



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: **KSC-BC-2020-04**
Specialist Prosecutor v. Pjetër Shala

Before: **The Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

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'Prosecution response to 'Defence Appeal against the Pre-Trial Judge's Decision

on Review of Detention of Pjetër Shala dated 22 April 2022', KSC-BC-2020-

04/IA005/F00003, filed on 16 May 2022

Specialist Prosecutor

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I. INTRODUCTION

1. Pursuant to Articles 41 and 45 of the Law¹ and Rules 57-58 and 170 of the Rules,² the Specialist Prosecutor's Office ('SPO') responds to the Appeal³ of Mr Pjetër SHALA against the Decision,⁴ which ordered Mr SHALA's continued detention.

2. The Court of Appeals Panel ('Panel') should deny the Appeal in its entirety. As set forth below, the correct legal standards were applied (Ground 1), the relevant factors were correctly considered and weighed (Grounds 2 & 3), the Pre-Trial Judge did not set an untenable threshold for conditional release (Ground 4), and continued detention of Mr SHALA remains proportionate (Ground 5). Throughout the Appeal, the Defence either mischaracterises or merely disagrees with the Pre-Trial Judge's reasoning and conclusions and repeats arguments that were previously rejected by the Pre-Trial Judge and the Panel.⁵

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Defence Appeal Against the Pre-Trial Judge's Decision on Review of Detention of Pjetër Shala dated 22 April 2022, KSC-BC-2020-04/IA005/F00001, 4 May 2022, Confidential ('Appeal').

⁴ Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00188, 22 April 2022, Confidential ('Decision').

⁵ See generally Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, KSC-BC-2020-04/IA003/F00005, 11 February 2022, Confidential ('Second Appeals Decision'); Decision on Pjetër Shala's Appeal Against Decision on Provisional Release, KSC-BC-2020-04/IA001/F00005, 20 August 2021, Confidential ('First Appeals Decision').

II. PROCEDURAL BACKGROUND

3. On 14 February 2020, the SPO filed the Application for Arrest Warrant.⁶
4. On 12 June 2020, the Pre-Trial Judge confirmed a four-count indictment against Mr SHALA charging him with war crimes under international law, including murder, torture, cruel treatment, and arbitrary detention.
5. That same day, the Application for Arrest Warrant was granted.⁷ Mr SHALA was taken into custody by Belgian authorities on 16 March 2021. Following his transfer to the seat of the KSC in The Hague, he made his initial appearance before the KSC on 19 April 2021.
6. On 15 June 2021, the Pre-Trial Judge rejected a request for provisional release submitted by the Defence for Mr SHALA ('Defence').⁸ On 20 August 2021, a Panel of the Court of Appeals upheld the First Detention Decision.⁹
7. On 10 September 2021, 10 November 2021 and 28 January 2022, the Pre-Trial Judge reviewed the detention of Mr SHALA and on each occasion ordered his continued detention.¹⁰

⁶ Submission of Indictment for confirmation and related requests, KSC-BC-2020-04/F00002, 14 February 2020, Strictly Confidential and *Ex Parte* ('Application for Arrest Warrant').

⁷ Decision on Request for Arrest Warrant and Transfer Order, KSC-BC-2020-04/F00008, 12 June 2020, Strictly Confidential and *Ex Parte*.

⁸ Decision on Pjetër Shala's Request for Provisional Release, KSC-BC-2020-04/F00045, 15 June 2021, Confidential ('First Detention Decision').

⁹ First Appeals Decision, KSC-BC-2020-04/IA001/F00005, para.62.

¹⁰ Decision on Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00075, 10 September 2021, Confidential ('Second Detention Decision'); Decision on Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00105, 10 November 2021, Confidential ('Third Detention Decision'); Decision on Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00133, 28 January 2022, Confidential ('Fourth Detention Decision').

8. On 11 February 2022, a Panel of the Court of Appeals issued its decision on the Defence's appeal against the Third Detention Decision.¹¹ The Panel granted the appeal in part and remanded the matter to the Pre-Trial Judge for further consideration.¹²
9. On 30 March 2022, the Defence filed submissions on the review of Mr SHALA's detention.¹³ On 7 April 2022, the SPO filed its response.¹⁴ The Defence replied on 12 April 2022.¹⁵
10. On 19 April 2022, the Registrar filed correspondence with the Belgian authorities regarding their willingness and capacity to implement any conditions of release in relation to Mr SHALA.¹⁶
11. On 22 April 2022, the Pre-Trial Judge extended the detention of Mr SHALA because the risks previously identified continued to exist and no conditions could mitigate them.¹⁷ The Pre-Trial Judge also found that the Accused's detention remained proportionate.
12. On 4 May 2022, the Defence filed the Appeal.¹⁸

¹¹ Second Appeals Decision, KSC-BC-2020-04/IA003/F00005.

