



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: 15 June 2023

Language: English

Classification: Confidential and *Ex Parte*

**Confidential Redacted Version of “Thirteenth Registry Report on Victims’
Applications for Participation in the Proceedings, with one strictly
confidential and *ex parte* Annex”, filing F01605, dated 14 June 2023**

Registry

Victims’ Participation Office

I. INTRODUCTION

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

2. Following guidance provided by the Court of Appeals Panel,² the VPO transmits to Trial Panel II ('the Panel') Victim-32/06's amended application for the status of a participating victim in the proceedings, whose participation was previously denied through the Fourth Decision on Victims' Participation.³ With this Thirteenth Report, the VPO also 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 Twelfth and Eleventh Reports.⁴

4. On 25 January 2022, the VPO submitted the Fourth Report on Victims' Applications for Participation in the Proceedings, including the application of Victim-32/06.⁵

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, IA026, F00011, Decision on Appeals Against "Fourth Decision on Victims' Participation", 26 April 2023, strictly confidential and *ex parte* (see also F00011/RED), paras 30 – 31.

³ F01152, Fourth Decision on Victims' Participation, 12 December 2022, strictly confidential and *ex parte* (see also F01152/RED, 14 December 2022) ('Fourth Decision' and 'Fourth Decision on Victims' Participation'), para. 38.

⁴ F01292, Twelfth Registry Report on Victims' Applications for Participation in the Proceedings, 14 February 2023, public, with one strictly confidential and *ex parte* annex, paras 2-4; F01264, Eleventh Registry Report on Victims' Applications in the proceedings, 7 February 2023, public, with strictly confidential and *ex parte* Annexes 1 - 5, paras 3-5.

⁵ 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 ('Fourth Registry Report'). See also Annex 6 to the Fourth Registry Report.

5. On 12 December 2022, the Pre-Trial Judge issued the Fourth Decision on Victims' Participation, rejecting the application of several victim applicants, including that of Victim-32/06, as inadmissible.⁶
6. On 28 February 2023, Counsel for the denied applicants appealed the Fourth Decision on Victims' Participation ('Appeal'), including on behalf of Victim-32/06.⁷
7. On 26 April 2023, a Panel of the Court of Appeals Chamber ('Appeals Panel') issued its Decision on Appeals Against "Fourth Decision on Victims' Participation" ('Appeals Decision').⁸ While the Appeals Panel denied the appeals, it indicated that should a denied applicant wish to present new information, which was not known to or in the possession of the applicant at the time of the initial application, and warranting a new consideration of their request for admission to the proceedings, they could resubmit their application through the VPO before the Panel, to be reassessed in light of the new information.⁹ The Appeals Panel noted that while the deadline set by the Trial Panel for applications for victims to participate in these proceedings had passed, to protect the personal interests and rights of victims, a Panel may accept any resubmitted applications from previously denied applicants.¹⁰
8. On 9 May 2023, the VPO received the amended application from Victim-32/06, providing additional information. The translation of all supporting documents was finalised at the end of May 2023.
9. As regards the additional victim applicants who submitted additional information before the Appeals Panel,¹¹ Victim-24/06 informed VPO they did not wish to re-apply to participate in the proceedings. Victim-applicants 83/06 and 23/06 have not expressed a wish to re-apply.

⁶ See fn. 3 above.

⁷ IA026, F00009, Victims' Counsel Appeal on Fourth Decision on Victims' Participation, 2 March 2023, strictly confidential and *ex parte* (see also F00009/RED/COR, 14 March 2023).

⁸ See fn 2 above.

⁹ *Idem.*, para. 30.

¹⁰ *Idem.*, para. 31.

¹¹ See Appeals Decision, paras 18, 27, 29.

III. CLASSIFICATION

10. The filing is submitted as strictly confidential and *ex parte*, pursuant to Rule 82(4) of the Rules, as it refers to submissions presented before the Appeals Panel that bear the same classification, and that have been redacted from the public version of the Appeal.

