



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: Fidelma Donlon

Date: 30 January 2024

Language: English

Classification: Public

**Public redacted version of
Decision on Victims' Counsel's Request to Disclose Information Concerning
V40/06**

Specialist Prosecutor's Office

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), 23 and 40(2) and (6)(f) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 80 and 81(5) and (6) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 10 December 2021, the Pre-Trial Judge issued a decision authorising the participation of V40/06, among others, in the present proceedings.¹ In the same decision, the Pre-Trial Judge granted measures protecting the identity of V40/06 from the public and the Parties.²

2. On 29 January 2024, Victims’ Counsel filed a request on behalf of V40/06 seeking the disclosure of V40/06’s status as participating victim in these proceedings to [REDACTED] (“Request”).³

II. DISCUSSION

3. Victims’ Counsel requests the authorisation of the Panel to disclose V40/06’s status as participating victim to [REDACTED].⁴

4. In the Panel’s decision on a similar request in this case, [REDACTED], it noted that the underlying request was not accompanied by [REDACTED]’s written consent to the disclosure of her status as participating victim (“Decision on [REDACTED]’s Request”).⁵ Notwithstanding Victims’ Counsel’s submission that

¹ F00611, Pre-Trial Judge, *Second Decision on Victims’ Participation* (“Decision on Participation”), 10 December 2021, strictly confidential and *ex parte*, paras 47, 70(b). A confidential redacted version and a public redacted version were filed on the same day (F00611/CONF/RED and F00611/RED).

² Decision on Participation, paras 52, 54, 70(f).

³ F02083, Victims’ Counsel, *Urgent Victims’ Counsel Request on Behalf of V40/06*, 26 January 2024, strictly confidential and *ex parte*, with strictly confidential and *ex parte* Annexes 1 and 2.

⁴ Request, para. 1.

⁵ [REDACTED].

his client wished to disclose evidence of her participation as a victim in the proceedings to certain authorities, the Panel expressly stated that “written consent signed by the participating victim should be provided to the Panel in support of an application on that person’s behalf to vary protective measures”.⁶ The Panel, therefore, directed Victims’ Counsel to obtain and transmit to the Registry without delay such a document.⁷

5. In support of the present Request, Victims’ Counsel submits that it is V40/06’s wish that [REDACTED] be provided with the proposed letter in Annex 1 to the Request. However, the Request is not accompanied by V40/06’s written consent to the disclosure of his status as participating victim to those third parties.

6. The Panel recalls that V40/06 was authorised to participate anonymously throughout these proceedings due to the objectively justifiable risks faced by V40/06 resulting from her participation.⁸ As the Panel has already made clear, an application to vary such protection, even in a limited manner, should be accompanied by written consent signed by the participating victim.

7. Nevertheless, the Panel will grant the Request and directs Victims’ Counsel to obtain and transmit to the Registry without delay the victim’s written consent. The Panel finds that the personal circumstances of V40/06 as outlined in the Request constitute compelling reasons for the Panel to authorise the disclosure of V40/06’s status as participating victim in these proceedings to [REDACTED]. The Panel considers such disclosure necessary to inform [REDACTED]. Moreover, the Panel considers that the disclosure of the annexed information for the purposes outlined in the Request represents only a limited variation to the anonymity vis-à-vis the public otherwise enjoyed by V40/06. Thus, the Panel finds that the

⁶ [REDACTED]; *referring to* Rule 81(5), which states that the Panel shall ensure that “the protected person has given consent to the variation of protective measures”; Rule 81(6), which states that the waiver of protective measures must be made either before the Panel or in a written statement.

⁷ [REDACTED].

⁸ Decision on Participation, paras 52, 54, 70(f).

Request is both necessary and proportionate.

III. CLASSIFICATION

8. This decision is rendered under the “strictly confidential and *ex parte*” classification as it concerns an application made on a strictly confidential and *ex parte* basis, as well as information relating to the security of V40/06’ family.

9. In order to preserve to the greatest extent possible the public character of the proceedings, and to give the Parties an opportunity to provide their observations on requests by Victims’ Counsel, the Panel reminds Victims’ Counsel of its obligation to file requests whenever possible as public documents, accompanied to the extent necessary by a confidential or *ex parte* Annex containing sensitive information. The Panel recalls that: “Parties and participants shall endeavor to file all written submissions as public documents, and to confine confidential matters as much as possible to confidential or strictly confidential annexes. [...] Parties and participants are instructed to refrain as much as possible from filing submissions or annexes *ex parte*. The Trial Panel will exercise heightened scrutiny of the reasons presented to justify *ex parte* filings.”⁹

IV. DISPOSITION

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

(a) **GRANTS** the Request, subject to Victims’ Counsel submitting the written, signed consent of V40/06 to the Registry;

(b) **DIRECTS** the Registry to prepare a statement as proposed in Annex 1 to the Request, and to transmit the statement directly to V40/06 upon receiving his

⁹ F01226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, paras 2 and 4.

written consent; and

(c) **AUTHORISES** V40/06 to disclose the statement to [REDACTED].

A handwritten signature in black ink that reads "Charles L. Smith III". The signature is written in a cursive style with a horizontal line at the end.

Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 30 January 2024

At The Hague, the Netherlands.