

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: 28 October 2024

Language: English

Classification: Confidential and *ex parte*

Reply to Registrar's Submissions Concerning F00516

Specialist Counsel for Haxhi Shala
Toby Cadman

I. INTRODUCTION

1. The Defence for Mr Haxhi Shala (“Defence”) hereby replies to the Registrar’s Submissions Concerning F00516 dated 21 October 2024.¹
2. On 9 October 2024, in Request for Review of Decision of the Registrar regarding travel and related costs, the Defence sought a review of a Decision of the Registrar regarding travel and related costs (“Haxhi Shala Request”).² The Registrar’s Submissions maintained that it was both a correct and reasonable determination that the place of Counsel’s assignment was The Hague and, consequently, that travel expenses to and from The Hague for the purpose of attending court hearings were not eligible for reimbursement.³

II. SUBMISSIONS

3. Firstly, the Defence submit that the Registrar’s position is wholly misguided. The Registrar’s arguments all rest on the determination that Counsel’s place of assignment is The Hague. However, there is no basis for this assertion. The

¹ KSC-BC-2023-10/F00543, Registrar’s Submissions Concerning F00516, Confidential and *Ex Parte* (“Registrar’s Submissions”).

² KSC-BC-2023-10/F00516, confidential and *ex parte*.

³ Registrar’s Submissions, para. 19.

Registrar has failed to point to any document, law, guidance or otherwise which states that Counsel's place of assignment is The Hague.

4. In response to the Defence's position that there is no legal basis for the Registrar's determination that the place of assignment is The Hague, the Registrar relies on the Decision of the President⁴ Invoking a Change of Venue to the Host State of 25 September 2023.⁵ However, the Trial Panel will note that this decision concerns the *venue* for the proceedings, not the place of assignment of Counsel.
5. The Registrar states "...while Counsel is correct in stating that being based in The Hague is not a "condition" for being assigned, Counsel is expected to be present in The Hague to carry out his duties in this case, when required."⁶
6. The Registrar continues, "While assigned Counsel may reside either in The Hague or anywhere else in the world, the cost of commuting from Counsel's place of residence to his or her place of assignment is a matter for each Counsel to consider in view of his or her individual circumstances."⁷

⁴ KSC-BC-2023-10/F00005, Decision Invoking a Change of Venue to the Host State, 25 September 2023, Public.

⁵ Registrar's Submissions, para. 8.

⁶ Registrar's Submissions, para. 8.

⁷ Registrar's Submissions, para. 9.

7. However, the Registrar never communicated this position in writing or orally to Counsel at the time he was assigned.
8. There is no mention in the Registry's Practice Direction "Directive on Counsel"⁸ of Counsel's place of assignment being The Hague, or that Counsel should consider the cost of commuting from Counsel's place of residence to his or her place of assignment when being assigned.
9. The Registrar did not warn Counsel at the time that she assigned him that he would receive no financial support whatsoever under Legal Aid to attend hearings in The Hague or to visit the detention centre in The Hague to properly represent his client.
10. The Registrar made the assertion that Counsel's place of assignment is The Hague on 24 September 2024⁹ more than nine (9) months after Counsel began to represent the Accused, a few weeks before the commencement of the trial. This is both inappropriate and unfair to Counsel, who is expected to fund his own fees, the fees of his entire team, and cover all travel costs and accommodation costs for every visit to The Hague.

⁸ KSC-BD-04-Rev2, Registry Practice Direction, Directive on Counsel, The Registrar, Kosovo Specialist Chambers, 22 February 2024.

⁹ Haxhi Shala Request, Annex 1.

