



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** **KSC-BC-2020-04**

**The Specialist Prosecutor v. Pjetër 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:** 7 May 2024

**Language:** English

**Classification:** **Public**

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**Public redacted version of**

**Decision on the Defence Request for Judicial Review of Registrar's Decision on  
Family Visits and Video Communications**

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**To be notified to:**

**Registry**

Fidelma Donlon, Registrar

Chief Detention Officer

**Counsel for the Accused**

Jean-Louis Gilissen

**TRIAL PANEL I** (Panel) hereby renders this decision on the Defence Request for Judicial Review of Registrar's Decision on Family Visits and Video Communications.

## I. PROCEDURAL BACKGROUND

1. On 26 January 2024, the Chief Detention Officer (CDO) issued the "Notification Regarding Scheduling of Visits Within an Allocated 10-day Period" (Notification), thereby informing, [REDACTED], Pjetër Shala (Accused or Mr Shala) and the Defence for Mr Shala (Defence), that he had taken a decision according to which, as of February 2024, the Accused will be allocated a fixed ten-day period each month for the scheduling of all his in-person and video visits (New Visitation Regime).<sup>1</sup> According to the Notification, the New Visitation Regime was adopted to ensure the good order and security in the Detention Facilities of the Kosovo Specialist Chambers (Detention Facilities and SC, respectively), the management of resources and the proper conduct of visits.<sup>2</sup> Accordingly, the following ten-day periods were allocated to Mr Shala for the scheduling of his in-person and video visits for the months of February and March 2024: [REDACTED] February and [REDACTED] March, respectively.<sup>3</sup>

2. On the same day, Mr Shala, [REDACTED], submitted a complaint challenging the New Visitation Regime (Complaint).<sup>4</sup>

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<sup>1</sup> KSC-D-2024-01/F00001/A02, Registrar, ANNEX 2 to Transmission of Pjetër Shala's Request for Judicial Review of Registrar's Decision on Request for Administrative Review, 26 March 2024 (original date of issuance, 26 January 2024), confidential & *ex parte*, p. 2.

<sup>2</sup> Notification, p. 2.

<sup>3</sup> Notification, p. 2.

<sup>4</sup> KSC-D-2024-01/F00001/A03, Registrar, ANNEX 3 to Transmission of Pjetër Shala's Request for Judicial Review of Registrar's Decision on Request for Administrative Review, 26 March 2024 (original date of filing, 26 January 2024), confidential & *ex parte*.

3. On 2 February 2024, the CDO issued the “Decision on Complaint”, where he found that the Complaint had no merit (CDO Decision).<sup>5</sup>
4. On 8 February 2024, the Defence submitted to the Registrar a request for administrative review of the CDO Decision (Request for Administrative Review).<sup>6</sup>
5. On 22 February 2024, the Registrar rejected the Request for Administrative Review (Impugned Decision).<sup>7</sup>
6. On 21 March 2024, the Defence filed the “Defence Request for Judicial Review of Registrar’s Decision on Family Visits and Video Communications” (Request for Judicial Review), requesting the Panel to: (i) find the Impugned Decision unlawful; (ii) instruct the Registry to revise the New Visitation Regime; and (iii) allow Mr Shala to conduct a video visit with his family [REDACTED].<sup>8</sup>
7. On 26 March 2024, the Registrar transmitted to the Panel the Defence’s Request for Judicial Review, together with other relevant information.<sup>9</sup>

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<sup>5</sup> KSC-D-2024-01/F00001/A04, ANNEX 4 to Transmission of Pjetër Shala’s Request for Judicial Review of Registrar’s Decision on Request for Administrative Review, 26 March 2024 (original date of issuance, 2 February 2024), confidential & *ex parte*, p. 4.

<sup>6</sup> KSC-D-2024-01/F00001/A05, Registrar, ANNEX 5 to Transmission of Pjetër Shala’s Request for Judicial Review of Registrar’s Decision on Request for Administrative Review, 26 March 2024 (original date of filing, 8 February 2024), confidential & *ex parte*, paras 37-38.

<sup>7</sup> KSC-D-2024-01/F00001/A06, Registrar, ANNEX 6 to Transmission of Pjetër Shala’s Request for Judicial Review of Registrar’s Decision on Request for Administrative Review, 26 March 2024 (original date of issuance, 22 February 2024), confidential & *ex parte*, para. 30

<sup>8</sup> KSC-D-2024-01/F00001/A01, Registrar, ANNEX 1 to Transmission of Pjetër Shala’s Request for Judicial Review of Registrar’s Decision on Request for Administrative Review, 26 March 2024 (original date of filing, 21 March 2024), confidential & *ex parte*, para. 54.

<sup>9</sup> KSC-D-2024-01/F00001, Registrar, Transmission of Pjetër Shala’s Request for Judicial Review of Registrar’s Decision on Request for Administrative Review, 26 March 2024, confidential & *ex parte*, with Annexes 1-8, confidential & *ex parte*.

