



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:** Trial Panel II

Judge Charles L. Smith III

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 15 February 2023

**Language:** English

**Classification:** Public

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

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 22 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 80, 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 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” (“Second Framework Decision”), establishing the principles governing the admission of victims to participate in the proceedings.<sup>1</sup>
2. On 30 September 2022, the SPO submitted the confirmed amended indictment (“Indictment”).<sup>2</sup>
3. On 18 August 2022, 3, 14 and 20 October 2022 and on 9 December 2022, the Victims’ Participation Office (“VPO”) successively filed: (i) the sixth report on victims’ applications, transmitting 50 applications (“Sixth Report”);<sup>3</sup> (ii) the seventh report on victims’ applications, transmitting 46 applications (“Seventh Report”);<sup>4</sup> (iii) the eighth report on victims’ applications, transmitting 45 applications (“Eighth Report”);<sup>5</sup> (iv) the ninth report on victims’ applications,

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<sup>1</sup> F00159, Pre-Trial Judge, *Framework Decision on Victims’ Applications*, 4 January 2021; F00382, Pre-Trial Judge, *Second Framework Decision on Victims’ Applications*, 6 July 2021.

<sup>2</sup> F00999, Specialist Prosecutor, *Submission of Confirmed Amended Indictment*, 30 September 2022, with Annex 1, strictly confidential and *ex parte*, Annex 2, confidential and Annex 3.

<sup>3</sup> F00930, Registrar, *Sixth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 18 August 2022, with strictly confidential and *ex parte* Annexes 1-51.

<sup>4</sup> F01007, Registrar, *Seventh Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 3 October 2022, with strictly confidential and *ex parte* Annexes 1-30.

<sup>5</sup> F01037, Registrar, *Eighth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 14 October 2022, with strictly confidential and *ex parte* Annexes 1-23.

transmitting 19 applications (“Ninth Report”);<sup>6</sup> and (v) the tenth report on victims’ applications, transmitting 10 applications (“Tenth Report”);<sup>7</sup> (collectively “Reports”).

4. On 1 September 2022, the Defence for Kadri Veseli (“Veseli Defence”) responded to the Sixth Report (“Veseli Response”).<sup>8</sup> The Specialist Prosecutor’s Office (“SPO”) and the other Defence teams did not file a response.

## II. SUBMISSIONS

5. The VPO assesses that all the applications submitted in the Reports are complete,<sup>9</sup> save for three applications in the Tenth Report.<sup>10</sup> As regards admissibility, the VPO recommends that the Panel: (i) admit 84 applicants as participating victims to the proceedings (“Group A Applicants”);<sup>11</sup> and (ii) deny 86 applicants as participating victims to the proceedings (“Group B Applicants”).<sup>12</sup>

<sup>6</sup> F01046, Registrar, *Ninth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 20 October 2022, with strictly confidential and *ex parte* Annexes 1-16.

<sup>7</sup> F01148, Registrar, *Tenth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings*, 9 December 2022, with strictly confidential and *ex parte* Annexes 1-9.

<sup>8</sup> KSC-BC-2020-06, F00944, Specialist Counsel, *Veseli Defence Response to Sixth Registry Report on Victims’ Applications for Participation in the Proceedings (F00930)*, 1 September 2022.

<sup>9</sup> Sixth Report, para. 21; Seventh Report, para. 25; Eighth Report, para. 22; Ninth Report, para. 23.

<sup>10</sup> Tenth Report, paras 22-25.

<sup>11</sup> Sixth Report (30 applicants): Sixth Report, para. 59; Annex 1 to the Sixth Report; **Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06, 110/06, 112/06, 121/06, 122/06, 123/06, 124/06, 125/06, 163/06, 180/06, 186/06, 187/06, 188/06, 191/06, 195/06, 196/06, 197/06, 198/06, 199/06, 200/06, 201/06, 202/06, 203/06, 204/06, 212/06.** Eighth Report (39 applicants): Eighth Report, paras 62-63; Annex 1 to the Eighth Report: **Victims 130/06, 131/06, 189/06, 206/06, 207/06, 208/06, 210/06, 211/06, 209/06, 214/06, 215/06, 217/06, 218/06, 219/06, 225/06, 227/06, 228/06, 221/06, 231/06, 233/06, 234/06, 235/06, 236/06, 237/06, 238/06, 239/06, 232/06, 242/06, 243/06, 244/06, 241/06, 230/06, 245/06, 246/06, 248/06, 249/06, 250/06, 240/06, 220/06.** Ninth Report (11 applicants): Ninth Report, para. 55; Annex 1 to the Ninth Report; **Victims 247/06, 251/06, 252/06, 254/06, 259/06, 216/06, 261/06, 262/06, 260/06, 265/06, 266/06.** Tenth Report (4 applicants): Tenth Report, para. 51; Annex 1 to the Tenth Report; **Victims 276/06, 268/06, 269/06, 270/06.**

<sup>12</sup> Sixth Report (20 applicants): Sixth Report, para. 60; Annex 1 to the Sixth Report; **Victims 88/06, 89/06, 90/06, 91/06, 92/06, 93/06, 94/06, 104/06, 106/06, 107/06, 109/06, 161/06, 162/06, 164/06, 165/06, 167/06, 168/06, 169/06, 170/06, 171/06.** Seventh Report (46 applicants): Seventh Report, paras 19, 42; Annex 1 to Seventh Report; **Victims 126/06, 127/06, 128/06, 129/06, 132/06, 133/06, 134/06, 135/06, 136/06, 137/06, 138/06, 139/06, 140/06, 141/06, 142/06, 143/06, 144/06, 145/06, 146/06, 147/06, 148/06, 151/06, 152/06, 153/06,**

As regards legal representation, the VPO: (i) recommends that Group A Applicants be grouped with the already admitted victims for the purpose of common legal representation and that they be represented by the assigned Victims' Counsel; and (ii) makes no recommendation for Group B Applicants.<sup>13</sup> As regards protective measures, the VPO recommends that: (i) Group A Applicants be granted anonymity; and (ii) Group B Applicants' names and identifying information be withheld from the Parties and the public.<sup>14</sup>

6. In respect of the Sixth Report, the Veseli Defence states that its response to the "Fifth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings" included in paragraphs 1, 5-8 and 10-14 therein are applicable, *mutatis mutandis*, to the present report and incorporates them by reference, namely that it: (i) does not oppose the admissibility of the recommended victims for participation in the proceedings; (ii) requests the Panel to deny anonymity to all victims and limit protective measures according to the legal instruments of the SC; (iii) requests the Panel to defer its decision on anonymity until the Court of Appeals issues its decision regarding the Veseli Defence Interlocutory Appeal Against Third Decision on Victims' Participation; (iv) submits that the SPO has failed to provide individual recommendations in

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154/06, 156/06, 158/06, 159/06, 160/06, 172/06, 174/06, 175/06, 176/06, 177/06, 178/06, 179/06, 181/06, 182/06, 183/06, 184/06, 185/06, 192/06, 193/06, 194/06, 205/06, and 213/06. Eighth Report (6 applicants): Eighth Report, paras 68, 71; Annex 1 to the Eighth Report; **Victims 155/06, 222/06, 223/06, 150/06, 224/06, and 190/06**. Ninth Report (8 applicants): Ninth Report, para. 56; Annex 1 to the Ninth Report; **Victims 255/06, 256/06, 257/06, 258/06, 229/06, 253/06, 264/06, and 263/06**. Tenth Report (6 applicants): Tenth Report, para. 52; Annex 1 to the Tenth Report; **Victims 105/06, 149/06, 166/06, 271/06, 272/06, 273/06**.

<sup>13</sup> Sixth Report, paras 65-66, 68; Seventh Report, para. 43; Eighth Report, paras 69-71; Ninth Report, paras 61-62; Tenth Report, paras 57-58.

