



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

Filing Participant: Dr Fidelma Donlon

Date: 22 July 2022

Language: English

Classification: Confidential and *Ex Parte*

**Fifth Registry Report to the Pre-Trial Judge on Victims' Applications for
Participation in the Proceedings**

with strictly confidential and *ex parte* Annexes 1-26

Registry

Victims' Participation Office

I. INTRODUCTION

1. The Victims' Participation Office (VPO) hereby files the fifth report ('Fifth Report') on victims' applications for participation in the proceedings pursuant to Rule 113(2) of the Rules.¹

2. With this Fifth Report, the VPO transmits to the Pre-Trial Judge 25 applications for the status of participating victim in the proceedings and provides a recommendation on admissibility, grouping, common representation, and protective measures.

II. PROCEDURAL HISTORY

3. On 26 October 2020, the Pre-Trial Judge confirmed the indictment ('Confirmed Indictment') against Messr Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (collectively, 'the Accused').²

4. On 3 September 2021, the Specialist Prosecutor's Office (SPO) submitted a corrected version of the Confirmed Indictment, as ordered by the Pre-Trial Judge,³ with a public redacted version filed on 8 September 2021.⁴

5. On 4 January 2021, the Pre-Trial Judge issued the Framework Decision on Victims' Applications⁵ ('Framework Decision') setting out the principles governing the application process and the role of the VPO.⁶

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

² KSC-BC-2020-06, F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 26 October 2020, public ('Confirmation Decision').

³ F00413, Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment, 22 July 2021, public, para 179(d) (ordering the SPO to submit a corrected version of the Confirmed Indictment by 3 September 2021).

⁴ F00455/A01, Annex 1 to Public Redacted Version of "Submission of corrected Indictment and request to amend pursuant to Rule 90(1)(b)", KSC-BC-2020-06/F00455, dated 3 September 2021, 8 September 2021, public.

⁵ F00159, Framework Decision on Victims' Applications, 4 January 2021, public (ordering, *inter alia*, VPO to submit its first report pursuant to Rule 113(2) of the Rules by 15 February 2021 and to submit further reports, if any, on a regular basis, the latest by the submission of the Defence filing pursuant to Rule 95(5) of the Rules).

⁶ Framework Decision, paras 14-17.

6. On 15 February 2021, the VPO submitted the first report on victims' applications for participation in the proceedings to the Pre-Trial Judge ('First Report'),⁷ followed by a supplement to its First Report in which it made a recommendation on grouping for the purpose of common representation.⁸
7. On 21 April 2021, the Pre-Trial Judge issued the First Decision on Victims' Participation ('First Decision').⁹
8. On 7 June 2021, an appeal was lodged against the First Decision by six of the applicants who were denied admission as participating victims.¹⁰
9. On 6 July 2021 the Pre-Trial Judge issued the Second Framework Decision on Victims' Applications ('Second Framework Decision').¹¹
10. On 16 July 2021, the Panel of the Court of Appeals Chamber issued a decision on the appeal lodged by the Denied Applicants ('Decision on Appeal'), confirming in part the First Decision and remanding it in part to the Pre-Trial Judge to provide further reasons for rejecting the applications of the Denied Applicants.¹²
11. On 10 December 2021, the Pre-Trial Judge issued the Second Decision on Victims' Participation ('Second Decision').¹³

⁷ F00203, First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 15 February 2021, public, with confidential and *ex parte* Annexes 1-19.

⁸ F00241, Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings with Recommendation on Grouping, 1 April 2021, public ("Supplement"), with one confidential and *ex parte* Annex. *See also* F00347, Second Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, with one strictly confidential and *ex parte* Annex, 11 June 2021.

⁹ F00257, First Decision on Victims' Participation, 21 April 2021, confidential. A public redacted version was issued on the same day (F00257/RED).

¹⁰ F00340, Appeal against the "First Decision on Victims' Participation" pursuant to Rule 113(6) of the Rules, 7 June 2021, strictly confidential and *ex parte*.

¹¹ F00382, Second Framework Decision on Victims' Applications, 6 July 2021, public.

¹² F00008, Decision on Appeal Against "First Decision on Victims' Participation", 16 July 2021, public.

¹³ F00611, Second Decision on Victims' Participation, 10 December 2021, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were issued on the same day (F00611/CONF/RED and F00611/RED).

