



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:** 16 July 2024

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**Public redacted version of**  
**Trial Judgment and Sentence**  
**with one confidential annex**

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TRIAL PANEL I (Panel) hereby renders this trial judgment and sentence.

## I. PROCEDURAL BACKGROUND

1. On 12 June 2020, the Pre-Trial Judge confirmed the indictment against Pjetër Shala (Mr Shala).<sup>1</sup>

2. On 16 March 2021, Mr Shala was arrested in the Kingdom of Belgium (Belgium)<sup>2</sup> and, on 15 April 2021, he was transferred to the detention facilities of the Specialist Chambers in The Hague, the Netherlands.<sup>3</sup>

3. On 19 April 2021, the initial appearance of Mr Shala took place before the Pre-Trial Judge, during which Mr Shala pleaded not guilty to all crimes charged.<sup>4</sup>

4. On 1 November 2021, the Specialist Prosecutor's Office (SPO) submitted a corrected confirmed indictment (Confirmed Indictment),<sup>5</sup> following challenges to the form of the indictment.<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Pjetër Shala* (Confirmation Decision), 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were filed on 6 May 2021, F00007/CONF/RED and [F00007/RED](#), respectively.

<sup>2</sup> KSC-BC-2020-04, F00013, Registrar, *Notification of Arrest of Pjetër Shala Pursuant to Rule 55(4)* (Notification of Arrest), 16 March 2021, public, paras 1, 5.

<sup>3</sup> KSC-BC-2020-04, F00019, Registrar, *Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel* (Notification of Reception), 15 April 2021, confidential, para. 2, with Annexes 1-2, confidential. A public redacted version of the main filing was submitted on 26 April 2021, F00019/RED.

<sup>4</sup> KSC-BC-2020-04, F00020, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance of Pjetër Shala and Related Matters*, 15 April 2021, public, para. 22(a); T. 19 April 2021, public, p. 11, line 11.

<sup>5</sup> KSC-BC-2020-04, F00098/A01, Specialist Prosecutor, *Annex 1 to Submission of Corrected Indictment*, 1 November 2021, confidential. A public redacted version was filed on 16 November 2021, [F00107/A01](#).

<sup>6</sup> KSC-BC-2020-04, F00089, Pre-Trial Judge, *Decision on Motion Challenging the Form of the Indictment* (Decision on Motion Challenging the Form of the Indictment), 18 October 2021, confidential. A public redacted version was filed on the same day, [F00089/RED](#).

5. On 21 September 2022, the Pre-Trial Judge transmitted the case file to the Panel.<sup>7</sup>
6. The trial commenced on 21 February 2023, with the opening statements of the SPO and Victims' Counsel, and the Defence for Mr Shala (Defence) made its opening statement on 22 February 2023.<sup>8</sup>
7. From 27 March 2023 to 6 July 2023, the SPO presented its case.<sup>9</sup> The SPO brought forward 17 witnesses (10 appeared before the Panel, either at the seat of the Specialist Chambers or *via* video-conference, and a further 7 had their written statements introduced in writing).
8. On 21 August 2023, Victims' Counsel called two expert witnesses, with the leave of the Panel.<sup>10</sup>
9. From 20 September 2023 to 15 January 2024, the Defence presented its case.<sup>11</sup> The Defence brought forward 14 witnesses (10 appeared before the Panel, either at the seat of the Specialist Chambers or *via* video-conference, and a further 4 had their written statements or reports introduced in writing).
10. On 9 February 2024, the Panel closed the evidentiary proceedings.<sup>12</sup>

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<sup>7</sup> KSC-BC-2020-04, F00284, Pre-Trial Judge, [Decision Transmitting the Case File to Trial Panel I](#) (Decision Transmitting the Case File to Trial), 21 September 2022, public, with Annexes 1-4, strictly confidential and *ex parte*.

<sup>8</sup> KSC-BC-2020-04, F00405, Trial Panel I, [Decision on the date for the commencement of the trial, evidence presentation and related matters](#) (Decision on Date for the Commencement of the Trial), 26 January 2023, public, para. 18(a)-(b); T. 21 February 2023, public, p. 497, lines 11-12; p. 502, line 21 to p. 503, line 9; T. 22 February 2023, public, p. 570, lines 17-20.

<sup>9</sup> T. 27 March 2023, public, p. 609, lines 11-13; KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

<sup>10</sup> KSC-BC-2020-04, F00598, Trial Panel I, [Decision on Victims' Counsel's request to call expert witnesses to testify](#), 21 July 2023, public, para. 12(a); T. 21 August 2023, public, p. 2249, lines 13-16.

<sup>11</sup> T. 20 September 2023, public, p. 2450, lines 12-14; KSC-BC-2020-04, F00772, Defence, *Defence Notice of Closing its Case Pursuant to Rule 131 of the Rules*, 15 January 2024, public.

<sup>12</sup> KSC-BC-2020-04, F00795, Trial Panel I, *Decision on the Defence motion for a crime site visit, closing the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements*, 9 February 2024, confidential, paras 23, 52(b). A public redacted version was filed on 20 February 2024, [F00795/RED](#).

11. The Parties and Victims' Counsel filed their final trial briefs and impact statement on 25 and 26 March 2024.<sup>13</sup> They presented their closing statements between 15 and 17 April 2024.<sup>14</sup>
12. On 17 April 2024, the Presiding Judge declared the case closed.<sup>15</sup>
13. Throughout the pre-trial and trial phases of the case, eight victims participated in the proceedings.<sup>16</sup>

## II. APPLICABLE LAW

14. The Panel notes Article 31(5) of the Constitution of the Republic of Kosovo (Constitution and Kosovo, respectively), Articles 3(2), 14(1)(c) and (2), 16(1)(a), 21, 23(1), 34, 40(5), 43, and 44(1), (2) and (5) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), and Rules 23(1), 24(1)-(3), 138, 139, 140, 158, 159(1)-(4) and (6), and 163(1), (3), (4) and (6) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

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<sup>13</sup> KSC-BC-2020-04, F00815, Victims' Counsel, *Victims' Counsel's Statement on the impact of the alleged crimes on victims participating in the proceedings in Case 04* (Victims' Counsel Impact Statement), 25 March 2024, confidential; F00818, Specialist Prosecutor, *Prosecution Final Trial Brief* (SPO Final Trial Brief), 25 March 2024, confidential, with Annexes 1 and 3, confidential, and Annex 2, public; F00821, Defence, *Defence Final Trial Brief* (Defence Final Trial Brief), 26 March 2023, confidential, with Annex 1, confidential.

<sup>14</sup> T. 15 April 2024, confidential, pp. 4080-4168; T. 16 April 2024, confidential, pp. 4172-4280; T. 17 April 2024, confidential, pp. 4283-4374.

<sup>15</sup> T. 17 April 2024, public, p. 4374, lines 9-10.

<sup>16</sup> KSC-BC-2020-04, F00123, Pre-Trial Judge, *First Decision on Victims' Participation*, 15 December 2021, confidential, para. 50(a). A public redacted version was issued on the same day, [F00123/RED](#); F00249, Pre-Trial Judge, *Second Decision on Victims' Participation*, 11 August 2022, confidential, para. 43(b). A public redacted version was issued on the same day, [F00249/RED](#); F00279, Pre-Trial Judge, *Third Decision on Victims' Participation*, 19 September 2022, confidential, para. 43(a). A public redacted version was issued on the same day, [F00279/RED](#).

### III. THE CHARGES AGAINST PJETËR SHALA

15. The SPO alleges that, at all times relevant to the Confirmed Indictment, Mr Shala was a member of the *Ushtria Çlirimtare e Kosovës* (UÇK), known in English as the Kosovo Liberation Army (KLA).<sup>17</sup> The SPO charges Mr Shala with four counts of war crimes under Article 14(1)(c) of the Law: arbitrary detention (Count 1), cruel treatment (Count 2), torture (Count 3), and murder (Count 4).<sup>18</sup>

16. According to the SPO, the crimes charged were committed in the context of and associated with a non-international armed conflict between, on one side, the KLA and, on the other, forces of the Federal Republic of Yugoslavia and the Republic of Serbia (Serbia), including units of the Yugoslav Army, police and other units of the Ministry of Internal Affairs, and other groups fighting on behalf of the Federal Republic of Yugoslavia and Serbia (collectively, Serbian forces).<sup>19</sup> The SPO further alleges that Mr Shala was aware of the factual circumstances establishing the existence of the armed conflict and knew that the victims were persons taking no active part in hostilities.<sup>20</sup>

17. According to the Confirmed Indictment, all crimes charged were committed against persons detained at a former metal works factory in Kukës, Republic of Albania (Kukës Metal Factory or KMF and Albania, respectively), which was used for a variety of military purposes, including: the receipt, storage, and distribution of equipment and supplies; the enlistment of volunteers; and as a preparation and transit point for KLA members moving to and from forward positions.<sup>21</sup> According to the Confirmed Indictment, the KMF was also used as a site for the detention and

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<sup>17</sup> [Confirmed Indictment](#), para. 2.

<sup>18</sup> [Confirmed Indictment](#), para. 31.

<sup>19</sup> [Confirmed Indictment](#), para. 3.

<sup>20</sup> [Confirmed Indictment](#), para. 7.

<sup>21</sup> [Confirmed Indictment](#), para. 6.

interrogation of persons suspected of having collaborated with the Federal Republic of Yugoslavia and Serbia or of failing to support the KLA.<sup>22</sup>

18. The SPO alleges that Mr Shala is individually criminally responsible for the arbitrary detention, cruel treatment and torture of at least nine persons at the KMF, between approximately 17 May 1999 and 5 June 1999, and the murder of one person, [REDACTED] (Murder Victim), on or about 5 June 1999.<sup>23</sup>

19. According to the SPO, Mr Shala is individually criminally responsible under Article 16(1)(a) of the Law for having physically committed the crimes of arbitrary detention, cruel treatment and torture under Counts 1-3.<sup>24</sup> The SPO further alleges that Mr Shala is individually criminally responsible through his participation in a joint criminal enterprise (JCE) and/or for aiding and abetting the commission of the crimes of arbitrary detention, cruel treatment, torture and murder under Counts 1-4.<sup>25</sup>

20. The Defence seeks the acquittal of Mr Shala on all counts in the charges.<sup>26</sup>

#### IV. DEFENCE FAIR TRIAL RIGHTS COMPLAINTS

21. The Defence made certain challenges regarding Mr Shala's fair trial rights,<sup>27</sup> which the Panel will address before its assessment of the evidence. The Panel notes that some of the Defence arguments relate more appropriately to jurisdictional aspects of the crimes and/or modes of liability charged, or to the credibility, reliability and/or probative value to be given to evidence submitted at trial. The Panel has therefore elected to address some of these challenges elsewhere in the Judgment. In the below

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<sup>22</sup> [Confirmed Indictment](#), para. 6.

<sup>23</sup> [Confirmed Indictment](#), paras 14-29, 31.

<sup>24</sup> [Confirmed Indictment](#), paras 30-31.

<sup>25</sup> [Confirmed Indictment](#), paras 30-31.

<sup>26</sup> Defence Final Trial Brief, para. 381; T. 17 April 2024, public, p. 4312, lines 14-17.

<sup>27</sup> Defence Final Trial Brief, paras 266-352.



section, the Panel will address the Defence challenges to the extent that they are related to the fairness of the trial.

A. JURISDICTION OVER JCE

22. The Panel has dealt with the Defence arguments related to JCE in its findings on the individual criminal responsibility of Mr Shala, on the basis that the issues raised concern jurisdictional aspects related to the modes of liability charged.<sup>28</sup>

B. INSUFFICIENT NOTICE AND CHANGES IN THE SPO'S CASE

23. The Defence submits that the SPO impermissibly changed its case during trial, particularly on five key issues: (i) the presence of Mr Shala at the KMF during the time frame of the charges; (ii) the allegation that Mr Shala was a member of Brigade 128 of the KLA; (iii) Mr Shala's presence and participation during one of the incidents described in the Confirmed Indictment; (iv) the number and identity of alleged detainees; and (v) the identity of alleged co-perpetrators Bedri and Van Damme, which remains unknown. According to the Defence, these changes in the SPO case affected the Defence investigations, the preparation of its case, and Mr Shala's overall ability to prepare an effective defence.<sup>29</sup>

24. The Panel notes that, in making its arguments, the Defence appears to raise alleged inconsistencies between, on the one hand, the Confirmed Indictment, and, on the other, the SPO Pre-Trial Brief, the SPO's opening statements at trial, and other submissions and lines of questioning to witnesses during trial.<sup>30</sup>

25. The Panel observes, first, that the Defence's submissions are largely unsubstantiated and inaccurate. For instance, contrary to what the Defence claims, the

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<sup>28</sup> See paras 995-997 below.

<sup>29</sup> Defence Final Trial Brief, para. 275.

<sup>30</sup> Defence Final Trial Brief, para. 275, footnotes 637-640.

SPO's allegations as to Mr Shala's presence at the KMF during the time relevant to the charges have remained unchanged throughout the proceedings, and so have the SPO's allegations regarding Mr Shala's presence and role during specific incidents. These aspects have been the subject of the Pre-Trial Judge's "Decision on Motion Challenging the Form of the Indictment", have been clarified during the pre-trial phase, and have remained unchanged throughout the trial.<sup>31</sup>

26. Second, the Panel recalls that, pursuant to Articles 38(4) and 39(2) of the Law, the charges are laid down in the Confirmed Indictment, as submitted by the SPO and confirmed by the Pre-Trial Judge. To the contrary, the Pre-Trial Brief, as well as the Final Trial Brief for that matter, are documents in which the Parties have the opportunity to elaborate upon their case, for the benefit of each other and to assist the Panel in its determination on the guilt or innocence of the accused person.<sup>32</sup> Similarly, any submissions that the SPO may make during trial, including lines of questioning to witnesses, must be seen under the light of pursuing its case, as pleaded in the charges contained in the Confirmed Indictment, which remains at all times the only authoritative document setting out the scope of the trial. In this Judgment, the Panel has adhered to the charges as set out in the Confirmed Indictment.

27. Lastly, the Defence has failed to show how its investigations and preparations have been impacted. Other than merely claiming that Mr Shala's right to an effective defence has been affected, the Defence has not substantiated further its submissions.

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<sup>31</sup> [Decision on Motion Challenging the Form of the Indictment](#); see also, IA004/F00008, Court of Appeals Panel, *Decision on Pjetër Shala's Appeal against Decision on Motion Challenging the Form of the Indictment* (Decision on Appeal against Decision on Motion Challenging the Form of the Indictment), 22 February 2022, confidential, confirming the Pre-Trial Judge's decision. A public redacted version was issued on the same day, [IA004/F00008/RED](#).

<sup>32</sup> See also, KSC-BC-2020-05, F00494/RED3/COR, Trial Panel I, [Further redacted version of Corrected version of Public redacted version of Trial Judgment](#) (*Mustafa* Trial Judgment), 16 December 2022, public, para. 432.

28. The Panel is therefore unpersuaded by the Defence arguments and dismisses this challenge.

### C. UNFAIR INVESTIGATION

29. The Defence submits that the SPO, by not calling relevant witnesses to testify at trial and by withdrawing other witnesses, did not conduct balanced and focused investigations aiming at the establishment of the truth.<sup>33</sup> The Defence also raises issues of credibility and probative value in relation to certain witnesses and their evidence. Given the evidentiary nature of those issues, they have been dealt with elsewhere in this Judgment.

30. When alleging incomplete investigations by the SPO, including by not pursuing “exonerating circumstances” and “exculpatory lines of inquiry”, the Defence conflates the SPO’s powers and responsibilities under the Specialist Chambers’ legal framework. Pursuant to Article 35(1)-(2) of the Law, the SPO is the independent authority in charge of the investigation and case-building for the purposes of prosecution. Under Article 21(6) of the Law and Rule 103 of the Rules, the SPO shall disclose any exculpatory evidence to the Defence “immediately”, as soon as it is in its “custody, control, or actual knowledge”.<sup>34</sup> In addition, under Rule 102(3) of the Rules, the SPO shall also disclose any material and evidence in its possession that the Defence deems material to its preparation.

31. For its part, the Defence may conduct its own investigations, including based on material and evidence disclosed by the SPO. Pursuant to Articles 21(4)(c) and (f), 39(10), 40(2), (6), and 42 of the Law, and Rules 121(3), 201(2), and 208(2) of the Rules,

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<sup>33</sup> Defence Final Trial Brief, paras 276-289; *see also*, T. 16 April 2024, public, p. 4223, line 17 to p. 4235, line 10.

<sup>34</sup> KSC-BC-2020-04, F00033, Pre-Trial Judge, [Framework Decision on Disclosure of Evidence and Related Matters](#) (Framework Decision on Disclosure), 30 April 2021, public, para. 54.

the Defence may apply to the Pre-Trial Judge or the Panel for any orders as may be necessary to assist it in the preparation of the accused's defence. The Panel has the duty to ensure that both Parties have a reasonable opportunity to present their case and to challenge the opposing Party's witnesses and evidence, and that the general fairness of the proceedings is maintained at all times.<sup>35</sup> The Defence in this case has, in fact on several occasions, requested the Panel's assistance with its investigations, preparation and presentation of its case, and has as a result, most notably, obtained the attendance of witnesses for Mr Shala.<sup>36</sup>

32. In submitting that the SPO has failed to further investigate certain individuals, or to call certain individuals as witnesses – based on vague allegations regarding the potential relevance of their evidence to the case –, the Defence appears to intrude into the SPO's investigation and case management. The Panel recalls that it is the SPO's prerogative – under the control of the Panel – to decide how many witnesses to call, which witnesses, and the modalities of presentation of their evidence.<sup>37</sup>

33. The Defence ignores that such case management decisions, including the withdrawal of witnesses, however potentially relevant their evidence may be, serves the overall efficiency and expeditiousness of the trial, and fosters Mr Shala's right to be tried within a reasonable time pursuant to Article 21(4)(d) of the Law. Had any of these witnesses been critical to the Defence, it could have taken steps to call them, and, if unavailable to appear, it could have called witnesses with equivalent evidence or

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<sup>35</sup> See similarly, Extraordinary Chambers in the Courts of Cambodia (ECCC), 002/19-09-2007/ECCC/TC, E465, Trial Chamber, [Case 002/02 Judgment](#), 16 November 2018, para. 119.

<sup>36</sup> See, for example, KSC-BC-2020-04, F00683, Trial Panel I, *Decision on the Defence request under Rule 121(3) of the Rules to summons witnesses W04405, W04441, W04280 and W04440* (Decision on Defence Request to Summons Witnesses), 5 October 2023, confidential, with Annexes 1-4, strictly confidential and *ex parte*, and Annexes 5-8, confidential. A public redacted version of the decision was issued on 16 November 2023, [F00683/RED](#).

<sup>37</sup> T. 31 May 2023, public, p. 1486, lines 13-18.

submit written material to this effect. The Panel is therefore unpersuaded by the Defence arguments in this respect.

34. With regard to the argument that excessive time has elapsed between the crimes charged and Mr Shala's prosecution, the Panel considers that the central issue is rather whether the evidence submitted in the case is sufficient to establish the individual criminal responsibility of the accused person. More specifically, the Panel considers that, irrespective of the time elapsed between the crimes charged and the prosecution of Mr Shala, the following constitutes a set of solid safeguards against unlawful or unfair prosecutions and convictions: (i) the exercise of testing the evidence in court through questioning of witnesses, under the supervision of professional Judges; (ii) oral and written litigation on the admissibility and probative value of testimonial and documentary evidence; (iii) the role of Judges in weighing the evidence, within a well-defined legal framework, in light of the *beyond reasonable doubt* threshold under Article 21(3) of the Law and Rule 140(1) of the Rules; and (iv) the remedies provided for under the Law and the Rules for appellate and other reviews.

35. For these reasons, the Defence arguments on this issue are untenable and therefore dismissed.

#### D. [REDACTED] IMMUNITY

36. The Defence takes issue with the proceedings in case KSC-BC-2021-08 (Case 08), [REDACTED].<sup>38</sup> Proceedings in Case 08 were originally initiated before [REDACTED], were deferred to the Specialist Chambers upon the SPO's request, and were eventually terminated by the SPO.<sup>39</sup>

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<sup>38</sup> Defence Final Trial Brief, paras 290-293; T. 17 April 2024, confidential, p. 4293, line 23 to p. 4298, line 20.

<sup>39</sup> 104141-104146 RED; 104147-104149; 108602-108608 RED.

37. The Defence submits that the fair trial rights of Mr Shala were violated when: (i) access to exculpatory material originating from Case 08 was denied; (ii) the Defence was prevented from making public references to the fact that [REDACTED]; and (iii) the SPO decided to terminate the proceedings in Case 08, thus depriving the Defence of a crucial finding on the credibility of [REDACTED].<sup>40</sup>

38. Turning to the Defence's argument that it was denied access to exculpatory material, the Panel recalls that this matter has been previously raised and addressed<sup>41</sup> and that the Defence has received access to all information sought that falls within the scope of the SPO's disclosure obligations, subject to restrictions, as foreseen in the Law and the Rules.<sup>42</sup> [REDACTED] was exhaustively examined and cross-examined on the credibility issues at stake on the basis of material and information duly disclosed to the Defence. In particular, the latter was able to question the witness on the topics that form part of the present challenge.<sup>43</sup>

39. As to the possibility to present the Defence case in relation to [REDACTED] in public, as opposed to in private session, the Panel considers – as elaborated also in relation to the challenges to the equality or arms below<sup>44</sup> – that the exercise of the accused's right to a public hearing under Article 21 of the Law must be balanced against the duty to protect witnesses, victims and other persons at risk. In the specific circumstances, the Panel could not allow the Defence to question [REDACTED] on the issues concerned in public, simply because these issues are of such a nature that they would easily identify the witness. The Defence was afforded the opportunity to elicit the evidence it needed for its case in private session, without compromising the

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<sup>40</sup> Defence Final Trial Brief, para. 293; T. 17 April 2024, confidential, p. 4293, line 23 to p. 4298, line 20.

<sup>41</sup> T. 20 October 2022, confidential and *ex parte* Defence only, p. 459, line 13 to p. 461, line 21; T. 20 October 2022, confidential and *ex parte* SPO only, p. 487, line 14 to p. 493, line 19.

<sup>42</sup> KSC-BC-2020-04, F00337, Specialist Prosecutor, *Submission of lists of disclosed materials relating to KSC-BC-2021-08*, 4 November 2022, confidential, with Annex 1, confidential.

<sup>43</sup> [REDACTED].

<sup>44</sup> *See* para. 53 below.

identity of the witness. The argument that the use of private session for such a line of questioning automatically violated Mr Shala's right to a public hearing completely disregards that the publicity of the proceedings must be weighed against the protection needs of witnesses and victims, which may require resort to private or closed session, as necessary. These sessions simultaneously preserve the judicially-authorized protective measures and allow the questioning Party to elicit the evidence it seeks for its own case.

40. With respect to the Defence's argument that it was deprived of crucial findings on the credibility of [REDACTED] by the SPO's termination of the judicial proceeding in Case 08, the Panel observes that [REDACTED].<sup>45</sup> This fact has been uncontested in this trial, has been extensively explored in both direct and cross-examination,<sup>46</sup> and the Panel has duly considered it in its credibility assessment of the witness.<sup>47</sup> The fact that the SPO terminated the proceedings in Case 08 is immaterial under these circumstances, and the Defence was not affected by this action in the presentation of its case.

41. The Defence challenges on this matter are dismissed.

#### E. DISCLOSURE VIOLATIONS

42. The Defence submits that disclosure violations occurred at the pre-trial and trial stage, in the form of late disclosure of material, insufficient descriptions of items, and excessive redactions to information, including the identity of witnesses.<sup>48</sup>

43. With respect to alleged disclosure violations during the pre-trial stage, the Panel considers that the Defence should have raised those issues before the Pre-Trial Judge

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<sup>45</sup> [REDACTED].

<sup>46</sup> [REDACTED].

<sup>47</sup> [REDACTED].

<sup>48</sup> Defence Final Trial Brief, paras 294-301.

at the relevant time, including by resorting to the remedies provided for in the legal framework, such as challenging the relevant decisions setting out the disclosure framework and subsequent decisions on disclosure and/or protective measures, as the case may be. The Panel further notes that the Pre-Trial Judge never found any fault in the disclosure process. In fact, the Defence only refers to a single instance where the Pre-Trial Judge found that the delay by the SPO in disclosing exculpatory material was “significant”, and promptly took remedial action by extending the deadlines for the Defence to file objections to the admissibility of evidentiary material and its Pre-Trial Brief, as well as the deadline to transmit the case to trial.<sup>49</sup>

44. In other instances of alleged disclosure violations raised by the Defence,<sup>50</sup> the Defence misrepresents or ignores the legal framework governing disclosure before the Specialist Chambers. For example, when referring to an allegedly late disclosure by the SPO of item 110670-110674, which occurred on 24 February 2023, the Defence omits to state that this document was sent to the SPO only four weeks before, on 27 January 2023, and that it relates to a very limited topic of the case, which the Panel considers incapable of affecting the fair trial rights of Mr Shala. By the same token, the Defence refers to an allegedly late disclosure dated 11 August 2022 (thus, during the pre-trial phase) of 57 items, in disclosure package 77, under Rule 103 of the Rules, ignoring that the provision, as interpreted, indisputably provides for a continuous obligation to disclose exculpatory material throughout the proceedings.<sup>51</sup>

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<sup>49</sup> KSC-BC-2020-04, F00234, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Rule 102(2) and Related Requests*, 20 July 2022, confidential, paras 30-31, 46(d)-(f). A public redacted version was filed on 8 August 2022, [F00234/RED](#).

<sup>50</sup> Defence Final Trial Brief, para. 294, footnote 662.

<sup>51</sup> [Framework Decision on Disclosure](#), para. 54, and references therein.



45. The Defence also refers to instances of late disclosure that have already been addressed by the Panel, who found that no prejudice was caused to the Defence.<sup>52</sup>

46. In the view of the Panel, the sporadic instances picked by the Defence to substantiate the alleged disclosure violations by the SPO across the proceedings are insufficient to reach any threshold to find a violation of Mr Shala's fair trial rights.

47. The Defence challenges on this issue are dismissed.

F. BREACH OF MR SHALA'S RIGHT TO EFFECTIVE LEGAL ASSISTANCE AND TO PROTECTION AGAINST SELF-INCRIMINATION

48. The Defence submits that all transcripts of interviews with Mr Shala should be excluded from the Panel's deliberation for the purpose of the present Judgment, on the ground that these statements were taken in violation of Mr Shala's fair trial rights.<sup>53</sup> Mr Shala gave two statements to the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), in 2005 and 2007 (2005 and 2007 Statements), and two statements to the Belgian Federal Judicial Police, in 2016 and 2019 (2016 and 2019 Statements).<sup>54</sup>

49. The Panel recalls that this matter has been extensively litigated before this Panel<sup>55</sup> and has also been addressed by the Court of Appeals Panel and the Specialist Chamber of the Constitutional Court. The Court of Appeals Panel upheld the Panel's original decision to consider the 2016 Statement not inadmissible pursuant to

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<sup>52</sup> KSC-BC-2020-04, F00813, Trial Panel I, *Decision on the Defence request for leave to reopen its case*, 19 March 2024, confidential, para. 21. A public redacted version was issued on the same day, [F00813/RED](#).

<sup>53</sup> Defence Final Trial Brief, paras 302-310; T. 17 April 2024, public, p. 4290, line 13 to p. 4293, line 22.

<sup>54</sup> KSC-BC-2020-04, F00364, Trial Panel I, *Decision concerning prior statements given by Pjetër Shala* (Decision on Prior Statements), 6 December 2022, confidential, para. 11. A corrected version and a public redacted version of corrected version were filed on 8 December 2022 and 26 January 2023, F00264/COR and [F00364/COR/RED](#), respectively.

<sup>55</sup> [Decision on Prior Statements](#).

Rule 138(2) of the Rules, and denied Mr Shala's appeal in respect of the other Statements.<sup>56</sup> The Specialist Chamber of the Constitutional Court declared the constitutional referral premature and therefore inadmissible, and dismissed it in its entirety.<sup>57</sup>

50. Accordingly, the Panel considers that the Defence is attempting to litigate anew the matter, and does not see merit in further entertaining this Defence challenge, which is dismissed.

#### G. INEQUALITY OF ARMS

51. The Defence submits that the principle of equality of arms enshrined in Article 21 of the Law was violated as follows: (i) the Defence could not challenge the evidence of some of the SPO witnesses in cross-examination as they have become unavailable, some of them being deceased; (ii) redactions applied to material disclosed to the Defence were excessive; (iii) protective measures restricted the Defence's access to relevant information and prevented it from effectively confronting SPO witnesses; and (iv) pressure was put on the Defence to proceed to trial before completion of its investigations.<sup>58</sup>

52. First, with regard to the Defence's impossibility to confront certain witnesses who could no longer testify, the Panel recalls that the Rules provide for alternative avenues to introduce evidence other than through live testimony, in case the witnesses

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<sup>56</sup> KSC-BC-2020-04, IA006-F00007, Court of Appeals Panel, [Decision on Shala's Appeal Against Decision Concerning Prior Statements](#) (Decision on Appeal against Decision on Prior Statements), 5 May 2023, public, para. 109.

<sup>57</sup> KSC-CC-2023-21, F00006, Specialist Chamber of the Constitutional Court, [Decision on the Referral of Pjetër Shala 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](#), 29 August 2023, public, p. 12.

<sup>58</sup> Defence Final Trial Brief, paras 311-326.

are unavailable, including because they are deceased.<sup>59</sup> As confirmed by the Specialist Chamber of the Constitutional Court, those alternative procedures are in line with the Constitution and with internationally recognised fair trial standards.<sup>60</sup> Further, as provided in Rule 140(4)(a) of the Rules, a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine, thereby providing for a safeguard to protect the rights of the Accused. In addition, the Panel recalls that, irrespective of the modality of introduction of any given piece of evidence into the trial record, the Panel is always called to evaluate the totality of the evidence holistically pursuant to Rule 139(2) of the Rules, and to weigh such evidence in its assessment as to whether the SPO has met the *beyond reasonable doubt* burden of proof. The passage of time and the possible deterioration of the quality of the evidence are not, by themselves, grounds to render the proceedings unfair, but rather factors that may be evaluated when assessing the reliability, probative value and, ultimately, the weight of the evidence.<sup>61</sup>

53. Second, with respect to the arguments that protective measures, including redactions, impaired the Defence's ability to conduct its investigations, prepare for trial and confront witnesses during the trial,<sup>62</sup> the Panel observes that the Defence seeks, in part, to re-litigate matters that have already been considered and addressed by the Pre-Trial Judge or by the Panel.<sup>63</sup> Other arguments overlap with the Defence

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<sup>59</sup> Rule 155 of the Rules.

<sup>60</sup> KSC-CC-PR-17-01, F00004, Specialist Chamber of the Constitutional Court, [Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19\(5\) of Law no. 05-L-053 on Specialist Chambers and Specialist Prosecutor's Office, 26 April 2017](#), public, para. 206.

<sup>61</sup> See similarly, [Mustafa Trial Judgment](#), para. 36.

<sup>62</sup> Defence Final Trial Brief, paras 314-321.

<sup>63</sup> See, for example, KSC-BC-2020-04, F00053, Pre-Trial Judge, *Second Decision on Specialist Prosecutor's Request for Protective Measures* (Second Decision on Protective Measures), 12 July 2021, strictly confidential and *ex parte*, para. 15. A confidential redacted version was issued on the same day, F00053/CONF/RED; F00439, Trial Panel I, *Decision on the Specialist Prosecutor's request for continuation of*

submission that it did not have sufficient time to conduct its investigations, and are more appropriately addressed below.<sup>64</sup> As to the Defence's argument that its ability to confront witnesses was impaired, the Panel recalls that, pursuant to Article 21(6) of the Law, restrictions to disclosure may be imposed in order to protect witnesses, victims and other persons at risk, as envisaged in Article 23(1) of the Law and Rules 80 and 108 of the Rules. The purpose of the interplay among these provisions is to achieve a balance between the rights of the accused and the duty to protect witnesses, victims and other persons at risk.<sup>65</sup>

54. Under this light, the Panel notes that the SPO, the Defence, Victims' Counsel, and the Panel itself had the opportunity to question at length SPO witnesses benefitting from protective measures, eliciting evidence throughout the trial, when necessary in private session to protect the witnesses, but also to allow the Parties to put questions more freely. This resulted in substantive submissions made during trial, as well as in the final trial briefs and during closing statements, which have informed the Panel's determination in the Judgment. Had the Defence been impaired by the protective measures to the extent it purports, all these submissions would not have taken place in the way they did.

55. In the view of the Panel, the balance between the protection of witnesses, victims and other persons at risk, and the obligation to uphold Mr Shala's right to a fair trial has been achieved throughout the trial. The arguments of the Defence on this matter have thus no merit.

56. Lastly, with respect of the argument that the Defence was pressured to proceed to trial while its investigations were not complete,<sup>66</sup> the Panel stresses that the

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*protective measures pursuant to Rule 81*, 27 February 2023, paras 39-42. A confidential redacted version was issued on 9 March 2023, F00439/CONF/RED.

<sup>64</sup> Defence Final Trial Brief, paras 316, 318.

<sup>65</sup> [Framework Decision on Disclosure](#), paras 28, 77.

<sup>66</sup> Defence Final Trial Brief, paras 322-326.

Specialist Chambers' legal framework does not provide for a requirement whereby the trial may start only once the Defence investigations are completed. This is the case exactly to protect the rights of the Defence to continue its investigative activities, as the SPO case unfolds in court, so that the accused can tailor the preparation of his/her case, which comes last.

57. In the specific circumstances, the Panel further underlines that, after the transmission of the case by the Pre-Trial Judge to the Panel, on 21 September 2022,<sup>67</sup> the Defence indicated to be trial-ready by January 2023.<sup>68</sup> The trial opened later, on 21 February 2023.<sup>69</sup> Subsequently, after the close of the SPO case, on 6 July 2023, the Panel granted one additional month to the Defence to conduct further investigations and to file its list of witnesses,<sup>70</sup> in addition to other extensions of time to file its Rule 130 motion<sup>71</sup> and a response to an SPO motion for admission of documentary evidence.<sup>72</sup>

58. In light of the measures taken by the Panel to accommodate the Defence progress in its investigations and preparation throughout the trial, the Panel considers that the Defence arguments as to the pressure to proceed to trial have no merit.

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<sup>67</sup> [Decision Transmitting the Case File to Trial](#), para. 10.

<sup>68</sup> [Decision on Date for the Commencement of the Trial](#), para. 6, referring to the Defence submissions made on its readiness for trial: KSC-BC-2020-04, F00305, Defence, *Defence Submissions Pursuant to Order on Trial Preparation Conferences*, 10 October 2022, strictly confidential and *ex parte*, para. 10. A public redacted version was issued on the same day, F00305/RED.

<sup>69</sup> T. 21 February 2023, public, p. 497, lines 11-12.

<sup>70</sup> KSC-BC-2020-04, F00591, Trial Panel I, [Decision on the Defence request for an extension of time for the submission of its lists of witnesses and exhibits \(F00583\)](#), 14 July 2023, public, para. 14(a)-(b).

<sup>71</sup> KSC-BC-2020-04, F00580, Trial Panel I, [Decision on the Defence request for an extension of time and word limit for its motion under Rule 130 of the Rules](#), 11 July 2023, public, para. 12(a)-(b).

<sup>72</sup> KSC-BC-2020-04, F00586, Trial Panel I, [Decision on the Defence Requests for an Extension of Time \(F00582\)](#), 13 July 2023, public, para. 16(b)-(c).

## H. BREACH OF RIGHT TO PUBLIC PROCEEDINGS

59. The Defence submits that Mr Shala's right to a public hearing was infringed due to excessive reliance on private sessions during the trial.<sup>73</sup>

60. The Panel points out that the use of private (or closed) sessions falls within the domain of available measures for the protection of witnesses and victims, in accordance with Rule 80(4)(b) of the Rules. The Panel has already clarified above that the exercise of adopting protective measures rests upon achieving a balance between the duty to protect witnesses, victims and other persons at risk, and the obligation to uphold the rights of the accused under Article 21 of the Law.<sup>74</sup>

61. Mindful of the importance of Mr Shala's right to a public hearing, the Panel has ordered the Parties and Victims' Counsel to undertake periodic revisions of the transcripts with a view to lifting redactions and/or reclassifying transcripts as public.<sup>75</sup> These counterbalancing measures on their own are sufficient to cure the Defence concerns, while also ensuring the protection of witnesses and victims.

62. In light of the foregoing, the arguments of the Defence must be dismissed.

## I. PREJUDICIAL UNCERTAINTY AS TO THE EVIDENCE ON RECORD AGAINST MR SHALA

63. The Defence submits that the system of admission of non-oral evidence adopted by the Panel in its "Decision on the submission and admissibility of non-oral

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<sup>73</sup> Defence Final Trial Brief, paras 327-330.

<sup>74</sup> See para. 53 above.

<sup>75</sup> See KSC-BC-2020-04, F00476, Trial Panel I, [Order for submissions on the lifting of redactions and/or the reclassification of transcripts of trial hearings](#), 4 April 2023, public; F00510, Trial Panel I, [Second order for submissions on the lifting of redactions and/or reclassification of transcripts of trial hearings](#), 15 May 2023, public.

evidence” (Framework Decision on Evidence)<sup>76</sup> violates Mr Shala’s right to know with certainty the evidence against him and to have an effective opportunity to respond to it.<sup>77</sup>

64. The Panel notes that the arguments presently put forward by the Defence have previously been considered and addressed by the Panel in the Framework Decision on Evidence.<sup>78</sup> If the Defence considered the system of admission of non-oral evidence adopted by the Panel to be detrimental to Mr Shala’s fair trial rights, it should and could have sought reconsideration or leave to appeal the Framework Decision on Evidence. Instead, the Defence abided by that system throughout the trial, including by making submissions in the Defence Final Trial Brief<sup>79</sup> and in its closing statements<sup>80</sup> on the evidence available for consideration by the Panel. Accordingly, the Panel considers the arguments made by the Defence in this respect to be a mere attempt to re-litigate the matter.

65. This challenge is therefore dismissed.

J. UNJUSTIFIED LIMITATIONS ON THE RIGHT TO CONFRONT WITNESSES AGAINST  
MR SHALA

66. The Defence submits that, despite the limitations provided in Article 31(4) of the Constitution and Rules 141 and 153 of the Rules as to the admission of witness evidence in writing, the Panel admitted the written statements of witnesses TW4-02 and TW4-04, without the possibility for the Defence to confront them.<sup>81</sup>

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<sup>76</sup> KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#), 17 March 2023, public.

<sup>77</sup> Defence Final Trial Brief, paras 331-343.

<sup>78</sup> [Framework Decision on Evidence](#), paras 15-20.

<sup>79</sup> Defence Final Trial Brief, paras 34-265.

<sup>80</sup> See, for example, T. 16 April 2024, confidential, p. 4235, line 18 to p. 4263, line 24.

<sup>81</sup> Defence Final Trial Brief, paras 344-345; T. 17 April 2024, public, p. 4299, lines 6-15.

67. Similarly, the Defence complains about the admission in writing of the statements of W04733 and W01448, who are deceased, and requests that little, if any, probative value be attached to such evidence, and that it should rather be excluded as unreliable.<sup>82</sup>

68. The Defence further submits that the Panel's instructions to cross-examine witnesses through open questions, together with further instructions to the Defence as to how to confront witnesses, put the Defence at a disadvantage against the SPO, which was not subject to similar instructions during its questioning.<sup>83</sup>

69. The Panel recalls that the admission of witnesses' statements in writing is one of the mechanisms through which the Parties may introduce evidence pursuant to Rules 153 and 155 of the Rules, which are designed to foster the expeditiousness of the proceedings.<sup>84</sup> When assessing the totality of the evidence available for judgment, the Panel is duty-bound to evaluate the weight to be attached to such statements in light of the other evidence on record, and taking into account the impossibility by the Parties, Victims' Counsel and the Panel to confront such witnesses. Accordingly, the Panel does not consider the very admission in writing of the statements concerned to be in violation of Mr Shala's fair trial rights. The Panel has assessed the credibility and reliability of these witnesses and has weighed their evidence – in light of all the evidence on record and in accordance with the principles enshrined in the Rules – when making its factual findings throughout this Judgment.

70. With regard to the alleged disadvantage suffered by the Defence as a result of the Panel's instructions on cross-examination, the Panel recalls that its directions on the mode of questioning apply to both Parties and Victims' Counsel and they are

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<sup>82</sup> Defence Final Trial Brief, para. 346; T. 17 April 2024, public, p. 4299, line 16 to p. 4300, line 21.

<sup>83</sup> Defence Final Trial Brief, paras 347-352.

<sup>84</sup> [Framework Decision on Evidence](#), para. 32.



premised first and foremost on the principle of efficiency.<sup>85</sup> Accordingly, where questioning is deemed inefficient, it will be restricted by the Presiding Judge in accordance with her powers under Rule 143(4) of the Rules.<sup>86</sup> Similarly, leading questions are not forbidden but may be put only when they are conducive to the expeditiousness of the proceedings and the determination of the truth, under the same control powers of the Presiding Judge.<sup>87</sup>

71. When identifying instances in which it was allegedly impaired in its questioning of witness TW4-01, the Defence disregards the above legal framework and directions according to which both Parties and Victims' Counsel operated during the trial. The Panel has evaluated the evidence elicited from TW4-01 in light of the totality of the evidence available for judgment, and against the backdrop of the Parties' submissions on this witness, and has attached to it the weight it considered appropriate in the present Judgment.

72. The Defence arguments on this matter are therefore dismissed.

#### K. CONCLUSION

73. In light of the foregoing considerations, the Panel finds that none of the instances raised by the Defence, either alone or in combination, affected the fairness of the trial, the rights of Mr Shala, or the Defence's preparation.

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<sup>85</sup> KSC-BC-2020-04, F00434, Trial Panel I, *Decision on the conduct of the proceedings* (Decision on Conduct of Proceedings), 24 February 2023, confidential, para. 41. A public redacted version was filed the same day, [F00434/RED](#).

<sup>86</sup> [Decision on Conduct of Proceedings](#), para. 41.

<sup>87</sup> [Decision on Conduct of Proceedings](#), para. 41.

## V. EVIDENTIARY CONSIDERATIONS

### A. THE PRESUMPTION OF INNOCENCE AND STANDARD OF PROOF

74. The Panel will set out below the evidentiary principles on which it based its findings in the Judgment.<sup>88</sup> As guaranteed by Article 31(5) of the Constitution and Article 21(3) of the Law, the accused shall be presumed innocent until proved guilty. A Panel may find an accused guilty where guilt is proved beyond reasonable doubt, in accordance with Article 21(3) of the Law and Rules 140(1) and 158(3) of the Rules. A reasonable doubt must be grounded in reason and cannot consist of imaginary or frivolous doubt, but must have a rational link to the evidence, lack of evidence or inconsistencies in the evidence.<sup>89</sup> The burden of proof rests solely on the SPO.<sup>90</sup>

75. As provided in Rule 140 of the Rules, the beyond reasonable doubt standard shall apply to the facts constituting the elements of the crimes and modes of liability charged and to other facts on which the conviction depends.<sup>91</sup> Importantly, the beyond reasonable doubt standard shall not be applied to individual pieces of evidence. Rather, the Panel shall carry out a holistic evaluation and weighing of *all* the evidence taken as a whole, as stated in Rule 139(2) of the Rules, to determine whether or not the facts at issue have been proved.

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<sup>88</sup> [Mustafa Trial Judgment](#), paras 27-48.

<sup>89</sup> KSC-BC-2020-07, F00611/RED, Trial Panel II, [Public Redacted Version of the Trial Judgment](#) (Gucati and Haradinaj Trial Judgment), 18 May 2022, public, para. 36. *Similarly*, International Criminal Court (ICC), *Prosecutor v. Ngudjolo Chui*, ICC-01/04-02/12-271-Corr, Appeals Chamber, [Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute"](#) (Ngudjolo Chui Appeal Judgment), 7 April 2015, para. 109, *citing* International Criminal Tribunal for Rwanda (ICTR), *Rutaganda v. Prosecutor*, ICTR-96-3-A, Appeals Chamber, [Judgement](#), 26 May 2003, para. 488.

<sup>90</sup> *See also*, [Gucati and Haradinaj Trial Judgment](#), para. 34.

<sup>91</sup> KSC-CA-2023-02, F00038/RED, Court of Appeals Panel, [Public Redacted Version of Appeal Judgment](#) (Mustafa Appeal Judgment), 14 December 2023, public, para. 368, and references therein.

76. With respect to circumstantial evidence (which is evidence on subsidiary facts from which a material fact may be reasonably inferred),<sup>92</sup> the standard of proof is satisfied, according to Rule 140(3) of the Rules, only if the inference to be drawn from such evidence is the only reasonable one.

B. THE EVIDENCE BEFORE THE PANEL

77. The evidence available to the Panel for the purpose of its deliberations consists of: (i) the oral testimonies of 16 witnesses (excluding experts) – 7 called by the SPO and 9 by the Defence – who appeared before the Panel (either at the seat of the Specialist Chambers or *via* video-conference),<sup>93</sup> together with portions of their written statements read out to them and discussed with them in court, which constitute an integral part of their testimonies;<sup>94</sup> (ii) the written statements of 10 witnesses (7 SPO witnesses and 3 Defence witnesses), admitted *in lieu* of their testimonies, under Rule 153 of the Rules (4 witnesses) and Rule 155 of the Rules (6 witnesses), together with related documents or associated exhibits;<sup>95</sup> (iii) four written statements of

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<sup>92</sup> [Mustafa Trial Judgment](#), para. 29; [Gucati and Haradinaj Trial Judgment](#), para. 42.

<sup>93</sup> KSC-BC-2020-04, F00482, Trial Panel I, *Decision on the Specialist Prosecutor's request for video-conference testimony for TW4-04, TW4-10 and TW4-11*, 13 April 2023, strictly confidential and *ex parte*; a confidential redacted version and a public redacted version were issued on the same day, F00482/CONF/RED and [F00482/RED](#), respectively (TW4-04's evidence was eventually introduced in writing under Rule 153 of the Rules); Oral Order, T. 24 November 2023, confidential, p. 3625, line 16 to p. 3626, line 15.

<sup>94</sup> [Framework Decision on Evidence](#), para. 59.

<sup>95</sup> KSC-BC-2020-04, F00556, Trial Panel I, *Decision on the Specialist Prosecutor's requests to admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules* (Decision on SPO Request for Admission of Evidence Pursuant to Rule 153), 23 June 2023, confidential. A public redacted version was issued on 17 July 2023, [F00556/RED](#); F00562, Trial Panel I, *Decision on the Specialist Prosecutor's motion for admission of evidence pursuant to Rule 155 of the Rules* (Decision on Admission of Evidence Pursuant to Rule 155), 4 July 2023, confidential. A public redacted version was filed on 16 August 2023, [F00562/RED](#); F00703, Trial Panel I, *Decision on the Defence Requests to Admit the Evidence of W03881 Pursuant to Rule 153 of the Rules* (F00656) or alternatively, to summons witness W03881 pursuant to Rule 121(3) of the Rules (F00657) (Decision on Defence Request for Admission of Evidence Pursuant to Rule 153), 1 November 2023, confidential. A public redacted version was issued on 13 December 2023, [F00703/RED](#); F00759, Trial Panel I, *Decision on the "Defence Request to Admit the Evidence of DW4-01 Pursuant to Rules 153 and 155 of the Rules" and related matters*, 8 January 2024, confidential. A public redacted version was issued on the same day,

Mr Shala, together with associated material;<sup>96</sup> (iv) documentary evidence consisting, among others, of photographs, audio-video material, KLA internal documents, reports, (cadastral) maps, media articles, social media content and book excerpts; and (v) the expert testimonies and/or reports of 7 experts – 3 called by the SPO, 2 by Victims' Counsel, with the leave of the Panel, and 2 by the Defence.<sup>97</sup>

### C. THE PANEL'S APPROACH TO EVIDENCE

78. Pursuant to Rule 138(1) of the Rules, the Panel considered, during its deliberations, the evidence that was part of the evidentiary record, in accordance with the system established by the Panel before the start of the trial on the submission and admissibility of evidence.<sup>98</sup>

79. The Panel is required to make findings only on those facts which are essential for the determination of the guilt or innocence of the accused on each count in the charges. When making its factual findings, the Panel has therefore discussed pieces of evidence only to the extent necessary to establish whether or not the standard of proof beyond reasonable doubt has been met in respect of the constitutive elements of the crimes, the modes of liability and any other relevant fact. Similarly, the Panel has not explicitly evaluated each and every potential inconsistency within a piece of evidence

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[F00759/RED](#); F00784, Trial Panel I, *Decision on Defence requests for admission of evidence (F00770/COR and F00771) and on evidence called by the Panel* (Decision on Defence Requests for Admission of Evidence Pursuant to Rule 155), 24 January 2024, confidential. A public redacted version was issued on the same day, [F00784/RED](#).

<sup>96</sup> [Decision on Prior Statements](#); [Decision on Appeal against Decision on Prior Statements](#), para. 109.

<sup>97</sup> KSC-BC-2020-04, F00639, Trial Panel I, *Decision on the Specialist Prosecutor's and Defence's motions for admission of materials related to expert witnesses W04887, W04826 and W04875* (Decision on Admission of SPO Expert Reports), 6 September 2023, confidential, with Annex 1, public. A public redacted version of the decision was issued on 26 September 2023, [F00639/RED](#); Oral Order: T. 25 October 2023, public, p. 3151, line 9 to p. 3153, line 8; F00794, Trial Panel I, *Decision on requests for admission of items used with witnesses W03887, W04441, W04440, DW4-03, W04280 and W04405* (Decision on Admission of Defence Expert Report), 9 February 2024, confidential, paras 41-42, 56, with Annex 1, public; Oral Order: T. 10 January 2024, public, p. 4072, line 21 to p. 4074, line 10.

<sup>98</sup> [Framework Decision on Evidence](#).

or between different items, but it has done so, *proprio motu* or upon challenge, when it considered it necessary to determine whether the required standard of proof was met in relation to a particular element or fact. In this context, the Panel emphasises the importance of assessing the credibility, reliability and probative value of the evidence in light of the trial record as a whole. The Panel has not explicitly addressed all the arguments raised by the Parties and participants and has not explicitly referred to a specific witness testimony where there was significant contrary evidence on the record. When necessary, the Panel has explained in more detail the considerations underlying its assessment of the evidence. All of this is in compliance with the principle of free assessment of the evidence by the Panel, as enshrined in Rule 137(2) of the Rules.<sup>99</sup>

80. In what follows, the Panel will set out in further detail the main principles that have guided its assessment of the evidence, in line with the provisions of Rules 139 and 140 of the Rules.

### 1. Testimonial Evidence

81. **Oral evidence of *viva voce* witnesses.** The Panel notes Rule 139(4) of the Rules, which provides that, in determining the weight to be given to the testimony of a witness, a Panel shall assess the credibility of the witness and the reliability of his or her testimony. Credibility relates to whether a witness testified truthfully, while reliability refers to whether the evidence, if accepted, proves the fact(s) to which it is directed, or whether it can be put in doubt by other evidence or surrounding

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<sup>99</sup> Similarly, [Mustafa Trial Judgment](#), para. 32.

circumstances.<sup>100</sup> Thus, even when a witness is honest and credible, his or her evidence can be, at times, unreliable.<sup>101</sup>

82. The Panel has full discretionary powers to assess the credibility and reliability of the witnesses before relying on their evidence.<sup>102</sup> In doing so, the Panel has considered a number of non-exhaustive factors,<sup>103</sup> the relevance of which must be assessed on a case-by-case basis.<sup>104</sup> These factors include: (i) the level of detail provided by the witness, indicating that the witness experienced the events personally;<sup>105</sup> (ii) the coherence and consistency of the witness's account, including the consistency of their testimony with their written statement(s) and the explanations provided by the witness for any inconsistencies, as discussed with them in court;<sup>106</sup> (iii) the coherence and consistency of the witness's testimony with other evidence before the Panel;<sup>107</sup>

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<sup>100</sup> [Mustafa Appeal Judgment](#), para. 229.

<sup>101</sup> [Mustafa Appeal Judgment](#), para. 229. See also, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-3121-Red, Appeals Chamber, [Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction](#) (Lubanga Appeal Judgment), 1 December 2014, para. 239.

<sup>102</sup> See ICTR, *Kanyarukiga v. Prosecutor*, ICTR-02-78-A, Appeals Chamber, [Judgement](#) (Kanyarukiga Appeal Judgement), 8 May 2012, para. 121, and references therein.

<sup>103</sup> [Mustafa Trial Judgment](#), para. 35. See similarly, ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1762-Red, Trial Chamber IX, [Trial Judgment](#) (Ongwen Trial Judgment), 4 February 2021, para. 260.

<sup>104</sup> [Mustafa Appeal Judgment](#), para. 233.

<sup>105</sup> See similarly, ICC, [Ongwen Trial Judgment](#), paras 255, 395; see also, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, Trial Chamber VI, [Judgment](#) (Ntaganda Trial Judgment), 8 July 2019, para. 78, referring to the precision of the information provided.

<sup>106</sup> See similarly, [Gucati and Haradinaj Trial Judgment](#), para. 44, and references therein; ICC, [Ongwen Trial Judgment](#), para. 256; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Appeals Chamber, [Judgement](#), Vol. I (Prlić et al. Appeal Judgement), 29 November 2017, para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>107</sup> See similarly, [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-2275-Red, Appeals Chamber, [Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"](#) (Bemba et al. Appeal Judgment), 8 March 2018, para. 1084, stating that corroboration is one of many potential factors relevant to a trial chamber's assessment of the credibility and reliability of a witness's testimony; [Ngudjolo Chui Appeal Judgment](#), paras 2, 170, stating that "a Trial Chamber should [...] assess the credibility of a witness in part by assessing whether the content of his or her testimony is confirmed by other evidence"; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

(iv) the plausibility of the witness's account;<sup>108</sup> (v) attempts or efforts made by the witness to be accurate (for instance, acknowledging difficulties in recalling certain events or details, or differentiating between what the witness experienced personally and what they learnt from others);<sup>109</sup> (vi) the effects of time and trauma on the witness's memory, which may have an impact on their ability to reconstruct the events;<sup>110</sup> (vii) the witness's demeanour when testifying in court, including their readiness and willingness to respond to questions and any changes in attitude when questioned by the opposing Party;<sup>111</sup> (viii) the witness's relationship to either Party or Victims' Counsel, including any ties to, bias towards, or motives to implicate or exculpate the accused, any ties to KLA members, the KLA as such or any branch thereof, any involvement in the events under consideration and any other incentive or motive to lie, fabricate, distort or withhold information;<sup>112</sup> (ix) any bias towards the Specialist Chambers and/or the SPO, which may have undermined the witness's willingness and sense of obligation to provide the Panel with evidence to assist in its determination of the truth; and (x) any indication that the witness may have been

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<sup>108</sup> See similarly, [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, [Ntaganda Trial Judgment](#), para. 78; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>109</sup> See similarly, ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1989-Red, Trial Chamber VII, [Judgment pursuant to Article 74 of the Statute](#) (*Bemba et al.* Trial Judgment), 19 October 2016, para. 203.

<sup>110</sup> See similarly, ICC, [Ntaganda Trial Judgment](#), para. 79; [Bemba et al. Trial Judgment](#), para. 203; *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Trial Chamber II, [Judgment pursuant to article 74 of the Statute](#) (*Katanga* Trial Judgment), 7 March 2014, para. 83; *Prosecutor v. Lubanga*, ICC-01/04-01/06-2842, Trial Chamber I, [Judgment pursuant to Article 74 of the Statute](#), 14 March 2012, para. 103.

<sup>111</sup> See similarly, [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, [Ongwen Trial Judgment](#), para. 259; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>112</sup> See similarly, [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2666-Red, Appeals Chamber, [Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'](#) (*Ntaganda* Appeal Judgment), 30 March 2021, para. 17; [Ongwen Trial Judgment](#), para. 258; [Ntaganda Trial Judgment](#), para. 77; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

intimidated, threatened, pressured or influenced, or that they have colluded with other witnesses.<sup>113</sup>

83. The Panel stresses that it has broad discretion in assessing inconsistencies in the evidence.<sup>114</sup> In doing so, it has taken into account, *inter alia*, the nature, extent and seriousness of the inconsistencies, the witness's explanations for these inconsistencies, the fact that witnesses experience and remember past events differently (either because they are physically not able to perceive all details, or because they attach different weight to what they perceive),<sup>115</sup> and the effects of trauma and the passage of time.<sup>116</sup> Similarly, the fact that witnesses may provide varying levels of detail at different times throughout their testimony, including when confronted with their prior statements, does not automatically make them inconsistent, unreliable, or discredit their evidence. The same applies when witnesses do not mention the same names of perpetrators, as this may depend on the different lines of enquiry pursued by the different authorities conducting the questioning. It is equally reasonable to expect that witnesses will be more detailed during their testimony in court rather than in their prior statements. Ultimately, inconsistencies, contradictions and inaccuracies do not automatically render a witness's evidence unreliable.<sup>117</sup>

84. Consistent with Rule 139(6) of the Rules, the Panel has accepted, at times, parts of a witness's account and rejected others, acknowledging that it is possible for a

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<sup>113</sup> See similarly, ICC, [Katanga Trial Judgment](#), para. 87.

<sup>114</sup> See also, ICC, [Ntaganda Appeal Judgment](#), para. 18.

<sup>115</sup> Witnesses may attach substantial weight to details that were important to them and less weight to details of minor significance; see similarly, ICC, [Bemba et al. Trial Judgment](#), para. 204; [Ntaganda Trial Judgment](#), para. 80.

<sup>116</sup> Memories of central details of a traumatic event are often more accurate and complete than memories of incidental or marginal details.

<sup>117</sup> See similarly, [Gucati and Haradinaj Trial Judgment](#), para. 44, and references therein, stating that "[i]n accordance with Rule 139(6) of the Rules, minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and his or her prior statements have not been regarded as discrediting such evidence".



witness to be accurate and reliable on some issues and unreliable on others.<sup>118</sup> When the Panel had reservations with regard to a witness's credibility, it relied on their testimony to the extent that it was corroborated by other credible and reliable evidence, or to the extent that discrete aspects of their evidence were not impacted by the factors otherwise affecting their credibility. However, other times, the Panel has found a witness's credibility and/or reliability to be impugned to such an extent that they could not be relied upon, even if other evidence appeared to corroborate parts of their testimony.<sup>119</sup>

85. In evaluating identification evidence given by witnesses regarding persons or locations, the Panel has considered factors including: (i) the circumstances in which the witness observed the location or the person; (ii) the length of the observation; (iii) the distance between the identified location or person and the witness; (iv) any obstruction to the observation; (v) other factors affecting such identification; (vi) any interactions between the witness and the identified person; (vii) the manner in which the witness described a location or person; and (viii) whether there were inconsistencies, misidentification followed by later rectification, memory lapses and possible influence by others.<sup>120</sup>

86. In assessing the identification evidence provided by witnesses regarding Mr Shala and/or other perpetrators, the Panel has further taken into account: (i) the position, role and authority of Mr Shala/other perpetrators at the relevant time; (ii) nicknames used by Mr Shala/other perpetrators, including when these are associated with a specific, identifying sound that they made; (iii) their membership in

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<sup>118</sup> [Mustafa Appeal Judgment](#), para. 307; [Mustafa Trial Judgment](#), para. 37. See similarly, ICC, [Ongwen Trial Judgment](#), para. 260.

<sup>119</sup> See similarly, ICC, [Ngudjolo Chui Appeal Judgment](#), paras 1, 168.

<sup>120</sup> [Mustafa Trial Judgment](#), para. 38. See similarly, ICC, [Ntaganda Trial Judgment](#), para. 72; *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Trial Chamber III, [Judgment pursuant to Article 74 of the Statute](#) (Bemba Trial Judgment), 21 March 2016, para. 242, and references therein.

the KLA; (iv) the presence in and control of an area by the KLA; (v) uniforms, insignias, and accessories worn; (vi) vehicles used; (vii) language used by the perpetrators; (viii) their behaviour, including their *modus operandi*; and (ix) any recognition made based on physical features and/or photographs shown to the witnesses in court.<sup>121</sup> The Panel has treated with caution the identification evidence of a single witness made under difficult circumstances, such as in the dark, while being beaten by several individuals, while being sick or unconscious, or in a fleeting moment.<sup>122</sup> However, the Panel has not excluded such evidence, but has assessed it considering all factors mentioned above and in light of other evidence on the record. Lastly, while a witness's prior knowledge of, or level of familiarity with, Mr Shala is a relevant factor, the fact that a witness did not personally know Mr Shala prior to the events does not necessarily undermine the reliability of his or her identification evidence.<sup>123</sup>

87. **Written statements.** The Panel notes that the same considerations of credibility and reliability apply *mutatis mutandis* to written statements introduced *in lieu* of oral testimony under Rules 153 and 155 of the Rules. In any such case, however, the Panel has duly taken into account that the witnesses did not testify in court and that the Parties, Victims' Counsel and the Panel did not have the opportunity to examine them. Moreover, the fact that witnesses may provide varying levels of detail across (prior) written statements does not automatically discredit their evidence. As previously

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<sup>121</sup> [Mustafa Trial Judgment](#), para. 39. See similarly, ICC, [Ntaganda Trial Judgment](#), para. 73; [Bemba Trial Judgment](#), para. 243, and references therein.

<sup>122</sup> [Mustafa Trial Judgment](#), para. 39. See similarly, ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, [Judgement](#) (Popović et al. Appeal Judgement), 30 January 2015, para. 382; *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Appeals Chamber, [Judgement](#), 19 July 2010, paras 152-156; *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeals Chamber, [Appeal Judgement](#), 23 October 2001, paras 39-40.

<sup>123</sup> [Mustafa Trial Judgment](#), para. 39. See similarly, ICTR, *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, Appeals Chamber, [Judgement](#), Vol. I, 14 December 2015, para. 1616; *Renzaho v. Prosecutor*, ICTR-97-31-A, Appeals Chamber, [Judgement](#), 1 April 2011, para. 530; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Appeals Chamber, [Judgment \(Reasons\)](#), 1 June 2001, paras 327-328.

mentioned, the same applies when witnesses do not mention the same names of perpetrators, as this may depend on the different lines of enquiry pursued by the different authorities conducting the questioning. As dictated by Rule 140(4) of the Rules, the Panel has not based its judgment solely or to a decisive extent on the evidence of these witnesses.<sup>124</sup>

88. **Expert reports.** In relation to expert reports, the Panel has considered factors such as the established competence of the experts in their field of expertise, the methodologies used, the extent to which the findings were consistent with other evidence in the case, and the general reliability of the experts' evidence.<sup>125</sup>

## 2. Documentary Evidence

89. The Panel notes that the Law does not establish an absolute requirement that evidence be introduced only through a witness. In evaluating the documentary evidence before it, the Panel has taken into account indicia of authenticity and reliability, when available, such as origin, authorship or source, chain of custody, specific references to names, locations, presence of logos or other identifying signs or symbols, and any other relevant information.<sup>126</sup> The Panel has also considered the coherence or consistency of the documentary evidence with other evidence in the case. The Panel has not necessarily discarded documentary evidence lacking the above indicia, provided that the content of the item fitted within the system of evidence relevant to a certain matter, in accordance with the Panel's holistic evaluation of the evidence.<sup>127</sup>

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<sup>124</sup> See [Decision on Admission of Evidence Pursuant to Rule 155](#), para. 26.

<sup>125</sup> See similarly, ICC, [Ntaganda Trial Judgment](#), para. 54.

<sup>126</sup> See similarly, ICC, [Ntaganda Trial Judgment](#), para. 57; [Bemba et al. Trial Judgment](#), para. 208.

<sup>127</sup> [Mustafa Trial Judgment](#), para. 42.

### 3. Corroboration

90. In line with Rule 139(3) of the Rules, it is within the Panel's discretion to consider whether a single piece of evidence or the sum of several pieces of evidence suffice to prove a specific fact.<sup>128</sup> There is no general requirement that the testimony of a witness be corroborated if otherwise deemed credible; in fact, corroboration is neither a condition nor a guarantee of reliability of a single piece of evidence.<sup>129</sup> Accordingly, the Panel has the discretion to decide whether corroboration of evidence is necessary, and to rely on uncorroborated, but otherwise credible, witness testimony.<sup>130</sup>

### 4. Hearsay Evidence

91. The Panel recalls that the legal framework of the Specialist Chambers does not forbid the use of hearsay evidence.<sup>131</sup> The Panel also considers that such evidence does not necessarily have lower probative value than direct evidence (*i.e.* direct accounts of what witnesses saw, experienced or did themselves). Ultimately, it depends on the circumstances surrounding each piece of hearsay evidence.<sup>132</sup> In general, the Panel has looked at hearsay evidence with caution in order to minimise the potential prejudice to Mr Shala arising out of the impossibility to confront the primary source of the information.<sup>133</sup>

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<sup>128</sup> Similarly, [Gucati and Haradinaj Trial Judgment](#), para. 39.

<sup>129</sup> [Mustafa Appeal Judgment](#), para. 38, and references therein.

<sup>130</sup> [Mustafa Appeal Judgment](#), para. 38, and references therein.

<sup>131</sup> [Mustafa Trial Judgment](#), para. 44; [Gucati and Haradinaj Trial Judgment](#), para. 24.

<sup>132</sup> Similarly, ICC, [Ngudjolo Chui Appeal Judgment](#), para. 226; [Bemba et al. Appeal Judgment](#), para. 874; ICTY, [Popović et al. Appeal Judgment](#), para. 1307.

<sup>133</sup> [Mustafa Appeal Judgment](#), para. 125, footnote 296; [Gucati and Haradinaj Trial Judgment](#), paras 25, 43.

## 5. Circumstantial Evidence

92. The Panel has approached circumstantial evidence with caution, as dictated by Rule 139(5) of the Rules, and has carefully assessed the consistency and intrinsic coherence of such evidence before relying on it.<sup>134</sup>

### D. FACTS REQUIRING NO PROOF

93. **Facts of common knowledge.** Pursuant to Rule 157(1) of the Rules, the Panel shall not require proof of facts of common knowledge, but shall take judicial notice thereof. In the present case, the Panel has taken judicial notice of 17 facts of common knowledge, upon the SPO's request.<sup>135</sup>

94. **Adjudicated facts.** Pursuant to Rule 157(2) of the Rules, the Panel may take judicial notice of adjudicated facts from other proceedings of the Specialist Chambers or from final proceedings before other Kosovo courts or other jurisdictions. While adjudicated facts need not be proved at trial, a Party may still present evidence challenging the accuracy of the facts.<sup>136</sup>

95. In the present case, upon the SPO's request, the Panel has taken judicial notice of 56 adjudicated facts from final proceedings before the ICTY and Kosovo courts. The facts relate primarily to the existence of an armed conflict between the KLA and the

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<sup>134</sup> [Mustafa Trial Judgment](#), para. 45.

<sup>135</sup> KSC-BC-2020-04, F00538, Trial Panel I, [Decision on the Prosecution motion for judicial notice of facts of common knowledge and adjudicated facts](#) (Decision on Facts of Common Knowledge and Adjudicated Facts), 8 June 2023, public, paras 16-19, 33(b), with [Annex 1](#) (List of Facts of Common Knowledge), public, and Annex 2 (List of Adjudicated Facts), confidential. A public redacted version of the List of Adjudicated Facts was issued on 13 July 2023, [F00538/A02/RED](#). See, in particular, [List of Facts of Common Knowledge](#), pp. 2-5.

<sup>136</sup> [Decision on Facts of Common Knowledge and Adjudicated Facts](#), paras 23-24.

Serbian forces.<sup>137</sup> The Defence did not present evidence challenging the accuracy of these facts.

#### E. CLIMATE OF WITNESS INTIMIDATION IN KOSOVO

96. This trial was conducted against the backdrop of a persisting climate of witness intimidation.<sup>138</sup> TW4-01 stated during his testimony that he never feels safe [REDACTED].<sup>139</sup> The expert witnesses who examined his mental health equally concluded that the witness fears for his family's safety.<sup>140</sup> TW4-02 was also concerned his cooperation with the SPO would have negative repercussions on his family.<sup>141</sup> W04733's family members vividly recounted how, after the events at the KMF in 1999, they felt unsafe and stigmatised; those fears persist until today.<sup>142</sup> Lastly, when interviewed by the SPO in 2018, W04820 confirmed his fears for his family because of his cooperation with the SPO.<sup>143</sup>

97. The evidence set out above shows that there continues to be a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former

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<sup>137</sup> [Decision on Facts of Common Knowledge and Adjudicated Facts](#), paras 25-32, 33(c); *see, in particular, List of Adjudicated Facts*, pp. 2-12.

<sup>138</sup> *See* [Mustafa Trial Judgment](#), paras 50-57; [Gucati and Haradinaj Trial Judgment](#), paras 576-579; KSC-BC-2020-06, PL001/F00008, Supreme Court Panel, [Decision on Kadri Veseli's Request for Protection of Legality](#), 15 August 2022, public, para. 41; IA022/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention](#), 22 August 2022, public, para. 28.

<sup>139</sup> [REDACTED].

<sup>140</sup> **Report:** V4010023-V4010044, p. V4010034 [REDACTED].

<sup>141</sup> **TW4-02:** 060664-TR-ET Part 5 RED4, p. 21, line 19 to p. 22, line 11 [REDACTED].

<sup>142</sup> *See* paras 700-705 below.

<sup>143</sup> **W04820:** T. 28 November 2023, confidential, p. 3814, lines 20-25, *referring to* Prior Statement: 054757-TR-ET Part 4, p. 8, lines 13-17 ("Q: Are you concerned about saying things to us that may cause you or your family problems in the future? [...] A: Of course").

KLA members. This climate has had a visible impact, albeit to different degrees, on the evidence provided by some of the witnesses who appeared before the Panel. This factor has informed the Panel's assessment of their credibility and reliability.

F. GENERAL CREDIBILITY ASSESSMENT OF SPO WITNESSES

1. TW4-01

98. TW4-01 testified before the Panel between 30 May and 6 June 2023,<sup>144</sup> with in-court protective measures.<sup>145</sup>

99. TW4-01 is a Kosovo Albanian, [REDACTED].<sup>146</sup> [REDACTED].<sup>147</sup> [REDACTED].<sup>148</sup>

100. He provided evidence, in particular, about: (i) his [REDACTED] apprehension by KLA members in May 1999; (ii) their subsequent detention at the KMF; (iii) the mistreatment they and other detainees suffered there; and (iv) [REDACTED].

101. TW4-01 gave a remarkably detailed testimony, with graphic and vivid descriptions of the events he witnessed and was a victim of.<sup>149</sup> He described compellingly and with depth of emotion the physical and mental suffering he

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<sup>144</sup> **TW4-01**: T. 30 May 2023, confidential, pp. 1365-1479; T. 31 May 2023, confidential, pp. 1480-1603; T. 2 June 2023, confidential, pp. 1604-1728; T. 5 June 2023, confidential, pp. 1729-1857; T. 6 June 2023, confidential, pp. 1858-1942.

<sup>145</sup> KSC-BC-2020-04, F00036, Pre-Trial Judge, *First Decision on Specialist Prosecutor's Request for Protective Measures*, 17 May 2021, strictly confidential and *ex parte*, paras 5-6. A confidential redacted version was filed on the same day, F00036/CONF/RED.

<sup>146</sup> [REDACTED].

<sup>147</sup> [REDACTED].

<sup>148</sup> [REDACTED].

<sup>149</sup> *See, for example*, his account of the mistreatment he suffered: **TW4-01**: T. 30 May 2023, confidential p. 1457, line 17 to p. 1459, line 15 ("They beat me like a dog"); p. 1465, lines 7-18; [REDACTED].

endured.<sup>150</sup> He provided a clear, coherent account, in a narrative manner, and remained firm and consistent when cross-examined by the Defence. His narrative was abundant in details,<sup>151</sup> all of which are indicators to the Panel that his testimony was based on events he personally experienced, which remained engraved in his mind.

102. TW4-01 further demonstrated a strong determination to provide evidence and to share his story,<sup>152</sup> despite his fear of himself or his family being harmed by (former) KLA members.<sup>153</sup> Indeed, in the view of the Panel, TW4-01 was forthcoming and made clear attempts to provide an accurate account. He admitted outright when he did not know or could not remember certain details of the events.<sup>154</sup> This is most notable when it comes to Mr Shala: TW4-01 stated clearly when he could not remember Mr Shala being present at certain incidents<sup>155</sup> and gave a nuanced account of his role, without overstating Mr Shala's participation in the events at the KMF.<sup>156</sup> In addition, the witness clearly distinguished between what he witnessed himself and what he heard from others<sup>157</sup> and insisted on correcting aspects of his prior statements when put to him.<sup>158</sup>

103. TW4-01 provided largely consistent evidence on the mistreatment he [REDACTED] suffered during their detention, the injuries he sustained as a result

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<sup>150</sup> See, for example, **TW4-01**: T. 30 May 2023, confidential, p. 1464, lines 21-24 (“Q: Was [REDACTED]? A: Yes, they did. And that is something that I will never forget. It’s imprinted on my mind”); T. 31 May 2023, confidential, p. 1528, lines 3-9; p. 1359, lines 5-14; p. 1569, line 8 to p. 1571, line 15.

<sup>151</sup> [REDACTED].

<sup>152</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1477, lines 8-16 (“I am here for my story”); T. 31 May 2023, confidential, p. 1572, lines 8-12 (“I will never be able to leave [the memories of what happened in Kukës] behind in my life. [...] If I could, I wouldn’t be here”).

<sup>153</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1574, lines 3-17; **Report**: V4010023-V4010044, p. V4010036.

<sup>154</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1465, lines 19-22; p. 1469, lines 19-25.

<sup>155</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1498, lines 18-20; p. 1505 line 13 to p. 1510, line 3; p. 1537, lines 2-10.

<sup>156</sup> **TW4-01**: T. 2 June 2023, confidential, p. 1692, lines 4-19; T. 6 June 2023, confidential, p. 1932, line 19 to p. 1933, line 14 (“he certainly did not beat me 10 or 12 times. I am not going to invent something that did not happen”, referring to Mr Shala).

<sup>157</sup> For example, **TW4-01**: T. 30 May 2023, confidential, p. 1453, line 18 to p. 1456, line 6.

<sup>158</sup> For example, **TW4-01**: T. 2 June 2023, confidential, p. 1677, line 24 to p. 1679, line 2.



thereof, the identities of the KLA members that participated in his [REDACTED] ill-treatment, and the presence, identities and mistreatment of other detainees at the KMF. Importantly, as shown in detail in the Panel's evidentiary analysis, TW4-01's evidence is confirmed by the mutually reinforcing accounts of other witnesses, including TW4-10, TW4-11, W04733, W01448, as well as the forensic expert evidence provided by Dr Marek Gasior (Dr Gasior).

104. The Panel is mindful that there are certain discrepancies between TW4-01's testimony and his prior statements, but also takes into account: (i) that the witness provided numerous statements and interviews over the course of years and has been questioned multiple times about the same events; (ii) that different authorities pursued different investigative lines and the statements were taken and recorded in different manners; (iii) the particularly traumatic nature of the events TW4-01 experienced during his detention, [REDACTED]; (iv) the difficulty in recounting repeatedly painful events, particularly to foreign authorities; and (v) the effects of time on TW4-01's memory. On balance, the Panel does not find that the inconsistencies affect the witness's overall credibility. The Panel has discussed the inconsistencies in its evidentiary analysis, to the extent necessary.

105. The Defence challenges the credibility of TW4-01, submitting that: (i) the witness is unable to provide reliable evidence, as he suffers from untreated and severe post-traumatic stress disorder (PTSD);<sup>159</sup> (ii) he has a long criminal record which includes convictions for violent offences;<sup>160</sup> (iii) [REDACTED];<sup>161</sup> (iv) he has personal grievances against Mr Shala and has deliberately fabricated evidence to incriminate him;<sup>162</sup> (v) his testimony and prior statements are filled with serious inconsistencies,

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<sup>159</sup> Defence Final Trial Brief, paras 181-190.

<sup>160</sup> Defence Final Trial Brief, para. 191.

<sup>161</sup> Defence Final Trial Brief, paras 192-197, *referring to* SITF00431831-SITF00431886 RED2.

<sup>162</sup> Defence Final Trial Brief, paras 198-205.

for which he failed to provide plausible justifications;<sup>163</sup> (vi) his testimony is inconsistent with other evidence on record;<sup>164</sup> (vii) many elements of his account are implausible and grossly exaggerated;<sup>165</sup> (viii) he added hearsay elements to his testimony, presenting them as direct evidence;<sup>166</sup> (ix) he [REDACTED] has an incentive to lie and to “worsen” Mr Shala’s role and liability; and (x) he attempted to influence other witnesses, providing them with false evidence implicating Mr Shala.<sup>167</sup> The Defence submits that TW4-01 is not truthful, credible or reliable and his evidence must be rejected in its entirety.<sup>168</sup>

106. The Panel will address the Defence’s submissions in turn. Regarding the Defence’s argument that TW4-01 cannot provide reliable evidence because he suffers from PTSD,<sup>169</sup> the Panel stresses that, while the effects of trauma are a factor to be considered – as indicated above<sup>170</sup> –, trauma does not render a witness’s account automatically or entirely not credible or not reliable. In TW4-01’s case, the Panel notes the expert report and testimony of Ms Karin Duhne-Prinsen (Ms Duhne-Prinsen) and Dr Chayén Lozano Parra (Dr Lozano Parra) – psychologist and psychiatrist, respectively<sup>171</sup> –, who examined the witness and stated that they did not observe any signs of memory problems.<sup>172</sup> Neither has the Panel observed such problems when the

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<sup>163</sup> Defence Final Trial Brief, paras 206-210.

<sup>164</sup> Defence Final Trial Brief, paras 211-222.

<sup>165</sup> Defence Final Trial Brief, paras 223-224.

<sup>166</sup> Defence Final Trial Brief, para. 227.

<sup>167</sup> Defence Final Trial Brief, paras 228-230, 259-265; *see also*, T. 16 April 2024, confidential, p. 4253, line 10 to p. 4262, line 16.

<sup>168</sup> Defence Final Trial Brief, para. 187.

<sup>169</sup> The Defence appears to conflate arguments related to the impact of trauma with arguments related to the consistency of the witness’s testimony with his prior statements and other evidence. Arguments related to the impact of trauma are addressed here. Arguments related to (potential) inconsistencies in the witness’s account are addressed elsewhere in this section or elsewhere in this Judgment.

<sup>170</sup> *See* para. 82 above.

<sup>171</sup> CV: V4010045-V4010048.

<sup>172</sup> **Report:** V4010023-V4010044, p. V4010036; **Ms Duhne-Prinsen and Dr Lozano Parra:** T. 21 August 2023, confidential, p. 2330, line 4 to p. 2331, line 6.

witness testified in court. To the contrary, the witness was clear, coherent and focused, and he distinguished between what he could remember and what he could not.<sup>173</sup> In case discrete aspects of the witness's account appeared to be affected by trauma, the Panel has discussed it in its evidentiary analysis. Accordingly, the Panel does not find merit in the Defence's submission.

107. With regard to the Defence's argument that TW4-01 is not trustworthy because he has a long criminal record, the Panel does not find that his criminal record, as such, affects his credibility or reliability as a matter of principle. It must be shown that the criminal record of the witness is indicative of untruthfulness on the part of the witness, which the Defence did not demonstrate. Accordingly, the Panel does not find merit in the Defence's argument.

108. Turning to [REDACTED].<sup>174</sup> [REDACTED].<sup>175</sup> [REDACTED].<sup>176</sup>

109. At the outset, the Panel stresses that no witness is *per se* unreliable, including a witness that [REDACTED].<sup>177</sup> Turning to the circumstances at hand, the Panel observes, first, that TW4-01 admitted outright and without hesitation that [REDACTED]. He was entirely forthcoming on this point and the Panel gives weight to his admission.

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<sup>173</sup> See paras 101-102 above.

<sup>174</sup> [REDACTED].

<sup>175</sup> [REDACTED].

<sup>176</sup> [REDACTED].

<sup>177</sup> KSC-BC-2020-04, F00652, Trial Panel I, *Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment*, 15 September 2023, confidential, para. 31. A public redacted version was filed the same day, [F00652/RED](#); [REDACTED].

110. Second, other evidence on record corroborates the witness's account [REDACTED].<sup>178</sup> [REDACTED].<sup>179</sup> [REDACTED].<sup>180</sup> [REDACTED].<sup>181</sup>

111. Third, TW4-01's explanation [REDACTED] is strongly supported by expert evidence. [REDACTED].<sup>182</sup>

112. Fourth, it is notable that, [REDACTED].<sup>183</sup> [REDACTED].<sup>184</sup> [REDACTED] before this Panel, TW4-01 made visible attempts to provide an accurate account and was forthcoming and largely consistent.<sup>185</sup>

113. [REDACTED].<sup>186</sup> [REDACTED].<sup>187</sup>

114. For these reasons, the Panel does not find that [REDACTED] affects his credibility in these proceedings or renders his evidence unreliable.

115. Turning to the Defence's assertion that TW4-01 has a motive to falsely incriminate Mr Shala, the Panel has not found any support in the evidence for this proposition. The Panel refers to its findings in this regard, where this matter is addressed in detail.<sup>188</sup> Having found no motive for which TW4-01 would falsely implicate Mr Shala, the Panel also finds no merit in the Defence's submission that he attempted to influence other witnesses by providing them with false evidence against him. The Defence's submissions that TW4-01 has colluded with other witnesses are

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<sup>178</sup> [REDACTED].

<sup>179</sup> [REDACTED].

<sup>180</sup> [REDACTED].

<sup>181</sup> [REDACTED].

<sup>182</sup> [REDACTED].

<sup>183</sup> [REDACTED].

<sup>184</sup> [REDACTED].

<sup>185</sup> See paras 102-103 above.

<sup>186</sup> [REDACTED].

<sup>187</sup> [REDACTED].

<sup>188</sup> See paras 793-794 below.

addressed at relevant points of those witnesses' credibility assessments or in the Panel's evidentiary analysis.

116. With regard to the Defence's submission that TW4-01's testimony is inconsistent with his prior statements and with other evidence on record, the Panel recalls its findings above.<sup>189</sup>

117. With regard to the Defence's assertion that TW4-01 has provided implausible and grossly exaggerated evidence, the Panel finds this argument to be unsubstantiated. The examples put forward by the Defence take TW4-01's testimony out of context, do not support the Defence's argument, and/or are immaterial to the charges. Accordingly, the Panel does not find merit in the Defence's submission.

118. As to the Defence's assertion that TW4-01 presented hearsay elements as direct evidence, the Panel finds this assertion to be without merit. As stated above, the witness clearly distinguished between what he himself witnessed and what he heard from others. The example put forward by the Defence, in fact, proves this point.

119. In light of the foregoing, the Panel finds TW4-01 credible and has relied on his evidence where appropriate, as discussed at relevant points of the evidentiary analysis.

## 2. TW4-02

120. TW4-02's written statements to the SPO were introduced under Rule 153 of the Rules *in lieu* of oral testimony.<sup>190</sup>

121. The witness is a Kosovo Albanian [REDACTED].<sup>191</sup>

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<sup>189</sup> See para. 104 above.

<sup>190</sup> [Decision on SPO Request for Admission of Evidence Pursuant to Rule 153](#), para. 54(b).

<sup>191</sup> TW4-02: 060664-TR-ET Part 1 RED3, p. 4.

122. In his statements, the witness provided evidence about: (i) his arrest by the KLA, [REDACTED]; (ii) the use (and importance) of the KMF as base of the KLA; (iii) the layout of the KMF; (iv) his mistreatment and interrogation at the KMF; (v) the detention conditions at the KMF; (vi) the presence and identities of his co-detainees and their mistreatment at the KMF; (vii) the circumstances surrounding the death of the Murder Victim; (viii) the identities and role of KLA members present at the KMF, including Xhemshit Krasniqi and Osman Kryeziu; and (ix) his release from the KMF.

123. The Panel notes that TW4-02's account is overall internally consistent, detailed and graphic with regard to his arrest [REDACTED], the layout of the KMF, including the rooms in which he and other individuals were detained, the detention conditions, the presence and mistreatment of his co-detainees at the KMF, and the role of KLA members at the KMF, especially Xhemshit Krasniqi and Osman Kryeziu. Importantly, his statements are amply corroborated by mutually reinforcing testimony and statements of several other witnesses, such as TW4-01, W01448 and TW4-04.

124. The same cannot be said on other crucial aspects of the witness's evidence. The Panel observes that the witness's account is internally inconsistent and implausible with regard to: (i) the dates of his arrival at the KMF and the duration of his detention there; (ii) the way he learned about the identity of, and the mistreatment suffered by, his co-detainees; and (iii) the circumstances of his release. Furthermore, the Panel is of the view that, while forthcoming on the mistreatment suffered by his co-detainees, TW4-02 obviously downplayed his own mistreatment at the KMF. To illustrate the internal contradiction, the Panel refers, for example, to the witness's claim that he was never physically mistreated at the KMF, but only psychologically,<sup>192</sup> while he states at the same time that he was convinced that "they" wanted to

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<sup>192</sup> TW4-02: 060664-TR-ET Part 2, p. 3, lines 21-22.

“eliminate” him, and “kill” him.<sup>193</sup> He also stated that every time he passes by the KMF he does not “feel well”,<sup>194</sup> and that for eight years he “lived without sleeping due to stress”.<sup>195</sup> Furthermore, his account is contradicted by [REDACTED], who testified that TW4-02 was physically abused during his detention.<sup>196</sup>

125. The Panel is attentive to the witness’s concerns and reluctance to testify in the present proceedings out of fear that his testimony could have negative repercussions for [REDACTED].<sup>197</sup> The witness also expressed at length concerns about his safety, [REDACTED].<sup>198</sup> In the Panel’s estimation, these concerns may explain why the witness presented implausible and inconsistent statements with regard to certain aspects of his evidence.

126. In light of the foregoing, the Panel treats TW4-02’s evidence with caution, and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.

### 3. TW4-04

127. TW4-04’s written statements were introduced *in lieu* of his oral testimony pursuant to Rule 153 of the Rules.<sup>199</sup>

128. TW4-04 is a Kosovo Albanian [REDACTED].<sup>200</sup>

129. In his statements, the witness provided evidence about: (i) his arrest by [REDACTED] KLA member [REDACTED]; (ii) his detention [REDACTED] at the KMF; (iii) the layout of the KMF; (iv) his mistreatment and interrogation at the KMF;

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<sup>193</sup> TW4-02: 060664-TR-ET Part 2, p. 4, lines 11-15.

<sup>194</sup> TW4-02: 108850-TR-ET Part 1 RED, p. 5, lines 20-21.

<sup>195</sup> TW4-02: 060664-TR-ET Part 3, p. 19, lines 22-23.

<sup>196</sup> [REDACTED]. Regarding TW4-02’s mistreatment, *see* further the Panel’s findings in para. 728 below.

<sup>197</sup> TW4-02: 060664-TR-ET Part 5 RED4, pp. 21-22.

<sup>198</sup> TW4-02: 108850- TR-ET Part 1 RED, pp. 13-15.

<sup>199</sup> [Decision on SPO Request for Admission of Evidence Pursuant to Rule 153](#), para. 54(c).

<sup>200</sup> TW4-04: SPOE00014669-00014751 RED, p. SPOE00014673; 064716-TR-ET Part 1 RED3, pp. 5-7.

(v) the detention conditions at the KMF; (vi) the presence and identities of his co-detainees at the KMF and their mistreatment; (vii) the identities and role of KLA members present at the KMF, including Osman Kryeziu and Xhemshit Krasniqi; and (viii) his release from the KMF.

130. The Panel notes that TW4-04's account is overall internally consistent, detailed and graphic with regard to his arrest by [REDACTED] KLA member, [REDACTED], the layout of the KMF, his detention locations within the KMF, the detention conditions, and the presence and identification of his co-detainees at the KMF. Importantly, in this respect, his statements are amply corroborated by mutually reinforcing testimony and statements of several other witnesses, such as TW4-01, W04733, W01448 and TW4-02.

131. The same cannot be said on other crucial aspects of the witness's evidence. Four aspects illustrate the Panel's concerns with regard to TW4-04's evidence.

132. First, the Panel is of the view that the witness downplayed the treatment he received while in detention at the KMF by stating that he was never tortured at the KMF.<sup>201</sup> This is contradicted by [REDACTED] who stated that TW4-04 "was tortured a lot".<sup>202</sup> [REDACTED] that TW4-04 was mistreated while detained at the KMF is also consistent with numerous accounts of other witnesses who were detained and mistreated at the compound at the same time and provided evidence that all detainees at the KMF were mistreated.<sup>203</sup> Hence, the Panel does not attach any weight to TW4-04's statements, in which he denies any mistreatment.

133. Second, the Panel is also of the view that TW4-04 grossly misrepresents Xhemshit Krasniqi's role at the KMF. In his SPO statement in 2022, he claimed that he

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<sup>201</sup> **TW4-04**: SITF00013336-00013347 RED, p. SITF00013339.

<sup>202</sup> [REDACTED].

<sup>203</sup> See Section VI.E.2.



was treated well by Xhemshit Krasniqi, [REDACTED].<sup>204</sup> The Panel also notes that, [REDACTED], the witness claimed that he had never heard from anyone or seen himself Xhemshit Krasniqi mistreat or kill anyone in the time period from March to June 1999.<sup>205</sup> Yet, the Panel observes that, according to the evidentiary record, [REDACTED].<sup>206</sup> As to Xhemshit Krasniqi's treatment of detainees, the Panel equally observes that TW4-04's evidence is clearly contradicted by several other credible witnesses in this case, who attested to Xhemshit Krasniqi's involvement in the mistreatment of detainees.<sup>207</sup> In this regard, the Panel observes that, [REDACTED].<sup>208</sup> [REDACTED].<sup>209</sup> [REDACTED].<sup>210</sup> In the Panel's assessment, the witness's [REDACTED] clearly indicates a strategic decision to protect the latter's interests. For this reason, the Panel does not attach any weight to TW4-04's evidence as regards Xhemshit Krasniqi, and relies on that of other credible witnesses.

134. Third, the Panel notes that, over the years, the witness has been inconsistent in his statements, downplaying, [REDACTED], what has happened to other detainees at the KMF. The Panel observes that the witness, in his 2009 statement, mentioned that [REDACTED] had told him of beatings and that he personally saw bruises on [REDACTED].<sup>211</sup> The witness also confirmed that he personally heard people screaming, particularly at night, and that he heard shots coming from within the detention building.<sup>212</sup> TW4-04 also stated that "two gypsy" detainees told him after

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<sup>204</sup> **TW4-04:** 108826-TR-ET Part 1 RED, p. 12.

<sup>205</sup> **TW4-04:** SPOE00014669-00014751 RED, p. SPOE00014700.

<sup>206</sup> See Section VI.D.8(a).

<sup>207</sup> See Section VI.E.2.

<sup>208</sup> **TW4-04:** 064716-TR-ET Part 1 RED3, pp. 15, 18-19

<sup>209</sup> **TW4-04:** SPOE00014669-00014751 RED, p. SPOE00014698.

<sup>210</sup> **TW4-04:** SPOE00014669-00014751 RED, p. SPOE00014705.

<sup>211</sup> **TW4-04:** SITF00013262-00013315 RED, p. SITF00013273.

<sup>212</sup> **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013273, SITF00013276; SITF00013336-00013347 RED, p. SITF00013340.

the war “about their tortures in Kukës”.<sup>213</sup> Conversely, [REDACTED], the Panel observes that the witness provided a markedly different account, denying [REDACTED] and, upon confrontation with his prior statements, persisting in his denial without providing any justification or explanation for his changed evidence. This behaviour is recorded, for example, in [REDACTED], when the witness denied having seen any bruises on [REDACTED].<sup>214</sup> The same pattern is seen in TW4-04’s [REDACTED], when he denied having spoken with [REDACTED] about their tortures at the KMF.<sup>215</sup> By the same token, [REDACTED], TW4-04 again stated that he heard fire shots, but he denied that these shots were coming from inside the detention building and testified instead that he did not know where they were coming from. Further, TW4-04 denied that people were screaming when he was in the detention building.<sup>216</sup> The Panel interprets this deliberate shift in the witness’s evidence as an effort to avoid providing any information which could link KLA members, including Xhemshit Krasniqi, with the commission of any crimes at the KMF, contrary to the significant amount of evidence the Panel has received.

135. Fourth, TW4-04’s statement to the SPO in 2019 is, in several aspects, implausible and replete with evasive and absurd responses, such as when he claims repeatedly that: (i) he could not see, it was very dark;<sup>217</sup> (ii) [REDACTED];<sup>218</sup> and

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<sup>213</sup> **TW4-04**: SITF00013336-00013347 RED, p. SITF00013340. The Panel notes that, in his subsequent statements, TW4-04 refers to “three gypsies” that “were there to clean” (SITF00013262-00013315 RED, p. SITF00013273) and who were musicians (SPOE00014669-00014751 RED, p. SPOE00014694). The Panel is satisfied that, across his statements, the witness refers to [REDACTED], [REDACTED] and the third Roma musician who, as the Panel establishes below, were detained at the KMF during the time frame of the charges. *See paras. See Section VI.D.10(a).*

<sup>214</sup> **TW4-04**: SITF00015825-00015925 RED, p. SITF00015845; SPOE00014669-00014751 RED, p. SPOE00014693.

<sup>215</sup> [REDACTED].

<sup>216</sup> **TW4-04**: SPOE00014669-00014751 RED, pp. SPOE00014695-00014696.

<sup>217</sup> **TW4-04**: 064716-TR-ET Part 5 RED4, p. 10, lines 24-25; p. 12, lines 1-2; p. 15, lines 18-19; p. 17, lines 18-20; p. 18, line 20; p. 19, lines 1-6.

<sup>218</sup> [REDACTED].

(iii) [REDACTED], [REDACTED] and the third Roma musician “preferred to be working than to be locked up”.<sup>219</sup>

136. In light of the above, noting the striking incompatibility between large parts of TW4-04’s evidence and the rest of the reliable evidence on record, the Panel finds that his evidence has very limited value and attaches no weight to it with regard to the duration of his detention at the KMF, his own mistreatment, the role of Xhemshit Krasniqi at the KMF, and the mistreatment suffered by, or forced labour imposed on, other co-detainees. Conversely, the Panel finds other discrete aspects of the witness’s statements credible, and relies on them where appropriate, as discussed at relevant points of the evidentiary analysis.

#### 4. TW4-05

137. TW4-05’s written statements were introduced under Rule 155 of the Rules in lieu of oral testimony (collectively, TW4-05’s Statements), [REDACTED].<sup>220</sup>

138. TW4-05 was a Kosovo Albanian [REDACTED],<sup>221</sup> [REDACTED].<sup>222</sup>

139. In his statements, TW4-05 provided evidence about: (i) his arrest by KLA members and his subsequent detention at the KMF, including the prevailing detention conditions there; (ii) the presence and identities of co-detainees at the KMF; (iii) his interrogation and psychological mistreatment by KLA members; (iv) [REDACTED]; (v) the identities and role of KLA members present at the KMF, including Sabit Geci, Xhemshit Krasniqi and Mr Mark Shala; (vi) the functions for which the KMF was used by the KLA; and (vii) his release.

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<sup>219</sup> TW4-04: 064716-TR-ET Part 5 RED4, p. 27, lines 22-24.

<sup>220</sup> [Decision on Admission of Evidence Pursuant to Rule 155](#), paras 54, 70(b).

<sup>221</sup> TW4-05: SITF00013123-SITF00013153 RED, pp. SITF00013123-SITF00013124; SITF00372498-00372510 RED4, p. SITF00372500.

<sup>222</sup> TW4-05: SITF00013123-SITF00013153 RED, p. SITF00013124.

140. The Panel notes that TW4-05 provided a generally consistent, detailed and inherently coherent account of his arrest by KLA members and his eventual release from the KMF, the identities of his co-detainees, [REDACTED], and the identities and roles of KLA members present at the KMF, including Sabit Geci, Xhemshit Krasniqi and Mr Mark Shala. Importantly, these aspects of TW4-05's account are corroborated by the mutually reinforcing evidence of other witnesses, notably TW4-01, TW4-11, W01148 and W04733. Thus, the Panel is convinced that TW4-05 truthfully recounted events that he personally experienced.

141. However, the Panel notes that TW4-05 downplayed the severity of the mistreatment he and his co-detainees received and the inadequacy of his detention conditions. For example, as to the detainees' mistreatment, the witness stated that, throughout his detention at the KMF, he was never mistreated physically, and denied having personally witnessed any of his co-detainees being beaten or hearing them screaming.<sup>223</sup> TW4-05 averred that he was treated very well.<sup>224</sup> The Panel is of the view that this is difficult to reconcile with the witness's statement that, at the same time, he was expecting to be killed at the KMF.<sup>225</sup> This reveals that the witness is internally inconsistent as to the way he and his co-detainees were treated at the KMF. Furthermore, as developed in detail in the evidentiary analysis,<sup>226</sup> TW4-05's account in this regard is contradicted by the mutually corroborative evidence of other witnesses, such as TW4-01, W04733, W01448 and TW4-11. The Panel discerns a similar discrepancy regarding the conditions of detention. For example, TW4-05 stated that he ate the same food as KLA members, that he was able to wash himself with warm

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<sup>223</sup> **TW4-05:** SITF00372498-00372510 RED4, pp. SITF00372500-SITF00372502; SITF00013123-SITF00013153 RED, pp. SITF00013131-SITF00013132, SITF00013134.

<sup>224</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372500.

<sup>225</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013134.

<sup>226</sup> See Section VI.E.2.

water every three days, and that a barber regularly cut his hair.<sup>227</sup> TW4-05's account on this point is contradicted by the accounts of several witnesses who provided credible and consistent evidence attesting to the insufficient and deplorable detention conditions at the KMF, including inadequate food and water and poor hygienic standards.<sup>228</sup> Considering that other witnesses held under similar conditions painted an entirely different picture about their harsh detention conditions, the Panel places more weight to their evidence. In this light, the Panel does not find TW4-05's Statements on the mistreatment he and his co-detainees received and the conditions of detention credible, and does not rely on his evidence in this respect.

142. The Panel also observes that TW4-05 stated that, although he was expecting to be killed at the KMF, Xhemshit Krasniqi and Sabit Geci "saved" him and that, for this reason, he is "thankful to both of them".<sup>229</sup> No other witness credibly testified to this effect. Mindful of the largely consistent and reliable evidence on record regarding the involvement of Xhemshit Krasniqi and Sabit Geci in the apprehension, detention and mistreatment of civilians at the KMF, the Panel disregards TW4-05's statement in this respect.

143. In light of the foregoing, the Panel considers the witness's evidence with caution and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.<sup>230</sup>

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<sup>227</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013130.

<sup>228</sup> See Section VI.E.1.

<sup>229</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013134.

<sup>230</sup> Regarding the Defence's allegation of collusion between TW4-05 and W01448, see the Panel's findings in para. 174 below.

## 5. TW4-06, TW4-07, TW4-08 and TW4-09 (W04733's Family Members)

144. TW4-06, TW4-07, TW4-08 and TW4-09 testified before the Panel from 27 to 30 March 2023,<sup>231</sup> with in-court protective measures.<sup>232</sup>

145. TW4-06 is W04733's wife, and TW4-07, TW4-08 and TW4-09 are his children (collectively, Family Members).

146. The four witnesses provided evidence about: (i) the time period preceding W04733's detention at the KMF (notably, his work as a police officer, a series of incidents in May 1998 and April/May 1999 involving (also) Mr Shala, and the family's relocation, initially within Kosovo, and later to Albania); (ii) the circumstances surrounding W04733's apprehension; (iii) W04733's and his co-detainees' mistreatment at the KMF; (iv) the physical and psychological state of W04733 following his release; and (v) the impact of W04733's detention and mistreatment on W04733 and his family.

147. To begin with, the Panel takes seriously the Defence's submission that TW4-06, TW4-07, TW4-08 and TW4-09 may have discussed the issues at stake over the years, thus aligning their testimonies.<sup>233</sup> The Panel observes that the evidence of the Family Members is largely congruent, which the Panel understands is the result of their shared experiences. Yet, the Panel has not detected any sign of deliberate collusion. They described the events from different vantage points, providing varying details.<sup>234</sup> This shows that the witnesses did not align or memorise their accounts prior to their testimonies before the Panel.

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<sup>231</sup> **Family Members:** T. 27 March 2023, confidential, pp. 608-731; T. 28 March 2023, confidential, pp. 732-831; T. 29 March 2023, confidential, pp. 832-955; T. 30 March 2023, confidential, pp. 956-1020.

<sup>232</sup> [REDACTED].

<sup>233</sup> Defence Final Trial Brief, para. 254.

<sup>234</sup> For example, TW4-06 provided a more detailed account of the family's relocation from their village to another town in Kosovo, and later to Albania, and the family's efforts to find suitable accommodation

148. The witnesses provided testimonies which were rich in detail, graphic and narrated with depth of emotion, demonstrating that they drew on their personal experiences. For instance, all four witnesses described in detail the physical injuries they observed on W04733, as well as his mental state following his release from the KMF.<sup>235</sup> The Panel further finds that the witnesses were clear and forthcoming in their answers, and that their evidence remained consistent throughout their respective testimonies. In addition, all four witnesses made visible efforts to provide accurate accounts, clearly distinguishing between the events they personally witnessed and those they heard from others, particularly from W04733.<sup>236</sup> They also acknowledged without hesitation when they did not know or did not remember certain aspects of the events.<sup>237</sup> Further, the Family Members intervened at times to ensure that they properly understood the questions posed to them,<sup>238</sup> or to provide additional information or clarifications, even without being prompted to do so.<sup>239</sup> This demonstrates their eagerness to stay truthful, coupled with a manifest attempt at accuracy.

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during the war; *see* **TW4-06**: T. 28 March 2023, public, p. 786, lines 5-22; T. 28 March 2023, confidential, p. 788, line 3 to p. 789, line 15. Her detailed account of these events is reflective of her role as the mother and her older age at the time, compared to TW4-07, TW4-08 and TW4-09.

<sup>235</sup> *See* Section VI.E.2(c).

<sup>236</sup> The Panel notes that the Family Members' testimonies are filled with statements that highlight their efforts to be accurate and truthful: "[a]ccording to my father", "[t]his is what my husband told me", "[t]his is what I heard from my father", "[a]s reported, relayed from my mother". *See, for example*, **TW4-08**: T. 27 March 2023, public, p. 648, lines 3-7; **TW4-06**: T. 28 March 2023, confidential, p. 805, lines 19-20; public, p. 815, lines 9-11; **TW4-07**: T. 29 March 2023, public, p. 902, lines 24-25; p. 903, lines 5, 13-14; **TW4-09**: T. 30 March 2023, public, p. 975, lines 12, 15-16; p. 978, line 10.

<sup>237</sup> *See, for example*, **TW4-08**: T. 27 March 2023, public, p. 646, line 24 to p. 647, line 2; **TW4-06**: T. 28 March 2023, confidential, p. 824, lines 1-3; **TW4-07**: T. 29 March 2023, confidential, p. 891, lines 1-3; p. 909, lines 6-8; **TW4-09**: T. 30 March 2023, public, p. 978, line 23 to p. 979, line 2.

<sup>238</sup> *See, for example*, **TW4-08**: T. 27 March 2023, confidential, p. 620, lines 11-15; T. 27 March 2023, public, p. 632, line 20; T. 27 March 2023, confidential, p. 750, lines 13-14; **TW4-06**: T. 28 March 2023, public, p. 845, line 14; **TW4-09**: T. 30 March 2023, public, p. 975, lines 7-8; p. 1011, lines 15-17.

<sup>239</sup> *See, for example*, **TW4-08**: T. 27 March 2023, public, p. 630, line 4; **TW4-07**: T. 29 March 2023, public, p. 902, lines 15-18.

149. In the same vein, when challenged by the Defence on perceived inconsistencies between their in-court testimonies and their prior statements, the witnesses responded calmly, spontaneously, providing plausible and convincing explanations.<sup>240</sup> Where necessary, the Panel has discussed the inconsistencies in its evidentiary analysis. All of the above reinforces the Panel's general impression that the witnesses recounted truthfully their personal experiences.