<sup>14</sup> Sixth Report, paras 72-74; Seventh Report, para. 45; Eighth Report, paras 76-78; Ninth Report, paras 66-71; Tenth Report, paras 61-67.

respect of each applicant; and (v) submits that the recommendation to grant total anonymity for all applicants is extreme and unsupported by the facts.<sup>15</sup>

### III. APPLICABLE LAW

7. The participation of victims is regulated by Article 22 and Rules 80, 113 and 114. The Panel is guided by the interpretation of these provisions 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,<sup>16</sup> the admissibility criteria,<sup>17</sup> the standard of proof,<sup>18</sup> the legal test applicable in granting protective measures<sup>19</sup> and the criteria for grouping victims for the purpose of common legal representation.<sup>20</sup>

8. The Panel is also guided by the Court of Appeals' decisions on victim participation in relation to the requirement that the applicants demonstrate that they are a victim of a crime specified in the Indictment; the requirement for the Panel to give reasons for denying applications for participation; and the anonymity of victims participating in the proceedings.<sup>21</sup>

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<sup>15</sup> F00916, Specialist Counsel, *Veseli Defence Response to Fifth Registry Report on Victims' Applications for Participation in the Proceedings (F00894)*, 4 August 2022, paras 1, 5-8, 10-14.

<sup>16</sup> First Framework Decision, para. 22; F00257, Pre-Trial Judge, *First Decision on Victims' Participation ("First Decision on Victims' Participation")*, 21 April 2021, confidential, para. 34. A public redacted version was filed on the same day, F00257/RED.

<sup>17</sup> First Framework Decision, paras 28, 30-39; First Decision on Victims' Participation, paras 42, 45, 50-55.

<sup>18</sup> First Framework Decision, para. 29; First Decision on Victims' Participation, para. 43.

<sup>19</sup> First Framework Decision, paras 45-49; First Decision on Victims' Participation, paras 64, 67.

<sup>20</sup> 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.

<sup>21</sup> IA0023/F00006, Court of Appeals, *Decision on Veseli's Appeal Against "Third Decision on Victims' Participations"* ("Appeal Decision on Third Decision on Victims' Participation"), 15 September 2022, paras 51-52. A corrected version was filed on the same day, IA023/F00006/COR.

#### IV. PRELIMINARY MATTER

9. The Veseli Defence's request that the Panel defer its decision on the VPO's request for anonymity, as its legality was an issue pending before the Court of Appeals,<sup>22</sup> is now moot as the Court of Appeals has issued its decision.<sup>23</sup> Accordingly, the Panel will consider the Sixth Report in its entirety.

#### V. DISCUSSION

##### A. ASSESSMENT OF APPLICATIONS

10. Having assessed the application forms and supporting documentation submitted in the Reports against the requirements set out in the First Framework Decision,<sup>24</sup> the Panel notes that three applications from the Tenth Report are incomplete.<sup>25</sup> The Panel notes VPO's submissions that, despite all its efforts, it did not receive the missing information or documentation from the three applicants, but that all applications can nonetheless be considered as formally complete.<sup>26</sup> The Panel considers that there is sufficient information before it to assess these applications and therefore will proceed with assessing them on the basis of the information submitted. The Panel is satisfied that all the remaining applications are complete.<sup>27</sup>

11. However, for some applications, the Panel received English versions only of the summaries of the application forms.<sup>28</sup> The absence of English translation of

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<sup>22</sup> Veseli Response, para. 8; F00856, Pre-Trial Judge, *Decision on Veseli Defence Request for Leave to Appeal the Third Decision on Victims' Participation*, 28 June 2022, paras 18-35, 50.

<sup>23</sup> Appeals Decision on Third Decision on Victims' Participation, paras 51-52. A corrected version was filed on the same day, IA023/F00006/COR.

<sup>24</sup> See First Framework Decision, para. 22.

<sup>25</sup> Tenth Report, para. 24.

<sup>26</sup> Tenth Report, para. 24. See also Annexes 4-6 to the Tenth Report.

<sup>27</sup> Sixth Report, para. 21; Seventh Report, para. 25; Eighth Report, para. 22; Ninth Report, para. 23; Tenth Report, para. 25.

<sup>28</sup> See e.g. **Victims 212/06, 257/06, 258/06, 263/06 and 264/06** Application Forms.

certain documentation did not affect the Panel's assessment of the applications, as the relevant applications were decided on other available material. However, should there be any future submissions from the VPO, the Panel directs the VPO to provide English translations of *all* supporting documents.<sup>29</sup>

12. The Panel is satisfied that all victim applicants are natural persons.<sup>30</sup>

### **1. Correspondence Between the Alleged Crimes in the Applications and the Indictment**

13. The Panel notes 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 Indictment.<sup>31</sup> Specifically, the Court of Appeals found that "the crime(s) 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 Indictment" and that "Schedule C, read in conjunction with the relevant sections of the Indictment, provides an exhaustive description of the crimes of enforced disappearance with which the Accused are charged."<sup>32</sup>

14. It follows that an applicant who claims to be an indirect victim of the crime of enforced disappearance must establish *prima facie* that they are an immediate family member of a person named in Schedule C. For the same reason, an

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<sup>29</sup> See *similarly* Fourth Decision on Victims' Participation, para. 39. See also F00611, Pre-Trial Judge, *Second Decision on Victims' Participation* ("Second Decision on Victims' Participation"), 10 December 2021, strictly confidential and *ex parte*, para. 38, fn. 33. A confidential redacted and a public redacted version were filed on the same day, F00611/CONF/RED and F00611/RED.

<sup>30</sup> Sixth Report, para. 25; Seventh Report, para. 29; Eighth Report, para. 26; Ninth Report, para. 23; Tenth Report, para. 25.

<sup>31</sup> 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, para. 35; First Framework Decision, para. 32; First Decision on Victims' Participation, para. 45.

<sup>32</sup> Decision on Appeal of First Decision on Victims' Participation, paras 24, 35.



applicant who claims to be an indirect victim of the crime of murder must establish *prima facie* that they are an immediate family member of a person named in Schedule B.

15. In making this assessment, the Panel conducted an individualised analysis of each application, based on the Reports, the application forms, the supporting documentation and the relevant parts of the Indictment.

(a) Group A Applicants (Recommended for Admission by the VPO)

16. The Panel is satisfied that 84 applicants in the Reports are victims of crimes allegedly committed at locations identified in the Indictment and that the alleged crimes fall within the temporal scope of the charges as specified in the Indictment in relation to each of the locations.<sup>33</sup> More specifically:

(a) *Direct Victims*. **Victims 204/06, 209/06, 214/06, 215/06, 225/06, 221/06, 231/06, 232/06, 243/06, 244/06, 249/06, 220/06, 251/06, 252/06, 216/06, 261/06, and 260/06<sup>34</sup>** are direct victims of imprisonment/illegal or arbitrary arrest and detention, other inhumane acts or cruel treatment and/or torture, allegedly committed in [REDACTED] (Malishevë/Mališevo municipality), Cahan, Has District, Albania, [REDACTED] (Kaçanik/Kaçanik municipality), Ivajë/Ivaja (Kaçanik/Kaçanik municipality), Likoc/Likovac (Skënderaj/Srbica municipality), Budakovë/Budakovo (Suharekë/Suva Reka municipality), [REDACTED] (Lipjan/Lipljan municipality), Jabllanicë/Jablanica (Gjakovë/Đakovica municipality), and Tusus, Prizren

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<sup>33</sup> Sixth Report: 30 applicants. Eighth Report: 39 applicants. Ninth Report: 11 applicants. Tenth Report: 4 applicants.

<sup>34</sup> The order of the applicants here and in the subsequent parts of this decision follows the chronological order of each report, singled out by reports in the footnotes.

