



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: 18 August 2022

Language: English

Classification: Confidential and *Ex Parte*

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

with strictly confidential and *ex parte* Annexes 1-51

Registry

Victims' Participation Office

I. INTRODUCTION

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

2. With this Sixth Report, the VPO transmits to the Pre-Trial Judge 50 applications for the status of a 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 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, 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.

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 10 December 2020 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 the applicants that 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 ('Second Supplement').

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 the Amendment Decision issued by the Pre-Trial Judge¹⁴, 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 on 25 January 2022,¹⁹ and on 22 July 2022.²⁰ The VPO will continue to do so for all other pending and incoming applications. The majority of applications submitted with this Sixth Report have been sent via e-mail, and three have been submitted with the direct assistance of the VPO.

III. CLASSIFICATION

15. The VPO files this Sixth Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Sixth 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 reclassification of the report as public. In the event that the Pre-Trial Judge decides to re-classify the report, this Sixth Report may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules.²¹

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

¹⁵ F00789, Submission of amended Indictment and related documents with strictly confidential and *ex parte* Annex 1, 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, 25 January 2022, public, with confidential and *ex parte* Annexes 1-17.

²⁰ F00894, Fifth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 22 July 2022, public, with strictly confidential and *ex parte* Annexes 1-26.

²¹ Framework Decision, para. 50.

16. Together with this Sixth Report, the VPO submits 51 strictly confidential and *ex parte* Annexes.²² Annex 1 contains the table indicating the number and details of applicants recommended for admission (Group A) and of those not recommended for admission (Group B). The remaining 50 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.²³

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.²⁴

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 Law²⁵ 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 Decision²⁶ and applied

²² Framework Decision, para. 24(e).

²³ First Decision, para. 66.

²⁴ Framework Decision, para. 25; *see also* First Decision, para. 64.

²⁵ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

²⁶ Framework Decision, para. 22.

additional guidance provided by the Pre-Trial Judge in the First Decision²⁷ and the Second Framework Decision.²⁸

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.²⁹

21. In line with the above requirements, the VPO recommends that all applications submitted with this Sixth Report 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 Sixth Report, the VPO applied the *prima facie* standard³⁰ 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,³¹ following the guidelines and requirements set out in the Framework Decision.³² The VPO also took into consideration the findings of the First Decision³³, the Decision on Appeal³⁴ and the Second Decision.³⁵

²⁷ First Decision, paras 34-35.

²⁸ Second Framework Decision, para. 19.

²⁹ 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).

³⁰ 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.

³¹ First Report, paras 17-20.

³² Framework Decision, paras 31, 35-37.

³³ First Decision, paras 44-45, 51-55.

³⁴ Decision on Appeal, paras 16, 20, 24, 35.

³⁵ Second Decision, paras 36, 44, 62-68.

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

(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". All applicants submitted a valid ID card, passport or driver's license as proof of identity.

(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: persecution, 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 a victim 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 a victim of do not fall under the parameters of the charges, as specified in the Amended Indictment.³⁸

³⁶ Amended Indictment, para. 16.

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

³⁸ See Second Decision, paras 30, 62-68.

(c) Harm and Direct result

30. In reviewing the applications in Group A,³⁹ the VPO assessed all three types of harm, namely physical, mental, and material harm, which is described in detail. The VPO further assessed whether there is *prima facie* evidence of a causal link between harm and crime.⁴⁰

31. As regards evidentiary material, the VPO followed the findings of the First Decision⁴¹ and the Second Framework Decision.⁴² 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.⁴³

32. In relation to applicants within Group A, regarding the requirement that harm has to be suffered *personally*, one applicant can be considered a direct victim⁴⁴ and all other applicants can be considered indirect victims.

33. The direct victim claims to have suffered harm as a result of unlawful detention, cruel treatment, and torture, as described in the application form and annexed application summary. The VPO assessed whether the types of harm have been described sufficient in detail and are a consequence of the alleged crimes.

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

³⁹ The VPO did not review in detail the applications in Group B as regards harm, since they are out of scope.

⁴⁰ 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.

⁴¹ First Decision, para. 35.

⁴² Second Framework Decision, para. 20.

