



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: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 18 June 2021

Language: English

Classification: Confidential and *Ex Parte*

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

with confidential and *ex parte* Annexes 1-12

Head of Victims' Participation Office

Silke Studzinsky

I. INTRODUCTION

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

2. With this Second Report, the VPO transmits to the Pre-Trial Judge 11 applications for the status of a participating victim in the proceedings and provides a recommendation on admissibility, grouping, common representation and protective measures.

II. PROCEDURAL HISTORY

3. On 26 October 2020, the Pre-Trial Judge confirmed the indictment ("Confirmed Indictment") against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, "the Accused").²

4. A public redacted version of the Confirmed Indictment was filed on 4 November 2020, following the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.³

5. On 4 January 2021, the Pre-Trial Judge issued the Framework Decision on Victims' Applications⁴ ("Framework Decision") setting out the principles governing the application process and the role of the VPO.⁵

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/F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi ("Confirmation Decision"), 26 October 2020, public.

³ F00045/A03, Specialist Prosecutor, Annex 3 to Submission of Corrected and Public Redacted Versions of Confirmed Indictment and Related Requests, 4 November 2010, public.

⁴ F00159, Framework Decision on Victims' Applications, 4 January 2021, public (ordering, *inter alia*, VPO to submit its first report pursuant to Rule 113(2) of the Rules by 10 December 2020 and to submit further reports, if any, on a regular basis, the latest by the submission of the Defence filing pursuant to Rule 95(5) of the Rules).

⁵ Framework Decision, paras 14-17.

6. On 15 February 2021, the VPO submitted the first report on victims' applications for participation in the proceedings to the Pre-Trial Judge ("First Report"),⁶ followed by a supplement to its First Report in which it made a recommendation on grouping for the purpose of common representation.⁷
7. On 21 April 2021, the Pre-Trial Judge issued the First Decision on Victims' Participation ("First Decision").⁸
8. On 11 June 2021, the VPO submitted a second supplement to its First Report, providing additional information on a deceased applicant.⁹
9. From the filing of the First Report to date, the VPO has received 33 new applications from persons applying for admission to participate in the proceedings as victims: 10 applications were sent by applicants via e-mail, with application forms and supporting documentation attached; 12 applications were sent by three different lawyers; nine applications were completed with the direct assistance of the VPO; and two applicants subsequently withdrew their applications. The applicants who withdrew their applications have been assigned pseudonyms Victim-25/06 and Victim-28/06, and their applications will not be submitted to the Pre-Trial Judge.
10. With this Second Report, the VPO transmits 11 applications that it has assessed to be formally complete and, therefore, ready for the consideration by the Pre-Trial Judge. The VPO will continue to submit reports on a regular basis, when it obtains all of the relevant information.

⁶ 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.

⁷ F00241, Registry, 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 ("Supplement"), with one confidential and *ex parte* annex.

⁸ F00257, First Decision on Victims' Participation, 21 April 2021, confidential. A public redacted version was issued on the same day (F00257/RED).

⁹ F00347, Registry, Second 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 ("Second Supplement"), with one confidential and *ex parte* annex.

III. CLASSIFICATION

11. The VPO files this Second Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of this report so that it can also 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 Second Report as public. In the event that the Pre-Trial Judge decides to re-classify the Report, this Second Report may also constitute the Report to the Parties pursuant to Rule 113(2) of the Rules.¹⁰

12. Together with this Second Report, the VPO submits 12 confidential and *ex parte* Annexes.¹¹ Annex 1 contains the table indicating the number and details of applicants recommended for admission (Group A). The remaining 11 annexes are summaries of the individual applications prepared by the VPO, along with basic information on the applicants, a summary of the alleged events and harm suffered, and any request for protective measures. 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.

13. The application forms and supporting documentation have been disclosed only to the Pre-Trial Judge 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.¹²

IV. ASSESSMENT OF APPLICATIONS

14. 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 Law¹³ and Rule 113(1) of the Rules.