(Prizren municipality) in April-November 1998, “winter 1999”, February-June 1999, and August-September 1999.<sup>35</sup>

(b) *Indirect Victims*. **Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06, 110/06, 112/06, 121/06, 122/06, 123/06, 124/06, 125/06, 163/06, 180/06, 186/06, 187/06,**

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<sup>35</sup> Sixth Report: **Victim 204/06** (direct victim of unlawful detention, inhumane and cruel treatment and torture allegedly committed at the KLA headquarters in Jabllanicë/Jablanica (Gjakovë/Đakovica municipality) in July or August 1998); *see* **Victim 204/06** Application Form and Supporting Material; Annex 30 to the Sixth Report; *see also* Indictment, paras 63, 100; Schedule A; section 3. Eighth Report: **Victims 209/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in [REDACTED] in June 1999); **214/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in Cahan, Has District, Albania between [REDACTED] 1999); **215/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in [REDACTED] and [REDACTED] in February-March 1999); **225/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention in Malishevë/ Mališevo (Malishevë/Mališevo municipality) in July 1998); **221/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in Budakovë/Budakovo (Suharekë/Suva Reka municipality) in [REDACTED]); **231/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in Cahan, Has District, Albania in [REDACTED] 1999); **232/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in Likoc/Likovac (Skënderaj/Srbica municipality) in “winter 1999” ([REDACTED], so the Panel considers that Victim 232/06’s claims are within the temporal scope of the crime site)); **243/06** and **244/06** (direct victims of imprisonment/illegal or arbitrary arrest and detention as well as other inhumane acts and cruel treatment allegedly committed in Budakovë/Budakovo (Suharekë/Suva Reka municipality) in [REDACTED] 1999); **249/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention allegedly committed in Malishevë/Mališevo (Malishevë/Mališevo municipality) in July 1998); **220/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in Likoc/Likovac (Skënderaj/Srbica municipality) in April-May 1998). *See* Application Forms and Supporting Material; Annexes 5-7, 9-11, 13, 15, 18, 20 to the Eighth Report. *See also* Indictment, paras 44, 62, 67-68, 80-81, [REDACTED], 99, 104, [REDACTED], 118, [REDACTED]; Schedule A, sections 5, 7, 13.1, 14.1, 17.1; Ninth Report: **251/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in Bajgorë/Bajgora (Podujevë/Podujevo municipality) in August-September 1998); **252/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in [REDACTED] in [REDACTED] in [REDACTED] 1999); **216/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention, as well as other inhumane acts and cruel treatment allegedly committed in [REDACTED] in [REDACTED] 1998); **261/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention allegedly committed in Jabllanicë/Jablanica (Gjakovë/Đakovica municipality) in [REDACTED] 1998); **260/06** (direct victim of imprisonment/illegal or arbitrary arrest and detention allegedly committed in [REDACTED] in June 1999). *See* Application Forms and Supporting Material; Annexes 3-4, 6-8 to the Ninth Report. *See also* Indictment, paras 63, 70, [REDACTED], [REDACTED], 106, [REDACTED] Schedule A, sections 3.1, [REDACTED], 9.

188/06, 191/06, 195/06, 196/06, 197/06, 198/06, 199/06, 200/06, 201/06, 202/06, 203/06, 212/06, 130/06, 131/06, 189/06, 206/06, 207/06, 208/06, 210/06, 211/06, 217/06, 218/06, 219/06, 225/06, 227/06, 228/06, 233/06, 234/06, 235/06, 236/06, 237/06, 238/06, 239/06, 242/06, 243/06, 244/06, 241/06, 230/06, 245/06, 246/06, 248/06, 249/06, 250/06, 240/06, 220/06, 247/06, 254/06, 259/06, 262/06, 265/06, 266/06, 267/06, 268/06, 269/06 and 270/06 are indirect victims of persecution, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment, torture, murder, and/or enforced disappearance allegedly committed in Jabllanicë/Jablanica (Gjakovë/Đakovica municipality), Kleçkë/Klečka (Lipjan/Lipljan municipality), Llapushnik/Lapušnik (Drenas (Gllogoc)/Glogovac municipality), Drenoc/Drenovac (Rahovec/Orahovac municipality), Volljakë/Volujak Cave (Klinë/Klina municipality), Malishevë/Mališevo (Malishevë/Mališevo municipality), Kukës, Kukës District, Albania, Likoc/Likovac, (Skënderaj/Srbica municipality), Ivajë/Ivaja (Ferizaj/Uroševac municipality), Varosh/Varoš Selo (Ferizaj/Uroševac municipality), [REDACTED] (Podujevë/Podujevo municipality), Former MUP building in Prizren (Prizren municipality), Jeshkovë/Ješkovo, Prizren (Prizren municipality), Bajgorë/Bajgora (Podujevë/Podujevo municipality), [REDACTED], and [REDACTED] in April-September 1998 and February-July 1999 against immediate family member/s.<sup>36</sup>

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<sup>36</sup> Sixth Report: **Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06** (indirect victims of imprisonment/illegal or arbitrary arrest and detention allegedly committed in Jabllanicë/Jablanica (Gjakovë/Đakovica municipality) in [REDACTED] 1998); **Victims 110/06, 112/06, 121/06, 122/06, 123/06, 124/06, 125/06, 163/06** (indirect victims of persecution, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts and cruel treatment and/or murder allegedly committed in Kleçkë/Klečka (Lipjan/Lipljan municipality) in [REDACTED] 1999); **Victims 180/06, 186/06, 187/06, 188/06, 196/06, 197/06, 198/06, 199/06, 200/06, 201/06, 202/06** (indirect victims of murder allegedly committed in Volljakë/Volujak Cave (Klinë/Klina municipality) in July 1998 against their respective immediate family members). The Panel notes that Victim 180/06 is also an indirect victim of imprisonment/illegal or arbitrary arrest and detention allegedly committed in Malishevë/Mališevo in

