



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 25 May 2022

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

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 22 and 39(11) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 80, 95(2)(h) and (i), 113 and 114 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed the indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi.²
2. On 4 January 2021 and 6 July 2021, the Pre-Trial Judge issued two framework decisions establishing the principles governing the admission of victims to participate in the proceedings.³
3. On 21 April 2021 and 10 December 2021, the Pre-Trial Judge issued the first and second decisions on victims' participation, admitting 20 victims to participate in the proceedings and rejecting eight applications (with one victim participating also on behalf of a deceased relative).⁴

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

² 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*.

³ KSC-BC-2020-06, F00159, Pre-Trial Judge, *Framework Decision on Victims' Applications* ("First Framework Decision"), 4 January 2021, public; F00382, Pre-Trial Judge, *Second Framework Decision on Victims' Applications*, 6 July 2021, public.

⁴ KSC-BC-2020-06, F00257, Pre-Trial Judge, *First Decision on Victims' Participation* ("First Decision on Victims' Participation"), 21 April 2021, confidential, para. 85(a), (f). A public redacted version was issued the same day, F00257/RED; F00611, Pre-Trial Judge, *Second Decision on Victims' Participation* ("Second Decision on Victims' Participation"), 10 December 2021, strictly confidential and *ex parte*, para. 70(a)-(c). Confidential redacted and public redacted versions were issued the same day, F00611/CONF/RED and F00611/RED.

4. On 18 November 2021, the Victims' Participation Office ("VPO") filed a third report on victims' applications, transmitting 12 applications ("Third Registry Report").⁵

5. On 10 December 2021, the Defence for Kadri Veseli ("Veseli Defence") responded to the Third Registry Report.⁶ The Defence for the other Accused did not file any responses.

6. On 29 April 2022, following the Pre-Trial Judge's confirmation of amendments to the charges,⁷ the Specialist Prosecutor's Office ("SPO") filed an amended indictment ("Amended Indictment").⁸

II. APPLICABLE LAW

A. APPLICATION AND ADMISSION TO THE PROCEEDINGS

7. 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.

8. 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

⁵ KSC-BC-2020-06, F00572, VPO, *Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings* ("Third Registry Report"), 18 November 2021, public, with Annexes 1-13, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-06, F00612, Veseli Defence, *Veseli Defence Response to Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings* (F00572) ("Veseli Defence Response"), 10 December 2021, public.

⁷ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 185. A confidential redacted version was filed the same day, F00777/CONF/RED. A public redacted version was filed on 6 May 2022, F00777/RED.

⁸ KSC-BC-2020-06, F00789/A01, Specialist Prosecutor, *Amended Indictment*, 29 April 2022, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were filed the same day, see F00789/A02 and F00789/A05, respectively.

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.

9. 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.

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

11. 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.

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

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

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

15. 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 victims participating in the proceedings in accordance with the Directive on Counsel.

16. 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 an assigned Victims' Counsel during, *inter alia*, pre-trial proceedings, when their interests are impacted and only when it is not prejudicial to or inconsistent with the rights of the accused.

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

18. 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.

19. 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.

20. 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

21. 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.

22. 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.

23. 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.

III. SUBMISSIONS

A. VPO

24. The VPO has transmitted to the Pre-Trial Judge 12 applications, submitted by victim applicants 21/06, 44/06, 45/06, 46/06, 47/06, 53/06, 54/06, 55/06, 56/06, 57/06, 58/06 and 59/06.⁹ The VPO has assessed all applications to be complete and admissible and recommends the Pre-Trial Judge to admit all applicants as

⁹ Third Registry Report, paras 2, 10; Annex 1 to Third Registry Report.

participating victims.¹⁰ It further recommends that all applicants be grouped with the already admitted victims for the purpose of common legal representation and that they be represented by the assigned Victims' Counsel.¹¹ Lastly, the VPO proposes that all applicants be granted anonymity towards the public, the Accused and Defence Counsel to ensure their protection.¹²

