



In: KSC-BC-2020-06

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: 27 December 2024

Language: English

File Name: The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi and Jakup Krasniqi

Classification: Confidential and *Ex Parte*

**Confidential and *Ex Parte* Redacted Version of "Eighteenth Registry Report on
Victims' Applications for Participation in the Proceedings" (F02813)**

with five strictly confidential and *ex parte* Annexes

Registry

Victims' Participation Office

I. INTRODUCTION

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

2. With this Eighteenth Report, the VPO transmits to Trial Panel II ('the Panel') four applications for the status of participating victim 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 five 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); 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, 11 October 2023, strictly confidential and *ex parte*, with one strictly confidential and *ex parte* Annex (*see also* F01850/CONF/RED, 27 October 2023, confidential; F01850/RED, 26 January 2024, public)('Resubmission of Fourteenth Report'); 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); F02255, Sixteenth Registry Report on Victims' Applications for Participation in the Proceedings, 22 April 2024, confidential, with two strictly confidential and *ex parte* annexes, (*see also* F02255/CONF/RED, 22 April 2024, public); F02575, Seventeenth Registry Report on Victims' Applications for Participation in the

5. The Panel admitted 13 additional participating victims⁴ and rejected one application as untimely.⁵

III. SUBMISSION OF APPLICATIONS

A. Victim-298/06

6. On 8 October 2024, the VPO received the application from Victim-298/06, which was sent by post. Given the content of the application,⁶ the VPO proceeded with processing the application, without providing further information to the applicant as regards the application process and the applicable deadline.

B. Victim-299/06 and Victim-300/06

7. On 28 October 2024, the VPO was informed [REDACTED] that [REDACTED] Victim-299/06 [REDACTED]⁷ wished to apply as a participating victim and needed assistance with the application form. VPO met with Victim-299/06 the following day.

8. The VPO explained the application process and indicated that the deadline for the submission of applications had passed. Victim-299/06 stated that [REDACTED] and do not have much access to information. They had heard other people mention the possibility to participate as a victim, but did not really understand what this means [REDACTED].

Proceedings, 13 September 2024, confidential and *ex parte*, with one strictly confidential and *ex parte* Annex, (see also F02575/CONF/RED, 290 September 2024, public).

⁴ F01774, Seventh Decision on Victims' Participation, 7 September 2023, strictly confidential and *ex parte* (see also F01774/RED, 11 September 2023); 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); F02439, Decision on the Sixteenth Registry Report on Victims' Applications for Participation in the Proceedings, 10 July 2024, confidential ('Decision on the Sixteenth Registry Report') (see also F02439/RED); Decision on Seventeenth Registry Report on Victims' Applications for Participation in the Proceedings, 16 December 2024, confidential (see also F02786/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 See further para. 28 below.

⁷ [REDACTED].

9. On 2 December 2024, the VPO was informed [REDACTED] that Victim-300/06 [REDACTED],⁸ wished to apply as a participating victim and needed assistance with the application form. VPO met with Victim-300/06 the following day.

10. The VPO informed Victim-300/06 that the deadline for submission of applications had passed and inquired why they had not applied sooner. Victim-300/06 stated that about four years ago, [REDACTED] about the possibility of applying as a victim in the proceedings, but they did not do so out of concerns for their safety. Victim-300/06 claimed that when they inquired [REDACTED] whether their identity would be protected in the process, should they apply, they never received a response. The VPO proceeded by explaining the application process, including the possibility of requesting protective measures. Following the information received, Victim-300/06 decided to complete the application form.

