

**Case No.:** KSC-CC-2023-21  
**Specialist Prosecutor v. Pjetër Shala**

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

**Registrar:** Dr Fidelma Donlon

**Date:** 10 July 2023

**Filing Party:** Specialist Defence Counsel

**Original Language:** English

**Classification:** Confidential

**THE SPECIALIST PROSECUTOR**

v.

**PJETËR SHALA**

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**Referral to the Constitutional Court Panel Concerning the Violation of Mr Shala's  
Fundamental Rights Guaranteed by Articles 31, 32, and 54 of the Kosovo  
Constitution and Articles 6 and 13 of the European Convention on Human Rights**

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## I. INTRODUCTION

1. Pursuant to Articles 31, 32, 54, and 113(7) of the Constitution of the Republic of Kosovo (“Kosovo Constitution”), Article 39(3) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“KSC Law”), and Rules 4(c) and 20 of the Rules of Procedure for the Specialist Chamber of the Constitutional Court (“SCCC Rules”), the Defence for Mr Pjetër Shala (“Defence” and “Accused”, respectively) introduces this Referral presenting the Accused’s complaints of a violation of his right to a fair trial and right to an effective remedy under Articles 31, 32, and 54 of the Kosovo Constitution and Articles 6 and 13 of the European Convention on Human Rights (“ECHR”) as a result of the Trial Panel’s finding that the statements of the Accused given to the Belgian Federal Judicial Police in 2016 (“2016 Belgian Interview”) are “not inadmissible” as evidence and are available to the Trial Panel for the purposes of its judgment and review of detention, as well as the Trial Panel’s subsequent refusal to reconsider its impugned findings.<sup>1</sup>
2. In its “Decision on Shala’s Appeal Against Decision Concerning Prior Statements”, the Court of Appeals Panel (“Appeals Panel”) found that the Accused’s right to legal assistance was violated with regard to the 2016 Belgian Interview and that the Trial Panel’s erroneous finding in this respect constitutes a violation of the standards of international human rights law as per Rule 138(2)

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<sup>1</sup> KSC-BC-2020-04, F00364COR, Corrected version of Decision Concerning Prior Statements given by Pjetër Shala, 6 December 2022 (confidential) (“Impugned Decision”), paras. 80, 114(c); KSC-BC-2020-04, F00520, Decision on the Defence request for an expedited ruling on its request for reconsideration of the “Decision concerning prior statements given by Pjetër Shala”, 23 May 2023, para. 8; T. 6 June 2023 pp. 1938, 1939. All further references to filings in this Referral concern Case No. KSC-BC-2020-04 unless otherwise indicated.

of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”).<sup>2</sup>

3. Following the Appeal Decision, the Defence requested the Trial Panel to reconsider the Impugned Decision in light of the Appeals Panel’s finding of the said violation in order to limit further interference with the Accused’s right to a fair trial caused by the Impugned Decision.<sup>3</sup> However, in its oral ruling on the Request for Reconsideration and rejection of an expedited ruling on the Request for Reconsideration, the Trial Panel denied the Defence such remedy and affirmed that the statements are available for its purposes.<sup>4</sup> These decisions are highly prejudicial and violate the Accused’s right to a fair trial and to an effective remedy under Articles 31, 32, and 54 of the Kosovo Constitution and Articles 6 and 13 of the ECHR.
4. For the purposes of this Referral and pursuant to Rule 20(3) of the SCCC Rules, the Accused nominates his appointed counsel to act on his behalf.

## II. PROCEDURAL BACKGROUND

5. On 20 September 2022, the Defence filed a request seeking, *inter alia*, the exclusion from the case file of the statements given by the Accused during the 2016 Belgian Interview and his interview conducted by the Specialist Prosecutor’s Office (“SPO”) and the Belgian Federal Judicial Police in 2019 as

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<sup>2</sup> IA006, F00007, Decision on Shala’s Appeal Against Decision Concerning Prior Statements, 5 May 2023 (“Appeal Decision”), paras. 73, 75, 76, 78, 79, 103.

<sup>3</sup> F00515, Defence Request for Reconsideration of the “Decision Concerning Prior Statements Given by Pjetër Shala”, 18 May 2023 (“Request for Reconsideration”), paras. 1, 12.