[REDACTED] 1998. The Panel also notes that Victims 196/06, 197/06, 198/06, 199/06, 200/06, 201/06 and 202/06 claim to be indirect victims of imprisonment/illegal or arbitrary arrest and detention allegedly committed in Malishevë/Mališevo in [REDACTED] 1998, but the Panel was unable to conclusively determine where in that area the direct victim was detained and whether this corresponds to one of the listed detention sites in the Indictment.). **Victims 191/06 and 212/06** (indirect victims of imprisonment/illegal or arbitrary arrest and detention, murder and enforced disappearance allegedly committed in [REDACTED] and [REDACTED] in [REDACTED] 1999); **Victims 195/06 and 203/06** (indirect victim of imprisonment/illegal or arbitrary arrest and detention, murder and enforced disappearance allegedly committed in [REDACTED] in [REDACTED] 1998 against their respective family members); *see* Application Forms and Supporting Documentation; Annexes 1-30, 51 to the Sixth Report; *see also* Indictment, paras 44, 63, [REDACTED], 67, [REDACTED], 154, [REDACTED]; Schedule A, sections 3.1, 5.1, 6.2, 12.1; Schedule B, sections [REDACTED], 9-10, [REDACTED]; Schedule C, [REDACTED]. Eighth Report: **Victims 130/06, 131/06** (indirect victims of imprisonment/illegal or arbitrary arrest and detention allegedly committed in Llapushnik/Lapušnik (Drenas (Glllogoc)/Glogovac) municipality in [REDACTED] 1998); **189/06** (indirect victim of murder allegedly committed in [REDACTED] in [REDACTED] 1998); **Victims 206/06, 207/06, 208/06, 210/06 and 211/06** (indirect victims of murder allegedly committed in Volljakë/Volujak Cave (Klinë/Klina municipality) in July 1998); **217/06** (indirect victim of imprisonment/illegal or arbitrary arrest and detention as well as other inhumane acts and cruel treatment allegedly committed in Jabllanicë/Jablanica (Gjakovë/Đakovica municipality) in [REDACTED] 1999); **218/06, 219/06, 225/06, 227/06, 228/06** (indirect victims of murder allegedly committed in Volljakë/Volujak Cave (Klinë/Klina municipality) in July 1998); **233/06, 234/06, 235/06, 236/06, 237/06, 238/06, 239/06** (indirect victims of imprisonment/illegal or arbitrary arrest and detention as well as other inhumane acts and cruel treatment, allegedly committed in Kukës, Kukës District, Albania in [REDACTED] 1999); **242/06** (indirect victim of murder allegedly committed in Likoc/Likovac, (Skënderaj/Srbica municipality) in April 1998); **243/06, 244/06** (indirect victims of murders allegedly committed in [REDACTED] in August 1998); **241/06** (indirect victim of murder allegedly committed in [REDACTED] (Podujevë/Podujevo municipality) in [REDACTED] 1999); **230/06** (indirect victim of murder allegedly committed in [REDACTED] in June 1999); **245/06, 246/06, 248/06, 249/06, 250/06** (indirect victims of murder and enforced disappearance allegedly committed in Volljakë/Volujak Cave (Klinë/Klina municipality) in July 1998); **240/06** (indirect victim of imprisonment/illegal or arbitrary arrest and detention as well as other inhumane acts and cruel treatment, allegedly committed in Jeshkovë/Ješkovo, Prizren (Prizren municipality) in August 1998); **220/06** (indirect victim of murder allegedly committed in Likoc/Likovac (Skënderaj/Srbica municipality) in April or May 1998). *See* Application Forms and Supporting Material; Annexes 2-4, 8-9, 12, 14-20 to the Eighth Report; *see also* Indictment, paras 63-64, [REDACTED], 82, 100, [REDACTED] 119, [REDACTED]; Schedule A, sections 1.1, 3.1, 11.1, 16.1; Schedule B, [REDACTED]; Schedule C, [REDACTED]. Ninth Report: **247/06** (indirect victim of other inhumane acts and cruel treatment allegedly committed in Jabllanicë/Jablanica (Gjakovë/Đakovica municipality) in [REDACTED] 1998); **254/06, 259/06** (indirect victims of murder allegedly committed in Rahovec/Orahovac in [REDACTED]); **262/06** (indirect victim of imprisonment/illegal or arbitrary arrest and detention allegedly committed in Jabllanicë/Jablanica (Gjakovë/Đakovica municipality) in [REDACTED] 1998); **265/06** (indirect victim of murder allegedly committed in [REDACTED] (Malishevë/Mališevo municipality) in July 1998); **266/06** (indirect victim of murder allegedly committed in [REDACTED] in [REDACTED] 1999). *See* Application Forms and Supporting Material; Annexes 2, 5, 7, 9-10 to the Ninth Report. *See also* Indictment, paras 63, 100, 154, [REDACTED]; Schedule A, section 3.1; Schedule B, [REDACTED]. Tenth Report: **Victims 267/06** (indirect victim of murder allegedly committed in [REDACTED] in [REDACTED] 1998), **268/06, 269/06, 270/06** (indirect victim of murder allegedly committed in [REDACTED] and [REDACTED] in July 1998). *See* Application Forms and Supporting Material; Annexes 2-3 to the Tenth Report. *See also* Indictment, para. [REDACTED]; Schedule B, [REDACTED].

17. The Panel notes that, in addition to the above crimes, **Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06, 130/06, 131/06, 214/06, and 240/06** also claim to be indirect victims of murder and/or enforced disappearance against immediate family members but finds that, as the family members are not among the victims of murder and/or enforced disappearance named in the Indictment, the family member's alleged murder and/or enforced disappearance falls outside the scope of the charges.<sup>37</sup> The Panel further notes that **Victims 191/06 and 267/06** also claim to be direct victims of imprisonment/illegal or arbitrary arrest and detention and/or other inhumane acts and cruel treatment but considers that, as there is no evidence that they were taken to a named location in the Indictment, the alleged crime falls outside the scope of the charges.<sup>38</sup> Similarly, the Panel finds that there is insufficient evidence to conclude, *prima facie*, that the following allegations fall within the temporal, geographical and/or material scope of the charges: (i) the event described by **Victims 234/06 and 239/06** in [REDACTED] in [REDACTED]; and (ii) the incident described by **Victim 261/06** in relation to [REDACTED].<sup>39</sup>

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<sup>37</sup> Sixth Report: Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06 Application Forms and Supporting Material; Annexes 2-7 to the Sixth Report. Eighth Report: Victims 130/06, 131/06, 214/06, 240/06, Application Forms and Supporting Material; Annexes 2, 6, 19 to the Eighth Report. *See also* regarding enforced disappearance, Decision on Appeal against First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, paras 159-161; Indictment, paras 140-177; Schedule B; Schedule C.

<sup>38</sup> Sixth Report: Victim 191/06 (imprisonment/illegal or arbitrary arrest and detention and other inhumane acts and cruel treatment at unknown location); *see* **Victim 191/06**, Application Form and Supporting Document; Annex 20 to the Sixth Report. Tenth Report: Victim 267/06 (while the applicant's [REDACTED] detention falls within the scope of the Indictment, there is insufficient information available to conclude that the [REDACTED] falls within the scope of the Indictment). *See* **Victim 267/06** Application Form and Supporting Material. *See also* Annex 2 to the Tenth Report.

<sup>39</sup> Eighth Report: Victims 234/06 and 239/06 ([REDACTED]). *See* Application Forms and Supporting Document; Annex 12 to the Eighth Report. Ninth Report: Victim 261/06 ([REDACTED]). *See* Application Form and Supporting Document; Annex 7 to the Ninth Report.

## (b) Group B Applicants (Not Recommended for Admission by the VPO)

18. The Panel is not satisfied that the 86 individuals constituting Group B Applicants in the Reports have 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 Indictment. In accordance with the Court of Appeals' finding,<sup>40</sup> the Panel has set out in the footnotes below the reasons why each denied applicant falls outside the scope of Article 22(1). This is so that the denied applicants can fully understand why their applications were rejected and so as to enable them to exercise their right of appeal in case they choose to do so:<sup>41</sup>

(a) *Temporal scope*. **Victims 132/06, 133/06, 140/06, 257/06, 258/06, 263/06, and 271/06** have not shown, on a *prima facie* basis, that the crimes they claim that their immediate family members were victims of fall within the temporal scope of the Indictment, which is March 1998 to September 1999;<sup>42</sup>

(b) *Geographical scope (crime sites)*. **Victims 88/06, 89/06, 90/06, 91/06, 92/06, 93/06, 94/06, 104/06, 106/06, 109/06, 161/06, 162/06, 165/06,<sup>43</sup> 167/06, 168/06, 169/06, 170/06, 171/06, 132/06, 134/06, 140/06, 145/06, 146/06, 147/06, 152/06,**

<sup>40</sup> Decision on Appeal of First Decision on Victims' Participation, paras 38-40.

<sup>41</sup> Sixth Report: 20 applicants. Seventh Report: 46 applicants. Eight Report: 6 applicants. Ninth Report: 8 applicants. Tenth Report: 6 applicants.

<sup>42</sup> Seventh Report: The relevant dates are as follows and fall outside the temporal scope of the Indictment: **Victim 132/06** ([REDACTED]); **Victim 133/06** ([REDACTED]); **Victim 140/06** ([REDACTED]); see Application Forms; Annexes 7-8, 13, 24 to the Seventh Report. Ninth Report: **Victims 257/06, 258/06** ([REDACTED]), **263/06** ([REDACTED]). See **Victims 257/06, 258/06, 263/06** Application Forms. See also Annexes 11-12, 16 to the Ninth Report. Tenth Report: **Victim 271/06** ([REDACTED]). See **Victim 271/06** Application Form; Annex 7 to the Tenth Report. See also Indictment, para. 16.

<sup>43</sup> The Panel observes that the VPO's description of **Victim 165/06's** application in the Sixth Report is incorrect. Nevertheless, the Panel has been able to assess the application based on the description in Annex 45 to the Sixth Report and the Application Form; see **Victim 165/06**, Application Form and Supporting Documentation; Annex 45 to the Sixth Report.

