



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-05

**The Prosecutor v. Salih Mustafa**

**Before:** Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 16 December 2022

**Language:** English

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**Further redacted version of Corrected version of  
Public redacted version of Trial Judgment**

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TRIAL PANEL I (Panel) hereby renders its trial judgment.

## I. PROCEDURAL BACKGROUND

1. On 19 June 2020, the Specialist Prosecutor's Office (SPO) submitted the indictment against Salih Mustafa (Mr Mustafa or Accused) as confirmed by the Pre-Trial Judge (Confirmed Indictment).<sup>1</sup>

2. On 24 September 2020, Mr Mustafa was arrested<sup>2</sup> and transferred to the detention facilities of the Specialist Chambers in The Hague, the Netherlands.<sup>3</sup>

3. On 28 September 2020, the initial appearance of the Accused took place before the Pre-Trial Judge.<sup>4</sup>

4. On 28 October 2020, the Accused pleaded not guilty to the crimes charged in the Confirmed Indictment.<sup>5</sup>

5. On 7 May 2021, the Pre-Trial Judge transmitted the case file to the Panel.<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-05, F00011/A01, Specialist Prosecutor, *Indictment*, 19 June 2020, confidential. A public redacted version was filed on 28 September 2020, [F00019/A01](#); F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Salih Mustafa* (Confirmation Decision), 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were filed on 5 October 2020, F00008/CONF/RED and [F00008/RED](#), respectively.

<sup>2</sup> KSC-BC-2020-05, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 24 September 2020, public; F00009/A01, Pre-Trial Judge, *Arrest Warrant for Mr Salih Mustafa*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was filed on 24 September 2020, [F00009/A01/RED](#).

<sup>3</sup> KSC-BC-2020-05, F00014, Registrar, *Notification of Reception in the Detention Facilities of the Specialist Chambers*, 24 September 2020, public, with Annex 1, strictly confidential and *ex parte*. A public redacted version of Annex 1 was filed on 24 November 2020, [F00054/A01](#); F00009/A02, Pre-Trial Judge, *Order for Transfer to Detention Facilities of the Specialist Chambers*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was filed on 24 September 2020, [F00009/A02/RED](#).

<sup>4</sup> KSC-BC-2020-05, F00017, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance of Salih Mustafa*, 25 September 2020, public; T. 28 September 2020, public.

<sup>5</sup> KSC-BC-2020-05, F00039, Pre-Trial Judge, *Order Setting the Date for the Plea Hearing and a Second Status Conference*, 19 October 2020, public, paras 18, 22(a); T. 28 October 2020, public, p. 60, lines 2-13.

<sup>6</sup> KSC-BC-2020-05, F00119, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 7 May 2021, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

6. Throughout the pre-trial and trial phase of the case, nine victims were admitted to participate in the proceedings.<sup>7</sup> [REDACTED],<sup>8</sup> bringing the total number of victims participating in the proceedings to eight.
7. On 7 September 2021, the Panel took judicial notice of 52 adjudicated facts (Decision on Adjudicated Facts).<sup>9</sup>
8. On 15 September 2021, the trial commenced with the opening statements of the SPO and Victims' Counsel.<sup>10</sup>
9. From 20 September 2021 to 4 February 2022, the SPO presented its case, during which 13 witnesses appeared in court.<sup>11</sup> The written statements of two other witnesses were introduced *in lieu* of their oral testimony.<sup>12</sup>

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<sup>7</sup> On 30 April 2021, the Pre-Trial Judge granted the applications of five victims to participate in the proceedings; see KSC-BC-2020-05, F00105, Pre-Trial Judge, *Second Decision on Victims' Participation*, 30 April 2021, confidential. A public redacted version was filed on the same day, [F00105/RED](#). On 21 May 2021, the Panel granted the applications of four victims to participate in the proceedings; see F00126, Trial Panel I, *Third decision on victims' participation*, 21 May 2021, confidential. A public redacted version was filed on the same day, [F00126/RED](#).

<sup>8</sup> [REDACTED].

<sup>9</sup> KSC-BC-2020-05, F00191, Trial Panel I, [Decision on judicial notice of adjudicated facts](#), 7 September 2021, public; see F00144/A01, Specialist Prosecutor, [Annex 1 to Prosecution's motion for judicial notice of adjudicated facts](#), 30 June 2021, public, for the list of adjudicated facts (Adjudicated Facts).

<sup>10</sup> KSC-BC-2020-05, F00138, Trial Panel I, [Decision setting the date for the commencement of the trial and related matters](#), 18 June 2021, public; T. 15 September 2021, public.

<sup>11</sup> T. 20 September 2021, public; F00308, Specialist Prosecutor, [Prosecution Notice of the Closing of its Case pursuant to Rule 129](#), 4 February 2022, public.

<sup>12</sup> KSC-BC-2020-05, F00235, Trial Panel I, *Decision on the Prosecution application for the admission of prior statements of witness W04648 and related documents* (Decision Admitting W04648's Written Statements), 15 October 2021, confidential, para. 16(b). A public redacted version was filed the same day, [F00235/RED](#); F00286, Trial Panel I, *Decision on the Prosecution application pursuant to Rule 153 of the Rules* (Decision Admitting W04712's Written Statements), 17 December 2021, confidential, para. 37(b). A public redacted version was filed the same day, [F00286/RED](#).

10. On 23 February 2022, the Panel issued the “Decision on the Defence Rule 130(1) motion to dismiss any or all charges of the Confirmed Indictment”, rejecting the Defence motion to dismiss the charges.<sup>13</sup>
11. On 21 March 2022, the Panel heard the views and concerns of one victim participating in the proceedings.<sup>14</sup>
12. On 22 March 2022, the Defence made its opening statement.<sup>15</sup>
13. From 23 March to 26 May 2022, the Defence presented its case, during which 15 witnesses appeared in court.<sup>16</sup>
14. On 1 June 2022, the SPO presented additional evidence in rebuttal,<sup>17</sup> as authorised by the Panel.<sup>18</sup> The Defence elected not to present any evidence in rejoinder.
15. On 3 June 2022, the Panel called additional evidence pursuant to Rule 132 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).<sup>19</sup>
16. On 20 June 2022, the Panel closed the evidentiary proceedings, pursuant to Rule 134(a) of the Rules.<sup>20</sup>

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<sup>13</sup> KSC-BC-2020-05, F00326, Trial Panel I, *Decision on the Defense Rule 130(1) motion to dismiss any or all charges of the Indictment*, 23 February 2022, confidential. A public redacted version was filed on the same day, [F00326/RED](#).

<sup>14</sup> T. 21 March 2022, public.

<sup>15</sup> T. 22 March 2022, public.

<sup>16</sup> T. 23 March 2022, public; KSC-BC-2020-05, F00421, Specialist Counsel, [Defence Rule 131 Notice to close the Defence case](#), 26 May 2022, public.

<sup>17</sup> T. 1 June 2022, public.

<sup>18</sup> KSC-BC-2020-05, F00424, Trial Panel I, *Decision on Prosecution request to present evidence in rebuttal*, 27 May 2022, confidential. A public redacted version was filed on the same day, [F00424/RED](#).

<sup>19</sup> KSC-BC-2020-05, F00430, Trial Panel I, *Decision under Rules 132 and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers on evidence called by the Panel*, 3 June 2022, confidential. A public redacted version was filed on the same day, [F00430/RED](#).

<sup>20</sup> KSC-BC-2020-05, F00439, Trial Panel I, [Decision on the closing of the evidentiary proceedings and related matters](#) (Decision Closing the Evidentiary Proceedings), 20 June 2022, public, para. 25.

17. On 20 July 2022, Victims' Counsel submitted her statement on the impact of the crimes on the participating victims.<sup>21</sup>

18. On 21 July 2022, the Parties submitted their Final Trial Briefs.<sup>22</sup>

19. From 13 to 15 September 2022, the hearing on the closing statements was held,<sup>23</sup> and on 15 September 2022 the Presiding Judge closed the case.<sup>24</sup>

20. On 6 December 2022, the Panel scheduled the pronouncement of the Trial Judgment for Friday, 16 December 2022.<sup>25</sup>

## II. APPLICABLE LAW

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

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<sup>21</sup> KSC-BC-2020-05, F00456, Victims' Counsel, *Victims' Counsel statement on the impact of the crimes on the participating victims* (Victims' Counsel Statement on Impact of the Crimes), 20 July 2022, strictly confidential.

<sup>22</sup> KSC-BC-2020-05, F00457/COR, Specialist Counsel, [Corrected Version of the Defense Final Trial Brief](#) (Defence Final Trial Brief), 21 July 2022, public, with Annex 1, confidential; F00459/COR, Specialist Prosecutor, [Corrected version of 'Prosecution Final Trial Brief pursuant to Rule 134\(b\)'](#), 22 July 2022 (the original version was filed on 21 July 2022), public, with Annex 1 (SPO Final Trial Brief), confidential, and [Annex 2](#), public.

<sup>23</sup> [Decision Closing the Evidentiary Proceedings](#), para. 22; KSC-BC-2020-05, F00468, Trial Panel I, *Decision setting the agenda for the hearing on the closing statements and related matters* (Decision Setting Agenda for Closing Statements), 31 August 2022, confidential. A public redacted version was filed on the same day, [F00468/RED](#).

