

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

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**Public Redacted Version of Victims' Counsel's Reply to Joint Defence Response
to Victims' Counsel's Request for Partial Reconsideration of Decision F03533**

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I. SUBMISSIONS

1. Victims' Counsel hereby replies to the Joint Defence Response to Victims' Counsel's Request for Partial Reconsideration of Decision F03533.¹
2. Contrary to the Defence's argument, the Decision imposes a clear choice on the VPPs concerned: they may either waive their anonymity or have their harm acknowledged.²
3. It is submitted that the Panel was in a position to conduct an assessment under Rule 80(4)(e) balancing the Accused's fair trial rights with the right of the VPPs to acknowledgment, and it did not do so. Therefore, the Decision, with its serious consequences for victim participation, should be revisited.

A. Information provided in the application forms

4. The Response argues against the possibility of the Panel relying on information contained in victim application forms.³ It fails however, to address the relevant SC and ICC jurisprudence cited in the Request.⁴ Should the Panel adopt the Defence's position, it would mean that single status VPPs who have not disclosed their identity cannot realise their right to acknowledgment or reparation. This proposition is irreconcilable with Article 22(1), (3) and (8) of the Law and Rule 114 and the above jurisprudence.

¹ KSC-BC-2020-06/F03578, Joint Defence Response to Victims' Counsel's Request for Partial Reconsideration of Decision F03533, 13 November 2025 ("Response"); F03554, Victims' Counsel's Request for Partial Reconsideration of the Decision on Victims' Counsel's Request for Admission of Evidence Pursuant to Rule 153 and Rule 155, 31 October 2025 ("Request"); F03533, Decision on Victims' Counsel's Request for Admission of Evidence Pursuant to Rule 153 and Rule 155, 21 October 2025 ("Decision").

² Response, para.4.

³ Response, paras.8-16.

⁴ Request, para.53.

B. The admission of SIH's from single-status VPPs has no meaningful impact on the rights of the Accused

5. The Defence identifies four ways in which the SIHs are said to cause prejudice to the Defence.

(1) SIHs are not anonymous accusations

6. It is argued repeatedly that the SIHs are “anonymous accusations”.⁵ The SIHs do not make accusations against any of the Accused. The accusations in the case are levelled in the Indictment, detailed in the Pre-Trial Brief, and supported by the Prosecution evidence. These accusations are known to the Defence. None of the information contained in the SIHs provides an additional charge, nor can the SIHs support or lead to a conviction. SIHs are evidence only of harm⁶ and are necessary to ensure that VPPs’ right to acknowledgement is materialised in these proceedings in accordance with Article 22(3) of the Law.

(2) Lack of prejudice at the sentencing stage

7. It is argued that the SIHs are objectionable because they may affect any sentence imposed on the Accused.⁷ The Response and the Decision overlook the fact that a sentence imposed upon an Accused primarily reflects the nature of the crime itself. An offence will be punished by a term of imprisonment commensurate, amongst other factors, with its gravity assessed *in abstracto* and *in concreto*.⁸

8. In addition to the submissions made in paragraphs 11 to 17 below, it is submitted that the assertion that the Defence have no “avenue” to confront the SIHs at the

⁵ Response, paras.5,16,17.

⁶ Decision, para.36: the Panel has found that it can disregard material in the SIHs that goes beyond harm.

⁷ Response, para.16.

⁸ KSC-BC-2020-04/F00847/RED, Public redacted version of Trial Judgment and sentence with one confidential annex, 16 July 2024, paras.1077-1078.

sentencing stage⁹ is inconsistent with the relevant ECtHR jurisprudence.¹⁰ Regardless of anonymity, the Defence can confront the SIHs based on evidence and other information on the record, and to argue that the weight to be attached to the SIHs at the sentencing stage may be limited because of the VPPs' anonymity.

