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| **Case No.:** | **KSC-SC-2025-06** |
| | **Specialist Prosecutor v. Pjetër Shala** |
| **Before:** | **Supreme Court Panel** |
| | Judge Ekaterina Trendafilova |
| | Judge Christine van den Wyngaert |
| | Judge Daniel Fransen |
| **Registrar:** | Dr Fidelma Donlon |
| **Date:** | 13 October 2025 |
| **Filing Party:** | Specialist Defence Counsel |
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**THE SPECIALIST PROSECUTOR**

**v.**

**PJETËR SHALA**

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# Public Redacted Version of Defence Request for Protection of Legality with confidential Annex 1

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# I. INTRODUCTION

1. Pursuant to Article 48(6) of the Law and Rule 193 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), the Defence for Mr Pjetër Shala files this Request for Protection of Legality against the Appeal Judgment issued by a Panel of the Appeal Chamber upholding Shala's convictions of the war crimes of arbitrary detention (Count 1), torture (Count 3), and murder (Count 4).[1]

# II. ADMISSIBILITY

2. On 16 July 2024, Trial Panel I found Shala guilty of the war crimes of arbitrary detention, torture and murder, and sentenced him to 18 years of imprisonment, with credit for time served.[2]

3. On 14 July 2025, the Appeals Panel affirmed Shala's conviction for the war crimes of arbitrary detention, torture and murder, thoroughly reviewed the Trial Judgment finding several errors in the Trial Panel's reasoning, and reduced his sentence to 13 years' imprisonment, with credit for time served.[3] Shala's conviction and sentence have become final.

4. The Request is admissible as it is filed within three months of the date of delivery of the Appeal Judgement. All grounds raised have been presented consistently at trial and on appeal and the Defence has exhausted all available remedies before submitting the present Request.

# III. MERITS

## GROUND 1: PASSAGE OF TIME

[1] Trial Judgment, paras. 1122-1125.
[2] Trial Judgment, paras. 1124, 1125.
[3] Appeal Judgment, para. 938.

5. The trial of Shala started 24 years after the events described in the charges against him. The passage of such an extraordinary period of delay strikes at the very core of the right to a fair and expeditious determination of criminal responsibility. It is a settled principle of criminal justice that allegations of serious wrongdoing must be adjudicated while the evidence remains sufficiently fresh to permit reliable evaluation. The sheer span of time elapsed in the present case renders the reconstruction of factual circumstances exceptionally difficult, if not impossible, thereby undermining the reliability and integrity of the adjudicative process itself.

6. The prejudice occasioned by this delay is both profound and self-evident. Witnesses who might once have provided exculpatory accounts have long since died or cannot be traced; those who remain alive are subject to the inevitable deterioration of memory over time. The detention rooms, together with their walls and windows, have been demolished, and no one can now state with certainty what events unfolded within those walls or what could once have been seen through those windows.

7. The Defence was unable to identify or question individuals said to have been present, to test their recollection of relevant events, or to obtain documentary or forensic material that might have contradicted the Prosecution's account. Shala, whose own statements have been the subject matter of great controversy is not immune from frailty of memory — a frailty exacerbated by the forced recollection of traumatic wartime events, the precise sequence and context of which no longer admit of reliable reconstruction. To challenge a well-rehearsed narrative and expose its falsity, one must possess a clear recollection and command of precise detail.

8. No judicial direction, evidentiary ruling, or procedural safeguard can fully remedy the prejudice resulting from the erosion of memory, the loss of material evidence, and the passing of key witnesses. The fairness of the proceedings has been irretrievably compromised by the passage of time. The Defence was required to confront allegations resting upon attenuated and untested recollections —

recollections shaped and reshaped by years of reflection, by the gradual accumulation of external information, and by their transmission from father to son, from husband to wife, from friend to friend, and comrade to comrade, before ultimately finding expression in the witness statements served upon the Defence and, for those few still able to testify, before the Trial Panel.[4]

9. Contrary to the Appeals Panel's assessment,[5] the Defence consistently identified specific instances of lost investigative opportunities throughout the proceedings. For example, during the closing statements, the Defence emphasised the destruction of relevant archives and the loss of potential witnesses, including Ruzhdi Saramati—a key figure in Kukës in 1999—whose recollection, owing to the passage of time, has been irretrievably lost.[6]

10. Both the Trial and Appeals Panels reversed the burden of proof and asked Shala to demonstrate that Kryeziu could be considered as a "competent authority" even though the only evidence available to Shala was that tendered by the Prosecution. The lapse of time prevented Shala from identifying anyone alive, able, and willing to testify or any other direct evidence that could be used in support.[7]

11. Neither the Trial nor the Appeals Panel remedied the passage of time and its impact on the fairness of the proceedings. The Trial Panel denied that the passage of time undermined the proceedings.[8] The Appeals Panel misinterpreted guiding authority by requiring Shala to demonstrate "how his ability to defend himself and prepare his case was '*fatally jeopardised*' as a result of the passage of time."[9] While, in the case considered by the Appeals Panel, the investigation was indeed found to have been fatally compromised by the passage of time, the European Court of Human

[4] *See* Ground 5 (paras. 38-46) below.
[5] Appeal Judgment, para. 90.
[6] T. 16 April 2024, p. 4221, 4222.
[7] Trial Judgment, para. 948; Appeal Judgment, para. 647.
[8] Trial Judgment, para. 52.
[9] Appeal Judgement, para. 90, *referring to Nicolaou v. Cyprus*, Judgment, para. 150.

Rights did not intend its description of those circumstances to establish a general test for assessing the fairness of proceedings conducted long after the events in question. Each case must be assessed on its own facts, with careful regard to the specific impact that the lapse of time has had on the ability of the individual accused to mount an effective defence.

12. Thus appropriate caution should have been exercised throughout the proceedings: in the assessment of Prosecution evidence, in what was reasonable to expect from Shala, in applying caution to evidence and not requiring Shala to carry the burden of proof on any point.

13. Accordingly, particular vigilance was required throughout the proceedings to guard against the manifest risk of unfairness occasioned by the passage of twenty-four years. The Trial and Appeals Panels ought to have exercised the highest degree of caution in assessing the Prosecution's evidence, in determining what could reasonably be expected from Shala after such a lapse of time, and in ensuring that the inherent evidentiary deficiencies were not permitted to shift, in substance or effect, the burden of proof onto the Defence. Their failure to do so vitiated the fairness of the proceedings.

