



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-SC-2025-06

Before: A Panel of the Supreme Court Chamber

Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Fidelma Donlon

Date: 9 March 2026

Original language: English

Classification: Public

Decision on the Defence Request for Protection of Legality

Specialist Prosecutor: Kimberly P. West

Counsel for Pjetër Shala: Jean-Louis Gilissen

Victims' Counsel: Simon Laws

THE PANEL OF THE SUPREME COURT CHAMBER of the Kosovo Specialist Chambers (“Supreme Court Panel” or “Panel”) noting Articles 33 and 162(2) of the Constitution,¹ Articles 3, 12, 14(1), 16(1), 44(2) and 48(6), (7) and (8) of the Law on Specialist Chambers and Specialist Prosecutor’s Office² (“Law”) and Rules 193 and 194(1)(b) of the Rules of Procedure and Evidence (“Rules”)³ is seized of the “Defence Request for Protection of Legality with Confidential Annex 1” (“Shala Request” or “Request”).⁴

I. PROCEDURAL BACKGROUND

1. On 16 July 2024, Trial Panel I issued its judgment and sentenced Mr Pjetër Shala to 18 years of imprisonment with credit for the time served in detention (“Trial Judgment”).⁵

2. On 29 November 2024, Trial Panel I issued the “Reparations Order against Pjetër Shala”, wherein it ordered Mr Shala to pay 208,000 Euros as compensation for the harm inflicted on the victims of the crimes for which he was convicted.⁶

3. On 14 July 2025, the Appeals Panel issued its judgment, wherein it, *inter alia*, granted Mr Shala’s Grounds 7, 12, and 14 in part, and reversed, in part, his convictions under Counts 1 and 3 insofar as they “rely on the arbitrary detention of two individuals and the torture of five individuals” (“Appeal Judgment”).⁷ The Appeals Panel dismissed Mr Shala’s appeal “in all other aspects”,⁸ and affirmed his convictions

¹ Constitution of Kosovo (with amendments I-XXIV), 5 August 2015.

² Law on the Specialist Chambers and Specialist Prosecutor’s Office, No. 05/L-053.

³ Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, (adopted on 17 March 2017, revised on 29 May 2017, amended on 29 and 30 April 2020).

⁴ PL001/F00001, Defence Request for Protection of Legality with Confidential Annex 1, 14 October 2025. A public redacted version was issued on 25 November 2025, F00001/RED.

⁵ KSC-BC-2024-04/F00847/RED, Trial Judgment and Sentence with One Confidential Annex, 16 July 2024, para. 1124.

⁶ KSC-BC-2024-04/F00866, Reparation Order against Pjetër Shala, 29 November 2024 (confidential), para. 239. A public redacted version was issued on 23 December 2024, F00866/RED.

⁷ KSC-CA-2024-03/F00069, Appeal Judgment, 14 July 2025, para. 938.

⁸ Appeal Judgment, para. 938.

for the war crimes of arbitrary detention, torture, and murder, but set aside the sentences imposed for Counts 3 and 4 and imposed a revised sentence of 13 years' imprisonment with credit for time served.⁹

4. On 23 July 2025, Mr Shala filed a "Defence Request for an Extension of Time and Word Limit for its Request for Protection of Legality", wherein he requested a 60-day extension of the time limit prescribed by the Rules to file his request for protection of legality and an extension of the word limit.¹⁰

5. On 25 July 2025, the President assigned the Supreme Court Panel to adjudicate, any request for protection of legality once filed by Mr Shala, as well as any other related matter.¹¹

6. On 8 August 2025, the Supreme Court Panel dismissed the request for an extension of time and word limit.¹²

7. On 14 October 2025, the Defence filed the Request.

8. On 16 October 2025, the Supreme Court Panel issued its "Order on the Time-Limits for Submissions".¹³

9. On 3 December 2025, the Specialist Prosecutor's Office ("SPO" or "Prosecution") and Victims' Counsel filed their responses ("SPO Response" and "Victims' Response", respectively).¹⁴

10. On 16 January 2026, the Defence filed the "Reply to Prosecution and Victims'

⁹ Appeal Judgment, para. 938.

¹⁰ F00001, Defence Request for an Extension of Time and Word Limit for its Request for Protection of Legality, 23 July 2025.

¹¹ F00002, Decision Assigning a Supreme Court Panel, 25 July 2025.

¹² F00005, Decision on the Request for an Extension of Time and Word Limit, 8 August 2025.

¹³ PL001/F00002, Order on the Time-Limits for Submissions, 16 October 2025.

¹⁴ PL001/F00004, Prosecution Response to Pjetër Shala's Request for Protection of Legality with Public Annex I, 3 December 2025 (confidential); PL001/F00003, Victims' Counsel's Response to the Defence Request for the Protection of Legality with Public Annex I, 3 December 2025 (confidential).

Counsel Responses to the Defence Request for Protection of Legality” (“Shala Reply”).¹⁵

II. ADMISSIBILITY

11. The Panel notes that the Appeal Judgment is final and that Mr Shala filed the Request within the three-month time limit prescribed in Article 48(6) of the Law, following the issuance of said Judgment. The Request is accordingly admissible in this respect, and the Panel will therefore proceed with the assessment of each ground therein.

12. Should a ground not comply with any of the admissibility criteria of the standard of review as established and set forth below,¹⁶ the Panel shall dismiss the ground without addressing its merits.

III. STANDARD OF REVIEW

13. The Panel recalls that protection of legality cannot be characterized as a third instance appeal,¹⁷ nor does it raise matters under Article 48(1) to (5) of the Law. It is an extraordinary legal remedy provided for in Article 48(6) and (7) of the Law and Rules 193 and 194 of the Rules. It is not meant to create another avenue of appeal.¹⁸ Rather, and similar to the Kosovo Criminal Procedure Code,¹⁹ protection of legality is limited to the specific instances defined in the Law and the Rules. As the Kosovo

¹⁵ F00007, Defence Reply to the Prosecution and Victims’ Counsel Responses to the Defence Request for Protection of Legality, 16 January 2026 (confidential).

¹⁶ KSC-BC-2020-06/PL001/F00008, Decision on Kadri Veseli’s Request for Protection of Legality, 15 August 2022, paras 17-18, 23-24.

¹⁷ See Article 47 of the Law.

¹⁸ KSC-BC-2020-06/PL002/F00005, Decision on Mr Veseli’s Request for the Protection of Legality, 19 December 2025 (“Veseli Decision”), para. 17; KSC-BC-2020-06/F00004, Decision on Krasniqi Defence Request for Protection of Legality Against, 29 December 2025 (“Krasniqi Decision”), para. 18; KSC-SC-2024-02/F00018, Decision on Salih Mustafa’s Request for Protection of Legality, 29 July 2024 (“Mustafa Decision”), para. 11; KSC-SC-2023-01/F00021, Decision on Requests for Protection of Legality, 18 September 2023 (“Gucati and Haradinaj Decision”), para. 9.

¹⁹ See Article 432 of the Kosovo Criminal Procedure Code No. 08/L-032, Official Gazette No. 24, 17 August 2022.

Supreme Court stated:

[t]he request for protection of legality, as one of the extraordinary legal remedies, is the exceptional legal remedy aiming to correct possibly wrong application of the material and procedural law. Strict requirements of the admissibility are designed to ensure that this legal remedy would not be used as a general third instance against all decisions in the criminal proceedings.²⁰

14. Strict admissibility requirements accordingly apply to the grounds underlying a request for protection of legality.²¹

15. In the assessment of each ground, the Panel shall determine whether a violation of the criminal law contained within the Law or a substantial violation of the procedures set out in the Law and in the Rules has been identified.²²

16. Arguments that reasonably could have been advanced before the first and second instance panels, cannot be raised *de novo* before the Supreme Court Panel.²³

17. Furthermore, grounds underlying a request for protection of legality alleging erroneous or incomplete determinations of the facts are beyond the competence of this Panel and are thus inadmissible.²⁴

18. Mere disagreement with the factual assessment of the first and second instance courts or verbatim repetitions of submissions of the previous appeal without engaging substantively with the impugned decision or final judgment identifying the specific alleged error or violation are equally insufficient to meet the admissibility threshold for such grounds.²⁵

²⁰ Kosovo, Supreme Court, S.S., Pml.Kzz 42/2017, Judgment, 10 May 2017, para. 23; Veseli Decision, para. 17; Krasniqi Decision, para. 18.

²¹ Veseli Decision, para. 18; Krasniqi Decision, para. 19.

²² Article 48(7) of the Law; Veseli Decision, para. 19; Krasniqi Decision, para. 20.

²³ Veseli Decision, para. 20; Krasniqi Decision, para. 21; Mustafa Decision, para. 14; Gucati and Haradinaj Decision, para. 10.

²⁴ Rule 193(3) of the Rules. See also Veseli Decision, para. 21; Krasniqi Decision, para. 22; Mustafa Decision, para. 15; Gucati and Haradinaj Decision, para. 10.

²⁵ Veseli Decision, para. 22; Krasniqi Decision, para. 23; Mustafa Decision, para. 16; Gucati and Haradinaj Decision, para. 10; Veseli Decision, para. 25.

19. The Supreme Court Panel recalls that it has previously set forth the standard of review applicable to requests for protection of legality based on *substantial violations of the procedures* regarding final judgments.²⁶ The Panel recalls the high threshold established by Article 48(7)(b) of the Law in relation to substantial procedural violations.²⁷ More specifically, the Panel ruled that “substantial violation” of the procedures occurs when it “materially affects the judicial finding”.²⁸ An alleged substantial violation of the procedures set out in the Law and the Rules should be assessed on a *case-by-case* basis in view of the circumstances underlying each particular request.²⁹

20. The Supreme Court Panel further recalls that it may find a substantial violation of the procedures if the Court of Appeals Panel, for example: (i) omitted to apply a provision of the Law or the Rules; (ii) incorrectly applied the Law and/or the Rules; or (iii) violated the rights of the Defence in a manner which has influenced the rendering of a lawful and fair decision.³⁰

21. The Panel also established the applicable standard of review with respect to violation(s) of the criminal law as set out in Article 48(7)(a) of the Law.³¹ The Panel found that this article does not require that a violation of the criminal law be “substantial”.³²

22. The Panel further observes the exhaustive list of violations of the criminal law provided for in Article 385(1) of the Kosovo Criminal Procedure Code and considers

²⁶ Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 13.

²⁷ Veseli Decision, para. 23; Krasniqi Decision, para. 24; Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 14.

²⁸ Veseli Decision, para. 23; Krasniqi Decision, para. 24; Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 14.

²⁹ See also Kosovo Supreme Court, NV, Pml.Kzz 91/2015, Judgment, 14 May 2015, paras 4, 10-12; AM, Pml.Kzz 84/2015, Judgment, 12 May 2015, pp 3-4; *M.I.*, Pml.Kzz 26/2015, Judgment, 18 March 2015, pp 5-7; Veseli Decision, para. 23; Krasniqi Decision, para. 24.

³⁰ Veseli Decision, para. 24; Krasniqi Decision, para. 25; Mustafa Decision, para. 18; Gucati and Haradinaj Decision, para. 14.

³¹ Mustafa Decision, para. 19; Gucati and Haradinaj Decision, para. 17.

³² Mustafa Decision, para. 19; Gucati and Haradinaj Decision, para. 17.

that violations of the criminal law are confined to those enumerated therein, if applicable. Specifically, such violations exist where: (i) the offence for which the accused is prosecuted is not a criminal offence; (ii) circumstances exist which preclude criminal liability and, in particular, if criminal prosecution is prohibited by the period of statutory limitation or precluded due to an amnesty or pardon, or prior adjudication by a final judgment; (iii) circumstances exist which preclude criminal prosecution; (iv) an inapplicable law was applied to the criminal offence; (v) in rendering a decision on punishment, alternative punishment or judicial admonition, or in ordering a measure of mandatory rehabilitation treatment or the confiscation, the court exceeded its authority under a law; or (vi) provisions were violated in respect of crediting the period of detention, house arrest, any period of deprivation of liberty and an earlier served sentence related to the criminal offence subject to the criminal proceedings.³³

23. The Panel notes that a request for protection of legality could also be premised on Article 48(8) of the Law, which stipulates that an extraordinary legal remedy may also be filed on the basis of rights available under the Law, which are also protected under the European Convention on Human Rights (“ECHR”). The Panel considers that any alleged violation of the rights available under the Law, which are also protected under the ECHR, must meet the same standard of review as set out above.³⁴

24. The Panel has further held that a party requesting protection of legality must clearly identify the alleged legal violation, substantiate it, and, in case of a procedural violation, demonstrate how it materially affected the impugned judgment.³⁵

³³ Article 385(1)(1.1-1.6) of the Kosovo Criminal Procedure Code. See also Mustafa Decision, para. 20; Gucati and Haradinaj Decision, para. 17.

³⁴ See Veseli Decision, para. 25; Krasniqi Decision, para. 26; Mustafa Decision, para. 21; Gucati and Haradinaj Decision, para. 18.

