

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: 9 October 2024

Language: English

Classification: Public

**Public Redacted Version of Request for Review of Decision of the Registrar
regarding travel and related costs with three *ex parte* and confidential Annexes**

Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala ("Defence") hereby seeks review of a Decision of the Registrar regarding travel and related costs.

II. PROCEDURAL HISTORY

2. On 24 September 2024, the [REDACTED] Defence Office ("[REDACTED]") wrote an e-mail to Specialist Counsel for Haxhi Shala in which he denied a request for approval of reimbursement under the Legal Aid Scheme of the costs of travel to and from The Hague for the purpose of court hearings ("[REDACTED] Decision") (Annex 1).

3. The [REDACTED] stated:

"The place of your assignment is The Hague. Therefore, neither costs of travel to and from the place of residence to The Hague, nor accommodation in The Hague is eligible for reimbursement. Your request for approval of reimbursement of travel costs is therefore denied."

4. On 25 September 2024, Specialist Counsel sent an e-mail communication to the Registrar [REDACTED] presenting additional reasons why costs of travel

to The Hague should be covered by Legal Aid (“Specialist Counsel’s email”) (Annex 2).

5. On 2 October 2024, the Registrar issued the “Decision On Request for Review Regarding Decision of the [REDACTED] Defence Office”, in which she dismissed Specialist Counsel’s request for review of the [REDACTED] Decision (“Impugned Decision”) (Annex 3).

6. The Registrar stated:

“I note that your place of assignment is The Hague. Moreover, your client is in detention in The Hague and the venue for proceedings in his case is The Hague. Accordingly, you are expected to be present in The Hague in order to carry out your duties in this case. Any travel which may be eligible for reimbursement from the allotments under the Legal Aid Fee must therefore have The Hague as the starting point, or be deemed to have The Hague as the starting point for calculation purposes.”

III. APPLICABLE LAW

7. Article 3(6) of the Law on the Specialist Chambers and the Specialist Prosecutor's Office ("Law")¹ provides:

"The Specialist Chambers shall have a seat in Kosovo. As provided for through an international agreement with the Host State, the Specialist Chambers shall also have a seat in the Host State outside Kosovo, but may sit elsewhere on an exceptional basis if necessary in the interests of proper administration of justice. The Specialist Chambers may make special arrangements for testimony or appearances through alternative means at the Judges' discretion."

8. Regulation 10(1) of the Legal Aid Regulations² ("LAR") provides:

"Upon request by the suspect or Accused, any decision on legal aid pursuant to Regulation 9 may be subject to review by the Competent Panel. Any such request for review shall be filed by the suspect or Accused within seven (7) days of receiving notification of the decision."

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

² KSC-BD-25/Rev1/2024, *Registry Practice Direction - Legal Aid Regulations*, 22 February 2024, available at: <https://www.scp-ks.org/sites/default/files/public/content/documents/ksc-bd-25-rev1-legalaidregulation-public.pdf>

9. Finally, Section 15(1)-(3) of The Guidelines on Administration and Monitoring of Legal Aid' states that:

“1. The travel costs which can be reimbursed to Counsel, upon approval of the Head of the relevant Registry Unit, may consist of:

(a) The travel costs incurred by Assigned Counsel or conditionally assigned Counsel in relation to the representation of Counsel's client during the Pre-Indictment Stage;

(b) The travel costs incurred by Duty Counsel in relation to the representation of Counsel's clients during any stage.

(c) The travel costs incurred by Assigned Counsel or conditionally assigned Counsel or his or her Team in relation to the investigations during all stages.”

IV. SUBMISSIONS

10. The Defence seeks review of the Impugned Decision pursuant to Regulation 10(1) of the LAR.
11. The Defence reaffirms the submissions in the Specialist Counsel's e-mail.

12. Firstly, the submissions of the Registrar depend on her contention that Specialist Counsel's place of assignment is The Hague.³ However, there is no basis in the Law or otherwise for this assertion. It was not a condition of the assignment of Specialist Counsel that he be based in The Hague. This new rationale presented by the Registrar as the basis for the decision has no basis in law or guidance and is entirely incorrect/inaccurate.
13. The Defence is aware 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. It would be wholly unfair for certain participants in the proceedings to have their travel and accommodation costs funded and not others.
14. Furthermore, as stated in Specialist Counsel's e-mail, the new (and incorrect) position taken by the Registrar unjustifiably discriminates against all representatives who are not resident in The Hague. This includes Kosovan nationals. The KSC is a domestic court of the Republic of Kosovo, it is not an international or hybrid institution and the approach of the Defence Office

³ Impugned Decision, para. 7.

discriminates against Kosovan members of the List of Counsel and Kosovan team members.

15. The Defence note that the wording used in Section 15(1)-(3) of The Guidelines which the Registrar refers to⁴ merely suggest (through the use of the term “may”) what travel costs may relate to. The Guidelines simply do not state that travel costs incurred by Specialist Counsel in relation to the representation of Counsel’s clients are not eligible for reimbursement.
16. Such an assertion would be inconsistent with the Legal Aid Regulations and Regulation 14(b)(3) in particular, in that the only criteria therein is that the costs arise in connection with the representation of the Accused and are necessary. The Guidelines do not, therefore, prevent travel and accommodation costs from being granted for Specialist Counsel and defence teams to travel to The Hague to provide legal representation to the Accused. Travel and accommodation costs are entirely necessary to represent the Accused and should be reimbursed under Regulation 14(b)(3).
17. The Registrar’s refusal to reimburse such costs raises very serious access to justice issues. On the basis of the Registrar’s decision, the Accused is being prevented from exercising his fundamental right to access to justice and legal

⁴ Annex 3, para. 6.

representation. The Defence is unable to properly represent the interests of the Accused and being obstructed from properly preparing the case. It is an extremely serious issue which is likely to affect whether the proceedings as a whole can ultimately be considered to be fair within the meaning of Article 6 of the ECHR.

V. QUALIFICATION

18. Since the Impugned Decision was addressed confidentially only to Specialist Counsel, the present filing has been classified as confidential and *ex parte*. However, the Defence has no objection to it being reclassified so that it is available to all the Parties in the case.

VI. CONCLUSION

19. In conclusion, the Defence requests that the Trial Chamber order the Registrar to permit under Regulation 14(b)(3) the reimbursement of travel and related costs of members of Defence Teams who are resident outside The Hague when they attend trials which take place in The Hague.

Word Count: [1,178 words]

A handwritten signature in black ink, appearing to read 'T. Cadman', is positioned above a horizontal line.

Toby Cadman

Specialist Counsel

9 October 2024

At London, United Kingdom