



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: 1 September 2022

Language: English

Classification: Confidential and *Ex Parte*

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

with one strictly confidential and *ex parte* Annex

Registry

Head of Victims' Participation Office

I. INTRODUCTION

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

2. With this Third Report, the VPO transmits to the Pre-Trial Judge six applications 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 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

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, 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.

³ 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.

⁴ 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).

⁵ F00064, Framework Decision on Victims' Applications, 1 September 2021, public.

to be submitted to the Trial Panel.⁶ The deadline for submitting a Defence pre-trial brief, if any, was extended by the Pre-Trial Judge to 5 September 2022, and the Pre-Trial Judge set a new tentative date of 21 September 2022 to transfer the case to trial.⁷

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').⁸

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 2021.⁹

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

9. On 21 July 2022, the VPO submitted the second report on victims' applications for participation in the proceedings to the Pre-Trial Judge ('Second Report').¹¹

10. On 11 August 2022, the Pre-Trial Judge issued the Second Decision on Victims' Participation ('Second Decision').¹²

11. The VPO has received six more applications from persons wishing to apply in the proceedings as participating victims. These six applicants are family members of Victim-02/04, admitted as a participating victim with the Second Decision. As the VPO indicated in the Second Report, obtaining the applications from the family members of Victim-02/04 took some more time due to the fact that the applicants live in different countries and, initially, the only point of contact was Victim-02/04. In addition, all of

⁶ Id., para. 21.

⁷ F00234, Decision on Specialist Prosecutor's Rule 102(2) and Related Requests, 20 July 2022, confidential, paras 31 and 46. A public redacted version was issued on 8 August 2022 (F00234/RED).

⁸ 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).

⁹ 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').

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

¹¹ F00236, Second Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 21 July 2022, public, with one strictly confidential and *ex parte* Annex.

¹² F00249, Second Decision on Victims' Participation, 11 August 2022, confidential. A public redacted version was issued on the same date (F00249/RED).

the applicants needed assistance with filling in the application forms. As a consequence, it was not possible to submit these applications within the deadline set by the Pre-Trial Judge in the Framework Decision.¹³ However, since the case has not yet been transferred to trial, the VPO respectfully seeks leave to file this Third Report with the Pre-Trial Judge.

III. CLASSIFICATION

12. 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 the 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 re-classification of the Third Report as public. In the event that the Pre-Trial Judge decides to re-classify the report, it will also constitute the Report to the Parties pursuant to Rule 113(2) of the Rules.¹⁴

13. Together with this Report, the VPO submits one strictly confidential and *ex parte* Annex, containing a summary 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 requests for protective measures.¹⁵ As regards the applications, the VPO notes that they have been submitted by members of the same family and concern the same events, which are described in an almost identical manner. To avoid repetition, the VPO is filing only one Annex for all six applications. 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.¹⁶

¹³ Framework Decision, paras 21, 63.

¹⁴ *Id.*, para. 57.

¹⁵ *Id.*, para. 30(e)(ii).

¹⁶ *Cf.* KSC-BC-2020-06, F00257/RED, Public Redacted Version of First Decision on Victims' Participation, 21 April 2021, public, para. 66.

14. The application forms 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

15. 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 Law on Specialist Chambers and Specialist Prosecutor's Office ('Law') and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

16. In assessing the completeness of the applications, the VPO reviewed the applications against the requirements listed in the Framework Decision.¹⁷ The VPO also took note of the findings in the Second Decision as to completeness of applications.¹⁸ In line with those requirements, the applications submitted with this Third Report can 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* standard¹⁹ for all requirements as well as any supporting documentation.

¹⁷ Framework Decision, paras 24-26.

¹⁸ Second Decision, para. 26.

¹⁹ 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").

2. Criteria of Admissibility

18. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,²⁰ following the guidelines and requirements set out in the Framework Decision.²¹ The VPO also took into consideration the findings in the First Decision²² and Second Decision²³.

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

(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". The applicants submitted valid passports/ID cards as proof of identity.

(b) Alleged crimes

21. The applicants allege the following crimes: arbitrary detention, cruel treatment, and torture.

22. The VPO assessed whether acts described in the applications 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 1999.²⁴

23. All the crimes alleged in the application forms that relate to events in 1999 are crimes reflected in the Confirmed Indictment. Therefore, the crime(s) in relation to which the applicants claim to be victims fall within the material, geographical, and temporal parameters of the charges as set out in the Confirmed Indictment.

²⁰ First Report, paras 13-15.

