

In: KSC-BC-2020-06
**The Prosecutor v. Hashim Thaci, Kadri Veseli, Rexhep Selimi
and Jakup Krasniqi**

Before: **President of the Specialist Chamber of Kosovo**
Dr Ekaterina Trendafilova

Registrar: Dr Fidelma Donlon

Filed by: Duty Victims' Counsel
Tijana Kostić

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**Public redacted version of the Appeal against the „Fifth Decision on Victims'
Participation“ pursuant to Rule 113 (6) of the Rules**

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I INTRODUCTION

1. Pursuant to Rule 113 (6) of the Rules of Procedure and Evidence before The Kosovo Specialist Chambers (hereafter: "Rules")¹ as Duty Victims' Counsel for denied applicants Victim 88/06, Victim 90/06, Victim 105/06, Victim 107/06, Victim 137/06, Victim 164/06, Victim 165/06, Victim 166/06, Victim 167/06, Victim 171/06, Victim 172/06, Victim 181/06, Victim 179/06, Victim 190/06, Victim 205/06, Victim 253/06, Victim 272/06, Victim 273/06, I hereby submit an appeal against the Fifth Decision on Victims' Participation (hereafter: "Fifth Decision").
2. Victim 257/06 and Victim 258/06 do not appeal the decision because the crimes from their applications fall outside the temporal parameters of the charges specified in the Indictment and they accept the decision of the Panel.

II PROCEDURAL BACKGROUND

3. On 4 January 2021, the Pre-Trial Judge issued the "Framework Decision on Victims' Application".²
4. On 6 July 2021, the Pre-Trial Judge issued the "Second Framework Decision on Victims' Applications".³
5. On 30 September 2022, the Specialist Prosecutor's Office (hereafter: SPO) submitted the confirmed amended Indictment (Indictment).⁴
6. On 18 August 2022, the Victims' Participation Office (hereafter: VPO) filed the Sixth Report on Victims' Applications ("Sixth Report").⁵
7. On 3 October 2022, VPO filed the Seventh Report on Victims' Application ("Seventh Report").⁶
8. On 14 October 2022, VPO filed the Eight Report on Victims' Application ("Eight Report").⁷

¹ Rule of Procedure and Evidence before the Kosovo Specialist Chambers, 2 June 2020.

² KSC-BC-2020-06, Pre-Trial Judge, First Framework Decision on Victims' Applications, 4 January 2021.

³ KSC-BC-2020-06, Pre-Trial Judge, Second Framework Decision on Victims' Applications, 6. July 2021.

⁴ KSC-BC-2020-06, Specialist Prosecutor, Submission of Confirmed Amended Indictment, 30 September 2022, with Annex 1, Annex 2 and Annex 3.

⁵ KSC-BC-2020-06, Registrar, Sixth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 August 2022.

⁶ KSC-BC-2020-06, Registrar, Seventh Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 3 October 2022.

⁷ KSC-BC-2020-06, Registrar, Eight Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 14 October 2022.

9. On 20 October 2022, VPO filed the Ninth Report on Victims' Application ("Ninth Report").⁸
10. On 9 December 2022, VPO filed the Tenth Report on Victims' Application ("Tenth Report").⁹
11. On 15 February 2023, Trial Panel II rendered The Fifth Decision on Victims' Participation (Impugned Decision).¹⁰
12. On 21 February 2023, Tijana Kostic was appointed as Duty Counsel for the group of twenty denied applicants from Fifth Decision.

III APPLICABLE LAW

13. Article 22 of the Law on Specialist Chambers and Specialist Prosecutor's office establish definition and rights of victims in the proceedings. According to Article 22 (3) victims have personal interest and rights in the criminal proceedings before the Specialist Chambers, to be notified, to be acknowledged as victim, with right for reparation.
14. Pursuant to Rule 113 (4) of the Rules, in deciding whether a victim may participate in the proceedings, the Panel need to consider whether the applicant has provided *prima facie* evidence of the harm suffered as a direct result of a crime in the Indictment.
15. The Panel have to render decision granting or denying victims admission in the proceedings. That decision must be reasoned, pursuant to Rule 113 (5) of the Rules.
16. Pursuant to Rule 113 (6) of the Rules, Denied applicants may appeal the decision of the Panel within fourteen days of notification.

IV GROUND OF APPEAL

⁸ KSC-BC-2020-06, Registrar, Ninth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 20 October 2022.