³⁵ Veseli Decision, para. 26; Krasniqi Decision, para. 27; Mustafa Decision, para. 22; Gucati and Haradinaj Decision, para. 19. See also Veseli Decision, paras 37-38, 58, 70-71, 76, and Krasniqi Decision, paras 42-43, 49-50, 60, where the Panel applied this standard by finding that the Defence failed to

25. Lastly, the Panel recalls Rule 194(1) of the Rules, which stipulates that where the Supreme Court Panel grants a request for protection of legality, depending on the nature of the violation, it may either:

- (a) modify the impugned decision or judgment;
- (b) annul in whole or in part the impugned decision or judgment and return the case for a new decision or retrial to the competent Panel; or
- (c) confine itself only to establishing the existence of a violation of law.

26. Having recalled the standard of review, the Supreme Court shall consider the grounds underlying the Request.

IV. DISCUSSION

A. PASSAGE OF TIME (GROUND 1)

1. Submissions

27. Mr Shala submits that the 24-year delay between the events and his trial made the right to a fair trial very difficult.³⁶ According to Mr Shala, the extraordinary lapse of time led to evidence being degraded or destroyed: witnesses with exculpatory information died or could not be found; surviving witnesses' memories deteriorated, and key investigative opportunities such as the testimony of Mr Ruzhdi Saramati was lost.³⁷ As a result, the Defence was unable to identify or question individuals who were present during the time of the events, and was unable to obtain documentary or forensic evidence to contradict the Prosecution's evidence which hinders Mr Shala's right to a fair trial.³⁸

28. Moreover, the Defence submits that both the Trial and Appeals Panels reversed the burden of proof to place it on Mr Shala, requiring him to disprove matters that the

identify a specific legal or procedural violation, raised factual disagreements, and did not demonstrate any material affected the impugned decision.

³⁶ Shala Request, para. 5.

³⁷ Shala Request, paras 6, 9.

³⁸ Shala Request, paras 7-8.

Prosecution was required to prove beyond a reasonable doubt.³⁹ Taken together, the Defence argues that the extensive time that passed since the events giving rise to the case and the Panels' approach fatally undermined the reliability and fairness of the proceedings.

29. The SPO responds that Mr Shala's Ground 1 should be dismissed because his complaint about the passage of time is a disagreement with findings already made, and he identifies no concrete fair-trial violation.⁴⁰ The SPO submits that Mr Shala's complaint about the unavailability of Mr Ruzhdi Saramati is misplaced because the accused did not advance this submission in his Appeal Brief and did not identify any specific lost investigative opportunity on appeal.⁴¹

30. The SPO further submits that Mr Shala's allegation of a "reversal of the burden of proof" regarding Mr Osman Kryeziu is an inadmissible *de novo* submission and is speculative given the breadth of evidence underpinning the relevant findings.⁴² Finally, the SPO argues that Mr Shala's reliance on the case of the European Court of Human Rights ("ECtHR"), *Nicolaou v. Cyprus*, is misconceived, because the case concerns demonstrable investigative prejudice arising from the passage of time, which requires concrete substantiation, something Mr Shala has not provided.⁴³

31. Mr Shala responds that the Prosecution fails to engage with the substance of his submissions, namely that the passage of time has caused irreversible prejudice to the Defence through the deterioration of evidence, fading memories, and the loss of potentially exculpatory material, prejudice that cannot be remedied by procedural safeguards alone.⁴⁴ Mr Shala further contends that the Prosecution mischaracterises the relevance of *Nicolaou v. Cyprus* by overlooking the core concern, which requires

³⁹ Shala Request, paras 10-13.

⁴⁰ SPO Response, para. 5.

⁴¹ SPO Response, para. 6.

⁴² SPO Response, para. 7.

⁴³ SPO Response, para. 8.

⁴⁴ Shala Reply, para. 2.

Mr Shala to demonstrate that his defence was “fatally jeopardised”, imposes an unreasonable burden and that greater caution should instead have been exercised when assessing the reliability of the Prosecution’s evidence in light of the passage of time.⁴⁵

2. The Supreme Court Panel’s Assessment

32. The Panel recalls that pursuant to Article 48(7)(b) of the Law and the applicable standards of review, a party requesting protection of legality must identify and substantiate the alleged legal violation,⁴⁶ and in the case of a substantial violation of the procedures, demonstrate how it materially affected the impugned judgment.⁴⁷ The Panel recalls that “the parties are expected to be precise in their submissions before the Specialist Chambers”.⁴⁸ The Panel further recalls that it could, where no reference to violation of the Rules or Articles in the Law is made, dismiss a Ground as inadmissible.⁴⁹

33. Mr Shala does not refer to any legal provision that may have been violated nor clearly point to a substantial violation of a specific procedure in the Law or the Rules with respect to this ground.⁵⁰ Similarly, Mr Shala does not refer to any article within the ECHR as reflected in either the Law or the Rules. Instead, Mr Shala only generally refers to a violation of the “fairness of the proceedings”.⁵¹

34. Without having clearly specified the legal basis for the alleged violation, it is difficult for the Panel to engage in a meaningful assessment how Mr Shala’s right to a fair trial was violated because of the “passage of time”. The Panel agrees with the

⁴⁵ Shala Reply, para. 3.

⁴⁶ See Article 48(7)(b) of the Law; Veseli Decision, para. 37.

⁴⁷ Mustafa Decision, paras 13, 22.

⁴⁸ KSC-BC-2023-10/PL001, Decision on Haxhi Shala’s Request for Protection of Legality, 9 September 2024 (“H. Shala PoL Decision”), para. 33.

⁴⁹ H. Shala PoL Decision, para. 33.

⁵⁰ Shala Request, paras 5-13.

⁵¹ See Shala Request, para. 13. See also Shala Request, paras 5, 11.

Appeals Panel's finding that Mr Shala failed to demonstrate how his ability to defend himself and prepare his case was "fatally jeopardised" as a result of the passage of time.⁵²

35. Notwithstanding the foregoing, the Panel views Mr Shala's arguments to be premised on a substantial violation of the procedures, which affect his right to a fair trial, as protected by Article 21(2) of the Law and Article 6 of the ECHR. The Panel will, on an exceptional basis, consider the merits of this Ground in view of the importance the Panel attaches to the right to liberty, its protection, the integrity of the proceedings and the right to a fair trial.

36. At the outset, the Panel recalls that pursuant to the Kosovo Criminal Code there is no statute of limitations for war crimes.⁵³

37. With respect to the impact of the passage of time on the fairness of the proceedings, the Panel recalls the Appeals Panel finding that an evaluation of the fairness of the proceedings will turn on other factors, including an assessment of "the reliability, probative value and, ultimately, the weight of the evidence".⁵⁴ Accordingly, Mr Shala's general submissions to the effect that "the fairness of the proceedings has been irretrievably compromised by the passage of time"⁵⁵ are without substance.

38. Instead, the question becomes whether there existed sufficient safeguards with respect to the evaluation of the evidence presented during the proceedings. In their respective judgments, both the Trial and the Appeals Panels highlighted the existence of the wide variety of such safeguards and the manner in which they were applied in Mr Shala's case, considering the time that has passed since the commission of the

⁵² Appeal Judgment, para. 90.

⁵³ See Article 104(1) Kosovo Criminal Code.

⁵⁴ Appeal Judgment, para. 92.

⁵⁵ Shala Request, para. 8.

crimes.⁵⁶

39. The Panel concurs with the Appeals Panel's finding that the ECtHR *Nicolaou v. Cyprus* case, which relates to a violation of Article 2 of the ECHR, and upon which Mr Shala relies, does not support his case.⁵⁷ As before the Appeals Panel, Mr Shala only refers in a general manner to "specific instances of lost investigative opportunities throughout the proceedings".⁵⁸ The Panel notes that Mr Shala referred only to one specific investigative opportunity that he was deprived of exploring, namely locating a particular witness, Mr Ruzhdi Saramati, for purposes of his defence.⁵⁹ However, Mr Shala did not explain what impact, if at all, this witness could have had on his case, nor did he argue on appeal that the absence of this person's specific testimony was "fatal" to the proceedings in his case.⁶⁰ Accordingly, Mr Shala has failed to demonstrate that the Trial Panel's assessment of the evidence, and as thereafter upheld by the Appeals Panel, gives rise to a violation of his right to a fair trial.

40. Considering the above, the Panel finds that Ground 1 should be dismissed.

B. ADMISSION AND RELIANCE ON SELF-INCRIMINATORY STATEMENTS IN VIOLATION OF THE RIGHT TO LEGAL ASSISTANCE (GROUND 2)

1. Submissions

41. Mr Shala contends that the Trial and the Appeals Panels wrongfully admitted and relied upon his 2005 and 2007 Statements before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), a statement given to the Belgian Police in 2016 ("2016 Belgian Statement"), a statement given to the Belgian police in 2019

⁵⁶ See, e.g., Trial Judgment, paras 166, 392, 397, 418, 451, 485, 599, 665, 893; Appeal Judgment, paras 91-93.

⁵⁷ ECtHR, *Nicolaou v. Cyprus*, [no. 29068/10](#), Judgment, 28 May 2020, paras 132-152.

⁵⁸ Shala Request, para. 9.

⁵⁹ Shala Request, para. 9.

⁶⁰ ECtHR, *Nicolaou v. Cyprus*, [no. 29068/10](#), Judgment, 28 May 2020, paras 150.

("2019 Belgian Statement") and statements given to the SPO ("SPO Statements"), all of which, he contends, were taken without legal assistance.⁶¹

42. The Defence submits that Mr Shala who was poorly educated, vulnerable, and uninformed, was questioned without a lawyer and was reluctant to rely on the interpreter, rendering the resulting statements inherently unreliable and unlawfully obtained.⁶² According to the Defence, this allegedly violates Article 6 of the ECHR, Article 48(7)-(8) of the Law, and Rule 193(3)(a) of the Rules.⁶³ Mr Shala further states that although the Appeals Panel acknowledged that his right to legal assistance was denied in the 2016 interview, it nevertheless permitted the 2016 Belgian Statements to remain "available for consideration," disregarding their manifest unlawfulness.⁶⁴

43. Mr Shala further argues that the acceptance of his 2016 Belgian Statement fundamentally misconceived the fruit of the poisonous tree doctrine by treating the unlawfully obtained statements as having "no impact" merely, because they were not explicitly quoted in the Trial Panel's reasoning.⁶⁵ The Defence stresses that the statements formed an integral part of the evidentiary record, were relied upon decisively, and tainted the 2019 Belgian and SPO Statements, which were shaped by the earlier violation.⁶⁶

44. Mr Shala moreover argues that the Panel erred by drawing adverse inferences from his silence and by using the statements to "discredit" witness testimony, amounting to an unlawful reversal of the burden of proof.⁶⁷ The Defence emphasises that these unlawfully obtained statements were used to support core findings, namely: Mr Shala's presence at the Kukës Metal Factory ("KMF"), his encounters with victims,

⁶¹ Shala Request, para. 14.

⁶² Shala Request, para. 15.

⁶³ Shala Request, para. 15.

⁶⁴ Shala Request, para. 16.

⁶⁵ Shala Request, paras 16-18.

⁶⁶ Shala Request, paras 17-18.

⁶⁷ Shala Request, para. 21.

his participation in mistreatment, his role and authority in the Kosovo Liberation Army (“KLA”), and even his lack of remorse – elements that materially shaped the conviction.⁶⁸

45. Additionally, Mr Shala maintains that the admission and reliance on these statements constituted a substantial violation of his right against self-incrimination.⁶⁹ Therefore, given the contamination of the proceedings, the Defence argues that the only proper remedy is the annulment of the convictions and a retrial, which excludes all unlawfully obtained statements.⁷⁰

46. The SPO responds that Ground 2 is an unclear “collage” of previously rejected arguments, which fail to demonstrate any error in the Appeal Judgment, and in many ways, it is difficult to tell which statement Mr Shala is even challenging.⁷¹ On the core allegation concerning the right to counsel, the SPO argues that Mr Shala ignores binding appellate findings.⁷² Those findings established that, in the 2005 and 2007 ICTY Statements and the 2019 Belgian and SPO Statements, Mr Shala was informed of his right to counsel and repeatedly waived it, so the premise of a rights-violation is therefore not made out.⁷³

47. As for the 2016 Belgian Statement, the SPO submits that the Trial Panel did not rely on it in the Trial Judgment, so even if there had been an error by admitting the Statement, Mr Shala cannot show how this error materially affected the Appeal Judgment.⁷⁴ The SPO also stresses that Mr Shala again fails to engage with the appellate finding that despite a “limited” right-to-counsel violation—there were no

⁶⁸ Shala Request, paras 19-23.

⁶⁹ Shala Request, para. 21.

⁷⁰ Shala Request, para. 26.

⁷¹ SPO Response, para. 9.

⁷² SPO Response, para. 9.

⁷³ SPO Response, para. 11.

