



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**
The Prosecutor v. Pjetër Shala

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

Registrar: Dr Fidelma Donlon

Date: 15 December 2021

Language: English

Classification: **Public**

Public Redacted Version of First Decision on Victims' Participation

Specialist Prosecutor

Jack Smith

Counsel for Pjetër Shala

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 22 and 39(1), (11) and (13) of Law No. 05/L-053 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 19 June 2020, further to a decision by the Pre-Trial Judge,² the Specialist Prosecutor submitted the Confirmed Indictment against Pjetër Shala ("Mr Shala" or "Accused").³

2. On 1 September 2021, the Pre-Trial Judge issued the "Framework Decision on Victims' Applications" ("Framework Decision"),⁴ thereby, *inter alia*, ordering the Victims' Participation Office ("VPO") to file, by no later than 1 October 2021, 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 and, at the latest, two weeks prior to the submission of the Defence filing pursuant to Rule 95(5) of the Rules.⁵

¹ KSC-BC-2020-04, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

² KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment against Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and F00007/RED.

³ KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential, lesser redacted version and a public, further redacted version of the Confirmed Indictment were submitted on 31 March 2021, F00016/A01 and F00016/A02. A further lesser redacted, confidential version of the Confirmed Indictment was submitted on 25 May 2021, F00038/A01. Following the Pre-Trial Judge's decision on the Defence's motion challenging the form of the Confirmed Indictment, a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential; a public redacted version of the corrected indictment was submitted on 16 November 2021, F00107/A01.

⁴ KSC-BC-2020-04, F00064, Pre-Trial Judge, *Framework Decision on Victims' Applications*, 1 September 2021, public.

⁵ Framework Decision, paras 21, 30, 32, 63(c)-(e).

3. On 1 October 2021, the VPO submitted its first report pursuant to Rule 113(2) of the Rules (“Report”),⁶ thereby transmitting the application of one individual for the status of a victim participating in the proceedings (“Applicant”) and providing a recommendation on admissibility, common representation and protective measures, together with a strictly confidential and *ex parte* Annex, which contains a summary of the application, basic information on the Applicant, a summary of the alleged events and harm suffered, and a request for protective measures (“Annex to Report”).⁷

4. On 20 October 2021, the Pre-Trial Judge, further to the VPO’s indication,⁸ ordered the Registrar to reclassify the Report as confidential.⁹ Neither the Specialist Prosecutor’s Office nor the Defence for Mr Shala (“Defence”) have made submissions in relation to the Report.¹⁰

II. SUBMISSIONS

5. The VPO recommends to the Pre-Trial Judge to admit the Applicant as a participating victim.¹¹ It also asserts that a recommendation on grouping is not relevant at this stage considering that only one application has been transmitted and that the Applicant has indicated a preference for being represented by an international counsel.¹² The VPO further requests that the Applicant’s identifying information be

⁶ KSC-BC-2020-04, F00085, Registrar, *First Registry Report to the Pre-Trial Judge on Victims’ Application for Participation in the Proceedings*, 1 October 2021, confidential and *ex parte*, together with one Annex, strictly confidential and *ex parte*. A public redacted version of the Report was submitted on 29 October 2021, F00085/RED.

⁷ Report, paras 2, 6, 8.

⁸ Report, para. 7.

⁹ KSC-BC-2020-04, F00092, Pre-Trial Judge, *Order Reclassifying the First Registry Report on Victims’ Applications for Participation*, 20 October 2021, confidential, paras 8, 9, 11.

¹⁰ See also Framework Decision, paras 58-60, 63(g).

¹¹ Report, para. 29.

¹² Report, paras 30-31.

withheld from the public and that the Applicant be granted anonymity towards Defence Counsel and the Accused.¹³

III. APPLICABLE LAW

A. APPLICATION AND ADMISSION TO THE PROCEEDINGS

6. 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.

7. 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, 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.

8. 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.

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

10. 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

¹³ Report, para. 38.

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.

