



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2023-10

The 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: Fidelma Donlon

Date: 13 February 2025

Language: English

Classification: Confidential and *ex parte*

**Decision on the Request for Review of the
Decision of the Registrar on the Legal Aid Fee (F00518)**

To be notified to:

Registrar
Fidelma Donlon

Counsel for Haxhi Shala
Toby Cadman

TRIAL PANEL I (Panel) hereby renders this decision on the Request for Review of the Decision of the Registrar on the Legal Aid Fee (F00518).

I. PROCEDURAL BACKGROUND

1. On 19 September 2024, having consulted the Panel and Counsel for Haxhi Shala (Counsel and Mr Shala, respectively), the Registrar issued a decision pursuant to Regulation 16(3) of the Legal Aid Regulations (LAR) in which she determined that, the present case, namely case KSC-BC-2023-10, should be ranked at complexity level 2 and granted a monthly lump sum for the remuneration of the Defence for Mr Shala (Defence) at €11,675 for the trial stage of the proceedings (Initial Decision and Legal Aid Fee).¹

2. On 23 September 2024, Counsel requested that the Registrar amend her determinations of the complexity level and the Legal Aid Fee (Request for Amendment).²

3. On 2 October 2024, the Registrar issued a decision on the Request for Amendment, finding that there are no grounds for amending the Legal Aid Fee, including the complexity level (Impugned Decision or Registrar's Decision).³

4. On 9 October 2024, Counsel filed a request in which he seeks that the Panel review the Registrar's Decision and find that (i) the case at the trial stage can be ranked

¹ KSC-BC-2023-10, F00518/A01, Registrar, *Annex 1 to the Request for Review of Decision of the Registrar on the Legal Aid Fee*, 9 October 2024, confidential and *ex parte* (Annex 1 to the Request).

² KSC-BC-2023-10, F00518/A02, Defence, *Annex 2 to the Request for Review of Decision of the Registrar on the Legal Aid Fee*, 9 October 2024, confidential and *ex parte* (Annex 2 to the Request).

³ KSC-BC-2023-10, F00518/A03, Registrar, *Annex 3 to the Request for Review of Decision of the Registrar on the Legal Aid Fee*, 9 October 2024, confidential and *ex parte* (Annex 3 to the Request).

at complexity level 3 and (ii) the Legal Aid Fee to be allocated should be €14,850 per month (Request).⁴

5. On 18 October 2024, the Registrar filed a response (Response).⁵

6. On 26 October 2024, Counsel filed a reply (Reply).⁶

II. RELEVANT PARTS OF THE IMPUGNED DECISION

7. In the Impugned Decision, the Registrar determined that although Counsel had argued that the case should be at Complexity Level 3 for the trial stage of the proceedings, his submissions did not support the amendment of the Legal Aid Fee. As a result, she upheld her Initial Decision, with the categorisation of the case at complexity level 2 for the trial stage.⁷

8. More specifically, with regard to the applicable standards of complexity, the Registrar indicated that complexity levels are determined for each accused and each stage of the proceedings by scrutinizing the criteria under Regulation 16(3) of the LAR, which she had assessed against available information about the present case.⁸ The Registrar further specified that these criteria do not differ and are not measured differently if the case is domestic or international in nature.⁹

9. The Registrar considered Counsel's position in the Request for Amendment, according to which, since the level of remuneration at complexity level 1 for

⁴ KSC-BC-2023-10, F00518, Defence, *Request for Review of Decision of the Registrar on the Legal Aid Fee with three ex parte and confidential Annexes*, 9 October 2024, paras 1 and 13.

⁵ KSC-BC-2023-10, F00541, Registrar, *Registrar's Submissions Concerning F00518*, 18 October 2024, confidential and *ex parte*.

⁶ KSC-BC-2023-10, F00563, Defence, *Reply to Registrar's Submissions concerning F00518*, 26 October 2024, confidential and *ex parte*.

⁷ Impugned Decision, para. 40.

⁸ Impugned Decision, para. 18.

⁹ Impugned Decision, para. 18.

international crimes is much higher than the remuneration 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.¹⁰ The Registrar concluded that Counsel's position did not find any support in the LAR, and, that, in addition, he failed to explain how the relative levels of remuneration available to domestic and international cases "would have led the Registrar to consider the factors under Regulation 16(3) of the LAR differently".¹¹

10. As regards Counsel's challenges to her assessment of the complexity of the legal and factual arguments involved at the trial stage of the proceedings, the Registrar noted that these issues were considered in the Initial Decision and found that Counsel did not provide any additional reasoning in this respect.¹²

11. As regards Counsel's challenges to her assessment of whether the case raises any novel issues at the trial stage of the proceedings, the Registrar observed that she had duly considered all arguments raised in this respect by Counsel already in her Initial Decision and that Counsel's submissions merely showed disagreement with her assessment.¹³

12. Lastly, the Registrar found that there were no grounds for the amendment of the Legal Aid Fee under Regulation 18(6) of the LAR on account of the fact that Counsel had not availed himself of the €1,000.00, which the Kosovo Ministry of Justice had confirmed was available for Mr Shala's defence under Law No. 05/L-054 on Legal Protection and Financial Support for Potential Accused Persons in Trials Before the Specialist Chambers (Law No. 05/L-054).¹⁴

¹⁰ Impugned Decision, para. 21.

