



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-05
The Prosecutor v. Salih Mustafa
Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon
Filing Participant: Dr Fidelma Donlon
Date: 9 December 2020
Language: English
Classification: Confidential and *Ex Parte*

**First Registry Report to the Pre-Trial Judge on Victims' Applications for
Participation in the Proceedings**

with strictly confidential and *ex parte* Annexes 1-4

Head of Victims' Participation Office

Silke Studzinsky

I. INTRODUCTION

1. The Victims' Participation Office ('VPO') hereby files the first report ('Report') to the Pre-Trial Judge on victims' applications for participation in the proceedings pursuant to Rule 113(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ('Rules').

II. PROCEDURAL HISTORY

2. On 12 June 2020, the Pre-Trial Judge confirmed the indictment against Mr Salih Mustafa ('the Accused').¹

3. A public redacted version² of the Confirmed Indictment was filed on 28 September 2020, following the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.

4. On 27 November 2020, the Pre-Trial Judge issued the Framework Decision on Victims' Applications³ ('Framework Decision') setting out the requirements of the application process and the role of the VPO.

5. From 5 October 2020 to date, the VPO has received four (4) applications from persons wishing to apply for admission in the proceedings as participating victims. The applications were sent via e-mail with the application forms attached.

III. CLASSIFICATION

6. The VPO files this Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Report so that it can be disclosed to the Parties, as it contains no identifying information of the applicants. For the same reason, the VPO does not object to the re-classification of this

¹ KSC-BC-2020-05/F00008, Decision on the Confirmation of the Indictment Against Salih Mustafa, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was filed on 5 October 2020.

² KSC-BC-2020-05/F00019/A01, Annex 1 to Submission of Further Redacted Version of Confirmed Indictment, 28 September 2020, public.

³ KSC-BC-2020-05/F00055, Framework Decision on Victims' Applications, 27 November 2020, public.

Report as public. In the event that the Pre-Trial Judge decides to re-classify this Report, this Report also constitutes the Report to the Parties pursuant to Rule 113(2) of the Rules.⁴

7. Together with this Report and in compliance with the Framework Decision, the VPO submits strictly confidential and *ex parte* Annexes containing a concise application summary prepared by the VPO for each submitted application, along with the related application forms. In addition, the same application forms will be disclosed to the Pre-Trial Judge through Legal Workflow, together with draft translations, in accordance with Rule 113(1), which provides that application forms shall not be disclosed to the Parties.

8. The Annexes contain identifying information, as well as other confidential information submitted by the applicants. Pursuant to the Framework Decision⁵ and Rule 113(2) and Rule 82(1) of the Rules, the Annexes are filed as strictly confidential and *ex parte*.

IV. ASSESSMENT OF APPLICATIONS

9. 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 Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

10. In order for an application to be considered complete⁶, the VPO assesses whether:

- (i) there is sufficient proof of identity and kinship (for indirect victims) and/or legal guardianship;

⁴ See Framework Decision, para. 49.

⁵ See Framework Decision, para. 24(e).

⁶ See Framework Decision, para. 22.

- (ii) personal details are complete;
- (iii) all relevant sections of the application form are filled in;
- (iv) the date/period and location of the crimes as well as the harm suffered are sufficiently clearly indicated;
- (v) relevant and sufficient documentation has been submitted to the extent possible; and
- (vi) the application is signed by the applicant or legal guardian.

11. The VPO received one application form, signed by three persons from the same family, and registered the application form as three applications. The fourth application form was submitted and signed by one person. The VPO notes that the applicants did not submit the relevant and necessary documentation.

12. Following the assessment of all the criteria of admissibility (see, in particular, paragraphs 23 and 26 below) the VPO did not deem it necessary to request the applicants to complete their applications and submit the required supporting documentation, in particular to demonstrate that the applicants are natural persons. Consequently, the VPO transmits this assessment Report with recommendations on admissibility together with the strictly confidential and *ex parte* Annexes consisting of concise application summaries and the application forms. The VPO discloses in addition the received application forms through Legal Workflow, together with applicable translations.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

13. Pursuant to Rule 113(1) of the Rules, a person claiming to be a victim can apply for admission as a victim participating in the proceedings after confirmation of an indictment by the Pre-Trial Judge.

