



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 12 December 2022

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

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THE PRE-TRIAL JUDGE,¹ 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 26 October 2020, the Pre-Trial Judge confirmed² the indictment against Hashim Thaçi ("Mr Thaçi"), Kadri Veseli ("Mr Veseli"), Rexhep Selimi and Jakup Krasniqi (collectively "Accused" or "Defence") ("Confirmed Indictment").³

2. On 4 January 2021 and 6 July 2021, the Pre-Trial Judge issued the "Framework Decision on Victims' Applications" ("First Framework Decision") and the "Second Framework Decision on Victims' Applications", thus establishing the principles governing the admission of victims to participate in the proceedings.⁴

3. On 21 April 2021, 10 December 2021, and 25 May 2022, the Pre-Trial Judge issued the first, second and third decisions on victims' participation, admitting 32 victims to participate in the proceedings and rejecting eight applications

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

² KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was issued on 19 November 2020, F00026/CONF/RED, and a public redacted version on 30 November 2020, F00026/RED.

³ KSC-BC-2020-06, F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential. A further corrected confirmed indictment, correcting certain clerical errors, was submitted on 4 November 2020, strictly confidential and *ex parte* (F00045/A01), with confidential redacted (F00045/A02) and public redacted (F00045/A03) versions. A lesser confidential redacted version was submitted on 11 December 2020 (F00134). A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. A confidential further lesser redacted version of the confirmed indictment was filed on 17 January 2022, F00647/A01.

⁴ KSC-BC-2020-06, F00159, Pre-Trial Judge, *Framework Decision on Victims' Applications*, 4 January 2021, public; F00382, Pre-Trial Judge, *Second Framework Decision on Victims' Applications* ("Second Framework Decision"), 6 July 2021, public.

(“First Decision on Victims’ Participation”, “Second Decision on Victims’ Participation” and “Third Decision on Victims’ Participation”, respectively).⁵

4. On 25 January 2022, the Victims’ Participation Office (“VPO”) filed a fourth report on victims’ applications, transmitting 16 applications (“Fourth Registry Report”).⁶

5. On 10 February 2022, the Defence for Mr Thaçi (“Thaçi Defence”) responded to the Fourth Registry Report (“Thaçi Response”).⁷

6. On 29 April 2022, following the Pre-Trial Judge’s confirmation of amendments to the charges,⁸ the Specialist Prosecutor’s Office (“SPO”) filed an amended indictment (“Amended Indictment”).⁹

7. On 22 July 2022, the VPO filed a fifth report on victims’ applications, transmitting 25 applications (“Fifth Registry Report”).¹⁰

⁵ KSC-BC-2020-06, F00257, Pre-Trial Judge, *First Decision on Victims’ Participation*, 21 April 2021, confidential, para. 85(a), (f). A public redacted version was issued on the same day, F00257/RED; F00611, Pre-Trial Judge, *Second Decision on Victims’ Participation*, 10 December 2021, strictly confidential and *ex parte*, para. 70(a)-(c). Confidential redacted and public redacted versions were issued on the same day, F00611/CONF/RED and F00611/RED; F00817, Pre-Trial Judge, *Third Decision on Victims’ Participation*, 25 May 2022, strictly confidential and *ex parte*, para. 50(a). A public redacted version was issued on the same day, F00817/RED.

⁶ KSC-BC-2020-06, F00656, VPO, *Fourth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 25 January 2022, public, with Annexes 1-17, strictly confidential and *ex parte*.

⁷ KSC-BC-2020-06, F00685, Specialist Counsel, *Thaçi Defence Response to Fourth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 10 February 2022, public.

⁸ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 185. A confidential redacted version was filed on the same day, F00777/CONF/RED. A public redacted version was filed on 6 May 2022, F00777/RED.

⁹ KSC-BC-2020-06, F00789/A01, Specialist Prosecutor, *Amended Indictment*, 29 April 2022, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were filed on the same day, F00789/A02 and F00789/A05, respectively. Following the decision authorising additional amendments to the charges, a further amended indictment was submitted on 30 September 2022, strictly confidential and *ex parte* (F00999/A01), with confidential redacted (F00999/A02) and public redacted (F00999/A03) versions.

¹⁰ KSC-BC-2020-06, F00894, VPO, *Fifth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 22 July 2022, public, with Annexes 1-26, strictly confidential and *ex parte*.

8. On 4 August 2022, the Defence for Mr Veseli (“Veseli Defence”) responded to the Fifth Registry Report (“Veseli Response”).¹¹

9. On 15 September 2022, following an appeal against the Third Decision on Victims’ Participation by the Veseli Defence,¹² the Court of Appeals confirmed the Pre-Trial Judge’s legal test applicable in granting protective measures (“Court of Appeals Decision on Protective Measures”).¹³

II. SUBMISSIONS

A. VPO

10. In the Fourth Registry Report, the VPO assesses the applications submitted by victim applicants 23/06, 29/06, 30/06, 31/06, 32/06, 42/06, 43/06, 48/06, 49/06, 50/06, 51/06, 52/06, 60/06, 61/06, 62/06 and 69/06 to be complete but inadmissible as none of the crimes that the applicants allege to be a victim of fall within the confirmed charges, as specified in the Amended Indictment.¹⁴ The VPO therefore recommends the Pre-Trial Judge to deny all of the applications for participation as victims in the proceedings¹⁵ and does not make a recommendation on grouping and common legal representation.¹⁶ Lastly, the VPO proposes that the names and identifying information of all applicants be withheld from the Parties and the public.¹⁷

¹¹ KSC-BC-2020-06, F00916, Specialist Counsel, *Veseli Defence Response to Fifth Registry Report on Victims’ Applications for Participation in the Proceedings (F00894)*, 4 August 2022, public.

¹² KSC-BC-2020-06, IA023/F00002, Specialist Counsel, *Veseli Defence Interlocutory Appeal Against Third Decision on Victims’ Participation*, 12 July 2022, public.

¹³ KSC-BC-2020-06, IA023/F00006, Court of Appeals, *Decision on Veseli’s Appeal Against “Third Decision on Victims’ Applications”*, 15 September 2022, public, paras 32, 52-52. A corrected version was filed on the same day, IA023/F00006/COR.

¹⁴ Fourth Registry Report, paras 2, 13, 20, 29, 31; Annex 1 to the Fourth Registry Report.

¹⁵ Fourth Registry Report, para. 43.

¹⁶ Fourth Registry Report, para. 44.

¹⁷ Fourth Registry Report, para. 47.