## II. APPLICABLE LAW

8. The Panel notes Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR or Convention), Articles 36(1) and 55 of the Constitution of the Republic of Kosovo (Constitution), Articles 3(2) and (5), 34(12), 41(7-9) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), Rule 23(7) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules), Rules 1, 4, and 63 of the Registry Practice Direction: Rules of Detention (Detention Rules),<sup>10</sup> Articles 4, 6, 9, 12 of the Registry Practice Direction on Detainees: Visits and Communications (Practice Direction on Visits and Communications),<sup>11</sup> Sections 2, 4, 6, 8 and 10-11 of the Detention Management Unit Instruction: Visiting Procedures for Family Members and Other Personal Visitors (DMU and Instruction on Family and Personal Visits, respectively),<sup>12</sup> Sections 1, 3-4 and 6 of the Registry Instruction: Video Visits (Instruction on Video Visits),<sup>13</sup> Rules 19 and 20 of the Detention Management Unit Instruction House Rules of the Detention Facilities: House Rules of the Detention Facilities (House Rules)<sup>14</sup> and Article 9 of the Registry Practice Direction on Detention: Complaints (Practice Direction on Complaints).<sup>15</sup>

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<sup>10</sup> KSC-BD-08-Rev1, Registrar, [Registry Practice Direction: Rules of Detention](#), 23 September 2020, public.

<sup>11</sup> KSC-BD-09-Rev1, Registrar, [Registry Practice Direction on Detainees: Visits and Communications](#), 23 September 2020, public.

<sup>12</sup> KSC-BD-33, Registrar, [Detention Management Unit Instruction: Visiting Procedures for Family Members and Other Personal Visitors](#), 23 September 2020, public.

<sup>13</sup> KSC-BD-34-Rev1, Registrar, [Registry Instruction: Video Visits](#), 6 September 2021, public.

<sup>14</sup> KSC-BD-29, Registrar, [Detention Management Unit Instruction: House Rules of the Detention Facilities](#), 23 September 2020, public.

<sup>15</sup> KSC-BD-11-Rev1, Registrar, [Registry Practice Direction on Detainees: Complaints](#), 23 September 2020, public.

### III. ANALYSIS

#### A. RELEVANT FINDINGS OF THE IMPUGNED DECISION

9. In the Impugned Decision, the Registrar found that the CDO has the discretion, under Section 11 of the Instruction on Family and Personal Visits, to allocate to each detainee a ten-day period for the scheduling of visits, where necessary, for example, to ensure safety, security, and good order in the Detention Facilities or to protect the rights of others.<sup>16</sup> In particular, she found that the New Visitation Regime, which was adopted under Section 11(2) of the Instruction on Family and Personal Visits, constitutes a restriction of general applicability, within the meaning of Article 4 of the Practice Direction on Visits and Communications.<sup>17</sup>

10. As regards the necessity of the imposed restriction, the Registrar found that the New Visitation Regime is necessary to guarantee: (i) the good order and security of the Detention Facilities; (ii) the proper management of the finite resources available so as to ensure the proper and safe conduct of visits; and (iii) reasonable means of maintaining personal relationships for all detainees at the Detention Facilities.<sup>18</sup> In her assessment, the Registrar noted that the adoption of the New Visitation Regime takes into account “among other things, court schedules, the daily activities of the DMU, and the availability of visitation rooms and other resources required to facilitate visits safely and securely”.<sup>19</sup> Thus, the Registrar concluded that the New Visitation Regime takes into account the individual circumstances of a detainee, such as the detainee’s individual court schedule.<sup>20</sup> Moreover, the Registrar found that the implementation of the New Visitation Regime is a proportionate measure, considering that Mr Shala

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<sup>16</sup> Impugned Decision, paras 15-17.

<sup>17</sup> Impugned Decision, para. 23.

<sup>18</sup> Impugned Decision, paras 19-20, 24.

<sup>19</sup> Impugned Decision, para. 21.

<sup>20</sup> Impugned Decision, para. 21.

remains entitled to the same number of visitation days and, at the same time, he can make use of the telephone facilities every day.<sup>21</sup>

11. In this light, the Registrar found that Mr Shala's right to family and private life is fully protected and declined to annul the CDO Decision.<sup>22</sup>

#### B. STANDARD OF REVIEW

12. The Panel notes that the SC's Trial Panel II, relying on jurisprudence from the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court, recently outlined the standard of review that is to be employed when engaging in judicial review of a decision taken by the Registrar.<sup>23</sup> In particular, Trial Panel II identified the following four factors as relevant to assessing the validity of a decision made by the Registrar:

- 1) whether the Registrar acted within the scope of her legal authority;
- 2) whether the Registrar took into account all relevant facts, gave relevant facts their due weight and/or took into account irrelevant facts and circumstances;
- 3) whether the Registrar's actions violate fundamental principles of procedural fairness, natural justice, including the rights of other accused; and

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<sup>21</sup> Impugned Decision, para. 26.

<sup>22</sup> Impugned Decision, paras 26, 30.

<sup>23</sup> KSC-BC-2020-06, F02155, Trial Panel II, [Public Redacted Version of Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision of 29 January 2024](#) (Trial Panel II Decision), 27 February 2024, public, paras 25-28.