¹¹ Impugned Decision, paras 18, 19 and 21.

¹² Impugned Decision, paras 23-28.

¹³ Impugned Decision, paras 29-34.

¹⁴ Impugned Decision, paras 35-39.

III. SUBMISSIONS

A. COUNSEL'S SUBMISSIONS

13. Counsel argues that, in making the determination of the case being at complexity level 2, the Registrar misunderstood the position of the Defence on the complexity of “domestic crimes” as opposed to “international crimes”.¹⁵ In this regard, Counsel submits that since 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, then it “follows that a much lower level of complexity is required for a domestic crime to qualify as Complexity Level 3.”¹⁶ Counsel also reaffirms the submissions made in the Request for Amendment as regards the factual basis for finding that the case should be considered at being at complexity level 3 and that the Legal Aid Fee should be set at €14,850.¹⁷

B. THE REGISTRAR'S RESPONSE

14. The Registrar responds that Counsel fails to demonstrate any error in the Impugned Decision and merely repeats arguments that he has already unsuccessfully advanced before the Registrar.¹⁸ The Registrar avers that Counsel's own arguments remain obscure and contradictory.¹⁹ In particular, the Registrar states that Counsel fails to explain how the differences in the maximum levels of remuneration available for “international crimes” and “domestic crimes” should have led the Registrar to consider and weigh the factors under Regulation 16(3) of the LAR differently in this

¹⁵ Request, para. 8.

¹⁶ Request, para. 10 (iii).

¹⁷ Request, para. 11.

¹⁸ Response, para. 5.

¹⁹ Response, para. 5.

particular case.²⁰ According to the Registrar, Counsel merely disagrees with the result of the Registrar's assessment, without further elaborating thereon and submits that Counsel's arguments should be dismissed.²¹

C. COUNSEL'S REPLY

15. Counsel replies that the Registrar continues to misunderstand Counsel's argument and reiterates his position that the Registrar has erroneously classified this case as being at complexity level 2.²²

IV. APPLICABLE LAW

16. The Panel notes Articles 21(4)(e), 34(1) and (7) and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), and Rules 23(6) and 116(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules) and Regulations 16 and 18(6) and (7) of the LAR.

V. ANALYSIS

17. The Panel is seized of a request for review of an administrative decision by the Registrar concerning legal aid, pursuant to Regulation 18(7) of the LAR.

A. TIMING OF THE REQUEST

18. Before turning to the review of the Impugned Decision, the Panel notes that the Request was submitted within the time limit prescribed by Regulation 18(7) of the LAR.

²⁰ Response, para. 7.

²¹ Response, para. 8.

²² Reply, paras 10 and 11.

B. REVIEW OF THE IMPUGNED DECISION

1. Standard of review

19. As this is the first time the Panel is seized with reviewing a Registrar's decision regarding the scope of legal aid, and the LAR do not specify the applicable standard of review, the Panel deems it appropriate to set out the standard it will use.

20. The Panel recalls that the Registrar is the organ of the Specialist Chambers responsible for the administration of the system of legal aid for representation of indigent or partially indigent accused before the Specialist Chambers.²³ As a result, the Panel considers that the Registrar is best placed to make determinations regarding the scope of legal aid and, as such, enjoys a wide margin of discretion.²⁴ The Panel should thus only interfere with this discretion when there are compelling reasons for doing so, taking into consideration the right of the Accused to legal assistance as enshrined in Article 21(4)(e) of the Law. Moreover, the Panel's role in reviewing determinations of the Registrar on this matter is not whether it would have made the

²³ Article 34(1) and (7) of the Law; Rule 23(6) of the Rules.

