



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 7 September 2023

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Public Redacted Version of Seventh Decision on Victims' Participation

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TRIAL PANEL II (“Panel”), pursuant to Articles 22, 23(1) and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 80, 113 and 114 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 4 January 2021 and 6 July 2021, the Pre-Trial Judge issued the “Framework Decision on Victims’ Applications” (“First Framework Decision”) and the “Second Framework Decision on Victims’ Applications” (“Second Framework Decision”), establishing the principles governing the admission of victims to participate in the proceedings.¹
2. On 25 January 2022, the Victims’ Participation Office (“VPO”) submitted the fourth report on victims’ applications for participation in the proceedings, including the application of Victim-32/06.²
3. On 30 September 2022, the Specialist Prosecutor’s Office (“SPO”) submitted the confirmed amended indictment (“Indictment”).³
4. On 12 December 2022, the Pre-Trial Judge issued the “Fourth Decision on Victims’ Participation” (“Fourth Decision”), rejecting *inter alia* the application of

¹ F00159, Pre-Trial Judge, *Framework Decision on Victims’ Applications*, 4 January 2021; F00382, Pre-Trial Judge, *Second Framework Decision on Victims’ Applications*, 6 July 2021.

² F00656, Registrar, *Fourth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings* (“Fourth Report”), 25 January 2022, with Annexes 1-17, strictly confidential and *ex parte*. See also Annex 6 to the Fourth Report.

³ F00999, Specialist Prosecutor, *Submission of Confirmed Amended Indictment*, 30 September 2022, with Annex 1, strictly confidential and *ex parte*, Annex 2, confidential and Annex 3. A public lesser redacted version of the Confirmed Amended Indictment was filed on 15 February 2023 (F01296/A03) and on 27 February 2023 (F01323/A01).

Victim-32/06.⁴ That decision was subsequently appealed by the victims having been denied the right to participate.⁵

5. On 18 January 2023, the Panel ordered the Registry to submit any remaining applications for admission of victims wishing to participate in the proceedings by 15 February 2023 and ordered the Parties to file any submissions on legal grounds regarding admissibility and common representation, if they so wished, no later than 22 February 2023 at 4.00 p.m.⁶

6. On 26 April 2023, the Court of Appeals Panel issued its decision on the appeal against the Fourth Decision on Victims' Participation ("Appeals Decision").⁷

7. On 9 May 2023, the VPO received the amended application of Victim-32/06 for the status of a participating victim in the proceedings ("Application").

8. On 14 June 2023, the VPO filed the thirteenth report on victims' applications ("Report"), transmitting to the Panel the Application.⁸

9. The Parties did not file responses to the Report.

⁴ F01152, Pre-Trial Judge, *Fourth Decision on Victims' Participation* ("Fourth Decision"), 12 December 2022, strictly confidential and *ex parte*, para. 38 (a public redacted version was filed on 14 December 2022, F01152/RED).

⁵ IA026/F00009, Counsel, *Victims' Counsel Appeal on Fourth Decision on Victims' Participation*, 2 March 2023, strictly confidential and *ex parte* (a corrected public redacted version was filed on 14 March 2023, IA026/F00009/RED/COR).

⁶ Transcript of Hearing, 18 January 2023 (Oral Order Setting Deadline for Applications for Admissions of Victims Participating in the Proceedings), pp. 1902-1903.

⁷ IA026/F00011, Court of Appeals Panel, *Decision on Appeals Against "Fourth Decision on Victims' Participation"*, 26 April 2023, strictly confidential and *ex parte* (a public redacted version was filed on 26 April 2023, IA026/F00011/RED).

⁸ F01605, Panel, *Thirteenth Registry Report on Victims' Applications for Participation in the Proceedings*, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte* (a confidential and *ex parte* redacted version of the Report was filed on the same day, F01605/CONF/RED; this confidential and *ex parte* version of the Report was reclassified as public on 21 June 2023).