- 4) in the absence of an error under the first three factors above, whether the Registrar's conclusion is nonetheless unreasonable.<sup>24</sup>

13. Trial Panel II found that this standard of review effectively protects and guarantees the fundamental rights and freedoms of the accused while ensuring that the proceedings remain fair.<sup>25</sup>

14. In its evaluation of the Request for Judicial Review, the Panel will apply the standard of review set forth by Trial Panel II.

### C. DETERMINATION

15. At the outset, the Panel recalls that, in accordance with Article 4(1) of the Practice Direction on Visits and Communications, every detainee shall be afforded with reasonable means of maintaining personal relationships with family members and other persons through visits, telephone calls, and correspondence. The importance of the right to family visits in particular is emphasised in Article 12(6) of the same practice direction. The latter stipulates that particular consideration shall be given to family visits and provides for the establishment of simplified visiting procedures for the purpose of facilitating the conduct of family visits.<sup>26</sup>

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<sup>24</sup> [Trial Panel II Decision](#), para. 28.

<sup>25</sup> [Trial Panel II Decision](#), para. 28.

<sup>26</sup> The Panel notes that, according to Sections 1(2) and 3(2) of the Instruction on Family and Personal Visits, a "family visit" is a visit between a detainee and his/her close relative(s). Close relatives are a spouse or partner, parent, child, grandchild, brother, sister (including half- or step-brothers and sisters), grandparent, and sons- and daughters-in-law. According to Section 1(2) of the same instruction, visits with other family members and persons with whom a detainee has a pre-existing personal relationship constitute "other personal visits". Furthermore, the Panel recalls that Section 4 of the Instruction on Family and Personal Visits provides that a close relative may apply for an annual visiting permit ("annual permit") to visit a detainee, which, if granted, allows the close relative to visit the detainee without having to reapply, until the expiration of the permit.

16. The Panel further takes note of the well-established case-law of the European Court of Human Rights (ECtHR) under Article 8 of the Convention, according to which, despite the inherent limitations on an individual's private and family life emanating from detention, "it is an essential part of a prisoner's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family".<sup>27</sup>

### **1. Whether the Registrar acted within the scope of her legal authority**

17. The Defence submits that the Registrar failed to take into account that the SC's legal framework does not provide the CDO or the Administrative Office of the Registry with the power to allocate to the Accused a fixed ten-day period every month for the scheduling of his in-person and video visits.<sup>28</sup> It argues that, according to the relevant legal provisions, it is up to each detainee or his/her visitor(s) to propose suitable dates for the conduct of a visit.<sup>29</sup> Accordingly, the Defence maintains that the adoption of the New Visitation Regime constitutes a departure from the standard practice laid out in the relevant provisions and, as such, is an arbitrary exercise of the CDO's discretion.<sup>30</sup>

18. The Panel clarifies that, although the Defence presents this line of argumentation under the second criterion of the legal test discussed in paragraph 12, the Panel will address it in the present section, considering that it pertains to the question whether it is within the power of the CDO to adopt the New Visitation Regime, and, by extension, whether it is within the Registrar's authority under the SC's legal framework to confirm its implementation.

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<sup>27</sup> ECtHR, *Khoroshenko v. Russia* [GC], no. 41418/04, [Judgment](#), 30 June 2015, para. 106 (with further references therein).

<sup>28</sup> Request for Judicial Review, paras 30-34.

<sup>29</sup> Request for Judicial Review, paras 30-34.

<sup>30</sup> Request for Judicial Review, paras 30-34.



19. The Panel will examine, in turn, whether the Registrar, or the CDO, acting on her behalf, has the authority to: (i) place limitations to the timing of in-person and video visits; and (ii) allocate to the Accused a specific period of ten consecutive days each month for the scheduling of his in-person and video visits.

- a. Whether the Registrar has the authority to place limitations to the timing of in-person and video visits

20. At the outset, the Panel recalls that, according to Article 34(12) of the Law, Rule 23(7) of the Rules and Detention Rule 4(1), the Registrar is responsible for managing and administering the SC's detention function and facilities in line with international standards and the Law. Moreover, according to Detention Rule 4(3), the CDO, acting under the authority of the Registrar, shall take all decisions concerning the daily management of the Detention Facilities, including the maintenance of safety, security, and good order, unless otherwise provided in the Law, the Rules or the Detention Rules.

21. The Panel further notes that Article 6 of the Practice Direction on Visits and Communications set out the criteria under which restrictions of general applicability can be placed to the detainees' visits and communications. In particular, paragraph 1 stipulates that the Detention Rules, the Practice Direction on Visits and Communications and any practice direction or instruction adopted or issued pursuant to Detention Rule 4<sup>31</sup> prescribe restrictions of general applicability to all detainees that are necessary in the high security environment of the Detention Facilities or that are necessary to achieve another legitimate aim, in accordance with Article 4(2) of the Practice Direction on Visits and Communications,

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<sup>31</sup> The Panel notes that the Instruction on Family and Personal Visits and the Instruction on Video Visits were adopted pursuant to Detention Rule 4(6) and 4(2), respectively, and, thus, prescribe also restrictions of general applicability to all detainees. *See* Section 1(1) of the Instruction on Family and Personal Visits and Section 1(1) of the Instruction on Video Visits.

such as ensuring safety, security or good order in the Detention Facilities. Any such restriction shall further satisfy the remaining conditions set forth in Article 4(2) of the Practice Direction on Visits and Communications, namely it shall be proportionate to the aim pursued and shall never result in the total deprivation of family contact.

