



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06/IA027

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Emilio Gatti
Judge Kai Ambos

Registrar: Fidelma Donlon

Date: 21 June 2023

Original language: English

Classification: Public

**Public Redacted Version of Decision on Appeals Against
"Fifth Decision on Victims' Participation"**

Victims' Participation Office:

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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 169 of the Rules of Procedure and Evidence (“Rules”), is seised of two appeals against the “Fifth Decision on Victims’ Participation” (“Impugned Decision”),² namely those filed by: (i) Counsel for Victims 144/06, 145/06, 146/06, 147/06, 148/06, 149/06, 150/06, 151/06, 153/06, 154/06, 155/06, 156/6, 158/06, 159/06, 160/06, 213/06, 222/06, 223/06, 224/06 (“Group 1” and “Group 1 Appeal”, respectively);³ and (ii) Counsel for Victims 88/06, 90/06, 105/06, 107/06, 137/06, 164/06, 165/06, 166/06, 167/06, 171/06, 172/06, 179/06, 181/06, 190/06, 205/06, 253/06, 272/06, 273/06 (“Group 2” and “Group 2 Appeal”, respectively).⁴

¹ IA027/F00002, Decision Assigning a Court of Appeals Panel, 1 May 2023 (strictly confidential and *ex parte*, reclassified as public on 20 June 2023).

² F01293/RED, Public Redacted Version of Fifth Decision on Victims’ Participation, 20 February 2023 (strictly confidential and *ex parte* version filed on 15 February 2023) (“Impugned Decision”).

³ IA027/F00001, Appeal against the “Fifth Decision on Victims’ Participation” pursuant to Rule 113(6) of the Rules, 26 April 2023 (strictly confidential and *ex parte*) (“Group 1 Appeal”). Counsel for Group 1 clarifies that an additional denied applicant whom he was appointed to represent, namely Victim 152/06, decided not to appeal the Impugned Decision; see Group 1 Appeal, para. 1. See also F01339, Notification of Assignment of Counsel to Denied Applicants, 3 March 2023 (“Notification of Assignment of Counsel”), para. 8. The Panel also notes that the Group 1 Appeal was initially filed via email to the Court Management Unit (“CMU”) on 21 April 2023, which was less than 14 days after the notification of the Impugned Decision to the first of the denied applicants in Group 1; see CRSPD229, Email from CMU to Duty Victims Counsel regarding Correction of Filing and Annexes in LW, 24 April 2023 (“Email of 24 April 2023”); CRSPD233, Memorandum from the Senior Court Officer to Panel of the Court of Appeals Chamber – IA027, 9 June 2023; Rule 113(6) of the Rules; IA005/F00003, Decision on Counsel’s Motion for Clarification and Variation of Time Limit, 31 May 2021, pp. 2-3. However, on 24 April 2023, CMU notified Counsel for Group 1 that it would not process the filing as it failed to comply with the Practice Direction on Filings; see Email of 24 April 2023; KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019 (“Practice Direction on Filings”). The refiled Group 1 Appeal was processed on 26 April 2023. In these circumstances, the Appeals Panel sees no need to further assess the timeliness of the filing.

⁴ IA027/F00003/RED, Public redacted version of the Appeal against the “Fifth Decision on Victims’ Participation” pursuant to Rule 113 (6) of the Rules, 6 June 2023 (strictly confidential and *ex parte* version filed on 5 May 2023) (“Group 2 Appeal”). Counsel for Group 2 clarifies that two additional denied applicants whom she was appointed to represent, namely Victims 257/06 and 258/06, decided not to appeal the Impugned Decision; see Group 2 Appeal, para. 2. See also Notification of Assignment of Counsel, para. 8. The Panel also notes that the Group 2 Appeal was originally uploaded to the Specialist Chambers’ Legal Workflow filing system on 17 April 2023 – which was 14 days after the

I. BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed an indictment against Mr Hashim Thaçi, Mr Kadri Veseli, Mr Rexhep Selimi and Mr Jakup Krasniqi (“Confirmation Decision” and “Indictment”, respectively).⁵
2. On 4 January and 6 July 2021, respectively, the Pre-Trial Judge issued the “Framework Decision on Victims’ Applications” (“First Framework Decision”) and the “Second Framework Decision on Victims’ Applications”.⁶
3. On 18 August, 3, 14 and 20 October and 9 December 2022, respectively, the Victims’ Participation Office (“VPO”) filed before the Pre-Trial Judge its sixth, seventh, eighth, ninth and tenth reports on received victims’ applications.⁷

notification of the Impugned Decision to the first of the denied applicants in Group 1 – but the submission procedure was not completed by Counsel. Consequently, the filing was not submitted for processing to CMU. This was determined following Counsel’s enquiries on 2 May 2023. On 4 May 2023, Counsel was requested to finalise the action of submitting the filing in Legal Workflow, which she executed that same day. However, CMU returned the filing to Counsel as it failed to comply with the Practice Direction on Filings. The Group 2 Appeal was refiled on 5 May 2023, and processed on the following working day, 8 May 2023, in accordance with the Practice Direction; see CRSPD226, Information with respect to filing KSC-BC-2020-06-IA027-F00003, 1 June 2023; Legal Workflow metadata for Group 2 Appeal. In these circumstances, the Appeals Panel sees no need to further assess the timeliness of the filing.

⁵ F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, confidential redacted version filed on 19 November 2020) (“Confirmation Decision”); F00034/A01, Indictment, 30 October 2020 (strictly confidential and *ex parte*); F00045/A03, Further redacted Indictment, 4 November 2020 (strictly confidential and *ex parte*, reclassified as public on 5 November 2020). A corrected confirmed indictment was filed on 3 September 2021. See F00455/RED/A01, Public Redacted Version of ‘Indictment’, KSC-BC-2020-06/F00455/A01, dated 3 September 2021, 8 September 2021 (strictly confidential and *ex parte* version filed on 3 September 2021). A confirmed amended indictment was filed on 29 April 2022. See F00789/A05, Public Redacted Version of Amended Indictment, 29 April 2022. A further amended indictment was submitted on 30 September 2022. See F00999/A03, Public Redacted Version of Amended Indictment, 30 September 2022. A lesser redacted public redacted version of the further amended indictment was filed on 27 February 2023. See F01323/A01, Public Lesser Redacted Version of Amended Indictment, 27 February 2023 (confidential, reclassified as public on 27 February 2023) (“Indictment”).

⁶ F00159, Framework Decision on Victims’ Applications, 4 January 2021; F00382, Second Framework Decision on Victims’ Applications, 6 July 2021.

⁷ F00930, Sixth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, 18 August 2022 (confidential and *ex parte*, reclassified as public on 22 August 2022) (“Sixth

4. On 15 December 2022, the Pre-Trial Judge transmitted the case file to the Trial Panel, including the outstanding victim applications for participation.⁸

5. On 15 February 2023, the Trial Panel issued the Impugned Decision, in which it, *inter alia*, rejected as inadmissible the applications of the members of Group 1 and Group 2.⁹

II. STANDARD OF REVIEW

6. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.¹⁰

III. DISCUSSION

A. GROUP 1 APPEAL

1. Submissions of the Denied Applicants

7. Counsel for Group 1 requests the Appeals Panel to clarify the law, reverse the Impugned Decision and admit the members of Group 1 to participate in the proceedings, arguing that the Trial Panel erred in determining the geographical and

Registry Report”); F01007, Seventh Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, 3 October 2022 (confidential and *ex parte*, reclassified as public on 5 October 2022); F01037, Eighth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, 14 October 2022 (confidential and *ex parte*, reclassified as public on 17 October 2022); F01046, Ninth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, 20 October 2022 (confidential and *ex parte*, reclassified as public on 21 October 2022); F01148, Tenth Registry Report to the Pre-Trial Judge on Victims’ Applications for Participation in the Proceedings, 9 December 2022 (confidential and *ex parte*, reclassified as public on 13 December 2022).

⁸ F01166, Decision Transmitting the Case File to Trial Panel II, 15 December 2022; F01166/A01, Handover Document, 15 December 2022 (confidential), para. 27.

⁹ Impugned Decision, paras 18(b)-(c), 47(b).