11. [REDACTED]. [REDACTED].⁹ [REDACTED].¹⁰

12. The VPO was unaware that Victim-299/06 and Victim-300/06 were interested in applying to participate as victims, did not have their contact and thus could not provide them with the relevant information before the expiration of the deadline. Therefore, through no fault of their own, the two applicants were unable to apply to participate in the proceedings within the deadline set by the Panel, due to an internal oversight. This is extremely regrettable, and the VPO emphasizes that the responsibility for this oversight does not lie with the applicants, [REDACTED].¹¹

C. Victim-301/06

13. Similarly, the VPO was also not aware that Victim-301/06 was interested in applying to participate as a victim.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

14. On 27 November 2024, [REDACTED] informed VPO that [REDACTED],¹² Victim-301/06, was interested in applying and would need VPO's assistance in this regard. [REDACTED]. [REDACTED].¹³

15. The VPO contacted Victim-301/06, explained the application process and indicated that the deadline for the submission of applications had passed. Victim-301/06 indicated a wish to apply nonetheless, and submitted their application a few days later via e-mail and Viber. The VPO notes that in deciding whether good cause has been shown to consider this application, the circumstances regarding [REDACTED] also need to be taken into account. More specifically, the VPO recalls that [REDACTED].¹⁴ [REDACTED].

16. The VPO submits that the applicants, lay persons, were not aware of the deadline to apply to participate as a victim in the proceedings.

17. Consistent with the Panel's prior approach,¹⁵ the VPO submits that good cause exists for considering the applications of Victim-299/06, Victim-300/06 and Victim-301/06, and that it would be in the interest of justice and would protect the rights of victims to do so, despite the applications being submitted after the deadline set by the Panel.

IV. ASSESSMENT OF APPLICATIONS

18. 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 Law¹⁶ and Rule 113(1) of the Rules.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ Decision on the Sixteenth Registry Report, para. 10.

¹⁶ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

A. COMPLETENESS OF APPLICATION FORMS

19. In assessing the completeness of the applications, the VPO reviewed the applications against the criteria listed in the Framework Decision¹⁷ and applied additional guidance provided by the Pre-Trial Judge in the First Decision¹⁸ and the Second Framework Decision.¹⁹

20. The VPO notes that the applications submitted with this Eighteenth Report can be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

21. In assessing the applications and making its recommendation in this Eighteenth Report, the VPO applied the *prima facie* standard²⁰ for all requirements, as well as any supporting documentation.

2. Criteria of Admissibility

22. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,²¹ following the guidelines and requirements set out in the Framework Decision.²² The VPO also took into consideration the findings of the First Decision²³ and the Second Decision²⁴ issued by the Pre-Trial Judge, and the

¹⁷ Framework Decision, para. 22.

¹⁸ F00257, First Decision on Victims' Participation, 21 April 2021, confidential (*see also* F00257/RED) ('First Decision'), paras 34-35.

¹⁹ Second Framework Decision, para. 19.

²⁰ 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.

²¹ 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.

²² Framework Decision, paras 31, 35-37.

²³ First Decision, paras 44-45, 51-55.

²⁴ 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.

Fifth Decision²⁵ and Sixth Decision²⁶ issued by the Panel. Consequently, the VPO's assessment and recommendation to the Panel is based on the following requirements:

(a) Natural person

23. The VPO notes that the applications do not raise questions regarding the requirement for an applicant to be a "natural person". The applicants submitted copies of valid passports.

(b) Alleged crimes and general description of the applications

24. The VPO assessed whether the acts described in the applications appear to constitute alleged crimes within the scope of the Confirmed Amended Indictment²⁷ 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 1999.²⁸

25. Victim-299/06 and Victim-300/06 claim to be direct victims of unlawful detention and cruel treatment by the KLA in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period.

26. Victim-301/06 claims to be an indirect victim of kidnapping, torture, unlawful detention and cruel treatment by the KLA of an immediate family member in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period. Victim-301/06 also claims to be direct victim of ill-treatment by the KLA, at the time the immediate family member had been unlawfully detained.

²⁵ 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.

²⁶ 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.

²⁷ 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').

²⁸ *Id.*, para. 16.

