



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2023-10

**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

**Filed by:** Registrar

**Date:** 21 October 2024

**Language:** English

**File Name:** The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and  
Haxhi Shala

**Classification:** Public

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**Public Redacted Version of Registrar's Submissions Concerning F00516**

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1. Pursuant to Article 34(1) of the Law<sup>1</sup> and Rule 23(2)(a) of the Rules,<sup>2</sup> the Registrar hereby makes submissions concerning a request for judicial review ('Request') of a decision of the Registrar regarding travel costs, filed by Counsel for Mr Haxhi Shala ('Mr Shala').<sup>3</sup>

## I. BACKGROUND

2. On 24 September 2024, the [REDACTED] Defence Office ('[REDACTED]') denied a request by the Shala Defence for the approval of the reimbursement of travel costs for the purposes of attending hearings in The Hague.<sup>4</sup>

3. [REDACTED].<sup>5</sup>

4. On 25 September 2024, Counsel for Mr Shala sent an email to the Registrar, [REDACTED] requesting review of the [REDACTED]'s decision concerning travel costs and making a number of additional points in support thereof.<sup>6</sup>

5. On 2 October 2024, the Registrar issued a decision dismissing the Shala Defence's request for review of the [REDACTED]'s decision ('Impugned Decision').<sup>7</sup> The Impugned Decision set out in detail, *inter alia*, the reasons why Counsel's request for approval of the reimbursement of travel costs from the United Kingdom to The Hague for the purpose of attending court hearings "would not be considered justified, reimbursable costs related to the legal representation under the allotment for miscellaneous costs pursuant to Regulation 14(b)(3) of the [Legal Aid Regulations

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<sup>1</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>2</sup> Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020, public ('Rules').

<sup>3</sup> KSC-BC-2023-10, F00516, Request for Review of Decision of the Registrar regarding travel and related costs with three *ex parte* and confidential Annexes, 9 October 2024, confidential and *ex parte* ('Request').

<sup>4</sup> KSC-BC-2023-10, F00516/A01, Annex 1 to Request for Review of Decision of the Registrar regarding travel and related costs, 9 October 2024, confidential and *ex parte*, p. 2.

<sup>5</sup> KSC-BC-2023-10, F00516/A02, Annex 2 to Request for Review of Decision of the Registrar regarding travel and related costs, 9 October 2024, confidential and *ex parte* ('Annex 2 to Request'), pp. 3-4.

<sup>6</sup> Annex 2 to Request, p. 2.

<sup>7</sup> KSC-BC-2023-10, F00516/A03, Annex 3 to Request for Review of Decision of the Registrar regarding travel and related costs, 9 October 2024, confidential and *ex parte* ('Impugned Decision'), paras 4-13.

(‘LAR’)] and Section 14(1) of the [Guidelines on Administration and Monitoring of Legal Aid (‘Guidelines’)]”.<sup>8</sup>

## II. SUBMISSIONS

6. In the Impugned Decision, the Registrar determined that the place of Counsel’s assignment is The Hague and, consequently, that the [REDACTED] correctly determined that travel expenses to and from The Hague for the purpose of attending court hearings were not eligible for reimbursement as “miscellaneous costs” under Section 14(b)(3) of the LAR and Section 14(1) of the Guidelines.<sup>9</sup> The Registrar submits that Counsel for Mr Shala fails to demonstrate any error in the Impugned Decision.<sup>10</sup>

7. First, Counsel argues that the Registrar incorrectly found that his place of assignment is The Hague. Counsel argues that being based in The Hague is not a condition for the assignment, that there is “no basis in the Law or otherwise for this assertion”, and that the Registrar’s position “unjustifiably discriminates against all representatives who are not resident in The Hague”, “includ[ing] Kosovan nationals”.<sup>11</sup>

8. As the Registrar explained in the Impugned Decision, “[t]he place of assignment is determined in the same way for all Counsel, irrespective of their place of residence”.<sup>12</sup> In addition, the Registrar further explained that Mr Shala is in detention in The Hague, the venue for proceedings in his case is The Hague, and Counsel is therefore expected to be present in The Hague in order to carry out his duties in this

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<sup>8</sup> Registry Practice Direction, Legal Aid Regulations, KSC-BD-25-Rev1, 22 February 2024, public (‘LAR’); Guidelines on Administration and Monitoring of Legal Aid, KSC-BD-38-Rev1, 6 January 2023, *limite*, *available at* [REDACTED].

<sup>9</sup> Impugned Decision, paras 8-10.

<sup>10</sup> In addition, it is noted that Counsel for Mr Shala relies on Regulation 10 of the LAR as the legal basis for the Request. For the sake of clarity, the Registrar notes that Regulation 10 of the LAR applies to a final decision of the Registrar on a request for legal aid under Regulation 9 of the LAR, after an indigence assessment has been completed, which has not yet occurred in this case. This of course does not preclude the Panel from deciding whether to review a decision of the Registrar where the LAR does not provide expressly for such review.