11. In the Fifth Registry Report, the VPO assesses the applications submitted by the victim applicants 24/06, 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 70/06, 71/06, 72/06, 73/06, 74/06, 75/06, 76/06, 77/06, 78/06, 79/06, 80/06, 81/06, 82/06, 83/06, 84/06, 85/06, 86/06 and 87/06 to be complete.¹⁸ The VPO recommends the Pre-Trial Judge to admit 21 applicants as participating victims and deny four applicants as the crimes that these four applicants allege to be victim of do not fall within the confirmed charges, as specified in the Amended Indictment.¹⁹ It further recommends that the 21 applicants recommended for admission be grouped with the already admitted victims for the purpose of common legal representation and that they be represented by the assigned Victims' Counsel.²⁰ Lastly, the VPO proposes that all applicants recommended to be admitted as participating victims be granted anonymity and that all applicants recommended to be denied as participating victims should have their names and identifying information withheld from the Parties and the public.²¹

B. THAÇI DEFENCE

12. In respect of the Fourth Registry Report, the Thaçi Defence responds that it supports the VPO's recommendation to deny the 16 applications for participation as victims in the proceedings,²² as the applicants have not sufficiently demonstrated, on a *prima facie* basis, that the events described in their applications fall within the material, geographical or temporal parameters of the confirmed charges.²³

¹⁸ Fifth Registry Report, paras 2, 18, 21; Annex 1 to the Fifth Registry Report.

¹⁹ Fifth Registry Report, paras 56-57; Annex 1 to the Fifth Registry Report.

²⁰ Fifth Registry Report, para. 63.

²¹ Fifth Registry Report, paras 69-72.

²² Thaçi Response, paras 1, 23.

²³ Thaçi Response, paras 16, 22.

C. VESELI DEFENCE

13. In respect of the Fifth Registry Report, the Veseli Defence responds that it does not oppose the admissibility of the recommended victims for participation in the proceedings, but it requests that the Pre-Trial Judge deny anonymity to all victims and limit protective measures according to the legal instrument of the Specialist Chambers (“SC”).²⁴ The Veseli Defence submits that total anonymity is not a valid protective measure for victims participating in the proceedings and is, at the time of filing, under deliberation before the Court of Appeals.²⁵ Accordingly, it requests that the Pre-Trial Judge defer his decision until the Court of Appeals issues its decision.²⁶ Alternatively, the Veseli Defence requests that the Pre-Trial Judge: (i) rejects the VPO’s recommendation concerning protective measures in the Fifth Registry Report; and/or (ii) orders the VPO to provide information concerning security issues faced by each individual applicant as the VPO failed to carry out detailed risk assessments for each victim applicant and the recommendations are unsupported by facts.²⁷

III. APPLICABLE LAW

A. APPLICATION AND ADMISSION TO THE PROCEEDINGS

14. 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 SC and alleged in an indictment confirmed by the Pre-Trial Judge.

15. 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

²⁴ Veseli Response, paras 1, 14.

²⁵ Veseli Response, paras 5, 14.

²⁶ Veseli Response, paras 5, 14.

²⁷ Veseli Response, paras 7-14.

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.

16. 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.

17. Pursuant to Rule 113(3) of the Rules, the Parties may only make submissions on legal grounds regarding admissibility and common representation.

18. 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.

19. 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.²⁸

20. 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 with common representation, taking into consideration: (a) any conflicting interests that may hinder common representation; (b) any

²⁸ 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.

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

28. 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.

29. 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.

30. Pursuant to Rule 80(4) of the Rules, such measures may include the 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. PRELIMINARY MATTER

31. In respect of the Veseli Defence's request that the Pre-Trial Judge defer his decision on the VPO's request for anonymity,²⁹ the Pre-Trial Judge notes that the Court of Appeals has since issued its decision.³⁰ Accordingly, this request is moot and the Pre-Trial Judge will consider the Fifth Registry Report in its entirety.

V. DISCUSSION

32. In assessing the applications of the 41 victim applicants, the Pre-Trial Judge is guided by the principles set out in the First Framework Decision and the First Decision on Victims' Participation with regard to the requirements for an application to be considered complete,³¹ the admissibility criteria,³² the standard of proof,³³ the legal test applicable in granting protective measures³⁴ and the criteria for grouping victims for the purpose of common legal representation.³⁵

A. ASSESSMENT OF APPLICATIONS IN FOURTH REGISTRY REPORT

1. Completeness of Applications

33. Having assessed the applications forms and supporting documentation against the requirements set out in the First Framework Decision,³⁶ the Pre-Trial Judge is satisfied that all application forms are complete.³⁷

²⁹ Veseli Response, paras 5, 14.

³⁰ *See supra*, para. 9.

³¹ First Framework Decision, para. 22; First Decision on Victims' Participation, para. 34.

³² First Framework Decision, paras 28, 30-39; First Decision on Victims' Participation, paras 42, 45, 50-55.

³³ First Framework Decision, para. 29; First Decision on Victims' Participation, para. 43.

³⁴ First Framework Decision, paras 45-49; First Decision on Victims' Participation, paras 64, 67.

³⁵ First Framework Decision, paras 42-44 (*see also* paras 27, 40-41, 44, and 49, on the role of the VPO in conducting the preliminary assessment regarding admissibility, grouping and protective measures); First Decision on Victims' Participation, para. 76.

³⁶ *See* First Framework Decision, para. 22.

³⁷ *See also* Fourth Registry Report, para. 20.

2. Admissibility of Applications

34. *Natural persons.* The Pre-Trial Judge is satisfied that all victim applicants are natural persons.³⁸

35. *Alleged crimes.* The Pre-Trial Judge recalls that, as confirmed by the Court of Appeals, the crimes in relation to which an applicant claims to be a victim must fall under the material, geographical and temporal parameters of the charges, as specified in the Amended Indictment.³⁹ In making this assessment, the Pre-Trial Judge examines the VPO reports, the application forms, the supporting documentation and the relevant parts of the Amended Indictment, which are the reference points for the Pre-Trial Judge's analysis and are to be read together with the Pre-Trial Judge's reasoning. While each application is assessed individually, this assessment may not necessarily translate into separate reasoning for each applicant, especially where the reasons are the same or similar, so as to ensure the expeditious and efficient conduct of the proceedings.⁴⁰

36. The Pre-Trial Judge finds that all applicants in the Fourth Registry Report have not established, on a *prima facie* basis, that the crimes that they claim to have been victims of fall under the temporal, geographical and material scope of the charges, as specified in the Amended Indictment, and therefore fall outside the scope of Rules 2 and 113(1) of the Rules.⁴¹ More specifically:

- (a) **Victim 23/06** claims that his immediate family members was taken from their house in [REDACTED] by members of the Kosovo Liberation Army

³⁸ Fourth Registry Report, para. 24.