B. VESELI DEFENCE

25. The Veseli Defence opposes the VPO's proposal to grant anonymity to all applicants, arguing that: (i) this is not supported by the Rules or the Law; (ii) it violates basic constitutional and international human rights; (iii) it is inconsistent with Article 22(9) of the Law and eliminates the possibility of civil proceedings before other Kosovo courts; and (iv) there are no exceptional circumstances to justify such a measure.¹³ The Veseli Defence also requests the Pre-Trial Judge to rescind all previous protective measures granting anonymity to participating victims under Rule 80(4)(e)(i) of the Rules.¹⁴

IV. DISCUSSION

26. In assessing the applications of the 12 victim applicants, the Pre-Trial Judge is guided by the principles set out in the first "Framework Decision on Victims' Applications" ("First Framework Decision") and the "First Decision on Victims' Participation" with regard to the requirements for an application to be considered

¹⁰ Third Registry Report, paras 16, 19, 22, 25-26, 30-31, 41.

¹¹ Third Registry Report, paras 47, 50.

¹² Third Registry Report, para. 54.

¹³ Veseli Defence Response, paras 2, 11-19, 21-22.

¹⁴ Veseli Defence Response, para. 22.

complete,¹⁵ the admissibility criteria,¹⁶ the standard of proof,¹⁷ the legal test applicable in granting protective measures¹⁸ and the criteria for grouping victims for the purpose of common legal representation.¹⁹

A. ASSESSMENT OF APPLICATIONS

1. Completeness of applications

27. At the outset, the Pre-Trial Judge notes that Victim 56/06 has applied (also) on behalf of his family and while the application is complete in relation to him, it is not in relation to his family members.²⁰ The Pre-Trial Judge recalls that family members who have suffered similar harm as a direct result of the same crime may use one application form collectively. However, the requirements for an application to be complete must still be fulfilled in relation to each of the applicants.²¹ Accordingly, the Pre-Trial Judge instructs the VPO to revert back to Victim 56/06 and inform him that other family members who may wish to participate in the proceedings shall fill in a new form meeting all formal requirements, including accompanying documentation. At this point, the Pre-Trial Judge will only consider for admission Victim 56/06. The Pre-Trial Judge further recalls that the VPO shall endeavour to submit only complete applications to the Pre-Trial Judge. Where it assesses that an application is incomplete, it should revert to the applicants and request the additional information or necessary material to render the application complete.²²

¹⁵ First Framework Decision, para. 22; First Decision on Victims' Participation, para. 34.

¹⁶ First Framework Decision, paras 28, 30-39; First Decision on Victims' Participation, paras 42, 45, 50-55.

¹⁷ First Framework Decision, para. 29; First Decision on Victims' Participation, para. 43.

¹⁸ First Framework Decision, paras 45-49; First Decision on Victims' Participation, paras 64, 67.

¹⁹ First Framework Decision, paras 42-44 (*see also* paras 27, 40-41, 44, 49, on the role of the VPO in conducting the preliminary assessment regarding admissibility, grouping and protective measures); First Decision on Victims' Participation, para. 76.

²⁰ Victim 56/06, Application Form, p. 4.

²¹ First Framework Decision, para. 17.

²² First Framework Decision, paras 20, 23.

28. Having assessed the application forms and supporting documentation against the requirements set out in the First Framework Decision,²³ the Pre-Trial Judge is satisfied that all applications are complete.²⁴

2. Admissibility of applications

29. *Natural persons.* The Pre-Trial Judge is satisfied that all victim applicants are natural persons.²⁵

30. *Alleged crimes.* The Pre-Trial Judge is further satisfied that all applicants are victims of crimes allegedly committed at locations identified in the Amended Indictment and the alleged crimes fall within the temporal scope of the charges as specified in the Amended Indictment in relation to each of the locations.²⁶ More specifically:

(a) **Victim 21/06** is a direct victim of persecution, imprisonment/illegal arbitrary arrest and detention, other inhumane acts, cruel treatment and torture, allegedly committed in [REDACTED].²⁷ Noting that Victim 21/06 also claims to be a victim of crimes committed allegedly in 2004, the Pre-Trial Judge recalls that such crimes do not fall within the temporal scope of the charges or the temporal jurisdiction of the Specialist Chambers;²⁸

(b) **Victims 44/06, 45/06, 46/06 and 47/06** are indirect victims of persecution and imprisonment/illegal or arbitrary arrest and detention, allegedly

²³ See First Framework Decision, para. 22.