<sup>11</sup> Request, paras 12, 14.

<sup>12</sup> Impugned Decision, para. 11.

case.<sup>13</sup> Contrary to Counsel's assertion that there is no legal basis for the Registrar's determination that the place of assignment is The Hague, it should be emphasised that the President issued a public decision on 23 September 2023 invoking a change of venue to the Host-State under Article 3 of the Law.<sup>14</sup> Therefore, 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.

9. 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. As the Registrar explained in the Impugned Decision:

The costs ancillary to the fulfilment of an assignment, such as the costs of commuting between Counsel's place of residence and the place of assignment, and how one's living arrangements serve to either maximise or minimise those costs, is inherently something to be considered by each Counsel when deciding whether to accept such an assignment.<sup>15</sup>

10. In this respect, the Registrar notes that Counsel for Mr Shala was on notice of the change of venue prior to his assignment and that Counsel receives € [REDACTED] per month in remuneration from the Specialist Chambers under the LAR, not including the allotments for the reimbursement of eligible costs actually incurred, as described in detail below.<sup>16</sup>

11. Counsel nevertheless argues that the Guidelines do not prevent travel and accommodation costs from being reimbursed as "miscellaneous costs" under

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<sup>13</sup> Impugned Decision, paras 7.

<sup>14</sup> KSC-BC-2023-10, F00005, Decision Invoking a Change of Venue to the Host State, 25 September 2023, public, para. 4 ("[T]he President considers that the current security situation and the proper administration of justice necessitates a change of venue to the Host State. Such change of venue concerns proceedings in this case under Article 38(4) of the Law, Rule 86 of the Rules, as well as all other proceedings and related matters emanating therefrom. This ensures the efficient, effective, safe and secure operation of these proceedings."). *See also* Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 (Law'), art. 3(6), 3(8)(a),(d).

<sup>15</sup> Impugned Decision, para. 11.

<sup>16</sup> *See below*, para. 16.

Regulation 14(b)(3) of the LAR, if those costs are “necessary” to represent the Accused.<sup>17</sup> Counsel further argues that travel expenses to and from The Hague are “necessary” costs for the purpose of providing legal representation to the Accused and should be reimbursed.<sup>18</sup>

12. As explained in the Impugned Decision, the allotment for miscellaneous costs may cover exceptional travel that is unrelated to investigations but deemed to be reasonable, justified, and necessary for the purposes of the legal representation.<sup>19</sup> As detailed above, the place of Counsel’s assignment is The Hague, and Counsel is expected to be present in The Hague to carry out his duties in this case, when required. Consequently, Counsel’s commuting expenses to and from his place of assignment are not considered reasonable, justified, or necessary, as assessed in light of the work to be undertaken and sound financial management.<sup>20</sup>

13. Counsel for Mr Shala also argues, without further explanation, that “many participants in the proceedings are not permanently resident in The Hague and therefore must travel to The Hague as and when required, requiring their travel and accommodation expenses to be covered” and that “[i]t would be “wholly unfair for certain participants in the proceedings to have their travel and accommodation costs funded and not others.”<sup>21</sup> As it is entirely unclear which “participants in the proceedings” Counsel is alluding to, the Registrar submits that this argument should be dismissed for lacking the requisite substantiation.

14. Regardless, the Registry of the Specialist Chambers has never reimbursed Assigned Counsel (and his or her Team) for travel to and from The Hague to attend court hearings under the “miscellaneous costs” allotment of the LAR (and the Guidelines). Insofar as Counsel is arguing that certain *Appointed* Defence Counsel in

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<sup>17</sup> Impugned Decision, para. 16; *See also* Guidelines, Section 14.

<sup>18</sup> Impugned Decision, 16.

<sup>19</sup> Impugned Decision, para. 10.

<sup>20</sup> Impugned Decision, paras 8-10. *See also* Regulation 14(3) of the LAR; Guidelines, Section 14(1)-2).

