



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 19 April 2024

Language: English

Classification: **Confidential and *Ex Parte***

**Confidential and *Ex Parte* Redacted Version of
"Sixteenth Registry Report on Victims' Applications for Participation in the
Proceedings, with two strictly confidential and *ex parte* Annexes" (F02255)**

Registry

Victims' Participation Office

I. INTRODUCTION

1. The Victims' Participation Office ('VPO') hereby files the Sixteenth Report ('Sixteenth Report') on victims' applications for participation in the proceedings pursuant to Rule 113(2) of the Rules.¹

2. With this Sixteenth Report, the VPO transmits to Trial Panel II ('the Panel') two applications for the status of participating victims in the proceedings and provides a recommendation on admissibility, grouping, common representation and protective measures.

II. PROCEDURAL HISTORY

3. On 18 January 2023, at the trial preparation conference, the Panel set 15 February 2023 as the deadline for the Registry to submit any remaining applications for admission of victims participating in the proceedings.²

4. The Registry filed three additional reports on victims' applications for participation in the proceedings since that time.³

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

² KSC-BC-2020-06, Oral Order setting deadline for applications for admission of victims participating in the proceedings, 18 January 2023, Transcript p. 1902 l. 20 – p. 1903 l. 4. *See also* F01264, Eleventh Registry Report on Victims' Applications in the proceedings, 7 February 2023, public, with strictly confidential and *ex parte* Annexes 1 – 5; F01292, Twelfth Registry Report on Victims' Applications for Participation in the Proceedings, 14 February 2023, public, with one strictly confidential and *ex parte* annex; F01355, Sixth Decision on Victims' Participation, 8 March 2023, strictly confidential and *ex parte* (*see also* F01355/RED, 10 March 2023).

³ F01605, Thirteenth Registry Report on Victims' Applications for Participation in the Proceedings, 14 June 2023, strictly confidential and *ex parte*, with one strictly confidential and *ex parte* annex, (*see also* F01605/CONF/RED, 15 June 2023, public) ('Thirteenth Report'); F01801, Fourteenth Report on Victims' Applications for Participation in the Proceedings, 18 August 2023, strictly confidential and *ex parte*, with ten strictly confidential and *ex parte* annexes (*see also* F01801/RED, 22 August 2023, public); F01850, Resubmission of the Fourteenth Registry Report on Victims' Applications for Participation in the Proceedings with one strictly confidential and *ex parte* Annex, 11 October 2023; F02006, Fifteenth Registry Report on Victims' Applications for Participation in the Proceedings, 14 December 2023, confidential, with one strictly confidential and *ex parte* annex, (*see also* F02006/CONF/RED, 11 January 2024, public).

5. The Panel admitted 10 additional participating victims⁴ and rejected one application as untimely.⁵

III. (RE)SUBMISSION OF APPLICATIONS

A. Victim-296/06

6. On [REDACTED] 2024, the VPO was informed [REDACTED] ('Victim-296/06' or 'the Applicant') wished to apply as a participating victim and needed assistance with the application form. VPO met with the Applicant the following day.

7. According to VPO's internal records, VPO reached out to Victim-296/06 through different avenues in 2022. The VPO made several attempts to reach Victim-296/06 by telephone on the number provided by the Specialist Prosecutor's Office ('SPO') on 16, 25 and 28 February 2022 and again on 3 March 2022. Receiving no answer, VPO also sent a secure Viber message⁶ to the same telephone number on 16 February 2022. VPO received a message in response on 21 March 2022 also via Viber, in which the respondent indicated they did not want to apply to participate as a victim in the proceedings. The VPO has no means of confirming who sent the message, and the message itself is no longer available.⁷

8. When meeting with Victim-296/06, the VPO inquired about the above-mentioned communications. Victim-296/06 stated that they were never contacted and

⁴ F01774, Seventh Decision on Victims' Participation, 7 September 2023, strictly confidential and *ex parte* (see also F01774/RED, 11 September 2023) ('Seventh Decision'); F02071, Decision on Resubmission of the Fourteenth Registry Report on Victims' Applications for Participation in the Proceedings, 22 January 2024, strictly confidential and *ex parte* (see also F02071/CONF/RED).

⁵ F02114, Decision on the Fifteenth Registry Report on Victims' Applications for Participation in the Proceedings, 8 February 2024, confidential (see also F02114/RED).

⁶ The standard message sent by VPO in such instances is that the VPO had been informed that the individual was interested in applying as a participating victim in the proceedings, and that the VPO had been attempting to reach them to provide more information and assist them with the application. Further, the message indicates that if they were still interested in applying, they could call VPO or indicate a suitable time for VPO to get in touch.

