



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: 16 December 2024

Language: English

Classification: Public

**Public Redacted Version of Decision on Seventeenth Registry Report
on Victims' Applications for Participation in the Proceedings**

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TRIAL PANEL II (“Panel”), pursuant to Articles 22, 23(1) and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 80, 113 and 114 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 18 January 2023, the Panel ordered the Registry to submit any remaining applications for admission of victims wishing to participate in the proceedings by 15 February 2023 (“Order”).¹
2. On 3 April 2023, the Specialist Prosecutor’s Office (“SPO”) opened its case.²
3. On 13 September 2024, the Victims’ Participation Office (“VPO”) filed the seventeenth report on victims’ applications, transmitting to the Panel one application (“Application”) for the status of participating victim (“Report”).³
4. The Parties did not respond to the Report.

II. SUBMISSIONS

5. The VPO provides a detailed explanation of the timing of the Report and the transmission of the Application after the expiration of the applicable time limit.⁴ The VPO submits that, despite the submission of the Report after the deadline set by the Panel, it would be in the interest of justice and would protect the rights of

¹ Transcript of Hearing, 18 January 2023 (Oral Order Setting Deadline for Applications for Admissions of Victims Participating in the Proceedings), pp. 1902-1903.

² See Transcript of Hearing, 15 February 2023, pp. 2038-2039; Transcript of Hearing, 3 April 2023, p. 2140.

³ F02575, Registry, *Seventeenth Registry Report on Victims’ Applications for Participation in the Proceedings*, 13 September 2024, confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte* (a confidential redacted version of the core filing was filed on 20 September 2024 (F02575/CONF/RED), which was reclassified as public on 26 September 2024 (F02575/RED)).

⁴ Report, paras 6-9.

the victims to have the Application considered.⁵ The VPO recommends that the applicant be admitted to participate as a victim in the proceedings.⁶

III. APPLICABLE LAW

6. The Panel incorporates by reference the law applicable to the admission of victims for participation in the proceedings set out in its previous decisions.⁷

IV. DISCUSSION

A. VALIDITY OF THE FILING OF THE REPORT

7. The Panel notes that Rule 113(1) requires that applications for admission of victims participating in the proceedings be filed “sufficiently in advance of the opening of the case pursuant to Rule 124”. The Panel recalls that: (i) it ordered the Registry to file any applications for admission of victims participating in the proceedings by 15 February 2023;⁸ and (ii) the case opened pursuant to Rule 124 on 3 April 2023.⁹ Therefore, as acknowledged by the VPO,¹⁰ the time limit to file applications for admission of victims participating in the proceedings has expired.¹¹

⁵ Report, para. 9.

⁶ Report, paras 9, 22.

⁷ F01801, Panel, *Decision on Fourteenth Registry Report on Victims’ Applications* (“Eighth Decision”), 19 September 2023, strictly confidential and *ex parte*, paras 7-8 (a public redacted version was filed on the same day, F01801/RED); F01774, Panel, *Seventh Decision on Victims’ Participation*, 7 September 2023, strictly confidential and *ex parte*, paras 12-15 (a public redacted version was filed on 11 September 2023, F01774/RED).

⁸ Transcript of Hearing, 18 January 2023, pp. 1902-1903.

⁹ See Transcript of Hearing, 15 February 2023, pp. 2038-2039; Transcript of Hearing, 3 April 2023, p. 2140.

¹⁰ Report, paras 7, 9.

¹¹ See similarly F02439, Panel, *Decision on the Sixteenth Registry Report on Victims’ Applications for Participation in the Proceedings*, 10 July 2024, confidential, para. 7 (a public redacted version was filed on the same day, F02439/RED); Eighth Decision, para. 9; F02114, Panel, *Decision on the Fifteenth Registry Report on Victims’ Applications for Participation in the Proceedings*, 8 February 2024, confidential, para. 7 (a public redacted version was filed on the same day, F02114/RED).

8. That being said, the Panel will assess whether the circumstances set out by the VPO in the Report meet the “good cause” requirement under Rule 9(5)(b).