150. The Defence challenged the reliability of the Family Members' testimonies for lack of coherence and consistency.<sup>241</sup> It also averred that they based their evidence on hearsay, which should be treated with caution.<sup>242</sup> In relation to TW4-08's evidence in particular, the Defence maintained that his evidence is affected by the fact that he was present during an interview between W04733 and investigators of [REDACTED] in 2009, which influenced TW4-08's account and provided him with the opportunity to align his evidence with that of W04733.<sup>243</sup> In relation to TW4-07's and TW4-08's evidence, the Defence contends that it is undermined by the fact that, contrary to their testimonies in court, they did not mention Mr Shala in prior statements<sup>244</sup> as being involved in W04733's mistreatment at the KMF and the May 1998 incident, respectively.<sup>245</sup>

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<sup>240</sup> See, for example, **TW4-08**: T. 27 March 2023, public, p. 643, line 16 to p. 644, line 3; p. 650, line 8 to p. 651, line 9; **TW4-07**: T. 29 March 2023, public, p. 945, line 11 to p. 946, line 18; p. 947, line 23 to p. 948, line 8.

<sup>241</sup> Defence Final Trial Brief, para. 244.

<sup>242</sup> Defence Final Trial Brief, paras 99, 100, 136, 248. According to the Defence, the hearsay evidence especially relates to: (i) Mr Shala's involvement in the mistreatment of W04733 at the KMF; and (ii) Mr Shala's presence in an incident that occurred in May 1998 in Kosovo (the May 1998 incident).

<sup>243</sup> Defence Final Trial Brief, paras 245, 258 referring to SPOE00185335-00185363 RED3. The Panel observes that the Defence refers to TW4-07 as being present during the interview of W04733 with the ICTY investigators. However, the Panel notes that it is, in fact, TW4-08 who was present during said interview, as it is clear from SPOE00185335-00185363 RED3, SPOE00185336. In this regard, see also, **TW4-07**: T. 29 March 2023, public, p. 948, lines 9-18.

<sup>244</sup> **TW4-07 Prior Statement**: SPOE00047605-00047612; **TW4-08 Prior Statement**: U017-4052-U017-4057 RED2.

<sup>245</sup> Defence Final Trial Brief, paras 98, 99, 250.



151. As regards potential inconsistencies or lack of coherence, the Panel discussed these points in its evidentiary analysis, if and where necessary. As regards the hearsay nature of their evidence, the Panel recalls that such evidence is not excluded *per se* and that it must be weighed appropriately in light of the entire evidence before the Panel.<sup>246</sup>

152. As regards TW4-08's evidence in particular, the Panel pays attention to the Defence's assertions. However, the Panel cannot identify any improper influence as a result of his presence at the 2009 [REDACTED] interview of W04733 that would warrant discarding his testimony before the Panel. Moreover, the Defence remains hypothetical and speculative and cannot point concretely to a statement in TW4-08's testimony affected by his father's 2009 interview. In addition, the Panel recalls that TW4-08 has heard from W04733, already in 1999, all details about W04733's detention and mistreatment at the KMF. Other events, such as the arrest of W04733 and his physical and mental state after his release, were witnessed personally by TW4-08. Importantly, his testimony in this regard is largely corroborated by other members of his family. In this light, the Panel finds the Defence's submissions as to TW4-08 without merit.

153. As regards the evidence of TW4-07 and TW4-08, the Panel notes that both witnesses attributed their omission to identify Mr Shala in their prior statements to the fact that: (i) they gave statements to several authorities; and (ii) the investigators' questions were focused on other perpetrators.<sup>247</sup> The Panel finds TW4-07's and TW4-08's explanations convincing and sincere. It is natural for witnesses who gave several prior statements to different authorities, pursuing different investigative lines,

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<sup>246</sup> See Section V.C.4.

<sup>247</sup> **TW4-08**: T. 27 March 2023, public, p. 651, lines 6-9; **TW4-07**: T. 29 March 2023, public, p. 945, line 18 to p. 946, line 8; p. 948, lines 4-8 ("There were occasions when I was asked only about Xhemshit Krasniqi. Other cases when I was asked only about Sabit Geci. We were constantly seeking justice. Sometimes we were in Prizren. Other times they came and interviewed me in my house. Now, I cannot remember details, but I answered their questions").

over several years, to provide additional names and other details in their testimonies. No witness recounts events comprehensively with the same language, order, structure, and degree of detail over several years. The Panel does not find that the lack of mention of Mr Shala in the prior statements casts doubt on the credibility of TW4-07 and TW4-08. Against this background, the Defence's challenges regarding TW4-07's and TW4-08's credibility are rejected.

154. In light of the foregoing, the Panel finds all four witnesses credible, and has relied on their evidence, as discussed in the Panel's evidentiary analysis.

## 6. TW4-10

155. TW4-10 testified *via* video-conference before the Panel on 1-2 May 2023,<sup>248</sup> with in-court protective measures,<sup>249</sup> [REDACTED].<sup>250</sup>

156. The witness was a former KLA member and, at the time relevant to the charges, was stationed at the KMF, serving as a guard at the entrance of the compound.

157. TW4-10 testified about: (i) his enlistment in the KLA and his duties while stationed at the KMF; (ii) the layout of the KMF compound; (iii) the operations of the KLA at the KMF; (iv) the presence and role of KLA members, including high-ranking KLA members and Mr Shala; (iv) the presence of detainees at the KMF, [REDACTED], their conditions of detention, as well as their mistreatment and interrogation by KLA members.

158. The Panel notes that the witness provided detailed and, all in all, coherent information about the layout of the KMF compound, the presence and role of Mr Shala and high-ranking KLA members, and the presence of [REDACTED] at the KMF,

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<sup>248</sup> **TW4-10**: T. 1 May 2023, confidential, pp. 1021-1135; T. 2 May 2023, confidential, pp. 1136-1175.

<sup>249</sup> Second Decision on Protective Measures, para. 30(c).

<sup>250</sup> [REDACTED].

which is further mutually reinforced by other evidence on record. Considering that he was serving as a guard at the gate of the KMF at the time relevant to the charges, the Panel is satisfied that his evidence on these matters originated from his personal knowledge and experience.

159. However, the Panel notes that TW4-10 was not forthcoming in his answers and displayed a strong reticence to discuss issues directly related to the charges, such as the detention, interrogation and mistreatment of detainees at the KMF. When questioned on these topics, the witness was elusive, sometimes contradictory, and hesitant in his answers. For example, he responded to various questions only after having been confronted with his prior statements, he gave answers irrelevant to the questions posed to him, and he maintained that he did not understand certain questions or requested that some questions be repeated, even though the questions were objectively clear and comprehensible.<sup>251</sup> The Panel had the strong impression that the witness did so in order to stall or evade providing answers. Another conspicuous element of TW4-10's testimony is that, when confronted by the SPO or the Panel on perceived inconsistencies between his in-court testimony and prior statements, the witness repeatedly maintained that his prior statements were not properly translated or that he had forgotten giving the statement in question.<sup>252</sup>

160. For example, TW4-10 initially testified that individuals were only held for two or three hours at the KMF before being released,<sup>253</sup> but later changed his account and admitted that [REDACTED] were held in the detention building for several days.<sup>254</sup>

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<sup>251</sup> See, for example, **TW4-10**: T. 1 May 2023, public, p. 1036, lines 5-9; p. 1038, line 23 to p. 1039, line 19; p. 1060, line 21 to p. 1063, line 1; confidential, p. 1071, line 23 to p. 1074, line 5; T. 2 May 2023, public, p. 1164, line 24 to p. 1166, line 6.

<sup>252</sup> See, for example, **TW4-10**: T. 1 May 2023, public, p. 1061, lines 19-22; p. 1065, line 5 to p. 1066, line 11; p. 1084, line 19 to p. 1085, line 16; p. 1086, lines 2-19; confidential, p. 1102, lines 2-25; T. 2 May 2023, public, p. 1167, lines 8-25.

<sup>253</sup> **TW4-10**: T. 1 May 2023, public, p. 1052, lines 13-16; p. 1053, line 8 to p. 1054, line 15.

<sup>254</sup> **TW4-10**: T. 1 May 2023, confidential, p. 1096, line 14 to p. 1098, line 20.

The witness was also evasive when testifying about the detention conditions at the detention building and downplayed the insufficiency of the detainees' conditions, stating that "they weren't too bad", "the conditions were the same, both for those persons [in the detention building] and for [the KLA members]."<sup>255</sup> Further, TW4-10 denied that any mistreatment took place at the KMF while he was stationed there.<sup>256</sup> Even when confronted by the SPO with his prior statement, in which he provided evidence to the contrary, he insisted: "I didn't see nor did I hear even a tiny voice".<sup>257</sup> However, when the witness was questioned by the Panel, he conceded that he heard from other KLA members that detainees were being mistreated at the KMF, but maintained that he did not personally witness anything.<sup>258</sup> Considering the credible and consistent evidence available before the Panel attesting to the continuous and severe mistreatment of the detainees at the KMF,<sup>259</sup> the Panel finds it implausible that TW4-10, who was stationed at the KMF, serving at the gate, and who slept in the command building,<sup>260</sup> did not see or hear any of this. The Panel finds it equally implausible that the witness did not see any injuries on the detainees when the latter were walking or working in the courtyard, or when he saw the detainees through the windows of the detention building.<sup>261</sup>

161. Overall, the Panel finds TW4-10's testimony on the detention, interrogation and mistreatment of detainees contradictory and unconvincing. In the Panel's view, the content and manner of TW4-10's answers demonstrate that the witness sought to distance himself from the crimes committed at the KMF, and to downplay the

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<sup>255</sup> **TW4-10**: T. 1 May 2023, public, p. 1056, line 4 to p. 1057, line 8; T. 2 May 2023, public, p. 1168, line 4 to p. 1169, line 24.

<sup>256</sup> **TW4-10**: T. 1 May 2023, confidential, p. 1102, lines 2-5

<sup>257</sup> **TW4-10**: T. 1 May 2023, confidential, p. 1102, lines 6-25.

<sup>258</sup> **TW4-10**: T. 2 May 2023, confidential, p. 1170, lines 10-16.

<sup>259</sup> See Section VI.E.2.

<sup>260</sup> **TW4-10**: T. 2 May 2023, public, p. 1041, line 25 to p. 1042, line 1 and p. 1045, lines 15-21 *referring to* REG00947.

<sup>261</sup> **TW4-10**: T. 1 May 2023, public, p. 1064, line 19 to p. 1065, line 4; p. 1066, line 12 to p. 1067, line 17.

deplorable conditions in which the detainees were held at the KMF and the severity of the mistreatment they suffered. For these reasons, the Panel finds that TW4-10's evidence on these topics has very limited value and attaches no weight to it.

162. In light of the foregoing, the Panel considers the witness's evidence with caution and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.

## 7. TW4-11

163. TW4-11 testified *via* video-conference before the Panel on 2-3 May 2023,<sup>262</sup> with in-court protective measures.<sup>263</sup>

164. The witness is a Kosovo Albanian [REDACTED].<sup>264</sup>

165. The witness testified about: (i) his arrest by the KLA; (ii) the detention conditions at the KMF; (iii) the mistreatment and interrogation that he and his co-detainees were subjected to; (iv) the circumstances surrounding the death of the Murder Victim; (v) the identities and role of KLA members present at the KMF; and (vi) his release from the KMF.

166. The Panel notes that TW4-11 appeared to be stressed during his testimony, and his memory needed to be refreshed at times with his prior statements. Yet, overall, he remained generally consistent and inherently coherent when providing an account of his apprehension by the KLA and his detention, interrogation and mistreatment at the KMF. Importantly, in this respect, his testimony is amply corroborated by the testimony and statements of several other witnesses, notably TW4-01, W04733, W01448 and Osman Kryeziu. The witness also made visible efforts to recall names or

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<sup>262</sup> **TW4-11**: T. 2 May 2023, confidential, pp. 1176-1236; T. 3 May 2023, confidential, pp. 1237-1348.

<sup>263</sup> Second Decision on Protective Measures.

<sup>264</sup> **TW4-11**: T. 2 May 2023, confidential, p. 1183, line 23.

details about other co-detainees and, when he did not remember exact dates, he provided other temporal references.<sup>265</sup> The Panel considers these efforts to constitute a meaningful attempt at accuracy and they demonstrate the personal basis of the witness's testimony.

167. The Panel notes, however, that TW4-11 was ambivalent and at times evasive when asked about the identity of the KLA members that mistreated him and his co-detainees, and about details of the abuse he personally witnessed while detained at the KMF.<sup>266</sup> The witness testified, for example, that he did not see the persons who beat him and his co-detainees because he kept his head low, he was turned to the wall, or because it was dark.<sup>267</sup> The Panel understands that said conditions can indeed impede the recognition of faces. However, it is difficult to accept that TW4-11 was unable to provide *any* information about KLA members who conducted the beatings, when other co-detainees, held and mistreated under similar conditions, were able to volunteer said information. Lastly, the Panel notes that TW4-11 was reluctant to discuss the circumstances surrounding the death of the Murder Victim and that, in particular on this point, the SPO had to refresh the witness's memory with his prior statements.<sup>268</sup> However, when confronted with his prior statements, TW4-11 confirmed their accuracy.<sup>269</sup> In this light, the Panel considers that the witness's initial hesitation to be forthcoming with details about the KLA perpetrators and the need to repeatedly refresh his memory on the events leading to the death of the

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<sup>265</sup> See Section VI.D.4(a) and (c).

<sup>266</sup> See, for example, **TW4-11**: T. 2 May 2023, public, p. 1233, lines 9-20; p. 1231, lines 2-24; T. 3 May 2023, confidential, p. 1243, line 5 to p. 1344, line 19.

<sup>267</sup> See, for example, **TW4-11**: T. 2 May 2023, public, p. 1220, lines 8-10; p. 1231, lines 2-24; T. 3 May 2023, confidential, p. 1249, lines 16-19.

<sup>268</sup> See, for example, **TW4-11**: T. 3 May 2023, confidential, p. 1246, line 3 to p. 1248, line 18; p. 1254, line 2 to p. 1255, line 11.

<sup>269</sup> See, for example, **TW4-11**: T. 3 May 2023, confidential, p. 1256, lines 10-23.

Murder Victim do not have a broader impact on the overall credibility of the witness. Rather, TW4-11's evidence will be assessed in light of the entirety of the evidence.

168. In light of the foregoing, the Panel finds the witness credible and has relied on his evidence where appropriate, as discussed in the Panel's evidentiary analysis.

## 8. W01448

169. W01448's written statements were introduced under Rule 155 of the Rules in lieu of oral testimony (collectively, W01448's Statements), as the witness had passed away.<sup>270</sup>

170. The witness was a Kosovo Albanian who was an immigrant worker in Germany.<sup>271</sup>

171. In his statements, W01448 provided evidence about: (i) his arrest by KLA members; (ii) his detention at different locations in Durrës, Kukës (Albania) and Prizren (Kosovo) and his subsequent release; (iii) the layout of the KMF; (iv) his interrogation and mistreatment at the KMF by KLA members, including Mr Shala; (v) the identities of co-detainees and their interrogation and mistreatment by KLA members, including Mr Shala; (vi) the death of the Murder Victim; and (vii) the identities and roles of KLA members present at the KMF.

172. The Panel notes that W01448 was extremely detailed, comprehensive and forthcoming in recounting coherently the relevant events, such as his arrest and eventual release, his detention at different locations within the KMF, and the presence and identities of co-detainees and KLA members mistreating them. Notably, he provided candidly graphic descriptions of the mistreatment he and his co-detainees

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<sup>270</sup> [Decision on Admission of Evidence Pursuant to Rule 155](#), paras 19, 70(b).

<sup>271</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013737; SITF00013852-00013869 RED6, pp. SITF00013853-SITF00013854; SITF00016221-00016285 RED4, p. SITF00016227.

endured from KLA members, including Mr Shala, and explained compellingly how he felt while in detention.<sup>272</sup> In this respect, the Panel notes that W01448's evidence is further mutually reinforced by the evidence of other witnesses, including TW4-01, TW4-11, W04733, TW4-05, TW4-04 and TW4-02.<sup>273</sup> In an effort to provide an accurate account, W01448 further clearly distinguished between events he personally witnessed and information he was given by his co-detainees, explaining the source of his information and offering details that supported the credibility of his information.<sup>274</sup> The Panel is convinced that the witness provided evidence about his personal experience and that he did so truthfully.

173. The Panel is mindful of certain discrepancies across W01448's Statements but also considers: (i) the fact that W01448 provided evidence on several occasions to different authorities, pursuing different investigative lines; (ii) the particularly traumatic nature of the events W01448 experienced during his detention; (iii) the difficulty in recounting repeatedly such painful events; and (iv) the effects of time on W01448's memory. On balance, the Panel does not find that the inconsistencies affect the witness's overall credibility. The Panel has discussed these inconsistencies, where necessary, in its evidentiary analysis.<sup>275</sup>

174. The Defence challenged the credibility of W01448, submitting that the witness was contacted by and had a conversation with TW4-09, and also met with TW4-05 and TW4-01.<sup>276</sup> In this regard, the Panel observes that the Defence merely states that TW4-01, TW4-09 and TW4-05 have talked to or met with W01448, but does not provide any evidence in support of its assertion that the witnesses discussed "disputed issues"

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<sup>272</sup> See Section VI.E.2.(d).

<sup>273</sup> See Section VI.E.2.(d).

<sup>274</sup> See, for example, para. 713 below.

<sup>275</sup> See, for example, para. 713 below.

<sup>276</sup> Defence Final Trial Brief, paras 257, 262, 265. The Defence's challenge that W01448 colluded with W04733 is addressed under the general credibility assessment of W04733.



in this case. As regards TW4-01 in particular, the Panel notes that the Defence uses, in support of its argumentation, a prior statement of TW4-01<sup>277</sup> which does not form part of the evidentiary record. Be that as it may, the Panel cannot detect any collusion between W01448 and TW4-01, when comparing their evidence, in particular in terms of content and language used. As regards TW4-05, the Panel notes that W01448 openly admitted that he incidentally met TW4-05 once and did not (attempt to) conceal their contact.<sup>278</sup> The same holds true for TW4-09, [REDACTED].<sup>279</sup> The Panel underscores that, while consistent on main points, the witnesses still provided varied evidence on discrete aspects of the events. The Panel detects no indication of collusion in the content or nature of the witnesses' evidence (for example in the manner in which they provided their statements, the use of the same language when describing the same facts, and other relevant circumstances). The fact that W01448 talked with or met once TW4-05 and TW4-09 is not sufficient, in and of itself, to demonstrate collusion or improper influence. Thus, the Panel rejects the Defence's allegation of collusion between W01448 and TW4-01, TW4-05 and TW4-09, as unfounded.

175. In light of the foregoing, the Panel finds the witness credible and has relied on his evidence where appropriate, as discussed in the Panel's evidentiary analysis.

## 9. W04733

176. W04733's written statements were introduced under Rule 155 of the Rules in lieu of oral testimony (collectively, W04733's Statements), as the witness had passed away.<sup>280</sup>

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<sup>277</sup> See Defence Final Trial Brief, para. 262, and, in particular, fn. 613 referring to 083219-TR-ET Part 9 Revised RED, p. 20.

<sup>278</sup> **W01448**: SITF00016140-00016220 RED3, p. SITF00016156; referring to TW4-05 as witness G.

<sup>279</sup> [REDACTED].

<sup>280</sup> [Decision on Admission of Evidence Pursuant to Rule 155](#), paras 33, 70(b).

177. The witness was a Kosovo Albanian [REDACTED], who worked as a police officer from 1968 until his dismissal in 1997 [REDACTED].<sup>281</sup>

178. In his Statements, W04733 provided evidence about: (i) a series of incidents in May 1998 and April/May 1999, involving (also) Mr Shala; (ii) his eventual arrest by members of the KLA Military Police in Durrës, and his subsequent detention in Rramallak/Romanat (Albania)<sup>282</sup> and then Kukës; (iii) his interrogation and mistreatment by KLA members at the KMF, including Mr Shala; (iv) the presence and identities of other detainees and their mistreatment by KLA members, including Mr Shala; (v) the identities and roles of other KLA members present at the KMF, including Sabit Geci and Xhemshit Krasniqi; (vi) his release from the KMF; and (vii) the physical and psychological injuries he sustained as a result of his detention and mistreatment.

179. The Panel notes that W04733's account, throughout his statements, was rich in detail, replete with graphic descriptions and complicating and unnecessary details, which are indicators that W04733 spoke from personal experience.<sup>283</sup> By providing several statements, despite his fear of being harmed by (former) KLA members,<sup>284</sup> the

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<sup>281</sup> **W04733**: 082892-TR-AT-ET Part 1, pp. 17, 25.

<sup>282</sup> Alternative spellings appear across the evidence: "Rramallak", "Ramalak", "Romanak", "Ramanak", "Romanat". The Panel understands that they all refer to one and the same location, hereinafter referred to as Romanat.

<sup>283</sup> For example, W04733 provided a graphic account of how Xhemshit Krasniqi broke his teeth, a distinct memory the witness recounted consistently over the years (see, for example, SITF00013181-SITF00013189 RED3, pp. SITF00013186-SITF00013187: "XHEMSHIT KRASNIQI broke all my teeth when he put a rubber baton deep into my throat and started shaking it inside my mouth. Blood also started coming out of my throat"). The witness provided equally vivid accounts of the mistreatment his co-detainees suffered, see, for example, 082892-TR-AT-ET Part 4 RED3, p. 5 (for the mistreatment of [REDACTED], [REDACTED] and the third Roma musician); SITF00018740-00018767 RED, p. SITF00018744 (for the mistreatment of W01448). The same applies to W04733's detailed account on the physical properties of the first room he was detained in at the KMF: SITF00019824-00019876 RED2, pp. SITF00019829-00019830; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013808-SPOE00013809; 082892-TR-AT-ET Part 4 RED3, p. 20, line 18 to p. 21, line 3.

<sup>284</sup> **W04733**: SPOE00185335-00185363 RED3, pp. SPOE00185337, SPOE00185342, SPOE00185344; 082892-TR-AT-ET Part 9 RED2, p. 23, lines 15-20 and p. 24, lines 5-9.

witness demonstrated a strong determination to provide evidence and share his story.<sup>285</sup> In the view of the Panel, W04733 was forthcoming in his statements and made clear attempts to provide an accurate account.<sup>286</sup> He gave clarifications and made corrections to his previous statements, even without being prompted.<sup>287</sup> Moreover, he clearly distinguished between what he personally witnessed and what he heard from others.<sup>288</sup> In the same vein, W04733 admitted outright when he could not remember or did not know certain details of the events,<sup>289</sup> such as the names of some KLA members or co-detainees, and, when possible, provided other identifying information or descriptions thereof.<sup>290</sup>

180. Importantly, the witness provided largely consistent and inherently coherent evidence on the mistreatment he suffered during his detention, the injuries he sustained as a result thereof, the identities of the KLA members that participated in his mistreatment, and the presence, identities and mistreatment of other detainees at the KMF.<sup>291</sup> In this respect, his evidence is further confirmed by mutually reinforcing

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<sup>285</sup> **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185337; 106978-107020, pp. 106983, 106991.

<sup>286</sup> *For example*, the witness clarified that it was late at night both when he arrived at the KMF and when he was released and, as a result, he was not able to provide a sketch of the compound. However, he explained that he knew well the building where he was detained and provided a description thereof, *see* SPOE00185335-00185363 RED3, p. SPOE00185342.

<sup>287</sup> **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185336; 106978-107020, p. 106980.

<sup>288</sup> **W04733**: SPO00013793-SPOE00013847 RED2, pp. SPOE00013844-SPOE00013845 (regarding information he provided involving the death of the Murder Victim); SITF00018740-00018767 RED, pp. SITF00018741-SITF00018742 (regarding the identification of certain KLA members as reported by his co-detainees).

<sup>289</sup> **W04733**: SITF00018740-00018767 RED, pp. SITF00018745-00018746; 106978-107020, p. 106981; SITF00019824-00019876 RED2, p. SITF00019835; 106978-107020, pp. 106981-106982, 107001.

<sup>290</sup> **W04733**: SPOE00185341-00185342; SITF00018740-00018767 RED, pp. SITF00018745-00018746; U003-2283-U003-2289 RED2, p. U003-2286; SITF00019824-00019876 RED2, pp. SITF00019830-00019831; SPOE00013793-SPOE00013847 RED2, p. SPOE00013813.

<sup>291</sup> *For example*, the Panel notes that since 2002 the witness has consistently provided evidence that, during his mistreatment, KLA members broke his teeth and cut his wrist with a knife. *See* SITF00390625-00390626, p. SITF00390626; SPOE00013793-SPOE00013847 RED2, p. SPOE00013818; SITF00013181-SITF00013189 RED3, pp. SITF00013186-SITF00013187; SITF00018740-00018767 RED, pp. SITF00018743-00018744; 106978-107020, pp. 106982-106984; 082892-TR-AT-ET Part 5 RED2, p. 2, lines 14-18, p. 7, line 20 to p. 8, line 4. *See further*, Sections VI.D.5 and VI.E2.(c).

evidence of other witnesses, including TW4-01, TW4-11, W01448, TW4-08, TW4-06, TW4-07, TW4-09, TW4-05, as well as the forensic expert evidence provided by Dr Gasior.<sup>292</sup>

181. The Panel is mindful that there are certain discrepancies across W04733's Statements, but also takes into account: (i) the fact that W04733 provided numerous statements and interviews in the course of sixteen (16) years; (ii) the particularly traumatic nature of the events W04733 experienced during his detention; (iii) the difficulty in recounting repeatedly painful events, particularly to foreign authorities; (iv) the effects of time on W04733's memory, coupled with his advanced age at the time he gave some statements and interviews;<sup>293</sup> and (v) the increasingly deteriorating health of the witness from [REDACTED] onwards.<sup>294</sup> On balance, the Panel does not find that the inconsistencies affect the witness's overall credibility. Where necessary, the Panel has discussed the inconsistencies in its evidentiary analysis.

182. The Defence challenged the credibility of W04733,<sup>295</sup> submitting that W04733's evidence is not reliable and/or should be approached with caution for the following reasons: (i) W04733's identification of some of the KLA perpetrators is based on hearsay or mentions in the media, occurred only in his most recent statements in 2018, or is uncorroborated by other witnesses.<sup>296</sup> In this context, the Defence submits that, contrary to W04733's evidence, three Defence witnesses, namely Time Kadrijaj, Safete Hadergjonaj and Bardhyl Mahmuti, testified in court that they were not present

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<sup>292</sup> See, for example, paras 449, 456, 462, 470, 694, 697 below.

<sup>293</sup> [REDACTED].

<sup>294</sup> **W04733**: SITF00019824-00019876 RED2, pp. SITF00019841, SITF00019846; 106978-107020, p. 107012; 082892-TR-AT-ET Part 8 RED2, p. 14, lines 10-11; 082892-TR-AT-ET Part 10, RED 2, p. 31, line 19 to p. 32, line 2.

<sup>295</sup> Defence Final Trial Brief, paras 231-254, 257, 263, 265; T. 16 April 2024, confidential, p. 4247, line 21 to p. 4253, line 9.

<sup>296</sup> Defence Final Trial Brief, paras 234, 240-241.

at the KMF during the period relevant to the charges;<sup>297</sup> (ii) certain aspects of W04733's evidence are either not corroborated or contradicted by the testimonies of his Family Members, namely TW4-06, TW4-07, TW4-08 and TW4-09;<sup>298</sup> and (iii) after his release from the KMF, the witness was in contact with W01448 and met with TW4-01 on one occasion.<sup>299</sup>

183. As to the Defence's assertions regarding, generally, W04733's identification of KLA perpetrators at the KMF, the Panel underscores, at the outset, 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>300</sup> The Panel evaluates the evidence holistically, in light of the entire body of evidence.<sup>301</sup> The fact that the witness's identification of KLA members is based on hearsay from other co-detainees at the KMF or the media, or is not corroborated by other witnesses, is a question of weight in light of the entire evidence before the Panel and does not diminish the reliability of W04733's Statements as such.

184. As regards the hearsay nature of his evidence, the Panel notes that the witness has been candid about how he knew the KLA members he named. He distinguished between those he knew from before the war and those whose identity he learnt while he was held at the KMF or later.<sup>302</sup> He also clearly explained the source of his information, offering details that support the credibility of the information

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<sup>297</sup> Defence Final Trial Brief, paras 234, 240.

<sup>298</sup> Defence Final Trial Brief, paras 246-248, 250-253.

<sup>299</sup> Defence Final Trial Brief, paras 243, 257, 263, 265.

<sup>300</sup> See [Decision on Admission of Evidence Pursuant to Rule 155](#), paras 26, 38.

<sup>301</sup> Rule 139(2) of the Rules.

<sup>302</sup> See, for example, SITF00013181-SITF00013189 RED3, pp. SITF00013186-SITF00013187; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013833-SPOE00013834.

provided.<sup>303</sup> The Panel recalls that hearsay evidence is not excluded *per se*.<sup>304</sup> As to the argument that the witness only mentioned certain names in his 2018 statement, the Panel notes that statements given by a witness over several years to various authorities, pursuing different investigative lines, are never the same. No witness recounts events comprehensively, and later reproduces them in subsequent statements with the same language, order, structure, and degree of detail. The individuality of each statement is a sign of reliability and must be appreciated fully in light of other evidence available.

185. Lastly, as regards the testimonies of Time Kadrijaj, Safete Hadergjonaj and Bardhyl Mahmuti, and as explained in more detail below, the Panel considers the three Defence witnesses to be not credible and attaches no weight to their evidence that they were not present at the KMF.<sup>305</sup> The Defence's observations on W04733's identification evidence are discussed, if need be, at relevant points of the evidentiary analysis.

186. As regards the Defence's assertion that certain aspects of W04733's evidence are either not corroborated or contradicted by the testimonies of TW4-06, TW4-07, TW4-08 and TW4-09, the Panel observes that W04733's Family Members were not present and have no first-hand knowledge of a number of incidents W04733 gave evidence about. It is thus natural that TW4-06, TW4-07, TW4-08 and TW4-09 do not corroborate every aspect of W04733's account. Any inconsistencies between the evidence of W04733 and

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<sup>303</sup> For example, W04733 stated that he learnt the names of certain KLA members from [REDACTED], [REDACTED] and another Roma musician that were held with him; he explained that they were musicians, participating in many weddings and, as a result, they knew many people, including KLA members. See **W04733**: SPOE00185335-00185363 RED3, pp. SPOE00185341-00185342 ("They knew everyone in the camp", "They knew Xhemshit KRASNIQI. The Gypsies told us his name. Through them you can find all the names", "They told us they did music at wedding parties. They knew a lot of KLAs").

<sup>304</sup> See para. 91.

<sup>305</sup> See paras 248, 259, 273 below.

that of his Family Members are discussed at relevant points of the evidentiary analysis.

187. As regards the Defence's assertion of collusion, the Panel observes that the Defence merely states that W01448 and TW4-01 have been in contact or met W04733, and does not provide any evidence in support of its assertion that they talked about "disputed issues in this case".<sup>306</sup> The evidence shows that W04733 and TW4-01 openly admitted that they met and did not (attempt to) conceal their contact.<sup>307</sup> The same holds true for W04733's contacts with W01448.<sup>308</sup> Importantly, the witnesses, while consistent on main points, still varied on discrete aspects of the events. The Panel detects no indication of collusion in the content or nature of the witnesses' evidence (for example, in the manner in which they provided their statements, the use of the same language when describing the same facts, and other relevant circumstances). The fact that W04733 talked with or met W01448 and TW4-01 is not sufficient, in and of itself, to demonstrate collusion or improper influence. Thus, the Panel rejects the Defence's allegation of collusion as unfounded.

188. In light of the foregoing, the Panel finds W04733 credible and has relied on his evidence where appropriate, as discussed at relevant points of the evidentiary analysis.

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<sup>306</sup> Defence Final Trial Brief, para. 265.

<sup>307</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1492, lines 12-18. **W04733**: 106978-107020, pp. 106997-106998.

<sup>308</sup> **W04733**: SITF00018740-00018767 RED, p. SITF00018745; SPOE00185335-00185363 RED3, pp. SPOE00185340, SPOE00185343; SITF00019824-00019876 RED2, pp. SITF00019837-00019838.

## 10. Zbyněk Dolejší (W04887)

189. Col Zbyněk Dolejší (Col Dolejší) testified before the Panel on 16 June 2023.<sup>309</sup> In addition to his testimony, he provided two expert reports, which were admitted into evidence under Rule 149 of the Rules.<sup>310</sup>

190. Col Dolejší is an expert in molecular biology and genetics. He works at the Institute of Criminalistics Police of the Czech Republic and is currently head of the Genetics Department.<sup>311</sup> He provided evidence about his DNA analysis of the biological kinship between the Murder Victim and [REDACTED]. The Defence challenged the reliability of Col Dolejší's expert evidence and his expertise.<sup>312</sup> As discussed in detail in the evidentiary analysis, the Panel finds his expert testimony and reports to be fully credible and reliable.<sup>313</sup>

## 11. Asllan Elezaj (W04379)

191. Asllan Elezaj's (Mr Elezaj) written statement to the SPO was introduced under Rule 155 of the Rules *in lieu* of oral testimony, as the witness had passed away.<sup>314</sup>

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<sup>309</sup> **Col Dolejší**: T. 16 June 2023, confidential, pp. 1943-2025.

<sup>310</sup> **Reports**: SITF00012456-SITF00012458-ET, prepared in 2009; 110670-110674, prepared in 2023; [Decision on Admission of SPO Expert Reports](#), paras 6, 24-25, 49.

<sup>311</sup> **CV**: 108634-108634 RED; **Col Dolejší**: T. 16 June 2023, public, p. 1952, line 14 to p. 1956, line 6.

<sup>312</sup> Defence Final Trial Brief, paras 173-177; KSC-BC-2020-04, F00348, Defence, *Defence Notice on Evidence of Prosecution's Expert Witnesses*, confidential, with Annex 1 confidential, para. 7.

<sup>313</sup> See paras 768, 774-778 below.

<sup>314</sup> [Decision on Admission of Evidence Pursuant to Rule 155](#), paras 62, 70(b).



192. Mr Elezaj was an Albanian citizen, born in Kukës.<sup>315</sup> The witness was the owner of the KMF,<sup>316</sup> which he put at the disposal of the KLA.<sup>317</sup> During the time relevant to the charges, he worked as a KLA member at the KMF, in logistics.<sup>318</sup>

193. In his statements, Mr Elezaj provided evidence about: (i) the ownership and layout of the KMF; (ii) the KMF's operation and use by the KLA; (iii) the presence of certain KLA members at the KMF; and (iv) Mr Shala's whereabouts during the war.

194. The Panel notes that Mr Elezaj provided detailed and, all in all, coherent information about certain aspects of the use, operation and layout of the KMF and its buildings,<sup>319</sup> as well as about the nickname, status and whereabouts of Mr Shala (in particular, his presence at the KMF at the end of May 1999). In this regard, the witness's evidence is consistent with other reliable evidence available to the Panel.

195. However, the Panel also notes the witness's obvious reluctance and/or diffidence to give evidence on several key aspects directly related to the charges. Crime-related questions had to be repeated several times before the witness responded. For example, while Mr Elezaj provided an otherwise comprehensive sketch of the KMF,<sup>320</sup> he omitted a building located in the middle of the yard,<sup>321</sup> where detainees were kept and mistreated.<sup>322</sup> The Panel doubts the witness's evidence in this regard, as it can be expected that he was aware of the existence and use of this particular building, given his ownership of and presence at the KMF at the relevant time. In addition, the witness responded first in an evasive manner when asked about the presence and/or detention

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<sup>315</sup> **Mr Elezaj:** 060124-TR-ET Part 1 Revised RED, p. 2, lines 5-6; p. 3, lines 2-7.

<sup>316</sup> **Mr Elezaj:** 060124-TR-ET Part 1 Revised RED, p. 5, lines 6-20.

<sup>317</sup> **Mr Elezaj:** 060124-TR-ET Part 1 Revised RED, p. 25, lines 5-20.

<sup>318</sup> **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 4, lines 15-19.

<sup>319</sup> The witness provided a sketch, *see* 065435-065435-ET.

<sup>320</sup> **Sketch:** 065435-065435-ET.

<sup>321</sup> *See* paras 312-318 below.

<sup>322</sup> *See* paras 335, 588, 748-750 below.

of civilians at the KMF,<sup>323</sup> which he then outright denied.<sup>324</sup> In the view of the Panel, such statement is incompatible with: (i) the fact that Mr Elezaj was present at the KMF during the time frame of the charges; and (ii) the abundance of mutually corroborative evidence before the Panel indicating that people were detained and mistreated at the KMF.<sup>325</sup> This behaviour clearly shows that the witness does not wish that he and other members of the KLA present at the KMF during the period of the charges be associated with the crimes taking place at the KMF. The witness further provided a number of implausible and/or evasive and nebulous responses regarding his KLA membership and the presence of other KLA members at the KMF.<sup>326</sup> A characteristic example is his claim not to know the role of Mr Mark Shala,<sup>327</sup> who – according to reliable evidence on record, not least his own testimony – was the chief of logistics stationed at the KMF,<sup>328</sup> at the time when Mr Elezaj also worked there in logistics, thus, apparently, under Mr Mark Shala’s supervision. In the Panel’s assessment, Mr Elezaj’s account on the above issue is unconvincing and clearly indicates a strategic decision to protect his interests and those of other KLA members at the KMF by denying any allegations related to detention practices there.

196. The above aspects of the witness’s statement indicate a strong reticence by the witness to provide any meaningful information concerning the charges under consideration with a view to protecting his and Mr Shala’s interests.

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<sup>323</sup> **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 51, line 23 to p. 55, line 4.

<sup>324</sup> **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 92, line 17 to p. 95, line 10.

<sup>325</sup> See findings in Sections VI.D, VI.E., and VI.H.

<sup>326</sup> See, for example, **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 4, line 23 to p. 8, line 15; p. 30, line 1 to p. 36, line 5; p. 131, line 2 to p. 132, line 13.

<sup>327</sup> **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 86, line 3 to p. 92, line 14.

<sup>328</sup> See para. 277 below.

197. In light of the foregoing, the Panel considers Mr Elezaj's statement with caution and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.

## 12. Marek Gasior (W04826)

198. Dr Gasior testified before the Panel between 26 June and 3 July 2023.<sup>329</sup> In addition to his testimony, Dr Gasior's provided three expert reports, which were admitted into evidence under Rule 149 of the Rules.<sup>330</sup>

199. Dr Gasior is a forensic medicine expert who performed an autopsy on the body of the Murder Victim and carried out a physical examination of TW4-01 and W04733 in 2009 and 2010.<sup>331</sup> He provided evidence regarding: (i) the injuries suffered by the Murder Victim before his death; (ii) the causes of the Murder Victim's death; (iii) the Murder Victim's remains; and (iv) the injuries suffered by TW4-01 and W04733. The Defence did not challenge his expertise.<sup>332</sup> The Panel finds his expert testimony and reports fully credible and reliable.

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<sup>329</sup> **Dr Gasior:** T. 26 June 2023, confidential, pp. 2026-2100; T. 27 June 2023, confidential, pp. 2101-2142; T. 3 July 2023, confidential, pp. 2157-2207.

<sup>330</sup> **Reports:** 031049-031095 RED2; SITF00019134-SITF00019147 RED2; SITF00372709-00372732 RED; SITF00019793-00019810; [Decision on Admission of SPO Expert Reports](#), paras 11, 32, 49.

<sup>331</sup> **CV:** 103409-103410 RED; **Dr Gasior:** T. 26 June 2023, confidential, p. 2064, line 8 to p. 2071, line 6; T. 27 June 2023, confidential, p. 2114, line 6 to p. 2117, line 5; p. 2125, line 21 to p. 2127, line 15; **Reports:** 031049-031095 RED2; SITF00019134-SITF00019147 RED2; SITF00372709-00372732 RED; SITF00019793-00019810.

<sup>332</sup> KSC-BC-2020-04, F00348, Defence, *Defence Notice on Evidence of Prosecution's Expert Witnesses*, confidential, with Annex 1 confidential, para. 5.

### 13. William Goodwin (W04875)

200. Dr William Goodwin (Dr Goodwin) testified before the Panel on 4 July 2023.<sup>333</sup> In addition to his testimony, he provided two expert reports, which were admitted into evidence under Rule 149 of the Rules.<sup>334</sup>

201. Dr Goodwin is a forensic geneticist and Reader in Forensic Genetics at the University of Central Lancashire, Preston, United Kingdom.<sup>335</sup> He was asked to comment on Col Dolejší's reports.<sup>336</sup> He provided evidence on DNA sampling, analysis and methodology, and the interpretation of such data. The Defence did not challenge his expertise.<sup>337</sup> The Panel finds his expert testimony and reports fully credible and reliable.

### 14. Osman Kryeziu (W04848)

202. The written statements of Osman Kryeziu (Mr Kryeziu) were admitted pursuant to Rule 155 of the Rules, as the witness is deceased.<sup>338</sup>

203. Prior to the time-frame of the charges, Mr Kryeziu was a prosecutor in Pristina, up until 1990.<sup>339</sup> He joined the KLA in or around April 1999<sup>340</sup> and, during the time relevant to the charges, was tasked with conducting investigations and interrogations,

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<sup>333</sup> **Dr Goodwin:** T. 4 July 2023, public, pp. 2208-2247.

<sup>334</sup> **Reports:** 103373-103387 RED, prepared in 2021; 111160-111162, prepared in 2023; [Decision on Admission of SPO Expert Reports](#), paras 14, 39, 49.

<sup>335</sup> **CV:** 103392-103400 RED; **Dr Goodwin:** T. 4 July 2023, public, p. 2214, line 11 to p. 2215, line 23.

<sup>336</sup> **Report:** 111160-111162; **Dr Goodwin:** T. 4 July 2023, public, p. 2218, lines 4-8.

<sup>337</sup> KSC-BC-2020-04, F00348, Defence, *Defence Notice on Evidence of Prosecution's Expert Witnesses*, confidential, with Annex 1 confidential, para. 9.

<sup>338</sup> [Decision on Admission of Evidence Pursuant to Rule 155](#), paras 46, 70(b).

<sup>339</sup> **Mr Kryeziu:** SITF00016908-00016964 RED, p. SITF00016910; SITF00014088-00014120 RED, p. SITF00014100.

<sup>340</sup> **Mr Kryeziu:** SITF00014088-00014120 RED, p. SITF00014091.

including at the KMF.<sup>341</sup> By his own account, he was appointed at the KMF by Xhemshit Krasniqi and Sabit Geci.<sup>342</sup>

204. In his statements, Mr Kryeziu provided evidence about, *inter alia*: (i) the circumstances in which he joined the KLA, in Kukës, around April 1999; (ii) his posting at the KMF;<sup>343</sup> (iii) his participation in the questioning of TW4-04 and TW4-11 ([REDACTED]);<sup>344</sup> (iv) the chain of command within the KMF at the time,<sup>345</sup> and (v) the arrest, interrogation and detention of suspected “collaborators” with the Serbian forces at the KMF.<sup>346</sup>

205. The Panel notes that Mr Kryeziu provided overall a generally consistent and coherent account of the timeline of his presence and function at the KMF at the relevant time. He also provided information rich in detail regarding the function of the KMF itself.<sup>347</sup> In this regard, his evidence is corroborated by numerous other witnesses. Likewise, the Panel is of the view that Mr Kryeziu was forthcoming on the presence of a number of key individuals from the chain of command at the KMF, including Xhemshit Krasniqi and Sabit Geci,<sup>348</sup> as well as other KLA members,<sup>349</sup>

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<sup>341</sup> Mr Kryeziu’s role included investigations and “hearing sessions” related to administrative offences allegedly committed by KLA members (see **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014095-SITF00014096; SITF00016908-00016964 RED, pp. SITF00016913-SITF00016914), as well as investigations and interrogations of civilian detainees, as discussed below.

<sup>342</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014097-SITF00014098; SITF00016908-00016964 RED, pp. SITF00016912 and SITF00016920.

<sup>343</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014099.

<sup>344</sup> See paras 422-423, 433, 521 below.

<sup>345</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014098- SITF00014099.

<sup>346</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014100-SITF00014101.

<sup>347</sup> The Panel notes, for instance, the distinction Mr Kryeziu drew between what he named “Headquarters 2” (KMF) and “Headquarters 1” located nearby, where Ruzhdi Saramati was based; see **Mr Kryeziu**: SITF00016908-00016964 RED, p. SITF00016912; SITF00014088-00014120 RED, pp. SITF00014092-SITF00014093. This is a key feature of the set-up in Kukës, on which the witness’s statements are corroborated by the testimonial evidence of another KLA member – witness TW4-10, **TW4-10**: T. 1 May 2023, public, p. 1092, lines 13-24.

<sup>348</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014098.

<sup>349</sup> The Panel notes that the witness is also credible on a number of minor aspects, such as his acquaintance with Ruzhdi Saramati, the latter’s departure to Burrel alongside other KLA members, and

during the time relevant to the charges, as amply corroborated by other evidence on record.<sup>350</sup> In the same vein, Mr Kryeziu acknowledged the presence of detainees TW4-04 and TW4-11, as well as that of TW4-01 and the Murder Victim, at the relevant time,<sup>351</sup> which is also corroborated by other evidence.<sup>352</sup> Therefore, the Panel finds Mr Kryeziu truthful and credible on these points.

206. However, the Panel found several key aspects of the witness's statements not credible, especially regarding the exercise of his functions at the KMF in relation to detained civilians.

207. First, the Panel notes that in his statements, Mr Kryeziu was reluctant to concede or tried to deny his involvement in the interrogation of persons accused of being "collaborators" to the Serbian forces. For instance, he initially denied having conducted any interviews or interrogations of civilians, but subsequently admitted having interviewed TW4-04 and TW4-11.<sup>353</sup> The evidence of TW4-04 and TW4-11 confirms that Mr Kryeziu conducted "hearings" and "questioned" them, introducing himself as a "judge" or "prosecutor".<sup>354</sup> Likewise, TW4-02, who knew Mr Kryeziu personally, also confirmed having been interrogated by him at the KMF.<sup>355</sup> In light of the extensive evidence on record contradicting Mr Kryeziu regarding his involvement in interrogating detainees at the KMF, the Panel does not attach much weight to his statement in this regard.

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their subsequent return to Kukës at the beginning of May 1999; *see* **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014093-SITF00014094. *See also* the findings in Section VI.H.2.

<sup>350</sup> *See also* the findings in Section VI.C.

<sup>351</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014100.

<sup>352</sup> *See* findings in Sections VI.D.2., VI.D.4., VI.D.8.

<sup>353</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014100; *see* paras 423-424, 521 below.

<sup>354</sup> *See* paras 422, 433-436 below.

<sup>355</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014100; SITF00016908-00016964 RED, p. SITF00016916; *see also*, para. 541 below.

208. Second, the Panel notes Mr Kryeziu's desire to distance himself more generally throughout his statements from *any* allegations related to detention and mistreatment practices at the KMF.<sup>356</sup> Strikingly, when asked whether he recalled hearing that one person was held and shot at the KMF, Mr Kryeziu responded: "if such a thing took place it was during the night and I was not there", adding that he would spend the night with his family.<sup>357</sup> The witness provided no plausible explanation as to why he was specifically referring to being absent from the KMF at night time. Another example is his assertion, without any apparent need or prompt, that he never mistreated anyone.<sup>358</sup> The Panel considers that the above examples are indicative of Mr Kryeziu's desire to lay down his version of events and anticipate the interpretation of his conduct. Consequently, the Panel attaches limited weight to these aspects of the witness's evidence.

209. Lastly, the Panel notes that Mr Kryeziu twice in his statements attempted to downplay the level of organisation or command structure of the KLA at the KMF, back in May 1999. However, he contradicted himself when noting that: (i) Xhemshit Krasniqi was "one of the highest" within the KMF;<sup>359</sup>(ii) Beslim Zyrapi was "the most important person"<sup>360</sup> and the "Chief of the main headquarters";<sup>361</sup> and that (iii) Fatmir Limaj was the leader of Operation Arrow.<sup>362</sup> The Panel further observes that his evidence is directly contradicted by the extensive documentary and

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<sup>356</sup> Mr Kryeziu: SITF00014088-00014120 RED, p. SITF00014100.

<sup>357</sup> Mr Kryeziu: SITF00014088-00014120 RED, p. SITF00014100.

<sup>358</sup> Mr Kryeziu: SITF00014088-00014120 RED, p. SITF00014100.

<sup>359</sup> Mr Kryeziu: SITF00014088-00014120 RED, p. SITF00014097.

<sup>360</sup> Mr Kryeziu: SITF00014088-00014120 RED, p. SITF00014102.

<sup>361</sup> Mr Kryeziu: SITF00014088-00014120 RED, p. SITF00014094; *see similarly*, SITF00016908-00016964 RED, p. SITF00016923.

<sup>362</sup> Mr Kryeziu: SITF00014088-00014120 RED, p. SITF00014096; SITF00016908-00016964 RED, p. SITF00016923.

testimonial evidence before the Panel, in particular on the role of Xhemshit Krasniqi and Sabit Geci.<sup>363</sup>

210. The afore-mentioned aspects of Mr Kryeziu's evidence indicate a strong reticence on his part to provide candid and straightforward answers to questions pertaining to his possible involvement in crimes committed at the KMF at the time relevant to the charges. The witness strategically directed his statements to protect his interests and to avoid providing any meaningful information which could implicate KLA members, such as Xhemshit Krasniqi or Sabit Geci, in the commission of any crimes at the KMF. Such intention is most likely to have affected his overall willingness to provide truthful evidence and negatively impacts the witness's general credibility. In light of the foregoing, the Panel treats Mr Kryeziu's statements with caution and will rely only on those aspects of the witness's evidence which are corroborated by other evidence on record, as discussed in the Panel's evidentiary analysis.

G. GENERAL CREDIBILITY ASSESSMENT OF WITNESSES CALLED BY VICTIMS'  
COUNSEL: KARIN DUHNE-PRINSEN AND CHAYÉN LOZANO PARRA

211. Ms Duhne-Prinsen and Dr Lozano Parra testified before the Panel on 21 August 2023.<sup>364</sup> In addition to their testimony, they provided one expert report which was admitted into evidence under Rule 149 of the Rules.<sup>365</sup>

212. Ms Duhne-Prinsen is a mental health psychologist, specialised in examining (presumed) victims of torture and inhumane treatment. Dr Lozano Parra is a psychiatrist. Both experts are working for the Netherlands Institute for Human Rights

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<sup>363</sup> See findings in Section VI.C.

<sup>364</sup> **Ms Duhne-Prinsen and Dr Lozano Parra:** T. 21 August 2023, confidential, pp. 2248-2342.

<sup>365</sup> **Report:** V4010023-V4010044; Oral Order: T. 25 October 2023, public, p. 3151, line 9 to p. 3153, line 8.



and Medical Assessment (iMMO).<sup>366</sup> In 2023, they conducted a forensic medical examination of TW4-01. Ms Duhne-Prinsen and Dr Lozano Parra provided evidence on: (i) the typical (or possible) psychological consequences of arbitrary detention and ill-treatment; (ii) TW4-01's mental health and psychological problems; (iii) the causal relationship between TW4-01's psychological problems and his detention and mistreatment at the KMF in 1999; (iv) [REDACTED]; and (v) the effects of trauma on memory. The Defence did not challenge their expertise.<sup>367</sup> The Panel finds their testimony and report fully credible and reliable.

## H. GENERAL CREDIBILITY ASSESSMENT OF DEFENCE WITNESSES<sup>368</sup>

### 1. DW4-09

213. DW4-09's written statements were introduced under Rule 155 of the Rules *in lieu* of oral testimony (collectively, DW4-09's Statements),<sup>369</sup> as the witness had passed away.<sup>370</sup>

214. DW4-09, a Kosovo Albanian, was [REDACTED].<sup>371</sup>

215. In his statements, DW4-09 provided evidence about: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].

216. The Panel observes that the witness provided largely consistent and inherently coherent evidence. He clearly distinguished between what he personally witnessed

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<sup>366</sup> CVs: V4010045-V4010048.

<sup>367</sup> KSC-BC-2020-04, F00578, Defence, *Defence Notice on Evidence of Victims' Counsel's Expert Witnesses Pursuant to the Trial Panel's Order of 4 May 2023*, 10 July 2023, confidential, para. 3. A public redacted version was filed on 13 July 2023, F00578/RED.

<sup>368</sup> The Panel has elected not to do a general credibility assessment for DW4-01, whose written statements, introduced under Rule 153 of the Rules, were ultimately found by the Panel to be of no relevance.

<sup>369</sup> DW4-09: SITF00374132-00374148 RED2; SPOE00014640-00014668 RED2.

<sup>370</sup> [Decision on Defence Requests for Admission of Evidence Pursuant to Rule 155](#), paras 12, 29(a)-(b).

<sup>371</sup> DW4-09: SPOE00014640-00014668 RED2, pp. SPOE00014643-SPOE00014644.

and what he learnt from others. His evidence is further confirmed by the mutually reinforcing evidence of TW4-01 and by documentary evidence.

217. The Panel is mindful that there are certain discrepancies across DW4-09's Statements, but also takes into account: (i) the trauma the witness suffered [REDACTED]; (ii) the difficulty in recounting repeatedly painful events, particularly to foreign authorities; (iii) the effects of time on a witness's memory; and (iv) the fear he expressed about providing evidence.<sup>372</sup> On balance, the Panel does not find that the inconsistencies affect the witness's overall credibility.

218. In light of the foregoing, the Panel finds DW4-09 generally credible and has relied on his evidence, as discussed in the Panel's evidentiary analysis.

## 2. W04280

219. W04280 was summonsed to testify before the Panel on 28-29 November 2023, with protective measures.<sup>373</sup> W04280 is a Kosovo Albanian [REDACTED].<sup>374</sup>

220. The witness was a member of the KLA [REDACTED].<sup>375</sup>

221. W04280 testified about: (i) his KLA membership; (ii) the layout of the KMF compound and its facilities, including the medical office and the toilets; and (iii) KLA members present at the KMF.<sup>376</sup>

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<sup>372</sup> DW4-09: SITF00374132-00374148 RED2, p. SITF00374137.

<sup>373</sup> [Decision on Defence Request to Summons Witnesses](#), paras 16, 21(b); W04280: T. 28 November 2023, confidential, pp. 3738-3828; T. 29 November 2023, confidential, pp. 3833-3870; *see also*, Oral Order: T. 27 November 2023, confidential, p. 3721, lines 8-17; T. 28 November 2023, confidential, p. 3732, line 2 to p. 3733, line 6.

<sup>374</sup> W04280: T. 28 November 2023, confidential, p. 3807, lines 13-22, p. 3808, lines 1-5.

<sup>375</sup> W4280: T. 28 November 2023, confidential, p. 3750, line 20 to p. 3751, line 6; p. 3769, lines 14-18.

<sup>376</sup> W4280: T. 28 November 2023, confidential, p. 3780, line 25 to p. 3781, line 21; p. 3824, line 18 to p. 3825, line 4; T. 29 November 2023, public, p. 3843, lines 1-2.

222. The Panel observes that the witness was equivocal and very reluctant to provide any relevant evidence on Mr Shala and the charges in this case: he claimed not to know or have met Mr Shala or someone by the nickname Ujku at the relevant time.<sup>377</sup> It was also obvious to the Panel that the witness was unwilling to provide any significant information or detail about the KMF, its facilities and its operations. When shown identification evidence (sketches or photographs) by both Parties, the witness merely responded that he does not recognise it or remember.<sup>378</sup> In reaction to this pattern of evasive answers, the Presiding Judge reminded the witness of his oath and that he shall not withhold information.<sup>379</sup> In this regard, his testimony clearly fell short of what the Panel would expect from a witness with his position at the KMF.

223. In the same vein, he outright and flatly denied having knowledge of individuals detained, interrogated, performing any work, or who died at the KMF.<sup>380</sup> When confronted by both Parties that evidence is available demonstrating his knowledge of the detention conditions, [REDACTED]<sup>381</sup> [REDACTED], W04280 continued to deny having any knowledge, and answered “No” and “I don’t remember. I don’t know”.<sup>382</sup> The witness, however, confirmed that, at the time, there was nobody else with the same name as his at the KMF.<sup>383</sup> The same holds true on a number of topics related to W04280’s membership and role within the KLA and his knowledge of or interaction with other KLA members at the KMF, such as Sabit Geci and Xhemshit Krasniqi: the witness remained evasive, equivocal and non-responsive. He repeatedly and

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<sup>377</sup> **W4280**: T. 28 November 2023, public, p. 3778, line 20 to p. 3779, line 2.

<sup>378</sup> *See, for example*, **W4280**: T. 28 November 2023, public, p. 3775, line 19 to p. 3776, line 10; T. 29 November 2023, confidential, p. 3843, lines 8-15; p. 3844, lines 13-15.

<sup>379</sup> **W4280**: T. 29 November 2023, public, p. 3842, lines 14-19.

<sup>380</sup> **W4280**: T. 28 November 2023, public, p. 3787, lines 20-23.

<sup>381</sup> [REDACTED].

<sup>382</sup> **W4280**: T. 28 November 2023, confidential, p. 3785, lines 4-9; T. 29 November 2023, confidential, p. 3846, lines 1-23.

<sup>383</sup> **W4280**: T. 28 November 2023, confidential, p. 3824, lines 14-17.

consistently answered that he does not remember,<sup>384</sup> even when his memory was refreshed with his prior statements.<sup>385</sup>

224. The Panel observes an overall disinterest, strong reticence and open reluctance by the witness to provide meaningful information concerning any crimes committed at the KMF during the relevant time and a systematic inclination to minimise or negate as much as possible his recollection of events and persons. The Panel cannot but conclude that the witness, in fact, deliberately chose to answer that he did not remember as many times as he possibly could, irrespective of the content of the question, the topic discussed, and of who put the questions. Moreover, in light of his behaviour in court, his repeated justification that he is in poor health<sup>386</sup> or that time had passed<sup>387</sup> seemed to be a pretext, as he did not show any genuine attempt to respond to questions put to him.

225. In light of the foregoing, the Panel treats the witness's testimony with caution and relies on it to a very limited extent, where appropriate, as discussed at relevant points of the evidentiary analysis.

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<sup>384</sup> See, for example, **W4280**: T. 28 November 2023, confidential; p. 3776, line 15 to p. 3777, line 19; p. 3780, lines 5-8, 22-24; p. 3781, lines 2-22; p. 3824, line 18 to p. 3825, line 4; T. 29 November 2023, confidential, p. 3837, lines 13-16; p. 3840, lines 11-23.

<sup>385</sup> See, for example, **W4280**: T. 28 November 2023, confidential, p. 3810, line 17 to p. 3813, line 6; p. 3819, line 21 to p. 3820, line 25; p. 3822, lines 8-25; T. 29 November 2023, confidential, p. 3840, lines 11-23.

<sup>386</sup> **W4280**: T. 28 November 2023, confidential, p. 3740, lines 11-13 ("And you can see that I'm in poor health, especially today. If it's possible for you to only take my statement in consideration"), 18-22 ("Because I can see myself becoming poorer and poorer in health, I would like my last statement that I made, that to be my testimony, and the testimony which I was supposed to give today to be admitted in written form"); p. 3752, lines 2-3.

<sup>387</sup> **W4280**: T. 28 November 2023, confidential, p. 3751, line 25 to p. 3752, line 1; p. 3754, lines 3-5; p. 3822, lines 23-25; T. 28 November 2023, public, p. 3775, line 6; T. 29 November 2023, confidential, p. 3837, lines 16-17; p. 3844, lines 15-16; p. 3865, lines 8-9.

### 3. André De Villiers Horne (DW4-03)

226. André De Villiers Horne (Mr De Villiers Horne) testified before the Panel on 27 November 2023.<sup>388</sup> In addition to his testimony, he provided an expert report which was admitted into evidence under Rule 149 of the Rules.<sup>389</sup>

227. Mr De Villiers Horne is a forensic firearms expert.<sup>390</sup> He provided evidence related to two incidents charged in the Confirmed Indictment: (i) [REDACTED]; and (ii) the shooting of [REDACTED] the Murder Victim on or about 4 June 1999 (Leg-Shooting Incident).<sup>391</sup> The Panel finds his expert testimony and report fully credible and reliable.

### 4. Bedri Dervishaj (DW4-02)

228. Bedri Dervishaj (Mr Dervishaj) testified before the Panel on 2 October 2023, without protective measures.<sup>392</sup>

229. Mr Dervishaj joined the KLA in February 1999 and was part of Brigade 128 as an ordinary member.<sup>393</sup> The witness testified about: (i) his whereabouts and role during the war; (ii) the existence of two KLA bases in Kukës; and (iii) the medical office at the KMF.

230. The Panel notes that Mr Dervishaj provided detailed and, all in all, coherent information about his involvement in the KLA, despite his claim to suffer from traumatic experiences from the war. This concerns, in particular, his joining the KLA, his training in Burrel (Albania), the movements of his KLA group, the establishment

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<sup>388</sup> **Mr De Villiers Horne:** T. 27 November 2023, confidential, pp. 3628-3727.

<sup>389</sup> **Report:** DPS00864-DPS00875; Decision on Admission of Defence Expert Report, paras 41-42, 56.

<sup>390</sup> **Report:** DPS00864-DPS00875, p. DPS00865, containing his CV.

<sup>391</sup> [Confirmed Indictment](#), paras 22-23, 28.

<sup>392</sup> **Mr Dervishaj:** T. 2 October 2023, confidential, pp. 2734-2804.

<sup>393</sup> **Mr Dervishaj:** T. 2 October 2023, public, p. 2735, line 25 to p. 2737, line 10; p. 2738, line 24 to p. 2739, line 2; p. 2753, lines 12-25; p. 2773, lines 11-25.

of Brigade 128, the second KLA base in Kukës (referred to by the witness as “Pavilion 1”), and the KMF medical office. Critically, when he did not remember exact dates, he was able to approximate certain events and timelines (*e.g.* his stay in Kalimash and at the frontline). The Panel notes that, while most of these factual allegations are outside the temporal scope of the charges, this evidence is consistent with other reliable evidence heard in this case.

231. However, the Panel observes that the witness did not provide any relevant evidence on the charges: he claimed not to know or have met Mr Shala at the relevant time and was unable to provide any information about the KMF, besides the medical office.

232. The Panel also notes that Mr Dervishaj maintains close ties to the KLA until today. More specifically, when confronted by the SPO with two Facebook posts by two of his acquaintances – who expressed strong support for Mr Dervishaj’s testimony before the Specialist Chambers and their respect for his contribution to the war as a KLA member<sup>394</sup> –, Mr Dervishaj became evasive, apparently in an effort to deflect attention from his ties with other former KLA members. He only answered the question when it was posed for the third time, after the intervention of the Presiding Judge.<sup>395</sup> Mr Dervishaj also admitted having met and spoken about his upcoming testimony before the Specialist Chambers with Naser Kocinaj (Mr Kocinaj) – with

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<sup>394</sup> **Mr Dervishaj**: T. 2 October 2023, public, p. 2794, lines 1-3; p. 2795, line 24 to p. 2796, line 19 (Mr Faruk Hoxha’s Facebook post stated: “Comrade Bedri DERVISHAJ travels to the Special /Specialist/ Court in the Hague today. We have a confident hope in your innocence Bedri. May you return stronger and triumphant! The KLA war is the foundation of Freedom and Kosovo’s future. Respect Comrade, invincible as always”; *see* SPOE00341624-SPOE00341624-ET); p. 2797, line 13 to p. 2798, line 1; p. 2799, line 12 to p. 2800, line 12 (Mr Hamit Bytyqi’s Facebook post stated: “May you be triumphant, liberator, like you were in the war and in freedom. May you return with your head held high from the Hague, Bedri DERVISHAJ”; *see* SPOE00341629-SPOE00341629-ET).

<sup>395</sup> **Mr Dervishaj**: T. 2 October 2023, public, p. 2796, line 20 to p. 2797, line 12.

whom he has familial and friendly ties – shortly before his testimony, as corroborated by Mr Kocinaj.

233. From the above considerations, the Panel observes a strong reticence by the witness to provide any meaningful information concerning Mr Shala and the charges under consideration. The content and manner of Mr Dervishaj's answers demonstrate that his account was strategically directed to protect his and Mr Shala's interests and to avoid providing any information which could link KLA members with the commission of any crimes.

234. In light of the foregoing, the Panel considers the witness's testimony with caution and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.

#### 5. [REDACTED] (W03881)

235. The statements of [REDACTED] were admitted pursuant to Rule 153 of the Rules.<sup>396</sup>

236. [REDACTED].<sup>397</sup> [REDACTED].<sup>398</sup>

237. The witness's statements pertain, *inter alia*, to [REDACTED].<sup>399</sup>

238. The Panel finds the witness's statements generally credible and reliable regarding the events [REDACTED], as he was an eye-witness to the events and kept a diary and photograph entries, including for that day.<sup>400</sup> Both in his diary and in his statements, [REDACTED] described coherently and methodically [REDACTED]:

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<sup>396</sup> [Decision on Defence Request for Admission of Evidence Pursuant to Rule 153](#), para. 23(a)-(b).

<sup>397</sup> [REDACTED].

<sup>398</sup> [REDACTED].

<sup>399</sup> DPS00125-DPS00141, p. DPS00125; 071142-071313-ET Revised 1 RED, pp. 071180-071182; 071107-071127-ET RED, p. 071110.

<sup>400</sup> 071142-071313-ET Revised 1 RED, p. 071180.

(i) [REDACTED]; and (ii) [REDACTED].<sup>401</sup> On both points, the Panel finds that [REDACTED] is internally consistent and overall mutually corroborative with TW4-01's testimony.<sup>402</sup> In addition, [REDACTED] is also mutually corroborative with other witnesses' evidence, notably W01448, TW4-05 and TW4-04, [REDACTED].<sup>403</sup>

239. In light of the above, the Panel relies on W03881's evidence, as discussed in the evidentiary discussion.

## 6. Safet Gashi (W04405)

240. Safet Gashi (Mr Gashi) was summonsed to testify before the Panel on 9-10 January 2024, without protective measures.<sup>404</sup>

241. Mr Gashi is a Kosovo Albanian citizen. He joined the KLA in March 1999 and, according to his testimony, he was a member of Brigade 128.<sup>405</sup>

242. During his testimony, Mr Gashi was contradictory, evasive, equivocal and not forthcoming.<sup>406</sup> The witness only reluctantly conceded certain details, if at all, when confronted with his prior statement to the SPO. Although the questions posed to him were objectively clear and comprehensible, he sometimes requested that they be repeated (in an apparent stalling tactic), or claimed that they were not clear in order to excuse contradictions across his account.<sup>407</sup>

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<sup>401</sup> 071142-071313-ET Revised 1 RED, p. 071182; *see similarly*, 071136-TR-ET Part 2 RED, pp. 11-12, 16-17.

<sup>402</sup> [REDACTED].

<sup>403</sup> [REDACTED].

<sup>404</sup> [Decision on Defence Request to Summons Witnesses](#), paras 16, 21(b); **Mr Gashi**: T. 9 January 2024, confidential, pp. 3896-3998; T. 10 January 2024, confidential, pp. 4003-4067.

<sup>405</sup> **Mr Gashi**: T. 9 January 2024, public, p. 3896, lines 15-20; p. 3899, line 5 to p. 3900, line 9; p. 3906, lines 13-15; p. 3907, lines 9-12; T. 10 January 2024, public, p. 4006, lines 4-8.

<sup>406</sup> *See, in particular*, **Mr Gashi**: T. 10 January 2024, confidential, p. 4030, line 14 to p. 4034, line 11; p. 4049, line 11 to p. 4060, line 2; p. 4062, line 1 to p. 4066, line 14.

<sup>407</sup> **Mr Gashi**: T. 9 January 2024, public, p. 3903, lines 4-7; T. 10 January 2024, public, p. 4009, lines 3-16.



243. The Panel observes that Mr Gashi's testimony was inconsistent with his own prior statement on several aspects, including his role in the KLA, his whereabouts, and his presence at the KMF. Most notably, the witness asserted across his testimony and prior statement either that he was in Kukës for a limited amount of time,<sup>408</sup> or that he was not there at all and "never stepped on Albanian soil".<sup>409</sup> With reference to the KMF, the witness asserted that he had "nothing to do with that depot or whatever you're describing here",<sup>410</sup> which clearly indicates that he had knowledge of the KMF. What is more, the witness was inconsistent, not only with his prior statement (on this and other points), but also throughout his testimony and constantly changed his account as he was questioned by the Parties and Victims' Counsel. When confronted with these inconsistencies, he either adapted his testimony or denied that any such contradictions existed.<sup>411</sup> The witness failed to provide any persuasive or plausible explanations for the inconsistencies<sup>412</sup> and had to be reminded several times by the Presiding Judge of his oath to tell the truth.<sup>413</sup> Crucially, the Panel observes that Mr Gashi is clearly contradicted by other reliable evidence before this Panel attesting, for example, that he was at the KMF during the time relevant to the charges and that he was aware that detainees ([REDACTED]) were being held there.<sup>414</sup>

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<sup>408</sup> **Mr Gashi:** T. 9 January 2024, public, p. 3901, lines 5-11 (stating that he joined the KLA in Kukës and was then sent to Kolsh or Kalimash); p. 3911, line 16 to p. 3912, line 2 (stating that he went to Kukës to get weapons, but did not stay there); p. 3956, line 8 to p. 3958, line 17.

<sup>409</sup> **Mr Gashi:** T. 9 January 2024, public, p. 3901, line 12 to p. 3903, line 3, *referring to* Prior Statement: 063317-TR-ET PART 1 RED2, p. 8, lines 8-14 (stating the he joined the KLA in Gorozhup, Kosovo); p. 3912, line 16 to p. 3913, line 25, *referring to* Prior Statement: 063317-TR-ET PART 2 RED2, p. 13, lines 3-8; p. 14, lines 6-13 (stating that he never went to Kukës); T. 10 January 2024, public, p. 4010, line 19 to p. 4011, line 6, *referring to* Prior Statement: 063317-TR-ET PART 2 RED2, p. 10, lines 11-15 (stating that "my two feet have never stepped on Albanian soil. Never").

<sup>410</sup> **Mr Gashi:** T. 10 January 2024, confidential, p. 4040, lines 14-16; pp. 4064-4066.

<sup>411</sup> **Mr Gashi:** T. 9 January 2024, public, p. 3905, line 16 to p. 3906, line 5 (changing his testimony that he joined the KLA, not in Kukës, but in Gorozhup); p. 3913, line 15 to p. 3914, line 1; T. 9 January 2024, confidential, p. 3932, line 14 to p. 3937, line 19; T. 10 January 2024, public, p. 4003, line 23 to p. 4013, line 3; p. 4019, line 21 to p. 4021, line 24.

<sup>412</sup> *See, for example, Mr Gashi:* T. 10 January 2024, public, p. 4015, line 20 to p. 4018, line 20.

<sup>413</sup> **Mr Gashi:** T. 10 January 2024, public, p. 4005, lines 20-22; p. 4013, lines 13-25.

<sup>414</sup> [REDACTED].

244. The above aspects of Mr Gashi's testimony indicate a strong reticence by the witness to provide any meaningful information concerning the charges under consideration. The Panel finds that the content and manner of Mr Gashi's answers clearly demonstrate that he attempted to deny any possible personal connection to the KMF in order to distance himself from any allegations related to the detention practices there. This reduces significantly any faith which might have otherwise been invested in his testimony. As a result, the Panel finds Mr Gashi's testimony wholly unreliable.

## 7. Safete Hadergjonaj (W04441)

245. Safete Hadergjonaj (Ms Hadergjonaj) was summonsed to testify before this Panel on 22-23 November 2023, without protective measures.<sup>415</sup>

246. Ms Hadergjonaj is a Kosovo Albanian citizen. She was trained as an economist.<sup>416</sup>

247. The Panel notes Ms Hadergjonaj's open defiance and reluctance to provide any meaningful information on the charges and Mr Shala. Her responses were marked by exaggeration and imbued with conspiracy allegations.<sup>417</sup> The witness did not hide her profound bias against the Specialist Chambers and the SPO, which she characterised as "ridiculous",<sup>418</sup> as well as her unconditional support for the KLA,<sup>419</sup> including for Mr Shala, although she claims she did not know him until he was arrested and transferred to the Specialist Chambers and that she is not familiar with the charges

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<sup>415</sup> [Decision on Defence Request to Summons Witnesses](#), paras 16, 21(b); **Ms Hadergjonaj**: T. 22 November 2023, confidential, pp. 3477-3517; T. 23 November 2023, public, pp. 3524-3539.

<sup>416</sup> **Ms Hadergjonaj**: T. 22 November 2023, public, p. 3486, lines 6-10.

<sup>417</sup> **Ms Hadergjonaj**: T. 22 November 2023, public, p. 3486, lines 6-14; p. 3507, line 15 to p. 3508, line 19; p. 3515, lines 8-12; T. 23 November 2023, public, p. 3525, line 4 to p. 3526, line 9.

<sup>418</sup> **Ms Hadergjonaj**: T. 22 November 2023, public, p. 3512, lines 1-7.

<sup>419</sup> **Ms Hadergjonaj**: T. 22 November 2023, public, p. 3484, lines 13-15: "Unfortunately, I wasn't a member of the KLA so that I could be proud now to have been a member of the KLA then".

against him.<sup>420</sup> The content and manner of Ms Hadergjonaj's answers demonstrate that her account was strategically directed to protect her own and Mr Shala's interests.

248. In light of the foregoing, the Panel finds Ms Hadergjonaj's testimony wholly unreliable.

## 8. Zijadin Hoxha (W03887)

249. Zijadin Hoxha (Mr Hoxha) testified before the Panel from 20 to 22 November 2023,<sup>421</sup> without protective measures.

250. Mr Hoxha is a Kosovo Albanian citizen.<sup>422</sup> He joined the KLA in the spring of 1999. During the time relevant to the charges, he was stationed at the KMF, where he was repairing weapons.<sup>423</sup>

251. Mr Hoxha testified about: (i) the functions of the KMF at the relevant time; (ii) the layout of the KMF and use of the different buildings by the KLA; (iii) his role at the KMF and whereabouts; (iv) the presence of certain KLA members at the KMF and/or his knowledge of them; (v) the battle of Gorožup/Gorozhup and the casualties suffered by the KLA there; and (vi) a number of videos that he filmed at the KMF and elsewhere.

252. The Panel notes that Mr Hoxha provided detailed and, all in all, coherent information about his role, the functions and layout of the KMF, the use of the different buildings (including the presence of a medical office and medical personnel), the living and sleeping conditions, and the casualties suffered by the KLA in the battle

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<sup>420</sup> **Ms Hadergjonaj**: T. 22 November 2023, public, p. 3489, line 23 to p. 3490, line 9; p. 3512, line 25 to p. 3513, line 5.

<sup>421</sup> **Mr Hoxha**: T. 20 November 2023, confidential, pp. 3171-3282; T. 21 November 2023, confidential, pp. 3288-3405; T. 22 November 2023, confidential, pp. 3417-3463.

<sup>422</sup> **Mr Hoxha**: T. 20 November 2023, public, p. 3172, line 4.

<sup>423</sup> **Mr Hoxha**: T. 20 November 2023, public, p. 3172, line 23 to p. 3175, line 15; T. 21 November 2023, public, p. 3317, line 9 to p. 3319, line 18.

of Gorožup/Gorozhup and surrounding events. Notably, his testimony on these points is generally consistent with other reliable evidence on record. Thus, the Panel is convinced that Mr Hoxha truthfully recounted events that he personally experienced.

253. However, the Panel notes the witness's obvious reticence and/or diffidence in giving evidence on several key aspects regarding the charges. For example, the witness denied having seen a building located in the middle of the KMF courtyard, where detainees were held, and knowing the location of the toilets at the KMF.<sup>424</sup> As is discussed in detail in the evidentiary discussion, the Panel finds that, in light also of other reliable evidence on record, the witness was not truthful in this respect.<sup>425</sup> The Panel further observes inconsistencies between the witness's testimony in court and his prior statements.<sup>426</sup> Mr Hoxha did not provide any credible explanation for the inconsistencies put to him. Instead, he either changed his evidence or insisted that no such inconsistencies existed. The behaviour of Mr Hoxha – who had to be reminded by the Presiding Judge of his oath to tell the truth<sup>427</sup> – clearly indicates that he wished to distance himself from any allegations related to detention practices at the KMF. The above aspects of Mr Hoxha's testimony indicate a strong reticence on his part to provide any meaningful information concerning the charges under consideration. Rather, the witness strategically directed his testimony to protect his and Mr Shala's interests and to avoid providing any information which could link KLA members at the KMF with the commission of any crimes. Such intention is most likely to have affected his overall willingness to truthfully answer any questions related to detention practices at the KMF, Mr Shala and the actions of other KLA members.

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<sup>424</sup> See paras 313, 323 below.

<sup>425</sup> See paras 315, 324 below.

<sup>426</sup> **Mr Hoxha:** T. 21 November 2023, public, p. 3317, line 9 to p. 3319, line 18; p. 3401, line 18 to p. 3403, line 5; T. 22 November 2023, public, p. 3437, line 25 to p. 3439, line 22.

<sup>427</sup> **Mr Hoxha:** T. 21 November 2023, public, p. 3377, lines 12-15.

254. In light of the foregoing, the Panel considers Mr Hoxha's testimony with caution and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.

## 9. Time Kadrijaj (W04440)

255. Time Kadrijaj (Ms Kadrijaj) was summonsed to testify before this Panel on 23-24 November 2023, without protective measures.<sup>428</sup>

256. Ms Kadrijaj is a Kosovo Albanian citizen. She joined the KLA in March/April 1998 as a medical doctor.<sup>429</sup>

257. The Panel notes the witness's palpably evasive attitude when responding to questions, especially when confronted by the SPO with evidence contradicting her testimony.<sup>430</sup> The Panel also observes striking inconsistencies between the evidence provided by Ms Kadrijaj and other reliable evidence available before this Panel (including from another Defence witness) with regard to her presence at the KMF,<sup>431</sup> which she outright denied. The Panel observes Ms Kadrijaj's unconditional support for the KLA and her expressed bias against the Specialist Chambers and the SPO.<sup>432</sup> It is clear that Ms Kadrijaj attempted to deny any possible personal connection to the KMF and the detention practices there.

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<sup>428</sup> [Decision on Defence Request to Summons Witnesses](#), paras 16, 21(b); **Ms Kadrijaj**: T. 23 November 2023, confidential, pp. 3549-3610; T. 24 November 2023, public, pp. 3616-3624.

<sup>429</sup> **Ms Kadrijaj**: T. 23 November 2023, public, p. 3551, lines 5-17.

<sup>430</sup> **Ms Kadrijaj**: T. 23 November 2023, public, p. 3581, line 3 to p. 3582, line 9; T. 23 November 2023, confidential, p. 3591, line 5 to p. 3593, line 3; T. 24 November 2023, public, p. 3621, lines 5-19.

<sup>431</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2937, line 11 to p. 2942, line 23; **W4733**: 082892-TR-AT-ET Part 4, p. 29, line 15 to p. 32, line 15; 082892-TR-AT-ET Part 5, p. 15, lines 4-13; p. 27, line 8 to p. 28, line 24; 082892-TR-AT-ET Part 8, p. 7, lines 1-18.

<sup>432</sup> **Ms Kadrijaj**: T. 23 November 2023, confidential, p. 3607, lines 11-14 (the witness stated that she is "very proud" of her participation in the war as a KLA doctor); T. 24 November 2023, public, p. 3616, line 24 to p. 3622, line 4 (the witness stated that the charges against senior KLA members before the Specialist Chambers are an "injustice", as they are based on fabricated facts).

258. The above aspects of the witness's testimony indicate a strong reticence of the witness to provide any meaningful information concerning Mr Shala and the charges under consideration. The Panel finds that the content and manner of Ms Kadrijaj's answers demonstrate that her account was strategically directed to protect her own and Mr Shala's interests, significantly reducing any faith which might otherwise be invested in her testimony.

259. In light of the foregoing, the Panel finds Ms Kadrijaj's testimony wholly unreliable.

#### 10. Naser Kocinaj (DW4-05)

260. Mr Kocinaj testified before the Panel on 3 October 2023, without protective measures.<sup>433</sup>

261. Mr Kocinaj joined the KLA in 1998<sup>434</sup> and, during the time relevant to the charges, he was stationed at the KMF, where he was working with logistics in a warehouse on the KMF premises.<sup>435</sup> He was in charge of issuing uniforms to KLA fighters.<sup>436</sup>

262. The witness testified about: (i) the function of the KMF warehouse where he worked and his role there; (ii) the layout of the KMF compound; (iii) the presence (or lack thereof) of other KLA members and detainees at the KMF; and (iv) Brigade 128.

263. The Panel notes that Mr Kocinaj provided detailed and, all in all, coherent information about his time and role in the KLA (in particular his task to distribute uniforms to KLA members and the establishment of Brigade 128), the existence and location of the warehouse where he worked and the KMF entrance, and the presence of a medical doctor, as mutually corroborated by other evidence on record.

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<sup>433</sup> **Mr Kocinaj**: T. 3 October 2023, confidential, pp. 2813-2903.

<sup>434</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2814, line 8 to p. 2815, line 6.

<sup>435</sup> See para. 886 below; **Mr Kocinaj**: T. 3 October 2023, public, p. 2816, lines 5-7; p. 2817, lines 19-22.

<sup>436</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2816, lines 8-10; p. 2817, lines 19-22; p. 2825, lines 9-13.

264. However, the Panel notes the witness's obvious reticence and/or diffidence in giving evidence on several key aspects. For example, while he confirmed the existence of the warehouse and his presence therein, the witness was not able to recognize any other building located on the KMF premises, repeatedly stressing that he only stayed in the warehouse and "wasn't interested to go outside and look around".<sup>437</sup> He even testified he did not remember any building located in the middle of the KMF courtyard,<sup>438</sup> where, according to evidence in this case, detainees were being held. Such statements are not credible in light of the fact that he was continuously stationed at the KMF for several months<sup>439</sup> and would, according to his own evidence, leave and return to the premises multiple times per day.<sup>440</sup> In the Panel's assessment, the behaviour of Mr Kocinaj – who had to be reminded by the Presiding Judge of his oath to tell the truth<sup>441</sup> – clearly indicates that he wished to distance himself from any allegations related to detention practices at the KMF. The witness also testified, for instance, that he did not know Mr Mark Shala, who according to evidence in this case, was his superior.<sup>442</sup> The Panel finds this highly implausible. In the view of the Panel, the witness was unconvincing and evasive when explaining his time at the KMF.

265. The Panel further observes inconsistencies between the witness's account and other available evidence. A characteristic example is Mr Kocinaj's persistent claim that the warehouse where he worked only contained uniforms,<sup>443</sup> while other mutually

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<sup>437</sup> **Mr Kocinaj:** T. 3 October 2023, public, p. 2870, lines 18-25; p. 2881, lines 18-22.

<sup>438</sup> **Mr Kocinaj:** T. 3 October 2023, public, p. 2283, line 14 to p. 2284, line 16, *referring to Photograph:* 074390-074391, p. 074390. The Panel has received mutually corroborating evidence that a building located in the centre of the courtyard was used for the detention and mistreatment of people (*see paras 335, 588, 750 below*).

<sup>439</sup> **Mr Kocinaj:** T. 3 October 2023, public, p. 2816, line 5 to p. 2817, line 10; p. 2835, lines 2-6; p. 2839, lines 18-21; p. 2847, line 16 to p. 2848, line 2.

<sup>440</sup> **Mr Kocinaj:** T. 3 October 2023, public, p. 2843, lines 4-15; p. 2844, line 5 to p. 2845, line 1.

<sup>441</sup> **Mr Kocinaj:** T. 3 October 2023, public, p. 2844, line 20; p. 2845, lines 7-9; p. 2884, lines 6-8.

<sup>442</sup> **Mr Kocinaj:** T. 3 October 2023, public, p. 2880, lines 23-24.

<sup>443</sup> **Mr Kocinaj:** T. 3 October 2023, public, p. 2818, lines 3-4; p. 2846, lines 18-24; p. 2848, lines 3-8; p. 2868, lines 1-23.

corroborative evidence before the Panel clearly indicates otherwise.<sup>444</sup> This reduces considerably any faith which might otherwise be invested in Mr Kocinaj's testimony.

266. Another conspicuous element of Mr Kocinaj's evidence is his systematic incapacity to indicate any dates or even approximate time frames throughout his testimony, at times requiring the intervention of the Presiding Judge.<sup>445</sup> While the Panel accepts that witnesses may have difficulties in remembering exact dates, it is striking that Mr Kocinaj constantly either denied remembering dates, or made no attempt to provide any approximate time frames (for example, on the duration of his own posting at the KMF warehouse, or landmark dates of the Kosovo war, in which he was actively involved).<sup>446</sup> The same can be said about KLA members, including Mr Shala, that Mr Kocinaj denied even having heard of. In this context, the Panel notes two contemporaneous Facebook posts that praised the KLA's war efforts and expressed support for the witness in relation to his upcoming testimony before the Specialist Chambers, which they strongly condemned.<sup>447</sup> Mr Kocinaj also has familial ties with Mr Dervishaj and admitted having met him before his upcoming testimony, as corroborated by Mr Dervishaj. While Mr Kocinaj cannot be made responsible for the actions of others, this nevertheless shows his ongoing close ties to (former) KLA members and explains his reluctance to provide information about his time in the KLA, Mr Shala and other KLA members involved in the activities at the time.

267. From the above considerations, given the number of implausible, inconsistent, evasive and nebulous responses by Mr Kocinaj during his testimony, the Panel

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<sup>444</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, p. 100, lines 15-17; **Mr Hoxha**: T. 20 November 2023, public, p. 3198, lines 13-16, *referring to Photograph*: SPOE40010264-40010559, p. SPOE40010274; **Mr Dervishaj**: T. 2 October 2023, confidential, p. 2757, line 15 to p. 2758, line 5 (the witness explicitly testified that Mr Kocinaj was in charge of distributing clothes and food supplies at the warehouse).

<sup>445</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2847, line 16 to p. 2848, line 25.

<sup>446</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2816, line 11 to p. 2817, line 10; p. 2830, lines 2-13; p. 2847, line 16 to p. 2848, line 2.

<sup>447</sup> SPOE00341607-SPOE00341607-ET; SPOE00341648-SPOE00341648-ET.



discerns a strong reticence and reluctance by the witness to provide any meaningful or truthful information concerning the KLA base at the KMF. Rather, Mr Kocinaj seeks to provide evidence favourable to the KLA, in general, and to Mr Shala, in particular. Such intention is most likely to have affected his overall willingness to truthfully answer any questions related to the KMF, Mr Shala and the actions of other KLA members, thereby negatively impacting the witness's general credibility.

268. In light of the foregoing, the Panel considers the witness's evidence with extreme caution, and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.

#### 11. Bardhyl Mahmuti (DW4-06)

269. Bardhyl Mahmuti (Mr Mahmuti) testified before the Panel on 20-21 September 2023, without protective measures.<sup>448</sup>

270. During the war, Mr Mahmuti was a political representative of the KLA and a member of the Steering Council of the People's Movement for Kosovo.<sup>449</sup>

271. The Panel finds that the witness does not provide any relevant evidence to the case: he claimed not to know or have met Mr Shala at the relevant time, and was unable to provide any information about the KMF, which he claims he never visited or knew of. In light of other reliable evidence on record, the Panel finds the witness's testimony outright implausible. Importantly, the Panel observes the witness's stalling tactic by avoiding to respond to numerous questions or by elaborating on peripheral or even irrelevant points. Mr Mahmuti was repeatedly warned by the Presiding Judge

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<sup>448</sup> **Mr Mahmuti:** T. 20 September 2023, confidential, pp. 2483-2574; T. 21 September 2023, confidential, pp. 2599-2720.

<sup>449</sup> **Mr Mahmuti:** T. 20 September 2023, public, p. 2503, lines 2-5; T. 21 September 2023, public, p. 2614, lines 6-9.

in this respect.<sup>450</sup> This is further compounded by Mr Mahmuti's profound bias against the Specialist Chambers and the SPO, which he qualified as "a political criminal enterprise",<sup>451</sup> claiming that the charges against Mr Shala were based on fabricated evidence by the Serbian secret services.<sup>452</sup>

272. The above considerations indicate a strong reticence by the witness to provide any meaningful information concerning Mr Shala and the charges under consideration. The content and manner of Mr Mahmuti's answers demonstrate that his account was strategically directed to protect his own and Mr Shala's interests.

273. In light of the foregoing, the Panel finds Mr Mahmuti's testimony wholly unreliable.

## 12. Vanessa Milazzo

274. Vanessa Milazzo (Ms Milazzo) did not testify before the Panel.<sup>453</sup> She provided an expert report, which was admitted into evidence under Rule 149 of the Rules.<sup>454</sup>

275. Ms Milazzo is a clinical psychologist. In December 2023, she conducted a psychological evaluation of Mr Shala. Her report was submitted by the Defence for the purposes of sentencing, in case of a conviction. As discussed in the part on sentencing, the Panel has taken note of her report.

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<sup>450</sup> **Mr Mahmuti:** T. 20 September 2023, public, p. 2565, lines 23-24; p. 2568, lines 15-17; T. 21 September 2023, confidential, p. 2650, lines 16-20; p. 2656, line 23 to p. 2657, line 9.

<sup>451</sup> **Mr Mahmuti:** T. 21 September 2023, public, p. 2693, line 19 to p. 2696, line 3 (*referring to* SPOE00341067-SPOE00341067-ET).

<sup>452</sup> *See, for example,* **Mr Mahmuti:** T. 21 September 2023, public, p. 2635, line 23 to p. 2336, line 9; p. 2719, line 16 to p. 2720, line 7.

<sup>453</sup> Oral Order: T. 10 January 2024, public, p. 4072, line 21 to p. 4074 line 10.

<sup>454</sup> **Report:** DPS01735-DPS01757; Oral Order: T. 10 January 2024, public, p. 4072, line 21 to p. 4074 line 10.

### 13. Mark Shala (W04754)

276. Mr Mark Shala testified before the Panel on 23-25 October 2023, without protective measures.<sup>455</sup>

277. Mr Mark Shala was a professional military officer before the war.<sup>456</sup> He joined the KLA in March 1999 and was stationed at the KMF as the chief of logistics for Operation Arrow.<sup>457</sup>

278. The witness testified about: (i) his role and whereabouts during the war; (ii) the operation and layout of the KMF and its buildings; (iii) Mr Shala's whereabouts and meetings between them during the war; and (iv) Operation Arrow.

279. The Panel notes that Mr Mark Shala provided detailed and, all in all, coherent information about his time and role in the KLA (in particular his tasks and whereabouts as a logistics commander), the operation of the KMF as a base for logistics and mobilisation, and the location and (parts of the) layout of the KMF and its buildings,<sup>458</sup> as mutually corroborated by other evidence on record. The witness was responsive, forthcoming and able to recall relevant dates and names. His testimony was comprehensive and filled with details of a nature that illustrated his first-hand knowledge of the above topics, given his role as a commander stationed at the KMF.

280. However, the Panel notes the witness's obvious reticence and/or diffidence in giving evidence on several key aspects directly related to the charges and Mr Shala. For example, while Mr Mark Shala provided a detailed description of the KMF

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<sup>455</sup> **Mr Mark Shala:** T. 23 October 2023, confidential, pp. 2912-3006; T. 24 October 2023, confidential, pp. 3011-3127; T. 25 October 2023, confidential, pp. 3130-3150.

<sup>456</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2915, line 2 to p. 2917, line 17.

<sup>457</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2918, line 16 to p. 2920, line 17; p. 2921, lines 3-8; p. 2982, lines 12-24.

<sup>458</sup> The witness provided a sketch, *see* 083525-083534 RED, p. 083525.

compound and buildings, he denied knowing the building where detainees were kept and mistreated<sup>459</sup> and had not included it in his otherwise comprehensive sketch.<sup>460</sup> His testimony is squarely contradicted by other mutually corroborative evidence before the Panel.<sup>461</sup> In addition, the witness outright denied any knowledge of detention practices within the KMF altogether.<sup>462</sup> In the view of the Panel, such statements are not credible in light of the witness's role as a commander stationed at the KMF, and the arrangement of buildings at the KMF,<sup>463</sup> which makes it difficult for him to be unaware of the building in which the detainees were kept and mistreated.<sup>464</sup> In the Panel's assessment, Mr Mark Shala's account is unconvincing and clearly indicates a wish to distance himself from any allegations related to detention practices at the KMF.

281. Additionally, the Panel notes striking inconsistencies between the witness's prior statement to the SPO<sup>465</sup> and his testimony with regard to Mr Shala's whereabouts during the war.<sup>466</sup> The witness did not provide any credible explanation as to why he changed crucial aspects of his testimony in this regard.<sup>467</sup> The Panel interprets this

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<sup>459</sup> **Mr Mark Shala:** T. 24 October 2023, public, p. 3048, line 3 to p. 3049, line 12; p. 3052, line 20 to p. 3055, line 20.

<sup>460</sup> **Sketch:** 083525-083534 RED, p. 083525.

<sup>461</sup> See findings in Section VI.D. and VI.E.

<sup>462</sup> **Mr Mark Shala:** T. 24 October 2023, public, p. 3055, lines 1-10; p. 3056, lines 20-22.

<sup>463</sup> See para. 297 below and more generally the findings in Section VI.B.4-5.

<sup>464</sup> The building where the detainees were kept and mistreated was located in the middle of the yard, to which the window of Mr Mark Shala's office directly faced, see **Mr Mark Shala:** T. 23 October 2023, public, p. 2949, lines 6-17 (the witness marked with number 4 the window of his office on **Photograph:** 083525-083534 RED, p. 083527 (saved as REG00974)).

<sup>465</sup> **Mr Mark Shala:** 083524-TR-ET Part 5 RED2.

<sup>466</sup> This concerns, in particular, the circumstances, the location and the dates of meetings between the witness and Mr Shala, the moment when the witness provided Mr Shala with a weapon, and whether the witness knew where Mr Shala was heading after both meetings, see **Mr Mark Shala:** T. 24 October 2023, public, p. 3061, line 1 to p. 3080, line 24; p. 3084, line 17 to p. 3086, line 25; p. 3089, line 6 to p. 3091, line 14.

<sup>467</sup> See, for example, **Mr Mark Shala:** T. 24 October 2023, public, p. 3069, lines 2-12; p. 3072, line 11-18; p. 3089, line 19 to p. 3091, line 14.

deliberate shift in the witness's account as an effort to place Mr Shala – whom he praised as a devoted, able and honourable KLA member<sup>468</sup> – away from the KMF and the charged crimes, contrary to the evidence the Panel has received, including from Mr Shala himself.<sup>469</sup>

282. The above aspects of the witness's testimony indicate a strong reticence by the witness to provide any meaningful information concerning Mr Shala and the charges under consideration. The content and manner of Mr Mark Shala's answers demonstrate that his account was strategically directed to protect his and Mr Shala's interests and to avoid providing any information which could link KLA members with the commission of any crimes at the KMF.

283. In light of the foregoing, the Panel considers the witness's testimony with caution and relies on it where appropriate, as discussed at relevant points of the evidentiary analysis.

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<sup>468</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2968, line 23 to p. 2969, line 3.

<sup>469</sup> See the Findings in Section VI.H.

## VI. FACTUAL FINDINGS

### A. PJETËR SHALA

#### 1. Background

284. Mr Shala was born on 17 September 1963, in Prizren, Kosovo and he is Catholic.<sup>470</sup> As a supporter of Kosovo's independence through armed force,<sup>471</sup> he joined the KLA in March 1998.<sup>472</sup>

285. Throughout the armed conflict, he was also known by his nickname "Ujku", meaning "wolf", in the English language.<sup>473</sup> According to Mr Shala himself, as well as W04733 and Mr Elezaj, Mr Shala used to howl like a wolf, a behaviour that he described as being part of his persona.<sup>474</sup> The Panel finds Mr Shala, W04733 and Mr Elezaj credible and reliable on this point, as they mutually corroborate each other and, in the case of Mr Shala and W04733, they provide evidence on a matter that is either personal (Mr Shala) or that they have personally witnessed (W04733).

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<sup>470</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript - A, p. 10; T001-0105-1-A-TR, pp. 9-10; 066864-TR-ET Part 1 Revised 1, p. 3, lines 15-16; 066888-TR-ET Part 1 Revised, p. 165, lines 3-9.

<sup>471</sup> **Mr Shala:** 066864-TR-ET Part 1 Revised 1, p. 59, lines 5-11; p. 62, line 13 to p. 64, line 7.

<sup>472</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript - A, pp. 30-35; T000-2742-T000-2742-Alb and Eng Transcript-3 - B, p. 5; T001-0105-1-A-TR, pp. 31-33; 066864-TR-ET Part 2 Revised 1, p. 13, line 21 to p. 14, line 9.

<sup>473</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript - A, pp. 9-10, 28; 066864-TR-ET Part 1 Revised 1, p. 22, lines 23-24; 066864-TR-ET Part 2 Revised 1, pp. 77-78; **KLA Document:** U009-9398-U009-9398-ET; **TW4-01:** T. 30 May 2023, public, p. 1408, lines 8-11; **Mr Mark Shala:** T. 25 October 2023, public, p. 3138, lines 13-18.

<sup>474</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 132, line 14 to p. 133, line 2; **W04733:** 082892-TR-AT-ET Part 3 RED2, p. 12, lines 14-24; SITF00019824-00019876 RED2, pp. SITF00019836-SITF00019837; **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 146, lines 1-9; p. 147, lines 10-16.

## 2. Membership in the KLA in 1998

286. Mr Shala provided detailed, coherent and credible evidence regarding his role in the KLA after he joined in March 1998. In his 2005, 2007 and 2019 Statements, he recalled that he was positioned in Jablanica/Jabllanicë (Kosovo) and that, one or two months after he joined the KLA, he was appointed as a commander/officer to the KLA Military Police in Jablanica/Jabllanicë, Dukagjini Plain.<sup>475</sup> He recalled that he was appointed by Nazmi Brahimaj, who had received an order from the KLA General Staff to form a Military Police unit.<sup>476</sup> Mr Shala stated that, upon his appointment, he received a black uniform, which was the uniform of the Military Police and which bore the KLA and the Military Police insignias and replaced his camouflage uniform.<sup>477</sup> He also received two documents containing the internal rules and tasks of the Military Police in Jablanica/Jabllanicë.<sup>478</sup> One of these documents – a KLA Military Police Regulation issued by the Dukagjini Plain Operational Staff, on 21 June 1998 – is in evidence before the Panel (KLA Regulation or Regulation).<sup>479</sup>

287. Regarding his tasks, Mr Shala recalled that these included, among others,<sup>480</sup> screening new recruits who sought to join the KLA.<sup>481</sup> Mr Shala stated that he received

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<sup>475</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript-3 - B, pp. 6-8, 11-12, 18-19; T000-2745-T000-2745-Alb and Eng Transcript-A, pp. 16-17; 066864-TR-ET Part 1 Revised 1, p. 22.

<sup>476</sup> **Mr Shala:** 066864-TR-ET Part 2 Revised 1, pp. 82-85; T001-0105-1-A-TR, pp. 71-72.

<sup>477</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript-3 - B, pp. 23-24; 066864-TR-ET Part 2 Revised 1, pp. 82-85, 87-88.

<sup>478</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript-3 - B, pp. 11-12; 066864-TR-ET Part 1 Revised 1, pp. 33-34; 066864-TR-ET Part 2 Revised 1, pp. 90-93; 066864-TR-ET Part 2 Revised 1, pp. 102-103.

<sup>479</sup> **KLA Document:** U009-9397-U009-9397-ET Revised (English translation); 066856-066862, p. 066856 (original Albanian version).

<sup>480</sup> Other tasks included: organising KLA members to dig trenches, keeping order among civilians, training new recruits; *see* **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript-3 - B, pp. 6, 10-11, 21-22; T000-2742-T000-2742-Alb and Eng Transcript - A, pp. 42-43; T000-2745-T000-2745-Alb and Eng Transcript-A, pp. 17-20; T001-0105-1-A-TR, pp. 77-80, 85-91; 066864-TR-ET Part 2 Revised 1, pp. 89, 100.

<sup>481</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript-3 - B, p. 11; T001-0105-1-A-TR, pp. 72-77.

lists of names in advance and had to verify whether the names of those who came to join the KLA were on the list. If they were not, they would not be allowed to join. Mr Shala explained that the purpose of the screening was to avoid the KLA being infiltrated by persons working with the Serbian authorities.<sup>482</sup>

288. Lastly, he explained that he was eventually discharged from the Military Police<sup>483</sup> and that, in the summer of 1998, he decided to leave Kosovo for Albania and then for Belgium.<sup>484</sup>

289. Mr Shala's account of his time in the KLA Military Police in 1998 is rich in detail (e.g. regarding his appointment, duties, locations where he served, the functioning of the Military Police and whom he reported to). This attests to the fact that Mr Shala spoke truthfully from his personal experience. Accordingly, the Panel finds that it can rely on Mr Shala's 2005, 2007 and 2019 Statements in this regard.

290. In light of the foregoing, the Panel finds that Mr Shala was appointed as a commander/officer to the KLA Military Police in Jablanica/Jabllanicë, Dukagjini Plain, sometime in April or May 1998 and served with the KLA Military Police until sometime in the summer of 1998.

291. While Mr Shala's membership in the KLA Military Police in 1998 falls outside the time frame of the charges, the Panel finds this part of his background to be significant, as it helps explain his position and role at the KMF during the time relevant to the charges, which the Panel will discuss later.

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<sup>482</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript-3 - B, p. 11; T001-0105-1-A-TR, pp. 72-77; 066864-TR-ET Part 2 Revised 1, pp. 83-85, 97-110.

<sup>483</sup> **Mr Shala:** T000-2745-T000-2745-Alb and Eng Transcript-A, pp. 26-27.

<sup>484</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript - A, p. 13; T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 27-29; 066888-TR-ET Part 1 Revised, p. 5, line 11 to p. 6, line 24.



### 3. Membership in the KLA in 1999

292. As regards Mr Shala's role within the KLA during the time frame of the charges, the Panel notes that Mr Shala readily admitted in his 2005 and 2019 Statements that he returned to Albania towards the end of March 1999, in order to re-join the KLA.<sup>485</sup> Mr Shala affirmed that he remained with the KLA in Albania for the next three to four months.<sup>486</sup> Following the end of the armed conflict, he left Albania for Belgium once more, sometime in June/July 1999.<sup>487</sup>

293. In the view of the Panel, Mr Shala's coherent statements leave no doubt that he re-joined the KLA in Albania at the end of March 1999 and remained with the KLA until sometimes in June/July 1999, after the end of the armed conflict. Therefore, the Panel finds that Mr Shala was a member of the KLA throughout the entire time frame of the charges (which runs from approximately 17 May 1999 to 5 June 1999).

294. Mr Shala's whereabouts during the time relevant to the charges and his position and role with the KLA at the KMF will be discussed in Sections VI.H and VI.I of this Judgment.

#### B. KUKËS METAL FACTORY

295. In what follows, the Panel will assess the evidence and enter its factual findings regarding: (i) the presence of a KLA base in Kukës in May – June 1999; (ii) the location of the KMF; (iii) the use of the KMF; (iv) the layout of the KMF compound; and (v) the interior layout of buildings at the KMF.

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<sup>485</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 67-72, 80-84, 98-99; T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 29-30.

<sup>486</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 117-121.

<sup>487</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 117-121; U009-9245-U009-9258-ET, pp. U009-9250, U009-9255.

## 1. Presence of a KLA base in Kukës in May – June 1999

296. At the outset, the Panel recalls that it took judicial notice of the adjudicated fact that a factory in Kukës, Albania was converted into a military camp by the KLA in 1999.<sup>488</sup>

297. The Panel has been presented with additional material evidencing the presence of the KLA at the KMF at the time relevant to the charges. Notably, the presence of a KLA base in Kukës is acknowledged by Mr Shala in his 2019 Statement, to the effect that the KLA had at its disposal, since around 22 March 1999, the “former mechanical works in Kukës”,<sup>489</sup> which he affirms to have visited several times “during the period of war”,<sup>490</sup> and which he would also refer to as “the KLA headquarters in Kukës”.<sup>491</sup> In the view of the Panel, Mr Shala’s evidence is credible, as he is forthcoming and his account rests undeniably on his personal experience. It is further corroborated by the evidence of other witnesses. In particular, Mr Mark Shala, who was stationed at the KMF as the chief of logistics for Operation Arrow between the end of March and June 1999,<sup>492</sup> testified to details on how the KLA used the “old factory”.<sup>493</sup> Furthermore, Mr Elezaj averred in his statement that he was the owner of the compound (“the site of the metalworks”),<sup>494</sup> which he had put at the disposal of the KLA for the period between March and July 1999.<sup>495</sup>

298. The evidence discussed above is consistent with the aforementioned adjudicated fact. It is also mutually corroborative and emanates from Mr Shala and witnesses with

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<sup>488</sup> [List of Adjudicated Facts](#), Adjudicated Fact 51.

<sup>489</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, p. 98, line 7 to p. 99, line 2.

<sup>490</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, p. 124, line 17 to p. 125, line 1.

<sup>491</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, p. 61, lines 8-9.

<sup>492</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2920, lines 7-17; p. 2921, lines 3-8; p. 2982, lines 12-24.