⁷⁴ SPO Response, para. 12.

indications of unreliability or damage to the integrity of proceedings from admitting the interview.⁷⁵

48. On the doctrine of “the fruit of the poisonous tree” or the derivative-evidence claims, the SPO submits that Mr Shala repeats an argument already rejected. Specifically, Mr Shala ignores the Appeals Panel’s finding that the 2016 Belgian Statement had been unlawfully obtained and that there is therefore no “tree and fruit relation” between the 2016 Belgian Statement and the 2019 Belgian and SPO Statements.⁷⁶ The SPO further argues that even if Mr Shala had shown an error, he still fails to demonstrate that it amounted to a substantial procedural violation affecting the outcome of the Trial and Appeal Judgments.⁷⁷ Moreover, the SPO submits that the Trial Panel did not rely on the 2016 Belgian Statement at all, and even the SPO submissions based on this Statement were not used by the Trial Panel when it determined that relevant portions of the 2019 Belgian and SPO Statements were not credible.⁷⁸ In light of the above, the SPO asserts that Ground 2 should be dismissed in its entirety.⁷⁹

49. Mr Shala responds that the Prosecution incorrectly asserts that Mr Shala consistently waived his right to counsel, arguing instead that any purported waiver was neither informed nor valid, as he was never adequately apprised of the complexity of his situation or the necessity of legal assistance for a fair process.⁸⁰ Mr Shala further submits that the SPO wrongly minimises the procedural violations that impacted the 2016 Belgian Statement and the 2019 Belgian and SPO Statements.⁸¹ Specifically, Mr Shala contends that disregarding infringements of Defence rights

⁷⁵ SPO Response, para. 13.

⁷⁶ SPO Response, para. 16.

⁷⁷ SPO Response, para. 17.

⁷⁸ SPO Response, para. 22.

⁷⁹ SPO Response, para. 25.

⁸⁰ Shala Reply, para. 4.

⁸¹ Shala Reply, para. 5.

which affect the fairness and lawfulness of the proceedings may constitute substantial procedural violations.⁸²

2. The Supreme Court Panel's Assessment

50. The Panel notes that Mr Shala generally alleges a violation of his right to a fair trial pursuant to Article 48(7)-(8) of the Law, Rule 193(3)(a) of the Rules, and Article 6 of the ECHR.⁸³ While Mr Shala does not specify the nature of the violation, the Panel understands his submissions to be one alleging a substantial violation of the procedures. As noted above, a party requesting protection of legality must not only identify the alleged legal violation but also substantiate it. In the case of an alleged procedural violation, the party must moreover demonstrate how the alleged violation materially affected the impugned judgment.⁸⁴

51. The Panel recalls in this respect that it could dismiss as inadmissible this Ground on the failure of Mr Shala to identify a substantial violation of the procedures contained in the Law or the Rules. Nevertheless, the Panel will exceptionally consider the merits of this Ground in view of the importance the Panel attaches to the right to liberty, its protection and the integrity of the proceedings.

52. The Panel notes that Mr Shala's submissions conflate multiple distinct issues, including matters related to the 2016 and 2019 Belgian Statements, the 2005 and 2007 ICTY Statements and the SPO Statements, the burden of proof, drawing adverse inferences, and the general rules on admissibility.⁸⁵

53. The Panel notes that Mr Shala's arguments in relation to the Belgian, the ICTY and the SPO Statements in essence revolve around alleged errors committed by the Trial Panel in its admission and alleged assessment of these Statements, which amount

⁸² Shala Reply, para. 5.

⁸³ Shala Request, para. 15.

⁸⁴ Mustafa Decision, paras 13, 22.

⁸⁵ Shala Request, paras 14, 20-21, 24.

to a violation of his right to a fair trial.⁸⁶

54. The Panel first turns to Mr Shala's arguments related to the 2016 Belgian Statement. The Panel recalls in this respect its standard of review, which provides that a "'substantial violation' of the procedures occurs when it 'materially affects the judicial finding'".⁸⁷

55. The Panel notes that Mr Shala has recognised that the Trial Panel did not rely on the 2016 Belgian Statement for any of its findings.⁸⁸ However, he argues that the mere admission of this Statement contaminated the proceedings, irrespective of whether they were relied upon.⁸⁹ The Panel notes that Mr Shala does not refer to a specific legal provision that was violated through such an admission. In this context, the Panel recalls that there is no rule requiring the exclusion of admitted evidence from the evidentiary record of a case as submitted by Mr Shala.⁹⁰ Indeed, a distinction should be drawn between the admission of evidence and a panel's reliance thereon for the purposes of the judgment. These are two distinct concepts clearly advanced in judicial practice.

56. Even if *arguendo* Mr Shala had been able to establish that a substantial violation of the procedures occurred by the admission of 2016 Belgian Statement, he failed to demonstrate how this violation materially affected any judicial finding. The mere fact that the 2016 Belgian Statement was admitted and therefore "available for consideration"⁹¹ to the Trial Panel does not in itself indicate with any specificity what judicial finding was materially impacted.

57. The Panel notes that the ECtHR jurisprudence cited by Mr Shala, which relate

⁸⁶ Shala Request, paras 15-26.

⁸⁷ Veseli Decision, para. 23; Krasniqi Decision, para. 24; Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 14.

⁸⁸ Shala Request, para. 14. See also Appeal Judgment, para. 113.

⁸⁹ Shala Request, paras 16-17.

⁹⁰ Shala Request, para. 17.

⁹¹ Shala Request, para. 17.

to the doctrine of the “fruit of the poisonous tree”, relate to circumstances whereby evidence that was unlawfully obtained served as a basis for conviction. The Panel recalls that the Appeals Panel specifically considered Mr Shala’s arguments in this respect and found that the manner in which the 2016 Belgian Statement was obtained did not amount to a case of the “fruit of the poisonous tree”.⁹²

58. Indeed, the ECtHR jurisprudence on which Mr Shala relies does not support his argument that admitting such evidence, without relying on it, renders proceedings unfair.⁹³ In *Panovits v. Cyprus*, the ECtHR focused on the decisive use of an impugned confession to secure a conviction.⁹⁴ This authority undermines, rather than supports Mr Shala’s claim, as it confirms the need to establish the impact of that evidence on the conviction. Similarly, in *Yaramenko v. Ukraine*, the violation arose because the conviction relied mainly on evidence obtained in breach of Article 3 of the ECHR, whereas Mr Shala has not shown that the Trial Panel relied on tainted evidence.⁹⁵ The Panel also notes the case of *Gäfgen v. Germany* whereby the ECtHR emphasised that proceedings only rendered unfair where it has been shown that a violation of the convicted rights had a bearing on the outcome of the proceedings.⁹⁶

59. The Panel observes that the Appeals Panel extensively engaged with Mr Shala’s arguments in relation to the 2019 Belgian Statement, including in relation to the Trial Panel’s reliance thereon in the Trial Judgment.⁹⁷ The Panel agrees with the Appeals Panel’s holding that the 2019 Belgian Statement was obtained a full three years after the 2016 Belgian Statement and that Mr Shala’s arguments that his answers therein “shaped the form of the [2019] interview and statements” are purely speculative.⁹⁸ The Appeals Panel further found with respect to the 2019 Belgian Statement that Mr Shala

⁹² Appeal Judgment, paras 115-116.

⁹³ Shala Request, paras 20-26.

⁹⁴ ECtHR, *Panovits v. Cyprus*, [no. 4268/04](#), Judgment, 11 March 2009, para. 85.

⁹⁵ ECtHR, *Yaramenko v. Ukraine*, [no. 32092/02](#), Judgment, 12 September 2008, paras 66-67.

⁹⁶ ECtHR, *Gäfgen v. Germany*, [no. 2297/05](#), Judgment, 1 June 2010, para. 178.

⁹⁷ See, e.g., Appeal Judgment, paras 119-121.

⁹⁸ Appeal Judgment, para. 116; Shala Request, para. 18.

explicitly waived his right to counsel on a voluntary basis when giving this statement and can therefore not now invoke his right to self-incrimination retroactively to prevent this statement from being admitted into evidence.⁹⁹

60. Given the above, the Panel is of the view that Mr Shala has not engaged substantively with the Appeals Panel's findings or shown how the Appeals Panel erred in its findings with respect to the 2016 and 2019 Belgian Statements. Mr Shala's arguments in this respect are therefore dismissed.

61. Turning to the ICTY Statements, the Panel observes that the Appeals Panel found that Mr Shala had been properly informed of all of his rights during the interview with ICTY Prosecutors in 2005 and 2007, including that he had the right to legal assistance of his choosing.¹⁰⁰ The Appeals Panel in that decision also engaged with Mr Shala's arguments in relation to his state of mind and ability to properly understand the consequences of his decision not to have a lawyer present and found that Mr Shala failed to demonstrate an error in the Trial Panel's reasoning and admission of the ICTY Statements.¹⁰¹

62. The Panel observes that Mr Shala does not refer to the Appeals Decision on Prior Statements, nor does he provide any arguments as to how either the Trial or the Appeals Panel substantially violated the procedures in this respect, including by admitting the ICTY Statements into evidence and relying thereon for purposes of the Trial Panel's findings. The Panel therefore dismisses Mr Shala's arguments in relation to the ICTY Statements.

63. Considering the above, the Panel finds that Mr Shala has not demonstrated that the Appeals Panel erred in its assessment of the Trial Judgment nor that this amounted

⁹⁹ Appeal Judgment, paras 117-118.

¹⁰⁰ *Specialist Prosecutor v. Pjetër Shala*, KSC-BC-2020-04/IA006, Decision on Shala's Appeal Against Decision Concerning Prior Statements, 5 May 2023 ("Appeals Decision on Prior Statements"), paras 46-53, 59, 62-69.

¹⁰¹ Appeals Decision on Prior Statements, paras 52-54, 67-69.

to a substantial violation of the procedures.

64. Accordingly, the Panel dismisses Ground 2 in its entirety.

C. BREACH OF THE PRINCIPLE OF LEGALITY (GROUND 3)

1. Submissions

65. Mr Shala submits that his conviction for arbitrary detention as a war crime in a non-international armed conflict and under the mode of liability of Joint Criminal Enterprise (“JCE”) violates the principle of legality, as neither the offence nor the mode of liability was criminalised under Kosovo Law or customary international law at the time of the alleged conduct.¹⁰² In particular, he argues that his conviction in this respect breaches Article 7 of the ECHR, Article 33 of the Kosovo Constitution, and Article 15 of the International Covenant on Civil and Political Rights (“ICCPR”).¹⁰³

66. Article 7(1) of the ECHR requires a crime to be defined in law. Mr Shala contends that the Panel improperly expanded Article 16(1)(a) of the KSC law to include JCE liability, despite no express reference to that effect.¹⁰⁴ The Defence also argues that given Mr Shala’s limited education and lack of a senior position, such liability was neither foreseeable nor accessible to him.¹⁰⁵

67. Mr Shala further argues that his conviction for arbitrary detention in a non-international armed conflict is unlawful, because Article 14(1)(c) of the KSC Law provides an exhaustive list of war crimes in non-international armed conflicts, which does not include arbitrary detention.¹⁰⁶ According to Mr Shala arbitrary detention was further not criminalised in 1999.¹⁰⁷ He submits that the Trial and Appeals Panels relied on procedural safeguards and definitions that did not exist at the time, breaching the

¹⁰² Shala Request, para. 27.

¹⁰³ Shala Request, para. 27.

¹⁰⁴ Shala Request, para. 28.

¹⁰⁵ Shala Request, para. 28.

¹⁰⁶ Shala Request, para. 29.

¹⁰⁷ Shala Request, para. 29.

accessibility and foreseeability requirements of Article 7(1) ECHR.¹⁰⁸ As a result, Mr Shala claims the Panels engaged in retrospective criminalisation, amounting to “a substantial violation of the law” under Article 48(7)-(8) of the Law and Rule 193 of the Rules.¹⁰⁹

68. The SPO responds that Ground 3, which calls into question the legality of JCE and arbitrary detention in a non-international armed conflict, simply repeats arguments already rejected by multiple KSC Panels, and ignores settled jurisprudence, including the Constitutional Court’s position on the direct applicability of customary international law norms.¹¹⁰ Regarding the foreseeability of JCE as a mode of liability, the SPO argues that Mr Shala advances “bald assertions” (including personal circumstances like education and rank) that cannot displace consistent, reasoned jurisprudence affirming its legality.¹¹¹ In relation to arbitrary detention, the SPO argues that Mr Shala again offers “bare assertions” against customary status, and asserts that the customary basis is “beyond any reasonable dispute” and has been repeatedly affirmed by Specialist Chambers’ Panels on the basis of state practice and *opinio juris*.¹¹² The SPO concludes there is “patently no violation of the criminal law” and Ground 3 should be rejected.¹¹³

69. Mr Shala responds that the Prosecution mischaracterises the source of the procedural safeguards relating to arbitrary detention by relying on the Trial Panel’s reference to the Pre-Trial Judge’s Confirmation Decision and the 2005 study of the International Committee for the Red Cross (“ICRC”), while ignoring the central issue that, as of 1999, there was no settled state practice recognising arbitrary detention as a crime under customary international law.¹¹⁴ Mr Shala submits that the ICRC first

¹⁰⁸ Shala Request, para. 29.

¹⁰⁹ Shala Request, para. 30.

¹¹⁰ SPO Response, para. 27.

¹¹¹ SPO Response, para. 28.

¹¹² SPO Response, para. 29.

¹¹³ SPO Response, para. 32.

¹¹⁴ Shala Reply, paras 6-7.

articulated such a prohibition only in 2005, that no general study or customary norm existed at the relevant time, and that the State practice cited in the ICRC Study is inconclusive, often post-dating 1999 and failing to clearly establish criminalisation applicable to both international and non-international armed conflicts.¹¹⁵

2. The Supreme Court Panel's Assessment

70. At the outset, the Panel notes that Mr Shala advances two distinct allegations under this ground, namely with respect to the mode of liability of JCE and the crime of arbitrary detention in a non-international armed conflict.¹¹⁶ The Panel observes that Mr Shala's arguments on arbitrary detention in a non-international armed conflict are essentially raised again in Ground 7.¹¹⁷ Accordingly, the Panel will only address his arguments on JCE under Ground 3 and will later attend to his arguments in relation to arbitrary detention together with Ground 7.