<sup>24</sup> T. 15 September 2022, public, p. 4859, line 15.

<sup>25</sup> KSC-BC-2020-05, F00491, Trial Panel I, [Scheduling order for the pronouncement of the judgment](#), 6 December 2022, public.

### III. THE CHARGES AGAINST THE ACCUSED

22. The Accused was born on 1 January 1972 in Prishtinë/Priština, Kosovo and is of Kosovar nationality.<sup>26</sup> The SPO alleges that, at all times relevant to the Confirmed Indictment, the Accused was the commander of the BIA Guerrilla unit (BIA, or BIA unit), a unit within the Llap Operational Zone (Llap OZ) of the *Ushtria Çlirimtare e Kosovës* (UÇK), known in English as the Kosovo Liberation Army (KLA).<sup>27</sup>

23. In the Confirmed Indictment, the SPO charges Mr Mustafa with four counts of war crimes under Article 14(1)(c) of the Law: arbitrary detention (Count 1), cruel treatment (Count 2), torture (Count 3), and murder (Count 4).<sup>28</sup> According to the SPO, the crimes charged were committed in the context of and associated with a non-international armed conflict between, on one side, the KLA and, on the other, forces of the Federal Republic of Yugoslavia and the Republic of Serbia, including units of the Yugoslav Army, police and other units of the Ministry of Internal Affairs, and other groups fighting on behalf of the Federal Republic of Yugoslavia and the Republic of Serbia (collectively Serbian forces).<sup>29</sup> The SPO further alleges that the Accused was aware of the factual circumstances establishing the existence of the armed conflict and knew that the victims were persons taking no active part in hostilities.<sup>30</sup>

24. According to the Confirmed Indictment, all crimes charged were committed against persons detained at a compound in Zllash/Zlaš, Kosovo – referred to as the Zllash Detention Compound (ZDC) – which was used by the BIA as a safe house and

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<sup>26</sup> [Confirmed Indictment](#), para. 1; KSC-BC-2020-05, F00108/A01, Specialist Counsel, *Annex 1 to Agreement on facts pursuant to Rule 95(3) (Proposed chart)*, 30 April 2021, confidential, p. 2, Facts 1.1 and 1.2. A corrected public redacted version was filed on 17 June 2022, [F00108/RED/A01/COR](#).

<sup>27</sup> [Confirmed Indictment](#), para. 2.

<sup>28</sup> [Confirmed Indictment](#), para. 35.

<sup>29</sup> [Confirmed Indictment](#), paras 3-4.

<sup>30</sup> [Confirmed Indictment](#), para. 6.

a detention and interrogation site.<sup>31</sup> The SPO alleges that Mr Mustafa is individually criminally responsible for the arbitrary detention, cruel treatment, and torture of at least six persons at the ZDC, between approximately 1 April 1999 and 19 April 1999,<sup>32</sup> and the murder of one person, [REDACTED] (Murder Victim), between approximately 19 April 1999 and around the end of April 1999.<sup>33</sup>

25. According to the SPO, the Accused is individually criminally responsible under Article 16(1)(a) of the Law for having physically committed certain acts underlying the crimes charged under Counts 1-3, and/or having committed certain or all acts underlying the crimes charged under Counts 1-4 through a basic form of joint criminal enterprise (JCE I). In the alternative, the SPO alleges that the Accused is individually criminally responsible for having committed the crime charged under Count 4 through an extended form of JCE (JCE III).<sup>34</sup> The Accused is also alleged to have ordered and/or instigated the crimes charged under Counts 1-3,<sup>35</sup> and to have aided and abetted the crimes under Counts 1-4.<sup>36</sup> In the alternative, the SPO alleges that the Accused is individually criminally responsible as a superior, under Article 16(1)(c) of the Law, for all crimes charged.<sup>37</sup>

26. The Defence seeks the acquittal of the Accused on all counts in the charges.<sup>38</sup>

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<sup>31</sup> [Confirmed Indictment](#), para. 5.

<sup>32</sup> [Confirmed Indictment](#), paras 18-30, 35.

<sup>33</sup> [Confirmed Indictment](#), paras 31-33, 35.

<sup>34</sup> [Confirmed Indictment](#), paras 7-10, 12, 34-35.

<sup>35</sup> [Confirmed Indictment](#), paras 13, 34-35.

<sup>36</sup> [Confirmed Indictment](#), paras 11, 34-35.

<sup>37</sup> [Confirmed Indictment](#), paras 14-17, 34-35.

<sup>38</sup> Defence Final Trial Brief, p. 84; T. 15 September 2022, public, p. 4798, lines 17-18.

#### IV. EVIDENTIARY CONSIDERATIONS

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

27. As guaranteed by Article 31(5) of the Constitution and Article 21(3) of the Law, the Accused shall be presumed innocent until proved guilty. A Panel may find an Accused guilty where guilt is proved beyond reasonable doubt, in accordance with Article 21(3) of the Law and Rules 140(1) and 158(3) of the Rules. A reasonable doubt must be grounded in reason and cannot consist of imaginary or frivolous doubt, but must have a rational link to the evidence, lack of evidence or inconsistencies in the evidence.<sup>39</sup> The burden of proof rests solely on the SPO.<sup>40</sup>

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

29. In respect of circumstantial evidence (which is evidence on subsidiary facts from which a material fact may be reasonably inferred)<sup>41</sup> the standard of proof is satisfied, according to Rule 140(3) of the Rules, only if the inference to be drawn from such evidence is the only reasonable one.

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<sup>39</sup> KSC-BC-2020-07, F00611/RED, Trial Panel II, [Public Redacted Version of the Trial Judgment](#) (Gucati and Haradinaj Trial Judgment), 18 May 2022, public, para. 36. Similarly, ICC, *Prosecutor v. Ngudjolo Chui*, ICC-01/04-02/12-271-Corr, Appeals Chamber, [Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute"](#) (Ngudjolo Chui Appeal Judgment), 7 April 2015, para. 109, citing ICTR, *Rutaganda v. Prosecutor*, ICTR-96-3-A, Appeals Chamber, [Judgement](#), 26 May 2003, para. 488.

<sup>40</sup> See also [Gucati and Haradinaj Trial Judgment](#), para. 34.

<sup>41</sup> [Gucati and Haradinaj Trial Judgment](#), para. 42.

## B. THE EVIDENCE BEFORE THE PANEL

30. The evidence available to the Panel for the purpose of its deliberations consists of: (i) the oral testimonies of 28 witnesses who appeared before the Panel, 13 called by the SPO and 15 by the Defence, together with portions of their written statements read out to them and discussed with them in court, which constitute an integral part of their testimonies;<sup>42</sup> (ii) the written statements of two witnesses who did not appear before the Panel, admitted *in lieu* of their testimony, pursuant to Rules 153 and 155 of the Rules, together with related documents or associated exhibits;<sup>43</sup> (iii) the written statements of the Accused, who neither testified nor made any unsworn statement before the Panel, which consist of: a statement given by Mr Mustafa as a witness in the *Agron Zeqiri* case, on 12 March 2003, before the Investigating Judge of the District Court of Prishtinë/Priština;<sup>44</sup> and a statement given to the SPO as a suspect, on 19 and 20 November 2019;<sup>45</sup> (iv) documentary evidence consisting, among others, of photographs (most notably of the Accused and the alleged crime location in Zllash/Zlaš), KLA internal documents, reports, maps, social media posts and book excerpts; and (v) two expert reports called into evidence by the Panel and prepared

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<sup>42</sup> T. 4 October 2021, public, p. 852, line 14 to p. 854, line 21. This includes portions of written statements taken by the SPO or the Defence, written statements taken by UNMIK, or transcripts of testimonies given before Kosovo courts.

<sup>43</sup> [Decision Admitting W04648's Written Statements](#), para. 16(b); [Decision Admitting W04712's Written Statements](#), para. 37(b).

<sup>44</sup> 7000650-7000660.

<sup>45</sup> 069404-TR-ET Parts 1-8 (and corresponding Albanian versions); 069401-069404. See KSC-BC-2020-05, F00281, Trial Panel I, *Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material* (Article 37 & Other Material Decision), 13 December 2021, confidential, paras 16, 20-23, admitting one statement into evidence and determining that the other was available for consideration by the Panel for the purpose of its deliberations and judgment. A public redacted version was issued the same day, [F00281/RED](#).

by the *Instituut voor Mensenrechten en Medisch Onderzoek* (iMMO), assessing the physical, psychological and psychiatric condition of two victim-witnesses in the case.<sup>46</sup>

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

31. Pursuant to Rule 138(1) of the Rules, the Panel considered during its deliberations the evidence that was part of the evidentiary record, in accordance with the system established by the Panel before the start of the trial on the submission and admissibility of evidence.<sup>47</sup> This system was not contested by the Parties or Victims' Counsel.

