



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

**Date:** 21 April 2021

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**Public Redacted Version of the  
First Decision on Victims' Participation**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 22, 39(1), (11) and (13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 80, 95(2)(h)-(i), 113 and 114 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed an indictment against Hashim Thaçi ("Mr Thaçi"), Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi ("Mr Krasniqi") (collectively, the "Accused") in a reasoned decision ("Confirmation Decision").<sup>2</sup>
2. On 30 October 2020, the Specialist Prosecutor's Office ("SPO") submitted the indictment as confirmed ("Confirmed Indictment"),<sup>3</sup> with redactions as authorised by the Pre-Trial Judge.<sup>4</sup>
3. On 11 December 2020, the SPO submitted the confidential redacted versions of the detailed outlines filed under Rule 86(3)(b) of the Rules ("Rule 86(3)(b) Outline").<sup>5</sup>
4. On 4 January 2021, the Pre-Trial Judge issued a framework decision on victims' applications ("Framework Decision"), ordering the Victims' Participation Office ("VPO") to, *inter alia*, file by 15 February 2021 its first report pursuant to Rule 113(2) of the Rules to the Pre-Trial Judge and the Parties regarding the submitted

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, public.

<sup>3</sup> KSC-BC-2020-06, F00034/A01, Specialist Prosecutor, *Indictment* ("Confirmed Indictment"), 30 October 2020, strictly confidential and *ex parte*. See also F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06-F00045-A02, 4 November 2020, 11 December 2020, confidential.

<sup>4</sup> Confirmation Decision, para. 521(c)-(d).

<sup>5</sup> KSC-BC-2020-06, F00136, Specialist Prosecutor, *Submission of Confidential Redacted Rule 86(3)(b) Outlines*, 11 December 2020, public, with Annexes 1-2, confidential.

applications and to submit further such reports, if any, on a regular basis, and the latest by the submission of the Defence filing pursuant to Rule 95(5) of the Rules.<sup>6</sup>

5. On 15 February 2021, the VPO submitted its first report on received applications (“First Report”) with nineteen confidential and *ex parte* annexes containing a table indicating seventeen applicants recommended for admission, a table indicating one applicant not recommended for admission and the application summaries of a total of eighteen applicants.<sup>7</sup>

6. On 26 February 2021, the Defence for Mr Thaçi, and on 1 March 2021, the Defence for Mr Krasniqi (collectively, the “Defence”) submitted their responses to the First Report.<sup>8</sup>

7. On 1 March 2021, the SPO submitted its observations to the First Report.<sup>9</sup>

8. On 1 April 2021, the VPO filed a supplement to the First Report (“Supplement”).<sup>10</sup>

9. On 14 April 2021, the Defence for Mr Thaçi responded to the Supplement.<sup>11</sup>

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<sup>6</sup> KSC-BC-2020-06, F00159, Pre-Trial Judge, *Framework Decision on Victims’ Applications* (“Framework Decision”), 4 January 2021, public, para. 56(c)-(e).

<sup>7</sup> KSC-BC-2020-06, F00203, Victims’ Participation Office, *First Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings* (“First Report”), 15 February 2021, public, para. 8, with confidential and *ex parte* annexes 1-19. The VPO further indicated to the Pre-Trial Judge that the First Report can also be disclosed to the Parties and the public. See First Report, para. 7.

<sup>8</sup> KSC-BC-2020-06, F00208, Defence for Mr Thaçi, *Thaçi Defence Response to the First Registry Report on Victims’ Applications for Participation in the Proceedings* (“Thaçi Response”), 26 February 2021, public; F00209, Defence for Mr Krasniqi, *Krasniqi Defence Response to the First VPO Report* (“Krasniqi Response”), 1 March 2021, public, with Annex 1, public.

<sup>9</sup> KSC-BC-2020-06, F00210, Specialist Prosecutor, *Prosecution Submissions on First Registry Report on Victims’ Applications* (“SPO Response”), 1 March 2021, public.

<sup>10</sup> KSC-BC-2020-06, F00241, Victims’ Participation Office, *Supplement to First Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings with Recommendation on Grouping* (“Supplement”), 1 April 2021, public, with Annex 1, confidential and *ex parte*.

<sup>11</sup> KSC-BC-2020-06, F00245, Defence for Mr Thaçi, *Thaçi Defence Response to Supplement to First Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings with Recommendation on Grouping* (“Thaçi Response to Supplement”), 14 April 2021, public.

## II. SUBMISSIONS

10. The VPO recommends that the Pre-Trial Judge grant seventeen applications and deny one application.<sup>12</sup> The VPO further recommends that the identifying information of all applicants are withheld from the public and that the identifying information of applicants residing in Kosovo and applicants of Albanian ethnicity with family in Kosovo are also granted anonymity towards Defence Counsel and the Accused.<sup>13</sup>

11. The Defence for Mr Thaçi submits general observations in relation to the admissibility of applications and the requested protective measures.<sup>14</sup>

12. The Defence for Mr Krasniqi submits general observations in relation to criteria under Rule 113 of the Rules, the requested protective measures and the grouping of applicants.<sup>15</sup> The Defence for Mr Krasniqi also submits a table summarising the information provided about the applicants in the First Report.<sup>16</sup>

13. The SPO submits that it has no objection to the application and interpretation of the criteria regarding admissibility, common representation and protective measures in the First Report.<sup>17</sup>

14. In the Supplement, the VPO makes further submissions on the grouping of the applicants and common legal representation.<sup>18</sup> The VPO also indicates that one applicant, Victim 05/06, has died since the submission of the First Report and that a filing in this regard shall be submitted.<sup>19</sup>

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<sup>12</sup> First Report, paras 48-49.

<sup>13</sup> First Report, paras 61-62.

<sup>14</sup> Thaçi Response, paras 7-25, 27-29.

<sup>15</sup> Krasniqi Response, paras 17-32.

<sup>16</sup> Krasniqi Response, Annex 1.

<sup>17</sup> SPO Response, para. 1.

<sup>18</sup> Supplement, paras 11-32.

<sup>19</sup> Supplement, fn. 10.

### III. APPLICABLE LAW

#### A. APPLICATION AND ADMISSION TO THE PROCEEDINGS

15. Pursuant to Article 22(1) of the Law and Rule 2 of the Rules, a victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a direct result of a crime within the jurisdiction of the Specialist Chambers ("SC") and alleged in an indictment confirmed by the Pre-Trial Judge.

