

**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:** 26 October 2024

**Language:** English

**Classification:** Confidential and *Ex Parte*

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**Reply to Registrar's Submissions concerning F00518**

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**Counsel for Haxhi Shala**

Toby Cadman

## I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala ("Defence") hereby replies to the Registrar's Submissions Concerning F00518 ("Registrar's Submissions").<sup>1</sup>

## 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,<sup>2</sup> in which she determined that the case must be ranked at Complexity Level 2<sup>3</sup> and that €11,675 be allocated as a monthly lump sum remuneration.<sup>4</sup>
3. On 23 September 2024, Counsel submitted a request to the Registrar, in which he concluded that the present case should be classified at the top end of Complexity Level 3.<sup>5</sup>
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)

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<sup>1</sup> KSC-BC-2023-10/F00541, 18 October 2024, confidential and *ex parte*.

<sup>2</sup>KSC/REG/IOR/7245 ("September 2024 Decision"). See KSC-BC-2023-10/F00518, Request for Review of Decision of the Registrar on the Legal Aid Fee with three *ex parte* and confidential Annexes, *ex parte* and confidential ("Request for Review"), Annex 1.

<sup>3</sup> September 2024 Decision, para. IV.6.

<sup>4</sup> September 2024 Decision, para. V.15

<sup>5</sup> See Request for Review, Annex 2.

of the Legal Aid Regulations,<sup>6</sup> in which she found that there were no grounds for revision of the Complexity Level or amendment of the Legal Aid Fee.<sup>7</sup>

5. On 9 October 2024, in Request for Review of Decision of the Registrar on the Legal Aid Fee (“Request for Review”),<sup>8</sup> the Defence requested that the Trial Panel find that the case at the Trial Stage should be ranked as Complexity Level 3 and that a monthly lump sum of €14,850 should be allocated.<sup>9</sup>

### III. APPLICABLE LAW

6. Regulation 16 of the Legal Aid Regulations<sup>10</sup> (“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:

- a. number and nature of charges in the indictment;

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<sup>6</sup> KSC/REG/IOR/7287 (“October 2024 Decision”). See Request for Review, Annex 3.

<sup>7</sup> October 2024 Decision, paras. 28, 41.

<sup>8</sup> KSC-BC-2023-10/F00518.

<sup>9</sup> Request for Review, para. 13.

<sup>10</sup> Registry Practice Direction, KSC-BD-25/Rev1/2024, 22 February 2024.

- 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.

#### IV. SUBMISSIONS

- 7. The Registrar submits that while Counsel continues to complain that the Registrar has misunderstood and misapplied his arguments, Counsel's own arguments remain obscure and internally contradictory.<sup>11</sup>
- 8. She correctly states that Counsel submits that because under Annex C to the LAR the maximum level of remuneration at Complexity Level 3 for "domestic crimes" is far below the maximum level of remuneration at Complexity Level 1 for "international crimes", a much lower level of complexity is required for a "domestic crime" to reach Complexity Level 3.<sup>12</sup> However, she further states that Counsel fails to explain how the differences in the maximum levels of remuneration available for the two types of cases under Annex C to the LAR

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<sup>11</sup> Registrar's Submissions, para. 5.

<sup>12</sup> Registrar's Submissions, para. 6.

should have led the Registrar to consider and weigh the factors under Regulation 16(3) of the LAR differently in this particular case.<sup>13</sup>

9. With respect the Registrar continues to misunderstand Counsel's argument. A partial analogy will be given in order to clarify it.
10. Children of seven (7) and fifteen (15) years of age can be given the same test of mathematical ability. The distribution of scores on the test might be such that:
  - (i) For those aged fifteen (15) scores of up to 26 indicate low ability; scores between 26 and 31 indicate average ability; and scores between 31 and 40 high ability; and
  - (ii) For the seven (7) year olds the score-bands are below 6 for low ability, between 6 and 12 for medium ability and between 12 and 14 for high ability.
11. A child aged seven (7) with a very high level of mathematical ability will nevertheless be expected to obtain a score of, for example, 14 that would put them in the low-ability range for fifteen year olds. This parallels levels of complexity for domestic and international crimes. Both sorts of crime can be put on the same scale of complexity associated with remuneration. The maximum level of complexity 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.<sup>14</sup> In failing to acknowledge and take

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<sup>13</sup> Registrar's Submissions, para. 7.

<sup>14</sup> Request for review, para. 10(iii). A limitation to the analogy is that, exceptionally, children of fifteen (15) years of age may score in excess of 40 and children aged seven (7) may score more than 14, whereas

this into account,<sup>15</sup> the Registrar has erroneously classified the case as Complexity Level 2.

## V. QUALIFICATION

12. Since the October 2024 Decision was addressed confidentially only to Specialist Counsel, the present filing has been classified as confidential and *ex parte* pursuant to Rule 82(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers.<sup>16</sup> However, the Defence has no objection to it being reclassified so that it is available to all the Parties in the case.

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**Toby Cadman**

**Specialist Counsel**

**26 October 2024**

**At Abu Dhabi, United Arab Emirates**

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there are financial ceilings for remuneration of complexity of €40,750 and €14,850 for international and domestic crimes; but this does not undermine the relevance of the comparison.

<sup>15</sup> September 2024 Decision. See Request for Review, Annex 1.

<sup>16</sup> KSC-BD-03/Rev3/2020, 2 June 2020.