32. The Panel is required to make findings only on those facts which are essential for the determination of the guilt or innocence of the Accused, on each count in the charges. When making its factual findings, the Panel has therefore discussed pieces of evidence only to the extent necessary to establish whether or not the standard of proof beyond reasonable doubt has been met in respect of the constitutive elements of the crimes, the modes of liability and any other relevant fact. Similarly, the Panel has not explicitly evaluated each and every potential inconsistency within a piece of evidence or between different items, but it has done so, *proprio motu* or upon challenge, when it considered it necessary to determine whether the required standard of proof was met

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<sup>46</sup> The Defence did not challenge the qualifications of the experts or the reports; KSC-BC-2020-05, F00430, Trial Panel I, *Decision under Rules 132 and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers on evidence called by the Panel*, 3 June 2022, confidential, paras 8-9, 13(a). A public redacted version was filed on the same day, [F00430/RED](#); F00417/01, Victims' Counsel, *Annex 1 to Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05* (iMMO Expert Report on [REDACTED]), 24 May 2022, strictly confidential (containing the medical report pertaining to [REDACTED]); F00417/02, Victims' Counsel, *Annex 2 to Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05* (iMMO Expert Report on [REDACTED]), 24 May 2022, strictly confidential (containing the medical report pertaining to [REDACTED]); See further KSC-BC-2020-05, F00473/A01, Registry, *Annex A to Memorandum on Exhibit List*, 12 September 2022, confidential, listing all items admitted or available to the Panel for the purpose of its deliberations and judgment.

<sup>47</sup> KSC-BC-2020-05, F00169, Trial Panel I, [Decision on the submission and the admissibility of evidence](#), 25 August 2021, public.

in relation to a particular element or fact. In this context, the Panel emphasises the importance of assessing the credibility, reliability and probative value of the evidence in light of the trial record as a whole. The Panel has not explicitly addressed all the arguments raised by the Parties and participants and has not explicitly referred to a specific witness testimony where there was significant contrary evidence on the record. When necessary, the Panel has explained in more detail the considerations underlying its assessment of the evidence. All of this is in compliance with the principle of free assessment of the evidence by the Panel, as enshrined in Rule 137(2) of the Rules.

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

### 1. Testimonial Evidence

34. **Oral evidence of *viva voce* witnesses.** The Panel notes Rule 139(4) of the Rules, which provides that in determining the weight to be given to the testimony of a witness, a Panel shall assess the credibility of the witness and the reliability of his or her testimony. Credibility relates to whether a witness testified truthfully, while reliability refers to whether facts on which a witness testified may be confirmed or put in doubt by other evidence or surrounding circumstances. Thus, even when a witness is honest and credible, his or her evidence can be, at times, unreliable.<sup>48</sup>

35. The Panel has full discretionary powers to assess the credibility and reliability of the witnesses before relying on their evidence.<sup>49</sup> In doing so, the Panel has considered

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<sup>48</sup> ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-3121-Red, Appeals Chamber, [Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction](#), 1 December 2014, para. 239.

<sup>49</sup> See ICTR, *Kanyarukiga v. Prosecutor*, ICTR-02-78-A, Appeals Chamber, [Judgement](#) (Kanyarukiga Appeal Judgement), 8 May 2012, para. 121, and references therein.

a number of factors, which are non-exhaustive,<sup>50</sup> as follows: (i) the level of detail provided by the witness, indicating that the witness experienced the events personally;<sup>51</sup> (ii) the coherence and consistency of the witness's account, including the consistency of their testimony with their written statement(s) and the explanations provided by the witness for any inconsistencies, as discussed with them in court;<sup>52</sup> (iii) the coherence and consistency of the witness's testimony with other evidence before the Panel;<sup>53</sup> (iv) the plausibility of the witness's account;<sup>54</sup> (v) attempts or efforts made by the witness to be accurate (for instance, acknowledging difficulties in recalling certain events or details, or differentiating between what the witness experienced personally and what they learnt from others);<sup>55</sup> (vi) the effects of time and trauma on the witness's memory, which may have an impact on their ability to reconstruct the events;<sup>56</sup> (vii) the witness's demeanour when testifying in court,

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<sup>50</sup> See similarly ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1762-Red, Trial Chamber IX, [Trial Judgment](#) (*Ongwen* Trial Judgment), 4 February 2021, para. 260.

<sup>51</sup> See similarly ICC, [Ongwen Trial Judgment](#), paras 255, 395; see also *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, Trial Chamber VI, [Judgment](#) (*Ntaganda* Trial Judgment), 8 July 2019, para. 78, referring to the precision of the information provided.

<sup>52</sup> See similarly [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, [Ongwen Trial Judgment](#), paras 255-256; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Appeals Chamber, [Judgement](#), Vol. I (*Prlić et al.* Appeal Judgement), 29 November 2017, para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>53</sup> See similarly [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-2275-Red, Appeals Chamber, [Judgment on the appeals of Mr Bemba et al. against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"](#) (*Bemba et al.* Appeal Judgment), 8 March 2018, para. 1084, stating that corroboration is one of many potential factors relevant to a trial chamber's assessment of the credibility and reliability of a witness's testimony; [Ngudjolo Chui Appeal Judgment](#), paras 2, 170, stating that "a Trial Chamber should [...] assess the credibility of a witness in part by assessing whether the content of his or her testimony is confirmed by other evidence"; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>54</sup> See similarly [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, [Ntaganda Trial Judgment](#), para. 78; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>55</sup> See similarly ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1989-Red, Trial Chamber VII, [Judgment pursuant to Article 74 of the Statute](#) (*Bemba et al.* Trial Judgment), 19 October 2016, para. 203.

<sup>56</sup> See similarly ICC, [Ntaganda Trial Judgment](#), para. 79; [Bemba et al. Trial Judgment](#), para. 203; *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Trial Chamber II, [Judgment pursuant to article 74 of the Statute](#) (*Katanga* Trial Judgment), 7 March 2014, para. 83; *Prosecutor v. Lubanga*, ICC-01/04-01/06-2842, Trial Chamber I, [Judgment pursuant to Article 74 of the Statute](#) (*Lubanga* Trial Judgment), 14 March 2012, para. 103.

including their readiness and willingness to respond to questions and any changes in attitude when questioned by the opposing Party;<sup>57</sup> (viii) the witness's relationship to either Party or Victims' Counsel, including any ties to, bias towards, or motives to implicate or exculpate, the Accused, any ties to the BIA or the KLA, any involvement in the events under consideration and any other incentive or motive to lie, fabricate, distort or withhold information;<sup>58</sup> (ix) any bias towards the Specialist Chambers and/or the SPO, which may have undermined the witness's willingness and sense of obligation to provide the Panel with evidence to assist it in its determination of the truth; and (x) any indications that the witness may have been intimidated, threatened, pressured or influenced, or that they have colluded with other witnesses.<sup>59</sup>

36. The Panel stresses that it has broad discretion in assessing inconsistencies in the evidence.<sup>60</sup> In doing so, it has taken into account, *inter alia*, the nature, extent and seriousness of the inconsistencies, the witness's explanations for these inconsistencies, the fact that witnesses experience and remember past events differently,<sup>61</sup> the effects of trauma and the passage of time.<sup>62</sup> Accordingly, inconsistencies, contradictions and inaccuracies do not automatically render a witness's evidence unreliable.<sup>63</sup>

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<sup>57</sup> See similarly [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, [Ongwen Trial Judgment](#), para. 259; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>58</sup> See similarly [Gucati and Haradinaj Trial Judgment](#), para. 44; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2666-Red, Appeals Chamber, [Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'](#) (*Ntaganda Appeal Judgment*), 30 March 2021, para. 17; [Ongwen Trial Judgment](#), para. 258; [Ntaganda Trial Judgment](#), para. 77; ICTY, [Prlić et al. Appeal Judgement](#), para. 200; ICTR, [Kanyarukiga Appeal Judgement](#), para. 121.

<sup>59</sup> See similarly ICC, [Katanga Trial Judgment](#), para. 87.

<sup>60</sup> See also ICC, [Ntaganda Appeal Judgment](#), para. 18.

<sup>61</sup> Witnesses may attach substantial weight to details that were important to them and less weight to details of minor significance; see similarly ICC, [Bemba et al. Trial Judgment](#), para. 204; [Ntaganda Trial Judgment](#), para. 80.

<sup>62</sup> Memories of central details of a traumatic event are often more accurate and complete than memories of incidental or marginal details.

<sup>63</sup> Similarly [Gucati and Haradinaj Trial Judgment](#), para. 44, stating that "[i]n accordance with Rule 139(6) of the Rules, minor discrepancies between the evidence of different witnesses, or between the testimony

37. Consistent with Rule 139(6) of the Rules, the Panel has accepted, at times, parts of a witness's account and rejected others, acknowledging that it is possible for a witness to be accurate and reliable on some issues and unreliable on others.<sup>64</sup> When the Panel had reservations with regard to a witness's credibility, it relied on their testimony to the extent that it was corroborated by other credible and reliable evidence or to the extent that discrete aspects of their evidence were not impacted by the factors otherwise affecting their credibility. However, other times, the Panel has found a witness's credibility and/or reliability to be impugned to such an extent that they could not be relied upon even if other evidence appeared to corroborate parts of their testimony.<sup>65</sup>

38. In evaluating identification evidence given by witnesses regarding persons or locations, which in the present case featured prominently, the Panel has considered factors including: the circumstances in which the witness observed the location or the person; the length of the observation; the distance between the identified location or person and the witness; any obstruction to the observation; other factors affecting such identification (weather, engines running, presence of other persons, day or night time); any interactions between the witness and the identified person; the manner in which the witness described a location or person; whether there were inconsistencies, misidentification followed by later rectification, memory lapses and possible influence by others.<sup>66</sup>

39. In assessing the identification evidence provided by witnesses on the Accused and other alleged perpetrators, the Panel has further taken into account: the position,

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of a particular witness and his or her prior statements have not been regarded as discrediting such evidence".