II. SUBMISSIONS

10. The VPO assesses that the Application should be considered anew by the Panel in light of additional available information.⁹ The VPO submits that the Application meets the criteria for resubmission and requests that the Panel consider it even though the timeline set for transmission of victim applications has expired.¹⁰

11. The VPO assesses that the Application is complete.¹¹ As regards admissibility, the VPO recommends that the Panel admit Victim-32/06 as participating victim to the proceedings.¹² As regards legal representation, the VPO recommends that Victim-32/06 be grouped with the already admitted victims for the purpose of common legal representation (Group 1), noting that there appears to be no reason why Victim-32/06, if admitted, could not be represented by the assigned Victims' Counsel.¹³ As regards protective measures, the VPO recommends that Victim-32/06 be granted anonymity.¹⁴

III. APPLICABLE LAW

12. The Panel recalls that the participation of victims is regulated by Article 22 and Rules 80, 113 and 114.

13. The Panel is also guided by the Court of Appeals' decisions on victim participation in relation to the requirement that the applicants demonstrate that they are a victim of a crime specified in the Indictment, the requirement for the

⁹ Report, para. 17.

¹⁰ Report, para. 18.

¹¹ Report, para. 22.

¹² Report, para. 38.

¹³ Report, paras 43, 46.

¹⁴ Report, para. 52.

Panel to give reasons for denying applications for participation, and the anonymity of victims participating in the proceedings.¹⁵

14. Further, the Panel takes specific guidance from the Appeals Decision. In particular, the Panel notes the Court of Appeals Panel's holdings that: (i) denied applicants could resubmit their application for consideration of additional information "since the personal interests and rights of victims must be protected";¹⁶ (ii) "should a denied applicant wish to present new information, which was not known to or in the possession of the applicant at the time of the initial application and warranting a new consideration of their request for admission to the proceedings, they can do so by resubmitting their application for participation through the VPO before a competent panel seized of the case at the relevant time, to be reassessed in light of the new information";¹⁷ and (iii) while the deadline set by the Panel for applications for victims to participate in these proceedings has passed, a Panel may accept any resubmitted applications from previously denied applicants to protect the personal interests and rights of victims.¹⁸

15. Pursuant to Rule 9(5)(b), the Panel may, *proprio motu* or upon showing of good cause, recognise as valid any act carried out after the expiration of a time limit.

¹⁵ IA0023/F00006, Court of Appeals, *Decision on Veseli's Appeal Against "Third Decision on Victims' Participations"*, 15 September 2022, paras 51-52 (a corrected version was filed on the same day, IA023/F00006/COR).

¹⁶ Appeals Decision, para. 29.

¹⁷ Appeals Decision, para. 30.

¹⁸ Appeals Decision, para. 31.

IV. DISCUSSION

A. PRELIMINARY MATTER

16. The Panel recalls that: (i) pursuant to Rule 113(1), applications may be filed sufficiently in advance of the opening of the case; (ii) in that light, the Panel ordered the Registry to file any applications for admission of victims participating in the proceedings by 15 February 2023;¹⁹ and (iii) the case opened on 3 April 2023.²⁰ It follows that the deadline to file applications for admission of victims participating in the proceedings has now expired.

17. In line with Rule 9(5)(b), the Panel will first assess whether there is good cause in recognising the transmission of the Application on 14 June 2023²¹ as valid, though carried out after the expiration of the time limit.

18. At the outset, the Panel recalls the context which led to the rejection of Victim-32/06's first application: (i) upon receipt of the application, the VPO requested additional information from Victim-32/06's legal representative at the time;²² (ii) Victim-32/06's legal representative did not respond to the requests for additional information;²³ (iii) in the absence of the requested additional information, the VPO assessed that Victim-32/06's application fell outside of the scope of the charges;²⁴ (iv) the Pre-Trial Judge rejected Victim-32/06's application to participate as a victim in the proceedings on the basis that the information was not sufficient for a *prima facie* finding that the direct victim was held at one of the detention sites identified in the Indictment;²⁵ and (v) in the appeal against the

¹⁹ Transcript of Hearing, 18 January 2023, pp. 1902-1903.