27. The crimes that Victim-299/06 and Victim-300/06 claim to be a victim of fall within the material, temporal, and geographical parameters of the charges, as specified in the Confirmed Amended Indictment.²⁹ As for Victim-301/06, the crimes they claim to be an indirect victim of fall within the material, temporal, and geographical parameters of the charges, as specified in the Confirmed Amended Indictment, while the crimes they claim to be a direct victim of, do not appear to.

28. Victim-298/06 claims to be a direct victim of a terrorist organisation that is responsible for the war crimes in Kosovo, and that has been using black magic and hypnosis against them. VPO assesses that the crimes that Victim-298/06 claims to be a victim of do not fall under the parameters of the charges, as specified in the Confirmed Amended Indictment.³⁰

(c) Harm and Direct result

29. As regards evidentiary material, the VPO followed the findings of the First Decision³¹ and the Second Framework Decision.³²

30. Regarding the requirement that harm has to be suffered *personally*, Victim-299/06 and Victim-300/06 can be considered as direct victims, while Victim-301/06 can be considered as an indirect victim.

31. Victim-299/06 claims to have suffered mental harm as a result of unlawful detention and cruel treatment, as described in the application form.

32. Victim-300/06 claims to have suffered physical, mental and material harm as a result of the unlawful detention and cruel treatment, as described in the application form.

²⁹ Framework Decision, para. 32; First Decision, para. 45, Second Decision, para. 44.

³⁰ See Second Decision, paras 30, 62-68.

³¹ First Decision, para. 35.

³² Second Framework Decision, para. 20.

33. For the direct victims, the VPO assessed whether the types of harm have been described sufficiently in detail and are a consequence of the alleged crimes as well as whether there is *prima facie* evidence of a causal link between harm and crime.³³

34. With regard to evidence of a causal link between harm and crime, VPO assesses Victim-299/06 and Victim-300/06 meet this requirement, on a *prima facie* basis, for the harm alleged.

35. As an indirect victim, Victim-301/06 claims to have suffered mental harm as a result of unlawful detention and cruel treatment of an immediate family member. They provided supporting documentation of kinship.

36. 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. This approach was also applied by the Panel in the Fifth Decision on Victims' Participation.³⁴

37. In light of this approach, the VPO assesses that as Victim-301/06 is an immediate family member of a direct victim, they therefore meet *prima facie* the necessary requirement for the mental harm suffered.³⁵

38. Finally, given that the application of Victim-298/06 falls manifestly outside of the material scope of the charges as specified in the Confirmed Amended Indictment, the VPO did not assess the alleged harm and the causal link between harm and crime. Likewise, VPO did not assess the alleged crime and the causal link between harm and crime insofar as they relate to the claims of Victim-301/06 as to the harm suffered as a direct victim.

³³ 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 form and the application summary annexed to this report.

³⁴ Fifth Decision, para. 20(b), fn 51.

³⁵ Framework Decision, para. 34; First Decision, para. 53; First Decision, para. 55; *see also* Second Decision, para. 45(c)

C. RECOMMENDATION ON ADMISSIBILITY

Should the Panel consider the applications on their merits, the VPO recommends to the Panel to:

- (i) admit Victim-299/06 Victim-300/06 and Victim-301/06 as a participating victim (Group A); and
- (ii) deny the application of Victim-298/06 (Group B).

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

39. 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 Victim-299/06, Victim-300/06 and Victim-301/06 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,³⁶ as echoed in the First Decision.³⁷ 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”.³⁸

40. The VPO has also considered the general observations and jurisprudence outlined in the Supplement and Second Supplement to the First Report, which included a detailed analysis of grouping for the purposes of common representation.³⁹

41. As outlined in the Second Supplement, Group 1 currently includes participating victims of different ethnicities, who reside in different areas, and speak different

³⁶ Framework Decision, para. 43.

³⁷ First Decision, paras 73-77.

³⁸ Framework Decision, para. 43; *see also* First Decision, para.76.

