

**In:** KSC-BC-2020-06  
**The 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 Counsel for Hashim Thaçi

**Date:** 10 February 2022

**Language:** English

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**Thaçi Defence Response to Fourth Registry Report to the Pre-Trial Judge on  
Victims' Applications for Participation in the Proceedings**

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## I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby responds to the Fourth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings.<sup>1</sup> The Defence supports the recommendations made in the Fourth Report: *i.e.* that the Pre-Trial Judge deny the 16 applications for participation as victims in the proceedings submitted with this Fourth Report.<sup>2</sup>

## II. PROCEDURAL BACKGROUND

2. On 26 October 2020, the Pre-Trial Judge (“PTJ”) confirmed the indictment<sup>3</sup> against Mr Hashim Thaçi (“Accused”) and his co-accused.<sup>4</sup>

3. On 4 January 2021 and 6 July 2021, the Pre-Trial Judge issued two framework decisions establishing the principles governing the admission of victims to participate in the proceedings in the present case.<sup>5</sup>

4. On 15 February 2021 and on 18 June 2021, the Victims’ Participation Office (“VPO”) submitted its first and second reports on victims’ applications for participation in the proceedings to the Pre-Trial Judge.<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-06/F00656, dated 25 January 2022, notified on 31 January 2022 (“Fourth Report”).

<sup>2</sup> *Ibid.*, para. 43.

<sup>3</sup> KSC-BC-2020-06/F00647/A01, ‘Confidential Lesser Redacted Version of ‘Indictment’, KSC-BC-202006/F00455/A01, dated 3 September 2021’, 17 January 2022 (“Indictment”).

<sup>4</sup> KSC-BC-2020-06/F00026/CONF/RED, Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 20 October 2020 (“Confirmation Decision”).

<sup>5</sup> KSC-BC-2020-06/F00159, Framework Decision on Victims’ Applications, 4 January 2021; KSC-BC-2020-06/F00382, Second Framework Decision on Victims’ Applications, 6 July 2021.

<sup>6</sup> KSC-BC-2020-06/F00203, First Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, 15 February 2021; KSC-BC-2020-06/F00360, Second Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, 15 February 2021.

5. On 21 April 2021, the Pre-Trial Judge issued the First Decision on Victims' Participation.<sup>7</sup> On 7 June 2021, an appeal was lodged against this First Decision by six of the applicants who were denied admission as participating victims (the "Denied Applicants").<sup>8</sup>

6. On 16 July 2021, the Panel of the Court of Appeals Chamber issued a decision on the appeal filed by the Denied Applicants; it confirmed in part the First Decision and remanded the matter to the Pre-Trial Judge for further consideration, instructing the Pre-Trial Judge to revert to the Court of Appeals Panel with an individual assessment of the applications filed by the Denied Applicants as well as the reasons underpinning the Pre-Trial Judge's finding that the Denied Applicants are not admitted to the proceedings as participating victims.<sup>9</sup>

7. The VPO submitted its third report on victims' applications for participation in the proceedings on 18 November 2021.<sup>10</sup>

8. On 10 December 2021, the Pre-Trial Judge issued the Second Decision on Victims' Participation, providing, *inter alia*, further reasons for rejecting the Denied Applicants.<sup>11</sup>

9. On 25 January 2022, the VPO issued its Fourth Report. It assessed that "*none of the crimes the applicants allege to be a victim of fall within the parameters of the confirmed charges, as specified in the Corrected Confirmed Indictment*"; and that there was no indication of a causal link between the harm suffered and a crime in the Indictment.<sup>12</sup> It concluded that the applicants have not sufficiently demonstrated, on a *prima facie*

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<sup>7</sup> KSC-BC-2020-06/F00257, First Decision on Victims' Participation, 21 April 2021 ("First Decision").

<sup>8</sup> KSC-BC-2020-06/IA005/F00004/RED, Public Redacted Version of the Appeal against the "First Decision on Victims' Participation" pursuant to Rule 113(6) of the Rules, 7 June 2021.

<sup>9</sup> KSC-BC-2020-06/IA005/F00008, Decision on Appeal Against "First Decision on Victims' Participation", 16 July 2021 ("16 July Decision").

<sup>10</sup> KSC-BC-2020-06/F00572, Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 November 2021.

<sup>11</sup> KSC-BC-2020-06/F00611, Second Decision on Victims' Participation, 10 December 2021.

<sup>12</sup> Fourth Report, paras. 29, 31.

basis, that the events described in their applications fall within the material, geographical and temporal parameters of the confirmed charges, as described in the Indictment, and recommended that the Pre-Trial Judge deny all applications.<sup>13</sup>

10. On 31 January 2022, the Panel of the Court of Appeals Chamber issued its Decision on Deferred Determination on Appeal Against “First Decision on Victims’ Participation”.<sup>14</sup>

### III. APPLICABLE LAW

11. Pursuant to Article 22(1) of the Law,<sup>15</sup> a victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a direct result of a crime within the jurisdiction of the Specialist Chambers.