## GROUND 2: ADMISSION AND RELIANCE ON SELF-INCRIMINATORY STATEMENTS IN VIOLATION OF THE RIGHT TO LEGAL ASSISTANCE

14. The Trial Panel admitted and relied upon statements made by Shala during interviews conducted in 2005, 2007, 2016, and 2019, despite the fact that he was questioned as a suspect without the benefit of legal assistance either prior to or during questioning.[10] Shala's incriminatory statements were given in interviews with the ICTY Prosecutor in 2005 and 2007, to the Belgian Federal Judicial Police in 2016, and to the Belgian Federal Judicial Police and SPO in 2019. There were no compelling reasons justifying the denial of his right to effective legal assistance. In fact, no such argument was ever even made by the Prosecution. For the purposes of both the ICTY

[10] KSC-BC-2020-04/F00364/COR, paras. 52, 114(b).

and Belgian interviews, Shala was questioned without a lawyer being present and without being afforded an opportunity to consult with a lawyer prior to or during his questioning.[11]

15. At the time of these interviews, Shala who never completed schooling was vulnerable and unable to appreciate the severity of the situation.[12] He was not informed of the significance of the right to legal assistance, that he could have legal assistance free of charge, and the potential consequences of proceeding without legal assistance.[13] In addition, he felt reluctant to rely on the interpreter who did not appear objective to him and preferred to communicate in French himself despite his limited command of the language and the complexity of the issues discussed.[14] All statements obtained in this manner were obtained in breach of Shala's rights to legal assistance protection against self-incrimination.[15] The decision on admission, the availability of such statements for the purposes of deliberations, and the reliance on such statements for the purposes of incriminating judicial findings violated Shala's fundamental right to a fair trial under Article 6 of the ECHR, Article 48(7)–(8) of the Law, and Rule 193(3)(a) of the Rules.

16. The Appeals Panel itself recognised that Shala's right to legal assistance was violated in the 2016 Belgian interview yet nevertheless allowed the resulting statements to remain "available for consideration" by the Trial Panel.[16] The Appeals Panel erred in disregarding the manifest unlawfulness resulting from the circumstances in which those statements were taken and declaring that "there is no

[11] Defence FTB, para. 302; T000-2742-T000-2742-Alb and Eng Transcript–A, pp. 2, 5-7; T001-0105-1-A-TR, pp. 1-2; T001-0105-3-A-TR, pp. 1-2; 074117-074129-ET Revised, p. 3; 066843-066855-ET Revised RED, p. 3; 066888-TR-ET Part 1 Revised, p. 95.
[12] Defence FTB, para. 274; KSC-BC-2020-04/F00358, para. 20.
[13] Defence FTB, para. 306; KSC-BC-2020-04/IA006-F00004, paras. 32, 36, n. 11, 40.
[14] Defence FTB, para. 303; KSC-BC-2020-04/F00358, para. 64.
[15] Defence FTB, paras. 302-310; T. 17 April 2024 pp. 4290-4293; KSC-BC-2020-04/F00281; KSC-BC-2020-04/F00299; KSC-BC-2020-04/F00358; KSC-BC-2020-04/F00369; KSC-BC-2020-04/F00385; KSC-BC-2020-04/IA006-F00004; KSC-BC-2020-04/IA006-F00006; KSC-BC-2020-04/F00515; KSC-BC-2020-04/F00533; KSC-CC-2023-21/F00001.
[16] KSC-BC-2020-04/IA006-F00007, paras. 78, 81, 109.

'poisonous tree'" and that the "issue" related to the statements "had no impact" on the fairness of the proceedings.[17]

17. The fact remains that those statements formed part of the evidentiary record of the case, were available for consideration, and were, in fact, relied upon by the Trial Judges. The absence of explicit reference to them in the reasoning underpinning the incriminating findings does not mean that the statements were without influence on the Panel's assessment or deliberative process. To suggest otherwise would be to disregard the legal and practical consequences of their admission into evidence and the express declaration that they were available for consideration. The Appeals Panel erred in concluding that the doctrine of the *fruit of the poisonous tree* was inapplicable to Shala's circumstances.[18] Those statements ought to have been excluded from the trial record to prevent contamination and to preserve the integrity of the proceedings.[19]

18. The Trial Panel relied decisively on these statements, as well as subsequent statements in 2019 that were tainted by the earlier violation. This contravenes the principle of the exclusionary rule and the doctrine of the fruit of the poisonous tree, as consistently upheld by the ECtHR and by international criminal tribunals.[20] The

[17] Appeal Judgment, para. 115. *See* also Appeal Judgment, para. 110.
[18] Appeal Judgement, para. 114.
[19] The Court of Appeals finding of "no indicia of unreliability or possible damage to the integrity of the proceedings if the 2016 Belgian statement was to be admitted" was an error of law that requires protection of the lawfulness of the proceedings. See Appeal Judgment, para. 115.
[20] *Salduz v. Turkey* [GC], paras. 54-55; *Öcalan v. Turkey* [GC], para. 148; *Lanz v. Austria*, para. 50; *John Murray v. The United Kingdom* [GC], para. 45; *Funke v. France*, para. 44. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, Article 3. *Panovits v. Cyprus*, paras. 85-86; *Yaremenko v. Ukraine (No. 2)*, paras. 66-67; *Gäfgen v. Germany* [GC], para. 168; *K.S. and M.S. v. Germany*, Concurring Opinion of Judge Vehabović; *Dvorski v. Croatia* [GC], para. 111. *See also Dvorski v. Croatia* [GC], Concurring Opinion of Judge Zupančič, paras. 5-6. *Karemera et al.* Decision on Admission into Evidence, paras. 23-32; *Bagosora et al.* Decision on the Prosecutor's Motion for the Admission of Certain Materials Under Rule 89(c), para. 21; *Delalić et al.* Decision on Zdravko Mucić's Motion for the Exclusion of Evidence, paras. 43, 55.

existence of the statements obtained in breach of the right to legal assistance shaped the form of the interview and statements given by Shala in 2019.[21] If the tainted statements which were "available for consideration" were, in fact, not considered they should have been excluded.