³⁹ KSC-BC-2020-06, IA005/F00008, Court of Appeals, *Decision on Appeal Against "First Decision on Victims' Participation"* ("Decision on Appeal of First Decision on Victims' Participation"), 16 July 2021, public, para. 35; First Framework Decision, para. 32; Second Decision on Victims' Participation, para. 61.

⁴⁰ See Second Decision on Victims' Participation, para. 61.

⁴¹ Fourth Registry Report, para. 43; Annexes 2-17 to the Fourth Registry Report. The Pre-Trial Judge notes that while the VPO refers to the Corrected Confirmed Indictment, he has assessed all applications against the Amended Indictment.

(“KLA”) in [REDACTED].⁴² **Victims 30/06 and 31/06** claim that their immediate family member was last seen in [REDACTED] and was taken from and to an unknown location by members of the KLA in [REDACTED].⁴³ **Victim 32/06** claims that her immediate family member was taken from [REDACTED] and taken to an unknown location by men wearing KLA uniforms in [REDACTED].⁴⁴ **Victim 48/06** claims that his immediate family member was taken from [REDACTED] and taken to an unknown location, believed to be one of the KLA camps in the area, in [REDACTED].⁴⁵ **Victims 50/06 and 51/06** claim that their immediate family members were taken from [REDACTED] and taken to an unknown location by men in KLA uniforms in [REDACTED].⁴⁶ **Victims 60/06, 61/06 and 62/06** claim that their immediate family member was taken in [REDACTED].⁴⁷ The whereabouts of the immediate family members of Victims 23/06, 30/06, 31/06, 32/06, 48/06, 50/06, 51/06, 60/06, 61/06 and 62/06 remain unknown to this day.⁴⁸ The Pre-Trial Judge notes that: (i) the information provided is not sufficient for a *prima facie* finding that the direct victims were held at one of the detention sites identified in the Amended Indictment;⁴⁹ (ii) the direct victims are not among the alleged victims of murder or enforced

⁴² Victim 23/06, Application Form; Annex 2 to the Fourth Registry Report.

⁴³ Victim 30/06, Application Form; SD3-English Summary of Additional Information; Victim 31/06, Application Form; Annexes 4-5 to the Fourth Registry Report.

⁴⁴ Victim 32/06, Application Form; Annex 6 to the Fourth Registry Report.

⁴⁵ Victim 48/06, Application Form; SD3-Cover Letter by Lawyer; Annex 9 to the Fourth Registry Report.

⁴⁶ Victim 50/06, Application Form; Victim 51/06, Application Form; Annexes 11-12 to the Fourth Registry Report.

⁴⁷ Victim 60/06, Application Form; SD4-Note to File; Victim 61/06, Application Form; Victim 62/06, Application Form; Annexes 14-16 to the Fourth Registry Report.

⁴⁸ Victim 23/06, Application Form; Victim 30/06, Application Form; Victim 31/06, Application Form; Victim 32/06, Application Form; Victim 48/06, Application Form; Victim 50/06, Application Form; Victim 51/06, Application Form; Victim 60/06, Application Form; Victim 61/06, Application Form; Victim 62/06, Application Form; Annexes 2, 4-6, 9, 11-12, 14-16 to the Fourth Registry Report.

⁴⁹ See Amended Indictment, paras 61-95; Schedule A.

disappearance named in the Amended Indictment;⁵⁰ and (iii) concerning Victims 60/06's, 61/06's and 62/06's claims, the information is not sufficient for a *prima facie* finding that the direct victim was taken by KLA members.

(b) **Victims 29/06 and 43/06** claim that their immediate family members were killed by members of the KLA in [REDACTED].⁵¹ **Victim 52/06** claims that her immediate family member was killed by members of the KLA in [REDACTED].⁵² **Victim 69/06** claims that his immediate family member was killed by a group of [REDACTED]/members of the KLA in [REDACTED].⁵³ The Pre-Trial Judge notes that: (i) the direct victims are not among the alleged victims of murder or enforced disappearance named in the Amended Indictment;⁵⁴ and (ii) Victim 52/06's claim is also outside the temporal scope of the Amended Indictment.⁵⁵

(c) **Victim 42/06** claims that her immediate family members were taken from [REDACTED] and taken to a KLA detention camp in [REDACTED]. The direct victims' remains were identified in [REDACTED].⁵⁶ **Victim 49/06** claims that her immediate family member was taken from [REDACTED] and taken to one of the KLA camps in [REDACTED] where he was tortured and murdered. The remains of the direct victim were found in

⁵⁰ See Decision on Appeal of First Decision on Victims' Participation, para. 24; F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment* ("Decision on Defects in the Form of the Indictment"), 22 July 2021, confidential, paras 159-161, 171. A public redacted version was issued on the same day, F00413/RED; Amended Indictment, paras 138-175; Schedule B; Schedule C.

⁵¹ Victim 29/06, Application Form; Victim 43/06, Application Form; Annexes 3, 8 to the Fourth Registry Report.

⁵² Victim 52/06, Application Form; Annex 13 to the Fourth Registry Report.

⁵³ Victim 69/06, Application Form; Annex 17 to the Fourth Registry Report. The Pre-Trial Judge notes that while Annex 17 to the Fourth Registry Report only refers to [REDACTED], Victim 69/06's Application Form refers to "members of the KLA".

⁵⁴ Decision on Appeal of First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, paras 159-161, 171; Amended Indictment, paras 138-175; Schedule B; Schedule C.

⁵⁵ See Amended Indictment, para. 16.

⁵⁶ Victim 42/06, Application Form; Annex 7 to the Fourth Registry Report.

[REDACTED] and were identified in [REDACTED].⁵⁷ The Pre-Trial Judge notes that: (i) [REDACTED] does not appear in the Amended Indictment as a charged location;⁵⁸ (ii) the information provided is not sufficient for a *prima facie* finding that Victim 49/06's family member was held at one of the detention sites identified in the Amended Indictment; and (iii) the direct victims are not named among the alleged victims of murder or enforced disappearance named in the Amended Indictment.⁵⁹

37. The above findings are without prejudice to any future applications and ruling on their admissibility, should the charges against the Accused in the Amended Indictment be amended. The remaining admissibility criteria will not be assessed in relation to these applicants.

3. Conclusion

38. In light of the above, the Pre-Trial Judge finds that Victims 23/06, 29/06, 30/06, 31/06, 32/06, 42/06, 43/06, 48/06, 49/06, 50/06, 51/06, 52/06, 60/06, 61/06, 62/06 and 69/06, for the reasons provided at paragraph 36, are not admitted to the proceedings as participating victims.

