



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: 25 January 2022

Language: English

Classification: Confidential and *Ex Parte*

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

with strictly confidential and *ex parte* Annexes 1-17

Head of Victims' Participation Office

I. INTRODUCTION

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

2. With this Fourth Report, the VPO transmits to the Pre-Trial Judge 16 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 ("Corrected Confirmed Indictment").⁴

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").

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
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 7 June 2021, an appeal was lodged against the First Decision by six of the applicants who were denied admission as participating victims ("Denied Applicants").¹⁰
9. On 6 July 2021, the Pre-Trial Judge issued the Second Framework Decision on Victims' Applications ("Second Framework Decision").¹¹
10. On 16 July 2021, the Panel of the Court of Appeals Chamber issued a decision on the appeal by the Denied Applicants ("Decision on Appeal"), confirming in part the First Decision and remanding for the Pre-Trial Judge to provide further reasons for rejecting the applications of the Denied Applicants.¹²

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.

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, 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.

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

¹⁰ F00340, Appeal against the "First Decision on Victims' Participation" pursuant to Rule 113(6) of the Rules, 7 June 2021, strictly confidential & *ex parte*, filed for the Appeals Panel as IA005/F0004). A public redacted version was filed on the same day (F00340/RED, IA005-F00004/RED).

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

¹² IA005/F00008, Decision on Appeal Against "First Decision on Victims' Participation", 16 July 2021, public.

11. On 10 December 2021, the Pre-Trial Judge issued the Second Decision on Victims' Participation ("Second Decision"), providing, *inter alia*, further reasons for rejecting the Denied Applicants.¹³

12. The VPO has been submitting reports on victims' applications for participation in the proceedings to the Pre-Trial Judge on a regular basis, with the Second Report¹⁴ filed on 18 June 2021 and the Third Report¹⁵ filed on 18 November 2021.

13. With this Fourth Report, the VPO transmits 16 applications that it has assessed to be formally complete and, therefore, ready for consideration by the Pre-Trial Judge. The VPO notes that after the Decision on Appeal was issued, the VPO informed the applicants about the reasoning in the decision and explained how this affects the admissibility of their applications. The VPO invited the applicants to submit any additional information in their possession that they had not yet shared, if any. The VPO also informed the applicants of the possibility to withdraw their applications. Six applicants clearly stated that they wished to continue with their applications, while the others did not reply.

III. CLASSIFICATION

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

¹³ F00611, Second Decision on Victims' Participation, 10 December 2021, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were issued on the same day (F00611/CONF/RED and F00611/RED).

¹⁴ 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.

¹⁵ F00572, Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 November 2021, public, with strictly confidential and *ex parte* Annexes 1-13.

decides to re-classify the Report, this Fourth Report may also constitute the Report to the Parties pursuant to Rule 113(2) of the Rules.¹⁶

15. Together with this Fourth Report, the VPO submits 17 strictly confidential and *ex parte* Annexes.¹⁷ Annex 1 contains the table indicating the number and details of applicants. The remaining 16 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.¹⁸

16. 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.¹⁹

IV. ASSESSMENT OF APPLICATIONS

17. 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 Law²⁰ and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

18. In assessing the completeness of the applications, the VPO checked the applications against the criteria listed in the Framework Decision²¹ and applied

¹⁶ Framework Decision, para. 50.

¹⁷ Framework Decision, para. 24(e).

¹⁸ First Decision, para. 66.

¹⁹ Framework Decision, para. 25; *see also* First Decision, para. 64.

²⁰ Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No.05/L-053, 3 August 2015 (“Law”).

²¹ Framework Decision, para. 22.

additional guidance provided by the Pre-Trial Judge in the First Decision²² and the Second Framework Decision²³.

19. Where an application is manifestly outside the scope of the confirmed charges, the Pre-Trial Judge has instructed the VPO to nevertheless ensure that certain criteria for completeness are fulfilled.²⁴

20. In line with the above, the VPO notes that all applications submitted with this Fourth Report can be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

21. In assessing the applications and making its recommendation in this Fourth Report, the VPO applied the *prima facie* standard²⁵ for all requirements as well as any supporting documentation.