<sup>493</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2922, lines 5-20.

<sup>494</sup> **Mr Elezaj**: 060124-TR-ET Part 1 Revised RED, p. 25, line 17.

<sup>495</sup> **Mr Elezaj**: 060124-TR-ET Part 1 Revised RED, p. 13, line 17 to p. 15, line 7; p. 25, line 5 to p. 26, line 17.

inside knowledge of the KLA, and of the KMF in particular. Accordingly, the Panel regards such evidence as credible and relies upon it.

299. Based upon the evidence taken as a whole, the Panel is satisfied that between the end of March and July 1999, the KLA maintained a base at the KMF in Kukës, Albania.

300. The Panel notes that it has also received mutually corroborative evidence indicating the existence of another location in Kukës, a one-storey building referred to as “Headquarters 1” or “Pavilion 1” or “Ruzhdi Saramati’s location”, which was in close proximity to the KMF and was used by the KLA for mobilisation purposes.<sup>496</sup> This location is evidently distinct from the KMF, as multiple witnesses describe moving or being moved between the two bases for different purposes, for example to receive medical treatment at the KMF, which was not available at “Pavilion 1”.<sup>497</sup>

## 2. Location of the Kukës Metal Factory

301. It is common knowledge that the KMF is located at the outskirts of Kukës, which is a town in Albania located approximately 20 kilometres from the Kosovo border.<sup>498</sup>

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<sup>496</sup> **TW4-10:** T. 1 May 2023, public, p. 1092, lines 13-24 (the witness refers to this location as “headquarters [...] number 1”); **Mr Dervishaj:** T. 2 October 2023, public, p. 2739, line 7-22; p. 2740, line 10 to p. 2741, line 1; p. 2752, lines 18-24; p. 2790, lines 3-17 (the witness refers to this location as “Pavilion 1”); **Mr Gashi:** T. 9 January 2024, public, p. 3956, lines 22-25; **Mr Kryeziu:** SITF00016908-00016964 RED, p. SITF00016912; SITF00014088-00014120 RED, pp. SITF00014092-SITF00014093 (the witness refers to this location as “Headquarters 1” or “Ruzhdi Saramati’s location”); **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013302-SITF00013303; 064716-TR-ET Part 3 RED4, p. 3, line 1 to p. 4, line 9; p. 23, lines 1-13; p. 25, lines 6-22.

<sup>497</sup> **Mr Dervishaj:** T. 2 October 2023, public, p. 2743, lines 3-9; **Mr Kryeziu:** SITF00016908-00016964 RED, p. SITF00016912; **TW4-04:** 064716-TR-ET Part 3 RED4, p. 7, line 15 to p. 8, line 3; SITF00013262-00013315 RED, p. SITF00013303; 064716-TR-ET Part 5 RED4, p. 1, line 19 to p. 2, line 25.

<sup>498</sup> [List of Facts of Common Knowledge](#), Facts 1-2.

302. More specifically, the Panel heard evidence from Mr Mark Shala that the KMF compound was located approximately 2–2.5 kilometres outside of the centre of Kukës.<sup>499</sup>

303. As the road conditions stood during the time frame of the charges, the city of Tirana could be reached within 9–12 hours by car from the KMF.<sup>500</sup> The Panel considers that it can rely on Mr Mark Shala's testimony on these particular issues,<sup>501</sup> given that the witness offered information that was clearly based on first-hand experience and of a nature that would be expected from someone in his position in the KLA and who was familiar with the KMF at the relevant time.

304. Moreover, the evidence before the Panel unequivocally proves that the entrance to the KMF was located on the main road between Kukës and Kruma,<sup>502</sup> with the Kukës cemetery located down the road in the direction of Kruma.<sup>503</sup>

305. On these topics the Panel has received detailed, clear and mutually corroborative evidence and is thus convinced of the described location of the KMF. As a result, based on the evidence before it, the Panel is satisfied that the KMF was located about 2–2.5 kilometres outside of Kukës, on the road leading to Kruma and the Kukës cemetery.

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<sup>499</sup> **Mr Mark Shala**: T. 24 October 2023, public, p. 3091, line 24 to p. 3092, line 7.

<sup>500</sup> **Mr Mark Shala**: T. 24 October 2023, public, p. 3022, lines 2-10.

<sup>501</sup> For the general credibility assessment of Mr Mark Shala, *see* Section V.H.13.

<sup>502</sup> *See, for example*, **Mr Mark Shala**: T. 24 October 2023, public, p. 3028, line 22 to p. 3029, line 1 (Mr Mark Shala identified through photograph SPOE00330362-00330362 (saved as REG00976) the entrance to the KMF, located on the road to Kruma); **Mr Elezaj**: 060124-TR-ET Part 1 Revised RED, p. 56, lines 8-18 and p. 60, lines 8-10 (Mr Elezaj marked the entrance to the KMF, located on the road to Kruma, on sketch 065435-065435); **TW4-02**: 060664-TR-ET Part 3, p. 3, lines 11-12, *referring to* sketch 060653-060663, p. 060653; and 108837-108849 RED, p. 108839. *See also* the annex appended to this Judgment (Annex), pp. 2-3.

<sup>503</sup> **TW4-01**: T. 5 June 2023, confidential, p. 1753, line 3 to p. 1754, line 4; **Mr Hoxha**: T. 21 November 2023, public, p. 3334, line 5 to p. 3335, line 13 (the witness marked the Kukës cemetery in photograph DPS00159-DPS00161, p. DPS00159 (saved as REG00992)); **TW4-02**: 060664-TR-ET Part 3, p. 3, lines 16-20.

### 3. Use of the Kukës Metal Factory

306. With regard to the use of the KMF during the period relevant to the charges, the Panel has received numerous items of mutually corroborative evidence that the compound functioned as a KLA headquarters, where, *inter alia*, recruitment, mobilisation and logistics operations were carried out. Several witnesses have given evidence that individuals routinely arrived at the KMF to enlist in the KLA, to receive uniforms and/or weapons and, after a certain time at the compound, to be sent to training centres or to fight at the (Kosovo) front.<sup>504</sup> Other witnesses also provided evidence that the KMF functioned as a logistics headquarters for Operation Arrow, receiving, storing and distributing military equipment and food supplies.<sup>505</sup> In this regard, the Panel recalls that Mr Shala referred to the KMF as the KLA headquarters in Kukës.<sup>506</sup>

307. Considering the clarity, congruence and level of consistency between Mr Shala's account and those of the witnesses in this regard, the Panel is convinced that the KMF, at the relevant time of the charges, functioned as a KLA headquarters for, *inter alia*, the recruitment, equipment and mobilisation of KLA members, as well as for the logistical support of the Kosovo front. In other words, it was used as a military base.

308. In addition to the above-mentioned functions of the KMF, the Panel has received multiple, mutually corroborative and credible evidence that the KMF was used by the

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<sup>504</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2922, lines 23-25; p. 2926, line 24 to p. 2927, line 7; p. 2930, lines 2-13; p. 2957, lines 13-22; **TW4-10**: T. 1 May 2023, public, p. 1038, lines 9-11; p. 1090, line 19 to p. 1091, line 1; **Mr Elezaj**: 060124-TR-ET Part 1 Revised RED, p. 38, lines 6-16; p. 39, lines 5-7; p. 41, lines 1-2; p. 42, lines 1 to p. 43, line 6; p. 44, line 22 to p. 45, line 9. *See also*, the commemorative plaque at the entrance of the KMF, as seen in photograph SPOE40010264-40010559, p. SPOE40010298.

<sup>505</sup> **Mr Hoxha**: T. 22 November 2023, public, p. 3439, line 25 to p. 3440, line 14; T. 20 November 2023, public, p. 3182, line 24 to p. 3183, line 8; p. 3198, lines 11-16; **Mr Mark Shala**: T. 23 October 2023, public, p. 2922, lines 11-23; p. 2949, line 23 to p. 2950, line 3; p. 2956, line 23 to p. 2957, line 3; **Mr Elezaj**: 060124-TR-ET Part 1 Revised RED, p. 37, lines 16-22.

<sup>506</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, p. 61, lines 8-9.

KLA for detention purposes, including the mistreatment of detainees. The Panel refers in this respect to Sections VI.D and VI.E of this Judgment.

#### 4. Layout of the Kukës Metal Factory Compound

309. The evidence before the Panel unequivocally proves that the KMF was comprised of a yard with several distinct buildings in its perimeter,<sup>507</sup> and was surrounded by a fence.<sup>508</sup>

310. *Gate, Guard Barracks, Command Building, Kitchen and Warehouse.* Mr Shala and several witnesses confirmed unambiguously that the entrance to the premises was through a metal gate.<sup>509</sup> They also stated that the gate was guarded in shifts<sup>510</sup> by KLA members, who were stationed at a small building located immediately on the left-hand side upon entering the gate (Guard Barracks).<sup>511</sup> The Panel also heard

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<sup>507</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 102, lines 14-18; **TW4-10:** T. 1 May 2023, public, p. 1051, line 23 to p. 1052, line 5, *referring to* sketch 083536-083536 RED (saved as REG00947); **Mr Hoxha:** T. 20 November 2023, public, p. 3201, line 25 to p. 3202, line 15, *referring to* photograph SPOE40010264-40010559, p. SPOE40010282; *see also*, photographs SPOE00330362-00330362 and SPOE40010264-40010559, p. SPOE40010279, and sketches 065435-065435-ET and SITF00012876-SITF00012878, p. SITF00012878. *See also*, Annex, p. 2.

<sup>508</sup> **W04280:** T. 28 November 2023, confidential, p. 3753, lines 13-21; **Mr Elezaj:** 060124-TR-ET Part 1 Revised RED, p. 56, lines 12-15; p. 61, lines 2-3 (the witness marked the fence on sketch 065435-065435); **TW4-02:** 060664-TR-ET Part 3, p. 2, lines 11-14. *See also*, 065418-065429-ET, p. 065419.

<sup>509</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 100, lines 7-9, *referring to* the photographs in 066883-066886, p. 066884; **TW4-01:** T. 30 May 2023, public, p. 1409, lines 19-23; p. 1411, lines 7-19 (the witness marked the gate with the letter A on his sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954)); **TW4-11:** T. 2 May 2023, public, p. 1192, line 3 to p. 1193, line 4, *referring to* the photographs in 059341-059350, p. 059342; **TW4-10:** T. 1 May 2023, public, p. 1042, line 17 to p. 1043, line 12, *referring to* the photographs in 065594-065596, p. 065596. *See also*, Annex, p. 3.

<sup>510</sup> For more on the guarding system of detainees within the KMF, *see, inter alia*, paras 423, 480, 626, 637.

<sup>511</sup> **TW4-10:** T. 1 May 2023, public, p. 1043, line 18 to p. 1044, line 18 (the witness marked the booth where he stood guard on his sketch, 083536-083536 RED (saved as REG00947)); p. 1044, line 20 to p. 1045, line 9 (the witness identified the building seen in the top photograph of 065597-065612, p. 065597 as the building where the guards were stationed); **Mr Mark Shala:** T. 23 October 2023, public, p. 2962, line 8 to p. 2963, line 2 (the witness marked with number 7 the building where the guards stood guard on photograph 083525-083534 RED, p. 083526 (saved as REG00975)).

congruent evidence that a two-storey building<sup>512</sup> was located further on the left,<sup>513</sup> which was where the offices of the KLA sectors (operations, mobilisation and logistics) and the logistic command were situated (Command Building).<sup>514</sup> The evidence also clearly shows that adjacent to the Command Building was a separate building used as a kitchen (Kitchen).<sup>515</sup> According to the evidence, next to the Kitchen and opposite the gate, across the yard, was a long building used as a warehouse (Warehouse).<sup>516</sup>

311. The Panel has received extensive, detailed and mutually corroborative evidence on the layout of the KMF compound, which does not leave any room for doubt. The Panel is therefore persuaded of its truthfulness and reliability.

312. *One-storey building - Detention Building.* The Panel has received substantial evidence indicating the existence of a one-storey building within the KMF compound, where individuals were detained (Detention Building). According to TW4-01, detainees (including himself) were kept, *inter alia*, in a small building located in the middle of the yard, on the right-hand side as one entered the premises, and around

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<sup>512</sup> **TW4-01:** T. 30 May 2023, public, p. 1412, lines 5-11, *referring to* sketch SITF00012876-SITF00012878, p. SITF00012878; **Mr Mark Shala:** T. 23 October 2023, public, p. 2924, line 21 to p. 2925, line 2, *referring to* sketch 083525-083534 RED, p. 083525; **Mr Hoxha:** T. 20 November 2023, public, p. 3180, line 25 to p. 3181, line 16, *referring to* photograph SPOE40010264-40010559, p. SPOE40010279 (saved as REG00983). *See also*, Annex, p. 4.

<sup>513</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 103, lines 18-25; **TW4-01:** T. 30 May 2023, public, p. 1409, line 19 to p. 1410, line 6; **Mr Mark Shala:** T. 24 October 2023, public, p. 3028, line 15 to p. 3029, line 4.

<sup>514</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2924, line 17 to p. 2925, line 16; **Mr Hoxha:** T. 20 November 2023, public, p. 3180, line 25 to p. 3181, line 16; **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 103, lines 18-25.

<sup>515</sup> **TW4-10:** T. 1 May 2023, public, p. 1049, line 20 to p. 1050, line 4, *referring to* sketch 083536-083536 RED; **TW4-01:** T. 30 May 2023, public, p. 1409, line 12 to p. 1410, line 10; *see also*, the sketch drawn by **Mr Mark Shala**, 083525-083525-ET.

<sup>516</sup> **TW4-01:** T. 30 May 2023, public, p. 1409, lines 19-25; *see also* the sketch drawn by the witness (SITF00012876-SITF00012878, p. SITF00012878); **TW4-10:** T. 1 May 2023, public, p. 1050, lines 5-8, *referring to* sketch 083536-083536 RED; **Mr Mark Shala:** T. 23 October 2023, public, p. 2956, line 23 to p. 2957, line 3, *referring to* sketch 083525-083534 RED, p. 083525; *see also*, the markings made by Mr Kocinaj on SPOE00330362-00330362 (saved as REG00968). *See also*, Annex, p. 5.

40–50 meters away from the Command Building.<sup>517</sup> In the same vein, TW4-11 testified that he was detained in a one-storey building, on the right-hand side of the gate.<sup>518</sup> Likewise, TW4-10, a former KLA guard serving at the KMF, identified the same building (designated by witnesses TW4-01 and TW4-11) as a one-storey “house”, where “suspects or ... those who wanted to join the KLA” were kept for a few hours and questioned as to their relations to Serbia.<sup>519</sup> In addition, W04733, W01448 and TW4-02 all provided information in their statements that they were detained in a building situated 50-60 meters away from the Command Building.<sup>520</sup> The Panel considers the aforementioned evidence to be credible, as it is clear, consistent and mutually corroborative as regards the core fact that persons were detained in a one-storey building in the yard of the KMF. While the Panel notes a certain degree of divergence concerning the distance between said building and the Command Building, it does not consider this divergence to negatively impact the reliability of the evidence because: (i) the divergence is marginal; (ii) it relates to a matter of no consequence; and (iii) the existence and location of said building in which persons

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<sup>517</sup> **TW4-01**: T. 30 May 2023, public, p. 1409, line 19 to p. 1410, line 10; T. 30 May 2023, confidential, p. 1420, line 5 to p. 1421, line 24, *referring to* sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954); T. 30 May 2023, public, p. 1423, line 14 to p. 1424, line 13 (the witness recognised the building shown in photograph 074390-074391, p. 074390 as the building where he was detained); T. 31 May 2023, confidential, p. 1554, line 23 to p. 1555, line 2.

<sup>518</sup> **TW4-11**: T. 2 May 2023, public, p. 1195, line 20 to p. 1198, line 13. *See also*, p. 1204, line 15 to p. 1206, line 17, where the witness recognised and marked the building where he was detained in the same photograph previously shown to TW4-01, 074390-074391, p. 074390 (saved as REG00951).

<sup>519</sup> **TW4-10**: T. 1 May 2023, public, p. 1052, line 7 to p. 1053, line 23, *referring to* sketch 083536-083536 RED; *see also*, p. 1054, lines 6-19, where the witness recognised the building depicted in the same photograph shown to witnesses TW4-01 and TW4-11 (photograph 074390-074391, p. 074390) as the building where individuals were questioned before joining the KLA. The Panel notes that TW4-10 testified that the identified building was located no more than 15-20 meters away from the Command Building (*see* p. 1054, lines 16-19).

<sup>520</sup> **W04733**: 106978-107020, p. 107007; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013748; **TW4-02**: 108850-TR-ET Part 1 RED, p. 10, line 21 to p. 11, line 13.



were detained within the KMF compound is confirmed by all aforementioned witnesses.

313. However, the Panel has also heard the testimonies of Defence witnesses and former KLA members Mr Hoxha, Mr Mark Shala, Mr Kocinaj and W04280, who stated that they had either never seen,<sup>521</sup> or could not recall the existence of the one-storey building.<sup>522</sup>

314. The Panel considers that such refutation evidence is unpersuasive when weighed against the evidence of a former KLA guard at the KMF (TW4-10) and, most importantly, five victims providing evidence regarding the circumstances of their own detention (TW4-01, TW4-11, W04733, W01448 and TW4-02).<sup>523</sup> First, as held above, the evidence of TW4-01, TW4-11, TW4-10, W04733, W01448 and TW4-02 regarding the existence and identification of the building is mutually corroborative and, therefore, reliable, especially given that TW4-01, TW4-11, TW4-10 all recognised the building through the same photograph.<sup>524</sup>

315. Second, W04280, Mr Hoxha, Mr Mark Shala, and Mr Kocinaj, who purported to not recognise the building in question, have been found by the Panel to either show a strong inclination to provide evidence favourable to Mr Shala, or to be unwilling to provide any information which could lead to the conclusion that KLA members committed crimes at the KMF.<sup>525</sup> Accordingly, the Panel is of the view that these

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<sup>521</sup> **Mr Hoxha:** T. 21 November 2023, public, p. 3390, lines 9-15; p. 3391, lines 9-25 (Mr Hoxha stated that he had never seen the structure depicted in photograph 074390-074391, p. 074390, which had been explicitly recognised by TW4-01 and TW4-11 as the building in which they were detained and by TW4-10 as the building where individuals were kept and questioned).

<sup>522</sup> **Mr Mark Shala:** T. 24 October 2023, public, p. 3052, line 20 to p. 3053, line 23; **Mr Kocinaj:** T. 3 October 2023, public, p. 2870, lines 9-12; p. 2883, line 23 to p. 3884, line 5; **W04280:** T. 29 November 2023, confidential, p. 3843, lines 8-15. All three witnesses were also shown photograph 074390-074391, p. 074390, which they were not able to recognise. The Panel also notes that Mr Elezaj did not include the Detention Building in sketch 065435-065435-ET.

<sup>523</sup> See Sections VI.D.2, VI.D.4, VI.D.5, VI.D.6 and VI.D.9.

<sup>524</sup> Photograph 074390-074391, p. 074390. See Annex, p. 6.

<sup>525</sup> See Sections V.H.2, V.H.8, V.H.10 and V.H.13.

witnesses have an incentive to deny the existence of any potential detention location within the KMF.

316. Third, the Panel finds the testimonies of this group of witnesses implausible, given that they were all stationed and working at the KMF during the Confirmed Indictment period, meaning their categorical claims that they had never seen, noticed or could not recall the presence of a building in the middle of the yard cannot possibly be true. The Panel notes, at this juncture, that it has received documentary evidence which clearly validates the existence of the Detention Building within the compound, at the time relevant to the charges.<sup>526</sup>

317. Fourth, the witnesses simply deny the existence of a one-storey building, but do not offer alternative explanations or descriptions that could upset the reliability of the evidence supporting its existence. In this regard, the Panel has not detected any particular credibility risk factors which would adversely affect the credibility of TW4-01, TW4-11, TW4-10, W04733 and W01448, who provided information concerning the existence of a detention building. As a result, the evidence denying the existence of the one-storey building cannot undermine the probative value of the evidence confirming its existence.

318. In light of the foregoing, the Panel is convinced that the Detention Building was a small one-storey building, as depicted in the photograph recognised by TW4-01, TW4-11 and TW4-10,<sup>527</sup> which existed at the KMF compound. The Detention Building was located between 40–60 meters away from the Command Building, on the right-

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<sup>526</sup> See 065437-065439, p. 065437, a planimetry of the KMF dated January 1996, where the Detention Building can be seen between the buildings marked with numbers 2 and 4, in conjunction with photograph 074390-074391, p. 074390, in which all aforementioned witnesses (TW4-01, TW4-11 and TW4-10) recognised the Detention Building. See Annex, p. 6.

<sup>527</sup> Photograph 074390-074391, p. 074390. See Annex, p. 6.

hand side of the compound.<sup>528</sup> The Panel notes that it has received evidence that the Detention Building no longer exists, as it was partially torn down and destroyed.<sup>529</sup>

319. *Toilets.* The Panel recalls that it has taken judicial notice of the adjudicated fact that “[t]he toilet was located outside. The detainees had to ask permission to go to the toilet and would be escorted and guarded by soldiers during this time”.<sup>530</sup>

320. In addition, the Panel has received extensive evidence concerning the toilets’ precise location at the KMF. During his in-court testimony, TW4-01 placed the toilets outside the Detention Building, on the side of the KMF facing the road to Kruma.<sup>531</sup> This evidence is further corroborated by the sketches drawn by witnesses TW4-04 and W01448 who each identified the same spot as the toilets’ location.<sup>532</sup> Similarly, Mr Mark Shala confirmed the location of the toilets on the right-hand side of the KMF compound.<sup>533</sup>

321. As regards the use of the toilets, TW4-01 stated that the facilities were used by both detainees and KLA members.<sup>534</sup> TW4-01’s testimony is corroborated by

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<sup>528</sup> See sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954), where TW4-01 marked the Detention Building with numbers 1, 2 and 3.

<sup>529</sup> See photographs SPOE40010264-40010559, pp. SPOE40010273, SPOE40010282, SPOE40010285, SPOE40010290, SPOE40010291 (these photographs were taken on 22 May 2019 and depict the remains of the Detention Building); see also, the aerial photograph SPOE00330362-00330362, in conjunction with SPOE00330364-00330364 (the Detention Building no longer existed when photograph SPOE00330362-00330362 was taken in 2022, while its existence, shape, and position, as confirmed by 065437-065439, p. 065437, are superimposed on SPOE00330364-00330364). See Annex, p. 6.

<sup>530</sup> [List of Adjudicated Facts](#), Adjudicated Fact 55.

<sup>531</sup> **TW4-01:** T. 30 May 2023, public, p. 1445, line 16 to p. 1446, line 5. The witness marked the toilets with the letter T on sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954).

<sup>532</sup> **TW4-04:** 08816-108825 RED, p. 108822; **W01448:** U003-2231-U003-2231-ET.

<sup>533</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2958, line 11 to p. 2960, line 18, referring to sketch 083525-083534 RED, p. 083525; T. 24 October 2023, public, p. 3037, line 14 to p. 3038, line 6, referring to photograph SPOE00330362-00330362 (saved as REG00977). The witness testified that marking number 6, on both the sketch and the photograph, constituted a rather small building, which housed field toilets used by everyone on the premises and was located up to 150 meters away from the Command Building.

<sup>534</sup> **TW4-01:** T. 30 May 2023, public, p. 1445, line 16 to p. 1446, line 5; T. 31 May 2023, confidential, p. 1535, lines 1-9.

Mr Mark Shala, who also testified that the toilets were the only ones available within the compound,<sup>535</sup> as well as by the statement of W04733, who averred that the toilets were used by everyone present at the KMF, including the detainees.<sup>536</sup> The Panel considers the aforementioned evidence as credible as it is straightforward, clear, consistent and mutually corroborative as regards the existence and use of toilets at the KMF.

322. While the Panel notes a slight divergence with regard to the exact location of the toilets in relation to the Detention Building (TW4-01, TW4-04 and W01448 place the toilets on the side of the compound towards the road to Kruma, while Mr Mark Shala locates them on the right-hand side of the Detention Building), it does not find that this divergence negatively impacts the reliability of the evidence because: (i) it is marginal; (ii) it relates to a matter of no consequence; and (iii) all aforementioned witnesses are consistent on key aspects of the description of the toilets, including their location on the right-hand side of the compound, in close proximity to the Detention Building. Importantly, this indicates that, in order for someone to access the toilets, they had to pass by the Detention Building when coming from the direction of the gate, the Command Building, the Kitchen or the Warehouse.

323. Conversely, Defence witnesses Mr Hoxha and W04280 admitted that toilets existed within the KMF compound, yet they were neither able to recall their exact location, nor able to recognise the location as indicated by the other witnesses mentioned above.<sup>537</sup> Mr Kocinaj could not recall the existence of toilets at the KMF altogether.<sup>538</sup>

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<sup>535</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2959, lines 5-7.

<sup>536</sup> **W04733**: 106978-107020, pp. 106990, 107001.

<sup>537</sup> **Mr Hoxha**: T. 21 November 2023, public, p. 3376, line 17 to p. 3377, line 11; p. 3378, lines 19-24; p. 3387, lines 4-12, *referring to* photograph SPOE40010264-40010559, p. SPOE40010289; **W4280**: T. 29 November 2023, confidential, p. 3842, line 22 to p. 3843, line 2.

<sup>538</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2844, line 5 to p. 2845, line 6; p. 2846, lines 12-13.

324. For similar reasons regarding the existence of the Detention Building, the Panel finds the evidence refuting the existence of or denying knowledge regarding the specific location of the toilets at the KMF to be unpersuasive. As set forth above, the Panel has received mutually corroborative evidence on the existence and location of the toilets, derived from the testimonies and the statements of victims describing their own circumstances of detention (TW4-01, W04733, W01448 and TW4-04), and from the testimony of Mr Mark Shala, who held a command role at the KMF. In addition, the Panel has observed that several Defence witnesses (Mr Hoxha, W04280 and Mr Kocinaj) have an incentive to deny knowledge of any building which could reveal the detention practices at the KMF. The Panel also recalls its finding that the specific Defence witnesses show a strong inclination to provide evidence favourable to Mr Shala and/or unwillingness to provide any information which could lead to the conclusion that some KLA members committed crimes.<sup>539</sup> In light of these circumstances, the Panel finds that it cannot be a coincidence that most Defence witnesses are able to pinpoint the location of all of the buildings comprising the KMF, with the sole exception of the Detention Building and the toilets.<sup>540</sup> As a result, the evidence denying the toilets' existence or their location cannot undermine the probative value of the evidence confirming their existence and use.

325. In light of the foregoing, the Panel finds that the only communal toilets available at the KMF existed on the right-hand side of the premises as one entered through the gate, outside of and in close proximity to the Detention Building, as indicated in the sketch drawn by TW4-01.<sup>541</sup>

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<sup>539</sup> See Section V.H.13.

<sup>540</sup> See **Sketch**: SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954); sketch 083525-083534 RED, p. 083525 (saved as REG00975); photograph SPOE00330362-00330362 (saved as REG00977).

<sup>541</sup> Sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954). This sketch is corroborated by sketches 08816-108825 RED, p. 10882 (drawn by **TW4-04**) and U003-2231-U003-2231-ET (drawn by **W01448**).

326. *Conclusion.* In light of the foregoing, the Panel finds that the evidence before it clearly indicates that the KMF was a fenced compound comprising a yard surrounded by multiple separate buildings, including, *inter alia*: (i) the Guard Barracks, the Command Building and the Kitchen, on the left-hand side; (ii) the Warehouse, across from the gate; and (iii) the Detention Building and the toilets, on the right-hand side of the compound.

## 5. Interior Layout of Buildings at the Kukës Metal Factory

327. Having established the layout of the KMF compound, the Panel now turns to examine the interior layout of the buildings.

328. *Command Building.* With regard to the Command Building, the Panel has received unequivocal and mutually corroborative evidence showing that the building comprised two levels (ground floor and first floor), connected through a staircase.<sup>542</sup> In the following paragraphs, the Panel will discuss the rooms of the Command Building that are relevant for its subsequent findings.

329. According to witnesses TW4-01, W04733 and W01448, a very small room was located on the first floor which was used for detention purposes (Command Building Detention Room).<sup>543</sup> The corroborative nature, the consistency and the detailed account of the witnesses' testimonies and statements persuade the Panel that they were honest and credible regarding the existence and the location of this small room

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<sup>542</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2925, lines 2-4; **W01448:** SITF00013852-00013869 RED6, p. SITF00013856.

<sup>543</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1471, lines 2-11; T. 6 June 2023, confidential, p. 1915, lines 9-17; **W01448:** SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016221-00016285 RED4, p. SITF00016229; **W04733:** SITF00018740-00018767 RED, p. SITF00018741; SITF00019824-00019876 RED2, pp. SITF00019829-SITF00019830; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013808-SPOE00013809; 082892-TR-AT-ET Part 5 RED2, p. 3, lines 19-22.

with a low ceiling. The Panel will examine the detention conditions of the victims in relation to this Command Building Detention Room in its factual findings (Counts 2-3).<sup>544</sup>

330. The Panel is also convinced by the evidence of witnesses TW4-01, W01448 and W04733 as to the existence of an office, which was used for the interrogation and mistreatment of detainees and which was located in the corridor of the ground floor of the Command Building (Office).<sup>545</sup> Other offices were used for different purposes,<sup>546</sup> including interrogations.<sup>547</sup> Their accounts are convincing and rich in detail and they corroborate each other. The Panel finds no reason to doubt that the witnesses are truthful in recounting their personal experience. It is, *inter alia*, in relation to the Office of the Command Building that the Panel will examine the alleged mistreatment of victims, as assessed below in the factual findings (Counts 2-3).<sup>548</sup>

331. Lastly, the Panel relies on extensive, clear, mutually corroborative and, therefore, reliable evidence, attesting to the existence of a medical office on the ground floor of the Command Building,<sup>549</sup> where medical care was provided by at least one doctor

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<sup>544</sup> See Section VI.E.1.

<sup>545</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1450, line 4 to p. 1451, line 23. The witness circled the Office on photograph 065597-065612, p. 065600 (bottom photograph, saved as REG00956); **W01448**: SITF00013852-00013869 RED6, p. SITF00013856; SITF00016221-00016285 RED4, p. SITF00016231; **W04733**: SITF00018740-00018767 RED, pp. SITF00018741, SITF00018746; SITF00019824-00019876 RED2, pp. SITF00019832-SITF00019833; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013810-SPOE00013811, SPOE00013814.

<sup>546</sup> **TW4-01**: T. 30 May 2023, public, p. 1412, lines 5-11; **TW4-10**: T. 1 May 2023, public, p. 1046, lines 7-18; p. 1047, lines 3-6; **Mr Mark Shala**: T. 23 October 2023, public, p. 2925, lines 8-16; **Mr Hoxha**: T. 20 November 2023, public, p. 3181, lines 11-14; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013743; SITF00013852-00013869 RED6, p. SITF00013856.

<sup>547</sup> See Section VI.E.3.

<sup>548</sup> See Section VI.E.2(b)-(e).

<sup>549</sup> **TW4-01**: T. 30 May 2023, public, p. 1412, lines 5-8, referring to sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954); **Mr Hoxha**: T. 20 November 2023, public, p. 3183, line 23 to p. 3184, line 11, referring to photograph SPOE40010264-40010559, p. SPOE40010279 (saved as REG00983); p. 3188, lines 8-22 (the witness marked with number 5 the medical office on photograph SPOE40010264-40010559, p. SPOE40010278 (saved as REG00984)); T. 21 November 2023, public, p. 3375,

and one nurse (Medical Office).<sup>550</sup> The Panel notes that, despite a slight divergence in the witnesses' testimonies with regard to the floor on which said office was located,<sup>551</sup> the Panel's assessment of the reliability of the evidence is not upset because: (i) the divergence is marginal; (ii) it relates to a matter of no consequence; and (iii) all aforementioned witnesses confirmed the existence and general location of said office in the Command Building.

332. In light of the foregoing, the Panel is persuaded that the Command Building accommodated, *inter alia*: (i) the Command Building Detention Room, a very small room located on the first floor; (ii) the Office situated on the ground floor; and (iii) the Medical Office located also on the ground floor.

333. *Warehouse*. As far as the inside layout of the Warehouse is concerned, the Panel has received corroborative, detailed and reliable evidence revealing that it was comprised of two main compartments, which were connected internally through a door, forming a unified space with a single entrance.<sup>552</sup> The evidence shows that one compartment was where mostly uniforms were kept, while the other compartment

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lines 6-13 (the witness marked with number 4 the medical office on photograph SPOE00330362-00330362 RED (saved as REG00994)); **TW4-10**: T. 1 May 2023, public, p. 1047, lines 9-13.

<sup>550</sup> **TW4-01**: T. 30 May 2023, public, p. 1412, line 7; T. 30 May 2023, confidential, p. 1451, lines 12-13; **TW4-10**: T. 1 May 2023, public, p. 1047, lines 7-13; **Mr Dervishaj**: T. 2 October 2023, public, p. 2750, line 23 to p. 2751, line 1; **Mr Kocinaj**: T. 3 October 2023, public, p. 2834, lines 18-23; **Mr Hoxha**: T. 20 November 2023, public, p. 3183, line 23 to p. 3184, line 2; T. 21 November 2023, public, p. 3375, line 21 to p. 3376, line 10; **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185343; **Mr Elezaj**: 060124-TR-ET Part 1 Revised RED, p. 46, line 7 to p. 47, line 26.

<sup>551</sup> TW4-10, in contrast to TW4-01 and Mr Hoxha, places it on the first floor of the Command Building.

<sup>552</sup> **TW4-01**: T. 30 May 2023, public, p. 1409, line 19 to p. 1410, line 4; p. 1411, line 20 to p. 1412, line 4, referring to sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954); **Mr Kocinaj**: T. 3 October 2023, public, p. 2867, line 13 to p. 2868, line 16 (the witness marked with number 1 the entrance to the warehouse on photograph SPOE00330362-00330362 (saved as REG00968-REG00968)); **Mr Mark Shala**: T. 23 October 2023, public, p. 2956, line 20 to p. 2957, line 1, referring to sketch 083525-083534 RED, p. 083525.



was where food supplies were stored.<sup>553</sup> The Panel has also received evidence that weapons were stored – and repaired – within the premises of the KMF, albeit the witnesses’ testimonies reveal different storage locations.<sup>554</sup>

334. *Detention Building.* Lastly, as regards the interior layout of the Detention Building, the evidence provided by witnesses TW4-01, W01448 and TW4-04 reveals that the one-storey building consisted of three rooms (Room 1, Room 2 and Room 3) and one corridor.<sup>555</sup> The testimonies of the witnesses are detailed and coherent, and as such the Panel has assigned them significant weight in its assessment. As a result, the Panel is convinced of the aforementioned description of the Detention Building.

## 6. Conclusion

335. In light of the totality of the evidence assessed above, the Panel is satisfied that the KLA base at the KMF, as described in the previous paragraphs, corresponds to the premises referred to in the Confirmed Indictment as the location of the crimes charged. Accordingly, the Panel will make its findings with regard to the charges of arbitrary detention, cruel treatment, torture and murder (Counts 1-4) with reference to the KMF as the established geographical scope of the crimes charged against Mr Shala. Within the KMF, two buildings are particularly relevant to the charges in this case: (i) the Detention Building, which encompassed Rooms 1 and 3 where

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<sup>553</sup> **TW4-01:** T. 30 May 2023, public, p. 1409, line 19 to p. 1410, line 4; **Mr Mark Shala:** T. 23 October 2023, public, p. 2956, line 20 to p. 2957, line 3; *see also*, sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954).

<sup>554</sup> **Mr Hoxha:** T. 21 November 2023, public, p. 3367, lines 3-6, *referring to* photograph SPOE00330362-00330362 RED (saved as REG00994); p. 3371, line 1 to p. 3373, line 21; **Mr Mark Shala:** T. 23 October 2023, public, p. 2952, line 17 to p. 2953, line 2, *referring to* photograph 083525-083534 RED, p. 083527 (saved as REG00974); **Mr Elezaj:** 060124-TR-ET Part 2 Revised, p. 5, lines 1-3; p.10, lines 8-15.

<sup>555</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1420, lines 5-9; T. 30 May 2023, public, p. 1421, lines 14-24; p. 1428, lines 14-17 (in all three excerpts reference is made to sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954), where the witness marked with numbers 1, 2 and 3 the three rooms of the Detention Building); p. 1426, line 14 to p. 1427, line 6, *referring to* sketch 059118-059144 RED2, p. 059119 (saved as REG00955); **W01448:** SITF00013852-00013869 RED6, p. SITF00013858; **TW4-04:** 064716-TR-ET Part 5 RED4, p. 4, lines 6-19; p. 7, line 13 to p. 8, line 3.

detainees were held and Room 2 used for interrogation and mistreatment; and (ii) the Command Building, which encompassed the Command Building Detention Room, which was used to hold some of the detainees for a short period of time before their transfer to the Detention Building, and the Office used for interrogation and mistreatment.

### C. KLA DETENTION OPERATIONS AT THE KMF

336. The Panel will hereunder discuss the KLA's operation of the detention facilities at the KMF, focusing on: (i) the tasks and duties of the KLA Military Police (including Mr Shala's statements in this regard); (ii) the individuals who were present at the KMF at the relevant time and who were involved in the apprehension, transfer, detention, interrogation and mistreatment of detainees; (iii) their membership in the KLA, functions and roles at the KMF; and (iv) the structure under which they operated. Mindful that the KMF also functioned as a headquarters for recruitment, mobilisation and logistics,<sup>556</sup> the Panel will focus only on those KLA members who performed functions related to the detention and mistreatment of individuals at the KMF.

337. *Tasks and duties of the KLA Military Police.* As explained above, upon being appointed as a commander/officer with the KLA Military Police in Jablanica/Jabllanicë, in the spring of 1998, Mr Shala received the KLA Regulation, setting out the tasks and duties of the KLA Military Police.<sup>557</sup> Such tasks and duties included, among others:

- (i) the duty [...] to investigate and uncover all individuals who collaborate with the enemy in any way by convincing facts; and
- (ii) the obligation [...] to take action against all who work against the Kosovo Liberation Army.<sup>558</sup>

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<sup>556</sup> See paras 306-307 above.

<sup>557</sup> See para. 286 above.

<sup>558</sup> **Document:** U009-9397-U009-9397-ET Revised, points 3 and 4.

338. The Regulation also states that members of the KLA Military Police should be provided with Military Police clothing and they should serve as guards at the locations where they are active.<sup>559</sup> Mr Shala explained in his 2005 and 2019 Statements that the KLA Military Police, indeed, did not wear the same type of (camouflage) uniform as regular members, but had black uniforms, with the KLA and Military Police insignias.<sup>560</sup> As mentioned above, he distinctly recalled that upon his appointment to the Military Police, he received a black uniform, which replaced his camouflage uniform.<sup>561</sup> He added that, later on, the black uniforms “became fashionable”.<sup>562</sup>

339. Mr Shala further explained that, in time, the 1998 Regulation became “almost official” and remained in effect, albeit with some modifications.<sup>563</sup> He added that the KLA Military Police became more structured and recruited former policemen and judges within its ranks.<sup>564</sup> Mr Shala did not provide a clear time frame as to when the KLA Military Police became more organised, but stated that this was “during the war”.<sup>565</sup>

340. The Panel finds Mr Shala’s statements regarding the KLA Military Police to be credible and reliable as: (i) he offered this information without being prompted to do so; (ii) he is corroborated by the KLA Regulation (*e.g.* regarding the Military Police having different uniforms); and (iii) specific aspects of his statements (*e.g.* on the use of the black uniforms or the recruitment of former policemen and judges) are corroborated by witnesses in this case, as shown below. Mr Shala also confirmed the

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<sup>559</sup> **Document:** U009-9397-U009-9397-ET Revised, points 9 and 10.

<sup>560</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript-3 - B, pp. 23-24; 066864-TR-ET Part 2 Revised 1, pp. 87-88.

<sup>561</sup> **Mr Shala:** 066864-TR-ET Part 2 Revised 1, pp. 82-83.

<sup>562</sup> **Mr Shala:** 066864-TR-ET Part 2 Revised 1, pp. 87-88.

<sup>563</sup> **Mr Shala:** 066864-TR-ET Part 2 Revised 1, pp. 102-103.

<sup>564</sup> **Mr Shala:** 066864-TR-ET Part 2 Revised 1, pp. 114-115.

<sup>565</sup> **Mr Shala:** 066864-TR-ET Part 2 Revised 1, pp. 114-115.

authenticity of the Regulation, stating that: (i) it bore the KLA stamp that he knew to be in use at the time, which is indeed visible on the Regulation,<sup>566</sup> and (ii) he received the original version while he was with the KLA in 1998.<sup>567</sup> In light of the foregoing, the Panel is satisfied that Mr Shala's 2005 and 2019 Statements regarding the KLA Military Police are credible and that the KLA Regulation dated 1998 is authentic, and decides to rely on this material.

341. *KLA members involved with the detainees at the KMF.* TW4-01, TW4-11, W04733, W01448, TW4-02, TW4-04 and TW4-05, who were detained at the KMF throughout the time relevant to the charges,<sup>568</sup> provided evidence on the identities of the individuals who apprehended, transferred, interrogated and/or mistreated them. They identified, among others, the following individuals by name or nickname: Sabit Geci, Xhemshit Krasniqi, Mr Shala or Ujku, Mr Kryeziu, Sokol Dobruna, Fatmir Limaj, Bedri and Van Damme.<sup>569</sup> The Panel will discuss them in turn.

342. *Sabit Geci.* The Panel has taken judicial notice of the adjudicated fact that Sabit Geci was a senior member of the KLA, with a command role, holding authority and control over his subordinates.<sup>570</sup>

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<sup>566</sup> **Mr Shala:** 066864-TR-ET Part 1 Revised 1, pp. 33-34; see the original Albanian version: 066856-066862, p. 066856.

<sup>567</sup> **Mr Shala:** 066864-TR-ET Part 1 Revised 1, pp. 33-34.

<sup>568</sup> See Section VI.D below on the Panel's findings that TW4-01, TW4-11, W04733, W01448, TW4-02, TW4-04 and TW4-05 were arbitrarily detained at the KMF during the time relevant to the charges.

<sup>569</sup> See Sections VI.D, VI.E and VI.F below.

<sup>570</sup> [List of Adjudicated Facts](#), Adjudicated Fact 59.

343. The Panel has also received mutually corroborative evidence from TW4-01,<sup>571</sup> W01448,<sup>572</sup> TW4-05<sup>573</sup> and Mr Kryeziu<sup>574</sup> that Sabit Geci had a superior position within the KLA and authority over the KLA members who interrogated and mistreated the detainees at the KMF. TW4-01 testified that Sabit Geci had overall authority: “When Sabit Geci was there, he was the man in charge. No one dared disobey him”. He also testified that everyone took orders from Sabit Geci, including Xhemshit Krasniqi.<sup>575</sup>

344. In addition, the Panel has received evidence from TW4-10 that Sabit Geci was “police commander of Hashim Thaci”.<sup>576</sup> W01448 affirmed that Sabit Geci was “the Chief of Military Police” and recalled that he always saw him wearing the KLA Military uniform.<sup>577</sup> TW4-05 stated that – next to Xhemshit Krasniqi – Sabit Geci was “in the security service [of the] KLA”, although he had (only) heard this from fighters and did not know for sure.<sup>578</sup>

345. The Panel finds, based on the evidence taken as a whole, that during the time relevant to the charges, Sabit Geci was a high-ranking member of the KLA, having a

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<sup>571</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1530, lines 1-8; p. 1559, lines 17-21; T. 6 June 2023, confidential, p. 1928, line 18 to p. 1930, line 9 (TW4-01 testified that Sabit Geci was acting as a superior to those who interrogated and mistreated him and described him as “the father”. He also stated that Sabit Geci was all-powerful).

<sup>572</sup> **W01448**: SITF00013833-00013847 RED4, pp. SITF00013836, SITF00013838; SITF00013736-SITF00013800 RED5, pp. SITF00013743, SITF00013745, SITF00013763; SITF00016221-00016285 RED4, pp. SITF00016231-00016232, SITF00016234; SITF00016140-00016220 RED3, p. SITF00016148 (W01448 stated that Sabit Geci was a “very high ranking” commander and distinctly recalled that the beatings stopped when he said to the others: “Enough now”).

<sup>573</sup> **TW4-05**: SITF00372498-00372510 RED4, p. SITF00372502, SITF00013123-SITF00013153 RED, pp. SITF00013132, SITF00013134 (TW4-05 recalled that Sabit Geci had a high rank and “lots of authority [...] over all prisoners”).

<sup>574</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014098; SITF00016908-00016964 RED, p. SITF00016918 (Mr Kryeziu explained that Sabit Geci was a superior and that he himself was subordinate to both Sabit Geci and Xhemshit Krasniqi).

<sup>575</sup> **TW4-01**: T. 6 June 2023, confidential, p. 1929, line 24 to p. 1930, line 9.

<sup>576</sup> **TW4-10**: T. 1 May 2023, public, p. 1106, line 21 to p. 1107, line 5.

<sup>577</sup> **W01448**: SITF00013852-00013869 RED6, pp. SITF00013857, SITF00013864.

<sup>578</sup> **TW4-05**: SITF00372498-00372510 RED4, p. SITF00372502; SITF00013123-SITF00013153 RED, p. SITF00013132.

command role and overall authority over his subordinates and, specifically, members of the KLA Military Police who were involved in the apprehension, transfer, interrogation and mistreatment of detainees at the KMF, including over Xhemshit Krasniqi.<sup>579</sup>

346. *Xhemshit Krasniqi*. The Panel has taken judicial notice of the adjudicated fact that Xhemshit Krasniqi held a position of authority at the KMF.<sup>580</sup>

347. The Panel has also received mutually corroborative evidence from TW4-01,<sup>581</sup> TW4-10<sup>582</sup>, W01448<sup>583</sup> and TW4-05<sup>584</sup> that Xhemshit Krasniqi was a KLA commander and was in charge of the detention facilities and the detainees at the KMF. TW4-01 explained that, while Xhemshit Krasniqi took orders from Sabit Geci, he was the one who came to see the detainees the most.<sup>585</sup> His evidence on this point is reinforced by Mr Kryeziu who explained that Xhemshit Krasniqi was more present at the KMF than Sabit Geci.<sup>586</sup> The evidence of both witnesses is strongly corroborated by multiple witnesses who identified Xhemshit Krasniqi as (one of) the KLA member(s) who apprehended, interrogated and/or mistreated them,<sup>587</sup> thereby showing that he was routinely present at the KMF.

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<sup>579</sup> It emerges from the witnesses' statements describing Sabit Geci's functions that his authority went beyond the KMF.

<sup>580</sup> [List of Adjudicated Facts](#), Adjudicated Fact 60.

<sup>581</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1530, lines 1-8; p. 1559, lines 16-21; T. 6 June 2023, confidential, p. 1929, lines 17-23.

<sup>582</sup> **TW4-10**: T. 1 May 2023, public, p. 1068, lines 10-16; p. 1104, lines 20-23 (describing Xhemshit Krasniqi as a "commander").

<sup>583</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013860; SITF00013833-00013847 RED4, p. SITF00013838; SITF00013736-SITF00013800 RED5, pp. SITF00013743, SITF00013763; SITF00016140-00016220 RED3, p. SITF00016148 (describing Xhemshit Krasniqi as a "commander").

<sup>584</sup> **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013134 (recalling that Xhemshit Krasniqi held a position of authority with regard to the detainees at the KMF).

<sup>585</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1530, lines 1-8; p. 1559, lines 16-21; T. 6 June 2023, confidential, p. 1929, line 17 to p. 1930, line 9.

<sup>586</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014098.

<sup>587</sup> [REDACTED].

348. In addition, the Panel has received mutually corroborative evidence from W04733, TW4-02 and TW4-04 that Xhemshit Krasniqi was a member of the KLA Military Police.<sup>588</sup> TW4-02 added that he knew this because Xhemshit Krasniqi was wearing the KLA Military Police insignia on his shoulder.<sup>589</sup> TW4-02 is corroborated on this aspect by Mr Shala, who explained in his 2005 and 2019 Statements that the Military Police members wore the Military Police insignia on the upper part of the arm.<sup>590</sup> In addition, TW4-05 stated that he was arrested by two men dressed in black uniforms [REDACTED].<sup>591</sup>

349. The Panel finds, based on the evidence taken as a whole, that during the time relevant to the charges, Xhemshit Krasniqi was a senior member of the KLA Military Police and held a position of authority at the KMF, as the person (directly) in charge of the detainees and the detention facilities there.

350. *Mr Shala*. The Panel recalls its previous finding that Mr Shala was a KLA member during the time relevant to the charges.<sup>592</sup> His presence at the KMF, position and role are discussed by the Panel in Sections H and I of this Judgment.

351. *Osman Kryeziu*. The Panel recalls that prior to the time frame of the charges, Mr Kryeziu served as a prosecutor in Pristina, up until 1990.<sup>593</sup> According to his own statements, Mr Kryeziu was approached by Xhemshit Krasniqi to join the KLA, sometime towards the end of April 1999.<sup>594</sup> Mr Kryeziu explained that he was based

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<sup>588</sup> **W04733**: U003-2283-U003-2289 RED2, p. U003-2284; **TW4-02**: 060664-TR-ET Part 3, p. 21, line 23 to p. 22, line 10; **TW4-04**: SPOE00014669-00014751 RED, p. SPOE00014694.

<sup>589</sup> **TW4-02**: 060664-TR-ET Part 3, pp. 21-22.

<sup>590</sup> **Mr Shala**: T000-2742-T000-2742-Alb and Eng Transcript-3-B, pp. 23-24; 066864-TR-ET Part 2 Revised 1, pp. 87-88.

<sup>591</sup> **TW4-05**: SIFT00013125-SIFT00013153, RED, p. SIFT00013125.

<sup>592</sup> See para. 293 above.

<sup>593</sup> See para. 203 above.

<sup>594</sup> **Mr Kryeziu**: SIFT00014088-00014120 RED, p. SIFT00014093; see also, pp. SIFT00014097-00014098, confirming that he is referring to Xhemshit Krasniqi; SIFT00016908-00016964 RED, p. SIFT00016912. As to the period when Mr Kryeziu joined the KLA, see SIFT00014088-00014120 RED, p. SIFT00014093;

at the KMF throughout the time relevant to the charges, where he had an office and where he was tasked to conduct interviews.<sup>595</sup> While Mr Kryeziu stated that he worked (primarily) on cases involving KLA members who were accused of desertion,<sup>596</sup> he admitted that he knew of persons accused of collaborating with the Serbian authorities and that he himself questioned TW4-04 and [REDACTED],<sup>597</sup> which the Panel understands to be TW4-11.<sup>598</sup>

352. Corroborating Mr Kryeziu's (partial) admissions, TW4-11, TW4-04 and TW4-02 recalled that they were questioned by Mr Kryeziu while they were detained at the KMF.<sup>599</sup> Mr Kryeziu's statements that he was approached by Xhemshit Krasniqi to join the KLA in April 1999 are also supported by Mr Shala's 2019 Statement the KLA Military Police recruited former policemen and judges within its ranks as it became more structured.<sup>600</sup>

353. On this basis, the Panel finds that Mr Kryeziu was a KLA member working with the KLA Military Police who, throughout the time relevant to the charges, was based at the KMF and had the function of interrogating detainees.

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SITF00016908-00016964 RED, p. SITF00016912, stating that he joined after the KLA members went to Burrel for training. *See also*, the Panel's finding at para. 860 below that this happened mid-April 1999 (at the earliest).

<sup>595</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014095-96, SITF00014099; SITF00016908-00016964 RED, pp. SITF00016912-14.

<sup>596</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014095-96; SITF00016908-00016964 RED, pp. SITF00016913-14.

<sup>597</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014096, SITF00014100-101; SITF00016908-00016964 RED, pp. SITF00016916-17.

<sup>598</sup> *See* para. 164 above.

<sup>599</sup> *See* paras 433-437, 529-530, 552-555.

<sup>600</sup> **Mr Shala**: 066864-TR-ET Part 2 Revised 1, pp. 114-115.



354. *Sokol Dobruna*. W04733 described Sokol Dobruna as a “judge” or a “prosecutor”, who questioned him while he was detained at the KMF. W04733 mentioned that the questioning took place in the Office of the Command Building.<sup>601</sup>

355. W04733’s evidence finds support in Mr Kryeziu’s statements, who affirmed that he was not the only one conducting the interviews, but that there were five or six others who did so and that they shared an office at the KMF.<sup>602</sup>

356. On this basis, the Panel is satisfied that Sokol Dobruna was a KLA member, who – like Mr Kryeziu – played a role in the interrogation of detainees at the KMF.

357. *Fatmir Limaj, Bedri and Van Damme*. Noting TW4-10’s testimony that Fatmir Limaj was a KLA commander,<sup>603</sup> the Panel is satisfied that he too was a KLA member. As regards Bedri and Van Damme, the Panel notes that they were part of a group that, on different occasions, mistreated [REDACTED], together with Mr Shala and/or Xhemshit Krasniqi.<sup>604</sup> Considering that they were acting closely together with Mr Shala and/or Xhemshit Krasniqi – who were members of the KLA at the relevant time – the Panel is satisfied that both Bedri and Van Damme were KLA members at the time relevant to the charges.

358. *(Other) KLA Military Police Members*. As set out in detail in Sections VI.D and VI.E of this Judgment, members of the KLA Military Police – including Xhemshit Krasniqi – were prominently involved in the apprehension, transfer and mistreatment of detainees at the KMF. For example, TW4-01 explained that the individuals who arrested him wore clothes with the insignia of the KLA Military Police.<sup>605</sup> W04733 stated that two of the individuals who arrested him were wearing black uniforms

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<sup>601</sup> [REDACTED].

<sup>602</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014096, SITF00014099.

<sup>603</sup> **TW4-10**: T. 1 May 2023, public, p. 1104, lines 20-25.

<sup>604</sup> [REDACTED].

<sup>605</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1418, lines 11-17.

bearing the KLA insignia and introduced themselves as members of the KLA Military Police.<sup>606</sup> TW4-05 also gave evidence that the individuals who arrested and transferred him to the KMF were dressed in black uniforms with the KLA insignia, adding that “[t]hey showed [him] their KLA ID”.<sup>607</sup> Both W01448 and W04733 identified some of the perpetrators of their mistreatment as members of the KLA Military Police by their black uniforms, “like those worn by the [KLA] special police”.<sup>608</sup> Furthermore, W01448 gave evidence that the individuals who mistreated him and his co-detainees acted under the authority of and pursuant to orders from Xhemshit Krasniqi.<sup>609</sup>

359. The evidence given by the above-mentioned witnesses is corroborated by the KLA Regulation, which provided that the tasks and duties of the KLA Military Police were, among others, to “investigate and uncover all individuals who collaborate with the enemy” and to “take action against all who work against the Kosovo Liberation Army”.<sup>610</sup> As detailed in Section VI.D, the detainees at the KMF were singled out and apprehended for being perceived as “collaborators” of the Serbian authorities, “spies”, “traitors”, sympathisers of Serbia, or for not being sufficiently supportive of the KLA effort.<sup>611</sup>

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<sup>606</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184; SPOE00013793-SPOE00013847 RED2, p. SPOE00013805.

<sup>607</sup> **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013132.

<sup>608</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013744, SITF00013753; **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013826; 082892-TR-AT-ET Part 5 RED2, p. 30, lines 16-19. **W01448** explained in several of his statements that the members of the KLA Military Police (or special police) were dressed in black uniforms; *see* SITF00013736-SITF00013800 RED5, pp. SITF00013742, SITF00013744; SITF00013852-00013869 RED6, p. SITF00013856.

<sup>609</sup> **W01448**: SITF00016221-00016285 RED4, pp. SITF00016231-00016232; SITF00013833-00013847 RED4, pp. SITF00013836, SITF00013838; SITF00013736-SITF00013800 RED5, pp. SITF00013743, SITF00013745; SITF00013852-00013869 RED6, p. SITF00013857.

<sup>610</sup> **Document**: U009-9397-U009-9397-ET Revised, points 3 and 4.

<sup>611</sup> *See also*, para. 590 below.

360. (*Other*) KLA Members. As set out in Section VI.E of this Judgment, the detainees at the KMF were also mistreated by many (other) different KLA members, some of them unknown to the detainees.<sup>612</sup>

361. The Panel has also received evidence from TW4-11 and W04733 according to whom the individuals who mistreated them were sometimes wearing civilian clothing.<sup>613</sup> The evidence before the Panel shows that, indeed, KLA members were sometimes dressed in civilian clothing (including the ones holding high-ranking positions, such as Xhemshit Krasniqi).<sup>614</sup> This is attested by Mr Shala,<sup>615</sup> as well as by several witnesses, notably TW4-11,<sup>616</sup> TW4-10,<sup>617</sup> W01448<sup>618</sup> and W04733.<sup>619</sup>

362. The Panel has also received evidence that KLA members returning from the front would harass the detainees through the windows of the Detention Building or would enter their room during the night and mistreat them.<sup>620</sup> This shows to the Panel that it was permissible to anyone at the KMF to mistreat the detainees and that those in charge allowed it.

363. *Conclusion.* In light of the foregoing, the Panel finds that Sabit Geci and (more directly) Xhemshit Krasniqi were in charge of the detainees at the KMF. Members of the KLA Military Police were prominently involved in the apprehension, transfer and mistreatment of detainees at the KMF, alongside other KLA members. Ultimately, the individuals who established and maintained the conditions of detention at the KMF,

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<sup>612</sup> See, for example, paras 641-642, 645, 653 below.

<sup>613</sup> **TW4-11**: T. 2 May 2023, public, p. 1231, lines 9-14; p. 1233, lines 19-23; 082892-TR-AT-ET Part 5 RED2, p. 30, lines 16-19.

<sup>614</sup> **TW4-10**: T. 2 May 2023, public, p. 1167, lines 3-5; p. 1187, lines 21-24.

<sup>615</sup> **Mr Shala**: T000-2742-T000-2742-Alb and Eng Transcript-3 - B, p. 32.

<sup>616</sup> **TW4-11**: T. 2 May 2023, confidential, p. 1187, lines 21-24.

<sup>617</sup> **TW4-10**: T. 2 May 2023, public, p. 1167, lines 3-5; p. 1187, lines 21-24.

<sup>618</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016234; SITF00013852-00013869 RED6, p. SITF00013855.

<sup>619</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013809.

<sup>620</sup> See para. 604 below.

including Sabit Geci, Xhemshit Krasniqi, Mr Shala, Mr Kryeziu, Sokol Dobruna, Fatmir Limaj, Bedri and Van Damme, were all KLA members.

D. ARBITRARY DETENTION (COUNT 1)

1. Preliminary Remarks

364. In this section, the Panel will assess the evidence and enter its factual findings regarding Count 1 of the Confirmed Indictment, whether at least nine persons<sup>621</sup> were deprived of their liberty without due process of law by Mr Shala and certain other KLA members, including Sabit Geci, Xhemshit Krasniqi and KLA members nicknamed Bedri and Van Damme, between approximately 17 May 1999 and 5 June 1999, at the KMF.<sup>622</sup>

365. Where possible, the Panel will make its findings detainee by detainee and will discuss: (i) the date and circumstances of their initial apprehension; (ii) their detention location at the KMF; (iii) the presence and identification of other co-detainees; (iv) the circumstances of release; and (v) the procedural guarantees in detention.

366. [REDACTED].<sup>623</sup>

367. Secondly, the Panel notes that the charges related to Count 1 (as well as those related to Counts 2 and 3) have a specific temporal scope, namely between approximately 17 May 1999 and 5 June 1999.<sup>624</sup> However, the Panel may analyse factual allegations or circumstances outside the temporal scope of the charges, if they

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<sup>621</sup> The Panel uses the formulation “at least nine persons” throughout the Judgment, although it identifies more detainees, as it reflects the charges as presented by the SPO and set out in the Confirmed Indictment. See [Confirmed Indictment](#), para. 14.

<sup>622</sup> [Confirmed Indictment](#), paras 14-17, 31.

<sup>623</sup> [REDACTED].

<sup>624</sup> [Confirmed Indictment](#), paras 14-17, 18-25, 26-27, 31.

are relevant for the determination of matters falling within the scope of the charges, such as the circumstances of the initial apprehension of individuals who were subsequently detained, or their subsequent release. The same applies to factual allegations or circumstances outside the geographical scope of the charges. In addition, the Panel may use such information in assessing witness credibility or for contextualisation purposes.<sup>625</sup>

## 2. TW4-01

### (a) Arrival at the KMF

368. TW4-01 testified that he arrived at the KMF on [REDACTED] May 1999, [REDACTED]<sup>626</sup> - facts which are not contested by the Defence. According to the witness, TW4-01 [REDACTED] intended to join the KLA after being expelled [REDACTED].<sup>627</sup> TW4-01 stated that he was brought to the KMF by [REDACTED] who was a KLA member at the time.<sup>628</sup>

369. According to TW4-01, it was on the first day at the KMF that he saw Mr Shala, whom he knew from before, and who greeted and joked with him.<sup>629</sup> With regard to this encounter, TW4-01 tellingly stated: “We hugged each other. We joked around with each other. I did not expect anything dangerous to come towards me from that. I thought that to be impossible”.<sup>630</sup> TW4-01 testified that he spent three days

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<sup>625</sup> [Mustafa Trial Judgment](#), para. 346.

<sup>626</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1388, lines 17-24; p. 1395, line 5 to p. 1402, line 22.

<sup>627</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1387, line 21 to p. 1397, line 11; regarding the arrival, *see* p. 1396, line 24 to p. 1397, line 3; regarding the exact date, *see* T. 30 May 2023, confidential, p. 1388, lines 22-24. [REDACTED].

<sup>628</sup> [REDACTED].

<sup>629</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1407, line 11 to p. 1408, line 16. *Also see Mr Shala's* statement corroborating TW4-01's testimony that they knew each other from before the war, 066888-TR-ET Part 1 Revised, pp. 149-150.

<sup>630</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1408, lines 14-16.

[REDACTED] at the KMF Warehouse, while waiting for the KLA to carry out “their verifications”.<sup>631</sup> TW4-01 mentioned that, throughout that period, he spent time with Mr Shala, playing cards, that Mr Shala slept in the Warehouse for at least two of the three nights, and that Mr Shala would go in and out of the KMF.<sup>632</sup>

370. TW4-01’s evidence is corroborated on this point by TW4-10, who was serving as a guard at the gate,<sup>633</sup> and who saw Mr Shala arrive at the KMF [REDACTED].<sup>634</sup> He too recalled that Mr Shala was able to enter and exit the KMF without asking for permission from anyone.<sup>635</sup> His testimony thereby lends credence to TW4-01’s account and *vice versa*.

371. The Defence challenges the truthfulness of TW4-01’s evidence with regard to, *inter alia*, who brought him to the KMF. In particular, the Defence alleges that, while TW4-01 had stated in prior statements that it was [REDACTED] who brought him, [REDACTED] to the KMF, in a phone conversation with the SPO in 2021, a few days after Mr Shala’s arrest in Belgium, TW4-01 implicated Mr Shala as being the one who brought him to the KMF.<sup>636</sup> In addition, the Defence alleges possible collusion on this matter between TW4-01 and [REDACTED].<sup>637</sup>

372. First, as to the question whether or not TW4-01 attempted to implicate Mr Shala, the Panel notes that TW4-01 clearly testified at trial that it was [REDACTED] who

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<sup>631</sup> **TW4-01**: T. 30 May 2023, confidential, pp. 1403, 1407, 1411, 1413-1414, 1417-1418. The witness marked the Warehouse with the letter B on his sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954).

<sup>632</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1407, line 18 to p. 1408, line 16; T. 30 May 2023, public, p. 1413, lines 18-23; T. 6 June 2023, confidential, p. 1931, line 1 to p. 1932, line 4.

<sup>633</sup> **TW4-10**: T. 1 May 2023, public, p. 1036, line 13 to p. 1038, line 8.

<sup>634</sup> **TW4-10**: T. 1 May 2023, confidential, p. 1074, line 22 to p. 1075, line 16; p. 1078, line 25 to p. 1079, line 5.

<sup>635</sup> **TW4-10**: T. 1 May 2023, public, p. 1110, lines 17-25.

<sup>636</sup> Defence Final Trial Brief, para. 204. Also see **TW4-01**: T. 2 June 2023, confidential, p. 1630, lines 1-17; p. 1632, line 24 to p. 1633, line 16; p. 1636, line 19 to p. 1637, line 3.

<sup>637</sup> Defence Final Trial Brief, para. 264.

brought him, [REDACTED] to the KMF.<sup>638</sup> The alleged discrepancy in TW4-01's evidence arises from information recorded in an SPO Note summarizing a phone conversation between TW4-01 and an SPO staff member in 2021.<sup>639</sup> When confronted with this contradiction during his cross-examination in court, the witness denied having made this claim, saying: "[t]hese are not my words. I have never said these words".<sup>640</sup> The Panel is left with no further explanation as to why in the SPO Official Note of 2021, Mr Shala was implicated. The Panel notes that the SPO Note is not a verbatim record of the witness's words. Thus, the Panel does not exclude the possibility of a misunderstanding between TW4-01 and the SPO staff member on the phone. In any event, the Panel notes that in court, TW4-01 was firm in refusing to implicate Mr Shala. He also gave extensive explanations [REDACTED] during his cross-examination by the Defence, reinforcing the Panel's impression that he was eager to clarify that he had not identified Mr Shala as the person who brought the three detainees to the KMF.

373. Second, as to the question of whether or not [REDACTED].<sup>641</sup> [REDACTED].<sup>642</sup> [REDACTED].<sup>643</sup> The witness was explicitly asked by the SPO if this was his independent recollection of events, which he confirmed outright.<sup>644</sup> The Panel notes that, like TW4-01, this witness did not further implicate Mr Shala.

374. Lastly, the Panel notes that, even if both witnesses had, at one point, mentioned that Mr Shala brought TW4-01, [REDACTED] to the KMF, they both insisted in court that it was [REDACTED] who brought the aforesaid persons to the KMF. Yet, in the

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<sup>638</sup> **TW4-01:** T. 30 May 2023, confidential, pp. 1397, 1401-1403; 31 May 2023, confidential, p. 1555, lines 3-18.

<sup>639</sup> **TW4-01:** 093591-093591 RED2.

<sup>640</sup> **TW4-01:** T. 2 June 2023, confidential, p. 1637, line 2.

<sup>641</sup> [REDACTED].

<sup>642</sup> [REDACTED].

<sup>643</sup> [REDACTED].

<sup>644</sup> [REDACTED].

view of the Panel, the Defence does not support its allegation of possible collusion between TW4-01 and [REDACTED] any further, but asks the Panel to draw inferences from selected statements of the witnesses. The Panel detects no indication of collusion, for example in the manner in which the witnesses testified, the use of the same language when describing the same facts, and other relevant circumstances. The fact that one witness rectified his prior statement and the other one denied in court having previously implicated Mr Shala, is not sufficient, in itself, to demonstrate collusion. It also does not cast doubt on the overall truthfulness of the witnesses' testimony.

375. As a result, contrary to the Defence's submission, the Panel finds no reason to doubt the veracity of TW4-01's and [REDACTED] mutually corroborative accounts that [REDACTED] brought TW4-01, [REDACTED] to the KMF.

376. Regarding the KMF being the place where TW4-01 arrived, [REDACTED], the Panel notes that TW4-01 extensively described the premises, in a very specific and detailed manner.<sup>645</sup> He also identified buildings on a number of photographs of the KMF shown to him, and made additional markings on a sketch that he had previously drawn.<sup>646</sup> Further, TW4-01 specified that the Warehouse was used for storing uniforms – a detail which was corroborated by Defence witnesses Mr Kocinaj, Mr Mark Shala and Mr Hoxha.<sup>647</sup> This firmly indicates that TW4-01 was indeed inside the building at the relevant time. In addition, as mentioned above, [REDACTED];<sup>648</sup> and Mr Shala himself stated that he met TW4-01, [REDACTED] at the KMF sometime in May 1999.<sup>649</sup>

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<sup>645</sup> See, for example, **TW4-01**: T. 30 May 2023, public, p. 1409, line 22 to p. 1410, line 10.

<sup>646</sup> See, for example, **TW4-01**: T. 30 May 2023, public, p.1409, line 22 to p. 1413, line 4; T. 30 May 2023, confidential, p. 1423, line 14 to p. 1425, line 2; REG00954.

<sup>647</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1403; **Mr Kocinaj**: T. 3 October 2023, public, pp. 2816-2817; **Mr Mark Shala**: T. 23 October 2023, public, pp. 2956-2957; **Mr Hoxha**: T. 20 November 2023, public, p. 3198; see also, SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954); see Section VI.B.3.

<sup>648</sup> [REDACTED].

<sup>649</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, pp. 146-147, 152, 169; 066866-066882-ET Revised, pp. 066876-066877.



As a result, the Panel is satisfied that the location where TW4-01 arrived, [REDACTED], was indeed the KMF.

377. Regarding the exact date of TW4-01's arrival, TW4-01 testified that on [REDACTED] May 1999, [REDACTED].<sup>650</sup> TW4-01 stated that he arrived at the KMF on the same day that he was expelled from Kosovo and that he spent three days at the Warehouse before being arrested.<sup>651</sup> The witness further testified that, [REDACTED] after his arrest, he was mistreated in the Office of the Command Building.<sup>652</sup>

378. The Panel observes that if one were to accept that TW4-01 arrived at the KMF on [REDACTED] May 1999, that would mean that the witness's mistreatment in the Office would have taken place on [REDACTED] May 1999.<sup>653</sup> On the other hand, the Panel notes that mutually corroborative evidence emanating from W01448 and W04733 places TW4-01 and the Murder Victim as being mistreated in the Office on or about 20 May 1999.<sup>654</sup> Specifically, the Panel notes that W04733 provided evidence that on the night of his arrival at the KMF, on or about 20 May 1999, he was mistreated in the Office, alongside TW4-01;<sup>655</sup> W01448 also stated that he was mistreated in the Office, alongside TW4-01 and others, on or about 20 May 1999.<sup>656</sup> The Panel is of the view that the mutual corroboration of W01448's and W04733's evidence serves as an example of their accuracy regarding the timing of the events. In addition, W01448

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<sup>650</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1388, lines 19-24.

<sup>651</sup> **TW4-01**: T. 30 May 2023, confidential, pp. 1413-1418.

<sup>652</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1450, line 4-p.1452, line 6. Regarding the mistreatment of TW4-01 in the Office, *see* the Panel's findings in Section VI.E.2(b).

<sup>653</sup> In the same vein, TW4-01 estimated that he was placed in Room 1 on [REDACTED] May 1999, *see* **TW4-01**: T. 30 May 2023, confidential, p. 1422, lines 3-11.

<sup>654</sup> *See* Section VI.E.2(b).

<sup>655</sup> **W04733**: SITF00018740-00018767 RED, p. SITF00018741. *See also*, **W01448**: SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, pp. SITF00013742-SITF00013743. The encounter of the two witnesses is further discussed in detail in Section VI.E.2(b).

<sup>656</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013737; SITF00016221-SITF00016285 RED4, p. SITF00016227; SITF00013852-00013869 RED6, p. SITF00013854; *see* Section VI.E.2(b).

provides temporal markers, such as days of the week and public holidays, which helps the Panel to affirm their reliability.<sup>657</sup> As a result, the Panel finds it plausible that witness TW4-01 was inaccurate in stating that he arrived on [REDACTED] May 1999 at the KMF, especially when considering that he made the statement a long time after the events occurred. The Panel finds it appropriate to make allowance for such an imprecision, and is of the view that it does not affect the overall credibility or reliability of the witness regarding his detention at the KMF. What is clear to the Panel is that TW4-01 was at the KMF around mid-May 1999. Mindful of the mutually corroborative evidence of W01448 and W04733, the Panel therefore sets aside TW4-01's testimony on [REDACTED] May 1999 being the date of his arrival at the KMF.

379. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-01 arrived at the KMF on or about [REDACTED] May 1999.

(b) Initial apprehension

380. The Panel now reverts to the circumstances of TW4-01's arrest at the KMF. TW4-01 testified that he, [REDACTED] were apprehended by KLA military policemen on the third evening of their arrival at the KMF.<sup>658</sup> When asked explicitly how he knew that these individuals were from the KLA Military Police, TW4-01 stated: "They had the stripes on the shoulder differently from the KLA".<sup>659</sup> TW4-01 further explained

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<sup>657</sup> W01448 recalls, for instance, that 13 May 1999 was an official holiday in Germany (**W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013737; SITF00013852-00013869 RED6, p. SITF00013854; SITF00016221-SITF00016285 RED4, p. SITF00016227). According to the annual calendar for the year 1999, 13 May 1999 was indeed Ascension Day.

<sup>658</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1418, lines 1-14.

<sup>659</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1418, lines 15-17. Regarding the insignia of the Military Police uniforms, see **TW4-02**: 060664-TR-ET Part 3, p. 22, lines 3-10; **Mr Shala**: T000-2742-T000-2742-Alb and Eng Transcript-3 - B, pp. 23-24; 066864-TR-ET Part 2 Revised 1, pp. 87-88.

that he had his hands tied with military bootlaces and was placed [REDACTED] in a section of the Warehouse, where they spent the night.<sup>660</sup>

381. When asked whether he could remember whether Mr Shala was present on the night of his arrest, the witness stated that, in his recollection, Mr Shala was not present but that he was not sure.<sup>661</sup> The Panel notes that the witness was cautious on Mr Shala's presence and seemed hesitant to deliberately implicate Mr Shala. This aspect adds to the truthfulness of his testimony as the witness clearly attempted to stay true to what he personally experienced.

382. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-01 was deprived of his liberty at the KMF on or about [REDACTED] May 1999.

(c) Detention location within the KMF

383. The Panel recalls its earlier finding that TW4-01 slept in the Warehouse on the night of his arrest on or about [REDACTED] May 1999.<sup>662</sup> The following morning, he was taken to Room 1 in the Detention Building, where he was mostly held until his release.<sup>663</sup> TW4-01 stated that his hands were tied most of the time while in Room 1.<sup>664</sup>

384. TW4-01 testified that on the day he was brought to Room 1 (*i.e.* on or about 20 May 1999), in the evening, he was taken out of Room 1 and brought to the Office in

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<sup>660</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1418, line 18 to p. 1419, line 25.

<sup>661</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1420, lines 1-4.

<sup>662</sup> See para. 380 above.

<sup>663</sup> **TW4-01**: T. 30 May 2023, public, p. 1409, line 19 to p. 1410, line 10; T. 30 May 2023, confidential, p. 1420, line 5 to p. 1422, line 2, referring to sketch SITF00012876-SITF00012878, p. SITF00012878 (saved as REG00954); T. 30 May 2023, public, p. 1423, line 7 to p. 1424, line 13 (the witness recognized the building shown in photograph 074390-074391, p. 074390 as the Detention Building); T. 31 May 2023, confidential, p. 1554, line 23 to p. 1555, line 2. Regarding other instances when TW4-01 was brought out of Room 1, see para. 385 below. Regarding the duration of TW4-01's detention at the KMF and the approximate time of release, see Section VI.D.2(e).

<sup>664</sup> **TW4-01**: T. 30 May 2023, public, p. 1447, lines 7-11.

the Command Building, where he was interrogated and severely beaten by KLA members, including by Mr Shala.<sup>665</sup> TW4-01 testified that, after a full night of beating, he was brought back to Room 1.<sup>666</sup>

385. TW4-01's testimony about his interrogation and mistreatment in the Office is corroborated by the evidence of W04733 and W01448, which, as will be discussed in detail below, the Panel finds credible and reliable.<sup>667</sup> With regards to where TW4-01 was brought after his mistreatment in the Office on 20 May 1999, the evidence appears contradictory. TW4-01 stated that he was brought back to Room 1, [REDACTED].<sup>668</sup> However, W04733 and W01448 place TW4-01, [REDACTED] in the Command Building Detention Room for a number of days.<sup>669</sup> The Panel notes in this regard that: (i) TW4-01 was clear in his testimony that [REDACTED] during his detention at the KMF, he did not see that room;<sup>670</sup> and (ii) both W04733 and W01448 are not entirely consistent across their respective statements about the co-detainees in the Command Building Detention Room and the amount of time all of them spent there before being brought to Room 1.<sup>671</sup> The Panel observes that TW4-01 remained consistent when testifying about his [REDACTED] whereabouts. Conversely, the inconsistencies in W04733's and W01448's statements cannot be reconciled with each other, or with TW4-01's evidence. For this reason, the Panel does not attach weight to W04733's and W01448's evidence on this specific point. As a result, reading the evidence holistically, the Panel finds that TW4-01 was not held in the Command Building Detention Room

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<sup>665</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1450, line 2 to p. 1451, line 20; p. 1457, lines 20-22. The witness circled the office on photograph 065597-065612, p. 065600 (bottom photograph, saved as REG00956); *see also*, Section VI.E.2(b).

<sup>666</sup> **TW4-01:** T. 30 May 2023, confidential, pp. 1459, 1469.

<sup>667</sup> *See* Section VI.E.2(b).

<sup>668</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1471, lines 2-11.

<sup>669</sup> [REDACTED].

<sup>670</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1471, lines 2-11.

<sup>671</sup> *See* footnote 669 above.

after his mistreatment in the Office, but was brought back to Room 1. In any event, the Panel is of the view that this is a minor issue [REDACTED].

386. [REDACTED],<sup>672</sup> [REDACTED].<sup>673</sup>

387. The Panel finds that TW4-01 was clear in his testimony when describing the rooms in which he was held with his co-detainees. Moreover, his testimony is mutually corroborative with a number of other witness accounts, including those of TW4-11, W04733 and W01448.<sup>674</sup> The Panel therefore finds TW4-01 credible and reliable on his detention location.

388. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that, throughout his detention, TW4-01, was held in the Warehouse and in Room 1. The Panel is also satisfied that, for the duration of his mistreatment and interrogation by KLA members, TW4-01 was also at times kept in the Office [REDACTED].

(d) Presence and identification of co-detainees

389. [REDACTED], TW4-01 identified a number of other persons held at the KMF throughout his detention, including: (i) [REDACTED] (W04733),<sup>675</sup> a “person from Drenica who had come from Germany” (W01448),<sup>676</sup> “three Roma musicians [REDACTED]” ([REDACTED], [REDACTED] and a third Roma musician),<sup>677</sup> [REDACTED]<sup>678</sup> and [REDACTED], “a person from Suhareka/Suharekë”

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<sup>672</sup> [REDACTED].

<sup>673</sup> [REDACTED].

<sup>674</sup> See Sections VI.D.4, VI.D.5, VI.D.6 and VI.E.2.

<sup>675</sup> [REDACTED].

<sup>676</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1440; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013737; SITF00013852-00013869 RED6, p. SITF00013854; SITF00016221-00016285 RED4, p. SITF00016227; see Section VI.D.6.

<sup>677</sup> See Section VI.D.10(a).

<sup>678</sup> [REDACTED]; see also, Section VI.D.10(e).

[REDACTED]<sup>679</sup> and “three men from Malisheve”,<sup>680</sup> who were held in Room 1,<sup>681</sup> and (ii) [REDACTED] and “two sisters” from Đakovica/Gjakove in Room 3.<sup>682</sup> TW4-01 also identified the Murder Victim, [REDACTED] and W04733 as co-detainees in the Office on the night of his mistreatment, on or about 20 May 1999.<sup>683</sup>

390. The Panel notes that W01448, W04733 and TW4-01 corroborate each other about their respective detentions in Room 1 at the relevant time.<sup>684</sup> W01448 and TW4-01 also corroborate each other regarding the detention of [REDACTED]<sup>685</sup> and [REDACTED] in Room 1.<sup>686</sup> Furthermore, TW4-01, TW4-11, W04733, W01448 and other witnesses corroborate each other regarding the detention of “three Roma musicians [REDACTED]”.<sup>687</sup> Finally, TW4-01’s account regarding the presence of the Murder Victim, [REDACTED] and W04733 in the Office is corroborated by the statements of both W04733 and W01448.<sup>688</sup>

391. Regarding the “three men from Malisheve” mentioned as co-detainees in Room 1 by TW4-01, due to the limited evidence available, which does not allow any precise identification, the Panel will address this evidence in Section VI.D.11 below.<sup>689</sup>

392. In the Panel’s estimation, TW4-01 testified clearly and with great detail regarding the presence and identification of his co-detainees at the KMF throughout the period

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<sup>679</sup> See Section VI.D.10(c).

<sup>680</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1438, lines 14-15 and T. 31 May 2023, confidential, p. 1540, lines 12-20.

<sup>681</sup> [REDACTED].

<sup>682</sup> [REDACTED].

<sup>683</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1452, lines 10-22.

<sup>684</sup> See Sections VI.D.5 and VI.D.6.

<sup>685</sup> See Section VI.D.10(c).

<sup>686</sup> See Section VI.D.10(e).

<sup>687</sup> See Section VI.D.10(a).

<sup>688</sup> **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185341; SPOE00013793-SPOE00013847 RED2, p. SPOE00013819; 106978-107020, pp. 106985-106986. **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013746-SITF00013747; SITF00016221-00016285 RED4, p. SITF00016235.

<sup>689</sup> See para. 589 below.

relevant to the charges. The witness remained consistent with his prior statements when questioned in court. He made visible efforts to accurately recount his personal experience and recall names or identifying details of persons despite the passage of time. Importantly, TW4-01's identification of co-detainees is mutually corroborative of the evidence of other witnesses, such as W04733, W01448 and TW4-11, who asserted either: (i) being held in the same locations within the KMF throughout the period relevant to the charges;<sup>690</sup> (ii) having seen TW4-01 as a co-detainee;<sup>691</sup> or (iii) having seen the same co-detainees as the ones mentioned by TW4-01.<sup>692</sup>

393. The Panel notes the Defence's challenge regarding the inconsistency between TW4-01's and TW4-02's accounts as to the exact period of TW4-02's detention.<sup>693</sup> As will be discussed below, the Panel considers that the aforementioned inconsistency arises from TW4-02's untruthful statement about the time-frame of his detention at the KMF, on which the Panel does not rely.<sup>694</sup> Thus, the Panel finds that this does not affect TW4-01's credibility and the reliability of his evidence when it comes to his identification of co-detainees at the KMF during the time frame of the charges.<sup>695</sup> The Panel thus considers that it can rely on TW4-01's evidence concerning the presence and identification of co-detainees at the KMF at the time relevant to the charges.

394. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-01 was detained at the KMF at overlapping periods with the Murder Victim,

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<sup>690</sup> [REDACTED].

<sup>691</sup> W04733 and W01448 both state that they were co-detained with TW4-01 and the Murder Victim in Room 1. *See* **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 16; SITF00013181-SITF00013189 RED3, p. SITF00013186; **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013761-SITF00013762.

<sup>692</sup> W04733 and W01448 both recall the mistreatment of [REDACTED] in the Office. TW4-11, W04733 and W1448 all identify, similarly to TW4-01, three "Roma musicians" as co-detainees in Room 1 (**TW4-11**: T. 2 May 2023, confidential, pp. 1209-1210; **W04733**: 082892-TR-AT-ET Part 4 RED3, pp. 5-6; **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013761- SITF00013762).

<sup>693</sup> Defence Final Trial Brief, para. 218.

<sup>694</sup> *See* Section VI.D.9.

<sup>695</sup> *See* Section VI.D.9.

[REDACTED], at least two other women, W04733, W01448, TW4-02, [REDACTED], [REDACTED] and another Roma detainee, [REDACTED].

(e) Circumstances of release

395. TW4-01 testified that on [REDACTED] June 1999, [REDACTED].<sup>696</sup> [REDACTED].<sup>697</sup> [REDACTED].<sup>698</sup> [REDACTED].<sup>699</sup> In general terms, the Panel finds that TW4-01's account was clearly structured, coherent, and detailed.

396. The Defence avers that TW4-01's account regarding the circumstances of his release is not credible for a number of reasons. The Defence refers to, *inter alia*: (i) discrepancies between TW4-01's and [REDACTED];<sup>700</sup> (iii) discrepancies regarding [REDACTED].<sup>701</sup>

397. Regarding the first alleged discrepancy, the Panel observes that, while TW4-01 did indeed indicate he was [REDACTED] on [REDACTED] June 1999 [REDACTED].<sup>702</sup> [REDACTED].<sup>703</sup> The Panel considers that the imprecision in TW4-01's account about the date of his release is minimal and can be attributed to the passage of time. The Panel does not consider that this marginal discrepancy has any broader impact on TW4-01's credibility. [REDACTED].

398. Regarding the second alleged discrepancy, the Panel notes that this point turns on [REDACTED]. [REDACTED],<sup>704</sup> [REDACTED],<sup>705</sup> [REDACTED].<sup>706</sup>

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<sup>696</sup> [REDACTED].

<sup>697</sup> [REDACTED].

<sup>698</sup> [REDACTED].

<sup>699</sup> [REDACTED].

<sup>700</sup> [REDACTED].

<sup>701</sup> [REDACTED].

<sup>702</sup> [REDACTED].

<sup>703</sup> [REDACTED].

<sup>704</sup> [REDACTED].

<sup>705</sup> [REDACTED].

<sup>706</sup> [REDACTED].



399. To begin with, the Panel is of the view that [REDACTED] is of secondary importance and not material to the determinations the Panel is tasked with making, as the events fall outside of the geographical and temporal scope of the Confirmed Indictment. In addition, the Panel underlines that TW4-01's and [REDACTED] perspectives understandably differ, which, as a result, impacts their evidence. TW4-01's perspective is that of a detainee who was held [REDACTED] at the KMF, severely mistreated and psychologically abused on several occasions. [REDACTED]. That being said, the Panel finds that TW4-01 made an earnest effort to estimate [REDACTED].<sup>707</sup> The Panel is of the view that this minor discrepancy, for which the Panel finds a logical explanation, has no bearing on the material question as to when and under which circumstances TW4-01 was released.

400. As a result, the Panel finds that TW4-01's general recollection of the circumstances of his release remains internally consistent and is corroborated by other witnesses' accounts and evidence. His credibility is therefore unaffected by the minor inconsistencies about the exact date of release, or his overestimation of [REDACTED].

401. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-01 [REDACTED].

(f) Lack of procedural guarantees

402. The Panel recalls that deprivation of liberty becomes arbitrary if and when at least one of the three basic guarantees — which must be afforded to all persons deprived of their liberty in an armed conflict — is denied by the detaining party. The detaining party has the obligation to: (i) inform any person deprived of his or her liberty of the reasons for such deprivation; (ii) bring any person deprived of his or her liberty promptly before a judge or other competent authority; and (iii) provide any

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<sup>707</sup> [REDACTED].

person deprived of his or her liberty with an opportunity to challenge the lawfulness of their detention.<sup>708</sup>

403. Regarding the obligation to inform a person who is deprived of his or her liberty of the reasons for such deprivation, the Panel notes that TW4-01 testified that at the moment of his arrest, he was informed that there was an order to arrest him, which was never shown to him. When he explicitly asked who ordered his arrest, he was simply told: “[y]ou will learn about this later” and was not otherwise provided with any reason for his arrest.<sup>709</sup> TW4-01 further testified it was his understanding that he was detained at the KMF because he was a “spy” or “a collaborator”.<sup>710</sup> As a result, the Panel finds that TW4-01 was not properly informed of the reason for his arrest and detention.

404. As to the question whether TW4-01 was brought before a judge or other competent authority and whether he had an opportunity to challenge the lawfulness of his detention, the Panel notes that, during his time in detention, TW4-01’s had his hands tied with bootlaces and that he was subjected to severe mistreatment, including routine beatings, harassment and humiliation.<sup>711</sup> He did not have access to his family or to the outside world. The witness also testified that, during his time in detention, he was interrogated on several occasions, including in the Office of the Command Building.<sup>712</sup> On one of these occasions, while he was being mistreated, TW4-01 was accused by Xhemshit Krasniqi and Sabit Geci, in the presence of Mr Shala, of [REDACTED] being a “spy” and of collaborating with the Serbian

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<sup>708</sup> [Confirmation Decision](#), para. 51; *see also*, Section VII.B.1. *See similarly*, [Mustafa Trial Judgment](#), para. 407.

<sup>709</sup> **TW4-01**: T. 30 May 2023, public, p. 1419, lines 8-12.

<sup>710</sup> **TW4-01**: T. 31 May 2023, confidential, pp. 1541, 1571, 1598.

<sup>711</sup> *See* Sections VI.E.2(a), VI.E.2(b) and V.E.4.

<sup>712</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1459, line 16 to p. 1460, line 4; p. 1477, lines 4-9; T. 31 May 2023, confidential, p. 1510, lines 12-18; p. 1527, lines 3-12.

police.<sup>713</sup> TW4-01 described another interrogation session as follows: “[REDACTED] they would say, ‘If you admit to this and confess, you will be safe.’ I could not confess to something I had never done and did not commit”<sup>714</sup>.

405. In light of the above findings, and considering that the detainees were liberated not as a result of due process, [REDACTED], the Panel finds that the only reasonable conclusion, based on the evidence as a whole, is that TW4-01 was not brought before a judge or other competent authority, nor was he provided with an opportunity to challenge the lawfulness of his detention.

406. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-01 was not informed of the reasons for his deprivation of liberty, was not brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention.

### 3. The Murder Victim

#### (a) Initial apprehension

407. [REDACTED].<sup>715</sup> [REDACTED].<sup>716</sup> The Murder Victim [REDACTED] was subsequently arrested and deprived of his liberty on or about [REDACTED] May 1999.<sup>717</sup>

#### (b) Detention location within the KMF

408. Regarding the detention location of the Murder Victim, [REDACTED].<sup>718</sup> [REDACTED] multiple witnesses, such as TW4-01, TW4-11, W01448 and W04733

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<sup>713</sup> [REDACTED].

<sup>714</sup> TW4-01: T. 31 May 2023, confidential, p. 1527, lines 9-12.

<sup>715</sup> [REDACTED].

<sup>716</sup> [REDACTED].

<sup>717</sup> [REDACTED].

<sup>718</sup> [REDACTED].

provide mutually corroborative accounts about the presence of the Murder Victim in Room 1;<sup>719</sup> in the Office and Room 2, when incidents of mistreatment occurred;<sup>720</sup> as well as in the Command Building Detention Room.<sup>721</sup> The evidence is clear and mutually corroborative with regard to the Murder Victim's presence in those locations between [REDACTED] May 1999 and the date of his death, on or about 5 June 1999.<sup>722</sup> [REDACTED].<sup>723</sup>

409. [REDACTED].<sup>724</sup>

410. In light of the foregoing, taking the evidence as a whole, the Panel finds that the Murder Victim was held in various locations within the KMF, including the [REDACTED] Command Building Detention Room, [REDACTED] the Detention Building, as well as the Office for the duration of his mistreatment there.

(c) Circumstances of release

411. The Panel finds that the evidence clearly indicates that the Murder Victim died at the KMF on or about 5 June 1999.<sup>725</sup>

(d) Lack of procedural guarantees

412. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, the Panel has established that members of the KLA

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<sup>719</sup> **TW4-01**: T. 30 May 2023, confidential, pp. 1431-1432; **TW4-11**: T. 2 May 2023, confidential, p. 1210, line 2 to p. 1215, line 7, *referring to* 059341-059350, p. 059349; **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013761-SITF00013762; **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 16; SITF00013181-SITF00013189 RED3, p. SITF00013186.

<sup>720</sup> *See* Section VI.E.2(b).

<sup>721</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013741- SITF00013742; SITF00016140-00016220 RED3, p. SITF00016145; **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 16; SITF00013181-SITF00013189 RED3, p. SITF00013186.

<sup>722</sup> *See* para. 832 below.

<sup>723</sup> [REDACTED].

<sup>724</sup> [REDACTED].

<sup>725</sup> [List of Adjudicated Facts](#), Adjudicated Fact 56.

Military Police took the Murder Victim [REDACTED] into custody.<sup>726</sup> Moreover, W01448 provided evidence that, during an incident of mistreatment in the Office, on or about 20 May 1999, the Murder Victim was accused of collaborating and having close relationships with Serbs.<sup>727</sup> The Panel has received no evidence that demonstrates that the Murder Victim was informed of the reasons he was deprived of his liberty. [REDACTED], the Panel is satisfied that the Murder Victim was equally not properly informed of the reasons for his arrest or detention.

413. Regarding the obligation to bring a person deprived of his liberty promptly before a judge or other competent authority and the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of the detention, the Panel is attentive to the fact that the Murder Victim was severely mistreated and died while in detention.<sup>728</sup> The Panel also notes that the Murder Victim, while detained, did not have access to his family or to the outside world. To the contrary, when the medical doctor advised the KLA members to take the Murder Victim to a hospital, one of the KLA members in charge of the detainees at the KMF did not allow for it.<sup>729</sup> Further, the Panel also observes that other co-detainees at the time, including TW4-01, TW4-11, W04733 and W01448 were not brought before a judge or any other competent authority and did not have an opportunity to challenge the lawfulness of their detention.<sup>730</sup> In light of the corroborating evidence establishing a pattern of detainees held at the KMF being deprived of their procedural guarantees, the Panel finds that the only reasonable conclusion is that the Murder Victim was not brought

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<sup>726</sup> [REDACTED].

<sup>727</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013857; SITF00013736-SITF00013800 RED5, p. SITF00013744.

<sup>728</sup> See Sections VI.E.2(a), VI.E.4 and VI.F.8.

<sup>729</sup> **TW4-01**: 31 May 2023, confidential, p.1529, lines 6-16 and 20-23; 2 June 2023, confidential, p.1674, line 24 to p. 1675, line 11.

<sup>730</sup> See the Panel's findings on "Lack of Procedural Guarantees" in relation to TW4-01, TW4-11, W04733, W01448 below.

before any judicial or other competent authority and was not afforded any opportunity to challenge the lawfulness of his detention.

414. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that the Murder Victim was not informed of the reasons for his deprivation of liberty, was not brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention.

#### 4. TW4-11

##### (a) Initial apprehension

415. The witness testified that on 27 April 1999 he and his family left for Albania as a result of pressure exerted upon them by Serb paramilitaries.<sup>731</sup> It is uncontested that TW4-11 and his family arrived in Kukës [REDACTED].<sup>732</sup>

416. Regarding the circumstances of his apprehension, TW4-11 testified that he was taken into custody [REDACTED] by two persons in civilian clothing, who were “looking for [him]”. [REDACTED].<sup>733</sup> [REDACTED].<sup>734</sup> The witness stated that he was asked to go with them in order to “give a statement”.<sup>735</sup> According to TW4-11, he was then taken by car to the KMF.<sup>736</sup> TW4-11 explained that he was not presented with an official document, such as a warrant or a summons, nor was he informed as to whether he was suspected of having committed a crime.<sup>737</sup>

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<sup>731</sup> TW4-11: T. 2 May 2023, public, p. 1185, lines 16-24.

<sup>732</sup> TW4-11: T. 2 May 2023, confidential, p. 1185, line 25 to p. 1186, line 21.

<sup>733</sup> TW4-11: T. 2 May 2023, confidential, p. 1186, line 23 to p. 1187, line 24; [REDACTED].

<sup>734</sup> [REDACTED].

<sup>735</sup> TW4-11: T. 2 May 2023, confidential, p. 1187, lines 6-7.

<sup>736</sup> See the photographic identification of the KMF by TW4-11, TW4-11: T. 2 May 2023, confidential, pp. 1192-1193, referring to 059341-059350, p. 059342.

<sup>737</sup> TW4-11: T. 3 May 2023, public, p. 1336, lines 11-18.

417. TW4-11 was ambivalent, and at times evasive, when asked whether he chose to go voluntarily with [REDACTED] and the other man, or if he felt compelled to do so.<sup>738</sup> In response to the question of the Panel whether he felt obliged or threatened to follow the two men, the witness responded “no”.<sup>739</sup> When the Panel next asked why he went along with them if he didn’t feel obliged, TW4-11 conceded that he “felt obliged to go”.<sup>740</sup> When the Panel attempted to clarify this contradiction, the witness returned to his initial position that he felt “no pressure whatsoever” to go with the two men.<sup>741</sup> The evasive way in which the witness answered these questions does not allow the Panel to draw any concrete inferences. However, based on the findings that two men unknown to TW4-11 came to look for him [REDACTED], told him that he had follow them in order to give a statement, and escorted him to the KMF for that purpose, the Panel accepts that there was a certain element of compulsion for TW4-11 to go with the two men.

418. The Panel notes that TW4-11 did not provide an exact date of his apprehension. However, he was very specific regarding his arrival in Albania (on 27 April 1999) and provided a concrete estimate of the period of time he and his family spent in [REDACTED].<sup>742</sup> The witness also estimated that he was detained for about a month,<sup>743</sup> [REDACTED].<sup>744</sup> The Panel is mindful of the fact that, given the passage of time, the memory of TW4-11 may have faded. It is also attentive to the fact that he is of an advanced age. The Panel notes favourably that, despite these difficulties, TW4-11 was able to provide a reasonable number of temporal references. The Panel regards this as

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<sup>738</sup> **TW4-11:** T. 3 May 2023, public, pp. 1329-1330.

<sup>739</sup> **TW4-11:** T. 3 May 2023, public, p. 1329, lines 6-11.

<sup>740</sup> **TW4-11:** T. 3 May 2023, public, p. 1329, lines 12-17.

<sup>741</sup> **TW4-11:** T. 3 May 2023, public, p. 1329, line 24 to p. 1330, line 2.

<sup>742</sup> See para. 415 above.

<sup>743</sup> **TW4-11:** T. 2 May 2023, confidential, pp. 1193, 1195, 1199; T. 3 May 2023, public, p. 1266.

<sup>744</sup> [REDACTED].

an element of genuineness and a manifest attempt at accuracy. This renders his testimony reliable insofar as it demonstrates his desire to stay true to his experiences without adding further details or simplifying matters.

419. The Panel also notes that the approximate time period of TW4-11's detention is consistent with evidence provided by W04733<sup>745</sup> and W01448,<sup>746</sup> who each identify TW4-11 as a co-detainee during the period of their respective detention in Room 1. In particular, TW4-01's testimony is consistent with W01448's account that TW4-11 was released before 17 June 1999, when W01448 was transferred to Prizren.<sup>747</sup>

420. [REDACTED].<sup>748</sup>

421. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-11 was arrested around mid-May 1999 and was detained for about a month at the KMF.

(b) Detention location within the KMF

422. Regarding the detention location, TW4-11 testified that he was placed in Room 1 of the Detention Building, where he spent the whole period of his detention.<sup>749</sup> TW4-11 also testified that he was taken out of Room 1 on one occasion, for interrogation by Mr Kryeziu.<sup>750</sup>

423. The Panel considers the witness's description of the Detention Building to be highly credible and reliable, for the following reasons. First, the witness accurately

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<sup>745</sup> **W04733**: U003-2283-U003-2289 RED2, p. U0032286; 082892-TR-AT-ET Part 4 RED3, p. 21.

<sup>746</sup> **W01448**: SITF00016221-00016285 RED4, pp. SITF00016224-SITF00016225; SITF00016140-00016220 RED3, p. SITF00016142; SITF00013736-SITF00013800 RED5, p. SITF000138.

<sup>747</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013757; SITF00016140-00016220 RED3, p. SITF00016142.

<sup>748</sup> [REDACTED].

<sup>749</sup> **TW4-11**: T. 2 May 2023, confidential, pp. 1187, 1193-1196, 1199, 1204-1206.

<sup>750</sup> **TW4-11**: T. 2 May 2023, public, p. 1222, line 7-24; T. 3 May 2023, public, p. 1260, line 18 to p. 1261, line 18.



described the Detention Building and its location with respect to other buildings in the KMF compound. Second, TW4-11 identified the Detention Building on the basis of a photograph that was shown to him.<sup>751</sup> Third, the witness described the location, size and layout of Room 1 within the Detention Building (marking the same photograph mentioned above),<sup>752</sup> which corresponds to the descriptions provided by other witnesses, notably TW4-01, TW4-02, TW4-05, W04733 and W01448.<sup>753</sup> Fourth, TW4-11 testified that there was a guard posted outside the entrance door of the Detention Building.<sup>754</sup> In this respect, the witness's account is amply corroborated by the evidence of TW4-01, W01448, W04733 and TW4-02.<sup>755</sup> The Panel notes that the witness also made visible efforts to recall names or details about other co-detainees held in Room 1, as developed below. The Panel finds it implausible that the witness would have colluded with others or accidentally provided a similar account at this level of detail to other witness accounts. Lastly, the Panel finds no reason to doubt the witness's account regarding him being taken out of Room 1 for interrogation by Mr Kryeziu, considering that Mr Kryeziu himself conceded having questioned TW4-11.<sup>756</sup>

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<sup>751</sup> **TW4-11:** T. 2 May 2023, public, p. 1204, line 15 to p. 1206, line 15, *referring to* photograph 074390-074391, p. 074390 (saved as REG00951). *See also*, **TW4-01:** T. 30 May 2023, public, p. 1423, line 14 to p. 1424, line 13, who also identified the Detention Building based on the same photograph.

<sup>752</sup> **TW4-11:** T. 2 May 2023, public, p. 1205, line 13 to p. to p. 1206, line 25. The witness described the entrance of the Detention Building leading to a corridor, and the room where he was held being located on the left-hand side of this corridor. *See also*, REG00951, on which TW4-11 marked the entrance of the Detention Building.

<sup>753</sup> **TW4-01: sketch** REG00955; **W01448: sketch** U003-2231-U003-2231-ET; **TW4-02: sketch** 060653-060663-ET, p. 060653. Regarding the physical properties of Room 1, *see also*, Section VI.E.1(a)(ii).

<sup>754</sup> **TW4-11:** T. 2 May 2023, public, p. 1207, lines 1-11; 1219, lines 21-25.

<sup>755</sup> **TW4-01:** T. 30 May 2023, public, p. 1445, lines 18-21; p. 1446, lines 22-23; p. 1447, lines 1-6; **W01448:** SITF00013852-00013869 RED6, p. SITF00013858; **W04733:** 106978-107020, p. 106990; **TW4-02:** 108850-TR-ET Part 1 RED, pp. 6-7; 060664-TR-ET Part 3, p. 4.

<sup>756</sup> **Mr Kryeziu:** SITF00014088-00014120 RED, p. SITF00014100; SITF00016908-00016964 RED, p. SITF00016916.

424. In light of the foregoing, the Panel is satisfied that TW4-11 was detained in Room 1 of the Detention Building of the KMF. The Panel is equally satisfied that TW4-11 was also held in another location within the KMF compound, for the duration of his interrogation.

(c) Presence and identification of co-detainees

425. TW4-11 testified that there were seven to eight other detainees in Room 1, including [REDACTED],<sup>757</sup> and three “Roma musicians” [REDACTED] (whom the witness stated he knew from before).<sup>758</sup> Specifically, TW4-11 recognised one of the “Roma musicians” [REDACTED], [REDACTED] on the basis of photographs shown to him.<sup>759</sup> In the Panel’s assessment, the witness’s evidence is clear, detailed and unambiguous.

426. With regard to W04733, TW4-11 testified that he believed this person to be [REDACTED], as he was told this by the other co-detainees.<sup>760</sup> The Panel notes that the witness was initially unable to provide much detail about W04733, other than the fact that “he stayed briefly and then he was released”.<sup>761</sup> When he was shown a photograph depicting W04733 during cross-examination, TW4-11 admitted outright that he did not know the identity of said person, but he confirmed that this was the person he believed to be [REDACTED], who was his co-detainee.<sup>762</sup> The Panel is satisfied that this is a sound visual identification of W04733 as TW4-11’s co-detainee. The fact that TW4-11 erroneously believed that W04733 was [REDACTED] is based

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<sup>757</sup> **TW4-11:** T. 2 May 2023, confidential, p. 1211, line 25 to p. 1212, line 1.

<sup>758</sup> **TW4-11:** T. 2 May 2023, confidential, pp. 1208-1213.

<sup>759</sup> **TW4-11:** T. 2 May 2023, confidential, p. 1208, line 22 to p. 1209, line 22, *referring to 059341-059350*, p. 059348; T. 2 May 2023, confidential, p. 1210, line 2 to p. 1215, line 7, *referring to 059341-059350*, p. 059349.

<sup>760</sup> **TW4-11:** T. 2 May 2023, confidential, p. 1216, lines 7-19.

<sup>761</sup> **TW4-11:** T. 2 May 2023, confidential, p. 1216, lines 12-14.

<sup>762</sup> **TW4-11:** T. 2 May 2023, confidential, p. 1216.

