



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 23 April 2021

Language: English

Classification: Public

Public Redacted Version of

**‘Request for Authorization to Use an Electronic Victims’ Application Form’,
filing KSC-BC-2020-06/F00252 dated 16 April 2021**

Specialist Prosecutor’s Office

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I. INTRODUCTION

1. Pursuant to Rule 23(2) and (5) of the Rules,¹ the Victims' Participation Office ("VPO") respectfully requests authorization to use an electronic application form in exceptional cases where victim applicants face difficulties in using the existing application form.

II. PROCEDURAL HISTORY

2. On 26 October 2020, the Pre-Trial Judge confirmed the indictment ("Confirmed Indictment") against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, "the Accused").²

3. A public redacted version of the Confirmed Indictment was filed on 4 November 2020, following the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.³

4. On 4 January 2021, the Pre-Trial Judge issued the "Framework Decision on Victims' Applications"⁴ ("Framework Decision") setting out the principles governing the application process and the role of the VPO.⁵

5. The Framework Decision emphasises that VPO should assist applicants, either in person or remotely, in filling out the four-page "Application for Admission as a Victim Participating in Proceedings" form, available on the website of the Specialist

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), KSC-BD-03/Rev3/2020, 2 June 2020.

² KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi ("Confirmation Decision"), 26 October 2020, public.

³ KSC-BC-2020-06, F00034/A01, Specialist Prosecutor, *Indictment*, 30 October 2020, strictly confidential and *ex parte*. A public redacted corrected Confirmed Indictment, correcting certain clerical errors, was submitted on 4 November 2020, F00045/A03, public.

⁴ KSC-BC-2020-06/ F00159, Pre-Trial Judge, Framework Decision on Victims' Applications, 4 January 2021, public.

⁵ See Framework Decision, paras 14-17.

Chambers.⁶ Further, the Framework Decision considers an application complete if, *inter alia*, the application is *signed* by the applicant or his/her legal guardian.⁷

III. APPLICABLE LAW

6. Pursuant to Article 22(3) of the Law, the Rules shall determine the content and procedure for submission and acceptance of any application by a victim to participate in the proceedings.

7. Rule 113(1) of the Rules provides that a person claiming to be a victim of a crime alleged in the indictment may file an application for admission as a victim participating in the proceedings, specifying how he or she qualifies as a victim and providing the location and date of an alleged crime giving rise to harm. Rule 113(1) further states that application forms shall not be disclosed to the Parties. The Rules do not elaborate further on the content of the application form.

8. A physical signature on the application form is not an explicit requirement under the Law or the Rules.

IV. SUBMISSION

A. Background

9. The application form (“the form”) developed and utilised by the VPO pursuant to the Law and the Rules is available on the website of the Specialist Chambers.⁸ The form includes a section for the signature of the applicant. After filling in the form, applicants have to print, sign and then scan/photograph the form before sending it to the VPO. In addition, applicants attach their ID-card/identifying document and other supporting documentation.

10. In the experience of the VPO, a number of applicants have faced difficulties in physically signing the application form. Most of the applicants are not in possession

⁶ See Framework Decision, para. 17.

⁷ See Framework Decision, para. 22.

⁸ Application for Admission as a Victim Participating in Proceedings, available at <https://www.scp-ks.org/en/specialist-chambers/victims> (last visited 15 April 2021).

of a printer/scanner. Therefore, they have to use locally available printing facilities, where in most cases a third-party does the printing and scanning of the form. [REDACTED]. This raises obvious issues for victim applicants, who, in order to complete the form, have to reveal that they are applying as a participating victim.

11. Applicants also face difficulties because of the Covid-19 pandemic. Due to Covid-19 measures, it is often not possible to leave the home for non-essential business, and often printing/scanning facilities are not open at all. Even when they are open, applicants may be exposed to additional health risks when they have to visit such facilities in order to complete the form. Ongoing travel restrictions due to Covid-19 also limit the VPO's ability to assist applicants in person.