<sup>64</sup> See similarly ICC, [Ongwen Trial Judgment](#), para. 260.

<sup>65</sup> See similarly ICC, [Ngudjolo Chui Appeal Judgment](#), paras 1, 168.

<sup>66</sup> ICC, [Ntaganda Trial Judgment](#), para. 72; *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Trial Chamber III, [Judgment pursuant to Article 74 of the Statute](#) (*Bemba Trial Judgment*), 21 March 2016, para. 242 and references therein.

role and authority of the Accused at the relevant time; nicknames used by the alleged perpetrators; their membership in the BIA or the KLA; the presence in and control of an area by the BIA or the KLA; uniforms, insignias, accessories and headgear worn; vehicles used; language used by the alleged perpetrators; their behaviour, including their *modus operandi*; and any recognition made based on physical features and/or photographs shown to the witnesses in court.<sup>67</sup> The Panel has treated with caution the identification evidence of a single witness made under difficult circumstances, such as in the dark, while being beaten by several individuals, while being sick or unconscious, or in a fleeting moment.<sup>68</sup> However, the Panel has not excluded such evidence, but has assessed it considering all factors mentioned above and in light of other evidence on the record. Lastly, while a witness's prior knowledge of, or level of familiarity with, the Accused is a relevant factor, the fact that a witness did not personally know the Accused prior to the events does not necessarily undermine the reliability of his or her identification evidence.<sup>69</sup>

40. **Written statements.** The Panel notes that the same considerations of credibility and reliability apply *mutatis mutandis* to written statements introduced *in lieu* of oral testimony under Rules 153 and 155 of the Rules. However, the Panel has duly taken into account that the witnesses did not testify in court and that the non-tendering Party – and, in fact, in the case of one witness, neither Party – had the opportunity to

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<sup>67</sup> Similarly, ICC, [Ntaganda Trial Judgment](#), para. 73; [Bemba Trial Judgment](#), para. 243 and references therein.

<sup>68</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, [Judgement](#) (*Popović et al. Appeal Judgement*), 30 January 2015, para. 382; *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Appeals Chamber, [Judgement](#), 19 July 2010, paras 152-156; *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeals Chamber, [Appeal Judgement](#), 23 October 2001, paras 39-40.

<sup>69</sup> See similarly ICTR, *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, Appeals Chamber, [Judgement](#), 14 December 2015, para. 1616; *Renzaho v. Prosecutor*, ICTR-97-31-A, Appeals Chamber, [Judgement](#), 1 April 2011, para. 530; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Appeals Chamber, [Judgment \(Reasons\)](#), 1 June 2001, paras 327-328.

examine the witnesses. As dictated by Rule 140(4) of the Rules, the Panel has not based its judgment solely or to a decisive extent on the evidence of these witnesses.

41. **Expert reports.** In relation to expert reports, the Panel has considered factors such as the established competence of the experts in their field of expertise, the methodologies used, the extent to which the findings were consistent with other evidence in the case, and the general reliability of the experts' evidence.<sup>70</sup>

## 2. Documentary Evidence

42. The Panel notes that the Law does not establish an absolute requirement that evidence be introduced only through a witness. In evaluating the documentary evidence before it, the Panel has taken into account indicia of authenticity and reliability, when available, such as origin, authorship or source, chain of custody, specific references to names, locations, presence of logos or other identifying signs or symbols, and any other relevant information.<sup>71</sup> The Panel has also considered the coherence or consistency of the documentary evidence with other evidence in the case. The Panel has not necessarily discarded documentary evidence lacking the above indicia, provided that the content of the item fitted within the system of evidence relevant to a certain matter, in accordance with the Panel's holistic evaluation of the evidence.

## 3. Corroboration

43. In line with Rule 139(3) of the Rules, it is within the Panel's discretion to consider whether a single piece of evidence or the sum of several pieces of evidence suffice to prove a specific fact.<sup>72</sup>

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<sup>70</sup> See similarly ICC, [Ntaganda Trial Judgment](#), para. 54.

<sup>71</sup> Similarly ICC, [Ntaganda Trial Judgment](#), para. 57; [Bemba et al. Trial Judgment](#), para. 208.

<sup>72</sup> Similarly, [Gucati and Haradinaj Trial Judgment](#), para. 39.

#### 4. Hearsay Evidence

44. The Panel recalls that the legal framework of the Specialist Chambers does not forbid the use of hearsay evidence.<sup>73</sup> The Panel also considers that such evidence does not necessarily have lower probative value than direct evidence (*i.e.* direct accounts of what witnesses saw, experienced or did themselves). Ultimately, it depends on the circumstances surrounding each piece of hearsay evidence.<sup>74</sup> In general, the Panel has looked at hearsay evidence with caution in order to minimise the potential prejudice to the Accused arising out of the impossibility to confront the primary source of the information.<sup>75</sup>

#### 5. Circumstantial Evidence

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

#### 6. Alibi Evidence

46. The Panel first recalls that an alibi does not constitute a defence in its proper sense. The accused is merely submitting evidence to deny that he or she was in a position to commit the crime(s) charged, as he or she was located elsewhere than where alleged in the charges.<sup>76</sup> An accused does not bear the burden of proof beyond

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<sup>73</sup> See also [Gucati and Haradinaj Trial Judgment](#), para. 24.

<sup>74</sup> Similarly, ICC, [Ngudjolo Chui Appeal Judgment](#), para. 226; [Bemba et al. Appeal Judgment](#), para. 874; ICTY, [Popović et al. Appeal Judgment](#), para. 1307.

<sup>75</sup> Similarly, [Gucati and Haradinaj Trial Judgment](#), paras 25, 43.

<sup>76</sup> ICTY, [Popović et al. Appeal Judgment](#), para. 343; *Prosecutor v. Mucić et al.*, IT-96-21-A, Appeals Chamber, [Judgement](#) (*Mucić et al. Appeal Judgment*), 20 February 2001, para. 581; ICTR, *Nchamihigo v. Prosecutor*, ICTR-2001-63-A, Appeals Chamber, [Judgement](#), 18 March 2010, para. 92; *Zigiranyirazo v. Prosecutor*, ICTR-01-73-A, Appeals Chamber, [Judgement](#), 16 November 2009, para. 17; ICC, [Ongwen Trial Judgment](#), para. 2449.

reasonable doubt in relation to establishing an alibi, but only needs to produce evidence likely to raise a reasonable doubt with regard to the SPO's case.<sup>77</sup> Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the SPO must eliminate the reasonable possibility that the alibi is true, and must establish beyond reasonable doubt that, notwithstanding the alibi, the facts as alleged, are true.<sup>78</sup>

#### D. FACTS REQUIRING NO PROOF

47. **Adjudicated facts.** Pursuant to Rule 157(2) of the Rules, the Panel may take judicial notice of adjudicated facts from other proceedings of the Specialist Chambers or from final proceedings before other Kosovo courts or other jurisdictions. While adjudicated facts need not to be proved at trial, a Party may still present evidence challenging the accuracy of the facts.<sup>79</sup>

48. In the present case, upon the SPO's request, the Panel has taken judicial notice of 52 adjudicated facts from final proceedings before the International Criminal Tribunal for the former Yugoslavia (ICTY) and Kosovo courts. The facts relate primarily to the existence of an armed conflict between the KLA and Serbian forces.<sup>80</sup> The Defence did not present evidence challenging the accuracy of these facts.

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<sup>77</sup> ICTY, [Popović et al. Appeal Judgement](#), para. 343; ICTR, [Setako v. Prosecutor](#), ICTR-04-81-A, Appeals Chamber, [Judgement](#) (Setako Appeal Judgement), 28 September 2011, para. 224; [Prosecutor v. Munyakazi](#), ICTR-97-36A-A, Appeals Chamber, [Judgement](#) (Munyakazi Appeal Judgement), 28 September 2011, para. 24.

<sup>78</sup> ICTY, [Popović et al. Appeal Judgement](#), para. 343; ICTR, [Setako Appeal Judgement](#), para. 224; [Munyakazi Appeal Judgement](#), para. 24; [Nahimana et al. v. Prosecutor](#), ICTR-99-52-A, Appeals Chamber, [Judgement](#) (Nahimana et al. Appeal Judgement), 28 November 2007, para. 417.

<sup>79</sup> [Decision on Adjudicated Facts](#), paras 11, 14.

<sup>80</sup> [Decision on Adjudicated Facts](#), paras 12-15; F00144/A01, Specialist Prosecutor, [Annex 1 to Prosecution's motion for judicial notice of adjudicated facts](#), 30 June 2021, public, containing the adjudicated facts (Adjudicated Facts).