22. An instance of such general restriction is the power of the CDO, pursuant to Section 10(2) of the Instruction on Family and Personal Visits, to place reasonable restrictions on a detainee's family and other personal in-person visits, including on their timing, quantity and duration, based on the daily schedule of the Detention Facilities and the availability of staff and facilities or equipment.

23. In the same vein, Section 4(2) of the Instruction on Video Visits vests the CDO with the power to limit the timing, quantity, and duration of video visits, based on the daily schedule of the Detention Facilities and the availability of staff and facilities or equipment.

24. The Panel, thus, finds that, by virtue of the afore-mentioned provisions, the CDO, acting under the authority of the Registrar, has the power to place limitations of general applicability to all detainees, including to the timing of both in-person and video visits.

- b. Whether the Registrar has the authority to allocate to the Accused a specific period of ten consecutive days each month for the scheduling of his in-person and video visits

25. The Panel notes that, according to Section 11(2) of the Instruction on Family and Personal Visits, “[u]p to 10 of a Detainee's visiting days may be consecutive, subject to the daily schedule of the [Detention Facilities] and the availability of staff and facilities or equipment in accordance the [*sic*] Article 6.2 of the Practice Direction on Visits and Communications”. The Panel is of the view that, as

advanced by the Registrar,<sup>32</sup> Section 11(2) constitutes a restriction of general applicability within the meaning of Article 6 of the Practice Direction on Visits and Communications. More specifically, Section 11(2) of the Instruction on Family and Personal Visits vests the CDO with the power to place limitations to the timing of a detainee's family and other personal (in-person) visits by restricting them within a period of (up to) ten consecutive days, on the basis of the daily schedule of the Detention Facilities and the availability of staff and facilities or equipment.

26. Although the Instruction on Video Visits does not include a similar provision with regard to video visits, the Panel recalls that, according to Section 3(1) of the Instruction on Video Visits, the practice directions and instructions that apply to in-person visits shall also apply to video visits, unless otherwise regulated by the Instruction on Video Visits. What is more, Section 6(2) of the Instruction on Video Visits states that the procedures on how to schedule a video visit are set out in the Instruction on Family and Personal Visits and the House Rules. Against this background, and in the absence of a specific provision in the Instruction on Video Visits regulating the scheduling of video visits, the Panel finds that Section 11 of the Instruction on Family and Personal Visits applies equally to video visits. Therefore, pursuant to paragraph 2 of Section 11 of Instruction on Family and Personal Visits, the CDO has the power to limit a detainee's video visits to a period of (up to) ten consecutive days.

27. The Panel, therefore, finds that, by virtue of Section 11(2) of the Instruction on Family and Personal Visits, the CDO, acting on behalf of the Registrar, may limit the scheduling of both in-person and video visits to a period of (up to) ten consecutive days, taking into account the daily schedule of the Detention Facilities and the

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<sup>32</sup> Registrar Decision, para. 23.

availability of staff and facilities or equipment, in accordance with Article 6(2) of the Practice Direction on Visits and Communications.

28. As regards the Defence's argument that the adoption of the New Visitation Regime constitutes a departure from the standard practice established in the SC's legal framework, as it excludes the Accused and his/her visitor(s) from selecting a suitable and therefore specific date for the conduct of visits, the Panel makes the following findings.

29. First, the Panel notes that the Instruction on Family and Personal Visits provides for specific circumstances under which the Administrative Office of the Registry and the CDO have the authority to either propose or directly choose a date for the conduct of a visit, other than the one originally requested by the detainee and his/her visitor(s). For instance, Sections 4(8) and 6(3) stipulate that, after the issuance of an annual visiting permit to a close relative, the Administrative Office can deny the conduct of an in-person visit on the requested date based on the daily schedule of the Detention Facilities and the availability of staff and visiting facilities. In such cases, the Administrative Office, may either request or propose an alternative date for the visit. Similarly, Section 8(4) of the same instruction, governing the scheduling of other personal in-person visits, stipulates that a visiting permit issued by the CDO for a personal visit shall be limited to a specific date and time, based on the daily schedule of the Detention Facilities and the availability of staff and visiting facilities. It is clear from these provisions that, contrary to the Defence's submissions, the choice of a suitable date for the conduct of visits does not rest exclusively with the detainee or his/her visitor(s), but can also be determined by the Registry under certain circumstances.

30. Second, the Panel finds that Article 6(2) of the Practice Direction on Visits and Communications and Section 11(2) of the Instruction on

Family and Personal Visits vest the CDO with the authority to allocate specific dates to the detainees for the conduct of visits when implementing a restriction of general applicability. The power of the CDO to limit the timing of visits, including by restricting them to a period of (up to) ten consecutive days, as provided for under Section 11(2) of the Instruction on Family and Personal Visits, cannot be properly exercised unless the CDO enjoys certain discretion so as to determine on which dates said visits will take place. If the choice of suitable visitation days would lie exclusively with each detainee and his/her visitor(s), as argued by the Defence, that would render the CDO's power to place limitations on the timing of visits void.