12. On 29 April 2022, pursuant to a Decision issued by the Pre-Trial Judge,¹⁴ the SPO submitted an amended version of the Indictment ('Amended Indictment').¹⁵

13. On 25 May 2022, the Pre-Trial Judge issued the Third Decision on Victims' Participation ('Third Decision').¹⁶

14. The VPO has been submitting reports on victims' applications on a regular basis, namely on 18 June 2021,¹⁷ on 18 November 2021,¹⁸ and on 26 January 2022.¹⁹ The VPO will continue to do so for all other pending and incoming applications.

III. CLASSIFICATION

15. The VPO files this Fifth Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the report so that it can also be disclosed to the Parties, as it contains no identifying information of the applicants. For the same reason, the VPO does not object to the re-classification of the report as public. In the event that the Pre-Trial Judge decides to re-classify the report, this Fifth Report may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules.²⁰

16. Together with this Fifth Report, the VPO submits 26 strictly confidential and *ex parte* Annexes.²¹ Annex 1 contains the table indicating the number and details of applicants recommended for admission (Group A) and of those not recommended for

¹⁴ F00777, Decision on the Confirmation of Amendments to the Indictment, 22 April 2022, strictly confidential and *ex parte*.

¹⁵ F00789, Submission of amended Indictment and related documents with strictly confidential and *ex parte* Annex1, confidential Annexes 2-4, and public Annexes 5-7, 29 April 2022, public.

¹⁶ F00817, Third Decision on Victims' Participation, 25 May 2022, strictly confidential and *ex parte*. A public redacted version was issued on the same day (F00817/RED).

¹⁷ F00360, Second Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 15 February 2021, public, with confidential and *ex parte* Annexes 1-12.

¹⁸ F00572, Third Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 November 2021, public, with confidential and *ex parte* Annexes 1-13.

¹⁹ F00656, Fourth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 26 January 2022, strictly confidential and *ex parte*, with confidential and *ex parte* Annexes 1-17.

²⁰ Framework Decision, para. 50.

²¹ Framework Decision, para. 24(e).

admission (Group B). The remaining 25 annexes are summaries of the individual applications prepared by the VPO, along with basic information on the applicants, a summary of the alleged events and harm suffered, and any request for protective measures. The Annexes do contain identifying information of the applicants and are therefore filed as strictly confidential and *ex parte* pursuant to Rule 113(2) and Rule 82(1) of the Rules.²²

17. The application forms and supporting documentation have been disclosed only to the Pre-Trial Judge through Legal Workflow ('LW') in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.²³

IV. ASSESSMENT OF APPLICATIONS

18. The VPO has assessed the formal completeness of the application forms and the content of the applications in light of the requirements stemming from the definition of a participating victim under Article 22(1) of the Law²⁴ and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

19. In assessing the completeness of the applications, the VPO reviewed the applications against the criteria listed in the Framework Decision²⁵ and applied additional guidance provided by the Pre-Trial Judge in the First Decision²⁶ and the Second Framework Decision.²⁷

²² First Decision, para. 66.

²³ Framework Decision, para. 25; see also First Decision, para. 64.

²⁴ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

²⁵ Framework Decision, para. 22.

²⁶ First Decision, paras 34-35.

²⁷ Second Framework Decision, para. 19.

20. Where an application is manifestly outside the scope of the confirmed charges, the Pre-Trial Judge has instructed the VPO to nevertheless ensure that certain criteria for completeness are fulfilled.²⁸

21. In line with the above requirements, the VPO considers that all applications submitted with this Fifth Report can be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

22. In assessing the applications and making its recommendation in this Fifth Report, the VPO applied the *prima facie* standard²⁹ for all requirements as well as any supporting documentation.

2. Criteria of Admissibility

23. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,³⁰ following the guidelines and requirements set out in the Framework Decision.³¹ The VPO also took into consideration the findings of the First Decision³², the Decision on Appeal³³, and the Second Decision.³⁴

24. Consequently, the VPO's assessment and recommendation to the Pre-Trial Judge is based on the following requirements:

²⁸ Framework Decision, paras 22-23; Second Framework Decision, para. 20 (in terms of completeness, the VPO need not ensure that relevant and supporting documentation has been submitted, to the extent possible, for applications manifestly outside the scope of the confirmed charges).