⁹ KSC-BC-2020-06, Registrar, Tenth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 9 December 2023.

¹⁰ KSC-BC-2020-06, Trial Panel II ("The Panel"), Fifth Decision on Victims' Participation", 15 February 2023.

**a. THE IMPUGNED DECISION IS BASED ON A WRONG ASSESMENT OF
THA APPLICATION ON VICTIMS' PARTICIPATION IN THE
PROCEEDINGS**

17. All denied victims who fill appeals are within the temporal scope of the charges, specified in the Indictment as at least March 1998 through September 1999".
18. The denied applicant: Victim 88, Victim 107/06, Victim 137/06, Victim 179/06, Victim 190/06, Victim 205/06 and Victim 272/06 have suffered harm from enforce disappearance of their immediate family members.
19. The denied applicant: Victim 90/06, Victim 105/06, Victim 164/06, Victim 165/06, Victim 166/06, Victim 167/06, Victim 171/06, Victim 172/06, Victim 181/06, Victim 273/06 and also Victim 88/06 have suffered harm from murder of their immediate family members. [REDACTED]
20. According to Rule 113 (4) of the Rules and recommendation in the First Framework Decision on Victims' Participation (para. 29), the Panel assess the submitted information and supporting material on a *prima facie* basis, review the submitted information and supporting material on a case-by-case basis. It means, taking into account all relevant circumstances as apparent and the intrinsic coherence of the application.
21. The Panel erred concluding that the denied applicants have not established, on a *prima facie* evidence, that the alleged crimes fall within the geographical or the material scope of the Indictment. In the assessment of applications by The Panel, individualized analysis of each application was incorrect. Article 113 (5) of Rules was violated by the Impugned decision. This article prescribed that Panel's decision on the participation of the victims must be reasoned. According to this rule, the Panel should render the reasoned decision whether granting or denying admission in the proceedings. The reasoning in the Fifth decision has many omissions and errors which makes it contrary to the established rule. In the Fifth decision, the Panel refers to the requirement to give reasons for denying applications for participation¹¹, but it did not do correctly and consistently for each denied applicant.

¹¹ Fifth decision, para.8.

1. The Panel erred in the assessing that denied victims suffered harm do not fall under the geographical scope of the indictment

22. [REDACTED]

23. [REDACTED]

24. [REDACTED]

25. [REDACTED]

2. The Panel erred in the assessing that denied victims suffered harm do not fall under the geographical scope of the indictment

26. Although in the Impugned Decision (para.18) stated that the reason of the rejection will be given in the footnotes for each denied applicants, this is not done. Victims 137/06, 172/06, 181/06,¹² 190/06,107/06 are only listed with reference to their applications form and supporting documents, as well as the Victim 164/06. The Panel failed to give reasons in the footnotes, as it recommended in the First Framework Decision and in the Decision on Appeal of First Decision on Victims' Participation.¹³

27. Instead of reason why the application of Victim 164/05 is denied, the Panel in the footnote observed that the VPO's description of this application in Sixth Report is incorrect. However, the Panel only states that has been able to assess the application based on Application Form and supporting documentation, without giving any reason for denied applicant. Although the Panel observes that the VPO's description of Victim 165/06' application in the Sixth Report is also incorrect, the Panel gave reasons for rejecting the application of this victim. That indicates an inconsistency in the Panel's assessment of the victim's applications.

¹² Victims 137/06, 172/06 and 181/06 were evaluated as a group in the Six Report, not individually.

¹³ Appeals decision on First Decision on Victims' Participation, 07.June 2021. [

28. All this omissions shows that the Impugned Decision was made in contrary to established principles in interpretation article 22 of the Law on the Specialist Chambers and Specialist Prosecutor's Office.
29. In the First Decision on Victims Participation¹⁴, the Pre-Trial Judge noted that immediate family members (spouse, parents, children, siblings) are presumed to be in a close relationship with a direct victim. According to that principle, the application of Victim 105/06 should not have been rejected.¹⁵ In the Impugned Decision, the Panel noted that the reasons why each applicant falls outside the scope of Article 22(1) has set out in the footnotes. The Victim 105/06 is rejected with only one reason - that he has not sufficiently demonstrated a close personal relationship with [REDACTED]. This reason for the Victim 105/06 in the footnote 47 of The Fifth Decision, without any other reasons, not indicating the justification of the Impugned decision for this victim. [REDACTED]
30. Regarding the applications of Victim 166/06 and Victim 105/06, the Panel concluded that this applications were incomplete.¹⁶ Although this two applications was considered as formally completed, the Impugned decision did not specify what was missing and was specifically done to obtain the missing data. [REDACTED]
31. In Six Report states that Victim 105/06 submitted all available supporting documentation. The assessment of this application was done in Six Report, but there is no specific no/recommendation by the VPO.
32. Victims' applications is a procedural mechanism which allow victims to participate in this proceedings. For this reason, it is necessary that victims' application be carefully considered and reliably evaluated, which was not done by the Panel. Regarding the denied applicants in the Fifth Decision, the conclusion on the admissibility of their applications is not adequately justified.

