

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

Filing Participant: Victims' Counsel

Date: 28 May 2025

Language: English

Classification: Public

Public Redacted Version of Victims' Counsel's Request for admission of supplementary information on harm with confidential annex 1

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I. INTRODUCTION

1. Pursuant to Article 22 (3), (6), (7) and Article 37(1) and (3)(c) and Article 40(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law"), Rules 114(4)(a) and (5), 138(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), and the Trial Panel's Oral Orders of 23 April 2025,¹ Victims' Counsel files this request for admission into evidence of supplementary information on harm ("SIH") suffered by victims' participating in the proceedings ("VPPs").
2. Pursuant to the Trial Panel's Oral Order of 23 April 2025,² together with this request Victims' Counsel files 15 SIHs as itemised in the annex to this request and will submit further SIHs on a rolling basis until 1 July 2025.

II. CLASSIFICATION

3. This submission is classified as confidential pursuant to Rule 82(3) of the Rules as it contains information that could identify victims participating in this case who have been granted anonymity.

III. PROCEDURAL HISTORY

4. As of the date of this filing, 155 individuals participate in these proceedings as victims, and have been granted anonymity towards the Parties and the public.³

¹ *Specialist Prosecutor v. Thaci et al*, KSC-BC-2020-06, In Court – Oral Order, 23 April 2025, 26177:1 - 26177:21 and In Court – Oral Order, 23 April 2025, 26183:17-26184:1 and 26184:17-26184:19 ("Oral Orders").

² In Court – Oral Order, 23 April 2025, 26183:17-26184:1 and 26184:17-26184:19.

³ KSC-BC-2020-06/F00257, First Decision on Victims' Participation, 21 April 2021; F00611, Second Decision on Victims' Participation, 10 December 2021; F00817, Third Decision on Victims' Participation, 25 May 2022; F01152, Fourth Decision on Victims' Participation, 12 December 2022; F01293, Fifth Decision on Victim's Participation, 15 February 2023; F01355, Sixth Decision on Victims' Participation, 9 March 2023; F01774, Seventh Decision on Victim's Participation, 7 September 2023; F02071, Decision on Resubmission of the Fourteenth Registry Report on Victims' Applications for Participation in the Proceedings, 19 January 2024; F02439, Decision on the Sixteenth Registry Report on Victims' Applications for Participation in the Proceedings, 10 July 2024; F03179, Consolidated Decision on the Eighteenth and Nineteenth Registry Report on Victims' Applications for Participation in the Proceedings, 15 May 2025. One VPP passed away during the course of the proceedings and

5. Of these VPPs, the Prosecution intended to call 77 as witnesses.⁴
6. On 23 March 2023, the Trial Panel ordered the disclosure of the identities of VPPs who also appeared on the Prosecution's witness list.⁵
7. On 23 April 2025, Victims' Counsel informed the Panel and the Parties of his intention to adduce documents containing supplementary information on harm.⁶
8. On the same day, the Trial Panel ordered Victims' Counsel to submit such of these documents as were ready by 28 May 2025, to submit further such documents on a rolling basis and to complete the submission of them by 1 July 2025.⁷

IV. APPLICABLE LAW

9. Article 40(6)(e) provides that the Trial Panel may order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties, prior to or during the trial. The same Article, in paragraph (6)(h), provides that the Trial Panel may rule on matters including the admissibility of evidence prior to or during the course of trial.
10. Under Rule 132:

without a successor to date, see F02512, Victims' Counsel's Notification of death of Victim 02-06, 27 August 2024. Four other VPPs have passed away since their admission and their claims are continued by a successor or successors, see F00611, Second Decision on Victims' Participation, 10 December 2021, para. 33; F01692, Decision on Victims' Counsel's Request for Resumption of Action on Behalf of V131/06 by an Immediate Family Member, 21 July 2023; F01834, Decision on Victim's Counsel's Request for Resumption of Action on Behalf of V252/06 by Relatives, 4 October 2023; F02789, Decision on Victims' Counsels Request for Resumption of Action Initiated by V254/06, 18 December 2024.