B. Jurisprudence

12. At the International Criminal Court ("ICC"), in the *Yekatom and Ngaïssona* case, the Pre-Trial Chamber held that for an application form to be complete, it requires "a signature or thumb print of the applicant on the document".⁹

13. In the more recent *Abd-Al-Rahman* case, the ICC Registry nevertheless noted that it has faced similar difficulties in receiving signed application forms from applicants and requested authorization to modify the approved application form.¹⁰ Specifically, the ICC Registry requested to use a wholly electronic victim application form, and to replace the signature box on the form with a solemn undertaking text box. The ICC Registry further submitted, *inter alia*, that due to the pandemic and the security and political situation in Sudan, a document that can be downloaded and filled in completely electronically on a tablet or smart device and sent back to the Court electronically could significantly help facilitate victim engagement.¹¹ Accordingly, the

⁹ See ICC, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, ICC-01/14-01/18-141, Pre-Trial Chamber II, Decision Establishing the Principles Applicable to Victims' Applications for Participation, 5 March 2019, para. 31.

¹⁰ ICC, *The Prosecutor v. Ali Muhamad Ali Abd-Al-Rahman ("Ali Kushayb")*, ICC-02/05-01/20-178-Red, Registrar, Public Redacted version of "'Registry Request for Authorization to use a Modified Standard Application Form to Facilitate Victim Participation in the Case', 8 October 2020, ICC-02/05-01/20-178-Conf", 2 November 2020, paras 5-10.

¹¹ *Ibid.*, paras 8-10.

Pre-Trial Chamber granted the request to replace the signature field on the electronic form with a solemn undertaking field.¹² The Pre-Trial Chamber held that “while ensuring the authenticity of applications is of fundamental importance, [...] a signature or a mark on the page is not in itself a guarantee of authenticity” and “consider[ed] that the proof of identification required of an applicant is a more reliable means of ensuring legitimacy than a signature”.¹³

14. Electronic forms have been used in other cases at the ICC, and they tend to expedite the collection and processing of information and foster wider victim participation, especially when applicants face difficulties with printing, signing and scanning the application form.¹⁴

V. REQUEST FOR AUTHORIZATION TO USE AN ELECTRONIC APPLICATION FORM

15. To facilitate the application process in cases where printing an application form is not possible, the VPO has explored different alternatives and requests that the Pre-Trial Judge authorise the use of an electronic application form for victim applicants, as set forth below.

16. The Information Technology Services Unit (“ITSU”) proposes the use of a fillable pdf document that can be downloaded and filled out offline. The signature box will be removed and replaced with a solemn undertaking field that can be completed by typing in the applicant’s name. Once completed, the form can then be submitted confidentially over the website of the Specialist Chambers using a secured transport mechanism without any storage on the website.

¹² ICC, *The Prosecutor v. Ali Muhamad Ali Abd-Al-Rahman (“Ali Kushayb”)*, ICC-02/05-01/20-198, Pre-Trial Chamber II, Decision on the Registry’s Request for Authorisation to use a Modified Standard Application Form for Victim Participation, 4 November 2020, para. 13.

¹³ *Ibid.*, para. 11.

¹⁴ See ICC, *The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona*, ICC-01/14-01/18-141, Pre-Trial Chamber II, Decision Establishing the Principles Applicable to Victims’ Applications for Participation, 5 March 2019, para. 23; see also ICC, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17-29-Anx1-Red, Registrar, Annex 1 to “Final Consolidated Registry Report on Victims’ Representations Pursuant to the Pre-Trial Chamber’s Order ICC-02/17-6 of 9 November 2017”, 20 February 2018, para. 18.

17. To ensure that the person submitting the application can be properly identified, applicants are required to provide a copy of an identification document. The VPO submits that the combination of the solemn undertaking field together with proof of identity is a reliable means of ensuring the authenticity of the applications.

18. In principle, the proposed electronic application form would be used exceptionally, where the regular means of submitting an application is not feasible under the circumstances. This additional option would facilitate the application process and reduce security and health risks to victim applicants.

19. Considering the above, the VPO kindly requests the Pre-Trial Judge to authorize the use of the above-described electronic application form for victim applicants, to be developed by ITSU and made available on the website of the Specialist Chambers.

VI. CLASSIFICATION

20. The VPO files this submission as confidential and *ex parte* because it, *inter alia*, contains personal information about the situations that specific victim applicants have faced. The VPO will submit a public redacted version of this filing.

Word count: 1436



Dr Fidelma Donlon

Registrar

23 April 2021

At The Hague, the Netherlands.