(3) Lack of prejudice at the reparation stage

9. It is argued that the admission of SIHs from single-status VPPs will result in unfairness because they can be taken into account at the reparations phase, and therefore expose the Accused to financial liability.¹¹ This is not an argument against the SIHs: without them being admitted, convicted persons are already exposed to financial liability by virtue of the conduct underlying their conviction(s). The Defence and the Decision overlook the established standards of reparation proceedings in international criminal tribunals, which do not require victims to be identified to the Defence in order to be eligible for reparations.¹² Two Case 04 examples in which VPPs were awarded reparations while remaining anonymous towards the Defence confirm that the SC adheres to this standard.¹³
10. For VPPs who are direct victims, all that must be demonstrated (on a balance of probabilities) to be eligible for reparations is that they suffered harm because of a crime of which an accused was convicted.¹⁴ For indirect victims, all that must be demonstrated, by the same burden of proof, is a close relationship to a direct victim of a crime for which an accused was convicted.¹⁵ The close relationship as between indirect VPPs and the relevant direct victim has already been established to the

⁹ Response, para.16.

¹⁰ See ECtHR standards on anonymous evidence founding conviction. and counterbalancing factors: *Asani v. the Former Yugoslav Republic of Macedonia*, 27962/10, Judgment, paras.36-37; *Doorson v. The Netherlands*, 20524/92, paras.72-76; *Van Mechelen and others v. the Netherlands*, 21363/93, Judgment, paras.49-58.

¹¹ Response, paras.16,19.

¹² Request, para.53 and references therein (unaddressed in the Response). STL jurisprudence is irrelevant: there were no reparation proceedings and no anonymous participation before the STL.

¹³ Ibid.

¹⁴ Case 04 Reparation Order, paras.49-52,69-70.

¹⁵ Ibid., paras.49-54,69-70.

requisite burden of proof. Material provided in the SIHs merely provides additional information on harm. Knowing the identity of VPPs has no added value to the Defence, and only exposes those VPPs to increased fear, anxiety, and potential retaliation.

(4) Admission of SIHs would not be contrary to the Defence's right to confront evidence against the accused

11. The Response argues that the Decision correctly found that the Defence's right to confront the evidence in the SIHs prevents their admission.¹⁶
12. As conceded by the Defence, the right to confrontation is not absolute.¹⁷ The Decision and the Defence ignore or misapply the relevant jurisprudence. The Defence relies on the *Van Mechelen* case concerning the standard applicable to anonymous identification evidence given by undercover officers that was used to found a conviction.¹⁸ This is not the case of the SIHs. Similarly, the ICC jurisprudence cited by the Defence at footnote 37 concerns inculpatory evidence adduced by the Prosecution. In footnote 34 the Defence cites to the Panel's decision concerning [REDACTED].¹⁹ SIHs do not form part of the evidence against the Accused, nor can they establish guilt.
13. At paragraph 49, the Request cites *Haas v. Germany* in which the ECtHR found no violation of the right to confront evidence in relation to "evidence obtained from anonymous informers [that] had not been decisive for the [...] conviction and had been corroborated".²⁰
14. This case is of particular importance here as it concerned anonymous informers who were abroad and who could, therefore, only be protected to a very limited extent by the German authorities. For the reasons developed at paragraphs 20-31

¹⁶ Response, paras.17-24.

¹⁷ Response, para.22.

¹⁸ Response, fn.37.

¹⁹ KSC-BC-2020-06/F02998/CONF/RED, para.14.

²⁰ ECtHR, *Haas v. Germany*, 73047/01, Decision as to the Admissibility.

of the Request, single-status VPPs are in a comparable position, with the distinction that the evidence is offered for a much more limited purpose.