⁴ See F01370/A02, Annex 2 to Victims' Counsel and SPO Third Joint Filing in Compliance with Decision F01355, 14 March 2023; F02458/A02, Annex 2 to Victims' Counsel's Filing in Compliance with Decision F02439, 18 July 2024; F01078/A04, Annex 4 to Submission of amended witness and exhibit lists, Amended List of Witnesses, 2 November 2022. Victims' Counsel considers the three newly admitted VPPs to be included in this number. See F03179, Consolidated Decision on the Eighteenth and Nineteenth Registry Report on Victims' Applications for Participation in the Proceedings, 15 May 2025.

⁵ F01348, Order on the Disclosure of Application Forms Pertaining to Dual Status Witnesses, 6 March 2023 with strictly confidential and *ex parte* Annexes 1-3. See also F01448, Decision on Victims' Counsel's Request for Reconsideration of Trial Panel II's "Order on the Disclosure of Application Forms Pertaining to Dual Status Witnesses", 12 April 2023.

⁶ Status Conference, T. 23 April 2025, 26157:25-26158:11.

⁷ In Court – Oral Order, 23 April 2025, 26183:17-26184:1 and 26184:17-26184:19.

After hearing the Parties and, where applicable, Victims' Counsel, the Panel may invite the submission of or *proprio motu* call additional evidence not produced by the Parties, including expert evidence, where it considers it necessary for the determination of the truth.

11. Under Rule 137:

(1) The Panel may submit evidence relevant to the case. In accordance with Rule 132, a Panel may order the submission of or call evidence that it considers necessary for the determination of the truth.

(2) A Panel shall assess freely all evidence submitted in order to determine its admissibility and weight.

12. Rule 138(1) provides that:

Unless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect. [...]

13. Article 23(1) states:

The Specialist Chambers' Rules of Procedure and Evidence shall provide for the protection of victims and witnesses including their safety, physical and psychological well-being, dignity and privacy.

14. Article 22(3) and (7) provide that:

(3) A victims' personal interests and rights in the criminal proceedings before the Specialist Chambers are notification, acknowledgement and reparation.

(7) In its judgment, a Trial Panel may, either upon request or on its own motion in exceptional circumstances, include a decision on the scope and extent of any damage, loss and injury to, or in respect of Victims. [...]

15. Rule 114(5) provides, in relevant part:

Where evidence was not produced by the Parties or the produced evidence does not adequately address the impact the alleged crimes have on the personal interests of victims participating in the proceedings, Victims' Counsel may request the Panel to order the submission of relevant evidence or call witnesses to testify. [...]

16. The Specialist Chambers have consistently held in relation to victims' rights in the proceedings before the KSC:

16. With regard to “acknowledgement”, in the view of the Panel it must be understood, in the context of criminal proceedings before the KSC concerning the determination of the charges in the Confirmed Indictment against the Accused, as the victims’ personal interest and right to have the harm they allegedly suffered recognised and, to that end, to contribute meaningfully, through the modalities of their participation, to the recognition of such harm and of the responsibility of those at the origin of it.

17. This interpretation is in line with – firstly – the findings of the Specialist Chamber of the Constitutional Court that victims have a fundamental right “to independent and effective investigation under the procedural heads of Articles 25 and 27 of the Constitution and Articles 2 and 3 of the Convention” and – secondly – the finding of the Grand Chamber of the European Court of Human Rights, in its judgment in the *El-Masri* case. The Grand Chamber underlined the importance of the right to truth not only for the victim and his family but also for other victims in similar cases and the general public who had the right to know what happened. It concluded that the applicant was deprived “of being informed of what had happened, including getting an accurate account of the suffering he had allegedly endured and the role of those responsible for his alleged ordeal” and that therefore, there had been a violation of the procedural head of Article 3 of the ECHR. The Panel is of the view that acknowledgment of serious breaches of human rights and international humanitarian law is a form of remedy that is as important, or even more important than, the right to compensation.