B. ASSESSMENT OF APPLICATIONS IN FIFTH REGISTRY REPORT

1. Completeness of Applications

39. Having assessed the application forms and supporting documentation against the requirements set out in the First Framework Decision,⁶⁰

⁵⁷ Victim 49/06, Application Form; Annex 10 to the Fourth Registry Report.

⁵⁸ See Amended Indictment, paras 61-95; Schedule A.

⁵⁹ Decision on Appeal of First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, paras 159-161, 171; Amended Indictment, paras 138-175; Schedule B; Schedule C.

⁶⁰ See First Framework Decision, para. 22.

the Pre-Trial Judge is satisfied that all applications are complete.⁶¹ The Pre-Trial Judge notes, however, that some supporting documents are not available in English,⁶² or are of poor legibility,⁶³ and directs the VPO, in the future, to provide English translations or legible versions of all supporting documents.

2. Admissibility of Applications

40. *Natural persons.* The Pre-Trial Judge is satisfied that all victim applicants are natural persons.⁶⁴

41. *Alleged Crimes.* The Pre-Trial Judge is further satisfied that 21 of the applicants are victims of crimes allegedly committed at locations identified in the Amended Indictment and the alleged crimes fall within the temporal scope of the charges as specified in the Amended Indictment in relation to each of the locations.⁶⁵ More specifically:

- (a) **Victims 63/06, 64/06, 65/06, 66/06, 67/06 and 68/06** are indirect victims of imprisonment/illegal or arbitrary arrest and detention, torture and murder allegedly committed in [REDACTED] and [REDACTED] in [REDACTED] against an immediate family member who is named as victim in the Amended Indictment.⁶⁶

⁶¹ See also Fifth Registry Report, para. 21. The Pre-Trial Judge notes that, while documentation regarding harm suffered has not been submitted by Victims 63/06, 64/06, 65/05, 66/06, 67/06, 68/06, 72/06, 73/06, 74/06, 75/06, 76/06, 77/06, 78/06, 79/06, 80/06, 84/06, 85/06, 86/06, the detailed accounts provided by them are sufficient to allow the relevant findings to be made.

⁶² See, for example, Victim 70/06, SD2-Medical Prescription; Victim 81/06, SD2-Medical Report; Victim 82/06, SD3-Medical Certificates, SD4-Housing and Property Claim, SD5-Decision on the Allocation of Accommodation, SD7-Article from Newspaper; Victim 85/06, SD3-Death Certificate.

⁶³ See, for example, Victim 71/06, SD4-Medical Documentation, Victim 85/06, SD3-Death Certificate; SD4-Property Document.

⁶⁴ Fifth Registry Report, para. 25.

⁶⁵ Fifth Registry Report, para. 28.

⁶⁶ Victim 63/06, Application Form; Victim 64/06, Application Form; Victim 65/06, Application Form; Victim 66/06, Application Form, SD3-Death Certificate, SD4-E-mail; Victim 67/06, Application Form; Victim 68/06, Application Form; Amended Indictment, [REDACTED]; Annexes 2-7 to the Fifth Registry Report.

- (b) **Victim 70/06** is a direct victim of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment and torture allegedly committed in [REDACTED].⁶⁷
- (c) **Victim 71/06** is a direct victim of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment and torture allegedly committed in [REDACTED].⁶⁸
- (d) **Victim 72/06** is an indirect victim of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment, torture and murder allegedly committed in [REDACTED] against an immediate family member who is named as victim in the Amended Indictment.⁶⁹
- (e) **Victim 73/06** is a direct victim of unlawful detention and other inhumane acts and cruel treatment allegedly committed in [REDACTED].⁷⁰
- (f) **Victims 74/06, 77/06 and 84/06** are indirect victims of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment, torture and murder allegedly committed in [REDACTED] and [REDACTED] in [REDACTED] against an immediate family member who is a named victim in the Amended Indictment.⁷¹

⁶⁷ Victim 70/06, Application Form; SD2-Medical Prescription; Amended Indictment, [REDACTED]; Annex 8 to the Fifth Registry Report.

⁶⁸ Victim 71/06, Application Form; SD3-Photo; SD4-Medical Documentation; Amended Indictment, [REDACTED]; Annex 9 to the Fifth Registry Report.

⁶⁹ Victim 72/06, Application Form, SD2-Death Certificate; Amended Indictment, [REDACTED]; Annex 10 to the Fifth Registry Report.

⁷⁰ Victim 73/06, Application Form; Amended Indictment, [REDACTED]; Annex 11 to the Fifth Registry Report.

⁷¹ Victim 74/06, Application Form; SD3-Death Certificate; Victim 77/06, Application Form; Victim 84/06, Application Form; SD4-Note to the File; Amended Indictment, [REDACTED]; Annexes 12, 15, 20 to the Fifth Registry Report.

- (g) **Victim 75/06** is a direct victim of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment, and torture allegedly committed in [REDACTED].⁷²
- (h) **Victim 76/06** is a direct victim of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment, and torture allegedly committed in [REDACTED].⁷³
- (i) **Victims 78/06, 79/06 and 80/06** are indirect victims of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment, torture and murder allegedly committed in [REDACTED] and [REDACTED] in [REDACTED] against an immediate family member who is a named victim in the Amended Indictment.⁷⁴
- (j) **Victim 82/06** is a direct and indirect victim of imprisonment/illegal or arbitrary arrest and detention, and other inhumane acts and cruel treatment allegedly committed in [REDACTED] against himself and immediate family members.⁷⁵
- (k) **Victims 85/06 and 86/06** are indirect victims of imprisonment/illegal or arbitrary arrest and detention allegedly committed in [REDACTED] against an immediate family member.⁷⁶ The Pre-Trial Judge notes that Victims 85/06 and 86/06 also claim to be indirect victims of murder and/or

⁷² Victim 75/06, Application Form; Amended Indictment, [REDACTED]; Annex 13 to the Fifth Registry Report.

⁷³ Victim 76/06, Application Form; Amended Indictment, [REDACTED]; Annex 14 to the Fifth Registry Report.

⁷⁴ Victim 56/06, Application Form; Victim 78/06, Application Form; SD4-Mortal Remains Certificate; SD5-Cause of Death Certificate; SD6-DNA Certificate; SD7-Identification Certificate; Victim 79/06, Application Form; Victim 80/06, Application Form; Amended Indictment, [REDACTED]; Annexes 16-18 to the Fifth Registry Report. The Pre-Trial Judge notes that while Victims 78/06, 79/06 and 80/06 do not mention [REDACTED], their immediate family member is named as a victim at this location in the Amended Indictment.