<sup>4</sup> T. 6 June 2023 pp. 1938, 1939; F00520, Decision on the Defence request for an expedited ruling on its request for reconsideration of the “Decision concerning prior statements given by Pjetër Shala”, 23 May 2023, para. 8.

well as related items.<sup>5</sup> On 30 September 2022, the SPO responded.<sup>6</sup> On 7 October 2022, the Defence replied.<sup>7</sup>

6. On 1 November 2022, following the Trial Panel's order,<sup>8</sup> the SPO filed additional submissions requesting the Trial Panel to admit into evidence the transcripts of the interviews given by the Accused to the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia ("ICTY") in 2005 and 2007, the Accused's statements given to the Belgian Federal Judicial Police in 2016 and to the SPO and the Belgian Federal Judicial Police in 2019, and associated exhibits and related procedural documents.<sup>9</sup> On 24 November 2022, the Defence responded.<sup>10</sup> On 29 November 2022, the SPO replied.<sup>11</sup>
7. On 6 December 2022, the Trial Panel issued the Impugned Decision, deciding: (i) to admit into evidence the transcripts of the ICTY Interviews; (ii) that the statements given during the Belgian Interviews, together with associated exhibits and related procedural documents, are "not inadmissible" and can be used for the purpose of detention review; and (iii) to defer to a later stage its decision on the admissibility of the statements given during the Belgian Interviews.<sup>12</sup>

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<sup>5</sup> F00281, Motion to Exclude Evidence from the Case File to be Transmitted to the Trial Panel, 20 September 2022 (confidential), paras. 1, 53.

<sup>6</sup> F00288, Prosecution response to Defence motion to exclude evidence from the case file, 30 September 2022.

<sup>7</sup> F00299, Defence Reply to Prosecution Response to Defence Motion to Exclude Evidence from the Case File, 7 October 2022.

<sup>8</sup> T. 20 October 2022 p. 495.

<sup>9</sup> F00334, Prosecution motion for admission of Accused's statements with confidential Annex 1, 1 November 2022 (confidential), para. 1.

<sup>10</sup> F00358, Defence Response to Prosecution Motion for Admission of Accused's Statements, 24 November 2022 (confidential).

<sup>11</sup> F00362, Prosecution reply to Defence response to motion for admission of the statements of the Accused, 29 November 2022.

<sup>12</sup> Impugned Decision, paras. 52, 80, 110, 114.

8. On 13 December 2022, the Defence applied for leave to appeal the Impugned Decision.<sup>13</sup> On 10 January 2023, the SPO responded.<sup>14</sup> On 16 January 2023, the Defence replied.<sup>15</sup>
9. On 24 January 2023, the Trial Panel granted the Defence leave to appeal the Impugned Decision on the following three issues:
  - (i) Whether the Trial Panel erred in law by interpreting Rule 138(2) of the Rules by requiring the existence of a “causal link” between the violation of a suspect’s rights and the gathering of evidence (“First Certified Issue”);
  - (ii) Whether the Trial Panel erred in fact and in law by considering that the Accused at the occasion of the ICTY Interviews and Belgian Interviews was sufficiently informed of the nature and cause of the suspicions against him as well as of his right to have access to a lawyer, with respect to each interview (“Second Certified Issue”); and
  - (iii) Whether the Trial Panel erred in fact and in law by considering that the Accused had provided a well-informed and unequivocal waiver of his right to have access to a lawyer (“Third Certified Issue”).<sup>16</sup>
10. On 13 February, the Defence filed an appeal against the Impugned Decision, requesting the Appeals Panel to set aside the Impugned Decision and declare that the transcripts of the ICTY Interviews and the statements given during the

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<sup>13</sup> F00369, Request for Leave to Appeal the Decision Concerning Prior Statements Given by Pjetër Shala, 13 December 2022.

<sup>14</sup> F00380, Prosecution response to Defence request for leave to appeal the decision concerning the prior statements of the Accused, 10 January 2023.

<sup>15</sup> F00385, Defence Reply to Prosecution Response to “Request for Leave to Appeal the Decision Concerning Prior Statements Given by Pjetër Shala”, 16 January 2023.

<sup>16</sup> F00401, Decision on Request for Leave to Appeal the Decision Concerning Prior Statements Given by Pjetër Shala, 24 January 2023, paras. 6(ii)-(iii), (vi), 30, 43, 60, 73(a).