16. Pursuant to Rule 113(1) of the Rules, after the confirmation of an indictment and sufficiently in advance of the opening of the case, a person claiming to be a victim of a crime alleged in the indictment may file an application for admission as a victim participating in the proceedings ("VPP"), specifying how he or she qualifies as a victim and providing the location and date of an alleged crime giving rise to harm. Application forms shall not be disclosed to the Parties.

17. Pursuant to Rule 113(2) of the Rules, the VPO registers and assesses the applications and files them before the Pre-Trial Judge together with a recommendation on admissibility and common representation, and a request for protective measures under Rule 80 of the Rules, as applicable. The VPO must also submit a confidential report to the Parties, without providing any identifying information of the applicants.

18. Pursuant to Rule 113(3) of the Rules, the Parties may only make submissions on legal grounds regarding admissibility and common representation.

19. Pursuant to Rules 95(2)(i) and 113(4)-(5) of the Rules, the Pre-Trial Judge shall consider whether the applicant has provided *prima facie* evidence of the harm suffered as a direct result of a crime in the indictment and shall render a reasoned decision granting or denying admission in the proceedings. The Pre-Trial Judge shall also decide on common representation and any requests for protective measures. The decision shall be notified to the applicant, the VPO and the Parties.

20. Pursuant to Rule 113(6) of the Rules, denied applicants may appeal as of right the decision within fourteen (14) days of notification.

21. Pursuant to Rule 113(8) of the Rules, the Pre-Trial Judge, after having consulted the VPO, shall decide whether to divide VPPs into groups having common representation, and taking into consideration: (a) any conflicting interests that may hinder common representation; (b) any similar interests that may facilitate common representation; and (c) the rights of the Accused and the interests of a fair and expeditious trial.

#### B. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

22. Pursuant to Article 22(3) of the Law, a VPP's personal interests and rights in the SC criminal proceedings are notification, acknowledgement and reparation.

23. Pursuant to Rule 113(7) of the Rules, where victims are granted the right to participate in the proceedings, the Registrar shall assign a Victims' Counsel to a group of VPPs in accordance with the Directive on Counsel.

24. In accordance with Article 22(6) of the Law and Rule 114(1) of the Rules, VPPs shall exercise their rights through an assigned Victims' Counsel during, *inter alia*, pre-trial proceedings, when the VPPs' personal interests are impacted and only when it is not prejudicial to or inconsistent with the rights of the Accused.

25. Pursuant to Rule 114(4) of the Rules, where necessary and depending on the circumstances, the Pre-Trial Judge shall issue specific guidelines regulating the participation of VPPs in the pre-trial proceedings, in accordance with Article 22(3) and (6) of the Law.

26. Pursuant to Rule 114(2) of the Rules, Victims' Counsel may be present at pre-trial proceedings if deemed necessary by the Pre-Trial Judge, in order to ensure the personal interests and rights of the VPPs, in accordance with Article 22(3) of the Law.

27. Pursuant to Rule 114(3) of the Rules, Victims' Counsel shall have access to confidential material, unless otherwise provided in the Rules or as determined by the Pre-Trial Judge. Victims' Counsel shall keep his or her clients informed of relevant developments in the case in a manner which does not reveal confidential information.

28. Pursuant to Rule 114(4) of the Rules, whenever the personal interests of VPPs are affected, and unless otherwise provided in the Rules, Victims' Counsel may, under the control of the Panel, make oral and written submissions.

#### C. PROTECTIVE MEASURES

29. Pursuant to Article 39(11) of the Law and Rule 95(2)(h) of the Rules, the Pre-Trial Judge may, where necessary, decide on motions related to the protection and privacy of victims and witnesses, filed before the transmission of the case file.

30. Pursuant to Rule 80(1) of the Rules, a Panel may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of, *inter alia*, victims participating in the proceedings.

31. Pursuant to Rule 80(4) of the Rules, such measures may include non-disclosure to the Parties of any material or information that may lead to the disclosure of the identity of a victim participating in the proceedings.

#### IV. DISCUSSION

##### A. COMPLETENESS OF APPLICATIONS

32. The VPO submits that the majority of applications had been received via email, while eight applications had been sent by two different lawyers.<sup>20</sup> The VPO further

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<sup>20</sup> First Report, para. 6. One applicant (Victim 15/06) withdrew his or her application, which has therefore not been included in the First Report. *See* First Report, para. 6.

indicates that, further to seeking additional documentation/information from a number of applicants,<sup>21</sup> all applications submitted with the First Report can be considered as formally complete.<sup>22</sup>

33. The Defence for Mr Thaçi submits that applications should be dismissed when they are incomplete, where inconsistencies exist between or within the identification documents and the application form, where the harm alleged falls outside the temporal or geographical scope of the charges or where the specific date or the location of the alleged event is not indicated.<sup>23</sup>

34. The Pre-Trial Judge recalls his finding in the Framework Decision according to which an application is complete if it meets the following requirements: (i) there is sufficient proof of identity and, where relevant, kinship and/or legal guardianship; (ii) personal details are complete; (iii) all relevant sections of the Application Form<sup>24</sup> are filled in; (iv) the date/period and location of the crimes as well as the harm suffered are sufficiently clearly indicated; (v) relevant and sufficient documentation has been submitted, to the extent possible; and (vi) the application is signed by the applicant or his/her legal guardian.<sup>25</sup>

35. The Pre-Trial Judge will accordingly assess whether the submitted applications are complete and whether they provide sufficient information to allow a finding under Rule 113(4) of the Rules. In this regard, the Pre-Trial Judge reminds the VPO that the phrase “to the extent possible” in relation to requirement (v) regarding the submission of relevant and sufficient documentation means that the VPO should at all times inquire whether such documentation is available and where that is the case, the VPO

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<sup>21</sup> First Report, para. 13.

<sup>22</sup> First Report, para. 14.

<sup>23</sup> Thaçi Response, para. 8.

<sup>24</sup> “Application for Admission as a Victim Participating in Proceedings” form, available on the SC website.