¹² Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, paras 54-57, 60, 61.

¹³ Specialist Counsel, Defence Submissions on Review of Detention and Response to the Order of the Pre-Trial Judge KSC-BC-2020-04/F00171, 30 March 2022, Confidential.

¹⁴ Specialist Prosecutor, Prosecution Submissions for Fifth Review of Detention, KSC-BC-2020-04/F00177, 7 April 2022, Confidential.

¹⁵ Defence Reply to 'Prosecution Submissions for Fifth Review of Detention', KSC-BC-2020-04/F00184, 12 April 2022, Confidential.

¹⁶ Transmission of Correspondence, KSC-BC-2020-04/F00185, 19 April 2022, Confidential.

¹⁷ Decision, KSC-BC-2020-04/F00188.

¹⁸ Appeal, KSC-BC-2020-04/IA005/F00001.

III. STANDARD OF REVIEW

13. When rendering discretionary decisions, like decisions on the review of detention, the weight given to relevant considerations may depend on numerous factors.¹⁹ Because of the fact-specific nature of detention decisions, the lower level panel is better placed to assess these factors.²⁰ Accordingly, the Panel must not intervene unless the appellant demonstrates the existence of a discernible error in that the Decision was based on an error of law, error of fact, or abuse of discretion.²¹ A mere disagreement with the conclusions that the first instance panel drew from the available facts or the weight it accorded to particular factors is not enough to establish a clear error.²²

14. Alleging an error of law requires identifying the alleged error, presenting arguments in support of the claim, and explaining how the error invalidates the decision.²³ An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground.²⁴

¹⁹ *Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, Public ('*Gucati Appeals Decision*'), paras 44, 49.

²⁰ *Gucati Appeals Decision*, KSC-BC-2020-07/IA001/F00005, para.49.

²¹ *Gucati Appeals Decision*, KSC-BC-2020-07/IA001/F00005, paras.14, 49. *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, Public ('*Haradinaj Appeals Decision*'), para.14.

²² *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.64.

²³ *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.12). *See also* Provisional Release Appeals Decision, KSC-BC-2020-04/IA001/F00005, para.5 (adopting the standard of review established in the *Gucati Appeals Decision*).

²⁴ *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.12.

15. An error of fact can only be found if no reasonable trier of fact could have made the impugned finding.²⁵ In determining whether a finding was reasonable, the Panel will not lightly overturn findings of fact made by a lower level panel.²⁶

16. Finding an abuse of discretion requires that the Decision was so unfair or unreasonable as to constitute an abuse of the lower level panel's discretion.²⁷

IV. SUBMISSIONS

A. The Pre-Trial Judge applied the correct legal standards (Ground 1)

17. The Defence's submissions on Ground 1 of the Appeal merely repeats baseless arguments previously rejected by the Panel.²⁸

18. As the Defence acknowledges,²⁹ the Pre-Trial Judge identified the correct standard and burden of proof.³⁰ However, the Defence repeats its unsupported argument that the Pre-Trial Judge did not apply this standard and reversed the applicable burden of proof.³¹ Specifically, the Defence submits that the Pre-Trial Judge 'relied entirely on pre-existing factors and inevitable developments' while expecting the Defence to provide specific submissions regarding the Article 41(6)(b) risks.³²

19. The Second Appeals Decision clarifies that 'a panel may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those

²⁵ *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.13.

²⁶ *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.13.

²⁷ *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.14; *Haradinaj Appeals Decision*, KSC-BC-2020-07/IA002/F00005, para.14.

²⁸ *Second Appeals Decision*, KSC-BC-2020-04/IA003/F00005, paras 15-20.

²⁹ *Appeal*, KSC-BC-2020-04/IA005/F00001, para. 18.

³⁰ *Decision*, KSC-BC-2020-04/F00188, paras 25-26, 32.

³¹ *Appeal*, KSC-BC-2020-04/IA005/F00001, paras 18-25. The Defence's submissions at times conflate the principles of standard of proof and burden of proof, *see* para.21.