2. Criteria of Admissibility

22. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,²⁶ following the guidelines and requirements set out in the Framework Decision.²⁷ The VPO also took into consideration the findings of the First Decision²⁸ and the Decision on Appeal,²⁹ as well as the further reasoning in the Second Decision.³⁰

²² First Decision, paras 34-35.

²³ Second Framework Decision, para. 19.

²⁴ Framework Decision, paras 22-23; Second Framework Decision, para. 20 (in terms of completeness, the VPO need not ensure that relevant and supporting documentation has been submitted, to the extent possible, for applications manifestly outside the scope of the confirmed charges).

²⁵ 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.

²⁶ First Report, paras 17-20.

²⁷ Framework Decision, paras 31, 35-37.

²⁸ First Decision, paras 45, 52-55.

²⁹ Decision on Appeal, paras 16, 20, 24, 35-36.

³⁰ Second Decision, paras 61-69.

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

(a) Natural person

24. 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.

(b) Alleged crimes

25. The VPO assessed whether the acts described in the applications appear to constitute alleged crimes within the scope of the Corrected Confirmed Indictment and evaluated whether the alleged events have taken place within the material, geographical and temporal scope of the indictment, *i.e.* in Kosovo and areas of northern Albania between March 1998 and September 1999.³¹

26. The applicants allege the following crimes: persecution, illegal or arbitrary arrest and detention, enforced disappearance of persons and murder.

27. The VPO notes that, in the First Decision, the Pre-Trial Judge rejected seven applications for not falling within the material, geographical and temporal parameters of the charges, as specified in the Confirmed Indictment.³² The Pre-Trial Judge noted that generic references in the Confirmed Indictment to other crimes as part of any background information or description of the contextual elements of war crimes or crimes against humanity do not fall under the scope of Rules 2 and 113(1) of the Rules, which define respectively the notion of victim and the notion of a victim participating in the proceedings.³³ This principle was confirmed by the Panel of the Court of Appeals Chamber in the Decision on Appeal.³⁴

³¹ Corrected Confirmed Indictment, para. 16.

³² First Decision, para. 48.

³³ First Decision, para. 45.

³⁴ See Decision on Appeal, paras 16, 20, 24.

28. In the Second Decision, the Pre-Trial Judge provided further reasoning with respect to his decision to reject the applications of the Denied Applicants.³⁵

29. Considering the above, the VPO assesses that none of the crimes the applicants allege to be a victim of fall within the parameters of the confirmed charges, as specified in the Corrected Confirmed Indictment.

(c) Harm and direct result

30. The VPO assessed the types of harm alleged and any available supporting documentation. The 16 applicants allege that they are indirect victims in that they have personally suffered mental and material harm as a result of the persecution, illegal or arbitrary arrest and detention, enforced disappearance and murder of a family member.

31. The VPO assessed whether there is evidence of a causal link between the harm suffered and a crime in the Corrected Confirmed Indictment.³⁶ It found no indication of such a link, as the events described by the applicants, which are summarised in more detail below and in the Annexes to this Report, do not appear to be within the scope of the confirmed charges.

3. General description of the applications

32. Applicant Victim-23/06 claims to be an indirect victim of kidnapping and enforced disappearance of two immediate family members from their home on the territory of Kosovo by the Kosovo Liberation Army ('KLA'), within the relevant period. The applicant states that they were taken to an unknown location. Their fate remains unknown to this day.

33. Applicants Victim-29/06 and Victim-43/06 claim to be indirect victims of the killing of three family members by the KLA on the territory of Kosovo within the period covered by the Corrected Confirmed Indictment.

³⁵ Second Decision, paras 61-69.

³⁶ Framework Decision, paras 38-39.

34. Applicants Victim-30/06 and Victim-31/06 are members of the same family. They claim to be indirect victims of the enforced disappearance of an immediate family member by the KLA on the territory of Kosovo within the relevant period. The applicants state that the immediate family member was last seen at their family home by another family member. They do not have any additional information. The fate of the immediate family member remains unknown to this day.