11. Pursuant to Rule 113(6) of the Rules, denied applicants may appeal as of right the decision within fourteen (14) days of notification of the decision denying admission in a language he or she understands.¹⁴

12. Pursuant to Rule 113(8) of the Rules, the Pre-Trial Judge, after having consulted the VPO, shall decide whether to divide victims participating in the proceedings 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

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

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

15. In accordance with Article 22(6) of the Law and Rule 114(1) of the Rules, victims participating in the proceedings shall exercise their rights through assigned Victims' Counsel during, *inter alia*, pre-trial proceedings, when their personal interests are

¹⁴ See also KSC-BC-2020-06, IA005/F00003, Court of Appeals, *Decision on Counsel's Motion for Clarification and Variation of Time Limit*, 31 May 2021, public, p. 3.

impacted and only when it is not prejudicial to or inconsistent with the rights of the Accused.

16. 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 victims participating in the pre-trial proceedings, in accordance with Article 22(3) and (6) of the Law.

17. 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 victims participating in the proceedings, in accordance with Article 22(3) of the Law.

18. 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.

19. Pursuant to Rule 114(4) of the Rules, whenever the personal interests of victims participating in the proceedings 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

20. 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 to the Trial Panel.

21. Pursuant to Rule 80(1) of the Rules, the Pre-Trial Judge 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.

22. 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

23. The Pre-Trial Judge is guided by the principles set out in the Framework Decision regarding: the requirements for an application to be considered complete,¹⁵ the admissibility criteria,¹⁶ the standard of proof,¹⁷ the legal test applicable to granting protective measures,¹⁸ and the criteria for grouping victims for the purpose of common legal representation.¹⁹

A. COMPLETENESS OF APPLICATION

24. Having assessed the Applicant's application form and supporting documentation against the requirements set out in the Framework Decision,²⁰ the Pre-Trial Judge is satisfied that the application is complete.

B. ADMISSIBILITY OF APPLICATION

25. At the outset, the Pre-Trial Judge recalls that the assessment of the aforementioned admissibility criteria is undertaken on a *prima facie* basis.²¹ Accordingly, the Pre-Trial Judge will review the submitted information and

¹⁵ Framework Decision, para. 24.

¹⁶ Framework Decision, paras 34, 36-45.

¹⁷ Framework Decision, para. 35.

¹⁸ Framework Decision, paras 52-56.

¹⁹ Framework Decision, paras 48-51; *see also* paras 33, 46-47, 51, 56, on the role of the VPO which conducts the preliminary assessment regarding the admissibility of applications, the grouping of applicants and the requested protective measures.

²⁰ Framework Decision, para. 24.

²¹ Framework Decision, para. 35.

supporting material on a case-by-case basis, taking into account: (i) all relevant circumstances as apparent at first sight, 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, including the individual application form, application summary and submitted supporting material.²² The Pre-Trial Judge shall not engage in a substantive assessment of the credibility or reliability of the submitted information and evidence.²³ That being said, the Pre-Trial Judge shall not rely on information or supporting material that is manifestly non-authentic.²⁴

26. *Natural person.* The Pre-Trial Judge is satisfied that the Applicant has provided adequate proof of identity and is a natural person.²⁵

27. *Alleged crimes.* The Pre-Trial Judge recalls that, as found in the Framework Decision, the “crime” in relation to which an applicant claims to have been a victim must fall within the material, geographical and temporal parameters of the charges, as specified in the Confirmed Indictment.²⁶ The Pre-Trial Judge finds that the Applicant is the victim of crimes [REDACTED] at [REDACTED], and therefore falls

²² Framework Decision, para. 35.

²³ 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.

²⁴ Similarly KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*, para. 50. A public redacted version was issued on 30 November 2020, F00026/RED.

²⁵ Report, para. 17; Application Form, p. 1; SD1; SD2.