<sup>762</sup> **TW4-11:** T. 3 May 2023, confidential, pp. 1308-1318.

on what he heard from others and could also be explained by the fact that several of the detainees held at the KMF were [REDACTED] and that he therefore mixed them up.<sup>763</sup>

427. The Panel further notes that TW4-11's evidence is consistent with the evidence of other witnesses regarding the approximate number and identities of the detainees held in Room 1. Notably, TW4-01, W04733 and W01448 asserted that the number of co-detainees ranged between 5 and 13.<sup>764</sup> TW4-11 estimated their number to be within that range.<sup>765</sup> The Panel makes appropriate allowances for imprecisions, as it is only natural that these occur given the passage of time. The Panel is also conscious of the fact that the personal situation of each witness at the time would have likely affected their ability to memorise peripheral circumstances, such as the number of co-detainees. Notably, the witness does not accurately recall the exact number of co-detainees, which changed from one day to the other.<sup>766</sup> Furthermore, the Panel has before it mutually corroborative evidence regarding the presence of specific co-detainees identified by TW4-11, namely [REDACTED], W04733 and three "Roma musicians" ([REDACTED], [REDACTED] and a third Roma musician).<sup>767</sup>

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<sup>763</sup> See Sections VI.D.8, VI.D.9 and VI.D.10(d).

<sup>764</sup> **TW4-01** testified that there were between 6 and 12 detainees held in Room 1 while he was kept there (**TW4-01**: T. 30 May 2023, public, p. 1431, lines 12-16). In their respective statements, witnesses **W04733** and **W01448** refer to 9 and 13, respectively, as the total number of detainees held in Room 1 (**W04733**: 082892-TR-AT-ET Part 9 RED2, pp. 8-9; 082892-TR-AT-ET Part 4 RED3, p. 5; SITF00013181-SITF00013189 RED3, p. SITF00013186; **W01448**: SITF00016221-00016285 RED4, p. SITF00016225).

<sup>765</sup> TW4-11 testified that when he arrived in Room 1, there were already seven or eight detainees inside (**TW4-11**: T. 2 May 2023, public, p. 1207, lines 12-25).

<sup>766</sup> See in this regard the testimony of TW4-10, who was a guard at the KMF gate, that "[t]here were many of them that were brought in there..." (**TW4-10**: T. 1 May 2023, confidential, p. 1073, lines 7-21). Likewise, see TW4-01's testimony that the total number of detainees throughout the period of his detention "would certainly be around 40 or so", because, while some people were detained, others were released (**TW4-01**: T. 6 June 2023, public, p. 1920, line 15 to p. 1921, line 4.).

<sup>767</sup> [REDACTED]. Regarding the presence of [REDACTED], [REDACTED] and a third Roma detainee, see Sections VI.D.2(d) VI.D.10(a).

428. As a result, the Panel considers TW4-11's account to be highly reliable and relies on this testimonial evidence for the purpose of identifying [REDACTED], W04733, [REDACTED], [REDACTED] and a third Roma musician as co-detainees in Room 1.

429. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-11 was detained in the KMF at overlapping periods with [REDACTED], W04733, [REDACTED], [REDACTED] and a third Roma musician.

(d) Circumstances of release

430. Regarding his release, TW4-11 testified that he remained at the KMF for approximately one month.<sup>768</sup> The witness did not provide a precise date upon which he was released, but asserted that when NATO forces entered Kosovo, "the doors opened and I just left".<sup>769</sup>

431. The Panel recalls that it has accepted an absence of precision as regards the witness's exact date of arrest given the witness's advanced age and passage of time. The Panel is of the view that the same considerations also apply to the date of his release. Importantly, the estimation of the witness that he was detained for about one month allows the Panel to deduce that he was released around mid-June 1999. The witness's testimony on this point is consistent with W01448's statement that TW4-11 was released before 17 June 1999.<sup>770</sup>

432. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-11's deprivation of liberty at the KMF came to an end around mid-June 1999.

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<sup>768</sup> **TW4-11**: T. 2 May 2023, public, p. 1199, lines 106.

<sup>769</sup> **TW4-11**: T. 3 May 2023, public, p. 1260, lines 14-17; p. 1306, public, lines 11-16.

<sup>770</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013757; SITF00016140-SITF00016220 RED3, p. SITF00016142.

(e) Lack of procedural guarantees

433. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, TW4-11 testified that he was not provided with any notice in this regard.<sup>771</sup> More specifically, TW4-11 testified that, on one occasion, he was questioned by Mr Kryeziu, who identified himself as a “judge or prosecutor”<sup>772</sup> – an account which is corroborated by the statement of Mr Kryeziu.<sup>773</sup> However, TW4-11 explained that neither Mr Kryeziu, nor anybody else, provided him with a reason for his arrest and detention.<sup>774</sup> According to TW4-11, it was only toward the end of his detention that he came to understand that the KLA was the authority responsible for it.<sup>775</sup>

434. The Panel notes that throughout his testimony, the witness was cautious and sought to remain truthful to what he experienced at the time. The Panel has no reason to doubt the witness’s clear and unequivocal testimony in this regard. Accordingly, the Panel is satisfied that TW4-11 was not properly informed of the reasons for his arrest and deprivation of liberty.

435. Regarding the obligation to bring a person deprived of his liberty promptly before a judge or other competent authority and the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of the detention, the Panel notes that approximately one month into his detention at the KMF, TW4-11 was brought before Mr Kryeziu.<sup>776</sup> TW4-11 further clarified that he did not know

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<sup>771</sup> **TW4-11:** T. 3 May 2023, public, p. 1266, lines 3-10.

<sup>772</sup> **TW4-11:** T. 2 May 2023, public, p. 1222, lines 16-20; T. 3 May 2023, public, p. 1261, lines 6-21.

<sup>773</sup> **Mr Kryeziu:** SITF00014088-00014120 RED, p. SITF00014100; SITF00016908-00016964 RED, p. SITF00016916.

<sup>774</sup> **TW4-11:** T. 3 May 2023, public, p. 1266, lines 3-10.

<sup>775</sup> **TW4-11:** T. 3 May 2023, public, p. 1263, line 11 to p. 1265, line 21.

<sup>776</sup> **TW4-11:** T. 3 May 2023, public, p. 1261, lines 6-18 and p. 1262, lines 10-22. The witness also visually identified Mr Kryeziu on the basis of a photograph shown to him during his testimony (*see* T. 3 May 2023, public, p. 1267 and SITF00013100-00013122 RED3, p. SITF00013101).

Mr Kryeziu's identity at that time, but found out about it after the events.<sup>777</sup> According to TW4-11, Mr Kryeziu asked him a number of questions, including inquiries about his occupation and his whereabouts during the conflict.<sup>778</sup> Mr Kryeziu proceeded by stating that "he was sorry that he had no arguments against me".<sup>779</sup>

436. The Panel finds TW4-11's account on this point credible. He recounted his experience in a frank, succinct and vivid way. The witness was also forthcoming in his testimony, specifying when he could not recall specific details put to him, such as whether or not Mr Kryeziu introduced himself as a "prosecutor for the KLA".<sup>780</sup> TW4-11 also volunteered that he learned the identity of Mr Kryeziu after the events.<sup>781</sup> Furthermore, the fact that Mr Kryeziu interviewed TW4-11 is corroborated by Mr Kryeziu's own statement as explained above.<sup>782</sup> Overall, the Panel finds no reason to doubt the accuracy of TW4-11's account on this matter.

437. The Panel notes that while Mr Kryeziu presented himself as a judge or a prosecutor, the evidence is clear that he was in fact not exercising independent oversight over the lawfulness of TW4-11's detention or that of anyone else.<sup>783</sup> In this context, the Panel also observes that the witness did not confirm or deny whether his release came about as a result of his interview with Mr Kryeziu.<sup>784</sup>

438. The Panel therefore concludes that TW4-11 was not brought before a judge or competent authority for the purpose of reviewing the lawfulness of his detention.

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<sup>777</sup> **TW4-11:** T. 3 May 2023, public, p. 1262, line 24 to p. 1263, line 5.

<sup>778</sup> **TW4-11:** T. 3 May 2023, public, p. 1266, lines 5-6.

<sup>779</sup> **TW4-11:** T. 3 May 2023, public, p. 1265, line 22 to p. 1266, line 6.

<sup>780</sup> *See, for example, TW4-11:* T. 3 May 2023, public, p. 1261, lines 19-21; p. 1262, lines 10-22.

<sup>781</sup> *See, for example, TW4-11:* T. 3 May 2023, confidential, p. 1262, line 24 to p. 1263, line 5.

<sup>782</sup> *See para. 433 above.*

<sup>783</sup> *See also, paras 351-353 above.*

<sup>784</sup> **TW4-11:** T. 3 May 2023, public, p. 1305, line 25 to p.1306, line 16.

439. The Panel infers from the circumstances of his release that TW4-11 was also not provided with an opportunity to challenge the lawfulness of his detention and was at the mercy of his captors.

440. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-11 was not informed of the reasons for his deprivation of liberty, was not brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention.

## 5. W04733

### (a) Initial apprehension and transfer to KMF

441. *Apprehension in Durrës.* The witness stated that he was apprehended in Durrës, Albania, on 18 May 1999 by four men wearing black KLA uniforms, with KLA insignias.<sup>785</sup> He explained that KLA members, including Xhemshit Krasniqi, repeatedly looked for him, even prior to his apprehension on 18 May 1999.<sup>786</sup> In his statements, W04733 characterised the 18 May 1999 event as a “kidnapping”,<sup>787</sup> noting that the men identified themselves as KLA Military Police, held him at gunpoint, ordered him to “surrender”, and to enter a car with them.<sup>788</sup> This took place in the presence of others, including some of W04733’s family members and the landlord of the house where W04733 and his family were staying. The witness explained that one of these KLA members was identified by one of his sons – TW4-08 – as Bashkim Lama, whom TW4-08 knew from the past.<sup>789</sup> According to W04733’s statements, W04733

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<sup>785</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013804-SPOE00013805; SITF00019824-00019876 RED2, p. SITF00019827.

<sup>786</sup> **W04733**: SITF00013181-SITF00013189 RED3, pp. SITF00013183-SITF00013184.

<sup>787</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, p. 51, lines 2-11.

<sup>788</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184.

<sup>789</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184; **TW4-08**: 27 March 2023, public, p. 659, line 7 to p. 660, line 8.

recognized the driver of the car and later saw this person at the KMF and heard him being referred to as Commander “Ločka”.<sup>790</sup> W04733 stated that he felt compelled to get into the car with the four KLA members. He was handcuffed once he was placed in the car.<sup>791</sup> The witness recalled the episode in vivid detail:

Since KLA men were all well armed, I was forced to go with them otherwise they would kill me. As soon as I entered the car, the KLA men handcuffed me. The landlord also entered the car and insisted on accompanying me, but as the car rolled on, they pushed him out.<sup>792</sup>

442. The Panel notes that the witness described the moment of his apprehension clearly and with circumspection. He readily admitted that he did not initially know the identity of the individuals arresting him and explained how he later came to know their names. The Panel finds his evidence reliable because it is plausible and internally consistent. Notably, W04733 implicated a series of third-persons, thus adding an otherwise unnecessary complication to his account. The Panel assessed W04733’s prior statements together with, and in the light of, other testimony given in court.

443. As to the location and time of W04733’s apprehension, as well as the persons arresting W04733, the Panel notes that these allegations are corroborated by TW4-08’s evidence, who witnessed W04733’s arrest.<sup>793</sup> Another family member, TW4-06, who did not witness the arrest but came as the car taking W04733 drove away, also attested to the same circumstances of arrest.<sup>794</sup> In addition, TW4-08 testified that no arrest warrant was presented to his father at that time.<sup>795</sup> The Family Members’ accounts are consistent and straightforward.<sup>796</sup>

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<sup>790</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184.

<sup>791</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184.

<sup>792</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184.

<sup>793</sup> **TW4-08**: T. 27 March 2023, public, p. 659, lines 7-10.

<sup>794</sup> **TW4-06**: T. 28 March 2023, public, pp. 801-802.

<sup>795</sup> **TW4-08**: T. 27 March 2023, public, p. 659, lines 20-22; p. 660, lines 6-8.

<sup>796</sup> **TW4-06**: T. 28 March 2023, public, p. 791-792, 801; **TW4-07**: T. 29 March 2023, public, pp. 903, 906; **TW4-09**: T. 30 March 2023, public, pp. 978- 979.



444. The Panel acknowledges that with regard to the date and circumstances of arrest, it relies primarily on evidence emanating from W04733 and his Family Members. The Panel is attentive to the fact that the Family Members could have coordinated with each other on these matters. However, having carefully examined the evidence, the Panel finds no reason to question the truthfulness of the evidence of W04733 and that of his Family Members. Importantly, one family member – TW4-08 – who was an eye-witness to the arrest, confirmed in court what W04733 had declared in his statements. The Panel therefore attaches particular weight to TW4-08’s testimony on this matter. In addition, the Panel observes that the apprehension of W04733 followed the same *modus operandi* as, for example, the arrest of TW4-11, W01448, TW4-05, TW4-04 and TW4-02, thus lending support to the existence of a pattern of arrest and detention.<sup>797</sup> The Panel thus considers that it can rely on W04733’s statements and the testimonies of his Family Members concerning the date and circumstances of W04733’s apprehension, which are facts within their personal knowledge.

445. As a result, the Panel is satisfied that W04733 was deprived of his liberty on 18 May 1999, by members of the KLA Military Police, including Bashkim Lama and a certain Commander “Loçka”.

446. *Transfers: Durrës-Romanat and Romanat-KMF.* Regarding W04733’s transfer from Durrës to Romanat, W04733 stated that he was blindfolded and had his hands tied, and was briefly taken to a military bunker “from Enver Hoxha’s time”.<sup>798</sup> He further recounted that, in Romanat, he was kept in a place which he later found out to be a former Albanian army facility used by the KLA.<sup>799</sup> According to the witness, he was beaten by Commander “Loçka” and by Commander Ramadan Selimi, who interrogated him and accused him of being a traitor.<sup>800</sup> The witness also stated that

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<sup>797</sup> See Sections VI.D.4(a), VI.D.6(a), VI.D.7(a), VI.D.8(a) and VI.D.9(a).

<sup>798</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, pp. 42-43.

<sup>799</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, pp. 39-40.

<sup>800</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, pp. 43-45.

Commander Ramadan Selimi attempted to force W04733 to confess that he “killed 100 people and raped 40 women” – an account which is corroborated by the testimonial evidence of TW4-01, who recalls similar allegations being levied against W04733 at the KMF.<sup>801</sup>

447. On or about 20 May 1999, W04733, dressed in a black KLA Military Police uniform, was transported from Romanat to the KMF in a small bus by a group of KLA members, including Mr Shala.<sup>802</sup> The witness stated that, on the way to Kukës, the KLA members in the bus called him a “Serb commander”, and threatened to kill him if he tried to escape.<sup>803</sup> The witness emphasised that Mr Shala, whom the other KLA members on the bus called by his nickname Ujku, howled like a wolf.<sup>804</sup>

448. The evidence before the Panel regarding the transfer of W04733 from Durrës to Romanat and subsequently to the KMF stems mainly from W04733’s account. In this respect, the Panel finds W04733’s statements remarkably consistent, notably his description of the building to which he was brought in Romanat,<sup>805</sup> the mistreatment and threats to which he was subjected,<sup>806</sup> the KLA members in charge,<sup>807</sup> and how the transport from Romanat to the KMF took place.<sup>808</sup> W04733 also provided specific and unique details, such as the approximate location of the site in Romanat where he was

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<sup>801</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, p. 46. **TW4-01**: 30 May 2023, confidential, p. 1455, lines 1-11.

<sup>802</sup> **W04733**: 082892-TR-AT-ET Part 3 RED2, pp. 2-11; *see also*, SITF00019824-00019876 RED2, pp. SITF00019831, SITF00019836-SITF00019837.

<sup>803</sup> **W04733**: 082892-TR-AT-ET Part 3 RED2, pp. 10, 16-17.

<sup>804</sup> **W04733**: SITF00018740-00018767 RED, p. SITF00018741 and 082892-TR-AT-ET Part 3 RED2, p. 12.

<sup>805</sup> Witness W04733 specified that this was a military bunker, *see* **W04733**: 082892-TR-AT-ET Part 2 RED3, pp. 42-43; 106978-107020, p.106991; SITF00013181-SITF00013189 RED3, p. SITF00013184.

<sup>806</sup> The witness stated that, at a certain moment he was blindfolded, and could hear his captors pulling out their revolvers and telling each other, “Kill him, no, you kill him”, *see* **W04733**: 082892-TR-AT-ET Part 2, p. 43.

<sup>807</sup> W04733 identified Ramadan Selimi, or “Commander Dani” as the commander in Romanat, *see* **W04733**: 082892-TR-AT-ET Part 2 RED3, p. 30, lines 19-22.

<sup>808</sup> The witness stated that the transport took place initially by car until a gas station, where W04733 was placed in a “minivan” or a “Kombi-bus”, *see* **W04733**: 082892-TR-AT-ET PART 3 RED2, p. 3, line 18 and pp. 10-11.

held and the road taken by the KLA members who were transporting him.<sup>809</sup> Likewise, the Panel observes that the witness's account of his detention and mistreatment in Romanat was detailed, vivid and consistent across his statements. The witness described being hit with a rubber baton on his back, his head, his arms, and on the soles of his feet.<sup>810</sup> His captors beat him as "hard as they could"<sup>811</sup> and used electric shock.<sup>812</sup> This reinforces the Panel's belief that W04733 spoke from personal experience. The Panel finds it implausible that W04733 would have invented a story with this level of detail, implicating a series of third-persons. To the contrary, it cannot identify any motive for the witness to do so. Notably, the accusations of having killed and raped many people and being a "Serb commander" were of a similar nature to the accusations to which other detainees were subjected, such as TW4-01 [REDACTED].<sup>813</sup> These similarities strengthen the Panel's conviction that the evidence offered by W04733 is truthful.

449. The Panel further notes that W04733's Family Members also attested to certain key details regarding the transfer, which W04733 shared with them, such as the approximate duration of W04733's detention and mistreatment in Romanat, and the threats made against him.<sup>814</sup> It is the understanding of the Panel that they had not witnessed the transfer personally, and their hearsay evidence relies mostly on what

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<sup>809</sup> For example, he specified that the location of the place where he was held was a 25-30-minute ride from Durrës in the direction of Tirana and that the people who took him there used a side road running alongside the sea to reach the location, *see* **W04733**: 082892-TR-AT-ET Part 2 RED3, pp. 30, 40.

<sup>810</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, p. 44, lines 3-7.

<sup>811</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, p. 44, lines 15-16.

<sup>812</sup> **W04733**: 082892-TR-AT-ET Part 2 RED3, p. 44, lines 7-11; p. 46, lines 3-6; pp. 47-49 (describing how the electric shock was administered and the pain that it induced).

<sup>813</sup> *See* para. 404 above; *see similarly*, para. 656 below.

<sup>814</sup> **TW4-09**: T. 30 March 2023, public, p. 979, lines 4-14 (TW4-09 testified that W04733 had told him he was initially taken to a "small camp" and that he was "threatened on the way"); **TW4-07**: T. 29 March 2023, public, p. 903, lines 11-18 (TW4-07 testified that W04733 had shared with him that he was held in a place for a night or two before being taken to the KMF, in which he was beaten and mistreated). **TW4-06**: T. 28 March 2023, public, p. 814, line 5 to p. 815, line 6 (TW4-06 testified that W04733 had shared that "he was tortured" and that "he heard unkind things about him being said", and that the people holding him told him "they were going to kill him and abuse him").

W04733 told them after the events. That being said, the Panel favourably notes that the witnesses clearly distinguished between what they personally witnessed and information they were given by W04733. This adds to the reliability of their accounts. Given the reliability of W04733's evidence regarding his transfer to Romanat and the KMF, the Panel accords some weight to the hearsay evidence of W04733's Family Members. In sum, the evidence of W04733 and that of his family is consistent and mutually corroborative.

450. The Defence challenges discrete aspects of W04733's evidence and alleges that W04733's evidence is unreliable because: (i) W04733's physical description of Mr Shala was "entirely inaccurate", as he described him as a person of dark complexion, almost black with dark eyebrows;<sup>815</sup> (ii) the witness only asserted in 2010 that Mr Shala was allegedly present during his transfer to Kukës, while he had ample opportunities to implicate him earlier;<sup>816</sup> and (iii) W04733's identification was influenced by suggestions from at least TW4-01.<sup>817</sup>

451. Regarding the Defence's first argument about the witness's flawed identification of Mr Shala, the Panel recalls that Mr Shala was known to W04733 through his police work before the war, as he was a person of interest to the police at the time.<sup>818</sup> While W04733 acknowledged he had never met Mr Shala in person before 1998, he stated to have heard that Mr Shala was from the village of Dujak/Dujakë and that he had seen a photograph of Mr Shala in a police photo album.<sup>819</sup> Further, W04733 clearly stated that he recognized Mr Shala "as soon as he saw him" in the bus, an identification which was further supported by Mr Shala's distinctive howl.<sup>820</sup> In the Panel's

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<sup>815</sup> Defence Final Trial Brief, paras 15, 97, 239.

<sup>816</sup> Defence Final Trial Brief, para. 15.

<sup>817</sup> Defence Final Trial Brief, para. 97.

<sup>818</sup> **W04733**: SITF00019824-00019876 RED2, pp. SITF00019836-SITF00019837; SITF00018740-00018767 RED, p. SITF00018741; 082892-TR-AT-ET Part 1 RED3, pp. 37-38; 082892-TR-AT-ET Part 3 RED2, p. 11.

<sup>819</sup> **W04733**: 082892-TR-AT-ET Part 1 RED3, pp. 37-38.

<sup>820</sup> **W04733**: 082892-TR-AT-ET Part 3 RED2, pp. 11-12.

assessment, it does not matter whether the witness described Mr Shala's physical appearance accurately, as appearances change over time and a witness's memory may be affected by the passage of time. The Panel lays greater weight on the fact that the witness accurately recalled Mr Shala's nickname, which he heard from other KLA members during the bus transfer, and Mr Shala's characteristic "howl". This is significant because Mr Shala himself states that his nickname during the war was Ujku and that he made "wolf-like sounds".<sup>821</sup>

452. The Defence further suggests that W04733's evidence is contradicted by the evidence of his Family Members who testified that they did not know the identity of Mr Shala until after the war. To that end, the Defence particularly relies upon the testimony of TW4-09, according to whom, W04733 never disclosed that he knew Mr Shala through his police work.<sup>822</sup> The Panel finds that, even if true, the appreciation of a family member, who is not a direct witness of the events, cannot diminish the fact that W04733 was able to recognise Mr Shala through his name and characteristic "howl", having known about him from his police work. As a result, the Panel is satisfied that W04733 accurately identified Mr Shala, and for this reason rejects the Defence challenge in this regard.

453. Regarding the Defence's second proposition that W04733 first mentioned Mr Shala as having been involved in his transfer in 2010, while W04733 could have mentioned him in earlier statements, the Panel finds that this varying level of detail can be explained by the different investigative lines pursued by different authorities. Simply put, W04733 was not specifically asked to elaborate on individuals involved in his transfer in earlier statements, where the line of questioning revolved around

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<sup>821</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 132-133.

<sup>822</sup> Defence Final Trial Brief, paras 238 and 247, referring to **TW4-09:** T. 30 March 2023, public, p. 1007.

possible perpetrators at the KMF. As a result, the Panel finds the Defence argument to be without merit.

454. Regarding the Defence's third argument that TW4-01 allegedly influenced W04733 to incriminate Mr Shala, the Panel recalls that W04733 was able to identify Mr Shala by means of his nickname and characteristic "howl". The Defence presents nothing to substantiate its claim that TW4-01 and W04733 colluded on this point. As a result, the Panel does not accept the Defence's proposition that W04733 only learned the identity of Mr Shala from TW4-01.<sup>823</sup>

455. In light of the foregoing, taking the evidence as a whole, the Panel finds that, on or about 20 May 1999, W04733 was transferred by KLA members including Mr Shala, from Romanat to the KMF.

(b) Detention location within the KMF

456. The Panel notes that, according to W04733, he was initially kept in the Command Building Detention Room for some time, before being brought to Room 1.<sup>824</sup> Regarding both locations, W04733's account is consistent with the testimonial evidence of TW4-01, TW4-11, and the statements of W01448.<sup>825</sup> The Panel finds the evidence of these witnesses to be credible and mutually corroborative.

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<sup>823</sup> TW4-01 testified that, according to him, "no one knew Sabit's [Geci's]'s name or other names at the time, including Pjetër Shala" (T. 5 June 2023, confidential, pp. 1786-1787). The Defence infers from this that W04733 did not know the identity of Mr Shala at the time. The Panel notes that this is not the only possible inference. Notably, TW4-01 was never explicitly asked whether he was aware if W04733 knew who Mr Shala was.

<sup>824</sup> **W04733**: SITF00018740-00018767 RED, p. SITF00018741; SITF00019824-00019876 RED2, pp. SITF00019829-SITF00019830; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013808-SPOE00013809; 082892-TR-AT-ET Part 5 RED2, p. 3.

<sup>825</sup> Regarding the Command Building detention room, see **TW4-01**: T. 30 May 2023, confidential, p. 1471, lines 2-11; T. 6 June 2023, confidential, p. 1915, lines 9-17; **W01448**: SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016221-00016285 RED4, p. SITF00016229. Regarding Room 1, see **TW4-01**: T. 30 May 2023, public, p. 1409, line 19 to p. 1410, line 10; T. 30 May 2023, confidential, p. 1420, line 5 to p. 1421, line 24, referring to sketch SITF00012876-

457. W04733 also provided evidence that on the night of his arrival at the KMF, (*i.e.* on or about 20 May 1999), he was brought to the Office, where he was interrogated and severely beaten by KLA members, including by Mr Shala, as set out in detail below.<sup>826</sup>

458. In light of the foregoing, taking the evidence as a whole, the Panel finds that the witness was detained at the KMF in both the Command Building Detention Room and Room 1 of the Detention Building. The Panel is also satisfied that W04733 was also kept in the Office for the duration of his interrogation and mistreatment.

(c) Presence and identification of co-detainees

459. The Panel notes that W04733 stated that he was initially held in the Command Building Detention Room, together with W01448.<sup>827</sup> W04733 added that around three days after he was taken there, he was moved to Room 1, where he saw a number of additional detainees, including TW4-01, [REDACTED] (TW4-11), TW4-05, and “three Roma musicians” [REDACTED] ([REDACTED], [REDACTED] and a third Roma musician).<sup>828</sup> Finally, W04733 recalled the presence of [REDACTED] in the Office during the mistreatment that took place on or about 20 May 1999, which is described by the Panel below.<sup>829</sup>

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SITF00012878, p. SITF00012878 (saved as REG00954); **TW4-11**: T. 2 May 2023, public, pp. 1193, 1195-1199.

<sup>826</sup> See Section VI.E.2(c).

<sup>827</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 16; SITF00013181-SITF00013189 RED3, pp. SITF00013185-SITF00013186. Regarding the Panel’s assessment of W04733’s evidence on the presence of TW4-01 [REDACTED] in the Command Building Detention Room, see para. 385 above.

<sup>828</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, pp. 5-6, 15-16; SITF00013181-SITF00013189 RED3, p. SITF00013186; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013812-SPOE00013813, SPOE00013821-SPOE00013822; SITF00018740-00018767 RED, pp. SITF00018744-SITF00018745. See also, Section VI.D.10(a).

<sup>829</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013819; 106978-107020, pp. 106987, 106999.

460. The Panel finds that W04733's identification of his co-detainees in Room 1 is consistent with the accounts given by TW4-01, TW4-11 and W01448.<sup>830</sup> The witnesses confirm each other's presence and the presence of others, such as TW4-05, [REDACTED], [REDACTED] and a third Roma musician, in the same detention location(s) and at the same time, adding details that are unique and specific. The witnesses thereby mutually corroborate each other, rendering their respective accounts credible, consistent and reliable.

461. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that W04733 was detained at the KMF at the same time as TW4-01, the Murder Victim, TW4-11, W01448, TW4-05, [REDACTED], [REDACTED] and a third Roma detainee.

(d) Circumstances of release

462. W04733 stated that he was held at the KMF until around 1 June 1999.<sup>831</sup> According to W04733, around three to four days before his release, he was questioned in the Office by Xhemshit Krasniqi and Sokol Dobruna, whom the witness described as a "judge".<sup>832</sup> According to the witness, W04733 saw Mr Shala leave the premises through the gate and a few minutes later saw him arrive in the courtyard of the KMF by car with Hashim Thaçi and Azem Syla.<sup>833</sup> [REDACTED].<sup>834</sup> According to W04733, these individuals had come to secure his release and bring him to his family; however, he did not leave with them on that day as he did not want his family to see him

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<sup>830</sup> See Sections VI.D.2(d), VI.D.4(c) and VI.D.6(c).

<sup>831</sup> **W04733**: 082892-TR-AT-ET Part 7, pp. 1-2, 6-7, 10-13. See also, **TW4-08**: 27 March 2023, public, p. 666, lines 15-18; **TW4-01**: 30 May 2023, confidential, p. 1456; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013761.

<sup>832</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, pp. SPOE00013823, SPOE00013825-SPOE00013827; 082892-TR-AT-ET Part 6, pp. 2, 4-7; SPOE00185335-00185363 RED3, p. SPOE00185343.

<sup>833</sup> **W04733**: 082892-TR-AT-ET Part 6, pp. 7-8, 18-19; 082892-TR-AT-ET Part 9 RED2, p. 5.

<sup>834</sup> **W04733**: 082892-TR-AT-ET Part 6, pp. 12-15; 26.



injured.<sup>835</sup> As per W04733' account, on 1 June 1999, [REDACTED], and after a brief discussion with KLA officers, took W04733 to his family.<sup>836</sup>

463. The Panel finds W04733's statement on the circumstances of his release plausible and truthful as the witness provides a coherent, chronological, and detailed account.

464. The Defence argues that W04733's evidence regarding the circumstances of his release and events leading thereto is conflicting, inconsistent and implausible.<sup>837</sup> In particular the Defence challenges W04733's credibility and reliability arguing that: (i) it was only in his 2018 statement that W04733 mentioned that he had seen Mr Shala leave the premises before returning with Hashim Thaçi and Azem Syla;<sup>838</sup> (ii) W04733's account is implausible, *inter alia*, because it was impossible to see the gate of the KMF from the window of the Office;<sup>839</sup> and (iii) W04733 was inconsistent in identifying [REDACTED] which intervened to secure his release.<sup>840</sup>

465. With regard to the fact that the witness only mentioned Mr Shala's presence at the KMF in his 2018 statement, the Panel is of the view that this can be attributed to different lines of questioning pursued by different investigative authorities, rather than an internal incoherence of the witness. Notably, it is essential to underscore that it is natural for witnesses, who give several statements over several years, to add details to their subsequent accounts. No witness recounts events comprehensively, and later reproduces them with the same words, order, structure, and degree of detail throughout several statements. Be that as it may, other witnesses attested to the fact that Mr Shala was present at the KMF during the period that W04733 was detained there.<sup>841</sup> It is therefore not improbable for W04733 to have seen Mr Shala at the KMF

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<sup>835</sup> **W04733**: 082892-TR-AT-ET Part 6, pp. 15-16.

<sup>836</sup> **W04733**: 082892-TR-AT-ET Part 7, pp. 1-2.

<sup>837</sup> Defence Final Trial Brief, paras 54-57.

<sup>838</sup> **W04733**: 082892-TR-AT-ET Part 6, pp. 7-8, 18-19; 082892-TR-AT-ET Part 9 RED2, p. 5.

<sup>839</sup> Defence Final Trial Brief, para. 54.

<sup>840</sup> Defence Final Trial Brief, paras 55-56.

<sup>841</sup> See paras 369-370, 707; Section VI.H.

between approximately 20 May 1999 and 1 June 1999. Accordingly, the Panel finds no merit in the Defence's claim.

466. Furthermore, with regard to the Defence's claim that W04733 could not have seen the gate from the window of the Office, the Panel finds that the line of sight to and from the Office towards the courtyard was not obstructed. Photographs in evidence support the Panel's conclusion.<sup>842</sup> In the same vein, W04733's statement that he saw Mr Shala with Hashim Thaçi and Azem Sylja in the courtyard is coherent and plausible. It is worth noting, in this context, that the Defence does not challenge the presence of Mr Shala, Hashim Thaçi and Azem Sylja, but whether or not W04733 was able to see the gate from the Office. For the reasons set forth above, the Panel finds the Defence's claim untenable.

467. With regard to the Defence's challenge to W04733's account that he saw Mr Shala come and go through the gate, the Panel finds that, insofar as it has established that W04733 could see into the courtyard and there was no other way for people to come in and out of the KMF except through the gate, especially by car, the Defence's argument bears no consequence on the credibility of W04733's statements. For the reasons set out above, the Panel discards the Defence's related claim.

468. Lastly, with regard to the Defence's challenge that W04733 was unable to identify with certainty which [REDACTED] had intervened to secure his release, the Panel is of the view that it does not have to establish this fact. What matters is that W04733 was released on or about 1 June 1999, not as a result of a judicial decision, but following an external intervention. In light of the foregoing, the Panel dismisses the Defence's challenge.

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<sup>842</sup> See, for example, SPOE00330365-00330365 and SPOE40010264-40010559, p. SPOE40010279, in conjunction with 065597-065612, p. 065600 (bottom photograph, saved as REG00956), where the witness marked the window of the Office, see **TW4-01**: T. 30 May 2023, confidential, p. 1450, line 4 to p. 1451, line 23.

469. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that W04733 was released from the KMF on or about 1 June 1999, through the action of [REDACTED].

(e) Lack of procedural guarantees

470. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, according to W04733, he was not provided with any formal reason or ground for his detention.<sup>843</sup> The Panel recalls that the witness was accused of being a “Serb commander” and having killed and raped many people.<sup>844</sup> In this regard, the Panel further notes that the KLA Military Police members arresting W04733 were armed and threatened him at gunpoint, ordered him to “surrender” and to enter a car with them.<sup>845</sup> The Panel finds that the account of W04733 on this point is credible as it is both internally consistent and specific. The information provided is so unique and personal that the Panel concludes that it came from the witness’s own knowledge. Further, it is corroborated by TW4-08’s evidence, who also testified that no arrest warrant was presented to his father at that time.<sup>846</sup> Lastly, the Panel observes that TW4-01, the Murder Victim and TW4-11 were also not informed of the reasons of their deprivation of liberty, thus lending support to the existence of a pattern in this regard. As a result, the Panel relies on these witnesses’ evidence to conclude that W04733 was not properly informed of the reasons for his arrest and detention.

471. As to whether W04733 was brought before a judge or other competent authority and whether he had an opportunity to challenge the lawfulness of his detention,

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<sup>843</sup> **W04733**: 082892-TR-AT-ET Part 6, pp. 4-6.

<sup>844</sup> See para. 448 above.

<sup>845</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013184; **TW4-08**: T. 27 March 2023, public, p. 659, lines 16-22.

<sup>846</sup> **TW4-08**: T. 27 March 2023, public, p. 659, lines 20-22; p. 660, lines 6-8.

the Panel notes that W04733 was severely mistreated while detained at the KMF.<sup>847</sup> W04733's statements further reveal that he was interrogated a number of times in the Office during his detention.<sup>848</sup> More specifically, W04733 provided evidence that, during his mistreatment in the Office, on or about 20 May 1999, several KLA members, including Sabit Geci, questioned him about his former work as a police officer and accused him of being a traitor, a murderer, a rapist and of collaborating with [the] Serbs.<sup>849</sup> During this incident, Mr Shala accused W04733 of being a spy.<sup>850</sup> Moreover, W04733 stated that he was interrogated several times in the Office by Xhemshit Krasniqi and Sokul Dobruna.<sup>851</sup>

472. The simple fact that Sokol Dobruna interrogated W04733 together with Xhemshit Krasniqi, who was directly involved in W04733's mistreatment and forced confessions, indicates that Sokol Dobruna did not exercise any kind of independent oversight over the lawfulness of W04733's detention or anyone else's detention. Moreover, it is apparent from the evidence that W04733's release was the result of an external intervention, and not a decision by a judge or other competent authority controlling the lawfulness of his detention. Furthermore, the Panel has established that other KMF detainees held at the same relevant time, such as TW4-01, the Murder Victim, and TW4-11, were also not brought before a judge or any other competent authority and did not have an opportunity to challenge the lawfulness of their detention.<sup>852</sup> In light of the foregoing, the Panel finds that the only reasonable conclusion is that W04733 was not brought before a judge or other competent

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<sup>847</sup> See Sections VI.E.2(c) and VI.E.4.

<sup>848</sup> **W04733**: 106978-107020, pp. 106988-106989; SPOE00013793-SPOE00013847 RED2, p. SPOE00013823, SPOE00013825; 082892-TR-AT-ET Part 6, p. 2, 4-7.

<sup>849</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013186; SITF00019824-00019876 RED2, pp. SITF00019841-00019842; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013814-SPOE00013815; 082892-TR-AT-ET Part 4 RED3, pp. 16- 17, 25.

<sup>850</sup> **W04733**: 082892-TR-AT-ET Part 5 RED2, pp. 10-11.

<sup>851</sup> **W04733**: 082892-TR-AT-ET Part 6, pp. 2, 4-7.

<sup>852</sup> See Sections VI.D.2(f), VI.D.3(d) and VI.D.4(d).

authority, nor was he provided with an opportunity to challenge the lawfulness of his detention.

473. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that W04733 was not informed of the reasons for his deprivation of liberty, was not brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention.

## 6. W01448

### (a) Initial apprehension and transfer to the KMF

474. Regarding the circumstances of his arrest, W01448 asserted in his statements that he was taken into custody at the port of Durrës, Albania, upon his arrival by ferry from Germany (*via* Bari, Italy).<sup>853</sup> He distinctly recalled that he was asked for his name and passport before being taken into custody.<sup>854</sup> This fact is not contested by the Defence and the Panel finds no reason to doubt the witness's account on this point.<sup>855</sup> As a result, the Panel is convinced W01448 came by ferry from Germany, *via* Bari, Italy and that he was taken into custody at the port of Durrës.

475. Regarding the date of his initial apprehension, the witness stated that he was arrested in Durrës on a Thursday, either on 13 or 14 May 1999.<sup>856</sup> The witness specified

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<sup>853</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013737;

<sup>854</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013854; SITF00013736-SITF00013800 RED5, p. SITF00013737; SITF00016221-00016285 RED4, p. SITF00016227.

<sup>855</sup> See also, co-detainees of W01448 who identified him by reference to Germany and his arrival from there to Durrës, **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013185; 082892-TR-AT-ET Part 4 RED3, pp. 7-8; **TW4-01**: T. 30 May 2023, confidential, p. 1440, lines 8-20; **TW4-05**: SITF00372498-00372510 RED4, p. SITF00372500.

<sup>856</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013854; SITF00013736-SITF00013800 RED5, p. SITF00013737; SITF00016221-SITF00016285 RED4, p. SITF00016227. According to the annual calendar, 13 May 1999 was indeed Ascension Day.

that he left Germany that week because Thursday of that week was a public holiday.<sup>857</sup> The Panel is not concerned by the small discrepancy of one day between the witness's statements regarding the exact date of his arrest. He provides sufficient details for the Panel to make a determination in this regard. Therefore, the Panel concludes that the witness was apprehended in Durrës, on or about 13 May 1999.

476. Regarding the individuals involved in his detention, W01448 asserted that he was apprehended by persons wearing civilian clothing.<sup>858</sup> The persons did not identify themselves and took W01448 by car to a location in Durrës.<sup>859</sup> According to W01448, both during the car ride and upon arriving at the first location in Durrës, he was reproached for not having contributed enough money to the KLA – an accusation that would be made against him again upon arrival at the KMF.<sup>860</sup> It was at this point, according to the witness, that he felt he was detained by these people.<sup>861</sup> W01448 also asserted in his statements that, during this period, he repeatedly requested to be let go and to be allowed to reunite with his family in Tirana, Albania. However, he was told he had to wait “until a trial or [an] interview takes place”.<sup>862</sup> The Panel infers from the aforementioned that the witness was not at liberty to leave and had to comply with the instructions he was given by the individuals who took him.

477. Regarding his transfer to the KMF, the witness averred that he was first driven to a location 2 km away, on the Durrës-Tirana axis,<sup>863</sup> where he was held until Monday of the following week, *i.e.* 17 May 1999.<sup>864</sup> W01448 claimed further that, on the same

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<sup>857</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013737.

<sup>858</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013737.

<sup>859</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013737; SITF00016221-SITF00016285 RED4, pp. SITF00016227- SITF00016228; SITF00013852-00013869 RED6, SITF00013854.

<sup>860</sup> **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013737-SITF00013740.

<sup>861</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013738.

<sup>862</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013738.

<sup>863</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013855.

<sup>864</sup> In one of his statements, W01448 mentions that he was transferred to Kukës on Monday, 18 May 1999 (**W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013738-SITF00013739). The Panel notes

day, he was transferred to the KMF by persons who were wearing civilian clothes and were armed, and who the witness believed to be with the KLA.<sup>865</sup> W01448's evidence bears similarities with the evidence of W04733 and TW4-04, who each attested to being apprehended and initially held elsewhere before being transferred to the KMF by KLA members.<sup>866</sup> W01448's evidence about the circumstances of his arrest is also similar to the accounts of TW4-11 and TW4-05, who each reported being approached by KLA members coming to look for them and requesting them to come along for "questioning" or to "give a statement".<sup>867</sup> In the Panel's estimation, the evidence of these other witnesses is credible and mutually corroborative and shows that these witnesses, like W01448, did not voluntarily go along, but were forcefully apprehended and held against their will.

478. The Panel notes that W01448's account of the sequence of these events is rich in detail, plausible and internally consistent. Moreover, W01448's statement that he was brought to the KMF around 17 May 1999 is compatible with W04733's statements who is on record stating that when he was brought to the Command Building Detention Room, on or about 20 May 1999, W01448 was already there.<sup>868</sup>

479. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that W01448 was arrested on or about 13 May 1999, and was subsequently transferred to the KMF by armed KLA members on or about 17 May 1999.

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that 17 May 1999 was a Monday, and therefore considers that it was on Monday, 17 May 1999 that W01448 first arrived in Kukës.

<sup>865</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013740.

<sup>866</sup> See Sections VI.D.5(a) and VI.D.8(a).

<sup>867</sup> See para. 416 above and para. 496 below.

<sup>868</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013741-SITF00013742; **W04733**: 082892-TR-AT-ET Part 4 RED3, p.7; SITF00013181-SITF00013189 RED3, p. SITF00013185; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013809-SPOE00013810.

## (b) Detention location within the KMF

480. The witness asserted that once at the KMF, he was initially detained in the Command Building Detention Room.<sup>869</sup> W01448 further purported that on or about 20 May 1999, he was brought to the Office, where he was interrogated and mistreated alongside W04733, TW4-01, the Murder Victim and [REDACTED].<sup>870</sup> The witness stated that he was subsequently moved to Room 1 of the Detention Building,<sup>871</sup> which he described as being guarded.<sup>872</sup> In addition, the witness stated that he was interrogated on several other occasions, usually in the Office of the Command Building.<sup>873</sup>

481. The witness's description of the Command Building Detention Room is consistent with W04733's account, who was detained there at the same time as W01448.<sup>874</sup> It is also consistent with the brief description TW4-01 provided, based on what he had heard [REDACTED].<sup>875</sup> Furthermore, W01448's description of the size of Room 1 and the lack of space for the detainees to rest or to sleep is mutually corroborative of the evidence of TW4-01, TW4-11, W04733 and TW4-05.<sup>876</sup> W01448's evidence that the Detention Building was guarded is also mutually corroborative of

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<sup>869</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016221-00016285 RED4, p. SITF00016229.

<sup>870</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013742-SITF00013747.

<sup>871</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013741; SITF00013748.

<sup>872</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858.

<sup>873</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013743-SITF00013744, SITF00013762; SITF00013852-00013869 RED6, pp. SITF00013856, SITF00013861.

<sup>874</sup> See para. 458 above. See, in particular, **W04733**: SPOE00013793-SPOE00013847 RED2, pp. SPOE00013809-SPOE00013810; SITF00019824-00019876 RED2, pp. SITF00019830-SITF00019831, corroborating the following evidence of **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016140-00016220 RED3, p. SITF00016145.

<sup>875</sup> [REDACTED].

<sup>876</sup> **TW4-01**: T. 30 May 2023, public, pp. 1431-1432; **TW4-11**: T. 2 May 2023, public, p. 1199; **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013748-SITF00013750; SITF00016140-00016220 RED3, pp. SITF00016145-SITF00016146; **W04733**: 106978-107020, pp. 106989-106990; SPOE00013793-SPOE00013847 RED2, p. SPOE00013822; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013129.



the evidence of TW4-01, TW4-11, W04733 and TW4-02, according to whom the detainees could not freely go out of the Detention Building.<sup>877</sup> Likewise, W01448's description of the Office is consistent with that of W04733 and TW4-01 and all three witnesses extensively describe the mistreatment they suffered in that room on or about 20 May 1999.<sup>878</sup> As a result, the Panel finds W01448's statements regarding his detention location to be highly reliable.

482. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that W01448 was detained in the Command Building Detention Room and in Room 1 of the Detention Building. The Panel is likewise persuaded that W01448 was detained in the Office for the duration of his mistreatment on or about 20 May 1999.

(c) Presence and identification of co-detainees

483. W01448 identified TW4-01, the Murder Victim and W04733 as co-detainees in Room 1<sup>879</sup> and provided the full names of TW4-01, the Murder Victim, W04733, leaving no doubt about their identities.<sup>880</sup> The Panel recalls that TW4-01 and W04733 equally identified W01448 as a co-detainee in Room 1 alongside others.<sup>881</sup> Accordingly, the Panel considers these three witnesses' respective accounts consistent, credible and mutually corroborative in this regard.

484. In addition, W01448 identified [REDACTED] as a co-detainee in the Office, on or about 20 May 1999.<sup>882</sup> On this, his statements are mutually corroborative with the

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<sup>877</sup> **TW4-01:** T. 30 May 2023, public, pp. 1445-1447; **TW4-11:** T. 2 May 2023, public, p. 1219, lines 21-25; **W04733:** 106978-107020, p. 106990; **TW4-02:** 108850-TR-ET Part 1 RED, p. 7; 060664-TR-ET Part 3, p. 4.

<sup>878</sup> See Sections VI.E.2(b) and VI.E.2(d).

<sup>879</sup> **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013761-SITF00013762.

<sup>880</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013762. With regard to co-detainees in the Command Building Detention Room, see para. 385 above.

<sup>881</sup> See Sections VI.D.2(d) and VI.D.5(c).

<sup>882</sup> **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013746-SITF00013747.

evidence of both TW4-01 and W04733, who were also mistreated in the Office on the same occasion.<sup>883</sup>

485. W01448 further identified, *inter alia*, the following co-detainees in Room 1: TW4-05, [REDACTED], [REDACTED] and a third Roma detainee, [REDACTED], [REDACTED], TW4-11, [REDACTED], a person from Krume,<sup>884</sup> a teacher from Dakovica/Gjakovë, and a person from Smolica.<sup>885</sup> The witness identified by name TW4-05, TW4-11 and [REDACTED], [REDACTED] and a third Roma detainee (whose first name was [REDACTED], according to W01148).<sup>886</sup> Regarding TW4-11, W01448 also specified his occupation (describing him as [REDACTED]), and noted that TW4-11 was released before him.<sup>887</sup> The Panel notes that, while TW4-11 does not mention W01448 as a co-detainee, the Panel is not overly concerned by TW4-11's inability to recall W01448's presence in the room, which may be due to a number of reasons, including the passage of time, the turnover of detainees to which TW4-11 himself testified, and the witness focusing on his individual circumstances while in detention. Importantly, W01448 identified TW4-11 by name and profession, and witness W04733 also listed both W01448 and TW4-11 as co-detainees, amongst others, in Room 1.<sup>888</sup> Overall, the Panel finds W01448 credible regarding his identification of all co-detainees in Room 1, and his identification of [REDACTED] as a co-detainee in the Office on or about 20 May 1999.

486. W01448's account of co-detainees is further corroborated by TW4-01 and W04733 (regarding [REDACTED]); by TW4-01, TW4-11, TW4-05 and W04733 (regarding

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<sup>883</sup> See paras 389 and 459 above; Sections VI.E.2(b) and VI.E.2(c).

<sup>884</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013761-SITF00013762.

<sup>885</sup> **W01448**: SITF00016140-00016220 RED3, p. SITF00016141.

<sup>886</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013761-SITF00013762.

<sup>887</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013757; SITF00016140-SITF00016220 RED3, p. SITF00016142.

<sup>888</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, pp. 5-6.

[REDACTED], [REDACTED] and a third Roma detainee); by TW4-02 and TW4-04 (regarding [REDACTED]); and by TW4-01 and TW4-02 (regarding [REDACTED]).<sup>889</sup> Considering the consistent and mutually corroborative nature of the aforementioned evidence, the Panel enters findings in this regard.

487. Conversely, the Panel notes that W01448 is the only witness who identified a person from Krume, a teacher from Đakovica/Gjakovë and a person from Smolica as co-detainees. Mindful of the fact that the evidence is limited with regard to these individuals and furthermore does not allow any precise identification, the Panel will address this evidence in Section VI.D.11 below.<sup>890</sup>

488. In light of the foregoing, taking the evidence as a whole, the Panel finds that W01448 was detained at the KMF at overlapping times with, *inter alia*, TW4-01, TW4-11, W04733, the Murder Victim, [REDACTED], [REDACTED] and a third Roma detainee, [REDACTED], [REDACTED], [REDACTED].

(d) Circumstances of release

489. W01448 stated that he was liberated by KFOR in Prizren, on 18 June 1999.<sup>891</sup> [REDACTED].<sup>892</sup> Noting their consistent and mutually corroborative evidence on their detention at the MUP Building in Prizren at that time,<sup>893</sup> the Panel is persuaded that W01448 was truthful and it has no reason to doubt the veracity of W01448's statement with regard to the date and circumstances of his liberation.

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<sup>889</sup> **W01448:** U003-2232-U003-2232-ET (in which the witness clearly marks [REDACTED] as co-detainees in Room 1); **W01448:** SITF00016221-00016285 RED4, p. SITF00016237. *See also*, Section VI.D.10(e).

<sup>890</sup> *See* para. 589 below.

<sup>891</sup> **W01448:** SITF00016221-00016285 RED4, p. SITF00016224; SITF00016140-00016220 RED3, p. SITF00016148.

<sup>892</sup> [REDACTED].

<sup>893</sup> [REDACTED].

490. In light of the foregoing, taking the evidence as a whole, the Panel finds that W01448 was liberated by KFOR, [REDACTED], on 18 June 1999, in Prizren.

(e) Lack of procedural guarantees

491. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, the Panel recalls that W01448 asserted that he was accused of not having financially contributed to the KLA.<sup>894</sup> Equally, the witness maintained that he was not informed on whose behalf the persons dressed in civilian clothes were acting.<sup>895</sup> Furthermore, W01448 also averred in his statements that, he was questioned on numerous occasions, usually in the Office, by different KLA members, including Fatmir Limaj, regarding his past, his military service and his knowledge of any Serbs or Serb collaborators.<sup>896</sup> He explained that, during some of these interrogations, he was asked to provide his answers in a written statement.<sup>897</sup> While W01448 stated that he was questioned and his statement was taken,<sup>898</sup> he was never informed of the reasons why he was brought to the KMF, besides some vague and generic explanations that he allegedly did not contribute to a KLA fund.

492. The Panel finds that the account of W01448 on this point is credible as it is both internally consistent and specific. He clearly described the circumstances of his arrest and what he experienced during his detention. The information provided is so unique and personal that the Panel concludes that it came from the witness's own knowledge. Importantly, his evidence is highly reminiscent of W04733's evidence regarding his own transfer to the KMF. Further, W01448's statements are similar to the testimonial

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<sup>894</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013737-SITF00013740; SITF00016221-SITF00016285 RED4, p. SITF00016227

<sup>895</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013737.

<sup>896</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013743, SITF00013762; SITF00013852-00013869 RED6, pp. SITF00013856, SITF00013861.

<sup>897</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013762; SITF00016140-00016220 RED3, p. SITF00016160-00016161; SITF00016221-00016285 RED4, p. SITF00016235.

<sup>898</sup> **W01448**: SITF00013736-SITF00013800 RED5, SITF00013762.

evidence of TW4-01 and TW4-11 regarding the fact that TW4-01, TW4-11, the Murder Victim and [REDACTED] were all denied proper information concerning the basis for their respective deprivations of liberty. Mindful of the corroborating evidence establishing a pattern of lack of guarantees for detainees held at the KMF, the Panel finds the account of W01448 in this regard credible and reliable. As a result, the Panel finds that W01448 was not properly informed of the reason for his arrest and detention.

493. Further, as to the question whether W01448 was brought before a judge or other competent authority and whether he had an opportunity to challenge the lawfulness of his detention, the Panel notes that W01448 was told that he would be released after an interview or a trial.<sup>899</sup> According to the evidence before the Panel, W01448 was not released after his interview, and no such a trial took place.<sup>900</sup> Furthermore, the Panel recalls that W01448 was severely mistreated throughout his detention at the KMF.<sup>901</sup> The Panel assesses W01448's evidence against the evidence of other detainees, such as TW4-01, TW4-11 and W04733, who were equally not brought before a judge or a prosecutor and did not have an opportunity to challenge the lawfulness of their detention.<sup>902</sup> Considering that all co-detainees were kept in similar conditions of detention, the Panel finds that the only reasonable conclusion based on the evidence as a whole is that W01448 was not brought before a judge or other competent authority, nor was he provided with an opportunity to challenge the lawfulness of his detention.

494. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that W01448 was not informed of the reasons for his deprivation of liberty, was not

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<sup>899</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013738.

<sup>900</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013738-SITF00013739.

<sup>901</sup> See Sections VI.E.2(a), VI.E.2(d) and VI.E.4.

<sup>902</sup> See Sections VI.D.2(f), VI.D.4(e) and VI.D.5(e).

brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention.

## 7. TW4-05

### (a) Initial apprehension

495. According to his statements, TW4-05 arrived in the town of Kukës as a refugee after [REDACTED] was expelled by the Serbian forces.<sup>903</sup> In his 2009 statement, the witness indicated that he left Albania on [REDACTED] May 1999 and that he arrived in Kukës with his family “three days later”.<sup>904</sup> In his 2010 statement, the witness explicitly indicates the date of [REDACTED] May 1999.<sup>905</sup> The Panel is satisfied that TW4-05 arrived in Kukës on or about [REDACTED] May 1999.

496. Regarding the circumstances of his arrest, TW4-05 stated that, four or five days after his arrival in Kukës, on or about [REDACTED] May 1999, he was approached by two or three persons, all wearing KLA uniforms.<sup>906</sup> [REDACTED].<sup>907</sup> According to TW4-05, the three KLA members asked for his name and told him that he “had to go to the headquarters with them”<sup>908</sup> for “an informative conversation”, which the witness understood would be a “short questioning”.<sup>909</sup> The witness explained that, according to the KLA members, the reason was that TW4-05 was “friendly with the Serbs”.<sup>910</sup> The Panel finds that the only reasonable conclusion is that the witness felt compelled to obey and went with them.

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<sup>903</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013125.

<sup>904</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372500.

<sup>905</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013125.

<sup>906</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372500; SITF00013123-SITF00013153 RED, p. SITF00013126.

<sup>907</sup> [REDACTED].

<sup>908</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372500.

<sup>909</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013126.

<sup>910</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372500.

497. According to TW4-05, the KLA members then drove him in a vehicle from the town of Kukës to the KMF.<sup>911</sup> According to TW4-05's statement, upon his arrival at the KMF, he was interrogated by [REDACTED] and "someone else who posed as a lawyer or judge there".<sup>912</sup> During this interrogation, the witness was accused of having friendly relationships with Serbs, [REDACTED].<sup>913</sup> According to the witness, [REDACTED] was "very tough" and "was talking with a loud voice" during the interrogation.<sup>914</sup>

498. The Panel finds the witness's account of the date and circumstances of his arrest credible and reliable. It follows a clear chronological sequence, it is internally consistent and it does not appear to be either exaggerated or simplified. The Panel notes that, when comparing TW4-05's 2010 statement with his 2009 statement, the witness in 2010 was generally more elaborate in his responses than in 2009. The Panel attributes this to the more extensive questioning conducted by the investigating authority in 2010. The overall consistency and coherence of TW4-05's statements persuade the Panel of the truthfulness and reliability of his evidence on this matter.

499. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-05 was arrested and deprived of his liberty in Kukës and brought to the KMF on or about [REDACTED] May 1999 by three KLA uniformed members, [REDACTED].

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<sup>911</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013126; as to whether the KMF was the location of arrival, *see* p. SITF00013128.

<sup>912</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013127.

<sup>913</sup> **TW4-05:** SITF00013123-SITF00013153 RED, pp. SITF00013127-SITF00013128; *see similarly*, SITF00372498-00372510 RED4, p. SITF00372500.

<sup>914</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013127.

## (b) Detention location within the KMF

500. Before all else, the Panel will briefly address TW4-05's evidence that while at the KMF he was "never held in a locked room" and that his freedom of movement was not restricted within the KMF.<sup>915</sup> The Panel recalls its findings in the credibility assessment of TW4-05 that he clearly downplayed certain aspects of his detention at the KMF.<sup>916</sup> Similarly, the Panel is of the view that the witness also misrepresented his ability to move freely within and outside the KMF. The witness is not only internally inconsistent on this point, but his account is also contradicted by the statements of other witnesses identifying him as a co-detainee.<sup>917</sup> For this reason, the Panel sets aside TW4-05's evidence that he was "never held in a locked room" and finds that he was deprived of his liberty.

501. As to the location within the KMF where TW4-05 was held, the Panel observes that the witness generically described being held in a room, without adding specific details. However, the Panel observes that: (i) the witness identified W01448 and [REDACTED], [REDACTED] and a third Roma musician as co-detainees in the room where he was held;<sup>918</sup> (ii) the witness stated that there were a total of eight or nine detainees in the room, which corresponds to the estimates given by other detainees held in Room 1;<sup>919</sup> and (iii) witness W04733 also identified TW4-05 as a co-detainee in Room 1 at the relevant time.<sup>920</sup> The Panel further notes that TW4-05's estimate of the

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<sup>915</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372500; SITF00013123-SITF00013153 RED, p. SITF00013129.

<sup>916</sup> See para. 141 above.

<sup>917</sup> See paras 459 and 485 above.

<sup>918</sup> **TW4-05:** SITF00013123-SITF00013153 RED, pp. SITF00013129, SITF00013131-SITF00013132; SITF00372498-00372510 RED4, pp. SITF00372500-SITF00372501.

<sup>919</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372501; SITF00013123-SITF00013153 RED, p. SITF00013129. See also, footnote 764 above.

<sup>920</sup> **W04733:** SPOE00013793-SPOE00013847 RED2, pp. SPOE00013818-SPOE00013819.



size of the room (5m x 4m) is consistent with other detainees' estimates regarding Room 1, notably witnesses TW4-01, TW4-11, W01448 and W04733.<sup>921</sup>

502. The Panel also notes that TW4-05 was [REDACTED].<sup>922</sup> The witness also provided evidence that he was taken to the Command Building on several occasions, where he was interrogated [REDACTED].<sup>923</sup>

503. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-05 was held in Room 1 of the Detention Building for the duration of his detention. The Panel is also satisfied that TW4-05 was detained at the Command Building, during his interrogation, as well as in other locations of the KMF, [REDACTED].

(c) Presence and identification of co-detainees

504. According to TW4-05, there were a total of eight or nine persons held in Room 1, including W01448 and three Roma musicians [REDACTED] ([REDACTED], [REDACTED] and a third Roma musician).<sup>924</sup> The Panel notes that TW4-05 identified W01448 as a co-detainee by name and provided details about the occupation and place of origin of the Roma detainees. In the Panel's view, his evidence is internally consistent and clear. What's more, the Panel observes that TW4-05's evidence is also amply corroborated by other witnesses' evidence, such as TW4-01, TW4-11, W01448 and W04733.<sup>925</sup> In addition, TW4-05 and W01448's accounts are mutually

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<sup>921</sup> **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013129. *See also*, **TW4-01**: T. 30 May 2023, public, p. 1432, lines 6-11; **TW4-11**: T. 2 May 2023, public, p. 1199, lines 12-13; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013748; **W04733**: 106978-107020, p. 106990; SPOE00013793-SPOE00013847 RED2, p. SPOE00013822.

<sup>922</sup> [REDACTED].

<sup>923</sup> **TW4-05**: SITF00013123-SITF00013153 RED, pp. SITF00013130-SITF00013131.

<sup>924</sup> **TW4-05**: SITF00013123-SITF00013153 RED, pp. SITF00013129, SITF00013131-SITF00013132; SITF00372498-00372510 RED4, pp. SITF00372501-SITF00372501.

<sup>925</sup> **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013129; **TW4-01**: T. 30 May 2023, confidential, p. 1414, line 16 to p. 1417, line 20; *see, in particular*, p. 1417, lines 5-8, where the SPO put to the witness a

corroborative regarding their respective detention in Room 1.<sup>926</sup> Lastly, witness W04733 also identified TW4-05 as a co-detainee in Room 1.<sup>927</sup> As a result, the Panel finds the witness's evidence on this issue to be truthful and reliable.

505. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-05 was detained, alongside W01448, W04733, [REDACTED], [REDACTED], a third Roma detainee and others, in Room 1.

(d) Circumstances of release

506. [REDACTED].<sup>928</sup> [REDACTED].<sup>929</sup> The Panel notes that the witness is internally consistent on this point and his account is mutually corroborative of [REDACTED].<sup>930</sup> The Panel is persuaded that the witness is truthful and credible.

507. The Panel recalls its earlier finding that TW4-05 was detained on or about [REDACTED] May 1999.<sup>931</sup> [REDACTED],<sup>932</sup> [REDACTED]. Mindful of the difficulties that witnesses may have when providing specific dates for events that occurred long ago, the Panel sets aside the witness's account on this point. Accordingly, it finds that TW4-05 was held for [REDACTED] at the KMF.

508. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-05 was detained for [REDACTED].

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prior statement to refresh his memory (SITF00012758-SITF00012789 RED2, p. SITF00012763); T. 30 May 2023, public, p. 1432, lines 2-5; **TW4-11**: T. 2 May 2023, public, p. 1209, lines 7-22; T. 3 May 2023, confidential, p. 1340, line 17 to p. 1341, line 13; **W01448**: SITF00016221-00016285 RED4, p. SITF00016225; SITF00013736-SITF00013800 RED5, p. SITF00013748; **W04733**: SPOE00013793-SPOE00013847 RED2, pp. SPOE00013811-SPOE00013812, SPOE00013818-SPOE00013819; 082892-TR-AT-ET Part 4 RED3, p. 5, line 14 to p. 6, line 12.

<sup>926</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013748.

<sup>927</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, pp. SPOE00013818-SPOE00013819.

<sup>928</sup> [REDACTED].

<sup>929</sup> [REDACTED].

<sup>930</sup> [REDACTED].

<sup>931</sup> See para. 499 above.

<sup>932</sup> [REDACTED].

## (e) Lack of procedural guarantees

509. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, the Panel notes that, according to TW4-05, he was not given any reason for his arrest except that he was “friendly with the Serbs” and had to come to the KMF to be interrogated in this regard.<sup>933</sup> As discussed above, the witness was then interrogated upon his arrival at the KMF by [REDACTED] and another person who “posed as a lawyer or a judge”, and whose identity the witness did not know.<sup>934</sup> According to his statement, throughout his detention at the KMF, TW4-05 was interrogated by [REDACTED] and another KLA member on several occasions in the Command Building, always during the night.<sup>935</sup> TW4-05 explained that, every time he was interrogated, he was questioned about and accused of having relationships with Serbs, [REDACTED].<sup>936</sup> TW4-05 additionally stated that, at some point during his detention, he feared that he was at risk of being killed for being a “traitor” [REDACTED].<sup>937</sup>

510. The Panel assesses the witness’s account regarding the allegations brought against him and the fear he experienced while in detention to be both truthful and plausible. The Panel does so, because TW4-05’s statements on these points are clear, coherent and largely consistent with the evidence of other witnesses, such as TW4-01, TW4-11, and TW4-02 who attested to the climate of fear amongst detainees held at the KMF.<sup>938</sup> The Panel finds TW4-05’s account credible as he provided information so unique and personal that the Panel concludes that it came from the witness’s own

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<sup>933</sup> See para. 496 above.

<sup>934</sup> **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013127; SITF00372498-00372510 RED4, p. SITF00372500.

<sup>935</sup> **TW4-05**: SITF00013123-SITF00013153 RED, pp. SITF00013130-SITF00013131.

<sup>936</sup> **TW4-05**: SITF00013123-SITF00013153 RED, pp. SITF00013127-SITF00013128, SITF00013130; *see similarly*, SITF00372498-00372510 RED4, p. SITF00372500.

<sup>937</sup> **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013134.

<sup>938</sup> See para. 649 below; *see similarly*, **TW4-02**: 060664-TR-ET Part 4, p. 20, line 23 to p. 21, line 11: “this was psychologically terrifying for me”.

knowledge. As a result, and considering the vague nature of the allegations repeatedly brought up against him, the Panel finds that TW4-05 was not properly informed of the reason for his arrest and detention.

511. As to the question whether TW4-05 was brought before a judge or other competent authority and whether he had an opportunity to challenge the lawfulness of his detention, the Panel notes that TW4-05 suffered mistreatment similar to that of other detainees at the KMF and was subjected to forced labour.<sup>939</sup> In any event, from the evidence, it is clear that TW4-05 and other detainees were liberated not as a result of a decision by a judge or other competent authority, [REDACTED].<sup>940</sup> Moreover, it is worth recalling that other detainees, such as TW4-01, the Murder Victim, TW4-11, W04733 and W01448 were equally not brought before a judge or any other competent authority and did not have an opportunity to challenge the lawfulness of their detention.<sup>941</sup> As a result, the Panel finds that the only reasonable conclusion based on the evidence as a whole is that TW4-05 was not brought before a judge or other competent authority, nor was he provided with an opportunity to challenge the lawfulness of his detention.

512. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-05 was not informed of the reasons for his deprivation of liberty, was not brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention, akin to his co-detainees.

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<sup>939</sup> See Section VI.E.2(i).

<sup>940</sup> [REDACTED].

<sup>941</sup> See Sections VI.D.2(f), VI.D.3(d), VI.D.4(e), VI.D.5(e) and VI.D.6(e).

## 8. TW4-04

### (a) Initial apprehension

513. TW4-04 stated that he left Kosovo on [REDACTED] March 1999 due to the conflict.<sup>942</sup> TW4-04 contended that he was arrested [REDACTED], by [REDACTED] and another KLA member.<sup>943</sup> According to TW4-04, upon arrest he was told that he had to come to the KLA Headquarters [REDACTED] “for a conversation”.<sup>944</sup> [REDACTED] and the other KLA member were wearing civilian clothes, but they introduced themselves to the witness as members of the KLA.<sup>945</sup> TW4-04 also stated that when he was subsequently brought for questioning over the next few days, he was interrogated by someone who introduced himself as a “judge from Tirana”.<sup>946</sup> According to the witness, he was asked to write a statement and was questioned, *inter alia*, about [REDACTED] whether he had collaborated with the Serbian state security services.<sup>947</sup> [REDACTED].<sup>948</sup> Thereafter, [REDACTED], he was transferred [REDACTED] to Kukës at the KMF by [REDACTED] KLA Military Police personnel.<sup>949</sup>

514. The Panel finds the witness straightforward, coherent and internally consistent across all his statements about the circumstances of his arrest, including the

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<sup>942</sup> **TW4-04:** SITF00013262-00013315 RED, p. SITF00013263; SITF00015825-00015925 RED, p. SITF00015828; SPOE00014669-00014751 RED, pp. SPOE00014673-SPOE00014674; SITF00013336-00013347 RED, p. SITF00013338.

<sup>943</sup> **TW4-04:** 064716-TR-ET Part 2 RED3, pp. 8-9.

<sup>944</sup> **TW4-04:** 064716-TR-ET Part 2 RED3, pp. 8-9.

<sup>945</sup> **TW4-04:** SITF00015825-00015925 RED, p. SITF00015829.

<sup>946</sup> **TW4-04:** 064716-TR-ET Part 2 RED3, p. 9; SITF00015825-00015925 RED, p. SITF00015829; SPOE00014669-00014751 RED, p. SPOE00014677.

<sup>947</sup> **TW4-04:** 064716-TR-ET Part 2 RED3, pp. 9, 11.

<sup>948</sup> **TW4-04:** SITF00013336-00013347 RED, pp. SITF00013338-SITF00013339; SITF00013262-00013315 RED, pp. SITF00013265-SITF00013269; 064716-TR-ET Part 3 RED4, pp. 3-4, 6-8, 20, 22-25; SITF00015825-00015925 RED, pp. SITF00015829-SITF00015830; SPOE00014669-00014751 RED, pp. SPOE00014680-SPOE00014682, SPOE00014687; 064716-TR-ET Part 2 RED3, p. 10; 064716-TR-ET Part 4 RED3, p. 2.

<sup>949</sup> **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013271, SITF00013275, SITF00013277; SPOE00014669-00014751 RED, pp. SPOE00014687, SPOE00014689-SPOE00014690; 064716-TR-ET Part 5 RED4, pp. 1-3; 108826-TR-ET Part 1 RED, p. 4; SITF00015825-00015925 RED, p. SITF00015843.

approximate timing of arrest, [REDACTED], the initial interrogation to which he was subjected, his subsequent detentions [REDACTED], as well as his transfer [REDACTED] to the KMF. Notably, TW4-04's statement [REDACTED] is similar to the accounts of TW4-11, TW4-02 and TW4-05. These witnesses also claimed, like TW4-04, that, at the time of their apprehension, they were told that they would be questioned. This lends the written statement of TW4-04 further credibility.

515. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-04 was deprived of his liberty sometime around [REDACTED] and was transferred to the KMF sometime around the end of May/beginning of June 1999.

(b) Detention location within the KMF

516. According to TW4-04's account, he was initially held in [REDACTED].<sup>950</sup> [REDACTED].<sup>951</sup>

517. The witness described in great detail and with consistency across statements both the layout of the KMF, as well as the layout of the Detention Building and the rooms inside. He was shown a number of photographs and the cadastral map of the KMF, and produced a sketch of the Detention Building, which he marked.<sup>952</sup> The Panel considers TW4-04's evidence regarding the locations of his detention to be credible and reliable, as it is corroborated by and confirms other witnesses' evidence.<sup>953</sup>

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<sup>950</sup> **TW4-04:** 064716-TR-ET Part 5 RED4, pp. 4-5, 7; SITF00013262-00013315 RED, pp. SITF00013272-SITF00013273, SITF00013275; SPOE00014669-00014751 RED, pp. SPOE00014690-SPOE00014692; 108826-TR-ET Part 1 RED, pp. 7-8, referring to 108816-108825 RED, p. 108822 (TW4-04 marked the room where he was detained with number 1);

<sup>951</sup> [REDACTED].

<sup>952</sup> **TW4-04:** 108826-TR-ET Part 1 RED, pp. 5-9, referring to 108816-108825 RED.

<sup>953</sup> See, for example, para. 486 above and para. 544 below.

518. In light of the foregoing, taking the evidence as a whole, the Panel finds that, based on the witness's description, he was detained in [REDACTED] the Detention Building.<sup>954</sup>

(c) Presence and identification of co-detainees

519. According to TW4-04, on the first night of his detention at the KMF, a person [REDACTED] told him that: "When the people come back from the war at night, then we're in a crisis".<sup>955</sup> [REDACTED].<sup>956</sup> TW4-04 also identified the following co-detainees as having arrived at some point [REDACTED]: [REDACTED];<sup>957</sup> [REDACTED];<sup>958</sup> a "father and a son";<sup>959</sup> and TW4-02.<sup>960</sup>

520. TW4-04 also recalled having seen other detainees at the KMF, including TW4-11, [REDACTED], as well as "three Roma" [REDACTED] ([REDACTED], [REDACTED] and a third Roma detainee).<sup>961</sup>

521. The Panel finds TW4-04's account regarding his co-detainees to be consistent across his statements, sufficiently detailed and mutually corroborative of other witnesses' evidence. The Panel particularly notes the corroboration amongst the witnesses with regard to co-detainees [REDACTED], [REDACTED], [REDACTED],

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<sup>954</sup> **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013272-SITF00013273, SITF00013275; 108826-TR-ET Part 1 RED, pp. 7-8, referring to 108816-108825 RED, p. 108822 (TW4-04 marked the room where he was detained with number 1); 064716-TR-ET Part 5 RED4, pp. 4, 11; SPOE00014669-00014751 RED, pp. SPOE00014690-SPOE00014692.

<sup>955</sup> **TW4-04:** 064716-TR-ET Part 5 RED4, pp. 11-12.

<sup>956</sup> [REDACTED].

<sup>957</sup> [REDACTED].

<sup>958</sup> [REDACTED].

<sup>959</sup> **TW4-04:** SITF00015825-00015925 RED, pp. SITF00015844, SITF00015846.

<sup>960</sup> **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013272, SITF00013278; 064716-TR-ET Part 5 RED4, p. 30; 064716-TR-ET Part 3 RED4, p. 14; SITF00015825-00015925 RED, pp. SITF00015844, SITF00015854-SITF00015855; SITF00013336-00013347 RED, p. SITF00013340.

<sup>961</sup> **TW4-04:** SITF00015825-00015925 RED, pp. SITF00015846-SITF00015847; SITF00013336-00013347 RED, p. SITF00013340; SPOE00014669-00014751 RED, p. SPOE00014694; 064716-TR-ET Part 5 RED4, pp. 27, 31-32. See also, Section VI.D.10(a).

[REDACTED] and a third Roma musician. The Panel acknowledges that not many witnesses recall TW4-04 being there when they were detained at the KMF.<sup>962</sup> This can be explained by the fact that he was held for a relatively short period of time ([REDACTED]),<sup>963</sup> [REDACTED]. Nevertheless, TW4-04's detention at the KMF is confirmed by the statements of Mr Kryeziu.<sup>964</sup>

522. Furthermore, the Panel finds TW4-04's statement regarding [REDACTED] to be credible and reliable as the witness recounts specific details and circumstances surrounding [REDACTED], thereby reinforcing the Panel's belief that the witness recalled his personal experiences [REDACTED].<sup>965</sup> In addition, his recollection is consistent with [REDACTED].<sup>966</sup> As a result, the Panel finds that TW4-04's account is truthful regarding the circumstances of his arrest, the location of his detention within the KMF, and the identification of co-detainees.

523. [REDACTED]. [REDACTED],<sup>967</sup> [REDACTED],<sup>968</sup> [REDACTED],<sup>969</sup> [REDACTED].<sup>970</sup> [REDACTED].

524. Lastly, the Panel assesses TW4-04's evidence in light of TW4-11's and W01448's evidence regarding the detention of [REDACTED] at the KMF,<sup>971</sup> and in light of the Panel's finding that [REDACTED].<sup>972</sup> Furthermore, the Panel finds that TW4-04's

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<sup>962</sup> [REDACTED].

<sup>963</sup> See para. 526 below.

<sup>964</sup> **Mr Kryeziu:** SITF00014088-00014120 RED, p. SITF00014100; SITF00016908-00016964 RED, p. SITF00016916.

<sup>965</sup> [REDACTED].

<sup>966</sup> [REDACTED].

<sup>967</sup> [REDACTED].

<sup>968</sup> [REDACTED].

<sup>969</sup> [REDACTED].

<sup>970</sup> [REDACTED].

<sup>971</sup> **TW4-11:** T. 2 May 2023, confidential, p. 1216, lines 1-19; **W01448:** SITF00013852-00013869 RED6, p. SITF00013858. See also, Section VI.D.10(d).

<sup>972</sup> [REDACTED].



reference to “a father and son” [REDACTED] is a reference to [REDACTED], as attested by TW4-01, TW4-02 and W01448.<sup>973</sup>

525. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-04 was detained at the KMF during the period relevant to the charges, along with TW4-02, [REDACTED], [REDACTED], [REDACTED], [REDACTED], TW4-11 and [REDACTED], [REDACTED] and a third Roma detainee.

(d) Circumstances of release

526. Regarding the duration of his detention, the witness’s account varies [REDACTED].<sup>974</sup> As discussed elsewhere, the Panel is of the view that TW4-04 downplays the treatment he received while in detention at the KMF.<sup>975</sup> [REDACTED], which the Panel finds to be a motive for the witness to adapt his account [REDACTED].<sup>976</sup> The Panel therefore has difficulties accepting the witness’s estimate as being truthful and considers that he was likely detained for a longer period of time, likely around [REDACTED]. The Panel makes this estimate based upon evidence that: (i) [REDACTED];<sup>977</sup> and (ii) [REDACTED].<sup>978</sup> The Panel therefore estimates that TW4-04 was released sometime around [REDACTED].

527. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-04 was released from the KMF sometime around [REDACTED].

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<sup>973</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1433, line 25 to p. 1434, line 2; **W01448:** SITF00016221-00016285 RED4, p. SITF00016237; **TW4-02:** 060664-TR-ET Part 4, pp. 8-10. *See also*, Section VI.D.10(e).

<sup>974</sup> **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013273-SITF00013274; SITF00015825-00015925 RED, p. SITF00015854; SPOE00014669-00014751 RED, pp. SPOE00014689-SPOE00014690, SPOE00014692, SPOE00014697; 108826-TR-ET Part 1 RED, pp. 7, 10; 107743-107743 RED, para. 2.

<sup>975</sup> *See* para. 132 above.

<sup>976</sup> **TW4-04:** SPOE00014669-00014751 RED, p. SPOE00014705; 064716-TR-ET Part 1 RED3, pp. 15-20.

<sup>977</sup> [REDACTED].

<sup>978</sup> [REDACTED].

(e) Lack of procedural guarantees

528. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, the Panel notes that, according to TW4-04, he was not informed of the reasons for his detention at the time of his arrest.<sup>979</sup> The Panel has no reason to doubt TW4-04's statement on this matter as it is precise and corresponds to the pattern according to which other witnesses were arrested. As a result, the Panel finds that TW4-04 was not properly informed of the reason for his arrest and detention.

529. As to the question whether TW4-04 was brought before a judge or other competent authority and whether he had an opportunity to challenge the lawfulness of his detention, the Panel notes that TW4-04 stated that, prior to his release, he was taken to the Command Building, to a "judge" whom TW4-04 identified as Mr Kryeziu. Mr Kryeziu asked him to provide a written statement containing his personal details and information about his past and his arrest.<sup>980</sup> TW4-04 stated that he was released a few days later.<sup>981</sup> According to TW4-04, this procedure was not genuine because Mr Kryeziu was "just making something official that had been already decided by somebody else".<sup>982</sup> TW4-04 further stated that he was told that he would receive a certificate regarding his release when back in Kosovo. TW4-04 maintained that, ultimately, he received a "note" from Mr Kryeziu stating that he was "clean".<sup>983</sup>

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<sup>979</sup> See para. 513 above.

<sup>980</sup> **TW4-04:** SITF00013262-00013315 RED, p. SITF00013274; SITF00015825-00015925 RED, p. SITF00015854; SPOE00014669-00014751 RED, p. SPOE000 14691; 064716-TR-ET Part 5 RED4, pp. 2-3, 9-10. See also, **Mr Kryeziu:** SITF00014088-00014120 RED, p. SITF00014100.

<sup>981</sup> **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013273-SITF00013274; SITF00015825-00015925 RED, p. SITF00015854; SPOE00014669-00014751 RED, pp. SPOE00014691-SPOE00014698.

<sup>982</sup> **TW4-04:** 064716-TR-ET Part 5 RED4, pp. 9-10.

<sup>983</sup> **TW4-04:** 064716-TR-ET Part 1 RED3, p. 17: "Osman gave me a note saying that I was clean and that it was somebody else who was holding me responsible for things".

530. The Panel finds the above account of TW4-04 credible and reliable, as the witness is consistent and coherent and volunteers detailed evidence regarding his interaction with Mr Kryeziu prior to his release. This reinforces the Panel's belief that in his statements, the witness conveyed his personal experience. Furthermore, TW4-04's account about Mr Kryeziu's involvement in his questioning is consistent with other witnesses' evidence about the lack of procedural guarantees in detention.<sup>984</sup> While the Panel notes TW4-04's statement that [REDACTED],<sup>985</sup> the Panel considers this to be an indication that certain detainees could obtain certain favours as a result of personal connections, rather than an indication of any procedural guarantees afforded to TW4-04 and other detainees. As set forth above, the evidence is clear as to the fact that Mr Kryeziu was not in any way exercising independent oversight over the lawfulness of TW4-04's and other witnesses' detention. In this context, the Panel also pays heed to the fact that in TW4-04's words, Mr Kryeziu was not the ultimate decision-maker. As a result, the Panel concludes that TW4-04 was not brought before a judge or other competent authority.

531. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-04 was not informed of the reasons for his deprivation of liberty, was not brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention.

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<sup>984</sup> See, notably, **TW4-11**: T. 3 May 2023, public, p. 1265, line 22 to p. 1266, line 6.

<sup>985</sup> **TW4-04**: 064716-TR-ET Part 3 RED4, p. 6; SITF00015825-00015925 RED, p. SITF00015843.

## 9. TW4-02

### (a) Initial apprehension

532. According to his account, TW4-02 arrived with his family in Kukës on [REDACTED] May 1999.<sup>986</sup> [REDACTED].<sup>987</sup> [REDACTED].<sup>988</sup> According to TW4-02, he was arrested sometime between 9 and 11 June 1999 [REDACTED].<sup>989</sup> Upon arrest, he was not informed of the reasons for his arrest but was rather told “[REDACTED], we’ve got a conversation”.<sup>990</sup> In his own words, TW4-02 was detained for several days on accusations of being a “spy” and a “collaborator” of Serbia.<sup>991</sup>

533. The Panel finds no reason to doubt that TW4-02 arrived with his family in Kukës on [REDACTED] May 1999. The witness’s 2019 statement makes clear that he was arrested [REDACTED]. [REDACTED].<sup>992</sup> As a result, the Panel finds TW4-02’s evidence on this point credible and reliable. However, for the reasons set out below, the Panel does not find TW4-02 statements regarding the time of his arrest to be credible.

534. First, the evidence TW4-02 provided on the dates of his arrest is internally inconsistent. In his statements, TW4-02 provides three different time frames for his arrest and detention: in his 2019 statement, he stated he was arrested on 11 June 1999 and was detained until 14 June 1999;<sup>993</sup> in the same statement, the witness also added

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<sup>986</sup> **TW4-02:** 060664-TR-ET Part 1 RED3, pp. 18-19; 060664-TR-ET Part 2, p. 1.

<sup>987</sup> [REDACTED].

<sup>988</sup> [REDACTED].

<sup>989</sup> TW4-02 himself gave three different possible dates for his arrest: 9, 10 or 11 June 1999; *see* **TW4-02:** 108850-TR-ET Part 1 RED, p. 5; 060664-TR-ET Part 1 RED3, p. 19; 060664-TR-ET Part 2, p. 3; 060664-TR-ET Part 5 RED4, p. 2.

<sup>990</sup> **TW4-02:** 060664-TR-ET Part 3, p. 19.

<sup>991</sup> **TW4-02:** 060664-TR-ET Part 2, p. 5; 060664-TR-ET Part 4, p. 13, p. 20, line 24.

<sup>992</sup> [REDACTED].

<sup>993</sup> **TW4-02:** 060664-TR-ET Part 2, pp. 3-4; *see also*, 060664-TR-ET Part 3, p. 26, line 25 to p. 27, line 1; 060664-TR-ET Part 5 RED4, p. 2.

that according to his understanding, the Murder Victim died either “two to three days before that, or when I was there”, which would put TW4-02 at the KMF already at the earliest on 5 June 1999;<sup>994</sup> in his 2022 statement, he asserted being detained from 9 or 10 June 1999 to 12 June 1999, and noted that he was only detained for 48 hours.<sup>995</sup> As the aforementioned inconsistencies within his statements cannot be resolved, the Panel cannot rely on any of TW4-02’s statements to accurately determine when he was apprehended.

535. Second, TW4-02’s statements regarding the timing and duration of his detention are inconsistent also in other respects and they are impossible to reconcile with his very specific and detailed information regarding the presence and serious mistreatment of other detainees at the KMF, who were held there prior to his alleged arrest between approximately 9 and 11 June 1999.<sup>996</sup> Notably, as the Murder Victim died on or about 5 June 1999,<sup>997</sup> it is impossible for TW4-02 to have been at the KMF when the Murder Victim died and at the same time to have arrived there only sometime between 9 and 11 June 1999, as he stated. An added difficulty is that it is not always clear from the statements whether TW4-02 conveyed his personal knowledge of events, based on what he saw, or whether he recalled what he had heard from others. While the witness used language which suggests he may have been an eye-witness to these events, he insisted throughout his 2019 SPO statement that he had not seen or heard anything himself and that he had not been there.<sup>998</sup> He further

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<sup>994</sup> **TW4-02:** 060664-TR-ET Part 3, p. 23, lines 14-17.

<sup>995</sup> **TW4-02:** 108850-TR-ET Part 1 RED, p. 5, lines 1-6.

<sup>996</sup> *See, for example,* **TW4-02:** 060664-TR-ET Part 2, p. 5, lines 1-6.

<sup>997</sup> *See* para 832 below.

<sup>998</sup> **TW4-02:** 060664-TR-ET Part 2, p. 5, lines 1-7: “However [REDACTED], I did not see it - I did not see it - but they eliminated people as well. And they have ill-treated physically terribly many people. For example, someone called [REDACTED] who died there -- I don't know his last name. [REDACTED], he died in the room from the torture and the injuries. However, I did not see this. I cannot say something which is not”. *See similarly,* **TW4-02:** 060664-TR-ET Part 5 RED4, p. 4, lines 6-11: “Q: To be clear [...] are you a witness to the death of [REDACTED] in any way? A: I did not see it. I was not even in the room.

insisted that he learned about these events from conversations with other detainees after the war, while at the same time stating that he never discussed matters related to his detention with others after the war.<sup>999</sup> As the aforementioned inconsistencies cannot be resolved, the Panel cannot draw on the witness's information about the presence and serious mistreatment of other detainees at the KMF to confirm the time when he was arrested, although it strongly suggests that he was at the KMF before 9 June 1999 and even already on or about 5 June 1999.

536. Third, TW4-02's account is contradicted by TW4-01's evidence indicating his (TW4-02's) presence at the KMF prior to 5 June 1999. Relatedly, the Defence challenged the credibility of TW4-01, based on the inconsistency between TW4-01's and TW4-02's accounts [REDACTED], proposing that the Panel rely on TW4-02's evidence.<sup>1000</sup> [REDACTED].<sup>1001</sup> The Panel recalls that it holds TW4-01 to be truthful, credible and reliable, especially as regards the presence of co-detainees at the relevant time, such as the Murder Victim, [REDACTED], W04733, W01448, [REDACTED], [REDACTED] and a third Roma detainee. Notably, his evidence and that of other witnesses is consistent and mutually corroborative on this point. In the Panel's estimation, TW4-01 had no reason to add the presence of TW4-02 to his account, unless he saw him at the KMF during the period in question. When juxtaposing the evidence of the two witnesses, the Panel finds it difficult to rely on TW4-02's account concerning the timing of this arrest, knowing that the Panel also cannot reconcile: (i) TW4-02's inconsistencies within his own statement(s) about the date of his arrest; and (ii) his contradictory assertions about the presence of other co-detainees and how he came to learn about the treatment of co-detainees at the KMF. Lastly, the Panel has been

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How could I be a witness when I was not present at all? How could I be a witness when I don't know, I wasn't there, I did not see, because my testimony is not valid".

<sup>999</sup> TW4-02: 060664-TR-ET Part 5 RED4, p. 2, line 15 to p. 3, line 8.

<sup>1000</sup> Defence Final Trial Brief, para. 218.

<sup>1001</sup> [REDACTED].

attentive to concerns voiced by this witness about his safety and that of his family. Although these assertions were not tested in court and verified, the Panel nevertheless notes that these concerns may have been a motive for TW4-02 to downplay certain aspects of his evidence.<sup>1002</sup>

537. In addition, the Panel recalls its findings that TW4-04 places TW4-02 in [REDACTED]<sup>1003</sup> – evidence on which the Panel finds TW4-04 credible. This puts TW4-02 as a detainee [REDACTED] already *prior* to the death of the Murder Victim on or about 5 June 1999. This timeline is corroborated by [REDACTED], as discussed above.

538. In the view of the Panel, in his statements TW4-02 intentionally provided a short timeframe for his detention at the KMF in order to avoid having to give evidence on certain events.

539. In light of the foregoing, taking the evidence as a whole, the Panel does not rely on the witness's statements regarding the time of his arrest being sometime between 9 and 11 June 1999. Rather, based on the evidence of [REDACTED] and the detailed information provided by TW4-02 about the mistreatment suffered by other detainees at the KMF, the Panel finds that TW4-02 was arrested and brought to the KMF [REDACTED] prior to that, sometime around [REDACTED].

(b) Detention location within the KMF

540. The witness stated that, upon arrest, he was taken straight to the “offices of the Kosovo Liberation Army in a depot, in a bed warehouse there”.<sup>1004</sup> The witness drew a sketch which closely resembles the KMF blueprint, and additionally identified it as the location where he was held on the basis of photographs shown to him.<sup>1005</sup>

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<sup>1002</sup> **TW4-02:** 108850-TR-ET Part 1 RED, p. 13.

<sup>1003</sup> [REDACTED].

<sup>1004</sup> **TW4-02:** 060664-TR-ET Part 2, p. 3, lines 17-18.

<sup>1005</sup> **TW4-02:** 060653-060663; 060653-060663-ET; 060664-TR-ET Part 3, pp. 1-14.

Accordingly, the Panel has no doubt that the witness described the KMF as the location of his detention.

541. TW4-02's description of the room in which he was placed at the KMF is consistent with that [REDACTED] of the Detention Building.<sup>1006</sup> TW4-01 and TW4-04 also stated that TW4-02 was held in [REDACTED] the Detention Building.<sup>1007</sup> The witness also provided evidence that he was taken to the Command Building on a number of occasions, where he was interrogated by Mr Kryeziu.<sup>1008</sup>

542. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that TW4-02 was held in [REDACTED] the Detention Building for the duration of his detention. The Panel is also satisfied that TW4-02 was detained at the Command Building for the duration of his interrogations.

(c) Presence and identification of co-detainees

543. In his statement, TW4-02 identified the following persons as co-detainees [REDACTED] throughout the period of his detention: [REDACTED],<sup>1009</sup> a person from Mitrovicë/Mitrovica,<sup>1010</sup> "someone from the village of Shirok of Suha Reka",<sup>1011</sup> and another person by the name of [REDACTED].<sup>1012</sup> In relation to the aforementioned individuals, TW4-02 stated that "I found them there and I left them there", clarifying that they were detained prior to his arrival and remained at the KMF after his release.<sup>1013</sup> The witness also stated that he saw both the "person from Suha Reka"

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<sup>1006</sup> **TW4-02:** 060664-TR-ET Part 2, p. 3, lines 19-22: "There were two rooms there. There was a hallway on the right-hand side, one on the left-hand side. [REDACTED]".

<sup>1007</sup> [REDACTED].

<sup>1008</sup> **TW4-02:** 060664-TR-ET Part 2, pp. 11-12; 060664-TR-ET Part 3, p. 26, lines 19-21; 060664-TR-ET Part 4, p. 18, line 16 to p. 19, line 15; 108850-TR-ET Part 1, pp. 10-11.

<sup>1009</sup> **TW4-02:** 060664-TR-ET Part 3, p. 23, line 21 to p. 24, line 17; 060664-TR-ET Part 4, p. 5, lines 13-22.

<sup>1010</sup> **TW4-02:** 060664-TR-ET Part 3, p. 23, line 21 to p. 24, line 17; 060664-TR-ET Part 4, p. 11, lines 3-16.

<sup>1011</sup> **TW4-02:** 060664-TR-ET Part 3, p. 23, line 21 to p. 24, line 17; 060664-TR-ET Part 4, p. 12, lines 2-9.

<sup>1012</sup> **TW4-02:** 060664-TR-ET Part 3, p. 23, line 21 to p. 24, line 17; 060664-TR-ET Part 4, p. 8, lines 4-15.

<sup>1013</sup> **TW4-02:** 060664-TR-ET Part 3, p. 24, line 4.



([REDACTED]) and the person called [REDACTED] after the war and that they are now both deceased ([REDACTED]).<sup>1014</sup>

544. The Panel finds TW4-02's evidence on the presence of [REDACTED] reliable as other witnesses' evidence, namely that of W01448 and TW4-04, corroborates TW4-02's account.<sup>1015</sup> Similarly, based on other evidence before it, the Panel considers that the person whom TW4-02 described as being from "Shirok or Suha Reka" is in fact [REDACTED].<sup>1016</sup> As a result, mindful of the consistent and mutually corroborative evidence of the witnesses, the Panel is satisfied that the evidence shows that TW4-02 was detained together with [REDACTED].

545. As regards the other individual, namely the person from Mitrovicë/Mitrovica, due to the limited evidence available, the Panel will address this evidence in Section VI.D.11 below.<sup>1017</sup>

546. In addition to the above co-detainees, TW4-02 also stated that other detainees during his time in detention included TW4-01, the Murder Victim, TW4-04, TW4-11 and two Roma brothers. [REDACTED].<sup>1018</sup> [REDACTED].<sup>1019</sup>

547. The Panel notes that TW4-02 gave a considerable number of details about some of the co-detainees, which were also provided by other witnesses. For example, TW4-02 stated that: (i) he was aware that [REDACTED] the Murder Victim (whom he identified by first name) had been detained and that the Murder Victim had died in

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<sup>1014</sup> **TW4-02:** 060664-TR-ET Part 3, p. 24, lines 5-10.

<sup>1015</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013858; **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013272, SITF00013277-SITF00013278; 064716-TR-ET Part 5 RED4, pp. 30-31; SITF00015825-00015925 RED, pp. SITF00015844, SITF00015854; SITF00013336-00013347 RED, p. SITF00013340.

<sup>1016</sup> Witness W01448 identified [REDACTED] as a co-detainee and gave additional personal details about him, including that [REDACTED]. **W01448:** SITF00013852-00013869 RED6, p. SITF00013858; SITF00013848-00013851 RED2, p. SITF0013848.

<sup>1017</sup> See para. 589 below.

<sup>1018</sup> [REDACTED].

<sup>1019</sup> [REDACTED].

detention in Room 1 ([REDACTED]), while other detainees were tortured and mistreated at the KMF;<sup>1020</sup> (ii) TW4-11 was a [REDACTED];<sup>1021</sup> and (iii) the Roma brothers “have always been good men”.<sup>1022</sup> The Panel finds it implausible that TW4-02 would be able to identify and describe with such specificity people he had never personally seen and/or interacted with, even assuming he would have had conversations about them after the events, which he said he did not have. Furthermore, as elaborated above, TW4-02’s assertion that he has never seen any of the above-mentioned co-detainees is directly contradicted by the evidence of both TW4-01 and TW4-04 who, independently identified TW4-02 as a co-detainee at the KMF during their own respective periods of detention.<sup>1023</sup> In light of the above, the Panel concludes that TW4-02’s own account in fact corroborates his detention at the KMF at the same time as TW4-01, the Murder Victim, the Roma brothers [REDACTED], and TW4-04.

548. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-02 was detained at the KMF at overlapping times with [REDACTED], [REDACTED], TW4-01, the Murder Victim, [REDACTED], [REDACTED], TW4-04 and TW4-11.

(d) Circumstances of release

549. According to TW4-02’s account, he only spent two or three days at the KMF before he was released.<sup>1024</sup> The Panel recalls its finding above that TW4-02 was likely

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<sup>1020</sup> **TW4-02:** 060664-TR-ET Part 2, p. 5.

<sup>1021</sup> **TW4-02:** 060664-TR-ET Part 5 RED4, p. 1, line 19-20.

<sup>1022</sup> **TW4-02:** 060664-TR-ET Part 5 RED4, p. 1, lines 20-21.

<sup>1023</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1434, lines 4-7; **TW4-04:** SITF00013262-00013315 RED, pp. SITF00013272, SITF00013278; 064716-TR-ET Part 3 RED4, p. 14; 064716-TR-ET Part 5 RED4, p. 30; SITF00015825-00015925 RED, pp. SITF00015844, SITF00015854-SITF00015855; SITF00013336-00013347 RED, p. SITF00013340.

<sup>1024</sup> **TW4-02:** 060664-TR-ET Part 2, p. 3, lines 21-22; p. 4, lines 23-24; 060664-TR-ET Part 5 RED4, p. 2, lines 4-8; 108850-TR-ET Part 1, p. 5, line 6.

detained sometime around [REDACTED]. As discussed above, the Panel finds TW4-02's account on the amount of time he spent at the KMF implausible.<sup>1025</sup> The Panel also notes that while it accepts that TW4-02 was released prior to TW4-04, it cannot rely on TW4-04's evidence to corroborate TW4-02 on the duration of his detention, because TW4-04 is also not reliable on this point.<sup>1026</sup> In contrast, the Panel finds TW4-01's testimony [REDACTED] reliable, as the witness was tested in court on this point and provided a clear and compelling explanation [REDACTED].<sup>1027</sup>

550. Similarly, regarding the circumstances of his release, the Panel notes the witness's claim that [REDACTED].<sup>1028</sup> The witness added: "Otherwise, I would have been eliminated".<sup>1029</sup> [REDACTED].<sup>1030</sup> [REDACTED].<sup>1031</sup> [REDACTED].

551. In light of the foregoing, taking the evidence as a whole, the Panel is persuaded that TW4-02 was released on or about mid-June 1999.

(e) Lack of procedural guarantees.

552. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, the Panel notes that according to TW4-02, he was never shown any documents containing allegations or charges levelled against him.<sup>1032</sup> The Panel equally notes that the witness maintained that, during his detention, he was questioned on a number of occasions in one of the offices of the Command Building by Mr Kryeziu, whom he knew personally from the past.<sup>1033</sup> During one interrogation

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<sup>1025</sup> See Section VI.D.9(a).

<sup>1026</sup> See para. 136 above.

<sup>1027</sup> [REDACTED].

<sup>1028</sup> [REDACTED].

<sup>1029</sup> **TW4-02:** 060664-TR-ET Part 2, p. 4. See similarly, 060664-TR-ET Part 5 RED4, p. 16.

<sup>1030</sup> [REDACTED].

<sup>1031</sup> [REDACTED].

<sup>1032</sup> **TW4-02:** 060664-TR-ET Part 5 RED4, p. 18.

<sup>1033</sup> **TW4-02:** 060664-TR-ET Part 2, pp. 11-12; 060664-TR-ET Part 3, p. 26, lines 19-21; 060664-TR-ET Part 4, p. 18, line 16 to p. 19, line 15; 108850-TR-ET Part 1, pp. 10-11.

session, the witness reported that Mr Kryeziu tried to help him by advising him to stay quiet and, in any event, not to confess to anything; in the witness's words: "By knowing me well, he would say: '[REDACTED]', shut up. Shut up because you do not know what is happening here'".<sup>1034</sup> According to TW4-02, Mr Kryeziu informed him that he was to be released and that he had been subjected to a verification procedure "completely in vain"; Mr Kryeziu then let TW4-02 go.<sup>1035</sup>

553. The Panel finds TW4-02's account to be persuasive, considering that it is specific and detailed, indicative of TW4-02 having personally lived through this episode. The Panel infers from the witness's account that Mr Kryeziu did not exercise the function of a judge or other competent authority *vis-à-vis* TW4-02, but rather that of a friend or acquaintance from the past. More importantly, the involvement of Mr Kryeziu in interviewing and questioning detainees at the KMF has been established *via* the assessment of TW4-04's and TW4-11's evidence.<sup>1036</sup>

554. As a result, in the Panel's assessment, the evidence unambiguously demonstrates that TW4-02 was not properly informed of the reasons for his deprivation of liberty.

555. As to the question whether TW4-02 was brought before a judge or other competent authority, and whether he had an opportunity to challenge the lawfulness of his detention, the Panel notes that Mr Kryeziu questioned TW4-02. As set forth above, the evidence clearly demonstrates that Mr Kryeziu was not in any way exercising independent oversight over the lawfulness of TW4-02's detention, as he had neither the power nor the function to do so; to the contrary, he was actively involved in trying to elicit information from the detainees and was present when they were mistreated.<sup>1037</sup> In this context, the Panel also observes that the witness did not

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<sup>1034</sup> **TW4-02:** 060664-TR-ET Part 2, p. 11, lines 7-8. The essence of this statement is repeated in the subsequent statement of **TW4-02:** 108850-TR-ET Part 1, p. 10.

<sup>1035</sup> **TW4-02:** 060664-TR-ET Part 5 RED4, p. 17.

<sup>1036</sup> See Sections VI.D.4(e) and VI.D.8(e).

<sup>1037</sup> See paras 351-353, 437 and 530 above.

suggest that his release came about as a result of his conversation with Mr Kryeziu; rather, Mr Kryeziu was at best warning him about the criminal activities taking place at the KMF and advising him to keep quiet in order to remain safe. As a result, the Panel concludes that TW4-02 was not brought before a judge or a competent authority for the purpose of controlling the lawfulness of his detention.

556. In light of the foregoing, taking the evidence as a whole, the Panel finds that TW4-02 was not informed of the reasons for his deprivation of liberty, was not brought promptly before a judge or other competent authority, and was not provided with an opportunity to challenge the lawfulness of his detention.

## 10. Other Detainees

557. The Panel recalls that, in the Confirmed Indictment, the SPO alleges that between approximately 17 May 1999 and 5 June 1999, Mr Shala and other KLA members deprived at least nine persons of their liberty without due process of law at the KMF.<sup>1038</sup> The Panel has received evidence that other persons, in addition to the ones discussed above, were detained at the KMF during the time frame of the charges. Hereunder, the Panel will enter its findings on other detainees held at the KMF throughout the relevant period.

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<sup>1038</sup> [Confirmed Indictment](#), para. 14.

(a) [REDACTED], [REDACTED] and a third Roma detainee

558. The Panel has received extensive and mutually corroborative evidence from witnesses including TW4 01,<sup>1039</sup> TW4-11,<sup>1040</sup> TW4-10,<sup>1041</sup> W04733,<sup>1042</sup> W01448,<sup>1043</sup> TW4-05<sup>1044</sup> and TW4-04<sup>1045</sup> regarding the detention of “three Roma musicians” at the KMF throughout the period relevant to the charges. The “three Roma musicians” were [REDACTED].<sup>1046</sup> First, the Panel recalls that it has taken judicial notice of the adjudicated fact that [REDACTED] were detained at the KMF.<sup>1047</sup> Furthermore, witnesses in this case provided a detailed and consistent account regarding the detention and treatment of these three individuals at the KMF. While not all witnesses identified them by name, many gave personal identifying details about them which were mutually corroborative.<sup>1048</sup> One witness visually identified one of them during

<sup>1039</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1414, line 16 to p. 1417, line 20; *see in particular* p. 1417, lines 5-8, where the SPO put to the witness a prior statement to refresh his memory; pp. 1431-1432.

<sup>1040</sup> **TW4-11**: T. 2 May 2023, confidential, pp. 1208-1209; T. 3 May 2023, confidential, pp. 1340-1341.

<sup>1041</sup> **TW4-10**: T. 1 May 2023, confidential, p. 1098, lines 5-19, referring to one Roma person being held in Room 1 of the Detention Building.

<sup>1042</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, pp. SPOE00013812-SPOE00013813, SPOE00013818-SPOE00013819; 082892-TR-AT-ET Part 4 RED3, pp. 5-6.

<sup>1043</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858. *See also*, SITF00016140-00016220 RED3, pp. SITF00016141, SITF00016143.

<sup>1044</sup> **TW4-05**: SITF00013123-SITF00013153 RED, pp. SITF00013129-SITF00013130, SITF00013132; SITF00372498-00372510 RED4, p. SITF00372500-SITF00372501.

<sup>1045</sup> **TW4-04**: SITF00015825-00015925 RED, p. SITF00015846; SITF00013336-00013347 RED, p. SITF00013340; SPOE00014669-00014751 RED, p. SPOE00014694-SPOE000146945; 064716-TR-ET Part 5 RED4, pp. 27.

<sup>1046</sup> The Panel notes that W01448 identifies the three persons by their first name; *see, for example*, **W01448**: SITF00016221-00016285 RED4, p. SITF00016225; SITF00013736-SITF00013800 RED5, p. SITF00013748.

<sup>1047</sup> [REDACTED].

