

In: KSC-BC-2020-06
The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Victims' Counsel

Date: 10 December 2021

Language: English

Classification: Public

**Victims' Counsel Response to Prosecution Submissions on Confidential
Information and Contacts with Witnesses**

Specialist Prosecutor
Jack Smith

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Victims
Simon Laws

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagenda

I. INTRODUCTION

1. Pursuant to Article 22(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law"), Rule 114(4)(a) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), and the Pre-Trial Judge's *First Decision on Victims' Participation*,¹ the Victims' Counsel submits this response to the Specialist Prosecutor's Office's ("SPO's") proposed framework for handling of confidential information and contacts with witnesses².
2. The Victims' Counsel agrees with the submission of the SPO save in respect of paragraph 6(a) and requests amendment of that provision.

II. PROCEDURAL HISTORY

3. On 21 April 2021, the Pre-Trial Judge determined the modalities of participation of victims in pre-trial proceedings in the *Thaçi et al.* case, admitted nine applicants as victims participating in the proceedings ("VPPs").³
4. On 7 May 2021, the Registrar appointed Mr Simon Laws as Victims' Counsel to Group 1 of VPPs in the *Thaçi et al.* case.⁴
5. On 22 October 2021, the Prosecution submitted its preliminary witness list.⁵

¹ *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F00257, First Decision on Victims' Participation, 21 April 2021, paras 84 and 85(d)(vi).

² *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F00594, Prosecution submissions on confidential information and contacts with witnesses, 3 December 2021.

³ *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F00257, Public Redacted Version of the First Decision on Victims' Participation, 21 April 2021, para. 85.

⁴ *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F00282, Notification of Assignment of Victims' Counsel to Group 1 of Victims Participating in the Proceedings With one confidential and *ex parte* Annex, 7 May 2021.

⁵ *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F00542, Prosecution submission of preliminary witness list with strictly confidential and *ex parte* Annex 1 and confidential redacted Annex 2, 22 October 2021.

6. On 3 December 2021, the Prosecution proposed a framework for (i) contacts with witnesses; and (ii) handling of confidential information during investigations.⁶

III. SUBMISSIONS

7. The Victims' Counsel supports the Prosecution's submission that "measures are necessary to avoid re-traumatisation of victim-witnesses and to safeguard privacy, dignity, and physical and psychological well-being."⁷
8. However, the Victims' Counsel submits that, in order to meaningfully and effectively represent the interests and rights of the VPPs⁸, it is essential that communication between the VPPs and the Victims' Counsel Team should be confidential, unimpeded and unconditional.
9. Concerned that the proposed framework inadvertently undermines this principle with regard to contact between the Victims' Counsel and dual status witnesses, the Victims' Counsel proposes the following amendment (in italics) to footnote 17 of the Prosecution's filing:

For purposes of this paragraph, this includes counsel, their clients, and their teams as defined in Article 2 of the Code of Conduct, *but does not apply to contact between the Victims' Counsel Team and dual status witnesses.*
10. The SPO has been given advance notice of this filing and has indicated that it has no objection to the proposed amendment in paragraph 9 above.

⁶ *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F00594, Prosecution submissions on confidential information and contacts with witnesses, 3 December 2021.

⁷ *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F00594, Prosecution submissions on confidential information and contacts with witnesses, 3 December 2021, para. 6 (citing: Rule 80(1) of the Rules).

⁸ E.g. Articles 22(3) and 22(6) of the Law, Rule 114 of the Rules.

IV. RELIEF SOUGHT

11. In the event the Pre-Trial Judge adopts a framework for handling of confidential information and contacts with witnesses, the Victims' Counsel respectfully requests the Pre-Trial Judge to approve the proposed amendment to the framework submitted by the Prosecution, as provided in paragraph 9 above.

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Simon Laws QC
Counsel for Victims
10 December 2021
Exeter, United Kingdom



Maria Radziejowska
Co-Counsel for Victims
10 December 2021
Warsaw, Poland