174/06, 175/06, 176/06, 177/06, 178/06, 179/06, 205/06, 150/06, 224/06, 257/06, 258/06, 253/06, 166/06, 271/06, 272/06 and 273/06 have not established, on a *prima facie* basis, that the crimes they claim that they or their immediate family members were victims of fall within the geographical scope of the Indictment;<sup>44</sup> and

(c) *Material Scope*.<sup>45</sup> **Victims 107/06, 164/06,<sup>46</sup> 126/06, 127/06, 128/06, 129/06, 133/06, 135/06, 136/06, 137/06, 138/06, 139/06, 141/06, 142/06, 143/06, 144/06, 148/06, 151/06, 153/06, 154/06, 156/06, 158/06, 159/06, 160/06, 172/06, 181/06,**

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<sup>44</sup> The following applicants describe locations not named in the Indictment, namely: Sixth Report: Victim 88/06 (direct victim allegedly killed in [REDACTED]), **Victims 89/06, 91/06, 92/06, 93/06, and 94/06** (direct victims were allegedly respectively subjected to cruel, inhumane and degrading treatment and killed [REDACTED]), **Victim 90/06** (direct victim allegedly tortured in [REDACTED]), **Victims 104/06 and 106/06** (direct victim allegedly abducted in [REDACTED]); **Victims 109/06, 161/06 and 162/06** (direct victim was allegedly taken to [REDACTED]), **Victim 165/06** (direct victim was allegedly raped and killed in [REDACTED]), **Victims 167/06 and 171/06** (the direct victim was allegedly killed in [REDACTED]), **Victims 168/06, 169/06 and 170/06** (direct victim was allegedly killed in [REDACTED]). *See also* Application Forms and Supporting Material, Annexes 31-50 to the Sixth Report. Seventh Report: Victim 132/06 (direct victim allegedly killed in [REDACTED]), **Victims 134/06, 174/06, 175/06, 176/06, 177/06 and 178/06** (direct victim allegedly killed on [REDACTED]), **Victim 140/06** (direct victim's [REDACTED]), **Victim 145/06** (direct victim allegedly taken to [REDACTED]), **Victim 146/06** (direct victim allegedly [REDACTED]), **Victim 147/06** (direct victim allegedly [REDACTED]), **Victim 152/06** (the direct victim was allegedly abducted from [REDACTED]). While specific locations in [REDACTED] are named in the Indictment, the alleged crimes do not fall within the temporal scope of these charges and do not describe a named location within [REDACTED]), and **Victims 179/06 and 205/06** (direct victim was allegedly abducted [REDACTED]); *see* Application Forms and Supporting Material; Annexes 2-18, 20-22, 24-30 to the Seventh Report. Eighth Report: Victims 150/06 and 224/06 (insufficient information to conclude on a *prima facie* basis that the direct victim suffered the alleged harm in relation to [REDACTED] municipality crime sites as charged in the Indictment). *See* Application Forms and Supporting Material. *See also* Annex 22 to the Eighth Report. Ninth Report: Victims 257/06 and 258/06 (direct victim's body was found in [REDACTED]), **253/06** ([REDACTED] is not among the detention sites listed in the Indictment). *See* Application Forms and Supporting Material. *See also* Annexes 12-14 to the Ninth Report. Tenth Report: Victims 166/06 (direct victims were allegedly killed in [REDACTED]), **271/06** (direct victim allegedly abducted from [REDACTED]), **272/06** (direct victims allegedly killed in [REDACTED]), **273/06** (direct victim was allegedly killed [REDACTED]) Application Forms and Supporting Documents. *See also* Annexes 4, 6-9 to the Tenth Report.

<sup>45</sup> The Panel notes that for the applicants who were assessed as falling outside the temporal scope and/or geographical scope of the Indictment, it is not necessary for the Panel to assess whether these applicants fall within the material scope.

<sup>46</sup> The Panel observes that the VPO's description of **Victim 164/06's** application in the Sixth Report is incorrect. Nevertheless, the Panel has been able to assess the application based on the description in Annex 44 to the Sixth Report and the Application Form; *see* **Victim 164/06**, Application Form and Supporting Documentation; Annex 44 to the Sixth Report.

182/06, 183/06, 184/06, 185/06, 192/06, 193/06, 194/06, 213/06, 155/06, 222/06, 223/06, 190/06, 229/06, 255/06, 256/06, 263/06, 264/06, 105/06,<sup>47</sup> and 149/06 have not established, on a *prima facie* basis, that the alleged murder and/or enforced disappearance of their immediate family members fall within the material scope of the Indictment.<sup>48</sup> This is because the alleged direct victims are not among the victims of murder and/or enforced disappearance named in Schedules B and C to the Indictment.<sup>49</sup>

19. The above determinations are without prejudice to any future ruling on the commission of the charged crimes, on the admissibility of victims' applications, including on the harm they may have suffered as a result of the alleged crimes, following a possible amendment of the Indictment, or supplemental information enabling a determination that the events described in the application fall within the scope of the charges. The Panel will not assess the remaining admissibility criteria of the applicants whose applications fall outside the scope of the charges.

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<sup>47</sup> **Victim 105/06** also has not sufficiently demonstrated a close personal relationship with [REDACTED].

<sup>48</sup> Sixth Report: Victims 107/06, and 164/06; see Application Forms and Supporting Documents; Annexes 40 and 44 to the Sixth Report; Seventh Report: Victims 126/06, 127/06, 128/06, 129/06, 133/06, 135/06, 136/06, 137/06, 138/06, 139/06, 141/06, 142/06, 143/06, 144/06, 151/06, 153/06, 154/06, 156/06, 158/06, 159/06, 160/06, 172/06, 181/06, 182/06, 183/06, 184/06, 185/06, 192/06, 193/06, 194/06, and 213/06; see Application Forms and Supporting Documents; Annexes 2, 4-6, 8-12, 15, 20-22, 24-25, 27-30. The Panel notes that, while **Victims 148/06** ([REDACTED]), **179/06** and **205/06** ([REDACTED]) have established that their immediate family members were taken to locations named in the Indictment, they have not established, on a *prima facie* basis, that the crimes they claim their immediate family members were victims of fall within its material scope. Eighth Report: Victims 155/06, 222/06, 223/06 and 190/06 Applications Form and Supporting Documents; Annexes 21, 23 to the Eighth Report. Ninth Report: Victims 229/06, 255/06, 256/06, 263/06, 264/06 Application Forms and Supporting Documents; Annexes 11, 13, 15-16 to the Ninth Report. Tenth Report: Victims 105/06, 149/06, 271/06 Application Forms and Supporting Documents. See also Annexes 4-5, 7 to the Tenth Report.

<sup>49</sup> See generally Indictment, paras 138-175; Schedule B; Schedule C; Decision on Appeal of First Decision on Victims' Participation, para. 24: "Schedule C, read in conjunction with the relevant sections of the Indictment, provides an exhaustive description of the crimes of enforced disappearance with which the Accused are charged" (footnote omitted).



## 2. Alleged Harm

20. The Panel is satisfied that all victims constituting Group A Applicants have *prima facie* suffered harm as a direct result of the alleged crimes described by them, as follows:

(a) *Direct victims – Physical, mental and/or material harm.* **Victims 204/06, 221/06, 209/06, 214/06, 215/06, 225/06, 231/06, 232/06, 243/06, 244/06, 249/06, 220/06, 251/06, 252/06, 216/06, 261/06, and 260/06** have personally suffered physical harm (bodily pains, numbness, broken teeth, hearing and vision impaired, scars), mental harm (stress, depression, trauma and nervousness) and material harm (medication costs), as a direct result of their alleged detention and mistreatment.<sup>50</sup>

(b) *Indirect victims – Mental harm.* **Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06, 110/06, 112/06, 121/06, 122/06, 123/06, 124/06, 125/06, 163/06, 180/06, 186/06, 187/06, 188/06, 191/06, 195/06, 196/06, 197/06, 198/06, 199/06, 200/06, 201/06, 202/06, 203/06, 212/06, 130/06, 131/06, 189/06, 206/06, 207/06, 208/06, 210/06, 211/06, 217/06, 218/06, 219/06, 225/06, 227/06, 228/06, 233/06, 234/06, 235/06, 236/06, 237/06, 238/06, 239/06, 242/06, 243/06, 244/06, 241/06, 230/06, 245/06, 246/06, 248/06, 249/06, 250/06, 240/06, 220/06, 247/06, 254/06, 259/06, 262/06, 265/06, 266/06, 267/06, 268/06, 269/06, and 270/06** as immediate family members,<sup>51</sup> have personally suffered mental harm (for example,

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<sup>50</sup> Sixth Report: **Victim 204/06** Application Form and Supporting Documentation; Annex 30 to the Sixth Report. Eighth Report: **Victims 221/06** (physical, mental and material harm claims), **209/06, 214/06, 215/06** (physical and mental harm claims), **225/06** (physical and mental harm claims), **231/06** (physical and mental harm claims), **232/06** (physical, mental, and material harm claims), **243/06, 244/06, 249/06, 220/06** (physical, mental and material harm claims) Application Forms and Supporting Documentation; Annexes 10-11, 13, 15, 18, 20 to the Eighth Report. Ninth Report: **Victims 251/06** (physical and mental harm claims), **252/06, 216/06** (mental harm claim), **261/06** (physical and mental claims), **260/06** (physical and mental harm claims) Application Forms and Supporting Documentation; Annexes 3-4, 6-9 to the Ninth Report.

