

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

Before: A Panel of the Court of Appeals
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 30 September 2024

Filing Party: Counsel for Mr Pjetër Shala

Original language: English

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

Specialist Prosecutor's Office

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1. Mr Pjetër Shala hereby appeals against the convictions entered by Trial Panel I of the Kosovo Specialist Chambers (“KSC”) on 16 July 2024 as well as the sentence imposed.¹ This Notice presents 14 grounds of appeal, each of which either invalidates the Impugned Judgment or has resulted in a miscarriage of justice.²

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

2. Mr Shala did not receive a fair trial. The Trial Panel’s reliance on self-incriminatory statements made without legal assistance rendered the trial unfair and constitutes an error of law that merits appellate interference.³ The Trial Panel explicitly chose to ignore the findings made by the Appeals Panel which acknowledged the violation of Mr Shala’s rights in this respect and failed to provide him with an effective remedy.⁴ The Trial Panel’s errors invalidate the convictions on all counts.

Ground 2: Prejudice Caused by the Uncertainty of the Trial Record

3. The Trial Panel erred in law and in fact by ignoring the KSC legal framework and failing to notify the Defence whether the incriminatory statements by Mr Shala were admitted in evidence, leaving as such the evidentiary record of the proceedings uncertain throughout the trial and depriving the Defence of an

¹ F00847, Trial Judgment and Sentence, 16 July 2024 (confidential) (“Judgment”).

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

³ Judgment, paras. 281, 284-293, 297-299, 306-310, 338-340, 348, 352-353, 361, 376-379, 451-455, 850-874, 881-882, 895-903, 910-914, 923-924, 929-931, 951-956, 1104, 1107, 1010-1011, 1014, 1116-1118; F00364/COR, Corrected version of Decision concerning prior statements given by Pjetër Shala, 6 December 2022 (confidential); F00401, Decision on Request for Leave to Appeal the Decision Concerning Prior Statements Given by Pjetër Shala, 24 January 2023.

⁴ IA006/F00007, Decision on Shala’s Appeal Against Decision Concerning Prior Statements, 5 May 2023, paras. 75-78, 103; Judgment, paras. 73, 1119.

effective opportunity to take a stance on the contents of the statements without jeopardizing the right of Mr Shala not to incriminate himself.⁵ The Trial Panel's errors invalidate all convictions and have resulted in a miscarriage of justice.

Ground 3: Breach of the Principle of Legality

4. The Trial Panel erred in law in entering convictions based on liability under a joint criminal enterprise as well as for entering a conviction for the crime of arbitrary detention in a non-international armed conflict. Both the form of liability used as well as the above-mentioned crime did not form part of the Kosovo law or customary international law in 1999 and were not foreseeable nor accessible to Mr Shala.⁶ The Trial Panel violated Mr Shala's rights under Articles 6 and 7 of the European Convention on Human Rights and its errors invalidate all convictions.

Ground 4: Defective Indictment

5. The Trial Panel erred in law when convicting Mr Shala on the basis of the Indictment that was defective for lack of sufficient particulars as to the members of the alleged JCE and the victims of the alleged crimes.⁷
6. The Trial Panel erred in law when permitting the trial to go ahead and conducting the trial on the basis of a defective Indictment that contained cumulative charging of cruel treatment and torture and failed to comply with the principle of reciprocal speciality and ultimately upholding the Defence objections to the defective Indictment only when issuing the Impugned

⁵ See n. 3 above.

⁶ Judgment, paras. 934-956, 995-1039, 1124; F00117, Decision on Application for Leave to Appeal "Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers", 29 November 2021, paras. 7, 28, 34.

⁷ Judgment, paras. 945, 977, 1005; IA004/F00008, Decision on Pjetër Shala's Appeal against Decision on Motion Challenging the Form of the Indictment, 22 February 2022 (confidential).

Judgment, causing irreparable prejudice to the Defence which had to answer to unlawful cumulative charges while operating with scarce resources.⁸ These errors invalidate the convictions on all counts.

