



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: 6 March 2025

Language: English

Classification: **Public**

**Decision on Haxhi Shala's Request for Reconsideration (F00685) and
Classification of Filings**

To be notified to:

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TRIAL PANEL I (Panel) hereby renders this decision on Haxhi Shala's request for reconsideration (F00685) and classification of filings.

I. PROCEDURAL BACKGROUND

1. On 13 February 2025, the Panel issued the "Decision on the Request for Review of the Decision of the Registrar on the Legal Aid Fee (F00518)" (Impugned Decision).¹
2. On 18 February 2025, pursuant to the Impugned Decision, the Registrar filed submissions regarding the classification of filing F00518.²
3. On 19 February 2025, Counsel for Mr Haxhi Shala (Counsel and Mr Shala, respectively) submitted a request for reconsideration of the Impugned Decision (Request).³ On the same day, Counsel filed separate submissions regarding the classification of filings F00518 and F00563 related to the litigation addressed in the Impugned Decision (Classification Submissions).⁴
4. On 24 February 2025, following the Panel's instructions,⁵ the Registrar responded to the Request (Response).⁶
5. On the same day, Counsel filed a reply to the Response (Reply).⁷

¹ KSC-BC-2023-10, F00680, Trial Panel I, *Decision on the Request for Review of the Decision of the Registrar on the Legal Aid Fee (F00518)*, 13 February 2025, confidential and *ex parte*.

² KSC-BC-2023-10, F00682, Registrar, *Submissions Pursuant to F00680*, 18 February 2025, confidential and *ex parte*.

³ KSC-BC-2023-10, F00685, Shala Defence, *Request for reconsideration of the Decision on the Request for Review of the Decision of the Registrar on the Legal Aid Fee (F00518)*, 19 February 2025, confidential and *ex parte*.

⁴ KSC-BC-2023-10, F00686, Shala Defence, *Submissions on F00518 and F00563*, 19 February 2025, confidential and *ex parte*.

⁵ KSC-BC-2023-10, CRSPD123, *Email from Trial Panel I to CMU regarding F00685 - Briefing Schedule*, 20 February 2025.

⁶ KSC-BC-2023-10, F00688, Registrar, *Registrar's Response to Haxhi Shala's Request for Reconsideration (F00685)*, 24 February 2025, confidential and *ex parte*.

⁷ KSC-BC-2023-10, F00689, Shala Defence, *Reply to Registrar's Response to Haxhi Shala's Request for Reconsideration*, 24 February 2025, confidential and *ex parte*.

6. On 25 February 2025, pursuant to the Panel's instructions,⁸ the Registrar responded to the Classification Submissions (Response to Classification Submissions).⁹

7. On 27 February 2025, Counsel replied to the Response to Classification Submissions (Reply on Classification Submissions).¹⁰

II. SUBMISSIONS

A. REQUEST

8. Counsel requests reconsideration of the Impugned Decision due to a clear error of reasoning and to avoid injustice.¹¹ Counsel's main contention is that the Panel and the Registrar have both misunderstood Counsel's argument regarding complexity level determinations and the connection he seeks to make between his position on relative levels of complexity and its submission that the instant case should be assessed as complexity level 3.¹² More specifically, Counsel contends that, contrary to the Panel's findings, the Registrar's determinations are unsound, because she misinterpreted the different categorisations of complexity for cases involving the two types of crimes, i.e. international or domestic crimes.¹³ Counsel avers that the need for a correct understanding of categorisations of complexity for the two types of crimes is acute so as to avoid that some of the factors listed under Regulation 16(3) of the Legal

⁸ KSC-BC-2023-10, CRSPD124, *Email from Trial Panel I to CMU on Instruction to the Registrar in relation to filing F00686*, 21 February 2025.

⁹ KSC-BC-2023-10, F00690, Registrar, *Registrar's Response to Haxhi Shala's Submissions on F00518 and F00563 (F00686)*, 25 February 2025, confidential and *ex parte*.

¹⁰ KSC-BC-2023-10, F00692, Shala Defence, *Reply to Registrar's Response to Haxhi Shala's Submissions on F00518 and F00563 (F00686)*, 27 February 2025, confidential and *ex parte*.

¹¹ Request, paras 1, 11, 22.

¹² Request, paras 11-13, 17.

¹³ Request, paras 12-13 and 19-21.

Aid Regulations (LAR) are inappropriately evaluated in the determination of the complexity of a domestic crime.¹⁴ Counsel reiterates his request that the Panel find that the case be ranked at complexity level 3 or, alternatively, submits that the Panel should refer the case to the Registrar to apply the “correct understanding” of complexity levels.¹⁵

B. RESPONSE

9. The Registrar responds that the Request should be rejected as Counsel fails to establish any clear error of reasoning or injustice that warrants undertaking the exceptional measure of reconsideration.¹⁶ More specifically, the Registrar submits that: (i) there is no misunderstanding of Counsel’s argument with regard to the relative levels of complexity; and (ii) Counsel’s argument has duly been addressed in the Registrar’s decision on legal aid (Legal Aid Decision), as noted by the Panel.¹⁷ The Registrar further argues that simply stating that the application of Counsel’s understanding of the relative levels of complexity to the facts of the present case would lead to a determination of complexity level 3, without any engagement with the criteria under Regulation 16(3) of the LAR, so as to illustrate why the case should be assessed at complexity level 3, is insufficient and fails to demonstrate a *clear* error of reasoning or injustice to warrant reconsideration.¹⁸ According to the Registrar, although Counsel continues to express disagreement with the outcome of the Impugned Decision, he also persists in failing to engage with the criteria in Regulation

¹⁴ Request, para. 21.