¹⁰ KSC-BC-2020-07, F00005, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, 9 December 2020, paras 4-14. See also IA026/F00011/RED, Public Redacted Version of Decision on Appeals Against “Fourth Decision on Victims’ Participation”, 26 April 2023 (strictly confidential and *ex parte* version filed on 26 April 2023) (“Appeal Decision on Fourth Decision on Victim Participation”), para. 6.

material scope of the Indictment.¹¹ Specifically, Counsel challenges the Trial Panel's reliance on an Appeals Panel finding that Schedule C of the Indictment, read in conjunction with relevant sections of the latter, provides an exhaustive description of the crimes of enforced disappearance with which the Accused are charged, based on which the Trial Panel found that an indirect victim applicant must provide *prima facie* evidence of being an immediate family member of a person listed in Schedules B or C of the Indictment.¹² He argues that the Appeals Panel's finding "is largely disputable" given the nature, gravity, scale and context of the charges, and considers that the Specialist Prosecutor's Office had this in mind when not providing a complete list of victims in Schedules B and C of the Indictment.¹³

8. Counsel moreover sets out the events which, in his view, show that the relevant direct victims were victims of crimes which should allow the members of Group 1 to participate in the proceedings.¹⁴ In particular, he submits that it is "unclear" why the Trial Panel did not recognise as direct victims persons connected to Victims 155/06, 222/06, 223/06, 153/06, 213/06 and 144/06.¹⁵ Counsel [REDACTED] the events involving the direct victim connected to Victim 151/06, and also points out that [REDACTED].¹⁶

9. With regard to Victims 145/06, 147/06, 150/06, 146/06 and 224/06's applications not falling within the geographical scope of the Indictment, Counsel for Group 1

¹¹ Group 1 Appeal, pp. 4, 19.

¹² Group 1 Appeal, para. 11, referring *inter alia* to IA005/F00008, Decision on Appeal Against "First Decision on Victims' Participation", 16 July 2021 ("Appeal Decision on First Decision on Victim Participation"), para. 24.

¹³ Group 1 Appeal, para. 12. Counsel for Group 1 also takes issue with past Appeals Panel findings on the purpose of the legal requirements for victim participation in the proceedings and its findings on not being satisfied that applicants face unreasonable difficulties in meeting the *prima facie* evidence standards, arguing that the overall number of denied applicants suggests that "there is an intention to prevent victims [...] from participating in the present criminal proceedings, due to unknown reasons", and that the "right to life" of the direct victims should have priority over the rights of the Accused, whose rights should be limited in light of the gravity of the charges in order to avoid "favouring the Accused" and secondary victimisation. See Group 1 Appeal, para. 13 and pp. 18-19.

¹⁴ Group 1 Appeal, paras 14-25, 28-33.

¹⁵ Group 1 Appeal, paras 14-15, 18, 33.

¹⁶ Group 1 Appeal, paras 25-26.

points to a finding in the Confirmation Decision on the connection between the alleged attack against the civilian population and the primary offence, and to a finding on the locations of detention.¹⁷ Moreover, he submits that it is difficult for applicants to establish where direct victims were taken, and that they may have been taken to one of the locations listed in the Indictment as the alleged offence continued.¹⁸ Counsel also points to a book written by former Prosecutor of the International Criminal Tribunal for the former Yugoslavia, Ms Carla Del Ponte, mentioning reports about abductions from Kosovo during the time period relevant to Group 1's applications.¹⁹

2. Assessment of the Court of Appeals Panel

10. Turning first to Counsel for Group 1's challenges to past Appeals Panel findings, the Panel considers that, in the interests of legal certainty and predictability, an Appeals Panel is expected to follow previous Appeals Panel decisions and should depart from them only for cogent reasons in the interests of justice.²⁰

11. Moreover, the Panel recalls its previous finding that, in line with the jurisprudence of other courts, "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 the rights of victims "can only relate to direct harm flowing from conduct imputed to an accused regarding a crime charged in an indictment".²¹ In addition, the Appeals Panel found that:

In accordance with Articles 21(4)(a) and 38(4) of the Law, as well as Rule 86(3) of the Rules, an indictment must set forth with sufficient specificity and clarity the facts underpinning the charged crimes, including the modes of liability charged. This ensues directly from

¹⁷ Group 1 Appeal, paras 27-28, 31, citing Confirmation Decision, paras 55, 128.

¹⁸ Group 1 Appeal, paras 28, 31 and p. 18.

¹⁹ Group 1 Appeal, para. 32.

²⁰ KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 37; KSC-BC-2020-04, IA002/F00010, Decision on Pjetër Shala's Appeal Against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 11 February 2022, para. 15.