³² *Appeal*, KSC-BC-2020-04/IA005/F00001, para.20.

decisions still supports the findings made at the time of the review'.³³ Furthermore, it is settled jurisprudence that the Pre-Trial Judge is not required to make findings on factors already decided upon in previous rulings on detention.³⁴

20. The Pre-Trial Judge correctly applied the requisite standard of proof by examining the factors and circumstances establishing Article 41(6)(b) risks in previous detention decisions and concluding that they continued to exist.³⁵ The Pre-Trial Judge's findings of the risk that Mr SHALA will obstruct the proceedings or commit further crimes were based on concrete grounds and ample evidence.³⁶

21. In addition, the Pre-Trial Judge found that the risk of obstruction and committing further crimes had increased due to the advancement of the pre-trial proceedings, as Mr Shala continues to gain more insight into the case against him and certain protective measures are lifted.³⁷

22. In the absence of any circumstances warranting a diminution of the established risk, the Defence fails to demonstrate any error in the Pre-Trial Judge's determination that reasons for detention still exist. The Pre-Trial Judge's reasoning is based on specific, substantiated risks, including [REDACTED].³⁸

23. The Defence's submission that the Pre-Trial Judge reversed the burden of proof is equally unfounded. Before embarking on his assessment of the risks, the Pre-Trial Judge noted that the Defence had not provided any specific submissions regarding risks besides repeating its previous submissions.³⁹ The Defence selectively quotes the

³³ Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, para.18.

³⁴ Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, para.15.

³⁵ Decision, KSC-BC-2020-04/F00188, paras 35, 37, 40, 42, 43.

³⁶ Decision, KSC-BC-2020-04/F00188, paras 37, 42 (and citations therein).

³⁷ Decision, KSC-BC-2020-04/F00188, paras 38, 42.

³⁸ Decision, KSC-BC-2020-04/F00188, para.37.

³⁹ Decision, KSC-BC-2020-04/F00188, paras 34, 36, 41.

Decision without acknowledging that the Pre-Trial Judge made these remarks in the context of summarising the parties' respective submissions on Article 41(6)(b) risks.⁴⁰ In fact, the Pre-Trial Judge expressly affirmed that the burden of proof remained with the SPO.⁴¹

24. Contrary to unambiguous appellate precedent,⁴² the Defence repeats previously rejected submissions that the Pre-Trial Judge was required to consider arguments previously made.⁴³ Moreover, the Panel has previously confirmed that the Pre-Trial Judge's approach is consistent with *Merabishvili v. Georgia*.⁴⁴

25. The Defence merely disagrees with the Pre-Trial Judge's reasoning and conclusions and repeats arguments that were previously rejected by the Panel. No error has been demonstrated.

B. The Pre-Trial Judge did not err in considering Mr SHALA's rejection of the legitimacy of the KSC as a factor in the detention analysis (Ground 2)

26. Ground 2 again attempts to re-litigate a ground of appeal previously dismissed by the Appeals Panel.⁴⁵ The Defence's arguments relate solely to the risk of flight under Article 41(6)(b), which the Pre-Trial Judge concluded is sufficiently mitigated by his proposed conditions.⁴⁶ The Defence therefore fails to show that any alleged

⁴⁰ *Contra* Appeal, KSC-BC-2020-04/IA005/F00001, para. 20, citing Decision, KSC-BC-2020-04/F00188, paras 34, 36, 41.

⁴¹ Decision, KSC-BC-2020-04/F00188, paras 25-26.

⁴² Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, para.18.

⁴³ Appeal, KSC-BC-2020-04/IA005/F00001, para.24.

⁴⁴ Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, para.18; *contra* Appeal, KSC-BC-2020-04/IA003/F00001, paras 17-18.

⁴⁵ Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, para.21.

⁴⁶ Decision, KSC-BC-2020-04/F00188, para.46.

error invalidates the Decision or occasions a miscarriage of justice. For this reason alone, Ground 2 should be summarily dismissed.⁴⁷

27. In any event, the Pre-Trial Judge appropriately considered Mr SHALA's statements and actions in connection with his arrest as part of the analysis of whether Mr SHALA poses a risk of flight.⁴⁸ The Defence mischaracterises the Decision by claiming that it 'violate[s] Mr Shala's right to put forward his defence case without fear of repercussions.'⁴⁹ The Decision is not grounded on and does not inhibit any of the substantive legal arguments or submissions Mr SHALA has raised in his defence. Rather, the Decision focuses on Mr SHALA's own statements and actions at the time of his arrest and correctly concludes that they reasonably contribute to the conclusion that he would abscond if released.⁵⁰ As a Court of Appeals Panel has previously held, certain statements of an accused may be such that they are relevant to the assessment of risk required under Article 41(6)(b).⁵¹

C. The Pre-Trial Judge did not err in his findings regarding climate of interference with criminal proceedings and witness intimidation (Ground 3)

28. In Ground 3 of the appeal, the Defence challenges findings that solely relate to the Pre-Trial Judge's conclusion that a moderate risk of flight continues to exist. As noted above, Mr SHALA's continued detention is not based on the risk of flight.⁵²

⁴⁷ First Appeals Decision, KSC-BC-2020-04/IA001/F00005, para.29.