18. The aforementioned interpretation is also in line with the Rules. In this regard, Victims’ Counsel, unlike the Parties, does not have an independent right to submit evidence but, in accordance with Rule 114(5) of the Rules, may only request the Panel to order the submission of relevant evidence or call witnesses to testify. The exercise of the Panels’ power to order the submission of evidence, in accordance with Rule 132 of the Rules, is in turn contingent on the Panel finding it “necessary for the determination of the truth”. Therefore, the Rules also necessarily make the victims’ right to participate in the proceedings and to present evidence contingent on the establishment of the truth with regard to what allegedly happened to them and the responsibility of those involved therein. That being said, the Panel will apply Rules 114(5) and 132 of the Rules in order to ensure that victims can meaningfully exercise such a right during trial proceedings.

19. In the view of the Panel, such a conclusion on the victims’ rights in criminal proceedings before the KSC does not in any way affect the fact that it remains entirely incumbent on the SPO to prove to the requisite standard the different

elements of the crimes contained in the Confirmed Indictment and the criminal responsibility of the Accused.⁸

V. SUBMISSIONS

A. The need for the SIHs

17. In accordance with Article 22(3) of the Law, victims participating in the proceedings before the SC have the right to acknowledgement. As explained by Trial Panel I, the right to acknowledgment must be understood in the context of the criminal proceedings before the SC as the victims' personal interest and right to have the harm that they allegedly suffered recognised.⁹
18. Acknowledgement of the truth with regard to what happened to the victims and determination of those responsible for it are an important form of remedy for victims.¹⁰ At the same time, the Trial Panel's determination of their harm will be also relevant at the stage of reparation proceedings.
19. The question of how and on the basis of what information the harm of the VPPs is to be recognised and acknowledged is thus a matter of real importance. This is because the majority of the VPPs did not have the opportunity to testify in person before the Trial Panel about their experiences as SPO witnesses, and will not be called as part of the Victims' case.¹¹
20. All VPPs in this case have been granted protective measures under Rule 80.
21. Out of the current total of 70 dual status VPPs,¹² there are 43 who have testified in Case 06 live or pursuant to Rule 154. In that group, there are eleven whom

⁸ *Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, paras 16-19; *Prosecutor v Pjetër Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, paras 25-28.

⁹ *Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 16. *Prosecutor v Pjetër Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, para. 25.

¹⁰ "The Panel recalls in this regard that acknowledgment of serious breaches of human rights and international humanitarian law is an important form of remedy for victims." KSC-BC-2020-04/F00866, Reparation Order against Pjetër Shala, 29 November 2024, para.153

¹¹ See Section V(C)(b) below.

¹² This excludes seven dual status VPPs whose evidence is no longer relied on by the SPO.

Victims' Counsel did not cross-examine in the course of the trial: seven were admitted as VPPs after their testimony,¹³ for one no further questioning was necessary,¹⁴ one comprehensively testified in another case about their harm and did not wish to add to that testimony,¹⁵ two because they found it difficult to be examined about the harm suffered in court or for fear of further traumatization.¹⁶

22. There are also dual status victims whose prior statements were admitted in writing pursuant to Rule 153¹⁷ or Rule 155¹⁸ and who, therefore, did not have an opportunity to fully explain their experiences of harm in their previous statements or in the course of these proceedings. Furthermore, there are 85 single status VPPs who have not testified in court or whose previous statements do not form part of the evidence on the record. Within that group there are seven VPPs who were previously on the SPO witness list, but whose testimony the Prosecution decided not to rely upon.¹⁹ Where their previous statements dealt with harm, Victims' Counsel seeks their admission under Rule 153.²⁰

23. Out of 155 VPPs, 34 have given comprehensive evidence in court about their harm and the impact of the crimes on their lives. In relation to these VPPs the Trial Panel has evidence on the record to determine what happened to them and to enable the acknowledgement and recognition of the harm they have suffered.

24. That leaves 121 VPPs who have not been able to fully explain the consequences of the crimes upon them. For these VPPs, the only material available to the Panel for the purpose of determining and acknowledging the harm that they have

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED]. Several of these VPPs are included in Victims' Counsel's Rule 153 filing ([REDACTED]).

