

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: Fidelma Donlon

Filed by: Milorad Konstantinovic, Duty Victims' Counsel

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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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INTRODUCTION

1. Milorad Konstantinovic, as Duty Counsel for denied Applicants – Victim-144/06, Victim-145/06, Victim-146/06, Victim-147/06, Victim-148/06, Victim-149/06, Victim-150/06, Victim-151/06, Victim-153/06, Victim-154/06, Victim-155/06, Victim-156/06, Victim-158/06, Victim-159/06, Victim-160/06, Victim-213/06, Victim-222/06, Victim-223/06, Victim-224/06, proceeding on their own behalf and in their own name hereby **files an APPEAL AGAINST the Fifth Decision on Victims' Participation** (hereinafter: Fifth Decision) issued on 15 February 2023, by Trial Panel II, pursuant to Articles 22 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecution Office and Rules 80, 113 and 114 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers in the case The Prosecutor vs. Hashim Thaci, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi, heard before the Kosovo Specialist Chambers under number KSC-BC-2020/06. Victim-152/06, whose application has been rejected, accepts the Decision by Trial Panel II and has not filed an appeal against the Decision.

2. The Appeal is filed as **STRICTLY CONFIDENTIAL** and **EX PARTE** in accordance with the current classification of the Fifth Decision on Victims' Participation.

I. PROCEDURAL BACKGROUND

3. 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.¹

4. On 30 September 2022, the SPO submitted the confirmed amended indictment („ Indictment“).²

5. On 18 August 2022, 3, 14 and 20 October 2022 and on 9 December 2022, the Victims' Participation Office successively filed: (i) the sixth report on victims' applications, transmitting 50 applications, (ii) the seventh report on victims’ applications, transmitting 46 applications, (iii) the eighth report on victims’ applications, transmitting 45 applications, (iv) the ninth report on victims’ applications, transmitting 19 applications, and (v) the tenth report on victims’ applications, transmitting 10 applications.

6. On 15 February 2023, Trial Panel II of the Kosovo Specialist Chambers, issued the Fifth Decision on Victims’ Participation, rejecting the applications of Group B Applicants as inadmissible, ordering that names and identifying information of Group B applicants be withheld from the Parties and the public, and that the “strictly confidential and ex parte” degree of confidentiality applying to their application forms, application summaries and accompanying documents be retained.³

¹ F00159, Pre-Trial Judge, Framework Decision on Victims' Application s, 4 January 2021; F00382, Pre-Trial Judge, Second Framework Decision on Victims' Applications, 6 July 2021.

² 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.

³ Fifth Decision on Victims’ Participation, paras 47 b and 47 e. iii.

7. On the basis of an Assignment Letter, on 28 February 2023, Milorad Konstantinovic was appointed Duty Counsel for the denied applicants, to assist them in filing their appeals.

8. The denied applicant Victims 155/06, 222/06, 223/06 were notified on 07 April 2023, the denied applicant Victims 144/06, 146/06, 147/06, 148/06, 149/06, 150/06, 152/06, 153/06, 154/06, 156/06, 158/06, 159/06, 160/06, 213/06, 224/06 were notified on 10. 04. 2023, the denied applicant Victim 151/06 was notified on 11. 04 2023. and the denied applicant Victim 145/06 was notified on 12. 04 2023.

II. APPLICABLE LAW

9. Pursuant to Art 22 (1) of the Law and Rule 2 of the Rules, a victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a direct result of a crime within the jurisdiction of the Specialist Chambers and alleged in an indictment confirmed by the Pre-Trial Judge.

10. Article 22 (3) of the Law determines that a victim's personal interest and rights in the criminal proceedings before the Specialist Chambers are notification, acknowledgement and reparation as well as reasonable reparation to Victims from an accused who has pled or been adjudged guilty of a crime(s) which has directly resulted in harm to the Victims.

III. GROUNDS OF APPEAL

- a. Trial Panel II made a mistake in determining the geographical and material scope of the Indictment.

