



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: 20 October 2022

Language: English

Classification: Confidential and *Ex Parte*

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

with strictly confidential and *ex parte* Annexes 1-16

Registry

Victims' Participation Office

I. INTRODUCTION

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

2. With this Ninth Report, the VPO transmits to the Pre-Trial Judge 19 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 ('Corrected Confirmed Indictment' or 'Corrected Indictment').

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 ('Denied Applicants').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 (*see also* 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* (*see also* F00340/RED).

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

¹² IA005, 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* (*see also* F00611/CONF/RED and F00611/RED).

12. On 29 April 2022, pursuant to the Amendment 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. On 30 September 2022, pursuant to two decisions of the Pre-Trial Judge,¹⁷ the SPO submitted the Confirmed Amended Indictment.¹⁸
15. The VPO has been submitting reports on victims' applications on a regular basis, namely on 18 June 2021,¹⁹ 18 November 2021,²⁰ 25 January 2022,²¹ 22 July 2022,²² 18 August 2022,²³ 3 October 2022,²⁴ and 14 October 2022.²⁵
16. The applications submitted with this Ninth Report represent all complete applications to date. They have been sent to VPO either via e-mail or filled in with the direct assistance of the VPO.

¹⁴ F00777, Decision on the Confirmation of Amendments to the Indictment, 22 April 2022, strictly confidential and *ex parte* ('Amendment Decision') (see also F00777/RED, 6 May 2022).

¹⁵ F00789, Submission of Confirmed 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* (see also F00817/RED).

¹⁷ F00895, Decision on Motion Alleging Defects in the Form of the Amended Indictment, 22 July 2022; F00993, Decision on the Prosecution Request to Amend the Indictment, 29 September 2022, confidential (see also F00993/RED).

¹⁸ F00999, Submission of Confirmed Amended Indictment, 30 September 2022, public, with strictly confidential and *ex parte* Annex 1, confidential Annex 2, and public Annex 3.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

²³ F00930, Sixth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 August 2022, public, with strictly confidential and *ex parte* Annexes 1-51.

²⁴ F01007, Seventh Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 3 October 2022, public, with strictly confidential and *ex parte* Annexes 1-30.

²⁵ F01037, Eighth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, public, 14 October 2022, with strictly confidential and *ex parte* Annexes 1 – 23.

III. CLASSIFICATION

17. The VPO files this Ninth Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Ninth 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 Ninth Report may also constitute the report to the Parties pursuant to Rule 113(2) of the Rules.²⁶

18. Together with this Ninth Report, the VPO submits 16 strictly confidential and *ex parte* Annexes.²⁷ 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 15 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. Similar to the Seventh and Eighth Reports, the VPO drafted group Annexes, joining applications linked to the same events in one Annex. This filing therefore includes 19 applications, summarized in 16 annexes. 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.²⁸

19. 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.²⁹

²⁶ Framework Decision, para. 50.

²⁷ Framework Decision, para. 24(e).

²⁸ First Decision, para. 66.

²⁹ Framework Decision, para. 25; *see also* First Decision, para. 64.

IV. ASSESSMENT OF APPLICATIONS

20. 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 Law³⁰ and Rule 113(1) of the Rules.

A. COMPLETENESS OF APPLICATION FORMS

21. In assessing the completeness of the applications, the VPO reviewed the applications against the criteria listed in the Framework Decision³¹ and applied additional guidance provided by the Pre-Trial Judge in the First Decision³² and the Second Framework Decision.³³

22. 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.³⁴

23. In line with the above requirements, the VPO recommends that all applications submitted with this Ninth Report be considered as formally complete.

B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

1. Standard of proof

24. In assessing the applications and making its recommendation in this Ninth Report, the VPO applied the *prima facie* standard³⁵ for all requirements as well as any supporting documentation.

³⁰ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

³¹ Framework Decision, para. 22.

³² First Decision, paras 34-35.