¹⁰ See Framework Decision, para. 50.

¹¹ See Annex 1-12; see also Framework Decision, para. 24(e).

¹² See Framework Decision, para. 25; see also First Decision, para. 64.

¹³ Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No.05/L-053, 3 August 2015 (“Law”).

A. COMPLETENESS OF APPLICATION FORMS

15. In assessing the completeness of the applications, the VPO checked the applications against the criteria listed in the Framework Decision¹⁴ and applied additional guidance provided in the First Decision.¹⁵

16. The VPO sought additional information/documentation from Victim-20/06. Additional information received is summarized in a note to the file,¹⁶ and the relevant information is also included in the application summary.

17. In line with the above requirements, the VPO recommends that all applications submitted with this Second Report be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

18. In assessing the applications and making its recommendation in this Second Report, the VPO applied the *prima facie* standard¹⁷ for all requirements as well as any supporting documentation.

2. Criteria of Admissibility

19. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,¹⁸ following the guidelines and requirements set out in the Framework Decision.¹⁹ The VPO also took into consideration the findings of the First Decision.²⁰ Consequently, the VPO's assessment and recommendation to the Pre-Trial Judge is based on the following requirements:

¹⁴ Framework Decision, para. 22.

¹⁵ First Decision, paras 34-35.

¹⁶ The Note to file has been uploaded to LW.

¹⁷ See Rule 113(4) of the Rules. *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. 29; First Decision, para. 43.

¹⁸ First Report, paras 17-20.

¹⁹ Framework Decision, paras 31, 35-37.

²⁰ See First Decision, paras. 44-45 and 51-55.

(a) Natural person

20. The VPO notes that the applications do not raise questions regarding the requirement for an applicant to be a “natural person”. All applicants submitted a valid ID card as proof of identity.

(b) Alleged crimes

21. The VPO assessed whether acts described in the applications appear to constitute alleged crimes within the scope of the Confirmed Indictment 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 1999.²¹

22. The applicants allege the following crimes: imprisonment/illegal or arbitrary arrest and detention, cruel treatment/other inhumane acts, torture and murder.

23. All of the crimes that each applicant claims to be a victim of fall within the material, geographical and temporal parameters of the charges, as specified in the Confirmed Indictment.²²

(c) Harm

24. In reviewing the applications, the VPO assessed all three types of harm, namely physical, mental and material harm, which is described sufficiently in detail in all applications and in some cases supported by evidentiary material.²³ As regards evidentiary material, the VPO followed the findings of the First Decision.²⁴

25. Regarding the requirement that harm has to be suffered *personally*, four applicants can be considered direct victims, while seven other applicants can be considered indirect victims.

²¹ Confirmed Indictment, fn, 3 above, para. 16.

²² Id., pp. 18–59. See Framework Decision, para.32; First Decision, para. 45.

²³ Some applicants submitted medical reports for physical and/or mental harm, and one applicant submitted documentation for material harm.

²⁴ First Decision, para. 35. The VPO inquired in all cases about any relevant supporting documentation and, in cases where it was possible, requested the applicants to submit such documentation. Where no supporting documentation was submitted because it was impossible for the applicants to obtain such documentation, the VPO did not consider these applications as incomplete or inadmissible.

26. The direct victims claim to have suffered harm as a result of unlawful detention, cruel treatment and torture, as described in the application forms and annexed application summaries.

27. The indirect victims claim to have suffered harm as a result of the unlawful detention, torture and murder of a family member, in relation to which they provided supporting documentation of kinship.