## E. GENERAL ASSESSMENT OF SPO WITNESSES

49. Before setting forth its general assessment of the credibility and reliability of the SPO witnesses, the Panel finds it necessary to discuss the climate of witness intimidation prevailing in Kosovo,<sup>81</sup> which has had an impact on the evidence of some of the SPO witnesses and has informed the Panel's assessment of their credibility and reliability.

### 1. Climate of Witness Intimidation in Kosovo

50. Throughout the course of this trial, the Panel has received credible evidence from multiple witnesses on the existence of a climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against persons who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members. Such investigations or prosecutions involve cases such as this one, where former KLA members are prosecuted for crimes allegedly committed against Kosovar Albanians.

51. [REDACTED] explained, in a very lucid and forthcoming manner, that witnesses – or those who are believed to be witnesses – before the Specialist Chambers are perceived and labelled in Kosovo as traitors and collaborators: “somebody who has betrayed the values of freedom and values of the war”. [REDACTED] testified that the possibility of being labelled as such creates fear among witnesses – which [REDACTED] has felt and continues to feel – and went further to state: “[The] fear of being labelled a collaborator and traitor will always exist. It will exist for all of us who have testified before the Specialist Chambers”. [REDACTED] added that this is

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<sup>81</sup> See also [Gucati and Haradinaj Trial Judgment](#), paras 576-579; KSC-BC-2020-06, PL001/F00008, Supreme Court Panel, [Decision on Kadri Veseli's Request for Protection of Legality](#), 15 August 2022, public, para. 41; IA022/F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention](#), 22 August 2022, public, para. 28.

enhanced by the fact that Kosovo is a small country and “[w]e all know each other, quite easily”.<sup>82</sup>

52. [REDACTED] similarly testified that [REDACTED] as a “traitor”, which took a heavy toll on him, and that he too was afraid: “Of course, the fear is there. It’s still there today. [...] [REDACTED]. They prejudge me. [...] [REDACTED]”.<sup>83</sup>

53. Several other witnesses provided further concrete accounts of threats or warnings that they or their family members received. [REDACTED]<sup>84</sup> – revealed that, [REDACTED] that former KLA members who had allegedly committed war crimes should be arrested and prosecuted, was told, in response, to [REDACTED]. The witness understood this to be a threat.<sup>85</sup> [REDACTED]. [REDACTED].<sup>86</sup> [REDACTED] further testified – in line with his prior statement to the SPO – that he did not feel comfortable reporting what had happened to him in Zllash/Zlaš because former KLA members had supporters “everywhere” in Kosovo, [REDACTED]: “all the institutions are held by those people”.<sup>87</sup>

54. [REDACTED] testified similarly that [REDACTED] was once threatened and told to [REDACTED]. The witness attributed this incident to his efforts to find out what had happened [REDACTED].<sup>88</sup> He further revealed [REDACTED] that he lives in constant fear that “something will happen to [him and his family]”.<sup>89</sup> He stated in court: “I feel I am not free. I live in stress. I don’t feel I can go freely onto the streets”,

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<sup>82</sup> **W04676**: T. 18 November 2021, confidential, p. 1712, line 1 to p. 1714, line 9.

<sup>83</sup> **W01679**: T. 5 October 2021, confidential, p. 942, lines 11-21.

<sup>84</sup> [REDACTED].

<sup>85</sup> [REDACTED].

<sup>86</sup> [REDACTED].

<sup>87</sup> [REDACTED].

<sup>88</sup> **W04391**: T. 22 November 2021, confidential, p. 1783, line 23 to p. 1787, line 25.

<sup>89</sup> **W04391**: T. 23 November 2021, confidential, p. 1844, line 22 to p. 1845, line 1.

“if I see a car [...] just behind me, I fear that something will happen”.<sup>90</sup> He added explicitly that he is afraid of the Accused and other former KLA members.<sup>91</sup>

55. [REDACTED], testified similarly that [REDACTED] was afraid and that it was impossible [REDACTED] to safely and openly speak [REDACTED]: “I always fear that somebody will recognise me and something will happen to me. We don’t discuss these things”.<sup>92</sup>

56. In an even more revealing incident, [REDACTED] testified that he was told [REDACTED] not to testify before the Specialist Chambers or he would be killed.<sup>93</sup> [REDACTED] testimony is reinforced by [REDACTED] statement to the SPO, introduced *in lieu* of oral testimony. [REDACTED] affirmed in clear terms: “Let me tell you straightaway [...] if they come to know about me being here today giving this statement [to the SPO], I will be dead before this evening”.<sup>94</sup>

57. The evidence set out above shows that there is a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members. Witnesses are stigmatised as “traitors” or “collaborators”, are unable to speak freely about the events they underwent, are subjected to threats and intimidation and live in constant fear that something will happen to them or their family. This climate has had a visible impact, albeit to different degrees, on the evidence provided by some of the witnesses who appeared before the Panel. The Panel

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<sup>90</sup> **W04391**: T. 23 November 2021, confidential, p. 1784, line 8 to p. 1785, line 23.

<sup>91</sup> **W04391**: T. 23 November 2021, confidential, p. 1845, lines 2-16.

<sup>92</sup> **W04390**: T. 24 November 2021, confidential, p. 1893, lines 21-22.

<sup>93</sup> **W03593**: T. 21 September 2021, confidential, p. 531, line 23 to p. 532, line 23; T. 22 September 2022, confidential, p. 619, line 14 to p. 621, line 19; p. 657, line 23 to p. 658, line 13.

<sup>94</sup> **W04712**: 077816-TR-ET Part 1 RED1, p. 20, lines 4-7.

has assessed this impact, where relevant, in its general assessment of the witnesses, below.

## 2. W01679

58. W01679 testified before the Panel on 4 and 5 October 2021 and 1 June 2022,<sup>95</sup> with in-court protective measures.<sup>96</sup>

59. He provided evidence about his arrest by KLA soldiers, his detention at the ZDC and the mistreatment he and other detainees suffered there.

60. The Panel finds W01679 credible regarding all aspects of his testimony. W01679 was exceptionally forthcoming in his answers on all topics on which he was questioned, which the Panel found remarkable considering the climate of fear and witness intimidation described above. He was clear, concise, coherent and consistent throughout his examination.

61. W01679's description of the treatment he and other detainees suffered at the ZDC was graphic, detailed,<sup>97</sup> and full of emotion, demonstrating that he experienced the events personally. For instance, he described in detail how he was electrocuted and burnt.<sup>98</sup> He recalled how he could hear the other detainees "screaming, howling like dogs, making sounds like cats, because of the torture and the pain" and added

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<sup>95</sup> **W01679**: T. 4 October 2021, confidential, pp. 860-930; T. 5 October 2021, confidential, pp. 938-1014; T. 1 June 2022, confidential, pp. 4442-4491.

<sup>96</sup> KSC-BC-2020-05, F00041, Pre-Trial Judge, *First Decision on Specialist Prosecutor's Request for Protective Measures* (First Decision on Protective Measures), 20 October 2020, strictly confidential and *ex parte*, para. 39(c). A confidential redacted version was issued the same day.

<sup>97</sup> See, for example, **W01679**: T. 4 October 2021, public, p. 915, line 14 to p. 916, line 5; p. 925, lines 2-6. The witness also sometimes provided unnecessary details, which indicate in the view of the Panel that his testimony was based on his personal experience. For instance, he recalled that, when he was released, he was returned his shoelaces and a belt (**W01679**: T. 4 October 2022, public, p. 904, line 24 to p. 905, line 3).

<sup>98</sup> **W01678**: T. 4 October 2021, public, p. 883, line 17 to p. 884, line 17; T. 5 October 2021, public, p. 985, lines 13-23; p. 986, line 17 to p. 987, line 15.

that he too may have uttered these sounds when mistreated.<sup>99</sup> He also recalled how the Murder Victim looked “deformed” from the beatings and that his flesh smelled from the injuries.<sup>100</sup> He described compellingly how he felt while in detention: “You were just waiting for death, when it will come. Today, tomorrow. You were waiting for you to be killed”.<sup>101</sup> He testified that to this day he can still hear the voices of the victims and of those who mistreated him and has flashbacks of their faces.<sup>102</sup> In a striking proof of this, [REDACTED].<sup>103</sup> W01679 stated: “I will never forget that person to my last breath”, “It’s fixed in my mind”.<sup>104</sup> His emotional testimony about the distress that it caused him [REDACTED] adds to the truthfulness of his account: “he tore open my wounds again” and “sent me back to 1999”, W01679 stated.<sup>105</sup> Given all of the above, there is no doubt in the Panel’s mind that W01679’s testimony is based on events that he personally experienced and that remained engraved in his mind.

62. In addition, W01679 made visible efforts to provide an accurate account, making it clear when he could not remember particular details,<sup>106</sup> distinguishing between what he witnessed himself and what he heard from others,<sup>107</sup> and insisting on correcting aspects of his prior statement.<sup>108</sup> In this regard, the Panel is satisfied that he provided

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<sup>99</sup> **W01679**: T. 4 October 2021, public, p. 890, line 15 to p. 891, line 1.

<sup>100</sup> **W01679**: T. 4 October 2021, confidential, p. 906, lines 5-9; p. 907, lines 5-8.