²⁶ Framework Decision, para. 38. See also KSC-BC-2020-06, IA005/F00008, Court of Appeals Panel, *Decision on Appeal against “First Decision on Victims’ Participation”*, 16 July 2021, public, para. 35. While 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](#), 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, Trial Chamber V, [Decision on Victims’ Participation in Trial Proceedings](#), 23 November 2020, paras 20-21.

within the material, geographical and temporal parameters of the charges related to this location.²⁷

28. *Harm.* In relation to the harm having been suffered personally by the victim, the Pre-Trial Judge recalls that, in the Framework Decision, it was found 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”).²⁸ 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,²⁹ 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.³⁰ The proximity of the relationship required does not depend on whether the direct victim was killed or injured.³¹

29. 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.³²

²⁷ Report, para. 19; Annex to Report, para. 2; Application Form, pp 2-4.

²⁸ Framework Decision, para. 40.

²⁹ [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.

³⁰ 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.

³¹ Similarly STL, [Ayyash et al. Decision on Victim Participation](#), para. 50; [2020 Ayyash Decision on Victim Participation](#), para. 26.

³² 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

30. Physical harm denotes any kind of bodily injury, such as wounds, fractures, disfigurement, mutilation, loss or dysfunction of organs, impairment, ailment, disease or death.³³ 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.³⁴ 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.³⁵

31. 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.³⁶ The psychological suffering must be of a certain degree of gravity; transient emotional distress does not in itself qualify as mental harm.³⁷ 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.³⁸

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.

³³ *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 Fourth Decision on Victim Participation*”), 12 December 2008, para. 70.

³⁴ *Similarly* STL, [Ayyash et al. Decision on Victim Participation](#), para. 65.

³⁵ *Similarly* ECCC, [Duch Appeal Judgment](#), para. 417.

³⁶ *Similarly* ECCC, [Duch Appeal Judgment](#), para. 415; STL, [Ayyash et al. Decision on Victim Participation](#), para. 77. *See also* ICC, [Bemba Fourth Decision on Victim Participation](#), para. 70.

³⁷ *Similarly* STL, [2020 Ayyash Decision on Victim Participation](#), para. 41.

³⁸ *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.

32. 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.³⁹ 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.⁴⁰

33. 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.⁴¹ The crime does not have to be the only cause of the harm suffered, but it must have significantly contributed thereto.⁴² 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,

³⁹ 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 Fourth Decision on Victim Participation](#), para. 70.

⁴⁰ Similarly ECCC, [Duch Appeal Judgment](#), para. 417.

⁴¹ Framework Decision, para. 45.

⁴² Similarly ICC, [Bemba Fourth Decision on Victim Participation](#), para. 77.

that the harm they suffered was the result of the harm suffered by the direct victim, with whom they had a close personal relationship.⁴³

34. The Pre-Trial Judge finds that the Applicant has suffered [REDACTED].⁴⁴ Furthermore, the Applicant has suffered [REDACTED].⁴⁵

35. *Conclusion.* The Pre-Trial Judge finds that there is *prima facie* evidence that the Applicant has suffered harm as a direct result of crimes alleged in the Confirmed Indictment. Accordingly, the Applicant is admitted to the proceedings as a participating victim.

C. PROTECTIVE MEASURES

36. 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 victims participating in the proceedings.⁴⁶ That being said, when determining the appropriate protective measures regarding victims participating in the proceedings, the Pre-Trial Judge shall take into account that: (i) the purpose of victim participation is to allow victims 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 victims participating in the proceedings, 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.

37. The Pre-Trial Judge observes that: (i) the Applicant suffers from [REDACTED]; (ii) the Applicant [REDACTED];⁴⁷ (iii) there is a risk that the Accused will obstruct the

⁴³ Similarly STL, [2020 Ayyash Decision on Victim Participation](#), para. 27.

⁴⁴ Report, para. 23; Annex to Report, para. 2; Application Form, pp 2-4.

⁴⁵ Report, paras 24-26; Annex to Report, para. 2; Application Form, pp 2-4; SD3; SD4.

⁴⁶ Framework Decision, para. 54.

