

Op-ed by KSC Registrar Dr Fidelma Donlon to "Radio KiM" (a Kosovo-based outlet in Serbian), and "Klan Kosova" (a Kosovo-based outlet in Albanian), on 28 August 2021

(English version)

The Voices of Victims are Essential to Justice

The Kosovo Specialist Chambers (KSC) has a mandate to try serious crimes, including war crimes and crimes against humanity. The Law on Specialist Chambers and Specialist Prosecutor's Office ensures that victims have a voice during the trials, and that they can exercise their rights.

Persons who can demonstrate that they have suffered physical, mental or material harm as a direct result of a crime listed in a public indictment confirmed by the KSC, can apply to participate in the proceedings. A victim could also be someone closely related to a direct victim who was killed or injured.

The Victims Participation Office, which informs and assists people who would like to participate in the proceedings as victims is part of the Registry. As Registrar of the Specialist Chambers, the Office also supports me with the very important task of assigning Victims' counsel to represent victims before the court.

I understand that the decision to contribute to the course of justice is an individual one. Together with the Victims' Participation Office, I would like to assure people that every participating victim will be supported and advised throughout the process, and that any safety concerns they may have will be taken seriously.

So how will victims take part in the trials?

To begin with, I should emphasize that a group of victims will participate through a lawyer, called Victims' Counsel, paid for by the court, whose job will be to represent their interests, rights and views, and to keep the victims informed during all stages of the proceedings.

In May this year, I assigned qualified and experienced lawyers to represent the victims so far admitted to participate in the cases of the Specialist Prosecutor v. Salih Mustafa and the Specialist Prosecutor v. Hashim Thaci et al. In each case, I based my decision on a fair selection process, with an open call for expression of interest to join the list of counsel and a selection panel, taking into account the recommendation of the Victims' Participation Office and consultations with victims. My goal is to ensure that the best qualified lawyers are made available to represent victims in the proceedings, taking into account the best interests of all of the members of the group of victims.

In addition to knowing that they will be represented and advised by qualified lawyers, participating victims should also know that our institution is committed to ensuring that the rights of victims provided for in the law are realized in a meaningful way. The Trial Panel in the Salih Mustafa case recently issued a very important decision on the modalities of participation for victims in that trial, which highlights the value and legitimacy of the process.

This decision elaborates how a victim's rights under the KSC law to notification, acknowledgment and reparation will be put into effect in this case, so that victims can contribute meaningfully to the course of justice.

For example, the Judges in the Mustafa case have explained that notification refers to a victim's personal interest and right to receive information about the proceedings before the KSC. Acknowledgment must be understood as the victims' personal interest and right to have the harm they allegedly suffered recognised and, to that end, to contribute meaningfully, through participation, to the recognition of such harm and of the responsibility of those at the origin of it.

Victims' Counsel shall have access to the case file, be present at all hearings, and keep participating victims informed at all times. She can make oral and written submissions to the court on any point of law or fact, question witnesses, present evidence and make observations on the admission of evidence, when the interests of victims are affected.

It may also be interesting for people to know that the Victims' Counsel may ask the judges to allow victims to directly address the court, not as witnesses, but in order to present their views and concerns, "as a way for victims to foster recognition of their harm."

Of course, a victim can only exercise his or her rights if he or she is able to do so safely. I want to assure every participating victim that the KSC takes their well-being, dignity and privacy very seriously through every step of the process. Applications are kept confidential between the Victims' Participation Office and the Judges, and if a victim fears for his or her safety, they may request that their identity be kept confidential. Judges will decide on their requests and may order further protective measures.

Finally, it is important for people to know that victims may still apply to participate in proceedings in three of the cases before the KSC. Information about these cases can be found on our website, along with information on how to apply to participate in the proceedings as a victim and contact information for the Victims' Participation Office. The office stands ready to assist anyone with questions about the application process.

Victims' participation is essential to the delivery of justice and the Registry will continue to do all that is needed to support this process. Reaching victims to inform them about the possibility to participate in the proceedings and how to do so has been a priority of the court since its establishment. It is one of the main focus areas of our robust outreach activities conducted since 2018. As the Registrar, I wish to emphasize my commitment to informing people about victims' participation and supporting victims in applying and participating in a meaningful way.