²⁰ See Victims' Counsel's Request for admission of evidence pursuant to Rule 153 with confidential annex 1 Victims' Counsel's Rule 153, 28 May 2025.

suffered is the application form, sometimes supplemented by a Note to File from the Victim Participation Office.

25. However, the purpose of the application form (and Note to File where applicable) is to establish the eligibility of applicants for admission as a VPP on a *prima facie* basis under Rule 113(1) and (4). The application form was never intended to provide a detailed account of the harm that a victim has suffered. In meeting with the VPPs and hearing their accounts, it became apparent that the vast majority of them had far more to say about the impact of the crimes on their lives than the typically brief summary that they had included in the application form. They had not approached the task of completing the application form as being their one and only opportunity to describe their harm.
26. To take an example from material previously disclosed to the Parties from the application forms, [REDACTED] made this entry in her application form in completing Section 3 (“Please describe the harm that you sustained as a direct result of this crime”) in respect of mental harm: “[REDACTED].”²¹
27. By contrast, her SIH powerfully explains, using her own words, the all-consuming effect of her father’s murder on her: that she feels like the dust left behind from burnt charcoal, that she has even thought she smells of it, and that part of her suffering is to live with the thought that she may be unwittingly in the presence of his killers at any time.²²
28. Furthermore, many VPPs have required some time and the development of a relationship of trust before wishing to discuss their harm. Some found speaking with Victims’ Counsel about their experiences too difficult and/or disruptive and preferred to share their experiences in writing.
29. It follows that the application forms alone do not, in the majority of cases, provide a sufficient basis for the VPPs’ harm to be determined, acknowledged and recognized in full by the Trial Panel. Thus, an additional source of information

²¹ [REDACTED].

²² V2400003-V2400004 RED at V2400004 RED.

needs to be provided to the Trial Panel in order to ensure that the rights of the VPPs under Article 22(3) are secured. Victims' Counsel respectfully requests that this source of information be the SIHs.

30. The SIH offers an opportunity to VPPs who wish to do so to provide a detailed account of their harm, thereby securing their right to acknowledgement. At the same time, as discussed further below (see paragraphs 50 and 52), this process respects protective measures granted to the VPPs and does not prejudice the rights of the Accused.

B. The content of the SIHs

31. The SIHs are intended to add to the information in the application forms by enabling the VPPs to add further details about their experience of harm. The documents also bring together in one place relevant information in relation to the VPPs.
32. The SIHs do not contain any evidence relating to the acts and conduct of the Accused and, as described below at paragraph 50, are not, in any case, submitted as evidence that could be relied on by the Trial Panel as relevant to the Accused' criminal liability.
33. For those VPPs who have previously provided evidence in another way (for example by interviews or in testimony in other cases), the SIHs begin with a Note from Victims' Counsel giving the relevant references.
34. The content of the SIHs reflects instructions that were given by VPPs to Victims' Counsel about their harm. This was provided in the course of consultations that have been held with the VPPs since Victims' Counsel's assignment. The statements in the SIHs reflect the VPPs' words that were either stated in the VPPs' language, interpreted and noted down by Victims' Counsel team during the consultations, or provided by the VPPs to Victims' Counsel in written form.
35. The content of every SIH will have been approved by the VPPs by the time it is submitted. The VPPs are informed and aware of the purpose of the SIH, read it in

their own language or a language they understand, are given an opportunity to amend it, and confirm that the content of the SIH is true to the best of their knowledge and belief.

36. Victims' Counsel's intention is that the VPPs should authenticate the contents of the document, preferably by signing it. However, for a variety of reasons, it will not be possible for every VPP to authenticate the content of the document with a hand-written or electronic signature. Some VPPs do not use email or a smart phone. Letters cannot be posted to their homes because a Dutch postmark may arouse suspicion, as might posting a letter to the Netherlands. For the same reason, a home visit by the Victims' Counsel Team is out of the question for many VPPs. Some VPPs who do not have access to a printer are afraid to use one in a printing shop for fear that the document might be seen by others. In such cases, other methods of authenticating the SIH (including by text message) will be used wherever possible. Victims' Counsel notes that, even for evidence submitted under Rule 153, the fact that a statement is not signed is not a bar to its admissibility (see Rule 153(2) third sentence).