Belgian Interviews are inadmissible.<sup>17</sup> On 24 February 2023, the SPO responded.<sup>18</sup> On 6 March 2023, the Defence replied.<sup>19</sup>

11. On 5 May 2023, the Appeals Panel issued the Appeal Decision, granting the appeal on the Second Certified Issue in part regarding the 2016 Belgian Interview. The Appeals Panel found that the Accused's right to legal assistance was violated for the purposes of the 2016 Belgian Interview, that the Trial Panel's erroneous finding in this respect constitutes a violation of the standards of international human rights law as per Rule 138(2) of the Rules. Nonetheless, the Appeals Panel upheld the first-instance finding that the statements given during the 2016 Belgian Interview are "not inadmissible pursuant to Rule 138(2) of the Rules".<sup>20</sup>
12. On 18 May 2023, the Defence filed the Request for Reconsideration, in which it requested the Trial Panel to reconsider the Impugned Decision as well as to rule on the Request for Reconsideration before the start of the evidentiary block scheduled to begin on 30 May 2023.<sup>21</sup>
13. On 23 May 2023, the Trial Panel issued the Decision on the Defence request for an expedited ruling on its Request for Reconsideration, rejecting the request for an expedited ruling.<sup>22</sup>

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<sup>17</sup> IA006, F00004, Defence Appeal Against the "Decision Concerning Prior Statements Given by Pjetër Shala", 13 February 2023, para. 44.

<sup>18</sup> IA006, F00005, Prosecution response to Defence appeal against 'Decision Concerning Prior Statements Given by Pjetër Shala', 24 February 2023.

<sup>19</sup> IA006, F00006, Defence Reply to Prosecution Response to Appeal Against "Decision Concerning Prior Statements Given by Pjetër Shala", 6 March 2023.

<sup>20</sup> Appeal Decision, paras. 73, 75, 76, 78, 79, 81, 103, 109.

<sup>21</sup> Request for Reconsideration, para. 11.

<sup>22</sup> F00520, Decision on the Defence request for an expedited ruling on its request for reconsideration of the "Decision concerning prior statements given by Pjetër Shala", 23 May 2023, paras. 9, 10(a).

14. On 30 May 2023, the SPO responded to the Request for Reconsideration.<sup>23</sup>
15. On 5 June 2023, the Defence replied to the SPO response to the Request for Reconsideration.<sup>24</sup>
16. On 6 June 2023, in an oral ruling, the Trial Panel rejected the Request for Reconsideration.<sup>25</sup>

### III. ADMISSIBILITY

17. Pursuant to Article 113(7) of the Kosovo Constitution, Article 49(3) of the KSC Law, and Rule 20(1) of the SCCC Rules, an accused may lodge a referral before the Specialist Chamber of the Constitutional Court (“SCCC”) in relation to violations by the Specialist Chambers of his individual rights and freedoms guaranteed by the Kosovo Constitution, subject to two conditions:
  - (i) the accused has exhausted all remedies provided by law with regard to the alleged violation of his rights; and
  - (ii) the referral is filed within two months from the date of the notification of the final ruling concerning the alleged violation.
18. The Referral concerns the Accused’s right to a fair trial as guaranteed by Article 31 of the Kosovo Constitution, Article 21(2) of the KSC Law, and Article 6 of the ECHR as well as the right to an effective legal remedy under Articles 32 and 54 of the Kosovo Constitution and Article 13 of the ECHR.
19. The Referral is admissible as: (i) the Accused has exhausted all available legal remedies upon the Appeals Panel upholding the Trial Panel’s decision to

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<sup>23</sup> F00527, Prosecution response to Defence request for reconsideration of the ‘Decision concerning Prior Statements Given by Pjetër Shala’, 30 May 2023.

<sup>24</sup> F00533, Defence Reply to Prosecution Response to Defence Request for Reconsideration of the “Decision Concerning Prior Statements Given by Pjetër Shala”, 5 June 2023 (confidential).

<sup>25</sup> T. 6 June 2023 pp. 1938, 1939.

consider the statements given during the 2016 Belgian Interview as “not inadmissible”; (ii) the Accused is a direct victim of the violation of his right to a fair trial and right to an effective remedy under Articles 31, 32, and 54 of the Kosovo Constitution and Articles 6 and 13 of the ECHR; and (iii) the Referral is filed before the SCCC within two months from the date of the notification of the final ruling concerning the violation of the Accused’s rights, which was issued on 5 May 2023 by the Appeals Panel and on 6 June 2023 when the Trial Panel rejected the Defence Request for Reconsideration on the basis of the Appeals Panel’s finding of a violation of the Accused’s rights.

