

**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:** Dr Fidelma Donlon

**Filing Participant:** Victims' Counsel

**Date:** 14 September 2023

**Language:** English

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**Victims' Counsel's Response to Prosecution request concerning post-testimony  
witness contacts**

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## I. INTRODUCTION

1. Pursuant to Article 22(3) and (6) of the Law on Specialist Chambers and Specialist Prosecutor's Office (Law No. 05/L-053) ("Law"), and Rule 114(4)(a) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), Victims' Counsel files this response to the Prosecution request concerning post-testimony witness contacts ("Prosecution request").<sup>1</sup>
2. Victims' Counsel supports the Prosecution request in order to guarantee the rights and interests of Dual Status witnesses.

## II. CLASSIFICATION

3. This submission is classified as public as it contains no confidential information.

## III. PROCEDURAL HISTORY

4. On 24 June 2022, upon the request of the SPO and following extensive submissions from the Parties and Participants, the Pre-Trial Judge issued the Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant ("Contact Protocol").<sup>2</sup>
5. On 27 December 2022, the Contact Protocol was upheld on Appeal.<sup>3</sup>
6. In its Order on the Conduct of Proceedings, the Trial Panel made clear that "[w]ith respect to the procedure and safeguards applicable to contacts with the opposite

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<sup>1</sup> *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F01765, Prosecution request concerning post-testimony witness contacts, 4 September 2023 ("Prosecution request").

<sup>2</sup> KSC-BC-2020-06/F00854, Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant, 24 June 2022 ("Contact Protocol").

<sup>3</sup> KSC-BC-2020-06/IA024/F00019, Decision on Defence Appeals against 'Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant', 27 December 2022 ("Appeals Decision").

Party's or participant's witnesses, Parties and participants shall abide by the Court of Appeals Panel's Decision of 27 December 2022."<sup>4</sup>

7. On 4 September 2023, the Prosecution filed its request following a question from a Defence team regarding post-testimony contact with a witness.<sup>5</sup>

#### IV. SUBMISSIONS

8. As Victims' Counsel argued in the course of the litigation relating to the Contact Protocol:

There can be no sensible dispute that the VPPs in this case have suffered either directly or indirectly at the hands of the KLA. It takes little imagination to picture the likely effect on the VPPs of receiving direct contact on behalf of such senior KLA figures as the Accused.<sup>6</sup>

9. These concerns do not dissipate on the completion of a witness's testimony.
10. The object and purpose of the Contact Protocol is to address such concerns. As explained by the Pre-Trial judge, the Contact Protocol is intended to avoid re-traumatisation of victims and witnesses, and to safeguard their privacy, dignity, and psychological well-being.<sup>7</sup>
11. The drafting of the Contact Protocol focused on the period "prior" to testimony. Now that the Defence have raised the prospect of making post-testimony contact with witnesses, the Contact Protocol should be amended.
12. There is no basis in logic or practice for limiting it in time to the period prior to testimony. Nor is there any good reason for limiting the application of the Contact Protocol to those who have in fact testified, thereby omitting those whose evidence

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<sup>4</sup> KSC-BC-2020-06/F01226/A01, Annex 1 to the Order on the Conduct of Proceedings, paras 71, 25 January 2023.

<sup>5</sup> Prosecution request, para. 1 and fn 5.

<sup>6</sup> KSC-BC-2020-06/IA024/F00008, Victims' Counsel Response to Defence Appeals against the "Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant", 19 September 2022, para. 50.

<sup>7</sup> Contact Protocol, paras 99-100, 116 *et seq.*

has been received under Rules 153 or 155. Those in the latter category are entitled to the same protection as witnesses who have given oral testimony.

13. Finally, with regard to dual status witnesses and all Victims Participating in the Proceedings, Article 17 of the Code of Professional Conduct continues to apply throughout the proceedings. According to this provision, any communication with a person who is represented by counsel – including Victims’ Counsel – must only take place through that counsel, upon authorisation by the Panel, or when such communication is initiated by the client.

## V. CONCLUSION

14. For all the foregoing reasons, Victims’ Counsel supports the Prosecution’s request that the Contact Protocol should apply to all contacts with Opposing Party Witnesses and invites the Trial Panel to grant it.

**Word count: 721**



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14 September 2023

At The Hague, the Netherlands.