



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-CA-2024-03**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 24 July 2024

Original language: English

Classification: **Public**

Decision on Modalities of Victims' Participation in Appellate Proceedings

Specialist Prosecutor's Office:

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Counsel for Victims:

Simon Laws

THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 172 of the Rules of Procedure and Evidence (“Rules”), hereby issues this Decision.

I. BACKGROUND

1. On 15 December 2021, the Pre-Trial Judge admitted one victim to the proceedings in case KSC-BC-2020-04 and set out the provisions applicable to the victims’ participation in pre-trial proceedings.² On 11 August 2022, the Pre-Trial Judge admitted one additional victim to the proceedings.³ On 19 September 2022, the Pre-Trial Judge admitted six further victims to the proceedings.⁴ On 24 February 2023, the Trial Panel set out the participating victims’ procedural rights at trial.⁵ On 16 July 2024, the Trial Panel issued its judgment in the case, noting *inter alia* that eight victims had participated in the proceedings.⁶

2. On 19 July 2024, Mr Pjetër Shala (“Shala”) requested an extension of time to file his notice of appeal against the Trial Judgment.⁷

¹ F00002, Decision Assigning a Court of Appeals Panel, 22 July 2024.

² KSC-BC-2020-04, F00123/RED, Public Redacted Version of First Decision on Victims’ Participation, 15 December 2021 (confidential version filed on 15 December 2021), paras 45-50.

³ KSC-BC-2020-04, F00249/RED, Public Redacted Version of Second Decision on Victims’ Participation, 11 August 2022 (confidential version filed on 11 August 2022), paras 42-43.

⁴ KSC-BC-2020-04, F00279/RED, Public Redacted Version of Third Decision on Victims’ Participation, 19 September 2022 (confidential version filed on 19 September 2022), paras 42-43.

⁵ KSC-BC-2020-04, F00433, Decision on victims’ procedural rights during trial and related matters, 24 February 2023 (confidential, reclassified as public on 6 March 2023) (“Decision on Victims’ Procedural Rights at Trial”), paras 29-50, 62.

⁶ KSC-BC-2020-04, F00847, Trial Judgment and Sentence, 16 July 2024 (confidential) (“Trial Judgment”), para. 13.

⁷ F00001, Application for Variation of the Time Limit for Filing the Defence Notice of Appeal, 19 July 2024, paras 1, 15.

II. DISCUSSION

3. The Panel recalls that, regardless of whether Counsel for Victims files an appeal under Article 46(9) of the Law, victim participation in appellate proceedings before the Specialist Chambers is permissible as long as (i) it complies with the Law and the Rules, (ii) is limited to issues impacting their personal interests, and (iii) is not prejudicial to or inconsistent with the rights of the Accused.⁸ Consistent with previous case law,⁹ the Appeals Panel will clarify below how the Specialist Chamber's legal provisions regarding victim participation apply in these appellate proceedings.

4. In this regard, the Appeals Panel notes the Trial Panel's analysis of the participating victims' personal interests, rights and modalities of participation at trial, based on the Specialist Chambers' legal framework – namely Articles 22(3), (5)-(6), 23 and 40(2) of the Law and Rules 80, 114 and 132 of the Rules, and notes in particular that they were permitted to attend all non-*ex parte* trial hearings, including the trial preparation conferences and defence preparation conferences.¹⁰ Consequently, keeping in mind the fact that the rules governing trial proceedings shall apply *mutatis mutandis* to proceedings before the Appeals Panel,¹¹ as well as the need for procedural coherence in this case, the Panel considers that it is in the interests of justice that a similar regime of victim participation be applied during these appellate proceedings, with the necessary adjustments.¹²

5. The Appeals Panel first considers that participating victims' rights during appellate proceedings are necessarily confined to the issues the Appeals Panel will be

⁸ See Article 22(6) of the Law. See also KSC-CA-2023-02, F00011, Decision on Modalities of Victim Participation in Appellate Proceedings, 15 February 2023 (“*Mustafa* Decision on Victim Participation in Appellate Proceedings”), paras 5-6.

⁹ See *Mustafa* Decision on Victim Participation in Appellate Proceedings.

¹⁰ Decision on Victims' Procedural Rights at Trial, paras 15-50. See also KSC-BC-2020-04, Transcript, 18 October 2022, p. 302; KSC-BC-2020-04, Transcript, 19 October 2022, p. 392; KSC-BC-2020-04, Transcript, 24 August 2023, p. 2343; KSC-BC-2020-04, Transcript, 25 August 2023, p. 2427.

¹¹ See Rule 173(3) of the Rules.