71. With respect to the mode of liability of JCE, the Panel recalls that a party requesting protection of legality must allege a violation of a criminal law set out in this Law in accordance with Article 48(7)(a) of the Law.

72. The Panel notes that Mr Shala claims a violation of the criminal law in the form of Article 16(1)(a) of the Law.¹¹⁸ The Panel recalls in this regard that Article 16(1)(a) of the Law governs the forms of individual criminal responsibility applicable before the Specialist Chambers. Mr Shala contends that the Trial and Appeals Panels' interpretation of Article 16(1)(a) of the Law as encompassing the mode of liability of JCE goes beyond the statutory limits of that provision by violating the principle of legality under Article 7 of the ECHR and Article 33 of the Constitution.¹¹⁹ In this context, the Panel notes Mr Shala's argument that such a mode of liability did not

¹¹⁵ Shala Reply, para. 7.

¹¹⁶ Shala Request, para. 27.

¹¹⁷ See Shala Request, paras 52, 53-59, 67.

¹¹⁸ Shala Request, para. 28.

¹¹⁹ Shala Request, paras 27-28.

constitute an accepted form of individual criminal responsibility under the Law. It is thus argued that the conduct for which the accused was found guilty was not criminalized pursuant to Article 16(1)(a) of the Law. Accordingly, the Panel finds Ground 3 admissible and will consider the merits thereof.

73. Mr Shala argues that the Appeals Panel violated the principle of legality because JCE did not form part of customary international law or Kosovo Law at the time the crimes were committed.¹²⁰ Except for the argument that JCE is not expressly mentioned in the Law, Mr Shala does not provide any references with respect to the applicability of JCE under customary international law at the time of commission of the crimes.

74. The Panel recalls that Trial Panel I convicted Mr Shala of the war crimes of arbitrary detention, torture and murder in the context of a non-international armed conflict under the mode of liability of JCE I only,¹²¹ and not under JCE II or III. The Panel will therefore confine its analysis of a possible violation of the principle of legality with respect to JCE I under this Ground.

75. With respect to Article 16(1)(a) of the Law and its compatibility with the principle of legality, the Supreme Court Panel recalls and agrees with the Appeals Panel previous analysis and findings that the Law provides for JCE as a form of commission under Article 16(1)(a) of the Law,¹²² and that JCE I is a mode of liability under customary international law at the time of commission of the crimes,¹²³ which was accessible and foreseeable to Mr Shala.¹²⁴

76. In this regard, the Panel recalls the finding of the Specialist Chamber of the Constitutional Court ("SCCC") that binding norms of customary international law in

¹²⁰ Shala Request, para. 27.

¹²¹ Trial Judgment, para. 1036.

¹²² Appeal Judgment, para. 175 and fns 391-393.

¹²³ Appeal Judgment, para. 175 and fn. 392

¹²⁴ Appeal Judgment, para. 175 and fn. 393.

relation to war crimes, crimes against humanity, and modes of liability are directly applicable under the Kosovo Constitution.¹²⁵ The Panel notes the jurisprudence of the SCCC, finding that customary international law enjoys superiority over domestic legislation, in accordance with the Kosovo legal framework and the Constitution of Kosovo.¹²⁶

77. Furthermore, pursuant to Article 3(3) of the Law, the Panel is guided by the jurisprudence of the *ad hoc* tribunals when determining customary international law.¹²⁷

78. Against this background, the Panel notes that JCE I has been firmly established as an accepted mode of liability under customary international law in 1998, which has been regularly applied by several international and internationalized courts and tribunals.¹²⁸ In addition, the Panel observes that JCE I, embodying the definition of co-perpetration within criminal codes applicable at the time of the crimes as well as

¹²⁵ *Specialist Prosecutor v. Pjetër Shala*, KSC-CC-2022-16/F00004, Decision on the Referral of Pjetër Shala to the Constitutional Court Panel Concerning Fundamental Rights Guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 6 July 2022, paras 61-72 (“SCCC Decision on Pjetër Shala’s Referral”).

¹²⁶ SCCC Decision on Pjetër Shala’s Referral; *Specialist Prosecutor v. Thaçi et al.*, KSC-CC-2022-14/F00009, Decision on the Referral of Jakup Krasniqi Concerning the Legality of Charging Joint Criminal Enterprise and the Referral of Kadri Veseli Concerning Decision of the Appeals Panel on Challenges to the Jurisdiction of the Specialist Chambers, 13 June 2022, para. 69; Article 31 Kosovo Criminal Code. See also Article 18 of the SFRY CC.

¹²⁷ See Article 3(3) of the Law; KSC-BC-2020-04/IA002/F00010, Decision on Pjetër Shala’s Appeal Against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 11 February 2022, para. 19; *Specialist Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/IA009/F00030, Decision on Appeals Against “Decision on Motions Challenging the Jurisdiction of the Specialist Chambers”, 23 December 2021 (“*Thaçi et al.* Appeal Decision on Jurisdiction”), para. 152.

¹²⁸ See ICTY, *Prosecutor v. Tadić*, Judgement, IT-94-1-A, 15 July 1999, para. 220; ICTY, *Prosecutor v. Milutinović et al.*, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, IT-99-37-AR72, 21 May 2003, para. 17; ICTR, *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Judgement, ICTR-96-10-A and ICTR-96-17-A, 13 December 2004, paras 461-468; ICTR, *Prosecutor v. Simba*, Judgment, ICTR-01-76-A, 27 November 2007, paras 243-255; ICTR, *Prosecutor v. Karemera and Ngirumpatse*, Judgement, ICTR-98-44-A, 29 September 2014, para. 110; SCSL, *Prosecutor v. Taylor*, Judgement, SCSL-03-01-T, 18 May 2012, paras 458, 466; SCSL, *Prosecutor v. Sesay et al.*, Judgment, SCSL-04-15-A, 26 October 2009, paras 397-400. With respect to JCE I, see ECCC, *Prosecutor v. Samphân and Chea*, Appeal Judgment, 002/19-09-2007-ECCC/SC, 23 November 2016, para. 810.

currently applicable in Kosovo,¹²⁹ has been applied by Kosovo Courts when convicting individuals for international crimes.¹³⁰ Therefore, there cannot be any dispute with respect to the JCE I liability as a firmly established mode of liability under customary international law.

79. With respect to whether JCE liability was foreseeable or accessible to Mr Shala given his limited education and lack of a senior role, and thus his conviction allegedly violates the principle of legality,¹³¹ the Panel agrees with the Appeals Panel's finding that, for the purposes of assessing foreseeability, factors such as an accused's education, rank, or access to information may be relevant but are not determinative.¹³² As held by the Appeals Panel, foreseeability is assessed on an objective basis, and the absence of an official position, limited education, or restricted access to public information cannot, of themselves, exclude liability where the applicable Law was sufficiently accessible and foreseeable at the relevant time.¹³³

80. Considering the above, the Panel is satisfied that the Appeals Panel did not violate the criminal law when it endorsed the findings of the Pre-Trial Judge, the Trial Panel, the SCCC, and its own conclusions in determining that JCE I formed part of customary international law at the time relevant to the charges, that customary international law is directly applicable before the Specialist Chambers and enjoys superiority within Kosovo's constitutional framework, and that liability based on JCE

¹²⁹ Cf. Article 22 of the SFRY CC; Article 31 of the Kosovo Criminal Code.

¹³⁰ Appeal Judgment, para. 812. See also Kosovo Supreme Court, *AP-KZ 89/2010*, Judgment, 26 January 2011, paras 114-117; Kosovo Basic Court of Prishtinë/Priština, *P 448/2012*, Judgment, 7 June 2013, pp 1-2; Kosovo Court of Appeals, *PAKR 440/13*, Judgment, 11 August 2015, pp 1-2, 14, 18-19; Kosovo Supreme Court, *Plm.Kzz 18/2016*, Judgment, 13 May 2016, paras 69-74; Kosovo Court of Appeals, *PAKR 271/13*, Judgment, 30 January 2014, paras 34-41; Kosovo Supreme Court, *PA II 3/2014*, Judgment, 7 August 2014, paras xlii-xliv; Kosovo Supreme Court, *Ap.-Kz No. 371/2008*, Judgment, 10 April 2009, pp 14-16, 46-47, 63-64, 82-83; Kosovo Court of Appeals, *PAKR 966/2012*, Judgment, 11 September 2013, para. 74; Kosovo Court of Appeals, *P. no. 122/2014*, Judgment, 22 June 2017, para. 1.7 (pp 11-12); Kosovo Basic Court of Mitrovicë/Mitrovica, *P.nr. 64/12*, Judgment, 12 September 2013, p. 37; Kosovo Court of Appeals, *PAKR 55/14*, Judgment, 29 October 2014, pp 1-3, 22.

¹³¹ Shala Request, para. 28.

¹³² Appeal Judgment, para. 177.

¹³³ Appeal Judgment, para. 177; Shala Appeal Decision on Jurisdiction, para. 36.

I was sufficiently accessible and foreseeable to Mr Shala.

81. Accordingly, the Panel rejects Ground 3 insofar as it relates to JCE as a mode of liability for the crime of arbitrary detention.

D. INSUFFICIENT NOTICE OF PROSECUTION'S CASE RESULTED IN UNSAFE CONVICTIONS
(GROUND 4)

1. Submissions

82. Mr Shala argues that the Panel convicted him on the basis of a defective indictment that failed to identify either the members of the alleged JCE or the victims of the alleged "offences".¹³⁴ Mr Shala contends that the Appeals Panel acknowledged this lack of specificity, which deprived the Defence of a genuine opportunity to investigate and respond to the charges, thereby violating Article 6 ECHR and Article 30 of the Kosovo Constitution.¹³⁵ Mr Shala asserts that the failure to name victims or specify JCE members prevented the Accused from mounting an effective defence.¹³⁶ According to Mr Shala, the indictment's reference only to unidentified "officials" and unnamed victims fell short of the minimum international pleading standards, effectively expanding the Prosecution's case.¹³⁷ Furthermore, the Trial Panel expanded the scope of victims from nine to 18 individuals.¹³⁸

83. Mr Shala further contends that the additional nine victims fell outside the pleaded charges and exposes Mr Shala to a new basis of conviction without prior notice.¹³⁹ As a result, the Defence submits it was kept entirely in the dark, received no notice that Mr Shala was effectively being tried for crimes involving 18 victims.¹⁴⁰ This amounted to an impermissible transformation of the Prosecution's case and breached

¹³⁴ Shala Request, para. 31.

¹³⁵ Shala Request, para. 31.

¹³⁶ Shala Request, para. 32.

¹³⁷ Shala Request, para. 31.

¹³⁸ Shala Request, para. 33.

¹³⁹ Shala Request, para. 34.

¹⁴⁰ Shala Request, para. 35.

his right to a fair trial.¹⁴¹ The Defence emphasises that this case is atypical given the limited number of victims, requiring greater specificity, and that it was unfair to convict him for offences allegedly committed against nine additional individuals never charged in the Indictment.¹⁴² According to the Defence, the lack of notice and precision denied Mr Shala adequate time, facilities, and clarity to prepare his Defence, constituting a substantial violation of procedure under Article 48(7) of the Law and Rule 193 of the Rules.¹⁴³

84. The SPO responds that Mr Shala's submissions regarding the specificity of the other JCE members repeats arguments that have already been rejected on appeal and that he does not engage with the Appeal Judgment, rendering the request inadmissible.¹⁴⁴ The SPO further contends that Mr Shala fails to explain any error in the Pre-Trial Judgment and Appeals Panel's reasoning that the description of other JCE members was not impermissibly vague, and he identifies no legal errors in the Trial Panel's findings on JCE members.¹⁴⁵ The SPO also stresses that the Appeals Panel already rejected the prejudice claim in a reasoned decision, finding, amongst others, that the Indictment gave unambiguous notice that additional JCE members existed beyond those named and that the Indictment was not defective.¹⁴⁶

85. The SPO further contends that Mr Shala simply disagrees with the Appeals Panel's considerations related to the harm caused to 18 victims, instead of the nine victims referenced in the indictment.¹⁴⁷ According to the SPO, the Appeals Panel correctly found that the indictment had been cured and that Mr Shala had "timely, clear and consistent notice that he was charged in relation to at least 18 victims".¹⁴⁸

¹⁴¹ Shala Request, para. 35.

¹⁴² Shala Request, para. 36.

¹⁴³ Shala Request, para. 37.

¹⁴⁴ SPO Response, para. 33.

¹⁴⁵ SPO Response, para. 34.

¹⁴⁶ SPO Response, para. 34.

¹⁴⁷ SPO Response, para. 36.

¹⁴⁸ SPO Response, para. 41. See also SPO Response, paras 37-40, 42.