37. Consistent with the protective measures granted to the VPPs, the SIHs disclosed to the Parties redact identifying information unless previously disclosed to them. Unredacted versions have been made available to the Panel.

C. The legal basis of the SIHs

38. Victims' Counsel requests the SIHs to be admitted into evidence pursuant to and in compliance with Article 22(1) (3) and (7), Article 23(1) and 44(6) of the Law, Rules 80, 114(5), 132, 137 and 138(1) for the purpose of the determination and recognition of the harm suffered by the VPPs.

39. It is submitted that the legal framework of the KSC approaches evidence for the purpose of acknowledgement and recognition of harm suffered by the VPPs in a different manner from evidence relevant to proof of guilt or innocence. There is nothing in the Law or the Rules that would prevent the Specialist Chambers from

admitting evidence concerning the impact of the alleged crimes on the personal interests of VPPs in the format of a written statement such as the proposed SIHs.²³

40. If the legal framework of the KSC was to be understood otherwise, the basic right of the VPPs to have their harm acknowledged by the Specialist Chambers would be, in the majority of cases, purely theoretical rather than realisable. It would mean that only those VPPs who are also Prosecution witnesses, and who testify live or pursuant to Rule 154 and were questioned about their experiences of harm, would be able to enjoy this right.

41. An additional security consideration and argument in favour of SIHs exists with regard to the single status VPPs. The protective measure of anonymity granted to VPPs under Article 23(1) of the Law and Rule 80(4)(e)(i), in light of justified security concerns, cannot trump one of the VPPs' basic rights in these proceedings. This is especially so given the security context in Kosovo.

a. The legal framework of the KSC approaches evidence of harm in a different manner from evidence relevant to proof of guilt / innocence

42. The Law and the Rules give the Trial Panel a wide discretion to call, receive and assess evidence under Article 40(6), Rule 132, Rule 137 and Rule 138(1).

43. As noted above, Article 22(3) of the Law envisages that victims participating in the proceedings before the KSC have the right to acknowledgement. This right,

²³ Victims' Counsel notes that Trial Panel I in the *Mustafa* case envisaged the possibility of victims presenting their views and concerns, noting that this could be a way for victims to foster recognition of their harm (See KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 37). [REDACTED]. Victims' Counsel notes that the Rules and the Law are silent on the possibility of victims presenting their views and concerns. Furthermore, other dual status witnesses in Case 05 testified on issues related to harm as witnesses and not under the auspices of views and concerns. Victims' Counsel submits that existence of one's physical, mental or material harm is not a subject of one's view or concern, but a matter of fact. Therefore, the better mode in which the Panel should be informed about harm is through information that is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect. In these proceedings, 34 dual status victims have provided evidence about the harm that they have suffered in the course of their in court testimony. All VPPs have submitted application forms which, in line with Rule 113(4) constitute *prima facie* evidence of their harm. The SIHs provide the Panel with further information on harm which comes directly from the VPPs and is relevant, authentic, and has probative value that is not outweighed by its prejudicial effect.

in accordance with the KSC's jurisprudence, must be understood in the context of criminal proceedings before the Specialist Chambers as the victims' personal interest and right to have the harm that they allegedly suffered recognised.²⁴

44. As to the ability of Victims' Counsel to request submission of evidence in relation to harm, Rule 114(5) provides in relevant part that Victims' Counsel may request the Panel to order the submission of relevant evidence or call witnesses to testify, where the evidence does not adequately address the impact the alleged crimes have had on the personal interests of the VPPs.

45. As Trial Panel I explained, given the VPPs' personal interest and right before the Specialist Chambers to have the harm they suffered recognised,²⁵ victims have the right "to contribute meaningfully, through the modalities of their participation, to the recognition of such harm and of the responsibility of those at the origin of it."²⁶ Trial Panel I clarified that Rule 114(5) and Rule 132 must be applied in a way that ensures that victims can meaningfully exercise their right to truth during trial proceedings.²⁷

46. However, the Rules of the KSC make no specific mention of the modality through which a VPP, even more so an anonymously participating VPP, should present evidence of their harm. There plainly cannot be a requirement for a VPP to testify *viva voce*, or for their evidence on harm to be submitted through Rules 153, 154, or 155 in order to have their harm acknowledged.