²⁴ See also Third Registry Report, para. 16. The Pre-Trial Judge notes that, while documentation regarding the harm suffered has not been submitted by Victims 44/06, 45/06, 46/06, 47/06, 53/06, 54/06, 55/06, 56/06 and 57/06, the detailed accounts provided by them are sufficient to allow the relevant findings to be made.

²⁵ See also Third Registry Report, para. 19.

²⁶ See also Third Registry Report, para. 22.

²⁷ See Victim 21/06, Application Form, SD2-Medical Certificate, and SD5-Note to the File; Amended Indictment, [REDACTED]; Annex 2 to Third Registry Report, pp. 2-3.

²⁸ See Amended Indictment, para. 16; Article 7 of the Law.

committed in [REDACTED] against an immediate family member.²⁹ The Pre-Trial Judge observes that Victims 44/06, 45/06, 46/06 and 47/06 also claim that the fate of their family member remains unknown. In this regard, the Pre-Trial Judge notes that the family member is not among the victims of murder or enforced disappearance named in the Amended Indictment and, therefore, the family member's alleged murder and/or disappearance falls outside the scope of the charges;³⁰

(c) **Victim 53/06** is an indirect victim of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment and murder, allegedly committed in [REDACTED] against an immediate family member who is named as a victim in the Amended Indictment.³¹ The Pre-Trial Judge notes, however, that the family member is not among the victims of enforced disappearance named in the Amended Indictment and, therefore, this alleged crime falls outside the scope of the charges;

(d) **Victim 54/06** is a direct and indirect victim of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture and murder, allegedly committed in [REDACTED] against himself and an immediate family member who is named as a victim in the Amended Indictment;³²

²⁹ See Victim 44/06, Application Form; Victim 45/06, Application Form; Victim 46/06, Application Form; Victim 47/06, Application Form; Amended Indictment, [REDACTED]; Annexes 3-6 to Third Registry Report, pp. 2-3.

³⁰ See KSC-BC-2020-06, IA005/F00008, Court of Appeals Panel, *Decision on Appeal Against "First Decision on Victims' Participation"*, 16 July 2021, public, para. 24; F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment* ("Decision on Defects in the Form of the Indictment"), 22 July 2021, confidential, paras 159-161, 171. A public redacted version was issued the same day, F00413/RED.

³¹ See Victim 53/06, Application Form, and SD6-Statement on Alleged Events; Amended Indictment, [REDACTED]; Annex 7 to the Third Registry Report, p. 2.

³² See Victim 54/06, Application Form; Amended Indictment, [REDACTED]; Annex 8 to Third Registry Report, pp. 2-3.

(e) **Victims 55/06, 56/06 and 57/06** are indirect victims of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder and, in the case of Victim 56/06, also enforced disappearance, allegedly committed in [REDACTED]³³ and in [REDACTED], against immediate family members who are named in the Amended Indictment;³⁴ and

(f) **Victims 58/06 and 59/06** are indirect victims of persecution, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment and torture, allegedly committed in [REDACTED] against an immediate/close family member.³⁵ To the extent that Victim 58/06 also claims to be a direct victim of mistreatment and Victim 59/06 an indirect victim of Victim 58/06's alleged mistreatment, the Pre-Trial Judge recalls that the charges of other inhumane acts and cruel treatment must be read together with the charges of imprisonment/arbitrary arrest and detention allegedly committed at one of the identified detention sites or at a location identified in a similar manner in the Amended Indictment and in Schedule A.³⁶ The Pre-Trial Judge notes that, unlike his immediate family member, Victim 58/06 was never arrested or taken to a location identified in the Amended Indictment. He was mistreated allegedly [REDACTED]³⁷ and, as such, his mistreatment falls outside the geographical scope of the charges as specified in the Amended Indictment.

³³ See Victim 55/06, Application Form and SD1-Statement on Crimes; Victim 57/06, Application Form; Amended Indictment, [REDACTED]; Annexes 9, 11 to Third Registry Report, p. 2.

³⁴ See Victim 56/06, Application Form; Amended Indictment, [REDACTED]; Annex 10 to Third Registry Report, pp. 2-3.