²¹ Appeal Decision on First Decision on Victim Participation, paras 16-18.

the principle that the Accused has to be informed of the nature and cause of the accusation against him or her, as enshrined in Article 30(1) of the Constitution of Kosovo and Article 6(3)(a) of the European Convention on Human Rights. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment, so as to provide notice to the accused and enable him or her to prepare a meaningful defence.²²

12. Consequently, the Appeals Panel found that “until sufficient notice of additional details is given by the prosecution, an accused is entitled to proceed upon the basis that what is provided in a list is exhaustive in nature”, such that the Appeals Panel reached the now challenged finding 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”.²³

13. Having carefully considered this reasoning and Counsel’s arguments, the Panel finds that Counsel has failed to show that there are cogent reasons, in the interests of justice, to depart from the challenged finding. In particular, Counsel has failed to substantiate any legal error in the Appeals Panel’s findings.²⁴ Further, the Panel finds that Counsel has failed to substantiate any error in the Trial Panel’s decision (i) to apply this Appeals Panel finding in the Impugned Decision, and (ii) to interpret it as also meaning that the list of direct victims in Schedule B to the Indictment is exhaustive.²⁵ Consequently, the Panel dismisses these arguments.

²² Appeal Decision on First Decision on Victim Participation, para. 23 (internal footnotes omitted).

²³ Appeal Decision on First Decision on Victim Participation, para. 24 (internal footnotes omitted).

²⁴ Counsel for Group 1 also fails to substantiate his challenges against the Appeals Panel’s findings on the purpose of the legal requirements for victim participation in the proceedings and its findings on not being satisfied that applicants face unreasonable difficulties in meeting the *prima facie* evidence standards, in particular by failing to show that these findings were applied in the Impugned Decision. In this respect, the Appeals Panel recalls that it lacks jurisdiction to decide on issues that do not arise from the Impugned Decision; see IA017/F00011/RED, Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention, 5 April 2022 (confidential version filed on 5 April 2022), para. 17; Appeal Decision on Fourth Decision on Victim Participation, para. 8.

²⁵ Impugned Decision, paras 13-14.

14. Next, the Appeals Panel notes that Counsel for Group 1 misrepresents the Confirmation Decision, in arguing that the Pre-Trial Judge's finding on the requirement of a nexus between the underlying acts and the contextual or *chapeau* elements of crimes against humanity²⁶ essentially means that even acts which are not specifically charged in the Indictment can become a part thereof by being sufficiently associated with underlying acts charged in the Indictment.²⁷ First, the Panel notes that the Pre-Trial Judge's finding concerned specifically crimes against humanity, and would therefore not apply to war crimes. Moreover, the Pre-Trial Judge's finding referred specifically to the requirement of a nexus between the widespread and systematic attack directed against any civilian population (in other words, the contextual or *chapeau* elements of crimes against humanity) and the actual underlying acts with which the Accused are charged (for example, murder).²⁸ This cannot be understood to mean that underlying acts that were not included in the Indictment can also be considered to be part thereof if they are sufficiently connected to other underlying acts that were included. This argument is therefore dismissed as ill-founded.

15. The remainder of the Group 1 Appeal consists of submissions seeking to show that the members of Group 1 were each victims of *certain* alleged crimes, but Counsel does not make submissions on how the Trial Panel erred in finding that the denied applicants did not fall within the geographical or material scope of *the crimes charged in the Indictment*. It follows from the appellate findings recalled above that these submissions are without merit, specifically because "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 the rights of victims "can only relate to direct harm flowing from conduct imputed to an accused

²⁶ Confirmation Decision, para. 55.

²⁷ Group 1 Appeal, paras 27-28, 31.

²⁸ See Confirmation Decision, paras 51-55.

regarding *a crime charged in an indictment*".²⁹ In addition, contrary to what the Group 1 Appeal alludes to, victim applications for participation are not a vehicle via which the non-inclusion of certain charges in the Indictment can be challenged, for example by showing, as Counsel seeks to do in the Appeal, that the crime in relation to which the denied applicant claims to be a victim *should* have been included in the charges in the Indictment, rather than that this crime does fall within the scope of the existing charges.³⁰ These arguments must therefore be dismissed.