47. Rule 113 which regulates the application process states in paragraph 4:

²⁴ *Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 16; *Prosecutor v Pjetër Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, para. 25.

²⁵ *Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 16; *Prosecutor v Pjetër Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, para. 25.

²⁶ *Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 16; *Prosecutor v Pjetër Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, para. 25.

²⁷ *Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 18; *Prosecutor v Pjetër Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, para. 27.

In deciding whether a victim may participate in the proceedings, the Panel shall consider whether the applicant has provided *prima facie* evidence of the harm suffered as a direct result of a crime in the indictment.

This regulation treats the content of the application form as *prima facie* evidence for the purposes of determining whether an individual is a victim within the meaning of Article 22(1), that is also as *prima facie* evidence of harm.

48. Once admitted to participate as a victim, the Law and the Rules place no restriction on the use which a Trial Panel may make of a VPP's application form, which remains a source of evidence of the harm suffered by an individual VPP at all stages of the proceedings and until their conclusion.²⁸
49. It follows that the application form remains evidence of harm available to the Panel which has not been admitted through Rules 153, 154, or 155.
50. Importantly, Rules concerning admission of evidence in the form of written statements, specifically Rule 155 which regulates admission of written statements of unavailable persons and of persons subjected to interference, envisages that the fact that evidence goes to proof of the acts and conduct of the Accused as charged in the indictment, may be a factor against the admission of such evidence, in whole or in part. The proposed SIHs are intended as evidence of harm only – the impact of the crimes concerned on individual VPPs. Therefore, the fact that the VPPs are not available for examination or cross-examination is not a factor that bars the SIHs from being admitted.
51. Reading the relevant Rules concerning evidence and victim participation in the context of the rights granted to VPPs under the Law, it is submitted that a written account, such as that in the SIHs submitted by Victims' Counsel, is an appropriate and unobjectionable way to present evidence of harm and to enable realization of the VPPs' rights as provided for in the KSC's legal framework.

²⁸ See, for example, the citation to the application forms in KSC-BC-2020-04/F00866, Reparation Order against Pjetër Shala, 29 November 2024, para. 96.

52. Furthermore, the SIHs meet the criteria under Rule 138(1). They are both relevant to and have probative value in relation to harm. They are also obviously authentic. Finally, given their very specific evidentiary relevance – that is only for the purpose of determination and recognition of harm suffered by the VPPs, SIHs have no prejudicial effect on the Accused.

b. The protective measure of anonymity granted to single status VPPs under Article 23(1) of the Law and Rule 80(4)(e)(i), in light of justified security concerns, cannot trump one of the VPPs' basic rights in these proceedings

53. With regard to single status VPPs, Victims' Counsel has considered the other avenues by which evidence of harm could be put before the Panel, and submits that there is no alternative that would be compatible with the anonymity granted to VPPs in this category.

54. In this regard, Victims' Counsel recalls the climate of fear in Kosovo, as established at the KSC.²⁹

55. The associated culture of intimidation of witnesses/victims is reflected in the convictions in Case 07 and the admissions of guilt of the Accused in Case 10.

56. In Case 06, SPO filings demonstrate that three of the Accused have shown a disregard for the protective measures in place for the victims/witnesses.³⁰ Further, the Accused Hashim Thaçi, a former member of the Veseli Defence (with access to confidential information), and three other individuals are awaiting trial for

²⁹ KSC-BC-2020-05, F00494/RED/COR, Trial Panel I, Corrected Version of Public Redacted Version of Trial Judgment, 24 January 2023, para. 57; KSC-BC-2020-07, F00611/RED, Trial Panel II, Public Redacted Version of Trial Judgment, 18 May 2022, para. 577 and multiple decisions of Trial Panels I and II.