31. Against this background, the Panel also finds that the CDO, acting on behalf of the Registrar, has discretion not only to limit the scheduling of both in-person and video visits to a period of (up to) ten consecutive days, but also to allocate to each detainee *specific* dates for the conduct of his/her visits in accordance with Article 6(2) of the Practice Direction on Visits and Communications.

c. Conclusion

32. In light of the above, the Panel finds that the CDO has the authority to place limitations, of general applicability to all detainees, to the timing of both in-person and video visits and to allocate to the Accused specific days every month for the scheduling thereof. Thus, the adoption of the New Visitation Regime, and by extension, the Impugned Decision, whereby the Registrar confirmed its implementation, is in conformity with the relevant legal provisions, in particular the Practice Direction on Visits and Communications, the Instruction on Family and Personal Visits and the Instruction on Video Visits. Therefore, the Panel concludes that the Registrar acted within the scope of her legal authority.

**2. Whether the Registrar took into account all relevant facts, gave relevant facts their due weight and/or took into account irrelevant facts and circumstances**

33. The Defence maintains that in the Impugned Decision the Registrar erroneously relied on what is the most convenient manner to use the Registry's resources.<sup>33</sup> The Defence further maintains that the Registrar did not give sufficient weight to the individual circumstances of the Accused and his family, and, in particular, the following considerations: (i) Mr Shala's family [REDACTED] within the allocated ten-day period; and (ii) it is difficult for the family of Mr Shala to conduct video visits under the terms set by the New Visitation Regime, for reasons relating to [REDACTED].<sup>34</sup> Finally, the Defence argues that the Registrar did not take into account the fact that, if the Accused chooses to have visits for six consecutive days, as per the New Visitation Regime, he will then be required to comply with the four-day waiting period set out in Section 11(3) of the Instruction on Family and Personal Visits before having any more visits, effectively reducing his visiting days from ten to six.<sup>35</sup>

34. The Panel, first, recalls the Registrar's finding that the New Visitation Regime is necessary to guarantee: (i) the good order and security of the Detention Facilities; (ii) the proper management of the finite resources available so as to ensure the proper and safe conduct of visits; and (iii) that all detainees in the Detention Facilities are provided with reasonable means of maintaining personal relationships.<sup>36</sup> In reaching this conclusion, the Registrar took into account the following factors and circumstances: (i) the increasing demands on the visiting facilities coupled with the increase in the number of detainees in the Detention Facilities; (ii) the court schedules of the Accused and other detainees; (iii) the daily activities of the detainees at the

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<sup>33</sup> Request for Judicial Review, para. 29.

<sup>34</sup> Request for Judicial Review, paras 40-43, 46.

<sup>35</sup> Request for Judicial Review, paras 25-26.

<sup>36</sup> See para. 10 above.

Detention Facilities, including [REDACTED], [REDACTED], medical appointments, and Counsel visits; (iv) the availability of visitation rooms; and (v) the organisation of the schedules of Detention Officers supervising visits, as well as those providing language assistance where needed.<sup>37</sup> The Registrar further relied on the fact that the number of visiting days the Accused is entitled to and his right to communicate with his family and other individuals through telephone calls and correspondence remain unaffected, to conclude that the implementation of the New Visitation Regime constitutes a proportionate measure.<sup>38</sup> In this light, the Registrar considered that the Accused continues to be provided with reasonable means of maintaining personal relationships with family members and other persons through visits, telephone calls, and correspondence.<sup>39</sup>

35. The Panel is satisfied that the Registrar's justifications for the imposed restrictions constitute a legitimate aim within the meaning of Articles 4 and 6 of the Practice Direction on Visits and Communications, considering that they fall within the aims enumerated in Article 4, namely the safety, security and good order in the Detention Facilities and the protection of the freedoms and rights of others. The Panel is equally satisfied that the Registrar clearly and sufficiently articulated the factors and circumstances she took into consideration when assessing the necessity and proportionality of the New Visitation Regime. The Panel finds that these factors, as elaborated above, are relevant to the assessment the Registrar had to undertake. In this regard, the Panel further finds that the Registrar properly balanced the rights of the Accused with the demands of the Detention Facilities and the rights of other detainees. Furthermore, in line with Article 4(1) of the Practice Direction on Visits and Communications, the Registrar affirmed that the Accused is provided with

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<sup>37</sup> Impugned Decision, paras 20-21.

<sup>38</sup> See para. 10 above.

<sup>39</sup> Impugned Decision, para. 29.

reasonable means of maintaining personal relationships with family members and other persons through visits, telephone calls, and correspondence. In compliance with the same provision, the Registrar further took into consideration the need to ensure that all detainees have fair and reasonable access to facilities and equipment for maintaining personal relationships.