⁷⁵ Victim 82/06, Application Form; SD3-Medical Certificate; Amended Indictment, [REDACTED]; Annex 19 to the Fifth Registry Report.

⁷⁶ Victim 85/06, Application Form; SD6-Description of the Event; Victim 86/06, Application Form; Amended Indictment, [REDACTED]; Annexes 21-22 to the Fifth Registry Report.

enforced disappearance against two immediate family members but finds that, as the family members are not among the victims of murder or enforced disappearance named in the Amended Indictment, the alleged crime falls outside the scope of the charges.⁷⁷

42. As regards **Victims 24/06, 81/06, 83/06 and 87/06**, the Pre-Trial Judge considers that these victims have not established, on a *prima facie* basis, that the crimes they claim to have been victims of fall under the temporal, geographical and material scope of the charges, as specified in the Amended Indictment, and therefore fall outside the scope of Rules 2 and 113(1) of the Rules. More specifically:

- (a) **Victim 24/06** claims that her immediate family member was taken from [REDACTED] and taken to an unknown location by KLA members in [REDACTED].⁷⁸ His whereabouts remains unknown until this day.⁷⁹ The Pre-Trial Judge notes that: (i) the information provided is not sufficient for a *prima facie* finding that the direct victim was held at one of the detention sites identified in the Amended Indictment;⁸⁰ and (ii) the direct victim is not among the alleged victims of murder or enforced disappearance named in the Amended Indictment.⁸¹
- (b) **Victim 81/06** claims that a group of men broke into his family house in [REDACTED] and killed his immediate family members in

⁷⁷ Victim 85/06, Application Form; SD6-Description of Events; SD6-Note to File; Decision on Appeal against First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, paras 159-161, 171; Amended Indictment, paras 138-175; Schedule B; Schedule C.

⁷⁸ Victim 24/06, Application Form; Annex 23 to the Fifth Registry Report.

⁷⁹ Victim 24/06, Application Form; Annex 23 to the Fifth Registry Report.

⁸⁰ See Amended Indictment, paras 61-95; Schedule A.

⁸¹ Decision on Appeal Against First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, para. 159-161, 171; Amended Indictment, para. 138-175; Schedule B; Schedule C.

[REDACTED].⁸² **Victim 83/06** claims that his immediate family members were killed in [REDACTED] by KLA fighters in [REDACTED].⁸³ **Victim 87/06** claims that his immediate family member was killed in [REDACTED] by a group of men from [REDACTED].⁸⁴ The Pre-Trial Judge notes that: (i) the direct victims are not among the alleged victims of murder or enforced disappearance named in the Amended Indictment;⁸⁵ and (ii) there is not sufficient information to find, on a *prima facie* basis, that Victims 81/06's and 87/06's family members were killed by KLA members.

43. The above determinations are without prejudice to any future applications, and ruling on their admissibility, should the charges against the Accused in the Amended Indictment be amended. The remaining admissibility criteria will not be assessed in relation to these applicants.

44. *Harm.* The Pre-Trial Judge is satisfied that all victim applicants have *prima facie* suffered harm as a direct result of the alleged crimes described by them, as follows:

(a) **Victims 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 72/06, 74/06, 78/06, 79/06, 80/06, 84/06, 85/06 and 86/06**, as immediate family members, have personally suffered mental harm (psychological trauma, post-traumatic stress disorder, bereavement, depression, fear, anxiety, stress and insomnia) as a direct result of the harm purportedly suffered by the direct victims.⁸⁶ The Pre-Trial Judge

⁸² Annex 24 to the Fifth Registry Report. The Pre-Trial Judge notes that the VPO has not submitted an English translation of Victim 81/06's Application Form. In the interest of efficiency, the Pre-Trial Judge has made the determination on the basis of Annex 24 to the Fifth Registry Report. However, the Pre-Trial Judge directs the VPO, in the future, to provide English translations.

⁸³ Victim 83/06, Application Form; Annex 25 to the Fifth Registry Report

⁸⁴ Victim 87/06, Application Form; Annex 26 to the Fifth Registry Report.

⁸⁵ See Amended Indictment, paras 138-175; Schedule B; Schedule C.

⁸⁶ Victim 63/06, Application Form; Victim 64/06, Application Form; Victim 65/06, Application Form; Victim 66/06, Application Form; SD4-E-mail; Victim 67/06, Application Form; Victim 68/06, Application Form; Victim 72/06, Application Form; Victim 74/06, Application Form; Victim 78/06,

notes that, while Victims 78/06 and 80/06 also claim to have suffered physical harm (high blood pressure and headaches),⁸⁷ as immediate family members of a direct victim, he considers that the information and documentation provided is not sufficient for a *prima facie* finding that the physical harm suffered by Victims 78/06 and 80/06 was a direct result of the harm caused to their immediate family members. The Pre-Trial Judge notes that Victims 85/06 and 86/06 also claim material harm⁸⁸ but considers that the information and material provided is not sufficient for a *prima facie* finding that the described material harm suffered by these victims was a direct result of the harm caused to their immediate family member.

- (b) **Victims 70/06, 71/06, 73/06, 76/06 and 82/06** have personally suffered physical harm (scars, injured jaw, physical pain and pulled out fingernails) and mental harm (depression, anxiety, panic attacks, nightmares, flashbacks and stress), as a direct result of their alleged detention and mistreatment.⁸⁹ Victims 71/06, 76/06 and 82/06 have also suffered material harm as a direct result of their alleged detention and mistreatment.⁹⁰ The Pre-Trial Judge notes that Victim 70/06 also claims material harm but as the destruction of his house took place after the war and without any apparent connection to the charges

Application Form; Victim 79/06, Application Form; Victim 80/06, Application Form; Victim 84/06, Application Form; SD4-Note to File; Victim 85/06, Application Form; SD6-Description of the Event; Victim 86/06, Application Form; Fifth Registry Report, paras 41, 44-46, 49, 51; Annexes 2-7, 10, 12, 16-18, 20-22 to the Fifth Registry Report.

⁸⁷ Victim 78/06, Application Form; Victim 80/06, Application Form.

⁸⁸Victim 85/06, Application Form; SD4-Property Document; SD6-Note to the File; Victim 86/06, Application Form. The Pre-Trial Judge notes that the VPO has not submitted an English translation of the property document and accordingly he has been unable to consider this document.

⁸⁹ Victim 70/06, Application Form; SD2-Medical Prescription; Victim 71/06, Application Form; SD3-Photo; SD4-Medical Documentation; Victim 73/06, Application Form; Victim 76/06, Application Form; Victim 82/06, Application Form; SD3-Medical Certificate; Fifth Registry Report, paras 42-43, 45, 48, 50; Annex 8-9, 11, 14, 19 to the Fifth Registry Report.

