



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA 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

**Date:** 6 July 2021

**Language:** English

**Classification:** Public

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**Second Framework Decision on Victims' Applications**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 22(1), 34(6), 39(1) and (13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 23(5), 95(2)(i) and 113 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 4 January 2021, the Pre-Trial Judge issued a framework decision on victims' applications ("First Framework Decision"), ordering the Victims' Participation Office ("VPO") to, *inter alia*, file by 15 February 2021 its first report pursuant to Rule 113(2) of the Rules to the Pre-Trial Judge and the Parties regarding the submitted applications and to file further such reports, if any, on a regular basis, and the latest by the submission of the Defence filing pursuant to Rule 95(5) of the Rules.<sup>2</sup>

2. On 15 February 2021, the VPO submitted its first report on received applications ("First Report").<sup>3</sup>

3. On 1 April 2021, the VPO filed a supplement to the First Report indicating its recommendations for the grouping of the applicants.<sup>4</sup>

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00159, Pre-Trial Judge, *Framework Decision on Victims' Applications* ("Framework Decision"), 4 January 2021, public, para. 56(c)-(e).

<sup>3</sup> KSC-BC-2020-06, F00203, Victims' Participation Office, *First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings*, 15 February 2021, public, para. 8, with confidential and *ex parte* annexes 1-19. The Defence for Mr Thaçi, the Defence for Mr Krasniqi and the SPO submitted responses. See F00208, Defence for Mr Thaçi, *Thaçi Defence Response to the First Registry Report on Victims' Applications for Participation in the Proceedings*, 26 February 2021, public; F00209, Defence for Mr Krasniqi, *Krasniqi Defence Response to the First VPO Report*, 1 March 2021, public, with Annex 1, public; F00210, Specialist Prosecutor, *Prosecution Submissions on First Registry Report on Victims' Applications*, 1 March 2021, public.

<sup>4</sup> KSC-BC-2020-06, F00241, Victims' Participation Office, *Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings with Recommendation on Grouping* ("Supplement"), 1 April 2021, public, with Annex 1, confidential and *ex parte*.

4. On 16 April 2021, the VPO filed a request for authorization to use an electronic victims' application form ("VPO Request").<sup>5</sup>
5. On 21 April 2021, the Pre-Trial Judge issued the First Decision on Victims' Participation.<sup>6</sup>
6. On 3 May 2021, the Defence for Kadri Veseli ("Mr Veseli") responded to the VPO Request.<sup>7</sup>
7. On 11 May 2021, the Specialist Prosecutor's Office ("SPO") filed a reply to the response of the Defence of Mr Veseli.<sup>8</sup>
8. On 18 June 2021, the VPO submitted its second report on received applications ("Second Report").<sup>9</sup>

## II. SUBMISSIONS

9. The VPO requests the Pre-Trial Judge to authorise the use of a downloadable and fillable electronic application form for victim applicants ("Proposed Form").<sup>10</sup> The VPO submits that the use of the Proposed Form is necessary because of security- and COVID-19-related difficulties in printing and physically signing the current application form available on the Specialist Chambers ("SC") website

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<sup>5</sup> KSC-BC-2020-06, F00252, Victims' Participation Office, *Request for Authorization to Use an Electronic Victims' Application Form* ("VPO Request"), 16 April 2021, confidential and *ex parte*. See also F00252/RED, Victims' Participation Office, *Public Redacted Version of the Request for Authorization to Use an Electronic Victims' Application Form*, 23 April 2021, public.

<sup>6</sup> KSC-BC-2020-06, F00257, Pre-Trial Judge, *First Decision on Victims' Participation*, 21 April 2021, confidential. See also F00257/RED, Pre-Trial Judge, *Public Redacted Version of the First Decision on Victims' Participation*, 21 April 2021, public.

<sup>7</sup> KSC-BC-2020-06, F00273, Defence for Mr Veseli, *Veseli Defence Response to Registry Filing KSC-BC-2020-06/F00252-RED* ("Veseli Response"), 3 May 2021, public.

<sup>8</sup> KSC-BC-2020-07, F00288, Specialist Prosecutor, *Prosecution Reply to Veseli Defence Response to Filing F000252* ("SPO Reply"), 11 May 2021, public.

<sup>9</sup> KSC-BC-2020-07, F00360, Victims' Participation Office, *Second Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings*, 18 June 2021, confidential *ex parte*, with Annexes 1-12, confidential *ex parte*.

<sup>10</sup> VPO Request, paras 15-16.