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

7. Although Mr Shala was charged with the crime of arbitrary detention and torture of *nine* individuals listed in the Indictment, the Trial Panel erroneously convicted him for the crime of arbitrary detention and torture in respect of *eighteen* individuals.⁹ This error of law requires reconsideration of the sentence imposed.

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

8. The Trial Panel made serious errors in the assessment and acceptance of the credibility of three key Prosecution witnesses which invalidate all convictions and have resulted in a miscarriage of justice.¹⁰ Its errors were compounded by applying double standards in assessing exculpatory and incriminating evidence, breached the principle of *in dubio pro reo*, and constituted abuse of discretion.¹¹
9. The Trial Panel erred in finding [REDACTED] credible and declining to consider evidence undermining his credibility; its decision not to treat his evidence with caution was manifestly unreasonable and exceeded the lawful

⁸ Judgment, paras. 961-964, 1037-1039.

⁹ Judgement, paras. 18, 1037-1038.

¹⁰ Judgment, paras. 98-119, 169-188, 363, 368-379, 384-407, 410, 412-414, 419-420, 423, 447-473, 477-488, 491-494, 501, 504-505, 510-512, 522-525, 558, 562-563, 565-592, 596-605, 629-638, 640-663, 669-683, 688-699, 706-726, 728, 730-753, 757-796, 799-807, 819, 830-847, 851-852, 895-897, 903-914, 945-949, 951-956, 971-978, 980-984, 1004, 1007-1008, 1010-1018, 1025-1029, 1031-1039.

¹¹ Judgment, paras. 119, 124-126, 132, 134-136, 141, 143, 154, 159, 162, 167-168, 173-175, 181-188, 196-197, 208-210, 224-225, 232-234, 244-248, 253-259, 268-273, 281-283, 377-379, 385, 475, 495, 500, 507, 534-536, 549, 652, 682, 729, 767, 781, 784, 879, 881-895.

bounds of its discretion.¹² The Trial Panel erred in declining to adjourn the trial pending completion of the Case 08 proceedings, failing to acknowledge that the Prosecution's decision to terminate the proceedings in Case 08, which concerned [REDACTED] in matters directly related to the Indictment against Mr Shala, deprived the Defence of a crucial finding on the credibility of [REDACTED] and breached Mr Shala's defence rights.¹³

10. The Trial Panel erroneously found W04733's evidence to be credible and corroborated by the evidence of other witnesses who simply relayed information conveyed to them by W04733 without applying caution.¹⁴ The Trial Panel erred in accepting W04733's identification of Mr Shala without applying caution or noting its frailty, particularly in considering that "it does not matter whether the witness described Mr Shala's physical appearance accurately".¹⁵ The Trial Panel erred by considering that "its Judgment is not based solely or to a decisive extent on W04733's evidence, whom the Defence has had no opportunity to examine".¹⁶
11. The Trial Panel erred in failing to consider with caution and ultimately finding the evidence of W01448 credible and corroborated, including W01448's identification of Mr Shala despite the false identification of Mr Shala in a photoboard identification procedure.¹⁷
12. The Trial Panel erred when it accepted the evidence of W04733, the family members of W04733, W01448, TW4-01, TW4-10, and TW4-04 without applying caution despite the strong indications and evidence that these witnesses'

¹² See [REDACTED].

¹³ Judgment, paras. 40-41, [REDACTED].

¹⁴ See n. 10 above and Judgment, paras. 147-154, 180, 441, 443-444, 449, 462, 470, 617-618, 624, 703-704.

¹⁵ Judgment, paras. 451, 455.

¹⁶ Judgment, para. 183.

