



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA 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:** 21 July 2022

**Language:** English

**Classification:** Confidential and *Ex Parte*

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

**with one strictly confidential and *ex parte* Annex**

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**Registry**

Head of Victims' Participation Office

## I. INTRODUCTION

1. The Victims' Participation Office (VPO) hereby files the second report on victims' applications for participation in the proceedings ('Second Report') pursuant to Rule 113(2) of the Rules.<sup>1</sup>
2. With this Second 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').<sup>2</sup>
4. A public redacted version of the Confirmed Indictment<sup>3</sup> 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.<sup>4</sup>
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.<sup>5</sup> Among other matters, the Framework Decision sets out that applications may be submitted to the Pre-Trial Judge until two weeks prior to the submission of the Defence pre-trial brief, which is the final deadline for applications submitted during the pre-trial phase. After that date, applications are

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<sup>1</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

<sup>2</sup> KSC-BC-2020-04, F00007, 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

<sup>3</sup> F00016, 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.

<sup>4</sup> F00013, Notification of Arrest of Pjetër Shala Pursuant to Rule 55(4), 16 March 2021, public; F00019, Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel, , 15 April 2021, confidential, with strictly confidential and *ex parte* Annexes 1 – 2. A public redacted version was submitted on 26 April 2021 (F00019/RED).

<sup>5</sup> F00064, Framework Decision on Victims' Applications, 1 September 2021, public.

to be submitted to the Trial Panel.<sup>6</sup> The deadline for submitting a Defence pre-trial brief, if any, was set by the Pre-Trial Judge.<sup>7</sup>

6. On 1 October 2021, the VPO submitted the first report on victims' applications for participation in the proceedings to the Pre-Trial Judge ('First Report').<sup>8</sup>

7. Following the Pre-Trial Judge's decision on the Defence's motion challenging the form of the Indictment, a corrected indictment was submitted on 1 November 2021.<sup>9</sup>

8. On 15 December 2021, the Pre-Trial Judge issued the First Decision on Victims' Participation ('First Decision').<sup>10</sup>

9. The VPO has received one more application from a person wishing to apply in the proceedings as a participating victim.

10. The applicant informed the VPO that some of the applicant's family members also expressed an interest to apply. The applicant informed the VPO that since the family members live in different countries the application process might take some more time. The VPO will assist the applicant and family to the extent possible and endeavour to submit the applications before the deadline for the Defence to submit a pre-trial brief, if any. Unless sent within the deadline set by the Pre-Trial Judge in the Framework Decision, any new applications shall be submitted to the Trial Panel, as determined by that Panel.<sup>11</sup>

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<sup>6</sup> Id., para.21.

<sup>7</sup> F00234, Decision on Specialist Prosecutor's Rule 102(2) and Related Requests, 20 July 2022, confidential.

<sup>8</sup> F00085, First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 1 October 2021, confidential, with one strictly confidential and *ex parte* Annex. A public redacted version was submitted on 29 October 2022 (F00085/RED).

<sup>9</sup> F0098/A01, Annex 1 to Submission of Corrected Indictment, 1 November 2021, confidential'; a public redacted version was submitted on 16 November 2021 (F00107/A01) ('Corrected Confirmed Indictment' or 'Confirmed Indictment').

<sup>10</sup> F00123, First Decision on Victims' Participation, 15 December 2021, confidential. A public redacted version was issued on the same date (F00123/RED).

<sup>11</sup> Framework Decision, para. 21.

### 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 the Second 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 the Second Report as public. In the event that the Pre-Trial Judge decides to re-classify this Second Report, it will also constitute the Report to the Parties pursuant to Rule 113(2) of the Rules.<sup>12</sup>

12. 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.<sup>13</sup> The Annex contains identifying information and is therefore filed as strictly confidential and *ex parte* pursuant to Rules 82 and 113(2) of the Rules.<sup>14</sup>

13. 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

14. 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 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.

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<sup>12</sup> Framework Decision, para. 57.

<sup>13</sup> *Id.*, para. 30(e)(ii).

<sup>14</sup> *Cf.* KSC-BC-2020-06, F00257/RED, Public Redacted Version of First Decision on Victims' Participation, 21 April 2021, public, para. 66.

## A. COMPLETENESS OF APPLICATION FORMS

15. In assessing the completeness of the application, the VPO reviewed the application against the requirements listed in the Framework Decision.<sup>15</sup> In line with those requirements, the application submitted with this Second Report can be considered as formally complete.

## B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

### 1. Standard of proof

16. In assessing the application and making its recommendation in this Second Report, the VPO applied the *prima facie* standard<sup>16</sup> for all requirements as well as any supporting documentation.

### 2. Criteria of Admissibility

17. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,<sup>17</sup> following the guidelines and requirements set out in the Framework Decision.<sup>18</sup> The VPO also took into consideration the findings in the First Decision.<sup>19</sup>

18. 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 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.

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<sup>15</sup> Framework Decision, paras 24-26.

<sup>16</sup> Rule 113 (4) of the Rules; *see also* Framework Decision, para. 35 ("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").

<sup>17</sup> First Report, paras 13-15.

<sup>18</sup> Framework Decision, paras 36-43.

<sup>19</sup> First Decision, paras 25-33.