<sup>101</sup> **W01679**: T. 4 October 2021, public, p. 883, lines 6-12; p. 903, lines 20-24.

<sup>102</sup> **W01679**: T. 5 October 2021, confidential, p. 939, line 24 to p. 940, line 21; T. 1 June 2022, confidential, p. 4466, lines 2-20, p. 4472 line 21 to p. 4473, line 9.

<sup>103</sup> See para. 404; T. 1 June 2022, confidential, p. 4445, lines 3-5.

<sup>104</sup> **W01679**: T. 1 June 2022, confidential, p. 4451, lines 3-21; p. 4466, lines 11-20.

<sup>105</sup> **W01679**: T. 1 June 2022, confidential, p. 4446, lines 5-15, p. 4447, lines 14-16.

<sup>106</sup> See, for example, **W01679**: T. 4 October 2021, public, p. 885, lines 7-11; p. 908, lines 5-9; T. 5 October 2021, public, p. 982, line 10 to p. 983, line 2; T. 5 October 2021, confidential, p. 991, line 21 to p. 992, line 4. In addition, his testimony is filled with statements that highlight his efforts to be accurate and truthful: “This is what I can still remember”, “As far as I remember”, “To my recollection”, “if I’m not mistaken”; see, for example, **W01679**: T. 4 October 2021, confidential, p. 877, lines 13-21; p. 887, lines 5-11; p. 904, lines 9-12; T. 4 October 2021, public, p. 882, lines 20-23; p. 885, lines 3-11; p. 902, lines 16-22.

<sup>107</sup> See, for example, **W01679**: T. 4 October, confidential, p. 894, lines 4-9; p. 895, lines 2-5, 22-25.

<sup>108</sup> **W01679**: T. 4 October 2021, confidential, p. 873, line 19 to p. 876, line 20 (*in particular*, p. 876, lines 18-20).

plausible and convincing explanations for apparent discrepancies with his prior statement.<sup>109</sup>

63. W01679 was also measured and restrained in his account, which further enhances his credibility. For instance, he testified that “Commander Cali” beat him only on one occasion and that, while he was present on subsequent occasions, he did not take part in other beatings.<sup>110</sup>

64. Lastly, the Panel notes that W01679’s testimony is strongly corroborated by other credible and reliable evidence before the Panel, both documentary and testimonial, as shown in detail in the Panel’s evidentiary analysis.

65. In light of all of the above, the Panel finds W01679 credible and has relied on his evidence.

### 3. W03593

66. W03593 testified before the Panel from 20 to 23 September 2021,<sup>111</sup> with in-court protective measures.<sup>112</sup>

67. He provided evidence about his arrest by KLA soldiers, his detention at the ZDC and the treatment he and other detainees suffered while in detention.

68. The Panel finds W03593 credible on all aspects of his testimony. His account was consistent, rich in detail, graphic, and narrated with emotion, which shows that he drew on his personal experience. For instance, W03593 recalled repeatedly that, when

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<sup>109</sup> **W01679**: T. 4 October 2021, public, p. 875, lines 10-16; p. 897, line 8 to p. 899, line 6; T. 4 October 2021, confidential, p. 882, lines 3-12.

<sup>110</sup> **W01679**: T. 5 October 2021, public, p. 1004, line 19 to p. 1005, line 6; p. 1013, lines 5-15; *see also* T. 5 October 2021, public, p. 987, lines 16-20.

<sup>111</sup> **W03593**: T. 20 September 2021, confidential, pp. 392-489; T. 21 September 2021, confidential, pp. 509-565; T. 22 September 2021, confidential, pp. 569-669; T. 23 September 2021, confidential, pp. 676-702.

<sup>112</sup> First Decision on Protective Measures, para. 39(c).

he was arrested, KLA soldiers offered him chocolate and that they started to beat him when he wanted to eat it.<sup>113</sup> This is a secondary detail that the witness recalled consistently throughout his testimony showing, in the view of the Panel, that he was recalling events that he personally experienced. His graphic account of the conditions of detention – how he lied down in water in the barn, after being beaten, or how he slept under the same blanket as W03594<sup>114</sup> – is also further proof of the personal nature of his account. So is, in the Panel’s view, his heartfelt testimony about the long-lasting effects of the mistreatment he suffered: “It has changed the course of my family life”, “it has changed my life”, the witness stated, explaining that it left him [REDACTED].<sup>115</sup>

69. Further, W03593 was generally forthcoming in his testimony and remained consistent on critical aspects of his account. Notably, the witness was questioned extensively by both Parties and the Panel on how he identified the Accused as one of the persons who interrogated and beat him. W03593 did not attempt to incriminate the Accused at all costs and acknowledged outright that he did not see him properly, that he was not acquainted with him, and that he could not recognise him even

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<sup>113</sup> **W03593**: T. 20 September 2021, public, p. 395, lines 7-21; p. 399, lines 19-24; p. 400, lines 20 to p. 401, line 1; *see also* T. 20 September 2021, public, p. 401, line 24 to p. 402, line 8 (recalling that he fell on his knees as he was pushed into the barn where he was detained).

<sup>114</sup> **W03593**: T. 20 September 2021, public, p. 411, lines 10-16; T. 20 September 2021, confidential, p. 453, lines 5-9; *see also* T. 20 September 2021, public, p. 454, lines 7-13 (recalling vividly how the Murder Victim had a burn injury on his stomach area).

<sup>115</sup> **W03593**: T. 21 September 2021, confidential, p. 542, lines 15-25. The witness’s testimony is full of further emotional and graphic examples that highlight the personal nature of his account; *see, for example*: T. 20 September 2021, confidential, p. 416, lines 8-11 (where the witness stated powerfully that after the beatings he felt “dead”); T. 21 September 2021, confidential, p. 523, lines 10-19 (pointing out the different injuries he incurred and stating that his “whole body [was] in a mess”); T. 21 September 2021, confidential, p. 540, lines 16-21 (pointing to places on his body where he was hit and where he had scars).

today.<sup>116</sup> He explained – contrary to the Defence’s submissions<sup>117</sup> – that he had come to believe that the person was the Accused based on his headgear, his role and authority over the other perpetrators, and his nickname.<sup>118</sup> When repeatedly pressed on this point by both the SPO and the Defence, the witness remained consistent in his answers and did not waver.

70. In addition, he was quick to specify the extent of his knowledge and admitted without hesitation when he did not know or could not remember certain aspects of the events.<sup>119</sup> He distinguished clearly between what he saw and heard himself<sup>120</sup> and what he learnt from others. Notably, he explained that he had learnt that the commander in Zllash/Zlaš was the Accused from other persons.<sup>121</sup>

71. Importantly, many aspects of W03593’s testimony are corroborated by other credible and reliable evidence before the Panel, both documentary and testimonial, as shown in detail in the Panel’s evidentiary analysis. The level of detail on which his testimony is corroborated and the graphic nature of these details are such that the Panel finds it highly implausible that W03593 would have fabricated his account, or colluded with other witnesses to align his testimony.

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<sup>116</sup> **W03593**: T. 20 September 2021, public, p. 412, line 20 to p. 414, line 14; p. 420, lines 13-21; T. 22 September 2021, public, p. 583, line 19 to p. 585, line 3; T. 23 September 2021, public, p. 695, lines 21-25.

<sup>117</sup> T. 14 September 2022, public, p. 4712, lines 6-23.

<sup>118</sup> **W03593**: T. 20 September 2021, public, p. 412, line 20 to p. 414, line 14; p. 420, lines 13-21; p. 429, lines 6-12; T. 22 September 2021, public, p. 583, line 19 to p. 586, line 21; T. 22 September 2021, confidential, p. 651, lines 15 to p. 657, line 9.

<sup>119</sup> *See, for example*, **W03593**: T. 20 September 2021, public, p. 399, lines 10-18; p. 405, lines 6-12; p. 409, lines 8-17; T. 20 September 2021, confidential, p. 431, lines 11-16; T. 21 September 2021, public, p. 511, line 6 to p. 512, line 4; p. 552, line 25 to p. 553, line 11; T. 21 September 2021, confidential, p. 517, lines 3-13; T. 23 September 2021, public, p. 697, line 12 to p. 698, line 3.

<sup>120</sup> *See, for example*, **W03593**: T. 20 September 2021, public, p. 413, line 12 to p. 414, line 14; p. 429, lines 6-12 (explaining that he had heard the Accused giving an order and that he saw him wearing a red hat).

<sup>121</sup> **W03593**: T. 22 September 2021, public, p. 584, line 12-20; p. 586, lines 10-21; T. 23 September 2021, public, p. 695, lines 21-25.