<sup>25</sup> Framework Decision, para. 22.

should request the submission of such material.<sup>26</sup> The Pre-Trial Judge further notes that, in the absence of a filing from the VPO attesting the death of Victim 05/06 and providing any additional submissions, this application will not be assessed in the present decision.<sup>27</sup>

36. Having reviewed the application forms, the application summaries and the supporting documentation, where provided, the Pre-Trial Judge makes the following findings. First, all seventeen<sup>28</sup> applications provide adequate proof of identity and personal details, indicate with sufficient clarity the date/period and location of the crimes as well as the harm suffered and provide a valid signature. Secondly, in relation to Victims 08/06, 09/06, 10/06, 11/06, 12/06, 13/06, 14/06, 16/06, 17/06, 18/06 and 19/06, adequate proof of kinship is also provided.<sup>29</sup> Thirdly, while documentation regarding the harm suffered was only submitted by Victims 04/06, 07/06, 08/06 and 17/06,<sup>30</sup> the detailed account provided by the applicants regarding the events and the harm suffered was sufficient to allow the relevant findings to be made.

37. The Pre-Trial Judge accordingly finds that all seventeen applications are complete and their admissibility can therefore be assessed.

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<sup>26</sup> The Pre-Trial Judge observes in this regard that Victims 01/06, 02/06, 03/06 and 04/06 indicated that they possess supporting documentation attesting harm, yet the VPO has expressly indicated in the respective application summaries that such documentation was not requested (*see* First Report, Annexes 2-6). While the Pre-Trial Judge considers that, for these specific applications, the information otherwise submitted was sufficient for findings in this decision, the VPO is urged to comply in future reports with the requirements regarding supporting documentation.

<sup>27</sup> The Pre-Trial Judge notes that the VPO has uploaded in Legal Workflow the death certificate of Victim 05/06 without an accompanying filing.

<sup>28</sup> This number excludes the application of Victim 05/06 for the reasons stated in para. 35.

<sup>29</sup> The Pre-Trial Judge notes the apparent minor discrepancies regarding kinship in the application of Victim 19/06, but considers that the detailed account of the applicant and the documentation provided satisfactorily demonstrate the immediate family relationship of the applicant with the deceased victim.

<sup>30</sup> First Report, paras 38, 40-41, 46.

## B. ADMISSIBILITY OF APPLICATIONS

38. The VPO submits that: (i) all applicants submitted valid documentation as natural persons;<sup>31</sup> (ii) the acts described in seventeen applications appear to constitute crimes within the scope of the Confirmed Indictment, either in relation to alleged crime sites listed therein or by virtue of the geographical and temporal scope of the Confirmed Indictment, thus in Kosovo and areas of northern Albania between March 1998 and September 1999;<sup>32</sup> (iii) six applicants have suffered harm as direct victims and eleven applicants have suffered harm as indirect victims following the death or disappearance of their immediate family member;<sup>33</sup> and (iv) there is evidence of a causal link between the harm suffered by all applicants recommended by VPO for admission and a crime in the Confirmed Indictment.<sup>34</sup> On this basis, the VPO recommends that the Pre-Trial Judge grant seventeen applications (Victims 01/06, 02/06, 03/06, 04/06, 05/06, 07/06, 08/06, 09/06, 10/06, 11/06, 12/06, 13/06, 14/06, 16/06, 17/06, 18/06 and 19/06)<sup>35</sup> and deny one application (Victim 06/06).<sup>36</sup>

39. The Defence for Mr Thaçi submits that the harm alleged by the applicants must be the direct result of a crime in the Confirmed Indictment and therefore any applicant should be required to demonstrate *prima facie* evidence of harm arising from charged crimes alleged to have occurred at sites expressly listed in the Confirmed Indictment, in particular in its Schedules A, B and C.<sup>37</sup>

40. The Defence for Mr Krasniqi submits that allowing the participation of victims who are not directly linked to the specific dates and locations in the indictment is

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<sup>31</sup> First Report, para. 22.

<sup>32</sup> First Report, paras 23-30.

<sup>33</sup> First Report, paras 33-36.

<sup>34</sup> First Report, para. 37.

<sup>35</sup> First Report, para. 48.

<sup>36</sup> First Report, para. 49.

<sup>37</sup> Thaçi Response, paras 9, 19.

inconsistent with the rights of the accused, because it inevitably expands the parameters of the case beyond the confines of the charges.<sup>38</sup>

41. The SPO submits that the Confirmed Indictment has clearly defined temporal, geographical and subject matter parameters, which appropriately limit the scope of *prima facie* eligible victims.<sup>39</sup>

42. The Pre-Trial Judge recalls his finding in the Framework Decision according to which a victim applicant is admitted to participate in the proceedings if there is *prima facie* evidence that:

- (a) the applicant is a natural person;
- (b) the applicant described acts in the application that appear to constitute a crime within the scope of the Confirmed Indictment;
- (c) the applicant has personally suffered harm; and
- (d) the harm was the direct result of a crime in the Confirmed Indictment.<sup>40</sup>

43. The Pre-Trial Judge further recalls that the assessment of the aforementioned admissibility criteria is undertaken on a *prima facie* basis.<sup>41</sup> Accordingly, 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,<sup>42</sup> including the content of the Confirmed Indictment, and, where necessary, the Rule 86(3)(b) Outline and the Confirmation Decision; and (ii) the intrinsic coherence of the application,<sup>43</sup> including the individual application form, application summary and submitted supporting documentation. The Pre-Trial Judge shall not engage in a substantive assessment of the credibility or reliability of the submitted information

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<sup>38</sup> Krasniqi Response, para. 21.

<sup>39</sup> SPO Response, para. 2.

<sup>40</sup> Framework Decision, para. 28.

<sup>41</sup> Framework Decision, para. 29.

<sup>42</sup> Framework Decision, para. 29.

<sup>43</sup> Framework Decision, para. 29.

and evidence.<sup>44</sup> That being said, the Pre-Trial Judge shall not rely on information or supporting material that is manifestly non-authentic.<sup>45</sup>

(a) Natural person

44. As stated in paragraph 37, the Pre-Trial Judge is satisfied that all seventeen applicants have provided adequate proof of identity and are natural persons.

(b) Alleged crime(s)

45. The Pre-Trial Judge recalls his finding in the Framework Decision that the “crime” in relation to which an applicant claims to have been a victim must pertain to any of the crimes reflected in the Confirmed Indictment.<sup>46</sup> The Pre-Trial Judge further recalls that an applicant must describe, as specifically as possible, the place and time of the event and, if possible, any alleged perpetrator present at the scene or involved in the event.<sup>47</sup> These requirements plainly indicate that the crime(s) in relation to which an applicant claims to be a victim must fall under the material, geographical and temporal parameters of the charges, as specified in the Confirmed Indictment.<sup>48</sup>

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<sup>44</sup> Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1119, Trial Chamber I, [Decision on Victims’ Participation](#) (“Lubanga Decision on Victim Participation”), 18 January 2008, para. 99; *Prosecutor v. Bemba*, ICC-01/05-01/08-1862, Trial Chamber III, [Decision on 270 Applications by Victims to Participate in the Proceedings](#), 25 October 2011, para. 27.

