

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: 20 June 2022

Language: English

Classification: Public

**Consolidated Veseli Defence Reply to SPO and
Victims Counsel Response to Veseli Defence Request for
Leave to Appeal Third Decision on Victims Participation**

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”), hereby replies to the SPO¹ and Victims Response² regarding the Leave to Appeal the Third Decision on Victims Participation.³
2. Preliminarily, the Defence submits that, unlike the Victims Participating in the Proceedings (“VPPs”), the SPO has no standing in the present litigation and its response should not be taken into consideration. In the alternative, the Defence submits that both SPO and VPPs submissions are unfounded and should be dismissed accordingly.

II. SUBMISSIONS

A. **The Impugned Decision Does not Concern Measures Related to Interim Non-Disclosure of Identity**

3. The VPPs fully agree with the Defence that the STL decision could “be considered in relation to the issue of anonymity throughout the proceedings and not interim protective measures”.⁴ However, the VPPs grossly mischaracterise the measures imposed in the Impugned Decision as ‘interim measures’.⁵ The latter refer to delayed disclosure measures, which are well defined in time and valid until 30 days before the start of trial or relevant testimony.⁶ In contrast, total anonymity is intended to apply throughout the proceedings, unless a variation is requested pursuant Rule 81 – subject to a change in circumstances.

¹ F00836, Prosecution response to Veseli Defence request for leave to appeal Decision F00817, 10 June 2022 (“SPO Response”).

² F00839, Victims’ Counsel’s Response to Veseli Defence Request for Leave to Appeal Third Decision on Victims’ Participation, 13 June 2022 (“VPPs Response”).

³ F00817/RED, Public Redacted Version of Third Decision on Victims’ Participation, 25 May 2022.

⁴ F00839, para. 21.

⁵ See F00839, paras 19, 22, 30, 36.

⁶ See F00094/CONF/RED, Confidential Redacted Version of ‘Request for Protective Measures’, dated 19 November 2020, 24 November 2020, Section II(A)(B). See also, Rule 105.

4. For the same reasons, the SPO's claim that the Impugned Decision is without prejudice to any future rulings by the relevant Trial Panel⁷ also misses the point, as it leaves the substance of the Issue untouched. Moreover, such argument undermines judicial economy and the fair and expeditious conduct of the proceedings, considering that in essence, the SPO is suggesting to postpone resolution of the Issue until trial requiring the participants to re-submit the same arguments before the Trial Panel.
5. Accordingly, a decision by the Court of Appeal Panel would (i) preclude prejudice to the Accused, (ii) expedite the proceedings and (iii) avoid relitigating the matter before the Trial Panel.

B. The Issues are Appealable

6. **The First Issue**: Both responses⁸ raise generic challenges without engaging with the Defence submissions at paragraph 5 of its Request. The Issue constitutes an easily identifiable topic arising from the Impugned Decision and it clearly identifies the specific legal errors committed by the Pre-Trial Judge. It is not, therefore, as the SPO and VPPs suggest, 'a mere disagreement' with the Pre-Trial Judge's Decision.
7. **The Second Issue**: The Defence recalls that the Second Issue is not concerned with the interpretation of the Rules, but whether total anonymity of VPPs is inherently prejudicial to the Accused and inconsistent with Articles 32 of the Law, Article 31 of the Constitution, Article 6 of the ECHR and Article 14 of the ICCPR. While obviously non-binding, the STL case law provides authoritative guidance on the interpretation of fair trial rights guaranteed in Article 14 ICCPR. The VPPs fail to substantiate how the STL jurisprudence "is an outlier

⁷ F00836, para. 10.

⁸ F00836, para. 5; F00839, para. 28.

in the jurisprudence of international courts and tribunals”⁹ or why the KSC should follow the ICC jurisprudence – which, in comparison, offers less fair trial protections. In any event, the Defence submits that the Impugned Decision, as well as the current KSC practice to date,¹⁰ does not follow ICC jurisprudence either, considering that the latter permits the participation of anonymous witnesses in exceptionally limited circumstances, namely for so-called ‘passive’ or ‘silent observer’ victims participating in the proceedings.¹¹

8. **Third Issue:** Both the SPO¹² and the VPPs¹³ conflate the scope of the Issue (failure to provide reasons) with the underlying merits (violation of Article 22(9) of the KSC Law).
9. **Fourth Issue:** Far from raising “an abstract and hypothetical concern”,¹⁴ the Fourth Issue identifies a discernible error, namely the finding that total anonymity is warranted for all VPPs, thereby resulting in a violation of Rule 80(4)(e)’s requirement of ‘exceptional circumstances’. The fact that no VPP – across all cases before the KSC – was granted anything less than total anonymity, is sufficient for the Court of Appeals Panel to be gravely concerned that, despite theoretical guarantees, the rights of the accused are being brazenly violated in practice.

⁹ F00839, para. 20.

¹⁰ See KSC-BC-2020-05/F0015, [Decision on victims’ procedural rights during trial](#), 12 July 2021.

¹¹ See for instance, ICC, *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15-471, [Decision on Disclosure of Victims’ Identities](#), 17 June 2016, paras 13-14. By contrast, in the Mustafa trial, the VPPs were extremely ‘active’, see KSC-BC-2020-05/F0015, [Decision on victims’ procedural rights during trial](#), 12 July 2021, as well as related filings in case KSC-BC-2020-05, and trial transcripts.

¹² F00836, para. 7.

¹³ F00839, paras 32-34.

¹⁴ F00836, para. 8.

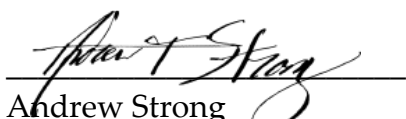
III. CONCLUSION

10. For the abovementioned reasons, the Defence for Mr Veseli respectfully requests the Pre-Trial Judge to grant the request and certify the four Issues proposed in F00828.

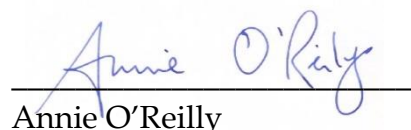
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