



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-BC-2020-05**
The Prosecutor v. Salih Mustafa

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 30 April 2021

Language: English

Classification: **Public**

**Public Redacted Version of
Second Decision on Victims' Participation**

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 22 and 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 12 June 2020, the Pre-Trial Judge confirmed an indictment against Salih Mustafa ("Mr Mustafa" or "Accused").² On 19 June 2020, the Specialist Prosecutor's Office ("SPO") submitted the indictment as confirmed ("Confirmed Indictment").³

2. On 27 November 2020, the Pre-Trial Judge issued a framework decision on victims' applications ("Framework Decision"), ordering the Victims' Participation Office ("VPO") to, *inter alia*, file by 10 December 2020 its first report pursuant to Rule 113(2) of the Rules to the Pre-Trial Judge and the Parties regarding the submitted applications and to submit further such reports, if any, on a regular basis, the latest by the submission of the Defence filing pursuant to Rule 95(5) of the Rules.⁴

3. On 9 December 2020, the VPO submitted its first report on received applications ("First Report").⁵

¹ KSC-BC-2020-05, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

² KSC-BC-2020-05, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Salih Mustafa*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was filed on 5 October 2020, F00008/RED.

³ KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Indictment*, 19 June 2020, confidential. A public redacted version of the Confirmed Indictment was filed on 28 September 2020: KSC-BC-2020-05, F00019/A01, Specialist Prosecutor, *Public Redacted Version of Indictment*, 19 June 2020, public.

⁴ KSC-BC-2020-05, F00055, Pre-Trial Judge, *Framework Decision on Victims'*, 27 November 2020, public, para. 55(c)-(e).

⁵ KSC-BC-2020-05, F00062, Victims' Participation Office, *First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings*, 9 December 2020, public, with Annexes 1-4, strictly confidential and *ex parte*.

4. On 10 February 2021, the Pre-Trial Judge issued the “First Decision on Victims’ Participation”.⁶
5. On 1 April 2021, the VPO submitted its second report on received applications (“Second Report”) with six strictly confidential and *ex parte* annexes containing a table indicating the number and details of applicants recommended for admission and the application summaries prepared by the VPO.⁷
6. The Defence for Mr Mustafa and the SPO did not submit any observations to the Second Report.

II. SUBMISSIONS

7. The VPO submits that, from the filing of its First Report, it has received five applications from persons applying for admission in the proceedings as participating victims, which were submitted with the direct assistance of the VPO.⁸ It recommends that the Pre-Trial Judge grant all five applications.⁹ The VPO further recommends that the identifying information of all applicants be withheld from the public, Defence Counsel, and the Accused.¹⁰

⁶ KSC-BC-2020-05, F00075, Pre-Trial Judge, *First Decision on Victims’ Participation*, 10 February 2021, public.

⁷ KSC-BC-2020-05, F00099, Victims’ Participation Office, *Second Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 1 April 2021, confidential, with Annexes 1-6, confidential and *ex parte*. A public redacted version of the Second Report was filed on 9 April 2021, F00099/RED.

⁸ Second Report, para. 7.

⁹ Second Report, paras 11-27.

¹⁰ Second Report, paras 45-53.

III. APPLICABLE LAW

A. APPLICATION AND ADMISSION TO THE PROCEEDINGS

8. 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 and alleged in an indictment confirmed by the Pre-Trial Judge.

9. 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.

10. 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.

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

12. 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.

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

14. 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

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 Pre-Trial Judge, make oral and written submissions.

C. PROTECTIVE MEASURES

22. 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.

23. 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.

24. 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

25. The VPO submits that all five submitted applications can be considered as formally complete in line with the criteria listed in the Framework Decision.¹¹

26. Having reviewed the application forms, the application summaries, and the supporting documentation against the criteria listed in the Framework Decision,¹² the Pre-Trial Judge is satisfied that all five 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. In relation to Victims 05/05 and 06/05, adequate proof of kinship is also provided. While none of the victims submitted documentation regarding the harm suffered, the detailed account provided by the applicants regarding the events and the harm suffered is sufficient to allow the relevant findings to be made. The Pre-Trial Judge accordingly finds that all five applications are complete.

