



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-04

**The Specialist Prosecutor v. Pjetër Shala**

**Before:** Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 24 February 2023

**Language:** English

**Classification:** Confidential

---

**Decision on victims' procedural rights during trial and related matters**

---

**Acting Specialist Prosecutor**

Alex Whiting

**Counsel for the Accused**

Jean-Louis Gilissen

**Registry**

Registrar

Head of Witness Protection and Support Office

**Victims' Counsel**

Simon Laws

I.	PROCEDURAL BACKGROUND .....	2
II.	SUBMISSIONS.....	4
III.	APPLICABLE LAW .....	6
IV.	DISCUSSION .....	7
A.	Victims' Procedural Rights During Trial.....	7
1.	General Consideration .....	7
2.	Victims' Personal Interests and Rights .....	7
3.	Victims' Procedural Rights.....	11
(a)	Access to the Case File.....	12
(b)	Presence at Trial Hearings .....	13
(c)	Oral and Written Submissions .....	13
(d)	Presentation of Evidence as Ordered by the Panel .....	14
(e)	Questioning of Witnesses by Victims' Counsel .....	17
(f)	Observations on the Admissibility of Evidence Presented by the Parties.....	19
B.	Deadline for the Submission of Applications for Participation .....	19
C.	Protective Measures.....	20
D.	Reclassification of Filings.....	24
V.	DISPOSITION .....	24

**TRIAL PANEL I** (Panel) hereby renders this decision on victims' procedural rights during trial and related matters.

## I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision of the Pre-Trial Judge,<sup>1</sup> the Specialist Prosecutor's Office (SPO) submitted the Confirmed Indictment against Pjetër Shala (Mr Shala or Accused).<sup>2</sup>
2. On 1 September 2021, the Pre-Trial Judge issued the Framework Decision on Victims' Applications (Framework Decision).<sup>3</sup>
3. On 1 October 2021, 21 July 2022, and 1 September 2022, the Registrar submitted three reports on victims' applications for participation in the proceedings (First Registry Report,<sup>4</sup> Second Registry Report<sup>5</sup> and Third Registry Report,<sup>6</sup> respectively).

---

<sup>1</sup> KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment against Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and F00007/RED.

<sup>2</sup> KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential, lesser redacted version and a public, further redacted version of the Confirmed Indictment were submitted on 31 March 2021, F00016/A01 and F00016/A02. A further lesser redacted, confidential version of the Confirmed Indictment was submitted on 25 May 2021, F00038/A01. Following the Pre-Trial Judge's *Decision on Motion Challenging the Form of the Indictment* (F00089, 18 October 2021), a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential. A public redacted version of the corrected indictment was submitted on 16 November 2021, F00107/A01.

<sup>3</sup> KSC-BC-2020-04, F00064, Pre-Trial Judge, *Framework Decision on Victims' Applications*, 1 September 2021, public.

<sup>4</sup> KSC-BC-2020-04, F00085, Registrar, *First Registry Report to the Pre-Trial Judge on Victims' Application for Participation in the Proceedings*, 1 October 2021, confidential, with one annex, strictly confidential and *ex parte*. A public redacted version of the report was submitted on 29 October 2021, F00085/RED.

<sup>5</sup> KSC-BC-2020-04, F00236, Registrar, *Second Registry Report to the Pre-Trial Judge on Victims' Application for Participation in the Proceedings*, 21 July 2022, confidential and *ex parte* (re-classified as public on 25 July 2022), with one annex, strictly confidential and *ex parte*.

<sup>6</sup> KSC-BC-2020-04, F00260, Registrar, *Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings*, 1 September 2022, confidential and *ex parte* (re-classified as public on 2 September 2022), with one annex, strictly confidential and *ex parte*.

4. On 15 December 2021, 11 August 2022 and 19 September 2022, the Pre-Trial Judge issued his first, second and third decision on victims' participation (First Decision on Victims' Participation,<sup>7</sup> Second Decision on Victims' Participation,<sup>8</sup> and Third Decision on Victims' Participation,<sup>9</sup> respectively), admitting a total of eight victims to participate in the proceedings (VPPs) – Victims 01/04, 02/04, 03/04, 04/04, 05/04, 06/04, 07/04 and 08/04 – and setting out, *inter alia*, their procedural rights during the pre-trial phase of proceedings and the protective measures from which they benefit. In relation to Victims 02/04, 03/04, 04/04, 05/04, 06/04, 07/04 and 08/04, the Pre-Trial Judge ordered Victims' Counsel to make further submissions as to the need for the continued application of the protective measures vis-à-vis the Defence and/or Accused, pursuant to Rule 80(4)(d) and (e)(i) of the Rules of Procedure and Evidence (Rules).<sup>10</sup>

5. On 21 September 2022, the Pre-Trial Judge transferred the case to the Panel.<sup>11</sup>

6. On 5 October 2022, Victims' Counsel provided submissions as to the need for the continued application of the protective measures in relation to seven VPPs (Victims 02/04, 03/04, 04/04, 05/04, 06/04, 07/04 and 08/04), as ordered by the Pre-Trial Judge (Victims' Counsel Submissions on Protective Measures).<sup>12</sup>

---

<sup>7</sup> KSC-BC-2020-04, F00123, Pre-Trial Judge, *First Decision on Victims' Participation*, 15 December 2021, confidential. A public redacted version was issued on the same day, F00123/RED. *See also* Transcript of Hearing, 4 March 2022, public, p. 191, line 25 to p. 192, line 10.

<sup>8</sup> KSC-BC-2020-04, F00249, Pre-Trial Judge, *Second Decision on Victims' Participation*, 11 August 2022, confidential. A public redacted version was issued on the same day, F00249/RED.

<sup>9</sup> KSC-BC-2020-04, F00279, Pre-Trial Judge, *Third Decision on Victims' Participation*, 19 September 2022, confidential. A public redacted version was issued on the same day, F00279/RED.

