



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 3 March 2022

Language: English

Classification: Public

Prosecution response to 'Thaçi Defence Motion for Disclosure of Witnesses with Dual Status'

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1. The Motion for disclosure of witness codes and victim applications of dual status witnesses is contrary to the applicable framework and fails to demonstrate that a variation of protective measures is justified.¹ It should be denied.
2. The procedure proposed by the Defence, namely, that applied at the International Criminal Court ('ICC'),² is based on a different framework and is not applicable before the Specialist Chambers ('SC'). While the ICC Rules expressly envisage disclosure of victim application forms,³ Rule 113(1)⁴ provides that, at the SC, such forms shall not be disclosed to the Parties.⁵
3. Moreover, in granting the Participating Victims⁶ anonymity, the Pre-Trial Judge considered that disclosure both to the public and Parties of any material or information leading to the identification of the Participating Victims poses an objectively justifiable risk to them and their family members.⁷ The Pre-Trial Judge underscored that 'the potential dual status of any [Participating Victims] has at this point minimal effect on the ability of the Defence to prepare in relation to future testimonies'.⁸ In this respect, the victim application process is ongoing before the Pre-

¹ Thaçi Defence Motion for Disclosure of Witnesses with Dual Status, KSC-BC-2020-06/F00706, 21 February 2022 ('Motion'). The term 'dual status witness' is defined in paragraph 1 of the Motion.

² Motion, KSC-BC-2020-06/F00706, paras 1, 15-16.

³ ICC, Rules of Procedure and Evidence ('ICC Rules'), Rule 89(1).

⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁵ See also Confidential Redacted Version of Second Decision on Victims' Participation, KSC-BC-2020-06/F00611/CONF/RED, 10 December 2021 ('Second Decision'), para.49; First Decision on Victims' Participation, KSC-BC-2020-06/F00257, 21 April 2021, Confidential ('First Decision'), para.64. See also *Prosecutor v. Mustafa*, Public redacted version of Third decision on victims' participation, KSC-BC-2020-06/F00126/RED, 21 May 2021, para.28 (The Trial Panel noted that, under the Rules, victim applications shall not be disclosed to the parties). Notably, Article 218(2) of the Kosovo Criminal Procedure Code (2012) ('KCPC') provides that a declaration of damages by an injured party may be filed anonymously if permitted by the court; the KCPC does not qualify this provision on whether the injured party has given evidence. A KCPC Article 218(2) declaration includes information similar to that in a victim application form before the SC (Article 218(3)) and the injured party's right to participate in proceedings may depend thereupon (Article 218(4)).

⁶ The 21 victims (including one deceased victim represented by a successor) admitted in the First Decision and Second Decision are collectively referred to herein as the 'Participating Victims'.

⁷ Second Decision, KSC-BC-2020-06/F00611/CONF/RED, para.51; First Decision, KSC-BC-2020-06/F00257, para.68.

⁸ First Decision, KSC-BC-2020-06/F00257, para.69.

Trial Judge.⁹ Currently, the number of Participating Victims and in turn, the potential number of dual status witnesses is relatively limited. Further, pursuant to Rule 102(1)(b) and subject to any necessary and proportionate protective measures ordered by the Pre-Trial Judge, the Defence has already received, *inter alia*, the statements of the witnesses the SPO intends to call, including any with dual status.

4. As emphasised in the Pre-Trial Judge's previous decisions – including in December 2021, shortly before the SPO filed its witness list¹⁰ – the Participating Victims' protective measures are without prejudice to any necessary variation at a later stage, including by the Trial Panel.¹¹ Considering (i) the stage of the proceedings, including the fact that no trial date has yet been set and the victim application process before the Pre-Trial Judge is ongoing, (ii) the minimal, if any, prejudice to the Defence, and (iii) the real and objective risks to the Participating Victims, the Motion fails to demonstrate that any variation of protective measures is currently justified.

5. For the foregoing reasons, the Motion should be dismissed.

Word count: 685



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Thursday, 3 March 2022

At The Hague, the Netherlands.

⁹ Framework Decision on Victims' Applications, KSC-BC-2020-06/F00159, 4 January 2021, para.19 (noting that applications may be submitted to the Pre-Trial Judge until the submission of the Defence filings pursuant to Rule 95(5), which is the final deadline for applications submitted during the pre-trial phase).

¹⁰ Submission of Pre-Trial Brief, with witness and exhibit lists, KSC-BC-2020-06/F00631, 17 December 2021, Strictly Confidential and *Ex Parte*.

¹¹ Second Decision, KSC-BC-2020-06/F00611/CONF/RED, para.53; First Decision, KSC-BC-2020-06/F00257, para.69.