



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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 November 2021

Language: English

Classification: Confidential and *Ex Parte*

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

with strictly confidential and *ex parte* Annexes 1-13

Head of Victims' Participation Office

Silke Studzinsky

I. INTRODUCTION

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

2. With this Third Report, the VPO transmits to the Pre-Trial Judge 12 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. On 3 September 2021, the Specialist Prosecutor's Office ("SPO") submitted a corrected version of the Confirmed Indictment, as ordered by the Pre-Trial Judge,³ with a public redacted version filed on 8 September 2021.⁴

5. On 4 January 2021, the Pre-Trial Judge issued the Framework Decision on Victims' Applications⁵ ("Framework Decision") setting out the principles governing the application process and the role of the VPO.⁶

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 F00413, Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment, 22 July 2021, para 179(d) (ordering the SPO to submit a corrected version of the Confirmed Indictment by 3 September 2021).

⁴ F00455/A01, Annex 1 to Public Redacted Version of "Submission of corrected Indictment and request to amend pursuant to Rule 90(1)(b)", KSC-BC-2020-06/F00455, dated 3 September 2021, 8 September 2021 ("Corrected Confirmed Indictment" or "Corrected Indictment").

⁵ 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).

⁶ 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"),⁷ followed by a supplement to its First Report in which it made a recommendation on grouping for the purpose of common representation.⁸
7. On 21 April 2021, the Pre-Trial Judge issued the First Decision on Victims' Participation ("First Decision").⁹
8. On 18 June 2021, the VPO submitted the second report on victims' applications for participation in the proceedings to the Pre-Trial Judge ("Second Report").¹⁰
9. On 6 July 2021, the Pre-Trial Judge issued the Second Framework Decision on Victims' Applications ("Second Framework Decision").¹¹
10. With this Third Report, the VPO transmits 12 applications that it has assessed as being formally complete and, therefore, ready for consideration by the Pre-Trial Judge. The VPO will continue to submit reports on a regular basis for any further applications received.

III. CLASSIFICATION

11. The VPO files this Third Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of this Third 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 reclassification of this Third Report as public. In the event that the Pre-Trial Judge

⁷ 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.

⁸ 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 ("Supplement"), with one confidential and *ex parte* annex.

⁹ F00257, First Decision on Victims' Participation, 21 April 2021, confidential. A public redacted version was issued on the same day (F00257/RED).

¹⁰ F00360, Second 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 1-12.

¹¹ F00382, Second Framework Decision on Victims' Applications, 6 July 2021, public.

decides to re-classify the Report, this Third Report may also constitute the Report to the Parties pursuant to Rule 113(2) of the Rules.¹²

12. Together with this Third Report, the VPO submits 13 strictly confidential and *ex parte* Annexes.¹³ Annex 1 contains the table indicating the number and details of applicants recommended for admission (Group A). The remaining 12 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.¹⁴

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.¹⁵

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 Law¹⁶ and Rule 113(1) of the Rules.

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 Decision¹⁷ and applied

¹² Framework Decision, para. 50.

¹³ Framework Decision, para. 24(e).

¹⁴ F00257/RED, Public Redacted Version of First Decision on Victims’ Participation, 21 April 2021, para. 66.

¹⁵ Framework Decision, para. 25; *see also* First Decision, para. 64.

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

¹⁷ Framework Decision, para. 22.

additional guidance provided by the Pre-Trial Judge in the First Decision¹⁸ and the Second Framework Decision.¹⁹

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

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

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

2. Criteria of Admissibility

18. 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 Decision.²³ Consequently, the VPO's assessment and recommendation to the Pre-Trial Judge is based on the following requirements:

(a) Natural person

19. 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 or passport as proof of identity.

¹⁸ First Decision, paras 34-35.

¹⁹ Second Framework Decision, para. 19.

²⁰ 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.

²¹ First Report, paras 17-20.

²² Framework Decision, paras 31, 35-37.

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

(b) Alleged crimes

20. 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, *i.e.* in Kosovo and areas of northern Albania between March 1998 and September 1999.²⁴

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

22. The crimes that each applicant claims to be a victim of fall within the material and geographical parameters of the charges and occurred within the indictment period, as specified in the Confirmed Indictment.²⁵

(c) Harm

23. In reviewing the applications, the VPO assessed all three types of harm, namely physical, mental and material harm, which is described in detail.

