



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:** 28 June 2022

**Language:** English

**Classification:** Public

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**Decision on Veseli Defence Request for Leave to Appeal the Third Decision on  
Victims' Participation**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 77 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. 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.<sup>2</sup>

2. 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 ("First Decision on Victims' Participation" and "Second Decision on Victims' Participation" respectively).<sup>3</sup>

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

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

<sup>2</sup> KSC-BC-2020-06, F00159, Pre-Trial Judge, *Framework Decision on Victims' Applications*, 4 January 2021, public; F00382, Pre-Trial Judge, *Second Framework Decision on Victims' Applications*, 6 July 2021, public.

<sup>3</sup> KSC-BC-2020-06, F00257, Pre-Trial Judge, *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*, 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.

<sup>4</sup> KSC-BC-2020-06, F00572, VPO, *Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings*, 18 November 2021, confidential and *ex parte*, with Annexes 1-13, strictly confidential and *ex parte*. On 30 November 2021, the filing was reclassified as public.

4. On 10 December 2021, the Defence for Kadri Veseli (“Veseli Defence” and “Mr Veseli” or “Accused” respectively) responded to the Third Registry Report (“Veseli Defence Response”).<sup>5</sup> The Defence for the other Accused did not file any responses.
5. On 25 May 2022, the Pre-Trial Judge issued the third decision on victims’ participation, admitting 12 victims to participate in the proceedings and granting non-disclosure of their identities to the public and the Parties (“Impugned Decision”).<sup>6</sup>
6. On 1 June 2022, the Veseli Defence filed a request for leave to appeal the Impugned Decision (“Request”).<sup>7</sup>
7. On 10 June 2022, the Specialist Prosecutor’s Office (“SPO”) filed a response to the Request (“SPO Response”).<sup>8</sup>
8. On 13 June 2022, the Victims’ Counsel filed a response to the Request (“VC Response”).<sup>9</sup>
9. On 20 June 2022, the Veseli Defence filed a consolidated reply to the SPO Response and VC Response (“Reply”).<sup>10</sup>

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<sup>5</sup> KSC-BC-2020-06, F00612, Specialist Counsel, *Veseli Defence Response to Third Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings (F00572)*, 10 December 2021, public.

<sup>6</sup> KSC-BC-2020-06, F00817, Pre-Trial Judge, *Third Decision on Victims’ Participation*, 25 May 2022, strictly confidential and *ex parte*, paras 29-32, 43-46, 50(a), (e). A public redacted version was filed on the same day, F00817/RED.

<sup>7</sup> KSC-BC-2020-06, F00828, Specialist Counsel, *Veseli Defence Request for Leave to Appeal Third Decision on Victims’ Participation*, 1 June 2022, public.

<sup>8</sup> KSC-BC-2020-06, F00836, Specialist Prosecutor, *Prosecution Response to Veseli Defence Request for Leave to Appeal Decision F00817*, 10 June 2022, public.

<sup>9</sup> KSC-BC-2020-06, F00839, Victims’ Counsel, *Victims’ Counsel’s Response to Veseli Defence Request for Leave to Appeal Third Decision on Victims’ Participation*, 13 June 2022, public.

<sup>10</sup> KSC-BC-2020-06, F00850, Specialist Counsel, *Consolidated Veseli Defence Reply to SPO and Victims Counsel Response to Veseli Defence Request for Leave to Appeal Third Decision on Victims Participation*, 20 June 2022, public.

## II. SUBMISSIONS

10. The Veseli Defence requests leave to appeal the Impugned Decision on the following four issues:

- (1) Whether total anonymity of victims participating in the proceedings is a valid protective measure foreseen by Articles 22-23 of the [Law] and Rule 80 of the Rules (“First Issue”);
- (2) Whether total anonymity of victims participating in the proceedings violates basic constitutional and international human rights of the Accused as protected by Article 32 of the [Law], Article 31 of the [Constitution of Kosovo (“Constitution”)], Article 6 of the [(European) Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”)] and Article 14 of the [International Covenant on Civil and Political Rights (“ICCPR”)] (“Second Issue”);
- (3) Whether the Pre-Trial Judge failed entirely to address the Defence argument that total anonymity is inconsistent with Article 22(9) of the Law and eliminates the possibility of civil proceedings before other Kosovo courts (“Third Issue”); and
- (4) Whether, in light of the fact that all admitted victims to date have been granted total anonymity, the Pre-Trial Judge erred in finding that exceptional circumstances justify such measure (“Fourth Issue”).<sup>11</sup>

