

**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:** 19 February 2025

**Language:** English

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

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

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**Counsel for Haxhi Shala**

Toby Cadman

## I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala ("Defence") hereby requests reconsideration of the Decision on the Request for Review of the Decision of the Registrar on the Legal Aid Fee (F00518)<sup>1</sup> ("Trial Panel Decision").

## 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")<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, Specialist Counsel for Mr. Haxhi Shala submitted a request to the Registrar to amend the September 2024 Decision ("September 2024 Request") seeking classification of the present case at Complexity Level 3 and the allocation of a monthly lump sum of €14,850.<sup>5</sup>
4. On 2 October 2024 the Registrar issued the Decision On Counsel's Request to Amend the Legal Aid Fee Pursuant to Regulation 18(6) of the Legal Aid Regulations<sup>6</sup> ("October 2024 Decision"), in which she found that there were

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<sup>1</sup> KSC/BC-2023/F00680.

<sup>2</sup>KSC/REG/IOR/7245. See KSC-BC-2023-10/F00518, Request for Review of Decision of the Registrar on the Legal Aid Fee, *ex parte* and confidential, 9 October 2024 ("Request for Review"), *ex parte* and confidential 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, *ex parte* and confidential Annex 2.

<sup>6</sup> KSC/REG/IOR/7287 (Request for Review, *ex parte* and confidential Annex 3).

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 again requested the ranking of the case as Complexity Level 3 and a monthly lump sum of €14,850.<sup>9</sup>
6. On 18 October 2024 the Registrar submitted Registrar's Submissions Concerning F00518 ("Registrar's Submissions")<sup>10</sup> in which she requested that the Request for Review be dismissed in its entirety.<sup>11</sup>
7. The Defence submitted its Reply to Registrar's Submissions concerning F00518 ("Defence Reply")<sup>12</sup> on 26 October 2024.

### III. APPLICABLE LAW

8. Rule 79(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers<sup>13</sup> provides, *inter alia*, that "[i]n exceptional circumstances and where a clear error of reasoning has been demonstrated or where

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

<sup>8</sup> KSC-BC-2023-10/F00518, confidential and *ex parte*.

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

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

<sup>11</sup> Registrar's Submissions, para. 10.

<sup>12</sup> KSC-BC-2023-10/F00563, confidential and *ex parte*.

<sup>13</sup> KSC-BD-03/Rev3/2020, 2 June 2020.

reconsideration is necessary to avoid injustice, a Panel may, upon request by a Party [...] after hearing the Parties, reconsider its own decisions.”

9. Regulation 16 of the Legal Aid Regulations (“LAR”)<sup>14</sup> 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;
- 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.

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<sup>14</sup> Registry Practice Direction, KSC-BD-25/Rev1/2024, 22 February 2024.

#### IV. SUBMISSIONS

10. The Defence recalls its argument in paragraph 10 of the Request for Review on the distinction between complexity levels for domestic and international crimes:<sup>15</sup>

“(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 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

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<sup>15</sup> These two types of crime are defined in paragraph 8 of the Request for Review.

complexity is required for a domestic crime to qualify as Complexity Level 3.”

11. In the next paragraph the Defence submitted that once this reasoning was applied, the assignment of the case at the Trial Stage to Complexity Level 3 followed straightforwardly.<sup>16</sup> The Defence has made essentially this argument on other occasions<sup>17</sup> because it has been misunderstood by the Registrar.<sup>18</sup> The Defence will submit that the Trial Panel has shared this misunderstanding and that reconsideration of its findings is necessary to avoid an injustice.
12. The Panel took basically the same position as the Registrar<sup>19</sup> in considering that that there was 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”.<sup>20</sup>
13. The Defence submits that paragraphs 10 and 11 of the Request for Review set out above amply demonstrate the falsity of the Registrar’s and Panel’s position. It should be stressed that the Euro value for the maximum amounts of remuneration for the various levels of complexity for international and domestic crimes in Annex C of the LAR provides, as it were, a common

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<sup>16</sup> Request for Review, para. 11.

<sup>17</sup> September 2024 Request, Section headed “Determination of Complexity Level”; Defence Reply, paras. 8-11.

<sup>18</sup> Registrar’s Submissions, paras. 5-7.

<sup>19</sup> October 2024 Decision, para. 21.

<sup>20</sup> Trial Panel Decision, para. 28 (citing Request for Review, para. 9; Defence Reply, para. 8.)

currency that allows comparison of the complexity of international and domestic crimes.

14. The Trial Panel considered that, in arguing that a much lower level of complexity was required for a domestic crime than for an international crime to qualify as Complexity Level 3, Counsel appeared to conflate complexity with remuneration.<sup>21</sup> The Panel refers to paragraph 11 of the Defence Reply where “Counsel speaks of differences between ‘maximum level of complexity’ for domestic crimes, rather than differences in remuneration between domestic and international crimes”.
15. Annex C sets forth the maximum amounts of remuneration for each of the three Complexity Levels for the two types of crime which form part of the basis for the determination of the Legal Aid Fee under LAR Regulation 13(1). As a consequence, the maximum amount of remuneration corresponds to the maximum amount of complexity for the Level in question. As applied here, the two concepts are closely linked in the calculation of the Legal Aid Fee, but they are, of course, not identical. This is properly reflected in paragraph 11 of the Defence Reply where what is discussed is the scale of complexity associated with remuneration. The Defence submits that there has been no conflation.
16. The Panel further considers that the proposition that a much lower level of complexity is required for a domestic crime to qualify as Complexity Level 3 contradicts Counsel’s argument that “[a]n individual international crime may be more or less complex than a domestic crime”.<sup>22</sup> There is no contradiction.