36. As regards the Defence's submissions that the Registrar did not take into account the individual circumstances of the Accused, the Panel finds them to be not sufficiently substantiated. The Defence argues in general terms that [REDACTED] make it difficult to communicate with him under the terms of the New Visitation Regime, without providing any further details or reasoning as to why this is the case.

37. Similarly, the Defence maintains that Mr Shala's family [REDACTED], while acknowledging that, [REDACTED].<sup>40</sup> Given this, the Panel fails to see how the New Visitation Regime impacts the [REDACTED]. To the extent that the Defence submits that [REDACTED]. Based on the above, the Panel rejects the Defence's submissions and finds that the Registrar did not fail to take into consideration the individual circumstances of the Accused.

38. As regards the Defence's assertion that the application of Section 11(3) of the Instruction on Family and Personal Visits limits the visitation days of the Accused from ten to six, the Panel finds that this argument lies on an incorrect reading of Sections 11(2) and (3) of the Instruction on Family and Personal Visits. Section 11(2) clearly states that "[u]p to 10 of a Detainee's visiting days may be consecutive", whereas, Section 11(3) stipulates that "[a] Detainee shall have a waiting period of 4 days before the Detainee may have another visiting day after the Detainee has had 4 or more [emphasis added] consecutive visiting days". The Panel observes that

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<sup>40</sup> Request for Judicial Review, para. 42.



Section 11(3) does not preclude the Accused from making use of the ten consecutive visiting days afforded to him explicitly under the terms of the New Visitation Regime. Section 11(3), if applied, would require the Accused to respect a four-day waiting period after ten consecutive visitation days. In the present circumstances, where (approximately) twenty days intervene between the Accused's allocated ten visiting days every month, Section 11(3) does not find application. In this light, the Panel rejects the Defence's submissions and finds that the Registrar did not err in not taking Section 11(3) into account in her decision.

39. *Conclusion.* The Panel finds that Registrar has considered the appropriate factors and given them appropriate weight. The Panel finds no reason to conclude that the Registrar inappropriately weighed relevant facts and circumstances or considered irrelevant matters in the Impugned Decision, or that she erred or abused her discretion when assessing the necessity and proportionality of these measures.

### **3. Whether the Registrar's actions violate fundamental principles of procedural fairness, natural justice, including the rights of other accused**

40. The Defence argues that, in confirming the implementation of the New Visitation Regime, the Registrar took into consideration reasons relating to scheduling and management of resources, which do not constitute a legitimate aim, within the meaning of Article 8 of the ECHR, capable of justifying an interference with the Accused's right to respect for private and family life.<sup>41</sup> Additionally, the Defence maintains that the New Visitation Regime constitutes a blanket measure applicable to all detainees and is neither a strictly necessary nor a proportionate limitation to the Accused's right to respect for family and private life within the meaning of Article 8

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<sup>41</sup> Request for Judicial Review, paras 18-21, 29.

of the ECHR. The Defence also argues that less restrictive measures should have been explored by the Registrar prior to its implementation.<sup>42</sup>

41. In this regard, the Panel takes note of the well-established case-law of the ECtHR, according to which, any interference with the Accused's right to respect for private and family life must fulfil the conditions set out in paragraph 2 of Article 8 of the Convention, namely must be in accordance with the law, in pursuit of a legitimate aim, and necessary in a democratic society.<sup>43</sup> The Panel is mindful of the fact that, to the extent that it places limitations to Mr Shala's visits, including with his family members, the New Visitation Regime constitutes an interference with his right to respect for private and family life.

42. Having established above that the New Visitation Regime was adopted in accordance with the law,<sup>44</sup> the Panel will examine under this section whether the New Visitation Regime pursues a legitimate aim and is necessary in a democratic society within the meaning of Article 8 of the ECHR.

43. *Pursuit of a legitimate aim.* The Panel already established that the Registrar's justifications for the imposed restrictions constitute a legitimate aim for the purposes of Article 4 of the Practice Direction on Visits and Communications, considering that they pertain to the safety, security and good order in the Detention Facilities and the protection of the freedoms and rights of others.<sup>45</sup> As regards the requirements of Article 8 of the ECHR, the Panel takes note of paragraph 2, which enumerates the

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<sup>42</sup> Request for Judicial Review, paras 35-39, 51.

<sup>43</sup> Article 8 of the ECHR reads: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

<sup>44</sup> See paras 20-31 above.

<sup>45</sup> See para. 35 above.

legitimate aims which may justify an interference with the right of the Accused to respect for family and private life. These are: “the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. Moreover, in its case-law developed pursuant to Article 8 of the Convention, the ECtHR has repeatedly recognized that restrictions on prisoner’s rights are often justified by considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment.<sup>46</sup> In light of the above, the Panel is satisfied that the adoption of the New Visitation Regime pursues a legitimate aim within the meaning of Article 8(2) of the ECHR, namely that of preventing disorder and protecting the rights of others.

44. The Defence’s submissions that the Registrar “makes a cursory reference to the need to maintain good order”<sup>47</sup> and that “[n]either scheduling issues nor the management of the Registry’s resources’ constitute a legitimate aim”<sup>48</sup> disregard the totality of justifications provided by the Registrar in the Impugned Decision. Having found that the reasons provided by the Registrar constitute legitimate aims within the meaning of Article 8 of the ECHR, the Panel rejects the Defence’s submissions in this regard.