³³ Second Framework Decision, para. 19.

³⁴ 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).

³⁵ 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

2. Criteria of Admissibility

25. The VPO based the assessment of admissibility on the same general principles and criteria applied in the First Report,³⁶ following the guidelines and requirements set out in the Framework Decision.³⁷ The VPO also took into consideration the findings of the First Decision³⁸, the Decision on Appeal³⁹ and the Second Decision.⁴⁰

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

(a) Natural person

27. 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 or passport as proof of identity.

(b) Alleged crimes

28. The VPO assessed whether acts described in the applications appear to constitute alleged crimes within the scope of the Confirmed Amended Indictment and evaluated whether the alleged events have taken place within the geographical and temporal scope of the indictment, thus in Kosovo and areas of northern Albania between March 1998 and September 1999.⁴¹

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

relevant circumstances as apparent at first sight; and (ii) the intrinsic coherence of the application"); First Decision, para. 43.

³⁶ First Report, paras 17-20.

³⁷ Framework Decision, paras 31, 35-37.

³⁸ First Decision, paras 44-45, 51-55.

³⁹ Decision on Appeal, paras 16, 20, 24, 35.

⁴⁰ Second Decision, paras 36, 44, 62-68.

⁴¹ Confirmed Amended Indictment, para. 16.

30. 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 Confirmed Amended Indictment.⁴²

31. 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 Confirmed Amended Indictment.⁴³

(c) Harm and Direct result

32. In reviewing the applications in Group A,⁴⁴ 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.⁴⁵

33. As regards evidentiary material, the VPO followed the findings of the First Decision⁴⁶ and the Second Framework Decision.⁴⁷ 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.⁴⁸

34. In relation to applicants within Group A, regarding the requirement that harm has to be suffered *personally*, six (6) applicants can be considered direct victims and thirteen (13) applicants can be considered indirect victims.

⁴² Framework Decision, para.32; First Decision, para. 45, Second Decision, para. 44.

⁴³ See Second Decision, paras 30, 62-68.

⁴⁴ The VPO did not review in detail the applications in Group B as regards harm, since they are out of scope.

⁴⁵ 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.

⁴⁶ First Decision, para. 35.

⁴⁷ Second Framework Decision, para. 20.

⁴⁸ See Second Decision, footnote 28, para. 37.

35. 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. The VPO assessed whether the types of harm have been described sufficiently in detail and are a consequence of the alleged crimes.

36. 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. With the exception of Victim-254/06 and Victim-266/06, all applicants provided supporting documentation of kinship. The VPO assesses that considering the specific circumstance of the applicants as described in more detail in the Annexes, not submitting relevant documentation on kinship is justified and does not affect the admissibility of the applications.⁴⁹

37. 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.⁵⁰ 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.⁵¹

38. 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.⁵²

39. With the exception of Victim-247/06 and Victim-266/06, all indirect victims are immediate family members of direct victims. Both applicants have provided further

⁴⁹ For more details, *see* Annexes 5 and 10.

⁵⁰ Framework Decision, para. 34.

⁵¹ First Decision, para. 53.

⁵² First Decision, para. 55. This was confirmed in the Second Decision, para. 45(c).

information on the nature of the relationship with the direct victim. Following the assessment of the applications, the VPO considers that the requirement of a close personal relationship with the direct victim has been sufficiently demonstrated.⁵³

40. 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.

41. 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.⁵⁴

3. General description of the applications

(a) Group A

42. Applicant Victim-247/06 claims to be an indirect victim 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 Confirmed Amended Indictment in the relevant period. The applicant claims to have suffered mental and material harm. The applicant indicated not having any supporting documentation.

43. Applicant Victim-251/06 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 Confirmed Amended Indictment during the relevant period. The applicant claims to have suffered physical and mental harm, and has submitted supporting documentation.

