



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

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

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

**Registrar:** Dr Fidelma Donlon

**Date:** 11 August 2022

**Language:** English

**Classification:** Public

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

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> 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 19 June 2020, further to a decision by the Pre-Trial Judge,<sup>2</sup> the Specialist Prosecutor's Office ("SPO") submitted the Confirmed Indictment against Pjetër Shala ("Mr Shala" or "Accused").<sup>3</sup>

2. On 1 September 2021, the Pre-Trial Judge issued the "Framework Decision on Victims' Applications" ("Framework Decision"),<sup>4</sup> thereby, *inter alia*, ordering the Victims' Participation Office ("VPO") to file, by no later than 1 October 2021, its first report pursuant to Rule 113(2) of the Rules to the Pre-Trial Judge and the Parties regarding the submitted applications and to submit further such reports, if any, on a regular basis and, at the latest, two weeks prior to the submission of the Defence filing pursuant to Rule 95(5) of the Rules.<sup>5</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-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment against Pjetër Shala* ("Confirmation Decision"), 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and F00007/RED.

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

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

<sup>5</sup> Framework Decision, paras 21, 30, 32, 63(c)-(e).

3. On 15 December 2021, the Pre-Trial Judge issued the first decision on victims' participation, admitting one victim to participate in the proceedings ("First Decision on Victims' Participation").<sup>6</sup>

4. On 21 July 2022, the VPO filed a second report on victims' application for participation in the proceedings, transmitting one further application of one individual, Victim 02/04 ("Applicant"), and providing a recommendation on admissibility, grouping, common representation and protective measures ("Second Registry Report").<sup>7</sup>

5. The SPO and the Defence for Mr Shala ("Defence") did not respond to the Second Registry Report.

## II. SUBMISSIONS

6. The VPO assesses the application to be complete and admissible and recommends the Pre-Trial Judge to admit the Applicant as a participating victim.<sup>8</sup> It further recommends that the Applicant be grouped with the already admitted victim for the purpose of common legal representation and that they be represented by the assigned Victims' Counsel.<sup>9</sup> Lastly, the VPO proposes that the Applicant be assigned a pseudonym and granted anonymity towards the public, the Accused and Defence Counsel to ensure their protection.<sup>10</sup>

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<sup>6</sup> KSC-BC-2020-04, F00123, Pre-Trial Judge, *First Decision on Victims' Participation*, 15 December 2021, confidential, para. 50(a). A public redacted version was issued on the same day, F00123/RED.

<sup>7</sup> KSC-BC-2020-04, F00236, VPO, *Second Registry Report to the Pre-Trial Judge on Victims' Application for Participation in the Proceedings*, 21 July 2022, public, paras 2, 29 [sic], 34, 36, 42, with one Annex, strictly confidential and *ex parte*.

<sup>8</sup> Second Registry Report, paras 15, 29 [sic].

<sup>9</sup> Second Registry Report, paras 34, 36.

<sup>10</sup> Second Registry Report, para. 42

### III. 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 (“SC”) 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 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 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.

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

12. 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

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

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

15. In accordance with Article 22(6) of the Law and Rule 114(1) of the Rules, victims participating in the proceedings shall exercise their rights through 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.

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<sup>11</sup> See also KSC-BC-2020-06, IA005/F00003, Court of Appeals, *Decision on Counsel's Motion for Clarification and Variation of Time Limit*, 31 May 2021, public, p. 3.

16. Pursuant to Rule 114(4) of the Rules, where necessary and depending on the circumstances, the Pre-Trial Judge shall issue specific guidelines regulating the participation of victims in the pre-trial proceedings, in accordance with Article 22(3) and (6) of the Law.

17. Pursuant to Rule 114(2) of the Rules, Victims' Counsel may be present at pre-trial proceedings if deemed necessary by the Pre-Trial Judge, in order to ensure the personal interests and rights of the victims participating in the proceedings, in accordance with Article 22(3) of the Law.

18. Pursuant to Rule 114(3) of the Rules, Victims' Counsel shall have access to confidential material, unless otherwise provided in the Rules or as determined by the Pre-Trial Judge. Victims' Counsel shall keep his or her clients informed of relevant developments in the case in a manner which does not reveal confidential information.

19. Pursuant to Rule 114(4) of the Rules, whenever the personal interests of victims participating in the proceedings are affected, and unless otherwise provided in the Rules, Victims' Counsel may, under the control of the Panel, make oral and written submissions.

