen for the conduct of the video-conference testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness.

6. 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

7. The Panel recalls that, 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.⁸ When considering whether to allow a request for video-link testimony under Rule 144, 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

⁸ See e.g. F01910, Panel, *Decision on Prosecution Request for the Video-Conference Testimony of W01493*, 8 November 2023, confidential (a public redacted version was filed on the same day, F01910/RED), para. 12; F01776, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W03827*, 8 September 2023, confidential (a public redacted version was filed on 1 November 2023, F01776/RED), para. 12; F01558, Panel, *Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337*, 26 May 2023, strictly confidential and *ex parte* (a confidential redacted version was filed on 30 May 2023, F01558/CONF/RED), para. 16; KSC-BC-2020-07, *Transcript of Hearing*, 14 January 2022, p. 3034, lines 2-5.

the complexity and duration of any logistical travel and other arrangements to be made”.⁹ 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 such a request. It is the calling Party’s responsibility to ensure that a witness appears in the courtroom in The Hague for testimony.¹⁰

8. Regarding the Request, the SPO submits that, due to family circumstances, W04571 requires assistance and he has not been able to identify anyone who can travel with him to provide support.¹¹ Therefore, according to the SPO, giving testimony in Kosovo via video-link is necessary to ensure W04571’s physical and psychological well-being.¹² Moreover, the Registry submits that it is able to facilitate the video-link for W04571,¹³ who may testify as early as 20 March 2024.¹⁴ The Registry further submits that the venue chosen complies fully with the requirements in Rule 144(2).¹⁵

9. Having carefully considered the Request, and in light of the absence of any objection by the Defence, the Panel is satisfied that the SPO has established that W04571’s family circumstances, as fully explained in the confidential version of the Request, would impose challenges related to his travel to The Hague for participation in the proceedings. The Panel is also satisfied that allowing W04571 to provide testimony via video-link from Kosovo would be more conducive to his well-being than transferring him to The Hague to testify in person.

⁹ 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.

¹⁰ F01975, Panel, *Decision on Prosecution Request for Video-Conference Testimony for W01140*, 1 December 2023, para. 7.

¹¹ Request, paras 7, 10.

¹² Request, paras 7-8, 10.

¹³ Registry Assessment, in particular, para. 17.

¹⁴ Request, paras 2, 10.

¹⁵ Registry Assessment, para. 13.

10. Moreover, the Panel weighs heavily the fact that the Defence does not oppose the Request, nor does the Panel foresee any prejudice to the rights of the Accused in that regard. 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.

11. For these reasons, the Panel finds it appropriate to grant the Request.

12. The Panel notes that a final assessment will be conducted by the Registry following a decision by the Panel.¹⁶ In this regard, the Panel encourages the Registry to work expeditiously to ensure that the relevant measures 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.

¹⁶ Registry Assessment, paras 18, 20.

IV. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** W04571 to testify via video-conference; and
- c) **ORDERS** the Registry to make the necessary arrangement for W04571's testimony via video-conference and to report to the Panel, the Parties and the participants as described in paragraph 12 of this decision.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 15 March 2024

At The Hague, the Netherlands.