86. Mr Shala responds that the Prosecution fails to appreciate the prejudice caused by the omission of key alleged JCE members from the Indictment, contending that had people such as Mr Fatmir Limaj and Mr Osman Kryeziu been identified as JCE participants, the Defence could have conducted targeted investigations and adjusted its strategy accordingly, particularly given Mr Kryeziu's role as a Prosecution witness.¹⁴⁹ The Defence further replies that the failure to include such prominent KLA figures, who were well known to the Prosecution, violated Mr Shala's fair trial rights, and that the Prosecution similarly fails to engage with Defence arguments concerning victim particulars by wrongly asserting that references to factual matters amount to an acknowledgement or acceptance of an impermissible expansion of the charges.¹⁵⁰

2. The Supreme Court Panel's Assessment

87. The Panel notes at the outset that Mr Shala does not point to a substantial violation of a specific procedure in the Law or the Rules, but instead generally refers to Article 6 of the ECHR and Article 30 of the Constitution.¹⁵¹

88. The Panel considers that Mr Shala's submissions may be understood as invoking Article 6(3)(a) of the ECHR, which concerns the notice of charges. The Panel observes that Article 21(4)(a) of the Law similarly provides an accused with the right to be notified of the charges against them. Accordingly, the Panel will consider the merits of this Ground in view of the importance the Panel attaches to the right to liberty, its protection and the integrity of the proceedings.

89. The Panel notes that Mr Shala disagrees with the Appeals Judgment by arguing that the Appeals Panel violated procedural law, but he does not engage with the Appeals Panel's findings in relation to the defective nature of the indictment and, more importantly, with its extensive analysis and ultimate finding that the defects in

¹⁴⁹ Shala Reply, para. 8.

¹⁵⁰ Shala Reply, paras 8-9.

¹⁵¹ Shala Request, paras 31-37.

the indictment were cured.¹⁵²

90. Specifically, the Panel observes that the Appeals Panel found that the Trial Panel erred in failing to find a defect in the indictment with respect to the number of victims contained therein.¹⁵³ The Appeals Panel thereafter found that the indictment could be cured, as the addition of the nine victims did “not amount to a new charge or lead to a radical transformation of the SPO case against Shala”.¹⁵⁴ The Appeals Panel further noted that the term “at least” nine victims in the indictment was a clear indication to Mr Shala that he could face liability for more victims.¹⁵⁵ In this respect, the Appeals Panel observed that the SPO in its pre-trial brief, opening statements and throughout its submissions during trial referred to the 18 victims.¹⁵⁶ The Appeals Panel also undertook an analysis of Mr Shala’s awareness throughout the proceedings of the 18 victims and found that he had been aware of their existence.¹⁵⁷

91. The Panel notes that Mr Shala does not address any of the Appeals Panel’s analysis regarding defects in the indictment and the manner in which it was cured, nor does he point to any error in the Appeals Panel’s assessment in this respect. The Panel agrees with the Appeals Panel’s conclusion that the lack of specificity in the indictment had been remedied, allowing Mr Shala to mount a meaningful defence¹⁵⁸ and that Mr Shala had been provided with “timely, clear and consistent notice” that he was charged with respect to the 18 individuals.¹⁵⁹

92. Similarly, the Appeals Panel extensively addressed Mr Shala’s arguments related to the members of the JCE and the absence of named victims in the

¹⁵² See Shala Request, paras 31-37.

¹⁵³ Appeal Judgment, paras 189-193.

¹⁵⁴ Appeal Judgment, para. 195.

¹⁵⁵ Appeal Judgment, para. 195.

¹⁵⁶ Appeal Judgment, para. 197.

¹⁵⁷ Appeal Judgment, para. 198.

¹⁵⁸ Appeal Judgment, para. 197.

¹⁵⁹ Appeal Judgment, para. 199.

indictment.¹⁶⁰ The Panel observes that Mr Shala only generally states that defects in the indictment in this respect of the JCE members and the victims' names were never cured, but does not point to any specific finding by the Appeals Panel, does not engage with their extensive analysis, nor does he cite to any jurisprudence or otherwise in support of his general contention.¹⁶¹

93. The Panel therefore finds that Mr Shala failed to demonstrate a violation of his fair trial rights in this respect. Accordingly, the Panel dismisses Ground 4.

E. UNFAIRNESS RESULTING FROM CONTAMINATION OF THE EVIDENCE OF PROSECUTION WITNESSES (GROUND 5)

1. Submissions

94. Mr Shala submits that the Trial Panel erred in admitting the testimonies of Prosecution witnesses whose evidence was, as he contends, demonstrably contaminated, as they exchanged views regarding issues in the case.¹⁶² The Defence argues that the Panel incorrectly accepted the evidence of W04733's family members testimonies despite clear indications of coordination, including striking similarities in their accounts suggesting that their testimonies were rehearsed beforehand.¹⁶³

95. Moreover, Mr Shala asserts that the Trial Panel unreasonably dismissed the possibility that TW4-08 had been influenced because of being present during an interview involving Prosecution witness W04733.¹⁶⁴ The Defence further contends that while the Panel applied a lenient approach to the admission of evidence from W04733 and his family members, it simultaneously subjected the evidence of Defence witnesses to heightened scrutiny, treating with caution without justification.¹⁶⁵

¹⁶⁰ Appeal Judgment, paras 209-235.

¹⁶¹ See Shala Request, paras 31-37.

¹⁶² Shala Request, para. 38.

¹⁶³ Shala Request, para. 39.

¹⁶⁴ Shala Request, para. 39.

¹⁶⁵ Shala Request, para. 40.

According to Mr Shala, this inconsistent approach amounts to the application of double standards and reflects an unreasonable and selective assessment.¹⁶⁶

96. Furthermore, Mr Shala submits that the Trial Panel failed to properly assess the extensive evidence showing that key Prosecution witnesses had discussed disputed issues amongst themselves, thereby contaminating their accounts.¹⁶⁷ The Defence notes that witnesses W01448, TW4-01, TW4-10, and TW4-04 admitted to meeting, maintaining contact, or discussing events central to the case, such as the detention at the KMF and the events in Kukës, after the war, demonstrating clear indications of aligned testimonies.¹⁶⁸ The Defence further emphasises that TW4-04 and TW4-01 discussed disputed matters on several occasions, and that both Panels failed to consider that TW4-01 and TW4-10 were friends who openly discussed core issues, including the death of one victim.¹⁶⁹ According to Mr Shala, the Panel's failure to approach this contaminated evidence with the necessary caution, while still relying upon it substantively, constituted a material error that undermined the fairness of the proceedings.¹⁷⁰

97. The SPO responds that Mr Shala's Ground 5 is inadmissible as it consists of incomplete or erroneous determination of a factual matter and is a repetition of his previous submissions.¹⁷¹ The SPO contends that Mr Shala fails to engage with the Appeal Panels findings and his arguments contain no violation of the Law or substantial violation of procedure.¹⁷²

98. The Victim's Counsel responds that Ground 5 is inadmissible because it merely repeats factual challenges to witness credibility that were already fully examined and

¹⁶⁶ Shala Request, para. 40.

¹⁶⁷ Shala Request, paras 41-42.

¹⁶⁸ Shala Request, paras 41-42.

¹⁶⁹ Shala Request, paras 43-45.

¹⁷⁰ Shala Request, para. 46.

¹⁷¹ SPO Response, para. 43.

¹⁷² SPO Response, para. 43.

rejected by both the Trial Panel and the Appeals Panel, without identifying any new legal or procedural violation as required under Article 48(7) of the Law.¹⁷³ The Defence's core allegation of "evident contamination" of W04733's family members is based on a misstatement of the evidence, particularly regarding references to "Imer Imeri", which was in fact mentioned by W04733 himself.¹⁷⁴

99. The Victims' Counsel further notes that allegations concerning witness interaction and alleged collusion (including TW4-08's presence at interviews and the relationship between TW4-01 and TW4-10) were explicitly analysed by the Trial Panel and reviewed by the Appeals Panel, which either rejected the arguments or confirmed that no weight was placed on the impugned testimony.¹⁷⁵ The Defence therefore demonstrates only disagreement with factual findings, not a procedural violation or material impact on the outcome.¹⁷⁶

100. Mr Shala replies that the Prosecution and Victims' Counsel incorrectly characterise his submissions as raising factual issues, when in fact they concern the fairness of the proceedings.¹⁷⁷ He contends that the failure to exercise appropriate caution in assessing Prosecution witness evidence, combined with the application of stricter standards to Defence evidence, breached Mr Shala's right to a fair trial.¹⁷⁸

2. The Supreme Court Panel's Assessment

101. The Panel recalls Article 48(8) of the Law, which states that "[a] request for an extra-ordinary legal remedy under this Article may be filed on the basis of *rights available under this Law* which are protected under the Constitution or the European Convention on Human Rights and Fundamental Freedoms".¹⁷⁹ Accordingly, a party

¹⁷³ Victims' Response, para. 21.

¹⁷⁴ Victims' Response, para. 22; Appeal Judgment, para. 344.

¹⁷⁵ Victims' Response, paras 22-23; Trial Judgment, paras 371-375; Appeal Judgment, para. 375.

¹⁷⁶ Victims' Response, para. 24.

¹⁷⁷ Shala Reply, para. 10.

¹⁷⁸ Shala Reply, para. 10.

¹⁷⁹ Emphasis added.

requesting protection of legality must allege a violation of the criminal law contained within this Law or a substantial violation of the procedures set out in this Law and the Rules in accordance with Article 48(7)(a) and (b) of the Law. The Panel notes that Mr Shala has not referred to any Article in the Law, any Rule with the Rules, let alone any of rights as contained in the ECHR.¹⁸⁰ Mr Shala has also not specified whether this Ground is based on a substantial violation of the procedures or a violation of the criminal law.

102. Instead, Mr Shala raises submissions that are purely evidentiary in nature.¹⁸¹ However, here too, Mr Shala does not engage with the Appeals Panel's assessment of the matter.¹⁸² The Panel recalls that, in addition to the principles set forth above, a request for protection of legality shall not be filed on the ground of "an erroneous or incomplete determination of the facts" or disagreements with the factual assessment of the first and second instances.

103. Accordingly, the Panel finds Ground 5 inadmissible and hereby summarily dismisses it.

F. UNFAIR RELIANCE ON UNTESTED EVIDENCE (GROUND 6)

1. Submissions

104. Mr Shala submits that untested evidence cannot form the sole or decisive basis of a conviction.¹⁸³ The Defence argues that the Appeals Panel failed to recognise that "untested evidence" also includes live evidence being orally presented at trial.¹⁸⁴ On this basis, the finding that Mr Shala participated in the JCE and transferred W04733 to Kukës is unlawful, as it relied on untested evidence provided by W04733's family

¹⁸⁰ See Shala Request, paras 38-46.

¹⁸¹ Shala Request, paras 38-46.

¹⁸² Shala Request, paras 38-46.

¹⁸³ Shala Request, para. 47.

¹⁸⁴ Shala Request, para. 47.

members following his death.¹⁸⁵ The Defence further submits that the Panel's reliance on a generalised "operational pattern" to use untested evidence to support convictions for arbitrary detention, as well as findings relating to a particular witness and their relative, violated Mr Shala's right to examine the witnesses against him.¹⁸⁶ Consequently, the Defence contends that the proceedings were unfair and that the case must be remitted for retrial.¹⁸⁷

105. The SPO responds that Mr Shala alleges two Rule 140(4) violations, namely the W04733 Finding and the Pattern Finding, and that both should be dismissed.¹⁸⁸ The SPO submits that, as to W04733, the finding was not "essential" (i.e., indispensable) for any aspect of the conviction, which matters because Rule 140(4) applies only to indispensable facts.¹⁸⁹ The SPO further stated that Mr Shala's argument is defective because it ignores the Appeals Panel's correct legal approach distinguishing "predicate" from "essential" findings, and the W04733 point was only one predicate among many supporting the essential findings.¹⁹⁰ The SPO concludes that Mr Shala's failure to engage with the Appeals Panel's reasoning means he has not demonstrated any error in the Rule 140(4) analysis, and Ground 6 should be dismissed in full.¹⁹¹

106. The Victim's Counsel responds that Ground 6 is inadmissible, as the Defence again seeks to relitigate factual findings already addressed on appeal, without engaging with the Appeals Panel's reasoning or identifying any procedural error.¹⁹² According to the Victim's Counsel, the Defence's claim that the finding regarding Mr Shala's participation in the transfer of W04733 to Kukës was based solely on

¹⁸⁵ Shala Request, para. 47.

¹⁸⁶ Shala Request, para. 48.

¹⁸⁷ Shala Request, para. 49.

¹⁸⁸ SPO Response, para. 44.

¹⁸⁹ SPO Response, para. 45.

¹⁹⁰ SPO Response, para. 47.

¹⁹¹ SPO Response, para. 55.

