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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: **Trial Panel II**
Judge Charles L. Smith III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 7 February 2023

Language: English

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

**Eleventh Registry Report on Victims' Applications for Participation in the
Proceedings**

with strictly confidential and *ex parte* Annexes 1 - 5

Registry

Victims' Participation Office

I. INTRODUCTION

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

2. With this Eleventh Report, the VPO transmits to Trial Panel II ('the Panel') nine 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. In line with the two Framework Decisions issued by the Pre-Trial Judge,² the VPO submitted ten reports on victims' applications during the pre-trial stage of proceedings.³

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

² F00159, Framework Decision on Victims' Applications, 4 January 2021, public ('Framework Decision'); F00382, Second Framework Decision on Victims' Applications, 6 July 2021, public ('Second Framework Decision').

³ 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; 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'); 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; 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; 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; 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; 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; F01007, Seventh Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 3 October 2022, public, with strictly confidential and *ex parte* Annexes 1-30; F01037, Eighth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, public, 14 October 2022, with strictly confidential and *ex parte* Annexes 1-23; F01046, Ninth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, public, 20 October 2022, with strictly confidential and *ex parte* Annexes 1-16; F01148, Tenth Registry Report to the Pre-Trial Judge on

4. The Pre-Trial Judge issued four decisions on victim applications, in relation to the first five VPO reports.⁴
5. For a comprehensive procedural background, the VPO incorporates by reference the submissions made in the latest report.⁵
6. On 18 January 2023, at the trial preparation conference, the Panel ordered the Registry to submit any remaining applications for admission of victims participating in the proceedings by 15 February 2023.⁶
7. With this Eleventh Report, the VPO transmits nine applications that were sent to VPO after the case was transferred to the Panel. They have been sent to the VPO via e-mail or post, and two applications were filled in with the direct assistance of the VPO. These are all the remaining applications currently pending before the VPO.

III. CLASSIFICATION

8. The VPO files this Eleventh Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Eleventh 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 the report as public. In the event that the Panel decides to re-classify the report, this Eleventh Report may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules.⁷

Victims' Applications for Participation in the Proceedings, public, 9 December 2022, with strictly confidential and *ex parte* Annexes 1–9.

⁴ F00257, First Decision on Victims' Participation, 21 April 2021, confidential (*see also* F00257/RED); F00611, Second Decision on Victims' Participation, 10 December 2021, strictly confidential and *ex parte* (*see also* F00611/CONF/RED and F00611/RED); F00817, Third Decision on Victims' Participation, 25 May 2022, strictly confidential and *ex parte* (*see also* F00817/RED); F01152, Fourth Decision on Victims' Participation, 12 December 2022, strictly confidential and *ex parte* (*see also* F01152/RED, 14 December 2022). *See also* IA005, F00008, Decision on Appeal Against "First Decision on Victims' Participation", 16 July 2021, public.

⁵ F01148, fn. 3 above, paras 3 - 15.

⁶ Oral Order setting deadline for applications for admission of victims participating in the proceedings, 18 January 2023, Transcript p. 1902 l. 20 – p. 1903 l. 4.

⁷ Framework Decision, para. 50.

9. Together with this Eleventh Report, the VPO submits five strictly confidential and *ex parte* Annexes.⁸ Annex 1 contains the table indicating the number and details of applicants recommended for admission (Group A) and of those not recommended for admission (Group B). The remaining four 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. Similar to the most recent reports, the VPO drafted group Annexes, joining applications linked to the same events in one Annex. This filing therefore includes nine applications, summarized in four annexes. 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.⁹

10. The application forms and supporting documentation have been disclosed only to the Panel through Legal Workflow ('LW')¹⁰ in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.¹¹

IV. ASSESSMENT OF APPLICATIONS

11. 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 Law¹² and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

12. In assessing the completeness of the applications, the VPO reviewed the applications against the criteria listed in the Framework Decision¹³ and applied

⁸ Framework Decision, para. 24(e).

⁹ First Decision, para. 66.