<sup>10</sup> Second Decision on Victims' Participation, paras 37 and 43(g); Third Decision on Victims' Participation, paras 38 and 43(e).

<sup>11</sup> KSC-BC-2020-04, F00284, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 21 September 2022, public, para. 6, with Annexes 1-4 (Handover Document) strictly confidential and *ex parte*.

<sup>12</sup> KSC-BC-2020-04, F00294, Victims' Counsel, *Victims' Counsel Submissions on the Need for the Continued Application of the Protective Measures Ordered for Victims Participating in the Proceedings*, 5 October 2022, public.

7. On 17 October 2022, the Defence filed a submission in response to Victims' Counsel Submissions on Protective Measures (Defence Request).<sup>13</sup>

8. On 19 October 2022, the Panel issued an oral order in which it considered the aforementioned Defence Request to be, not a response to the Victims' Counsel Submissions on Protective Measures, but a request as such and invited Victims' Counsel and the SPO to respond, if they so wished, following the deadlines provided in Rule 76 of the Rules.<sup>14</sup>

9. On 24 October 2022 and 27 October 2022, the SPO and Victims' Counsel filed their respective responses (SPO Response<sup>15</sup> and Victims' Counsel Response,<sup>16</sup> respectively).

10. On 31 October 2022, the Defence filed a consolidated reply to the SPO Response and Victims' Counsel Response (Defence Reply).<sup>17</sup>

## II. SUBMISSIONS

11. The Defence requests that the Panel lift the protective measures in place of non-disclosure of the identities of seven VPPs to the Accused and the Defence; in the alternative, the Defence requests variation of the protective measures in force that would permit disclosure of said VPPs' identities to the Defence.<sup>18</sup> The Defence

---

<sup>13</sup> KSC-BC-2020-04, F00316, Defence, *Defence Response to Victims' Counsel Submissions on the Need for the Continued Application of the Protective Measures Ordered for Victims Participating in the Proceedings*, 17 October 2022, confidential.

<sup>14</sup> KSC-BC-2020-04, Transcript of Hearing, 19 October 2022, p. 405, lines 2-17, public.

<sup>15</sup> KSC-BC-2020-04, F00321, Specialist Prosecutor, *Prosecution reply to filing F00316*, 24 October 2022, confidential.

<sup>16</sup> KSC-BC-2020-04, F00328, Victims' Counsel, *Victims' Counsel Response to Defence Filing F00316*, 27 October 2022, confidential.

<sup>17</sup> KSC-BC-2020-04, F00332, Defence, *Reply to Prosecution and Victims' Counsel Submissions on Continued Non-Disclosure of VPPs' identity to the Accused and the Defence*, 31 October 2022, confidential.

<sup>18</sup> Defence Request, para. 9.

does not object to the continued non-disclosure of the VPP's identity to the public.<sup>19</sup>

12. The SPO objects to the disclosure of the identity of those VPPs who are not witnesses in this case to the Defence or to the Accused. In the circumstances of this case, the SPO has no objection to the disclosure of the identities of victims who are also witnesses (Dual Status Victims-Witnesses) to the Defence and the Accused, 30 days before the commencement of trial.<sup>20</sup> The SPO further submits that this does not impact on the necessary and proportional protective measures granted to any other current or future VPPs who do not have dual status, or the non-disclosure of the identities of all VPPs to the public.<sup>21</sup>

13. Victims' Counsel agrees that the disclosure of the identity of the Dual Status Victims-Witnesses is appropriate in this case and that it should take effect 30 days before trial.<sup>22</sup> Victims' Counsel further notes that all Dual Status Victims-Witnesses have already been informed of the fact that their participation as victims may have to be disclosed, and all have given their consent to that course.<sup>23</sup> In this regard, Victims' Counsel avers that, despite the wording of Rule 81(5) of the Rules, requiring the Witness Protection and Support Office (WPSO) to obtain consent from the protected person to vary protective measures, in this case WPSO's input would be duplicative and is not necessary.<sup>24</sup> Lastly, Victims' Counsel objects to the disclosure of identities of VPPs who do not have dual status.<sup>25</sup>

14. In its reply, the Defence argues that, in relation to Dual Status Victims-Witnesses, the SPO and Victims' Counsel both fail to substantiate the need to delay

---

<sup>19</sup> Defence Request, para. 4.

<sup>20</sup> SPO Response, para. 3.

<sup>21</sup> SPO Response, para. 3.

<sup>22</sup> Victims' Counsel Response, paras 2, 13-22, 39(a).

<sup>23</sup> Victims' Counsel Response, para. 23.

<sup>24</sup> Victims' Counsel Response, paras 24-26.

<sup>25</sup> Victims' Counsel Response, paras 27-38, 39(b).

disclosure until 30 days before the start of trial.<sup>26</sup> The Defence therefore requests the disclosure of their identity to the Accused and the Defence with immediate effect.<sup>27</sup> As to the victims who do not hold dual status, the Defence argues that: (i) Victims' Counsel has not substantiated any exceptional circumstances that justify victims' anonymity, notably in light of their vulnerable position;<sup>28</sup> (ii) the non-disclosure of victims' identities to the Accused infringes on his right to know the case against him;<sup>29</sup> and (iii) anonymity of VPPs cannot be considered the norm in international criminal jurisdictions.<sup>30</sup>

### III. APPLICABLE LAW

15. The Panel notes Articles 22(3) and (5)-(6), 23 and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 9(5), 80, 82, 114 and 132 of the Rules.

16. The Panel further notes Rule 4(1) of the Rules which provides that "the Rules shall be interpreted in a manner consonant with the framework as set out in Article 3 of the Law, and, where appropriate, the Kosovo Criminal Procedure Code" (KCPC).