¹⁹² Victims' Response, para. 25.

untested evidence was explicitly considered and rejected by the Appeals Panel.¹⁹³

107. The Victim's Counsel further contends that the Defence's submission amounts to no more than a repetition of prior appellate arguments, falling squarely outside the scope of a request for protection of legality and failing to meet the admissibility threshold.¹⁹⁴

108. Mr Shala responds that the Prosecution wrongly downplays the central issue concerning witness W04733, namely that hearsay evidence remains untested even when presented through live testimony, as it does not constitute first-hand evidence.¹⁹⁵ It argues that such evidence violates Rule 140(4)(a) of the Rules and that no degree of examination can cure its inherent unreliability or compensate for the Defence's inability to meaningfully challenge the case against Mr Shala.¹⁹⁶

2. The Supreme Court Panel's Assessment

109. The Panel recalls that, pursuant to Article 48(7)(b) of the Law, a party requesting protection of legality must identify a substantial violation of the procedures set out in this Law and the Rules.¹⁹⁷ The Panel further notes that a party requesting protection of legality must identify and substantiate the alleged legal violation, and in the case of a procedural violation, demonstrate how it materially affected the impugned judgment.¹⁹⁸

110. Mr Shala does not point to a substantial violation of a specific procedure in the Law or the Rules, except for generally referring to Rule 140(4) of the Rules in footnote 66 of the Request.¹⁹⁹ However, the Panel will exceptionally consider the merits of this Ground in view of the importance the Panel attaches to the right to liberty, its

¹⁹³ Victims' Response, para. 25; Appeal Judgment, paras 493, 501.

¹⁹⁴ Victims' Response, para. 25.

¹⁹⁵ Shala Reply, para. 11.

¹⁹⁶ Shala Reply, para. 11.

¹⁹⁷ See Article 48(7)(b) of the Law; Veseli Decision, para. 37.

¹⁹⁸ Mustafa Decision, paras 13, 22.

¹⁹⁹ Shala Request, paras 47-49.

protection, the integrity of the proceedings and the right to a fair trial.

111. Mr Shala submits that the Appeals Panel failed to consider that live testimony which repeats previously untested evidence does not lose its untested nature.²⁰⁰ However, the Appeals Panel addressed this issue by recalling that, under Rule 140(4)(a) of the Rules, a conviction may not be based “solely” on untested evidence.²⁰¹ The Appeals Panel further clarified that this prohibition applies to facts constituting elements of crimes, modes of liability, and any facts indispensable for conviction.²⁰² The Appeals Panel held that this prohibition also extends to individually charged criminal incidents even where multiple incidents are brought under a single count.²⁰³

112. Moreover, while evidence demonstrating a consistent pattern of conduct may, in certain circumstances, lend support to untested evidence, the Appeals Panel emphasised that any such corroboration must be assessed on a *case-by-case* basis; one untested piece of evidence cannot simply serve to corroborate another.²⁰⁴ Further, the Appeals Panel framed the inquiry as to whether the impugned findings rested solely or decisively on untested evidence, irrespective of broader considerations of overall fairness or counterbalancing factors.²⁰⁵

113. Other than general references to the Trial and the Appeal Judgment, Mr Shala does not engage with the Appeals Panel’s findings in this respect.²⁰⁶ Similarly, Mr Shala does not cite to any jurisprudence in support of his arguments.

114. In view of the above, the Panel considers that Mr Shala failed to demonstrate a substantial procedural violation.

²⁰⁰ Shala Request, para. 47.

²⁰¹ Appeal Judgment, paras 473-475.

²⁰² Appeal Judgment, para. 478.

²⁰³ Appeal Judgment, paras 482-83.

²⁰⁴ Appeal Judgment, paras 479-80.

²⁰⁵ Appeal Judgment, para. 486.

²⁰⁶ See Shala Request, paras 47-49.

115. Therefore, the Panel finds Ground 6 hereby dismisses it.

G. ERRORS RELATED TO THE CONVICTION FOR ARBITRARY DETENTION (GROUNDS 7 AND 3, IN PART)

1. Submissions

116. The Defence argues that the Trial and Appeals Panels misapplied the crime of arbitrary detention in a non-international armed conflict.²⁰⁷ They relied on standards drawn from an international armed conflict and international human rights law, and these standards cannot be transposed to a non-international armed conflict.²⁰⁸ The Defence submits that the Panels also treated procedural guidelines such as prompt judicial review and the existence of a “competent authority” as elements of the *actus reus*, even though such safeguards only apply to States.²⁰⁹ The Defence submits that the KLA lacked a state structure and an independent judiciary, making such requirements impossible to fulfil.²¹⁰ According to the Defence, the Appeals Panel also erred in finding that the Defence “never challenged the *actus reus*” of the crime of arbitrary detention.²¹¹

117. The Defence further submits that the Panels violated the principle of legality and Article 7 ECHR because the crime of arbitrary detention in a non-international armed conflict did not exist under Kosovo Law or customary international law in 1999.²¹² The Defence argues that the Appeals Panel reversed the burden of proof by requiring Mr Shala to show that no such offence existed, instead of requiring the Prosecution to prove such a claim.²¹³ According to the Defence, ill-treatment during detention cannot serve as an objective element of arbitrary detention, and the

²⁰⁷ Shala Request, paras 50-53.

²⁰⁸ Shala Request, paras 54-55.

²⁰⁹ Shala Request, paras 52, 57-59, 61-62.

²¹⁰ Shala Request, paras 55, 60-62.

²¹¹ Shala Request, para. 53.

²¹² Shala Request, paras 51, 54-55.

²¹³ Shala Request, paras 58, 62.

applicable law did not link ill-treatment to an automatic right to release.²¹⁴

118. The Defence also contests the Panels' findings on the *mens rea*. According to the Defence, the Panels inferred intent from occasional presence and limited participation, even though Mr Shala had no authority to arrest, detain, or release any detainees.²¹⁵ The evidence of ill-treatment does not demonstrate the intent required for arbitrary detention.²¹⁶ The Defence also submits that the Panels applied an inflated and unsupported standard for security-based detention.²¹⁷

119. The SPO responds that Ground 7 fails because Mr Shala advances five arguments concerning arbitrary detention, namely, its customary status in non-international armed conflicts, the *actus reus* requirements, the alleged lack of access to a competent authority in 1999, the role of ill-treatment, and liability *via* JCE, however, none disclose any error of law or procedure.²¹⁸ The SPO first argues that Mr Shala challenges to the customary basis of arbitrary detention and to the articulation of its *actus reus* merely reformulate legality arguments already raised under Ground 3, rendering them redundant.²¹⁹ According to the SPO, Mr Shala's claim that the Appeals Panel reversed the burden of proof is a mischaracterisation: the Appeals Panel simply rejected Mr Shala's unsubstantiated challenge to the customary analysis after finding no structural divergence between international humanitarian law and international human rights law in defining the crime of arbitrary detention.²²⁰

120. Regarding Mr Shala's remaining arguments, the SPO submits that requiring review by an independent authority is an inherent feature of the prohibition of arbitrary detention and applies equally to all actors in a non-international armed

²¹⁴ Shala Request, paras 63-65.

²¹⁵ Shala Request, para. 65.

²¹⁶ Shala Request, para. 66.

²¹⁷ Shala Request, para. 67.

²¹⁸ SPO Response, para. 56.

²¹⁹ SPO Response, paras 56-57.

²²⁰ SPO Response, paras 58-60.

conflict, such that the KLA's alleged lack of institutional capacity is legally irrelevant and does not entail any reversal of the burden of proof.²²¹ The SPO further argues that Mr Shala's contention regarding ill-treatment is unfounded, as the Trial Judgment did not treat ill-treatment as an objective element of the crime, and his JCE arguments rest on a misreading of the *Delalić* case by conflating direct commission with JCE liability, which the Appeals Panel correctly rejected.²²² Finally, the SPO states that one aspect of the *actus reus* challenged by Mr Shala was overturned on appeal, rendering any remaining complaint abstract and without material impact, and Ground 7 should therefore be dismissed in full.²²³

121. The Defence responds that, contrary to the Prosecution's assertions, the Trial Panel expressly and erroneously treated ill-treatment as an objective element of the crime of arbitrary detention.²²⁴ It submits that the Trial Panel's finding that mistreatment of detainees was "crucial" to satisfying the material elements of the offence demonstrates that ill-treatment was improperly relied upon in establishing the objective elements of arbitrary detention.²²⁵

2. The Supreme Court Panel's Assessment

122. The Panel recalls at the outset that, in addition to the arguments advanced in Ground 7, the Panel will consider here the arguments raised by Mr Shala in Ground 3, insofar as it relates to arbitrary detention. The Panel will first address Mr Shala's arguments related to the alleged violation of the principle of legality for arbitrary detention as advanced in Ground 3.

123. The Panel notes in this respect that Mr Shala contends that there has been a violation of the requirement of accessibility and foreseeability, as well as the principle

²²¹ SPO Response, paras 61-63.

²²² SPO Response, paras 66-69.

²²³ SPO Response, paras 72-73.

²²⁴ Shala Reply, para. 12.

²²⁵ Shala Reply, para. 13.

of legality as guaranteed by Article 7(1) of the ECHR, Article 33 of the Kosovo Constitution and Article 15 of the ICCPR.²²⁶ Mr Shala also refers to a violation by the Trial and Appeals Panels with respect to the application of Article 14(1)(c) of the Law and contends that the Trial and Appeals Panels committed “substantial violations of the law within the meaning of Article 48(7)-(8) of the Law and Rule 193 of the Rules”.²²⁷

124. The Panel understands Mr Shala’s arguments referencing Article 7 of the ECHR to be premised on an alleged violation of the criminal law and, in view of the above, finds this aspect of Ground 3 admissible. The Panel will therefore consider Mr Shala’s arguments on their merit.

125. The Panel recalls that the Appeals Panel addressed the question whether arbitrary detention forms part of customary international law at the time of the alleged crimes on a variety of occasions, including in Mr Shala’s case, following a lengthy analysis thereof.²²⁸ With respect to Mr Shala’s appeal against the Trial Judgment, the Appeals Panel confirmed its earlier findings that:

(i) the Specialist Chambers’ jurisdiction is not limited to the acts expressly enumerated under Article 14(1)(c) of the Law; (ii) the non-exhaustive language of the provision does not violate the principle of legal certainty (*lex certa*) considering that, for an act to be included in the Law, and thus be within the jurisdiction of the Specialist Chambers, it must have existed under customary international law during the Specialist Chambers’ temporal jurisdiction and must constitute a serious violation of Common Article 3; (iii) arbitrary detention amounts to a serious violation of Common Article 3, and detention becomes arbitrary and constitutes a serious violation of Common Article 3 when the principle of humane treatment is violated, irrespective of whether there is a legal basis to detain a person; (iv) arbitrary detention during a non-international armed conflict was criminalised under customary international law at the material time; (v) it was accessible and foreseeable to the Accused at the relevant time that involvement in acts of arbitrary detention might give rise to individual criminal responsibility; and (vi) charges of arbitrary detention in non-international armed conflict in this case do not violate the principle of legality.²²⁹

126. The Panel further wishes to emphasize that, as previously found by the Appeals

²²⁶ Shala Request, paras 27, 29. See also Shala Request, para. 51.

²²⁷ Shala Request, para. 30.

²²⁸ See Shala Appeal Decision Jurisdiction, paras 44-47. See also *Thaçi et al.* Appeal Decision on Jurisdiction; *Specialist Prosecutor v. Salih Mustafa*, KSC-CA-2023-02/F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023 (“*Mustafa* Appeal Judgment”), para. 430.

²²⁹ Appeal Judgment, para. 176. See also Appeal Judgment, para. 618.

Panel, “a plain reading of Article 142 of the SFRY Criminal Code and of the corresponding provisions of other criminal legislation from countries of the former Yugoslavia shows that these provisions provided at the time for the express criminalisation of illegal arrest [and detention] as a war crime without distinguishing between non-international and international armed conflicts”.²³⁰

127. The Appeals Panel, while noting that Mr Shala simply repeated arguments raised on previous occasions before the Pre-Trial Judge and the Court of Appeals,²³¹ also addressed additional arguments raised by Mr Shala “out of fairness to the Accused and in the interests of justice”.²³² Specifically, the Appeals Panel found that:

Shala’s arguments that the KLA was not sufficiently organised to implement international humanitarian law and thus that KLA members could not foresee that they could be liable for arbitrary detention are contradicted by adjudicated facts, evidence available on the record, including Shala’s prior statements, and the Trial Panel’s findings.²³³

128. The Panel notes that Mr Shala here too repeats, in one paragraph, arguments he previously raised.²³⁴ Mr Shala does not substantively engage with the various decisions and judgments issued by the Appeals Panel wherein it discussed at length the question regarding the customary international law nature of arbitrary detention during the time the crimes were committed. The Panel has carefully examined the Appeals Panel’s findings in its various decisions and judgment in this respect and agrees therewith.²³⁵ The Panel is therefore satisfied that neither the Trial nor the Appeals Panel violated the criminal law by finding that prior to 1998, arbitrary or unlawful detention was already widely condemned and under customary international law recognised as constituting a serious violation of international humanitarian law, including in non-international armed conflicts, and that such

²³⁰ *Thaçi et al.* Appeal Decision on Jurisdiction, para. 107.

²³¹ Appeal Judgment, paras 171, 174, 177.

²³² Appeal Judgment, para. 177 (internal citations omitted).

²³³ Appeal Judgment, para. 178 (internal citations omitted).

²³⁴ See Shala Request, para. 29. See also Appeal Judgment, para. 166.

²³⁵ See Appeal Judgment, paras 176-181, 618; Shala Appeal Decision on Jurisdiction, paras 44-47; *Thaçi et al.* Appeal Decision on Jurisdiction, paras 87-102, 106-109; *Mustafa* Appeal Judgment, paras 430-431.

violation could trigger consequences in terms of criminal responsibility.²³⁶ In other words, the Panel finds that Mr Shala failed to demonstrate any violation of the criminal law.

