



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: 3 October 2022

Language: English

Classification: Confidential and *Ex Parte*

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

with strictly confidential and *ex parte* Annexes 1-30

Registry

Victims' Participation Office

I. INTRODUCTION

1. The Victims' Participation Office ('VPO') hereby files the seventh report ('Seventh Report') on victims' applications for participation in the proceedings pursuant to Rule 113(2) of the Rules.¹
2. With this Seventh Report, the VPO transmits to the Pre-Trial Judge 46 applications for the status of a participating victim in the proceedings and provides a recommendation on admissibility 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, 26 October 2020, public ('Confirmation Decision').

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.

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 7 June 2021, an appeal was lodged against the First Decision by the applicants that were denied admission as participating victims.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 lodged by the Denied Applicants ('Decision on Appeal'), confirming in part the First Decision and remanding it in part to the Pre-Trial Judge to provide further reasons for rejecting the applications of the Denied Applicants.¹²
11. On 10 December 2021, the Pre-Trial Judge issued the Second Decision on Victims' Participation ('Second Decision').¹³

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. See also F00347, Second Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, with one strictly confidential and *ex parte* Annex, 11 June 2021 ('Second Supplement').

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 and *ex parte*. A public redacted version was issued on the same day (F00340/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.

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).

12. On 29 April 2022, pursuant to the Amendment Decision issued by the Pre-Trial Judge,¹⁴ the SPO submitted an amended version of the Indictment ('Amended Indictment').¹⁵

13. On 25 May 2022, the Pre-Trial Judge issued the Third Decision on Victims' Participation ('Third Decision').¹⁶

14. On 30 September 2022, pursuant to two decisions of the Pre-Trial Judge,¹⁷ the SPO submitted the Confirmed Amended Indictment.¹⁸

15. The VPO has been submitting reports on victims' applications on a regular basis, namely on 18 June 2021,¹⁹ on 18 November 2021,²⁰ on 25 January 2022,²¹ on 22 July 2022²² and on 18 August 2022.²³ The VPO will continue to do so for all other pending and incoming applications.

16. With this Seventh Report, the VPO transmits 46 applications that it has assessed to be formally complete and, therefore, ready for consideration by the Pre-Trial Judge. The majority of applications (30) were submitted to the VPO in April 2022 by a lawyer and an additional 16 followed in the next months that are linked to this initial package.

¹⁴ F00777, Decision on the Confirmation of Amendments to the Indictment, 22 April 2022, strictly confidential and *ex parte*. A public redacted version was issued on 6 May 2022 (F0077/RED) ('Amendment Decision').

¹⁵ F00789, Submission of amended Indictment and related documents with strictly confidential and *ex parte* Annex 1, confidential Annexes 2-4, and public Annexes 5-7, 29 April 2022, public.

¹⁶ F00817, Third Decision on Victims' Participation, 25 May 2022, strictly confidential and *ex parte*. A public redacted version was issued on the same day (F00817/RED).

¹⁷ F00895, Decision on Motion Alleging Defects in the Form of the Amended Indictment, 22 July 2022; F00993, Decision on the Prosecution Request to Amend the Indictment, 29 September 2022, confidential. A public redacted version was issued on the same date (F00993/RED).

¹⁸ F00999, Submission of confirmed amended Indictment, 30 September 2022, public, with strictly confidential and *ex parte* Annex 1, confidential Annex 2, and public Annex 3.

¹⁹ 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.

²⁰ F00572, Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 November 2021, public, with confidential and *ex parte* Annexes 1-13.

²¹ F00656, Fourth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 25 January 2022, public, with confidential and *ex parte* Annexes 1-17.

²² F00894, Fifth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 22 July 2022, public, with strictly confidential and *ex parte* Annexes 1-26.

²³ F00930, Sixth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 August 2022, public, with strictly confidential and *ex parte* Annexes 1-51.

The lawyer only sent the applications and was not further involved in the application process. For any missing information or documentation, the VPO contacted the applicants directly.

17. The VPO notes that none of the submitted applications can be linked to the charges in the indictment. Therefore, the VPO informed the applicants about the reasoning in the Decision on Appeal 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. The applicants expressed their intent to continue with their applications.

III. CLASSIFICATION

18. The VPO files this Seventh Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Seventh 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 the report as public. In the event that the Pre-Trial Judge decides to re-classify the report, this Seventh Report may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules.²⁴

19. Together with this Seventh Report, the VPO submits 30 strictly confidential and *ex parte* Annexes.²⁵ Annex 1 contains the table indicating the number and details of applicants. The remaining 29 annexes are summaries of the 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. As regards the structure of the application summaries, the VPO notes that among the applicants there are family members of a direct victim, and who (except for personal information)

²⁴ Framework Decision, para. 50.

²⁵ Framework Decision, para. 24(e).

submitted identical or almost identical applications. To streamline the entire process and make the filing easier to navigate, in such instances, the VPO drafted group Annexes, joining applications linked to the same events in one Annex. This filing therefore includes 46 applications, summarized in 29 annexes.