<sup>51</sup> The Panel notes, in respect of **Victim 163/06**, that while a close relationship cannot be presumed as the direct victim is [REDACTED], such a relationship can be inferred as the direct victim [REDACTED];

trauma, post-traumatic stress disorder, grief, depression, anxiety, bereavement, insomnia, memory loss, nightmares and stress) as a direct result of the harm purportedly suffered by the direct victims.<sup>52</sup>

21. *All Rejected Harm.* The Panel has decided that the following victims have *prima facie* suffered harm. However, they have not established, *prima facie*, that the following additional claimed harm was suffered as a direct result of the crimes charged. In particular, the Panel notes that indirect **Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06, 110/06,<sup>53</sup> 112/06, 163/06, 180/06, 186/06, 187/06, 188/06, 191/06, 197/06, 198/06, 199/06, 200/06, 201/06, 202/06, 189/06, 206/06, 207/06, 208/06,**

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*see* **Victim 163/06**, Application Form and Supporting Documents; Annex 10 to the Sixth Report. In addition, the Panel observes that while **Victims 197/06, 198/06, 199/06** and **200/06**, are immediate family members of one of the direct victims ([REDACTED]), a close relationship cannot be presumed to the other direct victims ([REDACTED]) as no evidence has been submitted to this effect. In respect of **Victim 247/06**, the Panel notes that, while a close relationship cannot be presumed as the direct victim is [REDACTED], such a relationship can be inferred as the direct victim [REDACTED]. In respect of **Victim 266/06**, while a close relationship cannot be presumed as the direct victim [REDACTED], such a relationship can be inferred as the [REDACTED]. The Panel concurs with VPO's assessment that the lack of documentation to prove the kinship is justified in light of the circumstances (the applicant currently [REDACTED]). *See* First Decision on Victims' Participation, paras 50, 53 ("...mental harm shall be presumed provided that the close relationship between the indirect victim and the direct victim is sufficiently established". In this regard, the Panel further recalls that "immediate family members (*i.e.* spouse, parents, children, siblings) are presumed to be in a close personal 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").

<sup>52</sup> Sixth Report: Victims 97/06, 99/06-103/06, 110/06, 112/06, 121/06-125/06, 163/06, 180/06, 186/06-188/06, 191/06, 195/06-203/06, 212/06 Application Forms and Supporting Documentation; Annexes 2-29, 51 to the Sixth Report. Eighth Report: Victims 130/06, 131/06, 189/06, 206/06, 207/06, 208/06, 210/06, 211/06, 217/06, 218/06, 219/06, 225/06, 227/06, 228/06, 233/06, 234/06, 235/06, 236/06, 237/06, 238/06, 239/06, 242/06, 243/06, 244/06, 241/06, 230/06, 245/06, 246/06, 248/06, 249/06, 250/06, 240/06, 220/06 Application Forms and Supporting Documentation; Annexes 2-4, 8-9, 12, 14-20 to the Eighth Report. Ninth Report: Victims 247/06, 254/06, 259/06, 262/06, 265/06, 266/06 Application Forms and Supporting Documentation; Annexes 2, 5, 7, 9-10 to the Ninth Report. Tenth Report: Victim 267/06 (mental and physical harm), 268/06, 269/06, 270/06 Application Forms and Supporting Documentation; Annexes 2-3 to the Tenth Report.

<sup>53</sup> The Panel observes that while **Victim 110/06** has submitted supporting documents of physical harm, the Application Form and Supporting Documentation do not enable the Panel to conclude that the physical harm alleged by the applicant was suffered as a result of the crimes charged. Nonetheless, the Panel observes that **Victim 110/06** has established that he has suffered mental harm as a direct result of the crimes charged. The Panel is therefore satisfied that there is no prejudice to the applicant's ability to participate in the proceedings.

210/06, 211/06, 217/06, 218/06, 219/06, 225/06, 227/06, 228/06, 233/06, 234/06, 235/06, 236/06, 237/06, 238/06, 239/06, 242/06, 243/06, 244/06, 245/06, 246/06, 248/06, 249/06, 250/06, 220/06, 247/06, 254/06, 266/06, 267/06, 268/06, 269/06, and 270/06 also claim physical and/or material harm,<sup>54</sup> and that **Victims 191/06, 204/06, 209/06, 215/06, 252/06, and 216/06** as direct victims, also claim physical and/or material harm,<sup>55</sup> for which there is insufficient information to find that the harm is linked to one of the crimes charged in the Indictment. This finding does not adversely affect the ability of these victims to participate in the proceedings.

22. Lastly, the Panel notes that, in addition to mental and/or physical harm, **Victims 212/06, 195/06, 203/06, 240/06, 234/06, 221/06, 225/06 and 260/06** also claim material harm, *inter alia* through loss of income, devaluation of property, or other specific circumstances.<sup>56</sup> As harm of a physical and/or mental nature has already

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<sup>54</sup> Sixth Report: **Victims 97/06, 100/06, 101/06, 102/06, and 103/06** (material harm claim), **99/06** (physical harm claim), **110/06, 112/06, and 163/06** (material harm claim), **180/06** (material harm claim), **186/06, 187/06, and 188/06** (material harm claim), **191/06** (material harm claim), **197/06, 198/06, 199/06, 200/06, 201/06 and 202/06** (material harm claim); *see* Application Forms and Supporting Documentation; Annexes 2-10, 16-20, 22-28 to the Sixth Report. Eighth Report: **Victims 189/06** (material harm claim), **206/06, 207/06, 208/06, 210/06 and 211/06** (material harm claim), **215/06** (material harm claim), **217/06** (material harm claim), **218/06 and 219/06** (physical and material harm claim), **225/06, 227/06 and 228/06** (material harm claim), **233/06, 235/06, 236/06, 237/06, 238/06, 239/06, 242/06** (material harm claim), **243/06** (material harm claim), **244/06** (material harm claim), **220/06** (material harm claim), **245/06** (material harm claim), **246/06** (material harm claim), **248/06** (material harm claim), **250/06** (material and physical harm claim); *see* Application Forms and Supporting Documentation; Annexes 3-4, 8-9, 12, 14-15, 18, 20 to the Eighth Report. Ninth Report: **Victims 247/06** (material harm claim), **254/06** (material harm claim), **266/06** (material harm claim); *see* Application Forms and Supporting Documentation; Annexes 2, 5, 10 to the Ninth Report. Tenth Report: **Victims 267/06** (material harm claim), **268/06, 269/06 and 270/06** (material harm claim); *see* Application Forms and Supporting Documentation; Annexes 2-3 to the Tenth Report.