#### A. The Accused Has Exhausted All Legal Remedies

20. At the present stage of the proceedings, the KSC Law does not allow any further appeals nor other ordinary remedies for the afore-mentioned violation of the Accused. The Accused has exhausted all available legal remedies following the Appeals Panel’s decision upholding the Trial Panel’s finding that the statements given during the 2016 Belgian Interview are “not inadmissible”. Furthermore, the Trial Panel has denied the Accused’s Request for Reconsideration despite the Appeals Panel’s finding of a violation of the Accused’s right to access a lawyer for the purposes of the 2016 Belgian Interview. In rendering its ruling, the Trial Panel relied, *inter alia*, on the importance “to uphold the principle of finality”.<sup>26</sup>

#### B. The Victim Status of the Accused

21. The Kosovo Constitutional Court has interpreted constitutional provisions on fundamental rights and freedoms in a manner consistent with the case-law of the European Court of Human Rights (“ECtHR”) pursuant to Article 53 of the

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<sup>26</sup> T. 6 June 2023 p. 1939, l. 21, 22.



Kosovo Constitution.<sup>27</sup> Established case-law of the ECtHR requires, with regard to an applicant's victim status, that "[t]he individual concerned must be able to show that he or she was 'directly affected' by the measure complained of"<sup>28</sup> and that "there must be a sufficiently direct link between the applicants and the harm which they consider they have sustained on account of the alleged violation".<sup>29</sup>

22. The Accused is directly affected by the Impugned Decision. The Accused became a victim of the violation of his fair trial rights, resulting from the Trial Panel's finding that the statements given during the 2016 Belgian Interview are "not inadmissible" and can be used as evidence against him as well as for the purposes of detention review. The subsequent dismissal by the Trial Panel of his request for reconsideration of the impugned findings despite the Appeals Panel's finding of a violation aggravated the violation of his right to a fair trial as well as his right to an effective remedy.
23. In light of the continuous impact of the violation of the rights of the Accused and in line with the relevant jurisprudence of the ECtHR,<sup>30</sup> the violations

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<sup>27</sup> KSC-CC-2022-14, F00009, Decision on the Referral of Jakup Krasniqi Concerning the Legality of Charging Joint Criminal Enterprise and the Referral of Kadri Veseli Concerning Decision of the Appeals Panel on Challenges to the Jurisdiction of the Specialist Chambers, 13 June 2022, para. 45, referring to Constitutional Court, KI 207/19, Judgment, 10 December 2020 (5 January 2021), para. 109; KI 195/19, 5 May 2021, para. 94; KI 12/19, Resolution on inadmissibility, 10 April 2019, para. 38; *Gëzim and Makfire Kastrati against Municipal Court in Prishtina and Kosovo Judicial Council*, KI 41/12, Judgment, 25 January 2013, para. 58.

<sup>28</sup> ECtHR, *Kalfagiannis and Pospert v. Greece*, no. 74435/14, 9 June 2020, para. 40, referring to *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, 15 September 2016, para. 50; *Association des amis de Saint Raphaël et de Fréjus et autres v. France* (dec.), no. 45053/98, 29 February 2000; *Dayras and Others and the association "SOS Sexisme" v. France* (dec.), no. 65390/01, 6 January 2005; and *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy (no.2)*, no. 26740/02, 31 May 2007, para. 20.

<sup>29</sup> ECtHR, *Kalfagiannis and Pospert v. Greece*, para. 44, referring to *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, ECHR 2004-III, para. 35.

<sup>30</sup> See, *inter alia*, KSC-CC-2022-18, F00004, Decision on the Referral of Pjetër Shala to the Constitutional Court Panel Concerning Fundamental Rights Guaranteed by Articles 30 and 31 of the Kosovo Constitution and Article 5 of the European Convention on Human Rights, 22 August 2022 (confidential), para. 18, referring to ECtHR, *Osmanov and Husseinov v. Bulgaria* (dec.), nos. 54178/00 and 59901/00, 4 September 2003.

described must be remedied in the course of the present proceedings and before the Trial Panel issues its judgment on the guilt and innocence of the Accused. Hence, the examination of the Referral at present is warranted. Direct and timely redress are crucial aspects of the effectiveness of the Accused's right to a remedy.<sup>31</sup>

24. The Referral falls within the SCCC's jurisdiction as it concerns complaints by the Accused of serious violations of his fundamental rights under Articles 31, 32, and 54 of the Kosovo Constitution and Articles 6 and 13 of the ECHR arising out of acts of the Specialist Chambers.