72. While some inconsistencies exist between the witness's testimony in court and his statement to [REDACTED], as revealed during his testimony, the Panel does not find that these inconsistencies affect the witness's credibility. The Panel has addressed these inconsistencies in more detail in its evidentiary analysis.<sup>122</sup>

73. Lastly, the Panel notes that the witness was, at times, hesitant to give the names of persons who had provided him with information related to the events under consideration.<sup>123</sup> The Panel does not consider that this affects W03593's credibility. Given the climate of fear and witness intimidation prevailing in Kosovo, it is understandable that W03593 did not wish to mention the names of other individuals out of concern for their safety and security. The Panel finds it telling that W01679 – who was exceptionally forthcoming – was also hesitant at one point to give the name of one individual in the presence of the Accused and stated: "Maybe it's not that important to mention his surname. [...] your client can do something. [REDACTED]. But, if necessary, I can tell it to Judges his name and surname".<sup>124</sup> In the Panel's view, W03593's hesitation was grounded in fear and not in an intention to withhold information from the Panel.

74. In light of all of the above, the Panel finds W03593 credible and has relied on his evidence.

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<sup>122</sup> See para. 553.

<sup>123</sup> **W03593**: T. 22 September 2021, confidential, p. 586, line 19 to p. 589, line 18 (*see, in particular*, p. 587, lines 2-4: "I'm not here to give the names of other persons. I am here to give a testimony on behalf of myself but not mention other names"; p. 589, lines 12-14: "I don't want to mention any of them here. So I am not here to mention the names of other people. I am just here for myself").

<sup>124</sup> **W01679**: T. 5 October 2021, confidential, p. 994, lines 11-24.

#### 4. W03594

75. W03594 testified before the Panel from 12 to 14 October 2021,<sup>125</sup> with in-court protective measures.<sup>126</sup>

76. He provided evidence about his arrest by KLA soldiers and his time in detention at the ZDC.

77. W03594 provided a generally credible account of his apprehension by the KLA, his detention at the ZDC, the presence of other detainees at the ZDC, and the circumstances of his release, all of which is strongly corroborated by the testimony of several other witnesses, as well as by documentary evidence. His account was detailed, graphic and emotional, which demonstrates that he testified about events that he personally experienced. For example, he recalled that, on the day he was taken to Zllash/Zlaš, [REDACTED].<sup>127</sup> Another telling example is his emotional recollection of how he felt while in detention – equated with an animal, humiliated, no longer a human being: “[T]his was my second death”, he testified.<sup>128</sup> On the above-mentioned topics, W03594 was forthcoming and clear, acknowledging when he did not know or could not recall particular aspects of the events, which adds to his credibility.<sup>129</sup>

78. However, his testimony about the treatment he and other detainees received in detention took a markedly different tone. Testifying about his own experience, he

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<sup>125</sup> **W03594**: T. 12 October 2021, confidential, pp. 1032-1092; T. 13 October 2021, confidential, pp. 1131-1224; T. 14 October 2021, confidential, pp. 1232-1275.

<sup>126</sup> KSC-BC-2020-05, F00053, Pre-Trial Judge, *Second Decision on Specialist Prosecutor’s Request for Protective Measures* (Second Decision on Protective Measures), 24 November 2020, strictly confidential and *ex parte*, para. 51(f). A confidential redacted version was issued the same day.

<sup>127</sup> **W03594**: T. 12 October 2021, confidential, p. 1036, line 20 to p. 1037, line 14. Another example is his graphic testimony of how he could smell livestock excrements in the barn where he was kept; see **W03594**: T. 13 October 2021, public, p. 1176, lines 1-19.

<sup>128</sup> **W03594**: T. 12 October 2021, public, p. 1040, line 22 to p. 1041, line 4; T. 12 October 2021, confidential, p. 1066, line 1 to p. 1067, line 7.

<sup>129</sup> See, for example, **W03594**: T. 12 October 2021, public, p. 1038, line 17 to p. 1039, line 11; p. 1040, lines 16-21; T. 13 October 2021, confidential, p. 1153, line 12 to p. 1154, line 3; p. 1200, lines 6-14.

stated that he was hit only on one occasion, that it was light and that he did not feel any pain.<sup>130</sup> Further, although he acknowledged that he was once taken to the interrogation room above the barn where he was held,<sup>131</sup> he stated that he had a friendly conversation with the KLA soldiers there.<sup>132</sup> When questioned about the state of the other detainees, he testified that they were in a very good physical shape, that although their backs were “a bit red”, none of them had any (other) marks of beating and that no one was taken away from the barn to be mistreated.<sup>133</sup> Repeatedly throughout his testimony, W03594 thanked the KLA soldiers at the ZDC for treating him well (“I thank them today for treating me in a correct, humane manner”) and stated that he did not blame them and he considered them as brothers.<sup>134</sup>

79. For the reasons set out below, the Panel does not find W03594’s testimony about the treatment he and other detainees received in detention to be credible. First, W03594’s testimony is clearly disproved by the fully credible and reliable accounts of W01679, W03593 and W04669, who testified about the beatings they and their co-detainees – including W03594 – endured at the ZDC on a daily basis.

80. Second, his testimony is internally inconsistent and implausible even considering W03594’s own admissions. The examples are many, but to take just a few, W03594 conceded in court that during his detention he was fearing for his life as he did not know what would happen to him: “we were just thinking [...] whether the

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<sup>130</sup> **W03594**: T. 12 October 2021, confidential, p. 1067, line 8 to p. 1070, line 19; T. 13 October 2021, confidential, p. 1190, line 14 to p. 1191, line 3.

<sup>131</sup> See para. 528 on the interrogation room.

<sup>132</sup> **W03594**: T. 12 October 2021, confidential, p. 1072, line 25 to p. 1075, line 25; p. 1080, line 3 to p. 1081, line 10; p. 1084, line 10 to p. 1089, line 13.

<sup>133</sup> **W03594**: T. 12 October 2021, confidential, p. 1049, line 19 to p. 1050, line 9; p. 1058, line 19 to p. 1065, line 25; p. 1076, line 5 to p. 1079, line 25; T. 12 October 2021, public, p. 1053, line 18 to p. 1054, line 24; T. 13 October 2021, confidential, p. 1189, lines 2-23.

<sup>134</sup> **W03594**: T. 12 October 2021, public, p. 1049, lines 19-25; p. 1089, line 4-13; T. 12 October 2021, confidential, p. 1066, line 1 to p. 1067, line 7; p. 1081, line 4-6; p. 1085, lines 3-6.

next morning would find us alive or not”.<sup>135</sup> Similarly, he confirmed that one of his co-detainees, W03593, was so scared of the BIA members that, whenever one of them opened the door to the barn where they were held, he would “come so close to [him] he would enter almost in [his] chest”, seeking his protection.<sup>136</sup> It is wholly implausible, in the Panel’s view, that the detainees would be so scared if, as claimed by W03594, they were treated well.<sup>137</sup>

81. Third, when confronted with his statement to the SPO – which was often in contradiction with his testimony in court on key points – W03594 failed to provide any convincing explanation or simply denied what he had previously said. For instance, W03594 had explained in his prior statement that he was hit with a “thick rubber stick”, that his co-detainees were also hit in his presence and that he saw “holes” in their bodies. He stated about one of his co-detainees – [REDACTED] – that he had been beaten-up so severely, all over his body, that he could no longer stand. When confronted with this statement in court, W03594 changed his account and claimed that he was hit not with a “*thick* rubber stick”, but with a “*thin* wooden stick”,<sup>138</sup> that the other detainees were not hit, but “pushed”,<sup>139</sup> and that they did not have “holes” in their bodies, but “long lines” on their backs.<sup>140</sup> [REDACTED], W03594

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<sup>135</sup> **W03594**: T. 12 October 2021, public, p. 1066, lines 9-12; T. 13 October 2021, public, p. 1136, lines 14-16.

<sup>136</sup> **W03594**: T. 12 October 2021, confidential, p. 1079, lines 1-13.

<sup>137</sup> Other examples where W03594’s account is implausible include: his testimony that enough daylight would come into the barn, even though the window was covered with timber; and his answer when asked whether water entered the barn: “No. No, not at all. Only when it was raining. But even if it was raining, there was no water coming there”; **W03594**: T. 13 October 2021, public, p. 1178, lines 10-22; p. 1185, line 24 to p. 1186, line 2.

<sup>138</sup> **W03594**: T. 12 October 2021, confidential, p. 1067, line 8 to p. 1070, line 19, *referring to* 061016-TR-ET Part 4 RED1, p. 2, lines 7-25 (emphasis added).

<sup>139</sup> **W03594**: T. 12 October 2021, confidential, p. 1070, line 20 to p. 1072, line 19, *referring to* 061016-TR-ET Part 4 RED1, p. 6, line 23 to p. 7, line 8.