11. The SPO and Victims’ Counsel respectively respond that the Request should be rejected as it fails to meet the requirements for leave to appeal under Article 45 of the Law and Rule 77 of the Rules.<sup>12</sup>

12. The Veseli Defence replies that, unlike the Victims’ Counsel, the SPO has no standing and the SPO Response should not be taken into consideration. It further submits that both the SPO’s and the Victims’ Counsel’s submissions are unfounded and should be dismissed accordingly.<sup>13</sup>

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<sup>11</sup> Request, para. 2.

<sup>12</sup> SPO Response, para. 1; VC Response, para. 2.

<sup>13</sup> Reply, para. 2.

### III. APPLICABLE LAW

13. Pursuant to Article 45 of the Law, a Court of Appeals Panel shall hear interlocutory appeals from an accused or from the SPO in accordance with the Law and the Rules. Interlocutory appeals, other than those that lie as of right, must be granted leave to appeal through certification by the Pre-Trial Judge or Trial Panel on the basis that they involve an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of the Pre-Trial Judge or Trial Panel, an immediate resolution by a Court of Appeals Panel may materially advance proceedings.

14. Rule 77(2) of the Rules further provides that the Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

### IV. DISCUSSION

15. The Pre-Trial Judge notes at the outset that the Veseli Defence avers that the SPO has no standing and that the Pre-Trial Judge should, therefore, not consider the SPO Response.<sup>14</sup> The Veseli Defence has provided no further justification supporting this argument. The Pre-Trial Judge considers that there is no basis in the Law and Rules supporting the Veseli Defence's submissions. Noting the SPO's explicit right to exercise appellate rights (Article 35(2)(j) of the Law and Rules 77 and 113(6) of the Rules), which includes the right to respond and reply (Rule 76 of the Rules), there is nothing in the Law or the Rules which suggests that the SPO is not entitled to respond.

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<sup>14</sup> Reply, para. 2.

Accordingly, the Pre-Trial Judge finds that there is no basis to the Veseli Defence's submissions and the SPO Response will be taken into account.

16. The Pre-Trial Judge recalls that a right to appeal arises only if the Pre-Trial Judge is of the opinion that the standard for certification set forth in Article 45(2) of the Law and Rule 77(2) of the Rules has been met.<sup>15</sup> The interpretation of these provisions has been set out in detail previously.<sup>16</sup>

17. Mindful of the restrictive nature of this remedy, the following specific requirements apply:

1. Whether the matter is an "appealable issue";
2. Whether the issue at hand would significantly affect:
  - (1) The fair and expeditious conduct of the proceedings, or
  - (2) The outcome of the trial; and
3. Whether, in the opinion of the Pre-Trial Judge, an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.<sup>17</sup>

#### A. FIRST ISSUE

18. The Veseli Defence argues that the First Issue arises from the Impugned Decision as the Pre-Trial Judge found that Rules 80 and 113(1)-(2) of the Rules provide for anonymity of victims. In respect of Rules 113(1)-(2) of the Rules, the Veseli Defence argues that these provisions clearly regulate "application forms" rather than "participation" of victims in the proceedings and, if the reasoning in the Impugned Decision is accepted, it would result in that all victims would enjoy *ipso*

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<sup>15</sup> KSC-BC-2020-06, F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal* ("Thaçi Decision on Leave to Appeal"), 11 January 2021, public, para. 9.

<sup>16</sup> Thaçi Decision on Leave to Appeal, paras 10-17.

<sup>17</sup> Thaçi Decision on Leave to Appeal, para. 10.