¹⁵ Request, paras 22-23.

¹⁶ Response, paras 3 and 7.

¹⁷ Response, para. 5.

¹⁸ Response, paras 4-6.

16(3) of the LAR, which is the concrete legal framework on which the Legal Aid Decision is based.¹⁹

C. REPLY

10. Counsel replies that: (i) the Registrar does not address Counsel's reasons for asserting that she has not understood Counsel's argument;²⁰ (ii) the Registrar focuses on the failure by Counsel to engage with the criteria in Regulation 16(3) of the LAR, whereas Counsel submits that the above criteria are not applied in a vacuum and the process of complexity level determination is an inherently comparative one;²¹ and that (iii) failure to properly understand the relationship between complexity levels for domestic or international crimes will lead to misclassification where the criteria apply differently to the two types of crimes.²²

III. APPLICABLE LAW

11. The Panel notes Article 21(2) and 40(4) and (6)(d) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 79(1) and 82(5) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

¹⁹ Response, para. 6, referring to 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*.

²⁰ Reply, para. 6.

²¹ Reply, paras 7-8.

²² Reply, para. 8.

IV. ANALYSIS

A. LEGAL TEST FOR RECONSIDERATION

12. At the outset, the Panel notes that reconsideration pursuant to Rule 79(1) of the Rules is an exceptional measure that is subject to stringent conditions. The power of a Panel to reconsider previous decisions should be exercised sparingly, and a Party must therefore meet a high threshold in order to succeed in its motion for reconsideration.²³ The Party seeking reconsideration bears the burden of showing that the Panel committed a clear error of reasoning or that reconsideration is necessary in order to avoid injustice.²⁴

13. The Panel notes that while Counsel asserts that his submissions pertain to both limbs of the test, he does not further engage with the test under Rule 79(1) of the Rules.²⁵ The Panel will proceed to examine Counsel's arguments under both limbs of the test under Rule 79(1) of the Rules.

B. CLEAR ERROR OF REASONING

14. The Panel notes that Counsel alleges a number of errors as regards the Panel's understanding of Counsel's argument regarding complexity level determinations.²⁶

²³ See, similarly, KSC-BC-2023-10, F00451, Pre-Trial Judge, [Decision on Request for Reconsideration of F00444](#) (Decision on F00444), 27 August 2024, public, para. 8; F00393, Pre-Trial Judge, [Decision on Defence Request for Reconsideration of F00325](#) (Decision on F00325), 17 July 2024, public, para. 13; F00183, Pre-Trial Judge, [Decision on Defence Request for Reconsideration of Decision F00029](#), 22 February 2024, confidential, para. 30; KSC-BC-2020-04, F00587, Trial Panel I, [Decision on the Defence's Request for Leave to Appeal and/or Reconsideration of F00538](#), 13 July 2023, public; F00830, Trial Panel I, [Decision on the Defence request for leave to appeal and/or reconsideration of the "Decision on the Defence request for leave to reopen its case"](#), 11 April 2024, public.

²⁴ See Decision on F00444, para. 8.

²⁵ Request, paras 11, 22; Reply, para. 9.

²⁶ Request, paras 11-13 and 17; Reply, para. 6.

First, the Panel maintains its understanding of Counsel's position to be – in essence – that, in light of the difference in remuneration between cases involving domestic and international crimes, complexity levels of cases involving domestic crimes are reached quicker or, as Counsel asserts: “a much lower level of complexity is required for a domestic crime to qualify as [c]omplexity [l]evel 3”.²⁷ Moreover, the Panel underlines the following: cases involving domestic and international crimes are not assessed on one continuous complexity scale and they are not compared to each other for the purposes of complexity level determinations. Instead, complexity level determinations about the two respective types of cases are made independently, while applying the (same) set of criteria, as per Regulation 16(3) of the LAR, to the extent that they are applicable and taking into account the specifics of each case.²⁸ The Panel thus considers that Counsel seeks to draw a general inference – namely that due to the difference in remuneration between cases involving domestic and international crimes, complexity levels of cases involving domestic crimes are reached quicker – that is not enshrined in the LAR. It is in this context that the Panel found Counsel's argument unsubstantiated, failing to find support in the LAR and confounding remuneration with complexity.²⁹ The Panel therefore finds that Counsel fails to articulate a clear error of reasoning in this respect.

15. Second, with regard to the facts of this particular case, the Panel recalls that in making her determination, the Registrar went through every applicable criterion listed under Regulation 16(3) of the LAR and provided reasons why she considered that this case, at trial stage, should be assessed at complexity level 2.³⁰ The Panel –

²⁷ Request, paras 10-11; Impugned Decision, paras 13, 28.