⁴⁷ Application Form, p. 5.

progress of SC proceedings and/or commit further crimes in view of [REDACTED];⁴⁸ and (iv) a general climate of witness or victim intimidation prevails in Kosovo, particularly in criminal proceedings against former KLA members.⁴⁹ Moreover, the Pre-Trial Judge is also mindful of the facts that: (i) the Applicant is especially vulnerable as a victim participating in the proceedings and any protective measure would have to address the Applicant's special needs as a victim; and (ii) adequate protective measures for a victim are often the legal means by which participation in the proceedings can be secured, as such measures are a necessary step in order to safeguard a victim's safety, physical and psychological well-being, dignity and privacy in accordance with Rule 80 of the Rules.⁵⁰

38. For these reasons, the Pre-Trial Judge considers that the disclosure to the public and the Parties of any material or information leading to the identification of the victim admitted to participate in the proceedings poses an objectively justifiable risk to this person and this person's family members, and therefore finds that anonymity is the most appropriate and necessary measure at this stage of the proceedings.

39. Regarding the proportionality of the measure, the Pre-Trial Judge notes that any protective measures ordered at this stage in relation to the victim admitted to participate in the proceedings are without prejudice to the variation of such measures at a later stage, including by the Trial Panel, if and when the need arises. For these reasons, the Pre-Trial Judge finds that anonymity is a proportionate measure at this stage of the proceedings.

40. Accordingly, the Pre-trial Judge finds that the following measures are appropriate, necessary and proportionate at this stage of the proceedings, namely:

⁴⁸ KSC-BC-2020-04, F00008, Pre-Trial Judge, *Decision on Request for Arrest Warrant and Transfer Order*, 12 June 2020, confidential, paras 21-22 (a public redacted version was issued on 6 May 2021); F00045, Pre-Trial Judge, *Decision on Pjetër Shala's Request for Provisional Release*, 15 June 2021, confidential ("Provisional Release Decision"), paras 32-33, 35, 39-40 (a public redacted version was issued on 23 June 2021, F00045/RED).

⁴⁹ See for instance *Provisional Release Decision*, para. 26.

⁵⁰ Similarly ICC, [Lubanga Decision on Victim Participation](#), para. 128.

(i) redacting the Applicant's name and identifying information from the SC public records (Rule 80(4)(a)(i) of the Rules); (ii) non-disclosure to the public of any records identifying the Applicant (Rule 80(4)(a)(ii) of the Rules); (iii) the assignment of a pseudonym (Rule 80(4)(a)(vi) of the Rules); (iv) non-disclosure to the Accused by Specialist Counsel of any material or information that may lead to disclosure of the identity of a witness or victim participating in the proceedings (Rule 80(4)(d) of the Rules); and (v) non-disclosure to the Defence of any material or information that may lead to the disclosure of the identity of a witness or victim participating in the proceedings (Rule 80(4)(e)(i) of the Rules).

41. However, the Pre-Trial Judge observes that the Applicant requested anonymity towards the public.⁵¹ Therefore, the Pre-Trial Judge finds it appropriate to order the protective measures under Rule 80(4)(d) and (e)(i) of the Rules on a provisional basis. Victims' Counsel, once appointed in accordance with the findings set out hereafter and after having consulted the Applicant, shall provide submissions as to the need for the continued application of these measures by no later than 25 February 2022.

42. Lastly, the Pre-Trial Judge notes that, in accordance with Rule 113(1) of the Rules, all application forms, application summaries and supporting documentation shall remain strictly confidential and *ex parte*.

D. GROUPING AND COMMON LEGAL REPRESENTATION

43. The Pre-Trial Judge considers that the question of grouping does not require to be addressed for the time being seeing as one application has been submitted.