²⁹ Rule 113(4) of the Rules. See Framework Decision, para. 29 ("the Pre-Trial Judge reviews the submitted information and supporting material on a case-by-case basis, taking into account: (i) all relevant circumstances as apparent at first sight; and (ii) the intrinsic coherence of the application"); First Decision, para. 43.

³⁰ First Report, paras 17-20.

³¹ Framework Decision, paras 31, 35-37.

³² First Decision, paras 44-45 and 51-55.

³³ Decision on Appeal, paras 16, 20, 24 and 35.

³⁴ Second Decision, paras 36, 44, 62-68.

(a) Natural person

25. The VPO notes that the applications do not raise questions regarding the requirement for an applicant to be a “natural person”. Except for one applicant, all applicants submitted a valid ID card or passport as proof of identity. Applicant Victim-71/06 did not have a valid ID and instead submitted a birth certificate and the extract from the register of civil status.³⁵

(b) Alleged crimes

26. The VPO assessed whether acts described in the applications appear to constitute alleged crimes within the scope of the Amended Indictment and evaluated whether the alleged events have taken place within the geographical and temporal scope of the indictment, *i.e.* in Kosovo and areas of northern Albania between March 1998 and September 1999.³⁶

27. The applicants allege the following crimes: imprisonment/illegal or arbitrary arrest and detention, cruel treatment/other inhumane acts, torture, murder, and enforced disappearance.

28. The crimes that the applicants in Group A claim to be victims of fall within the material, temporal and, geographical parameters of the charges, as specified in the Amended Indictment.³⁷

29. VPO assesses that the crimes that the applicants in Group B claim to be victims of do not fall under the parameters of the charges, as specified in the Amended Indictment.³⁸

³⁵ See Annex 9 to this Fifth Report.

³⁶ Amended Indictment, para. 16.

³⁷ Framework Decision, para.32; First Decision, para. 45; Second Decision, para. 44.

³⁸ See footnote 30 above. See also Second Decision, paras 30, 62-68.

(c) Harm

30. In reviewing the applications in Group A, the VPO assessed all three types of harm, namely physical, mental, and material harm.

31. As regards evidentiary material, the VPO followed the findings of the First Decision³⁹ and the Second Framework Decision.⁴⁰ The VPO inquired in all cases whether any relevant supporting documentation was available and, where that was the case, requested the applicants to submit such documentation. Where no supporting documentation was submitted because it was impossible for the applicants to obtain such documentation, the VPO did not consider these applications as incomplete or inadmissible on these grounds.⁴¹

32. In relation to applicants within Group A, regarding the requirement that harm has to be suffered *personally*, six applicants can be considered direct victims and 15 applicants can be considered indirect victims.

33. The direct victims claim to have suffered harm as a result of unlawful detention, cruel treatment, and torture, as described in the application forms and annexed application summaries.

34. For the direct victims, the VPO assessed whether the types of harm have been described sufficiently in detail and are a consequence of the alleged crimes.

35. The indirect victims claim to have suffered harm as a result of the unlawful detention, torture, enforced disappearance, and murder of a family member, in relation to which they provided supporting documentation of kinship.

36. For the indirect victims, the VPO assessed whether the applicants have sufficiently established that the harm they claim to have suffered arises from the harm suffered by the direct victim and whether the harm is a result of a personal relationship with the direct victim.⁴² In terms of harm suffered by indirect victims,

³⁹ First Decision, para. 35.

⁴⁰ Second Framework Decision, para. 20.

⁴¹ See also Second Decision, footnote 28, para. 37.

⁴² Framework Decision, para. 34.

emotional suffering (such as grief, sorrow, bereavement and distress) of an indirect victim as a result of the death or grave injury of a direct victim is presumed, provided that the close relationship between them is sufficiently established.⁴³

37. In the First Decision, the Pre-Trial Judge noted that immediate family members (spouse, parents, children, siblings) are presumed to be in a close relationship with a direct victim, 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.⁴⁴

38. With one exception, all indirect victims are immediate family members of direct victims. In VPO's assessment, although Victim-77/06 is not an immediate family member of a direct victim, the VPO considers that the requirement of a close personal relationship with the direct victim has been sufficiently demonstrated with the applicant's statement.⁴⁵

39. Considering the above, all applicants in Group A meet *prima facie* the necessary requirements as to the harm suffered. In addition, all indirect victims meet the requirement as regards the closeness of relationship with the direct victim.