### C. PROTECTIVE MEASURES

20. Pursuant to Article 39(11) of the Law and Rule 95(2)(h) of the Rules, the Pre-Trial Judge may, where necessary, decide on motions related to the protection and privacy of victims and witnesses filed before the transmission of the case file to the Trial Panel.

21. Pursuant to Rule 80(1) of the Rules, the Pre-Trial Judge may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of, *inter alia*, victims participating in the proceedings.

22. Pursuant to Rule 80(4) of the Rules, such measures may include non-disclosure to the Parties of any material or information that may lead to the disclosure of the identity of a victim participating in the proceedings.

#### IV. DISCUSSION

23. In assessing the application of the Applicant, the Pre-Trial Judge is guided by the principles set out in the Framework Decision and the First Decision on Victims' Participation with regard to the requirements for an application to be considered complete,<sup>12</sup> the admissibility criteria,<sup>13</sup> the standard of proof,<sup>14</sup> the legal test applicable in granting protective measures<sup>15</sup> and the criteria for grouping victims for the purpose of common legal representation.<sup>16</sup>

##### A. ASSESSMENT OF APPLICATION

#### 1. Completeness of Application

24. Having assessed the application form and supporting documentation against the requirements set out in the Framework Decision,<sup>17</sup> the Pre-Trial Judge is satisfied that the application is complete.<sup>18</sup>

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<sup>12</sup> Framework Decision, para. 24.

<sup>13</sup> Framework Decision, paras 34, 36-45; First Decision on Victims' Participation, paras 28-33.

<sup>14</sup> Framework Decision, para. 35.

<sup>15</sup> Framework Decision, paras 52-56; KSC-BC-2020-06, F00817, Pre-Trial Judge, *Third Decision on Victims' Participation*, 25 May 2022, strictly confidential and *ex parte*, paras 36-40, 42. A public redacted version was filed on the same day, F00817/RED.

<sup>16</sup> Framework Decision, paras 48-51 (*see also* paras 33, 46-47, 51, and 56 on the role of the VPO in conducting the preliminary assessment regarding admissibility, grouping and protective measures).

<sup>17</sup> Framework Decision, para. 24.

<sup>18</sup> Second Registry Report, para. 15. The Pre-Trial Judge notes that, while documentation regarding the harm suffered has not been submitted by the Applicant, the detailed account provided by the Applicant is sufficient to allow the relevant findings to be made.



## 2. Admissibility of Application

25. *Natural persons.* The Pre-Trial Judge is satisfied that the Applicant has provided adequate proof of identity and is a natural person.<sup>19</sup>

26. *Alleged crimes.* The Pre-Trial Judge is satisfied that the Applicant is an indirect victim of crimes (arbitrary detention, cruel treatment, torture) allegedly committed at the Metal Factory in Kukës, Albania, from on or about 17 May 1999 until on or about 5 June 1999<sup>20</sup> against an immediate family member who is named in the Confirmed Indictment.<sup>21</sup> While the Pre-Trial Judge is able, in this particular instance, to assess the admissibility of the application together with the Confirmed Indictment, the VPO is reminded to advise applicants to insert in the Application Form all necessary information and to revert to applicants to request additional information in order to render the application complete, if necessary,<sup>22</sup> and to provide all relevant supporting documents.<sup>23</sup> Accordingly, the Pre-Trial Judge orders the VPO to provide a copy of the Note to File referenced in the Annex to the Second Registry Report by no later than **Friday, 19 August 2022**.

27. *Harm.* The Pre-Trial Judge is satisfied that the Applicant, an immediate family member to a direct victim, has personally suffered mental harm (distress and grief) as a direct result of the alleged arbitrary detention, cruel treatment and

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<sup>19</sup> Second Registry Report, para. 19; Victim 02/04, Application Form, p. 1; SD1-Passport; SD4-Birth Certificate.

<sup>20</sup> [REDACTED]. The Pre-Trial Judge considers that references to paragraphs in the Confirmed Indictment could lead to the identification of Victim 02/04; *See also* KSC-BC-2020-04, F00037/A02, Specialist Prosecutor, *Annex 2 to Submission of Corrected Rule 86(3)(b) Outline*, 19 May 2021, confidential, *for example*, pp. [REDACTED]. A public redacted version was filed on the same day, F00037/A03; Confirmation Decision, paras [REDACTED].