³⁹ F00241, Supplement to First Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings with Recommendation on Grouping, 1 April 2021, public, with one confidential and ex parte Annex (‘Supplement’), paras 13-29; F00347, Second Supplement to First Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, with one strictly confidential and ex parte Annex, 11 June 2021 (‘Second Supplement’), paras 46-50.

languages. Both the direct and indirect participating victims in Group 1 were allegedly subjected to similar crimes at the hands of the same group of perpetrators, have suffered similar forms of harm, and they all share an interest in participating in the proceedings and pursuing their rights.⁴⁰

42. With regard to the individual circumstances of Victim-299/06, Victim-300/06 and Victim-301/06 the VPO assesses that the situation or specificity of the victims in Group 1 and the three applicants is not so different that their interests would be irreconcilable.⁴¹

43. Consequently, after analysing the individual circumstances of Victim-299/06 Victim-300/06, Victim-301/06 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 them, if admitted, together with the already admitted victims participating in the proceedings and that they be jointly represented as one group (Group 1).⁴²

44. Given the recommendation on admissibility regarding Victim-298/06, VPO does not make a recommendation on grouping and common legal representation for this applicant.

B. COMMON LEGAL REPRESENTATION

45. Victim-299/06 and Victim-300/06 did not indicate any preferences with regard to legal representation. Victim-301/06 indicated that they would like to be represented by the already assigned Victims' Counsel in the case.

46. The VPO submits that there appears to be no reason for which, if admitted, the three applicants could not be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.⁴³

⁴⁰ Second Supplement, para. 49.

⁴¹ *Id.*

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

⁴³ 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.

VI. PROTECTIVE MEASURES

47. Victim-299/06 did not request any protective measures and stated that they do not have any issues with their name being known to the public.

48. [REDACTED].⁴⁴ [REDACTED].⁴⁵ [REDACTED]. [REDACTED].⁴⁶

49. [REDACTED], the VPO recommends the Panel to take the same approach as with other participating victims, namely, to grant non-disclosure to the public of any identifying information as regards the applicant's status as a participating victim.

50. Victim-300/06 requested non-disclosure of identifying information to the public, the Defence Counsel and the Accused.

51. [REDACTED].⁴⁷ [REDACTED].⁴⁸ [REDACTED].

52. Therefore, if admitted, the VPO recommends to the Panel to [REDACTED], and granting non-disclosure of any identifying information to the public.⁴⁹

53. Victim-301/06 requested non-disclosure of identifying information to the public. The VPO recommends to the Panel to follow the approach taken thus far and grant anonymity under Rule 80(4)(e)(i) of the Rules.⁵⁰

54. As regards, Victim-298/06, the VPO notes that they did not request any protective measures. Nevertheless, should the Panel deny Victim-298/06's application, the VPO recommends the Panel to take the same approach followed thus far, and order that the names and any identifying information of denied applicants be withheld from the Parties and the public.⁵¹

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

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ Fifth Decision, para. 36; *see also* First Decision, para. 70; Second Decision, para. 52.

⁵¹ First Decision, para. 72; Second Decision, para. 56.

VII. CLASSIFICATION

56. The VPO files this Eighteenth Report as confidential and *ex parte*, as it contains information related to [REDACTED]. The VPO will file a confidential and *ex parte* redacted version of this Eighteenth Report, in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the redacted version of the Eighteenth Report by lifting the *ex parte* marking so that it can be disclosed to the Parties, as it will contain no identifying information of the applicants. For the same reason, the VPO does not object to the re-classification of the redacted version of the Report as public. 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.⁵²

57. Together with this Eighteenth Report, the VPO submits five strictly confidential and *ex parte* Annexes, containing a summary of the 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.⁵³

58. 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.⁵⁴

Word count: 4,227



Dr Fidelma Donlon

Registrar

Friday, 27 December 2024

At The Hague, the Netherlands.

⁵² Framework Decision, para. 50.

⁵³ First Decision, para. 66.

⁵⁴ Framework Decision, para. 25; *see also* First Decision, para. 64.