<sup>21</sup> Request, para. 13.

other proceedings, who are not being funded under the Legal Aid Regulations, have their comparable travel and accommodation expenses covered from private or other funds, this is irrelevant to the case at hand, which concerns the specific issue of whether the requested travel expenses are reimbursable under the LAR (and the Guidelines) from the “miscellaneous costs” allotment for conditionally *Assigned Counsel*. Alternatively, insofar as Counsel’s argument relates to the issue of travel expenses being reimbursed for Duty Counsel, who are remunerated at an hourly rate, the Registrar explained in the Impugned Decision that these costs are explicitly regulated in Section 15(1)(b) and (2) of the Guidelines,<sup>22</sup> and that Counsel’s “current position as conditionally Assigned Counsel, in receipt of a monthly lump-sum remuneration and various allotments, is therefore distinguishable and clearly differentiated in Section 15(1)(c) of the Guidelines”.<sup>23</sup>

15. Furthermore, Counsel argues that the word “may” in Section 15(1)-(2) of the Guidelines suggests that the Guidelines do not prevent the costs of the requested travel from being reimbursed.<sup>24</sup> The Registrar notes that Counsel is raising this argument for the first time before the Trial Panel, having not raised it before the Registrar. In any event, Sections 14 and 15 of the Guidelines provide an exhaustive list of the travel costs that are eligible for reimbursement under the LAR.<sup>25</sup> In this context, the word “may” in Section 15 of the Guidelines reflects which travel costs are *eligible* for reimbursement, if all other conditions in Section 15 of the Guidelines are met, such as prior approval.

16. Finally, Counsel argues that the Registrar’s finding that travel costs to attend hearings in The Hague are not reimbursable under the LAR (and the Guidelines) amounts to Counsel “being obstructed from properly preparing the case” and states generically that this may raise fair trial issues under “Article 6 of the [European

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<sup>22</sup> See also Annex C to the LAR, Section 4.

<sup>23</sup> Impugned Decision, para. 12.

<sup>24</sup> Request, paras 15-16.

<sup>25</sup> Regulation 14(b) of the LAR; Annex C to the LAR, Section 4.

Convention on Human Rights ('ECHR')]"<sup>26</sup> In this regard, the Registrar recalls that the Registry of the Specialist Chambers is not only providing Mr Shala's Defence team with € [REDACTED] per month in remuneration, but also € 1,150.00 per month for translation and interpretation costs, € 500.00 per month for miscellaneous costs, € 5,125.00 for the Trial Stage to support investigations (including travel), and € 10,250.00 for contracting external investigators, experts or consultants for all Stages of the Proceedings. In this respect, it is noted that, should Counsel need to undertake investigations in Kosovo or a Third State, the costs of travel from The Hague to Kosovo or the Third State to support investigations are eligible for reimbursement under the applicable allotment, as set out above.<sup>27</sup>

17. In addition, the Registry of the Specialist Chambers is also providing Mr Shala's Defence team, *inter alia*, with fully equipped office space and meeting rooms; printing facilities and other office supplies; computer and other IT equipment, as well as IT software and support; and other administrative support through the Defence Office. The Registry also recalls that, at the Detention Facilities, Mr Shala has access to, *inter alia*, a computer allowing him to review case materials electronically and share case materials with Counsel using the Secure Electronic Data Sharing system ('SEDS'), as well as facilities to consult with his Defence team both in-person and remotely through in-person and video visits, as well as through unlimited telephone calls on the privileged telephone line.

18. Taking all of this into account, the Registrar submits that any suggestion that the Impugned Decision violates Mr Shala's right to, *inter alia*, adequate facilities for the

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<sup>26</sup> Request, para. 17.

<sup>27</sup> Impugned Decision, para. 7. Counsel may of course also travel from his place of residence to Kosovo or a Third State for the purpose of these investigations, and the level of reimbursement would be calculated on the basis of travel between The Hague and Kosovo. *See Id.*


preparation of his defence under Article 6(3)(b) of the ECHR and free legal assistance under Article 6(3)(c) of the ECHR is unfounded.<sup>28</sup>

19. In sum, the Registrar maintains that it was both a correct and reasonable determination that the place of Counsel's assignment is The Hague and, consequently, that travel expenses to and from The Hague for the purpose of attending court hearings are not eligible for reimbursement as "miscellaneous costs" under the LAR and the Guidelines. Counsel has failed to show that the Registrar committed any error in this regard, and the Registrar respectfully submits that the Request should be dismissed in its entirety.

### III. CLASSIFICATION

20. Pursuant to Rule 82(3) of the Rules, these submissions are filed as confidential and *ex parte*, to be distributed to the Trial Panel and Counsel for Mr Shala only, as they refer to another filing bearing this classification, as well as referring to a confidential decision of the Registrar regarding Counsel's request for the reimbursement of specific travel costs.

**Word count: 2,423**



**Dr Fidelma Donlon**

**Registrar**

Monday, 21 October 2024

At The Hague, the Netherlands

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<sup>28</sup> It is also noted that Counsel provides no support, in law or fact, for his broad suggestion that, "[o]n the basis of the Registrar's decision, the Accused is bring prevented from exercising his fundamental right to access to justice and legal representation" and that "[t]he Defence is unable to properly represent the interests of the Accused and [is] being obstructed from properly preparing the case", and specifically that this amounts to a violation of Article 6 of the ECHR. *See* Request, para. 17.