---

<sup>26</sup> Defence Reply, para. 6.

<sup>27</sup> Defence Reply, para. 7.

<sup>28</sup> Defence Reply, paras 8 and 11-12, 16.

<sup>29</sup> Defence Reply, para. 13.

<sup>30</sup> Defence Reply, paras 14-15.

#### IV. DISCUSSION

##### A. VICTIMS' PROCEDURAL RIGHTS DURING TRIAL

###### 1. General Consideration

17. At the outset, the Panel notes that the victims' rights during trial proceedings are necessarily confined to the case the Panel has been seized of and therefore must be exercised within the limits of the Confirmed Indictment as transmitted by the Pre-Trial Judge to the Panel, in accordance with Rule 98(1) of the Rules, subject to any amendment to that Confirmed Indictment, in accordance with Articles 39(8) and 40(7) of the Law and Rule 90 of the Rules. This is confirmed by Rule 113(1) and (4) of the Rules which states that, in order to be admitted as a victim participating in the proceedings, a person must provide *prima facie* evidence that he or she has suffered harm as a direct result of a crime in the indictment.

###### 2. Victims' Personal Interests and Rights

18. With regard to proceedings before the Specialist Chambers (SC), Article 22(3) of the Law refers to three distinct "personal interest[s] and rights in the criminal proceedings": notification, acknowledgement, and reparation.

19. As a preliminary matter, the Panel notes that the Law does not explain the distinction it makes between the "personal interests" and the "rights" of the victims. The Panel understands in this context that the existence of "personal interests" allows victims to exercise procedural "rights" before the SC.<sup>31</sup>

20. In the view of the Panel, the fact that "notification" and "acknowledgement" are mentioned in addition to "reparation" means that victims' participation before

---

<sup>31</sup> Similarly, KSC-BC-2020-05, F00152, Trial Panel I, *Decision on victims' procedural rights during trial* (Mustafa Decision on Victims' Rights), 21 May 2021, public, para. 10.



the SC is not limited to reparation for the harm suffered. Furthermore, the Panel is of the view that the protection of victims provided for in Article 23 of the Law should be added to the three aforementioned personal interests and rights, where paragraph 2 in particular gives the right to Victims' Counsel to make representations to any panel with regard to protective measures.<sup>32</sup> The protection of the safety, physical and psychological well-being, dignity and privacy of the victims must be understood as an essential part of the personal interests and rights of victims, although it is not expressly mentioned in Article 22 of the Law.<sup>33</sup>

21. "Reparation", as a victims' personal interest and right, is further developed in Articles 22(7) and (8) and 44(6) of the Law and Rule 168 of the Rules. With regard to reparations proceedings leading eventually to a Reparation Order in accordance with Articles 22(8) and 44(6) of the Law,<sup>34</sup> the Panel considers that those proceedings fall within the scope of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Therefore, victims enjoy the procedural rights under that article with regard to their reparation claims.<sup>35</sup> This includes the right to submit any observations and evidence that the victims would consider relevant to support their claims for reparations and the corresponding Panel's duty to conduct a proper assessment of the arguments, submissions, and evidence adduced by the victims in this regard.<sup>36</sup>

---

<sup>32</sup> See also Rule 80 of the Rules.

<sup>33</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 11.

<sup>34</sup> See KSC-BC-2020-04, F00421, Trial Panel I, *Decision on reparation proceedings*, 9 February 2023, public, para. 11.

<sup>35</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 12. European Court of Human Rights (ECtHR), *Perez v. France* [GC], no. 47287/99, [Judgment](#) (*Perez v. France* [GC]), 12 February 2004, para 71.

<sup>36</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 12. ECtHR, [Perez v. France](#) [GC], para. 80. See also ECtHR, [Van de Hurk v. the Netherlands](#), no. 16034/90, *Judgment*, 19 April 1994, para. 59.

22. While the Law offers some clarification as to the meaning of “reparation”, the same is not true for “notification” and “acknowledgement” for which the Law does not provide any definition.

23. With regard to “notification”, the Panel is of the view that this refers to the victims’ personal interest and right to receive information about the proceedings before the SC, in order to allow them to participate in these proceedings. Such a right is provided for in several international legal texts.<sup>37</sup>

24. In this regard, while the Victims Participation Office (VPO) within the Registry is in charge of providing information regarding proceedings in the different cases before the SC to victims in general, in accordance with its mandate provided for in Rule 23(5) of the Rules,<sup>38</sup> Victims’ Counsel shall keep his or her clients informed of relevant developments in the case in accordance with Rule 114(3) of the Rules.<sup>39</sup>

25. With regard to “acknowledgement”, in the view of the Panel, it must be understood, in the context of criminal proceedings before the SC concerning the determination of the charges in the Confirmed Indictment against the Accused,<sup>40</sup> as the victims’ personal interest and right to have the harm they allegedly suffered recognised and, to that end, to contribute meaningfully, through the modalities of

---

<sup>37</sup> Similarly, *Mustafa* Decision on Victims’ Rights, para. 14. See also UN General Assembly, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) (UN Declaration of Basic Principles of Justice), U.N. Doc. A/RES/40/34, 29 November 1985, para. 6(a); [Recommendation No. R \(85\) 11 of the Committee of Ministers of the Council of Europe to Member States on the Position of the Victim in the Framework of Criminal and Procedure](#), 28 June 1985, para. 9. See also the reference to this Recommendation by the ECtHR in *Perez v. France* [GC], paras 27, 72.

<sup>38</sup> See also Article 22 of the Law.

<sup>39</sup> Similarly, *Mustafa* Decision on Victims’ Rights, para. 15.