²⁸ Legal Aid Decision, para. 18.

²⁹ Impugned Decision, paras 28-29.

³⁰ KSC-BC-2023-10, F00518/A01, Registrar, *Decision of the Registrar on the Determination of the Complexity Level and the Legal Aid Fee for the Trial Stage of Proceedings*, 9 October 2024, confidential and *ex parte*. Section III, paras 16-41.

having assessed the Registrar's reasoning – subsequently found that in reaching the above conclusion, the Registrar: (i) did not abuse her discretion; (ii) did not commit any error of fact or law and (iii) did not make a manifestly unreasonable decision.³¹ Counsel does not engage with any of the above findings in the Impugned Decision or the underlying determination by the Registrar based on the LAR criteria.

16. The Panel therefore fails to see any concrete argument demonstrating a clear error of reasoning in the Impugned Decision, warranting its reconsideration.

C. AVOIDING INJUSTICE

17. Counsel asserts that reconsideration is necessary to avoid injustice, without articulating any link between the Impugned Decision and any real or potential injustice. To the extent that Counsel's proposition is that the Registrar's determination, as reviewed by the Panel, is unsound, and this in turn constitutes a ground for reconsideration to avoid injustice,³² the Panel considers this to be the same argument as the one Counsel advances to demonstrate an error of reasoning. Having found that the Request fails to demonstrate a clear error of reasoning, the Panel is of the view that no corrective action is required to avoid injustice.³³

D. CONCLUSION

18. In light of the above, the Panel finds that no error of reasoning or necessity to avoid injustice has been demonstrated that would, in exceptional circumstances, warrant reconsideration. The Panel therefore rejects the Request.

³¹ Impugned Decision, paras 22-26, 27-30 and 31-32.

³² Request, paras 20-21; Reply, para. 8.

³³ See, *similarly*, Decision on F00325, para. 26.

V. CLASSIFICATION OF FILINGS RELATED TO THIS LITIGATION

19. The Panel notes that the Registrar and Counsel disagree on: (i) the lifting of the *ex parte* marking of confidential filings F00518 and F00563 without further redactions and on (ii) the redactions to be applied in the public redacted versions of these filings.³⁴

The Panel notes that the information at issue concerns the Registrar's decision on the *complexity level* assigned to the present case and the *legal aid fee* attributed to Mr Shala's defence team (Complexity Level, Legal Aid Fee, and, together, Concerned Information).³⁵ More specifically, the Registrar argues that the redactions proposed strike the appropriate balance between the publicity of proceedings and the confidentiality of the Registrar's decisions on legal aid in a specific case.³⁶ According to Counsel, the Concerned Information does not affect the Registrar's activities as such and instead concerns Counsel in the first instance. Therefore, if Specialist Counsel agrees to making it public, there is no valid reason why the Concerned Information should remain confidential.³⁷

20. The Panel recalls, on the one hand, the principle of publicity of proceedings,³⁸ and, on the other hand, its duty to provide for the protection of confidential information.³⁹ The Panel pays heed to the fact that Counsel agrees to make public the Complexity Level and the Legal Aid Fee and, in effect, to disclose to the public the outcome of the legal aid process and related litigation. The Panel is further of the view that making the Concerned Information public does not prejudice the rights or interests of any of the concerned individuals (including the other convicted persons

³⁴ See Classification Submissions, paras 7, 9-12; Response to Classification Submissions, paras 1-2; Reply on Classification Submissions, paras 2-4.

³⁵ See Classification Submissions, para. 7.

³⁶ Response to Classification Submissions, para. 2.

³⁷ Reply on Classification Submissions, para. 4.

³⁸ See Articles 21(2) and 40(4) of the Law.

³⁹ Article 40(6)(d) of the Law.

and their respective Counsels) nor affects the Registrar's discharge of her functions under Article 34(7) of the Law and Rule 23(6) of the Rules; rather, it fosters transparency and ensures due process in the Specialist Chambers' legal aid system. Lastly, the Panel notes that the Registrar does not present any specific argument substantiating the need to maintain the Concerned Information confidential other than arguing that said information stems from a confidential decision by the Registrar. For these reasons, the Panel finds it appropriate to order, pursuant to Rule 82(5) of the Rules, the reclassification as public, and lifting of the *ex parte* marking, of filings F00518, F00541, F00563, F00680, F00682, F00685, F00686, F00688, F00689, F00690, and F00692 (currently classified as confidential and *ex parte*).

VI. DISPOSITION

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

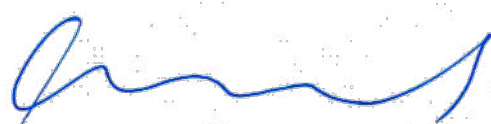
- a. **REJECTS** the Request; and
- b. **ORDERS** the Registrar to reclassify as public, and lift the *ex parte* markings, of filings F00518, F00541, F00563, F00680, F00682, F00685, F00686, F00688, F00689, F00690, and F00692.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 6 March 2025

At The Hague, the Netherlands