⁷ Message history was not retained when the device was upgraded.

that they certainly did not send such a message. If the VPO received such a message, the Applicant indicated it must have been sent by someone else.

9. The VPO explained the application process and indicated that the deadline for the submission of applications had passed. Victim-296/06 stated that they were not aware that there was a deadline. In particular, given that the trial is still ongoing and as the incident concerning them is mentioned in the indictment, the Applicant assumed that they could apply at any time. Victim-296/06 also mentioned that they consulted a local lawyer about a year ago, who advised that the Applicant qualified as a victim and could apply for compensation. The Applicant wanted this lawyer to represent them, but did not proceed in this regard as they believed that it would be too expensive.

10. The VPO recalled the procedural rules regarding the deadline for applying to participate in the proceedings, and assisted Victim-296/06 with completing the application form.

11. Despite VPO's efforts in 2022 to contact the Applicant, direct contact was not possible, and VPO cannot verify whether the Applicant themselves received and responded to its message. The Applicant, a lay person, was not aware of the deadline to apply to participate as a victim in the proceedings and did not ultimately retain a lawyer to assist. VPO therefore submits it would be in the interest of justice, and would protect the rights of victims, to have Victim-296/06's application considered, despite being submitted after the deadline set by the Panel.

B. Victim-24/06

12. On 22 July 2022, the VPO submitted the Fifth Report on Victims' Applications for Participation in the Proceedings, including the application of Victim-24/06.⁸ The VPO notes that the first application of Victim-24/06 was received on 3 March 2021. The

⁸ F00894, Fifth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 22 July 2022, public, with confidential and *ex parte* Annexes 1-26 ('Fifth Report'). See also F00894/A23, Annex 23 to the Fifth Report, strictly confidential and *ex parte*.

VPO reviewed the application and engaged with Victim-24/06 to obtain additional information, including a complete application form. Victim-24/06 stated they did not have all the requested information. Based on the available information, the VPO assessed at that time that the application fell outside of the scope of the charges in the indictment and recommended to the Pre-Trial Judge not to admit the applicant as a participating victim.⁹

13. On 12 December 2022, the Pre-Trial Judge issued the Fourth Decision on Victims' Participation, rejecting the application of several victim applicants, including that of Victim-24/06, as inadmissible.¹⁰

14. On 11 February 2023, Counsel for Victim-24/06 appealed the Fourth Decision on Victims' Participation ('Appeal').¹¹ In the Appeal, Counsel argued that since the application was submitted in 2021, Victim-24/06 and Counsel had learned of and identified certain new information that established sufficient evidence for a *prima facie* finding that the detention of the direct victim related to Victim-24/06 fell within the scope of the indictment.¹²

15. On 26 April 2023, a Panel of the Court of Appeals Chamber ('Appeals Panel') issued its Decision on Appeals Against "Fourth Decision on Victims' Participation" ('Appeals Decision').¹³ With regard to Victim-24/06, the Appeals Panel denied the appeal, finding *inter alia* it could not consider information or material which was not before the Pre-Trial Judge in the Fourth Decision.¹⁴ However, the Appeals Panel indicated that should a denied applicant wish to present new information, which was not known to or in the possession of the applicant at the time of the initial application,

⁹ Fifth Report, paras 52, 57; *See also* F00894/A023 'Note on admissibility'.

¹⁰ F01152, Fourth Decision on Victims' Participation, 12 December 2022, strictly confidential and *ex parte* (*see also* F01152/RED, 14 December 2022) ('Fourth Decision').

¹¹ IA026, F00006, Appeal of Victim-24/06 against the 'Fourth Decision on Victims' Participation' pursuant to Rule 113(6) of the Rules, 13 February 2023, strictly confidential and *ex parte* (*see also* F00006/RED).

¹² Appeal, paras 4-10; *see also* Appeals Decision, para. 10.

¹³ IA026, F00011, Decision on Appeals Against "Fourth Decision on Victims' Participation", 26 April 2023, strictly confidential and *ex parte* (*see also* F00011/RED).