⁴³ *See* Second Decision, footnote 28, para. 37.

⁴⁴ Annex 30.

35. 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.⁴⁵ In terms of harm suffered by indirect victims, 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.⁴⁶

36. 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.⁴⁷

37. With the exception of Victim-163/06, all indirect victims are immediate family members of direct victims. Victim-163/06 has described in detail the nature of the relationship with the direct victim in the application. The VPO assessed the applicant's statement and considers that the requirement of a close personal relationship with the direct victim has been sufficiently demonstrated.⁴⁸

38. Considering the above, all applicants in Group A meet *prima facie* the necessary requirements as to harm suffered. In addition, all indirect victims meet the requirement as regards the closeness of relationship with the direct victim. As regards evidence of a causal link between harm and crime, VPO assesses that all applicants in Group A meet this requirement on a *prima facie* basis.

⁴⁵ Framework Decision, para. 34.

⁴⁶ First Decision, para. 53.

⁴⁷ First Decision, para. 55. This was confirmed in the Second Decision, para. 45(c).

⁴⁸ For more details, *see* Annex 10.

3. General description of the applications

(a) Group A

39. Applicants Victim-97/06, Victim-99/06, Victim-100/06, Victim-101/06, Victim-102/06, and Victim-103/06 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 some also material harm. They have submitted all available supporting documents on harm.

40. Applicants Victim-110/06, Victim-112/06, and Victim-163/06 are members of the same family. They claim to be indirect victims of persecution, unlawful detention, cruel treatment enforced disappearance, and murder of a family member. The 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 mental and material harm. They submitted all supporting documentation in their possession.

41. Applicants Victim-121/06, Victim-122/06, Victim-123/06, Victim-124/06, and Victim-125/06 are members of the same family. They claim to be indirect victims of the enforced disappearance and murder of a family member. The 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 documentation on harm.

42. Applicant Victim-180/06 claims to be an indirect victim of kidnapping and murder of two immediate family members. Their remains were found in one of the crime sites mentioned in the Amended Indictment in the relevant period. The applicant claims to have suffered mental and material harm and does not have any supporting documentation.

43. Applicants Victim-186/06, Victim-187/06, and Victim-188/06 are members of the same family. They claim to be indirect victims of the kidnapping and murder of two immediate family members. Their remains were found in one of the crime sites

mentioned in the Amended Indictment in the relevant period. The applicants claim to have suffered mental and material harm. They indicated not having any documentation on harm.

44. Applicants Victim-191/06 and Victim-212/06 are members of the same family. They claim to be indirect victims of enforced disappearance of an immediate family member. The family member was taken to one of the detention sites mentioned in the Amended Indictment in the relevant period and the family was denied information. The applicants claim to have suffered physical, mental, and material harm and have no supporting documentation.

45. Applicant Victim-195/06 and claims to be an indirect victim of enforced disappearance and murder of an immediate family member. The family member was taken to one of the detention sites mentioned in the Amended Indictment in the relevant period. The applicant claims to have suffered mental and material harm and has no supporting documentation.

46. Applicants Victim-196/06, Victim-197/06, Victim-198/06, Victim-199/06, Victim-200/06, Victim-201/06, and Victim-202/06 are members of the same family. They claim to be indirect victims of the kidnapping and murder of two immediate family members. Their remains were found in one of the crime sites mentioned in the Amended Indictment in the relevant period. The applicants claim to have suffered mental and some of them also material harm. They indicated not having any documentation on harm.

47. Applicant Victim-203/06 claims to be an indirect victim of enforced disappearance and murder of an immediate family member. The family member was taken to one of the detention sites mentioned in the Amended Indictment in the relevant period. The family tried to obtain information on the direct victim, but they were unsuccessful. The applicant claims to have suffered mental and material harm and has no supporting documentation.

48. Applicant Victim-204/06 claims to be a direct victim of unlawful detention, cruel treatment, and torture by the KLA in one of detention sites mentioned in the Amended

Indictment during the relevant period. The applicant claims to have suffered physical, mental, and material harm and has no supporting documentation.