11. The VPO will file a confidential and *ex parte* redacted version of this Thirteenth Report, in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the redacted version of the Thirteenth 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-classification of the redacted version of the Report as public. In the event that the Panel decides to re-classify the Report, the redacted version of the Thirteenth Report may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules.¹²

12. Together with this Thirteenth Report, the VPO submits one strictly confidential and *ex parte* Annex,¹³ 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.¹⁴

13. The amended application form and supporting documents have been disclosed only to the Panel through Legal Workflow, in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.¹⁵ The aforementioned documents have been added to the already existing file of Victim-32/06.¹⁶ Translations of supporting documents have also been filed.

¹² F00159, Framework Decision on Victims' Applications, 4 January 2021, public ('Framework Decision'), para. 50.

¹³ *Idem*, para. 24(e).

¹⁴ F00257, First Decision on Victims' Participation, 21 April 2021, confidential ('First Decision') (see also F00257/RED), para. 66.

¹⁵ Framework Decision, para. 25; *see also* First Decision, para. 64.

¹⁶ Victim-32/06 was disclosed in LW in Group B1.

IV. RESUBMISSION OF THE APPLICATION

14. As a preliminary matter, the VPO has assessed whether the resubmission of the application is in line with the guidance provided by the Appeals Panel.

15. The VPO notes that the first application of Victim-32/06 was submitted on 21 March 2023 by a legal representative of Victim-32/06. The VPO reviewed the application and requested additional information from the legal representative, but no such information was submitted. Based on the information available, the VPO assessed at that time that the application fell outside of the scope of the charges in the indictment and recommended to the Pre-Trial Judge not to admit the applicant as a participating victim.¹⁷ The Pre-Trial Judge agreed with the VPO's assessment of the application.¹⁸

16. In the appeal against the Fourth Decision on Victims' Participation, Counsel for Denied Applicants submitted that the applicant had not included all of the relevant information in the application due to lack of awareness of its legal importance, [REDACTED].¹⁹

17. The VPO notes that the applicant is a lay person, unfamiliar with legal requirements in proceedings, who has, in addition, submitted the application through a legal representative. Requests for additional information from that legal representative went unanswered. In the VPO's view, it would be in the interests of justice, and would protect the personal interests and rights of victims, to give the applicant the possibility to have their application considered anew by the Panel, in light of additional available information, which was not provided earlier through no fault of the applicant.

18. The VPO assesses that the present application meets the criteria for resubmission of the application and respectfully requests the Panel to consider this Thirteenth

¹⁷ Fourth Registry Report, paras 35, 43; *See also* F00656/A06 [REDACTED].

¹⁸ Fourth Decision, para. 38.

¹⁹ [REDACTED]; *see also* Appeals Decision, para. 21.

Report and the application transmitted with it, even though the timeline set for transmission of victim applications has expired.²⁰

V. ASSESSMENT OF THE APPLICATION

19. 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 Law²¹ and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORM

20. In assessing the completeness of the application, the VPO reviewed the application against the criteria listed in the Framework Decision²² and applied additional guidance provided by the Pre-Trial Judge in the First Decision²³ and the Second Framework Decision.²⁴

21. The VPO notes that applicant only submitted an amended and duly signed application form, since all other supporting documents have already been submitted with the first application sent on 21 March 2021. Two additional relevant documents have been added by the VPO to the folder of Victim-32/06 in Legal Workflow.²⁵

22. Thus, the VPO assesses that the application submitted with this Thirteenth Report can be considered as formally complete.

²⁰ See Appeals Decision, para. 31.

²¹ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

²² Framework Decision, para. 22.

²³ First Decision, paras 34-35.

²⁴ F00382, Second Framework Decision on Victims' Applications, 6 July 2021, public ('Second Framework Decision'), para. 19.