¹⁴ *Id.*, para. 17.

and warranting a new consideration of their request for admission to the proceedings, they could resubmit their application through the VPO before the Trial Panel, to be reassessed in light of the new information.¹⁵ The Appeals Panel noted that while the deadline set by the Trial Panel for applications for victims to participate in these proceedings had passed, to protect the personal interests and rights of victims, a Panel may accept any resubmitted applications from previously denied applicants.¹⁶

16. On 14 June 2023, after speaking to Victim-24/06 on two occasions, the VPO submitted the Thirteenth Report, informing the Panel *inter alia* that Victim-24/06 did not wish to re-apply to participate in the proceedings.¹⁷

17. Following the Appeals Panel's guidance, in the Seventh Decision on the Thirteenth Report, the Panel recognised additional information submitted by a previously denied applicant as validly filed, and decided to assess their application anew.¹⁸

18. On 8 March 2024, Victim-24/06 first reached out to the Counsel who filed the Appeal, and then to the VPO. Victim-24/06 said that they had changed their mind and wished to re-apply. The VPO informed them that the deadline for applications had passed and that in case they decided to re-apply, they should submit a new application form and provide reasons as to why they did not re-apply following the Appeals Decision, and wished to do so now.

19. On 22 March 2024, Victim-24/06 submitted a new application form and provided additional information.¹⁹ Victim-24/06 shared with the VPO that they have been faced with intimidation from their community, and pressure from their family not to apply, in case of the latter due to fear of potential repercussions. For reasons detailed in Annex 2, after the Appeals Decision, Victim-24/06 worried their application before the Specialist Chambers had been disclosed, leading to increased fear that prevented them

¹⁵ *Id.*, paras 18, 30.

¹⁶ *Id.*, para. 31.

¹⁷ Thirteenth Report, para. 9.

¹⁸ Seventh Decision, paras 14, 20.

¹⁹ *See* Annex 2, strictly confidential and *ex parte*.

from taking further action regarding participating in the proceedings.²⁰ Already in 2021, Victim-24/06 could not print/scan the application form because it bore the logo of the Specialist Chambers.²¹

20. In line with the Appeals Panel's guidance, the VPO notes that Victim-24/06 had indeed obtained relevant new information, not available to them at the time of submitting their first application. In light of this information, the VPO assesses that the present application meets the criteria for resubmission of the application.

21. The VPO is mindful of the fact that the timeline set for transmission of victim applications has expired and that Victim-24/06 had the opportunity to re-apply after the Decision on Appeal was issued, but decided not to. However, the VPO submits that in view of the particular circumstances of this case, and the reasons provided by Victim-24/06, it would be in the interest of justice, and would protect the rights of victims, to have Victim-24/06's application considered, despite being submitted after the deadline set by the Panel.

IV. ASSESSMENT OF APPLICATIONS

22. The VPO has assessed the formal completeness of the application forms and the content of the applications in light of the requirements stemming from the definition of a participating victim under Article 22(1) of the Law²² and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

23. In assessing the completeness of the application, the VPO reviewed the applications against the criteria listed in the Framework Decision²³ and applied

²⁰ Id.

²¹ Id.

²² Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

²³ F00159, Framework Decision on Victims' Applications, 4 January 2021, public ('Framework Decision'), para. 22.

additional guidance provided by the Pre-Trial Judge in the First Decision²⁴ and the Second Framework Decision.²⁵

24. As regards Victim-24/06, the VPO notes they only submitted an amended and duly signed application form, since all other supporting documents had already been submitted with the first application sent in 2021 and subsequently in the context of the Appeal. One additional supporting document was added by the VPO to the folder of Victim-24/06 in Legal Workflow.²⁶

25. The VPO notes that both applications submitted with this Sixteenth Report can be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

26. In assessing the applications and making its recommendation in this Sixteenth Report, the VPO applied the *prima facie* standard²⁷ for all requirements, as well as any supporting documentation.

2. Criteria of Admissibility

27. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,²⁸ following the guidelines and requirements set out in the Framework Decision.²⁹ The VPO also took into consideration the findings

²⁴ F00257, First Decision on Victims' Participation, 21 April 2021, confidential (*see also* F00257/RED) ('First Decision'), paras 34-35.

²⁵ F00382, Second Framework Decision on Victims' Applications, 6 July 2021, public ('Second Framework Decision'), para. 19.

²⁶ *See* Supporting Document ('SD') 4 in Legal Workflow. SD4 is a public document available in English on the internet.

²⁷ Rule 113(4) of the Rules. *See* Framework Decision, para. 29 ("the Pre-Trial Judge reviews the submitted information and supporting material on a case-by-case basis, taking into account: (i) all relevant circumstances as apparent at first sight; and (ii) the intrinsic coherence of the application"); First Decision, para. 43.

²⁸ F00203, First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 15 February 2021, public, with confidential and *ex parte* Annexes 1-19 ('First Report'), paras 17-20.

²⁹ Framework Decision, paras 31, 35-37.

of the First Decision³⁰ and the Second Decision³¹, issued by the Pre-Trial Judge and the Fifth Decision³² and Sixth Decision³³ issued by the Panel. Consequently, the VPO's assessment and recommendation to the Panel is based on the following requirements:

(a) Natural person

28. The VPO notes that the applications do not raise questions regarding the requirement for an applicant to be a "natural person". The applicants submitted a valid passport/ID card.