(d) Direct result

40. The VPO assessed whether there is evidence of a causal link between harm and crime.⁴⁶ The VPO assessed that all applicants in Group A meet this requirement on a *prima facie* basis.

⁴³ First Decision, para. 53.

⁴⁴ First Decision, para. 55. This was confirmed in the Second Decision, para. 45.c.

⁴⁵ For more details, *see* application form and summary of Victim-77/06.

⁴⁶ Framework Decision, para. 39; *see also* First Decision, para. 55. More details on meeting the criteria of the "direct result" requirement can be found in the description of the events in the application forms and the application summaries annexed to this Report.

3. General description of the applications

(a) Group A

41. Applicants Victim-63/06, Victim-64/06, Victim-65/06, Victim-66/06, Victim-67/06, and Victim-68/06 are members of the same family. They claim to be indirect victims of the imprisonment, torture, and murder of an immediate family member. The immediate family member was allegedly taken to one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicants claim to have suffered physical, mental, and material harm. They are not in possession of any supporting documentation.

42. Applicant Victim-70/06 claims to be a direct victim of unlawful detention, cruel treatment, and torture by the KLA in one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicant claims to have suffered physical, mental, and material harm. The applicant submitted supporting documentation for mental harm and indicated that no other supporting documentation is available.

43. Applicant Victim-71/06 claims to be a direct victim of unlawful detention, cruel treatment, and torture by the KLA in one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicant claims to have suffered physical, mental, and material harm as a result and submitted all supporting documentation in his possession.

44. Applicant Victim-72/06 claims to be an indirect victim of unlawful detention, cruel treatment, torture, and murder of an immediate family member by the KLA in one of the detention sites mentioned in the Amended Indictment within the relevant period. The applicant claims to have suffered mental harm. The applicant indicated not having any documentation on harm.

45. Applicant Victim-73/06 claims to be a direct victim of unlawful detention and cruel treatment by the KLA in one of the detention sites mentioned in the Amended

Indictment within the relevant period. The applicant claims to have suffered physical and mental harm and does not have any supporting documentation.

46. Applicants Victim-74/06, Victim-77/06, and Victim-84/06 are members of the same family. They claim to be indirect victims of the unlawful detention, cruel treatment, torture, and murder of an immediate family member. The immediate family member was allegedly taken to one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicants claim to have suffered mental harm. They indicated not having any supporting documentation.

47. Applicant Victim-75/06 claims to be a direct victim of unlawful detention, cruel treatment, and torture by the KLA in one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicant claims to have suffered mental harm. The applicant indicated not having any documentation on harm.

48. Applicant Victim-76/06 claims to be a direct victim of unlawful detention, cruel treatment, and torture by the KLA in one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicant claims to have suffered physical, mental, and material harm. The applicant indicated not having any documentation on harm.

49. Applicants Victim-78/06, Victim-79/06 and Victim-80/06 are members of the same family. They claim to be indirect victims of the unlawful detention, cruel treatment, torture, and murder of an immediate family member. The immediate family member was taken to one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicants claim to have suffered physical, mental, and material harm. They indicated not having any supporting documentation.

50. Applicant Victim-82/06 claims to be a direct victim of unlawful arrest and cruel treatment by the KLA. The applicant can also be considered as an indirect victim of cruel treatment of immediate family members. The described events can be linked to one of the crime sites mentioned in the Amended Indictment in the relevant period. The applicant claims to have suffered physical, mental, and material harm. The applicants submitted all available supporting documentation.

51. Applicants Victim-85/06 and Victim-86/06 are members of the same family. They claim to be indirect victims of the enforced disappearance and unlawful detention of an immediate family member. The immediate family member was allegedly taken to one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicants claim to have suffered mental and material harm. They have submitted documentation on material harm. They do not have any other supporting documents.

(b) Group B

52. Applicant Victim-24/06 claims to be an indirect victim of unlawful arrest and enforced disappearance of an immediate family member by the KLA within the relevant period. The immediate family member was taken to an unknown location in the territory of Kosovo that does not appear to be linked to any of the detention sites in the Amended Indictment. Despite the attempts of the family to obtain information at two alleged KLA headquarters, the fate of the immediate family member remains unknown to this day. The applicant claims to have suffered mental and material harm as a consequence of these crimes. The applicant is not in possession of any documentation on harm.

