

**In:** KSC-CA-2024-03  
**The Specialist Prosecutor v. Pjetër Shala**

**Before:** **The President of the Specialist Chambers**  
Judge Ekaterina Trendafilova

**Registrar:** Fidelma Donlon

**Date:** 2 September 2024

**Filing Party:** Counsel for Mr Pjetër Shala

**Original language:** English

**Classification:** Public

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**Public Redacted Version of Defence Notice of Appeal**

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## I. INTRODUCTION

1. Mr Pjetër Shala hereby appeals against his convictions on Counts 1, 3 and 4 of the Indictment as well as the sentence imposed by Trial Panel I of the Kosovo Specialist Chambers (“KSC”) on 16 July 2024.<sup>1</sup> This Notice of Appeal is filed pursuant to Rule 176 of the KSC Rules of Procedure and Evidence and presents 14 grounds of appeal, each of which either invalidates the Impugned Judgment or has resulted in a miscarriage of justice.<sup>2</sup>

## II. SUMMARY OF GROUNDS OF APPEAL

### **Ground 1: Violation of Mr Shala’s Rights not to Incriminate Himself and to Effective Legal Assistance**

2. Mr Shala did not receive a fair trial. The Trial Panel’s use and reliance on self-incriminatory statements made by Mr Shala who did not have legal assistance either prior to or during the interviews in which the statements were made rendered his trial unfair.<sup>3</sup>
3. The Trial Panel failed to acknowledge the violation of Mr Shala’s rights caused by the circumstances in which the incriminatory statements were made in the absence of a lawyer and failed to provide Mr Shala an effective remedy. In fact,

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<sup>1</sup> F00847, Trial Judgment and Sentence, 16 July 2024 (confidential) (“Impugned Judgment”). The Defence respectfully requests a limited extension of the applicable word limit of 690 words to present a meaningful notice of appeal that will assist the Panel.

<sup>2</sup> The Defence reiterates that each time it refers to an error of law, it refers to an error that invalidates the findings referred to in the specified sections of the Impugned Judgment and relevant conviction and each time it refers to an error of fact it refers to an error of fact that has occasioned a miscarriage of justice.

<sup>3</sup> Impugned Judgment, paras. 281, 284-293, 297-299, 306-310, 338-340, 348, 352-353, 361, 376, 379, 451, 850-856, 858, 860-874, 881-882, 895-900, 910-914, 923, 929, 951, 1104, 1107, 1117-1118; F00364/COR, Decision concerning prior statements given by Pjetër Shala, 6 December 2022 (confidential) (“Decision on Prior Statements”); F00401, Decision on Request for Leave to Appeal the Decision Concerning Prior Statements Given by Pjetër Shala, 24 January 2023 (“Decision on Leave to Appeal Concerning Prior Statements”).

the Trial Panel explicitly chose to ignore the findings made by the Court of Appeals,<sup>4</sup> maintaining that “[it] did not find any violation of Mr Shala’s rights”.<sup>5</sup> While the Panel made no express reference to Mr Shala’s statements given in an interview in 2016, it is clear that it considered those statements available for the purposes of its findings,<sup>6</sup> those statements shaped the 2019 interview in which additional incriminatory statements were made in the absence of a lawyer, and the Panel expressly relied on incriminatory statements made by Mr Shala in 2000, 2005, 2007 and 2019 to make findings adverse to him, extinguishing thus the very essence of his defence rights and rendering his trial unfair.

### **Ground 2: Prejudice Caused by Uncertainty of Trial Record**

4. The Trial Panel erred in law and in fact by ignoring the KSC legal framework and failing to notify the Defence whether the incriminatory statements by Mr Shala were admitted into evidence, leaving as such the evidentiary record of the proceedings uncertain throughout the trial, including during the presentation of the Defence Final Brief and Closing Submissions, and depriving therefore the Defence of an effective opportunity to take a stance on the contents of such statements and comment on them without jeopardizing the right of Mr Shala not to incriminate himself.<sup>7</sup>

### **Ground 3: Breach of the Principle of Legality**

5. Mr Shala’s convictions for Counts 1, 3 and 4 which were based on the mode of liability of a joint criminal enterprise as well as the conviction entered for

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<sup>4</sup> IA006/F00007, Decision on Shala’s Appeal Against Decision Concerning Prior Statements, 5 May 2023 (“Appeal Decision on Prior Statements”), paras. 75-78, 103.