**(b) Alleged crimes**

20. The applicant alleges the following crimes: arbitrary detention, cruel treatment, and torture.

21. The VPO assessed whether acts described in the application 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.<sup>20</sup>

22. All the crimes alleged in the application form are crimes reflected in the Confirmed Indictment. In other words, the crime(s) 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) Personally Suffered Harm as a direct result of a crime in the Indictment**

23. In reviewing the application, the VPO assessed mental and material harm.<sup>21</sup> The VPO further assessed whether there is evidence of a causal link between harm and crime.<sup>22</sup>

24. As to the requirement that harm has to be suffered *personally* by the victim, the applicant can be considered an indirect victim.<sup>23</sup>

25. The applicant claims to have suffered mental and material harm as a result of the unlawful detention, cruel treatment, and torture of a family member. 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.<sup>24</sup> Immediate family members (spouse,

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<sup>20</sup> F00007/RED, fn. 2 above, para. 5; First Decision, para. 27.

<sup>21</sup> Framework Decision, paras 42-43.

<sup>22</sup> *Id.*, paras 44-45; *see also* First Decision, paras 33, 35. 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 Second Report.

<sup>23</sup> Framework Decision, para. 40.

<sup>24</sup> *Ibid.*

parents, children, siblings) are presumed to be in a close personal relationship with the direct victim.<sup>25</sup>

26. The applicant can be considered an immediate family member and the closeness of the relationship with the direct victim is therefore presumed. The applicant submitted documents to prove kinship.

27. The applicant indicated not having any supporting documentation on mental harm. However, 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.<sup>26</sup>

28. Considering the above, the applicant meets *prima facie* the necessary requirements as to mental harm suffered and the requisite close personal relationship with a direct victim.

29. As regards material harm, the applicant indicated in the application form that material harm had been suffered, but did not provide any specification. The VPO requested more information, but the applicant has not responded. Consequently, the VPO assesses that the application at this stage does not meet the *prima facie* requirement as to material harm suffered.

### C. RECOMMENDATION ON ADMISSIBILITY

The VPO recommends the Pre-Trial Judge to admit the applicant as a participating victim.<sup>27</sup>

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<sup>25</sup> First Decision, para. 28.

<sup>26</sup> First Decision, para. 31.

<sup>27</sup> The recommendation is based on the *prima facie* standard; see para. 16, above.

## V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

### A. RECOMMENDATION ON GROUPING

30. In making its recommendation to the Pre-Trial Judge on grouping, the VPO assessed the criteria set out in Rule 113(8) of the Rules by considering the individual circumstances of the 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.<sup>28</sup> 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”.<sup>29</sup>

31. The VPO has also considered the general observations and jurisprudence outlined in its submissions on grouping in the KSC-BC-2020-06 case.<sup>30</sup>

32. The VPO notes that, through the First Decision, one victim was admitted for participation. Looking into the individual circumstances of the participating victim and the applicant, the VPO notes that even though they reside in different countries, they are of the same ethnicity and speak the same language. In addition, both were allegedly subjected to similar crimes at the hands of the same group of perpetrators, have suffered similar forms of harm, and they both share an interest in participating in the proceedings and pursuing their rights.<sup>31</sup>

33. Considering all the relevant circumstances, the VPO assesses that there is no indication of a potential conflict of interest that would affect grouping or common representation. VPO assesses that the situation or specificity of the applicant and the

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<sup>28</sup> Framework Decision, paras 48-49.

<sup>29</sup> *Id.*, para. 49.

<sup>30</sup> KSC-BC-2020-06, F00241, Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings with Recommendation on Grouping with one confidential and ex parte Annex, 1 April 2021, public,

<sup>31</sup> *Id.*, para. 27.



victim participating in the proceedings are not so different that their interests would be irreconcilable.<sup>32</sup>

34. Consequently, the VPO recommends the Pre-Trial Judge to group the applicant together with the already admitted victim participating in the proceedings and that they be jointly represented as one group (Group 1).

## **B. COMMON LEGAL REPRESENTATION**

35. As regards legal representation, the applicant indicated having no preference.

36. The VPO submits that there appears to be no reason for which the applicant, if admitted, could not be represented together with the other victim participating in the proceedings by the assigned Victims' Counsel.<sup>33</sup>

## **VI. PROTECTIVE MEASURES**

37. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.<sup>34</sup>

38. The applicant has requested for identifying information not to be disclosed to the public.

## **A. RECOMMENDATION**

39. 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.<sup>35</sup>

40. The VPO notes that the same general concerns exist as regards the applicant as indicated by the Pre-Trial Judge in the First Decision.<sup>36</sup> The applicant is particularly

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<sup>32</sup> Framework Decision, para. 49.

<sup>33</sup> F00134, Notification of Assignment of Victims' Counsel with one confidential and *ex parte* Annex, 28 January 2022, public.

<sup>34</sup> Framework Decision, para. 53.

<sup>35</sup> *Id.*, para. 54; First Decision, para. 36.

<sup>36</sup> First Decision, para. 37.

vulnerable, 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.

41. Furthermore, 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.<sup>37</sup>

42. Therefore, the VPO recommends that the Pre-Trial Judge grants anonymity and orders the following specific protective measures that are strictly necessary, appropriate, and proportionate at this stage of the proceedings:<sup>38</sup>

- (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)).

**Word count: 2514**



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**Dr Fidelma Donlon**  
**Registrar**

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<sup>37</sup> Ibid.

<sup>38</sup> Framework Decision, para. 54; First Decision, paras 38 – 40.

21 July 2022

At The Hague, the Netherlands