²⁵ See Supporting Document ('SD') 12 and SD13 in Legal Workflow. [REDACTED].

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

23. In assessing the application and making its recommendation in this Thirteenth Report, the VPO applied the *prima facie* standard²⁶ for all requirements as well as any supporting documentation.

2. Criteria of Admissibility

24. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,²⁷ following the guidelines and requirements set out in the Framework Decision.²⁸ The VPO also took into consideration the findings of the First Decision²⁹ and Second Decision³⁰ issued by the Pre-Trial Judge, as well as the Fifth Decision issued by the Panel.³¹

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

(a) Natural person

26. 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.

²⁶ 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.

²⁷ 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 ('First Registry Report'), paras 17-20.

²⁸ Framework Decision, paras 31, 35-37.

²⁹ First Decision, paras 44-45, 51-55.

³⁰ F00611, Second Decision on Victims' Participation, 10 December 2021, strictly confidential and *ex parte* (see also F00611/CONF/RED and F00611/RED ('Second Decision'), paras 36, 44, 62-68.

³¹ F01293, Fifth Decision on Victims' Participation, 15 February 2023, strictly confidential and *ex parte* ('Fifth Decision') (see also F01293/RED, 20 February 2023), paras 10-12.

(b) Alleged crimes

27. The VPO assessed whether the acts described in the application appear to constitute alleged crimes within the scope of the Confirmed Amended Indictment³² 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 1999.³³

28. The applicant claims to be an indirect victim of unlawful detention, cruel treatment, and murder of an immediate family member by the KLA in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period.

29. 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.³⁴

(c) Harm and Direct result

30. As regards evidentiary material, the VPO followed the findings of the First Decision³⁵ and the Second Framework Decision.³⁶ The applicant submitted supporting documentation for material harm and indicated not having any supporting documentation for mental harm. The VPO did not consider the application to be incomplete on this ground.³⁷

³² 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').

³³ Confirmed Amended Indictment, para. 16.

³⁴ Framework Decision, para. 32; First Decision, para. 45, Second Decision, para. 44.

³⁵ First Decision, para. 35.

³⁶ Second Framework Decision, para. 20.

³⁷ Second Decision, 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").

31. The VPO assessed the two types of harm alleged, namely mental and material harm. The VPO further assessed whether there is *prima facie* evidence of a causal link between harm and crime.³⁸
32. Regarding the requirement that harm has to be suffered *personally*, the applicant can be considered an indirect victim.
33. The applicant claims to have suffered harm as a result of unlawful detention, cruel treatment, and murder of an immediate family member. The applicant provided supporting documentation of kinship.
34. The VPO assessed whether the applicant has sufficiently established that the harm the applicant claims 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.³⁹ In terms of harm suffered by indirect victims, emotional suffering (such as grief, sorrow, bereavement and distress) caused to 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.⁴⁰
35. 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.⁴¹ This approach was also applied by the Panel in the Fifth Decision on Victims' Participation.⁴²
36. The applicant is an immediate family member of a direct victim and therefore meets *prima facie* the necessary requirement as to mental harm suffered.
37. 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 mental harm only.

³⁸ 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.

³⁹ Framework Decision, para. 34.

⁴⁰ First Decision, para. 53.

⁴¹ First Decision, para. 55; *see also* Second Decision, para. 45(c).

⁴² Fifth Decision, para. 20(b), fn 51.

C. RECOMMENDATION ON ADMISSIBILITY

38. The VPO recommends to the Panel to admit applicant Victim-32/06 as a participating victim.

VI. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

39. 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 Decision,⁴³ as echoed in the First Decision.⁴⁴

40. 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.⁴⁵

41. 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.⁴⁶

42. With regard to the individual circumstances of the application presented in this Thirteenth Report, the VPO assesses that the situation or specificity of the victims in

⁴³ Framework Decision, para. 43.

⁴⁴ First Decision, paras 73-77.

