



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-04
The Prosecutor v. Pjetër Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 29 October 2021

Language: English

Classification: Public

Public Redacted Version of

**First Registry Report to the Pre-Trial Judge on Victims' Application for
Participation in the Proceedings, filing F00085, dated 1 October 2021**

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I. INTRODUCTION

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

2. Through this Report, the VPO transmits to the Pre-Trial Judge one application for the status of a participating victim in the proceedings and provides a recommendation on admissibility, common representation and protective measures.

II. PROCEDURAL HISTORY

3. On 12 June 2020, the Pre-Trial Judge confirmed the indictment against Mr Pjetër Shala ("the Accused").²

4. A public redacted version of the Confirmed Indictment³ was filed on 31 March 2021, following the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.⁴

5. On 1 September 2021, the Pre-Trial Judge issued the Framework Decision on Victims' Applications ("Framework Decision") setting out the requirements of 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-2020-04, F00007, Pre-Trial Judge, Decision on the Confirmation of the Indictment Against Pjetër Shala, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was issued on 6 May 2021, F00007/RED ("Confirmation Decision").

³ KSC-BC-2020-05, F00016/A01, Submission of lesser redacted and public redacted version of confirmed Indictment and related requests with strictly confidential and *ex parte* Annexes 1-2, 31 March 2021, public ("Confirmed Indictment").

⁴ KSC-BC-2020-04, F00013, Registrar, Notification of Arrest Pursuant to Rule 55(4), 16 March 2021, public; KSC-BC-2020-04, F00019/RED, Registrar, Public Redacted Version of 'Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel', filing F00019 dated 15 April 2021, 26 April 2021, public, with Annexes 1-2, confidential.

⁵ KSC-BC-2020-04, F00064, Pre-Trial Judge, Framework Decision on Victims' Applications, 1 September 2021, public.

6. The VPO has so far received one application from a person wishing to apply for admission in the proceedings as participating victim. The VPO directly assisted the applicant with filling in the application form.

III. CLASSIFICATION

7. The VPO files this First Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of this First Report so that it can be disclosed to the Parties, as it contains no identifying information of the applicant. For the same reason, the VPO does not object to the reclassification of this First Report as public. In the event that the Pre-Trial Judge decides to re-classify this First Report, this First Report also constitutes the Report to the Parties pursuant to Rule 113(2) of the Rules.⁶

8. Together with this Report, the VPO submits one strictly confidential and *ex parte* Annex, containing the summary of the application prepared by the VPO, along with basic information on the applicant, a summary of the alleged events and harm suffered, and any request for protective measures.⁷ The Annex does contain identifying information and is therefore filed as strictly confidential and *ex parte* pursuant to Rules 82 and 113(2) of the Rules.⁸

9. The application form and supporting documentation have been disclosed only to the Pre-Trial Judge through Legal Workflow in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.

IV. ASSESSMENT OF APPLICATIONS

10. The VPO has assessed the formal completeness of the application form and the content of the application in light of the requirements stemming from the definition

⁶ Framework Decision, para. 57.

⁷ Framework Decision, para. 30(e)(ii).

⁸ Cf. KSC-BC-2020-06, F00257/RED, Public Redacted Version of First Decision on Victims' Participation, 21 April 2021, para. 66.

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

11. In assessing the completeness of the application, the VPO checked the application against the criteria listed in the Framework Decision.⁹ In line with those requirements, the application submitted with this First Report can be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

12. In assessing the application and making its recommendation in this First Report, the VPO applied the *prima facie* standard¹⁰ for all requirements, as well as any supporting evidentiary material.

2. Criteria of Admissibility

13. 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.

14. 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.

⁹ Framework Decision, para. 24.

¹⁰ 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. 35.

15. In assessing whether the applicant meets 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 supporting material, if available.

16. Considering the above and the guidelines and requirements set out in the Framework Decision,¹¹ the VPO has based its assessment and recommendation to the Pre-Trial Judge on the following requirements:

(a) Natural person

17. The VPO notes that the application does not raise questions regarding the requirement for an applicant to be a “natural person”. The applicant submitted a valid passport as proof of identity.

(b) Alleged crimes

18. The VPO assessed whether acts described in the application appear to constitute crimes within the scope of the Confirmed Indictment, namely arbitrary detention, cruel treatment, torture and murder. The VPO also assessed whether the alleged events have taken place in a detention compound located in Kukës, Albania, during the period from on or about 17 May 1999 until on or about 5 June 1999.¹²

19. The applicant alleges the following crimes: [REDACTED]. The applicant was [REDACTED] during the relevant period. [REDACTED].

20. All of the crimes alleged in the application form are crimes reflected in the Confirmed Indictment. In other words, the crimes in relation to which the applicant claims to be a victim fall within the material, geographical and temporal parameters of the charges as set out in the Confirmed Indictment.

