



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-05

The Prosecutor v. Salih Mustafa

Before: Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 21 May 2021

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**Public redacted version of
Third decision on victims' participation**

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TRIAL PANEL I (Panel)¹ hereby renders this decision admitting four victims to participate in the proceedings and extending the deadline for victims to apply for participation in the proceedings.

I. PROCEDURAL BACKGROUND

1. On 12 June 2020, the Pre-Trial Judge² confirmed an indictment against Salih Mustafa (Mr Mustafa).³ On 19 June 2020, the Specialist Prosecutor's Office (SPO) submitted the indictment as confirmed (Confirmed Indictment).⁴

2. On 27 November 2020, the Pre-Trial Judge issued a framework decision on victims' applications (Framework Decision on Victims' Applications), 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 of Procedure and Evidence before the Kosovo Specialist Chambers (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.⁵

3. On 9 December 2020, the VPO submitted its first report on received applications.⁶

¹ KSC-BC-2020-05, F00114, President, *Decision Assigning Trial Panel I*, 5 May 2021, public.

² KSC-BC-2020-05, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

³ 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.

⁴ 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.

⁵ KSC-BC-2020-05, F00055, Pre-Trial Judge, *Framework Decision on Victims' Applications*, 27 November 2020, public, para. 55(c)-(e).

⁶ 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”.⁷
5. On 1 April 2021, the VPO submitted its second report on received applications (Second Report).⁸
6. On 30 April 2021, the Pre-Trial Judge issued the “Second Decision on Victims’ Participation” (Second Decision), admitting five victims to participate in the proceedings in the present case as Group 1 (Five VPPs).⁹
7. On 30 April 2021, the VPO submitted its third report on received applications (Third Report) with five 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.¹⁰
8. The Defence for Mr Mustafa and the SPO did not submit any observations to the Third Report.

II. SUBMISSIONS

9. The VPO submits that, from the filing of its Second Report, it has received four applications from persons applying for admission in the proceedings as participating victims, which were submitted with the direct assistance of the

⁷ KSC-BC-2020-05, F00075, Pre-Trial Judge, *First Decision on Victims’ Participation*, 10 February 2021, public.

⁸ 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.

⁹ KSC-BC-2020-05, F00105, Pre-Trial Judge, *Second Decision on Victims’ Participation*, 30 April 2021, confidential. A public redacted version was filed on the same day, F00105/RED.

¹⁰ KSC-BC-2020-05, F00109, Victims’ Participation Office, *Third Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 30 April 2021, confidential, with Annexes 1-5, strictly confidential and *ex parte*. A public redacted version of the Third Report was filed on 6 May 2021, F00109/RED.

VPO.¹¹ It recommends that the four applications be granted.¹² The VPO further recommends that the identifying information of all applicants be withheld from the public, the Accused and Defence Counsel (the Defence).¹³

III. APPLICABLE LAW

10. The Panel notes Articles 22, 23, and 40(6)(f) of the Law N° 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 2, 80, 113-114, and 116(4)(b) of the Rules.

IV. ANALYSIS

A. COMPLETENESS OF APPLICATIONS

11. The VPO submits that all four submitted applications can be considered as formally complete, in line with the criteria listed in the Framework Decision on Victims' Applications.¹⁴

12. Having reviewed the application forms, the application summaries, and the supporting documentation against the criteria listed in the Framework Decision on Victims' Applications,¹⁵ the Panel is satisfied that all four 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 11/05, 12/05, and 13/05, [REDACTED]¹⁶ 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

¹¹ Third Report, para. 10.

¹² Third Report, paras 16-31.

¹³ Third Report, paras 37-42.

¹⁴ Third Report, para. 15.

¹⁵ Framework Decision on Victims' Applications, para. 22.

¹⁶ See *infra* para. 24.

harm suffered is sufficient to allow the relevant findings to be made. The Panel accordingly finds that all four applications are complete.

B. ADMISSIBILITY OF APPLICATIONS

13. The VPO recommends that all four applicants be admitted as participating victims (Group A),¹⁷ noting that: (i) all four applicants are natural persons;¹⁸ (ii) all crimes alleged in the applications are crimes that fall within the material, geographical, and temporal parameters of the charges set out in the Confirmed Indictment;¹⁹ (iii) the harm suffered by the applicants as either direct or indirect victims is described sufficiently in detail;²⁰ 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.²¹

14. The Panel recalls that the assessment of applications against the admissibility criteria, as set out in the Framework Decision on Victims' Applications,²² is undertaken on a *prima facie* basis, taking into account the intrinsic coherence of the entire application, including supporting documentation, and all relevant circumstances.²³ The Panel shall not engage in a substantive assessment of the credibility or reliability

¹⁷ Third Report, paras 12, 31.

¹⁸ Third Report, para. 18.

¹⁹ Third Report, paras 19-21.