¹² See Rule 114(4) of the Rules. See also Decision on Victims' Procedural Rights at Trial, para. 31; *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 7.

seised of, and therefore must be exercised within the limits of the issues arising from the grounds of appeal.¹³

6. The Appeals Panel recalls that, according to Article 22(3) of the Law, the participating victims' personal interest and rights in the proceedings are notification, acknowledgement and reparation, and recalls that, in light of Article 23 of the Law, the protection of victims' safety, physical and psychological well-being, dignity and privacy is a fourth personal interest and right that participating victims have in the proceedings.¹⁴

7. Turning to the modalities of victims' participation in these appellate proceedings, the Panel recalls at the outset that they can only participate through Counsel for Victims and can therefore not represent themselves.¹⁵ In addition, the Panel considers that it shall retain control of the modalities of victims' participation, at all times, and that they may be amended and/or supplemented in certain instances, so long as the victims' personal interests are not adversely affected by such amendments or supplementations.¹⁶ The Panel shall also ensure that the victims' participation in the appellate proceedings is neither prejudicial to nor inconsistent with the Accused's rights.¹⁷

8. Specifically, Counsel for Victims shall continue to have access to the entire case file, including all public, confidential and strictly confidential filings, transcripts and evidentiary material, but excluding any items which are *ex parte* the Counsel for

¹³ See Article 46(1) of the Law; Rules 113(1)-(4), 175, 176(2), 182(2)-(3) of the Rules. See also *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 8; Decision on Victims' Procedural Rights at Trial, para. 17.

¹⁴ See Decision on Victims' Procedural Rights at Trial, paras 18-20. See also Decision on Victims' Procedural Rights at Trial, paras 21-28; *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 9.

¹⁵ Articles 22(5)-(6), 46(9) of the Law; Rule 114(1) of the Rules. See also Decision on Victims' Procedural Rights at Trial, para. 29; *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 10.

¹⁶ See Decision on Victims' Procedural Rights at Trial, para. 32. See also *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 10.

¹⁷ Article 22(6) of the Law. See Decision on Victims' Procedural Rights at Trial, para. 32; *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 10, fn. 24 and references cited therein.

Victims.¹⁸ It follows that Counsel for Victims shall also continue to be notified of all disclosed and/or distributed items in the case file, including all public, confidential and strictly confidential filings, transcripts and evidentiary material, but excluding any items which are *ex parte* the Counsel for Victims.¹⁹ Counsel for Victims shall continue to keep the participating victims informed of relevant developments in the case in a manner which does not reveal any non-public information.²⁰

9. In addition, in order to ensure that the participating victims' personal interests are appropriately represented at all times, Counsel for Victims shall continue to be notified of and be present at all appellate hearings, whether held in public, private or closed session, but excluding any hearings which are *ex parte* the Counsel for Victims.²¹ Counsel for Victims may request an *ex parte* hearing to address the Panel.²²

10. Moreover, Counsel for Victims may continue, within the limits set forth in Article 22(6) of the Law and Rule 114(4) of the Rules, without seeking prior leave from the Panel, to make oral and written submissions on any point of law or fact, and to file responses and replies, as the case may be, to any submissions made before the Panel, including appellate briefs.²³ However, the Panel stresses that Counsel for Victims must explicitly set out how the submissions are related to the participating victims' personal interests.²⁴ Failure to satisfy the Panel of this relationship may therefore lead to the

¹⁸ Rule 114(3) of the Rules; Decision on Victims' Procedural Rights at Trial, paras 30, 33. See also *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 11.

¹⁹ See Decision on Victims' Procedural Rights at Trial, para. 33. See also *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 11.

²⁰ Rule 114(3) of the Rules; Decision on Victims' Procedural Rights at Trial, para. 33. See also *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 11.

²¹ Article 22(6) of the Law; Rule 114(2) of the Rules; *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 12. See also Decision on Victims' Procedural Rights at Trial, paras 30, 34.

²² Decision on Victims' Procedural Rights at Trial, para. 34. See also *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 12.

²³ Article 22(6) of the Law; Rule 114(4) of the Rules; *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 13. See also Decision on Victims' Procedural Rights at Trial, paras 30, 35.

²⁴ Article 22(3), (6) of the Law. See also Decision on Victims' Procedural Rights at Trial, para. 35; *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 13.

summary dismissal of the submissions.²⁵ In addition, when filing written submissions, Counsel for Victims shall respect the applicable time and word limits, as well as other formal requirements set out in the Rules and the Practice Direction on Files and Filings.²⁶

11. Finally, the Appeals Panel notes that the present Decision does not set out modalities of victims' participation for the entire ambit of situations which may occur in these appellate proceedings. Should the need arise to further specify the modalities of victim participation in these proceedings, the Appeals Panel will give further direction, either at the request of the Parties or participants in the proceedings, or on its own motion.²⁷

III. DISPOSITION

12. For these reasons, the Court of Appeals Panel:

ADOPTS the modalities for victim participation in appellate proceedings set out in this Decision.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 24 July 2024

At The Hague, the Netherlands

²⁵ *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 13.

²⁶ KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019. See also *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 13.

²⁷ See *Mustafa* Decision on Victim Participation in Appellate Proceedings, para. 14.