⁴⁵ 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, with one confidential and *ex parte* Annex ('Supplement'), paras 13-29; 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'), paras 46-50.

⁴⁶ Second Supplement, para. 49.

Group 1 and the one referenced in the present report is not so different that their interests would be irreconcilable.⁴⁷

43. Consequently, after analysing the individual circumstances of Victim-32/06, as well as the particularities of the group of victims admitted to participate in the proceedings as a whole, the VPO recommends the Panel to group Victim-32/06 together with the already admitted victims participating in the proceedings and that they be jointly represented as one group (Group 1).⁴⁸

B. COMMON LEGAL REPRESENTATION

44. In the amended application, the applicant indicated a preference as to legal representation. VPO followed the Pre-Trial Judge's instructions in the Second Framework Decision in this regard, namely to inquire whether the applicant has been represented by counsel in past proceedings, and if so, whether the applicant has any expectation to be represented by the same counsel; further, in such instances, VPO is to inform the applicant that his/her views are but one of the considerations taken into account when assigning Victims' Counsel, and inquire whether the applicant has any concerns on the potential designation of a legal representative other than the preferred one.⁴⁹

45. VPO notes that the preferred counsel named by the applicant represented them in past proceedings related to this case, but the applicant does not have any expectation of being represented by the same counsel going forward, if admitted as a participating victim. When queried by VPO, the applicant did not object to being represented by Victims' Counsel already assigned to Group 1 of participating victims in the present case, or express any concerns about the potential designation of a legal representative other than the preferred one, should the applicant be admitted to participate in the proceedings.

⁴⁷ Framework Decision, para. 43; *see also* First Decision, para. 76.

⁴⁸ First Decision, para. 77; *see also* Fifth Decision, paras 42-43.

⁴⁹ Second Framework Decision, para. 22.

46. In view of the above, the VPO submits that there appears to be no reason why the victim-applicant, if admitted, could not be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.⁵⁰

VII. PROTECTIVE MEASURES

47. With the Fourth Decision, the Pre-Trial Judge ordered that the name and any identifying information of Victim-32/06 be withheld from the Parties and the public.⁵¹

48. In submitting the amended application, Victim-32/06 requested non-disclosure to the public, the Defence Counsel and the Accused.

49. 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.⁵²

50. The VPO notes that the concerns expressed in detail in the First Report and summarised in the First and Second Decisions on Victims' Participation affect all victims applying for participation, including the applicant included in this Thirteenth Report.⁵³

51. 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 and subsequent decisions on victims' participation, including the Fifth Decision on Victims' Participation.⁵⁴ 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.⁵⁵

⁵⁰ 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.

⁵¹ Fourth Decision, paras 63 – 64.

⁵² Framework Decision, paras 47-49.

⁵³ First Report, paras 59-60; First Decision, para. 61; Second Decision, para. 51.

⁵⁴ See Fifth Decision, paras 32 – 33.

⁵⁵ First Decision, paras 68-69.

52. The VPO recommends to the Panel to follow the approach taken thus far and grant anonymity under Rule 80(4)(e)(i) of the Rules.⁵⁶ In making this recommendation, the VPO also takes note of the findings of the decision on protective measures by the Appeals Panel, where it found that anonymity of victims participating in proceedings is a valid protective measure.⁵⁷

53. The VPO considers that the above-requested protective measures are strictly necessary, appropriate, and proportionate at this stage of the proceedings.⁵⁸

Word count: 3390



Dr Fidelma Donlon

Registrar

Thursday, 15 June 2023

At The Hague, the Netherlands.

⁵⁶ Fifth Decision, para. 36; *see also* First Decision, para. 70; Second Decision, para. 52.

⁵⁷ IA023, F00006, Decision on Veseli's Appeal against "Third Decision on Victims Participation", 15 September 2022, public, paras 32, 52.

⁵⁸ Framework Decision, para. 47.