<sup>5</sup> Impugned Judgment, paras. 73, 1119.

<sup>6</sup> Decision on Prior Statements, para. 80; Decision on Leave to Appeal Concerning Prior Statements, paras. 67, 72.

<sup>7</sup> See n. 3 above.

arbitrary detention in a non-international armed conflict, which did not form part of the Kosovo law or customary international law at the material time in 1999 and was not foreseeable or accessible to him, violated his right not to be held guilty on account of an act or omission which did not constitute a criminal offence at the time when it was committed and violates the principle of legality.<sup>8</sup> The convictions were entered in breach of Mr Shala's rights under Articles 6 and 7 of the European Convention on Human Rights.

#### **Ground 4: Defective Indictment**

6. The Trial Panel erred in law when convicting Mr Shala on Counts 1, 3, and 4, when the Indictment was defective for lack of sufficient particulars as to the members of the alleged JCE and the victims of his alleged criminal activities and depriving Mr Shala of an effective opportunity to answer to the Prosecution's allegations.<sup>9</sup>
7. The Trial Panel erred in law when permitting the trial to go ahead and conducting the trial of Mr Shala on the basis of a defective Indictment that contained cumulative charging of cruel treatment and torture, failing to comply with the principle of reciprocal speciality and ultimately upholding the Defence objections to the defective Indictment only when issuing the trial judgment, causing irreparable prejudice to the Defence that was unnecessarily required to answer to unlawful cumulative charges while operating with scarce resources.<sup>10</sup>

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<sup>8</sup> Impugned Judgment, paras. 932-956, 995-1039, 1124; F00117, Decision on Application for Leave to Appeal "Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers", 29 November 2021, paras. 7, 28, 34.

<sup>9</sup> Impugned Judgment, paras. 945, 977, 1005; IA004-F00008, Decision on Pjetër Shala's Appeal against Decision on Motion Challenging the Form of the Indictment, 22 February 2022 (confidential).

<sup>10</sup> Impugned Judgment, paras. 961-964.

### **Ground 5: Error Due to Conviction for Crimes which were not Charged**

8. Although Mr Shala was charged with the crime of arbitrary detention and torture of *nine* individuals listed in the Indictment, the Trial Panel erroneously convicted him for the crime of arbitrary detention and torture in respect of *eighteen* individuals, nine of which were not listed in the Indictment.<sup>11</sup> This error requires reconsideration of the sentence imposed.

### **Ground 6: Abuse of Discretion in Assessment of Evidence of Key Prosecution Witnesses**

9. The Trial Panel made serious errors in the assessment and acceptance of the credibility of the three key Prosecution witnesses [REDACTED], W04733, and W01448.<sup>12</sup> Its errors which were compounded by applying double standards in assessing exculpatory and incriminating evidence breached the principle of *in dubio pro reo* and constituted abuse of discretion leading to a miscarriage of justice.<sup>13</sup>
10. The Trial Panel erred in finding [REDACTED] credible and declining to consider evidence undermining his credibility; its decision not to treat his evidence with caution was manifestly unreasonable and exceeded the lawful bounds of its discretion.<sup>14</sup> The Trial Panel erred in declining to adjourn the trial pending completion of the Case 08 proceedings, failing to acknowledge that the

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<sup>11</sup> Impugned Judgment, paras. 18, 1037-1038.

<sup>12</sup> Impugned Judgment, paras. 119, 175, 188, 363, 369, 372-374, 378-379, 385-401, 404-407, 410, 412-414, 419, 423, 447-473, 478-488, 492-494, 501,504-505, 510-512, 514-515, 522-525, 558, 562-563, 565-592, 605, 638, 640-644, 654-663, 669-680, 688-699, 706-726, 732-753, 757-796, 830-832 840-847, 851-852, 895, 897, 904-909, 945-949, 952-956, 972-973, 977-978, 980-984, 1004, 1018, 1025-1028, 1031-1039.