11. It is also potentially highly prejudicial to the representation of the Accused. If Counsel were to withdraw due to these financial constraints, the Accused would be left without representation a mere few weeks before his trial. If Counsel were to withdraw, the Accused would need time to find alternative counsel. This would cause significant delays to the commencement of the trial. Newly appointed Counsel would require a huge amount of time to consider all material from the past ten (10) months in these proceedings. They would need to conduct their own defence investigations, including perhaps travelling to Kosovo. This would likely delay the trial by several months, resulting in the Accused being unfairly detained for a period much longer than he should be.
12. The right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the fundamental features of a fair trial.¹⁰ The Defence submit that the Registrar's decision not to provide any financial support to Counsel who she has assigned to represent the Accused prevents Counsel from effectively defending the Accused, and therefore raises serious questions about the fairness of the Accused's trial for the purposes of Article 6 of the European Convention on Human Rights ("ECHR").

¹⁰ *Salduz v. Turkey* [GC], 2008, para. 51; *Ibrahim and Others v. the United Kingdom* [GC], 2016, para. 255.

13. Furthermore, this trial is not going to take place over a continuous period. The Trial Panel has provisionally scheduled it to take place intermittently across several months, meaning that Counsel is expected to attend The Hague for a series of visits, sometimes for one day only. Making The Hague Counsel's principal place of practice in these circumstances would be unreasonable. This situation is highly prejudicial to all Counsel who are not resident in The Hague. Many Counsel on the List of Counsel before the Kosovo Specialist Chambers¹¹ are practicing lawyers outside of The Netherlands. The Defence submit that it is likely that many of these Counsel would not have the privilege of uprooting and relocating their home residences to The Hague and may not be able to easily extricate themselves permanently from all other commitments in the country they practice in for this case.
14. The Registrar's decision is therefore highly exclusionary to all Counsel based outside of The Netherlands. The Registrar's decision affects the ability of Counsel to represent individuals before the Kosovo Specialist Chambers, yet the decision discriminates against Kosovan Counsel who are based in Kosovo who cannot simply relocate to The Hague. It excludes them from participating altogether unless they are willing to formally relocate to The Netherlands or

¹¹ Kosovo Specialist, 'Chambers List of Counsel before the Kosovo Specialist Chambers', last accessed on 27 October 2024, available at: <https://www.scp-ks.org/sites/default/files/public/content/20240919-list-of-counsel-eng.pdf>.

are willing to fund the cost of their flights and accommodation each time they need to travel to The Hague to meet with their clients or attend court. This is contrary to the means and purpose of the Kosovo Specialist Chambers, which is a Kosovan court, not a domestic court of The Netherlands.

15. The Court's website states, "The Kosovo Specialist Chambers and the Specialist Prosecutor's Office have a seat in The Hague, the Netherlands. Their staff is international, as are the Judges, the Specialist Prosecutor and the Registrar."¹² It is submitted that the effect of the Registrar's decision is that the Court will not have "international" staff. Rather, it excludes defence Counsel who are not resident in The Hague or financially able to cover their own travel and accommodation costs.
16. For the compelling reasons set out above, the Defence submit that reasonable expenses should be covered. The Defence submit that the Registrar should follow a similar model as she uses to reimburse costs of investigations in Kosovo to reimburse Counsel's flight and accommodation costs when Counsel needs to attend The Hague for client attendances and court appearances. The Defence submit that the Registrar could cap these costs in the same way as the Registrar does are when she reimburses travel and

¹² Kosovo Specialist Chambers & Specialist Prosecutor's Office website, 'Kosovo Specialist Chambers & Specialist Prosecutor's Office, available at: <https://www.scp-ks.org/en>.

accommodation costs for investigations. Counsel would be happy to provide the Registrar with requests for reimbursement in the same way that Counsel does when requesting travel to Kosovo, which can then be considered on a case-by-case basis by the Registrar prior to approval.

III. QUALIFICATION

17. 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.¹³ However, the Defence has no objection to it being reclassified so that it is available to all the Parties in the case.

IV. CONCLUSION

18. In conclusion, the Defence reaffirms its request in paragraph 19 of the Haxhi Request regarding the reimbursement of travel and related costs of members of Defence Teams who are resident outside The Hague.

Word Count: [1403 words]

¹³ KSC-BD-03/Rev3/2020, 2 June 2020.



Toby Cadman

Specialist Counsel

28 October 2024

At Abu Dhabi, United Arab Emirates