16. In light of the findings above, the Group 1 Appeal is denied in its entirety.

B. GROUP 2 APPEAL

1. Submissions of the Denied Applicants

17. Counsel for Group 2 submits that the Trial Panel erred in its individual assessment of the denied applications and in failing to give a reasoned decision thereon, and asks that the Impugned Decision be reversed and that the members of Group 2 be admitted to participate in the proceedings.³¹

18. Specifically, Counsel submits that the events described by Victim 253/06 were linked to the charges because [REDACTED] in [REDACTED] according to paragraph [REDACTED] of the Indictment [REDACTED].³² She also argues that the reasons for rejecting Victims 179/06 and 205/06's applications are unclear and do not correspond to the documentation, as the Trial Panel found that the connected direct victim was taken to a location named in the Indictment, but did not fall within the latter's material scope, while the Trial Panel did not actually mention them amongst those whose applications were rejected for not falling within the material scope of the Indictment.³³ Counsel also argues that the Trial Panel erred by failing to consider Victim 88/06's

²⁹ Appeal Decision on First Decision on Victim Participation, paras 16-18 (emphasis added).

³⁰ See Group 1 Appeal, paras 14-15, 18, 33.

³¹ Group 2 Appeal, paras 20-21, 40-41.

³² Group 2 Appeal, para. 22.

³³ Group 2 Appeal, para. 23.

application in relation to a second direct victim, and erred in its assessment of the application in relation to the direct victim it did consider, since the Accused should have been charged with committing crimes at the place relevant to this direct victim.³⁴ Finally, she submits that the Trial Panel erred in assessing Victim 90/06's application.³⁵

19. Counsel for Group 2 also argues that the Trial Panel failed to give reasons in the footnotes for rejecting each of Victims 137/06, 172/06, 181/06, 190/06, 107/06 and 164/06, as *inter alia* indicated earlier in the Impugned Decision and in the Appeal Decision on First Decision on Victim Participation.³⁶ She also argues that Victim 105/06's application was erroneously rejected because it had not demonstrated a close personal relationship with an immediate family member, contrary to the previously stated presumption that immediate family members are in a close relationship with direct victims.³⁷ Counsel also argues that the Impugned Decision does not specify what was missing from the applications of Victims 166/06 and 105/06 and what "was specifically done to obtain the missing data".³⁸

20. Moreover, Counsel for Group 2 argues that the crimes described in the denied applications – in particular those of Victims 272/06, 273/06, 167/06, 171/06, 105/06, 88/06, 90/06, 172/06, 181/06, 179/06, 205/06 and 137/06 – are linked to the charges in the Indictment, in that they were part of the widespread and systematic attack in Kosovo.³⁹ She avers that the interpretation of the legal framework on victim participation in the First Framework Decision and in the Appeal Decision on First Decision on Victim Participation "limited victims' access to justice", and that the Accused's fair trial rights should not cause unfairness towards victims.⁴⁰

³⁴ Group 2 Appeal, para. 24.

³⁵ Group 2 Appeal, para. 25.

³⁶ Group 2 Appeal, paras 26-28, 32.

³⁷ Group 2 Appeal, para. 29.

³⁸ Group 2 Appeal, paras 30-31.

³⁹ Group 2 Appeal, paras 33-37.

⁴⁰ Group 2 Appeal, paras 38-39.

2. Assessment of the Court of Appeals Panel

21. Counsel for Group 2 makes submissions regarding each member of the group,⁴¹ which will be addressed in turn below.

22. First, the Panel dismisses the arguments concerning Victim 253/06, which seek to show that the events described by the latter are “linked” in certain ways to events described in the Indictment. As noted above, “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”.⁴² It is therefore insufficient to show a “link” to the charges; rather, the applicant victim must show that the described events form part of the charges as set out in the Indictment. Counsel’s arguments are therefore dismissed.

23. Regarding Victims 179/06 and 205/06, the Panel notes that there is an apparent contradiction in the Impugned Decision regarding the reasons for which their applications were rejected, but Counsel for Group 2 misrepresents the findings in some respects. Specifically, these applicants are listed in paragraph 18(b) of the Impugned Decision as not falling within the geographical scope of the Indictment, in that their applications describe a location not named in the Indictment.⁴³ Then, while not being named in the text of paragraph 18(c) of the Impugned Decision as applicants not falling within the material scope of the Indictment, footnote 48 of this subparagraph does name them and states that although they have shown that the direct victim to which they are connected was taken to a location named in the Indictment (in contradiction to the findings made in paragraph 18(b) of the Impugned Decision),

⁴¹ The Panel notes however that, although Victim 165/06 is mentioned in the Group 2 Appeal, this is only in passing in the context of submissions concerning another denied applicant, and no submissions of error are made with respect to Victim 165/06 specifically; see Group 2 Appeal, para. 27. The Panel is therefore only able to consider Victim 165/06’s appeal insofar as it is affected by any general arguments made by Counsel for Group 2.

