



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-05
The Prosecutor v. Salih Mustafa

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 10 February 2021

Language: English

Classification: Public

First Decision on Victims' Participation

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Julius von Bóné

Registry
Victims' Participation Office

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 22(1), 39(1) and (13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 95(2)(i) and 113 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 12 June 2020, the Pre-Trial Judge confirmed an indictment against Salih Mustafa.² On 19 June 2020, the Specialist Prosecutor's Office submitted the indictment as confirmed ("Confirmed Indictment").³

2. On 27 November 2020, the Pre-Trial Judge issued a framework decision on victims' applications ("Framework Decision"), ordering the Victims' Participation Office ("VPO") to, *inter alia*, file by 10 December 2020 its first report pursuant to Rule 113(2) of the Rules to the Pre-Trial Judge and the Parties regarding the submitted applications and to submit further such reports, if any, on a regular basis, and the latest by the submission of the Defence filing pursuant to Rule 95(5) of the Rules.⁴

3. On 9 December 2020, the VPO submitted its first report on received applications ("First Report") with four strictly confidential and *ex parte* annexes containing the application summaries and application forms of a total of four applicants

¹ KSC-BC-2020-05, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

² KSC-BC-2020-05, F00008, Pre-Trial Judge, *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.

³ KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Annex 2 to Submission of Confirmed Indictment*, 19 June 2020, confidential. A public redacted version of the Confirmed Indictment was filed on 28 September 2020: KSC-BC-2020-05, F00019/A01, Specialist Prosecutor, *Annex 1 to Submission of Further Redacted Version of Confirmed Indictment*, 28 September 2020, public.

⁴ KSC-BC-2020-05, F00055, Pre-Trial Judge, *Framework Decision on Victims' Applications* ("Framework Decision"), 27 November 2020, public, para. 55(c)-(e).

(“Annexes”). The VPO further indicated to the Pre-Trial Judge that the First Report can also be disclosed to the Parties and the public.⁵

II. SUBMISSIONS

4. As regards the number of applications and the time and manner of their receipt, the VPO submits that, up to the date of its First Report, it had received, via email, four applications from persons applying for admission in the proceedings as participating victims.⁶

5. As regards the completeness of the applications, the VPO submits that three applicants from the same family (Victims 01/05, 02/05 and 03/05) signed and submitted collectively one application form, which VPO registered as three distinct applications.⁷ A fourth applicant (Victim 04/05) submitted and signed one application form.⁸ The VPO further notes that none of the applicants submitted the relevant and necessary documentation,⁹ and that, following the assessment of all admissibility criteria, the VPO did not deem it necessary to request the applicants to complete their applications and submit the required supporting documentation.¹⁰

6. As regards the admissibility of the applications, the VPO recommends that the Pre-Trial Judge deny the four applications,¹¹ as none of the applicants (i) provided documentation proving their identity and that they are natural persons;¹² and

⁵ KSC-BC-2020-05, F00062, Victims’ Participation Office, *First Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings* (“First Report”), 9 December 2020, public, with strictly confidential and *ex parte* annexes 1-4 (“Annex 1”; “Annex 2”; “Annex 3”; “Annex 4”).

⁶ First Report, para. 5.

⁷ First Report, para. 11.

⁸ First Report, para. 11.

⁹ First Report, para. 11.

¹⁰ First Report, para. 12.

¹¹ First Report, para. 27.

¹² First Report, para. 21.

(ii) describe acts that appear to have any connection with the crimes within the geographical and temporal scope of the Confirmed Indictment.¹³

7. As regards protective measures, the VPO submits that Victims 01/05, 02/05 and 03/05 do not request any such measures, while Victim 04/05 requests that identifying information should not be disclosed to the public.¹⁴ The VPO nevertheless requests that, in order to maintain the confidentiality of the process and protect the privacy of the applicants,¹⁵ the following measures be adopted: (i) the pseudonyms of the four applicants and the strictly confidential and *ex parte* classification of the Annexes be maintained;¹⁶ and, in any event, (ii) the names and any identifying information of the applicants be redacted from the Specialist Chambers' public records, pursuant to Rule 80(4)(a)(i) of the Rules.¹⁷

III. APPLICABLE LAW

8. Pursuant to Article 22(1) of the Law and Rule 2 of the Rules, 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 and alleged in an indictment confirmed by the Pre-Trial Judge.

9. Pursuant to Rule 113(1) of the Rules, after the confirmation of an indictment and sufficiently in advance of the opening of the case, 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 ("VPP"), specifying how he or she qualifies as a victim and providing the location and date of an alleged crime giving rise to harm.

¹³ First Report, paras 23, 26.

¹⁴ First Report, para. 28.

¹⁵ First Report, para 29.

¹⁶ First Report, para. 29.

¹⁷ First Report, para. 30.

10. Pursuant to Rule 113(2) of the Rules, the VPO registers and assesses the applications and files them before the Pre-Trial Judge together with a recommendation on admissibility and common representation, and a request for protective measures under Rule 80 of the Rules, as applicable.

11. Pursuant to Rule 113(4)-(5) of the Rules, 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 and shall render a reasoned decision granting or denying admission in the proceedings. The Pre-Trial Judge shall also decide on common representation and any requests for protective measures. The decision shall be notified to the applicant, the VPO and the Parties.

