

## Dissenting Opinion of Judge Erkki Kourula

1. I agree with the Majority's findings at paragraphs 45-50 and 53-64 of the Judgment that the first ground of the appeal must be dismissed, and that there is no error in the finding of the Pre-Trial Chamber that the conditions of article 58 (1) (a) of the Statute continue to be met, being the existence of "reasonable grounds to believe" that Mr Babala committed the offences for which he has been charged. I also agree with the Majority's conclusion in relation to the third ground of appeal, at paragraphs 110-117.

2. With respect to article 58 (1) (b) of the Statute, I agree with the Majority's observations at paragraph 88 of the Judgment that the Pre-Trial Chamber's description of offences against the administration of justice as those "of the utmost gravity" is highly concerning, and that offences under article 70 of the Statute, while undeniably serious, cannot be considered to be as grave as the core crimes under article 5 of the Statute.

3. However, while the Majority considered the Pre-Trial Chamber's treatment of the gravity of the offences to be a discrete issue, in my view, this critically impacted upon the Pre-Trial Chamber's determination of whether the conditions under article 58 (1) (b) (i), (ii) and (iii) of the Statute continue to be met. In my opinion, the language used by the Pre-Trial Chamber in describing the offences for which Mr Babala was charged to be "of the utmost gravity" is an indication that it gave too much weight to the seriousness of the alleged offending in finding that the conditions under article 58 (1) (b) of the Statute continue to be met. This was compounded by the Pre-Trial Chamber's finding that the personal circumstances of Mr Babala, such as "education, professional or social status", were "*per se* neutral and inconclusive in respect of the need to assess the existence of flight risks", which I consider to mean that it gave little consideration to these factors. In my view, this is a further indication that the entire weighing exercise under article 58 (1) (b) of the Statute, conducted by the Pre-Trial Chamber, was tainted by its findings in relation to the gravity of the offences, and that it gave too much weight to factors favouring detention over those in favour of release. Indeed, I consider that Mr Babala's personal circumstances ought to have been given greater weight, given that the offences for which he has been charged are not at the higher end of the scale of seriousness.



4. Accordingly, I would have reversed the Impugned Decision and remanded the assessment of the grounds for detention under article 58 (1) (b) of the Statute, in their entirety, to the Pre-Trial Chamber.

Done in both English and French, the English version being authoritative.

  

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Judge Erkki Kourula

Dated this 11<sup>th</sup> day of July 2014

At The Hague, The Netherlands