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<sup>21</sup> Trial Panel Decision, para. 28.

<sup>22</sup> Trial Panel Decision, para. 28.

International crimes are mostly more complex than domestic crimes as is reflected in the Complexity Levels in Annex C; however, this does not preclude a particular international crime being less complex than a particular domestic crime.

17. The Trial Panel does not present accurately the connection that the Defence makes between its position on relative levels of complexity and its submission that the instant case should be assessed as Complexity Level 3:

“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.”<sup>23</sup>

18. In neither of the two passages that the Trial Panel cites in support does the Defence claim that “it follows” from its understanding of the relative levels of complexity of international and domestic crimes that the case should be assessed as being at complexity level 3. What in fact the Defence claimed was that once its analysis of complexity was applied, the assignment of the instant case at the Trial Stage to Complexity Level 3 “follows straightforwardly”.<sup>24</sup> It is not the position of the Defence that its analysis *implies*, or that it *follows as a matter of logic*, that the instant case should be classified as Complexity Level 3.

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<sup>23</sup> Trial Panel Decision, para. 23 (citing Request for Review, para. 11 and Defence Reply, para. 11).

<sup>24</sup> Request for Review, para. 11. In paragraph 11 of the Defence Reply the Defence asserts that “[i]t follows” from the analysis “that a much lower level of complexity is required for a domestic crime to qualify as Complexity Level 3”. This is not a claim about the classification of the instant case as Complexity Level 3.



It contends rather that the application of the analysis to the facts would lead to a finding that the case should have this classification.

19. The Registrar noted that the Complexity Level was determined for each Accused for the specific Stage of the Proceedings by scrutinizing the criteria in LAR Regulation 16(3) of the LAR on a case by case basis, regardless of whether the case involves “domestic” or “international” crimes and that in the present case she had assessed each factor in Regulation 16(3) against available information about the case at this time and had concluded that the case was categorised as Complexity Level 2.<sup>25</sup> She further stated that the complexity of the case was considered relative to other cases of domestic crimes for the purpose of determining whether the case was relatively more complex than another.<sup>26</sup>
20. However, this does not explain how decisions were taken on where to draw the line between the three Complexity Levels. Since the Kosovo Specialist Chambers has jurisdiction over both international and domestic crimes and proceedings are currently being conducted in relation to both types, the distinction between the applicable levels of complexity for both should be fully appreciated in making a determination of complexity in an individual case. The Registrar’s determinations on this point are unsound because she has misinterpreted the different categorisations of complexity for the two types of crime.<sup>27</sup>
21. The need for a correct understanding is especially acute because of the differential significance of certain of the general factors in the list at LAR

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<sup>25</sup> October 2024 Decision, para. 18.

<sup>26</sup> October 2024 Decision, para. 19.

<sup>27</sup> October 2024 Decision, para. 21.

Regulation 16(3). Two have particular importance in the context of international crimes and would not have appeared in the list if domestic crimes had only been under consideration: the suspect's or the Accused's alleged position within a political or military hierarchy;<sup>28</sup> and the geographical and temporal scope of the case.<sup>29</sup> Two others constitute dimensions of complexity on which international crimes will tend to score particularly highly: the number and type of witnesses and documents involved,<sup>30</sup> and the number of victims or groups of victims expected to participate in the proceedings.<sup>31</sup> A failure to appreciate the difference in Complexity Levels for international and domestic crimes will result in these four factors being evaluated inappropriately in the determination of the complexity of a domestic crime.

## V. CONCLUSION

22. The Defence submits that the Trial Panel has made a clear error in reasoning in the application by the Registrar of Complexity Levels in her determination of the Legal Aid Fee and that reconsideration is necessary to avoid injustice. The Defence therefore reaffirms its request that the Trial Panel find that the case at the Trial Stage be ranked as Complexity Level 3 and that the monthly lump sum to be allocated should be €14,850 per month.<sup>32</sup>

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<sup>28</sup> LAR Regulation 16(3)(b).

<sup>29</sup> LAR Regulation 16(3)(c).

<sup>30</sup> LAR Regulation 16(3)(d).

<sup>31</sup> LAR Regulation 16(3)(e).

<sup>32</sup> Defence Request, para. 13.

23. In the alternative, the Defence requests that the Trial Panel revise its finding on Complexity Levels and refer the decision on the Legal Aid Fee to the Registrar to make a further determination by the application of a correct understanding of Complexity Levels.

## VI. QUALIFICATION

24. The present filing has been classified as confidential and *ex parte* pursuant to Rule 82(4) of the Rules. However, the Defence has no objection to it being reclassified as public.

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**At Dubai, United Arab Emirates**