11. Namely, in the challenged Decision, the Panel states that it is not satisfied that Group B Applicants in the Report by the Victims' Participation Office (in respect of whom the Office has not recommend granting the status of victims), consisting of 86 applicants, have provided prima facie evidence that the crimes based on which they request the status of victims fall within the scope defined by the material, geographical, and temporal parameters of the charges specified in the Indictment.⁴ With regard to this, the Panel refers to the view stated by the Court of Appeals in its ruling on the appeal against the "First Decision on Victims' Participation" of July 2021, namely 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." Accordingly, the Panel is of the view that an applicant claiming to be an indirect victim of the crime of enforced disappearance must provide prima facie evidence that he/she is a member of the immediate family of the person listed in Schedule C, and that an applicant claiming to be an indirect victim of the crime of murder must provide prima facie evidence that he/she is a member of the immediate family of the person listed in Schedule B.⁵

12. The denied Applicants consider that the view of the Court of Appeals referred to by the Panel in its Decision, is largely disputable, in view of the gravity, nature, and hence, the specificity of the crimes the Accused are charged with, as well as the general situation in which the criminal offences were committed, the pattern of their commission, and the highly organized, consistent, and thorough concealing of the crimes committed, by both removing the traces of the criminal offences and denying same. The very fact that the crimes of enforced disappearance and murder, as crimes against humanity, and murder as a war crime, were committed by the members of the KLA on a massive scale, in an organized manner, consistently and thoroughly, over a long period of time, in a broad area of Kosovo and partly in Albania, constitutes

⁴ Fifth Decision, para. 18.

⁵ Fifth Decision, paras 13-14.

sufficient evidence per se that the murders of the persons concerned – whose post-mortem remains were recovered at the aforementioned locations, and particularly at the locations where post-mortem remains of multiple persons were found, in respect of whom autopsy has confirmed that the persons died a violent death, as well as forced disappearances of persons whose remains have not been found by now, especially at the places where they were carried out frequently, like Pristina and Peja (in relation to victims) – were exactly the result of their activities. The denied Applicants consider that this is what the Prosecutor also had in mind failing to provide a complete list of persons killed and victims of enforced disappearance, exactly having regard to the fact that the number thereof is much higher than the one specified in Schedules B and C.

13. In the same Decision, the Court of Appeals is of the opinion that the legal requirements for acquiring the victim-participant status are not intended to prevent the victims of grievous criminal offences and suffering to participate in the proceedings, and the requirements, instead, have the purpose of ensuring the integrity of the given criminal proceedings, respect for the rights of the Accused, and expedience of the proceedings.⁶ However, the very number of denied Applicants, who are indisputably victims of grievous criminal offences for which the Accused are being tried, testifies exactly to the contrary. It is only on the basis of the Fifth Decision of the Panel which has been challenged, that 86 applications have been rejected, more than the number granted thereby, and if the number of applications rejected by the previous decisions is added to this, the number is far greater than 100 persons. In this specific case, the subject-matter of the Appeal refers to 19 rejected applications relating to 15 persons who were either victims of enforced disappearance or were killed. Namely, the right to life is a universal human right, guaranteed by numerous generally recognized international conventions, and as such it has to have priority in

⁶ Decision on the appeal against the “First Decision on Victims’ Participation” of 16 July 2021, para. 27

relation to the rights of the Accused, as well, which rights, in view of the gravity and specificity of the criminal offences the Accused are charged with, as well as their concealing of the latter, have to be subject to certain forms of limitation, since otherwise, they would lead to favouring the Accused, as well as to secondary victimization. The denied Applicants also challenge the view of the Court of Appeals stated in the above Decision, that the Panel is not satisfied that the Applicants are faced with unreasonable difficulties in meeting the requirements for prima facie evidence, as well as additional difficulties that may ensue from the nature of the crime of enforced disappearance.⁷ The given view of the Court of Appeals, as well as the number of the applications rejected, point to the fact that there is an intention to prevent the victims of grievous crimes and suffering from participating in the present criminal proceedings, due to unknown reasons.