²⁰ Third Report, paras 22-27.

²¹ Third Report, para. 28.

²² Framework Decision on Victims' Applications, para. 27.

²³ Framework Decision on Victims' Applications, para. 28.

of the submitted information and evidence.²⁴ That being said, the Panel shall not rely on information or supporting material that is manifestly non-authentic.²⁵

(a) Natural person

15. The Panel is satisfied that all four applicants are natural persons.

(b) Alleged crime(s)

16. The Panel 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.²⁶ The Panel 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.²⁷

17. In light of the foregoing, the Panel finds that all four applicants are victims of an underlying crime alleged in the Confirmed Indictment, as provided in Rules 2(1) and 113(1) of the Rules. Specifically, Victims 11/05, 12/05, and 13/05 have been victims of crimes allegedly committed [REDACTED] (Victims 11/05 and 12/05) [REDACTED] (Victim 13/05), at the Zllash/Zlaš Detention Compound, while Victim 10/05 has been a victim of crimes allegedly committed at the same location.²⁸ Lastly, the Panel notes

²⁴ See also Second Decision, para. 28; 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.

²⁵ Second Decision, para. 28; *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.

²⁶ Framework Decision on Victims’ Applications, para. 31; Second Decision, para. 30; *Thaçi et al. First Decision on Victim Participation*, para. 45.

²⁷ Framework Decision on Victims’ Applications, para. 31; Second Decision, para. 30.

²⁸ Confirmed Indictment, para. 35.

that the crimes described by the four 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

18. In relation to the harm having been suffered personally by the victim, the Panel recalls 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”).²⁹ In this regard, the Panel notes that immediate family members (spouse, parents, children, siblings) are presumed to be in a close relationship with a direct victim,³⁰ 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.³¹ As to the latter category, the Panel finds that this may comprise not only family members, but also any other persons who can sufficiently demonstrate that they had a close relationship with the direct victim.³²

²⁹ Framework Decision on Victims’ Applications, para. 33.

³⁰ Second Decision, para. 32; *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.

³¹ Second Decision, para. 32; *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.

³² Similarly, ECCC, *Co-Prosecutors v. Kaing*, Case 001, Supreme Court Chamber, [Appeal Judgment](#) (“*Duch Appeal Judgment*”), 3 February 2012, para. 418.

The proximity of the relationship required does not depend on whether the direct victim was killed or injured.³³

19. In relation to the type of harm suffered by victims as a result of the crimes, the Panel recalls that the Law and the Rules identify three types of harm: physical, mental, and material.³⁴

20. Physical harm denotes any kind of bodily injury, such as wounds, fractures, disfigurement, mutilation, loss or dysfunction of organs, impairment, ailment, disease or death.³⁵ 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.³⁶ 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.³⁷

21. 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.³⁸ The psychological suffering must be of a certain degree

³³ Second Decision, para. 32; *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.

³⁴ 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.

³⁵ Second Decision, para. 34; *Thaçi et al.* First Decision on Victim Participation, para. 52. Similarly, ECCC, [Duch Appeal Judgment](#), 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.

³⁶ Second Decision, para. 34; *Thaçi et al.* First Decision on Victim Participation, para. 52. Similarly, STL, [Ayyash et al. Decision on Victim Participation](#), para. 65.

³⁷ Second Decision, para. 34; *Thaçi et al.* First Decision on Victim Participation, para. 52. Similarly, ECCC, [Duch Appeal Judgment](#), para. 417.

³⁸ Second Decision, para. 35; *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.

of gravity; transient emotional distress does not in itself qualify as mental harm.³⁹ 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.⁴⁰

22. 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.⁴¹ 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 income⁴² or loss of opportunity for the indirect victim.

23. In relation to the harm being the direct result of a crime in the Confirmed Indictment, the Panel recalls 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

³⁹ Second Decision, para. 35; *Thaçi et al.* First Decision on Victim Participation, para. 53. Similarly, STL, [2020 Ayyash Decision on Victim Participation](#), para. 41.

⁴⁰ Second Decision, para. 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.

⁴¹ Second Decision, para. 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.

⁴² Second Decision, para. 36; *Thaçi et al.* First Decision on Victim Participation, para. 54. Similarly, ECCC, [Duch Appeal Judgment](#), para. 417.

observer.⁴³ The crime does not have to be the only cause of the harm suffered, but it must have significantly contributed thereto.⁴⁴ 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.⁴⁵

24. The Panel accordingly finds that: (i) Victim 10/05 has suffered physical harm, such as wounds, fractures, and broken teeth, and mental harm, such as lasting anxiety and distress, as a direct result of his alleged detention at the Zllash/Zlaš Detention Compound and the physical and/or psychological assault suffered throughout his detention therein; and (ii) Victim 12/05, [REDACTED], has suffered mental harm, such as lasting anxiety, distress, and bereavement, as a result of the alleged crimes committed [REDACTED]. With respect to: (i) Victim 11/05, [REDACTED]; and (ii) Victim 13/05, [REDACTED] and therefore suffered mental harm, such as lasting anxiety, distress, and bereavement, as a result of the alleged crimes committed [REDACTED].