¹⁰ Where applicable, supporting documents are being translated and will be uploaded in LW – *see* Fourth Decision, para. 39.

¹¹ Framework Decision, para. 25; *see also* First Decision, para. 64.

¹² Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

¹³ Framework Decision, para. 22.

additional guidance provided by the Pre-Trial Judge in the First Decision¹⁴ and the Second Framework Decision.¹⁵

13. 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.¹⁶

14. The VPO followed this instruction and made every effort to obtain complete applications, but was not successful in all the cases. Despite several attempts and reminders in order to receive the missing information/documentation, applicants Victim-275/06, Victim-277/06, Victim-279/06, Victim-280/06 and Victim-281/06 did not respond in time.¹⁷ These applications are nevertheless submitted with this Eleventh Report, in line with the oral order issued by the Panel.

15. The VPO notes that both applications in Group A submitted with this Eleventh Report can be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

16. In assessing the applications and making its recommendation in this Eleventh Report, the VPO applied the *prima facie* standard¹⁸ for all requirements as well as any supporting documentation.

¹⁴ First Decision, paras 34-35.

¹⁵ Second Framework Decision, para. 19.

¹⁶ 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).

¹⁷ Victim-275/06, Victim-279/06, Victim-280/06 and Victim-281/06 did not submit a valid ID or passport and Victim-277/06 did not sign the application.

¹⁸ 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.

2. Criteria of Admissibility

17. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,¹⁹ following the guidelines and requirements set out in the Framework Decision.²⁰ The VPO also took into consideration the findings of the First Decision,²¹ the Decision on Appeal²² and the Second Decision.²³

18. Consequently, the VPO's assessment and recommendation to the Panel is based on the following requirements:

(a) Natural person

19. Four applicants failed to submit a valid ID card or passport as proof of identity. The VPO notes that the remaining applications do not raise questions regarding the requirement for an applicant to be a "natural person".

(b) Alleged crimes

20. The VPO assessed whether acts described in the applications appear to constitute alleged crimes within the scope of the Confirmed Amended Indictment²⁴ and evaluated whether the alleged events have taken place within the geographical and temporal scope of the indictment, thus in Kosovo and areas of northern Albania between March 1998 and September 1999.²⁵

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

¹⁹ First Report, paras 17-20.

²⁰ Framework Decision, paras 31, 35-37.

²¹ First Decision, paras 44-45, 51-55.

²² Decision on Appeal, paras 16, 20, 24, 35.

²³ Second Decision, paras 36, 44, 62-68.

²⁴ 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 ('Confirmed Amended Indictment').

²⁵ Confirmed Amended Indictment, para. 16.

22. The crimes that the applicants in Group A claim to be a victim of fall within the material, temporal, and geographical parameters of the charges, as specified in the Confirmed Amended Indictment.²⁶

23. VPO assesses that the crimes that the applicants in Group B claim to be a victim of do not fall under the parameters of the charges, as specified in the Confirmed Amended Indictment.²⁷

(c) Harm and Direct result

24. As regards evidentiary material, the VPO followed the findings of the First Decision²⁸ and the Second Framework Decision.²⁹ The VPO inquired whether any relevant supporting documentation was available and, where that was the case, requested the applicants to submit such documentation.

(a) Group A

25. The VPO assessed the two types of harm alleged, namely physical and mental harm, which is described in detail. The VPO further assessed whether there is *prima facie* evidence of a causal link between harm and crime.³⁰

26. Regarding the requirement that harm has to be suffered *personally*, the two applicants can be considered both direct and indirect victims.

27. As direct victims, the applicants claim to have suffered harm as a result of unlawful detention, cruel treatment, and torture, as described in the application forms and annexed application summaries. The VPO assessed whether the types of harm have been described sufficiently in detail and are a consequence of the alleged crimes.

²⁶ Framework Decision, para. 32; First Decision, para. 45, Second Decision, para. 44.

²⁷ See Second Decision, paras 30, 62-68.

²⁸ First Decision, para. 35.