9. The Panel observes that the applicant is Victim-297/06, i.e. [REDACTED], who testified for the SPO on [REDACTED],¹² and subsequently applied for admission as a victim participating in the proceedings.¹³ The VPO submits that:

- (i) on [REDACTED] 2022, the VPO had a telephone call with the applicant, following which the VPO sent the applicant an e-mail containing the application form and comprehensive information about the Specialist Chambers’ (“SC”) victims’ participation program;¹⁴
- (ii) over the two subsequent months, the VPO followed up with the applicant via e-mail and telephone calls but contact was unsuccessful;¹⁵
- (iii) on [REDACTED] 2024, the SPO informed the VPO that the applicant queried about applying as a participating victim;
- (iv) on [REDACTED] 2024, the SPO informed the VPO of the applicant’s wish to apply to participate as a victim in the proceedings;
- (v) on the next day, [REDACTED] 2024, after having obtained the contact details of the applicant from the SPO, the VPO contacted the applicant by phone. During the phone conversation, the applicant: (i) confirmed having received the emails sent by the VPO in 2022; (ii) explained that he did not apply to participate in the proceedings at that time as he assumed that he could apply at any stage; and (iii) stated that he would like to apply now even if, as the VPO informed him, the deadline for submitting applications had passed;¹⁶

¹² See Transcript of Hearing, [REDACTED].

¹³ Report, para. 8.

¹⁴ Report, para. 6.

¹⁵ Report, para. 6.

¹⁶ Report, para. 7.

- (vi) on the same day, [REDACTED] 2024, the VPO sent the application form to the applicant and followed up by email at the end of the same month;¹⁷ and
- (vii) on 16 July 2024, the VPO received the filled-in application form from the applicant by e-mail.¹⁸

10. The Panel further notes that, in the application form, the applicant expresses his disappointment with the fact that there is a deadline for applications and requests the status of participating victim as, he believes, that “it is [his] right and part of the justice [he] deserve[s]”.¹⁹

11. The Panel accepts that: (i) the applicant is a lay person who was likely not aware of the deadline to apply to participate as a victim in the proceedings until he was about to testify in [REDACTED]; (ii) the VPO made several efforts in good faith to contact the applicant; and (iii) those efforts were unsuccessful. Therefore, considering the circumstances set out above, and noting that no party opposes the application, the Panel is satisfied that good cause has been shown to consider as valid the transmission of Victim-297/06’s application after the time limit set in the Order.

12. In light of the above, the Panel, exercising its discretion, finds that the Application is timely. The Panel will now assess the merits of the Application.

B. ASSESSMENT OF APPLICATION

13. The Panel recalls that, in the Report, the VPO recommends that the Panel admit the applicant as a participating victim.²⁰

¹⁷ Report, para. 7.

¹⁸ Report, para. 8.

¹⁹ Report, para. 8.

²⁰ Report, para. 22.

14. Having assessed the application form and supporting documentation submitted in the Report, the Panel is satisfied that the Application is complete.²¹ The Panel notes that the applicant provided a valid ID card.²² The Panel is satisfied that the applicant is a natural person.²³

1) Correspondence Between the Alleged Crimes in the Application and the Indictment

15. The Panel recalls that, as confirmed by the Court of Appeals, “the crime(s) in relation to which an applicant claims to be a victim must fall under the material, geographical and temporal parameters of the charges, as specified in the Indictment”.²⁴

16. In making its assessment, the Panel conducted an individualised analysis of the application, based on the Report, the application form, the supporting documentation and the relevant parts of the Indictment.²⁵

17. The Panel is satisfied that the applicant is a victim of crimes allegedly committed at a location identified in the Indictment and that the alleged crimes fall within the temporal scope of the charges as specified in the Indictment. Specifically, the Panel is satisfied that there is *prima facie* evidence that Victim-297/06 is a direct victim of imprisonment/illegal or arbitrary arrest, detention, other inhumane acts or cruel treatment, and torture, allegedly committed in [REDACTED] detention site ([REDACTED] municipality) in [REDACTED] 1999.²⁶

²¹ Report, para. 12.

²² See **Victim-297/06** Supporting Documents.

²³ Report, para. 28.

²⁴ IA005/F00008, Court of Appeals, *Decision on Appeal Against “First Decision on Victims’ Participation”*, 16 July 2021, para. 35.

²⁵ F00999, Specialist Prosecutor, *Submission of Confirmed Amended Indictment (“Indictment”)*, 30 September 2022, with Annex 1, strictly confidential and *ex parte*, Annex 2, confidential and Annex 3. See also F01323/A01, Specialist Prosecutor, *Public Lesser Redacted Version of Amended Indictment*, 27 February 2023.

²⁶ See Report, paras 20-21; Annex 1 to the Report. **Victim-297/06** supporting documents. See also Indictment, paras [REDACTED].