<sup>40</sup> See also, but as a form of satisfaction for the victims by a public apology, including acknowledgment of the facts and acceptance of responsibility, UN General Assembly, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), U.N. Doc. A/RES/60/147, 16 December 2005, para. 22(e).

their participation, to the recognition of such harm and of the responsibility of those at the origin of it.<sup>41</sup>

26. This interpretation is in line – firstly – with the findings of the Specialist Chamber of the Constitutional Court that victims have a fundamental right “to independent and effective investigation under the procedural heads of Articles 25 and 27 of the Constitution and Articles 2 and 3 of the Convention”<sup>42</sup> and – secondly – with the finding of the Grand Chamber of the European Court of Human Rights in its judgment in the *El-Masri* case.<sup>43</sup> The Grand Chamber underlined the importance of the right to truth not only for the victim and his family in that case but also for other victims in similar cases and the general public who had the right to know what happened.<sup>44</sup> It concluded that the applicant was deprived “of being informed of what had happened, including getting an accurate account of the suffering he had allegedly endured and the role of those responsible for his alleged ordeal” and that therefore, there had been a violation of the procedural head of Article 3 of the ECHR.<sup>45</sup> The Panel is of the view that acknowledgment of serious breaches of human rights and international humanitarian law is – as are reparations for the harm suffered as a result of those breaches – an important form of remedy for victims.<sup>46</sup>

27. The aforementioned interpretation is also in line with the Rules. In this regard, Victims’ Counsel, unlike the Parties, does not have an independent right

---

<sup>41</sup> Similarly, *Mustafa* Decision on Victims’ Rights, para. 16.

<sup>42</sup> See KSC-CC-2020-11, F00015, Specialist Chamber of the Constitutional Court, [Judgment on the Referral of Proposed Amendments to the Constitution of Kosovo](#), 26 November 2020, public, paras 69, 75. The “Convention” refers to the ECHR.

<sup>43</sup> ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia* [GC], no. 39630/09, [Judgment](#) (*El-Masri v. The Former Yugoslav Republic of Macedonia* [GC]), 13 December 2012.

<sup>44</sup> ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia* [GC], para. 191. See also ECtHR, *Abu Zubaydah v. Lithuania*, no. 46454/11, [Judgment](#) (*Abu Zubaydah v. Lithuania*), 31 May 2018, para. 610.

<sup>45</sup> ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia* [GC], paras 192-194. See also ECtHR, *Abu Zubaydah v. Lithuania*, para. 620.

<sup>46</sup> See on the importance of acknowledgment also ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia* [GC], Joint Concurring Opinion of Judges Tulkens, Spielmann, Sicilianos and Keller, para. 6.

to submit evidence but, in accordance with Rule 114(5) of the Rules, may only request the Panel to order the submission of relevant evidence or call witnesses to testify. The exercise of the Panels' power to order the submission of evidence, in accordance with Rule 132 of the Rules, is in turn contingent on the Panel finding it "necessary for the determination of the truth". Therefore, the Rules also necessarily make the victims' right to participate in the proceedings and to present evidence contingent on the establishment of the truth with regard to what allegedly happened to them and the responsibility of those involved therein. That being said, the Panel will apply Rules 114(5) and 132 of the Rules in order to ensure that victims can meaningfully exercise such a right during trial proceedings.<sup>47</sup>

28. In the view of the Panel, such a conclusion on the victims' rights in criminal proceedings before the SC does not in any way affect the fact that it remains entirely incumbent on the SPO to prove to the requisite standard the different elements of the crimes contained in the Confirmed Indictment and the criminal responsibility of the Accused.

### **3. Victims' Procedural Rights**

29. The Panel notes that Article 22(5) and (6) of the Law underlines that victims can only participate in proceedings before the SC through Victims' Counsel, therefore precluding self-representation, and refers to the Rules for the determination of the modalities of such participation.

30. Further, Rule 114 of the Rules provides for the following modalities with regard to victims' participation in proceedings, through Victims' Counsel, without elaborating on them in great detail: (i) making opening and closing statements in accordance with Rules 126(3) and 135 of the Rules; (ii) presence during trial

---

<sup>47</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 18.

proceedings; (iii) access to confidential material; (iv) making oral and written submissions; (v) asking questions of witnesses; and (vi) requesting the Panel to order the submission of relevant evidence or to call witnesses to testify.

31. The Panel is of the view that, in the present case, the victims' procedural rights require the issuance of further specific guidelines pursuant to Rule 114(4) of the Rules. In this regard, Rule 114(4) of the Rules, besides its reference to Article 22(3) and (6) of the Law, gives discretion to the Panel to set out such guidelines within the framework provided for in the Law and the Rules.<sup>48</sup>

32. The Panel underlines however that the modalities of participation in the proceedings set out below remain, at all times, under the control of the Panel and may be amended in specific instances, if the victims' personal interests are not affected. Moreover, in accordance with Article 22(6) of the Law, the Panel must also ensure that the victims' participation in the proceedings is neither prejudicial to nor inconsistent with the rights of the Accused.<sup>49</sup>

(a) Access to the Case File

33. Pursuant to Rule 114(3) of the Rules, Victims' Counsel shall have access to the entire case file, including all public, confidential, and strictly confidential filings, transcripts, and evidentiary material, excluding any *ex parte* items of the case file. By the same token, Victims' Counsel shall be notified of all distributed items in the case file, including all public, confidential, and strictly confidential filings, transcripts, and disclosures of evidentiary material, excluding any *ex parte* items. Victims' Counsel shall keep the VPPs informed of relevant developments in the case in a manner which does not reveal non-public information.<sup>50</sup>

---

<sup>48</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 22.

<sup>49</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 23.

<sup>50</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 25.