<sup>13</sup> Impugned Judgment, paras. 119, 124-126, 132, 134-136, 141, 143, 154, 159, 162, 167-168, 173-175, 181-188, 196-197, 208-210, 224-225, 232-234, 244-248, 253-259, 268-273, 281-283, 377-379, 385, 475, 495, 500, 507, 534-536, 549, 652, 682, 729, 767, 781, 784, 879, 881-895.

<sup>14</sup> See [REDACTED].

Prosecution's decision to terminate the proceedings in Case 08, which concerned [REDACTED] in matters directly related to the Indictment against Mr Shala, deprived the Defence of a crucial finding on the credibility of [REDACTED] and breached Mr Shala's defence rights.<sup>15</sup>

11. The Trial Panel erred in finding W04733 consistent and coherent and declining to apply caution to his evidence.<sup>16</sup> In addition, the Trial Panel erroneously found W04733's evidence to be corroborated by the evidence of other witnesses who simply relayed information conveyed to them by W04733 without applying caution.<sup>17</sup>
12. The Trial Panel made a discernible error in accepting W04733's identification of Mr Shala without applying caution or noting its frailty, particularly when it considered that "it does not matter whether the witness described Mr Shala's physical appearance accurately".<sup>18</sup> The Trial Panel erred by considering that "its Judgment is not based solely or to a decisive extent on W04733's evidence, whom the Defence has had no opportunity to examine".<sup>19</sup>
13. The Trial Panel erred in failing to consider with caution and ultimately finding the evidence of W01448 credible, reliable and corroborated, including W01448's identification of Mr Shala despite the false identification of Mr Shala in a photoboard identification procedure.<sup>20</sup>
14. The Trial Panel erred when it accepted the evidence of W04733, the family members of W04733, W01448, TW4-01, TW4-10, TW4-04 without applying caution despite the fact that their evidence was contaminated as these witnesses

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<sup>15</sup> Impugned Judgment, paras. 40-41, [REDACTED].

<sup>16</sup> Impugned Judgment, para. 180 and reference in n. 13.

<sup>17</sup> Impugned Judgment, paras. 147-154, 180, 441, 443-444, 449, 462, 470, 617, 624, 703-704.

<sup>18</sup> Impugned Judgment, para. 451.

<sup>19</sup> Impugned Judgment, para. 183.

<sup>20</sup> See n. 13 above.

had exchanged views with regard to matters related to the Indictment.<sup>21</sup> The Panel did not consider whether it could safely rely on this evidence as free of collusion, despite the strong indications that the evidence was so contaminated, at times inadvertently, that it could not be reasonably accepted as free from collusion rendering the findings that are based on such evidence unsafe.

### **Ground 7: Unfair Reliance on Untested Evidence**

15. The Trial Panel erred in law and fact when entering convictions against Mr Shala which were based on findings based solely or in a decisive manner on untested evidence and/or adjudicated facts.<sup>22</sup> In this respect, the Panel extensively relied on the untested evidence of seven witnesses, including the four deceased witnesses W04733, W01448, Kryeziu, Elezaj, it considered the untested evidence corroborated by other untested evidence, and failed to treat it with caution.
16. The Trial Panel erred in law and fact when admitting written evidence of Prosecution witnesses TW4-02 and TW4-04 without cross-examination, relying on their evidence to a decisive extent and making findings adverse to Mr Shala on issues about which the witnesses had exculpatory information.<sup>23</sup>

### **Ground 8: Placing an Unattainable Burden of Proof on the Defence**

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<sup>21</sup> Impugned Judgment, paras. 147-154, 174-175, 187-188, 374, 519, 522.

<sup>22</sup> Impugned Judgment, paras. 96, 285, 296, 319, 342, 354-355, 366, 378, 385-388, 390-394, 401, 406, 411-414, 441-494, 495-581, 587-608, 614-627, 629-753, 756, 830, 842-848, 851, 864, 897, 903-909, 912, 919, 921, 945-949, 952-956, 971-973, 977-978; 980-984, 1003-1004, 1007, 1014-1018, 1025-1028, 1031-1039.

