



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 14 February 2023

Language: English

Classification: Confidential and *Ex Parte*

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

With one strictly confidential and *ex parte* Annex

Registry

Victims' Participation Office

I. INTRODUCTION

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

2. With this Twelfth Report, the VPO transmits to Trial Panel II ('the Panel') one application 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. For a comprehensive procedural background, the VPO refers to the submissions made in the Eleventh report.²

4. 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 2023.³

5. With this Twelfth Report, the VPO transmits one application that was received by the VPO after the Eleventh Report was filed. The application was filled in by the applicant with the direct assistance of the VPO over the phone.

III. CLASSIFICATION

6. The VPO files this Twelfth Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Twelfth 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 re-

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

² F01264, Eleventh Registry Report on Victims' Applications in the proceedings with strictly confidential and *ex parte* Annexes 1 - 5, 7 February 2023, confidential and *ex parte*, paras. 3-5.

³ 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.

classification of the report as public. In the event that the Panel decides to re-classify the report, this Twelfth Report may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules.⁴

7. Together with this Twelfth Report, the VPO submits one strictly confidential and *ex parte* Annex,⁵ containing a summary of the application prepared by the VPO. The Annex does contain identifying information of the applicant and is therefore filed as strictly confidential and *ex parte* pursuant to Rule 113(2) and Rule 82(1) of the Rules.⁶

8. The application form and supporting documentation have been disclosed only to the Panel through Legal Workflow ('LW')⁷ in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.⁸

IV. ASSESSMENT OF APPLICATIONS

9. 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 Law⁹ and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

10. In assessing the completeness of the application, the VPO reviewed the application against the criteria listed in the Framework Decision¹⁰ and applied additional guidance provided by the Pre-Trial Judge in the First Decision¹¹ and the Second Framework Decision.¹²

⁴ Framework Decision, para. 50.

⁵ Framework Decision, para. 24(e).

⁶ First Decision, para. 66.

⁷ Where applicable, supporting documents are being translated and will be uploaded in LW – *see* Fourth Decision, para. 39.

⁸ Framework Decision, para. 25; *see also* First Decision, para. 64.

⁹ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

¹⁰ Framework Decision, para. 22.

¹¹ First Decision, paras 34-35.

¹² Second Framework Decision, para. 19.

11. The VPO notes that the application submitted with this Twelfth Report can be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

12. In assessing the application and making its recommendation in this Twelfth Report, the VPO applied the *prima facie* standard¹³ for all requirements as well as any supporting documentation.

2. Criteria of Admissibility

13. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,¹⁴ following the guidelines and requirements set out in the Framework Decision.¹⁵ The VPO also took into consideration the findings of the First Decision,¹⁶ the Decision on Appeal¹⁷ and the Second Decision.¹⁸

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

(a) Natural person

15. 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 ID.

¹³ 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.

¹⁴ First Report, paras 17-20.

¹⁵ Framework Decision, paras 31, 35-37.

¹⁶ First Decision, paras 44-45, 51-55.

¹⁷ Decision on Appeal, paras 16, 20, 24, 35.

¹⁸ Second Decision, paras 36, 44, 62-68.

(b) Alleged crimes

16. The VPO assessed whether the acts described in the application appear to constitute alleged crimes within the scope of the Confirmed Amended Indictment¹⁹ 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 1999.²⁰

17. The applicant claims to be a direct victim 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.

18. The crimes that the applicant claims to be a victim of fall within the material, temporal, and geographical parameters of the charges, as specified in the Confirmed Amended Indictment.²¹

(c) Harm and Direct result

19. As regards evidentiary material, the VPO followed the findings of the First Decision²² and the Second Framework Decision.²³ The VPO inquired whether any relevant supporting documentation was available and, where that was the case, requested the applicant to submit such documentation. The applicant indicated not having any such documents. VPO did not consider the application to be incomplete on this ground.²⁴

¹⁹ 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').

²⁰ Confirmed Amended Indictment, para. 16.

²¹ Framework Decision, para. 32; First Decision, para. 45, Second Decision, para. 44.

²² First Decision, para. 35.

²³ Second Framework Decision, para. 20.

²⁴ See F00611/CONF/RED, Confidential Redacted Version of Second Decision on Victims' Participation, 10 December 2021, confidential, fn. 28 ("The Pre-Trial Judge notes that, while documentation regarding the harm suffered has not been submitted, the detailed account provided by Victim 05/06 is sufficient to allow the relevant findings to be made").

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

21. Regarding the requirement that harm has to be suffered *personally*, the applicant can be considered a direct victim.

22. As a direct victim, the applicant claims to have suffered harm as a result of unlawful detention, cruel treatment, and torture, as described in the application form and annexed application summary. The VPO assessed whether the types of harm have been described sufficiently in detail and are a consequence of the alleged crimes.

23. Considering the above, the applicant meets *prima facie* the necessary requirement as to harm suffered.

24. With regard to evidence of a causal link between harm and crime, VPO assesses the applicant meets this requirement, on a *prima facie* basis for physical and mental harm.

C. RECOMMENDATION ON ADMISSIBILITY

25. The VPO recommends to the Panel to admit applicant Victim-284/06 as a participating victim.

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

26. 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 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 Decision²⁶

²⁵ 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.

²⁶ Framework Decision, para. 43.

as echoed in the First Decision.²⁷ 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.²⁸

27. 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.²⁹

28. 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.³⁰

29. With regard to the individual circumstances of the application presented in this Twelfth Report, the VPO assesses that the situation or specificity of the victims in Group 1 and the one referenced in the present report is not so different that their interests would be irreconcilable.³¹

30. Consequently, after analysing the individual circumstances of Victim-284/06, 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 Victim-284/06 together with the already admitted victims participating in the proceedings and that they be jointly represented as one group (Group 1).³²

²⁷ First Decision, paras 73-77.

²⁸ Fourth Decision, paras. 65 – 67.

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

³⁰ Second Supplement, para. 49.

³¹ Framework Decision, para. 43; *see also* First Decision, para. 76.

³² First Decision, para. 77.

B. COMMON LEGAL REPRESENTATION

31. The applicant did not indicate any preferences with regard to legal representation.

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

VI. PROTECTIVE MEASURES

33. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.³⁴ The Victim-284/06 requested non-disclosure to the public, the Defence Counsel and the Accused.³⁵

34. 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.³⁶

35. 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 applicant included in this Twelfth Report.³⁷

36. 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. The applicant can be considered as especially vulnerable and the applicant's participation can only be secured by granting adequate and proportionate protective measures for the current stage of the proceedings.³⁸

³³ 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.

³⁴ Framework Decision, para. 46.

³⁵ Victim-282/06 and Victim-283/06.

³⁶ Framework Decision, paras 47-49.

³⁷ First Report, paras 59-60; First Decision, para. 61; Second Decision, para. 51.

³⁸ First Decision, paras 68-69.

37. 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.³⁹ 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.⁴⁰

38. The VPO considers that the above-requested protective measures are strictly necessary, appropriate, and proportionate at this stage of the proceedings.⁴¹

Word count: 2,063



Dr Fidelma Donlon
Registrar

Tuesday, 14 February 2023
At The Hague, the Netherlands

³⁹ First Decision, para. 70; Second Decision, para. 52.

⁴⁰ IA023, F00006, Decision on Veseli's Appeal against "Third Decision on Victims Participation", 15 September 2022, public, paras 32, 52.

⁴¹ Framework Decision, para. 47.