19. The admission and subsequent consideration and/or reliance upon unlawfully obtained self-incriminatory statements constituted a blatant violation of Shala's right to a fair trial. The violations were not cured by the Trial Panel's effort to avoid explicit reference to the tainted statements or by the Appeal Judgement. As the ECtHR has emphasised, a conviction based on or influenced by statements taken in the absence of legal assistance is inherently unfair and must be quashed, irrespective of the overall fairness of proceedings.[22]

20. The Trial Panel heavily relied on Shala's statements from the two ICTY interviews and the 2019 Belgian interview to make findings regarding: (i) Shala's membership of the KLA in 1998 and 1999; (ii) the presence of a KLA base at Kukës in May–June 1999; (iii) the use of the Kukës Metal Factory ("KMF"); (iv) the layout of the KMF compound; (v) KLA detention operations at the KMF; (vi) Shala's encounters with TW4-01, [REDACTED], [REDACTED], and W04733 at the KMF; (vii) Shala's presence at the KMF during the Indictment Period; (viii) Shala's degree of autonomy and authority within the KLA at the KMF; (ix) Shala's participation in crimes; and (x) Shala's alleged lack of remorse and empathy for the victims.[23] The statements therefore were decisive for the outcome of the proceedings. They played a prominent

[21] *Panovits v. Cyprus*, paras. 85-86.
[22] *Salduz v. Turkey* [GC], paras. 54-55; *Öcalan v. Turkey* [GC], para. 148; *Lanz v. Austria*, para. 50; *John Murray v. The United Kingdom* [GC], para. 45; *Funke v. France*, para. 44.
[23] Trial 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, 1010-1011, 1014, 1104, 1107, 1116-1118.

role in the Judgment and formed an "integral" part of the probative evidence upon which the conviction was based.[24]

21. Relying on the 2005 and 2019 statements, the Trial Panel found that "Shala himself acknowledged that he was present at the KMF during the timeframe of the charges".[25] Relying on his statements that he saw TW4-01, the Murder Victim, [REDACTED] and W04733 at the KMF sometime in 1999, the Panel found that "he was at the KMF on two separate occasions, between approximately [REDACTED] May 1999 and 5 June 1999, when the four detainees were held there" and that he participated in crimes against these persons.[26] Shala's statements were also untested and unsworn. Not only did the Trial Panel rely on them, but also used them to assess his credibility drawing adverse inferences from the exercise of his right not to incriminate himself,[27] as well as to "discredit" the evidence of Prosecution witnesses which unlawfully shifted the burden of proof.[28] The use of the statements by the Trial Panel as evidenced by its language *reversed* the burden of proof; instead of expecting the Prosecution evidence to demonstrate beyond reasonable doubt Shala's guilt, the Trial Panel expected the Defence to "cast doubt" on the Prosecution's evidence.[29]

22. The Trial Panel found that:

> 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

[24] *Gäfgen v. Germany* [GC], para. 164; *Bykov v. Russia* [GC], para. 89; *Jalloh v. Germany* [GC], para. 96; *Leka v Albania*, paras. 107-118; *Ayetullah Ay v. Turkey*, paras. 123-130. For instance, Trial Judgment, paras. 850-874, 896-897, 910-914.
[25] Trial Judgment, para. 853.
[26] Trial Judgment, paras. 865-870.
[27] Trial Judgment, para. 869 ([t]he 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). *See also* Trial Judgment, para. 913.
[28] See, e.g. Trial Judgment, paras. 873 and 913.
[29] The Appeals Panel erred in law in failing to acknowledge that the trial was rendered unfair because of the inappropriate reversal of the burden of proof. Appeal Judgment, paras. 159, 160. Trial Judgment, paras. 405, 412-413, 439, 472, 493, 496, 511, 553, 562, 565, 572, 576, 581, 583, 610, 638, 730, 747, 853-873, 910-914.

> 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.[30]

23. It further held that "[h]is 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".[31]

24. The Trial Panel erred by shifting the burden of proof to the Defence to disprove the finding regarding his presence at the KMF during the timeframe of the charges and his participation in mistreating detainees. The language the Trial Panel used in its assessment of the statements, requiring the statements to "discredit" and to "cast doubt on" the Prosecution's evidence, demonstrate the reversal of the burden of proof.[32]

25. Accordingly, the admission and reliance upon Shala's statements for the purposes of his convictions amount to a substantial violation of procedure and of his right to legal assistance, falling squarely within the grounds for a request for protection of legality. The Appeals Panel acknowledged the detrimental effect of the uncertainty as to the whether the impugned Belgian statements would be part of the trial record at trial.[33] Admission was only ruled at the same time and in the same document as the trial judgment. The Appeals Panel noted that the decision made by the Defence not to comment on those statements was deliberate.[34] What the Appeals Panel failed to acknowledge is that such deliberate choice was compelled by the privilege non-self-incrimination. Any comment could be considered incriminatory. Why incriminate oneself by commenting on incriminating statements that could or could not be admitted? The Appeals Panel's assumption that any potential damage of

[30] Trial Judgment, para. 873 (emphasis added).
[31] Trial Judgment, para. 913 (emphasis added).
[32] *Zigiranyirazo* Appeal Judgement, para. 19.
[33] Appeal Judgment, para. 146.
[34] Appeal Judgment, para. 149.

incrimination could be mitigated by the provision of legal advice was an illusion.[35] The statements were clearly incriminating. Commenting upon them, would provide corroboration. Especially because of the availability of legal advice, such course of action was ruled out.

26. The only appropriate remedy is the annulment of the convictions and the ordering of a retrial at which all self-incriminatory statements obtained in violation of Shala's rights are excluded.

GROUND 3: BREACH OF THE PRINCIPLE OF LEGALITY

27. The convictions on the basis of liability through joint criminal enterprise ("JCE") and for the war crime of arbitrary detention in a non-international armed conflict ("NIAC") violated the principle of legality. Neither JCE liability nor arbitrary detention in a NIAC formed part of Kosovo law or customary international law at the time of the alleged crimes. The law as applied by the Trial and Appeals Panels was not foreseeable to Shala and the convictions entered violated the principle of legality guaranteed by Article 7 of the ECHR, Article 33 of the Constitution of Kosovo, and Article 15 of the ICCPR.