14. In reference to the aforementioned paras 12 and 13 of the present Appeal, **denied applicants - Victims 155/06, 222/06 and 223/06**, state that, on [REDACTED], KFOR troops with the [REDACTED], among them, broke into the house of [REDACTED] in [REDACTED] in the morning hours, and carried out a search thereof, on which occasion they seized a substantial quantity of gold and money in the amount of 15.000 German marks, as well as firearms, both those for which a possession licences had been issued and those that had been obtained from the territorial defence, on which occasion they issued no certificate to them of seizure of the objects, in view of which the search, as well as the seizure of the aforementioned objects were illegal. In performing the search, they tore a picture of applicant 222/06 from the wall, because he was pictured wearing a uniform, having been a member of the army, and they trampled on it until they destroyed it, because the person himself was not in the house at the moment. This was the second illegal act by the members of KFOR. After finishing the search, the whole family [REDACTED] were taken away to the post

⁷ Decision on the appeal against the “First Decision on Victims’ Participation” of 16 July 2021, para. 35

office in [REDACTED]. They were detained there for a certain period of time, and thereafter, the grandmother and Applicant 155/06 were released, while [REDACTED] was transported to [REDACTED], and thereafter to Camp Bondsteel. He was detained in Bondsteel till [REDACTED], when he was brought to [REDACTED] (30 km from the place where he had been arrested, in [REDACTED]), and released. The fact is that it was their obligation to take him back to [REDACTED], from where he had been deported. So, the KFOR members brought [REDACTED] to [REDACTED] in the evening hours, and released him there. Their illegal behaviour constitutes grounds for suspicion that the KFOR members, who took part in the search, collaborated closely with the members of the KLA. Since he refused to leave the detention unit, he was held in detention overnight. The following morning, he was released from detention, and this was when he headed for the home of his (paternal) cousins [REDACTED], who resided in [REDACTED]. He made a phone call from their place to Applicant 155/06 telling him that he was going to wait for a convoy to go to his native village of [REDACTED], which was inhabited by Serbian population. The uncle of applicant 222/06 told him that he had been notified by [REDACTED] that two persons in black uniforms had been following him since he was released from detention in [REDACTED] to the house of his cousins [REDACTED]. The houses were set on fire on [REDACTED]. Having been informed that the convoy was to depart only within several days, [REDACTED] decided to stay with his cousins. The next day, at the store belonging to his cousin [REDACTED], he met with his own brother [REDACTED], who had arrived that day by bus from the village of [REDACTED], in order to take him back [REDACTED]. They departed together for the village that same day, heading for the bus terminal, and thereafter, nobody has ever seen them again. The family reported their disappearance that same day, [REDACTED], to all the competent institutions. First of all, to the KFOR unit in [REDACTED], the International Red Cross, the Church Council, UNMIK and others. The family inquired everywhere, even managing to obtain certain information via certain of their Albanian acquaintances who contacted the members of the KLA currently stationed at their headquarters, who

informed them that the persons concerned were not on the list of those killed for the time being, however, that they did not have the list of the persons taken captive, because that list was strictly confidential. The family managed to learn via their cousin [REDACTED] who had contacted his Albanian acquaintances that [REDACTED] had been at the boarding school in [REDACTED]. On the basis of the documents the family obtained from the Coordination Centre and UNMIK it is evident that the post-mortem remains of [REDACTED] were found in the year [REDACTED], and that an attempt had been made to incinerate the bodies. On the basis of the pathologist's report it is evident that both of the persons concerned died a violent death, their brains having been destroyed by means of a blunt object.⁸ The post-mortem remains (parts of the bodies) of the [REDACTED] who were unidentified at the time, whose identities were established only later, were found packed in [REDACTED] in [REDACTED], on [REDACTED], by the investigator of the UNMIK Police Regional Investigation Unit, [REDACTED], who immediately notified the OSCE and KFOR, as well as the Central Criminal Investigation Police based in Priština, requesting the latter to perform an autopsy of the post-mortem remains. At the meeting of the UNMIK Police Regional Investigation Unit and the KFOR Investigation Department held on [REDACTED], it was agreed that KFOR assist in the identification of the bodies by matching against photographs. Since KFOR was not able to perform the autopsy at Camp Bondsteel, it was decided that the post-mortem remains found in the [REDACTED], be transported to the morgue of the Hague Tribunal, for autopsy to be performed there. According to the sources of the Commission on Missing Persons of the Republic of Serbia, the bodies were transported to the morgue of the Tribunal in Orahovac, and autopsy was performed on [REDACTED] including ordinal numbers. Since the post-mortem remains had not been identified, samples were taken for DNA analysis. After the primary autopsy, the bodies were transported to [REDACTED] and buried at the Christian Orthodox cemetery as unidentified persons, under the code and numbers