25. The findings in the previous paragraph with regard to the harm suffered by the victims is without prejudice to any future rulings on this issue depending on the material which will be available to the Panel.

⁴³ Framework Decision on Victims' Applications, para. 38.

⁴⁴ Second Decision, para. 37; *Thaçi et al.* First Decision on Victim Participation, para. 55. Similarly, ICC, [Bemba 4th Decision on Victim Participation](#), para. 77.

⁴⁵ Second Decision, para. 37; *Thaçi et al.* First Decision on Victim Participation, para. 55. Similarly, STL, [2020 Ayyash Decision on Victim Participation](#), para. 27.

(d) Conclusion

26. The Panel accordingly finds that there is *prima facie* evidence that Victims 10/05, 11/05, 12/05, and 13/05 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.

C. PROTECTIVE MEASURES

27. The VPO submits that all four applicants have requested that their identifying information not be disclosed to the public and the Defence.⁴⁶ The VPO further avers that the concerns expressed in the Second Report and summarized in the Second Decision affect all victims applying for participation, including the four applicants included in the Third Report.⁴⁷ Moreover, all applicants are particularly vulnerable and the full range of protective measures is strictly necessary in light of the objectively justifiable and heightened risk to them and their family members.⁴⁸ 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 the Defence.⁴⁹

⁴⁶ Third Report, para. 37.

⁴⁷ Third Report, para. 38.

⁴⁸ Third Report, para. 39.

⁴⁹ Third Report, para. 41.

(a) Application forms

28. In accordance with Rule 113(1) of the Rules, the Panel 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

29. The Panel notes that, as indicated in the Framework Decision on Victims' Applications, the legal test applicable for protective measures in relation to witnesses is also applicable as regards VPPs.⁵⁰ That being said, when determining the appropriate protective measures regarding VPPs, the Panel 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.⁵¹

30. As regards the existence of an objectively justifiable risk and the necessity of protective measures, the Panel first notes that [REDACTED].⁵² [REDACTED]. The Panel further takes into account specific risk factors applicable to 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 Panel is also mindful that: (i) by virtue of their status as VPPs, these individuals are especially vulnerable and any protective measure would have to

⁵⁰ Framework Decision on Victims' Applications, para. 46.

⁵¹ Second Decision, para. 42; *Thaçi et al.* First Decision on Victim Participation, para. 67.

⁵² [REDACTED].

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.⁵³ For the aforementioned reasons, the Panel considers that disclosure both to the public and the Defence of any material or information leading to the identification of the four 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.

31. Regarding the proportionality of these measures, the Panel 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, if and when the need arises.⁵⁴ For the aforementioned reasons, the Panel finds that anonymity under Rule 80(4)(e)(i) of the Rules is a proportionate measure at this stage of proceedings.

32. The Panel accordingly orders that the names and any identifying information of Victims 10/05, 11/05, 12/05, and 13/05 shall be withheld from the public and the Defence and reference to them be made only by their pseudonym.

⁵³ Second Decision, para. 43; *Thaçi et al.* First Decision on Victim Participation, para. 68. Similarly, ICC, [Lubanga Decision on Victim Participation](#), para. 128.

⁵⁴ Similarly, Second Decision, para. 44; *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

33. 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 four applicants be represented as one group.⁵⁵

34. As regards common legal representation, the VPO submits that one applicant would like to be represented by a highly qualified counsel and another applicant does not wish to be represented by a lawyer [REDACTED].⁵⁶ The VPO further states that it shall base its proposal to the Registrar for assignment of Victims' Counsel on a range of objective criteria, as described in the Second Report.⁵⁷

35. The Panel recalls that, according to the Framework Decision on Victims' Applications, the 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.⁵⁸ The Panel further recalls that, in accordance with Article 22(5) of the Law and Rules 113(7) and 114(1) 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.

36. Noting: (i) the ethnicity, [REDACTED], and language skills of the four applicants admitted to participate in the proceedings by means of the present decision,⁵⁹ as well as of the Five VPPs previously admitted;⁶⁰ (ii) the fact that all aforementioned nine VPPs admitted are either direct or indirect victims of crimes allegedly committed at the same crime site,⁶¹ at the hands of the same group of alleged perpetrators, having

⁵⁵ Third Report, paras 32-34.

⁵⁶ Third Report, para. 35.

⁵⁷ Third Report, para. 36.

⁵⁸ Framework Decision on Victims' Applications, para. 42.

⁵⁹ Third Report, paras 33, 38.