45. *Necessity of the restriction in a democratic society.* The Panel takes note of the case-law of the ECtHR, according to which, the term “necessary” in the context of Article 8 of the ECHR does not have the flexibility of such expressions as “useful”, “reasonable”, or “desirable”.<sup>49</sup> Rather, the interference with an individual’s right

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<sup>46</sup> ECtHR, *Hirst v. The United Kingdom (No. 2)* [GC], no. 74025/01, [Judgment](#), 6 October 2005, para. 69.

<sup>47</sup> Request for Judicial Review, para. 19.

<sup>48</sup> Request for Judicial Review, para. 20.

<sup>49</sup> ECtHR, *Dudgeon v. The United Kingdom*, no. 7525/76, [Judgment](#), 22 October 1981, para. 51.

under Article 8 of the Convention must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued.<sup>50</sup>

46. As regards specifically the rights of prisoners under Article 8 of the ECHR, the ECtHR has recognized that some measure of control of prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention.<sup>51</sup> In such cases, when assessing whether the interference complies with the requirements of Article 8(2) of the ECHR, regard shall be paid to the ordinary and reasonable requirements of imprisonment.<sup>52</sup> However, the ECtHR has found that such control must not exceed what is required by the legitimate aim pursued.

47. In addition, the ECtHR has established that, where restrictions of general applicability are imposed to a prisoner's rights under Article 8 of the Convention, a degree of flexibility shall be afforded in order to determine whether limitations are appropriate or necessary in each individual case.<sup>53</sup> More specifically, the ECtHR found that a proportionality assessment should be employed enabling the authorities to balance the competing individual and public interests and to take into account peculiarities of each individual case.<sup>54</sup>

48. Noting the principles established by the ECtHR, and bearing in mind that the New Visitation Regime constitutes a measure of general applicability under Article 6 of the Practice Direction on Visits and Communications, the Panel makes the following findings.

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<sup>50</sup> *Dudgeon v. The United Kingdom*, paras 51, 53; *Khoroshenko v. Russia*, para. 118.

<sup>51</sup> ECtHR, *Aliev v. Ukraine*, no. 41220/98, [Judgment](#), 29 July 2003, para. 187; *Kyriacou Tsiakkourmas and Others v. Turkey*, no. 13320/02, [Judgment](#), 2 September 2015, para. 303.

<sup>52</sup> *Khoroshenko v. Russia*, paras 106, 109, 116-149.

<sup>53</sup> ECtHR, *Trosin v. Ukraine*, no. 39758/05, [Judgment](#), 23 May 2012, para. 42; *Khoroshenko v. Russia*, para. 126.

<sup>54</sup> *Trosin v. Ukraine*, para. 42.

49. As regards the necessity of the New Visitation Regime, the Panel takes note of the Registrar's finding that the good order and security of the Detention Facilities cannot be ensured without this measure in place.<sup>55</sup> The Panel pays particular attention to the following finding made by the Registrar: "[a] rolling schedule would not allow for the advance scheduling of resources to manage the visits and daily activities of [REDACTED] different Detainees (including [REDACTED], [REDACTED], medical appointments, and Counsel visits), to guarantee that the necessary visitation rooms are available, or to manage the schedules of Detention Officers supervising visits (within general sight and hearing), as well as those providing language assistance where needed."<sup>56</sup> The Panel is satisfied, in light of the above submissions, that the Registrar has sufficiently established the necessity of the implementation of the New Visitation Regime under the present circumstances. There is no indication that the Registrar is in a position to achieve the pursued aims in a manner that is more "flexible", as requested by the Defence, or that she arbitrarily refrained from adopting such a system.

50. As regards the proportionality of the imposed restriction, the Panel, first, notes that under the New Visitation Regime the Accused remains entitled to the same amount of visiting days as before, that is ten visiting days per month. With the exception of their timing, the modalities of the Accused's in-person and video visits (e.g. their duration, number of visitors permitted) remain unaffected. Moreover, as it was stressed in the Impugned Decision, the implementation of the New Visitation Regime does not affect in any way Mr Shala's right to communicate with his family, as well as other persons, through telephone calls and correspondence. Therefore, during the (approximately) twenty days that Mr Shala does not receive in-person or video visits, he is able to communicate with his family and other

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<sup>55</sup> Impugned Decision, para. 19.

<sup>56</sup> Impugned Decision, para. 21.

individuals through other means, notably *via* telephone calls. Mr Shala is, thus, in a position to have regular contacts, spread throughout the month, with his family members and other individuals.

51. What is more, of particular relevance to the Panel's proportionality assessment is also the existence of adequate safeguards against any arbitrary interference with the Accused's rights. The Panel notes that Articles 6-9 of the Practice Direction on Complaints enable the Accused to challenge the restrictions emanating from the New Visitation Regime and have the latter reviewed. The New Visitation Regime has been subject to administrative review by the Registrar who, as discussed in detail above, prior to confirming its implementation, assessed its necessity and proportionality, taking into consideration the Accused's activities in the Detention Facilities and his court schedule and further detailing the practical circumstances and limitations faced by the DMU. Moreover, the New Visitation Regime is now subject to the Panel's judicial review.