IV. DISCUSSION

A. COMPLETENESS OF APPLICATIONS

12. The Pre-Trial Judge recalls his finding in the Framework Decision according to which an application is complete if it meets the following requirements: (i) there is sufficient proof of identity and, where relevant, kinship and/or legal guardianship; (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 his/her legal guardian.¹⁸

13. The Pre-Trial Judge will accordingly assess whether the submitted applications are complete and whether they provide sufficient information to allow a finding under Rule 113(4) of the Rules. In this regard, the Pre-Trial Judge reminds the VPO that it

¹⁸ Framework Decision, para. 22.

should endeavour to submit only complete applications to the Pre-Trial Judge.¹⁹ The Pre-Trial Judge further instructs the VPO that, where a group of applicants, having suffered similar harm as a direct result of the same crime, such as family members, use the same application form collectively, the requirements of a complete application must be fulfilled, as provided in paragraph 12, for each applicant.²⁰ Where, despite the VPO's best efforts, an application cannot be completed, the VPO should nevertheless submit it before the Pre-Trial Judge, indicating the measures taken to complete the application and the reasons for their failure.²¹ Furthermore, the Pre-Trial Judge instructs the VPO that where, in its view, an application is manifestly outside the scope of the confirmed charges, the VPO should nevertheless ensure that the requirements under (i)-(iv) and (vi) of paragraph 12 are fulfilled.²²

14. As regards Victims 01/05, 02/05 and 03/05, the Pre-Trial Judge notes that requirements (i)-(iii) are not met, as the applicants did not submit any proof of identity and kinship, their personal details are incomplete and several relevant sections of the application form are not filled in.²³ As regards requirements (iv) and (v), the Pre-Trial Judge notes that the applicants provide some information about the period and location of the alleged crimes, and link a reference to further information, without, however, providing supporting documentation.²⁴ As regards requirement (vi), the Pre-Trial Judge notes that all three applicants signed the application form.²⁵ While the Pre-Trial Judge finds that the applications of Victims 01/05, 02/05 and 03/05 are

¹⁹ Framework Decision, para. 23.

²⁰ See also KSC-BC-2020-06, F00159, Pre-Trial Judge, *Framework Decision on Victims' Applications* ("Thaçi et al. Decision"), 4 January 2021, public, para. 17. Each applicant in the collectively filled out Application Form shall be assigned a separate pseudonym.

²¹ Framework Decision, para. 23.

²² *Thaçi et al. Decision*, para. 23.

²³ Annex 3, sections 1-2.

²⁴ Annex 3, section 2.

²⁵ Annex 3, section 6.

incomplete, the Pre-Trial Judge considers that, in these specific circumstances, a finding under Rule 113(4) of the Rules can nevertheless be made.

15. As regards Victim 04/05, the Pre-Trial Judge notes that requirement (i) is not met, as the applicant did not submit any proof of identity.²⁶ As regards requirements (ii)-(v), the Pre-Trial Judge notes that the applicant completes the personal details as well as the relevant sections of the application form, and provides a certain amount of information about the alleged harm suffered with some documentation, but does not clearly indicate the date and location of the alleged crimes.²⁷ As regards requirement (vi), the Pre-Trial Judge notes that the applicant signed the application form.²⁸ While the Pre-Trial Judge finds that the application of Victim 04/05 is incomplete, the Pre-Trial Judge considers that, in these specific circumstances, a finding under Rule 113(4) of the Rules can nevertheless be made.

B. ADMISSIBILITY OF APPLICATIONS

16. The Pre-Trial Judge recalls his finding in the Framework Decision according to which a victim applicant is admitted to participate in the proceedings if there is *prima facie* evidence that:

- (a) the applicant is a natural person;
- (b) the applicant described acts in the application that appear to constitute a crime within the scope of the Confirmed Indictment;
- (c) the applicant has personally suffered harm; and
- (d) the harm was the direct result of a crime in the Confirmed Indictment.²⁹

²⁶ Annex 4, section 1.

²⁷ Annex 4, section 2.

²⁸ Annex 4, section 6.

²⁹ Framework Decision, para. 28.

17. As regards Victims 01/05, 02/05 and 03/05, the Pre-Trial Judge notes that the crimes described by the three applicants relate to events that occurred several years after the temporal scope of the charged crimes, involve a location that is outside the geographical scope of the same charges and do not seem to relate to the Accused.³⁰ Accordingly, the Pre-Trial Judge finds that the applications of Victims 01/05, 02/05 and 03/05 are inadmissible.

18. As regards Victim 04/05, the Pre-Trial Judge notes that the harm described by the applicant concerns events completely unrelated to the charges, none of which seem to be linked to the Accused.³¹ Accordingly, the Pre-Trial Judge finds that the application of Victim 04/05 is inadmissible.

C. PROTECTIVE MEASURES

19. The Pre-Trial Judge considers that, by virtue of the confidentiality of the application process, as provided in Rule 113(1)-(2) of the Rules, and taking into consideration the applicants' protection of privacy, the non-disclosure to the Parties and the public of their names and identifying information is necessary. Given that none of the applicants are admitted as VPPs, no prejudice is caused to the Accused or a fair trial by this non-disclosure.

20. The Pre-Trial Judge accordingly finds it appropriate to maintain the classification of the Annexes as strictly confidential and *ex parte* and, in any event, orders that the names and any identifying information of Victims 01/05, 02/05, 03/05 and 04/05 be withheld from the Parties and the public.

³⁰ Annex 1, pp. 2-3; Annex 3, section 2.

³¹ Annex 2, p. 2; Annex 4, sections 2, 6.

V. DISPOSITION

21. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **REJECTS** the applications of Victims 01/05, 02/05, 03/05 and 04/05 as inadmissible; and
- b. **ORDERS** that the names and any identifying information of Victims 01/05, 02/05, 03/05 and 04/05 be withheld from the Parties and the public.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 10 February 2021
At The Hague, the Netherlands.