#### IV. MERITS

25. The Accused complains of a violation of his right to a fair trial and right to an effective remedy as guaranteed by Articles 31, 32, and 54 of the Kosovo Constitution and Articles 6 and 13 of the ECHR as a result of the Impugned Decision and the Trial Panel's decision on the Request for Reconsideration both of which: (i) violated his right to a fair trial; and (ii) deprived his right to an effective remedy.

##### A. Violation of the Accused's Right to a Fair Trial

26. In the Appeal Decision, the Appeals Panel held that the Trial Panel erred in the Impugned Decision by finding that the Accused, at his 2016 Belgian Interview, was sufficiently informed of his right to legal assistance and that the exercise of this right was available to him.<sup>32</sup> The Appeals Panel found that a lawyer was not provided for during the interview and that the Trial Panel erred in

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<sup>31</sup> ECtHR, *Bezmyannaya v. Russia*, no. 21851/03, 22 December 2009, para. 21 (with respect to the rights guaranteed under Article 6 of the ECHR). See also *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2010, para. 107; *Melnik v. Ukraine*, no. 72286/01, 28 March 2006, para. 68 (with respect to the rights secured under Article 3 of the ECHR).

<sup>32</sup> Appeal Decision, paras. 75, 76, 78; Impugned Decision, paras. 73, 77.

concluding that “overall the Accused was not barred from access to a lawyer”.<sup>33</sup>

The Appeals Panel concluded that the Accused’s rights under the standards of international human rights law were violated by the manner in which the 2016 Belgian Interview was conducted as per Rule 138(2) of the Rules.<sup>34</sup>

27. In *Çimen v. Turkey*, the ECtHR found that “even though the applicant had the opportunity to challenge the evidence against him at the trial and subsequently on appeal, the absence of a lawyer while he was in police custody irretrievably affected his defence rights”.<sup>35</sup> In *Panovits v. Cyprus*, the ECtHR emphasised the doctrine of the fruit of the poisonous tree: the use in trial of the applicant’s confession, which was held to be voluntary and admissible as evidence, violated his right to a fair trial under Article 6 of the ECHR, because it was obtained in breach of the applicant’s right to legal assistance and “irreparably undermined his rights of defence”.<sup>36</sup>
28. Similarly, in *Delalić*, a Trial Chamber at the ICTY found that the violation of a suspect’s right to legal assistance is inconsistent with the fundamental principles of fairness and damages the integrity of the proceedings; such violation in itself would suffice to render the police statements “null and inadmissible in the proceedings”.<sup>37</sup> The Trial Chamber held that evidence *must* be excluded if it was obtained by means contrary to internationally protected human rights.<sup>38</sup> Yet, both the Trial Panel and Appeals Panel failed to take into account these binding and/or persuasive authorities and acknowledge that any statements obtained from the Accused in breach of his right to legal assistance

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<sup>33</sup> Appeal Decision, paras. 73, 75; Impugned Decision, para. 77.

<sup>34</sup> Appeal Decision, paras. 78, 79, 103.

<sup>35</sup> ECtHR, *Çimen v. Turkey*, no. 19582/02, 3 February 2009, para. 27.

<sup>36</sup> ECtHR, *Panovits v. Cyprus*, no. 4268/04, 11 December 2008, paras. 75, 84-86.

<sup>37</sup> ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Decision on Zdravko Mucić’s Motion for the Exclusion of Evidence, 2 September 1997, para. 55.

<sup>38</sup> ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Decision on Zdravko Mucić’s Motion for the Exclusion of Evidence, 2 September 1997, para. 35.

cannot be used as evidence against him as required by his right not to incriminate himself and his right to effective and adequate legal representation.