(c) Harm

21. In reviewing the application, the VPO assessed [REDACTED] harm, which is described in detail.¹³

¹¹ Framework Decision, paras 36-45.

¹² Confirmation Decision, para. 5.

¹³ Framework Decision, paras 41-42.

22. Regarding the requirement that harm has to be suffered *personally* by the victim, the applicant can be considered a direct victim as well as an indirect victim.¹⁴
23. The applicant claims to have suffered [REDACTED], as described in the application form and annexed application summary.
24. The applicant also claims to have suffered [REDACTED] harm as a result of [REDACTED]. In this regard, the VPO assessed whether the applicant has alleged that the harm suffered results from the harm suffered by the direct victim and whether the harm is a result of a close personal relationship with the direct victim.¹⁵ Immediate family members (spouse, parents, children, siblings) are presumed to be in a close personal relationship with the direct victim.¹⁶
25. In terms of mental harm suffered by indirect victims, emotional suffering (such as grief, sorrow, bereavement or 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.¹⁷
26. [REDACTED].
27. Considering the above, the applicant meets *prima facie* the necessary requirements as to harm suffered and the requisite close personal relationship with a direct victim.

¹⁴ Framework Decision, para. 40.

¹⁵ *Ibid.*

¹⁶ Cf. KSC-BC-2020-05, F00126/RED, Trial Panel I, Public Redacted Version of Third Decision on Victims' participation, 21 May 2021, para. 18; KSC-BC-2020-06, F00257/RED, Public Redacted Version of First Decision on Victims' Participation, 21 April 2021, para. 50; see also STL, *Prosecutor v. Ayyash et al.*, Pre-Trial Judge, Decision on Victims' Participation in the Proceedings ('*Ayyash et al.* Decision on Victim Participation'), STL-11-01/PT/PTJ, F0236, 8 May 2012, para. 84.

¹⁷ KSC-BC-2020-05, F00105, Pre-Trial Judge, Second Decision on Victims' Participation ("*Mustafa* Second Decision"), 30 April 2021, public, para. 35.

(d) Direct result

28. The VPO assessed whether there is evidence of a causal link between harm and crime.¹⁸ The VPO assessed that the applicant meets this requirement on a *prima facie* basis.

C. RECOMMENDATION ON ADMISSIBILITY

29. The VPO recommends to the Pre-Trial Judge to admit the applicant as a participating victim.¹⁹

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION**A. RECOMMENDATION ON GROUPING**

30. Considering that only one application is transmitted to the Pre-Trial Judge with this First Report, the recommendation on grouping is at this stage not relevant.

B. COMMON LEGAL REPRESENTATION

31. As regards preferences on legal representation, the applicant stated that they would like to be represented by an international counsel. No preference as to a particular legal representative was indicated.²⁰

32. The VPO shall base its proposal for assignment of Victims' Counsel to the Registrar based on a range of objective criteria, such as a demonstrated relationship of trust with victims, a demonstrated commitment to working with vulnerable persons, as well as relevant litigation expertise/experience, etc.

¹⁸ Framework Decision, para. 44. 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 First Report.

¹⁹ The recommendation is based on the *prima facie* standard. See para. 12, above.

²⁰ Framework Decision, para. 50.

VI. PROTECTIVE MEASURES

A. PROTECTIVE MEASURES

33. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.²¹

34. The applicant has requested that identifying information not to be disclosed to the public.

B. RECOMMENDATION

35. 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.²²

36. The VPO notes that serious concerns exist as regards [REDACTED]. The applicant is [REDACTED], and the VPO considers that the full range of protective measures is strictly necessary in light of the objectively justifiable and heightened risk to the applicant and that no less restrictive measures are sufficient or feasible to protect the applicant, taking into account the specific circumstances.

37. Moreover, the VPO is of the view that the relevant protective measures are proportionate at this early stage of the proceedings. Such protective measures do not prejudice the rights of the Accused at this stage, but not granting them could have irreversible consequences for the applicant. As noted by the Pre-Trial Judge, adequate protective measures for victims are often the legal means by which their participation in the proceedings can be secured, because they are a necessary step in order to safeguard the victims' safety, physical and psychological well-being, dignity and privacy in accordance with Rule 80 of the Rules.²³

²¹ Framework Decision, para. 53.

²² Framework Decision, para. 54.

²³ See KSC-BC-2020-05, F00105, Pre-Trial Judge, Second Decision on Victims' Participation, 30 April 2021, para. 43.

38. Thus, the VPO requests the Pre-Trial Judge to grant the following protective measures to the applicant:

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

39. The VPO considers that the above-requested protective measures are strictly necessary, appropriate and proportionate at this stage of the proceedings.²⁴

Word count: 2003



Dr Fidelma Donlon

Registrar

Friday, 29 October 2021

At The Hague, the Netherlands

²⁴ See Framework Decision, para. 54.