53. Applicant Victim-81/06 claims to be an indirect victim of the murder of two immediate family members in their family house in Kosovo within the relevant period. The events described do not appear to be linked to the charges as specified in the Amended Indictment. The applicant claims to have suffered physical and mental harm. The applicant submitted a medical report as supporting documentation.

54. Applicant Victim-83/06 claims to be an indirect victim of the murder of two immediate family members in their home in Kosovo within the relevant period. The events described do not appear to be linked to the charges as specified in the Amended Indictment. The applicant claims to have suffered physical and mental harm. The applicant does not have any documentation on harm.

55. Applicant Victim-87/06 claims to be an indirect victim of the murder of an immediate family member in their family house in Kosovo within the relevant period. The events described do not appear to be linked to the charges as specified in the Amended Indictment. The applicant claims to have suffered mental and material harm. The applicant does not have any supporting documentation.

C. RECOMMENDATION ON ADMISSIBILITY

56. The VPO recommends the Pre-Trial Judge to admit the following applicants as participating victims: Victim-63/06, Victim-64/06, Victim-65/06, Victim-66/06, Victim-67/06, Victim-68/06, Victim-70/06, Victim-71/06, Victim-72/06, Victim-73/06, Victim-74/06, Victim-75/06, Victim-76/06, Victim-77/06, Victim-78/06, Victim-79/06, Victim-80/06, Victim-82/06, Victim-84/06, Victim-85/06, and Victim-86/06.

57. The VPO assesses that applicants Victim-24/06, Victim-81/06, Victim-83/06, and Victim-87/06 have not sufficiently demonstrated on a *prima facie* basis that the events described in their applications from which they claim to have suffered harm fall within the material, temporal, and geographical scope of the charges, as described in the Amended Indictment. Consequently, the VPO recommends to the Pre-Trial Judge to deny these applicants for participation as victims in the proceedings.

V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

58. In making its recommendation to the Pre-Trial Judge on grouping, the VPO assessed the criteria set out in Rule 113(8) of the Rules by considering the individual circumstances of each applicant and the composition of the group as a whole. The VPO has followed the guidelines set out by the Pre-Trial Judge in the Framework

Decision⁴⁷ as echoed in the First Decision.⁴⁸ Pursuant to the Framework Decision, the need to divide applicants into more than one group arises when “the situation or the specificity of the victims is so different that their interests are irreconcilable, making their common representation impracticable”.⁴⁹

59. The VPO also recalls the general observations and jurisprudence outlined in the Supplement and Second Supplement to the First Report, which included a detailed analysis of grouping for the purposes of common representation.⁵⁰

60. As outlined in the Second Supplement, Group 1 currently includes participating victims of different ethnicities, who reside in different areas, and speak different languages. Both the direct and indirect participating victims in Group 1 were allegedly subjected to similar crimes at the hands of the same group of perpetrators, have suffered similar forms of harm, and they all share an interest in participating in the proceedings and pursuing their rights.⁵¹

61. As regards the individual circumstances, the applicants presented in this Fifth Report that are recommended for admission (Group A) are Albanian and/or Serbian speaking. They come from Kosovo and other parts of the world. None of the applicants objected to being grouped in a single group.

62. The VPO identified only one applicant whose circumstances might give rise to a potential conflict of interest. The VPO thoroughly analysed the individual circumstances of the applicant and their impact on the group as a whole.⁵² The VPO notes that a similar situation was already considered in relation to another applicant in the Supplement to the First Report, where it was also assessed that such circumstances do not amount to a conflict of interest that would warrant the creation of a separate group.⁵³ The VPO assesses that the situation or specificity of the victims

⁴⁷ Framework Decision, para. 43.

⁴⁸ First Decision, paras 73-77.

⁴⁹ Framework Decision, para. 43; see also First Decision, para. 76.

⁵⁰ Supplement, paras 13-29; Second Supplement, paras 46-50.

⁵¹ Second Supplement, para. 49.

⁵² For a detailed analysis, see Annex 11 to this Fifth Report.