2) Alleged Harm

18. The Panel is satisfied that Victim-297/06 has *prima facie* suffered physical (as a result of the mistreatment endured in detention) and mental (anxiety, fear, and trauma) harm as a direct result of the alleged crimes

19. In addition to physical and mental harm, Victim-297/06 also claims material harm, *inter alia*, through the loss of property.²⁷ As harm of a physical and mental nature has already been demonstrated to the requisite degree, it is not necessary for the Panel to decide on the material harm alleged by the applicant. This determination may be made in the reparations order, if any.²⁸

20. The above findings concerning harm are without prejudice to any future ruling following submission of additional material.

3) Conclusion

21. In light of the above, the Panel finds that there is *prima facie* evidence that the applicant has suffered harm as a direct result of crimes alleged in the Indictment. Accordingly, the Panel admits the applicant as a participating victim in the proceedings.

C. PROTECTIVE MEASURES

22. Victim-297/06 requests non-disclosure of identifying information to the public, the SPO, the Defence Counsel and the Accused.²⁹ The Panel notes that Victim-297/06 was, as an SPO witness, granted protective measures vis-à-vis the public, namely pseudonym, face and voice distortion.³⁰ The Panel observes that the

²⁷ Victim-297/06 Applications Form (material harm claim); Annex 1 to the Report.

²⁸ See similarly F01293, Panel, *Fifth Decision on Victims' Participation* ("Fifth Decision"), 15 February 2023, para. 22.

²⁹ Report, para. 28. See also **Victim-297/06** Application Form.

³⁰ F00133, Pre-Trial Judge, *First Decision on Specialist Prosecutor's Request for Protective Measures* ("First Protective Measures Decision"), 10 December 2020, strictly confidential and *ex parte*, paras 117-

identity of Victim-297/06, as an SPO witness, has been disclosed to the Defence.³¹ Consequently, the Panel cannot give effect to the request of the applicant regarding the non-disclosure of his identifying information to the Accused, Defence Counsel and the SPO. The Panel further notes that the VPO recommends that the Panel follow its previous approach as regards dual status witnesses and maintain the protective measures currently in force vis-à-vis the public for the applicant as an SPO witness.³²

(a) Application form

23. The Panel recalls that, in accordance with Rule 113(1), all application forms, application summaries and supporting documents shall remain strictly confidential and *ex parte*.³³ The Panel further recalls that this is without prejudice to the Panel's decision to grant access to the Defence to redacted versions of section 2 of the application forms and, where necessary, supporting documents of dual status witnesses.³⁴

24. The Panel notes that Victim-297/06 submitted his application to participate after he had testified in the trial. Nevertheless, following the previously established procedure,³⁵ the Panel considers it appropriate to ensure that the Defence has access to Section 2 of the application form of Victim-297/06. The Panel therefore instructs Victims' Counsel to review Victim-297/06's application form *ex parte*, consult with Victim-297/06, and submit any concerns that they have

120, 132(q) (a corrected version was filed on 14 December 2020, F00133/COR; a confidential redacted version was also filed on 14 December 2020, F00133/COR/CONF/RED). See also Report, para. 29.

³¹ F01594/A02, Specialist Prosecutor, *Confidential Redacted Version of 'Amended List of Witnesses'*, 9 June 2023, confidential, p. 169. See also Report, para. 29.

³² Report, para. 30.

³³ F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, para. 28.

³⁴ See e.g. F01355, Panel, *Sixth Decision on Victims' Participation* ("Sixth Decision"), 8 March 2023, strictly confidential and *ex parte*, para. 23 (a public redacted version was filed on 10 March 2023, F01355/RED).

³⁵ F01348, Trial Panel, *Order on the Disclosure of Application Forms Pertaining to Dual Status Witnesses* ("Order on the Disclosure of Application Forms"), 6 March 2023, with Annexes 1-3, strictly confidential and *ex parte*, paras 25, 27.

regarding disclosure of Section 2 of this form to the Parties. In this process, Victims' Counsel should make Victim-297/06 aware that, subject to redactions justified by fact-specific reasons if any, Section 2 of their application form will be transmitted to the Defence. Victims' Counsel must also inform Victim-297/06 that the application form will not be shared with the public.