⁶⁰ Second Report, para. 38.

⁶¹ Third Report, para. 33; Second Report, para. 38.

suffered from similar forms of harm; and (iii) the preference expressed by two of the four applicants admitted to participate in the proceedings by means of the present decision,⁶² the Panel finds that Victims 10/05, 11/05, 12/05, and 13/05 shall be represented together with the Five VPPs as one group of VPPs (Group 1) by Anni Pues, Victims' Counsel assigned by the Registrar to such group.⁶³

E. PARTICIPATION IN TRIAL PROCEEDINGS

37. The Panel 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 the trial proceedings through the modalities described below. Importantly, the modalities set out below remain under the control of the Panel at all times. Further instructions as concerns the participation of VPPs in the trial proceedings will be given by the Panel in due course. Participatory rights may be amended in specific instances, if the personal interests of VPPs are not affected or other reasons so require.

38. Firstly, pursuant to Rule 114(3) of the Rules, Victims' Counsel shall have access to the entire case file, including all public, confidential, and strictly confidential filings, transcripts, and evidentiary material, 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, confidential, and strictly confidential filings, transcripts, and disclosures of evidentiary material, excluding any distributed *ex parte* items of the case file. Victims' Counsel shall keep the VPPs informed of relevant developments in the case in a manner which does not reveal non-public information.

39. 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

⁶² Third Report, para. 35.

⁶³ KSC-BC-2020-05, F00117, Registrar, *Notification of Assignment of Victims' Counsel to Group 1 of Victims Participating in the Proceedings*, 7 May 2021, public, with Annex 1, confidential and *ex parte*.

at all times, Victims' Counsel shall be present at all trial hearings, whether held in public, closed or private session, excluding any *ex parte* hearings. To that effect, Victims' Counsel shall be notified of all hearings before the Panel. Victims' Counsel may also request to address the Panel during an *ex parte* hearing.

40. 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 on any point of law or fact, and to file responses and replies to any submissions made to the Panel in accordance with Rule 76 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. Those submissions shall be related to the victims' personal interests as provided for in Article 22(3) of the Law.

F. DEADLINE FOR THE SUBMISSION OF APPLICATIONS

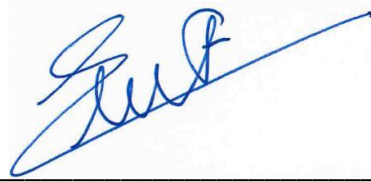
41. The Panel recalls that, pursuant to Rule 113(1) of the Rules, victim applications for participation in the proceedings shall be submitted sufficiently in advance of the opening of the case pursuant to Rule 124 of the Rules. However, in the circumstances of the present case, the Panel considers it appropriate, pursuant to Rule 9(5) of the Rules, to vary the deadline for the submission of victim applications for participation in the proceedings until the closing of the Specialist Prosecutor's case pursuant to Rule 129 of the Rules. The Panel considers that such a variation does not cause any prejudice to the rights of the Accused, who shall have adequate time to make submissions on the legal grounds regarding admissibility and common representation, in accordance with the deadline set out in the Framework Decision on Victims' Applications,⁶⁴ before the commencement of the presentation of evidence by the Defence, if any.

⁶⁴ Framework Decision on Victims' Applications, paras 52, 55(g).

V. DISPOSITION

42. For the above-mentioned reasons, the Panel hereby:

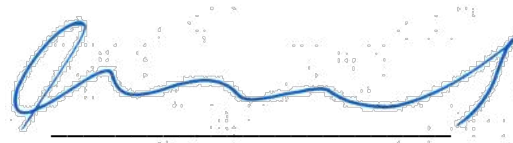
- a. **GRANTS** the applications of Victims 10/05, 11/05, 12/05, and 13/05 and admits these applicants to the proceedings as VPPs;
- b. **DECIDES** that Victims 10/05, 11/05, 12/05, and 13/05 shall form part of Group 1, represented by Anni Pues, Victims' Counsel assigned by the Registrar;
- c. **DECIDES** that the victims, through their Victims' Counsel, shall benefit from the participatory rights described in paragraphs 38 to 40 of the present decision;
- d. **ORDERS** that the protective measure of anonymity under Rule 80(4)(e)(i) of the Rules be granted to Victims 10/05, 11/05, 12/05, and 13/05;
- e. **ORDERS** that the names and any identifying information of Victims 10/05, 11/05, 12/05, and 13/05 be withheld from the Defence and the public;
- f. **ORDERS** to maintain the classification of all applications summaries, application forms, and supporting documentation as strictly confidential and *ex parte*; and
- g. **VARIES** the deadline for the submission of victim applications for participation in the proceedings until the closing of the Specialist Prosecutor's case pursuant to Rule 129 of the Rules.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 21 May 2021
At The Hague, the Netherlands.