²⁹ Second Framework Decision, para. 20.

³⁰ 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 report.

28. Both victims also claim to have suffered harm as a result of the imprisonment/illegal or arbitrary arrest and detention, cruel treatment/other inhumane acts, torture and murder of a family member.

29. 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.³¹ 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.³²

30. 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, but other family members having a special bond of affection with or dependence on the direct victim may also be considered to be in a close relationship therewith.³³

31. In this regard, the VPO notes that both applicants in Group A are immediate family members of a direct victim.

32. Considering the above, the applicants in Group A meet *prima facie* the necessary requirements as to harm suffered, as well as regards the closeness of relationship with the direct victim.

33. With regard to evidence of a causal link between harm and crime, VPO assesses that both applicants in Group A meet this requirement on a *prima facie* basis.

(b) Group B

34. Regarding the requirement that harm has to be suffered *personally*, applicants in Group B can all be considered indirect victims. Given that the applications from Group B fall manifestly outside of the material and/or temporal scope of the charges

³¹ Framework Decision, para. 34.

³² First Decision, para. 53.

³³ First Decision, para. 55. This was confirmed in the Second Decision, para. 45(c).

as specified in the Confirmed Amended Indictment, the VPO did not assess in detail the alleged harm and the causal link between harm and crime.

3. General description of the applications

(a) Group A

35. Applicant Victim-282/06 and Victim-283/06 claim to be direct victims of unlawful detention, cruel treatment, and torture by the KLA in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period. They also claim to be indirect victims of unlawful detention, cruel/treatment, torture and murder of an immediate family member at the same detention site. The applicants claim to have suffered physical and mental harm. They indicated not having any supporting documentation.

(b) Group B

36. Applicant Victim-275/06 claims to be an indirect victim of cruel treatment of two family members on the territory of Kosovo within the Indictment period. The events described do not appear to be linked to the charges as specified in the Confirmed Amended Indictment. The applicant claims to have suffered mental harm and did not submit any supporting documentation. The applicant further submits that the family house was destroyed in 2003, and provided supporting documentation. This event falls outside of the temporal jurisdiction of the Specialist Chambers.

37. Applicants Victim-276/06, Victim-277/06 and Victim-278/06 claim to be indirect victims of the enforced disappearance and murder of an immediate family member on the territory of Kosovo within the Indictment period. The events described do not appear to be linked to the charges as specified in the Confirmed Amended Indictment. The applicants claim to have suffered mental and material harm, but did not submit any supporting documentation.

38. Applicants Victim-279/06, Victim-280/06 and Victim-281/06 claim to be indirect victims of the murder of an immediate family member on the territory of Kosovo within the Indictment period. The events described do not appear to be linked to the

charges as specified in the Confirmed Amended Indictment. The applicants claim to have suffered mental and material harm, but did not submit any supporting documentation.

C. RECOMMENDATION ON ADMISSIBILITY

39. The VPO recommends to the Panel to admit applicants Victim-282/06 and Victim-283/06 as participating victims.

40. The VPO assesses that seven applicants – Victim-275/06, Victim-276/06, Victim-277/06, Victim-278/06, Victim-279/06, Victim-280/06, and Victim-281/06 – have not sufficiently demonstrated, on a *prima facie* basis, that the events described in their applications from which they claim to have suffered harm 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 Panel to deny these applications submitted for participation as victims in the proceedings.

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

41. In making its recommendation to the Panel on grouping, the VPO considered the criteria set out in Rule 113(8) of the Rules by assessing 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 Decision³⁴ as echoed in the First Decision.³⁵ The VPO has also followed the Pre-Trial Judge's assessment of an instance that may amount to a conflict of interest in the Fourth Decision.³⁶ 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

³⁴ Framework Decision, para. 43.

³⁵ First Decision, paras 73-77.

