



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,
Jakup Krasniqi**

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 1 April 2021

Language: English

Classification: Confidential and *Ex Parte*

**Supplement to First Registry Report to the Pre-Trial Judge on Victims'
Applications for Participation in the Proceedings with
Recommendation on Grouping
with one confidential and *ex parte* Annex**

Head of Victims' Participation Office

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I. INTRODUCTION

1. The Victims' Participation Office ("VPO") hereby files this report to the Pre-Trial Judge ("Supplemental Report") to supplement its First Report¹ on victims' applications for participation in the proceedings, pursuant to Rule 113(2) and (8) of the Rules² and the Framework Decision.³
2. This Supplemental Report addresses the VPO's recommendation on grouping for the purposes of common representation.

II. PROCEDURAL HISTORY

3. 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").⁴
4. 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.⁵
5. On 4 January 2021, the Pre-Trial Judge issued the Framework Decision setting out the principles governing the application process and the role of the VPO.⁶ The Pre-Trial Judge also indicated that the VPO shall make a recommendation on grouping for

¹ KSC-BC-2020-06, F00203, First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings ("First Report"), 15 February 2021, public, with confidential and *ex parte* Annexes 1-19.

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

³ KSC-BC-2020-06, F00159, Framework Decision on Victims' Applications ("Framework Decision"), 4 January 2021, public.

⁴ 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.

⁵ 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.

⁶ See Framework Decision, paras 14-17.

the purpose of common representation, taking into account the criteria set out in Rule 113(8) of the Rules.⁷

6. On 15 February 2021, the VPO filed the First Report with the Pre-Trial Judge, which included preliminary observations on grouping for the purpose of common representation.⁸ The VPO noted in its First Report that it would supplement its preliminary observations in a further report to the Pre-Trial after obtaining additional information from the victim applicants in order to assess whether there are any conflicting interests that may hinder common representation.⁹

7. The VPO contacted sixteen (16) applicants¹⁰ who have been recommended for admission as participating victims and inquired about any possible conflict of interests in the event that all participating victims would be grouped in a single group. The applicants' answers are summarized in notes to the file, uploaded for each applicant in Legal Workflow ("LW").

III. CLASSIFICATION

8. The VPO files this Supplemental Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. The VPO has no objection to the reclassification of the Supplemental Report so that it can be disclosed to the Parties, as it contains no identifying information of the applicants. In the event that the Pre-Trial Judge decides to re-classify this Supplemental Report as public, this Supplemental Report also constitutes the Report to the Parties pursuant to Rule 113(2) of the Rules.¹¹

9. Together with this Supplemental Report, the VPO submits one confidential and *ex parte* Annex. The Annex contains a detailed summary of the arguments submitted by one applicant and an analysis of the issues by the VPO. Since the Annex does

⁷ See *ibid.*, paras 42-44.

⁸ First Report, paras 50-54.

⁹ *Ibid.*, para. 52.

¹⁰ In its First Report, the VPO recommended seventeen (17) applicants for admission. Since that time, one applicant, Victim-05/06, has died. The VPO will provide additional information to the Pre-Trial Judge about the deceased victim applicant Victim-05/06 in a separate filing.

¹¹ See Framework Decision, para. 50.

contain identifying information, it is also filed as confidential and *ex parte* pursuant to Rule 113(2) and Rule 82(1) of the Rules.

10. Notes to the file are not submitted as annexes to this filing. They have been disclosed in LW only to the Pre-Trial Judge, and they should be treated in the same way as application forms and supporting documentation pursuant to Rule 113(1) of the Rules.

IV. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

A. RECOMMENDATION ON GROUPING

11. In making a recommendation to the Pre-Trial Judge on grouping, the VPO considered the criteria set out in Rule 113(8) of the Rules, taking into account the individual circumstances of each applicant and the composition of the group as a whole. The VPO also considered the relevant jurisprudence of other courts and tribunals.

1. General observations

12. In the Framework Decision, the Pre-Trial Judge indicated that dividing applicants into more than one group should only be done in exceptional circumstances, e.g., “when the situation or the specificity of the victims is so different that their interests are irreconcilable, making their common representation impracticable.”¹² In this regard, the Pre-Trial Judge provided a non-exhaustive list of considerations that might warrant the need to divide applicants into more than one group, such as different forms of harm, different crimes, different ethnicities, different places of residence, different languages spoken, different political views, etc. The Pre-Trial Judge stated that these considerations may not automatically warrant separate

¹² See Framework decision, para. 43.

representation, but that where several of these considerations overlap, the division into more than one group may be warranted.¹³

13. The potential issues linked to grouping and common representation that the VPO has identified when assessing the victims' applications relate to the different backgrounds of the applicants, namely their *ethnicity, language, and geographical location*. These considerations could potentially have an impact upon effective common representation and meaningful participation in two ways, namely by possibly undermining the required trust between Victims' Counsel and clients, as well as potentially impacting negatively upon participating victims of different ethnicity, if placed in the same group. It is assessed, however, that in the particular circumstances of the current applications, this is unlikely.