⁸ [REDACTED]

that had been assigned to them at autopsy. After the taking effect of the three Protocols on Cooperation between UNMIK and the SRY in the field of forensic expertise and exhumations, and tracing of missing persons, which were signed in Belgrade on 11 February 2002, and following an exchange of information about the located and potential mass burial sites in the area of K&M, the representatives of the Commission on Missing Persons performed a re-autopsy of the post-mortem remains from the [REDACTED] location Christian Orthodox cemetery in [REDACTED], in [REDACTED], at the UNMIK OMPF morgue in Orahovac.⁹ On the basis of the final identification performed by comparing Ante-mortem and Post-mortem data and on the basis of DNA analysis, it was established that the aforementioned post-mortem remains belong to the persons on the consolidated list of missing persons. On the basis of the aforementioned, it remains unclear how the Trial Court does not recognize [REDACTED] as an indisputable, direct victim.

15. Considering the illegal behaviour of the members of KFOR performing the search of the house of the [REDACTED] family in [REDACTED], with the Albanian [REDACTED] among them their destruction of the property during the search, their hostile behavior, robbery, releasing [REDACTED] in the evening hours at a location 30 km away from his home, his disappearance thereafter, as well as the recovery of his post-mortem remains within the bounds of the [REDACTED], in a [REDACTED], which gives rise to suspicion that he might have also been the victim of organ trafficking, the Counsel justifiably raises the question if the involvement of certain members of KFOR in this case is the reason why [REDACTED] has not been recognized as a direct victim.

⁹ [REDACTED]

16. In reference to the aforementioned paras 12, 13 and 15 of this Appeal, the Counsel states that KFOR members stationed at their Base in [REDACTED] also failed to provide an adequate response in the case of the direct victim [REDACTED] (in reference to Applicant 145/06), in view of the fact that the victim had been abducted by the members of the KLA in front of their Base, while waiting to be invited in for a job interview. [REDACTED] and [REDACTED] were also abducted on that occasion. Not only did certain KFOR members take an active part in the illegal activities against the civilian population, they also facilitated the violation of the fundamental civilian rights by their passive behavior.

17, The denied Applicant - Victim - 148/06, states that, his father [REDACTED] was abducted from his family home in [REDACTED], on [REDACTED], by KLA members [REDACTED] and commander of the [REDACTED] KLA troop [REDACTED], who took him away in an unknown direction.

18. The denied Applicants - Victims - 153/06 and 213/06, state that, on [REDACTED], around 11:00 o'clock, [REDACTED] departed by truck from [REDACTED] for the village of [REDACTED], where he was abducted by KLA members, after which all trace of him was lost. It is unclear why [REDACTED] has not been recognized as a direct victim, considering that it is indisputable that he was abducted by KLA members in the vicinity of [REDACTED], that KLA headquarters were in [REDACTED], that KLA members incarcerated people at that location.

19. The denied Applicant – Victim - 158/06, states that on [REDACTED], in [REDACTED], her brother [REDACTED] was forcibly taken away in an unknown direction by the members of the KLA, after which all trace of him was lost, that [REDACTED] was abducted with him as well, being released subsequently. He was forcibly taken away by the members of the KLA, which can be testified by witness.

