



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: 4 October 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on Victims' Counsel's Request for
Resumption of Action on Behalf of V252/06 by Relatives**

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Counsel for Kadri Veseli

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TRIAL PANEL II (“Panel”), pursuant to Articles 3, 21(2), 22(3) and (6) and 23 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 4(1), 5, 80 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 V252/06’s application to participate as a victim in these proceedings.¹
2. On 8 September 2023, Victims’ Counsel notified the Panel of V252/06’s death, and filed a request to permit three of V252/06’s close relatives to participate as victims in proceedings in V252/06’s stead (“Request”).²
3. No responses to the 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 V252/06.³ Victims’ Counsel asserts that, pursuant to Specialist Chambers’ jurisprudence, relatives are permitted to continue an action initiated by a victim who subsequently dies.⁴ Victims’ Counsel submits that V252/06’s three close relatives should therefore be permitted to participate as victims in the current proceedings on V252/06’s behalf.⁵

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

² F01786, Victims’ Counsel, *Victim’s Counsel’s Request for Resumption of Action on Behalf of V252/06 by Relatives*, 8 September 2023, confidential, with strictly confidential and *ex parte* Annex 1.

³ Request, para. 8.

⁴ Request, para. 9.

⁵ Request, para. 15.

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 in the Rules.⁶

6. However, as the Panel recently held, it is 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.⁷ 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.⁸ 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.⁹ The European Court of Human Rights 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.¹⁰

7. The Pre-Trial Judge has also taken the view in this case that, in order for an

⁶ F01692, Trial Panel, *Decision on Victims' Counsel's Request for Resumption of Action on Behalf of V131/06 by an Immediate Family Member* ("V131/06 Decision"), 21 July 2023, strictly confidential and *ex parte* (a public redacted version was filed the same day, F01692/RED), para. 5; *see also* 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 V131/06 Decision, para. 6.

⁸ *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.

⁹ Second Decision on Victims' Participation, para. 32.

¹⁰ *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. 13274/08, 5 December 2019, 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.

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 victim was a relative or closely-connected individual.¹¹

8. Victims' Counsel has submitted the death certificate of V252/06 as well as the [REDACTED] of the three relatives seeking to continue the action in his stead.¹² V252/06 is identified as [REDACTED].¹³ Each document visibly reflects its official nature based upon its letterhead, layout and official stamps present on the documents. The Panel is satisfied of the authenticity and reliability of the submitted documentation, which establishes V252/06's death and his relationship to the three claimants. The Panel is further satisfied that the three close relatives of V252/06 have individually and collectively a legitimate interest in the case. Accordingly, the Panel finds that Victims' Counsel's submissions satisfy the necessary requirements outlined above for the three close relatives of V252/06 to

¹¹ Second Decision on Victims' Participation, para. 32. See also V131/06 Decision, para. 7; 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.

¹² F01786/A01, *Annex to Victim's Counsel's Request for Resumption of Action on Behalf of V252/06 by relatives* ("Annex to Request"), 8 September 2023, strictly confidential and *ex parte*, pp. 3-7.

¹³ Annex to Request, pp. 5-7.

continue the action as victims.¹⁴

IV. PROTECTIVE MEASURES

9. V252/06's identity is known to the Parties, as V252/06 was a dual status witness.¹⁵ V252/06's successors have expressed concerns for their welfare and that of their families, should their identities be revealed.¹⁶ The Panel notes that the expression of such subjective concerns unsupported by other indications does not normally warrant the granting of protective measures. However, considering the absence of objection on the part of all Parties to such measures being granted and considering that V252/06's close relatives will not testify for the SPO, the Panel is prepared to grant these three individuals' anonymity by using only pseudonyms to refer to them in filings available to the Parties and the public. The Panel finds those measures are not prejudicial to or inconsistent with the rights of the Accused as guaranteed in Article 21 of the Law.

V. DISPOSITION

10. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** the Request, and allows [REDACTED], to continue the action as victims participating in the present proceedings;
- b) **ORDERS** that the pseudonym of V252A/06 be assigned to [REDACTED];
- c) **ORDERS** that the pseudonym of V252B/06 be assigned to [REDACTED];

¹⁴ This determination is without prejudice to the standing that V252/06's representatives may have to claim reparations if a conviction is entered.

¹⁵ See F01676/CONF/A050, Trial Panel, Annex 50 to Notification of Application Forms of Dual Status Witnesses to the Defence Pursuant to F01348, 13 July 2023, confidential; see also F01312/CONF/RED, Victims' Counsel and SPO Second Joint Filing in Compliance with F01293, 9 March 2023, confidential, with Annexes 1 and 2, confidential (providing V252/06's pseudonym as W04825).

¹⁶ Request, para. 17.

and

- d) **ORDERS** that the pseudonym of V252C/06 be assigned to [REDACTED].

A handwritten signature in black ink that reads "Charles L. Smith III". The signature is written in a cursive style with a horizontal line underneath the name.

Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 4 October 2023

At The Hague, the Netherlands.