14. Language and geographical location of victims are important considerations, since establishing trust between Victims' Counsel and his or her clients by being able to communicate effectively and meet clients regularly is essential for effective representation.

15. In this regard, the VPO also took into consideration any logistical barriers to accessing some of the victims that may justify their separate representation. Namely, the role of Victims' Counsel is, *inter alia*, to keep the victims informed about the proceedings, which can be undertaken individually or in group meetings. Concerns regarding access to victims that the VPO considered included possible difficulties of travel to Kosovo, travel between Kosovo and Serbia, meeting clients from the diaspora, as well as the capability of contacting clients by different means of communication when meeting in person would be impracticable. In particular, with regard to group meetings, the VPO considered any issues that might arise and hamper effective representation by, for example, gathering victims of Serbian and Kosovo-Albanian ethnicity together in one group in Kosovo or Serbia.

¹³ See *ibid.*, para. 43.

2. Jurisprudence of the International Criminal Court (“ICC”)

16. The VPO conducted research on the jurisprudence of other courts and tribunals, in particular the jurisprudence of the ICC, which is the most relevant.

17. In the *Bemba* case,¹⁴ the Chamber followed the Registry’s proposal to group the victims in four geographical groups reflecting the geographical locations of the alleged crimes. The Chamber was of the view that this grouping would allow for families in the same community to be represented by the same legal representative and facilitate communication between victims and their representatives. It is of relevance that the number of applicants at the time was 135, with the grouping also to apply to an anticipated further 1,200 applicants.¹⁵

18. In the *Katanga and Ngudjolo Chui* case,¹⁶ the Chamber grouped the victims in two groups, one composed of child soldiers, who participated in the attack on the Bogor village, and another of all other victims of the attack. The Chamber followed the Registry’s view that there exists a potential conflict of interest between these two groups. In this case, the interest of the victims were manifestly opposed to the extent that the appointment of different legal teams was not only appropriate but necessary.

19. Similarly in the *Ntaganda* case,¹⁷ the Single Judge followed the Registry’s proposal to group the victims in two distinct groups, namely a group consisting of UPC/FPLC child soldiers and another consisting of victims of the UPC/FPLC attacks. The same approach was later adopted in the *Yekatom and Ngaïssona* case.¹⁸

¹⁴ ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, “Decision on common legal representation of victims for the purpose of the trial”, No. ICC-01/05-01/08-1005, 10 November 2010, paras 18-20.

¹⁵ *Ibid.*, para. 6.

¹⁶ ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, Trial Chamber II, “Order on the organisation of common legal representation of victims”, No. ICC-01/04-01/07-1328, 22 July 2009, paras 6, 12-13.

¹⁷ ICC, *Prosecutor v. Bosco Ntaganda*, Pre-Trial Chamber II, “Decision concerning the organisation of common Legal representation of Victims”, No. ICC-01/04-02/06-160, 2 December 2013, paras 10, 23.

¹⁸ ICC, *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Pre-Trial Chamber II, “Decision on Legal Representation of Victims”, No. ICC-01/14-01/18-205, 23 May 2019, para. 14.

20. In the *Banda and Jerbo* case,¹⁹ however, victims were grouped in one single group. The Chamber took the view that speaking a different language or residing in a different country than the other victims in the case does not *per se* imply that the two victims have distinct interests that would warrant separate representation and that this can be tackled by forming a balanced legal team. The Chamber also found that there was no conflict of interest between the two Darfuri victims, who witnessed the killing and injury of the peacekeepers, and the other international victims.

21. A similar decision was taken in the *Ruto and Sang* case,²⁰ where the Single Judge followed the Registry's proposal that no distinct interests had arisen and no conflict of interest had been reported that would warrant the division into more than one group. The issues identified by the Registry were linked to ethnicity and political affiliation.²¹

3. Particular circumstances of the applicants

22. Turning to the specific circumstances of the applicants, they are either Serbian (eleven) or Albanian speaking (five). Out of these, nine applicants are living in Serbia, three applicants are from the diaspora and living in different parts of the world, and five applicants are living in Kosovo, of whom one is Serbian speaking.