²¹ Framework Decision, paras 36-43.

²² First Decision, paras 25-33.

²³ Second Decision, paras 25-27.

²⁴ F00007/RED, fn. 2 above, para. 5; First Decision, para. 27; Second Decision, para. 26.

(c) Personally Suffered Harm as a direct result of a crime in the Indictment

24. In reviewing the applications, the VPO assessed mental and material harm.²⁵ The VPO further assessed whether there is evidence of a causal link between harm and crime.²⁶

25. As to the requirement that harm has to be suffered *personally* by the victims, the applicants can be considered indirect victims.²⁷

26. The applicants are members of the same family and claim 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 applicants have 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.²⁸ Immediate family members (spouse, parents, children, and siblings) are presumed to be in a close personal relationship with the direct victim.²⁹

27. The applicants can be considered immediate family members and the closeness of the relationship with the direct victim is therefore presumed. The applicants submitted documents to prove kinship.

28. The applicants 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.³⁰

²⁵ Framework Decision, paras 42-43.

²⁶ *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 forms and the application summary annexed to this Third Report.

²⁷ Framework Decision, para. 40.

²⁸ *Ibid.*

²⁹ First Decision, para. 28.

³⁰ *Id.*, para. 31.

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

30. As regards material harm, the applicants claim destruction of property and loss of income. They do not have any supporting documentation on material harm. The VPO assesses that the applications at this stage do not meet the *prima facie* requirement as to material harm suffered.

C. RECOMMENDATION ON ADMISSIBILITY

The VPO recommends the Pre-Trial Judge to admit all six applicants as participating victims.³¹

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

31. 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 applicants 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.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

32. The VPO has also considered the general observations and jurisprudence outlined in its submissions on grouping in the KSC-BC-2020-06 case.³⁴

³¹ The recommendation is based on the *prima facie* standard; see para. 17, above.

³² Framework Decision, paras 48-49.

³³ *Id.*, para. 49.

³⁴ 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.

33. The VPO notes that, with the First and Second Decisions, two victims were admitted for participation. Looking into the individual circumstances of the participating victims and the applicants, the VPO notes that even though they reside in different countries, they are of the same ethnicity and speak the same language. In addition, all six applicants are members of the same family as Victim-02/04, admitted as a participating victim through the Second Decision. Thus, all applicants 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

34. 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 applicants and the victims participating in the proceedings are not so different that their interests would be irreconcilable.³⁶

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

B. COMMON LEGAL REPRESENTATION

36. As regards legal representation, the applicants indicated having no preference.

37. The VPO submits that there appears to be no reason for which the applicants, if admitted, could not be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.³⁷

³⁵ Id., para. 27.

³⁶ Framework Decision, para. 49.

³⁷ F00134, Notification of Assignment of Victims' Counsel with one confidential and *ex parte* Annex, 28 January 2022, public.

VI. PROTECTIVE MEASURES

38. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.³⁸

39. Two applicants have requested that their identifying information not be disclosed to the public. Four applicants have requested that their identifying information not be disclosed to the public and the Accused.

A. RECOMMENDATION

40. 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.³⁹

41. The VPO notes that the same general concerns exist as regards the applicants as indicated by the Pre-Trial Judge in the First and Second Decisions.⁴⁰ The applicants are particularly 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 applicants and that no less restrictive measures are sufficient or feasible to protect the applicants.

42. Furthermore, the VPO is of the view that the relevant protective measures are proportionate at this 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 applicants. 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.⁴¹

³⁸ Framework Decision, para. 53.

³⁹ Id., para. 54; First Decision, para. 36; Second Decision, paras 31-32.

⁴⁰ First Decision, para. 37; Second Decision, para. 32.

⁴¹ Ibid.

43. Although the applicants have requested different protective measures, the VPO recommends that the Pre-Trial Judge take a uniform approach and grant anonymity to all of the applicants at this stage of the proceedings, similar to the approach in the Second Decision.⁴² The VPO therefore recommends that the Pre-Trial Judge order the following specific protective measures that are strictly necessary, appropriate, and proportionate at this stage of the proceedings:⁴³

- (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) non-disclosure to the Accused (Rule 80(4)(d)); and
- (v) non-disclosure to Defence Counsel (Rule 80(4)(e)(i)).

Word count: 2830



Dr Fidelma Donlon
Registrar

1 September 2022

At The Hague, the Netherlands

⁴² See Second Decision, paras 33-37.

⁴³ Framework Decision, para. 54; First Decision, paras 38-40; Second Decision, paras 34-37.