

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

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

Date: 9 October 2024

Language: English

Classification: Confidential and *Ex Parte*

Request for Review of Decision of the Registrar on the Legal Aid Fee with three *ex parte* and confidential Annexes

Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala ("Defence") hereby seeks review of a Decision of the Registrar regarding a request to Amend the Legal Aid Fee.

II. PROCEDURAL HISTORY

2. On 19 September 2024, the Registrar issued a Decision on the determination of the Complexity Level and the Legal Aid Fee for the Trial Stage of the Proceedings ("September 2024 Decision"),¹ in which she determined that the case must be ranked at Complexity Level 2² and that €11,675 be allocated as a monthly lump sum remuneration.³
3. On 23 September 2024, Specialist Counsel for Mr Shala submitted a request to the Registrar to amend her determination of the Complexity Level and the Legal Aid Fee for the Trial Stage, in which he concluded that the present case should be classified at the top end of Complexity Level 3. ("Request for Amendment")⁴

¹KSC/REG/IOR/7245. See Annex 1.

² September 2024 Decision, para. IV.6.

³ September 2024 Decision, para. V.15

⁴ See Annex 2.

4. On 2 October 2024 the Registrar issued the ‘Decision of 2 October 2024 On Counsel’s Request to Amend the Legal Aid Fee Pursuant to Regulation 18(6) of the Legal Aid Regulations’ (“Impugned Decision”),⁵ in which she concluded that there were no grounds for revision of the Complexity Level or amendment of the Legal Aid Fee.⁶

III. APPLICABLE LAW

5. Regulation 16 of the Legal Aid Regulations⁷ (“LAR”) provides in relevant part:

2. The Complexity Level of a case shall be determined as follows:

- a. Complexity Level 1: standard;
- b. Complexity Level 2: difficult;
- c. Complexity Level 3: very difficult.

3. For the purpose of determining the Complexity Level of a case, the following general factors, as applicable, shall be considered:

⁵ KSC/REG/IOR/7287. See Annex 3.

⁶ Impugned Decision, paras. 28, 41.

⁷ Registry Practice Direction, KSC-BD-25/Rev1/2024, 22 February 2024.

- a. number and nature of charges in the indictment;
- b. suspect or Accused's alleged position within a political or military hierarchy;
- c. geographical and temporal scope of the case;
- d. number and type of witnesses and documents involved;
- e. number of victims or groups of victims expected to participate in the proceedings;
- f. complexity of the legal and factual arguments involved;
- g. whether the case raises any novel issues.

6. Regulation 18(6) and 18(7) of the LAR provide:

6. Where, during the course of proceedings, Assigned Counsel considers that the Legal Aid Fee agreed upon pursuant to paragraph (2) is not sufficient, he or she may request that the Registrar amend the Legal Aid Fee accordingly. Within two (2) weeks of receipt of this request, the Registrar shall render a reasoned decision on the request and notify Assigned Counsel.

7. Within seven (7) days of notification of a decision pursuant to paragraphs (5) or (6), Assigned Counsel may file a reasoned request for review of the decision before the Competent Panel.

IV. SUBMISSIONS

7. In the Impugned Decision the Registrar assessed the case as being at Complexity Level 2⁸ and on this basis concluded that the Legal Aid Fee should remain as determined in the September 2024 Decision.
8. The Defence respectfully submits that the Registrar has misunderstood the position of the Defence on the complexity of “domestic crimes” (crimes under Article 15(2) and 16(3) of the Law) as opposed to “international crimes” (crimes under Articles 13, 14, 15(1) and 16(1)-(2) of the Law).
9. In the Request for Amendment, Counsel submitted that because the level of remuneration at Complexity Level 1 for international crimes is much higher than at Complexity Level 1 for domestic crimes, a much lower level of complexity is required for a domestic crime case to reach the highest Complexity Level. The Registrar found that this argument did not find any support in the LAR.⁹
10. The Defence argument is as follows:
 - (i) The criteria for complexity in Regulation 16(3) of the LAR are such that the same scale of complexity is applicable to both domestic and

⁸ Impugned Decision, para. 41.

⁹ Impugned Decision, para. 21.

international crimes. An individual international crime may be more or less complex than a domestic crime. Whether it is or not depends not on whether it is domestic or international but on the criteria in Regulation 16(3).

- (ii) Annex C of the LAR sets out the maximum monthly remuneration for the three Complexity Levels. For international crimes they are €26,830 for Complexity Level 1, €31,470 for Complexity Level 2 and €40,750 for Complexity Level 3 and for domestic crimes they are respectively €6,875, €12,675 and €14,850.
- (iii) The maximum level of remuneration for domestic crimes at Complexity Level 3 is far below the maximum level for international crimes at Complexity Level 1. It follows that a much lower level of complexity is required for a domestic crime to qualify as Complexity Level 3.

11. The Registrar does not address the reasoning given here, which contrary to her assertion,¹⁰ is evidently based on the LAR. Once it is applied, the assignment of the case at the Trial Stage to Complexity Level 3 follows straightforwardly. The Request for Amendment sets forth the factual basis for

¹⁰ Impugned Decision, para. 21.

finding that it should be considered as being at Complexity Level 3 and that the monthly lump sum should be the maximum for Complexity Level 3, that is €14,850. The Defence reaffirms these submissions.

V. QUALIFICATION

12. Since the Impugned Decision was addressed confidentially only to Specialist Counsel, the present filing has been classified as confidential and *ex parte*. However, the Defence has no objection to it being reclassified so that it is available to all the Parties in the case.

VI. CONCLUSION

13. In conclusion, the Defence requests that the Trial Panel find that the case at the Trial Stage should be ranked as Complexity Level 3 and that the monthly lump sum to be allocated should be €14,850 per month.

Word Count: [965 words]



Toby Cadman

Specialist Counsel

9 October 2024

At London, United Kingdom