23. To obtain further information, the VPO contacted each applicant individually. The aim of the VPO was to determine if any irreconcilable differences exist among the applicants that would warrant a recommendation of more than one group.

24. Out of the sixteen applicants, only one objected to being grouped in a single group. The applicant's arguments are in part linked to ethnicity and the particular

¹⁹ ICC, *Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohamed Jerbo Jamus*, Trial Chamber IV, "Decision on common legal representation", No. ICC-02/05-03/09-337, 25 May 2012, paras 34-46.

²⁰ ICC, *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Pre-Trial Chamber, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", No. ICC-01/09-01/11-249, 5 August 2011, para. 65.

²¹ ICC, *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Registrar, Annex 2 to Proposal for the common legal representation of victims, "Summary of information relevant to the grouping of victims", No. ICC-01/09-01/11-243-Anx2, 1 August 2011.

circumstances of his case, as well as a potential conflict of interest with other victims. Further details on the applicant's arguments can be found in the confidential *ex parte* Annex to this filing and the note to the file on grouping in LW.

4. Recommendation on grouping

25. Despite the different backgrounds of the applicants, the majority of the applicants do not object to being grouped in a single group. As regards the applicant that expressed objections, the VPO agrees that his situation differs to some extent from the other applicants. However, after carefully analyzing the individual circumstances of the applicant and the particularities of the group as a whole, the VPO considers that the applicant's arguments do not constitute a situation that would warrant separate representation.

26. Although in the *Katanga and Ngudjolo* case, and even more in the *Ntaganda* case, the grouping was based only on a *potential* conflict of interest between the child soldiers and the victims of the attacks, the facts of those cases are materially different in terms of the nature of the conduct giving rise to the conflict.²² Accordingly, the VPO considers that the concerns raised by the applicant in this case are not sufficient to require the division of applicants into two groups. In the VPO's view, any other concerns the applicant has or risks that he and/or his family might face can be mitigated with the protective measures proposed in the First Report.²³

27. In addition, as a general comment concerning the alleged crimes and victims of these crimes as described in the Confirmed Indictment, the present case concerns crimes allegedly committed against persons deemed to be opponents, including persons not supporting the aims or means of the KLA, whether of Serbian, Roma, or other ethnicity, as well as persons perceived to be collaborating or associating with Federal Republic of Yugoslavia ("FRY") forces or officials or state institutions.²⁴ For

²² See above paras 18-19.

²³ See First Report, paras 62-65.

²⁴ See Confirmed Indictment, F00045/A03, para. 32.

example, some of the crimes against opponents described in the Confirmed Indictment were allegedly carried out in whole or in part on ethnic grounds, whereas others may have been carried out in whole or in part on political grounds. Regardless of ethnic background, language spoken, and geographical location, all applicants can be considered victims of crimes allegedly committed by the same perpetrators.²⁵ And, importantly, each of those victims shares the same interest of seeking justice before the Specialist Chambers.

28. After analysing individual circumstances of the applicants and the interests of the group as a whole, the VPO considers that the differences and potential issues outlined and considered above can be managed effectively through ensuring a legal team with multiple members, with the capacity to work in different languages and countries of origin. In addition, Victims' Counsel and his or her team members will be able to tailor their interaction and communication with their clients in a manner most suitable, taking into account any linguistic, ethnical, geographical or other particularities, thereby ensuring fair and equal representation of all clients regardless of their background.

29. Accordingly, the VPO does not find that any of the above issues and/or differences would make common representation impracticable at this stage and recommends the Pre-Trial Judge to group the victims in one single group.

B. COMMON LEGAL REPRESENTATION

30. As regards preferences on legal representation, eleven Serbian-speaking applicants have stated their preferences in the application forms by providing names of Counsel, and one applicant has expressed a general preference of having a lawyer from Western countries.

31. The VPO shall base its proposal for assignment of Victims' Counsel to the Registrar based on a range of criteria, such as a demonstrated relationship of trust

²⁵ See *ibid.*

with victims, a demonstrated commitment to working with vulnerable persons, as well as relevant litigation expertise/experience, etc.

32. The VPO shall also take into account the countries of origin of proposed Victims' Counsel and his or her Team Members, as well as the capacity of the Team Members to work in different languages, together with any preferences expressed by the applicants to ensure the necessary balance and effective representation for all victims in the group.

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Dr Fidelma Donlon
Registrar

1 April 2021
At The Hague, the Netherlands