⁹⁰ Victim 71/06, Application Form; Victim 76/06, Application Form; Victim 82/06, Application Form; SD4-Housing and Property Claim; SD5-Decision on the Allocation of Accommodation; Fifth Registry Report, paras 43, 48, 50; Annexes 9, 14, 19 to the Fifth Registry Report.

in the Amended Indictment,⁹¹ the Pre-Trial Judge considers that there is not a sufficient direct link between the material harm and the charged crimes. The Pre-Trial Judge also notes that Victim 82/06 claims additional physical harm⁹² (neurological complaints, hypertension and diabetes) as a direct victim but he considers that the information and documentation provided is not sufficient for a *prima facie* finding that the described physical harm suffered by Victim 82/06 was a direct result of the harm caused to him.

(c) **Victim 75/06** has suffered mental harm (psychological trauma and anger) as a direct result of his alleged detention and mistreatment.⁹³

(d) **Victim 77/06** has suffered mental harm (psychological trauma and fear) by virtue of being in a close relationship with a direct victim.⁹⁴ In this regard, the Pre-Trial Judge clarifies that, while a close relationship with the direct victim may not be presumed (as Victim 77/06 is not an immediate family member),⁹⁵ such a relationship can be inferred from the fact that he is [REDACTED].⁹⁶

45. The above findings are without prejudice to any future ruling following submission of additional material.

3. Conclusion

46. In light of the above, the Pre-Trial Judge finds that there is *prima facie* evidence that Victims 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 70/06, 71/06, 72/06, 73/06, 74/06, 75/06, 76/06, 77/06, 78/06, 79/06, 80/06, 82/06, 84/06, 85/06 and 86/06

⁹¹ Victim 70/06, Application Form; Annex 8 to the Fifth Registry Report.

⁹² The Pre-Trial Judge notes that Victim 82/06 has referred to these harms as mental harm but he considers that they are physical harm.

⁹³ Victim 75/06, Application Form; Fifth Registry Report, para. 47; Annex 13 to the Fifth Registry Report.

⁹⁴ Victim 77/07, Application Form; Fifth Registry Report, para. 46; Annex 15 to the Fifth Registry Report.

⁹⁵ See First Decision on Victims' Participation, para. 50.

⁹⁶ Victim 77/07, Application Form.

have suffered harm as a direct result of crimes alleged in the Amended Indictment and admits them as participating victims in the proceedings.

47. The Pre-Trial Judge further finds that Victims 24/06, 81/06, 83/06 and 87/06, for the reasons provided at paragraph 42, are not admitted to the proceedings as participating victims.

C. PROTECTIVE MEASURES

1. Admitted Applicants

48. The VPO recommends that all admitted victim applicants be granted anonymity pursuant to Rule 80(4)(e)(i) of the Rules.⁹⁷

49. The Veseli Defence opposes this recommendation arguing that the VPO did not conduct a case-by-case assessment for each victim.⁹⁸ It avers this approach stands in contrast to the SPO's requests for protective measures vis-à-vis witnesses.⁹⁹ The Veseli Defence further argues that the requested protective measures are unsupported by the facts as many victims have not requested anonymity and no exceptional circumstances exist and, in any event, the subjective fears of individual victims are insufficient to outweigh the fair trial rights of the Accused.¹⁰⁰ Lastly, the Veseli Defence avers that the VPO's recommendation is disproportionate to the rights of the Accused.¹⁰¹

50. As to the Veseli Defence's request for a hearing,¹⁰² the Pre-Trial Judge first refers to Rule 80(4) of the Rules which provides that he may hold an *in camera* hearing to determine whether to order protective measures, but is not obliged to

⁹⁷ Fifth Registry Report, paras 69-70.

⁹⁸ Veseli Response, paras 7-8 *referring to* Rule 80 of the Rules and the respective provisions of the Criminal Procedure Code of Kosovo, Law No. 04/L-123 ("CPC") referred to in Article 23(1) of the Law.

⁹⁹ Veseli Response, para. 7.

¹⁰⁰ Veseli Response, paras 10-12 *referring to* Article 224(3) of the CPC

¹⁰¹ Veseli Response, paras 10, 13.

¹⁰² Veseli Response, para. 10 *referring to* Article 224(4) of the CPC.

do so. The Pre-Trial Judge therefore rejects the Veseli Defence's request for a hearing.

51. Second, concerning the Veseli Defence's argument concerning the illegality of anonymity,¹⁰³ the Pre-Trial Judge recalls his prior finding in the Third Decision on Victims' Participation that the protective measure of anonymity is foreseen by the Rules¹⁰⁴ which was upheld by the Court of Appeals.¹⁰⁵

52. Third, contrary to the Veseli Defence's assertion,¹⁰⁶ the Fifth Registry Report is supported by separate annexes for each applicant, which contain detailed risk assessments.¹⁰⁷

53. Fourth, the Pre-Trial Judge notes that the VPO's recommendations align with the requests of all admitted applicants except two of them.¹⁰⁸ Nevertheless, he emphasises that, in accordance with Rules 80, 113(2) and (5) of the Rules, the VPO shall make recommendations as to the applicants' requests for protective measure, if necessary, for their protection, safety, physical and psychological well-being, dignity and privacy.¹⁰⁹ There is nothing in the Law, or the Rules, that provides that the VPO may not make recommendations other than those requested by the victims participating in the proceedings if the VPO considers such protective measures necessary and proportionate in the circumstances. In addition, victims, when filing in the application forms, may not understand the breadth and ramifications of their security situation. Accordingly, it is the Pre-Trial Judge's

¹⁰³ Veseli Response, para. 5.

¹⁰⁴ See Third Decision on Victims' Participation, paras 36-41.

¹⁰⁵ Court of Appeals Decision on Protective Measures, para. 32.

¹⁰⁶ Veseli Response, paras 7-8.

¹⁰⁷ Annexes 2-26 to the Fifth Registry Report.

¹⁰⁸ Victim 71/06 did not request any protective measures and Victim 82/06 requested non-disclosure of identifying information to the public. See Fifth Registry Report, para. 67.