²⁴ See similarly, ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-955, Trial Chamber VII, [Decision on the Defence Application for Judicial Review of the Decision of the Registrar on the Allocation of Resources during the Trial Phase](#) (*Bemba et al.* Review Decision), 21 May 2015, para. 32; ICC, *Prosecutor v. Ngudjolo Chui*, ICC-01/04-02/12-159, Appeals Chamber, [Decision on Mr Ngudjolo's request for review of the Registrar's decision regarding the level of remuneration during the appeal phase and reimbursement of fees](#), 11 February 2014, para. 22; ICC, *Prosecutor v. Gaddafi*, ICC-01/11-01/11-390-Red, Pre-Trial Chamber I, [Decision on Request for Review of Registrar's Decision by the Defence of Saif Al-Islam Gaddafi](#) (*Gaddafi* 30 July 2013 Review Decision), 30 July 2013, para. 30; ICC, *Prosecutor v. Gaddafi*, ICC-01/11-01/11-613, Pre-Trial Chamber I, [Decision on the Defence Request for Review of the Registrar's Decision on Legal Aid](#) (*Gaddafi* 24 August 2015 Review Decision), 24 August 2015, para. 25; ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3277, Trial Chamber II, [Decision on the Urgent Requests of the Legal Representative of Victims for Review of the Registrar's Decision of 3 April 2012 regarding Legal Aid](#) (*Katanga* Review Decision), 23 April 2012, para. 9; ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, [Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić](#), 7 February 2003, para. 13.

same decision as the Registrar but rather to ensure procedural fairness and safeguard the fundamental rights and freedoms of the Accused.²⁵

21. Having considered the jurisprudence of the Specialist Chambers as well as cases before other jurisdictions, the Panel is of the view that, with regard to legal aid determinations by the Registrar, its role is limited to reviewing whether: (i) the Registrar abused her discretion; (ii) the Registrar's decision is affected by a material error of law or fact; or (iii) the Registrar's decision is manifestly unreasonable.²⁶

2. Whether the Registrar abused her discretion

22. At the outset, the Panel notes that the Registrar issued the Impugned Decision pursuant to her authority under Regulation 18(6) of the LAR. Procedurally, the Registrar therefore acted according to the legal framework in place. Second, the Impugned Decision addressed explicitly four main arguments raised by Counsel in the Request for Amendment, namely: (i) standards of complexity; (ii) the complexity of the legal and factual arguments involved; (iii) whether the case raises any novel issues; and (iv) the deduction of €1,000 based on Mr Shala's eligibility to receive funding from the Ministry of Justice under Law No. 05/L-054.²⁷

²⁵ See, especially, Article 40(2) of the Law; see, similarly, KSC-BC-2020-06, F02155/RED, Trial Panel II, [Public Redacted Version of Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision of 29 January 2024](#), 27 February 2024, public, para 28.

²⁶ See similarly, *Gaddafi* 24 August 2015 Review Decision, para. 25. The Panel notes that the above-outlined standard differs in some aspects from the one articulated by Trial Panel II in the context of reviewing the Registrar's decisions pertaining to detention matters (see KSC-BC-2020-06, F02155RED, Trial Panel II, Public Redacted Version of Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision of 29 January 2024, 27 February 2024, public, para. 28). The Panel finds the above-outlined standard to be more apposite with regard to reviews of the Registrar's decisions concerning the scope of legal aid, in particular, noting that the ultimate purpose of the review remains the same, see supra para. 20.

²⁷ Impugned Decision, paras 8, 11-22 (applicable standards of complexity), 23-28 (complexity of the legal and factual arguments involved), 29-34 (novel issues), and 35-39 (funding under Law No. 05/L-054).

23. With regard to standards of complexity, the Panel notes that, according to Counsel, the Registrar misunderstood his position, that a “much lower level of complexity is required for a domestic crime to qualify as Complexity Level 3” and that once the reasoning underpinning the above argument is correctly understood, “it follows” that the case should be assessed as being at complexity level 3.²⁸

24. The Panel observes that, contrary to Counsel’s contention, this argument – in exactly the same wording²⁹ – was addressed by the Registrar in detail in the Impugned Decision.³⁰ The Panel has further carefully considered: (i) the Registrar’s point of departure that complexity levels are determined for each accused and each stage of the proceedings by scrutinizing the criteria under Regulation 16(3) of the LAR; (ii) the Registrar’s position that these criteria are the same and are not measured differently whether a case concerns domestic or international crimes and that she has assessed each factor listed under Regulation 16(3) of the LAR against available information about the case; and (iii) the Registrar’s argument that Counsel fails to explain how the relative levels of remuneration available to domestic and international cases “would have led the Registrar to consider the factors under Regulation 16(3) of the LAR differently”.³¹

25. The Panel further notes that the Request does not appear to challenge any of the other determinations by the Registrar in the Impugned Decision. In the absence of any further submissions on these matters, the Panel will not proceed to review the Registrar’s determinations regarding the complexity of the legal and factual arguments, whether the case presents any novel issues, or Counsel’s final remuneration amount based on the funding available under Law No. 05/L-054.

²⁸ Request, para. 11 and Reply, para. 11.

²⁹ See Request, paras 9 and 10(iii) and Impugned Decision, para. 17.

³⁰ Impugned Decision, paras 17-21.

³¹ Impugned Decision, paras 18, 19 and 21.