¹⁷ See n. 10 above.

evidence was contaminated as they had exchanged views with regard to matters related to the Indictment.¹⁸

Ground 7: Unfair Reliance on Untested Evidence

13. The Trial Panel erred in law and fact when entering convictions against Mr Shala which were based on findings based solely or in a decisive manner on untested evidence.¹⁹ Its errors invalidate all convictions entered and have resulted in a miscarriage of justice.
14. In this respect, the Panel extensively relied on the untested evidence of seven witnesses, including four deceased witnesses, considered the untested evidence corroborated by other untested evidence and failed to treat it with caution.
15. The Trial Panel erred in law and fact when admitting the written evidence of Prosecution witnesses TW4-02 and TW4-04 without cross-examination, relying on their evidence to a decisive extent and making findings adverse to Mr Shala on issues about which the witnesses had exculpatory information.²⁰

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

16. The Trial Panel erred in law and fact and breached the principle of *in dubio pro reo* when (i) drawing inferences which were not the only reasonable inferences that could be drawn from the available evidence, including from Mr Shala's statements; (ii) assessing whether his statements "discredit[ed]" the

¹⁸ Judgment, paras. 147-154, 174-175, 187-188, 374, 519, 522.

¹⁹ Judgment, paras. 96, 285, 342, 341, 354-356, 378-379, 385-388, 390-394, 401, 408, 411-414, 441-581, 587-608, 614-627, 629-753, 756, 830, 842-848, 851, 864, 897, 903-909, 912, 919, 921, 945-949, 952-956, 971-973, 977-978, 980-984, 1003-1004, 1007, 1014-1018, 1025-1028, 1031-1039.

²⁰ Judgment, paras. 69, 352-353, 393, 444-445, 447, 479, 481, 486, 488, 515, 519-526, 528-529, 531, 533, 536-537, 541, 543-544, 546, 548, 552, 554-555, 558, 565, 567, 576-579, 582, 587, 591, 606, 615, 670-671, 728, 745, 748-749; F00556, Decision on the Specialist Prosecutor's Requests to Admit the Evidence of TW4-02 and TW4-04 under Rule 153 of the Rules, 23 June 2023; F00592, Decision on the Defence Request for Certification to Appeal the "Decision on the Specialist Prosecutor's Requests to Admit the Evidence of TW4-02 and TW4-04 under Rule 153 of the Rules", 17 July 2023.

Prosecution's evidence; and (iii) applying double standards in assessing the evidence.²¹

17. The Trial Panel erred in law when taking judicial notice of "adjudicated" facts, including facts that formed core elements of the Prosecution's case and relying on them for the purpose of convicting Mr Shala thereby shifting the burden of proof in breach of the presumption of innocence.²²
18. The above errors invalidate all convictions entered and have resulted in a miscarriage of justice.

Ground 9: Violation of Defence Rights

19. The Trial Panel erred in law by failing to acknowledge that Mr Shala's right to present an effective defence was violated *inter alia* due to the repeated delayed disclosures and refusals to disclose information by the Prosecution, the restrictions on which witnesses to call, starting the trial before the Defence was trial ready and failing to acknowledge the impact of the passage of time between the Indictment events and the trial on Mr Shala's ability to defend himself.²³ These errors invalidate all convictions entered.

Ground 10: Abuse of Discretion Concerning Defence Witnesses

²¹ Judgment, paras. 378-379, 405, 412-413, 439, 444-445, 451, 472, 476, 493, 496, 511, 528, 553, 561-562, 565, 572, 576, 581, 583, 590-591, 610, 638, 710, 728, 730, 746-747, 823, 853-873, 903, 910-914, 980, 983, 1007, 1010-1011, 1021, 1031-1039.

²² Judgment, paras. 95, 296, 319, 342, 346, 366, 411, 558, 560, 564, 626, 756, 919, 921; F00538, Decision on the Prosecution motion for judicial notice of facts of common knowledge and adjudicated facts, 8 June 2023 (confidential); F00587, Decision on the Defence's Request for Leave to Appeal and/or Reconsideration of F00538, 13 July 2023.

²³ Judgment paras. 29-35, 42-47, 51-62, 1037-1039; F00218, Decision on Defence Application for Leave to Appeal the Decision on Request for Protective Measures for Documents Containing Exculpatory Information, 14 June 2022 (confidential); F00813, Decision on the Defence request for leave to reopen its case, 19 March 2024 (confidential); F00830, Decision on the Defence request for leave to appeal and or reconsideration of the "Decision on the Defence request for leave to reopen its case", 11 April 2024.