³⁰ See, for example, F01933, Prosecution urgent request for modification of detention conditions with confidential Annexes 1 to 5, 17 November 2023, paras 13-14, 22-23, 24, 25, 33-35; KSC-BC-2020-06/F02896, Prosecution consolidated response to F02785 and F02846, 3 February 2025, paras 8-13.

having “coordinated to unlawfully influence the testimony of and/or contact SPO witnesses in the *Thaçi et al.* case.”³¹

57. At the same time, the vulnerability of the victims has been rightly recognised from the very first decision on victims’ participation:

(i) by virtue of their status as VPPs, these individuals are especially vulnerable and any protective measure would have to address their special needs as victims; and (ii) adequate protective measures for victims are often the legal means by which their participation in the proceedings can be secured, because such measures are a necessary step in order to safeguard the victims’ safety, physical and psychological well-being, dignity and privacy in accordance with Rule 80 of the Rules.³²

58. The Trial Panel has seen numerous instances of witnesses altering their testimony in a manner only consistent with them being afraid of the consequences of telling the truth.³³

59. Some VPPs have been driven to seek, and been granted, asylum as a result of their fear for their safety in Kosovo. Another has withdrawn from the proceedings as a result of safety concerns,³⁴ but that individual was not alone in being the recipient of both online and real-world threats. [REDACTED].³⁵

60. Against that background, the importance of anonymity for the VPPs cannot be overstated. At a minimum, their participation as witnesses cannot be said to be free of risk.

61. However, participation as a witness almost inevitably involves the disclosure of identity. Although Rule 80(4)(e)(ii) provides for the possibility of total anonymity for witnesses, Victims’ Counsel notes that there were no SPO witnesses who

³¹ KSC-BC-2023-12/F00264/A02, ANNEX 2 Submission of Amended Confirmed Indictment, 16 April 2025, p. 3.

³² F00257, First Decision on Victims’ Participation, 21 April 2021, para. 68, and see dicta as to vulnerability to the same effect in each subsequent decision.

³³ [REDACTED] was a notable, but not the only, example.

³⁴ F03142, Public Redacted Version of Decision Approving Withdrawal of [REDACTED] from Participation as a Victim in the Proceedings, 23 April 2025.

³⁵ F02034, Victims’ Counsel’s Notification to the Trial Panel of concerns of a victim participating in the proceedings with one confidential annex, 22 December 2023.

provided evidence *viva voce* or through Rules 153, 154, or 155 who retained their anonymity.

62. Rule 147, applicable to witnesses who testify, may be seen as setting the standard here. That Rule makes it necessary to demonstrate a serious risk of loss of life/grave physical or mental harm or the jeopardising of imperative national security interests in order for a witness to testify anonymously.

63. In those circumstances, Victims' Counsel considers that the appropriate advice to give to a VPP is that the safest course for them is to preserve their anonymity vis-à-vis the Defence, and that means not to participate as a witness (*viva voce*, or via Rules 153 or 154), but only to provide a SIH.

64. It is submitted that the VPPs are not required to forfeit the crucial protection rightly afforded them by their anonymity simply in order to describe fully the harm that has been caused to them.

65. For all VPPs who have been granted anonymity, Victims' Counsel submits SIHs with redactions reflecting their protective measures.

D. Conclusion

66. The SIHs are not submitted for any other purpose than as evidence of harm. In these circumstances, there can be no principled objection to the SIHs, which simply add to or augment information which is already available to the Trial Panel for the purpose of acknowledging the harm of the VPPs. They can therefore have no impact on any of the live issues between the SPO and the Defence. For that reason, the fair trial rights of the Accused would not be affected by the admission of the SIHs.

67. Victims' Counsel submits that permitting the VPPs to provide evidence of harm in the manner proposed is:

- a. Necessary for the recognition and acknowledgement of the harm caused to them, that is to guarantee one of their basic rights before the Specialist Chambers, and

- b. Compatible with the Law and the Rules, and has no prejudicial effect on the Accused.

VI. RELIEF REQUESTED

68. For the foregoing reasons, Victims' Counsel requests the Trial Panel to admit the SIHs listed in Annex 1 as evidence of the harm suffered by VPPs in this case.

Word count: 5742



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28 May 2025

At The Hague, the Netherlands.