(b) Presence at Trial Hearings

34. Pursuant to Article 22(6) of the Law and Rule 114(2) of the Rules, and in order to ensure that the personal interests of the VPPs are appropriately represented at all times, Victims' Counsel shall be present at all trial hearings, whether held in public, closed or private session, excluding any *ex parte* hearings. To that effect, Victims' Counsel shall be notified of all hearings before the Panel. Victims' Counsel may also request to address the Panel during an *ex parte* hearing.<sup>51</sup>

(c) Oral and Written Submissions

35. Victims' Counsel shall be permitted to make oral and written submissions as set forth in Article 22(6) of the Law and Rule 114(4) of the Rules on any point of law or fact, and to file responses and replies to any submissions made to the Panel in accordance with Rule 76 of the Rules. In order to ensure a seamless and efficient modality of participation, Victims' Counsel shall not be required to submit any prior leave for making oral and written submissions. Those submissions shall be related to the victims' personal interests as provided for in Article 22(3) of the Law.<sup>52</sup>

36. In addition to the modalities set out above, the Panel will establish further guidelines regarding the presentation of evidence as ordered by the Panel, the questioning of witnesses by Victims' Counsel, and the submission of observations by Victims' Counsel on the admissibility of evidence presented by the Parties.

---

<sup>51</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 26.

<sup>52</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 27.

(d) Presentation of Evidence as Ordered by the Panel

37. With regard to the sequence for the presentation of evidence at trial, Rule 127(2) of the Rules provides that, unless otherwise directed by the Panel, evidence for the SPO shall be presented first, then evidence for the Defence, if any, and finally evidence called by the Panel *proprio motu* pursuant to Rule 132 of the Rules.

38. Nothing is specifically provided for the evidence called by the Panel at the request of Victims' Counsel pursuant to Rule 114(5) of the Rules. However, interpreting the Rules, where appropriate,<sup>53</sup> by drawing inspiration from the KCPC,<sup>54</sup> the Panel is of the view that, in the present case, victims should present their evidence, if any, as ordered by the Panel, after the SPO, and before the Defence. Such sequence of presentation would also allow the Defence to respond during the presentation of its case both to evidence presented by the SPO, as well as by Victims' Counsel, if any.<sup>55</sup>

39. The Panel however emphasises that, when a witness appears in court for the purpose of providing his or her testimony, both the Parties, as well as Victims' Counsel shall endeavour to put all questions they consider necessary to that witness, subject to the control of the Presiding Judge, so as to avoid having to recall that witness as part of their respective presentation of evidence.<sup>56</sup>

---

<sup>53</sup> Rule 4(1) of the Rules.

<sup>54</sup> See Articles 327 and 331(1) of the KCPC. Article 327 of the KCPC stipulates that after the opening statements, evidence shall be presented in the following order: first, evidence by the state prosecutor, then evidence by the injured party, and finally evidence by the defendant. Article 331(1) of the KCPC provides that the "presiding trial judge shall issue a schedule of the witnesses, beginning with the witnesses proposed by the state prosecutor, the witnesses proposed by the injured party or victim advocate, and then the witnesses proposed by the defendant or defence counsel". *Similarly, Mustafa Decision on Victims' Rights*, para. 30.

<sup>55</sup> *Similarly, Mustafa Decision on Victims' Rights*, para. 30.

<sup>56</sup> *Similarly, Mustafa Decision on Victims' Rights*, para. 31.



40. Furthermore, the Panel is conscious that the Defence may, immediately after the closing of the SPO's case, notify its intention to file a motion to dismiss any or all of the charges in the Confirmed Indictment, in accordance with Rule 130(1) of the Rules. In such a case, the Panel will first address such a motion before allowing the presentation of evidence by Victims' Counsel.<sup>57</sup>

41. In order to ensure the fairness and expeditiousness of the proceedings, the Panel may decide to hold, at the end of the SPO's case, a status conference in order to organise the presentation of: (i) evidence for the establishment of the truth by Victims' Counsel, as ordered by the Panel; and (ii) evidence presented for the purposes of reparations.<sup>58</sup>

42. For this purpose, Victims' Counsel shall submit his (final) list of proposed (expert) witnesses to be called by the Panel sufficiently in advance of the end of the SPO's case, including the information set out below.<sup>59</sup> Victims' Counsel shall indicate to what extent the testimonies or expertise of the proposed witnesses relate to the personal interests and rights of the victims, *i.e.*, the establishment of the truth and/or reparations. Furthermore, Victims' Counsel shall indicate when submitting the list: (i) the name and the pseudonym, if applicable, of each witness; (ii) whether the proposed witnesses are Dual Status Victims-Witnesses or other persons; (iii) a summary of the facts on which each proposed witness is expected to provide evidence; (iv) an indication as to whether the proposed witnesses will testify in person at the seat of the court or give evidence through other means as

---

<sup>57</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 32.

<sup>58</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 33.

<sup>59</sup> The deadline for the filing of the (final) list of witnesses will be set later in the proceedings. The Panel has taken note of Victims' Counsel preliminary submissions in this regard, KSC-BC-2020-04, F00301, Victims' Counsel, *Victims' Counsel Submissions for Trial Preparation Conference* (Victims' Counsel Submissions for Trial Preparation Conference), 10 October 2022, paras 19-21.



provided for by the Rules;<sup>60</sup> (v) the estimated time required for the direct examination of each proposed witness and their proposed order of appearance; (vi) whether Victims' Counsel intends to use any material during the proposed witnesses' examination and if so, submit such material to the Panel;<sup>61</sup> and (vii) whether any of the proposed witnesses will require protective measures, and, if applicable, proposed redactions to their material, including to any material to be used during their examination.<sup>62</sup>

43. Victims' Counsel shall also indicate sufficiently in advance of the end of the SPO's case whether he wishes the Panel to order the submission of relevant non-oral evidence relating to the victims' personal interests and rights.<sup>63</sup> Likewise, Victims' Counsel will have to submit a list of such proposed material, indicating whether the material relates to the establishment of the truth and/or reparations, as well as whether redactions will be necessary and which ones.<sup>64</sup>

44. With regard to reparations proceedings, the Panel recalls that it is incumbent on Victims' Counsel to present any evidence, including expert evidence, concerning the victims' reparations claims. In this regard, Victims' Counsel may also request the SPO to disclose any material or evidence in its possession which could substantiate such claims. As previously indicated,<sup>65</sup> the Panel will have to allow Victims' Counsel to present any relevant evidence for the substantiation of

---

<sup>60</sup> Victims' Counsel shall inform the Panel as soon as possible, as further determined in the Panel's decision on the conduct of the proceedings.