28. Article 7(1) of the ECHR requires that a crime must be clearly defined in law, and prohibits extensive judicial construction of criminal liability to the detriment of an accused. The Panel failed to respect this principle by interpreting Article 16(1)(a) of the KSC Law to include JCE liability, despite the absence of any express reference to such liability. At the material time, JCE had not been codified domestically, nor sufficiently crystallised in customary international law; its declaration as such in the Tadić Appeal Judgment post-dated the alleged JCE in this case.[36] Given Shala's limited

[35] Appeal Judgment, para. 149.
[36] ICTY, *The Prosecutor v. Duško Tadić,* Case No. IT-94-1-A, Appeal Judgment, 15 July 1999.

education and lack of senior role, such liability was neither foreseeable nor accessible to him. The convictions entered on this basis contravene the principle of legality.

29. Similarly, the conviction for arbitrary detention in a NIAC is unlawful. Article 14(1)(c) of the KSC Law sets out an exhaustive list of war crimes in NIAC, which does not include arbitrary detention. At the relevant time in 1999, there was no settled state practice or *opinio juris* establishing arbitrary detention in NIAC as a crime under international law. The concept itself remained uncertain and debated for many years thereafter. The uncertainty dominated the discussion of its elements and requirements that remain unclear to this date. As such, the law as declared and applied by the Trial and Appeals Panel in this respect failed to meet the requirements of accessibility and foreseeability under Article 7(1) of the ECHR. For instance, there was no clear definition of the procedural safeguards the absence of which would render detention arbitrary. These were set out for the first time by the KSC panel and were certainly not part of the law that applied in Kosovo in 1999. There was no requirement under the law in 1999 providing that entities engaging in a civil war as well as resistance groups fighting against state armed forces would need to provide procedures for testing the lawfulness of review upon arrest by an authority other than the authority that ordered detention and, additionally, by an authority that has the power to order release.[37] There was no provision rendering otherwise lawful detention on valid security concerns unlawful because of ill-treatment.[38] The expansive interpretation of Article 14(1)(c) amounted to retroactive criminalisation and violated the principle of legality.

30. These errors strike at the core of the fairness of the proceedings and constitute substantial violations of law within the meaning of Article 48(7)–(8) of the Law and

[37] Appeal Judgment, para. 644 ("by logical implication, the authority must be empowered to order release when detention is determined to be unlawful or unwarranted").
[38] *See* para. 64 below.

Rule 193 of the Rules. The convictions entered on the basis of JCE liability and the crime of arbitrary detention in NIAC must be annulled.

## GROUND 4: INSUFFICIENT NOTICE OF PROSECUTION'S CASE RESULTED IN UNSAFE CONVICTIONS

31. The Panel erred in law by convicting Mr Shala on the basis of a defective Indictment that failed to provide sufficient particulars regarding both the members of the alleged JCE and the victims of the alleged offences. This error as to the lack of specificity regarding the identity of the victims was acknowledged by the Appeals Panel.[39] This lack of specificity deprived the Defence of effective notice and a genuine opportunity to investigate and respond to the charges, in violation of Article 6 ECHR and Article 30 of the Kosovo Constitution. Despite the limited scope of the case and the Prosecution's knowledge of relevant names, the Indictment merely referred to unidentified "KLA soldiers, police and guards" and left victims unnamed or vaguely described, which fell short of the minimum pleading requirements recognised in international jurisprudence. The Trial Panel instead of remedying the inadequate notice impermissibly expanded the Prosecution's case by considering as JCE members Kryeziu and Limaj.[40]

32. These defects were never cured in the course of the proceedings. The omission of key JCE members such as Fatmir Limaj and Osman Kryeziu from the Indictment and pre-trial filings prevented timely investigations. Similarly, the failure to identify victims when their identities were known or knowable deprived the Accused of the clarity required to mount an effective defence.

33. The Panel exceeded the factual scope of the confirmed charges in violation of the principle that an accused may only be convicted on the basis of the indictment.

[39] Appeal Judgment, para. 192, 230.
[40] Appeal Judgment, para. 216 (noting that "the SPO never alleged [that these two individuals] were alleged members of the JCE").

Although the Indictment charged Shala with arbitrary detention, cruel treatment and torture of nine individuals, the Panel entered convictions for arbitrary detention and torture in respect of eighteen individuals.

34. Given the scale of the case and the mode of liability alleged—physical perpetration—each victim should have been specifically identified in the Indictment. The additional victims relied upon in the Judgment were factually distinct and fell outside the pleaded charges, exposing Shala to new bases of conviction without prior notice. The Panel should have either required an amendment to the Indictment to include such victims or excluded the related evidence from its consideration.

35. The Appeals Panel erred in law in finding that the conviction of crimes in respect of nine additional victims did not amount to a conviction of a new charge or a radical transformation of the Prosecution case against Shala.[41] The entering of a conviction with respect to crimes committed against victims not identified as victims in the Indictment was an impermissible transformation of the Prosecution's case. No notice was given of the fact that the Panel considered Shala to be charged for war committed against eighteen persons. The Defence was kept totally in the dark in this respect. Yes, there was notice of that the Prosecution's case encompassed alleged crimes committed against additional victims but there was no notice of the impermissible amendment of the Indictment which only became known with the delivery of the Trial Judgment.[42] This breached Shala's right to a fair trial. An accused has the right to know from the outset the nature of the crimes he allegedly committed and against whom those crimes are said to have been committed. The addition exposed Shala to an additional basis for conviction. Whether there has been a "radical"

[41] Appeal Judgment para. 195.
[42] The fact that the Defence acknowledged that the Prosecution gave evidence concerning eighteen individuals does not mean that the Defence was aware that it was answering charges with regard to those eighteen individuals. Had the Defence been put on notice of that part of the Prosecution case prior to the conclusion of the trial it would have presented a different case, a case that specifically responds to the additional nine victims which were not a direct focus of the Defence investigations.

transformation of the Prosecution's case is irrelevant.[43] An accused can only be convicted in respect of crimes that are clearly defined in the Indictment.