44. Applicant Victim-252/06 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 Confirmed Amended Indictment during the relevant period. The applicant claims to have suffered physical, mental, and material harm. The applicant has submitted supporting documentation.

⁵³ For more details, see Annex 2.

⁵⁴ See also fn. 45 above.

45. Applicants Victim-254/06 and Victim-259/06 are members of the same family. They claim to be indirect victims of enforced disappearance of an immediate family member by the KLA. The events described can be linked to one of the crime sites in the Confirmed Amended Indictment during the relevant period. The applicants claim to have suffered mental harm. Victim-254/06 also claims material harm. They indicated not having any supporting documentation.

46. Applicant Victim-216/06 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 Confirmed Amended Indictment during the relevant period. The applicant claims to have suffered mental and material harm, and has indicated not having any supporting documentation.

47. Applicants Victim-261/06 and Victim-262/06 are members of the same family. Victim-261/06 is a direct victim of unlawful detention, cruel treatment, and torture by the KLA in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period. Victim-262/06 witnessed the unlawful arrest and claims to be an indirect victim of the alleged crimes committed against Victim-261/06. Both applicants claim to have suffered mental harm. Victim-261/06 also claims physical and material harm. They submitted supporting documentation.

48. Applicant Victim-260/06 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 Confirmed Amended Indictment during the relevant period. The applicant claims to have suffered physical, mental, and material harm, and has not submitted supporting documentation by the time of the filing of this Ninth Report.⁵⁵

49. Applicant Victim-265/06 claims to be an indirect victim of unlawful detention, cruel treatment, and torture by the KLA of an immediate family member in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant

⁵⁵ See Annex 8.

period. The applicant claims to have suffered mental harm and indicated not having any supporting documentation.

Applicant Victim-266/06 claims to be an indirect victim of unlawful detention, cruel treatment, and torture by the KLA of a family member in one of the detention sites mentioned in the Confirmed Amended Indictment during the relevant period. The applicant claims to have suffered mental and material harm and indicated not having any supporting documentation.

(b) Group B

50. Applicants Victim-255/06 and Victim-256/06 are members of the same family. They claim to be indirect victims of the kidnapping of an immediate family member on the territory of Kosovo within the Indictment period. The events described do not appear to be linked to the charges as specified in the Confirmed Amended Indictment. The applicants claim to have suffered mental and material harm. They indicated not having any supporting documentation.

51. Applicants Victim-257/06, and Victim-258/06 are members of the same family. They claim to be indirect victims of the enforced disappearance and murder of an immediate family member on the territory of Kosovo. The events described fall outside of the temporal scope of the charges of the Confirmed Amended Indictment. The applicants claim to have suffered physical, mental, and material harm. They indicated not having any documentation on harm.

52. Applicant Victim-229/06 claims to be an indirect victim of the murder of an immediate family member on the territory of Kosovo within the Indictment period. The events described do not appear to be linked to the charges as specified in the Confirmed Amended Indictment. The applicant claims to have suffered mental and material harm, and indicated not having any supporting documentation.

53. Applicant Victim-253/06 claims to be a direct victim of cruel treatment and torture on the territory of Kosovo within the Indictment period. The events described do not appear to be linked to any detention sites as specified in the Confirmed

Amended Indictment. The applicant claims to have suffered mental harm and submitted supporting documentation.

54. Applicant Victim-264/06 claims to be an indirect victim of the murder of an immediate family member on the territory of Kosovo within the Indictment period. The events described do not appear to be linked to the charges as specified in the Confirmed Amended Indictment. The applicant claims to have suffered mental harm and indicated not having any supporting documentation. Applicant Victim-263/06 claims to be an indirect victim of the enforced disappearance of an immediate family member on the territory of Kosovo. The events described are outside the temporal scope of the Confirmed Amended Indictment. The applicant claims to have suffered mental harm and indicated not having any supporting documentation.