<sup>45</sup> Similarly, KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, para. 50.

<sup>46</sup> Framework Decision, para. 32.

<sup>47</sup> Framework Decision, para. 32.

<sup>48</sup> Mindful of the different procedural context, similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1432, Appeals Chamber, [Judgment on the Appeals of the Prosecutor and the Defence Against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008](#) (“Lubanga Appeal Decision on Victim Participation”), 11 July 2008, paras 58, 62; *Prosecutor v. Ntaganda*, ICC-01/04-02/06-449, Trial Chamber VI, [Decision on Victims’ Participation in Trial Proceedings](#) (“Ntaganda Decision on Victims’ Participation”), 6 February 2015, para. 43; *Prosecutor v. Al Hassan*, ICC-01/12-01/18-37-tENG, Pre-Trial Chamber I, [Decision Establishing the Principles Applicable to Victims’ Applications for Participation](#), 24 May 2018, paras 27, 48; *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-738, [Decision on Victims’ Participation in Trial Proceedings](#), 23 November 2020, paras 20-21.

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, regardless of whether such references relate to crimes similar to those forming the charges. Any interpretation otherwise would lead to the admission of VPPs who would not be linked to the charges specified in the Confirmed Indictment.

46. In light of the foregoing and having reviewed all applications, the Pre-Trial Judge finds that nine applicants claim to be a victim of a crime alleged in the Confirmed Indictment, as provided in Rules 2 and 113(1) of the Rules. Accordingly, Victims 01/06, 02/06, 03/06 and 04/06 claim to have been victims of crimes allegedly committed at [REDACTED] municipality.<sup>49</sup> Victim 07/06 claims to have been a victim of crimes allegedly committed at [REDACTED] municipality.<sup>50</sup> Victims 16/06, 17/07 and 18/06 claim to have been victims of crimes allegedly committed against their immediate family member at [REDACTED] municipality.<sup>51</sup> Victim 19/06 claims to have been victim of crimes allegedly committed against an immediate family member at [REDACTED] municipality and another location in the Confirmed Indictment.<sup>52</sup> Lastly, the Pre-Trial Judge notes that the crimes described by the above applicants fall within the respective time period provided for each aforementioned site in the Confirmed Indictment.<sup>53</sup>

47. As regards Victim 12/06, the Pre-Trial Judge finds that the information provided is insufficient for a *prima facie* determination of whether the crime the applicant claims to be a victim of is alleged in the Confirmed Indictment. In particular, Victim 12/06 claims to have been a victim of a crime allegedly committed against an immediate family member in [REDACTED] municipality. While the information provided clearly

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<sup>49</sup> [REDACTED].

<sup>50</sup> [REDACTED].

<sup>51</sup> [REDACTED].

<sup>52</sup> [REDACTED].

<sup>53</sup> [REDACTED].

indicates that the alleged crime does not fall under the scope of the [REDACTED] charges related to that location,<sup>54</sup> it does not allow for a determination of whether the crime may fall under the [REDACTED] charges for the same location.<sup>55</sup> The Pre-Trial Judge accordingly finds it appropriate to defer determination on the application of Victim 12/06 and to instruct the VPO to revert back to the applicant in order to receive more information regarding the circumstances of the alleged crimes.

48. As regards the remaining applicants, *i.e.* Victims 06/06, 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06, the Pre-Trial Judge finds that the crimes they claim to have been victims of do not fall under the temporal, geographical and material scope of the charges, as specified in the Confirmed Indictment, and therefore fall outside the scope of Rules 2 and 113(1) of the Rules. This is without prejudice to any future ruling on the admissibility of their applications, including on the harm they may have suffered as a result of the described crimes, following a possible amendment of the Confirmed Indictment.

49. The Pre-Trial Judge accordingly defers determination on the application of Victim 12/06 and further finds that the applications of Victims 06/06, 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06 are inadmissible. The remaining admissibility criteria will be assessed only in relation to the applications of Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06.

(c) Personally suffered harm as a direct result of a crime in the indictment

50. In relation to the harm having been suffered personally by the victim, the Pre-Trial Judge recalls his finding in the Framework Decision that the harm must be suffered *by* the applicant, *i.e.* his or her physical or psychological well-being or economic situation must be affected. This may include harm suffered by victims subjected to the

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<sup>54</sup> [REDACTED].

<sup>55</sup> [REDACTED].

acts of the perpetrator(s) (“direct victims”) or suffered by individuals in a close personal relationship with the direct victim killed or injured by the perpetrator(s) (“indirect victims”).<sup>56</sup> In this regard, the Pre-Trial Judge further notes that immediate family members (spouse, parents, children, siblings) are presumed to be in a close relationship with a direct victim,<sup>57</sup> 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.<sup>58</sup> The proximity of the relationship required does not depend on whether the direct victim was killed or injured.<sup>59</sup>

51. In relation to the type of harm suffered by victims of crimes, the Pre-Trial Judge recalls that the Law and the Rules identify in this regard three types of harm: physical, mental and material.<sup>60</sup>

52. Physical harm denotes any kind of bodily injury, such as wounds, fractures, disfigurement, mutilation, loss or dysfunction of organs, impairment, ailment, disease or death.<sup>61</sup> While the bodily injury need not be life-threatening or permanent, it must

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<sup>56</sup> Framework Decision, para. 34.

<sup>57</sup> [United Nations Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#) (“UN Basic Principles”), UNGA Resolution 60/147, 16 December 2005, A/RES/60/147, para. 8: the term “victim” includes the immediate family or dependants of the direct victim.

<sup>58</sup> Similarly, ICC, [Lubanga Appeal Decision on Victim Participation](#), para. 32; *Prosecutor v. Lubanga*, ICC-01/04-01/06-1813, Trial Chamber I, [Redacted Version of “Decision on ‘Indirect Victims’”](#), 8 April 2009, paras 44, 50; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT, Pre-Trial Judge, [Decision on Victims’ Participation in the Proceedings](#) (“*Ayyash et al.* Decision on Victim Participation”), 8 May 2012, para. 49; *Prosecutor v. Ayyash*, STL-18-10/PT, Pre-Trial Judge, [Decision Relating to Victims’ Participation in the Proceedings and Their Legal Representation](#) (“2020 *Ayyash* Decision on Victim Participation”), 17 April 2020, para. 26.