29. As confirmed by the Appeals Panel, the statements given during the 2016 Belgian Interview were obtained in flagrant breach of the Accused's right to legal assistance, which is an internationally protected human right under Article 6(3) of the ECHR.<sup>39</sup> Their exclusion is necessary to stop and prevent further injustice.
30. The Trial Panel's finding that such statements are "not inadmissible" as evidence and can be used for the purposes of its judgment as well as of detention review has resulted in and continues to cause serious and irreparable injustice and prejudice.
31. As the Defence has previously submitted, given the Appeals Panel's unequivocal finding that the rights of the Accused have been violated in the context of the 2016 Belgian Interview, reconsideration of the Impugned Decision was warranted to limit further injustice and prejudice and to protect the fundamental right of the Accused to a fair trial as guaranteed by Article 31 of the Kosovo Constitution and Article 6 of the ECHR.<sup>40</sup> Nonetheless, this violation of the Accused's right to a fair trial has been further compounded by the fact that the Trial Panel has rejected the Request for Reconsideration,<sup>41</sup> following its rejection to issue an expedited ruling on the Request for Reconsideration before the start of the evidentiary block scheduled to start on 30 May 2023,<sup>42</sup> and that the statements have continued to be used for every

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<sup>39</sup> Appeal Decision, para. 75.

<sup>40</sup> Request for Reconsideration, para. 10; F00533, Defence Reply to Prosecution Response to Defence Request for Reconsideration of the "Decision Concerning Prior Statements Given by Pjetër Shala", 5 June 2023 (confidential), para. 7.

<sup>41</sup> T. 6 June 2023 pp. 1938, 1939.

<sup>42</sup> Request for Reconsideration, para. 11.

single decision on detention review since the Impugned Decision.<sup>43</sup> Any further use of the statements in the proceedings renders the trial unfair and violates the Accused's rights under Article 31 of the Kosovo Constitution and Article 6 of the ECHR.

## B. Violation of the Accused's Right to an Effective Remedy

32. The Appeals Panel's decision as well as the Trial Panel's decision on the Request for Reconsideration, deprived the Accused of an effective remedy for the unfairness tainting the proceedings. Articles 32 and 54 of the Kosovo Constitution and Article 13 of the ECHR guarantee that every person whose rights or interests are violated by judicial and administrative decisions shall have an effective remedy.
33. The Defence had requested an expedited ruling because the use of the impugned statements obtained in breach of the Accused's rights inevitably influence the conduct of the proceedings and the presentation of the Defence case and, in particular, the manner in which the Defence would confront Witness TW4-01, a central Prosecution witness who testified in the evidentiary block that begun on 30 May 2023.<sup>44</sup> The Trial Panel found that that an expedited ruling was unnecessary, that the statements were available to the Trial Panel for the purposes of its judgment, and that an expedited ruling would not help to limit further prejudice to the Accused.<sup>45</sup> The right to an effective remedy requires a remedy that can be effective. The only effective remedy for the

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<sup>43</sup> F00365, Decision on the Eighth Review of Detention of Pjetër Shala, 6 December 2022 (confidential), paras. 23, 24; F00418, Decision on the Ninth Review of Detention of Pjetër Shala, 6 February 2023 (confidential), para. 27; F00480, Decision on the Tenth Review of Detention of Pjetër Shala, 6 April 2023 (confidential), paras. 25, 29; F00534, Decision on the Eleventh Review of Detention of Pjetër Shala, 6 June 2023 (confidential), para. 21.

<sup>44</sup> Request for Reconsideration, para. 11; F00533, Defence Reply to Prosecution Response to Defence Request for Reconsideration of the "Decision Concerning Prior Statements Given by Pjetër Shala", 5 June 2023 (confidential), para. 2.

<sup>45</sup> F00520, Decision on the Defence request for an expedited ruling on its request for reconsideration of the "Decision concerning prior statements given by Pjetër Shala", 23 May 2023, paras. 7, 8.

violation of the Accused's rights as a result of the lack of legal representation for the purposes of his interview is that any incriminatory statements obtained in this manner are excluded from further use in these proceedings with immediate effect. This is to ensure that the trial can proceed in a fair manner, that the Defence has sufficient knowledge of the evidence against the Accused in advance of presenting its case and can prepare its case accordingly.