1. Standard of proof

14. Pursuant to Rule 113(4) of the Rules, in deciding whether a victim may participate in the proceedings, the Panel shall consider whether the applicant has

provided *prima facie* evidence of the harm suffered as a direct result of a crime in the indictment.

15. In assessing the applications and making its recommendation in the present Report, the VPO applied the *prima facie*⁷ standard for all requirements as well as any supporting evidentiary material.

2. Criteria of Admissibility

16. Article 22(1) of the Law provides that a victim is a natural person who has personally suffered harm, including physical, mental and material harm, as a direct result of a crime within the jurisdiction of the Specialist Chambers.

17. Rule 113(1) of the Rules further stipulates that 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.

18. In assessing whether the applicants meet the definitions set out in Article 22(1) of the Law and Rule 113(1) of the Rules, the VPO considered the requirements listed below, in light of the description of the events and the evidentiary material.

19. As regards evidentiary material, the applicants must produce *prima facie* evidence of meeting the requirements under Article 22(1) of the Law and Rule 113(1) of the Rules.

20. The VPO has based its assessment and recommendation to the Pre-Trial Judge on the following requirements:

(a) Natural person

21. The VPO notes that all applications were submitted without supporting documentation, such as an ID card or other proof of identity.⁸ This is a mandatory

⁷ *Prima facie* means that 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. See Framework Decision, para. 28.

⁸ See Framework Decision, para. 30.

requirement, and this in itself would have been reason enough to reject the applications. The assessment whether the applicants are a “natural person” could therefore only be assumed based on the account of the applicants.

(b) Alleged crimes

22. The VPO assessed whether acts described in the applications appear to constitute crimes within the scope of the Confirmed Indictment, namely arbitrary detention, cruel treatment, torture, murder; and whether the alleged events have taken place in a detention compound located in Zllash/Zlaš between approximately 1 April 1999 and around the end of April 1999.⁹

23. The applicants did not submit any statement of facts or incidents that can be linked to the alleged crimes in the Confirmed Indictment. Their statements about violations that occurred to them are manifestly outside of the scope of the Confirmed Indictment.

(c) Harm

24. The VPO assessed the types of harm alleged and supporting documentation, if any (for example, medical records to demonstrate mental harm). The applicants claimed to be direct victims¹⁰ and alleged that they have personally suffered mental and material harm, at least in substance.

(d) Direct result

25. The VPO assessed whether there is evidence of a causal link between harm and crime.¹¹ It found no indication of such a link.

⁹ See KSC-BC-2020-05/F00019/A01, paras 34-35.

¹⁰ See Framework Decision, para. 33.

¹¹ See Framework Decision, para. 38.

C. RECOMMENDATION ON ADMISSIBILITY

26. Following the assessment of the applications in view of the above requirements, the VPO concludes that the applicants do not describe acts that appear to have any connection with the crimes within the geographical and temporal scope of the Confirmed Indictment with which the Accused has been charged.

27. Thus, pursuant to Rule 113(2) of the Rules, the VPO recommends to the Pre-Trial Judge to deny the four (4) applicants with the pseudonyms¹² Victim-01/05, Victim-02/05, Victim-03/05 and Victim-04/05 admission as victims participating in the present case (Group B).¹³

V. PROTECTIVE MEASURES

28. Applicant Victim-04/05 requested in the application form that identifying information should not be disclosed to the public, without providing any further reasoning for this request. The other applicants did not request any protective measures.

29. The VPO submits that using a pseudonym¹⁴ in the Report and classifying the Annexes with the summary of the applications as strictly confidential and *ex-parte* is sufficient to maintain the confidentiality of the application process and the applicants' privacy by protecting their identifying information from disclosure to the public, as well as the Parties.¹⁵

¹² In accordance with the Framework Decision, the VPO assigned to each applicant a pseudonym. *See* Framework Decision, para. 21.

¹³ *See* Framework Decision, paras 39, 49(f).

¹⁴ *See* Framework Decision, para. 21.

¹⁵ *See* Rule 113(1)-(2) of the Rules.

30. To further protect the privacy of the applicants and in light of the character of the allegations, the VPO further requests the redaction of any names and identifying information from the Specialist Chambers' public records, pursuant to Rule 80(4)(a)(i).

Word count: 1611



Dr Fidelma Donlon
Registrar

Wednesday, 9 December 2020
At The Hague, the Netherlands