⁵³ Supplement, paras 25-26; see also Annex 1 to Supplement; First Decision, paras. 73, 77.

in Group 1 and those referenced in the present report is not so different that their interests would be irreconcilable.⁵⁴

63. Consequently, after analysing all the relevant circumstances, the VPO recommends the Pre-Trial Judge to group the victim applicants (Group A) described in this submission together with the already admitted victims participating in the proceedings and that they be jointly represented as one group (Group 1).⁵⁵

64. Given the recommendation on admissibility as regards Group B, VPO does not make a recommendation on grouping and common legal representation for the applicants within said group.

B. COMMON LEGAL REPRESENTATION

65. As regards preferences on legal representation, the applicants did not express any specific preferences. Two expressed a general request to have a competent and loyal counsel and one objected to being represented by an Albanian counsel.

66. The VPO submits that there appears to be no reason for which all victim applicants, if admitted, could not be represented together with the other victims participating in the proceedings by the assigned Victims' Counsel.⁵⁶

VI. PROTECTIVE MEASURES

67. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.⁵⁷ The protective measures requested by the applicants can be summarized as follows:

- two applicants requested non-disclosure of identifying information to the public;⁵⁸
- two applicants requested non-disclosure to the public and the Accused;⁵⁹

⁵⁴ Framework Decision, para. 43; see also First Decision, para. 76.

⁵⁵ First Decision, para. 77.

⁵⁶ F00282, Notification of Assignment of Victims' Counsel to Group 1 of Victims Participating in the Proceedings, 7 May 2021, public, with one confidential and *ex parte* Annex.

⁵⁷ Framework Decision, para. 46.

⁵⁸ Victim-82/06 and Victim-87/06.

⁵⁹ Victim-24/06 and Victim-81/06.

- nineteen applicants requested non-disclosure to the public, the Accused, and Defence Counsel;⁶⁰
- one applicant did not request any protective measure;⁶¹
- one applicant requested the VPO to make a recommendation.⁶²

A. RECOMMENDATION GROUP A

68. In making its recommendation on protective measures, the VPO has taken into consideration the legal test, as instructed by the Pre-Trial Judge in the Framework Decision.⁶³ The VPO notes that the concerns expressed in detail in the First Report and summarised in the First and Second Decisions affect all victims applying for participation, including the applicants included in this Fifth Report.⁶⁴

69. As regards the existence of an objectively justifiable risk and the necessity of protective measures, the VPO finds that the same considerations apply as outlined in the First Decision. In particular, all of the applicants: (i) continue to suffer from ongoing trauma; (ii) express fears or concerns for their safety or that of their family members, should their identities become known; and (iii) some of them continue to live in Kosovo or have links with Kosovo. They can all be considered as especially vulnerable and their participation can only be secured by granting adequate and proportionate protective measures for the current stage of the proceedings.⁶⁵

70. The VPO recommends to the Pre-Trial Judge to follow the approach taken thus far and grant anonymity under Rule 80(4)(e)(i) of the Rules.⁶⁶

⁶⁰ Victim-63/06, Victim-64/06, Victim-65/06, Victim-66/06, Victim-67/06, Victim-68/06, Victim-70/06, Victim-72/06, Victim-73/06, Victim-74/06, Victim-75/06, Victim-76/06, Victim-77/06, Victim-78/06, Victim-79/06, Victim-80/06, Victim-83/06, Victim-85/06, and Victim-86/06.

⁶¹ Victim-71/06.

⁶² Victim-84/06.

⁶³ Framework Decision, paras 47-49.

⁶⁴ First Report, paras 59-60; First Decision, para. 61, Second Decision, para. 51.

⁶⁵ First Decision, paras 68-69.

⁶⁶ First Decision, para. 70; Second Decision, para. 52.

71. The VPO considers that the above-requested protective measures are strictly necessary, appropriate, and proportionate at this stage of the proceedings.⁶⁷

B. RECOMMENDATION GROUP B

72. Similarly, and with due consideration to the confidentiality of the application process and the applicants' protection of privacy, the VPO recommends to the Pre-Trial Judge to follow the approach taken thus far also for applicants not recommended to be admitted as participating victims, and order that the names and any identifying information of the applicants in Group B be withheld from the Parties and the public.⁶⁸

Word count: 4,637



Dr Fidelma Donlon

Registrar

22 July 2022

At The Hague, the Netherlands.

⁶⁷ Framework Decision, para. 47.

⁶⁸ First Decision, para. 72; Second Decision, para. 56.