³⁵ Victim 58/06, Application Form; Victim 59/06, Application Form; Amended Indictment, [REDACTED]; Annex 12 to Third Registry Report, pp. 2-3.

³⁶ Decision on Defects in the Form of the Indictment, paras 150, 153; Second Decision on Victims' Participation, para. 64.

³⁷ Victim 58/06, Application Form.

31. *Harm.* The Pre-Trial Judge is satisfied that all victim applicants have suffered harm as a direct result of the alleged crimes described by them, as follows:

(a) **Victim 21/06** has suffered physical harm (wounds), mental harm (memory loss, panic attacks and sleep anxiety) and material harm, as a direct result of his alleged detention and mistreatment;³⁸

(b) **Victims 44/06, 45/06, 46/06, 47/06, 53/06, 55/06, 56/06, 57/06 and 58/06** have suffered mental harm (psychological trauma, bereavement, emotional pain, depression, fear, anxiety, stress and insomnia) as immediate family members of direct victims;³⁹

(c) **Victim 54/06** has suffered physical harm (severe wounds, broken ribs, physical pain and headaches), as well as mental harm (trauma, stress, flashbacks, fear and trouble sleeping), both as a direct result of his alleged detention and mistreatment and as an immediate family member of a direct victim;⁴⁰ and

(d) **Victim 59/06** has suffered mental harm (psychological trauma) by virtue of being in a close family relationship with the direct victim.⁴¹ In this regard, the Pre-Trial Judge clarifies that, while a close relationship with the direct victim may not be presumed (as Victim 59/06 is not an immediate family

³⁸ See Victim 21/06, Application Form; Third Registry Report, paras 26, 32; Annex 2 to Third Registry Report.

³⁹ See Victim 44/06, Application Form; Victim 45/06, Application Form; Victim 46/06, Application Form; Victim 47/06, Application Form; Victim 53/06 Application Form; Victim 55/06, Application Form; Victim 56/06, Application Form; Victim 57/06, Application Form; Victim 58/06, Application Form; Third Registry Report, paras 34-35, 37-40; Annexes 3-7, 9-12 to Third Registry Report; *see further* First Decision on Victims' Participation, paras 50, 53.

⁴⁰ See Victim 54/06, Application Form; Third Registry Report, para. 36; Annex 8 to Third Registry Report.

⁴¹ Victim 59/06, Application Form; Third Registry Report, paras 30, 31, 40.

member),⁴² such a relationship can be inferred from the fact that [REDACTED]⁴³ [REDACTED].⁴⁴

32. The above findings are without prejudice to any future ruling following submission of additional material.

3. Conclusion

33. In light of the above, the Pre-Trial Judge finds that there is *prima facie* evidence that Victims 21/06, 44/06, 45/06, 46/06, 47/06, 53/06, 54/06, 55/06, 56/06, 57/06, 58/06 and 59/06 have suffered harm as a direct result of crimes alleged in the Amended Indictment and admits them as participating victims in the proceedings.

B. PROTECTIVE MEASURES

34. The VPO recommends that all victim applicants be granted non-disclosure of their identities to the public, the Accused and Defence Counsel.⁴⁵

35. The Veseli Defence opposes this recommendation, arguing *inter alia* that anonymity for victims is not foreseen by the Rules or the Law and that it violates the Accused's basic human rights.⁴⁶

36. The Pre-Trial Judge notes, first, that the Rules do provide for anonymity for victims. Rule 113(1) and (2) of the Rules provides that the victim application forms and the identity of the applicants shall not be disclosed to the Parties. Further, Rule 113(5) of the Rules envisages that the Pre-Trial Judge may grant admitted

⁴² See First Decision on Victims' Participation, para. 50.

⁴³ Victim 59/06, Application Form [REDACTED].

⁴⁴ Victim 59/06, Application Form.

⁴⁵ Third Registry Report, para. 54.