(b) Group B

49. Applicant Victim-88/06 and claims to be an indirect victim of the kidnapping and murder of two immediate family members on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicant claims to have suffered mental and material harm. The applicant submitted a medical report as supporting documentation and indicated not having any other documentation.

50. Applicant Victim-90/06 claims to be an indirect victim of the torture and murder by the KLA of an immediate family member in front of their house on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicant claims to have suffered mental and material harm. The applicant submitted all available supporting documentation.

51. Applicants Victim-89/06, Victim-91/06, Victim-92/06, Victim-93/06, and Victim-94/06 are members of the same family. They claim to be indirect victims of the murder and cruel treatment of two immediate family members in their family home on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicants claim to have suffered physical, mental, and material harm. They indicated not having any documentation on harm.

52. Applicants Victim-104/06 and Victim-105/06 are members of the same family. They claim to be indirect victims of the kidnapping and murder of an immediate family member by the KLA on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicants claim to have suffered mental and material harm. They submitted all available supporting documentation.

53. Applicant Victim-107/06 claims to be an indirect victim of the enforced disappearance of an immediate family member on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicant claims to have suffered mental and material harm. The applicant submitted a medical report as supporting documentation and indicated not having any other documentation.

54. Applicants Victim-109/06, Victim-161/06, and Victim-162/06 are members of the same family. They claim to be indirect victims of the kidnapping of an immediate family member by the KLA on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicants claim to have suffered mental and material harm. They submitted all available supporting documentation.

55. Applicant Victim-164/06 claims to be an indirect victim of rape and killing of an immediate family member on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicant claims to have suffered mental harm. The applicant indicated not having any documentation on harm.

56. Applicant Victim-165/06 claims to be an indirect victim of the enforced disappearance of an immediate family member on the territory of Kosovo within the Indictment period.

57. Applicants Victim-167/06 and Victim-171/06 are members of the same family. They claim to be indirect victims of the kidnapping and murder of an immediate family member by the KLA on the territory of Kosovo within the Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicants claim to have suffered mental and material harm. They indicated not having any documentation on harm.

58. Applicants Victim-168/06, Victim-169/06, and Victim-170/06 are members of the same family. They claim to be indirect victims of the kidnapping and murder of an immediate family member by unknown persons on the territory of Kosovo within the

Indictment period. The events described cannot be linked to the charges as specified in the Amended Indictment. The applicants claim to have suffered mental and material harm. They indicated not having any documentation on harm.

C. RECOMMENDATION ON ADMISSIBILITY

59. The VPO recommends to the Pre-Trial Judge to admit 30 applicants as participating victims: Victim-97/06, Victim-99/06, Victim-100/06, Victim-101/06, Victim-102/06, Victim-103/06, Victim-110/06, Victim-112/06, Victim-163/06, Victim-121/06, Victim-122/06, Victim-123/06, Victim-124/06, Victim-125/06, Victim-180/06, Victim-186/06, Victim-187/06, Victim-188/06, Victim-191/06, Victim-212/06, Victim-195/06, Victim-196/06, Victim-197/06, Victim-198/06, Victim-199/06, Victim-200/06, Victim-201/06, Victim-202/06, Victim-203/06, and Victim-204/06.

60. The VPO assess that 20 applicants - Victim-88/06, Victim-90/06, Victim-89/06, Victim-91/06, Victim-92/06, Victim-93/06, Victim-94/06, Victim-104/06, Victim-106/06, Victim-107/06, Victim-109/06, Victim-161/06, Victim-162/06, Victim-164/06, Victim-165/06, Victim-167/06, Victim-171/06, Victim-168/06, Victim-169/06, and Victim-170/06 - 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

61. In making its recommendation to the Pre-Trial Judge on grouping, the VPO considered the criteria set out in Rule 113(8) of the Rules by looking into 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

Decision⁴⁹ as echoed in the First Decision.⁵⁰ 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”.⁵¹

62. The VPO has also considered 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.⁵²

63. 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.⁵³

64. As regards the individual circumstances of the applicants presented in this Sixth Report that are recommended for admission (Group A), they are Albanian and/or Serbian speaking and reside in different countries, including Kosovo and Serbia. VPO assesses that the situation or specificity of the victims in Group 1 and those referenced in the present report is not so different that their interests would be irreconcilable.⁵⁴

65. Consequently, after analysing the individual circumstances of the applicants in Group A, as well as the particularities of the group of applicants and the group of victims admitted to participate in the proceedings as a whole, 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

⁴⁹ Framework Decision, para. 43.