24. As regards evidentiary material, the VPO followed the findings of the First Decision²⁶ and the Second Framework Decision.²⁷ The VPO inquired in all cases whether any relevant supporting documentation was available and, where that was the case, requested the applicants to submit such documentation. Where no supporting documentation was submitted, this was because it was impossible for the applicants to obtain such documentation. The VPO did not consider these applications as incomplete or inadmissible on these grounds.

²⁴ Corrected Confirmed Indictment, para. 16.

²⁵ *Id.*, pp. 18–59; *see* Framework Decision, para. 32; First Decision, para. 45.

²⁶ First Decision, para. 35.

²⁷ Second Framework Decision, para. 20.

25. Regarding the requirement that harm has to be suffered *personally*, one applicant can be considered a direct victim, three applicants can be considered both direct and indirect victim, and the remaining eight applicants can be considered indirect victims.

26. The direct victims claim to have suffered harm as a result of persecution, 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 the 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.²⁸ 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.²⁹

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.³⁰ All indirect victim applicants described in this submission are immediate family members of a direct victim.

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

²⁸ Framework Decision, para. 34.

²⁹ First Decision, para. 53.

³⁰ *Id.*, para. 55.

(d) Direct result

31. The VPO assessed whether there is evidence of a causal link between harm and crime.³¹ The VPO assessed that all applicants meet this requirement on a *prima facie* basis.

3. General description of the applications

32. Applicant Victim-21/06 is of Albanian ethnicity and claims to be a direct victim of kidnapping, torture, unlawful detention and cruel treatment by the KLA in relation to a crime site mentioned in the Confirmed Indictment, within the indictment period. Specifically, the alleged events took place at or in connection with a specific detention site for a duration that extends into the specific time period relevant to this detention site and included in the Confirmed Indictment.³² The applicant alleges to have suffered physical, mental and material harm as a consequence of these crimes. The applicant has submitted medical certificates indicating physical and mental harm. The applicant is not in possession of any documentation concerning material harm.

33. Applicant Victim-21/06 also claims to be a direct victim of crimes allegedly committed by the KLA in 2004. As these events are beyond the scope of the Confirmed Indictment, the VPO recommends to the Pre-Trial Judge to admit the applicant only as far as the events in 1998 are concerned.

34. Victim-44/06, Victim-45/06, Victim-46/06 and Victim-47/06 are Serbian speaking and are members of the same family. They claim to be indirect victims of the kidnapping and enforced disappearance of an immediate family member. The immediate family member was allegedly taken to one of the detention sites mentioned in the Confirmed Indictment in the relevant period. The applicants claim to have

³¹ 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 Third Report.

³² Further information is provided in Annex 2 to this Third Report, strictly confidential and *ex parte*.

suffered mental harm as a result. They are not in possession of any supporting documentation.

35. Applicant Victim-53/06 is of Albanian ethnicity and claims to be an indirect victim of unlawful detention, torture and murder of an immediate family member by the KLA on the territory of Kosovo within the period covered by the Confirmed Indictment. The immediate family member was allegedly taken to one of the detention sites mentioned in the Confirmed Indictment in the relevant period and killed. The applicant claims to have suffered mental harm as a result and states that there is no supporting documentation.

36. Applicant Victim-54/06 is of Albanian ethnicity and claims to be a direct and an indirect victim. The applicant claims to be a victim of unlawful detention and torture in two of the detention sites mentioned in the Confirmed Indictment, within the relevant period. The applicant also claims to be an indirect victim of the unlawful detention, torture and killing of an immediate family member at one of the detention sites. The applicant alleges physical and mental harm and indicated that no supporting documentation is available.

37. Applicant Victim-55/06 is of Albanian ethnicity and claims to be an indirect victim of unlawful detention, torture and murder of an immediate family member by the KLA on the territory of Kosovo within the period covered by the Confirmed Indictment. The immediate family member was allegedly taken to one of the detention sites mentioned in the Confirmed Indictment in the relevant period and subsequently killed. The applicant claims to have suffered mental and material harm as a result. The applicant states that there is no available supporting documentation concerning harm.

38. Applicant Victim-56/06 is of Albanian ethnicity and claims to be an indirect victim of unlawful detention, torture and murder of an immediate family member by the KLA on the territory of Kosovo within the period covered by the Confirmed Indictment. The immediate family member was allegedly taken to one of the detention sites mentioned in the Confirmed Indictment in the relevant period and subsequently

killed. The applicant claims to have suffered physical, mental and material harm. The applicant indicated not having any documentation on harm.