B. ADMISSIBILITY OF APPLICATIONS

27. The VPO recommends that the Pre-Trial Judge admit all five applicants as participating victims (Group A),¹³ noting that: (i) all five applicants are natural persons;¹⁴ (ii) all crimes alleged in the applications are crimes listed in the Confirmed Indictment that fall within the temporal and geographical scope thereof;¹⁵ (iii) the harm suffered by the applicants as either direct or indirect victims is described

¹¹ Second Report, para. 12.

¹² Framework Decision, para. 22.

¹³ Second Report, para. 27.

¹⁴ Second Report, para. 15.

¹⁵ Second Report, paras 16-18.

sufficiently in detail;¹⁶ and (iv) a causal link exists between the harm suffered by the applicants and a crime listed in the Confirmed Indictment on a *prima facie* basis.¹⁷

28. The Pre-Trial Judge recalls that the assessment of applications against the admissibility criteria, as set out in the Framework Decision,¹⁸ is undertaken on a *prima facie* basis, taking into account the intrinsic coherence of the entire application, including supporting documentation, and all relevant circumstances.¹⁹ The Pre-Trial Judge shall not engage in a substantive assessment of the credibility or reliability of the submitted information and evidence.²⁰ That being said, the Pre-Trial Judge shall not rely on information or supporting material that is manifestly non-authentic.²¹

(a) Natural person

29. The Pre-Trial Judge is satisfied that all five applicants are natural persons.

(b) Alleged crime(s)

30. The Pre-Trial Judge recalls that the “crime”, in relation to which an applicant claims to have been a victim, must fall under the material, geographical and temporal parameters of the charges as set out in the Confirmed Indictment.²² The Pre-Trial Judge further recalls that an applicant must describe, as specifically as possible, the

¹⁶ Second Report, paras 19-23.

¹⁷ Second Report, para. 24.

¹⁸ Framework Decision, para. 27.

¹⁹ Framework Decision, para. 28.

²⁰ See also KSC-BC-2020-06, F00257/RED, Pre-Trial Judge, *Public Redacted Version of First Decision on Victims’ Participation* (“*Thaçi et al. First Decision on Victim Participation*”), 21 April 2021, public, para. 43. 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.

²¹ *Thaçi et al. First Decision on Victim Participation*, para. 43. 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.

²² Framework Decision, para. 31; *Thaçi et al. First Decision on Victim Participation*, para. 45.

place and time of the event and, if possible, any alleged perpetrator present at the scene or involved in the event.²³

31. In light of the foregoing, the Pre-Trial Judge finds that all five applicants are victims of an underlying crime alleged in the Confirmed Indictment, as provided in Rules 2 and 113(1) of the Rules. Specifically, Victims 05/05 and 06/05 have been victims of crimes [REDACTED] at the Zllash/Zlaš Detention Compound, while Victims 07/05, 08/05, and 09/05 have been victims of crimes allegedly committed at the same location.²⁴ Lastly, the Pre-Trial Judge notes that the crimes described by the five applicants fall within the time period set out in the Confirmed Indictment.

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

32. 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 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”).²⁵ 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,²⁶ 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

²³ Framework Decision, para. 31.

²⁴ Confirmed Indictment, para. 35.

²⁵ Framework Decision, para. 33.

²⁶ *Thaçi et al.* First Decision on Victim Participation, para. 50; [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.

close relationship therewith.²⁷ The proximity of the relationship required does not depend on whether the direct victim was killed or injured.²⁸

33. 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.²⁹

34. Physical harm denotes any kind of bodily injury, such as wounds, fractures, disfigurement, mutilation, loss or dysfunction of organs, impairment, ailment, disease or death.³⁰ While the bodily injury need not be life-threatening or permanent, it must be of such nature or gravity as to interfere with the health or well-being of the victim.³¹ 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.³²

²⁷ *Thaçi et al.* First Decision on Victim Participation, para. 50. 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.

²⁸ *Thaçi et al.* First Decision on Victim Participation, para. 50. Similarly, STL, [Ayyash et al. Decision on Victim Participation](#), para. 50; [2020 Ayyash Decision on Victim Participation](#), para. 26.

²⁹ 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.

³⁰ *Thaçi et al.* First Decision on Victim Participation, para. 52. 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 4th Decision on Victim Participation*"), 12 December 2008, para. 70.

³¹ *Thaçi et al.* First Decision on Victim Participation, para. 52. Similarly, STL, [Ayyash et al. Decision on Victim Participation](#), para. 65.