⁴⁶ Veseli Defence Response, paras 2, 4-21.

victims protective measures under Rule 80 of the Rules, which contains the full arsenal of protective measures, including non-disclosure to the Parties of the victims' identities.⁴⁷ Moreover, the Veseli Defence's submission that the VPO cannot rely on Rules 80(4)(d) and 80(4)(e)(i) of the Rules to request the non-disclosure of the victims' identities – only the SPO can⁴⁸ – ignores the fact that Rule 113(2) of the Rules refers to Rule 80 in its entirety and thus provides the VPO with the power to make such requests. The Veseli Defence's further reference to Rule 108 of the Rules is misplaced, as this provision governs the disclosure process⁴⁹ and is not referred to in Rule 113 of the Rules.⁵⁰

37. Second, contrary to the Veseli Defence's submission,⁵¹ victims' participation does not give rise to separate and additional accusations to those made by the SPO. According to Rule 2 of the Rules, a victim is a natural person who has suffered harm as a direct result of a crime alleged in an indictment confirmed by the Pre-Trial Judge. Victims' participation is therefore limited to victims of crimes alleged in the Amended Indictment.⁵²

⁴⁷ The Veseli Defence's restrictive interpretation of Rule 80(4)(e)(i) of the Rules is unsupported by the plain wording of the rule, which provides for "the 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" (emphasis added); see Veseli Defence Response, para. 7.

⁴⁸ Veseli Defence Response, paras 9, 12.

⁴⁹ Rule 108 of the Rules is part of Chapter 7 entitled "Disclosure". Conversely, Rule 113 of the Rules is part of Chapter 8 entitled "Participation of Victims in the Proceedings".

⁵⁰ The Veseli Defence refers selectively to existing jurisprudence of one tribunal in support of its claim that anonymity violates the Accused's fundamental rights. It relies exclusively on the findings of the Pre-Trial Judge of the Special Tribunal for Lebanon ("STL"), as confirmed by the STL Appeals Chamber, who declined to grant anonymity to participating victims, as such a protective measure was not provided for in the legal instruments of the STL, except on an interim basis. However, the Pre-Trial Judge at the Specialist Chambers is guided, first and foremost, by the legal instruments of this court, which expressly foresee anonymity for victims, and is not bound by the STL case-law.

⁵¹ Veseli Defence Response, para. 14.

⁵² See also para. 30(a), (b), (c) and (f) above, where the Pre-Trial Judge found that certain crimes alleged by victims fell outside the temporal, material or geographical scope of the charges contained in the Amended Indictment; KSC-BC-2020-06, F00010, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 2 July 2020, public, paras 8-11.

38. Third, the Veseli Defence seems to conflate the status of victims with that of witnesses.⁵³ The Pre-Trial Judge stresses that the purpose of victims' participation is for them to have their personal interests represented.⁵⁴ That there is a distinction between the role of victims and that of witnesses is evident from Rule 113(3) of the Rules which provides that the Parties may not challenge the admissibility of individual applicants or their credibility, they may only make submissions on legal grounds regarding admissibility and common representation. In addition, the information provided by victims is not subject to the same disclosure regime as the material and information in the SPO's possession. The Veseli Defence's suggestion that it is allegedly hampered from requesting potentially exculpatory evidence from participating victims⁵⁵ rests similarly on a misconstrued understanding of the applicable legal framework and the role of the Parties and participating victims. The SPO may be approached for – and indeed it is duty-bound to provide – exculpatory evidence,⁵⁶ but the victims are not. Victim application forms have a limited purpose and are meant to enable the Pre-Trial Judge or Trial Panel to assess whether victim applicants should be admitted to participate in the proceedings. They are not intended to provide information on the guilt or innocence of the accused or the credibility of witnesses.⁵⁷

⁵³ See Veseli Defence Response, paras 15-16.

⁵⁴ First Decision on Victims' Participation, para. 67.

⁵⁵ Veseli Defence Response, para. 16.

⁵⁶ Rule 103 of the Rules.

⁵⁷ See similarly, International Criminal Court ("ICC"), *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/21-171, Appeals Chamber, [Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled "Decision establishing the principles applicable to victims' applications for participation"](#), 14 September 2021, paras 50-51; *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15-471, Trial Chamber IX, [Decision on Disclosure of Victims' Identities](#), 17 June 2016, para. 11; *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-449, Trial Chamber VI, [Decision on victims' participation in trial proceedings](#), 6 February 2015, para. 36; *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-2012-Red, Trial Chamber III, [Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011](#), 9 February 2012, paras 100-101; *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, ICC-01/09-01/11-169, Pre-Trial Chamber II, [Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case](#), 8 July 2011, paras 9-10; *Situation in Darfur, Sudan*, ICC-02/05-110, Pre-Trial Chamber I, [Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86\(2\) \(e\) of the](#)