⁴² Appeal Decision on First Decision on Victim Participation, para. 16; see also above, paras 11-12.

⁴³ Impugned Decision, para. 18(b) and fn. 44.

the direct victim is not named in Schedule [REDACTED] of the Indictment. Despite these apparent contradictions in the Trial Panel's reasoning, the Appeals Panel notes that the finding in footnote 48 of the Impugned Decision, the correctness of which is not challenged, is sufficient to confirm that the two applicants do not fall within the material scope of the Indictment.⁴⁴ The Appeals Panel therefore dismisses Counsel's arguments as failing to show that the alleged errors in reasoning had any effect on the Trial Panel's decision not to admit the applicants to participate in the proceedings.

24. Regarding Victim 88/06, the Appeals Panel notes that, indeed, the Impugned Decision appears to only consider one of the direct victims described in the relevant application, and not the second.⁴⁵ With regard to the correctness of the assessment of the first direct victim, the Panel notes that Counsel's argument is not that this direct victim fell within the geographical scope of the charges, but rather that "the [A]ccused should have been charged also with the crimes committed in this place".⁴⁶ As explained above, this is a misunderstanding of the test for the admission of victims to participate in the proceedings, who must rather show that the events described in the application fall within the scope of the existing charges.⁴⁷ Regarding the Trial Panel's failure to assess the second direct victim connected to Victim 88/06, the Appeals Panel notes that, in any event, this person⁴⁸ is not named in Schedule [REDACTED] to the Indictment, which would have been determinative of the Trial Panel's decision on the admission of Victim 88/06 to participate in the proceedings based on the connection to this direct victim.⁴⁹ The Appeals Panel therefore dismisses Counsel's arguments as failing to show that the alleged errors in reasoning had any effect on the Trial Panel's decision not to admit this applicant to participate in the proceedings.

⁴⁴ See above, paras 11-13.

⁴⁵ Impugned Decision, para. 18(b) and fn. 44.

⁴⁶ Group 2 Appeal, para. 24.

⁴⁷ See above, para. 15.

⁴⁸ Group 2 Appeal, para. 24.

⁴⁹ See above, paras 11-13.

25. Moreover, the Panel notes that, while alleging an error in the Trial Panel's assessment of Victim 90/06's application, Counsel does not present any arguments in support.⁵⁰ Counsel's submissions are therefore dismissed as unsubstantiated.

26. Regarding Victims 137/06, 172/06, 181/06, 190/06, 107/06 and 164/06, Counsel points out that reasons for the rejection of their applications are not given in the footnotes, as indicated in the *chapeau* of paragraph 18 of the Impugned Decision. The Appeals Panel also notes that the reasons for rejecting these applications were clearly and exhaustively stated in paragraph 18(b) of the Impugned Decision – namely that “the alleged direct victims are not among the victims of murder and/or enforced disappearance named in Schedules B and C to the Indictment” – such that no additional reasoning was necessary in the footnotes to that paragraph. The Panel therefore dismisses Counsel's arguments as unsubstantiated.

27. Moving to Victim 105/06, the Panel notes that Counsel misrepresents the Impugned Decision in two respects. First, the reason for rejecting the application in relation to both direct victims, as clearly stated in paragraph 18(c) of the Impugned Decision, is that they are not among the victims named in Schedules B and/or C of the Indictment. No further reasoning would therefore be required from the Trial Panel. Second, in footnote 47 of the Impugned Decision, the Trial Panel further noted that Victim 105/06 had additionally not sufficiently demonstrated a close personal relationship with the non-immediate family member mentioned in the application, rather than with an immediate family member, as Counsel alleges in the Group 2 Appeal. Therefore, the Panel sees no error in the Trial Panel's finding, given that: (i) there is no presumption of a close family relationship with a non-immediate family member and the applicant did not show such a close personal relationship; and (ii) in

⁵⁰ See Group 2 Appeal, para. 25; see also Impugned Decision, para. 18(b) and fn. 44.

any event, the applicant did not provide any documents even showing kinship to this non-immediate family member.⁵¹ Counsel's arguments are therefore dismissed.