¹⁰⁹ See also First Framework Decision, paras 45, 49.

duty to assess, taking all circumstances into account, that the victims participate with security and safety.¹¹⁰

54. Lastly, while the Veseli Defence argues that the protective measure of anonymity is prejudicial to the Accused as they infringe the principle of publicity and “the right to confront witnesses in adverse proceedings”,¹¹¹ the Pre-Trial Judge considers that the Veseli Defence seems to conflate the status of witnesses with that of participating victims. The Pre-Trial Judge stresses that the purpose of victims’ participation is for them to have their personal interests represented,¹¹² and that participating victims are not witnesses incriminating the Accused and do not present charges.¹¹³ In addition, the Pre-Trial Judge recalls that victims’ participation is subject to judicial control.¹¹⁴ The Pre-Trial Judge further notes that a request for the disclosure of the witness codes of participating victims who also are SPO witnesses (where the protective measure of anonymity could impact the Accused’s right to confront witnesses) is pending before him and will be addressed in the context of that litigation.¹¹⁵ Accordingly, the Pre-Trial Judge considers that the requested protective measures, in and of themselves, do not infringe upon the rights of the Accused

55. For these reasons, the Pre-Trial Judge rejects the Veseli Defence’s submissions and will proceed to assess the VPO’s request for protective measures.

¹¹⁰ See Articles 23(1), 39(11) of the Law; Rule 80(1) of the Rules.

¹¹¹ Veseli Response, para. 10.

¹¹² See Article 22(3) of the Law; Rule 114(2) of the Rules; See also First Decision on Victims’ Participation, para. 67; Third Decision on Victims’ Participation, para. 38.

¹¹³ See Rule 2 of the Rules which defines a victim as a “natural person who has personally suffered harm, including physical, mental or material harm, as a direct result of a crime alleged in an indictment confirmed by the Pre-Trial Judge.”; See also Article 22(1) of the Law.

¹¹⁴ See Rule 114(2) of the Rules.

¹¹⁵ See KSC-BC-2020-06, F00706, Specialist Counsel, *Thaçi Defence Motion for Disclosure of Witnesses with Dual Status* (“Thaçi Defence Motion for Disclosure of Dual Status Witnesses”), 21 February 2022, public.

(a) Application Forms

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

(b) Identity of Applicants

57. At the outset, the Pre-Trial Judge recalls that, as indicated in the First Framework Decision, the legal test applicable to protective measures in relation to victims is the same as that applicable in relation to witnesses.¹¹⁶

58. In assessing the existence of an objectively justifiable risk and the necessity of the protective measures for the admitted applicants, the Pre-Trial Judge takes into account the following specific factors applicable to one or more of the victims: (i) all of them continue to suffer from physical and/or mental trauma as a result of the crimes they or their family members have allegedly been victims of;¹¹⁷ (ii) all applicants, except two, have expressed concern that revealing their identity to the public, Defence Counsel and/or the Accused might endanger them or their family;¹¹⁸ and (iii) [REDACTED].¹¹⁹

59. In addition, the Pre-Trial Judge takes into account: (i) the general climate of witness and victim intimidation prevailing in Kosovo, particularly in criminal proceedings against former members of the KLA;¹²⁰ and (ii) the Accused's means and incentives to intimidate victims, in light of the positions of authority held by

¹¹⁶ First Framework Decision, para. 47; First Decision on Victims' Participation, para. 67; Second Decision on Victims' Participation, para. 50; Third Decision on Victims' Participation, para. 42.

¹¹⁷ See *supra*, para. 44.

¹¹⁸ Fifth Registry Report, para. 67; and the application forms of each of the victims.

¹¹⁹ [REDACTED].

¹²⁰ See also KSC-BC-2020-06, IA015/F00005, Court of Appeals, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, public, para. 43.

them during the timeframe of the charges, as well as in more recent times.¹²¹ Moreover, the Pre-Trial Judge is also mindful that: (i) by virtue of their status as victims participating in the proceedings, these individuals are especially vulnerable and protective measures have to address their special needs as victims; and (ii) adequate protective measures for victims 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.¹²²

60. For these reasons, the Pre-Trial Judge considers that disclosure to the public and the Parties of any material or information leading to the identification of the victims admitted to participate in the proceedings poses an objectively justifiable risk to them and their 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.

61. Regarding the proportionality of the measures, the Pre-Trial Judge recalls his finding above¹²³ and further notes that: (i) 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;¹²⁴ (ii) victims' participation in the proceedings at the pre-trial stage is limited and accordingly have a limited impact on the rights of the Accused; and (iii) protective measures granted at this stage are without prejudice to any additional measures stemming from the victims' potential dual status, an issue which is pending before the Pre-Trial Judge and which he will address in the

¹²¹ See First Decision on Victims' Participation, para. 68; Second Decision on Victims' Participation, para. 51; Third Decision on Victims' Participation, para. 43.

¹²² See First Decision on Victims' Participation, para. 68; Second Decision on Victims' Participation, para. 51; Third Decision on Victims Participation, para. 43.

¹²³ See *supra*, para. 54.

¹²⁴ See First Decision on Victims' Participation, para. 69; Second Decision on Victims' Participation, para. 53; Third Decision on Victims' Participation, para. 45.

context of that litigation.¹²⁵ 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.

62. In the light of the above, the Pre-Trial Judge orders that the name and any identifying information of all admitted victims be withheld from the public and the Parties.

2. Rejected Applicants

63. As regards Victims 23/06, 24/06, 29/06, 30/06, 31/06, 32/06, 42/06, 43/06, 48/06, 49/06, 50/06, 51/06, 52/06, 60/06, 61/06, 62/06, 69/06, 81/06, 83/06 and 87/06, the Pre-Trial Judge considers that, by virtue of the confidentiality of the application process, as provided in Rule 113(1)-(2) of the Rules, and taking into consideration the applicants' protection of privacy, the non-disclosure to the Parties and the public of their names and identifying information is necessary. Given that none of the applicants are admitted as victims participating in the proceedings, no prejudice is caused to the Accused or a fair trial by this non-disclosure.

64. The Pre-Trial Judge accordingly orders that the names and any identifying information of Victims 23/06, 24/06, 29/06, 30/06, 31/06, 32/06, 42/06, 43/06, 48/06, 49/06, 50/06, 51/06, 52/06, 60/06, 61/06, 62/06, 69/06, 81/06, 83/06 and 87/06 be withheld from the Parties and the public and, as a result, finds it appropriate to maintain the classification of the respective application forms, summaries and supporting documentation as strictly confidential and *ex parte*.

¹²⁵ See First Decision on Victims' Participation, para. 67; Third Decision on Victims' Participation, para. 40; See also Thaçi Defence Motion for Disclosure of Dual Status Witnesses.