²⁰ See Transcript of Hearing, 15 February 2023, pp. 2038-2039; Transcript of Hearing, 3 April 2023, p. 2140.

²¹ See, generally, Report.

²² Report, para. 15.

²³ Report, para. 17.

²⁴ Fourth Report, paras 35, 43.

²⁵ Fourth Decision, paras 36(a), 38.

Fourth Decision, it appears that Victim-32/06's new legal counsel indicated that Victim-32/06 had not included all of the relevant information in the application due to the lack of awareness of its legal importance.²⁶

19. The Panel observes that Victim-32/06 is a lay person, who applied originally through a legal representative, who in turn did not respond to the queries of the VPO in relation to Victim-32/06's first application. The Panel observes that the additional information provided pertains to the detention site where the applicant's relative was allegedly held.²⁷ The Panel considers that, insofar as it was not contained in the initial application of Victim-32/06, but received by the VPO in May 2023,²⁸ and by the Panel upon receipt of the Report, it constitutes new information. The Panel observes, however, that it is apparent from one of the documents provided in support of her Application – [REDACTED]²⁹ – that she had knowledge of this information at the time of her first application in 2021. That said, as mentioned above, the applicant is a lay person who may not have received effective assistance of counsel with her initial application. Accordingly, the Panel is of the view that this should not be an obstacle to the consideration of the additional information as it would be detrimental to the personal interests and rights of Victim-32/06.

20. The Panel is mindful of the fact that Victim-32/06 submitted the additional information before the Panel after having received the advice of new counsel. Thus, for the foregoing reasons, the Panel finds that there is good cause to recognise the additional information recently communicated in support of the Application as validly filed and it will assess the application anew.³⁰

²⁶ Report, para. 16 and references cited in fn. 19.

²⁷ See SD12 and SD13

²⁸ See Report, para. 8.

²⁹ [REDACTED].

³⁰ See Rule 9(5)(b); Appeals Decision, para. 30.

B. ASSESSMENT OF THE APPLICATION

21. Having assessed the application form and supporting documentation submitted in the Report, the Panel is satisfied that the application form is complete.

22. Victim-32/06 provided a valid ID card as proof of identity.³¹ The Panel is therefore satisfied that Victim-32/06 is a natural person.

1. Correspondence Between the Alleged Crimes in the Applications and the Indictment

23. The Panel recalls that, as confirmed by the Court of Appeals, “the crime(s) in relation to which an applicant claims to be a victim must fall under the material, geographical and temporal parameters of the charges, as specified in the Indictment”.³² Further, in relation to direct victims of murder or killings, the Panel observes that the Court of Appeals confirmed that the list in Schedule B to the Indictment is to be interpreted as exhaustive.³³

24. In making its assessment, the Panel conducted an analysis of the Application, based on the Report, the application form, the supporting documentation and the relevant parts of the Indictment.

25. The Panel is satisfied that Victim-32/06 is a victim of crimes allegedly committed at a location identified in the Indictment and that the alleged crimes fall within the temporal scope of the charges as specified in the Indictment. More specifically, the Panel is satisfied that Victim-32/06 is an indirect victim of

³¹ See SD1.

³² IA005/F00008, Court of Appeals, *Decision on Appeal Against “First Decision on Victims’ Participation”*, 16 July 2021, para. 35. See also First Framework Decision, para. 32.

³³ IA027/F00004, Court of Appeals, *Decision on Appeal Against “Fifth Decision on Victims’ Participation”*, 21 June 2023, strictly confidential and *ex parte*, para. 13. A public redacted version was filed on the same day, IA027/F00004/RED.

unlawful detention and cruel treatment of an immediate family member by the Kosovo Liberation Army allegedly committed in [REDACTED].³⁴ However, the Panel is not satisfied that Victim-32/06 has established, on a *prima facie* basis, that the alleged murder of the victim's immediate family member falls within the material scope of the charges, as specified in the Indictment. This is because the alleged direct victim, Victim-32/06's immediate family member, is not among the victims of murder named in Schedule B to the Indictment.³⁵

26. The above determinations are without prejudice to any future ruling on the commission of the charged crimes or amendment of the Indictment.