³² *Thaçi et al.* First Decision on Victim Participation, para. 52. Similarly, ECCC, [Duch Appeal Judgment](#), para. 417.

35. 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.³³ The psychological suffering must be of a certain degree of gravity; transient emotional distress does not in itself qualify as mental harm.³⁴ 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.³⁵

36. 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.³⁶ 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 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.³⁷

37. In relation to the harm being the direct result of a crime in the Confirmed Indictment, the Pre-Trial Judge recalls his finding in the Framework Decision that the

³³ *Thaçi et al.* First Decision on Victim Participation, para. 53. Similarly, ECCC, [Duch Appeal Judgment](#), para. 415; STL, [Ayyash et al. Decision on Victim Participation](#), para. 77. See also ICC, [Bemba 4th Decision on Victim Participation](#), para. 70.

³⁴ *Thaçi et al.* First Decision on Victim Participation, para. 53. Similarly, STL, [2020 Ayyash Decision on Victim Participation](#), para. 41.

³⁵ *Thaçi et al.* First Decision on Victim Participation, para. 53. 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.

³⁶ *Thaçi et al.* First Decision on Victim Participation, para. 54. 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 4th Decision on Victim Participation](#), para. 70.

³⁷ *Thaçi et al.* First Decision on Victim Participation, para. 54. Similarly, ECCC, [Duch Appeal Judgment](#), para. 417.

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.³⁸ The crime does not have to be the only cause of the harm suffered, but it must have significantly contributed thereto.³⁹ 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). 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.⁴⁰

38. The Pre-Trial Judge accordingly finds that: (i) Victims 08/05 and 09/05 have suffered physical harm, such as cuts, bruises, and broken teeth; and (ii) Victims 07/05, 08/05, and 09/05 have suffered mental harm, such as lasting anxiety and post-traumatic stress disorder, as a direct result of their alleged detention at the Zllash/Zlaš Detention Compound and the physical and/or psychological assault suffered throughout their detention therein. Furthermore, the Pre-Trial Judge finds that Victims 05/05 and 06/05, [REDACTED], have suffered mental harm, such as bereavement and severe trauma, as a result of the alleged crimes committed [REDACTED].

(d) Conclusion

39. The Pre-Trial Judge accordingly finds that there is *prima facie* evidence that Victims 05/05, 06/05, 07/05, 08/05, and 09/05 have suffered harm as a direct result

³⁸ Framework Decision, para. 38.

³⁹ *Thaçi et al.* First Decision on Victim Participation, para. 55. Similarly, ICC, [Bemba 4th Decision on Victim Participation](#), para. 77.

⁴⁰ *Thaçi et al.* First Decision on Victim Participation, para. 55. Similarly, STL, [2020 Ayyash Decision on Victim Participation](#), para. 27.

of a crime alleged in the Confirmed Indictment. Accordingly, these applicants are admitted to the proceedings as participating victims.

C. PROTECTIVE MEASURES

40. The VPO submits that: (i) Victim 07/05 requests that identifying information should not be disclosed to the public; (ii) Victims 05/05 and 06/05 request that identifying information should not be disclosed to the public and the Accused; and (iii) Victims 08/05 and 09/05 request that identifying information should not be disclosed to the public, the Accused, and Specialist Counsel.⁴¹ 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 has immense influence and resources, affect all victims applying for participation.⁴² 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.⁴³ Revealing their identifying information would therefore pose a security risk to the applicants and their family members.⁴⁴ The VPO accordingly recommends that the identifying information of all applicants be withheld from the public and that all applicants also be granted anonymity towards Defence Counsel and the Accused.⁴⁵

(a) Application forms

41. 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. For this reason,

⁴¹ Second Report, para. 44.

⁴² Second Report, para. 46.

⁴³ Second Report, para. 47.

⁴⁴ Second Report, para. 47.

⁴⁵ Second Report, paras 48-49.

the Pre-Trial Judge finds it appropriate to maintain the classification of all application forms, application summaries, and supporting documentation as strictly confidential and *ex parte*.

(b) Identity of applicants

42. At the outset, the Pre-Trial Judge notes that, as indicated in the Framework Decision, the legal test applicable for protective measures in relation to witnesses is also applicable as regards VPPs.⁴⁶ 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 the additional measures stemming from their potential dual status.⁴⁷ The below findings are without prejudice to any future ruling by the relevant Trial Panel in this regard.