<sup>1048</sup> This includes, *inter alia*, the fact that they were [REDACTED] (**W01448**: SITF00013852-00013869 RED6, p. 000013858); that they were [REDACTED] (**W04733**: U003-2283-U003-2289 RED2, p. U0032286; SPOE0013793-SPOE00013847 RED2, pp. SPOE00013812-SPOE00013813); that they played music at weddings (**TW4-11**: T. 2 May 2023, public, p. 1208-1209; **W01448**: SITF00013833-00013847 RED4, pp. SITF00013836-SITF00013837; **W04733**: SPOE00185335-00185363 RED3, pp. SPOE00185341-SPOE00185342); the father’s name [REDACTED] (**W01448**: SITF00013852-00013869 RED6, p. SITF0013858); and hearsay evidence about the reasons why they were allegedly held at the KMF (**TW4-01**: T. 30 May 2023, confidential, p. 1417: “I was told that they knew one of them was a paramilitary and was seen in a military jeep”).

his testimony.<sup>1049</sup> The Panel finds that given the witnesses' vivid, consistent and detailed description of these three persons, there is no reason to doubt the accuracy of their accounts. Accordingly, mindful of the evidence of TW4-01, TW-11, TW4-10, W04733, W01448, TW4-05 and TW4-04, the Panel finds that [REDACTED], [REDACTED] and a third Roma musician were detained at the KMF during the period relevant to the charges.

559. Regarding their initial apprehension, duration of their detention and their release, the Panel has received incomplete evidence. According to several witnesses' accounts, [REDACTED], [REDACTED] and the third Roma musician were already present at the KMF when the detainees discussed in this Judgment arrived.<sup>1050</sup> As to their release, the Panel notes a discrepancy between the evidence of TW4-05 on the one hand ([REDACTED]), and the evidence of W01448 on the other hand (indicating that they were already released a day earlier from the KMF).<sup>1051</sup> In this regard, the Panel takes the view that it is not necessary to establish the exact date of release and that the discrepancy is marginal and of no consequence. What is important is whether the evidence can establish that these three individuals were indeed detained at the KMF during the period relevant to the charges.

560. Regarding the location of their detention within the KMF, according to several witnesses, [REDACTED], [REDACTED] and the third Roma musician were kept in the Warehouse and in Room 1 of the Detention Building.<sup>1052</sup> They were also taken to

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<sup>1049</sup> **TW4-11**: T. 2 May 2023, public, p. 1209, lines 7-22, referring to 059341-059350, p. 059348.

<sup>1050</sup> See, for example, **TW4-11**: T. 2 May 2023, confidential, pp. 1208-1209; **W04733**: SPOE0013793-SPOE00013847 RED2, p. SPOE00013822; **W01448**: SITF00016221-00016285 RED4, p. SITF00016236.

<sup>1051</sup> See **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013135; SITF00372498-00372510 RED4, p. SITF00372502; cf. **W01448**: SITF00016140-00016220 RED 3, p. SITF00016155.

<sup>1052</sup> **TW4-01**: T. 30 May 2023, confidential, pp. 1414-1415, 1431-1433; **TW4-11**: 2 May 2023, public, p. 1208, line 22 to p. 1209, line 22; **W01448**: SITF00016221-00016285 RED4, pp. SITF00016225, SITF00016236; SITF00013852-00013869 RED6, pp. SITF00013858, SITF00013861; SITF00013736-SITF00013800 RED5, pp. SITF00013748, SITF00013761-SITF00013762; U003-2232-U003-2232-ET; **W04733**: SPOE0013793-

the Command Building for interrogation.<sup>1053</sup> [REDACTED], [REDACTED] and the third Roma musician were also forced to perform manual labour in the Warehouse and the courtyard.<sup>1054</sup>

561. In light of the foregoing, taking the evidence as a whole, the Panel is satisfied that [REDACTED], [REDACTED] and the third Roma musician were detained in Room 1 of the Detention Building. The Panel is equally satisfied that they were also detained in other locations of the KMF, as described above, during their interrogation and while they were providing forced labour.

562. Regarding the lack of procedural guarantees, the Panel notes that it has already found that TW4-01, TW4-11, the Murder Victim, W04733, W01448, TW4-05, TW4-04 and TW4-02 were deprived of their liberty at the KMF at various times throughout the period relevant to the charges without any of the basic guarantees to which they are entitled under international humanitarian law. Noting the overwhelming evidence of the co-detainees to this effect, and considering that [REDACTED], [REDACTED] and a third Roma musician were detained at the same time and under similar conditions as the aforementioned co-detainees, the Panel is convinced that, based on the evidence as a whole, the only reasonable conclusion is that no steps were undertaken to ensure that these three detainees were afforded any of these basic guarantees. To the contrary, [REDACTED], [REDACTED] and a third Roma musician were subjected to deplorable conditions of detention, beatings, interrogations, forced labour and other forms of mistreatment.<sup>1055</sup>

563. In light of the foregoing, taking the evidence as a whole, the Panel finds that during their time in detention, [REDACTED], [REDACTED] and a third Roma

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SPOE00013847 RED2, p. SPOE00013822; TW4-02: 060664-TR-ET Part 5 RED4, p. 1; TW4-10: 1 May 2023, public, p. 1098. *See also*, [List of Adjudicated Facts](#), Adjudicated Fact 53.

<sup>1053</sup> TW4-05: SITF00013123-SITF00013131 RED, p. SITF000131329-SITF00013130.

<sup>1054</sup> *See* Section VI.E.2(i).

<sup>1055</sup> *See* Sections VI.E.2(g) and VI.E.2(i).



musician were deprived of the basic procedural guarantees required under international humanitarian law.

(b) [REDACTED] and other female detainees

564. [REDACTED].<sup>1056</sup> [REDACTED],<sup>1057</sup> [REDACTED]. She was arrested at the KMF on or about [REDACTED] May 1999.<sup>1058</sup> [REDACTED].<sup>1059</sup>

565. Regarding the location of her detention within the KMF, the Panel has received credible evidence that she was kept in a location separate from Room 1 of the Detention Building.<sup>1060</sup> The Panel recalls that, [REDACTED], upon being arrested, [REDACTED] was held for one night in the Warehouse.<sup>1061</sup> In addition, according to TW4-04, at some point in May 1999, a young woman [REDACTED] was put in [REDACTED] Room 3 of the Detention Building.<sup>1062</sup> The Panel considers this to be [REDACTED], considering that there were not many female detainees at the KMF. W01448's evidence that [REDACTED] was kept in a different room from Room 1 is consistent with this account.<sup>1063</sup> This is further strengthened by TW4-01's testimony that [REDACTED] was held elsewhere.<sup>1064</sup>

566. Aside from Room 3, the Panel has heard evidence that [REDACTED] was detained in a location near the Kitchen.<sup>1065</sup>

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<sup>1056</sup> [REDACTED].

<sup>1057</sup> [REDACTED].

<sup>1058</sup> [REDACTED].

<sup>1059</sup> [REDACTED].

<sup>1060</sup> **TW4-01**: T. 30 May 2023, confidential, pp. 1421-1422, 1452.

<sup>1061</sup> See para. 380 above.

<sup>1062</sup> **TW4-04**: 064716-TR-ET PART 5 RED4, pp. 28-29; SITF00013262-00013315 RED, pp. SITF00013272-SITF00013273; SITF00015825-00015925 RED, p. SITF00015844; see also, para. 523 above.

<sup>1063</sup> **W01448**: SITF00016221-00016285 RED4, pp. SITF00016225, SITF00016235.

<sup>1064</sup> **TW4-01**: T. 30 May 2023, confidential, pp. 1421-1422.

<sup>1065</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1563, lines 9-19; T. 6 June 2023, confidential, p. 1916, lines 2-19. [REDACTED].

567. As established in detail in the Panel's evidentiary analysis on Counts 2 and 3, on or about 20 May 1999, [REDACTED] was brought to the Office where she was interrogated and severely mistreated.<sup>1066</sup> Accordingly, mindful of the evidence of TW4-01, TW4-04, and W01448, the Panel finds that [REDACTED] was detained in various locations within the KMF, including the Warehouse, in the Office of the Command Building, Room 3 of the Detention Building (for one night), and a location near the Kitchen.

568. Regarding the duration of [REDACTED] detention and the circumstances and date of her release, the Panel has received scant and incomplete evidence. The witnesses refer to her when describing co-detainees who were present during their respective detentions. When exactly [REDACTED] was released is not recorded. The Panel therefore takes a narrow approach and finds that [REDACTED] was detained while witnesses TW4-01, TW4-02, and W01448 were detained as well, and therefore during the period relevant to the charges.

569. Regarding the lack of procedural guarantees, the Panel observes that according to two witnesses, on or about 20 May 1999, while being mistreated, [REDACTED] was accused of having relationships with Serbs.<sup>1067</sup> During this incident, as developed elsewhere by the Panel,<sup>1068</sup> while she was being mistreated by other KLA members, Mr Shala demanded from [REDACTED] to make a confession [REDACTED].<sup>1069</sup> In light of the foregoing, and taking the evidence as a whole, which establishes that she was detained at the same time and under similar conditions as the aforementioned co-detainees, the Panel finds that throughout her detention at the KMF, [REDACTED]

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<sup>1066</sup> See Section VI.E.2(e).

<sup>1067</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013747.

<sup>1068</sup> See Sections VI.E.2(b) and VI.E.2(e).

<sup>1069</sup> See para. 720 below.

was deprived of the basic procedural guarantees provided for under international humanitarian law.

570. In addition to [REDACTED], the Panel has received evidence that other female detainees were kept in the Detention Building. According to TW4-01, “two sisters” from Đakovica/Gjakovë, who were in their early twenties, were detained, mistreated and interrogated in the Detention Building.<sup>1070</sup> The witness testified to seeing them briefly as they walked outside the window of the Detention Building. TW4-01 recalled that they “had been beaten up” and that he heard them crying.<sup>1071</sup> Consistent with TW4-01, witness W01448 stated that “two females who were close to our room were also beaten; we heard their screamings”.<sup>1072</sup> The Panel has received no other evidence regarding these two female detainees to support further findings about their identities, the duration of their detention or circumstances surrounding their release.

571. The Panel further notes that W01448 stated consistently and in detail that (another) female detainee, whose first name was [REDACTED], was mistreated in the Office, on or about 20 May 1999.<sup>1073</sup> The Panel cannot conclusively establish whether [REDACTED] was one of the “sisters from Đakovica/Gjakovë” or an additional detainee.

572. While the Panel cannot enter detailed findings regarding the above women’s identity, period of detention or location of detention within the KMF, it is nevertheless satisfied, based on the evidence before it, that in addition to [REDACTED], a woman whose first name was [REDACTED] and at least one other woman were detained in

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<sup>1070</sup> **TW4-01**: T. 31 May 2023, confidential, pp. 1565-1567.

<sup>1071</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1565-1566.

<sup>1072</sup> **W01448**: SITF00013833-00013847 RED4, p. SITF00013837.

<sup>1073</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013746-SITF00013747; SITF00016221-00016285 RED4, p. SITF00016235.

the Detention Building or elsewhere at the KMF throughout the time period relevant to the charges.

(c) [REDACTED]

573. Several witnesses, including TW4-01, W01448, and TW4-02 identify [REDACTED] as a co-detainee who was present during their respective periods of detention at the KMF. While TW4-01 testified that he does not recall the name of the person, he described the man as being from Suva Reka/Suharekë, tall, with a moustache and in his 50s.<sup>1074</sup> W01448 identified this man as [REDACTED] and gave additional personal details about him, including that [REDACTED].<sup>1075</sup> This is consistent with TW4-02's account.<sup>1076</sup>

574. Regarding the location of his detention, witnesses identify [REDACTED] as a co-detainee who was present in Room 1 and Room 3 of the Detention Building.<sup>1077</sup> In light of the evidence as a whole, the Panel is satisfied that [REDACTED] was indeed detained in Room 1 and Room 3 of the Detention Building at the KMF during the period relevant to the charges.

575. Regarding the duration of his detention and the circumstances of his release, the Panel notes that it has received no evidence pointing to a specific date but that W01448 stated that [REDACTED] was released by Xhemshit Krasniqi prior to 17 May 1999.<sup>1078</sup> Based on the evidence as a whole, the Panel is satisfied that [REDACTED] was detained at the KMF within the Confirmed Indictment period.

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<sup>1074</sup> **TW4-01**: T. 31 May 2023, public, p. 1538, lines 23-24.

<sup>1075</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858; *see similarly*, SITF00013848-00013851 RED2, p. SITF00013848.

<sup>1076</sup> **TW4-02**: 060664-TR-ET Part 4, p. 12; 060664-TR-ET Part 3, p. 24.

<sup>1077</sup> **TW4-01**: T. 31 May 2023, public, p. 1538; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013762; **TW4-02**: 060664-TR-ET Part 2, p. 3 and 060664-TR-ET Part 3, p. 24.

<sup>1078</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013757.

576. Regarding the question of procedural guarantees, the Panel first notes that it has received no evidence as to the circumstances of [REDACTED] arrest. Nevertheless, the Panel takes note of TW4-01's testimony that [REDACTED] was held on allegations of "keeping company with Serbs", while "his own son was a member of the KLA".<sup>1079</sup> According to TW4-01, he was asked the following question while being interrogated: "How come your son is fighting with us on the front and you are keeping company with the Serbs?"<sup>1080</sup> TW4-02 similarly stated that [REDACTED] was held at the KMF as "supposedly he had collaborated with the Serbs".<sup>1081</sup> Based on the above witness accounts, which the Panel finds credible and reliable, and considering that [REDACTED] detention follows the same pattern as others who were detained at the KMF on allegations of being spies or collaborators, the Panel finds that the only reasonable conclusion based on the evidence taken as a whole is that [REDACTED] was likewise not properly informed of the reasons for his arrest or detention. The Panel further notes TW4-01's testimony about the severe mistreatment suffered by [REDACTED] while in detention.<sup>1082</sup> Based on: (i) the above-cited mistreatment; (ii) the absence of procedural guarantees afforded to any other detainees; and (iii) the circumstances of his release, the Panel finds that the only reasonable conclusion based on the evidence taken as a whole is that [REDACTED] was not brought before a judge or competent authority, nor was he afforded the opportunity to challenge the lawfulness of his detention.

577. In light of the foregoing, and taking the evidence as a whole, the Panel finds that during his time in detention, [REDACTED] was deprived of the basic guarantees provided for under international humanitarian law.

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<sup>1079</sup> **TW4-01:** T. 31 May 2023, public, p. 1556, lines 12-13.

<sup>1080</sup> **TW4-01:** T. 31 May 2023, public, p. 1556, lines 18-19.

<sup>1081</sup> **TW4-02:** 060664-TR-ET Part 4, p. 12, lines 8-9.

<sup>1082</sup> **TW4-01:** T. 31 May 2023, public, p. 1538, lines 12 -24.

(d) [REDACTED]<sup>1083</sup>

578. Witnesses W01448, TW4-02, and TW4-04 provide mutually corroborative accounts regarding the detention of [REDACTED], during the period relevant to the charges.<sup>1084</sup>

579. Regarding the detention location of [REDACTED], the Panel notes that W01448, TW4-02 and TW4-04 identify him as being present in both Room 1 and Room 3. According to the statements of W01448, [REDACTED] was a co-detainee in Room 1,<sup>1085</sup> and was later moved to what W01448 calls the “girls room”<sup>1086</sup> – which the Panel interprets as a reference to Room 3.<sup>1087</sup> According to TW4-04’s account, [REDACTED] was detained in Room 3, [REDACTED].<sup>1088</sup> As already discussed, the Panel relies on TW4-04’s evidence in this regard and therefore finds that [REDACTED] was detained in Room 3 while at the KMF.

580. Regarding the duration of his detention and circumstances of release, while the Panel cannot conclusively establish the starting date of his detention, based on the evidence before it, the Panel is satisfied that [REDACTED] was liberated from the MUP building in Prizren by KFOR on 18 June 1999, alongside other detainees.<sup>1089</sup>

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<sup>1083</sup> [REDACTED].

<sup>1084</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858; **TW4-02**: 060664-TR-ET Part 3, pp. 23-24; 060664-TR-ET Part 4, pp. 5-7.

<sup>1085</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, pp. SITF00013761-SITF00013762.

<sup>1086</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858.

<sup>1087</sup> **W01448** describes the “girls room” as being located across the hallway from Room 1, which corresponds to the location of Room 3. His reference to a room where female detainees were kept is consistent with TW4-01’s testimony that “two sisters” from Đakovica/Gjakove were interrogated in Room 3 and beaten in Room 2. *See TW4-01*: 31 May 2023, confidential, p. 1565, line 18 to p. 1566, line 24. [REDACTED].

<sup>1088</sup> **TW4-04**: SITF00015825-00015925 RED, pp. SITF00015844, SITF00015846.

<sup>1089</sup> [REDACTED]; **W01448**: SITF00016221-00016285 RED4, p. SITF00016225; SITF00013852-00013869 RED6, pp. SITF00013858, SITF00013861, SITF00013863; SITF00013736-SITF00013800 RED5, p. SITF00013756; 064716-TR-ET Part 5 RED4, pp. 30-31.

581. Regarding the question of procedural guarantees, considering that all co-detainees were arrested and kept in similar conditions of detention, following the same operational pattern, and similar to W01448 [REDACTED] released in the context of the same operation in Prizren, the Panel finds that the only reasonable conclusion based on the evidence as a whole is that [REDACTED] was likewise not properly informed of the reasons for his arrest or detention, not brought before a judge or other competent authority, and not provided with an opportunity to challenge the lawfulness of his detention.

(e) [REDACTED]<sup>1090</sup> and [REDACTED]<sup>1091</sup>

582. The Panel notes that TW4-01 referred to [REDACTED] and [REDACTED] as two co-detainees held in the same room as him (Room 1).<sup>1092</sup> TW4-02 also referred to [REDACTED] as a co-detainee in Room 3, and provided additional personal details regarding his place of origin, nickname and activities before the conflict, which lends credence to his account.<sup>1093</sup> In his statements, W01448 also listed [REDACTED] and [REDACTED] as co-detainees in Room 1, alongside TW4-01 and the Murder Victim.<sup>1094</sup> Based on these three witness accounts, which the Panel finds credible and reliable in this respect, the Panel is satisfied that during the period relevant to the charges, [REDACTED] was detained in Rooms 1 and 3, whereas [REDACTED] was detained in Room 1 of the Detention Building of the KMF.

583. The Panel notes that it has not received any evidence regarding the circumstances surrounding the arrest of these persons, the duration of their detention, or details of their release. At least one witness, however, attested to [REDACTED]

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<sup>1090</sup> [REDACTED].

<sup>1091</sup> [REDACTED].

<sup>1092</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1433, line 15 to p. 1434, line 2.

<sup>1093</sup> **TW4-02:** 060664-TR-ET Part 4, pp. 5, 8-11.

<sup>1094</sup> **W01448:** SITF00016221-00016285 RED4, p. SITF00016237; U003-2232-U003-2232-ET.

being mistreated during his detention.<sup>1095</sup> The Panel finds such evidence reliable, in particular because it is consistent with the pattern of mistreatment of all other detainees held in the Detention Building. The Panel is therefore satisfied, taking into consideration the operational pattern followed for the arrest and detention of all detainees at the KMF, that [REDACTED] and [REDACTED] were not informed of the reasons of their arrest and detention, were not brought before a judge or other competent authority, and were not provided with an opportunity to challenge the lawfulness of their detention.

(f) Other alleged detainees

584. *FARK or KLA fighters*. The Panel has received evidence from TW4-01 and W01448 that, at some point during the Confirmed Indictment period, a group of FARK<sup>1096</sup> or KLA fighters<sup>1097</sup> were briefly detained in Room 1 of the Detention Building.<sup>1098</sup> They were accused of desertion and were severely mistreated.<sup>1099</sup>

585. *Serbian detainees*. The Panel notes that, in addition to other co-detainees discussed above, TW4-01 testified about the possible presence of Serbian detainees during his period of captivity at the KMF.<sup>1100</sup> Similarly, W04379 stated that an alleged member of a Serbian paramilitary unit was also briefly detained at the KMF.<sup>1101</sup>

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<sup>1095</sup> **TW4-02**: 060664-TR-ET Part 4, p. 10.

<sup>1096</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016238; SITF00013852-00013869 RED6, p. SITF00013860;

<sup>1097</sup> **TW4-01**: T. 31 May 2023, public, p. 1507, lines 6-15; p. 1512, lines 2-11; SITF00014088-00014120 RED, pp. SITF00014095-SITF00014096;

<sup>1098</sup> **Mr Kryeziu**: SITF00016908-00016964 RED, pp. SITF00016913-SITF00016914; SITF00013833-00013847 RED4, p. SITF00013837; SITF00013736-SITF00013800 RED5, p. SITF00013754.

<sup>1099</sup> **TW4-01**: 31 May 2023, confidential, pp. 1507, 1512; SITF00013852-00013869 RED6, p. SITF00013860; SITF00016221-00016285 RED4, p. SITF00016238; SITF00013736-SITF00013800 RED5, p. SITF00013759.

<sup>1100</sup> **TW4-01**: T. 6 June 2023, confidential, p. 1913.

<sup>1101</sup> **W04379**: 060124-TR-ET Part 2 Revised RED4, pp. 56-66.



586. Regarding the aforementioned detainees, the Panel finds that it has not received sufficient evidence to be able to make findings under Count 1 of the Confirmed Indictment.

## 11. Conclusion

587. In light of all the evidence taken as a whole, the Panel finds that the following individuals were deprived of their liberty by KLA members between approximately 17 May 1999 and 5 June 1999 at the KMF: TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED], [REDACTED] and a third Roma detainee, [REDACTED], [REDACTED] and at least one more female detainee, [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

588. Regarding the detention location, the evidence indicates that a number of places inside the KMF were used to detain individuals. Detainees were mostly held in the Detention Building. Within the Detention Building, Room 1 was the most densely occupied detention room; Room 2 was used as a place for interrogation/mistreatment; Room 3 was another detention room where fewer detainees were kept. To the extent that extensive interrogations and long-lasting beatings were conducted in the Office of the Command Building, this facility also constituted an effective location of detention. The Panel has also established that witnesses W04733, W01448 and the Murder Victim were held in the Command Building Detention Room for a short period of time. Lastly, considering the evidence as a whole, the Panel deems it wholly plausible that other rooms or locations within the KMF compound, such as the Warehouse or a location near the Kitchen, were used as detention spaces. Likewise, the courtyard, where [REDACTED] and a third Roma detainee were forced to work, was also a place of detention.

589. Regarding the total number of detainees held at the KMF throughout the period relevant to the charges, the Panel determines that the evidence unequivocally proves

that persons at the KMF were detained and released on an ongoing basis. Some individuals were detained for a few days, while others were held for up to a month. The total number of individuals who were detained at the KMF during the period relevant to the charges is unknown, but was estimated to be around 40 people.<sup>1102</sup> At times, up to 13 detainees were held in a single room.<sup>1103</sup>

590. In the Panel's assessment, the arrest and detention of individuals kept at the KMF followed an operational pattern: detainees were arrested at their place of residence, on the street, upon arrival at the Durrës port, [REDACTED] or wherever they had found shelter after being expelled from Kosovo. The circumstances of arrest for a number of detainees suggest that investigations about their whereabouts were made ahead of time. Detainees were transferred to the KMF or arrested while inside the KMF. They were apprehended and interrogated on vague allegations of sympathizing or otherwise being associated with Serbia, "Serbs", or Serbian authorities, or being "traitors" or "collaborators" or not being sufficiently supportive of the KLA effort – be it financially, militarily or politically. As also discussed under Counts 2 and 3, these individuals were mistreated and detained either until the people in charge of their detention decided that they could be released, or until they were eventually liberated through external interventions.<sup>1104</sup> While in detention, the aforementioned individuals were subjected to similar conditions of detention and mistreatment, ranging from appalling conditions in the detention rooms to beatings and shootings.<sup>1105</sup>

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<sup>1102</sup> See footnote 766 above. The Panel notes that a number of witnesses mention additional detainees being held at the KMF, on whom the Panel has not entered further findings (see paras 391 and 487 above). Based on the evidence as a whole, the Panel is of the view that there were more detainees held at the KMF than the individuals discussed in this judgment.

<sup>1103</sup> See para. 427 above.

<sup>1104</sup> See Sections VI.E.2 and VI.E.4.

<sup>1105</sup> See Sections VI.E.1, VI.E.2(a) and VI.E.4.

591. Lastly, the Panel finds that a number of detainees, including TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED], [REDACTED] and a third Roma detainee, [REDACTED], [REDACTED] and at least one more female detainee, [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were deprived of all basic procedural guarantees to which they were entitled while in detention, pursuant to international humanitarian law. Specifically, they were not properly informed of the reasons for their deprivation of liberty, were not brought promptly before a judge or other competent authority, and were not provided with an opportunity to challenge the lawfulness of their detention.

#### E. CRUEL TREATMENT AND TORTURE (COUNTS 2 AND 3)

592. In what follows, the Panel will assess the evidence and enter its factual findings regarding Counts 2 and 3 of the Confirmed Indictment, specifically as to whether the detainees at the KMF – including TW4-01, the Murder Victim, W04733, W01448, [REDACTED] and another female detainee – were held in inhumane conditions and were physically and psychologically assaulted by Mr Shala and other members of the KLA, between approximately 17 May 1999 and 5 June 1999.<sup>1106</sup> The Panel will discuss: (i) the conditions of detention prevailing at the KMF; and (ii) the physical and psychological mistreatment inflicted on the detainees.

##### 1. Conditions of Detention

593. The Panel will discuss, in turn: (a) the living and sleeping conditions; (b) the provision of food and water; (c) the hygienic conditions and access to sanitary

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<sup>1106</sup> [Confirmed Indictment](#), paras 18-24, 26.

facilities; (d) access to medical care; and (e) the extent to which the detainees could interact and talk to each other while in detention.

(a) Living and sleeping conditions

594. The Panel established in its factual findings regarding arbitrary detention (Count 1) that TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED] and a third Roma musician, [REDACTED], and at least one more female detainee, were held in the Command Building Detention Room, Rooms 1 and 3 of the Detention Building as well as in other locations within the KMF compound.<sup>1107</sup>

595. In making its factual findings regarding the detention conditions, the Panel lays emphasis on the conditions of detention prevailing in the Detention Building, notably in Room 1, where the majority of the detainees were kept.<sup>1108</sup>

i. Conditions in the Command Building Detention Room

596. The Panel recalls that, during the time frame relevant to the charges, a limited number of individuals, *i.e.* the Murder Victim, W04733 and W01448 and the Murder Victim, were detained in the Command Building Detention Room.<sup>1109</sup>

597. TW4-01 explained during his testimony that, although he did not personally see the Command Building Detention Room, the Murder Victim described it to him as “a small room under the stairs”.<sup>1110</sup> The Panel considers TW4-01’s hearsay evidence, obtained from the Murder Victim contemporaneously, to be sound evidence as it is corroborated by W01448 and W04733, whose statements are more detailed in this

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<sup>1107</sup> See paras 587-588 above.

<sup>1108</sup> See para. 588 above.

<sup>1109</sup> See para. 588 above.

<sup>1110</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1471, lines 2-11; T. 6 June 2023, confidential, p. 1915, lines 9-17.

regard. In particular, W01448 and W04733 described the Command Building Detention Room in a mutually corroborative manner as being very small, with no furniture.<sup>1111</sup> According to W01448, the detainees did not have enough space to move around and, when they wanted to lie down, they had to take turns.<sup>1112</sup> W04733's description of the room is telling: "Not a small room but a very tiny room".<sup>1113</sup> Furthermore, W01448 and W04733 distinctly recalled that the Command Building Detention Room had a very low ceiling.<sup>1114</sup> W01448 explained that, as a result, the detainees could not stand straight up.<sup>1115</sup> Considering the detail of their accounts and given that the witnesses corroborate each other, the Panel finds no reason to doubt the personal experiences of W04733 and W01448.

598. Furthermore, according to the statements of W04733 and W01448, there was no electricity or windows in the Command Building Detention Room, and, thus, no light.<sup>1116</sup> As W04733 explained, "the only light came from under the door from the

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<sup>1111</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016221-00016285 RED4, p. SITF00016229; **W04733:** SITF00019824-00019876 RED2, p. SITF00019829; SPOE00013793-SPOE00013847 RED2, p. SPOE00013809; 082892-TR-AT-ET Part 5 RED2, p. 3, lines 19-22.

<sup>1112</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016140-00016220 RED3, p. SITF00016145.

<sup>1113</sup> **W04733:** SPOE00013793-SPOE00013847 RED2, p. SPOE00013809.

<sup>1114</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013741; SITF00016140-00016220 RED3, p. SITF00016144; **W04733:** SITF00019824-00019876 RED2, p. SITF00019830. The Panel notes that the witnesses' accounts differ as to whether the room's low ceiling was due to the fact that the room was located under the stairs or under the roof. The Panel considers that such differences between the witnesses' statements are the natural result of the passage of time and reflect each witness's personal recollection of the physical structure of the room, which differs for each witness depending on his or her traumatic experience of mistreatment. In any case, this inconsistency has no consequence on the Panel's findings, as the witnesses are consistent on key aspects of their description of the room, including its size and location on the first floor of the Command Building. Whether the room was located under the stairs or simply under the roof is of marginal importance to the determination of the charges.

<sup>1115</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016221-00016285 RED4, p. SITF00016229; SITF00016140-00016220 RED3, pp. SITF00016144-SITF00016145.

<sup>1116</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016140-00016220 RED3, p. SITF00016145; **W04733:**

corridor".<sup>1117</sup> W01448 further recounted in his statements that, upon his arrival in the Command Building Detention Room, he found bottles filled with urine and dirty blankets.<sup>1118</sup> He further stated that when it was raining outside, the room was cold but, later during his detention, the temperatures inside the room were very high.<sup>1119</sup> The Panel finds the evidence reliable as the witnesses described the Command Building Detention Room in a convincingly detailed and clear manner.

599. The Panel observes that the witnesses' statements differ, but only marginally, with regard to the sleeping conditions. W01448 recalled that there were thin mattresses made from sponge inside the room,<sup>1120</sup> whereas W04733 stated that the detainees would sleep on tarpaulin.<sup>1121</sup> The Panel considers that such differences are the natural result of the passage of time and they reflect each witness's personal recollection of the traumatic events they experienced. From this perspective, these differences strengthen the credibility of the witnesses, rather than weakening it. Further, the Panel is of the view that such discrepancies do not relate to matters of consequence and, therefore, do not impact the reliability of the witnesses' account. Accordingly, the Panel is convinced that both witnesses truthfully attested to the sleeping conditions in the Command Building Detention Room.

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SPOE00013793-SPOE00013847 RED2, p. SPOE00013809; SITF00019824-00019876 RED2, p. SITF00019831.

<sup>1117</sup> **W04733**: SITF00019824-00019876 RED2, p. SITF00019831.

<sup>1118</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013741; SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016221-00016285 RED4, p. SITF00016229; SITF00016140-00016220 RED3, p. SITF00016144.

<sup>1119</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016140-00016220 RED3, p. SITF00016145.

<sup>1120</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016229; SITF00016140-00016220 RED3, p. SITF00016144.

<sup>1121</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 21, lines 1-3.

## ii. Conditions in Room 1

600. As established by the Panel under Count 1, Room 1 is where most of the detainees were held.

601. The evidence provided by TW4-01, W04733, W01448, TW4-11 and TW4-05 regarding the size of Room 1 reveals that there was not enough space for the detainees to rest or sleep, especially considering that, according to evidence available to the Panel, at a given moment, the number of the detainees held in this room rose to 13.<sup>1122</sup> Similarly, all the witnesses recalled that there was no furniture in Room 1 and that the floor was made of concrete.<sup>1123</sup> TW4-01 explained that the building was so old that the concrete floor was broken, a distinct detail corroborated by W01448's statement.<sup>1124</sup> The witnesses also consistently recounted that the room had two barred windows, without any glass.<sup>1125</sup> W01448 explained that inside Room 1 it was "disastrously hot".<sup>1126</sup> "For the old people there it was harder [...] I fell unconscious many times

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<sup>1122</sup> **TW4-01**: T. 30 May 2023, public, p. 1431, lines 15-16; p. 1432, lines 8-11; **TW4-11**: T. 2 May 2023, public, p. 1199, lines 12-13; **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013748, SITF00013750; SITF00016140-00016220 RED3, pp. SITF00016145-SITF00016146; SITF00374558-00374558, p. SITF00374558; **W04733**: 106978-107020, p. 106990; SPOE00013793-SPOE00013847 RED2, p. SPOE00013822; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013129. Regarding the number of detainees in particular, *see* amongst other **TW4-01**: T. 30 May 2023, public, p. 1431, lines 15-16; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013748; SITF00013833-00013847 RED4, p. SITF00013837.

<sup>1123</sup> **TW4-01**: T. 30 May 2023, public, p. 1430, lines 19-21; **TW4-11**: T. 2 May 2023, public, p. 1218, lines 11-12; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013749; SITF00016140-00016220 RED3, p. SITF00016146; **W04733**: 106978-107020, p. 106990; SPOE00013793-SPOE00013847 RED2, p. SPOE00013822; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013130.

<sup>1124</sup> **TW4-01**: T. 30 May 2023, public, p. 1430, lines 19-21; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013749.

<sup>1125</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1423, lines 16-22; T. 30 May 2023, public, p. 1430, lines 22-24; p. 1431, line 1; **TW4-11**: T. 2 May 2023, public, p. 1199, line 12; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013749; SITF00016140-00016220 RED3, p. SITF00016147; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013130. Contrary to the evidence provided by all the other witnesses, TW4-11 testified only to the existence of one window. The Panel does not find TW4-11's recollection in this regard problematic and considers that, whether the room had one or two windows, has no consequence for the Panel's findings on the charges.

<sup>1126</sup> **W01448**: SITF00016140-00016220 RED3, p. SITF00016147.

there because of the hot temperature inside”, he added.<sup>1127</sup> When asked about the living conditions inside Room 1, W04733 replied: “They were such that even animals or cattle would not stay there”.<sup>1128</sup> The witnesses’ consistent evidence persuades the Panel that they were honest and credible regarding the characteristics of Room 1.

602. As regards the sleeping conditions, TW4-01 testified that, although the detainees initially were provided with blankets to sleep on, these blankets were later removed from the room.<sup>1129</sup> TW4-11’s account is similar. He testified in court that, in addition to blankets, the detainees were also provided with thin mattresses made of sponge,<sup>1130</sup> both of which were later removed from the room.<sup>1131</sup> TW4-05’s and W04733’s accounts further corroborate the existence of thin mattresses and blankets.<sup>1132</sup> W04733 recalled in this respect: “Two or three of us shared a blanket”.<sup>1133</sup> The Panel considers that it can rely on the aforementioned witnesses’ evidence because it is mutually corroborative.

603. However, the Panel has also received a slightly different account from W01448, according to whom the detainees slept on the concrete floor without any mattresses or blankets.<sup>1134</sup> The Panel finds that this inconsistency is isolated in nature, does not relate to matters of consequence and, therefore, does not impact the reliability of the witness’s evidence. As a result, the Panel also relies on the evidence of W01448, who

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<sup>1127</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013750.

<sup>1128</sup> **W04733**: 106978-107020, p. 106990.

<sup>1129</sup> **TW4-01**: T. 30 May 2023, public, p. 1430, line 17; p. 1431, lines 3-7; p. 1432, lines 16-20.

<sup>1130</sup> **TW4-11**: T. 2 May 2023, public, p. 1218, lines 8-16.

<sup>1131</sup> **TW4-11**: T. 3 May 2023, public, p. 1241, lines 17-19; p. 1289, lines 10-13.

<sup>1132</sup> **W04733**: 106978-107020, pp. 106990, 106708; SPOE00013793-SPOE00013847 RED2, p. SPOE00013822; 082892-TR-AT-ET Part 9 RED2, p. 8, line 22 to p. 9, lines 1-7; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013129.

<sup>1133</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013822.

<sup>1134</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013749; SITF00016140-00016220 RED3, p. SITF00016146; SITF00013852-00013869 RED6, p. SITF00013858.



clearly confirms the deplorable living and sleeping conditions that were prevalent in Room 1.

604. The Panel has also received ample evidence that the detainees held in Room 1 were unable to sleep during the night as different KLA members and fighters returning from the front would harass the detainees through the windows or enter their room and mistreat them until the early hours of the morning.<sup>1135</sup> TW4-01's testimony is revealing: "We would close our eyes to sleep, but we actually did not sleep. Could not sleep. I don't know if we could actually sleep for five minutes. You would have people coming and swearing at you, using offensive language against you through the window. [...] we were expecting at every moment that the door will open and that the beating will begin".<sup>1136</sup> W04733 also explained in one of his statements that KLA members "would come inside [Room 1] telling us not to sleep, telling us to stand up, and they would beat us".<sup>1137</sup> Further attesting to the continuous mistreatment they suffered, W01448 recalled: "every night this happened, [KLA members] ordering us to beat each other and them beating us. They were coming drunk".<sup>1138</sup>

605. Considering the detailed and mutually corroborative nature of their evidence, the Panel is convinced that TW4-01, W04733, W01448, TW4-11 and TW4-05 truthfully described their personal experiences.

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<sup>1135</sup> See paras 641-643, 648 below and references therein.

<sup>1136</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1539, lines 5-14.

<sup>1137</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013825.

<sup>1138</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013754.

## iii. Conditions in Room 3

606. [REDACTED], who were amongst the detainees held in Room 3 during the time frame relevant to the charges, provided mutually corroborative evidence regarding the conditions in Room 3.

607. More specifically, [REDACTED] described Room 3 as an old, small and humid room, with no electricity.<sup>1139</sup> He recalled that Room 3 had large windows.<sup>1140</sup> [REDACTED] also recounted that, in contrast with the rest of his co-detainees in Rooms 1 and 3, who slept on the floor, he was provided with a mattress to sleep on.<sup>1141</sup> The Panel also received evidence from [REDACTED] who, similarly to [REDACTED], stated that the detainees in Room 3 would sleep on the cement floor, using only some blankets.<sup>1142</sup> The witness also recalled that Room 3 had no furniture or beds and was “[t]errribly warm”.<sup>1143</sup> He also remembered that it had one small window with iron bars.<sup>1144</sup>

608. The Panel is satisfied that [REDACTED] provided first-hand information based on their personal experiences and relies on their evidence with regard to the physical properties of Room 3. The Panel finds that the discrepancy in the witnesses’ accounts as regards the existence of one or more windows does not relate to matters of consequence and, therefore, does not impact the reliability of the witnesses’ evidence.

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<sup>1139</sup> [REDACTED].

<sup>1140</sup> [REDACTED].

<sup>1141</sup> [REDACTED].

<sup>1142</sup> [REDACTED].

<sup>1143</sup> [REDACTED].

<sup>1144</sup> [REDACTED].

iv. Other locations

609. The Panel recalls that [REDACTED] were also detained [REDACTED] at the Warehouse and that [REDACTED] was also held in another location near the Kitchen.<sup>1145</sup> The Panel considers that, by their very nature, these buildings were not suitable for detaining people. However, considering that it has not received sufficient evidence regarding the living and sleeping conditions at the Warehouse and the Kitchen, the Panel will not enter any findings in this regard.

610. The Panel further recalls that it established above that a female detainee, named [REDACTED], was held at the KMF during the time frame of the charges. The Panel notes that it has not received any evidence regarding [REDACTED]'s exact location and conditions of her detention.<sup>1146</sup> However, in light of the abundance of mutually corroborative evidence establishing that the detainees at the KMF were held in insufficient and inadequate living and sleeping conditions, the Panel finds that the only reasonable conclusion is that [REDACTED] was held under similar conditions, especially considering that, like the rest of the detainees, [REDACTED] was severely mistreated, interrogated and had accusations levied against her during her detention at the KMF.<sup>1147</sup>

v. Final remarks and conclusion

611. The Defence's argues that the accommodation conditions were also poor for members of the KLA, which the Defence bases on the account of Mr Mark Shala, according to whom, "there was very little there in terms of beds".<sup>1148</sup> The Panel emphasizes, in this regard, that the deplorable living and sleeping conditions of the

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<sup>1145</sup> [REDACTED].

<sup>1146</sup> See paras 571-572 above.

<sup>1147</sup> See Section VI.E.2(e).

<sup>1148</sup> Defence Final Trial Brief, para. 107, citing **Mr Mark Shala**: T. 23 October 2023, public, p. 2957, line 13 to p. 2958, line 10.

detainees extended beyond the absence of beds or mattresses. The Command Building Detention Room was so small that it was impossible for the detainees to even stand up or lie down. There was no window and, as a result, no light. Inside Room 1, the detainees were also held in cramped conditions and were unable to rest or to sleep properly. Although thin mattresses and some blankets were provided at a certain moment to the detainees, they were later removed. The detainees were further prevented from sleeping due to the constant physical and psychological abuse they experienced, especially at night.

612. On the contrary, the testimonies of Mr Mark Shala and Mr Hoxha reveal that, even though the number of beds available at the KMF was not sufficient for every KLA member, the latter did not have the same living and sleeping conditions as the detainees. More precisely, according to Mr Mark Shala and Mr Hoxha, senior members of the KLA were sleeping in beds located in the offices of the Command Building.<sup>1149</sup> As for the rest of the KLA members present at the KMF, Mr Mark Shala testified that, although the beds were not enough to accommodate all of them, they were, nevertheless, given mattresses, sleeping bags, blankets and pillows.<sup>1150</sup> In light of the evidence discussed above, the Panel concludes that the detainees' living and sleeping conditions were in no way comparable to those of the KLA members.

613. In light of the foregoing, the Panel finds, based on the evidence before it, that the living and sleeping conditions at the KMF, including in the Command Building Detention Room, and in Rooms 1 and 3 of the Detention Building, were wholly inadequate and degrading.

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<sup>1149</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2924, line 24 to p. 2926, line 4; p. 2926, lines 18-23; **Mr Hoxha:** T. 20 November 2023, public, p. 3181, line 17 to p. 3182, line 10; p. 3214, lines 11-22.

<sup>1150</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2957, line 13 to p. 2958, line 10.

## (b) Food and drinking water

614. TW4-01, W04733, W01448 and TW4-04 in particular, provided highly detailed, graphic and mutually corroborative evidence regarding the provision of food at the KMF during the relevant period in time. TW4-01 testified: “I don’t remember eating a lot. I think they gave us food once a week or once in two weeks”.<sup>1151</sup> The lack of food is equally described by other witnesses. W01448 explained in his statement that on some days the detainees would not receive any food at all, whereas on other days they would eat the leftover food of the KLA members.<sup>1152</sup> His account is telling: “It would happen sometimes that there were two people sharing one boiled egg”.<sup>1153</sup> Both W01448 and W04733 recalled that, on certain occasions, the detainees were given only canned fish to eat.<sup>1154</sup> W04733 added: “The only one time they gave us a real meal – it was bean soup – just as we started to eat, a completely crazy KLA soldier [...] kicked the plate I was eating from, spilling the soup all over me and then he kicked me”.<sup>1155</sup> His account is corroborated by W01448 who was present during the incident.<sup>1156</sup>

615. TW4-01, W01448 and W04733 further explained in similar words that the water they were given was not enough for all the detainees.<sup>1157</sup> TW4-01 testified: “We had some bottles. [...] But there was very little water. We were six to seven, also at one point twelve people. The amount of water that we had there was not sufficient for all

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<sup>1151</sup> **TW4-01**: T. 30 May 2023, public, p. 1431, lines 8-11.

<sup>1152</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013751.

<sup>1153</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013751.

<sup>1154</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013751; **W04733**: 106978-107020, p. 106990; 082892-TR-AT-ET Part 4 RED3, p. 21, lines 4-6; 082892-TR-AT-ET Part 9 RED2, p. 15, lines 14-15.

<sup>1155</sup> **W04733**: 082892-TR-AT-ET Part 9 RED2, p. 9, lines 8-18. *See also*, SPOE00185335-00185363 RED3, p. SPOE00185339; SITF00018740-00018767 RED, p. SITF00018745; SPOE00013793-SPOE00013847 RED2, p. SPOE00013841.

<sup>1156</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859; SITF00013736-SITF00013800 RED5, p. SITF00013761.

<sup>1157</sup> **TW4-01**: T. 30 May 2023, public, p. 1431, lines 14-17; **W04733**: 106978-107020, p. 106990; SPOE00013793-SPOE00013847 RED2, p. SPOE00013823; 082892-TR-AT-ET Part 4 RED3, p. 21, lines 8-9; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013752.

of us".<sup>1158</sup> Referring to his detention in the Command Building Detention Room, W04733 explained in his statement: "They brought us water, a plastic bottle each. And that's how three days passed in there"<sup>1159</sup> W01448 stated regarding access to water: "We were afraid to ask for water in the first room; we had to ask many people until they brought it from the water supply truck".<sup>1160</sup> TW4-01 and W01448 further recounted that, during their detention in Room 1, the detainees would go to a water tank outside the room in order to fill some bottles with water and bring them back.<sup>1161</sup> As to whether they were allowed by the KLA members guarding them to refill the bottles, TW4-01 replied: "that depended on them, whether they wanted to provide the water".<sup>1162</sup> In this regard, W01448 provided evidence that, on their way to the water tank, which was located near the toilets, the detainees were beaten and harassed by a KLA member.<sup>1163</sup> He recalled: "[I]f we wanted to drink water we had to go to the toilet, and if we went there he would stab us. So, we would stay thirsty just to not face that".<sup>1164</sup> The account of W01448 is corroborated by TW4-02, who also provided evidence that he was harassed when going to the toilet.<sup>1165</sup>

616. Considering the detailed and mutually corroborative nature of their evidence, the Panel finds no reason to doubt the veracity of the personal experiences recounted by TW4-01, TW4-02, W04733 and W01448.

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<sup>1158</sup> **TW4-01**: T. 30 May 2023, public, p. 1431, lines 14-17.

<sup>1159</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 21, lines 8-9.

<sup>1160</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013752.

<sup>1161</sup> **TW4-01**: T. 30 May 2023, public, p. 1431, lines 13-21; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013752; SITF00016140-00016220 RED3, p. SITF00016146. *See also*, **TW4-11**: T. 2 May 2023, public, p. 1207, lines 6-7.

<sup>1162</sup> **TW4-01**: T. 30 May 2023, public, p. 1431, lines 20-21.

<sup>1163</sup> **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013750, SITF00013752; SITF00016140-00016220 RED3, pp. SITF00016146-SITF00016147; SITF00013852-00013869 RED6, p. SITF00013858; SITF00013833-00013847 RED4, p. SITF00013838.

<sup>1164</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013750.

<sup>1165</sup> **TW4-02**: 060664-TR-ET Part 3, p.27.

617. TW4-01, W04733 and W01448 further explained that, due to the scarcity of food and water, they lost a lot of weight during their detention.<sup>1166</sup> TW4-01 testified in this regard: “When I went back home, I didn’t weigh more than 45 or so kilos”.<sup>1167</sup> The dramatic weight loss suffered by TW4-01 is corroborated by [REDACTED]. [REDACTED].<sup>1168</sup> According to W01448, he also lost 14 to 17 kilos during his detention at the KMF.<sup>1169</sup> He explained: “I could tell by looking at my body, but when we came back to church in Prizren I checked my weight there”.<sup>1170</sup> Similarly, W04733 stated: “We were more hungry than fed. [...] I lost over 16 kg in 10 days”.<sup>1171</sup> His account is corroborated by his Family Members.<sup>1172</sup> TW4-09 testified about seeing his father for the first time after he was released: “He used to be strong physically, and he had lost a lot of weight and appeared weakened”.<sup>1173</sup> The Panel also received a similar account from TW4-04, who recounted that he lost a lot of weight during his detention.<sup>1174</sup> He explained regarding the food: “[i]t wasn’t good at all, soup full of water”.<sup>1175</sup> “I only ate once a day”, he added.<sup>1176</sup>

618. The Panel finds that the weight loss of TW4-01, W04733, W01448 and TW4-04 is attributable to the lack of sufficient food and water during their detention at the KMF.

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<sup>1166</sup> **TW4-01:** T. 31 May 2023, public, p. 1552, line 22; **W01448:** SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, p. SITF00013751; **W04733:** SPOE00013793-SPOE00013847 RED2, p. SPOE00013823.

<sup>1167</sup> **TW4-01:** T. 31 May 2023, public, p. 1552, line 22.

<sup>1168</sup> [REDACTED].

<sup>1169</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013751; SITF00013852-00013869 RED6, p. SITF00013858.

<sup>1170</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013751.

<sup>1171</sup> **W04733:** SPOE00013793-SPOE00013847 RED2, p. SPOE00013823.

<sup>1172</sup> **TW4-08:** T. 27 March 2023, public, p. 667, lines 9, 17; **TW4-06:** T. 28 March 2023, confidential, p. 824, line 13. **TW4-07:** T. 29 March 2023, public, p. 911, line 7; **TW4-09:** T. 30 March 2023, public, p. 988, lines 24-25.

<sup>1173</sup> **TW4-09:** T. 30 March 2023, public, p. 988, lines 24-25.

<sup>1174</sup> **TW4-04:** SITF00013262-00013315 RED, p. SITF00013275; SPOE00014669-00014751 RED, p. SPOE00014692.

<sup>1175</sup> **TW4-04:** SITF00013262-00013315 RED, p. SITF00013275.

<sup>1176</sup> **TW4-04:** SITF00013262-00013315 RED, p. SITF00013275.

The weight loss of TW4-01 and W04733 is confirmed independently by [REDACTED] W04733's relatives, namely [REDACTED], TW4-06, TW4-07, TW4-08 and TW4-09, who saw the detainees after their release. The Panel is therefore persuaded that the evidence regarding the weight loss suffered by TW4-01, W04733, W01448 and TW4-04 regarding their weight loss is reliable.

619. The Defence argues that TW4-01,<sup>1177</sup> W04733, TW4-05, TW4-10 and Mr Mark Shala provided conflicting evidence as to the quantity of food available at the KMF.<sup>1178</sup> Citing the testimony of Mr Mark Shala and TW4-10 in particular, the Defence further argues that the lack of food also affected the KLA members present at the KMF.<sup>1179</sup>

620. The Panel is unpersuaded by the Defence's submissions that the evidence pertaining to the availability of food at the KMF is contradictory. TW4-01, W04733, W01448 and TW4-04 provided clear and consistent evidence that they received inadequate amounts of food and, on some days, they received no food at all, as a result of which they lost a lot of weight. At the same time, Mr Mark Shala, the chief of logistics at the KMF, testified that, although on certain occasions the KLA members did not eat cooked meals, they still had access to canned food "or whatever there was in our warehouses".<sup>1180</sup> He further attested to the existence of a kitchen staffed with "cooks and other assistant personnel" who prepared and distributed the food to the KLA members.<sup>1181</sup> The existence of a well-organized kitchen is also corroborated by

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<sup>1177</sup> The Panel observes that the Defence relies on a statement of TW4-01 contained in an official note from the SPO that was disclosed to the Defence, Victims' Counsel and the Panel. The Panel notes, however, that this document is not available for consideration for the purposes of the Judgment, as neither the Parties nor Victims' Counsel requested its admission pursuant to the rules set out in the [Framework Decision on Evidence](#).

<sup>1178</sup> Defence Final Trial Brief, para. 109.

<sup>1179</sup> Defence Final Trial Brief, para. 109.

<sup>1180</sup> **Mr Mark Shala**: T. 25 October 2023, public, p. 3143, lines 11-14.

<sup>1181</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2951, lines 2-8.



the evidence of Mr Hoxha who worked at the Warehouse under the supervision of Mr Mark Shala.<sup>1182</sup> In fact, Mr Hoxha stated during his testimony in court: “we could have food there all the time. Breakfast, lunch, dinner, everything was served there, actually, at the factory”.<sup>1183</sup> The Panel, thus, finds that, although cooked meals were not always available, there was no shortage of food at the KMF during the time frame of the charges. The Panel is, thus, left with no doubt that the insufficient amount of food provided to the detainees was in fact not the result of necessity, but rather a policy implemented by the KLA members in charge of the detainees.

621. As regards the Defence’s submissions that the detainees had access to drinking water, when available, the Defence refers to a report from the European Community Monitoring Mission, dated 24 May 1999, that documented the water supply shortage in the town of Kukës at the relevant time.<sup>1184</sup> The Panel finds that, contrary to the Defence’s submissions, there is no evidence suggesting that any shortage of water affected the KMF or that the water supply at the compound was insufficient. On the contrary, the evidence before the Panel, as discussed above, reveals that a water tank was located just outside the Detention Building and that water was available. In this light, the Panel finds that the restrictions placed on the detainees’ access to water was a policy implemented by the KLA members in charge of the detainees, rather than one borne out of necessity. The Panel, therefore, rejects the Defence’s submissions.

622. In light of the foregoing, the Panel finds, based on the evidence before it, that throughout their detention at the KMF, the detainees were provided with insufficient and inadequate food and water, despite both being readily available.

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<sup>1182</sup> **Mr Hoxha**: T. 20 November 2023, public, p. 3175, lines 19-21.

<sup>1183</sup> **Mr Hoxha**: T. 21 November 2023, public, p. 3351, line 25 to p. 3352, line 2.

<sup>1184</sup> Defence Final Trial Brief, para. 111 *referring to* SPOE00305297-00305298, p. SPOE00305298.

## (c) Hygiene and access to sanitary facilities

623. *Hygiene*. [REDACTED] and W01448 provided mutually supporting evidence that they were allowed to wash themselves only once, after the death of the Murder Victim, which occurred weeks into their period of detention.<sup>1185</sup> Similarly, [REDACTED] explained that he was able to wash only after the death of the Murder Victim.<sup>1186</sup> When asked if he was provided with a toothbrush during his detention, TW4-01 replied: “We didn’t even see such items”.<sup>1187</sup> TW4-01 and W01448 further recalled that the detainees were not provided with any clothing to change into, and were not allowed to clean their clothes.<sup>1188</sup>

624. The evidence of [REDACTED] and W01448 is corroborated by W04733, who was released from the KMF before the death of the Murder Victim, and, thus, was not allowed to wash himself at all throughout his detention.<sup>1189</sup> “We would smell like animals”, he said in one of his statements.<sup>1190</sup> In addition, he distinctly recalled that, upon his arrival at the KMF, he was given dirty clothes to wear, which he wore until his release.<sup>1191</sup> Further describing the poor hygienic conditions, W04733 stated: “the hygiene did not meet any requirements. I myself, after I was released, was [*sic*] ashamed to go home because of the way I looked”.<sup>1192</sup> W04733’s account is

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<sup>1185</sup> [REDACTED]; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013750; SITF00016140-00016220 RED3, p. SITF00016148. As it will be discussed below, after the death of the Murder Victim new guards were placed in charge of the Detention Building, which triggered a change in the conditions of detention. On the amelioration of the detention conditions at the KMF after 5 June 1999, *see* para. 637 below.

<sup>1186</sup> [REDACTED].

<sup>1187</sup> **TW4-01**: T. 30 May 2023, public, p. 1448, line 3.

<sup>1188</sup> **TW4-01**: T. 30 May 2023, public, p. 1448, lines 4-5; **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013750; SITF00016140-00016220 RED3, p. SITF00016148.

<sup>1189</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013823.

<sup>1190</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013823.

<sup>1191</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013186; SPOE00013793-SPOE00013847 RED2, p. SPOE00013810; 082892-TR-AT-ET Part 4 RED3, p. 19, line 22 to p. 20, line 13.

<sup>1192</sup> **W04733**: 106978-107020, p. 106990.

corroborated by his son, TW4-08, who testified candidly in court: “When my father came back, he was in a completely inhuman state. He stunk; that is, he was not clean”.<sup>1193</sup> TW4-06, W04733’s wife, also testified about the first time she saw her husband following his release. She vividly recalled: “We took him inside. He was unwashed. He was covered in blood. He had a bad odour. [...] That was a very difficult moment for us psychologically, mentally. My sons, my daughters were crying. [...] We cleaned him”.<sup>1194</sup> The Panel is convinced that W04733 truthfully attested to the inadequacy of the hygienic conditions and finds that his account in this regard is further corroborated by his family members, notably TW4-08 and TW4-06, who saw W04733 immediately after his release.

625. The Panel observes that the TW4-01, W04733, W01448 and [REDACTED] provided this information candidly and coherently and finds their evidence on the hygienic conditions prevalent at the KMF to be reliable.

626. *Access to toilets.* The Panel recalls that it has taken judicial notice of the adjudicated fact that “[t]he detainees had to ask permission to go to the toilet and would be escorted and guarded by soldiers during this time”,<sup>1195</sup> which is further corroborated by the accounts of TW4-01, TW4-11, W01448 and W04733.<sup>1196</sup> In W01448’s words: “[w]e have [*sic*] to report to the guard and he would order us to put our hands behind us and walk in the direction of the toilet”.<sup>1197</sup> According to W01448, the toilets were also in bad condition.<sup>1198</sup> The Panel is satisfied that the witnesses were

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<sup>1193</sup> **TW4-08**: T. 27 March 2023, public, p. 667, lines 7-8.

<sup>1194</sup> **TW4-06**: T. 28 March 2023, public, p. 809, lines 4-9, 13.

<sup>1195</sup> [List of Adjudicated Facts](#), Adjudicated Fact 55.

<sup>1196</sup> **TW4-01**: T. 30 May 2023, public, p. 1445, lines 18-19; p. 1446, lines 22-23; p. 1447, lines 1-6; **TW4-11**: T. 2 May 2023, public, p. 1219, lines 21-25; **W01448**: SITF00013852-00013869 RED6, p. SITF00013858; **W04733**: 106978-107020, p. 106990.

<sup>1197</sup> **W01448**: SITF00016140-00016220 RED3, p. SITF00016146.

<sup>1198</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013749.

honest in their description of the conditions and access to the toilets. Their evidence is consistent, and thus the Panel finds it credible and relies upon it.

627. In light of the foregoing, the Panel finds, based on the evidence before it, that the hygienic and sanitary conditions in which the detainees were kept at the KMF, were wholly insufficient and degrading.

(d) Medical care

628. The Panel recalls that it has already established the existence of a Medical Office on the ground floor of the Command Building, where medical care was provided by at least one doctor and one nurse.<sup>1199</sup> Indeed, TW4-10 testified in court that there were doctors treating sick KLA members.<sup>1200</sup> The presence of medical personnel at the KMF is also attested to by Defence witness Mr Hoxha who identified “nurses who gave the first aid to soldiers” in a video which was broadcasted and discussed in the courtroom.<sup>1201</sup> Likewise, Defence witness W04280 testified that “many people who were wounded in the field came there”, referring to the Medical Office at the KMF.<sup>1202</sup>

629. However, both [REDACTED] and W04733 provided evidence that, when the medical staff were called to attend to the detainees, KLA members either obstructed them from providing medical aid, or entirely disregarded the medical advice provided by the staff.<sup>1203</sup> More specifically, W04733 provided evidence that during his detention he was not treated for his pre-existing medical condition:

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<sup>1199</sup> See Section VI.B.5.

<sup>1200</sup> **TW4-10**: T. 1 May 2023, public, p. 1047, lines 7-13. TW4-10 stated in court: “[T]here were doctors looking after us”. Considering TW4-10’s position as a KLA member, serving as a guard at the KMF, the Panel understands the witness’s reference to “us” to mean the members of the KLA present at the KMF.

<sup>1201</sup> **Mr Hoxha**: T. 21 November 2023, public, p. 3291, line 19 to p. 3292, line 18, referring to **Video**: 078252-01.

<sup>1202</sup> **W04280**: T. 28 November 2023, confidential, p. 3824, line 18 to p. 3825, line 4.

<sup>1203</sup> [REDACTED]; **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 32-33; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013828-SPOE00013829.

“[REDACTED]”.<sup>1204</sup> W04733 also described an incident where the doctor and nurses were called to treat a wound on his head.<sup>1205</sup> He recalled: “Because I was bleeding and covered with blood and blood was coming from my forehead continuously, the doctor bandaged my head and as soon as he finished a person came with a knife and cut the bandages”.<sup>1206</sup> He added that the medical staff again wrapped his head with bandages, and again the same KLA member immediately cut them off.<sup>1207</sup> In a similar vein, [REDACTED], after the Murder Victim was severely mistreated and shot in the leg – an incident that will be discussed below – the KLA members in charge of the detainees denied his transfer to a hospital, against the advice of a doctor who was present at the KMF.<sup>1208</sup>

630. Given the level of depth provided in their respective accounts, the Panel is satisfied that [REDACTED] and W04733 provided first-hand information based on their personal experiences. The Panel therefore finds the evidence of [REDACTED] and W04733 to be truthful and reliable. The Panel finds the above examples to be reflective of the attitude of the KLA members present at the KMF regarding the medical care afforded to the detainees.

631. The Panel rejects the Defence’s submissions that medical care was provided to the detainees.<sup>1209</sup> The mere presence of doctors at the KMF and the measuring of the detainees’ blood pressure or blood sugar level falls short of any acceptable standard

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<sup>1204</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 33, lines 12-16. *See also*, SPOE00013793-SPOE00013847 RED2, p. SPOE00013829; 082892-TR-AT-ET Part 8 RED2, p. 6.

<sup>1205</sup> **W04733**: 106978-107020, p. 106979; SITF00019824-00019876 RED2, p. SITF00019842; SPOE00013793-SPOE00013847 RED2, p. SPOE00013826; 082892-TR-AT-ET Part 4 RED3, p. 30.

<sup>1206</sup> **W04733**: 106978-107020, p. 106979.

<sup>1207</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013826; 082892-TR-AT-ET Part 4 RED3, p. 32.

<sup>1208</sup> [REDACTED].

<sup>1209</sup> Defence Final Trial Brief, para. 110.

of medical care, considering, in particular, the severity of the mistreatment the detainees received, their conditions of detention and the length of their detention.

632. In light of the foregoing, the Panel finds, based on the evidence before it, that the detainees at the KMF did not receive sufficient and appropriate medical care, and, in some cases, they were denied appropriate care altogether.

(e) Prohibition to interact with each other

633. The evidence provided by TW4-01, W04733, W01448 and TW4-04 shows that the detainees were not allowed to speak to each other, and as a result, they were afraid to do so.<sup>1210</sup> TW4-01, in particular, explained: “[i]n secret, we could talk. If we did that openly, they could maltreat us”.<sup>1211</sup> In W01448’s words: “We were not allowed to speak to each other. While lying crumpled on the hard floor, we used to talk in low whispers”.<sup>1212</sup> TW4-04, similarly, stated: “We were not allowed to talk, and even if we were allowed we wouldn’t dare, the soldiers were close to the window”.<sup>1213</sup> The Panel is satisfied that the witnesses spoke truthfully of their actual experiences, considering, in particular, that they corroborate each other on this matter.

634. The above finding is not undermined by diverging statements of other witnesses, for instance TW4-05 and TW4-11, whose evidence indicates that at times detainees may have been able to talk briefly.<sup>1214</sup> What is key in the Panel’s view is not whether the detainees could talk to each other, either briefly or in secret, but whether they could do so freely, which according to the evidence, the detainees could not do.

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<sup>1210</sup> **TW4-01**: T. 30 May 2023, public, p. 1448, lines 8-13; **W01448**: SITF00013852-00013869 RED6, p. SITF00013857; **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185341; **TW4-04**: SITF00013262-00013315 RED, p. SITF00013272.

<sup>1211</sup> **TW4-01**: T. 30 May 2023, public, p. 1448, lines 8-9.

<sup>1212</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1213</sup> **TW4-04**: SITF00013262-00013315 RED, p. SITF00013272.

<sup>1214</sup> **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013131; **TW4-11**: T. 2 May 2023, confidential, p. 1216, lines 17-19; T. 3 May 2023, confidential, p. 1328, lines 8-9.

635. In light of the foregoing, the Panel finds, based on the evidence before it, that the detainees at the KMF were not able to communicate freely with each other, which reinforced their fear and anxiety.

(f) Final remarks

636. The Defence argues that the detention conditions, in general, were similar to those of the KLA members and were the result of the modest facilities and supplies available at the KMF, or lack thereof.<sup>1215</sup> The Panel is wholly unpersuaded by this argument. As established above, the detainees were held in cramped rooms and were prevented from sleeping due to the constant physical and psychological abuse they suffered. Moreover, the detainees were not provided with adequate food and water, although both were available at the KMF. Moreover, the hygienic and sanitary conditions in which the detainees were kept were wholly insufficient and degrading. In addition, despite the presence of medical staff at the KMF, KLA members obstructed the doctors and nurses from providing medical aid to the detainees or entirely disregarded the medical advice they provided. Further, the detainees were forbidden to interact and talk to each other, thereby reinforcing their psychological distress. Importantly, the detainees were also subjected to constant physical and psychological abuse by KLA members present at the KMF, as it will be established below.

637. Not least, the Panel has received ample evidence from [REDACTED], W01448 and [REDACTED] that immediately after the death of the Murder Victim, on or about 5 June 1999,<sup>1216</sup> new guards were placed in charge of the Detention Building and that

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<sup>1215</sup> Defence Final Trial Brief, para. 111.

<sup>1216</sup> Regarding the date of the Murder Victim's death, *see* Section VI.F.8.

the conditions of the detainees improved.<sup>1217</sup> The detainees were provided with blankets and were allowed to wash themselves.<sup>1218</sup> The evidence further demonstrates that the detainees were no longer being physically abused and were able to sleep.<sup>1219</sup> This reinforces the Panel's view that the degrading conditions of detention prevailing at the KMF during the time relevant to the charges, were not the result of necessity, but rather an institutionalised practice imposed by the KLA members in charge of the detainees. In light of these circumstances, the Panel rejects the Defence's argument.

638. The Panel finds, based on the evidence before it, that TW4-01, TW4-11, W04733, W01448, TW4-05, TW4-04 and TW4-02 were kept in inhumane and degrading conditions the KMF at the time relevant to the charges. Considering the abundance of mutually corroborative evidence confirming the prevailing degrading detention conditions, the Panel is also satisfied that, to the extent that the Murder Victim, [REDACTED] and the third Roma musician, [REDACTED], and at least one more female detainee, were also held at the KMF at the time relevant to the charges, they were also subjected to the same inhumane and degrading conditions of detention.

## 2. Mistreatment

639. In what follows, the Panel will discuss: (a) the continuous physical and psychological abuse to which the detainees were collectively subjected, notably inside Room 1; (b) the specific mistreatment suffered by individual detainees; and (c) the forced labour to which [REDACTED] and the third Roma musician were subjected during their detention.

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<sup>1217</sup> [REDACTED]; **W01448**: SITF00013852-00013869 RED6, p. SITF00013860; SITF00013736-SITF00013800 RED5, p. SITF00013750; SITF00016140-00016220 RED3, p. SITF00016146; [REDACTED].

<sup>1218</sup> [REDACTED]; **W01448**: SITF00013852-00013869 RED6, p. SITF00013860; SITF00013736-SITF00013800 RED5, p. SITF00013750; SITF00016140-00016220 RED3, p. SITF00016146.

<sup>1219</sup> [REDACTED]; **W01448**: SITF00013852-00013869 RED6, p. SITF00013860; SITF00016140-00016220 RED3, p. SITF00016146.



## (a) Collective mistreatment of detainees

640. *Physical abuse.* The Panel attaches great weight to the evidence of TW4-01, TW4-11, W04733 and W01448 which shows that detainees endured physical abuse on a daily basis within the premises of the KMF, most notably in Room 1, where most of the detainees were held for the longest part of their detention.

641. In particular, TW4-01 testified in court that all detainees were beaten every day inside Room 1 by various members of the KLA, including Sabit Geci and Xhemshit Krasniqi.<sup>1220</sup> He recalled: "They beat me. They beat others that were in the room. Whenever they would enter the room, in general they would beat all of us up. Nobody would be saved, spared".<sup>1221</sup> He added: "we were maltreated virtually every day. [...] They would just kill time with us there".<sup>1222</sup> Similarly, TW4-11 testified in court that every detainee who was held in Room 1 was beaten "one by one, without any discrimination".<sup>1223</sup> W04733 and W01448 provided similar accounts, further attesting to the daily mistreatment of the detainees by several KLA members.<sup>1224</sup> They both explained that the beatings would start at midnight and last until the morning.<sup>1225</sup> W01448's statement, in particular, corroborates the testimony of TW4-01 that Sabit Geci and Xhemshit Krasniqi were among the KLA members who subjected the detainees to physical abuse on a daily basis inside Room 1.<sup>1226</sup> Moreover, both TW4-11

<sup>1220</sup> **TW4-01:** T. 31 May 2023, public, p. 1511, line 23 to p. 1512, line 1; confidential, p. 1524, line 20 to p. 1525, line 2.

<sup>1221</sup> **TW4-01:** T. 31 May 2023, public, p. 1512, lines 18-20.

<sup>1222</sup> **TW4-01:** T. 31 May 2023, public, p. 1524, line 22 to page 1525, line 1.

<sup>1223</sup> **TW4-11:** T. 2 May 2023, public, p. 1222, lines 2-3. *See further*, T. 2 May 2023, public, p. 1231, lines 21-24.

<sup>1224</sup> **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013750, SITF00013753-SITF00013754; SITF00013852-00013869 RED6, p. SITF00013858; **W04733:** SITF00018740-00018767 RED, p. SITF00018745; 106978-107020, pp. 106987-106989; 082892-TR-AT-ET Part 8 RED2, p. 29.

<sup>1225</sup> **W01448:** SITF00013833-00013847 RED4, p. SITF00013837; SITF00013736-SITF00013800 RED5, p. SITF00013754; **W04733:** SITF00018740-00018767 RED, pp. SITF00018745-00018746; 106978-107020, p. 106989.

<sup>1226</sup> **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013750, SITF00013754.

and W01448 distinctly recalled that different KLA members would frequently enter Room 1, order the detainees to face the wall and then proceed to beat them with batons.<sup>1227</sup> W04733 gave a similar account: “we were all asked to wake up and extend our hands as they wanted to beat us”.<sup>1228</sup>

642. The accounts of TW4-01, W04733 and W01448 reveal that detainees in Room 1 were beaten by many different KLA members, some of them unknown to the detainees.<sup>1229</sup> TW4-01 testified in this regard: “Every time the important people came, Xhemshit and Sabit and others came, they would come into the room and maltreat us. They would come with people, soldiers, and do this”,<sup>1230</sup> “[w]e were beaten up so many times. Sometimes the one group would come, the next another group”.<sup>1231</sup> W01448 similarly explained: “they were coming four or five people at once”, “[t]hey were KLA uniformed soldiers and also civilian plain clothed and in black uniforms”.<sup>1232</sup> Asked whether he could recognize the KLA members that were physically assaulting the detainees inside Room 1, W04733 answered: “No, they were all new and unfamiliar faces”.<sup>1233</sup>

643. In addition to the beatings they suffered from KLA members, TW4-01, TW4-11 and W01448 provided evidence that the detainees were repeatedly forced to hit and

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<sup>1227</sup> **TW4-11:** T. 2 May 2023, public, p. 1220, lines 1-10 and p. 1231, lines 2-4; **W01448:** SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, p. SITF00013753.

<sup>1228</sup> **W04733:** 106978-107020, p. 106989.

<sup>1229</sup> **TW4-01:** T. 31 May 2023, public, p. 1512, line 25 to p. 1513, line 3; p. 1524, lines 23-25; **W01448:** SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, pp. SITF00013753-SITF00013754; **W04733:** 106978-107020, pp. 106987-106988; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013824-SPOE00013825; SITF00018740-00018767 RED, p. SITF00018746.

<sup>1230</sup> **TW4-01:** T. 31 May 2023, confidential, p. 1524, lines 23-25.

<sup>1231</sup> **TW4-01:** T. 31 May 2023, public, p. 1513, lines 1-3.

<sup>1232</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013753.

<sup>1233</sup> **W04733:** SITF00018740-00018767 RED, p. SITF00018746.

slap each other.<sup>1234</sup> TW4-11 explained that on one occasion the detainees were ordered by two KLA members to slap each other “as much as possible, as hard as possible”.<sup>1235</sup> W01448 also provided a graphic account in this respect in one of his statements: “[t]hey ordered one to go first and slap everyone, and then the second one would have their turn. If we would have slapped with a little force, they would beat us”.<sup>1236</sup>

644. The Panel finds the mutually corroborative evidence of TW4-01, W01448, W04733 and TW4-11 regarding their own mistreatment and the mistreatment of their co-detainees to be very reliable.

645. *Psychological abuse.* TW4-01, TW4-11, W04733 and W01448 provided graphic and detailed accounts of the psychological abuse they suffered during their detention at the KMF. As provided above, the detainees witnessed the mistreatment of their co-detainees inside Room 1 on a daily basis. The arbitrary and indiscriminate nature of these beatings as well as the fact that they were perpetrated by so many different KLA members, who were sometimes unknown to the detainees, aggravated the already psychologically exhausting conditions of the detainees. The detainees were also forced to witness the brutal beatings perpetrated by KLA members in the Office and in Room 2, as will be demonstrated below.<sup>1237</sup>

646. The extreme level of violence perpetrated upon a group of KLA or FARK fighters who were briefly detained in Room 1 is representative of the mistreatment that the detainees were routinely forced to watch. Both TW4-01 and W01448 recalled this incident vividly. TW4-01 testified in court that these fighters were beaten in front of

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<sup>1234</sup> **TW4-01:** T. 31 May 2023, public, p. 1512, line 22; p. 1513, line 3; **TW4-11:** T. 2 May 2023, public, p. 1233, lines 19-23; **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013754; SITF00013852-00013869 RED6, p. SITF00013858; SITF00016221-00016285 RED4, p. SITF00016237.

<sup>1235</sup> **TW4-11:** T. 2 May 2023, public, p. 1233, lines 19-23.

<sup>1236</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013754.

<sup>1237</sup> [REDACTED].

the detainees in Room 1 by several KLA members, including Sabit Geci, using batons, metal bars and sticks.<sup>1238</sup> “They beat them so hard that the police baton broke on the head of one of them,” TW4-01 recalled.<sup>1239</sup> W01448 shared the same recollection: “The beating was so severe that the rubber baton broke into two pieces”.<sup>1240</sup> Further attesting to the brutality of the mistreatment he witnessed, W01448 recalled: “I don’t know how they survived that night”.<sup>1241</sup>

647. Even when they did not personally witness the mistreatment of others, the detainees could nonetheless see the injuries inflicted on their co-detainees as well as the state they were in when they were brought back in the detention rooms: bruised, covered in blood, with swollen hands and legs and broken teeth.<sup>1242</sup> TW4-01 graphically recalled [REDACTED]: “when he was brought back later in the evening to the room, I removed his shirt and actually a part of his skin came off with the shirt”.<sup>1243</sup> The screams of those being beaten, as well as the sounds of shots being fired in close proximity, further instilled fear amongst all detainees.<sup>1244</sup>

648. In addition to being forced to witness and listen to the physical violence being perpetrated upon their co-detainees, the detainees were also personally harassed and

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<sup>1238</sup> **TW4-01**: T. 31 May 2023, public, p. 1512, lines 2-14.

<sup>1239</sup> **TW4-01**: T. 31 May 2023, public, p. 1512, lines 8-9.

<sup>1240</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013860.

<sup>1241</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013759. *See further*, SITF00013833-00013847 RED4, p. SITF00013837; SITF00016221-00016285 RED4, p. SITF00016238.

<sup>1242</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1538, lines 18-24; T. 6 June 2023, confidential, p. 1919, lines 13-17; **TW4-11**: T. 2 May 2023, confidential, p. 1228, lines 16-25; T. 3 May 2023, confidential, p. 1256, lines 10-23; p. 1258, lines 15-21; p. 1344, line 3 to p. 1345, line 3; **W01448**: SITF00013852-00013869 RED6, pp. SITF00013858-SITF00013859; **W04733**: 106978-107020, p. 106987; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013820-SPOE00013821; SITF00018740-00018767 RED, p. SITF00018744; 082892-TR-AT-ET Part 5 RED2, p. 13, lines 1-4; [REDACTED].

<sup>1243</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1538, lines 21-23.

<sup>1244</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1477, lines 20-24; T. 31 May 2023, confidential, p. 1530, lines 9-13; **TW4-11**: T. 3 May 2023, confidential, p. 1342, lines 13-15; **W01448**: SITF00013833-00013847 RED4, p. SITF00013837; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013134; [REDACTED].

threatened with violence or death.<sup>1245</sup> “When people walked by the window, they would insult our mothers and say, ‘Spies’ and everything that they would think of”, TW4-01 recalled.<sup>1246</sup> According to W01448, the male detainees were further humiliated by one KLA member who asked them to beat each other on the genitals and to pretend to have sexual intercourse with each other.<sup>1247</sup> “It is so embarrassing to even tell it”, W01448 admitted.<sup>1248</sup> The prolonged sleep deprivation and the fact that the detainees were prohibited from talking to each other further added to their psychological exhaustion.

649. It is clear that, by their exposure to these conditions, the detainees were subjected to an immense psychological pressure which may be characterised as an atmosphere of terror and intimidation. They feared that at any minute they might be subjected to physical abuse, or even be killed.<sup>1249</sup> “We were counting the minutes when we will die”, TW4-01 explained in court.<sup>1250</sup> TW4-11 also described compellingly how he felt while in detention: “I felt frightened. I mean, what was going to happen to me? I just didn’t know what had happened to them or what would happen to me”.<sup>1251</sup> Further

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<sup>1245</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1466, lines 18-22; T. 31 May 2023, confidential, p. 1525, line 19 to p. 1526, line 2; **W01448**: SITF00013736-SITF00013800 RED5, pp. SITF00013750, SITF00013752, SITF00013754; SITF00016140-00016220 RED3, pp. SITF00016146-SITF00016147; SITF00013852-00013869 RED6, p. SITF00013858, SITF00013859; SITF00013833-00013847 RED4, p. SITF00013838. [REDACTED].

<sup>1246</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1466, lines 18-22.

<sup>1247</sup> **W01448**: SITF00013848-00013851, p. SITF00013849; SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, p. SITF00013750.

<sup>1248</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858.

<sup>1249</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1525, line 19 to p. 1526, line 2; public, p. 1539, lines 5-14; **TW4-11**: T. 2 May 2023, confidential, p. 1229, lines 5-8; T. 3 May 2023, confidential, p. 1259, lines 17-20; **W01448**: SITF00016221-00016285 RED4, pp. SITF00016231-SITF00016232; **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013185; 082892-TR-AT-ET Part 4 RED3, pp. 7, 10-11; SPOE00013793-SPOE00013847 RED2, p. SPOE00013809.

<sup>1250</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1539, lines 8-9.

<sup>1251</sup> **TW4-11**: T. 2 May 2023, confidential, p. 1229, lines 5-7.

describing the atmosphere of terror and the unsafety he felt throughout his detention, W01448 said in one of his statements that: “life was in question those days there”.<sup>1252</sup>

650. The mutually corroborative accounts of TW4-01, TW4-11, W04733 and W01448 recalled above are so graphic and highly detailed that the Panel has no doubt that the witnesses recounted the events truthfully based on their personal experience.

651. The Panel’s assessment of the evidence is not upset by TW4-05’s account, which is markedly different from the accounts of the above-mentioned witnesses. TW4-05 stated that, throughout his detention, he was treated very well and he was never mistreated physically.<sup>1253</sup> Despite acknowledging that his co-detainees were taken for interrogation outside Room 1 during the night, TW4-05 denied having personally witnessed or heard anyone being beaten.<sup>1254</sup> He explained: “I heard rumours that they are torturing and beating them up, but I never saw that”.<sup>1255</sup>

652. The Panel finds that TW4-05’s account is clearly disproved by the coherent and credible testimonies of TW4-01, TW4-11, W04733 and W01448, who were detained with him and have provided highly consistent evidence that they were beaten regularly inside Room 1, in the presence of their co-detainees. The Panel finds it implausible that TW4-05 would not have seen or heard other co-detainees being mistreated, especially considering the size of the room they were kept in and the degree of violence inflicted on the other detainees.<sup>1256</sup> It is equally implausible that TW4-05 did not witness the brutal beatings [REDACTED].<sup>1257</sup> Likewise, the Panel finds that TW4-05’s claim that he had no personal knowledge of beatings and only heard

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<sup>1252</sup> **W01448:** SITF00016140-00016220 RED3, p. SITF00016158.

<sup>1253</sup> **TW4-05:** SITF00372498-00372510 RED4, pp. SITF00372500-SITF00372502.

<sup>1254</sup> **TW4-05:** SITF00013123-SITF00013153 RED, pp. SITF00013129-SITF00013131, SITF00013134.

<sup>1255</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013134.

<sup>1256</sup> See paras 601, 641-643 above.

<sup>1257</sup> [REDACTED]).

rumours about them, lacks credibility, particularly in light of the witness's own admission that he would often talk to [REDACTED] about subjects including [REDACTED]'s own interrogations while they were detained together.<sup>1258</sup> Furthermore, TW4-05's evidence, according to which he was treated "very well", is also difficult to reconcile with some of his other statements that reveal feelings of despair and powerlessness. For example, TW4-05 recounted: "One of the soldiers provoked me saying that they were going to kill us all. I said, 'why would they kill us without a hearing?' I said this freely as I counted myself as a dead person already".<sup>1259</sup> Referring to an encounter he had with Sabit Geci, TW4-05 stated: "I was scared that he would kill me".<sup>1260</sup> Finally, the Panel has received reliable evidence from W04733 and W01448, revealing that TW4-05 was also subjected to mistreatment inside Room 1, just like his co-detainees.<sup>1261</sup> In light of the foregoing, the Panel does not find TW4-05's evidence pertaining to the mistreatment he and other detainees suffered at the KMF to be credible and does not attach weight to it. The Panel is further satisfied, in light of the evidence provided by W04733 and W01448, that TW4-05 was also mistreated inside Room 1.

653. In light of the foregoing, based on the evidence taken as a whole, the Panel is satisfied that all the detainees in Room 1 were physically and psychologically abused on a daily basis by several members of the KLA. They were also beaten during the night and until the early hours of the morning, forced to slap and hit one another and, in the case of the male detainees, to pretend to have sexual intercourse with each other. In addition, they were forced to witness and to listen to the physical abuse of their co-detainees. The detainees were further harassed both inside and outside Room 1,

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<sup>1258</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013133.

<sup>1259</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013134.

<sup>1260</sup> **TW4-05:** SITF00013123-SITF00013153 RED, p. SITF00013133.

<sup>1261</sup> **W04733:** SPOE00013793-SPOE00013847 RED2, pp. SPOE00013818-SPOE00013819; **W01448:** SITF00013833-00013847 RED4, p. SITF00013836; SITF00013736-SITF00013800 RED5, p. SITF00013758.

lied to and threatened with violence or death. As a result, they lived in constant fear and felt that they could be subjected to physical abuse at any time, or even be killed.

(b) TW4-01 and the Murder Victim

654. *Mistreatment and interrogation in the Office on or about 20 May 1999.* TW4-01 testified that [REDACTED], he and the Murder Victim were taken by a guard and another KLA member to the Office in the Command Building.<sup>1262</sup> Inside the Office, TW4-01 witnessed the mistreatment and interrogation of W04733, who was already in the Office when TW4-01 and the Murder Victim arrived.<sup>1263</sup> TW4-01 recalled that Mr Shala, Sabit Geci, Xhemshit Krasniqi and three other KLA members were present in the Office, carrying out the beatings.<sup>1264</sup>

655. TW4-01 recounted that, after W04733 was physically abused and interrogated, he (*i.e.* W04733) was taken out of the Office and his own mistreatment began.<sup>1265</sup> He distinctly recalled that Mr Shala was the first to hit him with a rubber bar.<sup>1266</sup> [REDACTED].<sup>1267</sup> TW4-01 recounted that the KLA members present in the Office then took turns in beating him, using various objects, including metal bars, baseball bats and rubber batons.<sup>1268</sup> Referring to Mr Shala, TW4-01 testified: “he beat us as much as he could”<sup>1269</sup> and “[h]e was smiling as he was hitting us”.<sup>1270</sup> [REDACTED].<sup>1271</sup>

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<sup>1262</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1450, line 4 to p. 1451, line 23; p. 1452, lines 3-12. The witness circled the Office on photograph 065597-065612, p. 065600 (bottom photograph, saved as REG00956).

<sup>1263</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1452, lines 18-22; p. 1454, lines 3-19; p. 1455, lines 1-11.

<sup>1264</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1452, line 25 to p. 1453, line 11.

<sup>1265</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1457, lines 17-20.

<sup>1266</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1457, lines 20-22.

<sup>1267</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1457, line 22; p. 1458, lines 10-12.

<sup>1268</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1457, lines 22-24; p. 1458, lines 15-19.

<sup>1269</sup> **TW4-01:** T. 2 June 2023, confidential, p.1691, line 22 to p. 1692, line 1.

<sup>1270</sup> **TW4-01:** T. 2 June 2023, confidential, p. 1690, lines 22-23.

<sup>1271</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1457, line 24 to p. 1458, line 1; p. 1459, lines 9-15.



[REDACTED].<sup>1272</sup> [REDACTED].<sup>1273</sup> TW4-01 further detailed: “[REDACTED]. They did anything they wanted and everything they thought of with me”.<sup>1274</sup> He added: “[REDACTED]. They beat me like a dog”.<sup>1275</sup>

656. TW4-01 also recounted that, during that night, he was questioned [REDACTED] about several individuals, [REDACTED].<sup>1276</sup> The witness explained that he was accused of [REDACTED].<sup>1277</sup> He further explained that he was also accused of collaborating with the Serbian police and was called a spy.<sup>1278</sup>

657. According to the evidence, after being interrogated and mistreated for several hours, TW4-01 [REDACTED].<sup>1279</sup> [REDACTED].<sup>1280</sup> [REDACTED].<sup>1281</sup>

658. [REDACTED], the physical abuse of the Murder Victim began.<sup>1282</sup> [REDACTED] explained that, although he did not see the Murder Victim being beaten, he could hear him screaming [REDACTED].<sup>1283</sup> He recalled: “[e]verything could be heard. You could hear the noise caused by the impact when they were hitting him”.<sup>1284</sup>

659. With respect to this incident, the Panel also takes into account the mutually corroborating evidence of W01448, who was present in the Office during the mistreatment of both TW4-01 and the Murder Victim.<sup>1285</sup> More specifically, W01448

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<sup>1272</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1457, line 24 to p. 1458, line 1.

<sup>1273</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1464, lines 9-24.

<sup>1274</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1465, lines 7-15.

<sup>1275</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1458, line 19.

<sup>1276</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1459, line 16 to p. 1460, line 4; p. 1477, lines 4-9.

<sup>1277</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1459, line 16 to p. 1460, line 4.

<sup>1278</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1459, line 21 to p. 1460, line 2; p. 1476, lines 6-11.

<sup>1279</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1467, line 20 to p. 1468, line 24.

<sup>1280</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1467, line 20 to p. 1468, line 20 to p. 1468, line 6.

<sup>1281</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1467, line 20 to p. 1468, line 20 to p. 1468, line 14.

<sup>1282</sup> [REDACTED].

<sup>1283</sup> [REDACTED].

<sup>1284</sup> [REDACTED].

<sup>1285</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857; SITF00013736-SITF00013800 RED5, p. SITF00013744.

explained in his statement that, after W04733 was removed from the Office, the mistreatment of TW4-01 started, which was followed by the mistreatment of the Murder Victim, thus, corroborating the testimony of TW4-01 with regard to the sequence of the beatings that night.<sup>1286</sup> Elaborating on the physical abuse he witnessed, W01448 recalled: “[TW4-01 and the Murder Victim] were beaten worse than I was. They were bleeding and they used batons and anything else to beat them”,<sup>1287</sup> “[t]hey screamed and yelled”.<sup>1288</sup> [REDACTED].<sup>1289</sup> [REDACTED].<sup>1290</sup> W01448 also provided evidence attesting to the fact that both TW4-01 and the Murder Victim were accused of collaborating and having close relations with Serbs.<sup>1291</sup>

660. As regards the perpetrators of the beatings, W01448 explained across his statements that TW4-01 and the Murder Victim were physically and psychologically abused by several KLA members, [REDACTED], who took turns in beating them with various objects until the early hours of the morning.<sup>1292</sup> According to W01448’s statements, with the exception of Sabit Geci, all the other KLA members present in the Office participated in beating TW4-01 and the Murder Victim.<sup>1293</sup> The Panel understands from W01448’s statements that Mr Shala participated in the beating of TW4-01 and the Murder Victim, given that he was part of the group of KLA members who were present in the Office that night, therefore, corroborating the evidence of TW4-01.

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<sup>1286</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1287</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016232.

<sup>1288</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016232.

<sup>1289</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013743.

<sup>1290</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016232; SITF00013736-SITF00013800 RED5, pp. SITF00013743, SITF00013747.

<sup>1291</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013857; SITF00013736-SITF00013800 RED5, p. SITF00013744.

<sup>1292</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016232; SITF00013736-SITF00013800 RED5, pp. SITF00013743-SITF00013745.

<sup>1293</sup> **W01448**: SITF00016221-00016285 RED4, pp. SITF00016231-00016232, SITF00016234; SITF00013736-SITF00013800 RED5, pp. SITF00013743-SITF00013744.

661. The Panel finds TW4-01's testimony and W01448's statements to be reliable as both witnesses described the mistreatment that TW4-01 [REDACTED] subjected to in the Office on or about 20 May 1999 in a convincingly detailed, graphic, precise and highly corroborative manner. The Panel, thus, considers that it can rely on TW4-01's testimony and W01448's statements concerning this incident, which are facts within their personal knowledge.

662. As regards the Defence's submissions that W04733 has provided conflicting evidence as to the mistreatment of TW4-01 and the Murder Victim,<sup>1294</sup> the Panel notes the following. Across his statements, W04733 has consistently provided evidence that, in addition to W01448, TW4-01 and the Murder Victim were also brought into the Office on or about 20 May 1999.<sup>1295</sup> The Panel further notes that, with the exception of a statement he provided in 2010, W04733 has repeatedly stated throughout the years that he saw TW4-01 and/or the Murder Victim being mistreated in the Office by KLA members, including by Mr Shala.<sup>1296</sup> The Panel, therefore, finds that W04733's account corroborates the evidence provided by [REDACTED] W01448 regarding the mistreatment of TW4-01 and the Murder Victim in the Office and, therefore, relies on W04733's evidence in this regard. The Defence's argument is rejected.

663. The Defence, additionally, submits that TW4-01 is the only witness that identified Mr Shala as one of the KLA members that mistreated him [REDACTED] in the Office on or about 20 May 1999.<sup>1297</sup> In this respect, the Panel recalls its finding above that W04733 provided reliable evidence attesting to the fact that he saw TW4-01 [REDACTED] being beaten by Mr Shala. The Panel further recalls that, according to

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<sup>1294</sup> Defence Final Trial Brief, para. 132.

<sup>1295</sup> **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185341; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013818-SPOE00013819; SITF00018740-00018767 RED, p. SITF00018742.

<sup>1296</sup> **W04733**: SPOE00185335-00185363 RED3, pp. SPOE00185340-00185341; 106978-107020, pp. 106984-106985; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013820-SPOE00013821; 082892-TR-AT-ET Part 5 RED2, pp. 12-14.

<sup>1297</sup> [REDACTED].

W01448's statements, with the exception of Sabit Geci, the rest of the KLA members present in the Office, including Mr Shala, participated in the beatings of TW4-01 [REDACTED]. In light of the foregoing, the Panel rejects the Defence's argument that no other witness has provided evidence as to Mr Shala's participation in the mistreatment of TW4-01 [REDACTED].

664. *Second incident of mistreatment* [REDACTED]. TW4-01 testified that [REDACTED], where he was again severely beaten.<sup>1298</sup> TW4-01's testimony reveals that, as before, he was beaten with various instruments throughout the night until early the next morning.<sup>1299</sup> The witness maintained he cannot recall the names of the KLA members that mistreated him on this occasion, adding: "They were in a group, important people, but I don't remember the names. I went through so much ill-treatment and frequently that I can't now clearly distinguish when and how".<sup>1300</sup> [REDACTED].<sup>1301</sup> He explained that he could not recall whether Mr Shala was also present.<sup>1302</sup> When confronted with his prior statements where he stated that Mr Shala was present during that incident, TW4-01 maintained that he did not remember after all these years.<sup>1303</sup>

665. The Panel is attentive to the fact that, contrary to his prior statements, the witness was unable to confirm in court whether Mr Shala was present during the second incident [REDACTED]. The Panel accepts the witness's explanation that the passage of time renders the recollection of events more difficult. The Panel further notes the witness's confirmation of the presence of [REDACTED], without deliberately

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<sup>1298</sup> **TW4-01**: T. 30 May 2023, confidential, p. 1471, line 22 to p. 1472, line 2; T. 31 May 2023, confidential, p. 1497, lines 20-24; p. 1498, lines 2-4.

<sup>1299</sup> **TW4-01**: T. 31 May 2023, public, p. 1507, line 19 to p. 1508, line 3; confidential, 1510, lines 6-11.

<sup>1300</sup> **TW4-01**: T. 31 May 2023, public, p. 1507, lines 19-23.

<sup>1301</sup> **TW4-01**: T. 31 May 2023, public, p. 1498, lines 17-20.

<sup>1302</sup> **TW4-01**: T. 31 May 2023, public, p. 1498, lines 17-20.

<sup>1303</sup> **TW4-01**: T. 31 May 2023, confidential, p. 1505, line 17 to 1506, line 24; p. 1508, line 22 to p. 1510, line 3 referring to TW4-01 Prior Statements: SITF00012758-SITF00012789, SITF00019151-SITF00019195 RED, 083219-TR-ET Part 4.

implicating Mr Shala. TW4-01's outright admission, without diffidence, that he could not remember Mr Shala's presence reinforces the Panel's overall impression that TW4-01 truthfully recounted his personal experience regarding the second incident of mistreatment [REDACTED]. The Panel does not consider TW4-01's inability to confirm his prior statements regarding the presence of Mr Shala to be significant enough to cast doubt on the truthfulness of the witness's evidence as a whole. The Panel, thus, relies on TW4-01's evidence concerning the second incident.

666. [REDACTED]. [REDACTED].<sup>1304</sup> [REDACTED].<sup>1305</sup> [REDACTED].<sup>1306</sup>  
[REDACTED].<sup>1307</sup>

667. [REDACTED].<sup>1308</sup> [REDACTED].<sup>1309</sup> [REDACTED].<sup>1310</sup> [REDACTED].<sup>1311</sup>  
[REDACTED].<sup>1312</sup> [REDACTED].<sup>1313</sup>

668. [REDACTED].<sup>1314</sup> [REDACTED].<sup>1315</sup> [REDACTED].<sup>1316</sup>

669. [REDACTED].<sup>1317</sup> [REDACTED]. [REDACTED].<sup>1318</sup> [REDACTED].<sup>1319</sup>

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<sup>1304</sup> [REDACTED].

<sup>1305</sup> [REDACTED].

<sup>1306</sup> [REDACTED].

<sup>1307</sup> [REDACTED].

<sup>1308</sup> [REDACTED].

<sup>1309</sup> [REDACTED].

<sup>1310</sup> [REDACTED].

<sup>1311</sup> [REDACTED].

<sup>1312</sup> [REDACTED].

<sup>1313</sup> [REDACTED].

<sup>1314</sup> [REDACTED].

<sup>1315</sup> [REDACTED].

<sup>1316</sup> [REDACTED].

<sup>1317</sup> [REDACTED].

<sup>1318</sup> [REDACTED].

<sup>1319</sup> [REDACTED].

670. [REDACTED]. [REDACTED].<sup>1320</sup> [REDACTED].<sup>1321</sup> [REDACTED].<sup>1322</sup>  
[REDACTED].<sup>1323</sup> [REDACTED].<sup>1324</sup> [REDACTED].<sup>1325</sup> [REDACTED].  
[REDACTED].<sup>1326</sup> [REDACTED].

671. [REDACTED].

672. [REDACTED].<sup>1327</sup> [REDACTED].<sup>1328</sup> [REDACTED]. [REDACTED].  
[REDACTED].

673. [REDACTED].

674. *Mistreatment in Room 2 on or about 4 June 1999 - Leg-Shooting Incident.*  
[REDACTED] the Murder Victim [REDACTED] taken from Room 1 to Room 2,  
[REDACTED] mistreated and interrogated.<sup>1329</sup> [REDACTED] Mr Shala,<sup>1330</sup>  
Xhemshit Krasniqi, Bedri, Van Damme and at least three or four more KLA members  
were present in the room that night.<sup>1331</sup> [REDACTED] the Murder Victim  
[REDACTED] physically abused with various objects by the KLA members present in

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<sup>1320</sup> [REDACTED].

<sup>1321</sup> [REDACTED].

<sup>1322</sup> [REDACTED].

<sup>1323</sup> [REDACTED].

<sup>1324</sup> [REDACTED].

<sup>1325</sup> [REDACTED].

<sup>1326</sup> [REDACTED].

<sup>1327</sup> [REDACTED].

<sup>1328</sup> [REDACTED].

<sup>1329</sup> [REDACTED].

<sup>1330</sup> Mr Shala's presence during this incident is discussed in more detail in Section VI.F.4.

<sup>1331</sup> [REDACTED].

Room 2 [REDACTED].<sup>1332</sup> [REDACTED]: “[REDACTED]”,<sup>1333</sup> “[REDACTED]”,<sup>1334</sup>  
“[REDACTED]”,<sup>1335</sup> “[REDACTED]”,<sup>1336</sup> “[REDACTED]”.<sup>1337</sup>

675. [REDACTED] he was forced to make a confession [REDACTED].<sup>1338</sup>  
[REDACTED].<sup>1339</sup> [REDACTED].<sup>1340</sup>

676. [REDACTED] the Murder Victim was [REDACTED] shot in the leg, below the  
knee.<sup>1341</sup> The Panel will discuss the Murder Victim’s shooting in more detail in  
Section VI.F.1 below.

677. [REDACTED].<sup>1342</sup> In his own words: “they went on beating [REDACTED] until  
the next morning. [REDACTED]”.<sup>1343</sup> [REDACTED].<sup>1344</sup> [REDACTED].<sup>1345</sup>

678. [REDACTED]. More specifically, TW4-11 testified that one day during their  
detention, the Murder Victim was taken out of Room 1.<sup>1346</sup> Shortly thereafter TW4-11  
heard a gunshot from a short distance away.<sup>1347</sup> [REDACTED].<sup>1348</sup> The witness further

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<sup>1332</sup> [REDACTED].

<sup>1333</sup> [REDACTED].

<sup>1334</sup> [REDACTED].

<sup>1335</sup> [REDACTED].

<sup>1336</sup> [REDACTED].

<sup>1337</sup> [REDACTED].

<sup>1338</sup> [REDACTED].

<sup>1339</sup> [REDACTED].

<sup>1340</sup> [REDACTED].

<sup>1341</sup> [REDACTED].

<sup>1342</sup> [REDACTED].

<sup>1343</sup> [REDACTED].

<sup>1344</sup> [REDACTED].

<sup>1345</sup> [REDACTED].

<sup>1346</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1245, lines 16-20.

<sup>1347</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1246, lines 3-6; p. 1246, line 15 to p. 1248, line 19 *referring to*  
TW4-11 Prior Statement SITF00013047-SITF00013060 RED5; p. 1249, lines 3-5, 20-22.

<sup>1348</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1245, line 25 to p. 1246, line 2.

recalled that when the Murder Victim was brought back to Room 1, the next morning, he had a gunshot wound above his knee and he was bleeding.<sup>1349</sup> [REDACTED].<sup>1350</sup>

679. [REDACTED].<sup>1351</sup> [REDACTED].<sup>1352</sup> [REDACTED].<sup>1353</sup> W01448 further recounted that KLA members – Xhemshit Krasniqi among them– [REDACTED] took the Murder Victim out of Room 1.<sup>1354</sup> W01448 stated that he could hear from Room 1 the Murder Victim’s “loud cries”, as KLA members were beating him.<sup>1355</sup> Then W01448 heard a shot near the door.<sup>1356</sup> He recalled that Xhemshit Krasniqi, together with two other KLA members, then brought the Murder Victim back to Room 1.<sup>1357</sup> W01448 saw that the Murder Victim “had a bullet hole on his lower right leg”,<sup>1358</sup> under his knee, and was “covered with blood”.<sup>1359</sup>

680. Notwithstanding certain differences in their accounts, which will be discussed in more detail below,<sup>1360</sup> the Panel observes that TW4-11’s testimony and the statements of W01448 corroborate [REDACTED]. [REDACTED].

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<sup>1349</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1244, line 25 to p. 1245, line 24; p. 1253, line 24 to p. 1255, line 6, *referring to* TW4-11 Prior Statement: 059351-TR-ET Part 2; T. 3 May 2023, confidential, p. 1255, line 23 to p. 1256, line 23, *referring to* TW4-11 Prior Statement: SITF00019898-00019956 RED4.

<sup>1350</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1258, lines 15-21.

<sup>1351</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859; SITF00013833-00013847 RED4, p. SITF00013837; SITF00013736-SITF00013800 RED5, p. SITF00013755.

<sup>1352</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013755.

<sup>1353</sup> **W01448**: SITF00013833-00013847 RED4, p. SITF00013838; SITF00013848-00013851 RED2, p. SITF00013848; SITF00013852-00013869 RED6, p. SITF00013859; SITF00013736-SITF00013800 RED5, p. SITF00013755.

<sup>1354</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859; SITF00013833-00013847 RED4, p. SITF00013837; SITF00013736-SITF00013800 RED5, p. SITF00013755.

<sup>1355</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859.

<sup>1356</sup> **W01448**: SITF00016221-00016285 RED4, p. SITF00016238.

<sup>1357</sup> **W01448**: SITF00013833-00013847 RED4, p. SITF00013838.

<sup>1358</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859.

<sup>1359</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859; SITF00013736-SITF00013800 RED5, p. SITF00013753; SITF00016221-00016285 RED4, p. SITF00016239.

<sup>1360</sup> [REDACTED].



681. [REDACTED],<sup>1361</sup> [REDACTED].<sup>1362</sup> [REDACTED].<sup>1363</sup>

682. [REDACTED].<sup>1364</sup>

683. [REDACTED]. [REDACTED]. [REDACTED].

684. *Consequences of mistreatment.* The evidence before the Panel shows that TW4-01's mistreatment throughout his detention, as analysed above, left the witness with long-lasting physical and psychological injuries. More specifically, TW4-01 testified that, to this day, he has pain in his ribs and bones [REDACTED].<sup>1365</sup> The witness also explained that he still has visible scars [REDACTED] from the physical abuse he suffered.<sup>1366</sup>

685. TW4-01 further testified in detail about the psychological effect of his mistreatment, stating that he suffers from stress and nervous breakdowns.<sup>1367</sup> He explained: "Sometimes in my sleep I just get scared. My body jumps like in shock".<sup>1368</sup> Further, he averred: "They killed me and took my soul slowly, [...] [REDACTED]. I know what being beaten is. I know what pain from beatings is. No one can cause me greater pain than they did".<sup>1369</sup> TW4-01 maintained that, even today, he does not feel safe and he is afraid that he can be killed.<sup>1370</sup> [REDACTED].<sup>1371</sup> As a result of his fear, TW4-01 is currently not working [REDACTED].<sup>1372</sup>

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<sup>1361</sup> [REDACTED].

<sup>1362</sup> [REDACTED].

<sup>1363</sup> [REDACTED].

<sup>1364</sup> [REDACTED].

<sup>1365</sup> **TW4-01:** T. 31 May 2023, confidential, p. 1523, lines 15-17.

<sup>1366</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1458, line 12; p. 1467, line 22 to p. 1468, line 3; p. 1474, line 11 to p. 1475, line 10.

<sup>1367</sup> **TW4-01:** T. 31 May 2023, public, p. 1570, lines 8-12.

<sup>1368</sup> **TW4-01:** T. 31 May 2023, public, p. 1572, lines 17-18.

<sup>1369</sup> **TW4-01:** T. 31 May 2023, confidential, p. 1570, 23 to p. 1571, line 3.

<sup>1370</sup> **TW4-01:** T. 31 May 2023, confidential, p. 1576, line 23 to p. 1577, line 15.

<sup>1371</sup> **TW4-01:** T. 31 May 2023, confidential, p. 1576, line 25 to p. 1577, line 2.

<sup>1372</sup> **TW4-01:** T. 31 May 2023, confidential, p. 1577, line 16 to p. 1578, line 19.

686. TW4-01's account regarding the injury he sustained [REDACTED] is corroborated by the findings of Dr Gasior who performed a physical examination on the witness [REDACTED].<sup>1373</sup> The report prepared by Dr Gasior as well as Dr Gasior's in-court testimony reveal that, at the time of his examination, TW4-01 had [REDACTED].<sup>1374</sup>

687. Further, TW4-01's account of the psychological consequences he suffers is staunchly corroborated by the psychological assessment conducted by Ms Duhne-Prinsen and Dr Lozano Parra. Their expert report reveals that TW4-01 suffers from PTSD, experiences flashbacks and feelings of anxiety and anger associated with the mistreatment [REDACTED].<sup>1375</sup> According to Ms Duhne-Prinsen's and Dr Lozano Parra's findings, these specific PTSD symptoms are consistent with the mistreatment the witness suffered during his detention at the KMF.<sup>1376</sup> In this regard, the Panel notes that the Defence did not challenge the findings of the experts. To the contrary, by seeking to challenge TW4-01's recollection of events due to his PTSD,<sup>1377</sup> the Defence accepts the findings made by the experts regarding the physical and psychological consequences of his mistreatment.