36. In addition, this case is atypical for an international criminal law case given the limited number of victims. Greater specificity should have characterized the Indictment, and greater precision in entering convictions should have been displayed by the Trial Panel. As the Appeals Panel itself acknowledged "upon conviction, an accused will be potentially liable for reparations vis-à-vis any participating victims in respect of each individual criminal incident".[44] It is unfair to convict Shala of offences allegedly committed against the nine additional victims, as these were not set out in the Indictment and therefore constitute offences with which he was never charged.

37. The resulting prejudice was structural and irreparable: Shala was denied adequate notice of the case, the time and facilities necessary for his defence, and the ability to fully understand and challenge the Prosecution's allegations. This constitutes a substantial violation of procedure under Article 48(7) of the Law and Rule 193 of the Rules, warranting the annulment of the convictions or, at a minimum, recognition of the violation with appropriate relief.

## GROUND 5: UNFAIRNESS RESULTING FROM CONTAMINATION OF THE EVIDENCE OF PROSECUTION WITNESSES

38. The admission of the evidence of W04733, W04733's family members, W01448, TW4-01, TW4-10, and TW4-04 required caution due to the strong indications that these witnesses' evidence was contaminated, as they had exchanged views with regard to issues in the case.[45]

39. First, the Trial Panel erred by finding that W04733's family members' evidence "show that the witnesses did not align or memorize their accounts prior to their

[43] *See* Appeal Judgment, para. 195.
[44] Appeal Judgment, para. 482.
[45] Trial Judgment, paras. 147-154, 174-175, 187-188, 374, 519, 522.

testimonies before the Panel".[46] It failed to acknowledge the similarities in their testimonies which suggested jointly rehearsing their forthcoming testimony (for instance all family members strangely referred to a certain "Imer Imeri" – that was never mentioned by W04733.[47] The Trial Panel also unreasonably dismissed the possibility of TW4-08 being influenced by being present at an interview given by W04733.[48]

40. While the evident contamination of the evidence of W04733's family members was not an issue for the Panel, the same lenient standard was not applied to the evidence of Defence witnesses, Bedri Dervishaj and Kocinaj, whose evidence was approached with caution.[49] The Trial Panel found that "Kocinaj also has familial ties with Mr Dervishaj and admitted having met him before his upcoming testimony".[50] The Trial Panel erred by applying double standards and unreasonably selecting the evidence to treat with caution.

41. Second, there are strong indications that W04733, W01448, TW4-01, TW4-10, and [REDACTED] exchanged views with regard to disputed issues in the case. W01448 admitted that he was in contact with W04733 after their release from the KMF.[51] In 2011, W01448 stated that he had met TW4-05, together with W01448's children and TW4-05's children.[52] TW4-09, [REDACTED] , testified that he contacted W01448 and had a conversation with him about the events in Kukës.[53]

[46] Trial Judgment, para. 147.
[47] T. 27 March 2023 pp. 670-671; T. 28 March 2023 p. 824; T. 29 March 2023 pp. 908-909; T. 30 March 2023 p. 992. *See* Defence FTB, 254.
[48] Trial Judgment, para. 152.
[49] Trial Judgment, paras. 154, 232-234, 268.
[50] Trial Judgment, para. 266.
[51] SITF00013833-00013847 RED4, p. 6.
[52] SITF00016140-00016220 RED3, p. 13.
[53] T. 30 March 2023 p. 982.

42. TW4-02 stated that he met with [REDACTED].[54] TW4-02 also stated that he met [REDACTED] and they discussed [REDACTED].[55] [REDACTED] confirmed that, after the war, he [REDACTED].[56] It is more than likely that the two exchanged information on the events in Kukës.

43. TW4-04 also confirmed that he had met with [REDACTED] and discussed with him the events at the KMF.[57] Despite the evidence of TW4-04, [REDACTED] denied even remembering his name which also raises doubts about the credibility of his account and his motives in denying knowing TW4-04.[58]

44. Until 2011, W04733 denied having had contact with anyone other than W01448, including [REDACTED].[59] When [REDACTED], he confessed to having seen [REDACTED].[60] [REDACTED] in 2011.[61] In addition, W04733 evidently had regular conversations with his family members, TW4-06, TW4-07, TW4-08 and TW4-09 about his detention.[62]

45. Both Panels failed to consider that TW4-10 discussed disputed issues in this case with [REDACTED].[63] Moreover, they failed to consider that [REDACTED] and that they admittedly discussed disputed issues, [REDACTED].[64]

46. In these circumstances, the failure to apply caution to the evidence of witnesses who discussed disputed issues in this case as well as the application of different standards when it came to the evaluation of Defence evidence breached Shala's right

[54] 060664-TR-ET Part 5 RED4, p. 2.
[55] 060664-TR-ET Part 5 RED4, p. 6.
[56] 064716-TR-ET Part 5 RED4, p. 32.
[57] SITF00013262-00013315 RED, p. 15; SITF00015825-00015925 RED, p. 28; SPOE00014669-00014751 RED, pp. 28, 29; 064716-TR-ET Part 5 RED4, pp. 13-14.
[58] [REDACTED].
[59] 106978-107020, p. 20.
[60] 106978-107020, pp. 20-21. His explanation that he did not communicate with him is not credible.
[61] [REDACTED].
[62] 106419-106419, p. 1.
[63] T. 1 May 2023 p. 1077; [REDACTED].
[64] T. 2 May 2023 pp. 1170-1171.

to a fair trial.[65] No reasonable trier of fact would have approached contaminated Prosecution evidence in this manner. The contamination of the evidence of Prosecution witnesses in the absence of caution applied in the assessment of their evidence violated the fairness of the proceedings.

GROUND 6: UNFAIR RELIANCE ON UNTESTED EVIDENCE

47. Untested evidence should never be the sole or decisive basis of a conviction.[66] This fundamental principle was upheld by the Appeals Panel. However, in practice the Appeals Panel failed to consider that when the untested evidence is the only source of evidence presented live at trial that does not change the fact that in essence what is expressed through the mouth of others remains untested evidence.[67] Thus the finding regarding Shala's participation in W04733's transfer to Kukës, which was essential both for the conviction of arbitrary detention as well as for the finding regarding Shala's participation in a JCE was unlawfully made as it was solely based on the untested evidence of deceased witness W04733 as that was conveyed to his family members.

