

**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:** Counsel for Kadri Veseli

**Date:** 1 June 2022

**Language:** English

**Classification:** Public

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**Veseli Defence Request for Leave to Appeal  
Third Decision on Victims' Participation**

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## I. INTRODUCTION

1. Pursuant to Rule 77 of the Rules of Procedure and Evidence (“Rules”), the Defence for Mr Kadri Veseli (“Defence”) hereby files this request for leave to appeal the Third Decision on Victims’ Participation (“Impugned Decision”).<sup>1</sup>
2. The Defence proposes the following Issues for Certification:
  - **First Issue:** Whether total anonymity of victims participating in the proceedings is a valid protective measure foreseen by Articles 22-23 of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“KSC Law”) and Rule 80 of the Rules.
  - **Second Issue:** Whether total anonymity of victims participating in the proceedings violates basic constitutional and international human rights of the Accused as protected by Article 32 of the KSC Law, Article 31 of the Constitution and Articles 6 of the ECHR and Article 14 of the ICCPR.
  - **Third Issue:** Whether the Pre-Trial Judge failed entirely to address the Defence argument that total anonymity is inconsistent with Article 22(9) of the Law and eliminates the possibility of civil proceedings before other Kosovo courts.
  - **Fourth Issue:** Whether, in light of the fact that all admitted victims to date have been granted total anonymity, the Pre-Trial Judge erred in finding that exceptional circumstances justify such measure.

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<sup>1</sup> F00817/RED, Public Redacted Version of Third Decision on Victims’ Participation, 25 May 2022.

## II. APPLICABLE LAW

3. The Defence recalls the legal test set out in filing F00172 which is hereby incorporated by reference.<sup>2</sup>

## III. SUBMISSIONS

4. The four proposed issues are of crucial importance and satisfy all formal requirements for certification.

### A. The Issues are Appealable

5. The First Issue stems from paragraph 36 of the Impugned Decision as well as from paragraphs 4-8 of the Defence's Response to the Registry.<sup>3</sup> The Pre-Trial Judge found that Rules 113(1)-(2) and 80 provide for anonymity of victims.<sup>4</sup> With regard to the former, the Defence notes that such provisions clearly regulate "application forms" rather than "participation" of victims in the proceedings. Further, if such reasoning is accepted, it would mean that all victims would enjoy *ipso facto* total anonymity without any need for protective measures, thereby rendering Rules 80 – and Rule 113(2) itself – entirely meaningless. As regards Rule 80, the issue remains that: (i) the construction of Rule 80(4)(e)(i) presupposes a previous decision on the non-disclosure of the identity of the protected person,<sup>5</sup> and (ii) despite the application of Rule 80(4)(e)(i) to both witnesses and victims, Rule 80(4)(e)(ii) prescribes total

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<sup>2</sup> F00172, Decision on the Thaçi Defence Application for Leave to Appeal, 11 January 2021, paras 9-17 ("Thaçi Decision on Leave to Appeal").

<sup>3</sup> F00612, Veseli Defence Response to Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings (F00572), 10 December 2021 ("Defence Response to the Registry").

<sup>4</sup> See also, Impugned Decision, fn. 50, wherein the Pre-Trial Judge noted that the KSC's legal instruments "expressly foresee anonymity for victims".

<sup>5</sup> "non-disclosure to the Parties of any material or information that may lead to the disclosure of the identity of a witness or victim participating in the proceedings; See, for instance the combination of Rule 80(4)(i) with Rule 80(4)(ii) wherein the latter serves to give effect to the previous provision.

anonymity for witnesses only. Notably, the Pre-Trial Judge failed to address Defence arguments in this regard.<sup>6</sup>

6. The Second Issue derives from paragraphs 37-39 of the Impugned Decision and paragraphs 13-17 of the Defence Response to the Registry. At paragraph 38, the Pre-Trial Judge misconstrues the main Defence argument – also taken verbatim from the STL Appeals Chamber –<sup>7</sup> which held that anonymous victim participation “has a strong potential to have a prejudicial effect on the accused”.<sup>8</sup> The Pre-Trial Judge cannot simply disregard the strongly worded holding of (now KSC) Judge Fransen that “it is not conceivable to convict a person for a crime committed against a [victim] who is involved in the trial proceedings and yet, by remaining anonymous, does not allow the accused a full defence”.<sup>9</sup> Unanimously confirmed by the STL Appeals Chamber which concluded that “the totally anonymous participation of VPPs in the proceedings [including “passive” or “silent observer VPPs”] is generally prejudicial to and inconsistent with the rights of the accused and the fairness of the trial”.<sup>10</sup> The STL Decision puts forward well-founded legal concerns which raises serious question of constitutionality, that the Pre-Trial Judge has failed to address.
7. The Third Issue is self-evident as it derives from Section II(C) of the Defence Response to the Registry. While the Pre-Trial Judge acknowledged such

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<sup>6</sup> F00612, paras 6, 10.

<sup>7</sup> See F00612, para. 16 and STL, *Prosecutor v. Ayyash et al*, STL-11-01/PT/AC/AR126.3, [Decision on Appeal by Legal Representative of Victims Against Pre-Trial Judge's Decision on Protective Measures](#), 10 April 2013, para. 30.

<sup>8</sup> [Decision on Appeal by Legal Representative of Victims Against Pre-Trial Judge's Decision on Protective Measures](#), para. 30.

<sup>9</sup> F00612, para. 3, and corresponding footnotes.

<sup>10</sup> [Decision on Appeal by Legal Representative of Victims Against Pre-Trial Judge's Decision on Protective Measures](#), para. 39. Note that pursuant to STL Rules, victims are entitled to the same rights as their counterparts before the KSC, see [Victims Participation at the Special Tribunal for Lebanon, a snapshot](#).

argument in the section relating to the submissions of the parties,<sup>11</sup> he then failed entirely to engage with it.

8. The Fourth Issue is proposed in the alternative, should the Court of Appeals Panel consider that total anonymity of victims participating in the proceedings is both foreseen in the Rules and the Law and is not inherently inconsistent with the rights of the Accused. It therefore concerns the proper application in practice of the exceptionally high standard required for anonymity.

**B. The Issues Significantly Affect the Outcome or Fair and Expeditious Conduct of the Proceedings**

9. The proposed Issues directly affect the right of Mr Veseli to a fair trial, and more specifically to the right of an adversarial trial.<sup>12</sup>

**C. An Immediate Resolution from the Court of Appeals Panel Will Materially Advance the Proceedings**

10. Should the Defence be correct in its analysis, a positive resolution from the Court of Appeals Panel at this stage would obviate the risk of any prejudice caused to Mr Veseli from potentially maintaining the full anonymity of victims throughout the proceedings. In addition, an authoritative determination from the Court of Appeals Panel would provide clarity on the interpretation of the relevant Rules pertaining to protective measures which may be accorded to victims participating in the proceedings. An immediate resolution from the Court of Appeals Panel is therefore warranted.

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<sup>11</sup> Impugned Decision, para. 25.

<sup>12</sup> See, for example, Article 6(1) ECHR.

IV. CONCLUSION

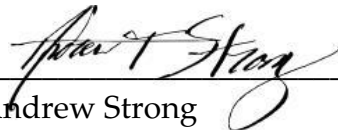
11. For the abovementioned reasons, the Defence for Mr Veseli respectfully requests the Pre-Trial Judge to grant the request and certify the proposed Issues.

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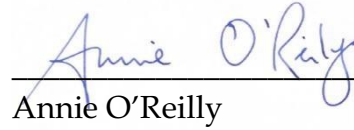
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