20. The Trial Panel took irrelevant factors into consideration and gave them determining weight in assessing the evidence of Defence witnesses.²⁴ Specifically, the Panel inappropriately placed determining weight on the witnesses' political opinions and openly expressed hostility towards the KSC as well as their support for the KLA. The Trial Panel also failed to place proper weight on the evidence that showed that Mr Shala was not part of the JCE and did not intend the crimes within the common criminal purpose at the KMF.²⁵ The Trial Panel erred in law and fact when refusing to hear the evidence of potential Defence witness W02540 and then making adverse findings on issues to which the witness could have testified.²⁶ The Panel's errors invalidate all convictions entered and have resulted in a miscarriage of justice.

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

21. The Trial Panel erred in law and fact when it relied on an insufficient evidentiary basis, drew unwarranted inferences and failed to give sufficient weight to relevant considerations when it concluded that there was a common plan to "arbitrarily detain, interrogate, torture and murder detainees at the KMF who were perceived to collaborate with, be associated with, or sympathize with the Serbian authorities or who were considered not sufficiently supportive of the KLA effort"²⁷, particularly given the existence of other reasonable inferences which were not foreclosed by Prosecution evidence.²⁸ The Trial Panel's errors in finding the existence of an alleged joint criminal enterprise invalidate all convictions entered.

²⁴ Judgment, paras. 185, 231-234, 247-248, 257-259, 266, 271-273, 1037-1039.

²⁵ Judgment, paras. 222, 231, 244, 247, 253, 266, 271, 281-282, 874-897, 910-914, 950-956, 1020-1039.

²⁶ F00813, Decision on the Defence request for leave to reopen its case, 19 March 2024 (confidential); F00830, Decision on the Defence request for leave to appeal and/or reconsideration of the "Decision on the Defence request for leave to reopen its case", 11 April 2024; Judgment, paras. 98-119, 395-401.

²⁷ Judgment, paras. 834, 1004-1005, 1010-1011, 1019-1024, 1031-1039.

²⁸ Judgment, paras. 834, 1010-1011, 1016-1019, 1021-1024.

Ground 12: Errors Related to the Conviction for Arbitrary Detention

22. The Trial Panel erred in law and fact in the manner in which it set out and applied the law and convicted Mr Shala of Count 1 of the Indictment. The Panel's errors invalidate the conviction on Count 1 and caused a miscarriage of justice.²⁹
23. The Trial Panel erred in law when requiring: (i) as an objective element of the crime of arbitrary detention (as in its view was applied in Kosovo in 1999) that detainees be brought promptly before a judge or other competent authority and be given an opportunity to challenge the lawfulness of their detention;³⁰ (ii) in the high standard it applied as to the characteristics that an authority in charge of issues related to detention was required to constitute a "competent authority", ignoring the time when the alleged offences took place and the relevant context of a non-international armed conflict;³¹ and (iii) by holding that "[w]hen assessing the compliance with basic procedural safeguards, it is irrelevant whether [...] the perpetrator is personally responsible for the failure to have the detainee's procedural rights respected".³² As to the latter, the Trial Panel misconstrued the authorities it applied concerning the offence of unlawful confinement of civilians in the context of an *international* armed conflict and the conduct of persons having "the authority to release civilian detainees".³³
24. The Trial Panel erred in law and fact when finding that: (i) persons detained "were not held at the KMF pursuant to any criminal charges and no security

²⁹ Judgment, para. 1037.

³⁰ Judgment, paras. 938, 942-943, 948, 1037.

³¹ Judgment, paras. 942-943, 948-949.

³² Judgment, para. 940.