129. In view of the above, the Panel therefore dismisses Ground 3, insofar as it relates to Mr Shala's arguments regarding arbitrary detention.

130. The Panel will now turn to Mr Shala's arguments related to arbitrary detention under Ground 7.

131. The Panel notes that Mr Shala has not identified any Article in the Law, any Rule within the Rules or any associated Article within the ECHR, other than generally referring to the admissibility requirements for a referral under Article 48(7)-(8) of the Law and Rule 193 of the Rules suggesting there has been a violation thereof.²³⁷ Mr Shala does not specify whether any of these alleged errors amount to a substantial violation of the procedures or a violation of a criminal law.²³⁸

132. The Panel recalls that "the parties are expected to be precise in their submissions before the Specialist Chambers".²³⁹ The Panel further recalls that it could, where no reference to a violation of the Rules or Articles in the Law is made, dismiss a Ground as inadmissible.²⁴⁰

133. Given the deficiencies of the Request referred to above, the Panel will still exceptionally consider the merits of this Ground perceived by the Panel to allege a violation of the criminal law, in view of the importance it attaches to the right to liberty, its protection, the integrity of the proceedings and the right to a fair trial.

134. Mr Shala essentially argues that the Trial and Appeals Panels erred by

²³⁶ Cf. *Thaçi et al.* Appeal Decision on Jurisdiction, para. 108.

²³⁷ See Shala Request, paras 50-69.

²³⁸ Shala Request, paras 50-69.

²³⁹ H. Shala PoL Decision, para. 33.

²⁴⁰ H. Shala PoL Decision, para. 33.

concluding that the objective elements of the *actus reus* of arbitrary detention during an armed conflict, as well as the procedural safeguards applicable thereto, can be applied *mutatis mutandis* to the same crime within a non-international conflict.²⁴¹ In other words, Mr Shala argues that arbitrary detention in an international armed conflict imposes obligations on States, which cannot be transposed to non-state actors during a non-international armed conflict.

135. The Panel views Mr Shala's submissions to be based on alleged violations of the interpretation of a crime under Article 14(1)(c) of the Law.

136. Mr Shala summarizes the alleged violations he identified as follows:

(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"; (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.²⁴²

137. With respect to the first violation identified, the Panel observes that the Appeals Panel extensively considered Mr Shala's arguments in relation to the manner in which the Trial Panel delineated the contours of the basic procedural safeguards to bring a detained person before a judge or other competent authority and to allow the detained person to challenge the lawfulness of the detention.²⁴³ The Trial Panel defined the *actus reus* of the war crime of arbitrary detention as follows:

[T]he 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.²⁴⁴

138. The Trial Panel went on to clarify with respect to the basic procedural safeguards that the obligations of the detaining power owing to the person detained,

²⁴¹ Shala Request, para. 54.

²⁴² Shala Request, para. 52 (internal citations omitted).

²⁴³ Appeal Judgment, paras 623-630.

²⁴⁴ Trial Judgment, para. 936.

encompass the obligation to: (i) inform the person of the reasons for the deprivation of liberty; (ii) bring the person deprived of liberty promptly before a judge or other competent authority; and (iii) provide an opportunity to challenge the lawfulness of their detention.²⁴⁵

139. The Panel observes that the Appeals Panel addressed Mr Shala's contention that the authorities relied on by the Trial Panel concerning arbitrary detention in an international armed conflict cannot be used to construe procedural safeguards for the same crime in a non-international armed conflict involving non-state actors.²⁴⁶

140. The Panel further observes that the Appeals Panel correctly recalled that the principle of legality does not prevent a court from interpreting and clarifying elements of a crime.²⁴⁷ The Appeals Panel further cautioned in this context 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".²⁴⁸ However, the Appeals Panel found that:

In this instance, the interests of international human rights law and international humanitarian law broadly converge (e.g. common goals and protected interests) in that, as explained by the ICRC, they aim "to prevent arbitrary detention by specifying the grounds for detention based on needs, in particular security needs, and by providing for certain conditions and procedures to prevent disappearance and to supervise the continued need for detention."²⁴⁹

141. Having carefully reviewed the Appeals Panel's findings in this respect, the Panel agrees therewith. The Panel is mindful that the KLA did not have the same traditional internal structures as a State would. However, the Panel is of the view that the nature and structure of a non-state actor does not exempt it as such from the obligation to ensure that its detention of individuals is not arbitrary. The Panel notes in this respect the ICRC study relied upon by Mr Shala²⁵⁰ which provides *inter alia* that,

²⁴⁵ Trial Judgment, para. 938.

²⁴⁶ Appeal Judgment, paras 623-630.

²⁴⁷ Appeal Judgment, para. 624. See also Gucati and Haradinaj Decision, para. 44.

²⁴⁸ Appeal Judgment, para. 624.

²⁴⁹ Appeal Judgment, para. 624.

²⁵⁰ See Shala Request, para. 54.

with respect to procedural safeguards in the context of non-state and state actors in a non-international armed conflict, “[t]he review of lawfulness of interment must be carried out by an independent and impartial body”.²⁵¹

142. In view of the above, the Panel cannot identify any violation of a criminal law with respect to the authorities relied on by the Trial Panel, and thereafter extensively analysed and upheld by the Appeals Panel, to delineate the procedural safeguards applicable to the war crime of arbitrary detention in a non-international armed conflict. The Panel further considers that Mr Shala failed to demonstrate that the procedural safeguards delineated by the Trial Panel and approved by the Appeals Panel were defined with sufficient clarity or foreseeable to him at the time the crimes were committed.

143. Bearing in mind the protective nature of the prohibition against arbitrary detention, the Panel is of the view that the stated absence by Mr Shala of an independent authority within the KLA in and of itself does not mean that it should not have complied with its obligations and provided for a competent authority when it detained individuals during the conflict.²⁵² The Panel observes that Mr Shala does not point to any jurisprudence or other authorities in this respect to support his argument that a competent authority “can only exist where the party to the conflict possesses at least certain attributes of governmental authority”.²⁵³ Indeed, the Panel considers that non-state actors, are required to treat individuals they detain with dignity and in accordance with international humanitarian law. They can similarly be held accountable when they violate their obligations in this respect, in particular

²⁵¹ ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2nd edition, 2020, para. 761.

²⁵² ICRC, *Internment by Non-State Armed Groups: Legal and Practical Limits*, Tilman Rodenhäuser, 14 October 2024 (“When a person is interned, a review procedure is needed to prevent arbitrariness. It should include informing the person of the reasons for their internment, allowing the person to challenge these reasons, and reviewing such challenges and the need for internment regularly in an independent and impartial manner”).

²⁵³ Shala Request, para. 59.

where the violation amounts to a war crime.

144. Finally, the Panel rejects Mr Shala's argument that the Appeals Panel reversed the burden of proof by requiring him to demonstrate that arbitrary detention in a non-international armed conflict formed part of customary international law at the time the crimes were committed, as well as the elements of the *actus reus* of this crime.²⁵⁴ Mr Shala was convicted of this crime by the Trial Panel and, in accordance with the applicable standard of review on appeal, must demonstrate that the Trial Panel committed an error on a question of law invalidating the judgment.²⁵⁵

145. The Panel therefore considers that Mr Shala failed to demonstrate that the Trial or Appeals Panel violated the criminal law by finding that one of the procedural safeguards with respect to the *actus reus* of arbitrary detention includes a review of the detention by an independent, competent authority.

146. The Panel next turns to Mr Shala's second alleged violation, namely "the adoption of an unduly stringent standard as to what constitutes a 'competent authority'".²⁵⁶ The Panel observes that Mr Shala does not further expand upon this argument nor explain how the Trial or Appeals Panel violated the criminal law in this respect.²⁵⁷ Instead, Mr Shala makes submissions that seem to suggest that the Trial Panel erred in finding that the KLA could have ensured the presence of a "competent authority", in view of the fact that it "never possessed the capacities or characteristics of a conventional army".²⁵⁸ The Panel observes that the Appeals Panel entered into a lengthy analysis of the Trial Panel's findings as basis for its decision in this respect.²⁵⁹

147. The Panel recalls that a party requesting protection of legality must not only

²⁵⁴ See Shala Request, para. 58.

²⁵⁵ Article 46 of the Law. See also Appeal Judgment, para. 27.

²⁵⁶ Shala Request, para. 52.

²⁵⁷ See Shala Request, paras 53-69. See also Shala Reply, paras 12-13.

²⁵⁸ Shala Request, para. 60. See also Shala Request, paras 61-63, 68.

²⁵⁹ See Appeal Judgment, paras 643-664.

identify the alleged violation but also substantiate it. The Panel further recalls that arguments alleging erroneous or incomplete determinations of the facts are beyond the competence of this Panel.

148. In view of the above, the Panel dismisses Mr Shala's second argument under Ground 7.

149. The Panel now turns to Mr Shala's third argument under this Ground, namely the alleged violation by the Trial's findings as confirmed by the Appeals Panel that "it was irrelevant whether the perpetrator was personally responsible for the failure to respect procedural safeguards".²⁶⁰ According to Mr Shala, the Trial Panel impermissibly expanded JCE liability to approach "guilt by association".²⁶¹ Mr Shala relies on the ICTY Appeals Chamber's finding in the *Delalić et al.* case in this respect, namely 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."²⁶²

150. The Panel observes that the Appeals Panel rejected Mr Shala's reliance on the ICTY Appeal Judgment in the *Delalić et al.* case, finding that "[i]n reading the entirety of the ICTY Appeals Chamber's view on this matter, it is clear that it was evaluating different forms of commission, and their respective degrees of proximity to the crime. When it referred to 'committing' and 'primary criminal responsibility,' the ICTY Appeals Chamber meant direct perpetration. It distinguished between this, most direct or proximate form of commission, and less direct forms of commission, such as JCE".²⁶³ The Panel agrees with the Appeals Panel's view that Mr Shala's reliance on the finding of the ICTY Appeals Chamber in the *Delalić et al.* case to argue that when

²⁶⁰ Shala Request, para. 52. See also Shala Request, para. 65-66.

²⁶¹ Shala Request, para. 65.

²⁶² Shala Request, para. 65, citing ICTY, *Delalić et al.* Appeal Judgment, IT-96-21-A, 20 February 2001 ("*Delalić et al.* Appeal Judgment"), para. 342.

²⁶³ Appeals Judgment, para. 740. See also *Delalić et al.* Appeal Judgement, paras 343, 345.

it comes to the *mens rea* for arbitrary detention, “something more must be proven than mere knowing ‘participation’ in a general system”²⁶⁴ is inapposite, as that case in fact concerns direct perpetration.

151. As the Appeals Panel pointed out, Mr Shala was not convicted as a direct perpetrator for arbitrary detention as a war crime; he was convicted pursuant to JCE I.²⁶⁵ The Panel observes that the Appeal Panel further correctly pointed out that the *mens rea* for JCE I liability does require more than “mere knowing participation”.²⁶⁶ The Panel also recalls that whether sufficient evidence was adduced at trial with respect to Mr Shala’s *mens rea* in relation to the war crime of arbitrary detention is a factual assessment and beyond this Panel’s purview.

152. Based on the above, the Panel therefore finds that Mr Shala failed to demonstrate that the Trial or Appeals Panels erred in the standard applied to *mens rea* for the war crime of arbitrary detention and his conviction pursuant to JCE I for this crime. The Panel therefore dismisses this aspect of Ground 7.

153. The Panel next turns to Mr Shala’s last argument, namely that the Trial and Appeals Panels erred by “requiring that for detention due to security concerns to be lawful, it must be ‘absolutely’ necessary”.²⁶⁷ Mr Shala submits that the “absolutely necessary” standard “has no bearing in customary international law” and that the ECtHR “for example, imposes the standard of ‘strictly’ necessary or required by the exigences of a given situation”.²⁶⁸

154. The Panel notes that Mr Shala appears to be raising his disagreement with the application of the “absolutely necessary” test for the first time before this Panel. Mr Shala made a variety of arguments, engaging with the Trial Judgment in this

²⁶⁴ See Shala Request, para. 65.

²⁶⁵ See Appeal Judgment, para. 740.

²⁶⁶ Appeal Judgment, para. 740. See also Appeal Judgment, para. 741.

²⁶⁷ Shala Request, para. 52. See also Shala Request, para. 67.

²⁶⁸ Shala Request, para. 67.

respect, but did not challenge the actual use of “absolutely necessary” before the Appeals Panel.²⁶⁹ Instead, Mr Shala suggested before the Appeals Panel that the correct test should have been “whether there was a suspicion in respect of each detainee which could have been considered reasonable at the time”.²⁷⁰

155. The Panel recalls that it will not consider arguments that could have reasonably been raised before the first and second instances panels *de novo* before the Supreme Court. Moreover, Mr Shala does not indicate how “strictly necessary” differs from “absolutely necessary” and what impact, if at all, this alleged difference would have on the Trial and Appeals Panels’ findings. The Panel therefore dismisses this aspect of Ground 7.