<sup>23</sup> Impugned Judgment, paras. 69, 352-353, 393, 444, 445, 447, 479, 481, 486, 488, 515, 519- 526, 528-529, 531, 533, 536-537, 541, 543-544, 546, 548, 552, 554-555, 558, 565, 567, 576-579, 582, 587, 591, 606, 615, 670, 671, 728, 745, 748-749; F00556, Decision on the Specialist Prosecutor's Requests to Admit the Evidence of TW4-02 AND TW4-04 under Rule 153 of the Rules, 23 June 2023; F00592, Decision on the Defence Request for Certification to Appeal the "Decision on the Specialist Prosecutor's Requests to Admit the Evidence of TW4-02 and TW4-04 under Rule 153 of the Rules", 17 July 2023.

17. The Trial Panel erred in law and fact and breached the principle of *in dubio pro reo* when drawing inferences which were not the only reasonable inferences that could be drawn from the available evidence, applying double standards in assessing the evidence, and failing to acknowledge the impact of the passage of time between the Indictment events and the trial on Mr Shala's ability to defend himself, placing thus an unattainable burden on the Defence.<sup>24</sup>
18. The Trial Panel erred in law when taking judicial notice of "adjudicated" facts, including facts that formed core elements of the Prosecution's case and relying on them for the purpose of convicting Mr Shala thereby shifting the burden of proof in breach of the presumption of innocence.<sup>25</sup>
19. The Trial Panel erred in law and fact when drawing inferences from Mr Shala's incriminatory statements which were not the only reasonable inferences that could be drawn based on the evidence and assessing whether his statements "discredit[ed]" the Prosecution's evidence.<sup>26</sup>
20. Mr Shala's right to present an effective defence was violated due to the inability to have his interests represented during the one-sided investigation, the repeated delayed disclosures and refusals to disclose information by the Prosecution, the restrictions on which witnesses to call, the disproportionate restrictions of the public nature of the proceedings, and the start of trial before the Defence was trial ready.<sup>27</sup>

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<sup>24</sup> Impugned Judgment, paras. 379, 405, 412-413, 439, 444, 451, 472, 476, 493, 496, 511, 528, 553, 562, 565, 572, 576, 581, 583, 590-591, 610, 638, 710, 728, 730, 746-747, 823, 980, 983, 1007, 1010-1011, 1021, 1031-1039.

<sup>25</sup> Impugned Judgment, paras. 95, 296, 319, 342, 346, 366, 411, 558, 560, 564, 626, 756, 919, 921; F00538, Decision on the Prosecution motion for judicial notice of facts of common knowledge and adjudicated facts, 8 June 2023 (confidential); F00587, Decision on the Defence's Request for Leave to Appeal and/or Reconsideration of F00538, 13 July 2023.

<sup>26</sup> Impugned Judgment, paras. 451, 455, 853-873, 903, 910-914.

<sup>27</sup> Impugned Judgment paras. 29-35, 42-47, 51-62; F00218, Decision on Defence Application for Leave to Appeal the Decision on Request for Protective Measures for Documents Containing Exculpatory



### **Ground 9: Abuse of Discretion in Assessing Evidence of Defence Witnesses**

21. The Trial Panel took irrelevant factors into consideration and gave them determining weight in the assessment of the evidence of Defence witnesses.<sup>28</sup> Specifically, the Panel inappropriately placed determining weight on the witnesses' political opinions and openly expressed hostility towards the KSC as well as their support for the KLA.
22. The Trial Panel failed to place proper weight on the evidence that showed that Mr Shala was not part of the JCE and did not intend the crimes within the common criminal purpose at the Kukës Metal Factory.<sup>29</sup>

### **Ground 10: Unfair Denial to Hear Exculpatory Evidence**

23. The Trial Panel erred in law and fact when refusing to hear the evidence of potential Defence witness W02540 and then making adverse findings on issues to which the witness could have testified.<sup>30</sup>

### **Ground 11: Errors in Inferring the Purpose of Alleged JCE**

24. The Trial Panel erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences and failed to give sufficient weight to relevant considerations when it concluded that there was a common plan to "arbitrarily detain, interrogate, torture and murder detainees at the KMF who were perceived to collaborate with, be associated with, or

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Information, 14 June 2022 (confidential); F00813, Decision on the Defence request for leave to reopen its case, 19 March 2024 (confidential); F00830, 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.