⁴⁸ Decision, KSC-BC-2020-04/F00188, para.61 (citing First Detention Decision, KSC-BC-2020-04/F00045, paras 24-25; Second Detention Decision, KSC-BC-2020-04/F00075, para.28; Third Detention Decision, KSC-BC-2020-04/F00105, para.25; Fourth Detention Decision, KSC-BC-2020-04/F00133, para.27).

⁴⁹ Appeal, KSC-BC-2020-04/IA005/F00001, para.27.

⁵⁰ Decision, KSC-BC-2020-04/F00188, 35 (citing First Detention Decision, KSC-BC-2020-04/F00045, paras 24-25; Second Detention Decision, KSC-BC-2020-04/F00075, para.28; Third Detention Decision, KSC-BC-2020-04/F00105, para.25; Fourth Detention Decision, KSC-BC-2020-04/F00133, para.27).

⁵¹ *Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005, 30 April 2021, paras 48-50.

⁵² Decision, KSC-BC-2020-04/F00188, para.46.

Ground 3 should therefore be summarily dismissed, in light of the Defence's failure to articulate how any alleged error would alter the outcome of the Decision.⁵³

29. Moreover, the Defence's argument that Mr SHALA has been living outside Kosovo and has consistently distanced himself from Kosovo affairs for the past 20 years repeats submissions which the Pre-Trial Judge rejected in the First, Second and Third Detention Decisions.⁵⁴ None of these findings have been overturned on appeal.⁵⁵

30. The Defence also argues that the 'Pre-Trial Judge relied on hypothetical assumptions and failed to refer to any evidence' of Mr SHALA's ability or intention to abscond'.⁵⁶ This is a misrepresentation both of the Decision and the applicable standard.

31. In his assessment of the risk of flight, the Pre-Trial Judge relied on a combination of factors which included (i) Mr SHALA's awareness of the nature of the charges and likelihood of a severe penalty; (ii) his rejection of the KSC's legitimacy; (iii) the possibility of mutual assistance among JCE members; (iv) and the general context of a climate of interference with criminal proceedings related to the Kosovo Liberation Army and of witness intimidation. These factors led the Pre-Trial Judge to conclude that a moderate risk of flight continued to exist.⁵⁷

⁵³ *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.12.

⁵⁴ First Detention Decision, KSC-BC-2020-04/F00045, para. 26; Second Detention Decision, KSC-BC-2020-04/F00075, para. 27; Third Detention Decision, KSC-BC-2020-04/F00105, paras 23-24;

⁵⁵ The Appeals Panel has summarily dismissed previous grounds of appeal relating to the risk of flight on the basis that the alleged errors could not alter the outcome of the Decision: Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, para.21; First Appeals Decision, KSC-BC-2020-04/IA001/F00005, para.29.

⁵⁶ Appeal, KSC-BC-2020-04/IA005/F00001, para.29.

⁵⁷ Decision, KSC-BC-2020-04/F00188, para. 35.

32. The Pre-Trial Judge need not be satisfied that the risk will in fact occur in the event of provisional release, nor that it is substantially likely to occur.⁵⁸ Rather, the question is whether there is ‘specific reasoning based on evidence supporting the belief of a sufficiently real possibility’ that the risk exists.⁵⁹ The Pre-Trial Judge has clearly articulated his finding, which is based on specific facts supported by evidence. The Defence does not explain why the Pre-Trial Judge erred in relying on the above factors.

33. Contrary to the Defence’s contention,⁶⁰ the existence of a climate of interference and witness intimidation is well-documented and reliance on this contextual factor in the assessment of Article 41(6)(b) risks has been accepted by a Panel of the Court of Appeals.⁶¹ Likewise, Mr SHALA’s rejection of the KSC’s legitimacy is based on his statements and actions in connection with his arrest.⁶²

34. Lastly, the Defence’s unsupported claim that the Pre-Trial Judge’s findings violate the presumption of innocence repeats a submission which the Panel has already rejected in relation to the risk of obstruction.⁶³

35. No error has been demonstrated, and this ground of appeal should be dismissed.

⁵⁸ *Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Decision on Kadri Veseli’s Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021, para.19.

⁵⁹ *Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Decision on Kadri Veseli’s Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021, para.19.

⁶⁰ Appeal, KSC-BC-2020-04/IA005/F00001, para.29.