C. RECOMMENDATION ON ADMISSIBILITY

55. The VPO recommends to the Pre-Trial Judge to admit eleven applicants as participating victims: Victim-247/06, Victim-251/06, Victim-252/06, Victim-254/06, Victim-259/06, Victim-216/06, Victim-261/06, Victim-262/06, Victim-260/06, Victim-265/06, Victim-266/06.

56. The VPO assess that eight applicants – Victim-255/06, Victim-256/06, Victim-257/06, Victim-258/06, Victim-229/06, Victim-253/06, Victim-264/06, Victim-263/06 - 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 Confirmed 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

57. 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 Decision⁵⁶ as echoed in the First Decision.⁵⁷ 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”.⁵⁸

58. 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.⁵⁹

59. 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.⁶⁰

60. As regards the individual circumstances of the applicants presented in this Ninth 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.⁶¹

⁵⁶ Framework Decision, para. 43.

⁵⁷ First Decision, paras 73-77.

⁵⁸ Framework Decision, para. 43; *see also* First Decision, para. 76.

⁵⁹ Supplement, paras 13-29; Second Supplement, paras 46-50.

⁶⁰ Second Supplement, para. 49.

⁶¹ Framework Decision, para. 43; *see also* First Decision, para. 76.

61. 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 to 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).⁶²

62. 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

63. As regards legal representation, none of the applicants indicated any preferences.

64. The VPO submits that there appear 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.⁶³

VI. PROTECTIVE MEASURES

65. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of the proceedings.⁶⁴ The protective measures requested by the applicants can be summarized as follows:

- one applicant requested non-disclosure to the public;⁶⁵
- six applicants requested non-disclosure to the public and the Accused;⁶⁶
- one applicant requested non-disclosure to the Accused;⁶⁷

⁶² First Decision, para. 77.

⁶³ 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.

⁶⁴ Framework Decision, para. 46.

⁶⁵ Victim-216/06.

⁶⁶ Victim-255/06, Victim-256/06, Victim-264/06, Victim-260/06, Victim-263/06, Victim-266/06.

⁶⁷ Victim-252/06.

- two applicants requested non-disclosure to the public, the Accused, and Defence Counsel;⁶⁸
- four applicants requested non-disclosure to the public, the Prosecution, the Accused, and Defence Counsel;⁶⁹ and
- five applicants did not request anything.⁷⁰

A. RECOMMENDATION GROUP A

66. 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.⁷¹

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 Ninth Report.⁷²

68. 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.⁷³

69. 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.⁷⁴ In making this recommendation, the VPO also takes note of the findings of the recent decision on

⁶⁸ Victim-251/06, Victim-253/06.

⁶⁹ Victim-254/06, Victim-261/06, Victim-262/06, Victim-265/06.

⁷⁰ Victim-247/06, Victim-259/06, Victim-257/06, Victim-258/06, Victim-229/06.

⁷¹ Framework Decision, paras 47-49.

⁷² First Report, paras 59-60; First Decision, para. 61; Second Decision, para. 51.

⁷³ First Decision, paras 68-69.

⁷⁴ First Decision, para. 70; Second Decision, para. 52.

protective measures by the Court of Appeals Panel, where the Panel found that anonymity of victims participating in proceedings is a valid protective measure and, at this stage of the proceedings, does not violate basic constitutional rights and international human rights of the Accused.⁷⁵

70. The VPO considers that the above-requested protective measures are strictly necessary, appropriate, and proportionate at this stage of the proceedings.⁷⁶

B. RECOMMENDATION GROUP B

71. 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.⁷⁷

Word count: 4,807



Dr Fidelma Donlon
Registrar

20 October 2022

At The Hague, the Netherlands.

⁷⁵ IA023, F00006, Decision on Veseli's Appeal against "Third Decision on Victims Participation", 15 September 2022, public, paras 32 and 52.

⁷⁶ Framework Decision, para. 47.

⁷⁷ First Decision, para. 72; Second Decision, para. 56.