48. Reliance on a generalized "operational pattern" to corroborate untested evidence for the purposes of convictions of arbitrary detention,[68] as well as the convictions with regard to [REDACTED][69] equally breached Shala's right to have the witnesses against him examined.[70]

49. The Supreme Court Chamber must find that impermissible reliance on untested evidence rendered the trial unfair and must remit the case for retrial.

[65] Trial Judgment, paras. 154, 174, 187, 232-234, 268.
[66] Rule 140(4)(a) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers.
[67] Appeal Judgment, para. 493.
[68] Trial Judgment, paras. 581, 583, 590.
[69] Trial Judgment, para. 583.
[70] Appeal Judgment, paras. 572, 573.

## GROUND 7: ERRORS RELATED TO THE CONVICTION FOR ARBITRARY DETENTION

50. The errors committed by the Trial and Appeals Panels in construing, defining, applying, and ultimately convicting Shala of the offence of arbitrary detention in a non-international armed conflict warrant intervention by the Supreme Court.[71]

51. As set out above,[72] the conviction of the crime of arbitrary of detention in a non-international armed conflict violates the principle of legality and Article 7 of the ECHR as no such crime existed in Kosovo law at the relevant time. No such crime existed in the law that applied in Kosovo at the time and no such crime existed in customary international law.

52. In addition, the Panels erred by: (i) treating the absence of procedural safeguards, namely, prompt production before a judge or other competent authority and the opportunity to challenge the lawfulness of detention, as an element of the *actus reus* of the offence; (ii) adopting an unduly stringent standard as to what constitutes a "competent authority";[73] (iii) holding that it was irrelevant whether the perpetrator was personally responsible for the failure to respect procedural safeguards; and (iv) requiring that for detention due to security concerns to be lawful it must be "absolutely" necessary.[74]

53. This has been the position of the Defence throughout these proceedings. The Appeals Panel erred in considering that the Defence never challenged the *actus reus* of the contested offence of arbitrary detention.[75] In its Appeal Brief, the Defence explicitly stated that "[t]he Panel erred in law when requiring: (i) as an objective element of the war crime of arbitrary detention in a NIAC that detainees be brought promptly before

[71] Appeal Judgment, para. 618-627.
[72] *See* Ground 3 (paras. 27, 29, 30) above.
[73] Trial Judgment, paras. 938-944. Appeal Judgment, paras. 625, 627, 629-632, 634, 635, 725.
[74] Appeal Judgment, para. 725.
[75] Appeal Judgment, para. 622.

a judge or other competent authority and be given an opportunity to challenge the lawfulness of their detention; (ii) a high standard as to the characteristics [of a] competent authority" (emphasis added).[76]

54. As the Defence has consistently been arguing, the propositions of law of the Trial and Appeals Panel were based on institutional guidelines and authorities governing the crime of arbitrary detention in an international armed conflict (including Article 75 AP I and the extracts from the ICTY Appeals Chamber judgment in *Delalić et al.*[77]) and international human rights law,[78] that were inapposite to NIAC and could not be imported to the law that applies to NIAC. The law as applied ignores the valid ICRC acknowledgment that, in NIAC, the notion of a "competent authority" is context-specific and capacity-dependent.[79] In any event, the unclarity as to the law that was purportedly imported to customary international law for the first time by KSC Panels violates the principle of legality.[80] No reasonable tribunal could have found that, in 1999, the offence of arbitrary detention in a non-international armed conflict was prescribed by law, formed part of the applicable law in Kosovo, and was defined with sufficient clarity and foreseeability to satisfy the requirements of Article 7 of the European Convention on Human Rights.

55. In the 1999 conflict involving the Kosovo Liberation Army, soldiers operated from makeshift facilities, their purported hierarchy had limited structure and scarce resources. The KLA possessed no state structure and had no independent judiciary. It is therefore inconceivable how it could have ensured a review of the lawfulness of detention by an independent and impartial body. The standard applied is both legally erroneous and manifestly unrealistic.

[76] Appeals Brief, para. 207.
[77] Trial Judgment, para. 937, 942; Appeal Judgment, paras. 629, 634.
[78] *See* Trial Judgment, para. 942, *referring to* the ECtHR judgment in *Lawless v. Ireland*.
[79] Appeal Brief, para. 210.
[80] See Ground 3 (paras. 24, 26, 27) above.

56. The Appeals Panel correctly acknowledged "that international human rights law and practice may be relevant to some but not all aspects of a prohibition under customary international humanitarian law, the violation of which entails individual criminal liability."[81] The Appeals Panel also correctly accepted that "not all aspects of a prohibition under customary international humanitarian law […] entail[ ] individual criminal liability."[82] The Appeals Panel made reference in this respect to the extensive analysis of the ICTY Trial Chamber in the *Kunarac et al. Trial* Judgment when considering whether the *jus cogens* prohibition of torture could be considered the basis of a crime under customary international law prescribing torture and construing the elements of such crime.[83]

57. A straightforward comparison between the *Kunarac* analysis and that of the Trial Panel in Shala reveals the superficial character of the Panel's assessment and its failure to undertake a coherent examination of whether, in 1999, customary international law proscribed arbitrary detention in a non-international armed conflict through an offence whose elements were clearly defined and thus foreseeable to KLA soldiers operating along the Albanian border.

58. The Appeals Panel overlooked the manifest flaws in the Trial Panel's reasoning and held that "Shala does not point to any structural differences between international human rights and humanitarian law which would preclude reliance on the referred sources for the purposes of delineating the contours of the second and third basic procedural safeguards." In doing so, the Appeals Panel effectively reversed the applicable burden of proof. It was not for Shala to demonstrate that no such offence existed under customary international law at the material time, or that the provisions construed as its elements derived from international human rights law and/or international humanitarian law applicable to international armed conflicts and, in any

[81] Appeal Judgment, para. 624.
[82] Appeal Judgment, para. 624.
[83] Appeal Judgment, para. 624, fn 1416, referring to *Kunarac et al.* Trial Judgment, paras. 470-497.

event, could not be directly transposed into the framework of international humanitarian law governing non-international armed conflicts. The burden to demonstrate that such offence was prescribed by customary international law and its elements were clearly defined rested upon the Prosecution, which failed to discharge it.