<sup>55</sup> Sixth Report: **Victim 191/06** (claim physical harm as he was allegedly mistreated when taken in for questioning but as the Panel has found that **Victim 191/06** is not a direct victim of an alleged crime, the alleged physical harm is not linked to one of the charged locations); **Victim 204/06** (material harm claim); *see* Application Forms and Supporting Document; Annexes 20, 30 to Sixth Report. Eighth Report: **Victims 209/06** (physical and material harm are linked to events falling outside of temporal scope of the Indictment), **214/06, 249/06** (material harm claim) Application Forms and Supporting Documentation; Annexes 5-6, 18 to the Eighth Report. Ninth Report: **Victims 252/06** (material harm claim), **216/06** (material harm claim); *see* Application Forms and Supporting Documentation; Annexes 4, 6 to the Ninth Report.

<sup>56</sup> *See* Victims Application Forms. *See also* Annexes 21, 29, 51 to the Sixth Report; Annexes 9-10, 12, 19 to the Eighth Report.

been demonstrated to the requisite degree for these victims at this stage, it is not necessary for the Panel to decide on the material harm alleged by these victims. These determinations will be made in the reparations order, if any.

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

### 3. Conclusion

24. In light of the above, the Panel finds that there is *prima facie* evidence that all Group A Applicants have suffered harm as a direct result of crimes alleged in the Indictment. Accordingly, the Panel admits all Group A Applicants as participating victims in the proceedings.

25. The Panel further finds that Group B Applicants, for the reasons provided at paragraph 18, are not admitted to the proceedings as participating victims.

## B. PROTECTIVE MEASURES

### 1. Group A Applicants

26. The VPO recommends that all Group A Applicants be granted anonymity under Rule 80(4)(e)(i).<sup>57</sup>

27. The Veseli Defence refers to the submissions it made in the “Veseli Response to Fifth Registry Report on Victims’ Applications for Participation in the Proceedings (F00894)”, opposing the VPO’s recommendation that the Group A Applicants be granted anonymity. Specifically, the Veseli Defence argues that: (i) the VPO did not conduct a case-by-case assessment for each victim; (ii) this approach stands in contrast to the SPO’s requests for protective measures vis-à-

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<sup>57</sup> Sixth Report, para. 72; Eighth Report, para. 76; Ninth Report, para. 69; Tenth Report, para. 65.

vis witnesses; (iii) 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; and (iv) the VPO's recommendation is disproportionate to the rights of the Accused.<sup>58</sup>

28. The Panel notes that the Pre-Trial Judge addressed and dismissed precisely these arguments by the Veseli Defence in the Fourth Decision on Victims' Participation.<sup>59</sup> The Panel concurs with the Pre-Trial Judge's reasoning and further notes that the witness codes and – unless exceptionally granted anonymity – the identities of all admitted dual status witnesses have been, or will be, disclosed to the Parties.

29. For these reasons, the Panel rejects the Veseli Defence's submissions and will proceed to assess the VPO's request for protective measures.

(a) Application Forms

30. The Panel notes that, in accordance with Rule 113(1), all application forms, application summaries and supporting documents shall remain strictly confidential and *ex parte*.<sup>60</sup> This is without prejudice to the pending issue of access by the Defence to victims' application forms and conditions.

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<sup>58</sup> Veseli Response, para. 1 referring to F00916, Specialist Counsel, *Veseli Defence Response to Fifth Registry Report on Victims' Applications for Participation in the Proceedings (F00894)*, 4 August 2022, paras 7-12.

<sup>59</sup> Fourth Decision on Victims' Participation, paras 50-55.

<sup>60</sup> See F01237, Trial Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, para. 28.

(b) Identity of Applicants

31. As indicated in the First Framework Decision, the legal test applicable for protective measures in relation to victims is the same as that applicable in relation to witnesses.<sup>61</sup>

32. In assessing the existence of an objectively justifiable risk and the necessity of the protective measures for the Group A Applicants, the Panel takes into account the following specific factors: (i) all of them continue to suffer from physical and/or mental trauma as a result of the alleged crimes they or their family members have allegedly been victims of;<sup>62</sup> (ii) all except six applicants<sup>63</sup> have expressed credible concern that revealing their identity to the SPO, the public, Defence Counsel and/or the Accused might endanger them or their family;<sup>64</sup> and (iii) at least [REDACTED] of the applicants continue to live in Kosovo or have family members who do.<sup>65</sup> In addition, the Panel has given consideration to: (i) the general climate of witness and victim intimidation prevailing in Kosovo, particularly in criminal proceedings against former members of the Kosovo Liberation Army;<sup>66</sup> and (ii) the Accused's means and incentives to intimidate

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<sup>61</sup> 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; F00817, Pre-Trial Judge, *Third Decision on Victims' Participation* ("Third Decision on Victims' Participation"), 25 May 2022, strictly confidential and *ex parte*, para. 42. A public redacted version was filed on the same day, F00817/RED.

<sup>62</sup> See *supra*, para. 20.

<sup>63</sup> Sixth Report: Victims 99/06, 186/06, 187/06, 188/06 and 196/06, Application Forms; Ninth Report: Victim 247/06 Application Form.

<sup>64</sup> See all Group A Applicants Application Forms, save for the applicants referenced in preceding footnote.

<sup>65</sup> Sixth Report: [REDACTED] Application Forms and Supporting Material; Eighth Report: [REDACTED] Application Forms. Ninth Report: [REDACTED] Application Forms.

<sup>66</sup> See 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, para. 43; KSC-BC-2020-07, F00611, Trial Panel II, *Public Redacted Version of Trial Judgement*, 18 May 2022, paras 577-581, 593, 646-645, 968; KSC-BC-2020-05, F00494, Trial Panel I, *Public Redacted Version of Trial Judgement*, 16 December 2022, para. 50; F01212, Trial Panel II, *Decision on Periodic Review of Detention of Jakup Krasniqi*, 17 January 2023, confidential, paras 22-23. A public redacted version was issued on the same day, F01212/RED; F01213, Trial Panel II, *Decision on Periodic Review of Detention of Rexhep Selimi*,

victims, in light of the positions of authority held by them during the timeframe of the charges, as well as in more recent times.<sup>67</sup> Moreover, the Panel 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.<sup>68</sup>

33. For these reasons, the Panel 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. The Panel recognises that information pertaining to dual status witnesses has been the subject of litigation.<sup>69</sup> However, for the same reasons, the Panel considers that disclosure of the identities of dual status witnesses to the Defence prior to the lifting of the protective measures which are in force due to their status as SPO witnesses poses an objectively justifiable risk to them and their families. The Panel similarly considers that the disclosure of the identities of dual status witnesses to the public – at any point – poses an objectively justifiable risk to them and their families.

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17 January 2023, confidential, paras 24-25. A public redacted version was issued on 18 January 2023, F01213/RED. KSC-CA-2022-01, F00114, Appeals Chamber, *Appeal Judgment*, 2 February 2023, paras 424, 438.

<sup>67</sup> See First Decision on Victims' Participation, para. 68; Second Decision on Victims' Participation, para. 51; Third Decision on Victims' Participation, para. 43; Fourth Decision on Victims' Participation, para. 59.

<sup>68</sup> See First Decision on Victims' Participation, para. 68; Second Decision on Victims' Participation, para. 51; Third Decision on Victims' Participation, para. 43; Fourth Decision on Victims' Participation, para. 59.

<sup>69</sup> See F01153, Pre-Trial Judge, *Decision on Thaçi Defence's Request for Disclosure of Dual Status Witnesses* ("Dual Status Witnesses Decision"), 13 December 2022, para. 39.

34. As regards the necessity of the protective measures, the Panel considers that, for the reasons set out above, and for the time being, anonymity under Rule 80(4)(e)(i) for victims who are not dual status witnesses is necessary under the circumstances. The Panel considers, however, that the witness codes and identities of victims admitted to participate in the proceedings who are dual status witnesses should be disclosed to the Defence to facilitate the right to confront a witness. Therefore, the protective measures currently in force for dual status witnesses due to their status as SPO witnesses constitute necessary measures.