20. The denied Applicant – Victim - 160/06, states that on [REDACTED], her husband [REDACTED] departed from [REDACTED] for [REDACTED] at around 09.00 h, and that he was seen for the last time at the [REDACTED], after which all trace of him was lost.

21. The denied Applicant – Victim - 159/06, states that on [REDACTED], a group of KLA members tried to force her husband [REDACTED] into their car, in front of the building where they were residing in [REDACTED], and that their neighbor [REDACTED] tried to prevent them from doing that, but they drove away both of them threatening them with arms, pushing one of them into one car, and the other one in the other, driving off in two different directions, after which all trace of them was lost.

22. The denied Applicant – Victim - 156/06, states that on [REDACTED], her [REDACTED] was abducted in the center of [REDACTED], in front of the garage of the [REDACTED], having gone to buy some bread, after which all trace of him was lost, and that her mother [REDACTED] witnessed the event.

23. The denied Applicant – Victim -154/06, states that on [REDACTED], her son [REDACTED] drove off from [REDACTED] heading for [REDACTED], in his car [REDACTED], having planned to meet his friend there, however, that the meeting never occurred, and that he was last seen in his car not far from the [REDACTED].

24. The denied Applicant – Victim - 149/06, states that on [REDACTED] during the night, her [REDACTED] was taken away from her apartment at [REDACTED], by the members of KLA, who took her away in an unknown direction, after which all trace of her was lost. She also states that on [REDACTED] her [REDACTED] was also

abducted by the members of the KLA, who intercepted him on his way to work, taking him away in an unknown direction.

25. The denied Applicant – Victim - 151/06, states that on [REDACTED], a group of KLA members [REDACTED] broke into their house in [REDACTED], killing [REDACTED] on that occasion, by strangling him by a tablecloth, that his [REDACTED] tried to escape through the window, but was soon caught and taken away by them in an unknown direction. The Counsel states that the [REDACTED], was sentenced by the judgement of the [REDACTED], to imprisonment for a term of six years for the [REDACTED], because, on [REDACTED] around 20:45 h, accompanied by other unidentified persons, he illegally entered the house of [REDACTED] at [REDACTED] in [REDACTED], with the intention to seize weapons, threatening his life and attacking him, beating him up violently and tightening a table cloth around his neck, after which he left him helpless in that condition, as a result of which [REDACTED] having been exposed to life threatening circumstances hi died that same day. ¹⁰Page [REDACTED] of the above judgement reads that “on the basis of a clear picture provided by witnesses [REDACTED], there is no doubt about the fact that the attackers broke into the house on [REDACTED], beating up [REDACTED] violently after which he died, and that [REDACTED] disappeared without a trace”.¹¹ Assessing the statement by witness [REDACTED], the court states that the latter had strong reasons to witness in favour of the accused, because himself and the accused [REDACTED] because the two of them served in the KLA as soldiers, which was also stated by the accused in his statement.¹² On the basis of the statements by the direct witnesses [REDACTED], it derives that, in advance of the attack, unidentified persons arrived at the door to their house on [REDACTED] at [REDACTED] h, and asked them through the closed door to vacate the house by [REDACTED] h. Since [REDACTED]

¹⁰ Judgement of the [REDACTED]

¹¹ Judgement of the [REDACTED]

¹² Judgement of the [REDACTED]

replied to them that they had no place and no one to go to, the above persons said that they would come back, and that is what they did at [REDACTED] h. Since the [REDACTED] family refused to open the door they broke in. Furthermore, it is important to emphasize that after [REDACTED] died, the aforementioned persons said that they would kill the [REDACTED] of them as well, if they did not vacate the house by next day. [REDACTED] stated that the last time she saw her [REDACTED] after the members of the KLA had broken into the house, after which all trace of him was lost.