("Application Form").<sup>11</sup> The VPO further avers that the signature box of the Application Form would be removed in the Proposed Form and replaced with a solemn undertaking field to be completed by typing in the applicant's name.<sup>12</sup> Once completed, the Proposed Form would then be submitted confidentially over the SC website using a secured transport mechanism.<sup>13</sup> The VPO further indicates that in order to ensure that the person submitting the application can be properly identified, applicants would be required to provide a copy of an identification document.<sup>14</sup> According to the VPO, the combination of the solemn undertaking field and the proof of identity would provide a reliable means of ensuring the authenticity of the applications.<sup>15</sup> The VPO submits that the Proposed Form would only be used exceptionally, where the regular means of submitting an application was not feasible under the circumstances.<sup>16</sup>

10. The Defence for Mr Veseli submits that truly exceptional circumstances may indeed arise which prevent a victim applicant from applying his or her physical signature to the Current Form. The Defence for Mr Veseli accordingly does not object, in principle, to the use of the Proposed Form, where absolutely necessary and where the following two requirements are met: (i) the proposed solemn undertaking appearing in the Proposed Form includes text whereby the victim applicant is required to acknowledge that he or she is aware of the legal consequences of providing false information both in his or her country of residence and before the SC; and (ii) the Proposed Form obliges the victim applicant to stipulate the "exceptional circumstances" that prevented him or her from applying a physical signature to the application.<sup>17</sup>

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<sup>11</sup> VPO Request, paras 10-11.

<sup>12</sup> VPO Request, para. 16.

<sup>13</sup> VPO Request, para. 16.

<sup>14</sup> VPO Request, para. 17.

<sup>15</sup> VPO Request, para. 17.

<sup>16</sup> VPO Request, para. 18.

<sup>17</sup> Veseli Response, paras 14-15.

11. The SPO replies that electronic application forms should be permissible whenever there are practical difficulties and security risks and the stipulation of “exceptional circumstances” is unnecessary.<sup>18</sup> According to the SPO, proof of identification, together with a solemn undertaking and the interactive and central role of VPO in, *inter alia*, ensuring that application forms are complete and making recommendations on admissibility, are more than sufficient guarantees of authenticity.<sup>19</sup> The SPO further submits that the VPO, in consultation with the victim applicant, is best-placed to determine and confirm whether the circumstances justify the use of electronic application forms.<sup>20</sup>

### III. APPLICABLE LAW

12. Pursuant to Article 34(6) of the Law and Rule 23(5) of the Rules, the VPO administers, *inter alia*, the system of victim participation provided for in Article 22 of the Law and the Rules. The VPO provides assistance and advice to VPPs.

13. Pursuant to Rule 113(2) of the Rules, the VPO registers and assesses the applications and files them before the Pre-Trial Judge together with a recommendation on admissibility and common representation, and on a request for protective measures under Rule 80 of the Rules, as applicable.

### IV. DISCUSSION

14. The Pre-Trial Judge shall address in the present decision: (i) a number of questions highlighted by the submission of the First Report and the Second Report; and (ii) the use of an electronic form for future victim applications.

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<sup>18</sup> SPO Reply, para. 3.

<sup>19</sup> SPO Reply, para. 2.

<sup>20</sup> SPO Reply, para. 3.

## A. CLARIFICATIONS REGARDING THE VICTIM APPLICATION PROCESS

15. The Pre-Trial Judge notes that the submission of the First Report has brought to the fore a number of questions, some of which have been briefly addressed in the First Decision on Victims' Participation, and which are herein elaborated, also taking in consideration the Second Report. These questions concern: (i) the information to be provided to the VPO by the SPO regarding persons who have suffered harm; (ii) the information to be provided to would-be applicants; (iii) the required documentation for the submission of applications by the VPO; and (iv) future VPO submissions on the grouping and legal representation of the applicants.

### 1. Principles Governing the Application Process

16. The Pre-Trial Judge recalls that the First Framework Decision granted VPO access to the un-redacted versions of the Confirmed Indictment<sup>21</sup> and the Confirmation Decision<sup>22</sup> and instructed the SPO to indicate to the VPO any person who has suffered harm as a direct result of a crime in the Confirmed Indictment.<sup>23</sup>

17. Given that the aforementioned filings provide the VPO with the names of potential victims, the Pre-Trial Judge hereby specifies that the information the SPO ought to indicate to the VPO regarding any person who has suffered harm should contain, to the extent available, contact details of such persons so as to enable the VPO to reach out to them. Moreover, the SPO should provide the VPO with any other necessary information or recommendation related to the security of the applicants, so

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<sup>21</sup> KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*.