<sup>61</sup> Further directions are set out in the Panel's decision on the conduct of the proceedings.

<sup>62</sup> *Similarly, Mustafa* Decision on Victims' Rights, para. 34.

<sup>63</sup> The Panel has taken note of Victims' Counsel preliminary submissions in this regard, *see* Victims' Counsel Submissions for Trial Preparation Conference, paras 18, 24. The deadline for the filing of the (final) list of non-oral evidence will be set later in the proceedings.

<sup>64</sup> *Similarly, Mustafa* Decision on Victims' Rights, para. 35.

<sup>65</sup> *See* para. 21 above.

the victims' reparations claims, thereby respecting the victims' rights under Article 6(1) of the ECHR.<sup>66</sup>

45. Victims' Counsel may also request the Panel, sufficiently in advance of the end of the SPO's case, to authorise victims participating in the proceedings to directly address the Panel not as witnesses but in order to present their views and concerns.<sup>67</sup> The Panel recognises that this could be a way for victims to foster recognition of their harm, in accordance with Article 22(3) of the Law. Any such presentation of victims' views and concerns will not be subject to examination and cross-examination by the Parties and will not be considered as evidence by the Panel for the purposes of the trial judgment. Should the Panel consider that the information brought by the victim could be necessary for the establishment of the truth, it retains the power to call that victim as a witness, in accordance with Rule 132 of the Rules.<sup>68</sup>

46. Finally, Victims' Counsel may request from the Panel, in accordance with Articles 39(13) and 40(6)(a) of the Law, the issuance of any order which may be of assistance for the preparation of his presentation of evidence.<sup>69</sup>

(e) Questioning of Witnesses by Victims' Counsel

47. The Panel notes that, although Rule 114(4)(b) of the Rules provides for the possibility for Victims' Counsel, under the control of the Panel, to ask questions of witnesses, the Rules do not provide for the sequence in which such questioning of witnesses should take place or the type of questions that can be put to witnesses

---

<sup>66</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 36.

<sup>67</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 37. The Panel has taken note of Victims' Counsel preliminary submissions in this regard, see Victims' Counsel Submissions for Trial Preparation Conference, paras 20, 22.

<sup>68</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 37.

<sup>69</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 38.

by Victims' Counsel, besides the reference to "whenever the personal interests of the victims participating in the proceedings are affected".

48. With regard to the type of questions that Victims' Counsel may put to witnesses, the Panel does not wish to limit those questions *a priori*. Moreover, Rule 114(4) of the Rules does not contain any specific limitation in this regard. However, the Panel underlines that the questioning of witnesses with regard to the establishment of the constitutive elements of the crimes and modes of liability charged in the Confirmed Indictment is first and foremost the responsibility of the SPO. Likewise, it is first and foremost the responsibility of Victims' Counsel to elicit from SPO and Defence witnesses any information relevant for reparations proceedings. Furthermore, in accordance with Rule 143(4) of the Rules, the Presiding Judge may at all times exercise control over the questioning of witnesses in order to avoid, *inter alia*, repetitive questioning.<sup>70</sup>

49. With regard to the sequence for questioning witnesses, Rule 127(3) of the Rules provides that a witness shall first be examined by the calling Party and then cross-examined by the opposing Party, without indicating when Victims' Counsel is supposed to question witnesses called by the SPO or the Defence. The Panel is of the view that it is appropriate for witnesses called by the SPO to be questioned by Victims' Counsel after the examination by the SPO, in order for the Defence to be able to take into consideration answers given by the witnesses to the SPO *and* Victims' Counsel when conducting its cross-examination. With regard to witnesses called by the Defence, they shall first be cross-examined by the SPO as the opposing Party and then examined by Victims' Counsel. With regard to witnesses called by the Panel at the request of Victims' Counsel, they shall first be examined by Victims' Counsel, then by the SPO, and finally by the Defence. With

---

<sup>70</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 40. Further directions on the mode of questioning by Victims' Counsel may be found in the Panel's decision on the conduct of the proceedings.

regard to witnesses called by the Panel *proprio motu*, they shall first be questioned by the Panel, then by the SPO, then by Victims' Counsel, and finally by the Defence.<sup>71</sup>

(f) Observations on the Admissibility of Evidence Presented by the Parties

50. The Panel is of the view that, when the victims' personal interests are at stake, Victims' Counsel should be allowed to make observations in relation to the admissibility of the evidence presented by the SPO or the Defence, in the same way as Victims' Counsel may request the Panel to order the submission of relevant evidence or to call witnesses. Therefore, Victims' Counsel may request the Panel to exercise its power to rule on the admissibility of evidence whether presented by the SPO or the Defence in accordance with Article 40(6)(h) of the Law.<sup>72</sup>

B. DEADLINE FOR THE SUBMISSION OF APPLICATIONS FOR PARTICIPATION

51. The Panel recalls that, pursuant to Rule 113(1) of the Rules, victim applications for participation in the proceedings shall be submitted sufficiently in advance of the opening of the case pursuant to Rule 124 of the Rules. However, in the circumstances of the present case, and considering the overall security situation in Kosovo, the Panel considers it appropriate, pursuant to Rule 9(5) of the Rules, to vary the deadline for the submission of victim applications for participation in the proceedings until the closing of the SPO's case pursuant to Rule 129 of the Rules. The Panel considers that such a variation does not cause any prejudice to the rights of the Accused, who shall have adequate time to make submissions on the legal grounds regarding admissibility and common

---

<sup>71</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 41.