35. As regards the proportionality of the measures, the Panel notes that: (i) the witness codes and identities of dual status witnesses will be disclosed to the Accused;<sup>70</sup> and (ii) 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, if and when the need arises.<sup>71</sup>

36. In light of the above, the Panel grants anonymity to admitted victims, who are not dual status witnesses, towards the public and the Parties. The Panel further finds that, for dual status witnesses, the protective measures currently in force for them as SPO witnesses shall be maintained.

#### (c) Disclosure of Witness Codes of Dual Status Witnesses

37. While the Panel considers that dual status witnesses' witness codes should be disclosed to the Defence, the Panel considers that, prior to any disclosure, Victims' Counsel should have the opportunity to inform the individual that his or

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<sup>70</sup> F01199, Victims' Counsel and Specialist Prosecutor, *Victims' Counsel and SPO joint filing in compliance with decision F01153*, 12 January 2023, confidential, with Annex 1, confidential.

<sup>71</sup> See First Decision on Victims' Participation, para. 69; Second Decision on Victims' Participation, para. 53; Third Decision on Victims' Participation, para. 45; Fourth Decision on Victims' Participation, para. 61.



her victim status will be disclosed to the Defence to allow them to raise any concerns about such disclosure.<sup>72</sup>

38. Therefore, and to facilitate the disclosure of information pertaining to dual status witnesses, the Panel orders:

- (a) Victims' Counsel to liaise with the SPO to identify dual status witnesses admitted to participate as a result of the present decision and file an updated list of dual status witnesses, strictly confidential and *ex parte*, by **Wednesday, 22 February 2023**, to be notified to WPSO and VPO;
- (b) Victims' Counsel to inform dual status witnesses that the fact that they are a victim will be disclosed to the Defence when it is disclosed that they are an SPO witness. Should the dual status witnesses have any concerns, they can raise them with the Panel. Victims' Counsel should file any application for relief associated with the expression of such concerns by **Wednesday, 8 March 2023**; and
- (c) Subject to any concerns, in the discretion of the Panel, the list of dual status witnesses will be reclassified as confidential.

## 2. Group B Applicants

39. As regards VPO's recommendation that the names and identifying information of Group B Applicants be withheld from the Parties and the public,<sup>73</sup> the Panel considers that, by virtue of the confidentiality of the application process, as provided in Rule 113(1)-(2), 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. The Panel is further of the view

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<sup>72</sup> Dual Status Witnesses Decision, para. 41.

<sup>73</sup> Sixth Report, para. 74; Seventh Report, para. 45; Eight Report, para. 78; Ninth Report, para. 71; Tenth Report, para. 67.

that, given that none of the Group B Applicants are admitted as victims participating in the proceedings, no prejudice is caused to the Accused by this non-disclosure.

40. The Panel accordingly orders that the names and any identifying information of Group B Applicants 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*.

### C. GROUPING AND COMMON LEGAL REPRESENTATION

41. As regards the VPO's recommendation that all Group A Applicants be grouped together with the other victims participating in the proceedings,<sup>74</sup> the Panel recalls the Pre-Trial Judge's finding that a need to divide applicants into more than one group arises where the situation or specificity of the victims is so different that their interests are irreconcilable, making common representation impracticable.<sup>75</sup>

42. The Panel observes that Group A Applicants have different backgrounds, reside in different areas and speak different languages. At the same time, all Group A Applicants, whether direct and/or indirect victims, were subjected to similar alleged types of crimes in generally similar circumstances and have suffered from similar forms of harm. As a result, the Panel is of the view that all Group A Applicants seem to share a common interest of participating in the proceedings and pursuing their rights. Moreover, all aforementioned applicants have indicated that they do not object to being in a group with other victims.

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<sup>74</sup> Sixth Report, para. 65; Eight Report, para. 71; Ninth Report, para. 61; Tenth Report, para. 57.

<sup>75</sup> First Framework Decision, para. 43; First Decision on Victims' Participation, para. 76. *See also* Second Decision on Victims' Participation, para. 58; Third Decision on Victims' Participation, para. 48; Fourth Decision on Victims' Participation, para. 69.

43. Based on these considerations, the Panel finds that all Group A Applicants shall be grouped together with the victims previously admitted, under Group 1.

44. Additionally, one victim (**Victim 180/06**) has indicated a preference to have “a competent counsel”, one victim (**Victim 191/06**) has indicated a preference to be represented by [REDACTED], three victims (**Victims 110/06, 191/06 and 210/06**) have indicated a preference for specific lawyers named in the application forms, and the remaining victims have no preference.<sup>76</sup> The VPO recommends that all admitted applicants be represented by the assigned Victims’ Counsel.<sup>77</sup> The Panel is satisfied that the recommended course is consistent with the effective guaranteeing of the rights of those concerned.

45. Based on the same considerations as set out in the First Decision on Victims’ Participation,<sup>78</sup> the Panel finds that Group 1 shall be represented by Victims’ Counsel assigned to Group 1.

#### D. PARTICIPATION IN TRIAL PROCEEDINGS

46. Group A Applicants shall exercise their rights through Victims’ Counsel and shall participate through the modalities described in the First Decision on Victims’ Participation and in accordance with the Order on the Conduct of Proceedings.<sup>79</sup>

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<sup>76</sup> Sixth Report, para. 67; **Victims 97/06, 99/06, 100/06, 101/06, 102/06, 103/06, 112/06, 163/06, 121/06, 122/06, 123/06, 124/06, 125/06, 186/06, 187/06, 188/06, 195/06, 197/06, 198/06, 199/06, 200/06, 201/06, 202/06, 203/06, 204/06, and 212/06**, Application Forms. Eighth Report, para. 70; **Victim 210/06** Application Form. The Panel notes that the other applicants in the Eighth Report who expressed a preference with regard to their legal representation (**150/06, 155/06 and 190/06**) are Group B applicants.

<sup>77</sup> Sixth Report, para. 68; Eighth Report, para. 71; Ninth Report, para. 63; Tenth Report, para. 60.

<sup>78</sup> First Decision on Victims’ Participation, para. 76; *see also* Second Decision on Victims’ Participation, para. 58; Third Decision on Victims’ Participation, para. 48; Fourth Decision on Victims’ Participation, para. 69; First Framework Decision, para. 43.

<sup>79</sup> First Decision on Victims’ Participation, paras 82-84, 85(d); F01226/01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, paras 32-36.

## VI. DISPOSITION

47. For the above-mentioned reasons, the Panel hereby:

- a. **GRANTS** the applications of Group A Applicants and admits them to participate as victims in the proceedings;
- b. **REJECTS** the applications of Group B Applicants as inadmissible;
- c. **DECIDES** that Group A Applicants shall be included in Group 1 for the purpose of common representation and shall be represented by Victims' Counsel for Group 1;
- d. **ADOPTS** the participation modalities and rights of Victims' Counsel as set out in paragraph 73(d) of the Fourth Decision on Victims' Participation;
- e. **ORDERS** the following protective measures under Rule 80(4)(e)(i):
  - i. anonymity to Group A Applicants who are not dual status witnesses;
  - ii. the same protective measures as those respectively granted to them as SPO witnesses to Group A Applicants who are dual status witnesses; and
  - iii. withholding from the Parties and the public the names and any identifying information of Group B Applicants, as well as maintaining the classification of their respective application forms, summaries and supporting documentation as strictly confidential and *ex parte*;
- f. **DECIDES** to maintain the classification strictly confidential and *ex parte* of all application forms, summaries and supporting documentation, subject to further order in respect of dual status witnesses;
- g. **ORDERS** Victims' Counsel, in respect of dual status witnesses, to:
  - i. liaise with the SPO to identify dual status witnesses and file an updated list of dual status witnesses, strictly confidential and *ex parte*, by **Wednesday, 22 February 2023**, to be notified to WPSO and VPO;

- ii. inform dual status witnesses that their victim status will be disclosed to the Defence, as set forth in this decision;
- iii. file before the Panel any concerns raised by dual status witnesses, if any, by **Wednesday, 8 March 2023**; and
- iv. reclassify, absent any concerns, the list of dual status witnesses as confidential one day thereafter.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Tuesday, 15 February 2023

At The Hague, The Netherlands.