12. Rule 2 of the Rules of Procedure and Evidence<sup>16</sup> further clarifies that a victim is a natural person who has suffered harm “as a direct result of a **crime alleged in an indictment** confirmed by the Pre-Trial Judge”.<sup>17</sup>

13. Rule 113(1) provides: “after confirmation of the indictment by the Pre-Trial Judge pursuant to Rule 86 and sufficiently in advance of the opening of the case pursuant to Rule 124, a person claiming to be a victim of a crime alleged in the indictment may file an application for admission as a victim participating in the proceedings, specifying how he or she qualifies as a victim and providing the location and date of an alleged crime giving rise to harm”.

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<sup>13</sup> *Ibid.*, para. 43.

<sup>14</sup> KSC-BC-2020-06/IA005/F00009/RED (“31 January Decision”).

<sup>15</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“the Law”).

<sup>16</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

<sup>17</sup> Emphasis added.

14. According to Rule 113(2), the VPO shall register and assess the applications and file them before the Panel together with a recommendation on admissibility and common representation, and submits a confidential report to the Parties, who according to Rule 113(3) may only make submissions on legal grounds regarding admissibility and common representation.

15. Pursuant to Rules 95(2)(i) and 113(4)-(5), in deciding whether a victim may participate in the proceedings, the Pre-Trial Judge shall consider whether the applicant has provided *prima facie* evidence of the harm suffered as a direct result of a crime in the indictment.

16. In its 16 July Decision, the Court of Appeals Panel clarified the meaning of a “crime alleged in the indictment” in the context of Rules 2 and 113(1) of the Rules, which define respectively the notion of victim and that of a victim participating in the proceedings. The Panel rejected the Applicant’s argument that the reference to “a crime alleged in the indictment” must be understood as war crimes and crimes against humanity through, *inter alia*, imprisonment, illegal or arbitrary arrest and detention, persecution, enforced disappearance and murder. The Panel agreed instead with the Pre-Trial Judge that 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.<sup>18</sup>

17. In particular, the Panel clarified that the purpose of having to demonstrate the existence of a “widespread or systematic attack directed against any civilian population”, as required under Article 13(1) of the Law, is to describe the context in which the Accused’s conduct must take place, and not “to create a category of crimes which is distinct or independent from the underlying crimes”.<sup>19</sup> Therefore, according to the Panel,

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<sup>18</sup> 16 July Decision, para. 16, referring to KSC-BC-2020-06/F00257/RED, Public Redacted Version of the First Decision on Victims’ Participation, 21 April 2021, para. 45. See also 31 January Decision, para. 11.

<sup>19</sup> 16 July Decision, para. 20. See also 31 January Decision, para. 19, pursuant to which “the “Indictment Period” clearly refers to the temporal scope of the widespread or systematic attack against a civilian population,<sup>45</sup> and not to the temporal scope of specific charges.”

the existence of the context element alone cannot suffice to justify the status of victims participating in the proceedings.<sup>20</sup>

18. The Panel further rejected the Applicants' argument that the list of crimes identified in the Indictment is not exhaustive.<sup>21</sup> In its 31 January Decision, it clarified that the scope of the charges of imprisonment/arbitrary arrest and detention, murder, enforced disappearance, is limited to the incidents expressly referred to in the Indictment, including in Schedules A, B and C annexed to the Indictment.<sup>22</sup>

19. As noted by the Court of Appeals Panel, "the requirements for victim participation serve to ensure the integrity of particular criminal proceedings, and that the rights of the accused, together with the celerity of the proceedings, are respected."<sup>23</sup>

#### IV. SUBMISSIONS

20. The 16 Applicants claim to be indirect victims of persecution, illegal or arbitrary arrest and detention, enforced disappearance of persons and murder on the territory of Kosovo.<sup>24</sup>

21. Pursuant to the Fourth Report, the Applicants either, *inter alia*:

- Do not know where their family members were taken (Victim-23/06, Victim-30/06 and Victim-31/06, Victim-32/06, Victim-48/06, Victim-49/06, Victim-50/06 and Victim-51/06, Victim-60/06, Victim-61/06 and Victim-62/06);

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<sup>20</sup> 16 July Decision, para. 20.

<sup>21</sup> 16 July Decision, paras. 21-24.

<sup>22</sup> 31 January Decision, paras 15, 23, 27.

<sup>23</sup> 16 July Decision, para. 27; 31 January Decision, para. 30.

<sup>24</sup> Fourth Report, paras 26, 30.

- Do not know by whom their family members were taken (Victim-48/06, Victim-50/06 and Victim-51/06, Victim-60/06, Victim-61/06 and Victim-62/06);
- Allege events outside the temporal scope of the Indictment (Victim-49/06, Victim-52/06); or
- Refer to a detention site not included in the Indictment (Victim-42/06).<sup>25</sup>

22. In these circumstances, and in light of the applicable law as clarified by the Court of Appeals,<sup>26</sup> the Defence submits that the Applicants have not sufficiently demonstrated, on a *prima facie* basis, that the events described in their applications fall within the material, geographical or temporal parameters of the confirmed charges.

23. The Defence therefore concurs with the VPO's recommendation that the Pre-Trial Judge deny each of the applications for participation as victims in the proceedings which were submitted with the Fourth Report.

**[Word count: 1,571]**

Respectfully submitted,



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**Counsel for Hashim Thaçi**

Thursday, 10 February 2022

At Tampa, United States

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<sup>25</sup> *Ibid.*, paras 32-42.

<sup>26</sup> See paras. 11-19 above.