(b) Identity and Witness Code of Victim-297/06

25. The Panel recalls that the legal test for protective measures in relation to victims is the same as that in relation to witnesses.³⁶

26. The Panel is satisfied that the objectively justifiable risk underlying the granting of protective measures to Victim-297/06 as an SPO witness still exists and that these measures remain necessary vis-à-vis the public.³⁷ The Panel further recalls the general climate of witness and victim intimidation prevailing in Kosovo, particularly in criminal proceedings against former members of the Kosovo Liberation Army.³⁸ Further, the Panel is mindful that by virtue of his status as a victim participating in the proceedings, Victim-297/06 is especially vulnerable.³⁹

27. As regards the proportionality of the measures, the Panel recalls that: (i) the dual status and witness code of Victim-297/06 will be disclosed to the Accused as set out below; and (ii) protective measures ordered in relation to Victim-297/06 are without prejudice to their variation at a later stage, if and when the need arises.⁴⁰

28. In light of the above, the Panel finds that the protective measures vis-à-vis the public should remain in force for Victim-297/06. Therefore, the identity and identifying information of Victim-297/06 may not be disclosed to the public.

³⁶ Sixth Decision, para. 24.

³⁷ First Protective Measures Decision, paras 117-120, 132(q) ([REDACTED]).

³⁸ See Sixth Decision, para. 25, footnote 41.

³⁹ See Sixth Decision, para. 25, footnote 42.

⁴⁰ See Sixth Decision, para. 27.

D. GROUPING AND COMMON LEGAL REPRESENTATION

29. As regards the VPO's recommendation that the applicant be grouped together with the other victims participating in the proceedings,⁴¹ the Panel observes that the applicant was subjected to similar alleged types of crimes in generally similar circumstances and has suffered from similar forms of harm. As a result, the Panel is of the view that the applicant shares a common interest of participating in the proceedings and pursuing his rights.

30. Based on these considerations, the Panel finds that Victim-297/06 shall be grouped together with the victims previously admitted, under Group 1.

31. The applicant did not indicate any preference with regard to legal representation.⁴² The VPO recommends that the applicant be represented by the assigned Victims' Counsel.⁴³ The Panel is satisfied that the recommended course is consistent with the effective guarantee of the rights of the applicant.

32. Based on the same considerations previously set out,⁴⁴ the Panel finds that Victim-297/06 shall be represented by Victims' Counsel assigned to Group 1.

E. PARTICIPATION IN TRIAL PROCEEDINGS

33. Victim-297/06 shall exercise his rights through Victims' Counsel and shall participate through the modalities described in the First Decision on Victims' Participation and in accordance with the Order on the Conduct of Proceedings.⁴⁵

⁴¹ Report, para. 27.

⁴² Report, para. 26.

⁴³ Report, para. 27.

⁴⁴ See e.g. Fifth Decision, para. 45.


⁴⁵ F00257, Panel, *First Decision on Victims' Participation*, 21 April 2021, confidential, paras 81-84 (a public redacted version was filed on the same day, F00257/RED); Fifth Decision, para. 46. See also F01226/01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, paras 32-36.

V. DISPOSITION

34. For these reasons, the Panel hereby:

- A) **DECLARES** the Application to be timely;
- B) **GRANTS** the application of Victim-297/06;
- C) **DECIDES** that Victim-297/06 shall be included in Group 1 for the purpose of common representation and shall be represented by Victims' Counsel for Group 1;
- D) **ADOPTS** the participation modalities and rights of Victims' Counsel as set out in paragraph 73(d) of the Fourth Decision on Victims' Participation;
- E) **NOTES** that protective measures remain in force prohibiting the disclosure of Victim-297/06's name and identifying information to the public;
- F) **ORDERS** that Section 2 of Victim-297/06's application form may be disclosed in redacted form to the Defence, and Victim-297/06's unredacted application form, summary and supporting documentation shall otherwise remain strictly confidential and *ex parte*;
- G) **INSTRUCTS** Victims' Counsel to inform Victim-297/06 that his victim status and Section 2 of their application form, redacted as necessary, will be disclosed to the Parties, and to consult with Victim-297/06 about any concerns that they have in this regard. Victims' Counsel shall submit such concerns, if any, to the Panel by **Friday, 10 January 2025**; and

H) **ORDERS** Victims' Counsel to liaise with the SPO to file an updated list of dual status witnesses, confidential, by **Friday, 17 January 2025**.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style and is positioned above a horizontal line.

Judge Charles L. Smith, III

Presiding Judge

Dated this Monday, 16 December 2024

At The Hague, The Netherlands.