<sup>28</sup> Impugned Judgment, paras. 185, 231-234, 247-248, 257-259, 266, 271-273.

<sup>29</sup> Impugned Judgment, paras. 222, 231, 244, 247, 253, 266, 271, 281-282, 874-897, 910-914, 950-956, 1020-1039.

<sup>30</sup> F00813, Decision on the Defence request for leave to reopen its case, 19 March 2024 (confidential); F00830, 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; Impugned Judgment, paras. 98-119, 395-401.

sympathize with the Serbian authorities or who were considered not sufficiently supportive of the KLA effort”<sup>31</sup>, particularly given the existence of other reasonable inferences which were not foreclosed by Prosecution evidence.<sup>32</sup> The Trial Panel’s errors in finding the existence of an alleged joint criminal enterprise invalidates the guilty findings under Counts 1, 3, and 4 of the Indictment.

### **Ground 12: Errors Related to the Conviction for Arbitrary Detention**

25. The Trial Panel erred in law and fact in the manner in which it set out and applied the applicable law in the circumstances of this case and convicted Mr Shala of Count 1 of the Indictment.
26. The Trial Panel erred in law when requiring as an objective element of the crime of arbitrary detention as applied in Kosovo in 1999 (and the Defence does not accept that such crime existed at the relevant time in the context of a non-international armed conflict) that detainees be brought promptly before a judge or other competent authority and be given an opportunity to challenge the lawfulness of their detention.<sup>33</sup> In addition, the Trial Panel erred in law in the high standard it applied as to the characteristics that an authority in charge of issues related to detention was required to constitute a “competent authority”, ignoring the time when the alleged offences took place and the relevant context of a non-international armed conflict.<sup>34</sup>

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<sup>31</sup> Impugned Judgment, paras. 834, 1004-1005, 1010-1011, 1019-1024, 1031-1039.

<sup>32</sup> Impugned Judgment, paras. 834, 1010-1011, 1016-1019, 1021-1024.

<sup>33</sup> Impugned Judgment, paras. 938, 942-943, 948, 1037.

<sup>34</sup> Impugned Judgment, paras. 942-943, 948-949.

27. The Trial Panel erred in law and fact when finding that persons detained “were not held at the KMF pursuant to any criminal charges and no security concerns made it absolutely necessary for any of them to be detained”.<sup>35</sup>
28. The Trial Panel erred in law by holding that “[w]hen assessing the compliance with basic procedural safeguards, it is irrelevant whether [...] the perpetrator is personally responsible for the failure to have the detainee’s procedural rights respected”.<sup>36</sup> The Trial Panel erred in setting out the law it ultimately applied, relying on authority it misconstrued that concerned the offence of unlawful confinement of civilians in the context of an *international* armed conflict and concerned the conduct of persons having “the authority to release civilian detainees”.<sup>37</sup>
29. The Trial Panel erred in fact when concluding that no person at the KMF exercised the functions of a competent authority.<sup>38</sup>
30. The Trial Panel erred in law and fact when finding that Mr Shala was aware and/or sufficiently informed of the fact that detainees were arbitrarily detained at the Kukës Metal Factory and had the requisite *mens rea* for the crime of arbitrary detention.<sup>39</sup> In addition, the Trial Panel erred in finding that Mr Shala “had no reasonable grounds to believe that security concerns made the detention of these individuals absolutely necessary”.<sup>40</sup>

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<sup>35</sup> Impugned Judgment, para. 947.

<sup>36</sup> Impugned Judgment, para. 940.

<sup>37</sup> Impugned Judgment, para. 940, referring to *Delalić* Appeal Judgment, para. 379.

<sup>38</sup> Impugned Judgment, paras. 948-949.

<sup>39</sup> Impugned Judgment, paras. 951-956, 1004, 1007, 1011, 1014, 1025.

<sup>40</sup> Impugned Judgment, para. 953.