39. Applicant Victim-57/06 is of Albanian ethnicity and claims to be an indirect victim of unlawful detention, torture and murder of an immediate family member by the KLA on the territory of Kosovo within the period covered by the Confirmed Indictment. The immediate family member was allegedly taken to one of the detention sites mentioned in the Confirmed Indictment in the relevant period and subsequently killed. The applicant claims to have suffered mental and material harm. The applicant stated not having any supporting documentation on harm.

40. Applicants Victim-58/06 and Victim-59/06 are of Serbian ethnicity. They claim to be direct victims of other inhumane acts and cruel treatment by the KLA on the territory of Kosovo within the period covered by the Confirmed Indictment. They also claim to be indirect victims of cruel treatment and/or unlawful detention of other immediate family members. The applicants claim to have suffered physical, mental and material harm. As regards supporting material, they submitted medical certificates and documents regarding the damage of property.

C. RECOMMENDATION ON ADMISSIBILITY

41. 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

42. 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

Decision³³ as echoed in the First Decision.³⁴ 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”.³⁵

43. 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.³⁶

44. 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.³⁷

45. As regards the individual circumstances of the applicants presented in this Third Report, they are Albanian speaking (six) and Serbian speaking (six). They come from Kosovo, Serbia and three other countries. The VPO has not identified any differences or potential conflicts of interest in the new applications that would warrant further consideration.

46. Further, VPO assesses that the situation or specificity of the victims in Group 1 and those referenced in the present report is not so different that their interests would be irreconcilable.³⁸

47. Consequently, after analysing the individual circumstances of the applicants, as well as the particularities of the group of applicants and victims admitted to participate in the proceedings as a whole, the VPO recommends the Pre-Trial Judge

³³ Framework Decision, para. 43.

³⁴ First Decision, paras 73-77.

³⁵ Framework Decision, para. 43; *see also* First Decision, para. 76.

³⁶ Supplement, paras 13-29; Second Supplement, paras 46-50.

³⁷ Second Supplement, para. 49.

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

to group the 12 victim applicants described in this submission together with the already admitted victims participating in the proceedings and that they be represented jointly as one group (Group 1).³⁹

B. COMMON LEGAL REPRESENTATION

48. As regards preferences on legal representation, two applicants have indicated a preference in the application form by providing a name of a counsel, and one expressed a general preference to have an international counsel. Others did not express any preferences.

49. The VPO followed the findings in the Second Framework Decision and made further inquiries, where relevant, as instructed by the Pre-Trial Judge.⁴⁰

50. The VPO submits that there appears to be no reason for which all victim applicants, if admitted, could not be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.⁴¹

VI. PROTECTIVE MEASURES

51. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage.⁴² The protective measures requested by the applicants can be summarized as follows:

- three applicants requested non-disclosure of identifying information to the public;⁴³
- two applicants requested non-disclosure to the public and the Accused;⁴⁴

³⁹ First Decision, para. 77.

⁴⁰ Second Framework Decision, para. 22. More details can be found in the application summaries annexed to this Third Report.

⁴¹ 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.

⁴² Framework Decision, para. 46.

⁴³ Victim-54/06, Victim-58/06 and Victim-59/06.

⁴⁴ Victim-21/06 and Victim-57/06.

- seven applicants requested non-disclosure to the public, the Accused and Defence Counsel.⁴⁵

52. 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.⁴⁶ The VPO notes that the concerns expressed in detail in the First Report and summarised in the First Decision affect all victims applying for participation, including the applicants included in this Third Report.⁴⁷

53. As regards the existence of an objectively justifiable risk and the necessity of protective measures, the VPO finds 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.⁴⁸

54. 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 ("SC") 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)).

⁴⁵ Victim-44/06, Victim-45/06, Victim-46/06, Victim-47/06, Victim-53/06, Victim-55/06 and Victim-56/06.

⁴⁶ Framework Decision, paras 47-49.

⁴⁷ First Report, paras 59-60; First Decision, para. 61.

⁴⁸ First Decision, paras 68-69.

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

Word count: 3550



Dr Fidelma Donlon
Registrar

18 November 2021
At The Hague, the Netherlands.

⁴⁹ Framework Decision, para. 47.