



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 21 July 2023

Language: English

Classification: Public

**Corrected Public Redacted Version of Decision on Victims' Counsel's Request for
Resumption of Action on Behalf of V131/06 by an Immediate Family Member**

Acting Specialist Prosecutor

Alex Whiting

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 3, 22(3) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 4(1), 5 and 114(4)(a) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 15 February 2023, the Trial Panel granted V131/06’s application to participate as a victim in these proceedings.¹
2. On 6 June 2023, Victims’ Counsel notified the Panel of V131/06’s death, and filed a request to permit V131/06’s spouse to participate in proceedings in V131/06’s stead.²
3. No responses to Victims’ Counsel’s request were filed.

II. SUBMISSIONS

4. Victims’ Counsel submits that he has standing to bring the present request given that he was previously appointed to represent V131/06.³ Victims Counsel asserts that, pursuant to Specialist Chambers’ jurisprudence, a close relative is permitted to continue an action initiated by a victim that subsequently dies.⁴ Victims’ Counsel submits that V131/06’s surviving spouse should therefore be permitted to participate in the current proceedings on V131/06’s behalf.⁵

¹ F01293, Trial Panel, *Fifth Decision on Victims’ Participation*, 14 February 2023, para. 47(a).

² F01580, Trial Panel, *Victim’s Counsel’s Request for Resumption of Action on Behalf of V131/06 by an Immediate Family Member with One Strictly Confidential Ex Parte Annex* (“Request”), 6 June 2023, confidential.

³ Request, para. 9.

⁴ Request, para. 10.

⁵ Request, para. 16.

III. DISCUSSION

5. The Panel notes that the question of whether a close family member may continue the action of a deceased participating victim is not answered in the Law or the Rules.⁶

6. The Panel finds it appropriate to interpret the participatory rights of victims in Rules 113 and 114 so as to extend to a participating victim's heirs in the event of death. Supporting this interpretation is Article 22(3) of the Law, which provides that victims have the right to notification, acknowledgement, and reparation. As noted by the Pre-Trial Judge, the right of acknowledgement requires that the harm suffered by the victim is recognised.⁷ In order to guarantee the effectiveness of this right, relatives of deceased victims or closely-connected individuals may participate in their place if specific parameters are satisfied.⁸ The ECtHR accepts that an application lodged by the original applicant before his or her death may be continued by heirs or close family members expressing the wish to pursue the proceedings, provided that they have a sufficient/legitimate interest in the case.⁹

7. The Pre-Trial Judge also taken the view in this case that, in order for an individual to stand in for the deceased victim, evidence must be provided that:

- a) the victim is deceased, and
- b) the individual seeking to resume the action on behalf of the deceased

⁶ See F00611, Pre-Trial Judge, *Second Decision on Victims' Participation* ("Second Decision on Victims' Participation"), 10 December 2021, strictly confidential and *ex parte*, (confidential redacted and public redacted versions were filed on the same date, F00611/CONFRED, F00611/RED) para. 32.

⁷ See *Second Decision on Victims' Participation*, citing KSC-BC-2020-05, F00152, Trial Panel, *Decision on Victims' Procedural Rights During Trial*, 12 July 2021, para. 16.

⁸ *Second Decision on Victims' Participation*, para. 32.

⁹ See ECtHR, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, 17 October 2019, paras 71-73; *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, 13 December 2000; *Tagiyev and Huseynov v. Azerbaijan*, no. 132743/08, 5 December 2018, paras 23-24 (and the references cited therein); *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, 13 November 2012, para. 71; *Ergezen v. Turkey*, no. 73359/10, 8 April 2014, para. 30; *Pais Pires de Lima v. Portugal*, no. 70465/12, 12 February 2019, paras 36-40; *Karastelev and Others v. Russia*, no. 29290/10, 12 May 2020, para. 51; *Mile Novaković v. Croatia*, no. 73544/14, 17 December 2020, paras 33-34.

victim was a relative or closely-connected individual.¹⁰

8. Victims' Counsel has submitted the death certificate of V131/06 as well as the marriage certificate of V131/06 and her spouse, [REDACTED].¹¹ Each document has indications of its official nature based upon their letterhead, layout and official stamps present on the documents. The Panel is therefore satisfied of the authenticity and reliability of the submitted documentation. Accordingly, the Panel finds that Victims' Counsel's submissions satisfy the necessary requirements outlined in paragraph 7 for V131/06's spouse, [REDACTED], to resume the action on behalf of V131/06.¹²

IV. PROTECTIVE MEASURES

9. V131/06 was granted anonymity toward the public and the Parties, as an admitted victim who was not a dual status witness.¹³ Considering that the circumstances that justified such status in respect of V131/06 apply equally to

¹⁰ Second Decision on Victims' Participation, para. 32. See also ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-1052, Trial Chamber I, [Decision on the Resumption of Action Applications](#), 11 October 2017, paras 12-14; *Prosecutor v. Ongwen*, ICC-02/04-01/15-962, Trial Chamber IX, [Decision on LRV Request Concerning the Deaths of Participating Victims](#), 30 August 2017, para. 3; *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-3346, Trial Chamber III, [Decision on "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées"](#) ("Bemba Trial Chamber Decision"), 24 March 2016, para. 22; *Prosecutor v. Ntaganda*, ICC-01/04-02/06-805, Trial Chamber VI, [Fourth Decision on Victims' Participation in Trial Proceedings](#) ("Ntaganda Decision"), 1 September 2015, para. 8; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-1737, Trial Chamber II, [Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure](#) ("Katanga Decision"), 22 December 2009, paras 30-32. See also *Prosecutor v. Al Hassan*, ICC-01/12-01/18-37-tENG, Pre-Trial Chamber I, [Decision Establishing the Principles Applicable to Victims' Applications for Participation](#), 24 May 2018, para. 52; *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-320, Pre-Trial Chamber III, [Fourth Decision on Victims' Participation](#), 12 December 2008, paras 44, 47; ECCC, *Kiang Guek Eav*, 001/18-07-2007-ECCC/TC, Trial Chamber, [Decision on Motion Regarding Deceased Civil Party](#), 13 March 2009, paras 8-13; *Khieu Samphân*, 002/19-09-2007/SC, Supreme Court Chamber, [Decision on Succession Request to Continue Civil Party Action](#), 14 June 2021, pp. 3-4.

¹¹ F01580/A01, *Annex to Victim's Counsel's Request for Resumption of Action on Behalf of V131/06 by an Immediate Family Member* ("Annex 1"), 6 June 2023, strictly confidential and *ex parte*. At the request of the Panel, English translations of both were prepared on 16 June 2023.

¹² This determination is without prejudice to the standing that V131/06's spouse may have to claim reparations if a conviction is entered.

¹³ F01293, Trial Panel, *Fifth Decision on Victims' Participation*, 15 February 2023, strictly confidential and *ex parte* (a public redacted version was filed on 20 February 2023, F01293/RED), para. 36.

V131/06's spouse, the Panel is prepared to grant [REDACTED] the same protection and status.

V. DISPOSITION

10. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** Victims' Counsel's request, and allows [REDACTED], the surviving spouse of V131/06, to resume V131/06's action as a victim participating in the present proceedings; and
- b) **ORDERS** that the pseudonym of V131A/06 be assigned to [REDACTED] for the purpose of these proceedings.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 21 July 2023

At The Hague, the Netherlands

Explanatory Note:

In paragraph 9, the gender of V131/06's spouse has been removed.

In paragraph 10(b) the assigned pseudonym has been corrected to now read V131A/06.

.