<sup>21</sup> Second Registry Report, paras 20-22; Annex to the Second Registry Report; Victim 02/04, Application Form; Confirmed Indictment. The Pre-Trial Judge considers that references to paragraphs in the Confirmed Indictment could lead to the identification of Victim 02/04.

<sup>22</sup> *See also* Framework Decision, paras 22 and 24 (“(iv) the date/period and location of the crimes as well as the harm suffered are sufficiently clearly indicated”).

<sup>23</sup> The Pre-Trial Judge notes that while footnote 3 of the Annex to the Second Registry Report reference the Note to File, this supporting document is not annexed, or available on Legal Workflow.

torture purportedly suffered by the direct victim.<sup>24</sup> In respect of the Applicant's claim that he has suffered material harm, the Pre-Trial Judge considers that there is not sufficient information for a *prima facie* finding that the Applicant also suffered material harm as a direct result of the charged crimes.<sup>25</sup>

28. The above findings are without prejudice to any future ruling following submissions of additional material.

### 3. Conclusion

29. In light of the above, the Pre-Trial Judge finds that there is *prima facie* evidence that the Applicant has suffered harm as a direct result of crimes alleged in the Confirmed Indictment and admits the Applicant as a participating victim in the proceedings.

#### B. PROTECTIVE MEASURES

30. The VPO recommends that the Applicant be assigned a pseudonym and granted non-disclosure of his identity to the public, the Accused and Defence Counsel.<sup>26</sup>

31. The Pre-Trial Judge recalls that, as indicated in the Framework Decision, the legal test applicable for protective measures in relation to victims is the same as that applicable in relation to witnesses.<sup>27</sup>

32. In assessing the existence of an objectively justifiable risk and the necessity of the protective measures for the Applicant, the Pre-Trial Judge takes into account

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<sup>24</sup> Second Registry Report, paras 23-28; Annex to the Second Registry Report; Victim 02/04, Application Form; SD2-Birth Certificate; SD4-Birth Certificate.

<sup>25</sup> Second Registry Report, para. 29; Annex to the Second Registry Report; Victim 02/04, Application Form.

<sup>26</sup> Second Registry Report, para. 42.

<sup>27</sup> Framework Decision, para. 54; First Decision on Victims' Participation, para. 36.

the following factors: (i) the Applicant alleges that he suffers from [REDACTED]; and (ii) the Applicant has [REDACTED].<sup>28</sup> 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;<sup>29</sup> and (ii) there is a risk that the Accused will obstruct the progress of SC proceedings and/or commit further crimes in view [REDACTED].<sup>30</sup> Moreover, the Pre-Trial Judge is also mindful that adequate protective measures for a victim are often the legal means by which their participation in the proceedings can be secured and 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.<sup>31</sup>

33. The Pre-Trial Judge notes that Victim 02/04 has not requested non-disclosure of his identity to the Accused and the Defence.<sup>32</sup> The Pre-Trial Judge observes, however, that Victim 02/04's family members have expressed an interest in applying as victims participating in the proceedings.<sup>33</sup> Accordingly, disclosure of Victim 02/04's identity to the Accused and the Defence, at this stage, could lead to the disclosure of his family members' identities to the Accused and the Defence

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<sup>28</sup> Victim 02/04, Application Form, p. 2. The Pre-Trial Judge notes that Victim 02/04 has not expressed concerns about his identity being revealed to the Parties.

<sup>29</sup> KSC-BC-2020-04, F00045, Pre-Trial Judge, *Decision on Pjetër Shala's Request for Provisional Release* ("Provisional Release Decision"), 15 June 2021, confidential, para. 26. A public redacted version was issued on 23 June 2021, F00045/RED; F00224, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* ("Decision on Review of Detention"), 22 June 2022, confidential, para. 30. A public redacted version was filed on the same day, F00224/RED,

<sup>30</sup> KSC-BC-2020-04, F00008, Pre-Trial Judge, *Decision on Request for Arrest Warrant and Transfer Order*, 12 June 2020, confidential, paras 21-22. A public redacted version was issued on 6 May 2021, F00008/RED; Provisional Release Decision, paras 32-33, 35, 39-40; Decision on Review of Detention, paras 33, 35, 39.

<sup>31</sup> See First Decision on Victims' Participation, para. 37; Similarly ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1119, Trial Chamber I, [Decision on Victims' Participation](#), 18 January 2008, para. 128.