59. In addition, the Appeals Panel misinterpreted the core of the Defence submissions on this point. The Defence extensively argued that transposing obligations designed for States under international human rights law and international humanitarian law for international armed conflicts in NIACs was so manifestly irrational that no reasonable tribunal could ever have come to it. This is because the establishment of a system for the review of the lawfulness of detention presupposes the institutional capacities of a functioning state structure—capacities which the KLA manifestly lacked, particularly while operating on Albanian territory. The procedural guarantees necessary to render a review of the lawfulness of detention compliant with either international humanitarian law applicable to an international armed conflict or with international human rights law, as a matter of fact, require an independent review mechanism. Such a mechanism can only exist where the party to the conflict possesses at least certain attributes of governmental authority. This was the essence of the Defence submissions on this matter and the Appeals Panel erred in considering that "Shala did not point to any structural differences between international human rights and humanitarian law which would preclude reliance on the referred sources."[84]

60. Both the second and third safeguards required independent review. However, the independent review requires independence from the authority that ordered detention and cannot be transposed from either international human rights law (which, in this context, imposes obligations upon States) or international

[84] Appeal Judgment, para. 624.

humanitarian law applicable in an international armed conflict (which, similarly in this context, imposes obligations upon States). The KLA in 1999 was an army, a loosely organised insurgent movement engaging in guerrilla resistance that by 1999 had developed into a somewhat structured armed force. It never possessed the capacities or characteristics of a conventional army.

61. According to the Adjudicated Facts that, following the Prosecution's request, became part of the trial record in this case "[f]rom at least the spring of 1998 onwards the KLA had a sufficiently formal structure including a General Staff and a clear chain of command".[85] Other Adjudicated Facts describe the KLA structure. Neither the Prosecution, nor the Trial and Appeals Panels explaine what would constitute a "competent authority" in the context of the KLA structure for the purposes of applying the contested *actus reus* of the crime of arbitrary detention in a NIAC. How could independent review be ensured in a structure in which everyone was subject to the same chain of command? Any order would have been made within the context of the KLA hierarchy and be attributed to those in command. Who could offer *independent* review (i.e. review by a person, organ or entity independent from the KLA hierarchy or otherwise not affiliated or subject to the entity that ordered detention)?

62. In addition, the Prosecution never explained or provided evidence as to why the person described by the witnesses as either "a judge" or "prosecutor" was not a "competent authority" for the purposes of the objective elements of this crime. Requiring the Defence to demonstrate that persons appearing to exercise some authority could be considered "a competent authority" impermissibly reversed the applicable burden of proof. The evidence on the trial record suggests that some detainees were questioned by "a prosecutor", some "by a judge" some say, "by a

[85] Adjudicated Facts, adjudicated fact no. 36.

prosecutor or judge"[86] and that they were arrested pursuant to security concerns. It was the Prosecution's task to show to the applicable standard that the questioning was not done by persons who were not competent or did not form part of a "competent authority", not the other way around.

63. According to the Trial and Appeals Panel, the crime of arbitrary detention can be committed by the lack of review of the lawfulness of detention by a competent authority. The Appeals Panel correctly found an error of law in that the Trial Panel failed to properly assess whether "security concerns made it absolutely necessary for the 18 individuals to be detained."[87] The lack of proper examination as to the existence of security concerns directly relates and demonstrates the lack of a proper assessment of the lack of a competent authority. This is despite the evidence on the record that a person with some authority appears to have been present during the interrogations. Had the issue of "security concerns" and "lack of competent authority" been assessed at trial, the fact that the Prosecution has entirely failed to prove its case on these points to the requisite standard would have become evident.

64. In addition, the ill-treatment of detainees during interrogations constitutes a violation of the right not to be tortured and would form the basis for satisfying the objective element of the war crime of torture. It cannot also be treated as an objective element of the crime of arbitrary detention. In fact, in most legal systems, ill-treatment in detention would not automatically entail a right to be released. In fact, no customary international law or any other international or other authority was provided in support of such proposition. The state of the law at present clearly fails to demonstrate that ill-treatment in detention automatically entails the right to be released, even if that would be a desirable proposition. The state of the law in 1999

[86] T. 3 May 2023 p. 1261; SITF00013262-00013315 RED, p. 13; SITF00015825-00015925 RED, p. 30; SPOE00014669-00014751 RED, p. 23; 064716-TR-ET Part 1 RED3, p. 18; 064716-TR-ET Part 5 RED4, pp. 9-10.
[87] Appeal Judgment, para. 730.

clearly did not provide that ill-treatment in detention automatically entails the right to be released. In criminal proceedings, legal certainty is an essential characteristic of the law which is required so that everyone can foresee whether his or her conduct constitutes a criminal offence. It was the Prosecution's task to show that the applicable Kosovo law in 1999 provided that ill-treatment of detainees would render detention unlawful and whoever is aware of the ill-treatment and is somewhat involved in the act of detention would be committing the crime of arbitrary detention.

65. The Trial Panel inferred Shala's *mens rea* from occasional presence and alleged participation, though key presence/participation findings rested solely or decisively on untested statements; and it expanded JCE liability in a manner approaching guilt by association. Responsibility for arbitrary detention "is more properly allocated to those responsible for detention in a more direct or complete sense"; the Trial Panel neither found that Mr Shala had power to arrest, detain, or release, nor explained how his limited, episodic conduct satisfied the mental element it articulated. The Appeals Panel erred by considering inapplicable the ICTY Appeals Chamber holding in the *Delalic et al.* Appeal that "to establish that an individual has committed the offence […] something more must be proved than mere knowing 'participation' in a general system or operation pursuant to which civilians are confined".[88] This was because the Appeals Panel considered that the relevant pronouncements concerned primary liability which was to be distinguished from less direct forms of commission such as JCE.[89] However, JCE liability is a form of primary liability, at least in international criminal law, which distinguishes it from the liability of accessories.[90] The point of the ICTY Appeals Chamber was that for primary liability to be imposed for the crime of arbitrary detention (in an international armed conflict) mere knowing participation in a general system or operation of confinement would not suffice.[91] The same applies

[88] Appeal Judgment, para. 740.
[89] Appeal Judgment, para. 740.
[90] *Karadžić* Appeal Judgment, para. 434.
[91] Appeal Judgment, para. 740.

with equal force to other means of co-perpetration or types of primary liability and the Appeals Panel erred in the manner in which it construed the law.