<sup>59</sup> Similarly, STL, [Ayyash et al. Decision on Victim Participation](#), para. 50; [2020 Ayyash Decision on Victim Participation](#), para. 26.

<sup>60</sup> Article 22(1) of the Law; Rule 2 of the Rules. See also [UN Basic Principles](#), para. 8, stating that harm may include physical or mental injury, emotional suffering, economic loss or substantial impairment of fundamental rights. Similarly, ICC, [Lubanga Appeal Decision on Victim Participation](#), paras 31-32; STL, [Ayyash et al. Decision on Victim Participation](#), paras 63-84.

<sup>61</sup> Similarly, ECCC, *Co-Prosecutors v. Kaing*, Case 001, Supreme Court Chamber, [Appeal Judgment](#) (“*Duch* Appeal Judgment”), 3 February 2012, para. 415. See also ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-320, Pre-Trial Chamber III, [Fourth Decision on Victims’ Participation](#) (“*Bemba* 4<sup>th</sup> Decision on Victim Participation”), 12 December 2008, para. 70.

be of such nature or gravity as to interfere with the health or well-being of the victim.<sup>62</sup> Additionally, indirect victims must show that the physical harm they suffered is the result of the harm suffered by the direct victim. This may be the case where grave or prolonged emotional suffering of the indirect victim, because of the death of or harm suffered by the direct victim, leads to physical ailments or afflictions.<sup>63</sup>

53. Mental harm denotes any kind of psychological suffering, such as grief, bereavement, post-traumatic stress disorder, or other types of psychological disorders, trauma or distress.<sup>64</sup> The psychological suffering must be of a certain degree of gravity; transient emotional distress does not in itself qualify as mental harm.<sup>65</sup> Additionally, indirect victims must show that the mental harm they suffered is the result of the harm suffered by the direct victim. That being said, 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 shall be presumed, provided that the close relationship between them is sufficiently established.<sup>66</sup>

54. Material harm denotes any kind of property or pecuniary damage or loss, such as destruction, damage or theft of personal property, loss of income or of means of subsistence or other forms of economic loss.<sup>67</sup> The property or pecuniary damage or loss must have a significant impact on the victim's livelihood. Additionally, indirect victims must show that the material harm they suffered is the result of the harm

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<sup>62</sup> Similarly, STL, [Ayyash et al. Decision on Victim Participation](#), para. 65.

<sup>63</sup> Similarly, ECCC, [Duch Appeal Judgment](#), para. 417.

<sup>64</sup> Similarly, ECCC, [Duch Appeal Judgment](#), para. 415; STL, [Ayyash et al. Decision on Victim Participation](#), para. 77. See also ICC, [Bemba 4<sup>th</sup> Decision on Victim Participation](#), para. 70.

<sup>65</sup> Similarly, STL, [2020 Ayyash Decision on Victim Participation](#), para. 41.

<sup>66</sup> Similarly, ICC, [Lubanga Appeal Decision on Victim Participation](#), para. 32; *Prosecutor v. Ruto et al.*, ICC-01/09-01/11-249, Pre-Trial Chamber II, [Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings](#), 5 August 2011, para. 55; STL, [2020 Ayyash Decision on Victim Participation](#), para. 44.

<sup>67</sup> Similarly, ECCC, [Duch Appeal Judgment](#), para. 415; STL, [Ayyash et al. Decision on Victim Participation](#), para. 72; [2020 Ayyash Decision on Victim Participation](#), para. 37. See also ICC, [Bemba 4<sup>th</sup> Decision on Victim Participation](#), para. 70.

suffered by the direct victim. This may be the case where the death of or harm suffered by the direct victim has led to loss of income for the indirect victim.<sup>68</sup>

55. In relation to the harm being the direct result of a crime in the indictment, the Pre-Trial Judge recalls his finding in the Framework Decision that the harm is the direct result of the crime where, in the circumstances prevailing at the relevant place and time and taking in consideration the personal situation of the victim, the acts or omissions of the perpetrator(s) would most likely bring about that harm, as viewed by an objective observer.<sup>69</sup> The crime does not have to be the only cause of the harm suffered, but it must have significantly contributed thereto.<sup>70</sup> In particular, in relation to physical or mental harm, applicants who are direct victims should indicate, at a minimum, that they were present at the scene of the crime at the relevant time and that they were subjected to the acts or omissions of the perpetrator(s). In relation to material harm, applicants who are direct victims should indicate, at a minimum, that their property or possessions were located at the scene of the crime at the relevant time and that they were damaged, destroyed or stolen as a result, or that the loss of income or means of subsistence post-dated and resulted from the crime. Irrespective of the type of harm, applicants who are indirect victims must show, at a minimum, that the harm they suffered was the result of the harm suffered by the direct victim, with whom they had a close personal relationship.<sup>71</sup>

56. The Pre-Trial Judge accordingly finds that Victims 01/06, 02/06, 03/06, 04/06 and 07/06 have suffered physical harm, such as wounds, fractures, disfigurement and impairment, and mental harm, such as lasting anxiety, severe trauma and distress, as a direct result of the alleged detention at the aforementioned crime sites and the physical and psychological assault allegedly suffered at the hands of KLA members

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<sup>68</sup> Similarly, ECCC, [Duch Appeal Judgment](#), para. 417.

<sup>69</sup> Framework Decision, para. 39.

<sup>70</sup> Similarly, ICC, [Bemba 4<sup>th</sup> Decision on Victim Participation](#), para. 77.

<sup>71</sup> Similarly, STL, [2020 Ayyash Decision on Victim Participation](#), para. 27.

throughout their detention therein. Furthermore, the Pre-Trial Judge finds that Victims 16/06, 17/06, 18/06 and 19/06, by virtue of being the immediate family member(s) of the respective direct victims, have suffered mental harm, such as bereavement and severe trauma, as a result of the alleged abduction and murder of said direct victims at the aforementioned crime sites.

57. While Victim 17/06 also claims to have suffered physical harm as a result of the death of the direct victim, the information and documentation provided is not sufficient for a *prima facie* finding that such physical ailment was the result of the emotional suffering of Victim 17/06 following the death of said family member. While Victims 01/06, 02/06, 03/06 and 04/06 also claim to have suffered material harm, the information and documentation provided is not sufficient for a *prima facie* finding that such harm was the direct result of the alleged crimes. These findings are without prejudice to any future rulings, following submission of additional material, on these matters.

