

**In:** KSC-BC-2023-10

**Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala**

**Before:** **Trial Panel I**  
Judge Mappie Veldt-Foglia, Presiding  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Haxhi Shala

**Date:** 02 October 2024

**Language:** English

**Classification:** Public

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**Submission of Requested Information on Availability for Scheduled Forthcoming Hearings**

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**Specialist Prosecutor**  
Kimberly P. West

**Counsel for Sabit Januzi**  
Jonathan Elystan Rees  
Huw Bowden

**Counsel for Ismet Bahtijari**  
Dr. Felicity Gerry  
Marion Carrin

**Counsel for Haxhi Shala**  
Toby Cadman  
John Cubbon

1. The Defence for Haxhi Shala (“Defence”) hereby submits information that Trial Panel I has requested on how it will ensure availability at forthcoming scheduled hearings.<sup>1</sup>
2. On 6 September 2024, Trial Panel I requested that the Parties ensure their availability until further notice to participate in hearings in 2024 on 7-16 October, 11-13 November, 9-12 December and 16-20 December.<sup>2</sup> In response, Specialist Counsel for Mr. Haxhi Shala (“Specialist Counsel”) wrote that he was available for all these dates with the exception of 15-16 October 2024.<sup>3</sup>
3. In reply to a question from the Court Management Unit,<sup>4</sup> Specialist Counsel wrote that Mr. Toby Cadman, Mr. John Cubbon, Ms. Isabella Kirwan and Mr. Admir Berisha would attend the upcoming Trial Preparation Conferences on 7-11 October 2024.<sup>5</sup>
4. The Defence would like the members of the Trial Panel to be aware that the Defence Coordination Office has advised the Defence, following a request to

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<sup>1</sup> KSC-BC-2023-10/F00479, Decision setting the dates for trial preparation conferences, requesting submissions and on related matters, 24 September 2024, para. 10.

<sup>2</sup> Email from Court Management Unit on 6 September 2024.

<sup>3</sup> Email from Mr. Toby Cadman on 7 September 2024.

<sup>4</sup> Email from Court Management Unit on 30 September.

<sup>5</sup> Email from Mr. Toby Cadman on 30 September 2024.

approve travel and accommodation for the upcoming hearings, of the following:

“The place of your assignment is The Hague. Therefore, neither costs of travel to and from the place of residence to The Hague, nor accommodation in The Hague is eligible for reimbursement. Your request for approval of reimbursement of travel costs is therefore denied. This constitutes a decision by the Head of the Defence Office pursuant to the Guidelines on Administration and Monitoring of Legal Aid.”

5. The Defence responded to the Defence Coordination Office in the following terms:

“First, the List of Defence Counsel is international and not restricted to the Dutch jurisdiction - the approach of the Defence Office unfairly discriminates against international members of the List (and their team members) in being able to travel to the Hague and represent the interests of indigent defendants against the heavily funded prosecution.

“Second, the KSC is a domestic court of the Republic of Kosovo, it is not an international or hybrid institution and the approach of the

Defence Office discriminates against Kosovan members of the List of Counsel and Kosovan team members.

“Third, and connected to the second point, the decision of the Defence Office means that we are not able to bring our investigator/translator to the Hague for the trial, we will thereby not be able to communicate with our client and take instructions, and this will add to the difficulties in being able to properly represent the interests of our client at trial, and will affect whether the proceedings as a whole will be considered fair within the meaning of Article 6 of the ECHR.

“Fourth, the decision of the Defence Office implies that “the” seat of the KSC is the Hague. The Defence Office refers to the place of assignment. It is clear that pursuant to the Host State Agreement and the legal framework of the KSC that the Hague is “a” seat of the KSC and that there may be seats elsewhere, such as in Kosovo as it is a domestic court. It has been decided by the Pre-Trial Judge that the trial will be heard in the Hague. We are not now seeking to challenge that decision, but by making that decision certain obligations follow including the ability to allow the participants to attend trial and represent the interests of the accused without placing insurmountable obstacles such as the removal of reasonable funding.”

6. The points set out above must be read in line with the decision to slash public funding of the defence by 80% that inevitably has an impact on funding the travel of defence teams to the Hague.
7. Notwithstanding the arbitrary and impactful decisions having been taken in this case by the Registry, and specifically the Defence Coordination Office, Specialist Counsel is committed to ensuring that the client's rights are fully respected and is mindful of his obligations as appointed Specialist Counsel and as a member of the Bar of England and Wales, and that travel and accommodation costs for the defence team, including our investigator/translator travelling from Kosovo, are being borne by Specialist Counsel.
8. Therefore, Mr. Cadman, Mr. Cubbon, Ms. Kirwan and Mr. Berisha intend, in addition to the Trial Preparation Hearings, to be present at the hearings scheduled for 11-13 November 2024, 9-12 December 2024 and 16-20 December 2024. Should any changes in availability arise, the Trial Panel will be duly notified. The Defence will in any event ensure that it will be properly represented on all the dates on which the Trial Panel has scheduled hearings.

**Word Count: [798 words]**



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**Toby Cadman**

**Specialist Counsel**

**02 October 2024**

**At London, United Kingdom**