39. Fourth, the Pre-Trial Judge is unpersuaded by the Veseli Defence's submission⁵⁸ that, regardless of the degree of participation, the anonymity of victims is inherently prejudicial to the Accused.⁵⁹ The Pre-Trial Judge must strike a balance between, on the one hand, the interests of the Defence and, on the other, the safety, physical and psychological well-being, dignity and privacy of victims, the expeditiousness of the proceedings and the need to ensure the victims' meaningful participation.⁶⁰ In this regard, the Pre-Trial Judge recalls that adequate protective measures are often the only means available to safeguard the victims' safety and well-being and to secure their participation in the proceedings.⁶¹

40. Lastly, while it is important to emphasize that Rule 80(4)(e)(i) of the Rules does not specify that protective measures may be ordered only on an interim basis,⁶² measures granted at this stage are without prejudice to any future ruling by the relevant Trial Panel and without prejudice to any additional measures stemming from the victims' potential dual status.⁶³

41. For these reasons, the Pre-Trial Judge dismisses the Veseli Defence's submissions and finds no reason to rescind the previously granted measures.⁶⁴

[Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor](#), 3 December 2007, paras 6, 20-21.

⁵⁸ Veseli Defence Response, para. 17.

⁵⁹ See similarly, ICC, *Prosecutor v. Mathieu Ngudjolo Chui*, ICC-01/04-02/12-140, Appeals Chamber, [Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims](#), 23 September 2013, paras 16-19; *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15-471, Trial Chamber IX, [Decision on Disclosure of Victims' Identities](#), 17 June 2016, paras 11-14; *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-1119, Trial Chamber I, [Decision on victims' participation](#), 18 January 2008, paras 130-131.

⁶⁰ See similarly, ICC, *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/21-171, Appeals Chamber, [Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled "Decision establishing the principles applicable to victims' applications for participation"](#), 14 September 2021, paras 3, 67; *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-3045-Red2, Appeals Chamber, [Decision on 32 applications to participate in the proceedings](#), 27 August 2013, paras 20-22.

⁶¹ First Decision on Victims' Participation, para. 68.

⁶² Contrary, Veseli Defence Response, para. 8.

⁶³ First Decision on Victims' Participation, para. 67.

⁶⁴ Veseli Defence Response, para. 22.

The Pre-Trial Judge will therefore proceed to assess the VPO's request for protective measures.

42. The Pre-Trial Judge recalls that, as indicated in the First Framework Decision, the legal test applicable for protective measures in relation to victims is the same as that applicable in relation to witnesses.⁶⁵

43. In assessing the existence of an objectively justifiable risk and the necessity of the protective measures for the admitted applicants, the Pre-Trial Judge takes into account the following specific factors applicable to one or more of the victims: (i) all of them continue to suffer from physical and/or mental trauma as a result of the crimes they or their family members have allegedly been victims of; (ii) all have expressed concern that revealing their identity to the public, Defence Counsel and/or the Accused might endanger them or their family; and (iii) [REDACTED].⁶⁶ In addition, the Pre-Trial Judge pays regard to: (i) the general climate of witness and victim intimidation prevailing in Kosovo, particularly in criminal proceedings against former members of the Kosovo Liberation Army;⁶⁷ and (ii) the Accused's means and incentives to intimidate victims, in light of the positions of authority held by them during the timeframe of the charges, as well as in more recent times.⁶⁸ Moreover, the Pre-Trial Judge is also mindful that: (i) by virtue of their status as victims participating in the proceedings, these individuals are especially vulnerable and protective measure 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 and

⁶⁵ First Framework Decision, para. 47; First Decision on Victims' Participation, para. 67; Second Decision on Victims' Participation, para. 50.

⁶⁶ [REDACTED]; see Annex 1 to Third Registry Report.

⁶⁷ See also KSC-BC-2020-06, IA015/F00005, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, public, para. 43.