52. In light of the above considerations, the Panel finds that the implementation of the New Visitation Regime does not amount to an inflexible restriction to the Accused's right to respect for private and family life. The Panel further finds that the Registrar conducted a proportionality assessment, as required by Article 8 of the ECHR, and properly balanced the competing interests at stake, namely the rights of the Accused, on the one hand, and the need to maintain good order and security in the Detention Facilities, properly manage the resources available and provide all detainees with reasonable means of maintaining personal relationships, on the other hand. The Panel concludes that the New Visitation Regime is a measure proportionate to the aims pursued.

53. *Conclusion.* The Panel is satisfied that the New Visitation Regime is compliant with the Accused's rights under Article 8 of the ECHR and that it does not violate the

fundamental principles of procedural fairness and natural justice, including the rights of other accused.

**4. Whether, in the absence of an error under the first three factors above, the Registrar's conclusion is nonetheless unreasonable**

54. The Defence maintains that the Registrar's approach in equating video visits to in-person visits and placing the same limitations to both, renders the Impugned Decision unreasonable.<sup>57</sup> The Defence argues in particular that the use of video visits by the Accused should be more frequent and flexible on the basis that these visits resemble more to telephone communications, in view of the resources they require, rather than in-person visits.<sup>58</sup>

55. The Panel observes that a reading of the applicable provisions reveals that the conduct of video visits is in fact more similar, in terms of the resources needed, to the conduct of in-person visits, rather than telephone calls. More specifically, telephone calls between a detainee and family members or other persons do not require advance scheduling and are not supervised by Detention Officers.<sup>59</sup> To the contrary, in order to have a video visit with a detainee, close relatives are required to apply for and obtain a visiting permit.<sup>60</sup> Notably, the submission of applications for such a permit and the subsequent scheduling of video visits are regulated by the same procedures as in-person visits.<sup>61</sup> In addition, similarly to in-person visits, video visits can be conducted with up to four close relatives at the same time and they take place within the sight and hearing of Detention Officers.<sup>62</sup> Furthermore, prior to and during a video

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<sup>57</sup> Request for Judicial Review, para. 24.

<sup>58</sup> Request for Judicial Review, para. 24.

<sup>59</sup> See Articles 16-17 of the Practice Direction on Visits and Communications and House Rule 19.

<sup>60</sup> Section 6(1) of the Instruction on Video Visits.

<sup>61</sup> Section 6(2) of the Instruction on Video Visits.

<sup>62</sup> Section 6(5) of the Instruction on Video Visits.

visit, Detention Officers are tasked with: (i) verifying the identity of visitors; (ii) resolving any connectivity issues or other technical difficulties that may occur; and (iii) ensuring that the detainee and his/her visitor(s) comply with the requirements set out in Section 4(3-4) and (6-7) of the Instruction on Video Visits. It is apparent from the above that, contrary to the Defence's submissions, the conduct of video visits is more resource intensive than that of a telephone call. In this light, the Panel does not find the Registrar's decision to apply the same limitations to in-person and video visits unreasonable. The Defence's submissions in this respect are, thus, rejected.

56. Under the present circumstances, the Panel discerns no unreasonableness in the Registrar's decision to limit the Accused's in-person and video visits as provided by the New Visitation Regime.

#### D. CONCLUSION

57. The Panel finds that, in confirming the implementation of the New Visitation Regime, the Registrar acted within the authority provided to her by the Law and the Rules. The Panel further finds that the Registrar did not abuse her discretion in this matter and that the New Visitation Regime is necessary, proportionate and consistent with the protection of the rights of the Accused. Furthermore, the Impugned Decision does not violate the fundamental principles of natural justice and procedural fairness and is not otherwise unreasonable.

58. In light of the above findings, the Defence's request to re-establish the conduct of Mr Shala's video visits with his family [REDACTED] is rejected.



#### IV. CLASSIFICATION

59. The Panel notes that all filings related to the Request for Judicial Review are currently classified as confidential and *ex parte*. The Panel, thus, orders the Defence and the Registry to submit, by no later than **Wednesday, 15 May 2024**, public redacted versions of their respective filings, request their reclassification as public or, where applicable, provide reasons as to why a filing should retain its present classification.

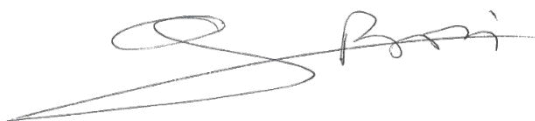
#### V. DISPOSITION

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

- a. **REJECTS** the Request for Judicial Review;
- b. **ORDERS** the Defence and the Registry to submit, by no later than **Wednesday, 15 May 2024**, public redacted versions of their respective filings, request their reclassification as public or, where applicable, provide reasons as to why a filing should retain its present classification.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Tuesday, 7 May 2024

At The Hague, the Netherlands.