156. Finally, the Panel notes that Mr Shala raises one further argument not contained in the alleged violations listed in paragraph 52 of the Shala Request. Specifically, Mr Shala contends that the ill-treatment of detainees during interrogations cannot “be treated as an objective element of the crime of arbitrary detention”.²⁷¹

157. The Panel observes that Mr Shala does not cite to any Trial or Appeals Panels’ findings in relation to this argument.²⁷² In fact, Mr Shala cites to nothing at all for this argument, whether the Trial or the Appeal Judgment or any other authority or jurisprudence. The Panel cannot engage with Mr Shala’s argument in relation to ill-treatment as an objective element of the crime of arbitrary detention where it has not been substantiated, explained or citations provided. In any event, the Panel notes that neither the Trial Panel nor the Appeals Panel found that the ill-treatment of a detainee constitutes an objective element of the arbitrary detention as a war crime.²⁷³

²⁶⁹ See Shala Request, paras 131, 214, 216-218.

²⁷⁰ Cf. Appeal Judgment, para. 721.

²⁷¹ Shala Request, para. 64.

²⁷² See Shala Request, para. 64.

²⁷³ Cf. Trial Judgment, paras 936-943; Appeal Judgment, paras 619-621.

158. The Panel therefore dismisses Mr Shala's argument in this respect.

159. Based on the above, the Panel therefore dismisses Ground 7 in its entirety.

H. THE CONVICTION FOR MURDER IS UNSAFE (GROUND 8)

1. Submissions

160. Mr Shala submits that the Panel improperly extended criminal responsibility for the victim's death to him through the JCE, even though he did not play an integral role in the killing.²⁷⁴ The Defence argues that the Trial Panel relied on three flawed elements to attribute the murder to the common plan. Firstly, it linked the killing to the mistreatment of detainees, even though Mr Shala was not present during the shooting, meaning the act could not be attributed to the common plan.²⁷⁵ Secondly, the Panel relied on untested and uncorroborated evidence that Mr Shala once threatened a detainee; even if accepted, this could at most show intent toward a specific individual, not the victim itself.²⁷⁶

161. Furthermore, according to Mr Shala, the Panel treated the denial of medical treatment as evidence of intention to kill, despite this decision being taken without Mr Shala's involvement.²⁷⁷ The Defence further notes that the events leading to the victim's death were unusual, that the Panel failed to clearly explain the basis for attributing the responsibility to Mr Shala, and that he did not possess the necessary *mens rea*.²⁷⁸ Overall, the Defence submits that these deficiencies breached Mr Shala's right to a sufficiently reasoned decision.²⁷⁹

162. The SPO responds that Ground 8 is inadmissible and should be summarily dismissed because Mr Shala fails to identify any specific legal or procedural error in

²⁷⁴ Shala Request, para. 70.

²⁷⁵ Shala Request, para. 71.

²⁷⁶ Shala Request, para. 71.

²⁷⁷ Shala Request, para. 71.

²⁷⁸ Shala Request, para. 72.

²⁷⁹ Shala Request, para. 73.

the Appeal Judgment, instead repeating factual disagreements already raised and rejected on appeal.²⁸⁰ The SPO submits that his submissions merely restate challenges to the scope of the JCE common plan and his responsibility for murder without engaging with the reasoning of the Appeals Panel and he largely relies on factual assertions that fall outside the scope of a request for protection of legality.²⁸¹ The SPO also argues Mr Shala misstates settled law: JCE liability does not require an “integral part” in the commission of the crime but a significant contribution with the requisite intent; nor does it require intent to kill a specific victim; and the Trial Panel did make findings on the type of intent possessed by Mr Shala, as expressly confirmed on appeal.²⁸²

2. The Supreme Court Panel’s Assessment

163. The Panel notes at the outset that Mr Shala does not point to a substantial violation of a specific procedure in the Law or the Rules.²⁸³ The Panel recalls that a party requesting protection of legality must identify, substantiate an alleged substantial violation of the procedures set out in this Law and the Rules and demonstrate how it materially affected the impugned judgment.²⁸⁴ The Panel cannot also engage with an assessment of factual and evidentiary matters. The Panel observes non-compliance on the part of Mr Shala with said admissibility standards.

164. For example, the Panel notes that Mr Shala does not engage or refer to the findings of the Appeals Panel.²⁸⁵ Instead, he challenges the Trial Panel’s attribution of JCE I to him as the mode of liability for the victim’s death, without however identifying whether this challenge constitutes an alleged error of law or a substantial procedural violation within the meaning of Article 48(7) of the Law.²⁸⁶ The Defence’s

²⁸⁰ SPO Response, paras 74-75.

²⁸¹ SPO Response, para. 75.

²⁸² SPO Response, para. 76; Appeal Judgment, paras 854-855. See also Appeal Judgment, paras 858-862.

²⁸³ Shala Request, paras 70-73.

²⁸⁴ See Article 48(7)(b) of the Law; Veseli Decision, para. 37.

²⁸⁵ Shala Request, paras 70-73.

²⁸⁶ Shala Request, paras 70-73.

submissions instead emphasise that Mr Shala was not the direct perpetrator of the killing and that other individuals played a greater role in the events leading to the victim's death.²⁸⁷

165. The Panel notes in this respect that the Defence challenges the factual findings of the Trial Panel and its assessment of Mr Shala's role and *mens rea* within the common plan, rather than identifying a specific legal error in the application of the JCE I. The Panel further observes that the rest of Mr Shala's arguments are purely evidentiary in nature. Mr Shala merely disagrees with alleged factual findings without engaging therewith as required by Article 48(7) of the Law and the standard of review referred to above.

166. In light of the above, the Panel finds Ground 8 inadmissible and summarily dismisses it.

I. ERRORS IN SENTENCING (GROUND 9)

1. Submissions

167. The Defence argues that the Trial and Appeals Panels violated the principle of legality under Article 7 of the ECHR by treating the applicable sentencing range merely as one factor amongst others.²⁸⁸ The Defence argues this contradicts the 1976 SFRY Criminal Code ("SFRY CC"), which prescribed a mandatory sentence range of five to fifteen years and was the law in force at the time.²⁸⁹ The Defence further contends that the Trial and Appeals Panel's reliance on Article 44(2) of the Law was misplaced because that provision entered into force sixteen years after the events and therefore could not lawfully influence the determination of the sentence.²⁹⁰ Mr Shala further argues that the Trial Panel erred in law by sentencing him based on crimes

²⁸⁷ Shala Request, para. 71.

²⁸⁸ Shala Request, para. 74.

²⁸⁹ Shala Request, para. 74.

²⁹⁰ Shala Request, para. 74.

allegedly committed against eighteen individuals and not nine as listed in the Indictment.²⁹¹ Finally, Mr Shala argues that the passage of time should have been considered as a mitigating factor.²⁹² As a result, the Defence states that the sentence imposed on Mr Shala should be reduced.

168. The SPO submits that Ground 9 ignores the autonomous legal framework governing the Specialist Chambers and incorrectly assumes the direct applicability of domestic sentencing provisions from the 1976 SFRY CC.²⁹³ Mr Shala was convicted of war crimes under customary international law, not under the SFRY CC, and binding jurisprudence confirms that the Law and customary international law govern sentencing, with domestic law relevant only insofar as compatible.²⁹⁴ The SPO further notes that even under Shala's erroneous interpretation, his sentence falls within the SFRY CC range, and his remaining arguments—concerning delay and the number of victims—either repeat previously rejected claims or are factually incorrect, as the Appeals Panel overturned several convictions and reduced the sentence accordingly.²⁹⁵ According to the SPO, Mr Shala identifies no sentencing error in law or principle, and Ground 9 should therefore be rejected or declared inadmissible.

169. The Victim's Counsel responds that Ground 9 is inadmissible, as the Defence repeats sentencing arguments already rejected on appeal without demonstrating any legal error.²⁹⁶ According to the Victim's Counsel, the Defence's claim that the sentencing ranges under the SFRY CC were mandatory has been comprehensively addressed and dismissed by the Appeals Panel, which confirmed that those ranges are not binding on the Specialist Chambers and were, in any event, considered as a

²⁹¹ Shala Request, para. 75.

²⁹² Shala Request, para. 76.

²⁹³ SPO Response, paras 79-80.

²⁹⁴ SPO Response, paras 79-81.

²⁹⁵ SPO Response, paras 82-83.

²⁹⁶ Victims' Response, paras 26-28.

relevant factor.²⁹⁷

170. The Victim's Counsel further notes that the Defence misrepresents the factual basis of sentencing by claiming Mr Shala was sentenced for eighteen victims, ignoring that the Appeals Panel overturned several convictions and reduced the sentence accordingly.²⁹⁸ Finally, according to the Victim's Counsel, the Defence fails to substantiate its claim that the passage of time constituted a mitigating factor, an argument already found vague and unsupported by the Appeals Panel, particularly in light of the seriousness of the crimes and Mr Shala's subsequent criminal conviction in Belgium.²⁹⁹

171. Mr Shala responds that the Prosecution and Victims' Counsel incorrectly rely on the fact that Mr Shala's 13-year sentence falls within the sentencing range of the SFRY CC, contending that sentencing ranges reflect a hierarchy of seriousness and define the maximum gravity of an offence.³⁰⁰ It submits that, although the sentence nominally fell within the five to 15-year range, the Appeals Panel unlawfully applied a broader sentencing framework permitting life imprisonment, thereby impermissibly expanding the applicable ceiling and violating the principle of legality and Article 7 of the ECHR.³⁰¹

2. The Supreme Court Panel's Assessment

172. The Panel notes at the outset that Mr Shala generally refers to Article 7 of the ECHR and Rule 44(2) of the Law.³⁰² However, Mr Shala does not specify whether there has been a substantial violation of the procedures or of the criminal law. The Panel again recalls that a party requesting protection of legality must identify a substantial

²⁹⁷ Victims' Response, para. 26; Appeal Judgment, paras 896, 899. See also Appeal Judgment, paras 833-885, 891-895.

²⁹⁸ Victims' Response, para. 27; Appeal Judgment, para. 907. See also Appeal Judgment, paras 191-200.

²⁹⁹ Victims' Response, para. 28; Appeal Judgment, para. 917.

³⁰⁰ Shala Reply, para. 14.

³⁰¹ Shala Reply, para. 15.

³⁰² Shala Request, paras 74-77.

violation of the procedures or the criminal law set out in this Law and the Rules.³⁰³

173. The Panel understands Mr Shala's submissions to be that the Trial and Appeals Panel violated the criminal law by failing to apply, what he contends is, the applicable law at the time his crimes were committed for purposes of determining his sentence.³⁰⁴ According to Mr Shala, the sentencing range provided for in his case is five to 15 years.³⁰⁵ Mr Shala contends that Article 44(2) of the Law entered into force 16 years after the SFRY CC and could not "lawfully influence the determination of the applicable sentencing framework".³⁰⁶

174. The Panel recalls that the SCCC confirmed that the Specialist Chambers shall function in an autonomous manner, in accordance with their own established legal framework.³⁰⁷ The SCCC further noted that "it is clear from a plain reading of Article 44(2) of the Law that neither the contemporaneous sentencing range nor any other subsequent more lenient range for the crime provided under Kosovo laws is binding on the criminal chambers".³⁰⁸ The SCCC specified that "a literal interpretation of the wording of the provision unequivocally indicates that, whereas the criminal chambers are bound to take these ranges into account when determining the punishment to be imposed on a person found guilty of a crime under international law, they are not bound to apply them".³⁰⁹

175. The Panel notes that Mr Shala does not attempt to argue that the SFRY CC is the more lenient sentencing range, nor does he provide any arguments suggesting that either the Trial or the Appeals Panel erred in its application of Article 44(2) of the Law.

³⁰³ See Article 48(7)(b) of the Law; Veseli Decision, para. 37.

³⁰⁴ Shala Request, para. 74.

³⁰⁵ Shala Request, para. 74.

³⁰⁶ Shala Request, para. 74.

³⁰⁷ KSC-CC-2024-27, Judgment on the Referral of Salih Mustafa Concerning Fundamental Rights Guaranteed by Articles 31 and 33 of the Kosovo Constitution and Articles 6 and 7 of the European Convention on Human Rights, 17 April 2025 ("SCCC Judgment"), para. 113.

³⁰⁸ SCCC Judgment, para. 115

³⁰⁹ SCCC Judgment, para. 115.

The Panel refers in this respect to the guidance it set forth in the *Salih Mustafa* case, which the Appeals Panel carefully followed in assessing Mr Shala's sentence of imprisonment pursuant to Article 44(2) of the Law.³¹⁰ In any event, the sentence of imprisonment handed down in Mr Shala's case falls within the sentencing range he contends should be applied to him and Mr Shala does not provide any arguments suggesting the Trial or the Appeals Panel abused their discretion in this regard.

176. Therefore, the Panel finds that Ground 9 should be dismissed.

V. CLASSIFICATION

177. Finally, the Panel notes that the SPO Response, Victims' Response and the Shala Reply are all classified as confidential. The Panel therefore orders Mr Shala, the SPO and Victims' Counsel to file public or public redacted versions of their submissions within 14 days of the notification of this Decision.

VI. DISPOSITION

178. For these reasons, the Supreme Court Panel hereby

- a. **DISMISSES** the Request in its entirety; and
- b. **ORDERS** Mr Shala, the SPO and Victims' Counsel to file public or public redacted versions of their submissions within 14 days from the notification of this Decision.



Judge Ekaterina Trendafilova, Presiding

Dated this Monday, 9 March 2026

At The Hague, the Netherlands

³¹⁰ Mustafa Decision, paras 75-111.