35. Applicant Victim-32/06 claims to be an indirect victim of the kidnapping and enforced disappearance of an immediate family member by the KLA on the territory of Kosovo within the relevant period. The applicant suspects that the immediate family member was taken to one of the detention facilities in the area, but has no further information on which detention site. The fate of the immediate family member remains unknown to this day.

36. Applicant Victim-42/06 claims to be an indirect victim of the kidnapping, enforced disappearance and killing of two immediate family members by the KLA, within the relevant period on the territory of Kosovo. The applicant states that the immediate family members were taken from their house to a detention camp that is not included in the Corrected Confirmed Indictment. The applicant further states that they were both killed and that their remains were eventually found.

37. Applicant Victim-48/06 claims to be an indirect victim of the enforced disappearance of an immediate family member on the territory of Kosovo in the relevant period. The applicant does not know where the family member was taken or by whom. The fate of the immediate family member remains unknown to this day.

38. Applicant Victim-49/06 claims to be an indirect victim of the kidnapping and killing of an immediate family member by the KLA on the territory of Kosovo. The remains of the family member were found on the territory of Kosovo, but the applicant does not know where the family member was taken and how the family member was killed. In addition, the events described fall outside the temporal scope of the Corrected Confirmed Indictment.

39. Applicants Victim-50/06 and Victim-51/06 are members of the same family. They claim to be indirect victims of the enforced disappearance of two immediate family members by the KLA on the territory of Kosovo within the relevant period. The applicants do not know where their family members were taken or by whom. The fate of the immediate family members remains unknown to this day.

40. Applicant Victim-52/06 claims to be an indirect victim of the killing of an immediate family member by the KLA on the territory of Kosovo. The events described fall outside the temporal scope of the Corrected Confirmed Indictment.

41. Applicants Victim-60/06, Victim-61/06 and Victim-62/06 are members of the same family. They claim to be indirect victims of the enforced disappearance of an immediate family member by the KLA on the territory of Kosovo within the relevant period. The applicants do not know where the family member was taken or by whom. The fate of the immediate family member remains unknown to this day.

42. Applicant Victim-69/06 claims to be an indirect victim of the murder of an immediate family member. The applicant states that the murder happened in the family house in Kosovo within the relevant period and was committed by members of the KLA.

C. RECOMMENDATION ON ADMISSIBILITY

43. The VPO assesses that the applicants have not sufficiently demonstrated, on a *prima facie* basis, that the events described in their applications fall within the material, geographical and temporal parameters of the confirmed charges, as described in the Corrected Confirmed Indictment. Consequently, the VPO recommends to the Pre-Trial Judge to deny all of the applications for participation as victims in the proceedings submitted with this Fourth Report.

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

44. Given the recommendation on admissibility, VPO does not make a recommendation on grouping and common legal representation for the applicants included in this Fourth Report.

VI. PROTECTIVE MEASURES

45. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage.³⁷ The protective measures requested by the applicants can be summarized as follows:

- three applicants requested non-disclosure of identifying information to the public;³⁸
- one applicant requested non-disclosure to the public and the Accused;³⁹
- seven applicants requested non-disclosure to the public, the Accused and Defence Counsel;⁴⁰
- five applicants did not request any protective measures.⁴¹

46. With due consideration to the confidentiality of the application process and the applicants' protection of privacy, the VPO recommends that the Pre-Trial Judge follow the approach taken in the First and Second Decisions on victims' participation.⁴²

³⁷ Framework Decision, para. 46.

³⁸ Victim-29/06, Victim-42/06, Victim-43/06.

³⁹ Victim-50/06.

⁴⁰ Victim-30/06, Victim-31/06, Victim-52/06, Victim-48/06, Victim-49/06, Victim-51/06, Victim-69/06.

⁴¹ Victim-23/06, Victim-32/06, Victim-60/06, Victim-61/06, Victim-62/06.

⁴² First Decision, paras 71-72; Second Decision, paras 55-56.

47. Thus, the VPO recommends that the names and any identifying information of the applicants be withheld from the Parties and the public.

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Dr Fidelma Donlon
Registrar

Tuesday, 25 January 2022
At The Hague, the Netherlands.