³³ Judgment, para. 940, *referring to Delalić Appeal Judgment*, para. 379.

concerns made it absolutely necessary for any of them to be detained”;³⁴ (ii) Mr Shala was aware and/or sufficiently informed of the fact that detainees were arbitrarily detained at the KMF and had the requisite *mens rea* for the crime of arbitrary detention;³⁵ and (iii) Mr Shala made a significant contribution to upholding the detention regime established by others by physically mistreating the victims.³⁶

25. The Trial Panel erred in fact when concluding that no person at the KMF exercised the functions of a competent authority.³⁷

Ground 13: Errors Related to Conviction of Murder

26. The Trial Panel erred in law and fact when finding that Mr Shala was criminally liable for the murder of a victim whom, according to the Trial Panel, was “intentionally killed” by two others, namely the KLA member who had shot him and the KLA member who denied his transfer to the hospital.³⁸ The Trial Panel made an error of law when it found it “irrelevant whether Mr Shala had any position of responsibility, authority or control, or whether he was under a duty to act in any specific manner towards the detainees at the KMF”.³⁹
27. The Trial Panel erred in law and fact when finding that Mr Shala had the requisite *mens rea* for killing the victim and failing to assess and provide a reasoned opinion as to the specific nature of the alleged intent of Mr Shala to kill the victim.⁴⁰

³⁴ Judgment, para. 947.

³⁵ Judgment, paras. 951-956, 1004, 1007, 1011, 1014, 1025.

³⁶ Judgment, paras. 903-914, 1025, 1028.

³⁷ Judgment, paras. 948-949.

³⁸ Judgment, paras. 988-991, 1015, 1018, 1031-1036, 1039-1040.

³⁹ Judgment, paras. 1027, 1031-1036.

⁴⁰ Judgment, paras. 990-991, 1016-1028, 1031-1036, 1039-1040.

28. The Trial Panel abused its discretion when relying on the evidence of expert witness Dolejsi and erred in law by failing to consider and/or provide a reasoned opinion as to the dismissal of the Defence objections to the reliability of his evidence.⁴¹
29. The Panel's errors invalidate the conviction on Count 4 and have resulted in a miscarriage of justice.

Ground 14: Errors in Sentencing

30. Mr Shala is appealing his sentence as it is manifestly unreasonable and excessive. The Trial Panel failed altogether to consider in sentencing the purposes of rehabilitation and reintegration to society.⁴²
31. The Trial Panel failed to consider sufficiently the applicable domestic sentencing range and apply the most lenient one.⁴³
32. The Trial Panel erred in law by failing to ensure equality in sentencing and attach appropriate weight to sentences imposed in comparable and related cases concerning individuals whom on its own findings had greater responsibility for the indicted crimes as well as to provide a reasoned opinion as to why it chose to significantly depart from those sentences.⁴⁴
33. The Trial Panel erred in law when imposing a sentence for the crimes of arbitrary detention and torture of eighteen victims and not nine as charged in the Indictment.⁴⁵

⁴¹ Judgment, paras. 817-818, 820-821, 823-826 1039-1040.

⁴² Judgment, paras. 1061-1065, 1071.

⁴³ Judgment, paras. 1066-1070, 1083.

⁴⁴ Judgment, paras. 1004, 1070.

⁴⁵ Impugned Judgment, paras. 1037-1038, 1087-1088, 1091-1092, 1121.

34. The Trial Panel failed to consider in mitigation: the infringement of Mr Shala's rights stemming from the violation of his right not to incriminate himself and his right to legal assistance;⁴⁶ the fact that Mr Shala had no senior position within the hierarchy of the KLA forces at the KMF; the passage of time since the Indictment events; that he is the sole guardian of his children; and Mr Shala's compliance with court orders and absence of obstruction to the procedures conducted against him by the Specialist Prosecutor.⁴⁷

Relief Sought

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

Word count: 3188

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel

⁴⁶ Judgment, para. 1119.

⁴⁷ Judgment, para. 1072.

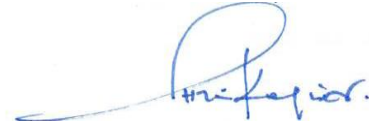


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Monday, 30 September 2024

The Hague, the Netherlands



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Explanatory Note

Following the reception of the unrevised translation of the Revised Notice of Appeal, Mr Shala has requested the Defence to correct the wording “cooperation with” in paragraph 34 to avoid potential misinterpretation of his relationship with the SPO and any unintended public inference. The Defence has replaced the wording with “compliance with court orders and absence of obstruction to the procedures conducted against him by”.