15. In this context, the Defence submits that it is unclear why the VPPs right to acknowledgment cannot be safeguarded through “less intrusive means”²¹ but fails to suggest any. Notably it does not suggest any “less intrusive” means of realising that right. It is also argued that Victims’ Counsel provides no support for his understanding of the right to acknowledgment.²² Victims’ Counsel has consistently relied on Trial Panel I’s jurisprudence, which explains by reference to the *El Masri* case that acknowledgment includes “getting an accurate account of the suffering [one] had allegedly endured”.²³ It is unclear how any Panel would be in a position to acknowledge VPPs’ harm without having information about it. Therefore, no less intrusive means than the SIHs exist.
16. Crucially, 50 of the 51 of the VPPs concerned are *indirect* victims²⁴ (the direct victims are identified in the Indictment/Pre-Trial Brief and/or there is evidence on the record regarding their harm). Neither the Defence nor the Panel set out what the exercise of the right to confront the indirect victims would entail. They have established a sufficient relationship to the direct victims to be admitted and are presumed to have suffered harm: their SIHs simply add detail. The Defence, if they so wish, can say that the SIHs are unreliable, but it is wholly unclear how knowing the VPPs’ identities would facilitate this exercise in relation to any of them.
17. A correct analysis of the fair trial standards concerning the right to confront anonymous evidence leads to the conclusion that the requested admission of SIHs will not violate the rights of the Accused.

²¹ Response, para.23.

²² Ibid.

²³ Request, fn.14; F03206, fn.8.

²⁴ One VPP ([REDACTED]) is a dual status witness, his identity is known to the Defence, 48 VPPs were admitted as indirect victims, two ([REDACTED]) were admitted as direct and indirect victims.

C. Application of Rule 80(4)(e)

18. The Trial Panel, in granting protective measures to VPPs subsequently to the Order on the Conduct of Proceedings,²⁵ has already found that the VPPs' circumstances amount to an "objectively justifiable risk".²⁶ Therefore, the Panel was and is in possession of relevant information to conduct a Rule 80(4)(e) assessment. Confronted with the request to admit the SIHs and to retain the VPPs' anonymity, the Panel had to assess whether variation of the already granted protective measure was necessary.
19. It is submitted that this assessment ought to consider the extent of the prejudice to the Accused balanced against the right of the VPPs to acknowledgement, with proper regard to their security and well-being. Such a balancing exercise would allow the Panel to decide whether retaining anonymity by the VPPs concerned is necessary and proportionate. It is not the case that *any* increase in participation must lead automatically to the disclosure of a VPP's identity.²⁷ When there is no meaningful prejudice to the Accused, or when it is sufficiently counterbalanced, admission of SIHs does not increase the participation of the VPPs concerned to the extent that would necessitate disclosure of their identities to the Parties.
20. As noted above, an important element of the assessment of the use of anonymous evidence against the Accused is the *centrality of that evidence to the conviction*: whether it was the sole or decisive evidence relied on by the fact-finder. The SIHs cannot support a conviction. Rather, the content of the SIHs is of the same nature as the application forms, i.e., they were submitted solely to inform the Panel about the VPPs' harm. Additionally, other counter-balancing factors, as required by the ECtHR jurisprudence exist here (the identities of the VPPs concerned are known

²⁵ Response, para.26.

²⁶ See admissibility decisions F01293, paras.31-33; F01774, para.32; F02439, para.24; F03179, paras.50-53. The same conclusion was reached by the Pre-Trial Judge in: F00257, paras.67-68; F00611, paras.50-52; F00817, paras.41-44; F001152, paras.57-60. Notably all these decisions recognise that "the legal test applicable for protective measures in relation to witnesses is also applicable as regards VPPs."

²⁷ ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-471, Decision on Disclosure of Victims' Identities, para.14.

to the Panel, there is evidence, including from dual status witnesses, that corroborates the harm described in the SIHs).

21. For all of the above reasons, it is submitted that a correctly conducted balancing exercise weighing the rights of the Accused with those of the VPPs concerned would necessarily lead to the conclusion that it is not necessary to disclose the identities of the VPPs concerned should their SIHs be admitted.

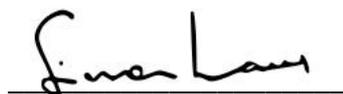
II. CLASSIFICATION

22. This submission is classified as confidential pursuant to Rule 82(4).

III. CONCLUSION

23. Victims' Counsel respectfully reiterates his request that the Panel reconsider the Decision and admit the SIHs in accordance with the Request, retaining the anonymity of the VPPs concerned.

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21 November 2025
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