<sup>32</sup> Victim 02/04, Application Form, p. 2.

<sup>33</sup> Second Registry Report, para. 10.

prior to them having the opportunity to indicate any necessary protective measures.

34. For these reasons, the Pre-Trial Judge considers that disclosure to the public, the Accused and the Defence of any material or information leading to the identification of the Applicant poses an objectively justifiable risk to him and, in particular, his 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.

35. 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.<sup>34</sup> 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.

36. In light of the above, the Pre-Trial Judge finds that the following measures are appropriate, necessary and proportionate at this stage of the proceedings, namely: (i) redactions of the Applicant's name and identifying information from the SC public records (Rule 80(4)(a)(i) of the Rules); (ii) non-disclosure to the public of any records identifying the Applicant (Rule 80(4)(a)(ii) of the Rules); (iii) the assignment of a pseudonym (Rule 80(4)(a)(vi) of the Rules); (iv) non-disclosure to the Accused by Specialist Counsel of any material or information that may lead to disclosure of the identity of the Applicant (Rule 80(4)(d) of the Rules); and (v) non-disclosure to Defence of any material or information that may lead to the disclosure of the identity of the Applicant (Rule 80(4)(e)(i) of the Rules).

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<sup>34</sup> See also First Decision on Victims' Participation, para. 39.

37. However, the Pre-Trial Judge observes that the Applicant requested anonymity towards the public.<sup>35</sup> Therefore, the Pre-Trial Judge finds it appropriate to order the protective measures under Rule 80(4)(d) and (e)(i) of the Rules on a provisional basis. Victims' Counsel, once appointed in accordance with the findings set out hereafter and after having consulted the Applicant, shall provide submissions as to the need for the continued application of these measures by no later than **Friday, 7 October 2022**.

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

#### C. GROUPING AND COMMON LEGAL REPRESENTATION

39. The VPO recommends that the Applicant be grouped together with the other victim participating in the proceedings and that they are represented by the assigned Victims' Counsel.<sup>36</sup>

40. Based on the same considerations as set out in the Framework Decision,<sup>37</sup> the Pre-Trial Judge finds that the Applicant, who expressed no particular preference,<sup>38</sup> shall be grouped together with Victim 01/04, admitted in the First Decision on Victims' Participation.<sup>39</sup> The Pre-Trial Judge observes that the Applicant suffered harm from similar crimes alleged by Victim 01/04 and they both seem to share a common interest of participating in the proceedings and pursuing their rights. Hence, they shall be represented as one group of victims participating in the proceedings ("Group 1").

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<sup>35</sup> Annex to the Second Registry Report, p. 3; Victim 02/04, Application Form, p. 2.

<sup>36</sup> Second Registry Report, paras 34, 36.

<sup>37</sup> Framework Decision, para. 49.

<sup>38</sup> Second Registry Report, para. 35.

<sup>39</sup> First Decision on Victims' Participation, paras 35, 50(a).

41. The Pre-Trial Judge also finds that Group 1, including Victim 02/04, shall be represented by Victims' Counsel previously assigned to represent Victim 01/04.

#### D. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

42. Victim 02/04 shall exercise his rights through Victims' Counsel and shall participate through the modalities described in the First Decision on Victims' Participation.<sup>40</sup>

#### V. DISPOSITION

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

- (a) **ORDERS** the VPO to provide a copy of the Note to File referenced in the Annex to the Second Registry Report by no later than **Friday, 19 August 2022**;
- (b) **GRANTS** the Applicant's application and admits the Applicant to the proceedings as a victim participating in the proceedings;
- (c) **DECIDES** that the Applicant and Victim 01/04 shall be represented as Group 1;
- (d) **DECIDES** that Group 1 shall be represented by Victims' Counsel previously allocated to Victim 01/04;
- (e) **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;

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<sup>40</sup> First Decision on Victims' Participation, paras 47-49, 50(c).

- (iii) neither 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;
- (f) **ORDERS** the protective measures for the Applicant as specified in paragraph 36 above;
- (g) **ORDERS** Victims' Counsel to provide submissions as to the need for the continued application of the protective measures ordered pursuant to Rule 80(4)(d) and (e)(i) of the Rules by no later than **Friday, 7 October 2022**; and
- (h) **DECIDES** to maintain the classification strictly confidential and *ex parte* of all application forms, summaries and supporting documentation.



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

Dated this Thursday, 11 August 2022

At The Hague, the Netherlands.