#### (d) Conclusion

58. The Pre-Trial Judge accordingly finds that there is *prima facie* evidence that Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06 have suffered harm as a direct result of a crime alleged in the Confirmed Indictment. Accordingly, these applicants are admitted to the proceedings as participating victims.

59. The Pre-Trial Judge defers determination on the application of Victim 12/06 and instructs the VPO to revert back to the applicant in order to receive more information regarding the circumstances of the alleged crime.

60. The Pre-Trial Judge further finds that Victims 06/06, 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06, for the reasons provided in paragraph 48, are not admitted to the proceedings as participating victims.

### C. PROTECTIVE MEASURES

61. The VPO submits that five applicants requested non-disclosure to the public,<sup>72</sup> one applicant requested non-disclosure to the Accused,<sup>73</sup> four applicants requested non-disclosure to both the public and the Accused,<sup>74</sup> and eight applicants requested non-disclosure to the public, the Accused and Defence Counsel.<sup>75</sup> The VPO further avers that concerns over a dangerous climate of victim intimidation in Kosovo, and the fact that Kosovo is a small country, where people live in tight-knit communities and the Accused have immense influence and resources, affect all victims applying for participation.<sup>76</sup> On this basis, the VPO submits that there are objectively justifiable risks to all applicants, without the need for them to specifically list concrete threats against them or their families. Revealing their identifying information would therefore pose a security risk to the applicants and their family members.<sup>77</sup> The VPO accordingly recommends that the identifying information of all applicants be withheld from the public and that the identifying information of applicants residing in Kosovo and applicants of Albanian ethnicity with family in Kosovo are also granted anonymity towards Defence Counsel and the Accused.<sup>78</sup>

62. The Defence submits that the VPO's request for full anonymity of six applicants should be dismissed, as the existence of a general climate of witness interference is insufficient to demonstrate an objectively justifiable risk to the applicants or to justify the requested anonymity, in the absence of allegations of concrete threat or real risk of interference.<sup>79</sup> The Defence further requests that the application forms of those

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<sup>72</sup> First Report, para. 56, referring to Victims 01/06, 02/06, 03/06, 04/06 and 05/06.

<sup>73</sup> First Report, para. 56, referring to Victim 19/06.

<sup>74</sup> First Report, para. 56, referring to Victims 06/06, 09/06, 10/06 and 11/06.

<sup>75</sup> First Report, para. 56, referring to Victims 07/06, 08/06, 12/06, 13/06, 14/06, 16/06, 17/06 and 18/06.

<sup>76</sup> First Report, para. 59.

<sup>77</sup> First Report, para. 60.

<sup>78</sup> First Report, paras 61-62.

<sup>79</sup> Thaçi Response, para. 28; Krasniqi Response, para. 31(c).

applicants who have already been interviewed by the SPO as witnesses, whose material has been disclosed to the Defence and/or who are mentioned in the Confirmed Indictment or the SPO Rule 86(3)(b) Outline be disclosed to the Defence.<sup>80</sup> Lastly, the Defence for Mr Krasniqi submits that measures allowing disclosure to Defence Counsel, but not to the Accused, are inconsistent with the rights of the Accused and contradict the national ethical rules applicable to Counsel practicing in England and Wales.<sup>81</sup>

63. The SPO submits that it has no objection to the requested protective measures and that any request for disclosure is both premature and, in any event, contrary to the applicable framework.<sup>82</sup>

(a) Application forms

64. The Pre-Trial Judge recalls at the outset that Rule 113(1) of the Rules explicitly provides that application forms shall not be disclosed to the Parties. In this regard, the Pre-Trial Judge emphasizes that the function of an application form is to provide information regarding the eligibility of an applicant as a VPP, including by describing the harm suffered by the victim.<sup>83</sup> As a result, an application form typically contains a significant amount of sensitive information that does not necessarily pertain to evidentiary matters. For this reason, application forms *per se* are not susceptible for disclosure to the Parties.<sup>84</sup>

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<sup>80</sup> Thaçi Response, para. 25. *See also* Krasniqi Response, para. 31(f).

<sup>81</sup> Krasniqi Response, para. 31(e).

<sup>82</sup> SPO Response, para. 1.

<sup>83</sup> *Similarly*, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-211, Pre-Trial Chamber II, [Decision on Victims' Participation at the Confirmation of Charges Hearing and in Related Proceedings](#), 15 January 2014, para. 43; [Ntaganda Decision on Victims' Participation](#), para. 36.

<sup>84</sup> *Similarly*, STL, *Prosecutor v. Ayyash et al.*, STL-11-01-PT, Pre-Trial Judge, [Decision on Prosecution's Request for the Reclassification as Confidential of the Identities and Application of Victims seeking to Participate in the Proceedings](#) ("*Ayyash et al.* Decision on Application Forms"), 31 May 2013, paras 44-49.

65. Regarding the Defence request for immediate disclosure of all applications of potential dual-status witnesses, the Pre-Trial Judge further notes that, at this stage of the proceedings, where the SPO has not finalised its disclosure obligations and no witness list has been provided, requests for disclosure of any information contained in the application forms of victim applicants “who may be called by the SPO as witnesses in the proceedings”<sup>85</sup> are decidedly premature.

66. The Pre-Trial Judge accordingly finds it appropriate to maintain the classification of the respective application forms and supporting documentation as strictly confidential and *ex parte* and therefore rejects the request of the Defence for the disclosure of any application forms.

(b) Admitted applicants

67. As regards Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06, the Pre-Trial Judge notes at the outset that, as indicated in the Framework Decision, the legal test applicable for protective measures in relation to witnesses is also applicable as regards VPPs.<sup>86</sup> That being said, when determining the appropriate protective measures regarding VPPs, the Pre-Trial Judge shall take into account that (i) the purpose of victim participation is to allow VPPs to pursue their rights and personal interests as provided in the Law and the Rules; and (ii) such a purpose also informs the considerations regarding the protective measures to be ordered for VPPs, without prejudice to any additional measures stemming from their potential dual status. The below findings are without prejudice to any future ruling by the relevant Trial Panel in this regard.

68. As regards the existence of an objectively justifiable risk and the necessity of protective measures, the Pre-Trial Judge takes into account specific risk factors

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<sup>85</sup> Thaçi Response, para. 25.