28. For indirect victims, 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 victim and whether the harm is a result of a personal relationship with the direct victim.²⁵ In terms of harm suffered by indirect victims, emotional suffering (such as grief, sorrow, bereavement and distress) of 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.²⁶

29. 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, but other family members having a special bond of affection with or dependence on the direct victim may also be considered to be in a close relationship therewith.²⁷

30. Victim-20/06, Victim-22/06, Victim-33/06, Victim-34/06 and Victim-40/06 are immediate family members of a direct victim. Victim-39/06 and Victim-41/06 are other family members of a direct victim, and the VPO considers that the requirement of a close personal relationship with the direct victim has been sufficiently demonstrated with their statements and other supporting material.²⁸

²⁵ Framework Decision, para. 34.

²⁶ First Decision, para. 53.

²⁷ First Decision, para. 55.

²⁸ For more details, see application summaries of Victim-39/06 and Victim-41/06 annexed to this Second Report.

31. Considering the above, all seven indirect victims meet *prima facie* the necessary requirements as to harm suffered and the closeness of relationship with the direct victim.

(d) Direct result

32. The VPO assessed whether there is evidence of a causal link between harm and crime.²⁹ The VPO assessed that all applicants meet this requirement on a *prima facie* basis.

3. General description of the applications

33. Applicant Victim-20/06 is of Serbian ethnicity and claims to be an indirect victim of the kidnapping and killing of their immediate family member by the KLA in one of the crime sites mentioned in the Confirmed Indictment in the relevant period.³⁰ The family member's remains were found, and the UNMIK Office of Missing Persons and Forensics has established the family member's identity. The applicant claims that, as a consequence of this traumatic event, they have suffered mental harm. The applicant submitted a medical report as supporting documentation. The applicant also claims to have suffered material harm (destruction of property). The applicant has submitted some supporting documentation and provided further information on the alleged material harm suffered.

34. Applicant Victim-22/06 is of Serbian ethnicity and claims to be an indirect victim of the kidnapping and enforced disappearance of their immediate family member by the KLA on the territory of Kosovo within the period covered by the Confirmed Indictment. Allegedly, the immediate family member was taken to one of the detention sites mentioned in the Confirmed Indictment in the relevant period. Despite several efforts to obtain information on the family member's whereabouts, their fate

²⁹ 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 Second Report.

³⁰ Victim-20/06 is member of the same family as Victim-16/06, Victim-17/06 and Victim-18/06, who were included in the First Report.

remains unknown to this day. The applicant submitted medical certificates as supporting documentation for the mental harm suffered.

35. Applicants Victim-33/06, Victim-34/06, Victim-39/06, Victim-40/06 and Victim-41/06 are of Albanian ethnicity and are members of the same family. They claim to be indirect victims of the unlawful detention, torture and killing of their relative in one of the detention sites mentioned in the Confirmed Indictment, within the relevant period. Applicant Victim-34/06 claims to have suffered physical and mental harm, while Victim-33/06, Victim-39/06, Victim-40/06 and Victim-41/06 allege mental harm. They did not submit any supporting documentation.

36. Applicants Victim-35/06, Victim-36/06, Victim-38/06 and Victim-37/06 are of Albanian ethnicity and claim to be direct victims of unlawful detention, cruel treatment and torture at one of the detention sites mentioned in the Confirmed Indictment, within the relevant period. They all claim to have suffered mental harm, and applicants Victim-36/06, Victim-37/06 and Victim-38/06 also claim to have suffered physical harm. They did not submit any supporting documentation on harm.

C. RECOMMENDATION ON ADMISSIBILITY

37. The VPO recommends to the Pre-Trial Judge to admit all applicants as participating victims.

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

38. In making its recommendation to the Pre-Trial Judge on grouping, the VPO considered the criteria set out in Rule 113(8) of the Rules by looking into the individual circumstances of each applicant 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,³¹ which is echoed in the First Decision.³² 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”.³³

39. 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.³⁴

40. As outlined in the Second Supplement, Group 1 currently includes participating victims of different ethnicities, who reside in different areas, and speak different 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.³⁵

41. As regards the individual circumstances of the applicants presented in this Second Report, they are either Serbian speaking (two) or Albanian speaking (nine). Two applicants live in Serbia and nine in Kosovo. The VPO has not identified any differences or potential conflicts of interest in the new applications that would warrant further consideration.

