



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

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Prosecution submissions on First Registry Report on Victims' Applications

Specialist Prosecutor's Office

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1. Pursuant to Rule 113(3) of the Rules¹ and the Framework Decision,² the Specialist Prosecutor's Office ('SPO') files these submissions on the First Report,³ mindful of their permissible scope.⁴ Based on the information available, the current stage of proceedings, and the *prima facie* nature of victim eligibility assessments,⁵ the SPO has no objection to the application and interpretation of the criteria regarding admissibility, common representation, and protective measures in the First Report. In this regard, any request for disclosure⁶ is both premature⁷ and, in any event, contrary to the applicable framework.⁸

2. Finally, the *prima facie* assessment of victim eligibility currently at issue⁹ is distinct from and without prejudice to any consideration of the specific delineation of material facts described in the Indictment or of the merits of the case.¹⁰ As such, submissions

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

² Framework Decision on Victims' Applications, KSC-BC-2020-06/F00159, 4 January 2021 ('Framework Decision'), paras 53, 56(g).

³ First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in Proceedings, KSC-BC-2020-06/F00203, 15 February 2021 (reclassified on 17 February 2021) ('First Report').

⁴ Rule 113(3); Framework Decision, KSC-BC-2020-06/F00159, paras 51-52 (providing that the Parties may make submissions on legal grounds, namely, on the application and interpretation of the criteria for admissibility, common representation, and protective measures).

⁵ Framework Decision, KSC-BC-2020-06/F00159, para.29; First Report, KSC-BC-2020-06/F00203, paras 15-16.

⁶ See Krasniqi Defence Response to the First VPO Report, KSC-BC-2020-06/F00209, 1 March 2021 ('KRASNIQI Defence Submissions'), para.31; Thaçi Defence Response to the First Registry Report on Victims' Applications for Participation in the Proceedings, KSC-BC-2020-06/F00208, 26 February 2021 ('THAÇI Defence Submissions'), para.25.

⁷ First Report, KSC-BC-2020-06/F00203, paras 63-65 (victim eligibility and the scope and modalities of victim participation have yet to be determined). Further, the THAÇI Defence has not demonstrated why applications for any potential victims interviewed by the SPO would be necessary for defence preparations, particularly at this stage of the proceedings where the full scope of witnesses and evidence to be relied upon by the SPO has yet to be disclosed.

⁸ Rule 113(1).

⁹ Framework Decision, KSC-BC-2020-06/F00159, para.29, fn.28 ('as it appears at first sight without investigation').

¹⁰ ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18, Public redacted version of 'Second decision on the admission of victims to participate in trial proceedings', 23 June 2020, para.19; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Second decision on victims' participation in trial proceedings, 16 June 2015, paras 17-18.

concerning, or alleging defects in, the form of the Indictment or the material facts pleaded are irrelevant in this context.¹¹ As set out in the First Report,¹² the Indictment¹³ has clearly defined temporal, geographical, and subject matter parameters, which – along with other requirements – appropriately limit the scope of *prima facie* eligible victims.¹⁴

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Monday, 1 March 2021

At The Hague, the Netherlands.

¹¹ First Report, KSC-BC-2020-06/F00203, paras 25-29; KRASNIQI Defence Submissions, KSC-BC-2020-06/F00209, paras 20-23; THAÇI Defence Submissions, KSC-BC-2020-06/F00208, paras 11-13, 17-18. The THAÇI Defence submissions that the First Report's approach threatens the expeditiousness of the proceedings are speculative and premature. The yet-to-be determined scope and modalities of victim participation can adequately address any risk in this regard, balancing the rights and interests of all parties and participants.

¹² First Report, KSC-BC-2020-06/F00203, paras 24, 30 (considering an act falling within the scope of the indictment to include 'any event that could constitute a crime alleged in the Confirmed Indictment that occurred between March 1998 and September 1999 in the territory of Kosovo and northern Albania').

¹³ Indictment, KSC-BC-2020-06/F00045/A01, 4 November 2020, Strictly Confidential and *Ex Parte* ('Indictment').

¹⁴ Jurisprudence cited by the Defence supports the approach taken in the First Report. *See, for example*, THAÇI Defence Submissions, KSC-BC-2020-06/F00208, fn.18 citing ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08, Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 30 June 2010, para.92 (defining the parameters of the confirmed charges as 'the alleged pillage, murder or rape by the Banyamulengués of Jean-Pierre Bemba in the period between 26 October 2003 and 15 March 2003'). *See also* THAÇI Defence Submissions, KSC-BC-2020-06/F00208, para.10 (referring to a decision in the *Al Bashir* case and stating that the requirement is a link to the forces under the accused's command or crimes of a similar nature to those alleged). The Pre-Trial Judge has previously considered, *inter alia*, whether a victim application concerns events that fall within the temporal and geographical scope of the charges, or whether it relates or may be linked to the accused. *See* First Decision on Victims' Participation, KSC-BC-2020-05/F00075, 10 February 2021, paras 17-18.