28. With regard to Victim 166/06, contrary to Counsel's submissions,⁵² the Trial Panel did explain, with reference to the VPO application summary, that the applicant submitted no documentation on *inter alia* kinship to the direct victims, and that the VPO's [REDACTED] attempts to seek this documentation from the applicant received no response.⁵³ Moreover, the Trial Panel found that "there is sufficient information before it to assess th[is] application[] and therefore will proceed with assessing [it] on the basis of the information submitted".⁵⁴ This is in line with the Trial Panel's rejection of the application for falling outside of the geographical scope of the Indictment, which was therefore irrespective of the applicant's failure to prove kinship with the direct victims.⁵⁵ Counsel's arguments in this respect are therefore dismissed.

⁵¹ F01148/A04, Annex 4 to Tenth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 9 December 2022 (strictly confidential and *ex parte*), p. 2. Moreover, contrary to Counsel's submissions (see Group 2 Appeal, paras 30-31), the Trial Panel did explain, with reference to the VPO's application summary, that documentation on *inter alia* kinship was missing from the application, and that upon the VPO's follow-up the applicant indicated that no further documentation could be provided. See Impugned Decision, para. 10 and fns 25-26. The Panel also notes that, as Counsel points out, Victim 105/06 appears to be mentioned in the Sixth Registry Report; however, upon closer inspection of the report and its annexes, it is clear that this is the result of a typographical error, and that Victim 106/06 should have been referenced instead; see Sixth Registry Report, para. 52; F00930/A01, Annex 1 to Sixth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 August 2022 (strictly confidential and *ex parte*), p. 4; F00930/A38, Annex 38 to Sixth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 August 2022 (strictly confidential and *ex parte*), p. 2; F00930/A39, Annex 39 to Sixth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 18 August 2022 (strictly confidential and *ex parte*), p. 2. Therefore, Counsel's argument that the Sixth Registry Report states that Victim 105/06 submitted all available documentation but that the VPO did not make a recommendation with regard to this applicant is dismissed; see Group 2 Appeal, para. 31.

⁵² Group 2 Appeal, para. 30.

⁵³ Impugned Decision, para. 10 and fns 25-26, referring to Tenth Registry Report, para. 24; F01148/A06, Annex 6 to Tenth Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 9 December 2022 (strictly confidential and *ex parte*), p. 2.

⁵⁴ Impugned Decision, para. 10.

⁵⁵ Impugned Decision, para. 18(b) and fn. 44.

29. Finally, the Panel will address the argument that Victims 272/06, 273/06, 167/06, 171/06, 105/06, 88/06, 90/06, 172/06, 181/06, 179/06, 205/06 and 137/06 are linked to the charges in the Indictment, in that they were part of the widespread and systematic attack in Kosovo.⁵⁶ In this regard, the Panel recalls that this argument would only apply to alleged crimes against humanity. Moreover, the Appeals Panel has previously explained that it is insufficient for the events described by an applicant to be linked to the contextual or *chapeau* elements of crimes against humanity.⁵⁷ Counsel's arguments are therefore dismissed. In addition, the Appeals Panel summarily dismisses as unsubstantiated Counsel's general arguments concerning the effect of past decisions on victims' access to justice,⁵⁸ as they fail to identify any challenged findings in the Impugned Decision or put forward cogent reasons for departing from past Appeals Panel findings.⁵⁹

30. For these reasons, the Panel denies the Group 2 Appeal in its entirety.

⁵⁶ Group 2 Appeal, paras 33-37.

⁵⁷ Appeal Decision on First Decision on Victim Participation, para. 20:

The Panel's finding that the participation of victims in the trial proceedings is limited to those victims who are linked to the crimes charged, necessarily relates to the alleged conduct of the Accused. The purpose of having to demonstrate the existence of a "widespread or systematic attack directed against any civilian population", as required under Article 13(1) of the Law, is to describe the context in which the Accused's conduct must take place. It is not intended to create a category of crimes which is distinct or independent from the underlying crimes. A crime against humanity is composed of both the underlying crime (e.g. murder) *and* the context element. Therefore, the existence of the context element alone cannot suffice to justify the status of VPP. Even if the Denied Applicants suffered as a result of incidents falling under the *chapeau* element of crimes against humanity, if these incidents are not connected to the precise conduct of the Accused in relation to the underlying crimes charged against him or them, they are not relevant to deciding on victims' participation.

⁵⁸ Group 2 Appeal, paras 38-39.

⁵⁹ See above, para. 10.

IV. DISPOSITION

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

DENIES the Group 1 Appeal; and

DENIES the Group 2 Appeal.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 21 June 2023

At The Hague, the Netherlands