26. The Counsel points out that what is also indicative is that the direct victims: 1. [REDACTED] (abducted on [REDACTED]), 2. [REDACTED] (abducted on [REDACTED]), 3. [REDACTED] (abducted on the road to [REDACTED] on [REDACTED]), 4. [REDACTED] (abducted on [REDACTED]), 5.[REDACTED] (abducted on [REDACTED]), 6. [REDACTED] (abducted on [REDACTED]), 7. [REDACTED] (abducted on [REDACTED]), were all abducted in the area of the [REDACTED] municipality. What is concerned here is not a single, isolated case, but seven persons abducted in the territory of the [REDACTED] municipality in the period from [REDACTED] to [REDACTED].

27. In reference to the statement by the Panel that victims 145/06, 147/06, 150/06, 146/06 and 224/06 have not provided prima facie evidence that the crimes they claim to have been committed against them or the members of their immediate family, fall within the geographical scope of the Indictment,¹³ the Counsel points out that in the Decision Confirming the Indictment of 26 October 2020, the Pre-Trial Judge is of the opinion that “The primary offence has to have been committed ‘as an integral part’ of the attack against the civilian population, however, it must not have necessarily been committed in the midst of the attack. A criminal offence committed before or after the

¹³ Fifth Decision, para. 18, item b

main attack against the civilian population or **at a distance** therefrom, if **sufficiently associated** it, may nevertheless **constitute an integral part of the attack**. In establishing whether such a connection exists, it is necessary to take into account the characteristics, objectives, nature, or consequences of the offence.”¹⁴ Furthermore, the same Decision goes on to state that a large number of opponents were detained at KLA headquarters, bases, or barracks across the territory of Kosovo and in northern Albania, and that they were also moved to, and held in confinement at, several different locations.¹⁵

28. In reference to this, Applicant 145/06 states that on [REDACTED], her [REDACTED] was taken by force for questioning at the KLA headquarters at the [REDACTED], after which all trace of him was lost. It is doubtless that the victim was taken away by the members of the KLA, under the threat of weapons, however, the family has no knowledge about whether he was detained at the [REDACTED] or was moved to another location later on. Considering that the members of the KLA kept their captives lists as highly confidential, this fact is difficult to establish, however, this does not mean that the victim was not taken to one of the other locations listed concretely in the Indictment. This is exactly what the Pre-Trial Judge had in mind stating that a criminal offence can also be committed at a distance from the main attack, if it is sufficiently associated therewith, therefore being an integral part of the attack. Secondly, in the official publication of the Government of the Republic of Serbia, [REDACTED].¹⁶

29. The Applicants 150/06 i 224/06, state that, on [REDACTED], a convoy departed from [REDACTED] going to [REDACTED] in order to evacuate civilians. At the

¹⁴ Decision confirming the Indictment against Hashim Thaci, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi of 26 October 2020, para. 55.

¹⁵ Decision confirming the Indictment against Hashim Thaci, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi of 26 October 2020, para.128

¹⁶ Publication of the Government of the Republic of Serbia, [REDACTED]

entrance to [REDACTED], at about [REDACTED] h, they were attacked by a group of KLA members. Two trucks did not manage to return to [REDACTED]. [REDACTED] was on the [REDACTED] truck, and after this all trace of him was lost.

30. The Applicant 146/06 states that, on [REDACTED], armed members of the KLA broke into the family house of [REDACTED] in [REDACTED], about 30 of them, and threatening with weapons they took away [REDACTED] and [REDACTED], most likely to the illegal prison in [REDACTED], where they were detained for more than a month, after which all trace of him was lost. [REDACTED] disappeared in the period between [REDACTED] and [REDACTED]. All of them disappeared in [REDACTED]. Post-mortem remains of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were found in [REDACTED].