2. Alleged Harm

27. The Panel is satisfied that Victim-32/06 has *prima facie* suffered harm as a direct result of the alleged crimes described in the Application.³⁶ Victim-32/06, as an immediate family member,³⁷ has personally suffered mental harm (depression and anxiety) as a direct result of the harm purportedly suffered by the direct victim.³⁸ The Panel is however not satisfied that the link between the alleged crimes and the material harm advanced by Victim-32/06 in relation to the family house is established on a *prima facie* basis. The Panel's finding concerning material harm is without prejudice to any future ruling following submission of additional material.

³⁴ See Report, paras 27-29; Updated Application form (9 May 2023) and Supporting Material; Annex 1 to the Report. See also Indictment, paras 64, 101.

³⁵ See generally Indictment, Schedule B.

³⁶ The Panel notes that the description on harm was provided in the first application form and the applicant confirmed to the VPO by e-mail that her claims as regards harm remain unchanged. See Annex 1 to the Report.

³⁷ Victim 32-06 provided supporting documentation of kinship. See Report, para. 33 and SD2 (birth certificate) and SD3 (death certificate of immediate family member). See also Annex 1 to the Report.

³⁸ Report, para. 36; Initial and Updated Application Forms (22 March 2021 and 9 May 2023) and Supporting Documentation; Annex 1 to the Report.

3. Conclusion

28. In light of the above, the Panel finds that there is *prima facie* evidence that Victim-32/06 has suffered mental harm as a result of crimes alleged in the Indictment. Accordingly, the Panel admits Victim-32/06 as participating victim in the proceedings.

C. PROTECTIVE MEASURES

29. The VPO recommends that Victim-32/06 be granted anonymity under Rule 80(4)(e)(i).³⁹

30. The Panel recalls that, in accordance with Rule 113(1), the application form, application summary and supporting documents shall remain strictly confidential and *ex parte*.⁴⁰

31. The Panel further observes that Victim-32/06 already benefits from protective measures vis-à-vis the Parties and the public when the victim's application was first denied by the Pre-Trial Judge.⁴¹ Considering that Victim-32/06's is admitted as participating victim in this decision, the Panel will assess the reasons underpinning the necessity of protective measures anew. In this regard, the Panel recalls that the legal test applicable for protective measures in relation to victims is the same as that applicable in relation to witnesses.⁴²

³⁹ Report, para. 52.

⁴⁰ See F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, para. 28.

⁴¹ See Fourth Decision, para. 73(f).

⁴² F01293, Panel, *Fifth Decision on Victims' Participation* ("Fifth Decision"), 15 February 2023, strictly confidential and *ex parte*, paras 31-36 (a public redacted version was filed on 20 February 2023, F01293/RED). See also *First Framework Decision*, para. 47; *First Decision*, para. 67; F00611, Pre-Trial Judge, *Second Decision on Victims' Participation* ("Second Decision"), 10 December 2021, strictly confidential and *ex parte*, para. 50 (a confidential redacted version and a public redacted version were filed on the same day, F00611/CONF/RED and F0061/RED); F00817, Pre-Trial Judge, *Third Decision on*

32. In assessing the existence of an objectively justifiable risk and the necessity of protective measures for Victim-32/06, the Panel takes into account the same factors it took into account in previous decisions on victims' participation as well as the fact that, by virtue of Victim-32/06's status as a victim participating in the proceedings, Victim-32/06 can be considered especially vulnerable and that the victim's participation can only be secured by granting anonymity.⁴³ For these reasons, the Panel considers that disclosure to the public and the Parties of any material or information leading to the identification of Victim-32/06 poses an objectively justifiable risk to the victim and the victim's family members. Accordingly, the Panel finds that the protective measures ordered by the Pre-Trial Judge in relation to Victim-32/06,⁴⁴ namely withholding of the victim's name and identifying information, remain necessary under Rule 80(1), (4)(a), and (4)(e)(i).