³⁶ Fourth Decision, paras. 65 – 67.

so different that their interests are irreconcilable, making their common representation impracticable".³⁷

42. 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.³⁸

43. 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.³⁹

44. With regard to the individual circumstances of the applicants presented in this Eleventh Report that are recommended for admission (Group A), the VPO assesses that the situation or specificity of the victims in Group 1 and those referenced in the present report in Group A is not so different that their interests would be irreconcilable.⁴⁰

45. Consequently, after analysing the individual circumstances of the applicants in Group A, as well as the particularities of the group of applicants and the group of victims admitted to participate in the proceedings as a whole, the VPO recommends the Panel to group the victim applicants (Group A) described in this submission together with the already admitted victims participating in the proceedings and that they be jointly represented as one group (Group 1).⁴¹

46. Given the recommendation on admissibility as regards Group B, VPO does not make a recommendation on grouping and common legal representation for the applicants within said group.

³⁷ Framework Decision, para. 43; *see also* First Decision, para. 76.

³⁸ Supplement, paras 13-29; Second Supplement, paras 46-50.

³⁹ Second Supplement, para. 49.

⁴⁰ Framework Decision, para. 43; *see also* First Decision, para. 76.

⁴¹ First Decision, para. 77.

B. COMMON LEGAL REPRESENTATION

47. Neither of the applicants in Group A indicated any preferences with regard to legal representation.

48. The VPO submits that there appears to be no reason for which the two victim applicants, if admitted, could not be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.⁴²

49. Given the recommendation on admissibility, VPO does not make a recommendation on grouping and legal representation for the applicants in Group B.

VI. PROTECTIVE MEASURES

50. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.⁴³ The protective measures requested by the applicants can be summarized as follows:

- two applicants requested non-disclosure to the public, the Defence Counsel and the Accused;⁴⁴
- one applicant requested non-disclosure to the Prosecution;⁴⁵
- three applicants requested non-disclosure to the Defence;⁴⁶ and
- three applicants did not request anything.⁴⁷

A. RECOMMENDATION GROUP A

51. 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.⁴⁸

⁴² 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.

⁴³ Framework Decision, para. 46.

⁴⁴ Victim-282/06 and Victim-283/06.

⁴⁵ Victim-275/06.

⁴⁶ Victim-279/06, Victim-280/06, and Victim-281/06.

⁴⁷ Victim-276/06, Victim-277/06, and Victim-278/06.

⁴⁸ Framework Decision, paras 47-49.

52. The VPO notes that the concerns expressed in detail in the First Report and summarised in the First and Second Decisions affect all victims applying for participation, including the applicants included in this Eleventh Report.⁴⁹

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 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.⁵⁰

54. The VPO recommends to the Panel to follow the approach taken thus far by the Pre-Trial Judge and grant anonymity under Rule 80(4)(e)(i) of the Rules.⁵¹ In making this recommendation, the VPO also takes note of the findings of the decision on protective measures by the Court of Appeals Panel, where the Panel found that anonymity of victims participating in proceedings is a valid protective measure.⁵²

55. The VPO considers that the above-requested protective measures are strictly necessary, appropriate, and proportionate at this stage of the proceedings.⁵³

B. RECOMMENDATION GROUP B

56. Similarly, and with due consideration to the confidentiality of the application process and the applicants' protection of privacy, also for applicants not recommended to be admitted as participating victims, the VPO recommends to the Panel to follow the approach taken thus far by the Pre-Trial Judge and order that the

⁴⁹ First Report, paras 59-60; First Decision, para. 61; Second Decision, para. 51.

⁵⁰ First Decision, paras 68-69.

⁵¹ First Decision, para. 70; Second Decision, para. 52.

⁵² IA023, F00006, Decision on Veseli's Appeal against "Third Decision on Victims Participation", 15 September 2022, public, paras 32, 52.

⁵³ Framework Decision, para. 47.

names and any identifying information of the applicants in Group B be withheld from the Parties and the public.⁵⁴

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Dr Fidelma Donlon
Registrar

Tuesday, 7 February 2023
At The Hague, the Netherlands.

⁵⁴ First Decision, para. 72; Second Decision, para. 56.