31. The Applicant 147/06 states that, on [REDACTED], four men and one woman, most likely members of the KLA, broke into their apartment in [REDACTED], looking for [REDACTED]. Since he was not at home, they entered [REDACTED] room, woke him up, and started harassing him, thereafter taking him away, after which all trace of him was lost. It is a fact that the direct victim was taken away to [REDACTED] by force, however, there is no information about where exactly. Considering that KLA members kept their lists of captives under strict confidentiality, this is difficult to establish, however, this does not mean that the victim was not taken to one of the other locations specifically listed in the Indictment. This is exactly what the Pre-Trial Judge had in mind stating that a criminal offence may also be committed at a distance from the main attack, if it is sufficiently associated therewith, as a result of which it constitutes an integral part of the attack. The victim was taken away by KLA members, by force, after being harassed, and therefore, since this is a continuing criminal offence, the offence was not finalized by the very act of taking the person away, but proceeded throughout the whole period of time the victim was incarcerated illegally, against his own will.

32. The Counsel states that all the direct victims were forcibly taken away by the members of the KLA, in the summer months of 1999, and that the persons concerned were young people. Having regard to this, the Counsel refers to the statement in the book >The Hunt< by Carla Del Ponte, the Chief Prosecutor of the Hague Tribunal from 1999 to 2007, which was published in 2008, in which the author says that the Prosecution Office repeatedly received reports about KLA soldiers resorting to violence and intimidation in order to expel Serbian and Roma families from the places where they were born, killing those who remained there; that they received reports based on which KLA soldiers used their captives as human shields; a report about the place of execution in the vicinity of a lake; reports about the corpses of the victims and about the captives who were transported to Albania. Later on, the Prosecution Office was notified that UNMIK investigators and officers had received information from a team of reliable journalists saying that, **during the summer months of 1999, Albanians from Kosovo transported about 300 abducted persons across the Kosovo and northern Albanian border, by trucks.** These captives were first detained in a hangar as well as in other facilities at locations such as Kukeš and Tropoje...and thereafter, they were transported to other prison facilities in Burelj and the surroundings, one of which was a hut behind a yellow house, approximately twenty kilometers south of the town. One room within the framework of that yellow house, according to the journalists, was equipped as an operating theatre and this was where surgeons extracted the captives organs.¹⁷

33. **The denied Applicant 144/06** states that it is not clear why the Trial Court has not recognized [REDACTED] as a direct victim, considering that it is indisputable that he was forcibly taken away from their family house by Albanians dressed in civilian

¹⁷ The Hunt: Me and the War Criminals, Carla del Ponte

clothes, on [REDACTED], just like it is indisputable that the same persons took him away for questioning, from which he never returned.

IV. Conclusion

The prescribed legal standards ask of the victims to achieve the impossible, whereby their right to take part in the proceedings has been rendered completely meaningless. In the circumstances of general fear, present even today among the people living in the area of Kosovo, in the circumstances of highly confidential lists of abducted and murdered persons at the time, in the circumstances of systematic and comprehensive removal of traces of the crimes, and circumstances of removing the abducted and the killed, including the fact that many of the missing persons were victims of organ trafficking, it is impossible to trace precise data about where the victims were detained and what was their fate. In view of the fact that the post-mortem remains of a large number of missing persons have not been found, the given legal standards which make it impossible for the victims to participate in the proceedings, represent another form of injustice for the families of the missing persons, as well as favouring of the Accused. It is exactly with the aim of preventing any of the missing persons from falling into oblivion, as well as ensuring the sanctioning of the perpetrators of the crimes, and preventing the commission of such crimes in the future, that the Counsel, having regard to all the aforementioned, considers that the victims must be given the opportunity to participate in the proceedings, and in that respect maintains the view that the Appeals Chamber should issue a clarification and an interpretation of the law orientated towards enabling the victims to participate in the proceedings, instead of denying that right to them, more precisely, interpreting the right to victims' participation in the proceedings with regard to the circumstances and the specifics of the given proceedings, in an extensive manner, rather than restrictively, as it has been the case so far.

Accordingly, **the Counsel for the denied Applicants – Victims requests that:**

- a. The Appeals Chamber reverse the impugned decision and**
- b. The Appeals Chamber grant the Applicants’ applications and recognize them as victims participating in the present proceedings.**

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Wednesday 26 April 2023

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