688. *Conclusion.* In light of the foregoing, the Panel is satisfied that, on or about 20 May 1999, a group of KLA members, which included Mr Shala, [REDACTED], mistreated physically and psychologically TW4-01 and the Murder Victim. On the same occasion, TW4-01 and the Murder Victim were interrogated and accused of collaborating with Serbs and of being spies. The Panel is equally satisfied that, [REDACTED], TW4-01 was mistreated [REDACTED]. [REDACTED]. [REDACTED].

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<sup>1373</sup> **Dr Gasior:** T. 27 June 2023, confidential, p.215, line 16 to p. 2117, line 17.

<sup>1374</sup> **Dr Gasior:** T. 27 June 2023, confidential, p. 2119, line 5 to p. 2120, line 21 *referring to Report:* SITF00019134-SITF00019147 RED2, pp. SITF00019137, SITF00019139.

<sup>1375</sup> **Report:** V4010023-V4010044, p. V4010037.

<sup>1376</sup> **Report:** V4010023-V4010044, pp. V4010041, V4010043.

<sup>1377</sup> *See, for example,* Defence Final Trial Brief, para. 188.

The Panel is further satisfied that, on or about 4 June 1999, [REDACTED] the Murder Victim [REDACTED] interrogated and physically and psychologically abused by Mr Shala, Xhemshit Krasniqi, Bedri, Van Damme and at least three or four other KLA members in Room 2. [REDACTED]. The Panel will enter its findings regarding the shooting of the Murder Victim in Section VI.F. below.

(c) W04733

689. *Mistreatment and interrogation in the Office on or about 20 May 1999.* On or about 20 May 1999, W04733 was taken by four KLA members from the Command Building Detention Room to the Office,<sup>1378</sup> where he saw Mr Shala, Xhemshit Krasniqi, Sabit Geci, Fatmir Limaj and other KLA members.<sup>1379</sup> According to W04733's account, he was the first detainee who was brought into the Office and mistreated that night, followed by W01448, TW4-01 and the Murder Victim.<sup>1380</sup>

690. The witness's statements provide a detailed account of the physical abuse he suffered that evening. More specifically, according to W04733, upon entering the room, he was sat on a wooden chair, in front of Sabit Geci, who questioned him.<sup>1381</sup> Behind the witness stood Xhemshit Krasniqi and Mr Shala, the two KLA members who, according to W04733, mistreated him the most on that night.<sup>1382</sup> W04733 recalled, in particular, that Mr Shala used a rubber baton and a baseball bat to hit him all over

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<sup>1378</sup> **W04733**: SITF00018740-00018767 RED, p. SITF00018741; SITF00019824-00019876 RED2, pp. SITF00019832-00019833; SPOE00013793-SPOE00013847 RED2, p. SPOE00013811; 082892-TR-AT-ET Part 4 RED3, p. 24.

<sup>1379</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013186; 082892-TR-AT-ET Part 4 RED3, p. 22; SITF00018740-00018767 RED, p. SITF00018741; SPOE00013793-SPOE00013847 RED2, p. SPOE00013811.

<sup>1380</sup> **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185341; SPOE00013793-SPOE00013847 RED2, pp. SPOE00013818-SPOE00013819; SITF00018740-00018767 RED, p. SITF00018742.

<sup>1381</sup> **W04733**: SITF00019824-00019876 RED2, p. SITF00019841; 082892-TR-AT-ET Part 4 RED3, p. 23; SITF00019824-00019876 RED2, pp. SITF00019841-SITF00019842.

<sup>1382</sup> **W04733**: SITF00019824-00019876 RED2, p. SITF00019846.

his body and head, including on his hands and feet, which were swollen as a result.<sup>1383</sup> In one of his statements, W04733 declared: “Pjeter Shala hit me using the most inhumane behaviour to me”.<sup>1384</sup> The witness further recounted in a consistent manner across his statements that Mr Shala ordered [REDACTED] to beat him, [REDACTED].<sup>1385</sup> W04733 further recounted across his statements that Xhemshit Krasniqi beat him on the head with a gun, put off cigarettes on his body and broke his elbow after hitting him with a rubber baton.<sup>1386</sup> He further detailed that Xhemshit Krasniqi forced a baton inside his mouth, causing his teeth to break and his mouth to bleed.<sup>1387</sup>

691. W04733 explained that, despite the fact that he was visibly injured from beatings he received prior to his arrival at the KMF, he was mistreated by all the individuals present in the room, including Mr Shala, Xhemshit Krasniqi and Fatmir Limaj.<sup>1388</sup> “[T]hey attacked me with kicks, punches, baton, baseball bat and everything they could strike me with”, he recalled.<sup>1389</sup> He added: “It looked like as if every one of them wanted to hit me as if they were getting some pleasure out of it”.<sup>1390</sup> As a result of the beatings he suffered, W04733 fainted and water was thrown on him to bring him back to consciousness.<sup>1391</sup> He further explained that due to the severe beatings on his head,

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<sup>1383</sup> **W04733**: 106978-107020, p. 106980; 082892-TR-AT-ET Part 5 RED2, pp. 10-12; SITF00018740-00018767 RED, p. SITF00018743; SITF00019824-00019876 RED2, p. SITF00019844.

<sup>1384</sup> **W04733**: 106978-107020, p. 106980.

<sup>1385</sup> **W04733**: 082892-TR-AT-ET Part 5 RED2, p. 11; SITF00018740-00018767 RED, p. SITF00018743; 106978-107020, p. 106981.

<sup>1386</sup> **W04733**: SITF00018740-00018767 RED, p. SITF00018742-00018743; 106978-107020, pp. 106982-106983.

<sup>1387</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013187; 082892-TR-AT-ET Part 5 RED2, pp. 7-8; 106978-107020, p. 106982.

<sup>1388</sup> **W04733**: SITF00019824-00019876 RED2, pp. SITF00019841-SITF00019842; 082892-TR-AT-ET Part 8 RED2, p. 14; SITF00018740-00018767 RED, pp. SITF00018743-00018744; U003-2283-U003-2289 RED2, pp. U0032284, U0032286.

<sup>1389</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 25, lines 24-25.

<sup>1390</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013186.

<sup>1391</sup> **W04733**: 106978-107020, p. 106979; SPOE00013793-SPOE00013847 RED2, p. SPOE00013818.

he started bleeding.<sup>1392</sup> Although a doctor came and bandaged his head twice, a KLA member removed the bandages with a knife both times.<sup>1393</sup>

692. In addition to being beaten, W04733 contended that he was questioned by Sabit Geci and other KLA members present at the Office and repeatedly accused of being a rapist, a murderer, a traitor and a spy for working with Serbs.<sup>1394</sup> W04733 specifically recalled that, while beating him, Mr Shala accused him of being a spy.<sup>1395</sup> He further vividly stated: "Whilst someone was beating me, I had to answer someone else's question. When I answered him, another one would say why I was not answering his question. [...] I never had a chance to finish an answer before someone else would ask me another and beat me".<sup>1396</sup> The witness also maintained that he was asked to sing a Serbian song.<sup>1397</sup>

693. W04733 further recounted that he was the first detainee to be removed from the Office that night and explained that, while he was taken out, the persons present in the Office continued mistreating other detainees, including W01448, TW4-01 and the Murder Victim.<sup>1398</sup> The witness added that, as he was being brought upstairs to the Command Building Detention Room, one KLA member continued beating him and cut his wrist using a knife, which caused W04733 to bleed heavily.<sup>1399</sup>

694. W04733's evidence regarding his mistreatment on or about 20 May 1999 finds strong corroboration in the evidence of other witnesses, including the in-court

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<sup>1392</sup> **W04733**: 106978-107020, p. 106979; 082892-TR-AT-ET Part 4 RED3, p. 32.

<sup>1393</sup> **W04733**: 106978-107020, p. 106979; SITF00019824-00019876 RED2, pp. SITF00019841-00019842; SPOE00013793-SPOE00013847 RED2, p. SPOE00013826; 082892-TR-AT-ET Part 4 RED3, pp. 30, 32.

<sup>1394</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013186; SITF00019824-00019876 RED2, pp. SITF00019841-00019842; SPOE00013793-SPOE00013847 RED2, p. SPOE00013814.

<sup>1395</sup> **W04733**: 082892-TR-AT-ET Part 5 RED2, p. 10, lines 23-24.

<sup>1396</sup> **W04733**: 082892-TR-AT-ET Part 8 RED 2, p. 14, lines 2-7.

<sup>1397</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013186.

<sup>1398</sup> **W04733**: 106978-107020, p. 106985; SPOE00013793-SPOE00013847 RED2, p. SPOE00013821.

<sup>1399</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013186; SITF00018740-00018767 RED, p. SITF00018744; 106978-107020, pp. 106983-106984. *See also*, SITF00390625-00390626, p. SITF00390626.

testimony of TW4-01 and the statements of W01448. In his testimony before the Panel, TW4-01 distinctly recalled that when he entered the Office he saw W04733 sitting on a chair, with his head covered in blood and bandages, a distinct detail that W01448 also recounted in his statements.<sup>1400</sup> Both TW4-01 and W01448 witnessed W04733 being beaten with wooden bars, batons and sticks.<sup>1401</sup> TW4-01 testified that Mr Shala was among the KLA members beating W04733.<sup>1402</sup> “He was beaten very badly. He was crying. He was traumatised”, TW4-01 recalled.<sup>1403</sup> [REDACTED].<sup>1404</sup> TW4-01 and W01448 also provided evidence that salt was thrown in his eyes and wounds, [REDACTED].<sup>1405</sup> Attesting to the brutality of W04733’s mistreatment, W01448 recounted in his statement: “Seeing [W04733] in that position. I felt like dying”,<sup>1406</sup> “It looked as if all of them were in some sort of competition to beat and humiliate him. When finally, his tormentors removed [W04733] from the room, he was not able to walk”.<sup>1407</sup> TW4-01 and W01448 also provided evidence that W04733 was interrogated about his former work as a police officer, and confirmed that he was repeatedly accused of collaborating with Serbs and raping women.<sup>1408</sup>

695. W04733 provided a vivid, rich in detail account of the physical abuse he suffered during his detention at the KMF that leaves the Panel convinced that he spoke

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<sup>1400</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1452, lines 19-22; p. 1453, lines 15-17; T. 31 May 2023, confidential, p. 1491, line 25 to p. 1492, line 9; **W01448:** SITF00013852-00013869 RED6, pp. SITF00013856-SITF00013857.

<sup>1401</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1454, lines 3-17.

<sup>1402</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1454, lines 8-11.

<sup>1403</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1452, lines 11-12.

<sup>1404</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1454, lines 4-7.

<sup>1405</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1454, lines 14-19; **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013743-SITF00013745; SITF00016221-00016285 RED4, p. SITF00016232. [REDACTED].

<sup>1406</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1407</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1408</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1455, lines 1-11; **W01448:** SITF00013852-00013869 RED6, pp. SITF00013856-SITF00013857; SITF00013736-SITF00013800 RED5, p. SITF00013744.

truthfully about his personal experiences, especially when assessed together with the corroborating evidence that TW4-01 and W01448 provided.

696. The Defence advances that no other witness corroborated, in a reliable and independent manner, W04733's assertion that he was mistreated by Mr Shala on or about 20 May 1999 in the Office.<sup>1409</sup> The Defence further challenges the reliability of W04733's evidence regarding this incident, arguing that: (i) in a statement he provided in 2002, W04733 did not provide any details as to the mistreatment he suffered by Mr Shala;<sup>1410</sup> and (ii) W04733 has not provided always consistent evidence as to the individuals that burnt him with cigarettes and broke his teeth.<sup>1411</sup> The Panel will address these challenges below.

697. As to the Defence's argument that no other witness corroborates W04733's account that he was physically abused by Mr Shala, the Panel recalls its finding above that TW4-01 provided a highly corroborating testimony of W04733's mistreatment, confirming, in particular, that he witnessed Mr Shala beat W04733. In addition, W01448 has provided evidence that, on or about 20 May 1999, all KLA members present in the Office, with the exception of Sabit Geci, were beating the detainees.<sup>1412</sup> W01448's evidence in this regard is in line with the testimony of TW4-01 who also stated that, during that night, every KLA member present in the Office took turns in beating him (*i.e.* TW4-01).<sup>1413</sup> Referring in particular to W04733, W01448 stated in one of his statements: "Anyone who wanted to beat him could".<sup>1414</sup> The Panel is left with no doubt that Mr Shala, who was present that night in the Office, physically mistreated W04733. The Defence's argument is, therefore, rejected.

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<sup>1409</sup> Defence Final Trial Brief, para. 137.

<sup>1410</sup> Defence Final Trial Brief, para. 235.

<sup>1411</sup> Defence Final Trial Brief, para. 235.

<sup>1412</sup> **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013744-SITF00013745; SITF00016221-00016285 RED4, p. SITF00016231.

<sup>1413</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1459, lines 9-15.

<sup>1414</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013745.

698. As regards the Defence's argument that, contrary to his 2003 statement, in 2002 W04733 did not provide detailed evidence on the mistreatment he suffered by Mr Shala, at the outset the Panel clarifies that the fact that witnesses provide different levels of detail at different times does not, in and of itself, make them inconsistent or unreliable. The level of detail in W04733's statement is simply a reflection of how the statement was taken and recorded at the time. Indeed, the Panel observes that, in 2003, W04733 was asked by the ICTY investigators to answer some additional questions concerning the statement he gave in 2002 to the same authority. It is, thus, natural that his 2003 statement is more detailed than the one of 2002. In this light, the Panel disagrees with the Defence that the variation in the level of detail between the two statements casts doubt on the reliability of W04733's evidence.

699. Finally, the Panel notes that, with the exception of the statement he provided in 2010, W04733 has consistently provided evidence in 2002, [REDACTED], [REDACTED] and 2019 that the person that forced the baton into his mouth, resulting in his teeth to break, was Xhemshit Krasniqi, a recollection also corroborated by W01448.<sup>1415</sup> Similarly, across his statements in 2009, 2010 and [REDACTED], W04733 has identified Xhemshit Krasniqi as the individual that used cigarettes to burn him on his shoulders. It is true that in [REDACTED] the witness initially named Mr Shala as the KLA member that burnt him with cigarettes, but the Panel notes that it was a mistake which he immediately corrected.<sup>1416</sup> The Panel, thus, finds that in contrast to what the Defence alleges, W04733 has provided consistent and detailed evidence of the specific types of mistreatment he suffered. The Panel further finds that the discrepancy in W04733's 2010 statement is isolated and does not affect his overall

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<sup>1415</sup> **W04733**: SITF00013181-SITF00013189 RED3, p. SITF00013187; 082892-TR-AT-ET Part 5 RED2, pp. 7-8; 106978-107020, p. 106982; SPOE00013793-SPOE00013847 RED2, p. SPOE00013818; **W01448**: SITF00013833-00013847 RED4, p. SITF00013837.

<sup>1416</sup> **W04733**: 106978-107020, p. 106980.



credibility, considering in particular the fact that the witness has provided numerous consistent statements over several years.

700. *Consequences of mistreatment.* The evidence received by the Panel reveals that W04733 suffered long-lasting physical and psychological consequences due to the injuries he sustained during his detention at the KMF. In particular, W04733 explained that the mistreatment inflicted on him left him with multiple injuries and scars during his detention, including a scar on his forehead,<sup>1417</sup> burn marks on his chest and shoulder,<sup>1418</sup> an injured elbow,<sup>1419</sup> and broken teeth.<sup>1420</sup>

701. Describing the psychological effect of his detention and mistreatment, W04733 stated: "I had and still have nightmares. In my dreams I see dead people. I know they're dead but I don't know how they've died. I just know that they're dead".<sup>1421</sup> The witness further explained that, following his release from the KMF, he lived constantly under stress, fearing to even visit a doctor, despite the serious injuries he had sustained at the KMF.<sup>1422</sup> "Even after a long time I had to watch over my shoulder fearing that something might happen", he said in one of his statements.<sup>1423</sup> According to W04733, his family's lives were also impacted by what he experienced at the KMF.

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<sup>1417</sup> **W04733:** SPOE00013793-SPOE00013847 RED2, p. SPOE00013814; SITF00018740-00018767 RED, pp. SITF00018742-SITF00018743; SPOE00185335-00185363 RED3, p. SPOE00185340.

<sup>1418</sup> **W04733:** SITF00018740-00018767 RED, pp. SITF00018742-SITF00018743; SPOE00013793-SPOE00013847 RED2, p. SPOE00013816; SPOE00185335-00185363 RED3, p. SPOE00185340.

<sup>1419</sup> **W04733:** SITF00018740-00018767 RED, p. SITF00018742; 106978-107020, p. 106982; SPOE00013793-SPOE00013847 RED2, p. SPOE00013817.

<sup>1420</sup> **W04733:** SITF00013181-SITF00013189 RED3, p. SITF00013187; 082892-TR-AT-ET Part 5 RED2, pp. 7-8; SITF00018740-00018767 RED, p. SITF00018743; 106978-107020, p. 106982; SPOE00013793-SPOE00013847 RED2, p. SPOE00013818.

<sup>1421</sup> **W04733:** 082892-TR-AT-ET Part 9 RED2, p. 24.

<sup>1422</sup> **W04733:** 082892-TR-AT-ET Part 9 RED2, pp. 18-19, 23; SPOE00185335-00185363 RED3, p. SPOE00185337; SITF00390625-00390626, p. SITF00390626.

<sup>1423</sup> **W04733:** 082892-TR-AT-ET Part 9 RED2, p. 24.

The witness explained that [REDACTED] and that his sons or nephews had to escort him everywhere he went.<sup>1424</sup>

702. W04733's account of the injuries he sustained is strongly corroborated by the findings of Dr Gasior who examined physically W04733 on 10 November 2010.<sup>1425</sup> The report prepared by Dr Gasior as well as his in-court testimony reveal that W04733 sustained a 4.5 centimetre scar in his forehead which was a "consequence of a serious injury [...] done by a blunt, heavy object with a certain force applied".<sup>1426</sup> Dr Gasior's testimony and his expert report on W04733 also attest that W04733's left elbow was slightly deformed and his ability to straighten said elbow was limited up to ten percent.<sup>1427</sup> Lastly, Dr Gasior's report and testimony confirm that W04733 sustained a linear scar on his left wrist, consequence of an injury made by a sharp object.<sup>1428</sup>

703. W04733's Family Members also provided ample evidence in court, corroborating W04733's physical injuries, as they witnessed them personally following his release, as well as the extensive mental suffering he endured for years afterwards.<sup>1429</sup> They vividly recalled that, upon his return, W04733 was pale,<sup>1430</sup> covered in blood,<sup>1431</sup> had

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<sup>1424</sup> **W04733:** 082892-TR-AT-ET Part 10 RED2, pp. 24, 29-30. *See also*, SPOE00185335-00185363 RED3, p. SPOE00185337.

<sup>1425</sup> **Dr Gasior:** T. 27 June 2023, confidential, p. 2126, line 12 to p. 2127, line 15. *See also*, SITF00019793-SITF00019810 containing the report of the physical examination of W04733.

<sup>1426</sup> **Report:** SITF00019793-SITF00019810, pp. SITF00019794-SITF00019795, SITF00019797; T. 27 June 2023, public, p. 2128, line 13 to p. 2129, line 9.

<sup>1427</sup> **Report:** SITF00019793-SITF00019810, pp. SITF00019795, SITF00019800; T. 27 June 2023, public, p. 2130, lines 5-14

<sup>1428</sup> **Report:** SITF00019793-SITF00019810, pp. SITF00019795, SITF00019801; T. 27 June 2023, public, p. 2131, line 8 to p. 2132, line 5.

<sup>1429</sup> **TW4-08:** T. 27 March 2023, public, p. 667, lines 8-11; p. 677, lines 15-17; p. 683, lines 5-6; p. 686, lines 14-16, 19-22; p. 687, lines 4-6 and 14-17; **TW4-06:** T. 28 March 2023, confidential, p. 824, lines 17-18, 23; p. 825, lines 1-2, 16; T. 29 March 2023, public, p. 844, lines 15-17; p. 845, lines 1-11, 17-20; **TW4-07:** T. 29 March 2023, public, p. 911, line 7-17; p. 912, lines 2-6; **TW4-09:** T. 30 March 2023, public, p. 989, lines 6-9, 12-13.

<sup>1430</sup> **TW4-06:** T. 28 March 2023, public, p. 824, lines 11-14.

<sup>1431</sup> **TW4-08:** T. 27 March 2023, public, p. 683, lines 2-6; **TW4-06:** T. 28 March 2023, public, p. 824, lines 11-21.

wounds all over his body<sup>1432</sup> and had lost a lot of weight.<sup>1433</sup> TW4-08, TW4-07 and TW4-09, in particular, described their father as being “destroyed”,<sup>1434</sup> “aggressive”,<sup>1435</sup> “not the one I used to know before”,<sup>1436</sup> “broken”.<sup>1437</sup> W04733’s wife, TW4-06, spoke extensively about the nightmares he experienced and the difficulties he had sleeping after his release.<sup>1438</sup> Similarly, TW4-08 confirmed about his father: “He mostly experienced difficult nights. He was not how he was before, before the war”.<sup>1439</sup>

704. Additionally, the Family Members corroborated and complemented W04733’s account regarding the long-lasting effects that his detention and mistreatment had on the family’s life. TW4-08, TW4-06, TW4-07 and TW4-09 described compellingly how the family shared the burden of suffering that W04733 brought with him.<sup>1440</sup> In TW4-08’s words: “The experience was harrowing because we all suffered the effects”, “we felt the condition that was caused to him”.<sup>1441</sup> TW4-08, TW4-06 and TW4-07 further testified that the family felt unsafe, as they were afraid that more harm would come towards their way.<sup>1442</sup> W04733’s wife, TW4-06, also explained that [REDACTED]

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<sup>1432</sup> **TW4-08:** T. 27 March 2023, public, p. 667, lines 6-11; **TW4-06:** T. 28 March 2023, confidential, p. 824, lines 11-24; **TW4-07:** T. 29 March 2023, public, p. 911, lines 6-17; **TW4-09:** T. 30 March 2023, public, p. 989, 4-9.

<sup>1433</sup> **TW4-08:** T. 27 March 2023, public, p. 667, lines 6-9; **TW4-06:** T. 28 March 2023, public, p. 824, lines 11-13; **TW4-07:** T. 29 March 2023, public, p. 911, lines 6-7; **TW4-09:** T. 30 March 2023, public, p. 988, lines 21-25.

<sup>1434</sup> **TW4-08:** T. 27 March 2023, public, p. 686, lines 14-16.

<sup>1435</sup> **TW4-08:** T. 27 March 2023, public, p. 687, lines 3-4.

<sup>1436</sup> **TW4-07:** T. 29 March 2023, public, p. 911, lines 23-24.

<sup>1437</sup> **TW4-09:** T. 30 March 2023, public, p. 989, lines 12-13.

<sup>1438</sup> **TW4-06:** T. 28 March 2023, public, p. 825, lines 1-2; T. 29 March 2023, public, p. 844, line 18 to p. 846, line 2.

<sup>1439</sup> **TW4-08:** T. 27 March 2023, public, p. 686, lines 15-16; p. 687, lines 15-17.

<sup>1440</sup> **TW4-08:** T. 27 March 2023, public, p. 677, lines 10-23; p. 687, line 7 to p. 689, line 12; **TW4-06:** T. 29 March 2023, public, p. 846, line 3 to p. 848, line 6; **TW4-07:** T. 29 March 2023, public, p. 912, lines 8-23; p. 913, line 13 to p. 914, line 12; **TW4-09:** p. 989, line 22 to p. 990, line 23.

<sup>1441</sup> **TW4-08:** T. 27 March 2023, public, p. 687, lines 9-10, 14-15.

<sup>1442</sup> **TW4-06:** T. 29 March 2023, public, p. 847, line 20 to p. 848, line 6; **TW4-08:** T. 27 March 2023, public, p. 677, lines 10-23; p. 687, line 7 to p. 689, line 2; **TW4-07:** T. 29 March 2023, public, p. 912, lines 8-23; **TW4-09:** T. 30 March 2023, public, p. 989, line 22 to p. 990, line 23.

as the family was concerned about their safety.<sup>1443</sup> In this regard, TW4-07 stated: “But also for us [REDACTED], the perspectives were not the same”, “[We were] seen as a family of spies by some people, or considered as such, because of what happened to our father”.<sup>1444</sup> TW4-06’s testimony reveals that the harm caused to the family persists until today: “The entire family, myself, all of my children, suffered a lot of stress. What befell on us will stay with us and we will never be able to erase it”.<sup>1445</sup>

705. The Panel also pays due attention to the fact that W04733’s description of the mental suffering he experienced after the physical abuse he was subjected to at the KMF is remarkably similar to that of TW4-01. Notably, both witnesses shared that their detention and mistreatment at the KMF left them feeling unsafe and fearful that something bad will happen to them. Not least, they both testified having difficulties in sleeping due to the traumatic events they experienced during their detention. The Panel considers that the above lends credence to the evidence W04733 provided in his statements as regards the psychological impact of his mistreatment. Likewise, it strengthens the evidence provided by TW4-01.

706. *Conclusion.* In light of the foregoing, the Panel is satisfied that, on or about 20 May 1999, a group of KLA members, which included Mr Shala, Fatmir Limaj and Xhemshit Krasniqi, mistreated physically and psychologically W04733. On the same occasion, several KLA members, including Sabit Geci, also interrogated the witness about his former work as a police officer and accused him of being a traitor, a murderer, a rapist and of collaborating with Serbs. The Panel is further satisfied that, during this incident, Mr Shala accused W04733 of being a spy.

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<sup>1443</sup> **TW4-06:** T. 29 March 2023, public, p. 847, lines 10-19. *See further*, **TW4-08:** T. 27 March 2023, public, p. 688, lines 1-13; **TW4-07:** T. 29 March 2023, public, p. 912, lines 11-17.

<sup>1444</sup> **TW4-07:** T. 29 March 2023, public, p. 912, lines 18-21. *See further*, **TW4-09:** T. 30 March 2023, public, p. 960, line 14 to p. 962, line 2.

<sup>1445</sup> **TW4-06:** T. 28 March 2023, public, p. 825, line 24 to p. 826, line 1.

(d) W01448

707. *Mistreatment and interrogation in the Office on or about 20 May 1999.* On or about 20 May 1999, W01448 was taken from the Command Building Detention Room to the Office, where he saw at least ten KLA members gathered, including Mr Shala, Xhemshit Krasniqi and Sabit Geci.<sup>1446</sup> He explained that, following the mistreatment of W04733, TW4-01 and the Murder Victim, which he personally witnessed, his own mistreatment began.<sup>1447</sup> In particular, W01448 described that he was mostly hit with batons, mainly on the upper part of his body and his hands.<sup>1448</sup> As a result, his hands were swollen.<sup>1449</sup> He further recounted that a KLA member present in the Office threatened to carve his skin with a knife.<sup>1450</sup> “Xhemshit KRASNIQI hit me with a rubber baton on the nose and as a result I fainted. They threw a bucket of water on my face to bring me back into senses”, he recalled.<sup>1451</sup> W01448 also explained that, similarly to the beatings of TW4-01 and W04733, all the KLA members present in the room during that night participated in beating him.<sup>1452</sup> However, across his statements, W01448 clarified that Mr Shala was the one that beat him the most.<sup>1453</sup>

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<sup>1446</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857; SITF00013736-SITF00013800 RED5, pp. SITF00013743-SITF00013744; SITF00016221-00016285 RED4, p. SITF00016231. Further enhancing the credibility of the witness, the Panel notes that, consistent with the evidence of TW4-01 and W04733, W01448 recalled that Sabit Geci was, at the time, injured and was using crutches (see SITF00013852-00013869 RED6, p. SITF00013857).

<sup>1447</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1448</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857; SITF00013736-SITF00013800 RED5, pp. SITF00013743, SITF00013747.

<sup>1449</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1450</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857; SITF00013736-SITF00013800 RED5, p. SITF00013746.

<sup>1451</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1452</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013744.

<sup>1453</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857; SITF00016221-00016285 RED4, p. SITF00016231; SITF00013736-SITF00013800 RED5, pp. SITF00013743, SITF00013746.

708. On the same night, W01448 was interrogated by Xhemshit Krasniqi about his past, his military service, his whereabouts prior to the war and his relationships with Serbs.<sup>1454</sup> He explained that he was ordered to write his answers on a paper.<sup>1455</sup>

709. W01448's evidence is corroborated by the evidence of other witnesses. More specifically, the Panel considers that W04733 provided evidence across his statements that he saw W01448 being beaten by KLA members, including Mr Shala, Sabit Geci and Xhemshit Krasniqi.<sup>1456</sup> In particular, W04733 provided evidence about Sabit Geci punching and slapping W01448.<sup>1457</sup> W04733 additionally corroborated W01448's account that he was beaten with batons on his feet and hands.<sup>1458</sup> In addition to what he witnessed inside the Office, W04733 also explained that when W01448 was brought back to the Command Building Detention Room, he could see signs of mistreatments on his body, including bruises and his swollen hands and feet.<sup>1459</sup>

710. The Panel further notes, in this regard, that [REDACTED], the interrogation and mistreatment [REDACTED]: they were mistreated in the Office by the same KLA members, including Mr Shala, with the use of the same tools, they both fainted and had water thrown on them, they were forced to witness the physical abuse inflicted on their co-detainees and, lastly, they were both questioned about details of their personal life.<sup>1460</sup> [REDACTED].

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<sup>1454</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013746.

<sup>1455</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013746.

<sup>1456</sup> **W04733**: SITF00018740-00018767 RED, p. SITF00018744; 106978-107020, pp. 106984-106985.

<sup>1457</sup> **W04733**: SITF00018740-00018767 RED, pp. SITF00018742, SITF00018744; 106978-107020, pp. 106984-106985, 106999.

<sup>1458</sup> **W04733**: 106978-107020, pp. 106984-106985, 106999.

<sup>1459</sup> **W04733**: 106978-107020, pp. 106986-106987, 106999; SPOE00013793-SPOE00013847 RED2, p. SPOE00013820.

<sup>1460</sup> [REDACTED].

711. Considering the detail of his account and the corroborating evidence provided by W04733 [REDACTED], the Panel is persuaded that W01448's statements pertaining to his mistreatment by KLA members, including Mr Shala, are very reliable.

712. The Defence takes issue with the identification of Mr Shala by W01448, which it submits is unreliable because: (i) W01448 did not know Mr Shala prior to his detention at the KMF; (ii) W01448 learned Mr Shala's identity from other detainees, [REDACTED]; and (iii) during a photo board identification procedure that took place in 2010, W01448 identified someone else as being Mr Shala.<sup>1461</sup> The Defence submits that this renders his evidence regarding Mr Shala's involvement in his mistreatment unreliable.<sup>1462</sup>

713. The Panel notes that W01448, who did not know Mr Shala prior to his detention at the KMF, identified him with his full name and nickname, (Commander) "Wolf", and described him as being Catholic, originating from or living in the village of Dushanovë, Prizren.<sup>1463</sup> In his statements, W01448 clarified that he acquired this information through [REDACTED].<sup>1464</sup> Bearing in mind the identifying details W01448 provided, that extended beyond the mere name or nickname of Mr Shala, [REDACTED],<sup>1465</sup> the Panel is satisfied that [REDACTED] accurately conveyed Mr Shala's identity to W01448. The Panel sees no reason to find that [REDACTED], provide false information regarding Mr Shala's identity. The fact that W01448 identified another individual as Mr Shala amongst a series of photos – none of which actually depicted Mr Shala – does not have any bearing on the Panel's finding,

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<sup>1461</sup> Defence Final Trial Brief, paras 101-102, 138.

<sup>1462</sup> Defence Final Trial Brief, paras 101-102.

<sup>1463</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013857; SITF00013833-00013847 RED4, p. SITF00013836; SITF00013736-SITF00013800 RED5, p. SITF00013743; SITF00016221-00016285 RED4, pp. SITF00016231-00016232.

<sup>1464</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013743; SITF00016221-00016285, p. SITF00016231.

<sup>1465</sup> [REDACTED].

especially considering that W01448 did not know Mr Shala before his detention, and the fact that the identification took place in 2010, 11 years after the events. In light of the foregoing, the Panel rejects the Defence's argument that the evidence of W01448 regarding the incident on or about 20 May 1999 is unreliable. In this respect, the Panel recalls that it already established that Mr Shala was present in the Office on or about 20 May 1999 and actively participated in beating the detainees on the basis of TW4-01's and W04733's accounts.

714. *Conclusion.* In light of the foregoing, the Panel is satisfied that, on or about 20 May 1999, a group of KLA members, which included Mr Shala, Sabit Geci and Xhemshit Krasniqi, mistreated physically and psychologically W01448. The Panel is equally satisfied that, on the same occasion, W01448 was interrogated about his past, his military service, his whereabouts prior to the war and his relationship with Serbs and that he was asked to provide his answers in a written statement.

(e) [REDACTED]

715. TW4-01 testified that when he was brought into the Office, on or about 20 May 1999, [REDACTED] was already there.<sup>1466</sup> The witness explained that, after his own mistreatment ended that night, he was taken to the corridor outside the Office, [REDACTED].<sup>1467</sup> He testified that, although he did not witness [REDACTED]'s mistreatment, he could hear her screaming while she was being beaten.<sup>1468</sup>

716. W01448, who was still in the Office after TW4-01 was taken outside, provided a detailed account of the physical abuse [REDACTED] endured, alongside another female detainee he identified as [REDACTED]. According to W01448, the two women were severely beaten by the KLA members present in the Office, including

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<sup>1466</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1452, lines 13-15.

<sup>1467</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1467, lines 22-23; p. 1469, lines 10-13.

<sup>1468</sup> **TW4-01:** T. 30 May 2023, confidential, p. 1477, lines 17-22.



Xhemshit Krasniqi, who slapped, punched and kicked them.<sup>1469</sup> W01448 also explained that the two female detainees were accused of having relationships with Serbs.<sup>1470</sup>

717. The Panel finds no reason to doubt the credibility of these witnesses and relies on their mutually corroborative evidence regarding the mistreatment of [REDACTED] on or about 20 May 1999.

718. The Panel also received evidence from W01448 and W04733 that on or about 20 May 1999 [REDACTED] was asked by an individual, that W01448 identified as the “interrogator”, to confess that [REDACTED] were collaborators of the Serbs.<sup>1471</sup> W01448 added in his statement: “When she said she had no idea about this, she was so severely beaten by Xhemshit KRASNIQI that she wetted the place when she was moved away”.<sup>1472</sup> W04733 also provided evidence in this regard but his account is slightly different. In particular, W04733 recalled that [REDACTED] confessed, under force, that [REDACTED] were collaborating with Serbs.<sup>1473</sup> Importantly, he identified Mr Shala and Xhemshit Krasniqi as the KLA members who questioned and forced [REDACTED] to confess that [REDACTED] were Serb collaborators.<sup>1474</sup> He recalled: “They brought her in. ‘Wolf’ said to her ‘face them and say what they did’. I was there”.<sup>1475</sup>

719. The Panel finds that the evidence provided by W04733 and W01448 is highly detailed, graphic and mutually corroborative, and, thus, reliable. Whether or not

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<sup>1469</sup> **W01448:** SITF00013736-SITF00013800 RED5, pp. SITF00013746-SITF00013747; SITF00016221-00016285 RED4, p. SITF00016235.

<sup>1470</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013747.

<sup>1471</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857; **W04733:** SPOE00185335-00185363 RED3, p. SPOE00185341.

<sup>1472</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013857.

<sup>1473</sup> **W04733:** 106978-107020, p. 106987; SPOE00013793-SPOE00013847 RED2, p. SPOE00013819; SPOE00185335-00185363 RED3, p. SPOE00185341.

<sup>1474</sup> **W04733:** 106978-107020, p. 106987; SPOE00185335-00185363 RED3, p. SPOE00185341.

<sup>1475</sup> **W04733:** SPOE00185335-00185363 RED3, p. SPOE00185341.

[REDACTED] actually confessed under force that [REDACTED] were collaborating with Serbs is immaterial to the Panel's findings. As such, the Panel does not consider this discrepancy to be significant enough to cast doubt on the reliability of the witnesses' evidence on this matter. The Panel, thus, relies on the testimony of TW4-01 and the statements of W01448 and W04733 in this regard.

720. In light of the foregoing, the Panel is satisfied that, on or about 20 May 1999, [REDACTED] were mistreated and accused of having relationships with Serbs, by the KLA members present in the Office, including by Xhemshit Krasniqi. The Panel is also satisfied that, while being mistreated by other KLA members, Mr Shala questioned and demanded [REDACTED] to make a confession identifying [REDACTED] as Serb collaborators.

(f) TW4-11

721. TW4-11 testified about two occasions upon which he was mistreated inside Room 1. More specifically, the witness testified that, on one occasion, he was hit with a rubber baton on his right shoulder, while he was facing the wall.<sup>1476</sup> TW4-11 further recalled that, three or four days after that incident, three individuals dressed in civilian clothing entered Room 1.<sup>1477</sup> They accused the detainees of being spies and traitors and one of them proceeded to punch TW4-11 in the eye.<sup>1478</sup> The witness testified that the hit left him with a bruised and sore eye and that, to this day, it affects the proper functioning of his eye.<sup>1479</sup> His account is corroborated by W01448 and W04733, who provided evidence that, like the rest of his co-detainees, TW4-11 was also physically assaulted inside Room 1.<sup>1480</sup>

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<sup>1476</sup> **TW4-11**: T. 2 May 2023, public, p. 1230, lines 12-20; p. 1231, line 4.

<sup>1477</sup> **TW4-11**: T. 2 May 2023, public, p. 1230, lines 6-9; p. 1231, lines 9-11.

<sup>1478</sup> **TW4-11**: T. 2 May 2023, public, p. 1231, lines 12-20.

<sup>1479</sup> **TW4-11**: T. 2 May 2023, public, p. 1232, lines 6-15.

<sup>1480</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013757; SITF00016140-00016220 RED3, p. SITF00016142; **W04733**: SITF00018740-00018767 RED, p. SITF00018745.

722. Considering the detailed account of TW4-11, the Panel is convinced that the witness spoke truthfully about his personal experience, especially when assessed together with the corroborating evidence of W01448 and W04733. The Panel therefore relies on the evidence of TW4-11, W01448 and W04733 in this regard.

723. In light of the foregoing, the Panel is satisfied that, in addition to the continuous physical and psychological mistreatment he was subjected to, TW4-11 was further physically abused on these two occasions by KLA members.

(g) [REDACTED] and the third Roma musician

724. The Panel has also received evidence that [REDACTED] and the third Roma musician were mistreated by members of the KLA during their detention. TW4-01, in particular, testified that, similar to their co-detainees, [REDACTED] and the third Roma musician were also regularly beaten, including inside Room 1.<sup>1481</sup> In addition, referring to the beatings he witnessed inside Room 1, TW4-11 testified that [REDACTED] and the third Roma musician were “beaten the most with rubber batons”.<sup>1482</sup> Strikingly, in his statement W04733 averred that they were beaten “like horses, as if they were animals”.<sup>1483</sup>

725. Considering the graphic and mutually corroborative nature of their evidence, the Panel is convinced that TW4-01, W04733 and TW4-11 provided truthful evidence about the mistreatment of [REDACTED] and the third Roma musician.

726. In light of the foregoing, the Panel is satisfied that [REDACTED] and the third Roma musician were regularly mistreated, including in Room 1, by members of the KLA.

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<sup>1481</sup> **TW4-01**: T. 30 May 2023, public, p. 1417, lines 13-18; T. 31 May 2023, public, 1512, lines 15-20.

<sup>1482</sup> **TW4-11**: T. 2 May 2023, public, p. 1220, line 6.

<sup>1483</sup> **W04733**: 082892-TR-AT-ET Part 4 RED3, p. 5.

## (h) Other detainees

727. The Panel received evidence that TW4-04, TW4-02, [REDACTED] and at least one more female detainee were also mistreated by members of the KLA during their detention.

728. Specifically, [REDACTED] testified that TW4-02 was physically abused during his detention, but that he did not know more details about TW4-02's mistreatment.<sup>1484</sup> Additionally, [REDACTED] stated that he learned that TW4-04 was heavily mistreated during his detention at the KMF, but did not provide the source of his information.<sup>1485</sup> As regards [REDACTED], TW4-01 and W01448 provided evidence that he was mistreated both inside and outside Room 1.<sup>1486</sup> Their accounts are also corroborated by TW4-02, who provided that while he and [REDACTED], [REDACTED] personally shared that he had been mistreated.<sup>1487</sup> As regards [REDACTED], W01448 explained in his statements that he was beaten outside Room 1, as a result of which his teeth were broken, which W01448 saw when [REDACTED] returned to Room 1.<sup>1488</sup> TW4-02's evidence also corroborates that [REDACTED] was mistreated during his detention.<sup>1489</sup> Additionally, TW4-02 stated that [REDACTED] told him, [REDACTED], that he [REDACTED] was mistreated during his detention at the KMF.<sup>1490</sup> Finally, the Panel recalls that, [REDACTED], at least two other female detainees who were held at the Detention Building were also

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<sup>1484</sup> [REDACTED].

<sup>1485</sup> [REDACTED].

<sup>1486</sup> **TW4-01**: T. 31 May 2023, public, p. 1538, line 15 to p. 1539, line 3; **W01448**: SITF00013833-00013847 RED4, p. SITF00013837; SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, p. SITF00013753.

<sup>1487</sup> **TW4-02**: 060664-TR-ET Part 4, p. 12.

<sup>1488</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, pp. SITF00013760-SITF00013761.

<sup>1489</sup> **TW4-02**: 060664-TR-ET Part 4, p. 7.

<sup>1490</sup> **TW4-02**: 060664-TR-ET Part 4, p. 10.

interrogated and mistreated during the time relevant to the charges.<sup>1491</sup> Bearing in mind that the Panel cannot conclusively establish whether [REDACTED] (who was mistreated together with [REDACTED] on or about 20 May 1999) was one of the two female detainees held at the Detention Building,<sup>1492</sup> the Panel finds that, in addition to [REDACTED], at least one more female detainee was interrogated and mistreated at the KMF during the time relevant to the charges.

729. The Panel is mindful of the fact that [REDACTED]'s and [REDACTED]'s evidence regarding the mistreatment of TW4-02 and TW4-04, respectively, constitutes hearsay evidence. The Panel is also aware that both TW4-02 and TW4-04 denied having been personally mistreated during their detentions at the KMF.<sup>1493</sup> The Panel notes, nevertheless, that [REDACTED]'s and [REDACTED]'s respective evidence that TW4-02 and TW4-04 were mistreated during their detention at the KMF is consistent with other reliable evidence before the Panel, attesting to the continuous mistreatment of all the detainees held at the Detention Building. Additionally, when providing this evidence, [REDACTED] clearly distinguished between what they personally witnessed and information they received from others, which adds to the reliability of their accounts. Importantly, the Panel recalls that, as it was established above, both TW4-02 and TW4-04 minimised the treatment they personally received while in detention at the KMF, and that it does not attach any weight to their statements in this regard.<sup>1494</sup> In this light, the Panel finds [REDACTED] respective hearsay evidence to be reliable with regard to TW4-02 and TW4-04 having been mistreated while detained at the KMF.

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<sup>1491</sup> See para. 570 above.

<sup>1492</sup> See para. 571 above.

<sup>1493</sup> **TW4-02:** 060664-TR-ET Part 3, p. 26; **TW4-04:** SITF00013336-00013347 RED, p. SITF00013339.

<sup>1494</sup> See Sections V.F.2 and V.F.3.

730. The Panel further notes that it has not received specific evidence pertaining to the mistreatment of [REDACTED], who was held in Room 1.<sup>1495</sup> Nevertheless, considering the mutually corroborative testimonies and statements of TW4-01, TW4-11, W04733 and W01448, according to whom, all the detainees held in Room 1 were subjected to mistreatment in front of their co-detainees, and bearing in mind that [REDACTED] was held in Room 1, the Panel considers that the only reasonable conclusion based on the evidence is that [REDACTED] was also mistreated while detained at the KMF.

731. In light of the foregoing, the Panel finds, based on the evidence as a whole, that TW4-04, TW4-02, [REDACTED], and at least one more female detainee were mistreated during their detention at the KMF.

(i) Forced labour

732. The Panel has received evidence that, during the time frame relevant to the charges, [REDACTED] and a third Roma musician were the only detainees able to leave Room 1, as they were forced to provide manual labour within the premises of the KMF.

733. TW4-01, in particular, testified that [REDACTED] and a third Roma musician “were forced to carry foodstuff and to load trucks from the warehouse”,<sup>1496</sup> adding: “[w]henver they would bring food, trucks loaded with food and which needed to be unloaded, they would use the Romas for that work”.<sup>1497</sup> The testimony of TW4-11 and the evidence of W04733 and W01448 further attest to the fact that [REDACTED] and a third Roma musician were forced to work throughout their detention.<sup>1498</sup> W04733’s

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<sup>1495</sup> See Section VI.D.10(e).

<sup>1496</sup> **TW4-01**: T. 6 June 2023, public, p. 1918, lines 10-14.

<sup>1497</sup> **TW4-01**: T. 6 June 2023, public, p. 1918, lines 15-17.

<sup>1498</sup> **TW4-11**: T. 2 May 2023, public, p. 1219, lines 4-13; **W04733**: SPOE00185335-00185363 RED3, p. SPOE00185342; SITF00018740-00018767 RED, pp. SITF00018745-00018746; 106978-107020, p. 106989;

statement in this regard is telling: “The Gypsies were not sleeping the whole night. They were cleaning the toilets. They were treated worse. They were discriminated because they were Gypsies”.<sup>1499</sup> “[D]uring the day up to 10 trucks came there and they unloaded the goods from the trucks, and after midnight they cleaned the toilets”, he explained.<sup>1500</sup>

734. [REDACTED].<sup>1501</sup> [REDACTED].<sup>1502</sup> W01448, whose evidence confirms that [REDACTED] and the third Roma musician were forced to work throughout their detention, provided an example of the humiliating tasks the latter were forced to perform: “[The] toilets were in bad condition, you could not even use it. They were very dirty and they were opening it to have [REDACTED] the three Romas clean it”.<sup>1503</sup> According to W01448: “[t]hey would *only* send the Romas [REDACTED] to clean the toilets and load and unload the trucks”.<sup>1504</sup>

735. W04733’s and W01448’s statements further reveal that, even while they were working, [REDACTED] and the third Roma musician were severely mistreated.<sup>1505</sup> One of W04733’s statement reads: “[REDACTED] and the third Roma musician] were also beaten during the day, while they were doing hard manual work in the courtyard, loading and unloading big trucks. [...] They used to complain that they were beaten”.<sup>1506</sup> In another statement, W04733 similarly says: “They were forced [to work] and humiliated”, [t]hey were unloading trucks and they were beaten while doing

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**W01448:** SITF00013852-00013869 RED6, p. SITF00013858; SITF00013736-SITF00013800 RED5, p. SITF00013748.

<sup>1499</sup> **W04733:** SPOE00185335-00185363 RED3, p. SPOE00185342.

<sup>1500</sup> **W04733:** 106978-107020, p. 107001.

<sup>1501</sup> [REDACTED].

<sup>1502</sup> [REDACTED].

<sup>1503</sup> **W01448:** SITF00013736-SITF00013800 RED5, p. SITF00013749.

<sup>1504</sup> **W01448:** SITF00013852-00013869 RED6, p. SITF00013858 (emphasis added).

<sup>1505</sup> **W01448:** SITF00016140-00016220 RED3, p. SITF00016143; **W04733:** SPOE00185335-00185363 RED3, p. SPOE00185342; SITF00018740-00018767 RED, pp. SITF00018745-00018746; 106978-107020, p. 106989.

<sup>1506</sup> **W04733:** SITF00018740-00018767 RED, pp. SITF00018745-00018746.

that”.<sup>1507</sup> According to W04733, [REDACTED] and the third Roma musician were injured, as a result of the beating they received, and were forced to work while injured.<sup>1508</sup> In a similar vein, W01448 stated that [REDACTED] and the third Roma musician were “beaten up and made to work in the yard”.<sup>1509</sup> Finally, the Panel notes that W04733 stated that Mr Shala was involved in the mistreatment of [REDACTED] and the third Roma musician by beating them and forcing them to clean the toilets and unload trucks.<sup>1510</sup>

736. The Panel is aware of a discrepancy in W04733’s statements, pertaining to whether he personally saw [REDACTED] and the third Roma musician being mistreated while working in the courtyard of the KMF<sup>1511</sup> or whether they themselves told him that they were beaten.<sup>1512</sup> However, the Panel notes that W04733’s statements throughout the years are consistent as to the fact that [REDACTED] and another Roma musician were mistreated, while providing forced labour, and that they would complain about their mistreatment to their co-detainees in Room 1. The Panel, thus, finds that the above discrepancy does not affect the reliability of W04733’s evidence on the matter.

737. The Panel finds that the testimonies of TW4-01 and TW4-11 and the statements of [REDACTED], W04733 and W01448 are strikingly consistent with regard to the tasks that [REDACTED] and the third Roma musician performed throughout their detention at the KMF. Likewise, the Panel finds consistency in the evidence of TW4-01, W01448 and W04733 that [REDACTED] and the third Roma musician did not choose to provide labour, but they were forced to, and that they were mistreated while

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<sup>1507</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013824.

<sup>1508</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013824.

<sup>1509</sup> **W01448**: SITF00016140-00016220 RED 3, p. SITF00016143.

<sup>1510</sup> **W04733**: 082892-TR-AT-ET Part 9 RED2, pp. 6-7. The Panel does not enter a factual finding on the participation of Mr Shala in this regard.

<sup>1511</sup> **W04733**: 082892-TR-AT-ET Part 9 RED2, p. 7.

<sup>1512</sup> **W04733**: 106978-107020, p. 106989.



working. Therefore, the Panel relies on the mutually corroborative, detailed and graphic evidence of TW4-01, TW4-11, [REDACTED], W04733 and W01448 with regard to the manual labour that [REDACTED] and the third Roma musician were forced to perform and/or their mistreatment.

738. In light of the foregoing, the Panel finds, based on the evidence before it, that [REDACTED] and the third Roma musician were forced to provide manual labour during their detention at the KMF. The Panel also finds that [REDACTED] and the third Roma musician were mistreated while performing manual labour.

### 3. Purpose of Infliction of Pain or Suffering

739. The evidence before the Panel shows that the detainees, including TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED] and a third Roma musician, [REDACTED], and at least one more female detainee were interrogated by members of the KLA, usually during the night, either in one of the offices of the Command Building or in Room 2.

740. More specifically, as established by the Panel above, on or about 20 May 1999, TW4-01 and the Murder Victim were interrogated by members of the KLA in the Office and were accused of collaborating with Serbs and of being spies.<sup>1513</sup> TW4-01, in particular, was questioned [REDACTED] and was accused of [REDACTED].<sup>1514</sup> TW4-01 was also taken [REDACTED] on two additional occasions for interrogation.<sup>1515</sup> Furthermore, [REDACTED], while he was being mistreated, TW4-01 was forced to make a confession [REDACTED].<sup>1516</sup>

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<sup>1513</sup> See para. 656 above.

<sup>1514</sup> See para. 656 above.

<sup>1515</sup> See para. 404 above.

<sup>1516</sup> [REDACTED].

741. In addition, the Panel has established that W04733 was also interrogated in the Office on several occasions, including on or about 20 May 1999, by several KLA members, including Sabit Geci, Xhemshit Krasniqi and Sokol Dobruna.<sup>1517</sup> The witness was questioned about his former work as a police officer and was accused of being a traitor, a murderer, a rapist and of collaborating with Serbs.<sup>1518</sup> Moreover, while W04733 was interrogated and mistreated, on or about 20 May 1999, Mr Shala accused him of being a spy.<sup>1519</sup>

742. Similarly, the Panel established that W01448 was questioned in the Office on numerous occasions, including on or about 20 May 1999, including by Fatmir Limaj, about matters such as his past, his military service, his whereabouts prior to the war and his relationship with Serbs.<sup>1520</sup> The witness was further asked to provide his answers in a written statement.<sup>1521</sup>

743. As for TW4-05, the Panel established that he was [REDACTED].<sup>1522</sup> The witness was further interrogated on three additional occasions in the Command Building, always during the night. During all interrogations, TW4-05 was questioned [REDACTED], with the participation of other KLA members. On every occasion, the witness was questioned about and accused of having friendly relationships with Serbs, [REDACTED].<sup>1523</sup>

744. Further, the Panel established that, on or about 20 May 1999, [REDACTED] were brought to the Office and, while being physically mistreated, they were accused of

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<sup>1517</sup> See para. 471 above.

<sup>1518</sup> See para. 471 above.

<sup>1519</sup> See para. 706 above.

<sup>1520</sup> See para. 491 above.

<sup>1521</sup> See para. 491 above.

<sup>1522</sup> See para. 497 above.

<sup>1523</sup> See para. 509 above.

having relationships with Serbs.<sup>1524</sup> On the same occasion, [REDACTED] was questioned by Mr Shala who demanded her to confess that [REDACTED] were collaborators of the Serbs.<sup>1525</sup>

745. As established by the Panel, during his detention, TW4-02 was accused of being a “spy” and a “collaborator” of Serbia.<sup>1526</sup> He was also interrogated on a number of occasions by Mr Kryeziu in one of the offices of the Command Building.<sup>1527</sup> Mr Kryeziu also interrogated TW4-04 and TW4-11. In particular, Mr Kryeziu questioned TW4-04 and asked him to provide a written statement, containing his personal details and information about his past and his arrest.<sup>1528</sup> As for TW4-11, Mr Kryeziu interrogated him about his occupation prior to the war, as well as his whereabouts during the war.<sup>1529</sup>

746. Lastly, the Panel established that [REDACTED] was interrogated during his detention and he was accused of collaborating with Serbs.<sup>1530</sup> Similar to their co-detainees, [REDACTED] and the third Roma musician were also interrogated during their detention at the KMF, as established by the Panel elsewhere.<sup>1531</sup>

747. The Panel notes that it has not received specific evidence pertaining to the interrogation of [REDACTED]. However, the Panel pays particular attention to the evidence provided by TW4-11, W04733, W01448 and TW4-05, that all the detainees were taken for interrogation during their detention.<sup>1532</sup> The evidence of these

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<sup>1524</sup> See para. 720 above.

<sup>1525</sup> See para. 720 above.

<sup>1526</sup> See para. 532 above.

<sup>1527</sup> See para. 552 above.

<sup>1528</sup> See para. 529 above.

<sup>1529</sup> See para. 435 above.

<sup>1530</sup> See para. 576 above.

<sup>1531</sup> See para. 560 above.

<sup>1532</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013823; 106978-107020, p. 106988; **W01448**: SITF00013852-00013869 RED6, p. SITF00013856; SITF00013736-SITF00013800 RED5, p. SITF00013743; **TW4-11**: T. 2 May 2023, public, p. 1222, lines 16-24; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013131.

witnesses, taken together, establishes a pattern whereby detainees were taken, often during the night, from Rooms 1 and 3 for interrogation either at the Command Building or in Room 2, where some of them were subjected to severe mistreatment. In this light, the Panel considers that the only reasonable conclusion based on the evidence is that [REDACTED] were also interrogated while detained at the KMF.

#### 4. Conclusion

748. In light of all the evidence discussed above taken as a whole, the Panel finds that, between approximately 17 May 1999 and 5 June 1999, the detainees at the KMF, including TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED] and a third Roma musician, [REDACTED], and at least one more detainee, were held in inhumane and degrading conditions. The detainees were kept in small rooms with no beds. They were prevented from sleeping by KLA members who harassed them through the windows or entered their room during the night and mistreated them. The detainees were also not provided with sufficient and adequate food or water, nor were they permitted to wash themselves or change their clothes. They had to ask for permission to use the toilets, which were in a bad condition, and they were always escorted there. The detainees were provided insufficient medical care or were deprived of it altogether. Among other things, the detainees were prevented from interacting and talking to each other.

749. The detainees, including TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED] and a third Roma musician, [REDACTED], and at least one more female detainee, were physically and psychologically abused by several members of the KLA. Sometimes, the detainees were beaten during the night, until the early hours of the morning, were forced to slap and hit one another and, in case of the male detainees, to pretend to have sexual intercourse with each other. They were further forced to witness and to listen to their co-detainees being physically

abused. They were harassed, lied to and threatened with violence or death. As a result, the detainees lived in constant fear and felt that they could be subjected to physical abuse at any time, or even be killed.

750. In addition, the detainees were taken for interrogation, most often during the night, to the offices of the Command Building or to Room 2. They were questioned about their jobs, their whereabouts during and prior to the war, their knowledge of or relationship with Serbs and Serb collaborators. They were accused of being spies, traitors, murderers, rapists, or of allegedly collaborating with Serbs. Some were forced to provide written statements containing this information. During these interrogations, some of the detainees, notably TW4-01, the Murder Victim, W04733 and W01448, were subjected to brutal beatings and other forms of mistreatment by KLA members: they were beaten with batons and baseball bats all over their bodies, kicked, punched, cut with knives, burnt with cigarettes, salt was thrown in their wounds and they were shot. Their mistreatment continued until they were covered in bruises and blood, unconscious and/or unable to stand.

751. The mistreatment and harassment of the detainees continued during the daytime and expanded to other locations within the premises of the KMF beyond the Command and Detention Buildings. The detainees were harassed on their way to the toilet and some of them were beaten while providing forced labour.

752. In light of all the evidence discussed above taken as a whole, the Panel finds that the inhumane conditions of detention and the physical and psychological assaults were inflicted on the detainees for the purpose of obtaining information or a confession from them, and/or to punish, intimidate, coerce and/or discriminate against them on political grounds.

753. The physical and psychological torture, coupled with the inhumane conditions of detention, left the detainees with long-lasting injuries, both physical and mental,

such as: head injuries, burn injuries, a broken elbow, broken teeth, persistent and severe pain throughout their bodies, feelings of shame, fear (*e.g.* to go to work or to go outside unaccompanied) and vulnerability (in relation to themselves or their family members) and PTSD (nightmares, flashbacks and intrusive memories).

#### F. MURDER (COUNT 4)

754. In this section, the Panel will assess the evidence and enter its factual findings regarding Count 4 of the Confirmed Indictment, as to whether the Murder Victim was killed by certain KLA members, on or about 5 June 1999, at the KMF.<sup>1533</sup>

755. The Panel will address in turn: (i) the Murder Victim's shooting, which occurred on or about 4 June 1999, and the circumstances of his death, on or about 5 June 1999; (ii) the cause of death; (iii) [REDACTED]; (iv) the presence and role of Mr Shala in Room 2 the night the Murder Victim was shot; (v) the presence and role of other KLA members, notably Xhemshit Krasniqi; (vi) the identification of the Murder Victim's remains; and (vii) [REDACTED].

#### 1. The Murder Victim's Shooting and Circumstances of his Death

756. At the outset, the Panel recalls that it has taken judicial notice of the adjudicated fact that the Murder Victim died on or about 5 June 1999, while he was detained at the KMF.<sup>1534</sup> This was adjudicated by the District Court of Mitrovicë/Mitrovica in the trial of *Sabit Geci et al.*<sup>1535</sup> and was not subject to appeal.<sup>1536</sup> In what follows, the Panel will

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<sup>1533</sup> [Confirmed Indictment](#), paras 28, 31.

<sup>1534</sup> [List of Adjudicated Facts](#), Adjudicated Fact 56.

<sup>1535</sup> [Sabit Geci et al. Verdict](#), para. 122.

<sup>1536</sup> Court of Appeals of Kosovo, *Prosecutor v. Sabit Geci et al.*, PAKR 966/2012, [Judgment](#), 11 September 2013, paras 69-74.

discuss the evidence presented in this case regarding the circumstances surrounding the death of the Murder Victim.

757. The Panel has established above that, on or about the evening of 4 June 1999, [REDACTED] the Murder Victim [REDACTED] physically abused throughout the entire night by a group of KLA members which included Mr Shala, Xhemshit Krasniqi, Bedri, Van Damme and at least three or four other KLA members.<sup>1537</sup>

758. [REDACTED]<sup>1538</sup> – [REDACTED], the Murder Victim was [REDACTED] shot in the leg, below the knee.<sup>1539</sup> [REDACTED].<sup>1540</sup> [REDACTED],<sup>1541</sup> [REDACTED].<sup>1542</sup>

759. As described above, [REDACTED] the Murder Victim [REDACTED] taken back to Room 1, where most of the other detainees were held.<sup>1543</sup> [REDACTED] the state the Murder Victim was in when [REDACTED] returned to Room 1. He explained that the Murder Victim was bleeding from the gunshot wound and that the bleeding did not stop, despite the efforts of some of his co-detainees to dress the wound with their shirts.<sup>1544</sup> [REDACTED] also vividly recalled that the mistreatment had left the Murder Victim unable to walk, that he had bruises all over his body, and that his stomach became “swollen” because he could not urinate.<sup>1545</sup>

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<sup>1537</sup> See paras 674-683, 688 above. Any references in the present section to the KLA members present in Room 2 on or about the night of 4 June 1999 when the Murder Victim was shot shall be read to refer to this group of KLA members. When the witnesses identified particular KLA members playing particular roles, the Panel has specified this.

<sup>1538</sup> [REDACTED].

<sup>1539</sup> [REDACTED].

<sup>1540</sup> [REDACTED].

<sup>1541</sup> [REDACTED].

<sup>1542</sup> [REDACTED].

<sup>1543</sup> [REDACTED].

<sup>1544</sup> [REDACTED].

<sup>1545</sup> [REDACTED].

760. [REDACTED], a doctor came later and tried to help the Murder Victim urinate artificially, using “tubes”, and put a plaster cast over his leg to stop the bleeding, but neither procedure was successful.<sup>1546</sup> He also recalled that the doctor advised the KLA members present to take the Murder Victim to the Kukës hospital or otherwise he would not survive.<sup>1547</sup> However, [REDACTED], “Xhemshit and the likes” – as he put it – did not allow for his transfer, stating: “We did not maltreat him to this point to send him to the hospital then”.<sup>1548</sup> [REDACTED] did not remember exactly who denied the Murder Victim’s transfer to the hospital. He stated that it was “the people in charge”, “Xhemshit and the likes”, “the staff, the headquarters”.<sup>1549</sup> When asked whom he considered to be in charge, [REDACTED] explained that it was Xhemshit Krasniqi who was in charge of the detainees, but whenever Sabit Geci was there, he (*i.e.* Sabit Geci) was in charge.<sup>1550</sup>

761. [REDACTED] the Murder Victim died the next day, on or about 5 June 1999, while still in detention, in Room 1.<sup>1551</sup> [REDACTED].<sup>1552</sup>

762. [REDACTED] is partly corroborated by W01448 and TW4-11, who each saw the Murder Victim after he was brought back to Room 1 and recalled that he had a gunshot wound around his knee and was bleeding.<sup>1553</sup> W01448 vividly described these events: “The whole night, [the Murder Victim] could not sleep. He bled a lot. We tried to place blankets on his wound, but the bleeding did not stop. Blankets became all red”.<sup>1554</sup> [REDACTED], he stated that the Murder Victim could not urinate and after

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<sup>1546</sup> [REDACTED].

<sup>1547</sup> [REDACTED].

<sup>1548</sup> [REDACTED].

<sup>1549</sup> [REDACTED].

<sup>1550</sup> [REDACTED].

<sup>1551</sup> [REDACTED].

<sup>1552</sup> [REDACTED].

<sup>1553</sup> See paras 678-680 above.

<sup>1554</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859. See also, SITF00013736-SITF00013800 RED5, p. SITF00013753; SITF00016221-00016285 RED4, p. SITF00016239.



he drank water his “belly [...] became swollen like a bull”.<sup>1555</sup> W01448 did not recall seeing a doctor,<sup>1556</sup> but stated that the Murder Victim died one or two days after being shot, on or about 5 June 1999, while still in detention in Room 1.<sup>1557</sup> According to W01448, the Murder Victim had told him that it was Lima(n) Geci who shot him in the leg.<sup>1558</sup> TW4-11 remembered – just like TW4-01 – that a doctor came,<sup>1559</sup> nevertheless the Murder Victim died not long after, while still in detention in Room 1.<sup>1560</sup>

763. The Panel finds the evidence of [REDACTED], TW4-11 and W01448 on the circumstances surrounding the Murder Victim’s shooting and death to be highly credible and reliable. First, the detailed and graphic descriptions provided by these witnesses demonstrate that they personally experienced these events. For example, all three witnesses recalled that the Murder Victim was shot around the knee. This is a detail that none of them could have known unless they were present [REDACTED] in Room 1 when he was brought back after being shot. As [REDACTED] corroborated by Dr Gasior, a plaster cast was applied on the Murder Victim’s leg while he was still in Room 1, which was not removed until 2009, when an autopsy was performed on his body.<sup>1561</sup>

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<sup>1555</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859. *See also*, SITF00013736-SITF00013800 RED5, p. SITF00013755; SITF00016221-00016285 RED4, p. SITF00016238.

<sup>1556</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013756.

<sup>1557</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859; SITF00013736-SITF00013800 RED5, pp. SITF00013749, SITF00013755; SITF00016221-00016285 RED4, p. SITF00016238; SITF00016140-00016220 RED3, pp. SITF00016141, SITF00016158.

<sup>1558</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859; SITF00374558-00374558 RED, para. 3; SITF00013833-00013847 RED4, p. SITF00013837.

<sup>1559</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1253, lines 5-8; p. 1257, lines 2-12.

<sup>1560</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1257, line 13 to p. 1258, line 14, *referring to* TW4-11 Prior Statement: SITF00019898-00019956 RED4, p. SITF00019909.

<sup>1561</sup> *See* para.768 below; **Dr Gasior**: T. 26 June 2023, public, p. 2075, line 17 to p. 2076, line 1 (“Plaster was found, plaster of gypsum, on this right leg and we removed it”); **Report**: 031049-031095 RED2, p. 031051 (“Plaster of gypsum was removed”).

764. Second, the witnesses remained consistent throughout their testimonies and/or statements, reinforcing the Panel's conviction that their accounts were truthful. In this regard, the Panel notes that the Defence takes issue with the limited details provided by [REDACTED] in one of his prior statements on the medical treatment received by the Murder Victim [REDACTED].<sup>1562</sup> The Panel recalls that the fact that witnesses provide different levels of detail at different times does not, in and of itself, make them inconsistent or unreliable. In this particular case, it is expected that [REDACTED] would be more detailed [REDACTED]. Accordingly, the Panel does not consider the fact that [REDACTED] added certain details [REDACTED] to affect his credibility.

765. Third and most importantly, the witnesses mutually corroborate each other on key facts and circumstances surrounding the Murder Victim's death: (i) the fact that the Murder Victim was shot in the leg, around the knee,<sup>1563</sup> [REDACTED];<sup>1564</sup> (ii) the fact that he was bleeding from the gunshot wound and could not urinate; and (iii) the fact that he died not long after being shot, on or about 5 June 1999, while still in detention in Room 1. The level of detail and inherent consistency in the accounts of [REDACTED], TW4-11 and W01448 on these key facts, years after the events, convince the Panel that this cannot be a matter of pure coincidence.

766. The Defence takes issue with the fact that certain (other) details provided by [REDACTED] are not corroborated by either TW4-11 or W01448, such as the fact that the KLA members in charge of the detainees refused the Murder Victim's transfer to the hospital.<sup>1565</sup> The Panel observes that TW4-11 and W01448 do, in fact, corroborate [REDACTED] that the Murder Victim died while he was still being detained in

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<sup>1562</sup> [REDACTED].

<sup>1563</sup> It is immaterial whether the gunshot wound was above the knee, as testified by TW4-11, or below the knee, as stated by W01448. This inconsistency is not significant enough to cast doubt on the reliability of the witnesses' evidence on this matter. Both witnesses recalled that the wound was around the knee, an aspect that – as will be shown below – is corroborated by forensic expert evidence.

<sup>1564</sup> [REDACTED].

<sup>1565</sup> Defence Final Trial Brief, para. 172.

Room 1. Thus, the fact remains that he was not taken to the hospital and that he died in detention at the KMF.

767. The Panel is mindful also of other details on which the witnesses' accounts differ. For instance, TW4-11's evidence on the doctor's intervention is less detailed [REDACTED], while W01448 did not recall the presence of a doctor at all.<sup>1566</sup> The Panel, however, does not find that this affects their credibility on the core aspects of their evidence. By his own admission, TW4-11 was – at that time – not immediately next to the Murder Victim,<sup>1567</sup> so it is natural that he remembered fewer details. [REDACTED]. The Panel recalls that witnesses experience and perceive events differently, which may be either because they are physically not able to perceive all details, or because they attach different weight to what they perceive.<sup>1568</sup> In any case, most discrepancies between the witnesses' accounts are minor and of little or no relevance ([REDACTED]).<sup>1569</sup> If anything, they render their evidence more credible. Contrary to the Defence's submissions,<sup>1570</sup> and as rightly argued by the SPO,<sup>1571</sup> this shows that their accounts are not aligned to such an extent that they may raise suspicions of collusion.

768. Lastly, the witnesses' evidence is substantially corroborated further by forensic expert evidence. Dr Gasior's autopsy report (Autopsy Report) and testimony attest that the Murder Victim suffered gunshot wounds to the right leg, around the knee, consistent with three shots, affecting the femur and the tibia.<sup>1572</sup> The Autopsy Report

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<sup>1566</sup> SPO Final Trial Brief, paras 166-170; Defence Final Trial Brief, paras 166-167.

<sup>1567</sup> **TW4-11**: T. 3 May 2023, confidential, p. 1245, lines 9-10; p. 1249, lines 18-19; p. 1254, lines 3-4; p. 1257, lines 6-12.

<sup>1568</sup> See para. 83 above.

<sup>1569</sup> [REDACTED].

<sup>1570</sup> Defence Final Trial Brief, paras 255-265.

<sup>1571</sup> T. 15 April 2024, public, p. 4118, lines 1-24.

<sup>1572</sup> **Report**: 031049-031095 RED2, p. 031051, 031055, 031059, 031065-031069 (photographs 29-53), 031091; **Dr Gasior**: T. 26 June 2023, public, p. 2087, line 1 to p. 2089, line 10; p. 2092, line 10 to p. 2093, line 25,

also reveals that Dr Gasior found on the body of the Murder Victim: (i) a catheter/tube leading into the urinary bladder, with a surgical bag for urine collection;<sup>1573</sup> and (ii) a gypsum plaster cast, placed on the leg of the Murder Victim.<sup>1574</sup> Both the surgical bag and the gypsum plaster cast are visible in photographs of the remains taken during the autopsy.<sup>1575</sup> Thus, Dr Gasior's expert evidence strongly corroborates [REDACTED], TW4-11 and W01448 in that the Murder Victim was shot and wounded around the knee.<sup>1576</sup> It also corroborates the account of [REDACTED] that a doctor came and tried to help the Murder Victim to urinate artificially, using "tubes", and put a plaster cast over his leg to stop the bleeding. As mentioned above, the presence of these compelling elements [REDACTED] is consistent with the account of someone who personally experienced the events and the Autopsy Report fully reinforces [REDACTED] account in this regard.

769. In light of the foregoing, the Panel finds the accounts of [REDACTED], TW4-11 and W01448 on the facts and circumstances surrounding the Murder Victim's shooting and death to be trustworthy, credible and reliable. In addition to the evidence of the three witnesses, the Panel also relies on the mutually corroborative evidence of expert witness Dr Gasior.

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*referring to* Autopsy Report: 031049-031095 RED2, p. 031065 (photograph 29, saved as REG00960), p. 031068 (photographs 43, 44); T. 3 July 2023, public, p. 2170, lines 8-11.

<sup>1573</sup> **Report:** 031049-031095 RED2, p. 031050; **Dr Gasior:** T. 3 July 2023, public, p. 2165, line 18 to p. 2166, line 21, *referring to* Autopsy Report: 031049-031095 RED2, p. 031063 (photographs 15, 16); p. 2188, line 19 to p. 2189, line 25.

<sup>1574</sup> **Report:** 031049-031095 RED2, p. 031051; **Dr Gasior:** T. 26 June 2023, public, p. 2075, line 17 to p. 2078, line 22, *referring to* Autopsy Report: 031049-031095 RED2, pp. 301056, 301057 (saved as REG00959, where Dr Gasior marked the cast on a photograph of the body), p. 031062 (photograph 12), p. 031063 (photographs 13, 14).

<sup>1575</sup> **Report:** 031049-031095 RED2, pp. 031056-031058, 031060, 031062-031064 (photographs 11-22), 031070 (photograph 57).

<sup>1576</sup> [REDACTED].

770. The Panel has also received evidence from TW4-05 that he never saw anyone die or heard of anyone dying at the KMF, [REDACTED].<sup>1577</sup> However, his evidence does not upset the Panel's previous findings, for the following reasons. First, the fact that the Murder Victim died in Room 1 in the Detention Building on or about 5 June 1999 is established by the mutually corroborative and consistent evidence of [REDACTED], TW4-11 and W01448 and is uncontested.

771. Second, TW4-05's statement that he did not see anyone die at the KMF is disproved by W01448, who affirmed in one of his written statements that TW4-05 was, in fact, in Room 1 when the Murder Victim died.<sup>1578</sup> W01448's statement is supported by circumstantial evidence provided by other witnesses, including TW4-05. [REDACTED].<sup>1579</sup> [REDACTED].<sup>1580</sup> [REDACTED].

772. Third, TW4-05's statement that he did not hear of anyone dying at the KMF is implausible.<sup>1581</sup> As found above, TW4-05 was held in Room 1,<sup>1582</sup> where the majority of the detainees were detained, including the Murder Victim. When the Murder Victim died, TW4-05 was still detained at the KMF.<sup>1583</sup> Even assuming that TW4-05 was not in Room 1 when the Murder Victim died, he must have noticed that the Murder Victim was no longer present after approximately 5 June 1999, [REDACTED]. He must have also learnt about his death from the other detainees. The death of the Murder Victim must have been a significant event for them considering

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<sup>1577</sup> **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372501; SITF00013123-SITF00013153 RED, pp. SITF00013133-SITF00013134.

<sup>1578</sup> **W01448:** SITF00016140-00016220 RED3, p. SITF00016141, *referring to* TW4-05 as witness G.

<sup>1579</sup> [REDACTED].

<sup>1580</sup> [REDACTED].

<sup>1581</sup> **TW4-05:** SITF00013123-SITF00013153 RED, pp. SITF00013133-SITF00013134.

<sup>1582</sup> *See* para. 503 above; *see also*, **TW4-05:** SITF00372498-00372510 RED4, p. SITF00372500-SITF00372501; SITF00013123-SITF00013153 RED, pp. SITF00013128-SITF00013129, SITF00013131-SITF00013132, explaining that he stayed in a room together with "the Roma [musicians]" and W01448.

<sup>1583</sup> *See* paras 506-508 above.

that – as acknowledged by TW4-05 himself – they lived in constant fear that they would be killed.<sup>1584</sup>

773. Lastly, the Panel recalls that TW4-05 downplayed the severity of the mistreatment he and his co-detainees received.<sup>1585</sup> For these reasons, the Panel does not find TW4-05 credible and does not attach any weight to his account in this regard.

## 2. Cause of Death

774. As discussed above, the consistent and mutually corroborative evidence of [REDACTED], TW4-11 and W01448 confirms that the Murder Victim was bleeding heavily from the gunshot wound in his leg. Their evidence is corroborated by Dr Gasior’s forensic expert evidence.

775. Further, according to Dr Gasior’s Autopsy Report, the cause of the Murder Victim’s death was: “[g]unshots to the right leg”.<sup>1586</sup> Dr Gasior explained in more detail during his testimony that the bullets hit an artery, going through a cavity in the knee (intercondylar fossa), which supplies blood to the entire limb and caused the total destruction of the artery and the bleeding.<sup>1587</sup> He added that such injuries resulting from a gunshot, if they are not treated quickly and correctly, lead to death as a result of the bleeding or other complications from the sustained injuries.<sup>1588</sup>

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<sup>1584</sup> See paras 649, 652 above; **TW4-05**: SITF00013123-SITF00013153 RED, p. SITF00013134 (“I counted myself as a dead person already”).

<sup>1585</sup> See para. 141 above.

<sup>1586</sup> **Report**: 031049-031095 RED2, p. 031052.

<sup>1587</sup> **Dr Gasior**: T. 26 June 2023, public, p. 2094, line 6 to p. 2095, line 5; T. 3 July 2023, public, p. 2201, lines 6-8; SPOE00332269-00332269; SPOE00332272-00332272.

<sup>1588</sup> **Dr Gasior**: T. 27 June 2023, public, p. 2113, lines 13-25; *see also*, T. 3 July 2023, public, p. 2173, lines 17-19; p. 2201, lines 6-8.

776. Dr Gasior also testified that a gypsum plaster cast would not stop “the intense bleeding from a damaged artery” and that “[o]nly a correct and quick [...] surgical intervention could create a chance of saving a patient”.<sup>1589</sup>

777. Not least, Dr Gasior estimated that the time between the gunshot and the death of the Murder Victim was “a short one”,<sup>1590</sup> “at most, few days”,<sup>1591</sup> as he did not see proof that the bone had undergone healing.<sup>1592</sup> In this regard, his testimony strongly corroborates [REDACTED], TW4-11 and W01448’s accounts that the Murder Victim died one or two days after he was shot.

778. Dr Gasior’s unequivocal Autopsy Report and his clear and straight-forward expert testimony, together with the mutually corroborative accounts of [REDACTED], TW4-11 and W01448, establish that the Murder Victim died from the consequences of the gunshot wounds inflicted upon his leg, combined with the denial of appropriate medical treatment.

### 3. [REDACTED]

779. [REDACTED],<sup>1593</sup> [REDACTED].<sup>1594</sup>

780. [REDACTED];<sup>1595</sup> [REDACTED],<sup>1596</sup> [REDACTED];<sup>1597</sup> [REDACTED].<sup>1598</sup>  
[REDACTED].

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<sup>1589</sup> **Dr Gasior:** T. 3 July 2023, public, p. 2201, line 9 to p. 2202, line 2.

<sup>1590</sup> **Dr Gasior:** T. 26 June 2023, public, p. 2094, line 6 to 2095, line 5.

<sup>1591</sup> **Dr Gasior:** T. 3 July 2023, public, p. 2172, line 12 to p. 2173, line 16.

<sup>1592</sup> **Dr Gasior:** T. 26 June 2023, public, p. 2095, lines 3-4.

<sup>1593</sup> [REDACTED].

<sup>1594</sup> [REDACTED].

<sup>1595</sup> [REDACTED].

<sup>1596</sup> [REDACTED].

<sup>1597</sup> [REDACTED].

<sup>1598</sup> [REDACTED].

781. [REDACTED];<sup>1599</sup> [REDACTED].<sup>1600</sup> [REDACTED].<sup>1601</sup> [REDACTED].<sup>1602</sup>  
[REDACTED].

782. [REDACTED].<sup>1603</sup> [REDACTED].<sup>1604</sup> [REDACTED].

783. Third, contrary to the Defence's submission, [REDACTED] is corroborated by, and consistent with, expert evidence presented by both Parties in this case. As stated above, Dr Gasior found gunshot wounds on the right leg of the Murder Victim, affecting the femur and the tibia.<sup>1605</sup> Further, Mr De Villiers Horne, a forensic firearms expert called by the Defence,<sup>1606</sup> found that the trajectory of one of the shots described in Dr Gasior's Autopsy Report matched [REDACTED] that "the rifle was pressed against the leg".<sup>1607</sup> He also determined that, given the different trajectories of the three shots, "there must have been movement of either the shooter or the victim, or both, between these shots".<sup>1608</sup> He explained that he would expect the Murder Victim to move after being shot, especially if a bone was struck, as this can be very painful.<sup>1609</sup> Dr Gasior's expert evidence and Mr De Villiers Horne's findings corroborate and lend

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<sup>1599</sup> [REDACTED].

<sup>1600</sup> [REDACTED].

<sup>1601</sup> [REDACTED].

<sup>1602</sup> [REDACTED].

<sup>1603</sup> [REDACTED].

<sup>1604</sup> [REDACTED].

<sup>1605</sup> **Report:** 031049-031095 RED2, pp. 031051, 031055, 031059, 031065-031069 (photographs 29-53), 031091; **Dr Gasior:** T. 26 June 2023, public, p. 2087, line 3 to p. 2089, line 10; p. 2092, line 10 to p. 2093, line 25, *referring to* Autopsy Report: 031049-031095 RED2, p. 031065 (photograph 29, saved as REG00960), p. 031068 (photographs 43, 44); T. 3 July 2023, public, p. 2170, lines 8-11.

<sup>1606</sup> **Report:** DPS00864-DPS00875, p. DPS00865; **Mr De Villiers Horne:** T. 27 November 2023, public, p. 3642, line 14 to p. 3643, line 20.

<sup>1607</sup> **Mr De Villiers Horne:** T. 27 November 2023, confidential, p. 3688, line 18 to p. 3689, line 14, *referring to* Report: DPS00864-DPS00875, p. DPS00870.

<sup>1608</sup> **Mr De Villiers Horne:** T. 27 November 2023, confidential, p. 3660, line 19 to p. 3661, line 6, *referring to* Report: DPS00864-DPS00875, p. DPS00871.

<sup>1609</sup> **Mr De Villiers Horne:** T. 27 November 2023, confidential, p. 3691, line 21 to p. 3692, line 16.



credence [REDACTED] that the bullet hit the bone and that the Murder Victim fell off the chair after he was shot [REDACTED].<sup>1610</sup>

784. [REDACTED]<sup>1611</sup> [REDACTED].<sup>1612</sup> [REDACTED].<sup>1613</sup> [REDACTED].

785. [REDACTED].

#### 4. Presence and Role of Mr Shala during the Murder Victim's shooting

786. The presence of Mr Shala at the Murder Victim's shooting, on or about 4 June 1999, has been extensively discussed during the trial and it is one of the central issues of fact in dispute between the Parties. The SPO alleges that Mr Shala was present in Room 2 when the Murder Victim was shot and participated in the beatings.<sup>1614</sup> The Defence submits that Mr Shala was not present [REDACTED].<sup>1615</sup> [REDACTED];<sup>1616</sup> [REDACTED].<sup>1617</sup>

787. [REDACTED],<sup>1618</sup> [REDACTED].<sup>1619</sup> [REDACTED].<sup>1620</sup> [REDACTED].<sup>1621</sup> [REDACTED].<sup>1622</sup>

788. [REDACTED].

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<sup>1610</sup> Neither expert was in a position to determine whether the Murder Victim was sitting or standing when shot; **Dr Gasior**: T. 27 June 2023, public, p. 2112, line 22 to p. 2113, line 11; **Report**: DPS00864-DPS00875, p. DPS00870 ("The victim may have been standing or sitting").

<sup>1611</sup> [REDACTED].

<sup>1612</sup> [REDACTED].

<sup>1613</sup> [REDACTED].

<sup>1614</sup> [Confirmed Indictment](#), paras 23, 28; SPO Final Trial Brief, paras 160, 369; T. 15 April 2024, confidential, p. 4114, line 20 to p. 4116, line 3.

<sup>1615</sup> [REDACTED].

<sup>1616</sup> [REDACTED].

<sup>1617</sup> [REDACTED].

<sup>1618</sup> [REDACTED].

<sup>1619</sup> [REDACTED].

<sup>1620</sup> [REDACTED].

<sup>1621</sup> [REDACTED].

<sup>1622</sup> [REDACTED].

789. [REDACTED].<sup>1623</sup> [REDACTED].<sup>1624</sup> [REDACTED].<sup>1625</sup> [REDACTED] all of them took part in that beating. Whoever could hit as much as they could, they did. Apart from Sabit, who was standing with his crutches at the door".<sup>1626</sup>

790. [REDACTED].<sup>1627</sup> [REDACTED].<sup>1628</sup>

791. [REDACTED].<sup>1629</sup> [REDACTED].<sup>1630</sup>

792. [REDACTED].<sup>1631</sup> [REDACTED].<sup>1632</sup> [REDACTED].<sup>1633</sup> [REDACTED].

793. [REDACTED].<sup>1634</sup> [REDACTED].<sup>1635</sup> [REDACTED].<sup>1636</sup> [REDACTED].<sup>1637</sup>  
[REDACTED].<sup>1638</sup> [REDACTED].<sup>1639</sup> [REDACTED].

794. [REDACTED].<sup>1640</sup>

795. [REDACTED].<sup>1641</sup> [REDACTED].<sup>1642</sup> [REDACTED].

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<sup>1623</sup> [REDACTED].

<sup>1624</sup> [REDACTED].

<sup>1625</sup> [REDACTED].

<sup>1626</sup> [REDACTED].

<sup>1627</sup> [REDACTED].

<sup>1628</sup> [REDACTED].

<sup>1629</sup> [REDACTED].

<sup>1630</sup> [REDACTED].

<sup>1631</sup> [REDACTED].

<sup>1632</sup> [REDACTED].

<sup>1633</sup> [REDACTED].

<sup>1634</sup> [REDACTED].

<sup>1635</sup> [REDACTED].

<sup>1636</sup> [REDACTED].

<sup>1637</sup> [REDACTED].

<sup>1638</sup> [REDACTED].

<sup>1639</sup> [REDACTED].

<sup>1640</sup> [REDACTED].

<sup>1641</sup> [REDACTED].

<sup>1642</sup> [REDACTED].

796. [REDACTED]. Accordingly, the Panel finds that Mr Shala was present in Room 2 in the Detention Building, on or about 4 June 1999, when the Murder Victim was shot in the leg.

## 5. Presence and Role of other KLA Members on the Night of the Murder Victim's Shooting

797. *Xhemshit Krasniqi*. The Panel has received divergent evidence as to the identity of the person who shot the Murder Victim on or about 4 June 1999. [REDACTED] that it was Xhemshit Krasniqi.<sup>1643</sup> W01448 on the other hand asserted repeatedly in his written statements that it was Lima(n) Geci. W01448 explained that he learnt this from the Murder Victim himself, who told him that it was Lima(n) Geci after he was brought back to Room 1.<sup>1644</sup>

798. [REDACTED].<sup>1645</sup> [REDACTED].

799. [REDACTED].<sup>1646</sup> [REDACTED]<sup>1647</sup> – [REDACTED].<sup>1648</sup>

800. Second, [REDACTED] is corroborated by W01448's statements as to the presence of Xhemshit Krasniqi in the Detention Building on that night. More specifically, W01448 stated that Xhemshit Krasniqi was among the KLA members who took the Murder Victim out of Room 1 and who brought him back after being shot.<sup>1649</sup> [REDACTED],<sup>1650</sup> [REDACTED].<sup>1651</sup>

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<sup>1643</sup> [REDACTED].

<sup>1644</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859; SITF00013833-00013847 RED4, p. SITF00013837; SITF00374558-00374558 RED, para. 3.

<sup>1645</sup> [REDACTED].

<sup>1646</sup> [REDACTED].

<sup>1647</sup> [REDACTED].

<sup>1648</sup> [REDACTED].

<sup>1649</sup> **W01448**: SITF00013833-00013847 RED4, pp. SITF00013837-00013838.

<sup>1650</sup> [REDACTED].

<sup>1651</sup> [REDACTED].

801. Third, [REDACTED] W01448 [REDACTED] stated that he learnt the name of Lima(n) Geci from the Murder Victim. Yet, according to [REDACTED] W01448 [REDACTED], the Murder Victim was delirious after being shot and was hardly in a position to talk. In W01448's own words: "[he] was saying things [...] without knowing what he was saying [...]. He was saying nonsense".<sup>1652</sup> [REDACTED].<sup>1653</sup> [REDACTED] W01448's accounts on this point are consistent with the mutually corroborative evidence of TW4-11 attesting to the serious state the Murder Victim was in after being shot, bleeding from the gunshot wound.<sup>1654</sup> This is also consistent with the findings of Dr Gasior.<sup>1655</sup>

802. Fourth, [REDACTED].<sup>1656</sup> [REDACTED].<sup>1657</sup> [REDACTED].<sup>1658</sup>

803. Fifth, W01448's written statements regarding the role played by Lima(n) Geci at the KMF are not consistent with the evidence otherwise before the Panel. W01448 portrayed Lima(n) Geci as having considerable authority over the detainees at the KMF. According to him, Lima(n) Geci was not only the person who shot the Murder Victim in the leg, but also the person who: (i) denied the Murder Victim medical care;<sup>1659</sup> and (ii) threatened W01448, TW4-01 and TW4-11 that they were next, stating: "I am dealing with you three tonight".<sup>1660</sup> The Panel would expect that a KLA member with this level of authority over the fate of the detainees would feature more prominently in the accounts of the witnesses detained at the KMF. Yet, Lima(n) Geci

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<sup>1652</sup> **W01448**: SITF00013736-SITF00013800 RED5, p. SITF00013755.

<sup>1653</sup> [REDACTED].

<sup>1654</sup> See para. 678 above.

<sup>1655</sup> See paras 775-776 above.

<sup>1656</sup> [REDACTED].

<sup>1657</sup> [REDACTED].

<sup>1658</sup> [REDACTED].

<sup>1659</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859 ("He asked for a doctor since he could not urinate. At this, Liman GECI sarcastically replied, 'I will bring you a doctor to cut your organ and then it will be easier for you to urinate'"); SITF00013736-SITF00013800 RED5, p. SITF00013755-00013756.

<sup>1660</sup> **W01448**: SITF00013852-00013869 RED6, p. SITF00013859.

is not mentioned by any other witness who has testified or provided written statements in this case. Rather, it is Xhemshit Krasniqi who is repeatedly mentioned by multiple witnesses, including W01448, as having a command role and authority over the fate of the detainees at the KMF, subject to the overall authority of Sabit Geci.<sup>1661</sup> [REDACTED] that Xhemshit Krasniqi shot the Murder Victim is therefore consistent with the overall role played by Xhemshit Krasniqi in these events.<sup>1662</sup>

804. Sixth, the Panel has also received evidence from W04733, who stated that W01448 had told him in a phone conversation that it was Xhemshit Krasniqi who killed the Murder Victim.<sup>1663</sup> W04733's written statement strengthens and lends credibility to [REDACTED].

805. In light of the foregoing, the Panel does not find W01448's evidence that Lima(n) Geci shot the Murder Victim in the leg to be credible or reliable. The Panel gives weight instead to [REDACTED] and the written statement of W04733 and finds that Xhemshit Krasniqi shot the Murder Victim in the leg on or about 4 June 1999.

806. *Sabit Geci*. [REDACTED].<sup>1664</sup> [REDACTED].<sup>1665</sup>

807. The Panel stresses that it does not have to establish whether Sabit Geci was physically present [REDACTED] or what his role was in order to enter its findings on

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<sup>1661</sup> **TW4-01**: T. 31 May 2023, public, p. 1530, lines 1-8; T. 6 June 2023, public, p. 1929, lines 17-25; **W01448**: SITF00013852-00013869 RED6, p. SITF00013860 (stating that "Xhemshit KRASNIQI [...] was Commander of the barracks in Kukës"); SITF00013833-00013847 RED4, p. SITF00013838 (Q: "Who was the commander of the camp? Do you remember? A: It seemed that both Krasniqi and Sabit Geci were. They were very high ranking"); SITF00013736-SITF00013800 RED5, p. SITF00013743; **TW4-10**: T. 1 May 2023, public, p. 1068, lines 10-16; **W04848**: SITF00014088-00014120 RED, p. SITF00014098; **TW4-02**: 060664-TR-ET Part 3, p. 21, line 21 to p. 23, line 5.

<sup>1662</sup> [REDACTED].

<sup>1663</sup> **W04733**: SPOE00013793-SPOE00013847 RED2, p. SPOE00013845, referring to W01448 as "witness A"; on the identification of witness A as W01448, see p. SPOE00013809.

<sup>1664</sup> [REDACTED].

<sup>1665</sup> [REDACTED].

the count of murder. Accordingly, the Panel will not entertain the Defence's challenge further.

## 6. Identification of the Murder Victim's remains

808. The Defence submits that the SPO has failed to prove that the human remains on which Dr Gasior performed his autopsy are the remains of the Murder Victim. Specifically, the Defence takes issue with the DNA identification evidence provided by expert witness Col Dolejší, which it submits is unreliable.<sup>1666</sup>

809. At the outset, the Panel notes that the evidence relevant to the identification of the Murder Victim's remains is not limited to the DNA identification evidence provided by Col Dolejší,<sup>1667</sup> but is also comprised of: (i) [REDACTED];<sup>1668</sup> (ii) the Exhumation Report;<sup>1669</sup> (iii) the Autopsy Report prepared by Dr Gasior; and (iv) lastly, DNA evidence provided by expert witness Dr Goodwin.<sup>1670</sup> The Panel will discuss this evidence in turn.

810. [REDACTED],<sup>1671</sup> [REDACTED].<sup>1672</sup> [REDACTED].<sup>1673</sup> [REDACTED].<sup>1674</sup>  
[REDACTED].<sup>1675</sup>

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<sup>1666</sup> Defence Final Trial Brief, paras 173-177.

<sup>1667</sup> Two reports: SITF00012456-SITF00012458-ET, prepared in 2009; 110670-110674, prepared in 2023; and his testimony before the Panel (T. 16 June 2023, confidential, pp. 1952-2017). In his 2023 report, Col Dolejší performed a new analysis of the same DNA profiles using more advanced software; *see Col Dolejší*: T. 16 June 2023, public, 1956, line 9 to p. 1957, line 19; p. 1969, line 13 to p. 1971, line 4; p. 1982, line 17 to p. 1983, line 10.

<sup>1668</sup> [REDACTED].

<sup>1669</sup> The Exhumation Report is attached to Dr Gasior's Autopsy Report; *see* 031049-031095 RED2, pp. 031092-031095.

<sup>1670</sup> Two reports: 103373-103387 RED, prepared in 2021; and 111160-111162, prepared in 2023; and his testimony before the Panel (T. 4 July 2023, public, pp. 2214-2246).

<sup>1671</sup> [REDACTED].

<sup>1672</sup> [REDACTED].

<sup>1673</sup> [REDACTED].

<sup>1674</sup> [REDACTED].

<sup>1675</sup> [REDACTED].

811. [REDACTED]<sup>1676</sup> [REDACTED].<sup>1677</sup> [REDACTED].

812. [REDACTED].<sup>1678</sup> [REDACTED].

813. *2009 EULEX Exhumation*. [REDACTED], the Exhumation Report provides that on [REDACTED] the body of the Murder Victim was exhumed from [REDACTED].<sup>1679</sup> The report also provides that the exhumation was conducted in the context of a (then) ongoing EULEX criminal investigation into crimes allegedly committed at the KMF, in 1999 ([REDACTED]). The exhumation was ordered by a EULEX Pre-Trial Judge with the purpose of conducting: (i) an autopsy to establish, *inter alia*, the immediate cause of death, to be performed by experts of the Office of Missing Persons and Forensics; and (ii) any examination and analysis deemed necessary to establish the identity of the mortal remains, including DNA analysis.<sup>1680</sup>

814. The Defence has not challenged the authenticity or reliability of the Exhumation Report. The Panel has no reason to doubt its authenticity or reliability considering that: (i) it has been prepared by EULEX in the context of an official criminal investigation; (ii) it bears the EULEX logo and is dated; and (iii) it incorporates the relevant order of the Pre-Trial Judge, which is signed, stamped and dated. [REDACTED].<sup>1681</sup> [REDACTED].<sup>1682</sup>

815. Accordingly, the Panel relies on the Exhumation Report, [REDACTED].

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<sup>1676</sup> [REDACTED].

<sup>1677</sup> [REDACTED].

<sup>1678</sup> [REDACTED].

<sup>1679</sup> **Report:** 031049-031095 RED2, p. 031092.

<sup>1680</sup> **Report:** 031049-031095 RED2, pp. 031092, 031094-031095.

<sup>1681</sup> [REDACTED].

<sup>1682</sup> [REDACTED].

816. *Autopsy*. While Dr Gasior was not in a position to comment on the identity of the mortal remains he examined,<sup>1683</sup> his Autopsy Report provides three important indications that the body he examined was indeed the body of the Murder Victim.

817. First, the body bag that he received, and which is visible in photographs contained in the Autopsy Report,<sup>1684</sup> bares the same Investigation No. [REDACTED] as the Exhumation Report. The same body bag is also visible in photographs taken following the exhumation and contained in the Exhumation Report.<sup>1685</sup>

818. Second, the Autopsy Report was prepared under the auspices of the Office of Missing Persons and Forensics,<sup>1686</sup> just as ordered by the EULEX Pre-Trial Judge when he ordered the exhumation,<sup>1687</sup> and bares the EULEX logo and stamp.<sup>1688</sup> The date of the autopsy, [REDACTED], follows immediately the date of the exhumation, [REDACTED].<sup>1689</sup>

819. Third, as described above, Dr Gasior's Autopsy Report and testimony reveal that: (i) a catheter leading into the urinary bladder was present on the body; (ii) the right leg of the subject was wrapped in a gypsum plaster cast, [REDACTED]; and (iii) the Murder Victim had suffered bullet wounds to the right knee, to which TW4-01, TW4-11 and W01448 each attested.<sup>1690</sup> These are highly distinctive and identifying

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<sup>1683</sup> **Dr Gasior**: T. 26 June 2023, public, p. 2071, line 7 to p. 2072, line 10.

<sup>1684</sup> **Report**: 031049-031095 RED2, p. 031061 (photographs 01-03).

<sup>1685</sup> **Report**: 031049-031095 RED2, p. 031093 (photograph 5).

<sup>1686</sup> **Report**: 031049-031095 RED2, p. 031049; *see further*, **Dr Gasior**: T. 26 June 2023, public, p. 2066, line 24 to p. 2067, line 7 (confirming that he worked for EULEX, as a forensic expert doctor, between 2008 and 2012).

<sup>1687</sup> **Report**: 031049-031095 RED2, pp. 031094-031095.

<sup>1688</sup> **Report**: 031049-031095 RED2, pp. 031052-031054.

<sup>1689</sup> **Report**: 031049-031095 RED2, pp. 031049, 031092.

<sup>1690</sup> *See* para. 768 above.



features and they are consistent with the accounts of TW4-01, TW4-11 and W01448 regarding the final hours of the Murder Victim.<sup>1691</sup>

820. Accordingly, the Panel relies upon the Autopsy Report, which shows that the body examined by Dr Gasior is the body that was exhumed by EULEX [REDACTED].

821. *DNA Identification Evidence.* The DNA analysis performed by Col Dolejší of a bone fragment extracted from the exhumed body determined that there was a probability of 99.99998% that the DNA profile of the bone fragment belonged to the biological descendant of [REDACTED],<sup>1692</sup> who are the Murder Victim's parents.<sup>1693</sup> Dr Goodwin explained before the Panel that this was "extremely strong evidence" in support of the proposition that [REDACTED] were the biological parents of the donor of the bone fragment.<sup>1694</sup>

822. The Defence challenges the reliability of Col Dolejší's expert evidence submitting that: (i) there is no information available as to how the bone fragment from the exhumed body and the samples from the parents were collected, preserved and transferred and by whom; (ii) Col Dolejší does not have sufficient experience in kinship analysis; and (iii) his methodology lacks scientific rigour.<sup>1695</sup>

823. The Panel has considered the Defence's submissions, but does not find Col Dolejší's DNA identification evidence to be unreliable. First, the Panel can infer from the Exhumation Report that the bone fragment was collected following the [REDACTED] EULEX exhumation. The very purpose of the exhumation was, in part, to identify the remains and confirm whether they belonged to [REDACTED] (the

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<sup>1691</sup> See paras 758-762 above.

<sup>1692</sup> **Report:** 110670-110674, p. 110670; **Col Dolejší:** T. 16 June 2023, public, p. 1971, lines 5-21; p. 1976, line 12 to p. 1979, line 6.

<sup>1693</sup> [REDACTED].

<sup>1694</sup> **Dr Goodwin:** T. 4 July 2023, public, p. 2222, line 20 to p. 2223, line 14.

<sup>1695</sup> Defence Final Trial Brief, paras 173-177.

Murder Victim), including through DNA analysis.<sup>1696</sup> The date on which Col Dolejší's institute, the Institute of Criminalistics Police of the Czech Republic, received the samples, [REDACTED], follows closely the date of the exhumation, [REDACTED].<sup>1697</sup> The Panel can also infer from the Exhumation Report that the bone sample was collected, preserved and transferred for analysis by the Office of Missing Persons and Forensics, the EULEX Police War Crime Investigation Unit and the Police Forensic Unit, as these were the entities authorised by the EULEX Pre-Trial Judge to perform the analysis.<sup>1698</sup> The same is true of the samples collected from the parents. The Panel also notes that Col Dolejší received the samples "in undamaged condition".<sup>1699</sup> The Panel has no reason to doubt the integrity of this process considering that it was carried out in the context of an official criminal investigation by competent authorities.

824. Second, the Panel does not find that Col Dolejší lacks sufficient experience in kinship analysis considering that: (i) he has a Bachelor's degree in Molecular and Cell Diagnostics and a Master's degree in Molecular Biology and Genetics, which includes the study of genetic material and human DNA; (ii) he has been working at the Institute of Criminalistics Police of the Czech Republic since 2004 and is currently head of the Genetics Department; (iii) the Institute of Criminalistics Police is part of the European Network of Forensic Scientific Institutions (ENFSI) and provides, among other things, expert examinations, statements and opinions; and (iv) Col Dolejší has previously provided expert evidence in court on DNA testing.<sup>1700</sup> Based on Col Dolejší's CV and

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<sup>1696</sup> **Report:** 031049-031095 RED2, pp. 031092, 031094-031095.

<sup>1697</sup> **Report:** SITF00012456-SITF00012458-ET, p. SITF00012457; **Report:** 031049-031095 RED2, p. 031092.

<sup>1698</sup> **Report:** 031049-031095 RED2, p. 031094.

<sup>1699</sup> **Report:** SITF00012456-SITF00012458-ET, p. SITF00012457; **Col Dolejší:** T. 16 June 2023, public, p. 1959, line 21 to p. 1960, line 6.

<sup>1700</sup> **CV:** 108634-108634 RED; **Col Dolejší:** T. 16 June 2023, public, p. 1952, line 14 to p. 1956, line 6; p. 1984, line 11 to p. 1985, line 14.

testimony, the Panel does not consider that there are any limitations to his expertise which may call his analysis or conclusions into question.

825. Third, Dr Goodwin – who was asked to comment on Col Dolejší's reports and whose expertise the Defence does not challenge<sup>1701</sup> – has testified before the Panel that the methodology used by Col Dolejší was “quite standard methodology used in forensic genetics” and that he had no reason to think that mistakes were made based on what he had seen.<sup>1702</sup> For the above reasons, the Panel has relied on the DNA identification evidence provided by Col Dolejší.

826. *Conclusion.* In light of the evidence taken as a whole, there is no doubt in the Panel's mind that the body on which Dr Gasior performed his autopsy is the body of the Murder Victim.

## 7. [REDACTED]

827. [REDACTED].<sup>1703</sup>

828. [REDACTED].<sup>1704</sup>

[...]

[I]f the rule of law had existed there, this would have -- this would have been sorted out in Kosovo. But who -- who could do that? No one would [dare] take the case file and deal with it there”.<sup>1705</sup>

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<sup>1701</sup> Defence Final Trial Brief, para. 175.

<sup>1702</sup> **Dr Goodwin**: T. 4 July 2023, public, p. 2216, lines 3-8; p. 2243, lines 11-15.

<sup>1703</sup> [REDACTED].

<sup>1704</sup> [REDACTED].

<sup>1705</sup> [REDACTED].

829. [REDACTED] the worst thing for him was that he could not speak publicly in Kosovo about what had happened at the KMF and that he could not “shame” the KLA members involved for what they had done, [REDACTED].<sup>1706</sup>

## 8. Conclusion

830. In light of all the evidence discussed above taken as a whole, the Panel finds that, on or about 4 June 1999 – while he was being mistreated in Room 2 in the Detention Building at the KMF<sup>1707</sup> – the Murder Victim was shot in the leg around the knee, by Xhemshit Krasniqi. Other KLA members present in Room 2 at the time of the shooting were: Mr Shala, Bedri, Van Damme and at least three or four other KLA members. While Mr Shala was not the one to shoot the Murder Victim, he participated in his mistreatment, both before and after the Murder Victim was shot.<sup>1708</sup>

831. Following the shooting and mistreatment, the Murder Victim was brought back to Room 1, in the same Detention Building. The mistreatment had left him bruised all over his body, unable to walk and unable to urinate, and he was bleeding profusely from the gunshot wounds in his leg. Some of his co-detainees tried to stop the bleeding, dressing the wounds with their shirts, but the bleeding did not stop. A doctor came and tried to help the Murder Victim to urinate artificially, using a catheter, and put a plaster cast over his leg to stop the bleeding, but neither procedure was successful. The doctor advised the KLA members to take the Murder Victim to the Kukës hospital or otherwise he would not survive. However, one of the KLA members in charge of the detainees at the KMF did not allow for it, stating: “We did not maltreat him to this point to send him to the hospital then”.