*facto* “total anonymity” without any need for protective measures.<sup>18</sup> Additionally, in respect of Rule 80 of the Rules, the Veseli Defence argues that Rule 80(4)(e)(i) of the Rules presupposes a previous decision on the non-disclosure of the identity of the protected person and that Rule 80(4)(e)(ii) of the Rules prescribes “total anonymity” for witnesses only. It submits the Pre-Trial Judge failed to address its arguments in this respect.<sup>19</sup>

19. The Veseli Defence argues that the First Issue directly impacts Mr Veseli’s right to a fair trial and, more specifically, his right to an adversarial trial.<sup>20</sup> Lastly, the Veseli Defence argues that intervention by the Court of Appeals Panel would materially advance proceedings by obviating the risk of any prejudice to Mr Veseli from potentially maintaining the full anonymity of victims throughout the proceedings. It also avers that it would provide clarity on the interpretation of the relevant rules pertaining to protective measures which can be accorded to victims participating in the proceedings.<sup>21</sup>

20. The SPO responds that the Veseli Defence merely disagrees with the Impugned Decision as the Pre-Trial Judge explained in detail the factors and obligations that he considered pursuant to the legal framework of the Specialist Chamber (“SC”), including Rules 80 and 113 of the Rules, and addressed the Veseli Defence’s submissions on this issue.<sup>22</sup> The SPO further avers that the Impugned Decision’s impact on the fair and expeditious conduct of the proceedings or outcome of the trial is entirely hypothetical as the Impugned Decision was without prejudice to any future ruling by the relevant Trial Panel. Accordingly, it submits that the Request is premature since the protective measures are not final.<sup>23</sup> Lastly, it avers

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<sup>18</sup> Request, para. 5.

<sup>19</sup> Request, para. 5.

<sup>20</sup> Request, para. 9.

<sup>21</sup> Request, para. 10.

<sup>22</sup> SPO Response, para. 5.

<sup>23</sup> SPO Response, para. 10.

that granting leave to appeal would not materially advance the proceedings but, in the current circumstances, including: (i) the stage of proceedings; (ii) minimal, if any, prejudice to the Veseli Defence; and (iii) the real and objective risks to participating victims, would only delay the proceedings.<sup>24</sup>

21. The Victims' Counsel responds that the Veseli Defence repeats arguments raised in the Veseli Defence Response and therefore constitutes a mere disagreement with the Impugned Decision. Additionally, it avers that the Veseli Defence misstates the Pre-Trial Judge's reasoning and ignores some of its elements, for example the reference to Rule 113(5) of the Rules.<sup>25</sup> The Victims' Counsel further avers that the Veseli Defence needs to show that the Impugned Decision had significant repercussions *now* for the fair and expeditious conduct of the proceedings, or the outcome of the trial. It avers that the Veseli Defence has failed to establish this since anonymity has only been granted on an interim basis during the pre-trial phase during which participation of victims is minimal.<sup>26</sup> Lastly, the Victims' Counsel avers that granting leave to appeal would not materially advance the proceedings as the protective measures will be reviewed in due course, they cannot be read to apply throughout the proceedings, as suggested by the Veseli Defence, and if the Impugned Decision is incorrect, its flaws cannot taint the fairness of proceedings or mar the outcome of the trial.<sup>27</sup> The Victim's Counsel also adds that the Veseli Defence's argument that the Court of Appeals Panel would provide clarity in relation to the rules pertaining to protective measures for victims participating in the proceedings is not a proper basis for seeking certification.<sup>28</sup>

22. The Veseli Defence replies that both responses raise generic challenges without engaging with the Veseli Defence's submissions. It avers that the First Issue is an easily

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<sup>24</sup> SPO Response, para. 11.

<sup>25</sup> VC Response, para. 28.

<sup>26</sup> VC Response, paras 15-17, 19.

<sup>27</sup> VC Response, para. 22.

<sup>28</sup> VC Response, para. 23.



identifiable issue which identifies the errors by the Pre-Trial Judge and is therefore not a mere disagreement with the Impugned Decision.<sup>29</sup> Additionally, it avers that Victims' Counsel mischaracterises the measures imposed in the Impugned Decision as interim measures as "total anonymity" is intended to apply throughout the proceedings, unless a variation is required pursuant to Rule 81 of the Rules, subject to a change in circumstance.<sup>30</sup>

23. The Pre-Trial Judge notes that the issue of non-disclosure of the identities of the victims admitted to participate in the proceedings was considered pursuant to Rules 80 and 113 of the Rules in the Impugned Decision.<sup>31</sup> The Pre-Trial Judge accordingly finds that the First Issue is not a mere disagreement with the Impugned Decision but constitutes a discrete topic emanating from the Impugned Decision as the Veseli Defence has highlighted a legal issue which requires the resolution by the Court of Appeals Panel.