20. 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.²⁶

21. 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.²⁷

IV. ASSESSMENT OF APPLICATIONS

22. 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 Law²⁸ and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

23. In assessing the completeness of the applications, the VPO reviewed the applications against the criteria listed in the Framework Decision²⁹ and applied additional guidance provided by the Pre-Trial Judge in the First Decision³⁰ and the Second Framework Decision.³¹

²⁶ First Decision, para. 66.

²⁷ Framework Decision, para. 25; *see also* First Decision, para. 64.

²⁸ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

²⁹ Framework Decision, para. 22.

³⁰ First Decision, paras 34-35.

³¹ Second Framework Decision, para. 19.

24. 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.³²

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

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

26. In assessing the applications and making its recommendation in this Seventh Report, the VPO applied the *prima facie* standard³³ for all requirements as well as any supporting documentation.

2. Criteria of Admissibility

27. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,³⁴ following the guidelines and requirements set out in the Framework Decision.³⁵ The VPO also took into consideration the findings of the First Decision³⁶, the Decision on Appeal³⁷ and the Second Decision.³⁸

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

³² 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).

³³ Rule 113(4) of the Rules. See Framework Decision, para. 29 ("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"); First Decision, para. 43.

³⁴ First Report, paras 17-20.

³⁵ Framework Decision, paras 31, 35-37.

³⁶ First Decision, paras 44-45, 51-55.

³⁷ Decision on Appeal, paras 16, 20, 24, 35.

³⁸ Second Decision, paras 36, 44, 62-68.

(a) Natural person

29. 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, passport or driver’s license as proof of identity.

(b) Alleged crimes

30. The VPO assessed whether acts described in the applications appear to constitute alleged crimes within the scope of the Confirmed Amended 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 1999.³⁹

31. The applicants list the following crimes: persecution, unlawful arrest/detention, cruel treatment, murder and enforced disappearance.

32. 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.⁴⁰ 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.⁴¹ This principle was confirmed by the Panel of the Court of Appeals Chamber in the Decision on Appeal.⁴²

33. In addition, as regards the crime of enforced disappearance, the Pre-Trial Judge confirmed the count of enforced disappearance of persons only for the series of

³⁹ Confirmed Amended Indictment, para. 16.

⁴⁰ First Decision, para. 48.

⁴¹ First Decision, para. 45.

⁴² See Decision on Appeal, paras 16, 20, 24. See also Second Decision, paras 61-69. In the Second Decision, the Pre-Trial Judge provided further reasoning with respect to his decision to reject the applications of the Denied Applicants.

incidents listed in Schedule C and described further in the Indictment, as also noted by the Panel of the Court of Appeals Chamber.⁴³

34. Turning to the specific circumstances of the applicants, they claim to be indirect victims of the above listed crimes committed against immediate family members by the KLA or unknown persons on the territory of Kosovo within either the Indictment period or the temporal jurisdiction of the Specialist Chambers.

35. The applicants who allege that their immediate family members were kidnapped, do not know where they were taken. Some were killed and their bodies later found. None of the incidents alleged are listed in Schedule C of the Confirmed Amended Indictment.

36. As regards the allegations of murder, the incidents alleged are not listed in Schedule A of the Confirmed Amended Indictment.

37. In relation to the allegations of persecution, unlawful arrest and cruel treatment, the applicants failed to provide *prima facie* evidence that the immediate family members were taken to one of the identified detention sites in the Amended Indictment.

38. Furthermore, two applications are outside the temporal scope of the charges in the Amended Indictment and one application falls outside the temporal mandate of the Specialist Chambers.

39. 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 Amended Indictment.

⁴³ Decision on Appeal, para. 24.

(c) Harm and Direct result

40. All applicants claim to have suffered mental harm. Some also claim physical and material harm.

41. Given that the applications fall manifestly outside of the material and/or temporal scope of the charges as specified in the Confirmed Amended Indictment, the VPO did not assess the alleged harm and the causal link between harm and crime.

C. RECOMMENDATION ON ADMISSIBILITY

42. 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 Confirmed Amended Indictment. Consequently, the VPO recommends to the Pre-Trial Judge to deny the applications submitted for participation as victims in the proceedings.

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

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

VI. PROTECTIVE MEASURES

44. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage.⁴⁴ The majority of the applicants requested protective measures; details for each applicant can be found in the respective Annexes.

45. 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 previous decisions on victims' participation where applicants

⁴⁴ Framework Decision, para. 46.

have been denied participation.⁴⁵ Thus, the VPO recommends that the names and any identifying information of the applicants be withheld from the Parties and the public.

Word count: 2832



Dr Fidelma Donlon
Registrar

Monday, 3 October 2022
At The Hague, the Netherlands.

⁴⁵ First Decision, paras 71-72; Second Decision, paras 55-56.