¹⁴ KSC-BC-2020-06, Pre-Trial judge, First Decision on Victims' Participation, 21 April 2021.

¹⁵ Fifth Decision, footnote 47.

¹⁶ The both victims from Tenth Report.

- b. THE PANEL ERRED CONCLUDED THAT THE CRIMES WHICH CAUSED SUFFERING TO DINIED VICTIMS' NOT PART OF THE CRIMES ALLEGED IN THE INDICTMENT.
33. All crimes described in the applications of the denied victims are linked to the charged on way specified in the Indictment.
34. This crimes didn't commit isolated but a part of a widespread and systematic attack on the territory of Kosovo, for which the defendants are accused. Events described in the application of denied victims' were committed as part of intention for conductive systematic and widespread attack. The accused were aware of all consequences/crimes, committed by members of the organization they managed and commanded.
35. The denied applicants have provided *prima facie evidence* of the harm they have suffered as a direct result of a war crimes and crimes against humanity alleged in the Indictment. [REDACTED] They recognized and named the perpetrators of this crime, who were KLA members. Fact that the remains of some victims were found near the place from the Indictment, doubtless indicates connection that crimes with the crimes in the Indictment.
36. Although after twenty-five years is hardly possible to find new evidence, the existing evidence and numerous supporting materials, clearly indicates that the committed crimes fall within the scope of the Indictment and responsibility of the accused.
37. All that crimes were committed with the knowledge and consent of the defendants in this case, who managed and commanded the member of KLA, who were direct executors. [REDACTED]
38. The interpretation of Article 22 of the Law, and article 113 of the Rules, in the First Framework Decision and Decision on Appeal against the "First Decision of Victims' Participation", limited access to justice for victims. The First Framework decision which set out the interpretation of the significant provisions about victims' rights, is largely based on the Mustafa's case. So, this limited interpretation of the Law should not be applied to other cases involving broader charges, such as this case against Hashim Tachi, Kadri Vesli, Rexhep Selimi and Jakup Krasniqi.

39. Fair trial rights of the accused must not be unfair to the obviously victims of their crimes, as in this case here. From that reason, the denied Applicants should have been allowed to participate in this proceedings. All denied victims have so far turned to all institutions and organization that dealt with the crimes committed on the Kosovo in 1998 and 1999. The proceedings before this Court are really the last opportunity for all denied victims to realized their right which are guaranteed to them by the European Convention on Human Rights and Freedoms, and other relevant International documents.

V APPEAL REQUEST

40. The conclusion of the Panel on the admissibility of the rejected application of the denied victims are disputed due to the irregularities and all mistakes made in the decision-making process.

41. Pursuant to Rule 113(6) of the Rules, Counsel for denied victims respectfully requested that this Panel of the Court of Appeals Chamber:

- a. reverse the impugned “Fifth Decision of Victims’ Participation”;
- b. admit the denied applicants: Victim 88/06, Victim 90/06, Victim 105/06, Victim 107/06, Victim 137/06, Victim 164/06, Victim 165/06, Victim 166/06, Victim 167/06, Victim 171/06, Victim 172/06, Victim 181/06, Victim 179/06, Victim 190/06, Victim 205/06, Victim 253/06, Victim 272/06, Victim 273/06, to participate in the proceedings, finding that there is prima facie evidence that they have suffered harm as a direct result of crimes alleged in the Indictment.

CLASSIFICATION

According with the current classification of the rejected applications, Counsel submits this Appeal as strictly confidential and *ex parte*. This appeal contains information that could reveal the identity of the denied victims.

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Monday, 17 April 2023.

Belgrade, Serbia