24. As concerns the significant effect on the fair and expeditious conduct of proceedings, the Pre-Trial Judge finds that the First Issue directly concerns the fair trial rights of the Accused, in particular the right to effectively challenge the victims' applications on legal grounds pursuant to Rule 113(3) and (6) of the Rules. Further, the Pre-Trial Judge considers that it is important to resolve issues related to the legal foundations of anonymity of victims participating in the proceedings early on, in order for the Accused to have adequate time and facilities to prepare their defence, as provided in Article 21(4)(c) of the Law. Therefore, the Pre-Trial Judge finds that the First Issue significantly affects the fair and expeditious conduct of the proceedings.

25. Lastly, the Pre-Trial Judge considers that an immediate resolution by the Court of Appeals Panel of the First Issue may materially advance the proceedings as the

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<sup>29</sup> Reply, para. 6.

<sup>30</sup> Reply, para. 3.

<sup>31</sup> Impugned Decision, para. 36.

question whether non-disclosure of victims' identities is rooted in the Law and the Rules may benefit from an authoritative determination by the Court of Appeals Panel at the earliest opportunity as this would: (i) provide legal certainty regarding the interpretation and application of the SC legal instruments; and (ii) minimise delays and the diverting of resources at subsequent stages of the proceeding to address challenges to existing orders involving the protection of participating victims.

26. In light of the above, the Pre-Trial Judge grants the leave to appeal for the First Issue.

## B. SECOND ISSUE

27. The Veseli Defence argues that the Second Issue arises from the Impugned Decision and it is neither a mere disagreement with the Impugned Decision nor does it amount to a hypothetical concern. It avers that the Pre-Trial Judge misconstrued the main Veseli Defence argument that the Special Tribunal for Lebanon's ("STL") Appeals Chamber held in *Prosecutor v. Ayyash et al* that anonymous victim participation "has a strong potential to have a prejudicial effect on the accused". It further avers that the decision puts forward well-founded legal concerns which raise serious question of constitutionality that the Pre-Trial Judge failed to address.<sup>32</sup>

28. The Veseli Defence contends, based on the same arguments as underlying the First Issue, that the Second Issue significantly affects the fair and expeditious conduct of the trial and that the intervention of the Court of Appeals Panel would significantly advance proceedings.<sup>33</sup>

29. The SPO responds that the Veseli Defence merely disagrees with the Impugned Decision as it raises the same arguments already considered and rejected by the Pre-Trial Judge without demonstrating any error. The SPO further avers that the

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<sup>32</sup> Request, para. 6.

<sup>33</sup> See *supra* para. 19.

Veseli Defence incorrectly states that the Impugned Decision failed to consider the Veseli Defence's arguments as the Pre-Trial Judge expressly considered the jurisprudence cited by the Veseli Defence and rejected its arguments in the Impugned Decision.<sup>34</sup>

30. The Victims' Counsel responds that the Veseli Defence fails to justify the appealability of the Second Issue. It avers that the Veseli Defence does not explain how the anonymity of victims participating in proceedings at this point in the proceedings, and as an interim measure, could potentially violate the Accused's rights.<sup>35</sup> Further, the Victim's Counsel avers that the Veseli Defence's argument that the Pre-Trial Judge disregarded the STL Appeals Chamber decision is incorrect as the Pre-Trial Judge referred to the decision, holding that he "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".<sup>36</sup>

31. The Veseli Defence replies that the Second Issue is not concerned with interpretation of the Rules but whether "total anonymity" of victims participating in the proceedings is inherently prejudicial to the Accused and inconsistent with his rights. It further avers that Victims' Counsel fails to justify how the STL jurisprudence is an outlier, or why the SC should follow the jurisprudence of the International Criminal Court ("ICC") and that, in any event, the SC does not follow the ICC jurisprudence as it permits the participation of anonymous victims in exceptionally limited circumstances.<sup>37</sup>

32. The Pre-Trial Judge recalls having considered the prejudicial effects of anonymous victims participating in the pre-trial proceedings.<sup>38</sup> The Pre-Trial Judge considers that the issue highlighted by the Veseli Defence, namely whether

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<sup>34</sup> SPO Response, para. 6.

<sup>35</sup> VC Response, para. 30.

<sup>36</sup> VC Response, para. 31.

<sup>37</sup> Reply, para. 7.