34. The Trial Panel's rejection of the Request for Reconsideration deprived the Accused of an effective remedy with regard to the violation of his right to a fair trial on a matter fundamental to his defence.
35. As demonstrated by the jurisprudence of the ECtHR in *Çimen v. Turkey* and *Panovits v. Cyprus*, the admission into evidence and use in trial of statements obtained in breach of a person's right to legal assistance causes irretrievable damage to one's defence rights.<sup>46</sup> Such prejudice cannot be remedied by the adversarial nature of the subsequent proceedings nor the opportunity to challenge the evidence at trial.<sup>47</sup> In this regard, it is particularly unfair that the Trial Panel has denied an expedited ruling and allowed the statements given during the 2016 Belgian Interview to continue to be relied on for all purposes in the proceedings.
36. The Trial Panel's decision on the Request for Reconsideration has the effect of denying the Accused of the only and most effective remaining remedy to end the continued interference of his right to a fair trial as a result of the findings in the Impugned Decision, which was to reconsider the Impugned Decision and declare that the statements given during the 2016 Belgian Interview are inadmissible and cannot be used for the purposes of its judgment. The decision

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<sup>46</sup> ECtHR, *Çimen v. Turkey*, para. 27; *Panovits v. Cyprus*, paras. 84-86.

<sup>47</sup> ECtHR, *Çimen v. Turkey*, para. 27; *Panovits v. Cyprus*, paras. 75, 84.

on the Request for Reconsideration violates the Accused's right under Articles 32 and 54 of the Kosovo Constitution and Article 13 of the ECHR.

37. The Trial Panel's failure to acknowledge the violation of the Accused's right to legal assistance with respect to the manner the 2016 Belgian Interview was conducted, and to reconsider the Impugned Decision following the finding of the Appeals Panel, left the prejudice caused to the Accused by the use of the statements without a remedy. Specifically, the licence given to the SPO to rely on statements obtained in breach of the Accused's right not to incriminate himself and right to benefit from legal assistance as he was entitled to in the context of an interview with law enforcement officials has affected the manner in which the Defence conducts its case, particularly when dealing with some of the most central matters of the Prosecution's case against the Accused, including confronting TW4-01, a core Prosecution witness. The Trial Panel's decisions leave a finding of a violation of constitutional rights and international human rights to continue to taint these proceedings. For as long as no remedy is provided, the continuing use of statements obtained in breach of the rights of the Accused renders these proceedings unfair. This matter merits the SCCC's immediate intervention to prevent a miscarriage of justice.

#### V. REQUEST FOR AN ORAL HEARING

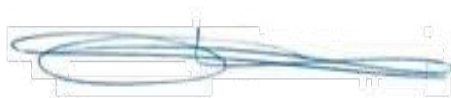
38. The Defence requests the SCCC to afford it the opportunity to develop its submissions in support of this Referral in an oral hearing. In light of the importance of the matters at stake, an oral hearing is warranted, and it is in the interests of the proper administration of justice as required by Rule 15(4) of the SCCC Rules.

#### VI. RELIEF REQUESTED

39. The Defence respectfully requests the SCCC for a declaration that the Trial Panel's Impugned Decision and its decision on the Request for Reconsideration violated the Accused's rights under Articles 31, 32, and 54 of the Kosovo Constitution and Articles 6 and 13 of the ECHR.
40. The Defence further requests the SCCC to order that the statements of the Accused given to the Belgian Federal Judicial Police in 2016 that were found to be obtained in breach of international human rights law be found inadmissible and be excluded from the case file for the purposes of this case.
41. Pursuant to Article 116(2) of the Kosovo Constitution and in view of the irretrievable prejudice caused to the Accused by the Trial Panel's impugned findings that cannot be remedied by any subsequent monetary award, the Defence respectfully requests the SCCC to order the suspension of the proceedings in case KSC-BC-2020-04 before the commencement of the presentation of the case of the Defence until the SCCC has had the opportunity to examine the matters raised by the Defence and render its definitive decision as to the lawfulness of the further use of statements of the Accused obtained in breach of his right against self-incrimination and effective legal assistance.

**Word count: 4,754**

Respectfully submitted,



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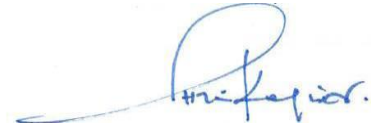
**Jean-Louis Gilissen**  
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**Hédi Aouini**  
**Defence Co-Counsel**



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**Leto Cariolou**  
**Defence Co-Counsel**

Monday, 10 July 2023

The Hague, the Netherlands