<sup>86</sup> Framework Decision, para. 47.

applicable to one or more of the aforementioned VPPs, considering that: (i) all of them suffer from ongoing physical and/or mental trauma as a result of the mistreatment they or their immediate family member had suffered; (ii) all of them have expressed fears or concerns for their or their family members' safety should their participation become known; and (iii) [REDACTED]. In his determination, the Pre-Trial Judge also pays regard to: (i) the general climate of witness or victim intimidation prevailing in Kosovo, particularly in criminal proceedings against former KLA members;<sup>87</sup> and (ii) the Accused's means and incentives to intimidate these victims, in light of the positions of authority held by them during the timeframe of the charges, as well as in more recent times, which may translate into a risk of intimidation by members of the Accused's wider network.<sup>88</sup> Moreover, the Pre-Trial Judge is also mindful that (i) by virtue of their status as VPPs, these individuals are especially vulnerable and any protective measure would have to address their special needs as victims; and (ii) adequate protective measures for victims are often the legal means by which their participation in the proceedings can be secured, because such measures 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.<sup>89</sup> For the aforementioned reasons, the Pre-Trial Judge considers that the disclosure both to the public and the Parties of any material or information leading to the identification of the aforementioned VPPs poses an objectively justifiable risk to them and their family members and therefore finds that anonymity under Rule 80(4)(e)(i) of the Rules is the most appropriate and necessary measure at this stage of proceedings.

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<sup>87</sup> First Report, para. 59. *See also* KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders* ("Decision on Arrest and Detention"), 26 October 2020, public, paras 29-30, 33-34, 37-38, 41-42; [REDACTED].

<sup>88</sup> First Report, para. 59; *See also* Decision on Arrest and Detention, paras 29-30, 33-34, 37-38, 41-42; [REDACTED].

<sup>89</sup> *Similarly*, ICC, [Lubanga Decision on Victim Participation](#), para. 128.

69. Regarding the proportionality of these measures, the Pre-Trial Judge reiterates that at the current stage of proceedings, where the SPO has not yet provided a witness list under Rule 95(4) of the Rules, it is decidedly premature to entertain any arguments regarding the potential dual status of any VPPs. As regards appropriate counterbalancing measures, the Pre-Trial Judge underscores that the protective measures granted to VPPs are independent from and do not affect any requested or granted protective measures as regards witnesses. Hence, the potential dual status of any of the VPPs has at this point minimal effect on the ability of the Defence to prepare in relation to future testimonies.<sup>90</sup> Moreover, the Pre-Trial Judge notes that any protective measures ordered in relation to the aforementioned VPPs at this stage are without prejudice to the variation of such measures at a later stage, including by the Trial Panel, if and when the need arises.<sup>91</sup> For the aforementioned reasons, the Pre-Trial Judge finds that anonymity under Rule 80(4)(e)(i) of the Rules is a proportionate measure at this stage of proceedings.

70. The Pre-Trial Judge accordingly orders that the names and any identifying information of Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06 shall be withheld from the public and the Parties and, as a result, finds it appropriate to maintain the classification of the respective application summaries as strictly confidential and *ex parte*.

(c) Rejected applicants

71. As regards Victims 06/06, 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06 the Pre-Trial Judge considers that, by virtue of the confidentiality of the application process, as provided in Rule 113(1)-(2) of the Rules, and taking into consideration the applicants'

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<sup>90</sup> Similarly, ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-471, Trial Chamber IX, [Decision on Disclosure of Victims' Identities](#) ("Ongwen Decision on Victims' Identities"), 17 June 2016, para. 11.

<sup>91</sup> Similarly, ICC, [Ongwen Decision on Victims' Identities](#), paras 12-14.

protection of privacy, the non-disclosure to the Parties and the public of their names and identifying information is necessary. Given that none of the applicants are admitted as VPPs, no prejudice is caused to the Accused or a fair trial by this non-disclosure.

72. The Pre-Trial Judge accordingly orders that the names and any identifying information of Victims 06/06, 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06 be withheld from the Parties and the public and, as a result, finds it appropriate to maintain the classification of the respective application summaries as strictly confidential and *ex parte*.

#### D. GROUPING AND COMMON LEGAL REPRESENTATION

73. In the First Report, the VPO submits that the applicants' interests do not appear to differ *per se* as regards the outcome of the proceedings.<sup>92</sup> In the Supplement, the VPO indicates that the potential issues linked to grouping and common representation that have been identified relate to the different backgrounds of the applicants, namely their ethnicity, language, and geographical location. The VPO further avers that these considerations could potentially have an impact upon effective common representation and meaningful participation, because they could undermine the required trust between Victims' Counsel and clients and impact negatively upon participating victims of different ethnicity, if placed in the same group.<sup>93</sup> Furthermore, the VPO submits that it also took into consideration any logistical barriers to accessing some of the victims, which may justify their separate representation.<sup>94</sup> Despite these considerations, the VPO indicates that the majority of the applicants do not object to being grouped in a single group.<sup>95</sup> The VPO adds that, regardless of their ethnic

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<sup>92</sup> First Report, para. 52.

<sup>93</sup> Supplement, para. 13.

<sup>94</sup> Supplement, para. 15.

<sup>95</sup> Supplement, para. 25.

background, language spoken and geographic location, all applicants can be considered victims of crimes allegedly committed by the same perpetrators and each of the applicants shares the same interest of seeking justice before the SC.<sup>96</sup> The VPO further submits that any potential issues affecting common representation can be managed effectively through ensuring a legal team with multiple members, with the capacity to work in different languages and countries of origin.<sup>97</sup> The VPO accordingly recommends that the applicants are grouped in a single group.<sup>98</sup>

74. The Defence for Mr Krasniqi submits that it sees nothing in the First Report suggesting a conflict of interests which would justify the division of applicants into more than one group and that it reserves the right to respond further at the appropriate time.<sup>99</sup>

75. The Defence for Mr Thaçi supports the VPO's recommendation that the victim applicants be grouped together in one single group to facilitate their common legal representation in these proceedings.<sup>100</sup> The Defence for Mr Thaçi further submits that the appointment of a common legal representative for all current victim applicants is in the interest of the fair but efficient administration of justice, and is consistent with both Rule 113(8) of the Rules, and the Framework Decision.<sup>101</sup>

76. The Pre-Trial Judge recalls his finding from the Framework Decision according to which a need to divide applicants into more than one group arises where the situation or the specificity of the victims is so different that their interests are irreconcilable, making common representation impracticable.<sup>102</sup> Accordingly, as regards Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06, the Pre-Trial Judge

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<sup>96</sup> Supplement, para. 27.