<sup>38</sup> Impugned Decision, para. 39.

anonymous victims participating in proceedings violates the Accused's right pursuant to Article 21 of the Law, Article 31 of the Constitution, Article 6 of the ECHR and Article 14 of the ICCPR is not a mere disagreement with the Impugned Decision. The Pre-Trial Judge accordingly finds that the Second Issue constitutes a discrete topic emanating from the Impugned Decision.

33. As concerns the significant effect on the fair and expeditious conduct of proceedings, the Pre-Trial Judge notes that the Second Issue is connected with the First Issue, as any possible prejudice to the Defence, to wit the violation of fundamental rights of the Accused, is an inherent aspect of the consideration whether the non-disclosure of identities of victims to the Parties is a valid protective measure under the applicable law. The Pre-Trial Judge considers that any violation of the Accused's rights as a result of the participation of anonymous victims is an issue that could have implications on the fair trial right of the Accused. For the same reasons set out in relation to the First Issue,<sup>39</sup> the Pre-Trial Judge finds that the Second Issue may significantly also affect the expeditious conduct of the proceedings.

34. Lastly, the Pre-Trial Judge considers that an immediate resolution by the Court of Appeals Panel of the Second Issue may materially advance the proceedings as the question whether non-disclosure of victims' identities violates the Accused's fundamental rights may benefit from an authoritative determination by the Court of Appeals Panel at the earliest opportunity as this would: (i) provide legal certainty regarding the interpretation and application of the SC legal instruments; and (ii) minimise delays and the diverting of resources at subsequent stages of the proceeding to address challenges to existing orders involving the protection of participating victims.

35. In light of the above, the Pre-Trial Judge grants the leave to appeal for the Second Issue.

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<sup>39</sup> See *supra* para.24.

### C. THIRD ISSUE

36. The Veseli Defence argues that the Third Issue arises from the Impugned Decision and it is neither a mere disagreement nor does it amount to a hypothetical concern. It avers that in the Veseli Defence Response it had argued that if “total anonymity” was granted it would render Article 22(9) of the Law meaningless as it would be materially impossible for a Trial Chamber to refer any victim admitted in the proceedings to civil proceedings.<sup>40</sup> It submits that the Pre-Trial Judge acknowledged this argument but then failed to engage with it.<sup>41</sup>

37. The Veseli Defence contends, based on the same arguments as underlying the First Issue, that the Third Issue significantly affects the fair and expeditious conduct of the trial and that the intervention of the Court of Appeals Panel would significantly advance proceedings.<sup>42</sup>

38. The SPO responds that the Third Issue is purely speculative as it concerns hypothetical civil proceedings before other courts and that it is a matter for those courts to what extent they can rely on the determinations of the victims’ status before the SC. The SPO avers that, therefore, the Veseli Defence merely disagrees with the treatment of these speculative and irrelevant arguments.<sup>43</sup>

39. The Victims’ Counsel responds that the Veseli Defence’s arguments are purely hypothetical, of no relevance to protective measures and therefore not appealable.<sup>44</sup> It avers that the issues of relevance in this regard are those pertaining to the safety, physical and physiological well-being, dignity and privacy of individual victims participating in the proceedings and, should such a referral arise in the future, they

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<sup>40</sup> Veseli Defence Response, para. 19.

<sup>41</sup> Request, para. 7.

<sup>42</sup> *See supra* para. 19.

<sup>43</sup> SPO Response, para. 7.

<sup>44</sup> VC Response, para. 32.

will be in the best position to assess such a referral.<sup>45</sup> Victims' Counsel argues that, at this stage, such considerations are premature and irrelevant.<sup>46</sup>

40. The Veseli Defence replies that the SPO and Victims' Counsel conflate the scope of the Third Issue, namely failure to provide reason, with the underlying merits, namely the violation of Article 22(9) of the Law.<sup>47</sup>

41. The Pre-Trial Judge notes at the outset that the Third Issue was advanced in the Veseli Defence Response<sup>48</sup> and referenced in the Impugned Decision when summarising the Veseli Defence arguments.<sup>49</sup> The Pre-Trial Judge recalls that an "issue" is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination and do not amount to abstract questions or hypothetical concerns.<sup>50</sup> No discrete findings were necessary on the abstract question whether and how future reparation proceedings in other courts of Kosovo, if at all initiated, would impact the protective measures regime for victims currently participating in criminal proceedings before the SC in the matters that the Pre-Trial Judge was seized with in the Impugned Decision.