<sup>22</sup> KSC-BC-2020-06, F00034/A01, Specialist Prosecutor, *Indictment*, 30 October 2020, strictly confidential and *ex parte*.

<sup>23</sup> First Framework Decision, paras 14-15.

that the VPO can exercise its functions fully and with due respect to the prevailing security considerations.

## **2. Information Provided to Would-Be Applicants**

18. The Pre-Trial Judge recalls and emphasises the VPO's central role in the application process and that, as a corollary of that role, it is the VPO's prerogative and responsibility to provide would-be applicants with information regarding the SC and its victim participation framework and, where necessary, to assist such applicants in completing the relevant form.<sup>24</sup> The SPO and other units of the Registry may assist in this process, in coordination with the VPO.

## **3. Submission of Applications**

19. As regards the submission of applications by the VPO, the Pre-Trial Judge recalls his finding in the First Framework Decision according to which an application is complete if it meets the following requirements: (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<sup>25</sup> 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.<sup>26</sup> The Pre-Trial Judge further recalls his instruction that the VPO should endeavour to submit only complete applications.<sup>27</sup>

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<sup>24</sup> First Framework Decision, para. 16.

<sup>25</sup> "Application for Admission as a Victim Participating in Proceedings" form, available on the SC website.

<sup>26</sup> First Framework Decision, para. 22.

<sup>27</sup> First Framework Decision, para. 23.

20. As indicated in the First Decision on Victims' Participation, the aforementioned directions entail that the VPO should at all times inquire with the victim applicants whether relevant and sufficient documentation supporting their application is available and, where that is the case, the VPO should request the submission of such material.<sup>28</sup> The Pre-Trial Judge further specifies that the VPO should endeavour to obtain such documentation in advance of its report to the Pre-Trial Judge so as to avoid, to the extent possible, delays caused by supplemental submissions and/or deferred decisions. Furthermore, the Pre-Trial Judge reminds the VPO that, where, in its view, an application is manifestly outside the scope of the confirmed charges, the VPO should nevertheless ensure that the requirements under (i)-(iv) and (vi) are fulfilled.<sup>29</sup>

#### **4. Grouping of Applicants**

21. As regards the grouping and legal representation of applicants, the Pre-Trial Judge notes that, in relation to the First Report, the VPO filed its recommendations separately and subsequently,<sup>30</sup> whereas in relation to the Second Report, the equivalent recommendations were filed together with that report.<sup>31</sup> The Pre-Trial Judge instructs the VPO to file such recommendations concomitantly with future reports, as done in the Second Report, so as to avoid delays caused by supplemental submissions.

22. The Pre-Trial Judge recalls that, pursuant to Rule 113(7) of the Rules, the Registrar assigns Victims' Counsel to a group of victims participating in the proceedings. When deciding on the assignment of Victims' Counsel, the Registrar shall take into account, amongst other considerations, the victims' views and interests, pursuant to Section 15

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<sup>28</sup> First Decision on Victims' Participation, para. 35 and fn. 26.

<sup>29</sup> First Framework Decision, para. 23.

<sup>30</sup> Supplement, paras 11-32.

<sup>31</sup> Second Report, paras 38-44.



of the Directive on Counsel. In the present case, the Pre-Trial Judge notes that both in the First Report and the Second Report, the VPO has so far specifically indicated whether individual applicants had any preference as to a particular legal representative. In such cases, the VPO should also inquire: (i) whether the applicant has been represented by counsel in past proceedings related to the relevant SC case, and if so, whether the applicant has any expectation to be represented before the SC by the same counsel; and (ii) while informing the applicant that his or her views are but one of the considerations taken into account by the Registrar when assigning Victims' Counsel, whether the applicant has any concerns on the potential designation of a legal representative other than the preferred one and if so, what these concerns are. The Pre-Trial Judge instructs the VPO to submit the answers so provided together with its recommendations.

#### B. ELECTRONIC APPLICATION FORM

23. The Pre-Trial Judge notes that the VPO Request raises the following questions: (i) the suitability of an electronic form for victim applications; (ii) alternatives for a manual signature; and (iii) the interplay between the Application Form and an electronic equivalent.

24. As regards the suitability of an electronic form for victim applications, the Pre-Trial Judge considers that the introduction of such a form is a useful and timely undertaking given the increasing use of electronic options in judicial proceedings and public administration. The Pre-Trial Judge considers therefore that an electronic application form should at all times be made available for any victim applicants, in addition to the conventional Application Form, and that it is not necessary for the applicant to justify the use of the electronic application form. Rather, with a view to facilitating victim engagement, the applicant should have the choice to either manually fill in the Application Form or use its electronic form.