(b) Alleged crimes and general description of the applications

29. The VPO assessed whether the acts described in the applications appear to constitute alleged crimes within the scope of the Confirmed Amended Indictment³⁴ and evaluated whether the alleged events have taken place within the geographical and temporal scope of the indictment, thus in Kosovo and areas of northern Albania between March 1998 and September 1999.³⁵

30. Victim-296/06 claims to be an indirect victim of unlawful detention of an immediate family member by the KLA in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period.

31. Victim-24/06 claims to be an indirect victim of unlawful arrest/detention and enforced disappearance of an immediate family member by the KLA in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period.

³⁰ First Decision, paras 44-45, 51-55.

³¹ F00611, Second Decision on Victims' Participation, 10 December 2021, strictly confidential and *ex parte* (see also F00611/CONF/RED and F00611/RED) ('Second Decision'), paras 36, 44, 62-68.

³² F01293, Fifth Decision on Victims' Participation, 15 February 2023, strictly confidential and *ex parte* (see also F01293/RED, 20 February 2023) ('Fifth Decision'), paras 10-12.

³³ F01355, Sixth Decision on Victims' Participation, 8 March 2023, strictly confidential and *ex parte* (see also F01355/RED, 8 March 2023) ('Sixth Decision'), paras 8-9.

³⁴ F00999, Submission of Confirmed Amended Indictment, 30 September 2022, public, with strictly confidential and *ex parte* Annex 1, confidential Annex 2, and public Annex 3 ('Confirmed Amended Indictment').

³⁵ *Id.*, para. 16.

32. The crimes that the applicants claim to be a victim of fall within the material, temporal, and geographical parameters of the charges, as specified in the Confirmed Amended Indictment.³⁶

(c) Harm and Direct result

33. As regards evidentiary material, the VPO followed the findings of the First Decision³⁷ and the Second Framework Decision.³⁸

34. The VPO assessed the two types of harm alleged, namely mental and material harm. The VPO further assessed whether there is *prima facie* evidence of a causal link between harm and crime.³⁹

35. Regarding the requirement that harm has to be suffered *personally*, the applicants can be considered indirect victims. They claim to have suffered mental and material harm as a consequence of the alleged crimes. They both provided supporting documentation of kinship, but are not in possession of any documentation on harm. In terms of the latter, the VPO did not consider the applications to be incomplete on this ground.⁴⁰

36. The VPO assessed whether the applicants have sufficiently established that the harm they claim to have suffered arises from the harm suffered by the direct victims and whether the harm is a result of a personal relationship with the direct victims.⁴¹ In terms of harm suffered by indirect victims, emotional suffering (such as grief, sorrow, bereavement and distress) caused to an indirect victim as a result of the death or grave injury of a direct victim is presumed, provided that the close relationship between them is sufficiently established.⁴²

³⁶ Framework Decision, para. 32; First Decision, para. 45, Second Decision, para. 44.

³⁷ First Decision, para. 35.

³⁸ Second Framework Decision, para. 20.

³⁹ Framework Decision, para. 39; *see also* First Decision, para. 55. More details on meeting the criteria of the “direct result” requirement can be found in the description of the events in the application forms and the application summaries annexed to this report.

⁴⁰ Second Decision, fn. 28.

⁴¹ Framework Decision, para. 34.

⁴² First Decision, para. 53.

37. In the First Decision, the Pre-Trial Judge noted that immediate family members (spouse, parents, children, siblings) are presumed to be in a close relationship with a direct victim.⁴³ This approach was also applied by the Panel in the Fifth Decision on Victims' Participation.⁴⁴

38. The applicants are immediate family members of direct victims, and therefore meet *prima facie* the necessary requirement as to the mental harm suffered, as well as with regards to the relationship with the direct victim.

39. With regard to evidence of a causal link between harm and crime, VPO assesses the applicants meet this requirement, on a *prima facie* basis, at least for one type of harm alleged.

C. RECOMMENDATION ON ADMISSIBILITY

40. Should the Panel consider the applications on their merits, the VPO recommends to the Panel to admit both applicants as participating victims.

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

41. In making its recommendation to the Panel on grouping, the VPO considered the criteria set out in Rule 113(8) of the Rules by assessing the individual circumstances of the applicants and the composition of the group as a whole. The VPO has followed the guidelines set out by the Pre-Trial Judge in the Framework Decision,⁴⁵ as echoed in the First Decision.⁴⁶ Pursuant to the Framework Decision, the need to divide applicants into more than one group arises when "the situation or the specificity of the victims is so different that their interests are irreconcilable, making their common representation impracticable".⁴⁷

⁴³ Id., para. 55; *see also* Second Decision, para. 45(c).