26. In light of the above, the Panel finds no indication that the Registrar abused her discretion in rejecting the Request for Amendment and upholding her Initial Decision.

3. Whether the Registrar's Decision is affected by a material error of law or fact

27. The Panel recalls that, in the Request, Counsel takes issue with the standard of complexity as interpreted and applied by the Registrar and therefore will limit its review of the Impugned Decision to this issue.

28. Insofar as Counsel argues that the Registrar made an error of law by not properly interpreting the standard of complexity when it comes to domestic crimes, the Panel refers to its findings in the previous section.³² Moreover, the Panel considers that there is nothing in the LAR to support Counsel's proposition that, since "[t]he maximum level of remuneration for domestic crimes at Complexity Level 3 is far below the maximum level for international crimes at Complexity Level 1", "a much lower level of complexity is required for a domestic crime to qualify as Complexity Level 3".³³ The Panel also considers that, in advancing this position, Counsel appears to conflate complexity with remuneration.³⁴ Lastly, the Panel considers that said proposition contradicts Counsel's argument that "[a]n individual international crime may be more or less complex than a domestic crime".³⁵

29. Insofar as Counsel argues that the Registrar made an error of fact in assessing the complexity level in this case, the Panel considers that Counsel does not engage any further with the criteria under Regulation 16(3) of the LAR so as to illustrate why the case should have been assessed as being at complexity level 3 or to show that the

³² See *supra* para. 24.

³³ See, Request, para. 9 and Reply, para. 8.

³⁴ See, Reply, para. 11, in which Counsel speaks of differences between "maximum level of complexity" for domestic crimes, rather than differences in remuneration between domestic and international crimes.

³⁵ Request, para. 10(i).

Registrar erroneously assessed any of those factors. Therefore, the Panel finds that Counsel merely repeats an argument which he unsuccessfully advanced before the Registrar and fails to present any further reasoning to substantiate his position.

30. In light of the above, the Panel does not find any material error of law or fact in the Registrar's Decision.

4. Whether the Registrar's Decision is manifestly unreasonable

31. The Panel recalls its findings that (i) the Registrar did not abuse her discretion in rejecting the Request for Amendment and maintaining her Initial Decision, and (ii) the Impugned Decision is not affected by a material error of law or fact.

32. Considering the above, the Panel sees no reason to consider that the Impugned Decision was manifestly unreasonable.

5. Conclusion

33. To conclude, the Panel sees no reason to intervene in order to ensure procedural fairness or safeguard the rights and freedoms of Mr Shala.

VI. CLASSIFICATION

34. The Panel notes that the Request, classified as confidential and *ex parte*, refers to a confidential decision of the Registrar (Impugned Decision) addressing Counsel's request for the amendment of the complexity level and the Legal Aid Fee with respect to his client (Request for Amendment).³⁶

35. In light of the principle of publicity of proceedings and pursuant to Rule 82(5), the Panel deems it appropriate to order:

³⁶ See for instance Request, para. 2.

- (i) Counsel, in consultation with the Registrar, to submit public redacted versions of the Request (F00518, without annexes) and of the Reply (F00563); and
- (ii) The Registrar to submit a public redacted version of the Response (F00541).

36. Furthermore, the Panel has taken note that Counsel does not object to the lifting of the *ex parte* marking of his filing F00518 (Request) in order to make it available to the other Parties.³⁷ The Panel recalls however that the Request refers to a confidential decision issued by the Registrar and, as a result, finds it appropriate to seek the views of the Registrar as to whether the *ex parte* marking of the Request (F00518, without annexes) can be lifted, before issuing its instruction.

VII. DISPOSITION

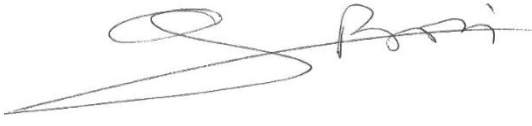
37. For the above-mentioned reasons, the Panel hereby:

- a. **REJECTS** the Request;
- b. **ORDERS** Counsel, in consultation with the Registrar, to submit public redacted versions of the Request (F00518, without annexes) and of the Reply (F00563), by no later than **Tuesday, 18 February 2025**; and
- c. **ORDERS** the Registrar (i) to submit a public redacted version of the Response (F00541) and (ii) to indicate, as provided in paragraph 36 of the present decision, whether the *ex parte* marking of the Request (F00518, without annexes) can be lifted, by no later than, **Tuesday, 18 February 2025**.

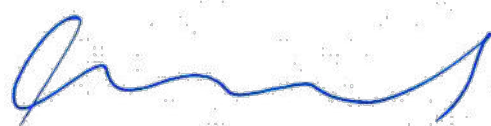
³⁷ See Request, para. 12.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 13 February 2025

At The Hague, the Netherlands.