44. It is recalled that, in accordance with Article 22(5) of the Law and Rule 113(7) of the Rules, victims participating in the proceedings must be assisted and represented by counsel as soon as they are granted the right to participate in the proceedings and

⁵¹ Report, para. 34; Annex to Report, para. 3; Application Form, p. 5.

that no other victim representation is permitted. The Pre-Trial Judge accordingly finds it necessary to ensure the representation of the Applicant as soon as possible after the issuance of the present decision, avoiding thereby any undue delays in the Applicant's participation. The Pre-Trial Judge accordingly directs the Registrar to assign Victims' Counsel, taking into account the victim's preference,⁵² to represent the Applicant by no later than 28 January 2022.

E. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

45. The Pre-Trial Judge recalls that the protective measures granted to the Applicant at this stage have a minimal effect on the ability of the Defence to put forward its case,⁵³ and therefore considers that the modalities of participation of the Applicant in pre-trial proceedings are not subject to the type of protective measures granted.⁵⁴ 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.

46. The Pre-Trial Judge accordingly finds that, in line with Article 22 of the Law and Rule 114 of the Rules, the rights of the Applicant shall be exercised through Victims' Counsel and the Applicant's participation in the pre-trial proceedings shall take place on the basis of the modalities described below. It is important to emphasise that the modalities set out below remain under the control of the Pre-Trial Judge at all times. Any participatory rights may be amended in specific instances, if the personal interests of the Applicant are not affected or other reasons so require.

47. 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, but excluding any *ex parte* items of the case file. By the same

⁵² Report, para. 31; Annex to Report, para. 4; Application Form, p. 6.

⁵³ See para. 39 above.

⁵⁴ Similarly ICC, [Bemba Fourth Decision on Victim Participation](#), para. 99.

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, but excluding any distributed *ex parte* items of the case file. Victims' Counsel shall neither have access to nor be notified of strictly confidential material, including filings, transcripts or evidentiary material, unless specifically provided. Victims' Counsel shall keep the Applicant informed of relevant developments in the case in a manner which does not reveal non-public information.

48. 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 Applicant are appropriately represented at all times, Victims' Counsel shall be present at all pre-trial hearings, excluding any *ex parte* hearings.

49. 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 Applicant 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 is required to specify the specific personal interest affected in any such submission.

V. DISPOSITION

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

- (a) **GRANTS** the Applicant's application and admits the Applicant to the proceedings as a victim participating in the proceedings;
- (b) **DIRECTS** the Registrar to assign Victims' Counsel for the purposes of representing the Applicant by no later than **Friday, 28 January 2022**;
- (c) **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, but 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, but excluding any distributed *ex parte* items of the case file;
 - (iii) neither have access to nor be notified of strictly confidential material, including filings, transcripts or evidentiary material, unless specifically provided;
 - (iv) keep the Applicant 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 Applicant are affected, without requiring prior leave;
- (d) **ORDERS** the following protective measures for the Applicant; (i) redacting the Applicant's name and identifying information from SC public records (Rule 80(4)(a)(i) of the Rules); (ii) non-disclosure to the public of any records identifying the Applicant (Rule 80(4)(a)(ii) of the Rules); (iii) the assignment of a

pseudonym (Rule 80(4)(a)(vi) of the Rules); (iv) non-disclosure to the Accused by Specialist Counsel of any material or information that may lead to disclosure of the identity of a witness or victim participating in the proceedings (Rule 80(4)(d) of the Rules); and (v) non-disclosure to the Defence of any material or information that may lead to the disclosure of the identity of a witness or victim participating in the proceedings (Rule 80(4)(e)(i) of the Rules);

(e) **ORDERS** Victims' Counsel, once appointed, to provide submissions as to the need for the continued application of the protective measures ordered pursuant to Rule 80(4)(d) and (e)(i) of the Rules by no later than **Friday, 25 February 2022**;

(f) **ORDERS** that the classification of the Annex to the Report, the application form and the supporting documentation as strictly confidential and *ex parte* shall be maintained; and

(g) **ORDERS** the Registrar to reclassify the Order Reclassifying the First Registry Report on Victims' Applications for Participation (F00092) as public.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 15 December 2021

At the Hague, the Netherlands.