66. The evidence suggesting that Shala ill-treated detainees does not suffice to demonstrate that he acted with the requisite *mens rea* for the contested crime of arbitrary detention concerning affording detainees with the requisite procedural guarantees,[92] as argued above.[93]

67. The high standard applied to justify detention on security grounds as lawful, namely in circumstances where it could be said that detention was "absolutely necessary" has no bearing in customary international law.[94] The European Court of Human Rights for instance imposes the standard of "strictly" necessary or required by the exigencies of a given situation.[95] On what grounds did the Appeals Panel apply a stricter test without providing a solid foundation for it?

68. Finally, the conclusion that no "competent authority" existed was unreasonable on the record. Multiple witnesses described questioning and release procedures conducted by a judge/prosecutor, with interviews, written statements, and releases following; Kryeziu himself described conducting hearings and ordering at least one release. The Trial Panel discounted this evidence, mischaracterised "external intervention" releases, and applied its inflated standard to negate authority in circumstances where a NIAC-appropriate standard would recognise functional review.

69. These errors in defining elements, assessing evidence, and attributing responsibility render the Count 1 conviction unsafe and amount to substantial

[92] Appeal Judgment, para. 745.
[93] See para. 64 above.
[94] Appeal Judgment, para. 725.
[95] See, for instance, *A and Others v. the United Kingdom* [GC], para. 171.

violations of law under Article 48(7)–(8) of the Law and Rule 193. The Supreme Court should vacate the conviction of arbitrary detention.

GROUND 8: THE CONVICTION FOR MURDER IS UNSAFE

70. The Trial Judgement, upheld on appeal, expressly found that the death of the victim was caused by the direct acts and omissions of others—namely, the individual who fired the shot and the individual who denied medical treatment—yet it nevertheless imputed their conduct and intent to Shala through the alleged JCE. Such reasoning improperly extended criminal responsibility, as Shala's alleged acts did not play an integral role in the killing and no evidence demonstrated that he possessed the requisite intent.

71. In attributing murder to the common plan, the Trial Panel relied on three elements. First, it referred to the mistreatment of detainees, but the fact that they were beaten—even where weapons were brandished—did not establish an intention to kill.[96] The subsequent shooting of the victim [REDACTED], an incident at which Shala was not present, was an isolated and unforeseeable occurrence and could not reasonably be regarded as part of a common plan.[97] Second, the Trial Panel relied on alleged threats, citing untested and uncorroborated testimony that Shala once threatened a detainee.[98] Even if accepted, this could at most be taken as evidence of an intent directed at that particular individual, not at the victim in question. Third, the Trial Panel concluded that intent to kill was shown by the denial of medical treatment, but the evidence was clear that this decision was taken by others, without Shala's knowledge, authority, or involvement.[99] The intent of those actors cannot be imputed to him.

[96] Trial Judgment, para. 1017.
[97] Trial Judgment, para. 1017.
[98] Trial Judgment, para. 1018.
[99] Trial Judgment, para. 1019.

72. The unusual nature of the events leading to the victim's death, and the subsequent efforts made by KLA members to prevent repetition, further confirm that the killing was not part of any common plan.[100] The Trial Panel also failed to identify or define the form of intent it attributed to Shala, despite clear jurisprudence requiring precision where intent to kill is inferred. In these circumstances, no reasonable trier of fact could have concluded that Shala possessed the *mens rea* for murder. The conviction on this count is therefore unsafe and must be quashed.

73. Lastly, the Trial Panel erred by failing to reason adequately its decision regarding the type of intent it found that Shala possessed with regard to the offence of murder.[101] This was in breach of Shala's right for a sufficiently reasoned decision attributing criminal liability.

GROUND 9: ERRORS IN SENTENCING

74. At the time of the alleged offences, the applicable law on sentencing was the 1976 SFRY Criminal Code, which prescribed a sentencing range of five to fifteen years' imprisonment. That range was mandatory. As the Defence has consistently argued,[102] by treating the sentencing range as a mere factor to be taken into account, the Trial and Appeals Panels contravened the principle of legality and Article 7 of the European Convention of Human Rights.[103] The SFRY Criminal Code was unequivocal in this respect and constituted the law that ought to have been applied when they considered the sentencing range as a factor to be taken into consideration.[104] The SFRY Code was clear in this regard and that is the law that should have been applied. The Law on Specialist Chambers and Specialist Prosecutor's Office, and in particular Article 44(2)

[100] Trial Judgment, para. 1023.
[101] Trial Judgment, paras. 990, 991.
[102] Appeal Brief, paras. 256-260.
[103] Trial Judgment, para. 1068, 1069; Appeal Judgment, para. 885.
[104] Appeal Judgment, para. 885; Trial Judgment para. 1068.

thereof, entered into force sixteen years after the alleged offences and therefore could not lawfully influence the determination of the applicable sentencing framework.

75. The Trial Panel erred in law when imposing a sentence for arbitrary detention and torture of eighteen victims and not nine as charged in the Indictment.[105] While this was a factor that could have been considered as aggravating, the Trial Panel instead sentenced Shala for crimes allegedly committed against individuals which were not charged.

76. The Trial Panel erred by not considering the passage of time since the Indictment events in mitigation.

77. Based on the above, the sentence imposed on Shala must be reduced.

## IV. CONCLUSION

78. The multiple errors of law and procedure which strike at the very foundation of Shala's right to a fair trial merit intervention by the Supreme Court Panel.

79. Pursuant to Article 48 (7)-(8) of the Law and Rule 193 of the Rules, the Defence requests the Supreme Court Panel to vacate the convictions entered against Shala; remit the case for a retrial before a newly constituted Trial Panel, in which the violations identified are remedied, or, in the alternative, grant such other relief as the Panel deems appropriate to ensure the protection of legality and the integrity of the proceedings.

**Word count: 8914**

Respectfully submitted,

[105] Trial Judgment, paras. 1087, 1088, 1091, 1092, 1121.

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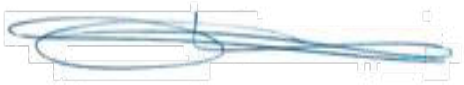

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