43. As regards the existence of an objectively justifiable risk and the necessity of protective measures, the Pre-Trial Judge first notes that [REDACTED].⁴⁸ [REDACTED] disclosure of their identity to the Accused and the public poses an objectively justifiable risk to these individuals. [REDACTED]. The Pre-Trial Judge further takes into account specific risk factors applicable to one or more of the VPPs in the present case considering that: (i) all of them suffer from ongoing physical and/or mental trauma as a result of the mistreatment they [REDACTED] have suffered; (ii) all of them have express fears or concerns for their safety or that of their family members, should their participation become known; and (iii) [REDACTED]. Moreover, the Pre-

⁴⁶ Framework Decision, para. 46.

⁴⁷ *Thaçi et al.* First Decision on Victim Participation, para. 67.

⁴⁸ [REDACTED].

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.⁴⁹ 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 five 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.

44. Regarding the proportionality of these measures, the Pre-Trial Judge notes that any protective measures ordered in relation to any of the 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.⁵⁰ 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.

45. The Pre-Trial Judge accordingly orders that the names and any identifying information of Victims 05/05, 06/05, 07/05, 08/06, and 09/05 shall be withheld from the public and the Parties and reference to them be made only by their pseudonym.

⁴⁹ *Thaçi et al.* First Decision on Victim Participation, para. 68. Similarly, ICC, [Lubanga Decision on Victim Participation](#), para. 128.

⁵⁰ Similarly, *Thaçi et al.* First Decision on Victim Participation, para. 69; ICC, [Ongwen Decision on Victims' Identities](#), paras 12-14.

D. GROUPING AND COMMON LEGAL REPRESENTATION

46. As regards grouping, the VPO submits that it has not identified any issues or differences in the applications that would warrant separate representation and recommends that the Pre-Trial Judge group the five applicants in one single group for the purposes of common representation.⁵¹

47. As regards common legal representation, the VPO avers that the majority of applicants did not express any preferences.⁵² It also recapitulates various factors it will take into account when proposing Victims' Counsel for assignment.⁵³

48. 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.⁵⁴ Noting the ethnicity, [REDACTED], and language skills of the VPPs,⁵⁵ as well as the fact they all are either direct or indirect victims of crimes committed at the same crime site,⁵⁶ at the hands of the same group of perpetrators, having suffered from similar forms of harm, the Pre-Trial Judge finds that Victims 05/05, 06/05, 07/05, 08/05, and 09/05 shall be represented as one group of VPPs ("Group 1").

49. 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 the VPPs as soon as possible after the issuance of the present decision, thereby avoiding any undue delays in the

⁵¹ Second Report, paras 39-40.

⁵² Second Report, para. 41.

⁵³ Second Report, paras 42-43.

⁵⁴ Framework Decision, para. 42.

⁵⁵ Second Report, para. 38.

⁵⁶ Second Report, para. 38.

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. The preference expressed by Victims 05/05 and 09/05 to be represented by international counsel shall be given due consideration.

E. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

50. The Pre-Trial Judge 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.

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

52. 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.

53. Thirdly, Victims' Counsel shall be permitted to make oral and written submissions as set forth in Article 22(6) of the Law and Rule 114(4) of the Rules. 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

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

- a. **GRANTS** the applications of Victims 05/05, 06/05, 07/05, 08/05, and 09/05 and admits these applicants to the proceedings as VPPs;
- b. **DECIDES** that Victims 05/05, 06/05, 07/05, 08/05, and 09/05 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, and 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; and
 - vi. be permitted to make oral and written submissions whenever the personal interests of the VPPs are affected, as provided in paragraph 53;
- e. **ORDERS** that the protective measure of anonymity under Rule 80(4)(e)(i) of the Rules be granted to Victims 05/05, 06/05, 07/05, 08/05, and 09/05;
- f. **ORDERS** that the names and any identifying information of Victims 05/05, 06/05, 07/05, 08/05, and 09/05 be withheld from the Parties and the public; and
- g. **ORDERS** to maintain the classification of all applications summaries, application forms, and supporting documentation as strictly confidential and *ex parte*.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Friday, 30 April 2021
At The Hague, the Netherlands.