42. In light of the above, the Pre-Trial Judge considers that the Third Issue does not present an identifiable issue emanating from the Impugned Decision, but merely disagrees with the Pre-Trial Judge's decision to disregard the Veseli Defence's argument as it was not an issue necessary to decide upon in the Impugned Decision. As a result, the Pre-Trial Judge will not assess the remainder of the legal test for certifying a request for leave to appeal.

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<sup>45</sup> VC Response, paras 33-34.

<sup>46</sup> VC Response, para. 34.

<sup>47</sup> Reply, para. 8.

<sup>48</sup> Veseli Defence Response, paras 18-19.

<sup>49</sup> Impugned Decision, para. 25.

<sup>50</sup> See *Thaçi* Decision on Leave to Appeal, para. 11.

#### D. FOURTH ISSUE

43. The Veseli Defence argues that, if the Court of Appeals Panel should consider that “total anonymity” of victims participating in the proceedings is foreseen by both the Rules and the Law, the Fourth Issue arises from the Impugned Decision and it is neither a mere disagreement with the Impugned Decision nor does it amount to a hypothetical concern. In particular, it avers that the Pre-Trial Judge failed in the proper application in practice of the exceptionally high standard required for anonymity.<sup>51</sup>

44. The Veseli Defence contends that, based on the same arguments as underlying the First Issue, the Fourth Issue significantly affects the fair and expeditious conduct of the trial and that the intervention of the Court of Appeals Panel would significantly advance proceedings.<sup>52</sup>

45. The SPO responds that the Fourth Issue raises hypothetical concerns, without identifying any error in the Pre-Trial Judge’s reasoning pertaining to the specific victims concerned by the Impugned Decision. The SPO further avers that the Pre-Trial Judge: (i) balanced the fair trial rights of the Accused and other interests at stake, such as those of the victims; (ii) found the protective measures are necessary and proportionate; and (iii) emphasised that such measures are “without prejudice to any future ruling by the relevant Trial Panel and without prejudice to any additional measures stemming from the victim’s potential dual status”.<sup>53</sup>

46. The Victims’ Counsel responds that the Veseli Defence fails to justify the appealability of the Fourth Issue. Victims’ Counsel avers that apart from an erroneous quantitative argument which is embedded in the First Decision on Victims’ Participation and Second Decision on Victims’ Participation, the Veseli Defence fails to justify any actual error in the Pre-Trial Judge’s assessment.<sup>54</sup>

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<sup>51</sup> Request, para. 8.

<sup>52</sup> *See supra* para. 19.

<sup>53</sup> SPO Response, para. 8.

<sup>54</sup> VC Response, para. 35.

47. The Veseli Defence replies that the Fourth Issue does not raise a hypothetical concern but identifies a discernible error, namely the finding that “total anonymity” is warranted for all victims participating in the proceedings thereby violating Rule 80(4)(e)’s requirement of “exceptional circumstances”.<sup>55</sup>

48. The Pre-Trial Judge recalls that in authorising the protective measures for the victims that were subject to the Impugned Decision, he relied on several concrete factors, as set forth in paragraphs 43-47 of the Impugned Decision. In challenging the Pre-Trial Judge’s decision to authorise protective measures, the Veseli Defence has not substantiated and demonstrated how these determinations in the Impugned Decision are erroneous. Rather, it remains general and abstract in its allegation that because a specific number of victims have been granted non-disclosure of their identities, those protective measures cannot be necessary and proportionate. The Pre-Trial Judge accordingly considers that the Veseli Defence has failed to identify an issue requiring a decision for its resolution, but merely disagrees with the Impugned Decision.

49. In light of the above, the Pre-Trial Judge considers that the Fourth Issue does not present an appealable issue. As a result, the Pre-Trial Judge will not assess the remainder of the legal test for certifying a request for leave to appeal.

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<sup>55</sup> Reply, para. 9.



V. DISPOSITION

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

- a. **GRANTS** leave to appeal the First Issue and Second Issue; and
- b. **REJECTS** leave to appeal the Third Issue and Fourth Issue.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Tuesday, 28 June 2022

At The Hague, the Netherlands.