<sup>72</sup> Similarly, *Mustafa* Decision on Victims' Rights, para. 42.

representation, in accordance with the deadline set out in the Framework Decision,<sup>73</sup> before the commencement of the presentation of evidence by the Defence, if any.<sup>74</sup>

### C. PROTECTIVE MEASURES

52. At the outset, the Panel recalls that there are eight victims admitted to participate in the proceedings, in total, who benefit from protective measures. The Panel equally recalls that seven out of eight VPPs were granted protective measures vis-à-vis the Defence and the Accused on a provisional basis, pending further submissions of Victims' Counsel.<sup>75</sup> The Defence requests the disclosure of the identity of seven VPPs to the Defence and/or the Accused. Victims' Counsel and the SPO oppose, but agree to share with the Defence the identities of Dual Status Victims-Witnesses. With a view to adopting a coherent protective measures regime, the Panel will address the issue for all eight VPPs, in light of the Parties' and Victims' Counsel's submissions.

53. As foreshadowed by the Pre-Trial Judge, protective measures are adjustable, depending on the stage of the proceedings and the modalities of participation under Article 22 of the Law and Rule 114 of the Rules.<sup>76</sup> In this regard, the Panel notes that the legal test applicable for protective measures in relation to witnesses

---

<sup>73</sup> Framework Decision, paras 60 and 63(g). The mechanism set out by the Pre-Trial Judge in the Framework Decision applies throughout the trial stage of the proceedings.

<sup>74</sup> Similarly, KSC-BC-2020-05, F00126/RED, Trial Panel I, *Public redacted version of Third decision on victims' participation (Mustafa Third Decision on Victims' Participation)*, 21 May 2021, public, para. 41.

<sup>75</sup> Second Decision on Victims' Participation, paras 37 and 43(g); Third Decision on Victims' Participation, paras 38 and 43(e).

<sup>76</sup> First Decision on Victims' Participation, para. 39; Second Decision on Victims' Participation, para. 35; Third Decision on Victims' Participation, para. 36; Transcript of Hearing, 4 March 2022, public, p. 192, lines 1-7. See also KSC-BC-2020-06, IA023/F00006/COR, Court of Appeals, *Decision on Veseli's Appeal Against "Third Decision on Victims' Participation"* (Case 06 Appeals Decision on Protective Measures), 15 September 2022, public, paras 47, 49; F01153, Pre-Trial Judge, *Decision on Thaçi Defence's Request for Disclosure of Dual Status Witnesses* (Case 06 Dual Status Decision), 13 December 2022, public, para. 35.

is also applicable as regards VPPs.<sup>77</sup> That being said, when determining the appropriate protective measures regarding VPPs, the Panel shall take into account that: (i) the purpose of victim participation is to allow VPPs to pursue their rights and personal interests as provided in the Law and the Rules; and (ii) such a purpose also informs the considerations regarding the protective measures to be ordered for VPPs, without prejudice to the additional measures stemming from their potential dual status.<sup>78</sup>

54. With regard to the non-disclosure of the identity of VPPs to the public, the Panel does not find it necessary to vary these measures at this stage of the proceedings.

55. With regard to protective measures vis-à-vis the Defence and/or the Accused, the Panel differentiates between VPPs who are Dual Status Victims-Witnesses and those that are not. In this context, the Panel also emphasises that there are two protective measures regimes to pay heed to: the protective measures accorded to SPO witnesses, and the protective measures accorded to VPPs. Accordingly, protective measures may apply, as authorised, simultaneously to Dual Status Victims-Witnesses.<sup>79</sup>

56. With regard to Dual Status Victims-Witnesses, the Panel first notes that, upon oral order,<sup>80</sup> Victims' Counsel submitted a list on the record of the Dual Status Victims-Witnesses, strictly confidential and *ex parte*, available to Victims' Counsel, the SPO and the Panel.<sup>81</sup> The Panel also recalls that the Pre-Trial Judge has granted

---

<sup>77</sup> See Framework Decision, 54; First Decision on Victims' Participation, para. 36. See also Case 06 Appeals Decision on Protective Measures, paras 26-27; *Mustafa* Third Decision on Victims' Participation, paras 29-31.

<sup>78</sup> Similarly, *Mustafa* Third Decision on Victims' Participation, para. 29.

<sup>79</sup> See similarly, Case 06 Dual Status Decision, para. 34.

<sup>80</sup> KSC-BC-2020-04, Transcript of Hearing, 19 October 2022, p. 404, line 18 to p. 405, line 1.

<sup>81</sup> KSC-BC-2020-04, F00318, Victims' Counsel, *Victims' Counsel Notice on Dual Status Victims Participating in the Proceedings*, 19 October 2022, strictly confidential and *ex parte*.

protective measures in respect of all VPPs in this case, and such measures include the non-disclosure of their identities and of any records identifying them to the Defence, including the Accused.<sup>82</sup> The Panel observes that, at the same time, the identities of all witnesses, including the Dual Status Victims-Witnesses, have been disclosed to the Defence<sup>83</sup> and they benefit from protective measures as witnesses only vis-à-vis the public. In the view of the Panel, the protective measures of Dual Status Victims-Witnesses must be aligned.

57. In striking a balance between the rights and interests of the Accused and the safety, physical and psychological well-being, dignity and privacy of victims and the need to ensure the victims' meaningful participation, the Panel considers that: (i) the case is now in its trial phase; (ii) the identities of all witnesses have been disclosed to the Defence; (iii) the Dual Status Victims-Witnesses will testify at trial, potentially incriminating the Accused; and (iv) the Dual Status Victims-Witnesses have consented that their identities as VPPs be revealed to the Defence.<sup>84</sup> Accordingly, the Panel finds it appropriate to vary the protective measures of the VPPs concerned, pursuant to Rule 80 of the Rules, in order to allow the disclosure of their identities to the Defence and the Accused. As a result, the Panel orders the Registrar to re-classify the following filings, currently classified strictly confidential and *ex parte*, as confidential and to remove the *ex parte* marking: F00318 (containing the list of Dual Status Victims-Witnesses), F00389, F00397 (and its annex), F00399 and F00400.