<sup>97</sup> Supplement, para. 28.

<sup>98</sup> Supplement, para. 29.

<sup>99</sup> Krasniqi Response, para. 32.

<sup>100</sup> Thaçi Response to Supplement, para. 5.

<sup>101</sup> Thaçi Response to Supplement, para. 7.

<sup>102</sup> Framework Decision, para. 43.

observes that they have different ethnicities, reside in different areas and speak different languages. At the same time, both direct and indirect victims were subjected to similar crimes at the hands of the same groups of perpetrators and have suffered from similar forms of harm, and they all seem to share a common interest of participating in the proceedings and pursuing their rights. Moreover, all aforementioned applicants have indicated that they do not object to be in a group with other victims.<sup>103</sup>

77. In light of the foregoing, the Pre-Trial Judge finds that Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06 shall be represented as one group of VPPs (“Group 1”).

78. The Pre-Trial Judge further recalls that, in accordance with Article 22(5) of the Law and Rule 113(7) of the Rules, VPP groups must be assisted and represented by a Victims’ Counsel as soon as they are granted the right to participate in the proceedings and that no other victim representation is permitted. The Pre-Trial Judge accordingly finds it necessary to ensure the common representation of admitted applicants as soon as possible after the issuance of the present decision, avoiding thereby any undue delays in the participation of VPPs. The Pre-Trial Judge accordingly directs the Registrar to assign by Friday, 7 May 2021, a Victims’ Counsel for the purpose of the common representation of Group 1.

#### E. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

79. The Defence submits that the Pre-Trial Judge should seek the views of the Parties on the participatory rights of VPPs at the pre-trial stage, in light of their status, given

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<sup>103</sup> First Report, Annexes 2-6, 8, 16-19; Supplement, para. 25.

that the scope of participation will differ depending on their protective measures and their potential dual status as VPPs and witnesses.<sup>104</sup>

80. The Pre-Trial Judge refers to the above consideration that protective measures granted to VPPs at this stage have minimal effect on the ability of the Defence to prepare in relation to future testimonies,<sup>105</sup> and therefore considers that the modalities of participation of VPPs in pre-trial proceedings are not subject to the type of protective measures granted.<sup>106</sup> Lastly, pursuant to Rule 114(4) of the Rules, it is the prerogative of the Pre-Trial Judge to issue specific guidelines regulating the participation of victims in pre-trial proceedings.

81. The Pre-Trial Judge accordingly finds that, in line with Article 22 of the Law and Rule 114 of the Rules, VPPs shall exercise their rights through their Victims' Counsel and shall participate in pre-trial proceedings through the modalities described below. Importantly, the modalities set out below remain under the control of the Pre-Trial Judge at all times. Participatory rights may be amended in specific instances, if the personal interests of VPPs are not affected or other reasons so require.

82. First, pursuant to Rule 114(3) of the Rules, Victims' Counsel shall have access to the entire case file, including all public and confidential filings, transcripts and evidentiary material and excluding any *ex parte* items of the case file. By the same token, Victims' Counsel shall be notified of all distributed items in the case file, including all public and confidential filings, transcripts, disclosures of evidentiary material and excluding any distributed *ex parte* items of the case file. Victims' Counsel shall not have access to nor be notified of strictly confidential material, including filings, transcripts or evidentiary material, unless specifically provided so. Victims'

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<sup>104</sup> Thaçi Response, para. 29; Krasniqi Response, para. 31(d).

<sup>105</sup> See *supra* para. 69.

<sup>106</sup> Similarly, ICC, [Bemba 4<sup>th</sup> Decision on Victim Participation](#), para. 99.

Counsel shall keep the VPPs informed of relevant developments in the case in a manner which does not reveal non-public information.

83. Secondly, pursuant to Article 22(6) of the Law and Rule 114(2) of the Rules, and in order to ensure that the personal interests of the VPPs are appropriately represented at all times, Victims' Counsel shall be present at all pre-trial hearings, excluding any *ex parte* hearings.

84. Thirdly, pursuant to Article 22(6) of the Law and Rule 114(4) of the Rules, Victims' Counsel shall be permitted to make oral and written submissions whenever the personal interests of the VPPs are affected. In order to ensure a seamless and efficient modality of participation, Victims' Counsel shall not be required to submit any prior leave for making oral and written submissions, but shall be required to indicate in the said submission the specific personal interest affected.

## V. DISPOSITION

85. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **GRANTS** the applications of Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06 and admits these applicants to the proceedings as VPPs;
- b. **DECIDES** that Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06 shall be represented as Group 1;
- c. **DIRECTS** the Registrar to assign by **Friday, 7 May 2021**, a Victims' Counsel for the purpose of the common representation of Group 1;
- d. **DECIDES** that Victims' Counsel so assigned shall:

- i. have access to the entire case file, including all public and confidential filings, transcripts and evidentiary material and excluding any *ex parte* items of the case file;
  - ii. be notified of all distributed items in the case file, including all public and confidential filings, transcripts, disclosures of evidentiary material and excluding any distributed *ex parte* items of the case file;
  - iii. not have access to nor be notified of strictly confidential material, including filings, transcripts or evidentiary material, unless specifically provided so;
  - iv. keep the VPPs informed of relevant developments in the case in a manner which does not reveal non-public information;
  - v. be present at all pre-trial hearings, excluding any *ex parte* hearings;
  - vi. be permitted to make oral and written submissions whenever the personal interests of the VPPs are affected, as provided in paragraph 84;
- e. **DEFERS** determination on the application of Victim 12/06 and **ORDERS** the VPO to submit to the Pre-Trial Judge additional information, if any, as provided in paragraph 47, by **Friday, 21 May 2021**;
- f. **REJECTS** the applications of Victims 06/06, 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06 as inadmissible;
- g. **ORDERS** that the protective measure of anonymity under Rule 80(4)(e)(i) of the Rules be granted to Victims 01/06, 02/06, 03/06, 04/06, 07/06, 16/06, 17/06, 18/06 and 19/06;
- h. **ORDERS** that the names and any identifying information of Victims 06/06, 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06 be withheld from the Parties and the public; and

- i. **ORDERS** to maintain the classification of all applications summaries, application forms and supporting documentation as strictly confidential and *ex parte*.



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**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Wednesday, 21 April 2021

At The Hague, the Netherlands.