33. As regards proportionality, the Panel observes that the protected measures do not infringe upon the rights of the Accused. The Panel is thus satisfied that the measures are proportionate.

34. In light of the above, the Panel finds that the protective measures in place for Victim-32/06 shall continue to apply.

D. GROUPING AND COMMON LEGAL REPRESENTATION

35. As regards the VPO's recommendation that Victim-32/06 be grouped together with the other victims participating in the proceedings,⁴⁵ the Panel recalls the Pre-Trial Judge's finding that a need to divide applicants into more than one

Victims' Participation ("Third Decision"), 25 May 2022, strictly confidential and *ex parte*, para. 42 (a public redacted version was filed on the same day, F00817/RED).

⁴³ Report, para. 51. *See also* Fifth Decision, paras 32-33, First Decision, paras 68-69; Second Decision, para. 51; Third Decision, para. 43; Fourth Decision, para. 59; Fifth Decision, para. 32.

⁴⁴ Fourth Decision, para. 73(f).

⁴⁵ Report, para. 43.

group arises where the situation or specificity of the victims is so different that their interests are irreconcilable, making common representation impracticable.⁴⁶

36. The Panel observes that Victim-32/06 did not object to being grouped together with victims already assigned to Group 1.⁴⁷ The Panel further observes that Victim-32/06 has suffered from similar forms of harm as a result of similar alleged types of crimes in generally similar circumstances as Group 1 victims. As a result, Victim-32/06 seems to share a common interest of participating in the proceedings and pursuing her rights.

37. Based on these considerations, the Panel finds that Victim-32/06 shall be grouped together with the victims previously admitted, under Group 1.

38. Additionally, although Victim-32/06 named a preferred counsel, she has no expectation of being represented by this counsel going forward.⁴⁸ The VPO sees no reason why Victim-32/06, if admitted, could not be represented together with the other admitted applicants by the assigned Victims' Counsel.⁴⁹ The Panel is satisfied that Victim-32/06 being represented by Victims' Counsel is consistent with the effective guarantee of the rights of the applicant.

39. Based on the same considerations previously set out,⁵⁰ the Panel finds that Victim-32/06 shall be represented by Victims' Counsel assigned to Group 1.

⁴⁶ First Framework Decision, para. 43; First Decision, para. 76. *See also* Second Decision, para. 58; Third Decision, para. 48; Fourth Decision, para. 69; Fifth Decision, para. 41.

⁴⁷ Report, para. 45.

⁴⁸ Report, para. 45.

⁴⁹ Report, para. 46.

⁵⁰ Fifth Decision, para. 45. *See also* First Decision, para. 76; Second Decision, para. 58; Third Decision, para. 48; Fourth Decision, para. 69; First Framework Decision, para. 43.

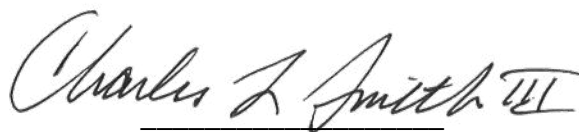
E. PARTICIPATION IN TRIAL PROCEEDINGS

40. Victim-32/06 shall exercise her rights through Victims' Counsel and shall participate through the modalities described in the First Decision and in accordance with the Order on the Conduct of Proceedings.⁵¹

V. DISPOSITION

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

- a. **GRANTS** the Application and admits Victim-32/06 to participate as a victim in the proceedings;
- b. **DECIDES** that Victim-32/06 shall be included in Group 1 for the purpose of common representation and shall be represented by Victims' Counsel for Group 1;
- c. **ORDERS** the continuation of the protective measures in place for Victim-32/06 *vis-à-vis* the public and the Parties; and
- d. **MAINTAINS** the classification strictly confidential and *ex parte* of Victim-32/06's application forms, summary and supporting documentation.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 7 September 2023

At The Hague, The Netherlands.

⁵¹ Fifth Decision, para. 46. *See also* First Decision, paras 82-84, 85(d); F01226/01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, paras 32-36.