

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 03 May 2021

Language: English

Classification: Public

Veseli Defence Response to Registry Filing KSC-BC-2020-06/F00252-RED

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli ("Defence") does not, in principle, object to the request of the Victims' Participation Office ("VPO") for the use of an electronic application form in "exceptional cases". Whether an electronic signature coupled with a solemn undertaking is sufficient to guarantee the truth of a victim's application and whether the circumstances where an electronic application form is employed may be deemed "exceptional" are, ultimately, questions for the Pre-Trial Judge. The Defence submits, however, that certain procedural safeguards are necessary to guide the Pre-Trial Judge in the exercise of his discretion when determining the admissibility of victims' applications submitted by way of the proposed electronic application form.

II. PROCEDURAL HISTORY

2. On 4 January 2021, the Pre-Trial Judge rendered the 'Framework Decision on Victims' Applications' ("Framework Decision").¹

3. On 16 April 2021, the VPO filed the confidential version of its 'Request for Authorization to Use an Electronic Victims' Application Form' ("Request").²

4. On 26 April 2021, the Request was notified to the Parties in redacted format.

III. APPLICABLE LAW

5. Article 22(3) of the Law on the Specialist Chambers and the Specialist Prosecutor's Office ("Law") stipulates as follows:

"The Specialist Chambers' Rules of Procedure and Evidence shall... determine the content and procedure for submission and acceptance of any application to participate in the proceedings and declaration of damage".

¹ KSC-BC-2020-06/F00159 ("Framework Decision").

² KSC-BC-2020-06/F00252.

6. Rule 113(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("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. Application forms shall not be disclosed to the Parties".

7. Rule 113(2), furthermore, provides that:

"The Victims' Participation Office shall register and assess the applications and file them before the Panel together with a recommendation on admissibility...".

IV. SUBMISSION

8. The VPO correctly asserts that the Rules neither elaborate on the exact form and content of an application for victim participation nor do they mandate that a physical signature be applied to the document through which such an application is submitted.

9. Notwithstanding the aforementioned, the Framework Decision quite clearly stipulates that a victim application will only be considered "complete" if the minimal and cumulative requirements of paragraph 22 thereof are met.³ One of the aforementioned fundamental requirements is that the application "is signed".

10. The VPO now approaches the Pre-Trial Judge with what is, effectively, a request for revision of the Framework Decision rendered four months ago. The grounds proffered for such revision are twofold: 1) the experience of the VPO that has

³ Framework Decision at para 22: "To render an application complete, the Pre-Trial Judge considers that at least the following requirements must be met: (i) there is sufficient proof of identity and, where relevant, kinship and/or legal guardianship; (ii) personal details are complete; (iii) all relevant sections of the Application Form are filled in; (iv) the date/period and location of the crimes as well as the harm suffered are sufficiently clearly indicated; (v) relevant and sufficient documentation has been submitted, to the extent possible; and (vi) the application is signed by the applicant or his/her legal guardian".

taught it that a number of victim applicants have been forced to rely on third parties for printing and scanning services thereby exposing themselves to danger, and 2) “lockdown” hurdles occasioned by the Covid-19 pandemic.

11. The Defence submits that the two grounds for revision presented by the VPO would clearly have been anticipated by the Pre-Trial Judge at the time that he rendered his Framework Decision. The fact that such considerations were not factored into the Framework Decision suggests that the Pre-Trial Judge did not deem them sufficiently “exceptional” to dispense with the requirement of a physical signature. Indeed, the fact that certain applicants might be forced to use third-party printing services does not explain why such applicants cannot seek the assistance of a locally based victims' lawyer who will be bound by an ethical obligation of professional secrecy. Furthermore, the Covid-19 pandemic and the logistical problems arising out of “lockdown” strictures have affected the global population since February 2020.

12. The comparison that the VPO makes with International Criminal Court (“ICC”) precedent is inapposite. The electronic format was introduced in the Abd-al-Rahman case because of the peculiar issues faced by the victims of Darfur, Sudan where the “level of communication technology is generally low, and IT hardware is often limited to simple devices such as portable PCs, tablets and smart phones (and no scanning and/or printing capacity)”.⁴ Nonetheless, prior to 2019, all ICC cases – some of them conducted in the most challenging regions of the world, mandated victim participation by way of physical signature on a standardised “hard-copy” application form.

13. The VPO is tasked with assessing the applications before filing its recommendations to the Panel tasked with deciding on admissibility. Rule 113(1) does

⁴ ICC-02/05-01/20-178-Red 02-11-2020 at para 8.

not permit the Defence to play a role in this important exercise which could entitle a victim applicant to be financially compensated by an accused person if convicted. In these circumstances, a physical signature or even a thumbprint serves to concretise a victim applicant's acknowledgment that the information that she/he has submitted is true and that she/he could be subject to perjury proceedings if the information supplied is found to be deliberately false. Such a requirement also provides a suitable counterbalance to the potential prejudice that may be caused to Defence rights by an overly permissive application regime.

14. Despite the aforementioned, and as implied at the outset, the Defence concedes that truly “exceptional circumstances” may, on occasion, arise which prevent a victim applicant from applying his or her physical signature to the standard form. For this reason, the Defence does not object, in principle, to the use of an electronic application form where absolutely necessary.

V. CONCLUSION

15. The Pre-Trial Judge is respectfully requested to condition the VPO's request to use an electronic application form, thereby dispensing with the requirement for a physical signature, on the two following requirements:

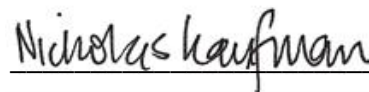
- i) That the proposed solemn undertaking appearing in the electronic application form includes text whereby the victim applicant is required to acknowledge that she/he is aware of the legal consequences of providing false information both in his country of residence and before the Kosovo Specialist Chambers, and;
- ii) That the electronic form obliges the victim applicant to stipulate the “exceptional circumstances” that prevented her/him from applying a physical signature to the application.

Word count: 1108

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Ben Emmerson, CBE QC

Specialist Counsel for Kadri Veseli

A handwritten signature in black ink, appearing to read 'Nicholas Kaufman', written over a horizontal line.

Nicholas Kaufman

Specialist Co-Counsel for Kadri Veseli

Dated: 3 May 2020