⁴⁴ Fifth Decision, para. 20(b), fn. 51.

⁴⁵ Framework Decision, para. 43.

⁴⁶ First Decision, paras 73-77.

⁴⁷ Framework Decision, para. 43; *see also* First Decision, para.76.

42. With regard to the individual circumstances of the applications presented in this Sixteenth Report, the VPO assesses that the situation or specificity of the victims in Group 1 and the one referenced in the present report is not so different that their interests would be irreconcilable.⁴⁸

43. Consequently, after analysing the individual circumstances of the applicants, as well as the particularities of the group of victims admitted to participate in the proceedings as a whole, the VPO recommends to the Panel to group the applicants, if admitted, together with the already admitted victims participating in the proceedings and that they be jointly represented as one group (Group 1).⁴⁹

B. COMMON LEGAL REPRESENTATION

44. The applicants did not indicate any preferences with regard to legal representation.

45. The VPO submits that there appears to be no reason for which the applicants, if admitted, could not be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.⁵⁰

VI. PROTECTIVE MEASURES

46. Victim-24/06 requested non-disclosure of identifying information to the public and the Accused.

47. In making its recommendation on protective measures, the VPO has taken into consideration the recommendation already made for Victim-24/06 in the Fifth Report⁵¹ based on the legal test, as instructed by the Pre-Trial Judge in the Framework

⁴⁸ Id.

⁴⁹ First Decision, para. 77; see also Fifth Decision, paras 42-43.

⁵⁰ F00282, Notification of Assignment of Victims' Counsel to Group 1 of Victims Participating in the Proceedings, 7 May 2021, public, with one confidential and *ex parte* Annex.

⁵¹ See Fifth Report, para. 72.

Decision.⁵² In the Fourth Decision, the Pre-Trial Judge ordered that the name and any identifying information of Victim-24/06 be withheld from the Parties and the public.⁵³

48. The VPO assesses that the circumstances for Victim-24/06 as regards the need for protective measures have not changed and therefore recommends to the Panel to maintain the already granted protective measures.⁵⁴

49. Victim-296/06 requested non-disclosure of any identifying information to the public.

50. The VPO reiterates that Victim-296/06 is [REDACTED].⁵⁵ [REDACTED].⁵⁶ [REDACTED].

51. If admitted, the VPO recommends to the Panel to [REDACTED] grant non-disclosure of any identifying information to the public.⁵⁷

52. The VPO considers that the above-requested protective measures are strictly necessary, appropriate, and proportionate at this stage of the proceedings.⁵⁸

C. CLASSIFICATION

53. This filing is submitted as confidential and *ex parte* as it contains [REDACTED]. The VPO will file a confidential and *ex parte* redacted version of this Sixteenth Report, in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the redacted version of the Sixteenth Report so that it can be disclosed to the Parties, as it contains no identifying information of the applicants.⁵⁹ In the event that the Panel decides to re-classify the redacted version of the Report, it may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules. The VPO will thereafter also file a public redacted version of the Report.

⁵² Framework Decision, paras 47-49.

⁵³ Fourth Decision, paras 63 – 64.

⁵⁴ Fifth Decision, para. 36; *see also* First Decision, para. 70; Second Decision, para. 52.

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

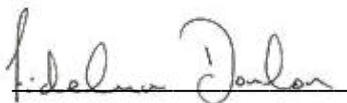
⁵⁸ Framework Decision, para. 47.

⁵⁹ Framework Decision, para. 50.

54. Together with this Sixteenth Report, the VPO submits two strictly confidential and *ex parte* Annexes, containing a summary of the individual applications prepared by the VPO. The Annexes do contain identifying information of the applicants and are therefore filed as strictly confidential and *ex parte* pursuant to Rule 113(2) and Rule 82(1) of the Rules.⁶⁰

55. The application forms and supporting documentation have been disclosed only to the Panel through Legal Workflow ('LW') in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.⁶¹ The documents for Victim-24/06 have been added to the already existing file.⁶²

Word count: 4024



Dr Fidelma Donlon
Registrar

Friday, 19 April 2024

At The Hague, the Netherlands.

⁶⁰ First Decision, para. 66.

⁶¹ Framework Decision, para. 25; *see also* First Decision, para. 64.

⁶² Victim-24/06 was disclosed in LW in Group B – *see* Fifth Report.