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<sup>1706</sup> [REDACTED].

<sup>1707</sup> [REDACTED].

<sup>1708</sup> [REDACTED].

832. The Murder Victim died the next day, on or about 5 June 1999, while still in detention at the KMF in Room 1, from the consequences of the gunshot wounds inflicted upon his leg, combined with the denial of appropriate medical treatment.

G. GENERAL ANALYSIS OF KLA DETENTION OPERATIONS IN AND AROUND KMF

833. Having set out its findings on the crimes charged, the Panel will present its general analysis on the organisation of the KLA activities in and around the KMF, in relation to the detainees held there during the period of the Confirmed Indictment. The Panel recalls that individuals were apprehended and detained in particular by members of the KLA Military Police, including senior member Xhemshit Krasniqi, together with other KLA members, under the overall authority of Sabit Geci.<sup>1709</sup> The Panel will discuss below: (i) the search, arrest and transfer of detainees to the KMF; and (ii) the organization of to the detention, interrogation and mistreatment of detainees at the KMF.

834. *Search, arrest and transfer.* Victims have described how they were arrested in different places in Northern Albania, such as [REDACTED], (the port of) Durrës, and [REDACTED].<sup>1710</sup> The Panel recalls that specific individuals were identified prior to their arrest based on their profiles (*i.e.* persons who were perceived to collaborate with, be associated with, or sympathize with the Serbian authorities or who were considered not sufficiently supportive of the KLA effort).<sup>1711</sup> Based upon the Panel's aforementioned findings, the Panel considers that the practice of prior identification must have required some form of, and a certain degree of, intelligence gathering activity, especially given the significant number of persons expelled from Kosovo at that time, who were seeking refuge in Albania or wished to enrol in the KLA. Victims

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<sup>1709</sup> See Section VI.C.

<sup>1710</sup> See para. 590 above.

<sup>1711</sup> See para. 590 above.

described their transfer, by cars and (small) buses, from the place of their arrest to other (temporary) detention locations across northern Albania (in Romanat, Durrës, on the Durrës-Tirana axis, or in [REDACTED]), as well as their subsequent and final transfer to their place of detention at the KMF.<sup>1712</sup> Based upon the foregoing, the Panel considers that the searches for, and the arrest and transfers of these detainees required a significant degree of organisation and considerable logistics and manpower.

835. *Detention, interrogation and mistreatment.* Similarly, the evidence suggests that the manner in which the detention, interrogation and mistreatment of detainees was organised at the KMF required a significant degree of manpower and a permanent structure on site. This conclusion is supported by the following circumstances: (i) there was a turnover of detainees at the KMF, who were then interrogated and mistreated; (ii) detainees were under continuous surveillance at the various detention places within the KMF compound; (iii) KLA members at the KMF were in charge of moving detainees to and from the interrogation rooms; and (iv) numerous KLA members at the KMF were involved in the mistreatment of detainees, who described that 10 people or more were participating in their mistreatment on a single occasion<sup>1713</sup> and that so many KLA members were involved in their mistreatment that they could not recognise them.<sup>1714</sup> Finally, the involvement of Sabit Geci, who was a senior member of the KLA, reflects the importance of such activities.

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<sup>1712</sup> See Section VI.D.

<sup>1713</sup> See para. 707 above.

<sup>1714</sup> See para. 642 above.

## H. MR SHALA'S WHEREABOUTS DURING THE TIME FRAME OF THE CHARGES

836. Mr Shala's presence at the KMF during the time frame of the charges was in dispute between the Parties throughout the trial. The SPO alleged that Mr Shala was present at the KMF: (i) on or about 17 May 1999, when he participated in the transfer of W04733 from a location in or around Durrës to the KMF;<sup>1715</sup> (ii) on or about 20 May 1999, when he participated in the interrogation and physical and psychological assault of at least six detainees, including TW4-01, the Murder Victim, W04733, W01448, [REDACTED] and another female detainee;<sup>1716</sup> and (iii) on or about 4 June 1999, when he participated in the interrogation and mistreatment of [REDACTED] the Murder Victim.<sup>1717</sup>

837. While the Defence did not formally offer a defence of alibi,<sup>1718</sup> it submitted that, during the time that Mr Shala was in Albania in 1999 – *i.e.* between the end of March 1999 and June/July 1999 – he was primarily at the frontline. According to the Defence, Mr Shala did visit the KMF during this time, but only on a few isolated occasions and briefly, in order to take supplies. The Defence insisted that Mr Shala was not present at the KMF in late May and/or June 1999 (*i.e.* during the time relevant to the charges).<sup>1719</sup>

838. For the purpose of determining Mr Shala's whereabouts during the time frame of the charges, the Panel will discuss, in turn: (i) the evidence placing Mr Shala at the KMF; (ii) Mr Shala's own statements and admissions; (iii) evidence placing Mr Shala at the frontline; and (iv) other evidence relied upon by the Defence.

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<sup>1715</sup> [Confirmed Indictment](#), para. 15.

<sup>1716</sup> [Confirmed Indictment](#), para. 21.

<sup>1717</sup> [Confirmed Indictment](#), paras 23, 28.

<sup>1718</sup> KSC-BC-2020-04, F00477, Defence, *Defence Further Submissions on Alibi*, 5 April 2023, public.

<sup>1719</sup> Defence Final Trial Brief, paras 2-27, in particular, paras 4-5, 8-9, 18-19; T. 16 April 2024, public, p. 4239, lines 24-25.

## 1. The Evidence Placing Mr Shala at the KMF

839. The Panel recalls its earlier findings as follows.

840. *Presence at the KMF between the approximate dates of [REDACTED] May 1999.* TW4-01 saw Mr Shala on his first day at the KMF,<sup>1720</sup> which the Panel determined to be on or about [REDACTED] May 1999.<sup>1721</sup> The Panel further recalls TW4-01's explanation that he spent time with Mr Shala during the days that followed, playing cards in the Warehouse. TW4-01 noted that Mr Shala slept in the Warehouse at least two out of three nights while TW4-01 was also present.<sup>1722</sup> Throughout this period, Mr Shala was going in and out of the KMF.<sup>1723</sup>

841. TW4-10 – who was serving as a guard at the main gate of the KMF<sup>1724</sup> – also saw Mr Shala arrive at the KMF [REDACTED].<sup>1725</sup> He further recalled that Mr Shala was able to enter and exit the KMF without asking for permission from anyone.<sup>1726</sup> This evidence – which the Panel has found to be credible and reliable – conservatively places Mr Shala at the KMF between the approximate dates of [REDACTED] May 1999 and [REDACTED] May 1999.

842. *Presence at the KMF on or about 20 May 1999.* W04733 saw Mr Shala on or about 20 May 1999, when Mr Shala – together with a group of KLA members – transferred W04733 from Romanat to the KMF.<sup>1727</sup> The Panel recalls that it found W04733's

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<sup>1720</sup> See para. 369 above.

<sup>1721</sup> See para. 369 above.

<sup>1722</sup> See para. 369 above.

<sup>1723</sup> See para. 369 above.

<sup>1724</sup> **TW4-10**: T. 1 May 2023, public, p. 1036, line 13 to p. 1038, line 8.

<sup>1725</sup> [REDACTED]. TW4-10 further testified that he saw Mr Shala again at the KMF, at least once more, sometime in either May or June 1999; **TW4-10**: T. 1 May 2023, public, p. 1081, line 5 to p. 1083, line 11.

<sup>1726</sup> See para. 370 above; see further, **Mr Elezaj**: 060124-TR-ET Part 2 Revised RED4, p. 14, lines 17-26, stating that regular fighters needed permission to leave even for a few hours.

<sup>1727</sup> See Section VI.D.5(a).



evidence regarding his transfer from Romanat to the KMF and his identification of Mr Shala to be credible and reliable.<sup>1728</sup>

843. On the same day, TW4-01, W04733 and W01448 all saw Mr Shala in the Office of the Command Building, when Mr Shala – together with certain other KLA members – participated in the interrogation and mistreatment of TW4-01, the Murder Victim, W04733, W01448, [REDACTED] and [REDACTED].<sup>1729</sup> The Panel recalls that it found TW-01, W04733 and W01448's evidence regarding this incident, including regarding Mr Shala's presence throughout, to be mutually corroborative and highly credible and reliable.<sup>1730</sup>

844. In light of the foregoing, the Panel finds that Mr Shala was present at the KMF on or about 20 May 1999.

845. *Presence at the KMF on or about 28 or 29 May 1999.* W04733 saw Mr Shala again at the KMF when he was being questioned by Xhemshit Krasniqi and Sokol Dobruna in the Office. From the open window of the Office overlooking the courtyard, W04733 saw Mr Shala leaving the KMF premises through the gate and returning a few minutes later by car with Hashim Thaçi and Azem Sylja.<sup>1731</sup> This happened three to four days before his release.<sup>1732</sup> The Panel recalls in this regard that W04733 was released on or about 1 June 1999.<sup>1733</sup>

846. The testimonies of TW4-01 and TW4-10 lend credence to W04733's account and *vice-versa*, as both of them attested that Mr Shala entered and exited the KMF without

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<sup>1728</sup> See Section VI.D.5(a).

<sup>1729</sup> See Sections VI.E.2(b)-(e).

<sup>1730</sup> See Sections VI.E.2(b)-(e).

<sup>1731</sup> See para. 462.

<sup>1732</sup> See para. 462.

<sup>1733</sup> See para. 469.

the need to seek permission.<sup>1734</sup> As explained elsewhere, the Panel finds TW4-01's and TW4-10's evidence to be mutually corroborative, truthful and credible on this point.<sup>1735</sup>

847. In light of the foregoing, the Panel finds that Mr Shala was present at the KMF on or about 28 or 29 May 1999 and was able to move freely in and out of the KMF.

848. *Presence at the KMF on or about 31 May 1999.* Further, the Panel notes Mr Elezaj's statement, who was the owner of the KMF at the relevant time.<sup>1736</sup> Mr Elezaj recalled seeing Mr Shala at the KMF "before the war ended", when he brought wounded and dead KLA members who had fallen during the battle of Gorožup/Gorozhup to the Kukës hospital.<sup>1737</sup> Mr Elezaj did not specify exactly when he saw Mr Shala, but recalled that the battle of Gorožup/Gorozhup took place between 25 or 26 May 1999 and 31 May 1999.<sup>1738</sup>

849. Mr Elezaj's written statement is supported by the testimony of Mr Hoxha, as well as audio-video evidence on record. Mr Hoxha recalled that wounded and dead KLA members who had fallen during the battle of Gorožup/Gorozhup were transported by trucks to the Kukës hospital and that afterwards the trucks were parked at the KMF. He testified that this event took place on either 30 or 31 May 1999, concluding: "I think it was 31 May".<sup>1739</sup> The Panel has also received a video recording made by Mr Hoxha during the burial of three of the fallen KLA members, in which one speaker states: "Yesterday on 31 May 1999, the following martyrs for freedom fell

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<sup>1734</sup> See paras 369-370 above.

<sup>1735</sup> See Sections VI.D.2(a) and VI.D.5(d). Contrary to the Defence's submissions, see T. 17 April 2024, public, p. 4303, lines 9-16.

<sup>1736</sup> **Mr Elezaj:** 060124-TR-ET Part 1 Revised RED, pp. 5-15.

<sup>1737</sup> **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, pp. 141-145.

<sup>1738</sup> **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, pp. 66, line 18 to p. 67, line 11.

<sup>1739</sup> **Mr Hoxha:** T. 20 November 2023, public, pp. 3226, line 5 to p. 3228, line 6, referring to **Video:** 075138-01, at 00:00-00:24.

on the front line”.<sup>1740</sup> The testimony of Mr Hoxha and the date mentioned in the video lend credence to Mr Elezaj’s statement that he saw Mr Shala at the KMF, which the Panel understands was on or about 31 May 1999.

850. The Panel has also received evidence from Mr Shala, in his 2019 Statement, that he never transported wounded KLA members.<sup>1741</sup> However, the Panel does not find his 2019 Statement in this regard to be credible. As explained in more detail below, the Panel considers that Mr Shala had an incentive to lie and to distance himself from the KMF and the crimes committed there.<sup>1742</sup>

851. In light of the foregoing, the Panel finds that Mr Shala was present at the KMF on or about 31 May 1999.

852. *Presence at the KMF on or about 4 June 1999.* The Panel recalls its finding that [REDACTED], on or about 4 June 1999, [REDACTED] Mr Shala – together with certain other KLA members – mistreated [REDACTED] the Murder Victim in Room 2 of the Detention Building.<sup>1743</sup> [REDACTED].<sup>1744</sup>

## 2. Mr Shala’s Statements and Admissions on his Presence at the KMF and at the Frontline

853. In addition to the Panel’s findings set out above, the Panel notes that Mr Shala himself acknowledged that he was present at the KMF during the time frame of the charges. Mr Shala readily admitted, in both his 2005 Statement and his 2019 Statement, that after he returned to Albania towards the end of March 1999, he made his way to

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<sup>1740</sup> **Mr Hoxha:** T. 20 November 2023, public, p. 3257, line 18 to p. 3258, line 12, *referring to Video:* DPS00879, at 02:43-04:07; **Transcript:** DPS00879-TR-ET.

<sup>1741</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 131, lines 21-25.

<sup>1742</sup> See para. 871 below.

<sup>1743</sup> [REDACTED].

<sup>1744</sup> [REDACTED].

the KMF.<sup>1745</sup> Mr Shala gave inconsistent statements, however, as to how long he remained at the KMF, which will be discussed by the Panel in turn.

854. *2005 Statement.* In his 2005 Statement, Mr Shala explained that he stayed at the KMF until he was sent to Burrel for training.<sup>1746</sup> While not entirely forthcoming on this point, Mr Shala added that he then remained in Burrel until he was arrested because “[t]here was a err... killing that took place...”.<sup>1747</sup> He was released afterwards thanks to his “cousin [who] had a higher position, was a commander”.<sup>1748</sup> The Panel understands that any detention that followed Mr Shala’s arrest was not prolonged. Notably, when an investigator asked Mr Shala what happened after his arrest, he responded straight away: “I was released”.<sup>1749</sup>

855. Although Mr Shala was reluctant to share details about his arrest, he did provide details about his time in Burrel which leads the Panel to conclude that he spoke from his own personal experience (for example, he explained that the military camp where he stayed was located “right from the officers house” and he corrected the investigator when the latter suggested that the camp was in downtown Burrel, clarifying that it was on the outskirts).<sup>1750</sup> Mr Mark Shala also testified that Mr Shala was “for a while [...] in a training centre in Burrel”.<sup>1751</sup> Importantly, the witness added that afterwards,

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<sup>1745</sup> **Mr Shala:** T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 29-30; 066864-TR-ET Part 1 Revised 1, pp. 38-42; 066888-TR-ET Part 1 Revised, pp. 83-84, 98-99.

<sup>1746</sup> **Mr Shala:** T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 31-32. *See further, Mr Mark Shala:* T. 23 October 2023, public, p. 2983, lines 9-10, explaining that Burrel is located south of Kukës, between Kukës and Tirana.

<sup>1747</sup> **Mr Shala:** T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 31-33.

<sup>1748</sup> **Mr Shala:** T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 39-40.

<sup>1749</sup> **Mr Shala:** T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 39-40.

<sup>1750</sup> **Mr Shala:** T000-2748-T000-2748-Alb and Eng Transcript-1, p. 38.

<sup>1751</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2966, lines 24-25; p. 2978, lines 14-15; p. 2980, line 10 to p. 2982, line 8; p. 2983, lines 7-13.

Mr Shala “came to Kukes. So he was in Kukes”.<sup>1752</sup> Mr Mark Shala’s testimony lends credence to Mr Shala’s 2005 Statement and *vice-versa*.

856. The Panel notes, however, that Mr Shala did not provide an indication as to exactly when he left Kukës for Burrel and when he returned. On this matter, the Panel turns to the testimony of Defence witness Mr Dervishaj and the written statement of Mr Kryeziu.<sup>1753</sup> Mr Dervishaj testified that he too was in Burrel for training, with other KLA members leaving from Kukës.<sup>1754</sup> He explained that he stayed in Burrel for approximately 12 to 14 days, after which time the KLA had to withdraw because “a soldier was killed”, and they returned to Kukës. According to Mr Dervishaj, this event happened at the beginning of May 1999.<sup>1755</sup> Therefore, according to him, KLA members left from Kukës to Burrel sometime around 20 April 1999 and returned to Kukës at the beginning of May 1999.

857. Similarly, Mr Kryeziu recalled in his written statement that he went to join the KLA in Kukës about 20 to 30 days after the NATO bombing started on 24 March 1999 (*i.e.* between approximately 13 and 23 April 1999).<sup>1756</sup> Soon after, KLA members went to Burrel for training, while Mr Kryeziu remained behind in Kukës.<sup>1757</sup> It follows that, according to Mr Kryeziu, the KLA members left Kukës for Burrel sometime between the approximate dates of 13 and 23 April 1999.

858. The Panel finds that it can rely on the testimony of Mr Dervishaj and the statement of Mr Kryeziu in order to establish when the KLA members went to Burrel and when they returned as: (i) both witnesses provided a coherent timeline of the

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<sup>1752</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2966, line 25 to p. 2967, line 1.

<sup>1753</sup> **Mr Kryeziu**: SITF00014088-00014120 RED.

<sup>1754</sup> **Mr Dervishaj**: T. 2 October 2023, public, p. 2738, lines 9-11; p. 2751, lines 9-13.

<sup>1755</sup> **Mr Dervishaj**: T. 2 October 2023, public, p. 2760, line 12 to p. 2764, line 21.

<sup>1756</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, pp. SITF00014089-SITF00014093, explaining that he sought to join the KLA in Kukës at the Headquarters where Ruzhdi Saramati was. The Panel understands this to refer to what was known as “Headquarters 1” or “Pavilion 1”; *see* para. 300 above.

<sup>1757</sup> **Mr Kryeziu**: SITF00014088-00014120 RED, p. SITF00014093.

events; (ii) they corroborated each other regarding the KLA members' time of departure for Burrel; (iii) Mr Dervishaj was present in Burrel and spoke from personal experience; and (iv) Mr Dervishaj's recollection of the killed "soldier" is corroborated by Mr Shala. Mr Dervishaj's testimony and Mr Kryeziu's statement also lend credence to Mr Shala's statement and Mr Mark Shala's testimony that Mr Shala went from Kukës to Burrel and then returned to Kukës.

859. The Panel has also received evidence from Mr Mark Shala that Mr Shala returned to Kukës from Burrel at "the beginning of April" or "somewhere between 10th and 15th April", although the witness could not remember exactly.<sup>1758</sup> The Panel sets aside Mr Mark Shala's testimony on this point, since he is contradicted by both Mr Dervishaj and Mr Kryeziu.

860. In light of the foregoing, the Panel finds, based on the mutually corroborative evidence of Mr Dervishaj and Mr Kryeziu, that KLA members left from Kukës to Burrel for training, for a short time, in mid-April (at the earliest) and returned to Kukës sometime at the beginning of May 1999. Based on Mr Shala's 2005 Statement and Mr Mark Shala's testimony, the Panel finds that Mr Shala left Kukës for Burrel with the other KLA members in mid-April (at the earliest) and that he returned to Kukës sometime at the beginning of May 1999. While the evidence discussed above related to events that fall outside the temporal scope of the Confirmed Indictment, it establishes that Mr Shala returned to Kukës at the beginning of May 1999.

861. *2019 Statement.* Contrary to his 2005 Statement, in his 2019 Statement, Mr Shala affirmed that, after he arrived in Kukës at the end of March 1999, he stayed at the KMF for two days and then he left for the frontline, located along the border between

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<sup>1758</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2966, line 24 to p. 2967, line 3; p. 2969, lines 9-13; p. 2980, line 10 to p. 2982, line 8.

Albania and Kosovo.<sup>1759</sup> He added that he always stayed on the Albanian side of the frontline.<sup>1760</sup> Mr Shala advanced that he remained engaged with the KLA at the frontline until the end of the armed conflict, after which he returned to Belgium, sometime in June/July 1999.<sup>1761</sup>

862. Speaking about his role during this period, Mr Shala stated that his tasks were to reinforce the KLA positions and to organise the transport of volunteers between their points of arrival in Albania and the frontline.<sup>1762</sup> In this context, Mr Shala admitted that he returned to the KMF very often in order to take supplies and to meet people.<sup>1763</sup> He further admitted that, on one of these occasions, he saw TW4-01 and the Murder Victim, [REDACTED] in the courtyard of the KMF.<sup>1764</sup> [REDACTED].<sup>1765</sup> [REDACTED].<sup>1766</sup> Mr Shala admitted that, triggered by this information, he hit TW4-01 and the Murder Victim with a piece of wood, gave them “a few blows” and slapped them. He added that after this incident he never saw them again.<sup>1767</sup> During his closing statement, Mr Shala confirmed (part of) his 2019 Statement, affirming that he had given TW4-01 and the Murder Victim “some slaps”.<sup>1768</sup> Mr Shala further admitted in his 2019 Statement that, on another occasion when he went to the KMF in 1999, he saw W04733 “serving coffee” to Bislim Zyrapi and Mr Mark Shala. Mr Shala added that he

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<sup>1759</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 103, 112-121.

<sup>1760</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 118, lines 11-23; p. 121, lines 6-14; p. 124, lines 13-16.

<sup>1761</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 117-121.

<sup>1762</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 121, lines 15-25; pp. 127-131.

<sup>1763</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 124, line 17 to p. 125, line 1; p. 131, lines 2-9. About his connection to Kukës, Mr Shala affirmed that he had friends there, who owned a restaurant in the centre of the town, and that he would stay there: “I drank at their place and if I needed to sleep, I would sleep upstairs”; *see* p. 141, lines 11-18.

<sup>1764</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 146-147, 169-170.

<sup>1765</sup> [REDACTED].

<sup>1766</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 146-157, 161-165.

<sup>1767</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 154-158, 161-163.

<sup>1768</sup> T. 17 April 2024, public, p. 4372, lines 12-17.

had heard rumours that W04733 was “a wanted man” because he and/or his sons were collaborators of the Serbian authorities.<sup>1769</sup>

863. While the Panel does not find Mr Shala’s 2019 Statement to be entirely credible – for reasons to be provided below – it observes that Mr Shala admitted seeing TW4-01, the Murder Victim, [REDACTED] and W04733 at the KMF sometime in 1999, and he confirmed the accusations made against them. The Panel finds that it can rely on Mr Shala’s admissions in this regard because: (i) he volunteered this information to the Belgian authorities; (ii) the Panel has found in Section VI.D above that TW4-01, the Murder Victim, [REDACTED] and W04733 were indeed at the KMF during the time frame of the charges, albeit as detainees; and (iii) Mr Shala confirmed the exact accusations made against TW4-01, the Murder Victim and W04733 (*i.e.* that they were collaborators of the Serbian authorities [REDACTED]).<sup>1770</sup>

864. Although Mr Shala did not specify exactly when in 1999 he saw TW4-01, the Murder Victim, [REDACTED] and W04733 at the KMF, his admissions nonetheless serve to place him at the KMF on two separate occasions, between approximately [REDACTED] May 1999 and 5 June 1999, when the four detainees were held there.<sup>1771</sup> The Defence’s submission that Mr Shala was not at the KMF in late May and/or June 1999 is therefore contradicted by Mr Shala’s own statement.<sup>1772</sup>

865. As to the remainder of Mr Shala’s 2019 Statement, the Panel does not find it credible regarding: (i) the circumstances of his encounter with TW4-01, the Murder

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<sup>1769</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 60-61, 65, 180-182.

<sup>1770</sup> See Sections VI.D.2, VI.D.3, VI.D.5, VI.D.10(b) Sections VI.E.2(b) and (c).

<sup>1771</sup> Mindful that their periods of detention differ, the Panel takes the date on or about [REDACTED] May 1999 as the first point of reference, as this is the date on which TW4-01, [REDACTED] arrived at the KMF. The date on or about 5 June 1999 serves as the last point of reference, as this is the date on which the Murder Victim died. W04733 however was released earlier, on or about 1 June 1999; see Sections Section VI.D.2(a), VI.D.5(d) and VI.F.8.

<sup>1772</sup> Defence Final Trial Brief, para. 8 (“The Accused was not present at the Factory in late May and/or June 1999”).



Victim, [REDACTED] and W04733; and (ii) the fact that he was at the frontline between the end of March 1999 and the end of the armed conflict, for the reasons that follow.

866. First, the Panel considers that Mr Shala's description of the circumstances in which he saw TW4-01, the Murder Victim, [REDACTED] and W04733 are implausible. As recalled above, Mr Shala affirmed that, [REDACTED] TW4-01 and the Murder Victim were Serb collaborators [REDACTED].<sup>1773</sup> At the same time, Mr Shala insisted that the two were not deprived of their liberty and were moving about freely within the KMF.<sup>1774</sup> The line of questioning in Mr Shala's interview is telling:

- [Prosecutor]: [REDACTED]?
- [Mr Shala]: Yes. [...] People were explaining -- as there were accusations [...] they had stolen from people in collusion with the Serbs [...]. They have been /seen/ on top of Serbian tanks, wearing headbands [...]. All kinds of accusations!
- [Prosecutor]: So there were many allegations against them?
- [Mr Shala]: Yes but!
- [Prosecutor]: And yet you say that they were moving about freely? [...]
- [Mr Shala]: Yes.
- [Prosecutor]: Without having been deprived of their liberty?
- [Mr Shala]: Yes, in the courtyard, they were there and they were smoking. They were smoking cigarettes!<sup>1775</sup>

867. The Panel finds it entirely implausible in light of the evidence on record<sup>1776</sup> that TW4-01 and the Murder Victim were free to move about the KMF whilst they were suspected of collaborating with the Serbian authorities [REDACTED]. The same applies to W04733. The Panel finds it implausible that W04733 would be "serving coffee" to KLA commanders in a friendly atmosphere, whilst being a "wanted man" for collaborating with the Serbian authorities.

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<sup>1773</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 146-157, 161-165.

<sup>1774</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 155-158.

<sup>1775</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 156, line 16 to p. 158, line 2.

<sup>1776</sup> See Sections VI.D.2, VI.D.3 and VI.E.2(a)-(b).

868. Second, the Panel observes that, although he claimed to be at the frontline between the end of March 1999 and the end of the armed conflict, Mr Shala did not volunteer any information or details about his time there (for example, who his superiors were, the locations where he had been mobilised, or where he slept). Once again, the line of questioning is telling:

- [Prosecutor]: Did you act as a reinforcement upon orders from anyone?
- [Mr Shala]: No, that wasn't necessary.
- [Prosecutor]: Please explain?
- [Mr Shala]: I had a good weapon, and everyone wanted a weapon close by.
- [Prosecutor]: So you were a very welcome reinforcement?
- [Mr Shala]: Yes, very welcome everywhere.
- [Prosecutor]: Everywhere?
- [Prosecutor]: Wanted by whom though?
- [Mr Shala]: Everyone who lays eyes on me.<sup>1777</sup>

The questioning continued:

- [Prosecutor]: So you were acting as a real soldier during this period?
- [Mr Shala]: Yes.
- [Prosecutor]: At the front?
- [Mr Shala]: Yes. [...]
- [Prosecutor]: And you were mobilised at various different positions?
- [Mr Shala]: To be mobilised in Albania, I didn't need either money or ... I even knew the inhabitants! It was easy to be mobilized.
- [Prosecutor]: Where did you sleep during this period?
- [Mr Shala]: Where? Everywhere!
- [Prosecutor]: Everywhere?
- [Mr Shala]: All over the place.
- [Prosecutor]: For example? [...]
- [Mr Shala]: The mountain was the safest place for me!<sup>1778</sup>

869. The Panel would expect Mr Shala, as an experienced KLA member, to volunteer more information and more details about his time at the frontline. Instead, he deflected attention away from the questions or provided generic answers, which do not convince the Panel that he spoke truthfully or from his personal experience.

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<sup>1777</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 122, lines 4-12; *see also*, p. 127, lines 11-13.

<sup>1778</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 123-124.

In contrast, in his 2005 and 2007 Statements, Mr Shala readily provided a host of details regarding his time with the KLA between March 1998 and the summer of 1998 (to whom he reported, where he was based, where he was sent, and where he slept).<sup>1779</sup>

870. Third, Mr Shala's assertion in his 2019 Statement that he left for the frontline two days after he arrived in Kukës<sup>1780</sup> is contradicted by his own 2005 Statement, where he explained that he stayed in Kukës until he was sent to Burrel for training. Mr Shala's 2019 Statement is also contradicted in this regard by the testimony of Mr Mark Shala, as explained above.<sup>1781</sup> Mr Shala's 2019 Statement is further internally inconsistent. In another part of his 2019 Statement, Mr Shala explained that he travelled inside Albania to organise the transport of volunteers between their points of arrival and the frontline and admitted that he returned to the KMF very often in order to take supplies and to meet people.<sup>1782</sup>

871. Fourth, the Panel observes that, at the time Mr Shala gave the 2019 Statement, it was clear to him that crimes (allegedly) perpetrated at detention sites in Albania were being investigated and that witnesses had named him as a co-perpetrator.<sup>1783</sup> Thus, the Panel considers that, in 2019, Mr Shala had an incentive to lie and to place himself at the frontline in order to distance himself from the KMF and the crimes committed there. This was not the case with regard to his 2005 Statement, which was the first statement provided by Mr Shala.

872. In light of the foregoing, the Panel treats Mr Shala's 2019 Statement with caution and attaches more weight to his 2005 Statement on the relevant issues. The Panel relies

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<sup>1779</sup> **Mr Shala:** T000-2742-T000-2742-Alb and Eng Transcript – A, pp. 33-35, 44-51; T000-2742-T000-2742-Alb and Eng Transcript-3 – B, pp. 2-8; T001-0105-1-A-TR, pp. 85-88.

<sup>1780</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 103, lines 12-14; pp. 112-121.

<sup>1781</sup> **Mr Shala:** T000-2748-T000-2748-Alb and Eng Transcript-1, pp. 31-32; **Mr Mark Shala:** T. 23 October 2023, public, p. 2966, lines 23-25; p. 2983, lines 7-13.

<sup>1782</sup> See para.862 above.

<sup>1783</sup> **Mr Shala:** 066864-TR-ET Part 1 Revised 1, pp. 9-14.

on Mr Shala's 2019 Statement only to the extent that it is corroborated by other evidence.

873. In any case, neither Mr Shala's 2005 Statement nor his 2019 Statement discredit the consistent, coherent and mutually corroborative evidence on record emanating, in particular, from TW4-01, W04733 and W01448, as well as Mr Elezaj, that Mr Shala was at the KMF on several occasions between the approximate dates of [REDACTED] May 1999 and 4 June 1999, taking part in the mistreatment of detainees. To the contrary, Mr Shala's admission in his 2019 Statement that: (i) during his time in the KLA in 1999 he was at all times in Albania;<sup>1784</sup> (ii) he went very often to the KMF, whenever he wanted;<sup>1785</sup> and (iii) he was there on at least two occasions between the approximate dates of [REDACTED] May 1999 and 5 June 1999<sup>1786</sup> supports the evidence of the above-mentioned witnesses.

### 3. Other Evidence Placing Mr Shala's at the Frontline

874. In addition to Mr Shala's 2019 Statement discussed above, the Panel has also received evidence from Mr Mark Shala and Mr Elezaj suggesting that Mr Shala was at the frontline during the time frame of the charges. The Panel will discuss their evidence in turn.

875. *Mr Mark Shala.* Mr Mark Shala testified before the Panel that he met Mr Shala twice "[d]uring the war".<sup>1787</sup> The first time was at the KMF, after Mr Shala returned from Burrel,<sup>1788</sup> which the Panel has established as having occurred sometime at the beginning of May 1999.<sup>1789</sup> Mr Mark Shala specified that Mr Shala came to the KMF

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<sup>1784</sup> See para. 861 above.

<sup>1785</sup> See para. 862 above.

<sup>1786</sup> See para. 862 above.

<sup>1787</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2966, lines 18-19.

<sup>1788</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2966, line 18 to p. 2969, line 7.

<sup>1789</sup> See para. 860 above.

and expressed his intention to go to the frontline and to remain there until the war ended. He asked for a weapon and then “went off to the frontline”, according to Mr Mark Shala.<sup>1790</sup>

876. Mr Mark Shala added that he did not see Mr Shala again until the second time they met “towards the end of the war”, “just before the war ended in June [1999]”.<sup>1791</sup> When asked by the SPO what he meant by the “end of the war”, Mr Mark Shala explained that this was marked by the signing of the Kumanovo Agreement,<sup>1792</sup> which the Panel notes occurred on 9 June 1999.<sup>1793</sup> Speaking about this second encounter, Mr Mark Shala stated in court that he came across Mr Shala by chance at a café in downtown Kukës. He added that they had a “relaxed meeting” because “we both were aware that the war was coming to an end”.<sup>1794</sup> Mr Shala told him at that time that he had “completed [his] mission” “to see Kosovo liberated” and that he was returning to Belgium.<sup>1795</sup>

877. During cross-examination, the SPO confronted Mr Mark Shala with a prior statement,<sup>1796</sup> where he gave a different account, in particular, regarding his second encounter with Mr Shala.<sup>1797</sup> In his prior statement, Mr Mark Shala affirmed that he saw Mr Shala for the second time at the KMF, around the end of May or beginning of June 1999, before the end of Operation Arrow:

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<sup>1790</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2966, line 18 to p. 2969, line 3; p. 2984, lines 5-11.

<sup>1791</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2969, lines 18-19; T. 24 October 2023, public, p. 3069, lines 8-18.

<sup>1792</sup> **Mr Mark Shala:** T. 24 October 2023, public, p. 3074, line 16 to p. 3075, line 5.

<sup>1793</sup> [List of Facts of Common Knowledge](#), Fact 14.

<sup>1794</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2969, line 16 to p. 2970, line 24; T. 24 October 2023, public, p. 3070, lines 1-7.

<sup>1795</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2969, line 16 to p. 2970, line 24; T. 24 October 2023, public, p. 3070, lines 1-7.

<sup>1796</sup> See Prior Statement: 083524-TR-ET Part 5 RED 2.

<sup>1797</sup> **Mr Mark Shala:** T. 24 October 2023, public, p. 3059, line 18 to p. 3091, line 20, referring to Prior Statement: 083524-TR-ET Part 5 RED2, pp. 23-27.

[H]e showed up and said, "I want to go to the front lines". He slept one night there and then he took off, and I didn't see him after that. And I heard that after Operation Arrow was finished, he then returned to Kosovo, and then he went somewhere into the west.<sup>1798</sup>

878. While the Panel makes allowances for a lack of imprecision regarding the time of the encounter, it notes that Mr Mark Shala's testimony is not consistent with his prior statement regarding the nature of his encounter with Mr Shala. Before the Panel, Mr Mark Shala insisted that their second meeting had taken place in a café in Kukës, that they knew the war was coming to an end, that Mr Shala stated that he fulfilled his duty to liberate Kosovo and that he was planning to return to Belgium. In contrast, in his prior statement, Mr Mark Shala advanced that this encounter took place at the KMF, not a café in Kukës, that Operation Arrow was still ongoing, and that Mr Shala expressed his intention to go to the frontline, not to Belgium.<sup>1799</sup> Although he was questioned extensively by the SPO on this point, the witness remained rather evasive, opaque and defensive. He did not provide any satisfying or plausible explanation for these inconsistencies and did not attempt to reconcile his two accounts.<sup>1800</sup>

879. It is clear to the Panel, having considered the evidence as a whole, that Mr Mark Shala sought to distance Mr Shala from the KMF during the time frame of the charges. This undermines the witness's credibility and the Panel cannot give any credence to his testimony that Mr Shala was at the frontline throughout the time frame of the charges. Accordingly, the Panel does not rely on Mr Mark Shala's testimony in this regard.

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<sup>1798</sup> **Mr Mark Shala**: T. 24 October 2023, public, p. 3067, line 21 to p. 3068, line 6, *citing* Prior Statement: 083524-TR-ET Part 5 RED 2, p. 26, lines 2-6.

<sup>1799</sup> *See also*, **Mr Hoxha**: T. 20 November 2023, public, p. 3174, lines 12-18, explaining that, on 6 or 7 June 1999, he left Kukës on an assignment to go back to Germany and "buy certain things that we needed" and that he "didn't know at the time that the war would end in four or five days". This makes Mr Mark Shala's testimony even less credible when he states that they knew the war was ending when he and Mr Shala met in the café in Kukës.

<sup>1800</sup> **Mr Mark Shala**: T. 24 October 2023, public, p. 3059, line 18 to p. 3091, line 20.

880. *Mr Elezaj*. Mr Elezaj affirmed in his written statement that Mr Shala “stayed for a very short period in Kukës”, “only two or three days”, “before he went to the frontline, like all the other soldiers”. The witness explained that Mr Shala was at the frontline with the “Atlantic Battalion”, under the command of Gani Elezi, as part of either Brigade 128 or Brigade 136, commanded by Ruzhdi Saramati and Binak Gashi, respectively.<sup>1801</sup>

881. The Panel observes that Mr Elezaj’s statement is consistent with Mr Shala’s 2019 Statement that, after arriving in Kukës, he stayed at the KMF for two days and then left for the frontline.<sup>1802</sup> However, the remainder of Mr Elezaj’s evidence, that Mr Shala was part of either Brigade 128 or 136: (i) is not consistent with Mr Shala’s 2019 Statement, according to which he was never part of Brigade 128;<sup>1803</sup> (ii) is contradicted by the evidence provided by Defence witness Mr Dervishaj, who was at the frontline at the relevant time as a member of Brigade 128 and testified that he had not heard of Mr Shala (“There was no Pjeter Shala there”);<sup>1804</sup> and (iii) regarding Mr Shala being part of Brigade 136, it is unsupported by any evidence in the record. The Panel gives weight on this point to the evidence of Mr Shala and Mr Dervishaj over the evidence of Mr Elezaj that Mr Shala was not part of Brigade 128 as the two corroborate each other. For these reasons, the Panel finds that it cannot give credence to Mr Elezaj’s statement that Mr Shala was at the frontline during the time frame of the charges, with either Brigade 128 or 136.

882. *Conclusion*. In light of the foregoing, the Panel finds that the evidence of Mr Mark Shala and Mr Elezaj that Mr Shala was (primarily) at the frontline does not cast doubt

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<sup>1801</sup> **Mr Elezaj**: 060124-TR-ET Part 2 Revised RED4, pp. 139-143.

<sup>1802</sup> See para. 861 above.

<sup>1803</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, pp. 76-83, 110-116 (Q: “And you still hadn’t found the 128th? A: No, that was already understood that it was a lie and that they wanted to get rid of me”).

<sup>1804</sup> **Mr Dervishaj**: T. 2 October 2023, public, p. 2753, line 4 to p. 2754, line 18; p. 2773, lines 10-25; p. 2777, lines 7-14.

on the highly consistent and mutually corroborative evidence of TW4-01, TW4-10, W04733, W01448 and Mr Elezaj, who personally saw Mr Shala at the KMF between the approximate dates of [REDACTED] May 1999 and 4 June 1999.

#### 4. Other Evidence

883. In addition to the evidence of Mr Shala, Mr Mark Shala and Mr Elezaj discussed above, the Defence also relies upon the evidence of: (i) SPO witnesses TW4-11, TW4-02 and TW4-04, who were detained at the KMF and who testified or stated that they did not know anyone by the name of Pjetër Shala;<sup>1805</sup> and (ii) Defence witnesses Mr Kocinaj, Mr Hoxha and W04280, who were stationed at the KMF at the relevant time and who testified that they did not know anyone (nick)named Pjetër Shala or Ujku.<sup>1806</sup> The Panel will address this evidence in turn.

884. *TW4-11, TW4-02 and TW4-04.* Turning first to SPO witnesses TW4-11, TW4-02 and TW4-04, the Panel notes that: (i) they were detained in the Detention Building, in Room 1 ([REDACTED]) and/or Room 3 ([REDACTED]);<sup>1807</sup> (ii) there is no evidence to suggest – and no allegations have been made – that Mr Shala mistreated detainees inside Rooms 1 or 3, or that he ever entered Rooms 1 or 3; and (iii) although the witnesses were taken for interrogation to the Command Building,<sup>1808</sup> there is no evidence to suggest – and again no allegations have been made – that they were mistreated in a manner similar to TW4-01, the Murder Victim, W04733 and W01448. Thus, it is entirely plausible that TW4-11, TW4-02 and TW4-04 would not have encountered Mr Shala at the KMF even if he was there at the same time as them.

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<sup>1805</sup> Defence Final Trial Brief, para. 20; T. 16 April 2023, public, p. 4241, lines 7-14.

<sup>1806</sup> Defence Final Trial Brief, paras 22, 24-25.

<sup>1807</sup> See Sections VI.D.4, VI.D.8 and VI.D.9.

<sup>1808</sup> See Section VI.E.3.



885. For these reasons, the Panel finds that the evidence of TW4-11, TW4-02 and TW4-04: (i) is not capable of establishing that Mr Shala was not present at the KMF during the time frame of the charges; and (ii) does not cast doubt on the credibility and reliability of TW4-01, TW4-10, W04733, W01448 and Mr Elezaj that Mr Shala was present at the KMF at the relevant time.

886. *Mr Kocinaj*. Mr Kocinaj, who was stationed at the KMF during the entire time relevant to the charges,<sup>1809</sup> testified that he did not meet, or hear of a person (nick)named Pjetër Shala or Ujku.<sup>1810</sup> The Panel notes that Mr Kocinaj also testified that: (i) he did not know Mr Mark Shala;<sup>1811</sup> (ii) did not recognise any building located on the KMF premises besides the Warehouse where he worked;<sup>1812</sup> and (iii) never used any toilet facilities within the KMF compound, as he would visit his home in Kukës every time he needed to use the restroom.<sup>1813</sup>

887. The Panel finds it highly implausible that Mr Kocinaj would not know Mr Mark Shala, who was the “chief of logistics” at the KMF<sup>1814</sup> and therefore Mr Kocinaj’s superior at the relevant time.<sup>1815</sup> The Panel also finds Mr Kocinaj’s claims that he did not recognise the different buildings around the KMF to be not credible, given that he was stationed at the KMF for several months<sup>1816</sup> and would, according to his own evidence, leave and return to the premises multiple times per day.<sup>1817</sup> Despite the

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<sup>1809</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2816, line 2 to p. 2817, line 22; p. 2839, lines 14-21.

<sup>1810</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2831, lines 2-7; p. 2882, lines 18-23.

<sup>1811</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2880, lines 23-24.

<sup>1812</sup> **Mr Kocinaj**: T. 3 October 2023, public, pp. 2821-2822, 2842-2843.

<sup>1813</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2844, line 5 to p. 2846, line 13.

<sup>1814</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 2921, lines 3-10.

<sup>1815</sup> *See also*, **Mr Hoxha**: T. 20 November 2023, public, p. 3175, lines 4-21, explaining that he was a “repairman for weapons” at the KMF and that his superior was Mr Mark Shala.

<sup>1816</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2816, line 5 to p. 2817, line 10; p. 2835, lines 2-6; p. 2839, lines 18-21; p. 2847, line 16 to p. 2848, line 2.

<sup>1817</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2839, lines 22-25; p. 2843, lines 4-15; p. 2844, line 5 to p. 2845, line 1.

reasonable expectation that Mr Kocinaj would be familiar with these facts, when confronted, he was not able to provide a plausible explanation as to why he was unaware of these details. Instead, Mr Kocinaj deflected attention away from the questions and repeatedly stated that he remembered only the work he did and nothing else.<sup>1818</sup> The Panel also finds it particularly implausible that Mr Kocinaj never used the toilet facilities at the KMF, but instead went to his home in Kukës (which was no less than 10 minutes away) every time he needed to use the restroom.<sup>1819</sup> This is further compounded by the fact that other reliable evidence in this case established that access to the toilets required passing by the Detention Building,<sup>1820</sup> where detainees were kept and mistreated.<sup>1821</sup>

888. The Panel has detected in Mr Kocinaj a clear intention to distance himself from any detention and mistreatment practices at the KMF. Mr Kocinaj made no effort to differentiate facts within his testimony, but instead strategically directed his account away from matters related to the detention and mistreatment practices at the KMF in order to protect his interests and those of others who were present at the KMF at the relevant time. For these reasons, the Panel finds that Mr Kocinaj was untruthful and the Panel therefore does not attach any weight to his testimony that he never met anyone (nick)named Pjetër Shala or Ujku at the KMF.

889. *Mr Hoxha*. Mr Hoxha, who was also stationed at the KMF during the relevant time,<sup>1822</sup> similarly testified that he did not meet Pjetër Shala and did not hear of a person nicknamed Ujku.<sup>1823</sup> The Panel notes that Mr Hoxha also testified that:

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<sup>1818</sup> **Mr Kocinaj**: T. 3 October 2023, public, pp. 2845-2848, 2853-2856, 2870, 2881-2884.

<sup>1819</sup> **Mr Kocinaj**: T. 3 October 2023, public, p. 2844, line 5 to p. 2845, line 1.

<sup>1820</sup> See paras 319-322.

<sup>1821</sup> See paras 588, 653.

<sup>1822</sup> **Mr Hoxha**: T. 20 November 2023, public, pp. 3173-3175, 3196-3197; T. 21 November 2023, public, p. 3317, line 9 to p. 3319, line 18.

<sup>1823</sup> **Mr Hoxha**: T. 20 November 2023, public, p. 3219, line 18 to p. 3220, line 5.

(i) he did not recognise the Detention Building, stating that there were three or four broken down trucks in the courtyard that “never moved” and were blocking the view;<sup>1824</sup> and (ii) he could not remember where the toilet was within the KMF compound.<sup>1825</sup> During his cross-examination, he was confronted by the SPO with his prior statement, where he had mentioned that there was one broken down truck in the courtyard (rather than three or four) and that otherwise “[t]here were frequently trucks coming in and out”.<sup>1826</sup>

890. The Panel observes, first, that Mr Hoxha did not provide an explanation for the inconsistencies in his statement put to him. Instead, he either changed his evidence or insisted that no such inconsistencies existed. Second, the Panel finds it implausible that, given the size of the courtyard, so many damaged trucks would be stationed there permanently, since (other) trucks bringing in supplies needed to be parked in the courtyard in order to be offloaded.<sup>1827</sup> Third, Mr Hoxha’s testimony is contradicted by the evidence of TW4-01 who testified that, from the window of Room 1 of the Detention Building, facing the courtyard, he could see “the entire headquarters”, attesting to the fact that the field of view between the Detention Building and the courtyard was not blocked.<sup>1828</sup> Lastly, even if one accepts the presence of multiple trucks, it is wholly unlikely for a person who worked – and slept<sup>1829</sup> – in the Warehouse and the courtyard of the KMF to have been unaware of the existence of the

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<sup>1824</sup> **Mr Hoxha**: T. 20 November 2023, public, pp. 3208-3209, 3211-3212, being shown **Photograph**: SPOE40010264-40010559, p. SPOE40010282 (saved as REG00989); T. 21 November 2023, public, pp. 3379-3394, being shown **Photographs**: SPOE40010264-40010559, pp. SPOE40010282, SPOE40010289, SPOE40010290; 074390-074391; *see also*, T. 22 November 2023, public, pp. 3434-3437.

<sup>1825</sup> **Mr Hoxha**: T. 21 November 2023, public, p. 3376, line 17 to p. 3379, line 5.

<sup>1826</sup> **Mr Hoxha**: T. 21 November 2023, public, pp. 3393-3395, 3401; T. 22 November 2023, public, pp. 3417-3420, *referring to* Prior Statement: 077857-TR-ET Part 2 RED2, pp. 5, 21-23; p. 3424, lines 1-10.

<sup>1827</sup> **Mr Hoxha**: T. 21 November 2023, public, p. 3394, lines 15-18; T. 22 November 2023, public, p. 3424, lines 1-10; *See* Sections VI.B.3 and VI.E.2(i).

<sup>1828</sup> **TW4-01**: T. 30 May 2023, public, p. 1424, lines 1-7.

<sup>1829</sup> **Mr Hoxha**: T. 22 November 2023, public, p. 3438, lines 1-11.

surrounding structures – *i.e.* the Detention Building – which was located in the middle of the yard.

891. As in the case of Mr Kocinaj, the Panel detected a clear intention in Mr Hoxha to distance himself from any detention and mistreatment practices at the KMF. This is evident both from his denial that he recognised the Detention Building and his testimony that he could not remember the location of the toilet. Mr Hoxha strategically directed his account away from matters related to the detention and mistreatment practices at the KMF in order to protect his interests and those of others who were present at the KMF at that time. For these reasons, the Panel finds that Mr Hoxha was untruthful and does not attach any weight to his testimony that he never met anyone (nick)named Pjetër Shala or Ujku at the KMF.

892. W04280. Similarly to Mr Kocinaj and Mr Hoxha, W04280 – [REDACTED]<sup>1830</sup> – testified that he did not know or hear of anyone (nick)named Pjetër Shala or Ujku.<sup>1831</sup> The Panel notes that, throughout his testimony, W04280 also repeatedly stated that he could not remember how he joined the KLA, or where he performed his functions [REDACTED] within the KMF premises, citing health and memory problems.<sup>1832</sup> When asked whether he saw anyone being detained, W04280 responded that he did not.<sup>1833</sup>

893. The Panel finds it unlikely, even with the passage of time, that W04280 would not remember essential aspects of his time with the KLA at the KMF. It is notable that W04280 also made no effort to recall such facts or to differentiate the aspects of his experiences that he did remember from those that he did not. Further, his testimony that he did not see anyone being detained is amply contradicted by the mutually

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<sup>1830</sup> [REDACTED].

<sup>1831</sup> W04280: T. 28 November 2023, public, p. 3778, line 20 to p. 3779, line 2.

<sup>1832</sup> W04280: T. 28 November 2023, confidential, p. 3751, line 7 to p. 3755, line 7.

<sup>1833</sup> W04280: T. 28 November 2023, public, p. 3784, line 7-17.

corroborative and reliable evidence provided by TW4-01, TW4-04 and TW4-02, [REDACTED].<sup>1834</sup>

894. Once again, the Panel has detected a clear intention in W04280 to distance himself from any detention and mistreatment practices at the KMF. He too has strategically directed his account away from matters regarding detention and mistreatment at the KMF in order to protect his own interests. For these reasons, the Panel finds that W04280 was untruthful in this regard and it does not attach any weight to his testimony that he never met anyone (nick)named Pjetër Shala or Ujku at the KMF.

895. For all of the above reasons, the Panel finds that the evidence of TW4-11, TW4-02, TW4-04, Mr Kocinaj, Mr Hoxha and W04280 that they did not know or had not heard of Mr Shala or anyone nicknamed Ujku does not cast doubt on the highly consistent and mutually corroborative evidence of TW4-01, TW4-10, W04733, W01448 and Mr Elezaj, who personally saw Mr Shala at the KMF during the time relevant to the charges. The Panel further recalls that Mr Shala himself confirmed that he was regularly present at the KMF during that period.

## 5. Conclusion

896. In light of the foregoing, taking the evidence as a whole, the Panel finds that following his arrival in Kukës at the end of March 1999, Mr Shala went to Burrel for training in mid-April 1999 (at the earliest). He returned from Burrel to Kukës sometime at the beginning of May 1999.

897. During the period relevant to the charges, Mr Shala was physically present at the KMF on several occasions, including, at a minimum: (i) between the approximate dates of [REDACTED] and [REDACTED] May 1999; (ii) on or about 20 May 1999; (iii)

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<sup>1834</sup> [REDACTED].

on or about 28 or 29 May 1999; (iv) on or about 31 May 1999; and (v) on or about 4 June 1999. The Panel also finds that Mr Shala entered and exited the KMF very often and was able to do so without restrictions, as he himself stated in his 2019 Statement. As a result, the Panel finds that the evidence does not support the conclusion that Mr Shala was at the frontline, along the border between Kosovo and Albania, during the entire period relevant to the charges.

## I. MR SHALA'S POSITION AND ROLE AT THE KUKËS METAL FACTORY

### 1. Mr Shala's Position with the KLA at the Kukës Metal Factory

898. In his 2019 Statement, Mr Shala affirmed that, when he returned to Albania in March 1999, he received an authorisation – seemingly from the KLA General Staff – to take command of Brigade 128 at the frontline.<sup>1835</sup> This document is also in evidence before the Panel.<sup>1836</sup> Mr Shala went on to explain that he soon realised that, in fact, the authorisation did not reflect the reality, as Ruzhdi Saramati was already Commander of Brigade 128.<sup>1837</sup> He added that the volunteers with whom he had joined the KLA from Belgium – whom Mr Shala considered to be “his soldiers” – went on to the frontline under the command of Nasim Haradinaj.<sup>1838</sup> Mr Shala concluded that he was, therefore, “reduced to an ordinary soldier”,<sup>1839</sup> without a specific area of responsibility or any KLA members under his command.

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<sup>1835</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 71-83; 066866-066882-ET Revised RED, pp. 066872-066874.

<sup>1836</sup> U009-9398-U009-9398-ET.

<sup>1837</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 71-83; 066866-066882-ET Revised RED, pp. 066872-066874.

<sup>1838</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 111.

<sup>1839</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 126, lines 24-25.

899. Mr Shala's 2019 Statement is corroborated by Mr Mark Shala and Mr Elezaj, both of whom described Mr Shala as a "simple soldier".<sup>1840</sup> In addition, Mr Mark Shala testified that the authorisation received by Mr Shala to take command of Brigade 128 was not valid or authentic, as it did not correspond to the realities on the ground.<sup>1841</sup> Mr Mark Shala therefore corroborated Mr Shala's 2019 Statement in this regard. The Panel finds the evidence provided by Mr Shala, Mr Mark Shala and Mr Elezaj on this point to be credible and reliable, since they corroborate each other.

900. That said, the Panel observes that their evidence only establishes that Mr Shala did not have an official position or particular rank in the KLA. It does not elucidate his *de facto* position and role at the relevant time. Mr Mark Shala and Mr Elezaj did not provide any details in this regard. As to Mr Shala, the Panel recalls that in 2019 he had an interest to downplay his role at the KMF and to remove himself from any form of responsibility or participation in the crimes committed there.<sup>1842</sup>

901. In order to determine Mr Shala's *de facto* position and role in the KLA at the relevant time, the Panel turns to its previous findings. The Panel recalls that Mr Shala was able to enter and exit the KMF regularly, without seeking permission from anyone.<sup>1843</sup> According to Mr Elezaj, regular KLA members did need permission to leave, even for a few hours.<sup>1844</sup> The Panel finds that this is indicative of a degree of autonomy that he enjoyed.

902. The Panel is further attentive to Mr Shala's role in the commission of the crimes charged, which also demonstrates that he had a degree of autonomy and authority

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<sup>1840</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2970, line 25 to p. 2971, line 5; p. 2978, lines 7-9; **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 147, line 23 to p. 148, line 2.

<sup>1841</sup> **Mr Mark Shala:** T. 23 October 2023, public, p. 2974, line 19 to p. 2978, line 20.

<sup>1842</sup> See para. 871 above.

<sup>1843</sup> See para. 897 above.

<sup>1844</sup> **Mr Elezaj:** 060124-TR-ET Part 2 Revised RED4, p. 14, lines 17-26.

within the KLA at the KMF, in particular in the interrogation and mistreatment of detainees. This is discussed by the Panel below.

## 2. Mr Shala's Role in the Commission of the Crimes Charged

903. The Panel recalls that, on or about 20 May 1999, Mr Shala participated in the transfer of W04733, under guard, from a detention location in Romanat to the KMF together with other KLA members.<sup>1845</sup>

904. On the same day, Mr Shala – together with Sabit Geci, Xhemshit Krasniqi, Fatmir Limaj and other KLA members – actively participated in beating TW4-01, the Murder Victim, W04733 and W01448 in the Office of the Command Building.<sup>1846</sup> More specifically, based upon the evidence, Mr Shala was the first to hit TW4-01 with a rubber bar, which demonstrates that he had the authority to take initiative, especially when mistreating detainees.<sup>1847</sup> The Panel recalls TW4-01's testimony that: "[Pjetër Shala] beat us as much as he could" and "[h]e was smiling as he was hitting us", which further attests to his brutality.<sup>1848</sup> He also participated in beating the Murder Victim.<sup>1849</sup> As to W04733, Mr Shala hit him with a rubber baton and a baseball bat all over his body and head, including on his hands and feet, which were swollen as a result.<sup>1850</sup> Together with Xhemshit Krasniqi, he was the KLA member who mistreated W04733 the most on that night.<sup>1851</sup> Once again, W04733's words attest to Mr Shala's brutality:

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<sup>1845</sup> See para. 455 above.

<sup>1846</sup> See Sections VI.E.2 (b), VI.E.2 (c) and VI.E.2 (d).

<sup>1847</sup> See para. 655 above.

<sup>1848</sup> See para. 655 above.

<sup>1849</sup> See para. 660 above.

<sup>1850</sup> See para. 690 above.

<sup>1851</sup> See para. 690 above.



“Pjeter Shala hit me using the most inhumane behaviour to me”.<sup>1852</sup> Mr Shala was also the KLA member who beat W01448 the most on that night.<sup>1853</sup>

905. In addition to beating the detainees, Mr Shala accused W04733 of being a “spy”, while he was beating him.<sup>1854</sup> He also ordered [REDACTED] to beat W04733, revealing once again that he had a certain degree of authority.<sup>1855</sup> Further, as [REDACTED] was being mistreated by other KLA members, Mr Shala questioned and demanded that she make a confession identifying [REDACTED] as Serb collaborators.<sup>1856</sup>

906. Moreover, in his 2018 SPO statement, W04733 recalled that Mr Shala told him at a certain point: “We’re going to kill you. We’re going to execute you”.<sup>1857</sup> The Panel finds W04733’s statement in this regard to be credible and reliable as it is consistent with: (i) the fact that W04733 was threatened by KLA members that he would be killed during his transfer to the KMF as well;<sup>1858</sup> and (ii) the manner in which he was beaten on or about 20 May 1999 in the Office, in particular on his head.<sup>1859</sup> The Panel is not persuaded by the Defence’s submission that the fact that W04733 only mentioned this in his 2018 SPO statement casts doubt on his credibility.<sup>1860</sup> Rather, it reflects the fact that in 2018 the questioning focused more on Mr Shala and his role than it did before.

907. Additionally, the Panel recalls its finding that, on or about 4 June 1999, Mr Shala – together with a group of KLA members, including Xhemshit Krasniqi, Bedri and Van Damme – actively participated in severely beating [REDACTED] the

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<sup>1852</sup> See para. 690 above.

<sup>1853</sup> See para. 707 above.

<sup>1854</sup> See para. 692 above.

<sup>1855</sup> See para. 690 above.

<sup>1856</sup> See para. 720 above.

<sup>1857</sup> **W04733**: 082892-TR-AT-ET Part 9 RED2, p. 5, lines 6-14.

<sup>1858</sup> See para. 447 above.

<sup>1859</sup> See paras 690, 691, 693, 694 above.

<sup>1860</sup> Defence Final Trial Brief, para. 119.

Murder Victim, in Room 2 of the Detention Building.<sup>1861</sup> [REDACTED].<sup>1862</sup> Mr Shala continued to take part in [REDACTED] mistreatment even after [REDACTED] the Murder Victim [REDACTED] shot [REDACTED].<sup>1863</sup>

908. The Panel observes, based on the above, that when beating detainees together with other KLA members, including Sabit Geci and Xhemshit Krasniqi, Mr Shala participated freely and without any constraints, in the same manner as the aforementioned KLA officials. This is supported by the testimony of TW4-01 who, when asked in what relation Mr Shala stood to Xhemshit Krasniqi, he stated: “they collaborated really closely together in everything, including the mistreatments”.<sup>1864</sup>

909. A degree of authority is also shown by the fact that Mr Shala brutally engaged in mistreatments and interrogations of detainees without any (fear of) consequence, as he did in relation to TW4-01, the Murder Victim, W04733, W01448 and [REDACTED]. His actions are not only condoned, but readily accepted by KLA officials Xhemshit Krasniqi and Sabit Geci next to him.

910. The Panel notes that, in his 2019 Statement, Mr Shala asserted that he never participated in the transfer, detention or mistreatment of any individuals at the KMF.<sup>1865</sup> Mr Shala explained in this regard that he could not have done so because he was drunk all the time.<sup>1866</sup>

911. The Panel does not find his 2019 Statement to be credible in this regard for the following reasons. First, Mr Shala is contradicted by the mutually corroborative testimonies or written statements of TW4-01, W04733 and W01448 that he mistreated

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<sup>1861</sup> See [REDACTED] Section VI.F.4.

<sup>1862</sup> [REDACTED].

<sup>1863</sup> [REDACTED].

<sup>1864</sup> **TW4-01**: T. 6 June 2023, public, p. 1928, lines 1-13.

<sup>1865</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, pp. 137-138, 178-179, 189-191.

<sup>1866</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, pp. 137-141.

them at the KMF while they were being detained there. He is also contradicted by W04733's written statement that Mr Shala participated in his transfer to the KMF.<sup>1867</sup>

912. Second, Mr Shala's explanation that he was drunk all the time is contradicted by his statement that he did not drink to the point that he was unconscious. In fact, Mr Shala explained that he drank "to be a little fitter" and less afraid of the war and was perfectly able to perform his functions and remained active.<sup>1868</sup> Mr Shala also contradicted himself on other aspects. For example, when confronted with W04733's statement that he howled like a wolf during W04733's transfer from Romanat to the KMF, Mr Shala denied it, saying that it was only at the front that he "might have howled".<sup>1869</sup> This is in contradiction with his previous admission that the howl was part of his persona.<sup>1870</sup> His denial is also disproved by W04733 and Mr Elezaj who attested to Mr Shala's hallmark howling.<sup>1871</sup> Not least, Mr Shala denied knowing Xhemshit Krasniqi, despite ample evidence to the contrary, including from TW4-01, W04733 and W01448, that they were involved in the mistreatment of detainees together.<sup>1872</sup>

913. In light of the foregoing, the Panel finds that Mr Shala's 2019 Statement denying or minimising any involvement in the crimes committed at the KMF is not reliable, as Mr Shala deliberately downplayed his role. His statements do not cast doubt on the highly consistent and mutually corroborative evidence given by witnesses TW4-01, W04733 and W01448 who were detained at the KMF and were mistreated by him. To the contrary, to the extent that Mr Shala's 2019 Statement is consistent with these

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<sup>1867</sup> See para. 447 above.

<sup>1868</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, pp. 137-141.

<sup>1869</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 190, lines 2-20.

<sup>1870</sup> See para. 285 above.

<sup>1871</sup> See para. 285 above.

<sup>1872</sup> **Mr Shala:** 066888-TR-ET Part 1 Revised, p. 141, line 21 to p. 142, line 15.

witnesses' evidence, it strongly corroborates them and reinforces their truthfulness, as explained above.<sup>1873</sup>

### 3. Conclusion

914. For all of the above reasons, the Panel finds that, at the time relevant to the charges, Mr Shala – as a KLA member – was able to move freely in and out of the KMF and had a certain degree of autonomy and authority, especially in mistreating and interrogating detainees. He engaged actively with members of the KLA Military Police and other KLA members, most notably Sabit Geci and Xhemshit Krasniqi, who held positions of authority and control at the KMF. He actively participated in the transfer, interrogation and mistreatment of detainees without (fear of) consequence.

## VII. LEGAL FINDINGS

### A. ARMED CONFLICT

#### 1. The Existence of an Armed Conflict

##### (a) Legal requirements

915. The Panel recalls its findings in the *Mustafa* Trial Judgment with respect to the legal framework governing the existence of an armed conflict.<sup>1874</sup> Article 14(2) of the Law provides that armed conflicts not of an international character take place in the territory of a state when there is protracted armed conflict between the organs of authority and organised armed groups or between such groups.<sup>1875</sup> Armed conflicts

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<sup>1873</sup> See paras 862-864 above.

<sup>1874</sup> [Mustafa Trial Judgment](#), paras 696-700, and references therein.

<sup>1875</sup> [Mustafa Trial Judgment](#), para. 696, and references therein.

are characterised by the outbreak of hostilities that take place in the territory of a state.<sup>1876</sup>

916. In relation to the parties to the hostilities, Article 14(2) of the Law mentions two categories of possible parties to the armed conflict that ought to be construed in compliance with customary international law. “Organs of authority” include governmental authorities, such as a state’s regular armed forces, police units, national guards or other authorities of a similar nature,<sup>1877</sup> including armed groups and militias incorporated into armed forces.<sup>1878</sup> “Organised armed groups” must have a degree of organisation but “do not necessarily need to be as organised as the armed forces of a State”.<sup>1879</sup> They do not need to carry out sustained and concerted military operations, but they must be sufficiently organised to confront the opposing party or parties to the conflict with military means.<sup>1880</sup> When deciding whether a non-state entity can carry out protracted armed violence, the following factors may be considered: (i) existence of a command structure, including headquarters, a general staff or high command, identifiable ranks and positions, and internal regulations; (ii) issuance of political statements or communiqués and the use of spokespersons; (iii) operational capacity and the ability to carry out military operations; (iv) logistical capacity, including the availability of weapons and equipment, and the capacity to move troops and to recruit and train personnel; (v) territorial control, including the division of territory into zones of responsibility; (vi) the existence of an internal disciplinary

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<sup>1876</sup> [Mustafa Trial Judgment](#), para. 696.

<sup>1877</sup> [Mustafa Trial Judgment](#), para. 697. *See also*, ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber II, [Judgement](#) (*Boškoski and Tarčulovski Trial Judgement*), 10 July 2008, paras 178, 195.

<sup>1878</sup> [Mustafa Trial Judgment](#), para. 697. *See also*, Article 43(3) of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict, of 8 June 1977 (Additional Protocol I).

<sup>1879</sup> [Mustafa Trial Judgment](#), para. 697, and references therein.

<sup>1880</sup> [Mustafa Trial Judgment](#), para. 697. *See also*, ICTY, [Boškoski and Tarčulovski Trial Judgement](#), paras 197-198.

system, including the implementation of international humanitarian law throughout the armed group's ranks; and (vii) the ability to speak with one voice on behalf of the armed group, for example in political negotiations or cease-fire agreements.<sup>1881</sup>

917. In relation to the level of intensity of the conflict, Article 14(2) of the Law requires that hostilities between the parties must reach a certain degree of intensity, exceeding internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, or other acts of similar nature.<sup>1882</sup> In this context, the notion of "protracted armed violence" informs the intensity test as it refers "more to the intensity of the armed violence than its duration".<sup>1883</sup> Intensity may be inferred, for example, from: (i) the seriousness and frequency of attacks; (ii) their spread over the territory and over a period of time, and whether any ceasefire orders have been issued; (iii) the increase and number of forces deployed; (iv) the mobilisation and distribution of weapons amongst the conflicting parties; (v) the type of weapons used, in particular the use of heavy artillery; (vi) the type of military equipment, in particular the use of tanks; (vii) whether the situation attracted the attention of the United Nations Security Council, or other international organisations; (viii) the effects on the civilian population, the extent of destruction and the number of persons killed or displaced; and (ix) the manner in which the armed group was treated by other international actors, and under which body of law it claimed to be operating.<sup>1884</sup>

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<sup>1881</sup> [Mustafa Trial Judgment](#), para. 697. *See also*, Article 1(1) of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977 (Additional Protocol II). *See also*, ICTY, [Boškoski and Tarčulovski Trial Judgment](#), paras 194-203. However, the degree of organisation of an armed group to a conflict to which Common Article 3 of the Geneva Conventions applies does not need to be at the level of organisation required for parties to Additional Protocol II armed conflicts, *see* ICTY, [Boškoski and Tarčulovski Trial Judgment](#), para. 197.

<sup>1882</sup> [Mustafa Trial Judgment](#), para. 698.

<sup>1883</sup> [Mustafa Trial Judgment](#), para. 698, and references therein.

<sup>1884</sup> [Mustafa Trial Judgment](#), para. 698, and references therein.

918. Lastly, the temporal and geographical scope of armed conflicts not of an international character extends beyond the exact time and place of hostilities and the applicable rules apply beyond the cessation of hostilities until a peaceful settlement is achieved.<sup>1885</sup> Thus, the norms of international humanitarian law apply regardless of whether actual combat activities are taking place in a particular location.<sup>1886</sup> In the case of persons whose liberty has been restricted, international humanitarian law continues to apply until such deprivation or restriction of liberty comes to an end.<sup>1887</sup>

(b) Findings

919. The Panel recalls that it has taken judicial notice of several facts related to the existence of an armed conflict between the KLA and the Serbian forces, including during the time frame of the charges, as well as their respective qualifications as an organised armed group and an organ of authority within the meaning of Article 14(2) of the Law.<sup>1888</sup> The Panel recalls that by taking judicial notice of an adjudicated fact, it established a well-founded presumption for the accuracy of this fact, which therefore does not have to be proven again at trial.<sup>1889</sup> The Panel also recalls that the Defence did not submit any evidence during the trial to challenge the accuracy of the existence of a non-international armed conflict between the KLA and the Serbian forces at the time of the crimes charged, and thus no trial litigation occurred on this matter.

920. In addition to these adjudicated facts, the Panel has received ample and consistent evidence, both testimonial and documentary, establishing the level of

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<sup>1885</sup> [Mustafa Trial Judgment](#), para. 700, and references therein.

<sup>1886</sup> [Mustafa Trial Judgment](#), para. 700, and references therein.

<sup>1887</sup> [Mustafa Trial Judgment](#), para. 700. *See also*, International Committee of the Red Cross (ICRC), *Commentary on Geneva Convention III relative to the Treatment of Prisoners of War*, 2020, Article 3(4), paras 533, 535; *Commentary on the Additional Protocols to the Geneva Conventions*, 1987, Article 2(2) of Additional Protocol II, paras 4493-4496.

<sup>1888</sup> [Decision on Facts of Common Knowledge and Adjudicated Facts](#), para. 33(c). *See, in particular*, [List of Adjudicated Facts](#), Adjudicated Facts 1-29, 34-50.

<sup>1889</sup> [Decision on Facts of Common Knowledge and Adjudicated Facts](#), para. 24.

intensity of the conflict at the time of the charges. The evidence indicates that both the Serbian forces and the KLA engaged in armed hostilities resulting in heavy shelling and casualties. The armed hostilities also resulted in significant numbers of Kosovo Albanians being displaced across Kosovo territory, along the Albanian border and into Albania,<sup>1890</sup> with the Yugoslav army setting up checkpoints to prevent the border crossing.<sup>1891</sup>

921. In light of the foregoing, the Panel finds, based on the Decision on Facts of Common Knowledge and Adjudicated Facts and the evidence available on the record, that a non-international armed conflict existed between the KLA and the Serbian forces at the time of the crimes charged.<sup>1892</sup>

## 2. Nexus with Non-International Armed Conflict

### (a) Legal requirements

922. The crimes charged must be sufficiently linked with the armed conflict. The armed conflict need not have been causal to the commission of the crimes charged, but it must have played, at a minimum, a substantial part in the perpetrator's ability to commit the crime, his or her decision to commit the crime, the manner in which the

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<sup>1890</sup> **Mr Mark Shala**: T. 23 October 2023, public, p. 3000, lines 6-10; **Mr Gashi**: T. 9 January 2024, public, p. 3975, lines 6-15; **Mr Hoxha**: T. 21 November 2023, public, p. 3362, line 5 to p. 3363, line 6; **Mr Elezaj**: 060124-TR-ET Part 2 Revised RED4, p. 66, line 18 to p. 67, line 12; SPOE00305286-00305288, p. SPOE00305287; SPOE00305289-00305292, pp. SPOE00305289, SPOE00305291; IT-05-87 4D00320-E; IT-05-87.1 D00675.E, pp. 1-3; SITF00078771-00078781, p. SITF00078773; SPOE00305297-00305298, p. SPO00305298; 075007-075129, pp. 075041, 075087; 074222-074225, p. 074222; SPOE00055399-SPOE00055399-ET; SPOE00133848-00133849, p. SPOE00133848.

<sup>1891</sup> 074222-074225, p. 074222; 075007-075129, p. 075051.

<sup>1892</sup> See similarly, [Mustafa Trial Judgment](#), para. 710. See also, ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-T, Trial Chamber II, [Judgment](#), paras 1579-1580; *Prosecutor v. Đorđević*, IT-05-87/1-A, Appeals Chamber, [Judgment](#) (Đorđević Appeal Judgement), 27 January 2014, para. 521; *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, [Judgment](#), Vol. 1, para. 841; District Court of Pristina, *Prosecutor v. Latif Gashi et al.*, C. Nr. 425/2001, [Verdict](#), 16 July 2003, pp. 4-5, 11-13; [Sabit Geci et al. Verdict](#), para. 44; Basic Court of Mitrovicë/Mitrovica, *Prosecutor v. Xh. K.*, P. No. 184/15, [Judgment](#), 8 August 2016, para. 162.



crime was committed, or the purpose for which the crime was committed.<sup>1893</sup> In determining the nexus between the crime(s) and the armed conflict, one may consider: (i) the status of the perpetrator and the victim; (ii) whether the act served the ultimate goal of a military campaign; or (iii) whether the act was committed as part of, or in the context of, the perpetrator's official duties.<sup>1894</sup>

(b) Findings

923. The Panel finds that Mr Shala and other KLA members acted in the context of their official duties within the KLA when they arbitrarily detained the victims, tortured them, and killed the Murder Victim. They took advantage of their status as KLA members, as they apprehended the victims and relied upon the KMF as a designated location to commit the crimes charged, irrespective of whether the KMF was also used for purposes other than the commission of the crimes charged.<sup>1895</sup>

924. In addition, the Panel finds that the ongoing non-international armed conflict played a substantial role in the commission of the crimes charged, as the detainees were held, interrogated, mistreated and killed (in the case of the Murder Victim) on the basis of, *inter alia*, accusations of being "spies" or "traitors", of collaborating with the Serbian authorities, or of not being sufficiently supportive of the KLA effort.<sup>1896</sup>

925. Accordingly, the Panel finds that the nexus requirement for the crimes charged in the Confirmed Indictment is fulfilled.

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<sup>1893</sup> [Mustafa Trial Judgment](#), para. 712, and references therein.

<sup>1894</sup> [Mustafa Trial Judgment](#), para. 712, and references therein.

<sup>1895</sup> See paras 306-307.

<sup>1896</sup> See para. 750.

### 3. Awareness of Non-International Armed Conflict and Status of the Victims

#### (a) Legal requirements

926. The perpetrator must be aware of the factual circumstances establishing the non-international armed conflict.<sup>1897</sup> Knowledge of the correct legal classification of the armed conflict is not necessary.<sup>1898</sup>

927. In addition, all war crimes must be committed against protected persons. The chapeau of Article 14(1)(c) of the Law, referring to Common Article 3(1) to the Geneva Conventions, requires that the victim was not actively taking part in the hostilities at the time the offence was committed.<sup>1899</sup> Active participation in hostilities means carrying out acts as part of the conduct of hostilities intended by their nature or purpose to cause actual harm to the personnel or equipment of the adverse party.<sup>1900</sup> Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, are protected under Common Article 3. The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.<sup>1901</sup>

#### (b) Findings

928. The Panel recalls its findings with regard to the functions of the KMF, Mr Shala's position and role within the KLA, and his presence at the KMF during the time of the crimes charged.<sup>1902</sup> In this respect, the Panel has found that the KMF functioned as a

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<sup>1897</sup> [Mustafa Trial Judgment](#), para. 718, and references therein.

<sup>1898</sup> [Mustafa Trial Judgment](#), para. 718, and references therein.

<sup>1899</sup> [Mustafa Trial Judgment](#), para. 719, and references therein.

<sup>1900</sup> [Mustafa Trial Judgment](#), para. 719, and references therein. *See also*, Article 13(3) of Additional Protocol II.

<sup>1901</sup> [Mustafa Trial Judgment](#), para. 719, and references therein.

<sup>1902</sup> *See* paras 306-308, 836-897, 898-902.

KLA headquarters, where, *inter alia*, recruitment, mobilisation and logistics operations were carried out. Individuals routinely arrived at the KMF to enlist in the KLA, receive uniforms, and/or weapons and were subsequently sent directly from the KMF to training centres or to fight at the (Kosovo) frontline. The Panel also concluded, based upon the evidence, that the KMF functioned as a logistics headquarters for Operation Arrow, receiving, storing and distributing military equipment and food supplies.<sup>1903</sup> The Panel further established that Mr Shala was a KLA member at the time of the crimes charged and was able to freely enter and exit the KMF.<sup>1904</sup>

929. In addition, the Panel found that Mr Shala: (i) was present at the KMF on several occasions during the time of the crimes charged; (ii) took part, together with other KLA members, in the transfer of one victim to the KMF; (iii) actively engaged with the KLA Military Police; and (iv) participated in and witnessed the mistreatment of the victims that were arbitrarily deprived of their liberty at the KMF, including the Murder Victim.<sup>1905</sup>

930. Accordingly, the Panel finds that Mr Shala and the other KLA members present at the KMF during the time of the crimes charged were aware of the existence of the non-international armed conflict between the KLA and Serbian forces, as conflict-related activities took place at the KMF.

931. Regarding the protected status of the victims, the Panel finds that the detainees were taking no active part in hostilities due to their detention at the KMF and, as a result, they were entitled to the protection of Common Article 3. In this respect, Mr Shala and other KLA members stationed at the KMF were aware of the protected status of the victims, considering their knowledge of the presence of detainees at the

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<sup>1903</sup> See para. 306 above.

<sup>1904</sup> See para. 914 above.

<sup>1905</sup> See paras 897, 903-909, 914 above.

KMF and their personal participation in the victims' protracted detention and mistreatment, including the death of the Murder Victim.

B. ARBITRARY DETENTION (COUNT 1)

1. Legal Requirements

(a) Legal basis

932. The Defence submits that arbitrary detention did not constitute a criminal offence under the applicable law in Kosovo at the time of the charges and that Mr Shala's prosecution for this war crime is a clear breach of the principle of legality that violates his rights under Articles 6 and 7 of the (European) Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>1906</sup>

933. The SPO responds that the Defence's argument on this point is an attempt to re-litigate matters which have been previously litigated and upheld on appeal and that this matter has already been settled.<sup>1907</sup>

934. At the outset, the Panel recalls that the Defence already raised this legal issue in its preliminary motion challenging the jurisdiction of the Specialist Chambers.<sup>1908</sup> The Court of Appeals Panel addressed this challenge, confirming that: (i) the Specialist Chambers have jurisdiction over arbitrary detention as a war crime committed in a non-international armed conflict under Article 14(1)(c) of the Law; and (ii) arbitrary

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<sup>1906</sup> Defence Final Trial Brief, para. 28; T. 16 April 2024, public, pp. 4269-4273.

<sup>1907</sup> T. 17 April 2024, public, pp. 4315, lines 10-15, referring to KSC-BC-2020-04, IA002-F00010, Court of Appeals Panel, [Decision on Pjetër Shala's Appeal Against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers](#) (Case 04 Jurisdictional Appeal), 11 February 2022, public, para. 47. See also, KSC-BC-2020-06, IA009-F00030, Court of Appeals Panel, [Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers"](#) (Case 06 Jurisdictional Appeal), 23 December 2021, public, paras 86-89, 94-102, 106-111.

<sup>1908</sup> KSC-BC-2020-04, F00054, Defence, [Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC](#) (Defence Preliminary Motion on Jurisdiction), 12 July 2021, public, para. 47.

detention in a non-international armed conflict existed as a war crime under customary international law during the temporal jurisdiction of the Specialist Chambers.<sup>1909</sup>

935. In light of the foregoing, the Panel is satisfied that arbitrary detention committed in a non-international armed conflict was criminalized under the applicable law in Kosovo at the time of the charges, and the criminalisation of this offence was accessible and foreseeable to Mr Shala at the relevant time. The Defence challenge on this issue is therefore dismissed.

(b) Material elements (*actus reus*)

936. The Panel recalls that the war crime of arbitrary detention, within the meaning of Article 14(1)(c) of the Law, is committed through an act or omission resulting in depriving a person who is not taking an active part in hostilities of his or her liberty without legal basis or without complying with basic procedural safeguards.<sup>1910</sup>

937. The deprivation of liberty is without legal basis when it is justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns make it absolutely necessary.<sup>1911</sup>

938. The basic procedural safeguards encompass, in particular, the obligation: (i) to inform any person deprived of his or her liberty of the reasons for such deprivation; (ii) to bring any person deprived of his or her liberty promptly before a judge or other

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<sup>1909</sup> [Case 04 Jurisdictional Appeal](#), paras 44-46; see also, [Mustafa Appeal Judgment](#), para. 430; [Case 06 Jurisdictional Appeal](#), paras 106-111.

<sup>1910</sup> Similarly, [Mustafa Trial Judgment](#), para. 646.

<sup>1911</sup> [Confirmation Decision](#), para. 50; [Mustafa Trial Judgment](#), para. 647. See also, ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-A, Appeals Chamber, [Judgement](#) (*Delalić et al. Appeal Judgement*), 20 February 2001, paras 320-322; *Prosecutor v. Kordić and Čerkez*, IT-95-14-A/2-A, Appeals Chamber, [Judgement](#) (*Kordić and Čerkez Appeal Judgement*), 17 December 2004, paras 72-73; ECCC, *Co-Prosecutors v. Kaing*, 001/18-07-2007/ECCC/TC, Trial Chamber, [Judgement](#), 26 July 2010 (*Duch Trial Judgment*), para. 465.

competent authority; and (iii) to provide any person deprived of his or her liberty with an opportunity to challenge the lawfulness of their detention.<sup>1912</sup>

939. The rationale for affording basic procedural safeguards lies in the fact that the person deprived of his or her liberty is, at that point, *hors de combat* and, accordingly, does not pose any threat to the detaining power by virtue of their detention.<sup>1913</sup>

940. When assessing the compliance with basic procedural safeguards, it is irrelevant whether: (i) the initial deprivation of liberty was justified;<sup>1914</sup> or (ii) the perpetrator is personally responsible for the failure to have the detainee's procedural rights respected.<sup>1915</sup>

941. The obligation to inform a person of the reasons for the deprivation of liberty is meant to allow the person deprived of liberty to challenge the lawfulness of the detention. Therefore, the person must be properly informed, *i.e.* promptly and at a sufficient level of detail, of the grounds for his/her detention. This is the case regardless of whether the detention is related to a criminal offence or a security matter.<sup>1916</sup> While international humanitarian law is silent on the precise level of detail or method required when informing a person of the reasons for their arrest or

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<sup>1912</sup> [Confirmation Decision](#), para. 51; [Mustafa Trial Judgment](#), para. 648. *See also*, Article 5(4) of the ECHR.

<sup>1913</sup> [Mustafa Trial Judgment](#), para. 649.

<sup>1914</sup> [Confirmation Decision](#), para. 52; ICTY, [Delalić et al. Appeal Judgement](#), para. 322. *See also*, ICTY, [Kordić and Čerkez Appeal Judgement](#), para. 73; ECCC, [Duch Trial Judgment](#), para. 465.

<sup>1915</sup> [Confirmation Decision](#), para. 52; [Mustafa Trial Judgment](#), para. 650. *See also*, ICTY, [Delalić et al. Appeal Judgement](#), para. 379.

<sup>1916</sup> *See* ICRC, [Customary International Humanitarian Law Database](#) (CIHL Study), Rule 99; Article 75 of Additional Protocol I, which is considered to reflect customary international law; Article 6 of Additional Protocol II (pertaining to penal prosecutions). *See also*, United Nations General Assembly (UNGA), [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), adopted by UNGA Resolution 43/173 of 9 December 1988, Principles 10 and 13. In its General Comment on Article 9 of the International Covenant on Civil and Political Rights (ICCPR), the United Nations (UN) Human Rights Committee held that: "if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, *i.e.* ... information of the reasons must be given", *see* UN Human Rights Committee, [CCPR General Comment No. 8: Article 9 \(Right to Liberty and Security of Persons\)](#) (*General Comment No. 8 on Article 9 of the ICCPR*), adopted on 30 June 1982, para. 4.

detention, the guarantee is meant to enable a person to understand the underlying reasons for the deprivation of liberty. Without this information, other procedural guarantees are rendered ineffective.

942. Regarding the obligation to be brought promptly before a judge or other competent authority, the Panel notes that this guarantee requires, at a minimum, that an independent authority from the one ordering the detention reviews the detention and is capable of assessing its lawfulness, whether it continues to be necessary and whether the detainee is to be released.<sup>1917</sup> The promptness allows the person to effectively challenge the lawfulness of their detention.<sup>1918</sup> Being brought before a judge or other competent authority also serves as an important safeguard against other violations, including violations against the right to life or the prohibition of torture and cruel, inhuman or degrading treatment.<sup>1919</sup>

943. Regarding the obligation to provide a detained person with an opportunity to challenge the lawfulness of their detention, the Panel notes that the purpose of this guarantee is to avoid arbitrary deprivation of liberty. This is fostered through

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<sup>1917</sup> See ICRC, [CIHL Study](#), Rule 99; see also, European Court of Human Rights (ECtHR), *Lawless v. Ireland* (No. 3), Application No. 332/57, [Judgment](#), 1 July 1961, para. 14. In cases of penal prosecutions in non-international armed conflicts, see Article 75(4) of Additional Protocol I, referring to “an impartial and regularly constituted court”; Article 6 of Additional Protocol II, referring to “a court offering the essential guarantees of independence and impartiality”; UNGA, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), Principle 32. In its General Comment on Article 4 of the ICCPR, the UN Human Rights Committee stipulated that the right to challenge the lawfulness of one’s detention may not be dispensed with, especially when it serves to safeguard other non-derogable rights, such as the right to life or prohibition against torture and cruel, inhuman or degrading treatment, see UN Human Rights Committee, [CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency](#), adopted on 31 August 2001, paras 11, 15-16.

<sup>1918</sup> See ICRC, [CIHL Study](#), Rule 99; UNGA, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), Principle 11. In its General Comment on Article 9 of the ICCPR, the UN Human Rights Committee held that a prompt appearance means that “delays must not exceed a few days”, see UN Human Rights Committee, [General Comment No. 8 on Article 9 of the ICCPR](#), para. 2.

<sup>1919</sup> UNGA, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), Principles 33 and 34; see also, Principle 21 regarding forced confessions.

ensuring that an initial review of detention is conducted and that continued oversight is exercised during the course of the person's detention.<sup>1920</sup>

(c) Mental elements (*mens rea*)

944. The perpetrator must have acted intentionally in relation to his or her conduct. Intent to commit a crime may be inferred from the accused's knowledge that crimes are being committed and by his or her participation in the perpetration of such crimes.<sup>1921</sup> In addition, the perpetrator must have no reasonable grounds to believe that security concerns of the parties to the conflict make the detention absolutely necessary, or the perpetrator must know that the detainees have not been afforded the requisite procedural guarantees, or be reckless as to whether those guarantees have been afforded or not.<sup>1922</sup>

## 2. Findings

(a) Material elements (*actus reus*)

945. The Panel has established that at least the following individuals were deprived of their liberty by KLA members between approximately 17 May 1999 and 5 June 1999 at the KMF: TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED], [REDACTED] and a third Roma musician, [REDACTED], [REDACTED] and at least one more female detainee, [REDACTED], [REDACTED],

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<sup>1920</sup> See ICRC, [CIHL Study](#), Rule 99; UNGA, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), Principle 32.

<sup>1921</sup> [Mustafa Trial Judgment](#), para. 651. Similarly, ICTR, *Karemera and Ndirumpatse v. Prosecutor*, ICTR-98-44-A, Appeals Chamber, [Judgement](#), 29 September 2014, para. 632; ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, [Judgement](#) (*Kvočka et al.* Appeal Judgement), 28 February 2005, paras 109-110.

<sup>1922</sup> [Confirmation Decision](#), para. 53; [Mustafa Trial Judgment](#), para. 651. See also, ICTY, [Delalić et al. Appeal Judgement](#), para. 378.



[REDACTED] and [REDACTED].<sup>1923</sup> The Panel is therefore satisfied that the first material element of the war crime of arbitrary detention is met.

946. The Panel has further established that at no point during their detention were any of the detained individuals provided with the basic guarantees that shall be afforded to any person deprived of his or her liberty pursuant to international humanitarian law.

947. First, none of the detainees were properly informed of the reasons for their deprivation of liberty.<sup>1924</sup> In the Panel's assessment, they 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. To the contrary, they were arrested and detained on vague allegations of being "collaborators", "spies", or "traitors", or of not being sufficiently supportive of the KLA effort.<sup>1925</sup>

948. Second, while held at the KMF, the detainees were not brought promptly before a judge or other competent authority and were not provided with an opportunity to challenge the lawfulness of their detention. In this regard, neither the KLA member Mr Kryeziu – who presented himself to detainees as a "judge" or "prosecutor" – nor Sokol Dobruna or any other KLA member exercised the function of a "judge" or "competent" authority for the purposes of meeting this procedural guarantee.<sup>1926</sup> Not only did Mr Kryeziu and Sokol Dobruna not exercise the functions of an independent authority having oversight over the lawfulness of the persons' detention; they actively participated in interrogations and were not in a position to independently order anyone's release.<sup>1927</sup> Crucially, throughout their detention, a number of detainees were

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<sup>1923</sup> See para. 587 above.

<sup>1924</sup> See para. 591 above.

<sup>1925</sup> See para. 590 above.

<sup>1926</sup> See paras 472, 530 above.

<sup>1927</sup> See paras 422, 541 above.

seriously mistreated by KLA members, including by Mr Shala.<sup>1928</sup> Some were subjected to forced confessions,<sup>1929</sup> and one of them was killed.<sup>1930</sup> The Panel is therefore satisfied that the second material element of the war crime of arbitrary detention is met.

949. In light of the foregoing, the Panel finds that the material elements of the war crime of arbitrary detention are satisfied.

(b) Mental elements (*mens rea*)

950. *Defence Challenges.* The Defence submits that the SPO has presented no credible evidence showing that Mr Shala participated in any acts enforcing and continuing the arbitrary detention at the KMF, and/or had any knowledge that any person was arbitrarily detained at the KMF, or participated, or was in any way involved in the unlawful arrest, transfer, arbitrary detention, or continued arbitrary detention or release of any person at the KMF.<sup>1931</sup> In particular, the Defence avers that the SPO has presented no evidence that Mr Shala knew that any person was detained at the KMF without being formally charged or without a determination that there were reasonable grounds to believe that security concerns made his or her detention absolutely necessary; or that he was reckless as to whether any person was detained without being afforded basic procedural safeguards.<sup>1932</sup> Secondly, the Defence argues that the SPO has presented no evidence that Mr Shala had any authority or control over any decision concerning the arrest, continued detention, release or conditions of detention of any person at the KMF. The Panel will address those points below.

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<sup>1928</sup> See paras 749-750 above and findings in Section VI.I.

<sup>1929</sup> See paras 656, 675, 718, 830-832 above.

<sup>1930</sup> See paras 830-832 above.

<sup>1931</sup> Defence Final Trial Brief, para. 47.

<sup>1932</sup> Defence Final Trial Brief, para. 72.

951. *Panel's Assessment.* The Panel finds that the perpetrators, including Mr Shala, acted intentionally in relation to their conduct. During the period relevant to the charges, they were present at the KMF, apprehended the detainees, mistreated them on a regular and recurring basis in a variety of manners, interrogated them, kept them locked up at the KMF in several rooms used for detention purposes, and made decisions regarding the fate or release of detainees at will.<sup>1933</sup>

952. Mr Shala in particular knew that arbitrary detention and other crimes were being committed and intended them by his participation in the perpetration of such crimes.<sup>1934</sup> Specifically, Mr Shala participated the transfer under guard of W04733 from Romanat to the KMF.<sup>1935</sup> He was also present at the KMF on multiple occasions in May and June 1999, including at critical times: (i) on or about 20 May 1999, when he personally mistreated TW4-01, the Murder Victim, W04733 and W01448, and when he questioned [REDACTED], demanding that she make a confession;<sup>1936</sup> and (ii) on or about 4 June 1999, during the shooting incident which led to the death of the Murder Victim, when he personally mistreated [REDACTED] the Murder Victim.<sup>1937</sup>

953. In addition, the perpetrators, including Mr Shala, had no reasonable grounds to believe that security concerns made the detention of these individuals absolutely necessary. Regarding TW4-01 and the Murder Victim, Mr Shala himself assessed that they did not pose any security risk when he saw them in the courtyard of the KMF. Moreover, Mr Shala was in the room when accusations were levied against detainees, including W04733 and TW4-01, the Murder Victim, W01448 and [REDACTED], as they were being beaten.<sup>1938</sup> Mr Shala even personally made accusations against some

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<sup>1933</sup> See findings in Sections VI.D., VI.E., VI.I.2.

<sup>1934</sup> See findings in Section VI.I.2.

<sup>1935</sup> See para. 903 above.

<sup>1936</sup> See para. 905 above.

<sup>1937</sup> See para. 907 above.

<sup>1938</sup> See paras 904-907 above.

of the detainees.<sup>1939</sup> He was therefore fully aware that these individuals were not held at the KMF on specific charges and that security concerns did not make their detention absolutely necessary.

954. Considering that Mr Shala participated in the mistreatment [REDACTED], the Defence's proposition that he was not aware of their detention is untenable. The perpetrators, including Mr Shala, knew that the detainees had not been afforded the requisite procedural guarantees in light of these circumstances.

955. Mr Shala's personal and repeated participation in the mistreatment of detainees, coupled with his knowledge that detainees were held at the KMF, demonstrate that he participated in intentionally depriving these persons of their liberty and knew that no basic guarantees were afforded to them for the duration of their respective detentions. The Defence argument is therefore dismissed.

956. In light of the foregoing, the Panel is satisfied that the mental element for the war crime of arbitrary detention is established.

## C. CRUEL TREATMENT (COUNT 2)

### 1. Legal Requirements

#### (a) Material elements (*actus reus*)

957. The Panel recalls below its findings with regard to the material and mental elements for this crime, and related supporting case law as set out in the *Mustafa* Trial Judgment. Accordingly, the war crime of cruel treatment, within the meaning of Article 14(1)(c)(i) of the Law, is committed through an act or omission, which causes

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<sup>1939</sup> See para. 905 above.

serious mental or physical suffering or injury, or which constitutes a serious attack on human dignity.<sup>1940</sup>

958. The seriousness of the harm or injury must be assessed on a case-by-case basis, taking into account such factors as: (i) the severity of the alleged conduct; (ii) the nature of the act or omission; (iii) the context in which the conduct occurred; (iv) its duration and/or repetition; (v) its physical, mental and moral effects on the victim; and (vi) the personal circumstances of the victim, including age, gender, and health.<sup>1941</sup>

959. The suffering inflicted by the act or omission upon the victim does not need to be lasting, so long as it is real and serious.<sup>1942</sup>

(b) Mental elements (*mens rea*)

960. The perpetrator must have acted intentionally or with the knowledge that the serious mental or physical suffering or injury, or the serious attack on human dignity, was a probable consequence of the act or omission.<sup>1943</sup>

## 2. Relationship between Cruel Treatment and Torture

961. The Panel has previously discussed the issue of the relationship between the war crimes of cruel treatment and torture in the *Mustafa* Trial Judgment and will recall its findings below.<sup>1944</sup> The Panel held that for reasons of fairness, only distinct crimes may justify multiple convictions.<sup>1945</sup> The Panel considers that, where two offences protect

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<sup>1940</sup> [Mustafa Trial Judgment](#), para. 660, and references therein.

<sup>1941</sup> [Mustafa Trial Judgment](#), para. 661, and references therein.

<sup>1942</sup> [Mustafa Trial Judgment](#), para. 662, and references therein.

<sup>1943</sup> [Mustafa Trial Judgment](#), para. 663, and references therein.

<sup>1944</sup> [Mustafa Trial Judgment](#), paras 664-667.

<sup>1945</sup> See also, ICTY, [Delalić et al. Appeal Judgement](#), para. 412; *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Appeals Chamber, [Judgement](#) (*Kunarac et al. Appeal Judgement*), 12 June 2002, para. 169.

the same value(s) or social interest(s), cumulative convictions for both offences based on the same conduct are in principle not permissible.<sup>1946</sup> If the same conduct fulfils two different legal provisions, both protecting the same value(s) or social interest(s), the more specific provision prevails.<sup>1947</sup> If one, and only one provision requires an additional element not required by the other, the former would typically be the more specific provision and would prevail,<sup>1948</sup> as in such instances it is not possible to commit the more specific offence without also (and simultaneously) committing the less specific one.<sup>1949</sup> In other words, the more specific offence fully encompasses or consumes the less specific offence.<sup>1950</sup>

962. Torture and cruel treatment within the meaning of Article 14(1)(c) of the Law protect the same value(s) or social interests(s), in particular, the physical and mental integrity and human dignity of persons not actively taking part in the hostilities.<sup>1951</sup>

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<sup>1946</sup> On the “value test”, see ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Chamber, [Judgement](#) (*Kupreškić et al.* Trial Judgement), 14 January 2000, paras 692-695; *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Chamber, [Decision on Defence Challenges to Form of the Indictment](#), 15 May 1998, para. 6 (on the question of whether or not the Prosecutor may bring cumulative charges); ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber I, [Judgement](#), 2 September 1998, para. 468; Stuckenberg, C.-F., “Multiplicity of Offences: Concursum Delictorum”, in Fischer H. et al. (eds), *International and National Prosecution of Crimes Under International Law: Current Developments*, Berlin: Verlag Arno Spitz (2001), pp. 582, 586.

<sup>1947</sup> See also, ICTY, [Kupreškić et al. Trial Judgement](#), paras 683-685.

<sup>1948</sup> Similarly, ICTY, [Delalić et al. Appeal Judgement](#), para. 413; [Kordić and Čerkez Appeal Judgement](#), para. 1032; [Kunarac et al. Appeal Judgement](#), para. 168; ICC, [Ongwen Trial Judgment](#), para. 2792; [Bemba et al. Trial Judgment](#), para. 951; [Ntaganda Trial Judgment](#), para. 1202; [Katanga Trial Judgment](#), para. 1695; [Bemba Trial Judgment](#), paras 747-748; [Bemba et al. Appeal Judgment](#), para. 750. Explicit national provisions on this issue can, for instance, be found in [Article 55\(2\) of the Criminal Code of the Kingdom of the Netherlands](#) and [Article 15 of the Italian Criminal Code](#).

<sup>1949</sup> Similarly, ICTY, [Kunarac et al. Appeal Judgement](#), para. 170; *Prosecutor v. Krstić*, IT-98-33-A, Appeals Chamber, [Judgement](#), 19 April 2004, para. 218.

<sup>1950</sup> See also, ICTY, [Kupreškić et al. Trial Judgement](#), paras 662, 665, 680-692, 707; ICC, [Ongwen Trial Judgment](#), para. 2796; [Bemba et al. Appeal Judgment](#), para. 751. An explicit and comprehensive national provision on this issue can, for instance, be found in [Article 8\(3\) of the Spanish Criminal Code](#).

<sup>1951</sup> [Mustafa Trial Judgment](#), para. 665. See also, ICRC, *Commentary on Geneva Convention I or the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2016, Article 3, para. 590; ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-T, Trial Chamber, [Judgement](#), 25 June 1999, para. 49; *Prosecutor*

Further, as established below, torture requires an additional element, namely that the perpetrator must have inflicted the pain or suffering not only intentionally, but *also* for such purpose as obtaining information or a confession, or punishing, intimidating, coercing or discriminating against, on any ground, the victim or a third person.<sup>1952</sup> As established above, this additional mental element is not required for the crime of cruel treatment, and cruel treatment does not require an additional element compared to torture.<sup>1953</sup> In other words, the legal elements of cruel treatment are entirely encompassed within the legal elements of torture.<sup>1954</sup>

963. The Panel notes that the facts underlying the charge of cruel treatment (Count 2) and the facts underlying the charge of torture (Count 3) are identical.<sup>1955</sup> In assessing the seriousness or severity of the harm or suffering inflicted on the detainees, the Panel has considered all acts or omissions of Mr Shala and other KLA members at the KMF during the time frame of the charges taken as a whole, including the conditions of detention, the psychological assaults suffered by the detainees and the physical assaults to which they were subjected in various locations within the KMF premises.

964. Accordingly, as the requirements of cruel treatment and torture as war crimes are fulfilled based on the same conduct, and torture is the more specific offence, the charge of cruel treatment will not be considered further for the purposes of conviction.<sup>1956</sup> The charge of cruel treatment is fully consumed by the charge of torture

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*v. Delalić et al.*, IT-96-21-T, Trial Chamber, [Judgement](#) (*Delalić et al. Trial Judgement*), 16 November 1998, para. 551.

<sup>1952</sup> See Section VII.D.1(b).

<sup>1953</sup> See Section VII.C.1(b). See also, ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Trial Chamber I, [Judgement](#), 3 April 2008, para. 480; ICC, [Ongwen Trial Judgment](#), para. 2835.

<sup>1954</sup> See also, ICTY, [Kupreškić et al. Trial Judgement](#), paras 679, 690-692, with references to ECtHR, *Aksoy v. Turkey*, Application No. 21987/93, [Judgment](#), 18 December 1996, para. 64; [Delalić et al. Trial Judgement](#), para. 442.

<sup>1955</sup> See [Confirmed Indictment](#), paras 18-24, 26.

<sup>1956</sup> See also, ICTY, [Kupreškić et al. Trial Judgement](#), para. 719; [Dorđević Appeal Judgment](#), and references therein.

and Mr Shala's individual criminal responsibility is fully reflected by a conviction for torture.

D. TORTURE (COUNT 3)

1. Legal Requirements

(a) Material elements (*actus reus*)

965. The Panel recalls below its findings with regard to the material and mental elements for the war crime of torture and the related supporting case law, as set out in the *Mustafa* Trial Judgment. Accordingly, the war crime of torture, within the meaning of Article 14(1)(c)(i) of the Law, is committed by an act or omission inflicting severe pain or suffering, whether physical or mental, upon another person.<sup>1957</sup> Whether an act or omission qualifies as an act of torture must be considered on a case-by-case basis,<sup>1958</sup> taking into account, for example: (i) the nature and context of the infliction of pain; (ii) the premeditated and institutionalised nature of the ill-treatment; (iii) the physical condition of the victim; (iv) the victim's age, gender and state of health; (v) the manner and methods used; (vi) the position of inferiority of the victim; (vii) the extent to which an individual has been mistreated over a prolonged period of time; and (viii) whether the victim has been subjected to repeated or various forms of mistreatment that are inter-related, follow a pattern, or are directed towards the same prohibited goal, in which case the severity of the acts should be assessed as a whole.<sup>1959</sup>

966. Conditions imposed during detention such as beatings, sexual violence, prolonged denial of sleep, food, hygiene and medical care, as well as threats involving

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<sup>1957</sup> [Mustafa Trial Judgment](#), para. 668, and references therein. See also, [Mustafa Appeal Judgment](#), para. 404, and references therein.

<sup>1958</sup> [Mustafa Trial Judgment](#), para. 668, and references therein.

<sup>1959</sup> [Mustafa Trial Judgment](#), para. 668, and references therein.



the torture, rape, or killing of relatives have been considered sufficiently severe so as to amount to torture.<sup>1960</sup> More specifically, threatening a person with death, execution, torture or suffering, or more generally, instilling fear in a detainee due to the conditions of detention, can cause severe mental anguish or psychological suffering and/or trauma.<sup>1961</sup> In particular, severe mental pain or suffering can be caused when detainees are compelled to live in a state of constant anxiety or fear that they might be subjected to physical abuse, or even killed. This is particularly the case when detainees: (i) witness, see or hear others being beaten or otherwise abused; (ii) witness others being taken away for such purposes – possibly combined with a (seemingly) arbitrary selection of detainees for abuse; and/or (iii) see the resulting injuries.<sup>1962</sup> Provided that the requisite mental element can be established, such acts can constitute torture.<sup>1963</sup>

967. Similarly, *forcing* someone to witness, by viewing or hearing, the mistreatment of others, be it their killing, execution, beatings, torture, or rape, can cause severe pain, suffering and/or psychological abuse,<sup>1964</sup> and can constitute torture, provided that the requisite mental element is satisfied.<sup>1965</sup>

968. The consequences of the act or omission need not be visible on the victim to constitute torture, nor is there a requirement that the injury be permanent.<sup>1966</sup> Furthermore, it is not required that the perpetrator acted in a public official capacity or as a person in authority.<sup>1967</sup>

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<sup>1960</sup> [Mustafa Trial Judgment](#), para. 669, and references therein.

<sup>1961</sup> [Mustafa Trial Judgment](#), para. 669, and references therein.