---

<sup>82</sup> First Decision on Victims' Participation, paras 40-41; Transcript of Hearing, 4 March 2022, public, p. 192, lines 1-7; Second Decision on Victims' Participation, paras 36-37; Third Decision on Victims' Participation, paras 37-38; KSC-BC-2020-04, Transcript of Hearing, 4 March 2022, p. 191 line 25 to p. 192 to line 10.

<sup>83</sup> KSC-BC-2020-04, F00331/A01, Specialist Prosecutor, *Annex 1 to Prosecution notice of filing of amended witness list and request to amend its exhibit list*, 28 October 2022, confidential.

<sup>84</sup> Victims' Counsel Response, paras 23, 25. In this context, the Panel clarifies that Rule 81 of the Rules is inapplicable as the protective measures were granted in the same case. Yet, consent of victims may also be required when varying protective measures, as granted under Rule 80 of the Rules.



58. That being said, the Panel stresses that the disclosure of the identities of Dual Status Victims-Witnesses does not entail the disclosure of the relevant victims' applications and related supporting material, as clearly stipulated in Rule 113(1) of the Rules, second sentence.<sup>85</sup>

59. With regard to VPPs not having a dual status, the Panel is of the view that in light of the specific risk factors set out previously by the Pre-Trial Judge,<sup>86</sup> – including the victims' own concern about revealing their identities to the public and/or the Accused – the protective measures have to remain in effect. In this regard, the Panel recalls that the non-disclosure of victims' identities is expressly foreseen in the SC legal framework and that the vulnerability of the victims (in this case, mental trauma) may indeed constitute a relevant factor when considering what exceptional circumstances justify victims' anonymity.<sup>87</sup> Furthermore, the Panel notes that such measures remain proportionate to the objective sought, as they will in no way impair the Accused's ability to prepare an adequate defence, while allowing for meaningful victims' participation. Regarding the Defence's argument that non-disclosure of victims' identities to the Accused infringes on his right to know the case against him, the Panel recalls that victims' participation does not give rise to separate and additional accusations to those made by the SPO and that the burden is solely on the SPO to prove its case against the Accused beyond reasonable doubt. In any event, the Panel is at all times duty-bound to ensure an adequate balance between the rights of the Accused and the rights of VPPs. In light of the above, the Panel finds that the names and identifying information of VPPs who do not have dual status shall continue to be withheld from the Defence and the Accused, and reference to them shall be made only by their pseudonym.

---

<sup>85</sup> See also Case 06 Dual Status Decision, paras 28-32.

<sup>86</sup> Third Decision on Victims' Participation, para. 35.

<sup>87</sup> Case 06 Appeals Decision on Protective Measures, paras 47-51.



#### D. RECLASSIFICATION OF FILINGS

60. The Panel notes that the Defence does not object to the re-classification of confidential filing F00316 as public.<sup>88</sup> The Panel finds that, pursuant to Rule 82(5) of the Rules, filing F00316 shall be reclassified as public, and accordingly orders the Registrar to do so.

61. The Panel further notes that the SPO Response (F00321), the Victims' Counsel Response (F00328) and the Defence Reply (F00332) are currently classified as confidential. In order to adhere to the principle of publicity of the proceedings, and in line with its duties under Rules 82 and 84 of the Rules, the Panel orders the SPO, Victims' Counsel and the Defence to file public redacted versions of their respective filings, or request that they be reclassified as public, by **Thursday, 2 March 2023**.

#### V. DISPOSITION

62. For the above-mentioned reasons, the Panel hereby:

- a) **ADOPTS** the aforementioned definitions of the victims' interests and rights as established in paragraphs 18-28 above;
- b) **ADOPTS** the victims' procedural rights during trial as laid down in paragraphs 29-50;
- c) **VARIES** the deadline for the submission of victim applications for participation in the proceedings until the closing of the SPO's case;

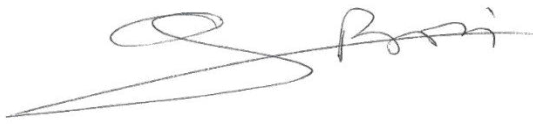
---

<sup>88</sup> See KSC-BC-2020-04, F00316, Defence, *Defence Response to Victims' Counsel Submissions on the Need for the Continued Application of the Protective Measures Ordered for Victims Participating in the Proceedings*, 17 October 2022, confidential, fn. 1.

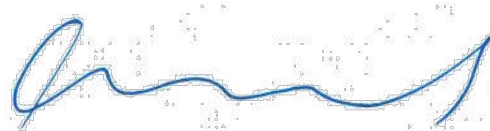
- d) **GRANTS** in part the relief sought by the Defence in the Defence Request, to the extent specified in paragraphs 57-58 above, and **DENIES** the remainder of the Defence Request;
- e) **ORDERS** the Registrar to re-classify the following filings, currently classified strictly confidential and *ex parte*, as confidential and to remove the *ex parte* marking: F00318, F00389, F00397 (and its annex), F00399 and F00400;
- f) **ORDERS** the Registrar to re-classify filing F00316 as public; and
- g) **ORDERS** the SPO, Victims' Counsel and the Defence to provide public redacted versions of their respective filings (F00321, F00328 and F00332), or request that they be reclassified as public, by **Thursday, 2 March 2023**.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Friday, 24 February 2023

At The Hague, the Netherlands.