25. As regards alternatives for a manual signature, the Pre-Trial Judge recalls that one of the requirements of a complete application form, as set out in the First Framework Decision, is that the application is signed by the applicant or his/her legal guardian.<sup>32</sup> Taking into consideration the need to identify applicants and authenticate their forms, but also mindful of the contemporary Kosovo practices regarding the signing of documents, the Pre-Trial Judge considers that the signature on the application form may be: (i) manual (the applicant or the legal guardian writes his or her name or mark on a hard-copy of the application form); or (ii) electronic (the applicant or the legal guardian uses his or her digitally generated signature or uploads or attaches a digital image (scan, photograph taken by, for example, the cell phone) of his or her handwritten signature on/to an electronic copy of the application form). The Pre-Trial Judge considers that both manual and electronic signatures, as described above, can be accepted as validly made.

26. In this regard, the Pre-Trial Judge notes that the VPO proposes to dispense with the signature requirement in the Proposed Form and replace it with a solemn undertaking field followed by the typing of the applicant's name.<sup>33</sup> The VPO avers that the applicant would in any event be required to provide a copy of an identification document and that the combination of the solemn undertaking and the proof of identity would provide a reliable means of ensuring authenticity.<sup>34</sup> The Pre-Trial Judge observes, however, that the provision of a digital copy of an identification document requires the same electronic manoeuvre as the uploading of a digital image of a handwritten signature. Consequently, if an applicant or a legal guardian is able to fill out and upload an electronic application form and provide a digital copy of his or her identification document, he or she should also be able to provide or upload a

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<sup>32</sup> First Framework Decision, para. 22.

<sup>33</sup> VPO Request, para. 16.

<sup>34</sup> VPO Request, para. 17.

digital image of his or her signature.<sup>35</sup> The Pre-Trial Judge accordingly finds it appropriate to maintain the requirement of a signature, be that manual or electronic.

27. As regards the interplay between the Application Form and an electronic equivalent, the Pre-Trial Judge considers that, in order to ensure consistency between the Application Form and the Proposed Form, the VPO must develop one consolidated form that can be used both in hard- and electronic copy (“Consolidated Form”). The signature section of the Consolidated Form should include:

- a) A certification undertaking along the lines of the one provided in the Application Form;<sup>36</sup>
- b) Date and location of the signature;
- c) The option to sign the application form manually, as provided in the Application Form;<sup>37</sup>
- d) The option to sign the application form electronically, with content controls for the uploading of the digital image of the signature; and

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<sup>35</sup> The Pre-Trial Judge notes that the ICC case-law cited by the VPO to support its request for removing the signature requirement was a case-specific approach based on the volatile security situation in Sudan, the low literacy level of victim applicants and the absence of cultural practices requiring a handwritten signature. *See ICC, Prosecutor v. Ali Muhamad Ali Abd-Al-Rahman (“Ali Kushayb”), 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, ICC-02/05-01/20-178-Red, 2 November 2020, paras 6-9, fn. 9.* The Pre-Trial Judge notes that the situation in Kosovo cannot be compared with the aforementioned circumstances.

<sup>36</sup> The certification undertaking provided in the Application Form reads as follows:

*“I hereby certify that:*

- *I was able to read this application form to participate in the proceedings before the Kosovo Specialist Chambers in a language that I understand or failing that, it was read to me in a language that I understand;*
  - *I provide my signature below and my initials on each page of this form and of the supporting documents;*
- The information provided in this form is correct to the best of my knowledge.”*

The phrase regarding the provision of initials on each page of the form and the supporting documents may be removed from the certification undertaking for electronic signatures.

<sup>37</sup> Section 6 (Signature) of the Application Form contains; (i) a certification undertaking; (ii) a list of documents attached, including the number of pages; (iii) the date and location; and (iv) the manual signature.

- e) An instruction to attach, submit or upload a hard- or electronic copy of the identification document of the applicant and/or the legal guardian.

28. The collection of the signature in the above-described forms can also be done after the submission by the applicant of the relevant form and the VPO may assist the applicants accordingly. The application form submitted before the Pre-Trial Judge pursuant to Rule 113(2) of the Rules shall, in any event, contain the required signature.

#### V. DISPOSITION

29. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **INSTRUCTS** the VPO to comply with the clarifications provided in paragraphs 16-22; and
- b. **ORDERS** the VPO to develop and use the Consolidated Form as provided in paragraphs 24-28.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Tuesday, 6 July 2021  
At The Hague, the Netherlands.