42. After analysing the individual circumstances of the applicants, as well as the particularities of the group as a whole, the VPO recommends the Pre-Trial Judge to group the 11 victim applicants together with the admitted victims participating in the proceedings and that they be represented jointly as one group (Group 1).³⁶

³¹ Framework decision, para. 43.

³² First Decision, paras 73-77.

³³ Framework Decision, para. 43; *see also* First Decision, para. 76.

³⁴ Supplement, paras 13-29; Second Supplement, paras 46-50.

³⁵ Second Supplement, para. 49.

³⁶ First Decision, para. 77.

B. COMMON LEGAL REPRESENTATION

43. As regards preferences on legal representation, one Serbian-speaking applicant has indicated a preference in the application form by providing the name of a counsel; two expressed a general preference to have an international counsel; one applicant stated that they would like to be represented by a highly qualified counsel; and one stated that they do not wish to have a Kosovan lawyer. Others did not express any preferences.

44. In line with the above recommendation on grouping, the VPO submits that the 11 victim applicants, if admitted, should all be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.³⁷

VI. PROTECTIVE MEASURES

45. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage.³⁸ The protective measures requested by the applicants can be summarized as follows:

- one applicant requested non-disclosure of identifying information to the public;³⁹
- two applicants requested non-disclosure to the public and the Accused;⁴⁰
- seven applicants requested non-disclosure to the public, the Accused and Defence Counsel;⁴¹
- one applicant did not request any protective measures.⁴²

46. In making its recommendation on protective measures, the VPO has taken into consideration the legal test, as instructed by the Pre-Trial Judge in the Framework Decision.⁴³ The VPO notes that the concerns expressed in detail in the First Report and

³⁷ 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.

³⁸ Framework Decision, para. 46.

³⁹ Victim 35/06.

⁴⁰ Victim 33/06 and Victim -34/06.

⁴¹ Victim-20/06, Victim-36/06, Victim-37/06, Victim-38/06, Victim-39/06, Victim-40/06 and Victim-41/06.

⁴² Victim-22/06.

⁴³ Framework Decision, paras 47-49.

summarised in the First Decision affect all victims applying for participation, including the applicants included in this Second Report.⁴⁴

47. As regards the existence of an objectively justifiable risk and the necessity of protective measures, the VPO submits that the same considerations apply as outlined in the First Decision. In particular, all of the applicants: (i) continue to suffer from ongoing trauma; (ii) express fears or concerns for their safety or that of their family members, should their identities become known; and (iii) some of them continue to live in Kosovo or have links with Kosovo. They can all be considered as especially vulnerable and their participation can only be secured by granting adequate and proportionate protective measures for the current stage of the proceedings.⁴⁵

48. Thus, the VPO proposes to the Pre-Trial Judge to grant the following protective measures to all applicants:

- (i) the redaction of names and identifying information from the Specialist Chambers public records (Rule 80(4)(a)(i));
- (ii) (ii) non-disclosure to the public of any records identifying the applicant (Rule 80(4)(a)(ii));
- (iii) (iii) the assignment of a pseudonym (Rule 80(4)(a)(vi));
- (iv) (iv) Anonymity towards the Accused (Rule 80(4)(d)); and
- (v) (v) Anonymity towards Defence Counsel (Rule 80(4)(e)).

⁴⁴ First Report, paras 59-60; First Decision, para.61.

⁴⁵ See First Decision, paras 68-69.

49. The VPO considers that the above-requested protective measures are strictly necessary, appropriate and proportionate at this stage of the proceedings.⁴⁶

Word count: 3219



Dr Fidelma Donlon
Registrar

Friday, 18 June 2021
At The Hague, the Netherlands.

⁴⁶ See Framework Decision, para. 47.