<sup>1962</sup> [Mustafa Trial Judgment](#), para. 669.

<sup>1963</sup> [Mustafa Trial Judgment](#), para. 669.

<sup>1964</sup> [Mustafa Trial Judgment](#), para. 670, and references therein.

<sup>1965</sup> [Mustafa Trial Judgment](#), para. 670, and references therein.

<sup>1966</sup> [Mustafa Trial Judgment](#), para. 671, and references therein.

<sup>1967</sup> [Mustafa Trial Judgment](#), para. 671, and references therein.

(b) Mental elements (*mens rea*)

969. The perpetrator must have inflicted the pain or suffering intentionally and for such purpose as obtaining information or a confession, or punishing, intimidating, coercing or discriminating against, on any ground, the victim or a third person.<sup>1968</sup> This list of purposes is, however, not exhaustive.<sup>1969</sup> It is sufficient that one of the prohibited purposes forms part of the motivation behind the conduct; it need not be the “predominant or sole purpose” behind the infliction of severe pain or suffering.<sup>1970</sup> If one prohibited purpose is fulfilled by the conduct, the fact that such conduct was also intended to achieve another purpose is immaterial.<sup>1971</sup>

970. The purpose of intimidation can, for instance, be fulfilled if a person is forced to witness others being executed.<sup>1972</sup> The purpose of intimidation can also be fulfilled if, for instance, violence is inflicted in a prison-camp setting by an armed person upon one detainee, with other detainees knowing that such violence is being inflicted, as this can create an atmosphere of fear and powerlessness among the detainees.<sup>1973</sup> In addition, subjecting a person to a mock execution can be indicative of a purpose of intimidation, and can amount to torture, as it generally increases the anxiety felt by the victim about the prospect of his or her execution throughout their period of detention.<sup>1974</sup>

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<sup>1968</sup> [Mustafa Trial Judgment](#), para. 672, and references therein. See also, [Mustafa Appeal Judgment](#), para. 404, and references therein.

<sup>1969</sup> [Mustafa Trial Judgment](#), para. 672, and references therein.

<sup>1970</sup> [Mustafa Trial Judgment](#), para. 672, and references therein.

<sup>1971</sup> [Mustafa Trial Judgment](#), para. 672, and references therein.

<sup>1972</sup> [Mustafa Trial Judgment](#), para. 673.

<sup>1973</sup> [Mustafa Trial Judgment](#), para. 673, and references therein.

<sup>1974</sup> [Mustafa Trial Judgment](#), para. 673. See also, ECtHR, *Ilaşcu and Others v. Moldova and Russia*, Application No. 48787/99, [Judgment](#), 8 July 2004, paras 435, 440.

## 2. Findings

### (a) Material elements (*actus reus*)

971. In its factual findings, the Panel has established that the detainees held at the KMF between approximately 17 May 1999 and 5 June 1999 were subject to inhumane and degrading conditions of detention due to wholly insufficient and inadequate living and sleeping conditions, insufficient and inadequate provision of food and drinking water, insufficient and degrading hygiene and sanitary conditions, and insufficient and inappropriate medical care or denial thereof.<sup>1975</sup>

972. In addition to the deplorable conditions of detention, the Panel has established that, during the time frame of the charges, the detainees at the KMF were subjected to physical and psychological abuse, some of them (in Room 1) on a daily basis.<sup>1976</sup> As elaborated in greater detail in the Panel's factual findings, TW4-01, the Murder Victim, W04733 and W01448 were physically and psychologically mistreated on multiple occasions by KLA members, including Mr Shala. These detainees were interrogated and accused of collaborating with Serbs and of being traitors, spies, rapists and murderers.<sup>1977</sup> They were beaten all over their bodies with various objects, including rubber batons and baseball bats, they were punched, cut with knives, burnt with cigarettes and had salt thrown in their wounds.<sup>1978</sup> Their mistreatment continued until they were covered in bruises and blood, unconscious or unable to stand.<sup>1979</sup> [REDACTED],<sup>1980</sup> [REDACTED].<sup>1981</sup>

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<sup>1975</sup> See Section VI.E.1.

<sup>1976</sup> See Section VI.E.2(a)-(i).

<sup>1977</sup> See Section VI.E.2(a)-(d).

<sup>1978</sup> See Section VI.E.2(b)-(d).

<sup>1979</sup> See Section VI.E.2(b)-(d).

<sup>1980</sup> [REDACTED].

<sup>1981</sup> [REDACTED].

973. Other detainees were also mistreated and interrogated (some of them multiple times) by KLA members, including by Mr Shala, at various points during the time frame of the charges.<sup>1982</sup> These detainees were questioned about matters such as their (former) jobs, their whereabouts and activities during the war, their knowledge of Serbs or of Serbs collaborators, and were accused, *inter alia*, of having close relationships or collaborating with Serbs.<sup>1983</sup> Some detainees were also forced to provide manual labour within the KMF premises.<sup>1984</sup>

974. The Panel further established that, in addition to physical assaults, the detainees at the KMF were psychologically mistreated by KLA members in a variety of ways. Specifically, the detainees often witnessed the mistreatment of their co-detainees, sometimes on a daily basis.<sup>1985</sup> This abuse was perpetrated by different KLA members, who were sometimes previously unknown to the detainees.<sup>1986</sup> In the Panel's view, this aggravated their psychological distress, as the detainees did not know what to expect and how brutal the new KLA members would be. The detainees could also hear the mistreatment being inflicted upon other detainees, such as when [REDACTED] screaming from just a few meters away.<sup>1987</sup> The Panel recalls that, when they did not witness or hear the mistreatment of others, the detainees could see the injuries inflicted upon them when they were brought back to the detention rooms.<sup>1988</sup> Moreover, the general sleep deprivation and the prohibition of talking to each other further affected the detainees' psychological state.<sup>1989</sup> The practice put in place by some KLA members who harassed the detainees when they were allowed to walk to the

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<sup>1982</sup> See Sections VI.E.2(a), (e)-(i) and VI.E.3.

<sup>1983</sup> See Section VI.E.3.

<sup>1984</sup> See Section VI.E.2(i).

<sup>1985</sup> See Section VI.E.2(a).

<sup>1986</sup> See para. 642.

<sup>1987</sup> See Section VI.E.2(a); para. 715.

<sup>1988</sup> See Section VI.E.2(a); paras 678-679, 762.

<sup>1989</sup> See Section VI.E.2(a).

water tank to get water further increased their psychological distress.<sup>1990</sup> This harassment and fear of further mistreatment forced the detainees to abandon their efforts to satisfy their basic need for water.<sup>1991</sup>

975. [REDACTED]. In one incident, a doctor on duty at the KMF recommended to the KLA members to take the Murder Victim to a hospital on account of a life-threatening situation. The doctor's advice was ignored by the KLA members in charge of the detainees, who left the Murder Victim to die in Room 1.<sup>1992</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>1993</sup>

976. These physical and psychological mistreatments, coupled with the inhumane conditions of detention at the KMF, left the detainees with long-lasting injuries, both physical and mental: head injuries, burn injuries, broken elbows, and/or teeth, persistent and severe pain throughout their bodies, feelings of shame, fear (for example to go to work, or to walk outside unaccompanied), vulnerability (in relation to themselves or their family members) and PTSD (nightmares, flashbacks and intrusive memories).<sup>1994</sup>

977. In light of the foregoing, the Panel finds that KLA members at the KMF, including Mr Shala, inflicted severe physical and mental pain and suffering upon the detainees, including TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED] and a third Roma musician, [REDACTED], and at least one more female detainee. The Panel therefore finds that the material element of the war crime of torture is satisfied.

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<sup>1990</sup> See Section VI.E.2(a).

<sup>1991</sup> See Sections VI.E.1(b) and VI.E.2(a).

<sup>1992</sup> See Section VI.F.1.

<sup>1993</sup> See para. 667.

<sup>1994</sup> See VI.E.2.

(b) Mental elements (*mens rea*)

978. The Panel has established that Mr Shala personally participated in the physical and/or psychological mistreatment and abuse of: (i) TW4-01 and the Murder Victim on or about 20 May 1999 [REDACTED]; (ii) W04733 on or about 20 May 1999; and (iii) W01448 on or about 20 May 1999.<sup>1995</sup>

979. The Panel has also established that other KLA members present at the KMF: (i) mistreated TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED] and a third Roma musician, [REDACTED], and at least one more female detainee, in a variety of ways, as respectively detailed in its factual findings;<sup>1996</sup> and (ii) subjected the detainees to inhumane and degrading conditions of detention with regard to living and sleeping conditions, food and drinking water, hygiene, and medical care, throughout the time frame of the charges.<sup>1997</sup>

980. On this basis, the Panel finds that the only reasonable conclusion, based on the evidence as a whole, is that Mr Shala and other KLA members at the KMF, during the time frame of the charges, intentionally inflicted severe pain or suffering on the detainees, including by keeping them in inhumane conditions of detention.

981. Further, the Panel has established that Mr Shala: (i) participated in the interrogation of W04733 and accused him of being a “spy” on or about 20 May 1999, during which W04733 was further accused of killing and raping people and collaborating with Serbs; and (ii) personally questioned [REDACTED] and demanded that she make a confession identifying [REDACTED] as Serb collaborators.<sup>1998</sup>

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<sup>1995</sup> See paras 688, 706, 714.

<sup>1996</sup> See Section VI.E.2(a).

<sup>1997</sup> See Sections VI.E.1 and VI.E.2.

<sup>1998</sup> See paras 706, 720.

982. The Panel has also established that other KLA members at the KMF: (i) interrogated the detainees about different matters, such as their former jobs in law enforcement, their knowledge of, or relationships with, Serbs or Serbian collaborators, and accused them of being traitors, spies, Serbian collaborators, rapists, or murderers; (ii) forced them to witness or to hear the mistreatment of co-detainees; and (iii) compelled them to live in constant fear that they could be subjected to physical abuse at any time.<sup>1999</sup>

983. On this basis, the Panel finds that the only reasonable conclusion, based on the evidence as a whole, is that Mr Shala and other KLA members at the KMF, during the time frame of the charges, inflicted the pain or suffering on the detainees for the purpose of obtaining information or a confession, punishing, intimidating, coercing, and/or discriminating against them on political grounds.

984. In light of the foregoing, the Panel finds, based on the evidence as a whole, that the mental elements of the war crime of torture are met, namely that the perpetrators intentionally inflicted severe pain or suffering, for the purpose of obtaining information or a confession, punishing, intimidating, coercing or discriminating against the detainees.

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<sup>1999</sup> See Sections VI.E.2(a) and VI.E.3.

E. MURDER (COUNT 4)

1. Legal Requirements

(a) Material elements (*actus reus*)

985. The war crime of murder, within the meaning of Article 14(1)(c)(i) of the Law, is committed through an act or omission resulting in the death of a person.<sup>2000</sup> The act or omission may include, for instance, causing serious bodily harm or omitting/denying medical care to a detainee.<sup>2001</sup>

986. The requirement that death must have occurred “as a result of” the perpetrator’s act or omission does not mean that such conduct has to be the sole cause of the victim’s death. It is sufficient that, at a minimum, it substantially contributed to the death of the person.<sup>2002</sup>

(b) Mental elements (*mens rea*)

987. The perpetrator must have intentionally killed the person, or wilfully caused serious bodily harm, or wilfully denied or omitted to provide medical care to a detainee, which the perpetrator should reasonably have known might lead to death.<sup>2003</sup>

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<sup>2000</sup> [Mustafa Trial Judgment](#), para. 686; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Judgement](#) (Karadžić Trial Judgment), 24 March 2016, para. 446; [Kvočka et al. Appeal Judgement](#), paras 259-261.

<sup>2001</sup> [Mustafa Appeal Judgment](#), para. 351; [Mustafa Trial Judgment](#), para. 686; ICTY, [Kvočka et al. Appeal Judgement](#), para. 270.

<sup>2002</sup> [Mustafa Appeal Judgment](#), paras 344, 350-351, and references therein; [Mustafa Trial Judgment](#), para. 687, and references therein; ICTY, [Karadžić Trial Judgment](#), para. 446.

<sup>2003</sup> [Mustafa Appeal Judgment](#), paras 388, 392, and references therein; [Mustafa Trial Judgment](#), para. 688, and references therein.



## 2. Findings

### (a) Material elements (*actus reus*)

988. The Panel has established that, on or about 4 June 1999, the Murder Victim was shot in the leg by Xhemshit Krasniqi, in Room 2 of the Detention Building.<sup>2004</sup> The Panel has also established that the bullets hit an artery in the Murder Victim's leg which supplied blood to the entire leg. The bullets caused the total destruction of the artery and corresponding bleeding.<sup>2005</sup> The Panel has also established that, following the shooting, one of the KLA members in charge of the detainees at the KMF denied the Murder Victim's transfer to the hospital for appropriate medical treatment. This denial was made despite the fact that the Murder Victim was bleeding profusely and a doctor advised that he must be taken to the Kukës hospital in order to survive.<sup>2006</sup> Lastly, the Panel has established that the Murder Victim died on or about 5 June 1999, while still in detention at the KMF, in Room 1 of the Detention Building, from the consequences of the gunshot wounds inflicted on his leg, combined with the denial of appropriate medical treatment.<sup>2007</sup>

989. In light of the foregoing, the Panel finds that Xhemshit Krasniqi and the KLA member who denied the Murder Victim's transfer to the hospital caused the Murder Victim serious bodily harm and denied him (appropriate) medical care, resulting in his death. Accordingly, the Panel finds that the material element of the war crime of murder is satisfied.

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<sup>2004</sup> See Sections VI.F.1, VI.F.5, VI.F.8.

<sup>2005</sup> See Section VI.F.2.

<sup>2006</sup> See paras 759-760, 762 above and Section VI.F.8.

<sup>2007</sup> See paras 778, 832 above.

(b) Mental elements (*mens rea*)

990. The Panel finds, for the following reasons, that Xhemshit Krasniqi and the KLA member who denied the Murder Victim's transfer to the hospital intentionally killed the Murder Victim.<sup>2008</sup> First, [REDACTED].<sup>2009</sup> Second, [REDACTED].<sup>2010</sup> Third, as recalled above, medical treatment was purposefully denied to the Murder Victim by one of the KLA members who was in charge of the detainees at the KMF. This was done despite the fact that the Murder Victim was bleeding profusely (which was visible) and that a doctor advised the KLA members to take him to a hospital or else he would not survive.<sup>2011</sup> The intent to kill is manifest in the words of said KLA member: "We did not maltreat him to this point to send him to the hospital then".<sup>2012</sup> Lastly, [REDACTED].<sup>2013</sup> This leaves no doubt in the Panel's mind that both Xhemshit Krasniqi and the KLA member who denied the Murder Victim's transfer to the hospital desired the death of the Murder Victim to be the result of their acts or omissions and committed the crime of murder with direct intent.<sup>2014</sup>

991. In light of the foregoing, the Panel is satisfied that the mental element for the war crime of murder is established.

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<sup>2008</sup> Mr Shala's mental element regarding his criminal responsibility in relation to the crime of murder is addressed in paras 1031-1036 below, where the Panel discusses whether Mr Shala shared the intent to commit the crime of murder with the other members of the JCE.

<sup>2009</sup> [REDACTED].

<sup>2010</sup> [REDACTED].

<sup>2011</sup> See paras 759-760, 762 above and Section VI.F.8.

<sup>2012</sup> See para. 760 above.

<sup>2013</sup> [REDACTED].

<sup>2014</sup> See further, [Mustafa Appeal Judgment](#), para. 390, and references therein.

## F. INDIVIDUAL CRIMINAL RESPONSIBILITY

### 1. Preliminary Remarks

992. The Panel recalls that, when multiple modes of liability are pleaded, if an accused's responsibility is fully captured by one mode of liability, the Panel will not analyse his/her responsibility under the other modes of liability pleaded.<sup>2015</sup>

993. The SPO has charged Mr Shala, under Article 16(1)(a) of the Law, with: (i) having physically committed, as a direct perpetrator, the crimes of arbitrary detention, cruel treatment and torture; (ii) having committed through his participation in a JCE the crimes of arbitrary detention, cruel treatment, torture and murder (JCE I or, in the alternative, JCE III for the crime of murder); and/or (iii) having aided and abetted the commission of the crimes of arbitrary detention, cruel treatment, torture and murder.<sup>2016</sup> The Panel observes that the acts and omissions on the basis of which the SPO has charged Mr Shala as a direct perpetrator are the same acts and omissions that form the basis of his participation in the JCE.<sup>2017</sup> Further, the modes of liability of JCE III and aiding and abetting, pleaded in the alternative to JCE I (JCE III in relation to the crime of murder and aiding and abetting in relation to all crimes charged) are also charged on the basis of the same acts and omissions.<sup>2018</sup>

994. In the circumstances of the present case, the Panel considers that Mr Shala's individual criminal responsibility is fully captured – and best reflected – by the mode of liability of JCE, specifically JCE I, as developed below. Considering that Mr Shala is charged as a direct perpetrator or an aider and abettor on the basis of the same acts

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<sup>2015</sup> [Mustafa Trial Judgment](#), para. 725, and references therein.

<sup>2016</sup> [Confirmed Indictment](#), paras 8-13, 30-31.

<sup>2017</sup> See [Confirmed Indictment](#), paras 13, 30 (regarding physical commission), *referring to* paras 15-16, 20-23, 26; para. 11 (setting out his contribution to the common purpose), *referring, inter alia, to* paras 15-16, 20-23, 26.

<sup>2018</sup> See also, [Decision on Motion Challenging the Form of the Indictment](#), paras 80, 90.

and omissions that form the basis of his participation in the JCE, the Panel will not examine Mr Shala's responsibility under these modes of liability. The same applies to JCE III.

## 2. Joint Criminal Enterprise

### (a) Defence challenges

995. The Panel notes the Defence's submissions that it would be contrary to the principle of legality to convict Mr Shala under JCE, as this mode of liability: (i) did not exist under the criminal laws in force in Kosovo at the time the crimes were committed; (ii) has been specifically excluded from the Law of the Specialist Chambers; (iii) was not established under customary international law in 1999; and (iv) was not foreseeable or accessible to Mr Shala.<sup>2019</sup>

996. The Panel observes that the Defence has already raised these legal issues in its preliminary motion challenging the jurisdiction of the Specialist Chambers.<sup>2020</sup> The Defence's arguments have been addressed by the Pre-Trial Judge,<sup>2021</sup> as well as by the Court of Appeals Panel, who confirmed that: (i) the Law provides for JCE liability as a form of commission; (ii) JCE – in both its first and third forms – is, and was, a mode of liability under customary international law at the time the crimes were committed; and (iii) JCE liability was accessible and foreseeable to Mr Shala.<sup>2022</sup>

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<sup>2019</sup> Defence Final Trial Brief, paras 266-274; T. 17 April 2024, public, p. 4285, line 12 to p. 4287, line 10.

<sup>2020</sup> [Defence Preliminary Motion on Jurisdiction](#), paras 20-45.

<sup>2021</sup> KSC-BC-2020-04, F00088, Pre-Trial Judge, [Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers](#), 18 October 2021, public, paras 90-97.

<sup>2022</sup> [Case 04 Jurisdictional Appeal](#), paras 32-40.

997. The Defence is attempting to re-litigate matters that have already been settled in the case-law of the Specialist Chambers.<sup>2023</sup> The Panel will therefore not address these submissions further.

(b) Legal requirements

i. Objective elements

998. JCE I – as all forms of JCE – requires the following objective elements: (i) a plurality of persons who act pursuant to a common purpose; (ii) a common purpose which amounts to or involves the commission of a crime provided for in the Law; and (iii) participation of the perpetrator in furthering the common design or purpose.<sup>2024</sup>

999. *Plurality of persons.* A JCE exists when a plurality of persons participates in the realisation of a common criminal objective.<sup>2025</sup> The persons participating in the criminal enterprise need not be organised in a military, political, or administrative structure.<sup>2026</sup> They must, however, be identified with specificity, for instance by name or by categories or groups of persons.<sup>2027</sup>

1000. *Common purpose which amounts to or involves the commission of a crime.* There is no necessity for the plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and may be inferred from the fact that a plurality of persons acts in unison to put into effect

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<sup>2023</sup> See also, [Case 06 Jurisdictional Appeal](#), paras 135-144, 162-172, 186-196; [Mustafa Trial Judgment](#), para. 735.

<sup>2024</sup> [Mustafa Trial Judgment](#), para. 737, and references therein.

<sup>2025</sup> [Mustafa Trial Judgment](#), para. 738, and references therein.

<sup>2026</sup> [Mustafa Trial Judgment](#), para. 738, and references therein.

<sup>2027</sup> [Decision on Appeal against Decision on Motion Challenging the Form of the Indictment](#), para. 16. [Mustafa Trial Judgment](#), para. 738, and references therein.

a joint criminal enterprise,<sup>2028</sup> or it may be inferred from the persons' intent.<sup>2029</sup> A common purpose does not presume preparatory planning or explicit agreement among JCE participants, or between JCE participants and third persons.<sup>2030</sup> Moreover, a JCE may exist even if none or only some of the physical perpetrators of the crimes are members of the JCE, but are used by one or more members of the JCE to commit crimes pursuant to the common purpose.<sup>2031</sup>

1001. *Contribution.* The perpetrator must have participated in the furthering of the common purpose at the core of the JCE by assisting in, or contributing to, the execution of the common plan or purpose, but need not have performed any part of the *actus reus* of the crime charged.<sup>2032</sup> The perpetrator's contribution to the JCE need not be, as a matter of law, necessary or substantial, but it should be at least a significant contribution to the crimes for which he or she is found responsible.<sup>2033</sup> The contribution does not need to be criminal *per se*.<sup>2034</sup>

ii. Subjective elements

1002. Under JCE I liability, the perpetrator must share the intent with the other participants to carry out the crimes forming part of the common purpose, including any special intent.<sup>2035</sup>

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<sup>2028</sup> [Mustafa Trial Judgment](#), para. 739, and references therein.

<sup>2029</sup> Similarly, ICC, [Lubanga Appeal Judgment](#), para. 446 ("In the view of the Appeals Chamber, it was as such correct to consider article 30 of the Statute because that provision describes the relevant mental element and may therefore also serve as a yardstick for determining whether two or more individuals agreed to commit a crime").

<sup>2030</sup> [Mustafa Trial Judgment](#), para. 739, and references therein.

<sup>2031</sup> [Mustafa Trial Judgment](#), para. 739, and references therein.

<sup>2032</sup> [Mustafa Trial Judgment](#), para. 740, and references therein.

<sup>2033</sup> [Mustafa Trial Judgment](#), para. 740, and references therein.

<sup>2034</sup> [Mustafa Trial Judgment](#), para. 740, and references therein.

<sup>2035</sup> [Mustafa Trial Judgment](#), para. 741, and references therein.

### 3. Findings

#### (a) Objective elements

1003. *Plurality of persons.* The Panel found, based on the evidence, that the crimes charged were committed by certain KLA members, including: Xhemshit Krasniqi, Sabit Geci, Mr Shala, Mr Kryeziu, KLA members nicknamed Bedri and Van Damme, Fatmir Limaj, (other) members of the KLA Military Police and other KLA members (JCE Members).<sup>2036</sup>

1004. Based upon the evidence, the Panel has established that Xhemshit Krasniqi – who was the person in charge of the detainees at the KMF<sup>2037</sup> – played a prominent role in the apprehension, transfer, interrogation and mistreatment of detainees, as well as the murder of one of them (the Murder Victim).<sup>2038</sup> Xhemshit Krasniqi and the other members of this group acted under the overall authority of Sabit Geci,<sup>2039</sup> who was also directly involved in the interrogation and mistreatment of detainees when present at the KMF.<sup>2040</sup> Mr Shala was directly involved in the transfer of detainees to the KMF, their questioning and their mistreatment, and made accusations against them.<sup>2041</sup> Mr Kryeziu interrogated the detainees once they arrived at the KMF;<sup>2042</sup> Bedri and Van Damme were involved in the mistreatment of detainees;<sup>2043</sup> Fatmir Limaj was involved in both their interrogation and their mistreatment.<sup>2044</sup> Lastly, members of the

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<sup>2036</sup> See Sections VI.D, VI.E, VI.F.

<sup>2037</sup> See para. 349 above.

<sup>2038</sup> See, for example, paras 416, 462, 496, 497, 499, 502, 509, 513-514, 532-533, 641, 706, 714, 720 and 805.

<sup>2039</sup> See para. 345 above.

<sup>2040</sup> See Sections VI.E.2 (a), (b), (c), (d).

<sup>2041</sup> See Section VI.I.2.

<sup>2042</sup> See paras 433-437, 529-530, 552-555 above.

<sup>2043</sup> See paras 668, 674, 688 above.

<sup>2044</sup> See paras 491, 689, 691, 706 above.

KLA Military Police<sup>2045</sup> were prominently involved in the apprehension, transfer and mistreatment of detainees at the KMF, alongside other KLA members.<sup>2046</sup>

1005. The Panel considers that all the aforementioned individuals forming the JCE are identified based on the evidence with sufficient specificity, either by name, nickname, or affiliation with the KLA Military Police or the KLA more generally. The above individuals are all linked to each other by the fact that their activities revolved around the KMF and they participated together in the apprehension, transfer and/or mistreatment of detainees at the KMF.

1006. The Defence challenges the fact that Mr Shala was a JCE Member, submitting that: (i) no evidence has been presented that he had any association with the other persons identified as JCE Members; and (ii) no evidence has been presented that he participated, either directly or indirectly, in the commission of the crimes charged.<sup>2047</sup>

1007. To the extent that the Defence argues that there was no *formal* association between Mr Shala and the other JCE Members, the Panel recalls that this is not required.<sup>2048</sup> The Panel infers Mr Shala's membership in the JCE from the fact that: (i) he was a KLA member throughout the time frame of the charges;<sup>2049</sup> (ii) his activities revolved around the KMF, as shown by the fact that he was physically present there on several occasions, coming and leaving regularly and without restrictions;<sup>2050</sup> (iii) he personally participated in the transfer, questioning and mistreatment of detainees at the KMF and made accusations against them;<sup>2051</sup> and, importantly, (iv) he did so together with other JCE Members, most notably Sabit Geci

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<sup>2045</sup> For the tasks and duties of the KLA Military Police, *see* paras 337-340 above.

<sup>2046</sup> *See* Sections VI.D and VI.E.

<sup>2047</sup> Defence Final Trial Brief, paras 77, 82, 85, 144.

<sup>2048</sup> *See* para. 999 above.

<sup>2049</sup> *See* Section VI.A.3.

<sup>2050</sup> *See* Section VI.H.

<sup>2051</sup> *See* Section VI.I.2.



and Xhemshit Krasniqi, while participating freely and without any constraints, in the same manner as the two of them.<sup>2052</sup> For these reasons, the Panel finds the Defence's challenge to be without merit and dismisses it.

1008. In light of the foregoing, the Panel finds that a plurality of persons existed, within the meaning of JCE. Accordingly, the Panel finds that the first objective element of JCE I is satisfied.

1009. *Common purpose which amounts to or involves the commission of a crime.* The Panel recalls that the common purpose need not be explicitly formulated, but can be inferred from the fact that the aforementioned JCE Members acted in unison and with intent to put into effect the JCE, as shown below.

1010. Based upon the evidence, the Panel infers that the JCE Members shared a common purpose to arbitrarily detain, interrogate, torture and murder detainees at the KMF who were perceived to collaborate with, be associated with, or sympathize with the Serbian authorities or who were considered not sufficiently supportive of the KLA effort. The Panel found that a considerable number of persons, including the following individuals, were detained at the KMF during the time frame of the charges: TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-02, TW4-04, [REDACTED], [REDACTED] and a third Roma detainee/musician, [REDACTED], [REDACTED] and at least one more female detainee, [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Their arbitrary detention and mistreatment at the KMF were not random, haphazard and isolated events, but instead followed the same pattern.

1011. The Panel infers the common purpose from the following. The initial apprehension of the detainees followed the same pattern and an organised *modus operandi*. The detainees were singled out prior to their arrest for being perceived to

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<sup>2052</sup> See Section VI.E.2 (b), (c), (d), (e) and VI.F.1, 4-5.

collaborate with, be associated with, or sympathize with the Serbian authorities or for not being sufficiently supportive of the KLA effort. For example, TW4-01, the Murder Victim and [REDACTED] were identified as presumed collaborators or supporters of the Serbian authorities.<sup>2053</sup> TW4-11, W04733, W01448, TW4-05, TW4-02 and TW4-04 were all singled out prior to their arrest for being perceived as “collaborators” of the Serbian authorities, “spies”, “traitors”, sympathisers of Serbia, or for not being sufficiently supportive of the KLA effort.<sup>2054</sup> Detainees were not arrested at random, but were targeted, as evidenced by searches for specific individuals conducted by KLA members prior to arrest. Notably, TW4-11 was taken into custody from [REDACTED] by [REDACTED] and one other individual, who were specifically “looking for [him]”.<sup>2055</sup> KLA members, including Xhemshit Krasniqi, repeatedly looked for W04733 prior to arresting him.<sup>2056</sup> The KLA members who apprehended W01448 waited for him at the port of Durrës, as he was arriving from Germany, and asked for his name and passport before arresting him.<sup>2057</sup> TW4-05 was also arrested after he was asked to identify himself.<sup>2058</sup> TW4-05, TW4-02 and TW4-04 were all told upon arrest that they had to be questioned.<sup>2059</sup> The arrest and/or transfer of detainees to the KMF was carried out by JCE Members working together, including by Mr Shala, Xhemshit Krasniqi, (other) members of the KLA Military Police and other KLA members.<sup>2060</sup>

1012. At the KMF, the victims’ detention was institutionalised and of a certain duration. While some of the detainees were kept for short periods of time in different

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<sup>2053</sup> See Sections VI.D.2, VI.D.3 and VI.D.10(b).

<sup>2054</sup> See Sections VI.D.4, VI.D.5, VI.D.6, VI.D.7, VI.D.8 and VI.D.9.

<sup>2055</sup> See Section VI.D.4(a).

<sup>2056</sup> See Section VI.D.5(a).

<sup>2057</sup> See Section VI.D.6(a).

<sup>2058</sup> See Section VI.D.6(a).

<sup>2059</sup> See Sections VI.D.7(a), VI.D.8(a) and VI.D.9(a).

<sup>2060</sup> See VI.D.2(b), VI.D.4(a), VI.D.5(a), VI.D.6(a), VI.D.7(a), VI.D.8(a), VI.D.9(a) and VI.D.10.

locations within the KMF compound (*e.g.* the Warehouse, or the Command Building Detention Room), they were (almost all) eventually moved to the Detention Building, where they were held for the majority of their period of detention.<sup>2061</sup> The Detention Building was specifically designated for this purpose and served no function other than holding detainees. Guards were posted outside the entrance door at all times.<sup>2062</sup>

1013. It is evident that the detention of the victims was institutionalised within the functions of the KMF, as the purpose served by the Detention Building was well-known. This is demonstrated by the fact that: (i) KLA members and fighters returning from the front harassed and threatened the detainees with violence through the window of Room 1;<sup>2063</sup> and (ii) KLA members entered Room 1 and accused the detainees of being spies and traitors.<sup>2064</sup>

1014. Detainees were systematically interrogated by JCE Members, oftentimes in the evenings or at night.<sup>2065</sup> They were questioned about their relationship with the Serbian authorities or their knowledge of “collaborators”, or were themselves accused of being “collaborators”, “spies”, or “traitors”, or of not being sufficiently supportive of the KLA effort.<sup>2066</sup> The interrogations were done by different KLA members including: Sabit Geci, Xhemshit Krasniqi, Mr Kryeziu and Fatmir Limaj.<sup>2067</sup> Mr Shala was also present during some of these interrogations and, in some cases, he questioned detainees himself.<sup>2068</sup> W04733 described the coordination amongst the JCE Members as follows: “Whilst someone was beating me, I had to answer someone else’s question. When I answered him, another one would say why I was not answering his

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<sup>2061</sup> See para. 588 above.

<sup>2062</sup> See paras 423, 480, 626, 637 above.

<sup>2063</sup> See para. 648 above.

<sup>2064</sup> See para. 721 above.

<sup>2065</sup> See Section VI.E.3.

<sup>2066</sup> See Section VI.E.3.

<sup>2067</sup> See Section VI.E.3.

<sup>2068</sup> See Section VI.E.2(e).

question. [...] I never had a chance to finish an answer before someone else would ask me another and beat me".<sup>2069</sup>

1015. The mistreatment of detainees at the KMF was systematic, involving daily beatings, other forms of physical and psychological abuse and inhumane and degrading conditions of detention.<sup>2070</sup> It is worth recalling TW4-01's testimony, in which he attested to the repeated and systematic character of the mistreatment: "Whenever they would enter the room, in general they would beat all of us up".<sup>2071</sup> Some of the detainees, namely TW4-01, the Murder Victim, W04733, W01448 and [REDACTED], were subjected to particularly brutal beatings, which were carried out by JCE Members working together and taking turns in beating the detainees.<sup>2072</sup>

1016. That murder was part of the common purpose is evident from: (i) the intentional manner in which (some of the) detainees were mistreated; (ii) statements made by JCE Members, including Mr Shala, that clearly show the intent to kill detainees; and (iii) the purposeful denial of the medical treatment to the Murder Victim, as developed below.

1017. First, several JCE Members brutally assaulted TW4-01, the Murder Victim and W04733, using dangerous objects and taking turns in beating them, working as a group. Specifically, on or about 20 May 1999, Mr Shala used a rubber baton and a baseball bat to hit W04733 all over his body, including his head.<sup>2073</sup> Xhemshit Krasniqi also hit W04733 on his head with a gun.<sup>2074</sup> W04733 started bleeding as a result. When a doctor bandaged his head, one JCE Member removed the bandage.<sup>2075</sup> Similarly, after

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<sup>2069</sup> See para. 692 above.

<sup>2070</sup> See paras 638, 653 above.

<sup>2071</sup> See para. 641 above.

<sup>2072</sup> See Sections VI.E.2(b)-(e).

<sup>2073</sup> See para. 690 above.

<sup>2074</sup> See para. 690 above.

<sup>2075</sup> See para. 691 above.

Mr Shala hit TW4-01 with a rubber bar, [REDACTED].<sup>2076</sup> [REDACTED].<sup>2077</sup> [REDACTED] lost consciousness as a result of the severe mistreatment they suffered.<sup>2078</sup> Indicative of their intent, the JCE Members present – including Mr Shala – continued to beat [REDACTED] even after they lost consciousness. The Murder Victim was subjected to a similar treatment.<sup>2079</sup> W01448's statement about TW4-01 and the Murder Victim is worth recalling: "[they] were beaten worse than I was. They were bleeding and they used batons and anything else to beat them".<sup>2080</sup> Further, [REDACTED] on or about 4 June 1999, Xhemshit Krasniqi [REDACTED] shot [REDACTED] the Murder Victim.<sup>2081</sup> [REDACTED].<sup>2082</sup> Given the manner in which TW4-01, the Murder Victim and W04733 were mistreated, the Panel finds that murder was part of the common purpose already on or about 20 May 1999.

1018. Second, statements made by JCE Members – including Mr Shala – plainly reveal their intent to commit murder. Mr Shala himself told W04733, at one point: "We're going to kill you. We're going to execute you".<sup>2083</sup> [REDACTED].<sup>2084</sup>

1019. Third, the intent to kill is also manifested by the fact that the Murder Victim was purposefully denied medical treatment.<sup>2085</sup> This was done despite the fact that the Murder Victim was bleeding profusely (which was visible) and, importantly, regardless of the doctor's advice to transfer him to a hospital, as he would otherwise not survive.<sup>2086</sup> The JCE Members' action to deny the Murder Victim's transfer was

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<sup>2076</sup> See para. 655 above.

<sup>2077</sup> See para. 657 above.

<sup>2078</sup> [REDACTED].

<sup>2079</sup> [REDACTED].

<sup>2080</sup> See para. 659 above.

<sup>2081</sup> See [REDACTED] Sections VI.F.1, VI.F.4.

<sup>2082</sup> [REDACTED].

<sup>2083</sup> See para. 906 above.

<sup>2084</sup> [REDACTED].

<sup>2085</sup> See para. 760 above.

<sup>2086</sup> See paras 759-760, 762 above and Section VI.F.8.

accompanied by the following words: “We did not maltreat him to this point to send him to the hospital then”.<sup>2087</sup> This leaves no doubt that murder was part of the common purpose. [REDACTED].<sup>2088</sup>

1020. The Defence submits that the SPO has failed to show that the alleged JCE Members had agreed to adopt a common criminal plan which involved the commission of the crimes charged, in particular, the crime of murder.<sup>2089</sup> Specifically, the Defence advances that: (i) there is no evidence showing any direct or indirect communication between the JCE Members; (ii) there is no evidence that Mr Shala agreed to adopt any criminal plan together with others, including a criminal plan to commit cruel treatment and/or torture; (iii) the JCE Members did not act in unison, but individually, to settle personal grievances; (iv) after the death of the Murder Victim, measures were taken by those in charge to ensure that the detainees were treated humanely, which shows that they did not want to kill any detainee, regretted what happened to the Murder Victim, and took immediate measures to ensure that this would not happen again; and (v) whatever medical treatment was available was provided to the Murder Victim, showing that the group did not want to kill him or let him die.<sup>2090</sup>

1021. With regard to the Defence’s argument that there is no evidence showing any direct or indirect communication between the JCE Members, or any agreement on Mr Shala’s part with the JCE Members, the Panel recalls that JCE does not require a plan, design or purpose to have been previously arranged or formulated. The common purpose may be implied and can be inferred from the fact that a plurality of persons

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<sup>2087</sup> See para. 760 above.

<sup>2088</sup> [REDACTED].

<sup>2089</sup> Defence Final Trial Brief, paras 77, 81, 179-181.

<sup>2090</sup> Defence Final Trial Brief, paras 77-81, 179-181; T. 16 April 2024, public, p. 4277, line 21 to p. 4278, line 19; T. 17 April 2024, public, p. 4287, line 11 to p. 4289, line 7.

act in unison to put into effect a JCE.<sup>2091</sup> The Panel infers the existence of the common purpose from the unified acts and statements of the JCE Members – including Mr Shala – as explained above. Thus, the Panel will not engage with this argument further and dismisses the Defence’s challenge.

1022. Turning to the Defence’s argument that the JCE Members did not act in unison, but individually, to settle personal grievances, the Panel observes that this is contradicted by the fact that: (i) the detainees were apprehended after they were singled out for being perceived as “collaborators” of the Serbian authorities, “spies”, “traitors”, sympathisers of Serbia, or not sufficiently supportive of the KLA effort; (ii) their apprehension followed the same pattern and a *modus operandi*; (iii) their detention at the KMF was institutionalised; and (iv) their mistreatment was systematic and carried out by several JCE Members acting together. Against this background, it is entirely improbable that all JCE Members acted individually, independent of each other, as suggested by the Defence. The Panel finds that the Defence’s submission is without merit and dismisses it accordingly.

1023. Lastly, with regard to the Defence’s submission that the JCE Members did not want to kill the Murder Victim, the Panel finds that this is clearly contradicted by: (i) the very statements made by the same JCE Members, as recalled above; and (ii) the fact that they denied the Murder Victim medical care, knowing that it would lead to his death, given the nature of his injuries and the doctor’s advice. The Defence’s suggestion that the JCE Members regretted what happened to the Murder Victim and took immediate measures is baseless and simply contradicted by the plain facts of this case: the Murder Victim was not taken to the hospital and died in detention at the KMF. The fact that the conditions of detention improved afterwards does not change this. The Defence’s argument is without merit and the Panel dismisses it accordingly.

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<sup>2091</sup> See para. 1000 above.

1024. In light of the foregoing, the Panel finds that the JCE Members had a common purpose to arbitrarily detain, interrogate, torture and murder detainees at the KMF who were perceived to collaborate with, be associated with, or sympathize with the Serbian authorities or who were considered not sufficiently supportive of the KLA effort. Accordingly, the second objective element of JCE I is also satisfied.

1025. *Mr Shala's significant contribution.* Throughout the time frame of the charges, Mr Shala made a significant contribution to the crimes charged by: (i) participating in the transfer of W04733, under guard, from a detention location in Romanat to the KMF;<sup>2092</sup> (ii) continuing and enforcing the arbitrary detention of TW4-01, the Murder Victim, W04733 and W01448 by physically mistreating them on or about 20 May 1999 and 4 June 1999, thereby upholding the detention regime established by the JCE Members at the KMF; (iii) personally mistreating TW4-01, the Murder Victim, W04733 and W01448, on or about 20 May 1999;<sup>2093</sup> (iv) accusing W04733 of being a "spy", on or about 20 May 1999;<sup>2094</sup> (v) ordering [REDACTED] to beat W04733, on or about 20 May 1999;<sup>2095</sup> (vi) questioning and demanding that [REDACTED] make a confession identifying [REDACTED] as Serb collaborators, on or about 20 May 1999;<sup>2096</sup> and (vii) personally and brutally mistreating [REDACTED] the Murder Victim, on or about 4 June 1999.<sup>2097</sup> In the Panel's view, Mr Shala's contributions were significant in furthering the common plan to detain, interrogate, mistreat and murder detainees.

1026. The Defence submits that: (i) the SPO has presented no evidence suggesting that Mr Shala had any position of responsibility, authority, or control over any decision

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<sup>2092</sup> See para. 903 above.

<sup>2093</sup> See para. 904 above.

<sup>2094</sup> See para. 905 above.

<sup>2095</sup> See para. 905 above.

<sup>2096</sup> See para. 905 above.

<sup>2097</sup> See para. 907 above.



concerning the arrest, continued detention, release or conditions of detention of any person at the KMF; (ii) the SPO has presented no evidence that he had any authority over the persons who committed the arbitrary detention; and (iii) the SPO has failed to demonstrate that Mr Shala was under a duty to act in any specific manner towards the detainees at the KMF.<sup>2098</sup>

1027. The Panel recalls that, for an accused to be found criminally responsible on the basis of JCE liability, what is required is that he/she participated in furthering the common plan or purpose of the JCE by significantly contributing to its execution.<sup>2099</sup> Beyond that, the law does not foresee specific types of conduct to be considered (or not) as contributions to a JCE. An accused's position of authority or control, or the existence of a legal duty to act, may be factors to be taken into account to establish that the accused significantly contributed to a JCE, but they are not legal requirements. What amounts to a significant contribution is a question of fact to be determined on a case-by-case basis.<sup>2100</sup> As a consequence, it is 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. Accordingly, the Defence arguments are dismissed.

1028. In the present case, the Panel has found that Mr Shala contributed significantly to the crimes charged by, *inter alia*, physically committing and participating in the arbitrary detention, interrogation and severe and brutal mistreatment of detainees. Mr Shala enjoyed a certain degree of autonomy and authority at the KMF, especially

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<sup>2098</sup> Defence Final Trial Brief, paras 73, 76, 86, 122, 128-129; T. 16 April 2024, public, p. 4275, lines 6-14; p. 4276, lines 9-11; p. 4277, lines 15-20.

<sup>2099</sup> See para. 1001 above.

<sup>2100</sup> See similarly, ICTY, *Prosecutor v. Stanišić and Župljanin*, IT-08-91-A, Appeals Chamber, [Judgment](#), 30 June 2016, para. 110.

when mistreating detainees.<sup>2101</sup> Contrary to the Defence's submissions,<sup>2102</sup> Mr Shala's contribution went far beyond what is required to meet this element.<sup>2103</sup> Accordingly, the Panel finds that the third objective element of JCE I has also been met.

(b) Subjective elements

1029. *Intent to carry out the crimes of arbitrary detention and torture.* The Panel recalls its findings above that Mr Shala possessed the requisite *mens rea* for the war crimes of arbitrary detention (Count 1) and torture (Count 3).<sup>2104</sup> On this basis, the Panel finds that Mr Shala clearly shared the intent to commit arbitrary detention and torture with the other members of the JCE.

1030. To the extent that the Defence repeats arguments already made in relation to the *mens rea* for the crime of arbitrary detention,<sup>2105</sup> the Panel refers to its determination made above.<sup>2106</sup>

1031. *Intent to carry out the crime of murder.* The Panel infers Mr Shala's intent to commit the crime of murder from the following.

1032. First, on or about 20 May 1999, Mr Shala actively participated in beating TW4-01, the Murder Victim, W04733 and W01448<sup>2107</sup> and, most notably, he hit W04733 on the head with a rubber baton.<sup>2108</sup> During this incident guns were brandished by multiple JCE Members and were used to hit detainees on the head.<sup>2109</sup> Mr Shala also witnessed the extreme violence inflicted, in particular, on TW4-01, the Murder Victim and

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<sup>2101</sup> See Sections VI.I.2-3.

<sup>2102</sup> Defence Final Trial Brief, paras 90, 145.

<sup>2103</sup> See para. 1001 above.

<sup>2104</sup> See Sections VII.B.2 (b) and VII.D.2 (b).

<sup>2105</sup> Defence Final Trial Brief, paras 87-89.

<sup>2106</sup> See Section VII.B.2 (b).

<sup>2107</sup> See Sections VI.E.2 (b), VI.E.2 (c) and VI.E.2 (d).

<sup>2108</sup> See para. 690 above.

<sup>2109</sup> See paras 655, 690 above.

W04733 by other JCE Members and its effects, which, *inter alia*, included: bleeding (including from the head), and injuries so severe that the victims could no longer walk or maintain consciousness.<sup>2110</sup> The degree of violence used and the fact that Mr Shala witnessed it, and yet continued to participate in the mistreatment of the detainees even after they started bleeding or lost consciousness, clearly shows that he already possessed the intent to kill on or about 20 May 1999.

1033. Second, Mr Shala's statement to W04733: "We're going to kill you. We're going to execute you" clearly reveals his intent to kill,<sup>2111</sup> which could not materialise because of the external intervention of an Albanian authority which secured W04733's release.<sup>2112</sup> This statement shows that Mr Shala possessed direct intent.

1034. Third, on or about 4 June 1999, Mr Shala participated in the mistreatment of [REDACTED] the Murder Victim.<sup>2113</sup> He was present when other JCE Members shot [REDACTED] the Murder Victim, and witnessed the consequences of the shooting.<sup>2114</sup> The Murder Victim, [REDACTED], was bleeding profusely.<sup>2115</sup> The fact that Mr Shala continued to participate in the mistreatment of the Murder Victim [REDACTED] shows that he shared the intent to kill.<sup>2116</sup>

1035. The Defence submits that no evidence has been presented which demonstrates that Mr Shala wanted to kill the Murder Victim.<sup>2117</sup> In this regard, the Panel refers to its determination above and will not engage with this argument further. To the extent that the Defence argues that Mr Shala could not be held responsible for the crime of

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<sup>2110</sup> See Sections VI.E.2 (b) and VI.E.2 (c).

<sup>2111</sup> See para. 906 above.

<sup>2112</sup> See para. 469 above.

<sup>2113</sup> See Section VI.E.2 (b): *Mistreatment in Room 2 on or about 4 June 1999*.

<sup>2114</sup> See Section VI.F.4.

<sup>2115</sup> See paras 759, 762, 775, 776 above.

<sup>2116</sup> [REDACTED].

<sup>2117</sup> Defence Final Trial Brief, para. 183; T. 17 April 2024, confidential, p. 4289, line 8 to p. 4290, line 4.

murder because he was not present during the shooting incident that led to the Murder Victim's death,<sup>2118</sup> the Panel also refers to its previous finding that he was, in fact, present.<sup>2119</sup> In any case, it is worth stressing that, for responsibility to arise under JCE, the accused's presence at the time the crime is committed by the direct perpetrator is not required.<sup>2120</sup> What is required is for the accused to have made a significant contribution to the common purpose and, in the case of JCE I, to share the intent to commit the crime with the other members of the JCE.<sup>2121</sup> This is the case in the present instance. Accordingly, the Panel dismisses the Defence's arguments.

1036. In light of all of the above, the Panel finds that Mr Shala shared the intent to commit the crimes of arbitrary detention (Count 1), torture (Count 2) and murder (Count 4) with the other JCE Members, thus satisfying the subjective element of JCE I.

#### G. CONCLUSION

1037. In light of the foregoing, the Panel finds beyond reasonable doubt that — in the context of a non-international armed conflict between the KLA and the Serbian forces, being aware of the circumstances establishing the armed conflict and of the status of the victims — Mr Shala is guilty under Count 1 of the Confirmed Indictment, for having committed, as part of a joint criminal enterprise in its basic form (JCE I), within the meaning of Article 16(1)(a) of the Law, the war crime of arbitrary detention, pursuant to Article 14(1)(c) of the Law, against at least eighteen (18) persons, between approximately 17 May 1999 and 5 June 1999 at the Kukës Metal Factory, as established by the Panel in Sections VII.A, B and F of this Judgment.

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<sup>2118</sup> Defence Final Trial Brief, paras 160-164, 179.

<sup>2119</sup> See Section VI.F.4.

<sup>2120</sup> ICTY, *Prosecutor v. Krnojelac*, IT-97-25-A, Appeals Chamber, [Judgment](#), 17 September 2003, para. 81.

<sup>2121</sup> See para. 1002 above.

1038. The Panel also finds beyond reasonable doubt that — in the context of a non-international armed conflict between the KLA and Serbian forces, being aware of the circumstances establishing the armed conflict and of the status of the victims — Mr Shala is guilty under Count 3 of the Confirmed Indictment, for having committed, as part of a joint criminal enterprise in its basic form (JCE I), within the meaning of Article 16(1)(a) of the Law, the war crime of torture, pursuant to Article 14(1)(c)(i) of the Law, against at least eighteen (18) persons, between approximately 17 May 1999 and 5 June 1999 at the Kukës Metal Factory, as established by the Panel in Sections VII.A, D and F of this Judgment.

1039. The Panel also finds beyond reasonable doubt that — in the context of a non-international armed conflict between the KLA and Serbian forces, being aware of the circumstances establishing the armed conflict and of the status of the victims — Mr Shala is guilty under Count 4 of the Confirmed Indictment, for having committed, as part of a joint criminal enterprise in its basic form (JCE I), within the meaning of Article 16(1)(a) of the Law, the war crime of murder, pursuant to Article 14(1)(c)(i) of the Law, against one (1) person (the Murder Victim), on or about 5 June 1999 at the Kukës Metal Factory, as established by the Panel in Sections VII.A, E and F of this Judgment.

## VIII. SENTENCING

1040. Having found Mr Shala guilty under Counts 1, 3 and 4, the Panel will now determine the appropriate sentence.

1041. This section of the Judgment solely addresses the issue of sentencing pursuant to Article 44(1) of the Law.

1042. The Panel will issue in due course a Reparation Order pursuant to Articles 22(8) and 44(6) of the Law and retains, to that effect, the necessary jurisdiction.<sup>2122</sup>

A. SUBMISSIONS

1. SPO

1043. Noting the Panel's broad discretion in determining the appropriate sentence up to a maximum of life-long imprisonment,<sup>2123</sup> the SPO submits that the Panel shall, pursuant to Article 44(2) of the Law, also consider, without being bound by it: (i) the sentencing ranges for the crimes provided under Kosovo law at the time of their commission; and (ii) any subsequent more lenient sentencing range for the crimes provided in Kosovo law, as well as the relevant provisions of the legal instruments referred to in Article 44(2), paragraph (c) of the Law.<sup>2124</sup> The SPO submits that the relevant applicable law in force in Kosovo at the time of the commission of the charged crimes was the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY).<sup>2125</sup> According to the SPO, Mr Shala was aware, or should have been aware, based on the sentencing provisions of the CCSFRY, that war crimes were subject to severe punishment.<sup>2126</sup>

1044. The SPO further submits that, when determining the appropriate sentence, the Panel may consider sentencing practices of both national and international courts for similar cases.<sup>2127</sup> Regarding international cases, the SPO refers to the *Stakić, Krstić* and *Blaškić* cases, which each imposed initial sentences in excess of 20 years.<sup>2128</sup> Regarding

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<sup>2122</sup> See KSC-BC-2020-04, F00421, Trial Panel I, [Decision on reparation proceedings](#), 9 February 2023, public, para. 25(b).

<sup>2123</sup> SPO Final Trial Brief, para. 379.

<sup>2124</sup> SPO Final Trial Brief, para. 380.

<sup>2125</sup> SPO Final Trial Brief, paras 381-382.

<sup>2126</sup> SPO Final Trial Brief, para. 383.

<sup>2127</sup> SPO Final Trial Brief, para. 384.

<sup>2128</sup> SPO Final Trial Brief, para. 383, and references therein.

domestic cases, the SPO notes that two of the JCE members listed in the Confirmed Indictment against Mr Shala have already been convicted in Kosovo for some of the crimes charged in this case: (i) Sabit Geci was sentenced to 15 years of imprisonment on the charges of inhumane treatment, violation of bodily integrity, and torture – which was the maximum sentence that the judges deemed available under the applicable law in Kosovo; and (ii) Xhemshit Krasniqi was sentenced to 8 years of imprisonment – reduced to 7 years on appeal – which, according to the SPO, “falls in the mid-range of what would have been open to the Panel”.<sup>2129</sup>

1045. Regarding the factors to be considered in determining the sentence, the SPO submits that the sentence must reflect:<sup>2130</sup> (i) primarily, the gravity of the crimes committed by Mr Shala, in particular their brutality;<sup>2131</sup> (ii) the impact of the crimes on the victims and their relatives;<sup>2132</sup> (iii) Mr Shala’s direct and deliberate participation in the commission of the crimes;<sup>2133</sup> (iv) the presence of multiple aggravating factors, in particular the vulnerability of the victims<sup>2134</sup> and the commission of the crimes with particular cruelty and against multiple victims;<sup>2135</sup> and (v) the lack of mitigating factors.<sup>2136</sup>

1046. Underscoring the importance to deter,<sup>2137</sup> the SPO requests that the Panel impose the following terms of imprisonment on Mr Shala: (i) arbitrary detention (Count 1): 8 years; (ii) cruel treatment (Count 2): 15 years; (iii) torture (Count 3): 20 years; and

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<sup>2129</sup> SPO Final Trial Brief, para. 385, and references therein. The SPO notes that the respective convictions of Sabit Geci and Xhemshit Krasniqi did not include the crime of murder.

<sup>2130</sup> SPO Final Trial Brief, paras 386-410.

<sup>2131</sup> SPO Final Trial Brief, paras 387, 389-394.

<sup>2132</sup> SPO Final Trial Brief, paras 388, 395-396; T. 15 April 2024, public, p. 4162, line 17 to p. 4164, line 3.

<sup>2133</sup> SPO Final Trial Brief, paras 402-403; T. 15 April 2024, public, p. 4085, line 18 to p. 4086, line 2; p. 4165, line 1 to p. 4166, line 18.

<sup>2134</sup> SPO Final Trial Brief, paras 397-398.

<sup>2135</sup> SPO Final Trial Brief, paras 399-401; T. 15 April 2024, public, p. 4164, lines 4-12.

<sup>2136</sup> SPO Final Trial Brief, para. 404-408; T. 15 April 2024, public, p. 4166, line 19 to p. 4167, line 7.

<sup>2137</sup> SPO Final Trial Brief, paras 409-410, and references therein.

(iv) murder (Count 4): 26 years.<sup>2138</sup> The SPO requests that a single sentence of 28 years' imprisonment be imposed on Mr Shala, in order to reflect the totality of his criminal conduct.<sup>2139</sup>

## 2. Defence

1047. With reference to Article 44(2) of the Law and the *Mustafa* Appeal Judgment,<sup>2140</sup> the Defence argues that the Panel is required to take into account domestic sentencing practice relating to sentencing ranges, and previous sentencing decisions in other cases for similar alleged conduct committed in substantially similar circumstances.<sup>2141</sup>

1048. With regard to the gravity of the crimes and their consequences, the Defence submits that, while undoubtedly serious, the crimes charged are limited in scope, scale and number of affected victims (eight participating victims, one murdered victim), and therefore are of a very different gravity to other cases heard by international criminal tribunals.<sup>2142</sup>

1049. With regard to the nature and extent of Mr Shala's involvement in the alleged crimes, the Defence submits that he was not a leader or a commander, nor did he otherwise have any authority or senior position; rather, he was a "simple KLA soldier".<sup>2143</sup>

1050. With regard to the individual circumstances of Mr Shala, the Defence refers the Panel to the Ms Milazzo's psychological expert report, which contains an assessment of Mr Shala's individual circumstances, mental health, and conduct after the alleged

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<sup>2138</sup> SPO Final Trial Brief, para. 411; T. 15 April 2024, public, p. 4167, lines 8-13.

<sup>2139</sup> SPO Final Trial Brief, paras 412-413.

<sup>2140</sup> Defence Final Trial Brief, para. 372.

<sup>2141</sup> Defence Final Trial Brief, para. 374, and references therein.

<sup>2142</sup> Defence Final Trial Brief, para. 354.

<sup>2143</sup> Defence Final Trial Brief, para. 355; T. 16 April 2024, public, p. 4277, lines 15-20.



events until the present.<sup>2144</sup> The Defence submits that the Panel should consider the following: (i) the context in which Mr Shala grew up, including the violence and trauma he experienced in Kosovo prior to 1999;<sup>2145</sup> and (ii) his health issues.<sup>2146</sup>

1051. With regard to mitigating circumstances, the Defence submits that the following should be taken into account: (i) Mr Shala's current family situation;<sup>2147</sup> (ii) Mr Shala's good behaviour while in detention;<sup>2148</sup> (iii) a number of alleged fair trial rights violations in the course of this trial, which the Defence argues to be of "exceptional character", justifying a reduction of sentence;<sup>2149</sup> and (iv) the length of time that has elapsed between the alleged crimes charged in the Confirmed Indictment and the present proceedings, which in the Defence's view has had a detrimental impact on the quality and availability of evidence.<sup>2150</sup>

1052. With regard to any possible sentence to be imposed on Mr Shala, the Defence refers the Panel to the *Sabit Geci et al.* and the *Xhemshit Krasniqi* cases.<sup>2151</sup> The Defence recalls that: (i) Sabit Geci was sentenced to 15 years of imprisonment for three counts of war crimes (Kukës), one count of war crime (Cahan), and one count involving the unauthorised possession of a weapon;<sup>2152</sup> and (ii) Xhemshit Krasniqi was sentenced to 8 years of imprisonment for illegal detention, torture, violation of bodily integrity or

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<sup>2144</sup> Defence Final Trial Brief, para. 356; DPS01735-DPS01757.

<sup>2145</sup> Defence Final Trial Brief, paras 357-359.

<sup>2146</sup> Defence Final Trial Brief, para. 356. Mr Shala's poor health has also been presented as a mitigating factor, *see* Defence Final Trial Brief, para. 362.

<sup>2147</sup> Defence Final Trial Brief, paras 360-361.

<sup>2148</sup> Defence Final Trial Brief, para. 366-367.

<sup>2149</sup> Defence Final Trial Brief, paras 368-369.

<sup>2150</sup> Defence Final Trial Brief, para. 370; T. 16 April 2024, public, p. 4220, line 21 to p. 4223, line 16; p. 4230, lines 1-8.

<sup>2151</sup> Defence Final Trial Brief, para. 375-377.

<sup>2152</sup> Defence Final Trial Brief, para. 376. The Defence underscores that: (i) Sabit Geci was found to have a command position as a member of the KLA; (ii) he was acquitted on the charge of murder and (iii) that the last two counts are not comparable to the charges raised against Mr Shala. The Defence adds that Sabit Geci was also fined (4,000 EUR).

health of witnesses and unknown civilians (Kukës).<sup>2153</sup> The Defence avers that, unlike Sabit Geci and Xhemshit Krasniqi, Mr Shala did not hold a command position at the KMF and that any sentence imposed should reflect the lesser role attributed to Mr Shala in the Confirmed Indictment and the evidence led by the SPO.<sup>2154</sup> In case of a conviction based on JCE liability, the Defence requests the Panel to take into account Mr Shala's low position in comparison to other members of the JCE as a mitigating circumstance.<sup>2155</sup> In its closing statements, the Defence asserted that the sentence requested by the SPO is excessive and disproportionate, and that it emanates from a repressive approach to sentencing.<sup>2156</sup>

1053. Recalling rehabilitation and reintegration to society as mandatory factors to be considered in sentencing,<sup>2157</sup> the Defence further advocates that a sentence should carry a certain humanizing message.<sup>2158</sup> It submits that, in case of conviction, the sentence must be fair and proportionate.<sup>2159</sup>

1054. Lastly, the Defence also requests that the Panel credit Mr Shala for the time served in detention.<sup>2160</sup>

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<sup>2153</sup> Defence Final Trial Brief, para. 377. The Defence underscores that Xhemshit Krasniqi was acquitted on the charge of murder and was also fined (1,500 EUR). The Defence submits that Xhemshit Krasniqi was released in September 2020, after having spent five years in prison. The Panel notes that Xhemshit Krasniqi's sentence was reduced to 7 years imprisonment on appeal.

<sup>2154</sup> Defence Final Trial Brief, paras 378-379.

<sup>2155</sup> Defence Final Trial Brief, para. 379.

<sup>2156</sup> T. 17 April 2024, public, p. 4341, lines 6-12; p. 4343, lines 12-17; p. 4344, lines 3-12.

<sup>2157</sup> Defence Final Trial Brief, para. 353.

<sup>2158</sup> T. 17 April 2024, public, p. 4344, lines 4-12.

<sup>2159</sup> Defence Final Trial Brief, para. 380.

<sup>2160</sup> Defence Final Trial Brief, para. 371.

### 3. Victims' Counsel

1055. With reference to the Law, the Rules and relevant findings in the *Mustafa* case,<sup>2161</sup> Victims' Counsel submits that, for the purposes of sentencing, the Panel take into account: (i) the gravity of the crimes and their long-lasting consequences on the victims and their relatives;<sup>2162</sup> and (ii) the personal contribution of Mr Shala to the crimes charged in the Confirmed Indictment.<sup>2163</sup> With regard to the first factor, in the closing statements, Victims' Counsel took issue with the Defence's position that the crimes were limited in scale and scope, highlighting the values protected by the crimes of arbitrary detention, torture and murder, as well as the life-altering impact these crimes had on the victims and their families.<sup>2164</sup> With regard to the second factor, while noting that his role was not one of a commander, Victims' Counsel submits that Mr Shala actively participated in the violence unleashed upon the detainees at the KMF, and did not intervene at any point to prevent or limit it.<sup>2165</sup>

1056. Furthermore, Victims' Counsel underlines that the crimes were committed with particular cruelty against completely defenceless individuals who were entirely at the mercy of their captors.<sup>2166</sup> Equally, Victims' Counsel notes that at no point throughout the proceedings did Mr Shala express any sign of remorse or apologize to the victims.<sup>2167</sup>

1057. In the closing statements, Victims' Counsel responded to some of the Defence's arguments regarding individual and mitigating circumstances. Victims' Counsel

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<sup>2161</sup> Victims' Counsel Impact Statement, paras 184-188.

<sup>2162</sup> Victims' Counsel Impact Statement, paras 189-194; T. 16 April 2024, public, p. 4212, line 19 to p. 4213, line 12.

<sup>2163</sup> Victims' Counsel Impact Statement, para. 195.

<sup>2164</sup> T. 16 April 2024, public, p. 4213, lines 6-12.

<sup>2165</sup> Victims' Counsel Impact Statement, para. 195.

<sup>2166</sup> Victims' Counsel Impact Statement, paras 189, 194, 197.

<sup>2167</sup> Victims' Counsel Impact Statement, para. 196.

questioned the relevance of the Defence's reference to Mr Shala's age and life in Kosovo prior to 1999.<sup>2168</sup> Victims' Counsel further submitted that poor health and the family circumstances of a convicted person can only be considered in mitigation in exceptional circumstances.<sup>2169</sup> With regard to the Defence's submissions on good behaviour, Victims' Counsel stated that, in the case of Mr Shala, one cannot speak of a free-standing and free-willing cooperation.<sup>2170</sup> With regard to the Defence's argument that fair trial violations warrant a reduction of the sentence, Victims' Counsel argued that: (i) the fair trial complaints raised by the Defence are unsubstantiated; and (ii) the Defence confused a potential reduction of a sentence as a remedy for fair trial violations with mitigating circumstances.<sup>2171</sup> With regard to the time lapse between the alleged events and the present proceedings, Victims' Counsel submitted that the Defence did not provide any reference or explanation to support this submission.<sup>2172</sup>

1058. Recalling retribution, deterrence and "affirmative prevention" as purposes of sentencing,<sup>2173</sup> Victims' Counsel does not request a particular sentence for each charge, but argues that such sentence would have to be "a very substantial one".<sup>2174</sup>

1059. Lastly, Victims' Counsel reiterates his request that the Panel include in its judgment a decision on the scope and extent of any damage, loss and injury to, or in respect of, victims, even in case of acquittal.<sup>2175</sup>

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<sup>2168</sup> T. 16 April 2024, public, p. 4206, lines 4-24.

<sup>2169</sup> T. 16 April 2024, confidential, p. 4206, line 25 to p. 4209, line 11.

<sup>2170</sup> T. 16 April 2024, public, p. 4209, line 17 to p. 4210, line 1.

<sup>2171</sup> T. 16 April 2024, public, p. 4210, line 2 to p. 4211, line 25.

<sup>2172</sup> T. 16 April 2024, public, p. 4212, lines 1-4.

<sup>2173</sup> Victims' Counsel Impact Statement, para. 198.

<sup>2174</sup> T. 16 April 2024, public, p. 4213, lines 13-19.

<sup>2175</sup> Victims' Counsel Impact Statement, para. 199.

## B. LEGAL FRAMEWORK

### 1. Purposes of Sentencing

1060. At the outset, the Panel recalls that the primary purposes of sentencing are rooted in deterrence and retribution; rehabilitation is relevant but should not play a predominant role.<sup>2176</sup> Regarding deterrence, the Panel recalls that a sentence should be adequate to dissuade a convicted person from re-offending (individual deterrence), while also aiming to dissuade other potential perpetrators from committing the same or similar crimes (general deterrence).<sup>2177</sup> Retribution is understood as the imposition of an appropriate punishment which reflects the culpability of the convicted person, but it should not express revenge or vengeance.<sup>2178</sup> Rehabilitation is focused on the reintegration of the convicted person into society.<sup>2179</sup>

1061. In relation to the Defence's argument to consider the rehabilitation of Mr Shala, the Panel notes that, while rehabilitation has gained in prominence in both national jurisdictions and some regional human rights instruments,<sup>2180</sup> considerations of rehabilitation cannot be given undue weight, given the gravity of the crimes falling under the jurisdiction of the Specialist Chambers.

1062. Moreover, the Panel observes that the establishment of the Specialist Chambers recognises the importance of bringing to justice the perpetrators of those serious

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<sup>2176</sup> See [Mustafa Appeal Judgment](#), para. 451, and references therein; [Mustafa Trial Judgment](#), para. 772.

<sup>2177</sup> See [Mustafa Appeal Judgment](#), para. 452, and references therein.

<sup>2178</sup> See [Mustafa Appeal Judgment](#), para. 452, and references therein.

<sup>2179</sup> See [Mustafa Appeal Judgment](#), para. 452, and references therein.

<sup>2180</sup> ECtHR, *Murray v. The Netherlands*, Application No. 10511/10, Grand Chamber, [Judgment](#), 26 April 2016, paras 101-102; *Khoroshenko v. Russia*, Application No. 41418/04, Grand Chamber, [Judgment](#), 30 June 2015, para. 121; see also, Council of Europe, [Recommendation Rec\(2006\)2-rev of the Committee of Ministers to member States on the European Prison Rules](#), adopted on 11 January 2006, revised and amended on 1 July 2020; UN Human Rights Committee, [CCPR General Comment No. 21: Article 10 \(Humane Treatment of Persons Deprived of Their Liberty\)](#), adopted on 10 April 1992, paras 10, 13.

crimes that concern the international community as a whole in order to end impunity – even decades after the events concerned and notwithstanding a prevalent and long-standing climate of witness intimidation in Kosovo.<sup>2181</sup>

1063. The punishment must also reflect the call for justice from persons who have – directly or indirectly – been victims of the crimes. Another important purpose of sentencing is the acknowledgment of the harm and suffering caused to them and to society.<sup>2182</sup>

1064. In addition, the purpose of the sentence imposed by the Panel is to make it abundantly clear that the rules of international humanitarian law have to be obeyed under all circumstances and in all places.<sup>2183</sup>

1065. Finally, the Panel considers that the implementation of the principle of equality before the law further constitutes a purpose of sentencing in the case at hand.<sup>2184</sup>

## 2. Sentencing Regime

1066. When determining the sentence, by virtue of Article 3(2)(b)-(c) and (4) of the Law, the Panel shall apply the regime provided for under Articles 44(1), (2) and (5) of the Law and Rules 159(6) and 163(1), (3), (4) and (6) of the Rules.

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<sup>2181</sup> See paras 96-97 above; see also, [Mustafa Trial Judgment](#), para. 773; [Gucati and Haradinaj Trial Judgment](#), paras 577-578.

<sup>2182</sup> See Article 38(1)(1.3) of the 2019 Criminal Code of Kosovo, Code No. 06/L-074 (2019 KCC), stating that one of the purposes of sentencing is “to provide compensation to victims or the community for losses or damages caused by the criminal conduct”. See also, [Mustafa Trial Judgment](#), para. 774.

<sup>2183</sup> See also, [Mustafa Trial Judgment](#), para. 776. In the same vein, ICTY, *Prosecutor v. Aleksovski*, IT-95-14/A-1, Appeals Chamber, [Judgement](#), 24 March 2000, para. 185; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber III, [Judgement](#), Vol. 4 (*Prlić et al.* Trial Judgement), 29 May 2013, para. 1276; ICTR, *Prosecutor v. Kambanda*, ICTR-97-23-S, Trial Chamber I, [Judgement and Sentence](#), 4 September 1998, para. 28.

<sup>2184</sup> See also, [Mustafa Trial Judgment](#), para. 777, and references therein.

1067. Pursuant to Article 44(1) of the Law, the Panel may impose upon a convicted person a maximum sentence of life-long imprisonment.

1068. Pursuant to Article 44(2) of the Law, in determining the sentence, the Panel is also required to “take into account”<sup>2185</sup> the punishments provided for crimes under the applicable law in Kosovo at the time of the commission of the crimes under consideration, and, in particular, any subsequent more lenient punishment. The Panel is however not bound by such considerations.<sup>2186</sup>

1069. In this regard, the Panel finds that the CCSFRY was the relevant applicable law in Kosovo at the time of the commission of crimes under consideration. It takes note that Article 142 of the CCSFRY entitled “War crime against the civilian population” provided for either “imprisonment for not less than five years or [...] the death penalty” and that Article 38 of the CCSFRY entitled “Imprisonment” provided that the “punishment of imprisonment may not be longer than 15 years”, but that “a term of 20 years [may be imposed] for criminal acts eligible for the death penalty”.<sup>2187</sup> The Panel notes that Regulation No. 1999/24 of the United Nations Mission in Kosovo (UNMIK) subsequently abolished the capital punishment,<sup>2188</sup> without specifying an alternative range, which resulted in an applicable sentencing range of 5 to 15 years of imprisonment under Articles 38 and 142 of the CCSFRY.<sup>2189</sup> The Panel further notes

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<sup>2185</sup> In contrast, in the context of offences against the administration of justice under Article 15(2) of the Law, Article 44(4) of the Law stipulates that punishments “shall be in line with the punishment for those crimes set out in the Criminal Code of Kosovo 2012, Law No. 04/L-082” (emphasis added), which denotes a mandatory requirement. See [Gucati and Haradinaj Trial Judgment](#), para. 941.

<sup>2186</sup> [Mustafa Appeal Judgment](#), para. 466; see also, [Mustafa Trial Judgment](#), para. 780.

<sup>2187</sup> [Mustafa Trial Judgment](#), para. 781.

<sup>2188</sup> See UNMIK/REG/1999/24, 12 December 1999, Section 1(1.5).

<sup>2189</sup> See [Mustafa Appeal Judgment](#), para. 473, and references therein, in particular Kosovo Constitutional Court Judgment of 31 March 2022, paras 48, 50, and Kosovo Supreme Court Judgment of 20 March 2023, p. 8 (English version).

that subsequent relevant laws or codes adopted in Kosovo provide equal or more severe sentencing ranges, and in particular attract higher maximum sentences.<sup>2190</sup>

1070. With respect to domestic and international sentencing practice relating to those ranges, the Panel incorporates by reference the extensive overview of such practice cited in the *Mustafa* Appeal Judgment.<sup>2191</sup> In addition to the cases cited by the Court of Appeals Panel (which include the *Sabit Geci et.al.* case), the Panel also notes the *Xhemshit Krasniqi* case, which pertains to crimes committed at the KMF in 1999 by Xhemshit Krasniqi, one of the JCE members in the present case.<sup>2192</sup> It is highlighted that sentencing practices of other courts, be it international or domestic, are not binding on the Panel,<sup>2193</sup> as the Panel must reach its determination taking into account a variety of case-specific factors, in particular, the convicted person's conduct, his or her individual circumstances, and the existence of mitigating and/or aggravating circumstances, if any.<sup>2194</sup>

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<sup>2190</sup> See the following sentencing ranges set out in subsequent Kosovo criminal codes concerning crimes under Article 14(1)(c) of the Law: (i) Article 120 of the Provisional Criminal Code of Kosovo, UNMIK/REG/2003/25, 6 July 2003 (2003 PKCC), read together with Articles 37(2) and 38(1) of the 2003 PKCC, setting out a sentencing range of five (5) to 20 years of imprisonment, or 21 to 40 years of long-term imprisonment; (ii) Article 152 of the 2012 Criminal Code of Kosovo, Code No. 04/L-082 (2012 KCC), read together with Article 45(1) of the 2012 KCC, setting out a sentencing range of five (5) to 25 years or life-long imprisonment; and (iii) Article 146 of the 2019 KCC, read together with Article 42(1)-(2) of the 2019 KCC, setting out a sentencing range of five (5) to 25 years or life-long imprisonment, the latter of which can be replaced by up to 35 years of imprisonment. See [Mustafa Appeal Judgment](#), para. 474.

<sup>2191</sup> See [Mustafa Appeal Judgment](#), para. 478, with accompanying footnotes 1292 and 1293.

<sup>2192</sup> In this case, Xhemshit Krasniqi was convicted for co-perpetration, with Sabit Geci and other KLA members, on the following charges of war crimes: (i) illegal detention; (ii) outrages upon personal dignity, in particular cruel, humiliating and degrading treatment, and (iii) violence to life and persons. Xhemshit Krasniqi was also found guilty of illegal possession of weapons. He was acquitted on the count of murder as a war crime. Xhemshit Krasniqi received, on appeal, an aggregate sentence of seven (7) years of imprisonment and a fine (1,200 EUR). See Court of Appeals of Kosovo, *Prosecutor v. Xh. K.*, Case No. 648/16, [Judgment](#), 22 June 2017.

<sup>2193</sup> See [Mustafa Appeal Judgment](#), paras 477-479.

<sup>2194</sup> Article 44(5) of the Law.



### 3. Relevant Factors to Determine the Sentence

1071. The Panel first identifies relevant factors pursuant to Article 44(5) of the Law and Rule 163(1) of the Rules and, second, weighs and balances all such factors, and determines the sentence.

#### (a) Identifying relevant factors

1072. The relevant factors in determining the sentence are: (i) primarily, the gravity of the crime and its consequences; (ii) the convicted person's personal contribution to the crime; (iii) the individual circumstances of the convicted person; and (iv) the existence of mitigating and aggravating circumstances related to those factors, if any.<sup>2195</sup>

#### (b) Balancing relevant factors

1073. The Panel has discretion in weighing and balancing different factors to determine the sentence.<sup>2196</sup> These factors, which are further developed below, referred to in a non-exhaustive way in Article 44(5) of the Law and Rule 163(1) of the Rules, will be addressed hereunder in three categories: (i) the gravity of the crime(s) and its consequences; (ii) the convicted person's personal contribution to the crime(s); and (iii) the individual circumstances of the convicted person.<sup>2197</sup>

1074. The Panel may consider aggravating and mitigating circumstances under any of the three categories. The Panel has a considerable degree of discretion, in the light of the circumstances of the case, in (i) determining what constitutes a mitigating or aggravating circumstance in addition to those explicitly set out in Rule 163(1) of the Rules, as well as in (ii) deciding how much weight, if any, to be accorded to them.<sup>2198</sup>

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<sup>2195</sup> See [Mustafa Appeal Judgment](#), para. 451; [Mustafa Trial Judgment](#), para. 783.

<sup>2196</sup> See, *inter alia*, Article 44(5) of the Law; Rule 163(1)(a)-(b) and (3) of the Rules.

<sup>2197</sup> See [Mustafa Trial Judgment](#), para. 784.

<sup>2198</sup> See [Mustafa Trial Judgment](#), para. 785.

1075. Furthermore, the Panel must explain the weight given to such circumstances and the specific evidence it relied upon.<sup>2199</sup> Likewise, the convicted person must be sufficiently put on notice of the facts that are taken into account to aggravate the sentence.<sup>2200</sup>

i. Gravity of the crime and its consequences

1076. The Panel notes that the gravity of the crime and its consequences are key considerations in imposing the sentence. The Panel will examine the qualitative and quantitative dimensions of the gravity of the crime at stake. It will consider its nature, scope, and circumstances as well as its consequences.<sup>2201</sup>

1077. Gravity is measured *in abstracto*, by analysing the nature of the crime in general terms and *in concreto*, by assessing the particular circumstances of the case. Not all crimes forming the grounds for conviction are necessarily of equivalent gravity and the Panel must weigh each of them.<sup>2202</sup>

1078. Indicators of gravity include, *inter alia*, the scale of the crime, the number of victims, the vulnerability of the victims, the age of the victims, the extent of the victims' suffering and the impact on the victims' relatives. Any factors taken into consideration as aspects of the gravity of the crime cannot additionally be considered as separate aggravating circumstances, and *vice versa*.<sup>2203</sup>

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<sup>2199</sup> See [Mustafa Trial Judgment](#), para. 786, and references therein.

<sup>2200</sup> See [Mustafa Trial Judgment](#), para. 786, and references therein.

<sup>2201</sup> See [Mustafa Trial Judgment](#), para. 787.

<sup>2202</sup> See [Mustafa Trial Judgment](#), para. 788.

<sup>2203</sup> See [Mustafa Trial Judgment](#), para. 789. Similarly, ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3484-tENG-Corr, Trial Chamber II, [Decision on Sentence pursuant to article 76 of the Statute](#) (Katanga Sentencing Decision), 23 May 2014, para. 35.

ii. Personal contribution to the crime

1079. With regard to the personal contribution to the crime, the Panel examines the convicted person's role and position, the means employed to execute the crime, and the degree of intent.<sup>2204</sup>

iii. Individual circumstances

1080. With regard to the individual circumstances, the Panel examines the personal situation of the convicted person, such as his or her age, health, family situation, education, prior conviction<sup>2205</sup> or character.<sup>2206</sup>

iv. Mitigating and aggravating circumstances

1081. Mitigating circumstances must relate directly to the convicted person; they need not however directly relate to the crime and are not limited to the scope of the charge.<sup>2207</sup> The Panel must be convinced of the existence of mitigating circumstances on a balance of probabilities.<sup>2208</sup> The existence of mitigating circumstances does not lessen the gravity of the crime, but becomes relevant for diminishing the sentence.<sup>2209</sup>

1082. Aggravating circumstances must relate to the crime of which the person was convicted or to the person him- or herself.<sup>2210</sup> The Panel must be convinced of the existence of aggravating circumstances beyond reasonable doubt.<sup>2211</sup> The absence of mitigating circumstances does not serve as an aggravating circumstance.<sup>2212</sup> Lastly, an

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<sup>2204</sup> See [Mustafa Trial Judgment](#), para. 790, and references therein.

<sup>2205</sup> Rule 163(3) of the Rules.

<sup>2206</sup> See [Mustafa Trial Judgment](#), para. 791.

<sup>2207</sup> See [Mustafa Trial Judgment](#), para. 792, and references therein.

<sup>2208</sup> See [Mustafa Trial Judgment](#), para. 792, and references therein.

<sup>2209</sup> See [Mustafa Trial Judgment](#), para. 792, and references therein.

<sup>2210</sup> See [Mustafa Trial Judgment](#), para. 793, and references therein.

<sup>2211</sup> See [Mustafa Trial Judgment](#), para. 793, and references therein.

<sup>2212</sup> See [Mustafa Trial Judgment](#), para. 793, and references therein.

element of the crime or mode of liability cannot at the same time be considered as an aggravating circumstance of the same crime.<sup>2213</sup>

#### 4. Determination of Sentence and Deduction of Time Detained

1083. In determining an appropriate sentence, the Panel enjoys considerable discretion and may take into consideration sentencing practices of both national and international courts for similar crimes.<sup>2214</sup>

1084. Pursuant to Rule 163(4) of the Rules, the Panel shall determine a sentence in respect of each charge in the Confirmed Indictment under which the person has been convicted and shall impose a single sentence reflecting the totality of the criminal conduct of the convicted person. The single sentence shall not be less than the highest individual sentence determined in respect of each charge.<sup>2215</sup>

1085. Finally, pursuant to Rule 163(6) of the Rules, when imposing a sentence of imprisonment, the Panel shall deduct the time, if any, during which the convicted person was detained prior to or during trial.<sup>2216</sup>

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<sup>2213</sup> See [Mustafa Trial Judgment](#), para. 793, and references therein.

<sup>2214</sup> See para. 1070 above; [Mustafa Trial Judgment](#), para. 794.

<sup>2215</sup> See [Mustafa Trial Judgment](#), para. 795.

<sup>2216</sup> See [Mustafa Trial Judgment](#), para. 795.

## C. FINDINGS

### 1. Relevant Factors

#### (a) Gravity of the crimes and their consequences

##### i. Gravity of the crimes

1086. The Panel notes that Mr Shala has been found guilty, as a JCE member, for the crimes of arbitrary detention (Count 1), torture (Count 3) and murder (Count 4) as war crimes committed in a non-international armed conflict.

1087. *Arbitrary detention.* Arbitrary detention is a grave crime in nature because it exposes victims to additional human rights violations.<sup>2217</sup> In the present case, the following individuals were deprived of their liberty by Mr Shala and other KLA members between approximately 17 May 1999 and 5 June 1999 at the KMF: TW4-01, the Murder Victim, TW4-11, W04733, W01448, TW4-05, TW4-04, TW4-02, [REDACTED] and a third Roma musician, [REDACTED] and at least one more female detainee, [REDACTED]. None of them was afforded any of the three basic guarantees which must be afforded to all persons deprived of their liberty in an armed conflict. As recalled hereunder, the detainees at the KMF were held in inhumane and degrading conditions of detention and were routinely psychologically and physically assaulted.

1088. *Torture.* The right not to be subjected to torture is recognised as a norm of *jus cogens*.<sup>2218</sup> The crime of torture represents an assault on the human dignity, security, and mental and physical well-being. In this case, at least 18 individuals were held in inhumane and degrading conditions of detention at the KMF. The detainees were kept

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<sup>2217</sup> See [Mustafa Trial Judgment](#), para. 796.

<sup>2218</sup> See [Mustafa Trial Judgment](#), para. 797, and references therein.

in wholly inadequate and degrading living and sleeping conditions; they were kept in small rooms with no beds; they were provided with insufficient and inadequate food and water; they were not permitted to wash themselves or change their clothes; they had to ask for permission to use the toilets, which were in a bad condition and were always escorted; they were not provided with adequate medical care, and in some cases were denied the provision of medical care altogether; they were prevented from interacting and talking to each other.<sup>2219</sup>

1089. Moreover, the detainees lived in constant fear that they could be subjected to physical abuse at any time, or even be killed.<sup>2220</sup> They were forced to witness and listen to the physical abuse of their co-detainees and they saw their co-detainees bruised, covered in blood, with swollen hands and legs and broken teeth.<sup>2221</sup> [REDACTED]. Some detainees, including TW4-01, the Murder Victim, W04733, W01448, TW4-11, TW4-05, [REDACTED] and a third Roma musician, were routinely physically and psychologically abused.<sup>2222</sup> Throughout their time in detention, the detainees were interrogated and accused of being “collaborators” of the Serbian authorities, “spies”, “traitors”, sympathisers of Serbia, or of not being sufficiently supportive of the KLA effort.<sup>2223</sup> The inhumane conditions of detention, and the corresponding physical and psychological assaults, were inflicted on these detainees for the purpose of obtaining information or a confession from them, and/or to punish, intimidate, coerce and/or discriminate against them on political grounds.<sup>2224</sup>

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<sup>2219</sup> See paras 748 and 971 above.

<sup>2220</sup> See para. 749 above.

<sup>2221</sup> See paras 647, 749 above.

<sup>2222</sup> See para. 653 above and Section VI.E.2.

<sup>2223</sup> See para. 590 above and Section VI.E.3.

<sup>2224</sup> See Section VI.E.3 and para. 752 above.

1090. *Murder*. Murder is inherently one of the most serious crimes,<sup>2225</sup> as the protected value is human life. Moreover, relatives left behind are deprived of a family member, and thereby of love and care, of support, be it financial, physical, emotional, psychological, moral, or otherwise. In this case, the Murder Victim died while still in detention at the KMF, on or about 5 June 1999, from the consequences of the gunshot wounds inflicted on his leg, combined with the denial of appropriate medical treatment.<sup>2226</sup>

1091. The Panel considers the number of the victims as part of the gravity of the crimes, and will thus not consider it as an aggravating factor.

1092. The Panel concludes that the above considerations are relevant in the assessment of the gravity of the crimes.

ii. Consequences of the crimes

1093. The Panel observes that, as a result of the arbitrary detention and torture, the victims suffered long-lasting consequences from their injuries both physical and mental, including: head injuries, burn injuries, broken arms and/or teeth, persistent and severe pain throughout their bodies, feelings of shame, and PTSD symptoms. They also experienced disruption in their social and family lives.<sup>2227</sup> Some victims lost the ability to earn a living, provide for their family or regain financial independence.<sup>2228</sup> The family of W04733 shared the burden of the suffering that he brought with him. Their lives were affected by the knowledge of what had been done to him and some of them had to stop their education or their career because they were

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<sup>2225</sup> See [Mustafa Trial Judgment](#), para. 798, and references therein.

<sup>2226</sup> See paras 778, 832 above.

<sup>2227</sup> See paras 684-687, 700-705, 753 above.

<sup>2228</sup> See para. 685 above.

seen as a family of spies by some persons, or considered as such because of what happened to W04733.<sup>2229</sup>

1094. [REDACTED]. [REDACTED], TW4-01 has suffered from PTSD, which has caused profound limitations in his social and occupational functions.<sup>2230</sup>

1095. For these reasons, the Panel finds that the crimes under consideration caused significant and long-lasting consequences: material, physical and psychological ones to the detained victims; and material and psychological ones to the family members [REDACTED].

iii. Aggravating factor: Commission of crimes with particular cruelty<sup>2231</sup>

1096. The Panel recalls that the beatings of the detainees were in some instances perpetrated in group<sup>2232</sup> and/or lasted for hours.<sup>2233</sup> The beatings were so brutal that some detainees were covered in bruises and/or blood, lost consciousness<sup>2234</sup> or were subsequently unable to walk.<sup>2235</sup> They also caused severe and long-lasting mental harm.<sup>2236</sup>

1097. The Panel recalls in particular that: TW4-01 and the Murder Victim were hit with batons and “anything else”; [REDACTED]; salt was thrown in the wounds of [REDACTED] W04733 during [REDACTED] beatings on or about 20 May 1999; on the same occasion, Mr Shala used a rubber baton and a baseball bat to hit W04733 all over

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<sup>2229</sup> See paras 701, 703-704 above.

<sup>2230</sup> [REDACTED].

<sup>2231</sup> Rule 163(1)(b)(iv) of the Rules. See SPO Final Trial Brief, paras 376-377.

<sup>2232</sup> See, for example, paras 641, 654, 690, 707, 716 above.

<sup>2233</sup> See, for example, paras 653, 749 above.

<sup>2234</sup> See, for example, paras 709, 714, 750 above.

<sup>2235</sup> See, for example, paras 759, 831 above.

<sup>2236</sup> See, for example, para. 753 above.



his body and head, including on his hands and feet, leaving them swollen and bruised.<sup>2237</sup> [REDACTED].<sup>2238</sup> The Murder Victim died after a prolonged agony in terrible circumstances – his stomach became swollen, he could not urinate and he was bleeding profusely.<sup>2239</sup> [REDACTED] he would die because of the refusal of the KLA members in charge to provide him with appropriate medical assistance. The Panel considers this a particularly vicious aspect in the commission of the crime of murder in this case.

1098. The Panel further notes the degrading and humiliating nature of the mistreatment that the victims suffered, such as being ordered to beat each other, or the Roma musicians being subjected, on discriminatory grounds, to forced labour.<sup>2240</sup>

1099. For these reasons, the Panel finds that the aggravating circumstance under Rule 163(1)(b)(iv) of the Rules is established.

iv. Aggravating factor: Particularly vulnerable or defenceless victims<sup>2241</sup>

1100. The Panel recalls that the detainees were abruptly apprehended and taken away from their daily lives, not knowing the reason for which they were detained, for how long their detention would last, or when they would be able to contact or see their family again.<sup>2242</sup> They were at the mercy of their captors while also exposed to the wrath and violence of fighters returning from the frontlines.<sup>2243</sup>

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<sup>2237</sup> See para. 690 above.

<sup>2238</sup> See para. 668 above.

<sup>2239</sup> See paras 831-832 above.

<sup>2240</sup> See paras 749, 751 above.

<sup>2241</sup> See Rule 163(1)(b)(iv) of the Rules. Both the SPO and Victims' Counsel plead for the Panel to consider this factor as aggravating, see SPO Final Trial Brief, paras 397-398; Victims' Counsel Impact Statement, paras 189 and 194.

<sup>2242</sup> See findings in Section VI.D.

<sup>2243</sup> See findings in Section VI.E.

1101. For these reasons, the Panel finds, as an aggravating circumstance under Rule 163(1)(b)(iii) of the Rules, that the victims in this case were particularly vulnerable and defenceless.

v. Conclusion

1102. Considering the nature and circumstances of the crimes, the extent of the victims' suffering, as well as the two above-mentioned aggravating circumstances, the Panel assesses the gravity of the crimes under consideration as high.

(b) Personal contribution to the crimes

1103. The Panel recalls that Mr Shala committed the crimes of arbitrary detention, torture, and murder as a JCE member, with other KLA members.<sup>2244</sup>

1104. At the outset, the Panel notes that Mr Shala played an active role within the group of KLA members who arbitrarily detained, tortured and murdered the detained persons. He had a degree of autonomy and authority within the KLA at the KMF, without, however, holding a commanding role.<sup>2245</sup>

1105. First, Mr Shala saw and knew that detainees were held at the KMF between approximately 17 May 1999 and 5 June 1999 and intentionally contributed to the plan to deprive them of their liberty during this time.<sup>2246</sup> With regard to W04733 in particular, Mr Shala participated, together with a group of KLA members, in his transfer from a detention location in Romanat to the KMF, on or about 20 May 1999.<sup>2247</sup>

1106. Second, Mr Shala personally and intentionally severely mistreated TW4-01, the Murder Victim, W04733 and W01448 on or about 20 May 1999. Mr Shala was the first

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<sup>2244</sup> See paras 1037-1039 above.

<sup>2245</sup> See paras 900 and 914 above.

<sup>2246</sup> See paras 951-956 above.

<sup>2247</sup> See para. 455 above.

to hit TW4-01 with a rubber bar. Together with Xhemshit Krasniqi, Mr Shala was the KLA member who beat W04733 and W01448 the most on or about 20 May 1999.<sup>2248</sup> He also ordered [REDACTED] to beat W04733. In addition, he questioned [REDACTED] and demanded that she make a confession.

1107. Third, in respect of the Murder Victim, Mr Shala participated in his mistreatment on or about 4 June 1999, and was present in the room when the Murder Victim was shot. [REDACTED].

1108. In light of the foregoing, the Panel assesses the degree of Mr Shala's personal participation and intent with regard to the crimes under consideration as high, but also takes into account the fact that he did not have any formal commanding role.

(c) Individual circumstances

1109. At the outset, the Panel notes that at the time of the commission of the crimes for which he is convicted, Mr Shala was 35 years old.<sup>2249</sup> According to the Defence, he grew up in precarious and unstable circumstances in Kosovo; Mr Shala was detained in a Serbian prison as a political prisoner before the war, and he and his family personally suffered casualties during the conflict.<sup>2250</sup>

1110. In the view of the Panel, Mr Shala's difficult early life in Kosovo and his imprisonment in Serbia does not constitute, in and of itself, a justification of any sort for the commission of crimes. He committed the relevant crimes when he was a fully responsible adult. Notably, no grounds excluding criminal responsibility under the Law were pleaded. In these circumstances, while acknowledging Mr Shala's

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<sup>2248</sup> See paras 690 and 707 above.

<sup>2249</sup> Defence Final Trial Brief, para. 357.

<sup>2250</sup> Defence Final Trial Brief, paras 357-358.

conflict-related difficult experiences, the Panel attaches little weight to these events for the purposes of mitigating Mr Shala's sentence.

1111. *Family Circumstances*. The Panel notes that Mr Shala is 60 years old,<sup>2251</sup> has a partner and two children in their twenties.<sup>2252</sup> According to the Defence: (i) Mr Shala's children and partner are under medical treatment;<sup>2253</sup> (ii) he has real concerns for her and his children's well-being;<sup>2254</sup> and (iii) his family was affected by the traumatizing way in which he was arrested, which led to social stigma for his family in the very small community they live.<sup>2255</sup>

1112. The Panel is cognizant of the fact that Mr Shala's detention has undoubtedly affected the lives of his family members. This factor is common to many persons who have been detained in the context of criminal proceedings. The Panel recalls that the standard of what constitutes "exceptional family circumstances" for the purposes of sentence mitigation is a high one.<sup>2256</sup> The Panel finds that neither individually nor collectively do the factors listed by the Defence meet the aforementioned standard. The Panel therefore cannot give them any weight as a mitigating circumstance in the present case.

1113. *Poor Health*. The Defence expert report of Ms Milazzo refers to Mr Shala suffering from low self-esteem, anxiety and somatic problems, which require medication.<sup>2257</sup>

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<sup>2251</sup> See para. 284 above.

<sup>2252</sup> Defence Final Trial Brief, para. 360.

<sup>2253</sup> Defence Final Trial Brief, para. 361, and references therein; **Mr Shala**: T. 17 April 2024, public, p. 4369, lines 6-7.

<sup>2254</sup> Defence Final Trial Brief, para. 361.

<sup>2255</sup> Defence Final Trial Brief, para. 361.

<sup>2256</sup> Family circumstances are accorded little, if any weight, in sentencing, unless they are exceptional. See ICC, [Katanga Sentencing Decision](#), paras 88, 144; ICTR, *Ntabakuze v. Prosecutor*, ICTR-98-41A-A, Appeals Chamber, [Judgement](#), 8 May 2012, para. 284; ICTY, *Prosecutor v. Babić*, IT-03-72-A, Appeals Chamber, [Judgment on Sentencing Appeal](#) (*Babić Judgment on Sentencing Appeal*), 18 July 2005, paras 50-51.

<sup>2257</sup> Defence Final Trial Brief, para. 362; DPS01735-DPS01757, pp. 6, 17, 18.

To begin with, it is underlined that any detainee in the Specialist Chambers' custody is given continuously adequate medical attention.<sup>2258</sup> In fact, the Defence admits that Mr Shala is being treated with medication.<sup>2259</sup> In line with international criminal jurisprudence, poor health may constitute a mitigating factor only in exceptional or rare circumstances.<sup>2260</sup> The Panel is of the view that the Defence cannot invoke exceptional circumstances regarding Mr Shala's current health state, as presented. More broadly, the Panel observes that a convicted person's health is primarily a matter for the enforcement of the imposed sentence, not a factor bearing upon the determination of its length.<sup>2261</sup> In light of the foregoing, the Panel cannot give any weight to Mr Shala's current health situation as a mitigating circumstance.

1114. *Good Behaviour*. The Defence affirms that Mr Shala: (i) responded to all the summonses to appear as a witness or suspect before the ICTY and the Specialist Chambers; and (ii) has never violated any orders from the Panel and has cooperated with the Specialist Chambers.<sup>2262</sup>

1115. The Panel recalls that compliance with the law or court-imposed orders are expected of any person, and therefore does not, on its own, constitute a mitigating circumstance, unless exceptional.<sup>2263</sup> Contrary to what the Defence avers, the Panel recalls that Mr Shala has not always shown respect towards the court. In at least one

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<sup>2258</sup> See KSC-BD-08-Rev1, Registrar, Registry Practice Direction: Rules of Detention, 23 September 2020, public, Rules 30-37.

<sup>2259</sup> Defence Final Trial Brief, para. 362.

<sup>2260</sup> ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1819-Red, Trial Chamber IX, [Sentence](#) (Ongwen Sentencing), 6 May 2021, para. 103; see similarly, International Residual Mechanism for Criminal Tribunals, *Prosecutor v. Mladić*, MICT-13-56-A, Appeals Chamber, [Judgement](#), 8 June 2021, para. 554; ICTY, *Prosecutor v. Šainović et al.*, IT-05-87-A, Appeals Chamber, [Judgement](#), 23 January 2014, para. 1827; [Prlić et al. Trial Judgement](#), para. 1288; *Prosecutor v. Galić*, IT-98-29-A, Appeals Chamber, [Judgement](#), 30 November 2006, para. 436; *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Chamber, [Judgement](#), 29 July 2004, para. 696; [Babić Judgment on Sentencing Appeal](#), para. 43.

<sup>2261</sup> [Ongwen Sentencing](#), para. 103.

<sup>2262</sup> Defence Final Trial Brief, para. 366.

<sup>2263</sup> See [Mustafa Trial Judgment](#), para. 824, and references therein.

instance throughout the proceedings, Mr Shala interrupted the proceedings and left the courtroom without leave from the Panel, thereby soliciting a warning from the Presiding Judge.<sup>2264</sup> Be that as it may, the Panel is not persuaded that Mr Shala's overall good behaviour in detention or cooperation with the Specialist Chambers have been exceptional. Therefore, the Panel will not consider this factor to reduce his sentence.

1116. *Criminal Record*. The Panel takes note, for the purposes of Rule 163(3) of the Rules, that Mr Shala has no prior convictions in Albania.<sup>2265</sup> He has a conviction for a violent stabbing offence in a public place, in 2018, in Belgium.<sup>2266</sup>

1117. *Remorse*. In addition, the Panel notes Victims' Counsel's submission that, throughout the proceedings, Mr Shala never expressed or displayed any signs of sympathy for the victims.<sup>2267</sup> Mr Shala asserted instead: "I did not cause any damage to these persons. I did not put them in danger".<sup>2268</sup> Similarly, in its closing statements, the Defence stated that its position is that "whatever happened in Kukës at that time, Pjeter Shala had no role or participation in it".<sup>2269</sup> In his 2019 Statement, Mr Shala not only expressed no regret for having beaten TW4-01 and the Murder Victim at the KMF, but he also stated: "if I had to do it again, I would do it without hesitation".<sup>2270</sup> The Panel finds that Mr Shala has shown no remorse and no empathy for the victims. While not an aggravating factor in and of itself, the Panel notes the absence of any expression of empathy for the victims.

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<sup>2264</sup> T. 23 November 2023, confidential, p. 3600, line 16 to p. 3603, line 2.

<sup>2265</sup> 119389-119390; *see also*, KSC-BC-2020-04, F00806, Specialist Prosecutor, *Prosecution submission further to Prosecution submission F00798 and order F00795*, 6 March 2024, confidential, with Annex 1, confidential. A public redacted version of the main filing was issued on 8 March 2024, [F00806/RED](#).

<sup>2266</sup> 118356-118384-ET, pp. 118364-118371.

<sup>2267</sup> Rule 163(a)(ii) of the Rules.

<sup>2268</sup> T. 17 April 2024, public, p. 4370, lines 21-22.

<sup>2269</sup> T. 16 April 2024, public, p. 4240, lines 10-12.

<sup>2270</sup> **Mr Shala**: 066888-TR-ET Part 1 Revised, p. 155, lines 2-3.

1118. *Conclusion.* In sum, while the Panel acknowledges Mr Shala's conflict-related difficult experiences, it attaches little weight to these events and has not identified any other individual circumstances that warrant reducing his sentence.

(d) Fair trial violations as a mitigating circumstance

1119. With reference to the Defence's request that the Panel consider the "exceptional" violations of Mr Shala's rights to fair trial as a mitigating circumstance,<sup>2271</sup> the Panel notes that it has addressed the Defence's arguments regarding a number of fair trial rights violations in an earlier section of this Judgment.<sup>2272</sup> The Panel did not find any violation of Mr Shala's rights.<sup>2273</sup> Consequently, it does not need to discuss this factor as mitigating the sentence any further.

## 2. Determination of an Individual Sentence for each Crime and of the Single Sentence

1120. Given that Mr Shala has been convicted of more than one crime, the Panel will proceed first with the determination of an individual sentence for each crime for which a conviction has been entered and second, with the determination of a single sentence for the totality of the criminal conduct of Mr Shala.

1121. Having weighed and balanced all factors set out above, including the gravity of the crimes and their consequences, Mr Shala's personal contribution to the crimes, and the individual circumstances of Mr Shala, including any mitigating and aggravating circumstances; and having considered the aforementioned purposes of sentencing, the

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<sup>2271</sup> Defence Final Trial Brief, para. 368, footnote 791. The Defence requests the Panel to consider as mitigating circumstance the (i) violations of Mr Shala's fair trial rights and (ii) his right to an effective remedy, guaranteed under Articles 6 and 13 of the ECHR, Articles 31, 32 and 54 of the Constitution and Article 21(2) of the Law.

<sup>2272</sup> See Section IV.

<sup>2273</sup> See para. 73 above.

Panel is of the view that the punishment of imprisonment of a considerable duration is a justified reaction and therefore sentences Mr Shala to:

- (i) a term of six (6) years of imprisonment for the war crime of arbitrary detention (Count 1);
- (ii) a term of sixteen (16) years of imprisonment for the war crime of torture (Count 3); and
- (iii) a term of eighteen (18) years of imprisonment for the war crime of murder (Count 4).

1122. Having determined these sentences, the Panel imposes a single sentence of eighteen (18) years for the war crimes of arbitrary detention (Count 1), torture (Count 3) and murder (Count 4) reflecting the totality of the criminal conduct of and the multiple crimes committed by Mr Shala.

### **3. Remaining Time of Imprisonment**

1123. As regards credit for the time served, the Panel notes that Mr Shala was arrested on 16 March 2021 in Belgium<sup>2274</sup> and has been detained at the detention facilities of the Specialist Chambers since 15 April 2021.<sup>2275</sup> The Panel accordingly deducts from the imposed sentence the time spent in detention since 16 March 2021.

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<sup>2274</sup> Notification of Arrest, paras 1, 5.

<sup>2275</sup> Notification of Reception, para. 2.



## IX. VERDICT

1124. For the foregoing reasons, on the basis of the evidence available, considered holistically, as well as the submissions made before the Panel at trial, pursuant to Article 43 of the Law and Rule 158 of the Rules, the Panel finds:

**Mr PJETËR SHALA**

- a) Under **Count 1** of the Confirmed Indictment, **GUILTY** of the war crime of **arbitrary detention**, pursuant to Articles 14(1)(c) and 16(1)(a) of the Law, committed between approximately 17 May 1999 and 5 June 1999 at the Kukës Metal Factory;
- b) Under **Count 3** of the Confirmed Indictment, **GUILTY** of the war crime of **torture**, pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law, committed between approximately 17 May 1999 and 5 June 1999 at the Kukës Metal Factory; and
- c) Under **Count 4** of the Confirmed Indictment, **GUILTY** of the war crime of **murder**, pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law, committed on or about 5 June 1999 at the Kukës Metal Factory; and
- d) Under **Count 2** of the Confirmed Indictment, **NOT GUILTY** of the war crime of **cruel treatment**.

1125. Mr Shala is sentenced to a single sentence of **eighteen (18) years** of imprisonment, with credit for the time served.

1126. The Panel **orders** the Registrar to assign exhibit numbers to all items of evidence previously marked for identification, for the purpose of maintaining an accurate record of the proceedings pursuant to Article 40(5) of the Law and Rule 24(1) of the Rules.

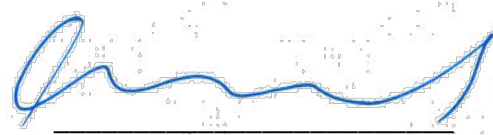
1127. The Panel further **decides** to retain jurisdiction in this case for the purposes of issuing in due course a Reparation Order specifying appropriate reparation to, or in respect of, victims, in accordance with Articles 22(8) and 44(6) of the Law.



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



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Tuesday, 16 July 2024

At The Hague, the Netherlands.