⁶¹ Decision, KSC-BC-2020-04/F00188, para.35 (citing First Detention Decision, KSC-BC-2020-04/F00045, para. 26; Second Detention Decision, KSC-BC-2020-04/F00075, para. 28; Third Detention Decision, KSC-BC-2020-04/F00105, para. 25; Fourth Detention Decision, KSC-BC-2020-04/F00133, para. 27); *See e.g. Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005, 30 April 2021, para.62.

⁶² Decision, KSC-BC-2020-04/F00188, para.35 (citing First Detention Decision, paras 24-25; Second Detention Decision, para. 28; Third Detention Decision, para.25; Fourth Detention Decision, para.27).

⁶³ Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, para.38

D. The Pre-Trial Judge did not set an untenable threshold for conditional release (Ground 4)

36. The Pre-Trial Judge applied the correct standard in evaluating the existence of Article 41(6)(b) risks. Contrary to the Defence's contention, the Pre-Trial Judge did not 'impermissibly assume' that [REDACTED] 'alleged isolated conduct' shows that [REDACTED].⁶⁴

37. The Pre-Trial Judge clearly articulated the reasons for his belief that there was a real possibility that Mr SHALA may obstruct the progress of proceedings and carefully set out the evidence that formed the basis for his belief.⁶⁵ [REDACTED].⁶⁶ [REDACTED]. [REDACTED]. [REDACTED].⁶⁷

38. The Defence's submission that the Pre-Trial Judge's findings on Article 41(6)(b) risks 'predetermines the fate of every decision on review of detention' misrepresents the legal framework for detention review. The Pre-Trial Judge is required to examine whether the reasons for detention still exist at the time of each review and must consider any change of circumstances since the previous ruling on detention.⁶⁸ Additionally, the Pre-Trial Judge may conclude that the Article 41(6)(b) risks underpinning the reasons for detention may have moderated over time or detention may no longer be reasonable.⁶⁹

⁶⁴ Appeal, KSC-BC-2020-04/IA005/F00001, para.31.

⁶⁵ Decision, KSC-BC-2020-04/F00188, paras 37-40.

⁶⁶ Decision, KSC-BC-2020-04/F00188, para.37 (citing First Detention Decision, paras 32-35; First Court of Appeals Decision, paras 35-42; Second Detention Decision, para. 32; Third Detention Decision, para. 29; Fourth Detention Decision, para. 30; Second Court of Appeals Decision, para. 33).

⁶⁷ Second Appeals Decision, KSC-BC-2020-04/IA003/F00005, paras 33, 38.

⁶⁸ Decision, KSC-BC-2020-04/F00188, para.25.

⁶⁹ Decision, KSC-BC-2020-04/F00188, para.55.

39. The Defence merely disagrees with the Pre-Trial Judge's findings and repeats arguments previously rejected by the Panel.

E. The Pre-Trial Judge did not err in assessing the proportionality of continued detention (Ground 5)

40. The Defence submits that the Pre-Trial Judge's reliance 'on the gravity of charges and on *stereotyped formulae* [...] have the *de facto* effect of rendering the passage of time ineffective as to any assessment of proportionality'.⁷⁰ The Defence merely disagrees with the Pre-Trial Judge's reasoning and conclusions that 'the serious nature of the charges against Mr SHALA, the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law, and the advancement of the proceedings' mean that Mr SHALA's detention remained proportionate.⁷¹ The Defence does not explain why the multitude of factors relied on by the Pre-Trial Judge, which are specific to Mr SHALA and the proceedings against him, constitute '*stereotyped formulae*'.⁷²

41. The Pre-Trial Judge correctly articulated⁷³ and applied⁷⁴ the relevant standard, giving express and appropriate consideration to the passage of time in the context of the other case-specific factors considered.

42. This ground of appeal must be rejected accordingly.

V. CLASSIFICATION

43. This filing is classified as confidential pursuant to Rule 82(4). A public redacted version will be submitted.

⁷⁰ Appeal, KSC-BC-2020-04/IA005/F00001, paras 35-36.

⁷¹ Decision, KSC-BC-2020-04/F00188, para.57.

⁷² See Decision, KSC-BC-2020-04/F00188, para.56.

⁷³ Decision, KSC-BC-2020-04/F00188, para.55.

⁷⁴ Decision, KSC-BC-2020-04/F00188, paras 56-57.

VI. RELIEF REQUESTED

44. For the foregoing reasons, the Panel should dismiss the Appeal in its entirety.

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Jack Smith

Specialist Prosecutor

Friday, 29 July 2022

At The Hague, the Netherlands.