D. GROUPING AND COMMON LEGAL REPRESENTATION

65. The VPO has identified one applicant whose circumstances might give rise to a potential conflict of interest.¹²⁶ The VPO submits however that it has thoroughly analysed the individual circumstances of the applicant and their impact on the group as a whole and that a similar situation was considered in relation to another applicant and assessed as not amounting to a conflict of interest that would warrant the creation of a separate group.¹²⁷ The VPO, therefore, recommends that all admitted applicants be grouped together with the other admitted victims participating in the proceedings and that they be jointly represented as one group (“Group 1”).¹²⁸

66. The Pre-Trial Judge notes that the relevant victim, which the VPO avers was a [REDACTED] and whose situation was previously assessed as not amounting to a conflict of interest,¹²⁹ was never admitted as a victim participating in the proceedings.¹³⁰ Accordingly, the Pre-Trial Judge has not previously assessed whether the admission of a [REDACTED] to Group 1 gives rise to a conflict of interest.

67. The Pre-Trial Judge observes, however, that [REDACTED], also suffered harm from similar crimes alleged by victims in Group 1 at the hands of the same group of perpetrators and there is [REDACTED].¹³¹ Therefore, [REDACTED] and Group 1 seem to share a common interest of participating in the proceedings and pursuing their rights.

¹²⁶ Fifth Registry Report, para. 62.

¹²⁷ Fifth Registry Report, para. 62; [REDACTED]; *See also* KSC-BC-2020-06, F00241, VPO, *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, paras 25-26, with one Annex, confidential and *ex parte*; First Decision on Victims’ Participation, paras 73, 77.

¹²⁸ Fifth Registry Report, para. 63.

¹²⁹ Fifth Registry Report, para. 62.

¹³⁰ *See* First Decision on Victims’ Participation, paras 47, 49; Second Decision on Victims’ Participation, paras 29-30.

¹³¹ *See* [REDACTED].

68. Additionally, the Pre-Trial Judge notes that three of the victims (Victims 70/06, 75/06 and 76/06) have indicated a preference to have a competent and loyal counsel, one victim (Victim 74/06) has indicated a preference to be represented by a non-Albanian counsel and 17 victims have no preference (Victims 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 71/06, 72/06, 73/06, 77/06, 78/06, 79/06, 80/06, 82/06, 84/06, 85/06, and 86/06).¹³²

69. In light of the above, and based on the same considerations as set out in the First Decision on Victims' Participation,¹³³ the Pre-Trial Judge finds that all admitted victims shall be grouped together with the victims previously admitted, under Group 1, and shall be represented by Victims' Counsel assigned to Group 1.

E. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

70. Victims 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 70/06, 71/06, 72/06, 73/06, 74/06, 75/06, 76/06, 77/06, 78/06, 79/06, 80/06, 82/06, 84/06, 85/06, and 86/06 shall exercise their rights through Victims' Counsel and shall participate through the modalities described in the First Decision on Victims' Participation.¹³⁴

F. DIRECTIONS TO VICTIMS' COUNSEL

71. As the case is close to be transmitted to trial,¹³⁵ the Pre-Trial Judge considers it appropriate, having found that insufficient documentation was provided for a *prima facie* finding of physical harm and material harm claimed by Victims 78/06,

¹³² Fifth Registry Report, paras 65-66; and the application forms of each of the victims.

¹³³ First Decision on Victims' Participation, para. 76; *See also* Second Decision on Victims' Participation, para. 58; Third Decision on Victims' Participation, para. 48; First Framework Decision, para. 43.

¹³⁴ First Decision on Victims' Participation, paras 82-84, 85(d).

¹³⁵ KSC-BC-2020-06, F01131, Pre-Trial Judge, *Notification Pursuant to Rule 98(3) of the Rules of Procedure and Evidence*, 30 November 2022, public.

80/06, 82/06, 85/06 and 86/06,¹³⁶ to invite Victims' Counsel to file any additional submissions, with the appropriate supporting documentation if needed.

G. EXTENSION OF TIME LIMIT FOR CERTIFICATION TO APPEAL

72. The Pre-Trial Judge notes that, in accordance with Rule 77(1) of the Rules, when a Party seeks to appeal a decision for which an appeal does not lie as of right, that Party shall request certification from the Panel that rendered the impugned decision within seven (7) days thereof. In light of the upcoming winter judicial recess,¹³⁷ the Pre-Trial Judge considers it appropriate to vary, pursuant to Rule 9(5)(a) of the Rules, the time limit for requesting certification to appeal the present decision. Accordingly, any such request(s) shall be filed by **Monday, 9 January 2023**. Any related responses and replies shall follow the time limits set out in Rule 76 of the Rules.

VI. DISPOSITION

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

- a. **GRANTS** the applications of Victims 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 70/06, 71/06, 72/06, 73/06, 74/06, 75/06, 76/06, 77/06, 78/06, 79/06, 80/06, 82/06, 84/06, 85/06 and 86/06 and admits them to participate as victims in the proceedings;
- b. **REJECTS** the applications of Victims 23/06, 24/06, 29/06, 30/06, 31/06, 32/06, 42/06, 43/06, 48/06, 49/06, 50/06, 51/06, 52/06, 60/06, 61/06, 62/06, 69/06, 81/06, 83/06 and 87/06 as inadmissible;

¹³⁶ See *supra*, para. 44(a)-(b).

¹³⁷ The winter judicial recess runs from Monday, 19 December 2022, to Friday, 6 January 2023, see KSCPR-2021, F00002, President, *Judicial Recess Periods for 2022*, 11 November 2021, p. 2, public.

- c. **DECIDES** that Victims 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 70/06, 71/06, 72/06, 73/06, 74/06, 75/06, 76/06, 77/06, 78/06, 79/06, 80/06, 82/06, 84/06, 85/06, and 86/06 shall be included in Group 1 for the purpose of common representation and shall be represented by Victims' Counsel for Group 1;
- d. **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;
 - iii. not 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;
- e. **ORDERS** that the protective measure of anonymity under Rule 80(4)(e)(i) of the Rules be granted to Victims 63/06, 64/06, 65/06, 66/06, 67/06, 68/06, 70/06, 71/06, 72/06, 73/06, 74/06, 75/06, 76/06, 77/06, 78/06, 79/06, 80/06, 82/06, 84/06, 85/06, and 86/06;

- f. **ORDERS** that the names and any identifying information of Victims 23/06, 24/06, 29/06, 30/06, 31/06, 32/06, 42/06, 43/06, 48/06, 49/06, 50/06, 51/06, 52/06, 60/06, 61/06, 62/06, 69/06, 81/06, 83/06 and 87/06 be withheld from the Parties and the public;
- g. **DECIDES** to maintain the classification strictly confidential and *ex parte* of all application forms, summaries and supporting documentation;
- h. **INVITES** Victims' Counsel to file additional submissions as set out in paragraph 71; and
- i. **VARIES** the time limit for any request(s) for certification to appeal the present decision and **ORDERS** that any such request(s) shall be filed by **Monday, 9 January 2023**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Monday, 12 December 2022

At The Hague, the Netherlands.