⁶⁸ See First Decision on Victims' Participation, para. 68; Second Decision on Victims' Participation, para. 51.

such measures are a necessary step in order to safeguard their safety, physical and psychological well-being, dignity and privacy in accordance with Rule 80 of the Rules.⁶⁹

44. For these reasons, the Pre-Trial Judge considers that disclosure to the public and the Parties of any material or information leading to the identification of the victims admitted to participate in the proceedings poses an objectively justifiable risk to them and their family members. Accordingly, the Pre-Trial Judge finds that anonymity under Rule 80(4)(e)(i) of the Rules is the most appropriate and necessary measure at this stage of the proceedings.

45. Regarding the proportionality of the measure, the Pre-Trial Judge notes that any protective measures ordered at this stage in relation to any of the admitted victims are without prejudice to their variation at a later stage, including by the Trial Panel, if and when the need arises.⁷⁰ For these 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 the proceedings.

46. In light of the above, the Pre-Trial Judge orders that the names and any identifying information of all admitted victims be withheld from the public and the Parties.

C. GROUPING AND COMMON LEGAL REPRESENTATION

47. The Pre-Trial Judge notes that two of the admitted victims (Victims 21/06 and 53/06) have indicated a preference for a particular counsel, one wishes to have an international counsel (Victim 54/06) and nine have no preference (Victims 44/06,

⁶⁹ See First Decision on Victims' Participation, para. 68; Second Decision on Victims' Participation, para. 51.

⁷⁰ See also First Decision on Victims' Participation, para. 69; Second Decision on Victims' Participation, para. 53.

45/06, 46/06, 47/06, 55/06, 56/06, 57/06, 58/06 and 59/06).⁷¹ The VPO recommends that all admitted victims be grouped together with the other victims participating in the proceedings and that they are represented by the assigned Victims' Counsel.⁷²

48. Based on the same considerations as set out in the First Decision on Victims' Participation,⁷³ the Pre-Trial Judge finds that all admitted victims shall be grouped together with the victims previously admitted, under Group 1, and shall be represented by Victims' Counsel assigned to Group 1.

D. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

49. The victims hereby admitted to participate in the proceedings shall exercise their rights through Victims' Counsel and shall participate through the modalities described in the First Decision on Victims' Participation.⁷⁴

V. DISPOSITION

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

- a. **GRANTS** the applications of Victims 21/06, 44/06, 45/06, 46/06, 47/06, 53/06, 54/06, 55/06, 56/06, 57/06, 58/06 and 59/06 and admits them to participate as victims in the proceedings;
- b. **ORDERS** the VPO to revert back to Victim 56/06 and inform him that other family members who may wish to participate in the proceedings shall fill in a

⁷¹ See Third Registry Report, para. 48, and application forms.

⁷² Third Registry Report, para. 50.

⁷³ First Decision on Victims' Participation, para. 76; Second Decision on Victims' Participation, para. 58; First Framework Decision, para. 43.

⁷⁴ First Decision on Victims' Participation, paras 82-84, 85(d).

new form meeting all formal requirements, including accompanying documentation;

- c. **DECIDES** that Victims 21/06, 44/06, 45/06, 46/06, 47/06, 53/06, 54/06, 55/06, 56/06, 57/06, 58/06 and 59/06 shall be included in Group 1 for the purpose of common representation and shall be represented by Victims' Counsel for Group 1;
- d. **DECIDES** that Victims' Counsel shall:
- i. have access to the entire case file, including all public and confidential filings, transcripts and evidentiary material and excluding any *ex parte* items of the case file;
 - ii. be notified of all distributed items in the case file, including all public and confidential filings, transcripts, disclosures of evidentiary material and excluding any distributed *ex parte* items of the case file;
 - iii. not have access to nor be notified of strictly confidential material, including filings, transcripts or evidentiary material, unless specifically provided so;
 - iv. keep the victims participating in the proceedings 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 victims participating in the proceedings are affected, without requiring prior leave;
- e. **ORDERS** that the protective measure of anonymity under Rule 80(4)(e)(i) of the Rules be granted to Victims 21/06, 44/06, 45/06, 46/06, 47/06, 53/06, 54/06, 55/06, 56/06, 57/06, 58/06 and 59/06; and

- f. **DECIDES** to maintain the classification strictly confidential and *ex parte* of all application forms, summaries and supporting documentation.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 25 May 2022

At The Hague, the Netherlands.