31. The Trial Panel erred in law and fact in finding that Mr Shala made a significant contribution to upholding the detention regime established by others by physically mistreating the victims.<sup>41</sup>

### **Ground 13: Errors Related to Conviction of Murder**

32. The Trial Panel erred in law and fact when finding that Mr Shala was criminally liable for the murder of the Murder Victim who, according to the Trial Panel was “intentionally killed” by two others, namely Xhemshit Krasniqi who had shot the Murder Victim and another KLA member who denied his transfer to the hospital.<sup>42</sup> The Trial Panel made an error of law and fact and abused its discretion when it found it “irrelevant whether Mr Shala had any position of responsibility, authority or control, or whether he was under a duty to act in any specific manner towards the detainees at the KMF”.<sup>43</sup>
33. The Trial Panel erred in law and fact when finding that Mr Shala had the requisite *mens rea* for killing the Murder Victim and failing to assess and provide a reasoned opinion as to the specific nature of the alleged intent of Mr Shala to kill the Murder Victim.<sup>44</sup>
34. The Trial Panel erred when relying on the evidence of expert Prosecution witness Dolejsi and failing to consider and/or provide a reasoned opinion as to the dismissal of the Defence objections to the reliability of his evidence.<sup>45</sup>

### **Ground 14: Errors in Sentencing**

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<sup>41</sup> Impugned Judgment, paras. 904-909, 914, 1025, 1028.

<sup>42</sup> Impugned Judgment, paras. 988-991, 1015, 1018, 1039.

<sup>43</sup> Impugned Judgment, paras. 1027, 1031-1036.

<sup>44</sup> Impugned Judgment, paras. 990-991, 1016-1019, 1025, 1031-1036, 1039.

<sup>45</sup> Impugned Judgment, paras. 821, 823-826.

35. Mr Shala is appealing the sentence of 18 years as it is manifestly unreasonable and excessive.
36. The Trial Panel failed altogether to consider in sentencing the purposes of rehabilitation and reintegration to society.<sup>46</sup>
37. The Trial Panel failed to consider sufficiently the applicable domestic sentencing range and apply the most lenient one.<sup>47</sup>
38. The Trial Panel erred in law by failing to ensure equality in sentencing and consider properly and attach appropriate weight to sentences imposed in comparable and related cases concerning individuals who on its own findings had greater responsibility for the Indicted crimes as well as to provide a reasoned opinion as to why it chose to significantly depart from those sentences.<sup>48</sup>
39. The Trial Panel erred in law when imposing a sentence for the crimes of arbitrary detention and torture of eighteen victims and not nine as charged in the Indictment.<sup>49</sup>
40. The Trial Panel erred in law when declining to consider as a mitigating factor the infringement of Mr Shala's rights stemming from the violation of his right not to incriminate himself and his right to legal assistance.<sup>50</sup>
41. The Trial Panel failed to sufficiently consider in mitigation the fact that Mr Shala had no leadership role or senior position within the hierarchy of the KLA forces at the Kukës Metal Factory; the passage of time since the Indictment

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<sup>46</sup> Impugned Judgment, paras. 1061-1065, 1071.

<sup>47</sup> Impugned Judgment, paras. 1066-1070, 1083.

<sup>48</sup> Impugned Judgment, paras. 1004, 1070.

<sup>49</sup> Impugned Judgment, paras. 1087-1088, 1091-1092, 1121.

<sup>50</sup> Impugned Judgment, para. 1119.

events; the health of Mr Shala's former spouse and exceptional family circumstances which left him to be the sole guardian for their children; and Mr Shala's cooperation with the Specialist Prosecutor.<sup>51</sup>

### III. RELIEF SOUGHT

42. In light of the nature and impact of the errors of law, fact, and sentencing as well as the resulting prejudice to Mr Shala's fair trial rights, the Defence respectfully requests the Appeals Panel to quash the convictions entered by the Trial Panel and/or remit the case for retrial and/or impose, if necessary, an appropriate sentence.

**Word count: 3689**

Respectfully submitted,



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**Jean-Louis Gilissen**

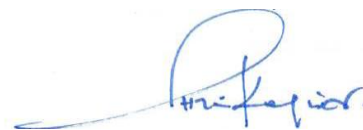
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**Hédi Aouini**

**Defence Co-Counsel**



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**Leto Cariolou**

**Defence Co-Counsel**

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<sup>51</sup> Impugned Judgment, para. 1072.

Monday, 2 September 2024

The Hague, the Netherlands