⁵⁰ First Decision, paras 73-77.

⁵¹ Framework Decision, para. 43; *see also* First Decision, para. 76.

⁵² Supplement, paras 13-29; Second Supplement, paras 46-50.

⁵³ Second Supplement, para. 49.

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

⁵⁵ First Decision, para. 77.

66. 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

67. As regards preferences on legal representation, from Group A, two applicants indicated the name of specific lawyers in the application form,⁵⁶ and one expressed a general preference not to be represented by an Albanian counsel.⁵⁷ Others did not express any preferences. In relation to the first two mentioned applicants, the VPO followed the instructions of the Pre-Trial Judge in the Second Framework Decision and made further inquiries with the applicants. The VPO inquired whether the named counsels represented them in past proceedings related to the relevant case before the Specialist Chambers and if so, whether the applicants have any expectations to be represented by the same counsel.⁵⁸ The VPO notes that none of the named counsels assisted the applicants with their applications or were in any way involved in the application process. Further, the applicants did not object to being represented by Victims Counsel already assigned to Group 1 of participating victims in the present case, should they be admitted to participate in the proceedings.

68. 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.⁵⁹

⁵⁶ Annex 8 and 22.

⁵⁷ Annex 20.

⁵⁸ Second Framework Decision, para. 22. The VPO follows this requirement with all applicants that indicate a preference as to legal representation.

⁵⁹ 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.

VI. PROTECTIVE MEASURES

69. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.⁶⁰ The protective measures requested by the applicants can be summarized as follows:

- thirteen applicants requested non-disclosure to the public;⁶¹
- twelve applicants requested non-disclosure to the public and the Accused;⁶²
- three applicants requested non-disclosure to the Accused;⁶³
- six applicants requested non-disclosure to the public, the Accused, and Defence Counsel;⁶⁴
- four applicants requested non-disclosure to the public, the Prosecution, the Accused, and Defence Counsel;⁶⁵ and
- twelve applicants did not request anything.⁶⁶

A. RECOMMENDATION GROUP A

70. 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.⁶⁷ 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 Sixth Report.⁶⁸

71. 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

⁶⁰ Framework Decision, para. 46.

⁶¹ Victim-121/06, Victim-122/06, Victim-123/06, Victim-124/06, Victim-125/06, Victim-167/06, Victim-171/06, Victim-168/06, Victim-169/06, Victim-170/06, Victim-195/06, Victim-203/06, and Victim-204/06.

⁶² Victim-110/06, Victim-112/06, Victim-163/06, Victim-109/06, Victim-180/06, Victim-196/06, Victim-197/06, Victim-198/06, Victim-199/06, Victim-200/06, Victim-201/06, and Victim-202/06.

⁶³ Victim-104/06, Victim-106/06, and Victim-165/06.

⁶⁴ Victim-88/06, Victim-97/06, Victim-107/06, Victim-164/06, Victim-191/06, and Victim-212/06.

⁶⁵ Victim-100/06, Victim-101/06, Victim-102/06, and Victim-103/06.

⁶⁶ Victim-99/06, Victim-186/06, Victim-187/06, Victim-188/06, Victim-89/06, Victim-90/06, Victim-91/06, Victim-92/06, Victim-93/06, Victim-94/06, Victim-161/06, and Victim-162/06.

⁶⁷ Framework Decision, paras 47-49.

⁶⁸ First Report, paras 59-60; First Decision, para. 61; Second Decision, para. 51.

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.⁶⁹

72. 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.⁷⁰

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

B. RECOMMENDATION GROUP B

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

Word count: 5124



Dr Fidelma Donlon

Registrar

Thursday, 18 August 2022

At The Hague, the Netherlands.

⁶⁹ First Decision, paras 68-69.

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

⁷¹ Framework Decision, para. 47.

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