<sup>140</sup> **W03594**: T. 12 October 2021, public, p. 1062, line 13 to p. 1065, line 25, *referring to* 061016-TR-ET Part 1 RED1, p. 26, lines 13-14, and 061016-TR-ET Part 3 RED1, p. 7, lines 22-23; T. 14 October 2021, public, p. 1266, line 24 to p. 1270, line 1, *referring to* 061016-TR-ET Part 1 RED1, p. 26, lines 13-14.

simply denied at first his prior SPO statement and confirmed it only when questioned further on this point by the SPO.<sup>141</sup>

82. Fourth, it is apparent from his testimony, as well as other evidence before the Panel, that W03594 was afraid to implicate the Accused or other former KLA members. W03594 stated in court that he was afraid of the person who ordered his detention as “[h]e might do something similar to me even today”.<sup>142</sup> In his prior SPO statement, W03594 also stated that he “was sent words to be careful, not to mention any names”, albeit when his prior statement was put to him in court he denied having said so.<sup>143</sup> The fact that W03594 was afraid is supported by [REDACTED].<sup>144</sup> That W03594 was afraid is also apparent from statements that he made in court when denying incriminating evidence previously provided to the SPO. The following statements are telling: “I declare *publicly* that I have not said this”;<sup>145</sup> “I hereby *publicly* state again that all those who were with me in the room, none of them had injuries on their faces, heads, limbs, knees, except the fact that their backs were a bit red”.<sup>146</sup> Not least, the Panel notes that W03594 is known to the Accused personally [REDACTED].<sup>147</sup>

83. In light of all of the above, the Panel finds W03594 credible as regards his apprehension by the KLA, his detention at the ZDC, the presence of other detainees at the ZDC and the circumstances of his release. However, the Panel finds that W03594

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<sup>141</sup> **W03594**: T. 12 October 2021, confidential, p. 1051, line 12 to p. 1054, line 5, *referring to* 061016-TR-ET Part 3 RED1, p. 10, lines 1-23; **W03594**: T. 12 October 2021, confidential, p. 1058, lines 8-18.

<sup>142</sup> **W03594**: T. 14 October 2021, public, p. 1273, lines 8-13.

<sup>143</sup> **W03594**: T. 14 October 2021, public, p. 1273, line 20 to p. 1274, line 8, *referring to* 061016-TR-ET Part 6 RED1, p. 4, lines 20-21.

<sup>144</sup> **W01679**: T. 4 October 2021, confidential, p. 913, line 18 to p. 914, line 14.

<sup>145</sup> **W03594**: T. 12 October 2021, confidential, p. 1053, line 18 (emphasis added). While the witness made these statements in private session, what matters in the Panel’s view is that he attempted to downplay the mistreatment in the presence of the Accused.

<sup>146</sup> **W03594**: T. 12 October 2021, public, p. 1061, lines 13-19 (emphasis added).

<sup>147</sup> **W03594**: T. 13 October 2021, public, p. 1210, lines 13-15; T. 14 October 2021, confidential, p. 1232, line 25 to p. 1233, line 2; p. 1239, line 7 to 1240, line 8.

has consistently downplayed the seriousness of the treatment he and other detainees have suffered and his testimony is in stark contrast with the accounts of the other witnesses detained at the ZDC, as well as with his own prior statement to the SPO. Accordingly, the Panel finds his testimony on the treatment suffered in detention to be of limited value and has relied on it only to the extent that it is corroborated by other witnesses, as set out in detail in the Panel's evidentiary analysis.

## 5. W04669

84. W04669 testified before the Panel on 10 and 11 November 2021,<sup>148</sup> with in-court protective measures.<sup>149</sup>

85. He testified about his arrest by KLA soldiers, his detention at the ZDC and the treatment he and other detainees suffered while in detention.

86. The Panel finds W04669 credible regarding the core aspects of his testimony. The witness was forthcoming, clear, concise, and consistent throughout his examination. His account was rich in detail, graphic and narrated with emotion, which demonstrates that he testified about events that he personally experienced. For instance, he described in detail and candidly how he was mistreated (upon which parts of his body he was hit, how he was hit, and what instruments were used to hit him).<sup>150</sup> He also recalled very graphically how the Murder Victim was "black from the

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<sup>148</sup> **W04669**: T. 10 November 2021, confidential, pp. 1389-1498; T. 11 November 2021, confidential, pp. 1503-1586.

<sup>149</sup> Second Decision on Protective Measures, para. 51(f).

<sup>150</sup> **W04669**: T. 10 November 2021, public, p. 1443, line 11 to p. 1446, line 7. *See also* for other examples where W04669 provides details which highlight the personal nature of his account: **W04669**: T. 10 November 2021, public, p. 1425, lines 18-21 (where W04669 explained that he remembered that interrogations would take place in the evening because "there was a light. A bulb was on when we would be interrogated"); T. 10 November 2021, public, p. 1399, line 21 to p. 1403, line 22 (providing details in relation to the training he and others received in Zllash/Zlaš); T. 10 November 2021, public, p. 1411, lines 22-23 (recalling that the KLA soldiers took his shoe laces when he arrived at

beatings” and “swollen”, and how he was “crying out in pain”.<sup>151</sup> Further attesting to the personal nature of his account, he described compellingly the psychological effect that it had on him to see the Murder Victim so badly beaten and the fear it triggered in him that he could have the same fate.<sup>152</sup>

87. In addition, W04669 made visible efforts to provide an accurate account of the events, making it clear when he could not remember particular details,<sup>153</sup> and distinguishing between what he witnessed himself and what he heard from others.<sup>154</sup> He concluded his testimony before the Panel by stating: “22 years have passed, and I apologise if I was unable to explain things in details. I only spoke about things that I remembered myself, things that I saw myself, and things that have remained in my mind from that time”.<sup>155</sup>

88. W04669 was measured and restrained in his account, which further enhances his credibility. For instance, when questioned about his mistreatment, he stated outright that he was interrogated and beaten on one occasion only.<sup>156</sup> Importantly, W04669’s testimony is corroborated by other evidence, both documentary and testimonial, as shown in the evidentiary analysis.

89. The Panel is mindful that there are some discrepancies between W04669’s testimony in court and his statement to the SPO. More specifically, W04669 stated in court that there were two persons known as “Cali” in the BIA, in contradiction with

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the ZDC, a detail that W01679 also remembered, as noted above); T. 10 November 2021, confidential, p. 1418, line 15 to p. 1419, line 5.

<sup>151</sup> **W04669**: T. 10 November 2021, confidential, p. 1432, lines 1-8; T. 10 November 2021, public p. 1434, lines 1-9; *see also* T. 10 November 2021, public, p. 1430, lines 4-19.

<sup>152</sup> **W04669**: T. 10 November 2021, public, p. 1441, lines 1-10; p. 1468, lines 7-16.

<sup>153</sup> **W04669**: T. 10 November 2021, public, p. 1395, line 24 to p. 1396, line 2; p. 1397, lines 1-8; p. 1402, lines 17-20; p. 1449, lines 7-22; p. 1463, line 3 to p. 1464, line 20; p. 1455, line 15 to p. 1456, line 16; T. 10 November 2021, confidential, p. 1412, lines 19-25; p. 1416, line 14 to p. 1417, line 2.

<sup>154</sup> **W04669**: T. 10 November 2021, confidential, p. 1417, line 11 to p. 1418, line 14.

<sup>155</sup> **W04669** : T. 11 November 2021, p. 1585, lines 14-18.

<sup>156</sup> **W04669**: T. 10 November 2021, public, p. 1445, lines 7-16; p. 1449, lines 2-4.

his statement to the SPO, which was put to him in court.<sup>157</sup> The Panel has given little weight to this part of W04669's testimony, as the Panel has received no other evidence to this effect and the witness has not provided a plausible explanation for this discrepancy. The Panel has, moreover, received credible and reliable evidence demonstrating that the only person with the nickname "Cali" or "Sali" in the BIA was the Accused, as shown in detail in the Panel's evidentiary analysis.<sup>158</sup> Such evidence emanates, among others, from former BIA/KLA members, including the Accused,<sup>159</sup> who had more knowledge of the BIA unit than W04669. That said, the Panel does not find that this discrepancy affects the witness's general credibility considering that it is discrete and isolated in nature.

90. In light of all of the above, the Panel finds W04669 credible and has relied on his evidence, with the caveat made above.

#### 6. [REDACTED] W04676, W04391, W04390, W04674, W04712 and W04648

91. [REDACTED]. W04676, W04391, W04390 and W04674 testified before the Panel, with in-court protective measures, on 17-18 November 2021,<sup>160</sup> 22-23 November 2021,<sup>161</sup> 24 November 2021,<sup>162</sup> and 13-14 December 2021,<sup>163</sup> respectively.<sup>164</sup> W04712's written statement was introduced *in lieu* of oral testimony under Rule 153 of the

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<sup>157</sup> **W04669**: T. 10 November 2021, public, p. 1472, line 18 to p. 1484, line 14.

<sup>158</sup> See paras 340, 541, 551-552.

<sup>159</sup> **Mr Mustafa**: 069404-TR-ET Part 8, p. 8, lines 2-7.

<sup>160</sup> **W04676**: T. 17 November 2021, confidential, pp. 1594-1677; T. 18 November 2021, confidential, pp. 1686-1716.

<sup>161</sup> **W04391**: T. 22 November 2021, confidential, pp. 1729-1788; T. 23 November 2021, confidential, pp. 1794-1847.

<sup>162</sup> **W04390**: T. 24 November 2021, confidential, pp. 1859-1915.

<sup>163</sup> **W04674**: T. 13 December 2021, confidential, pp. 1929-2004; T. 14 December 2021, confidential, pp. 2008-2022.

<sup>164</sup> First Decision on Protective Measures, para. 39(c); Second Decision on Protective Measures, para. 51(f).

Rules.<sup>165</sup> W04648's written statements were introduced under Rule 155 of the Rules *in lieu* of oral testimony as the witness had passed away.<sup>166</sup>

92. The six witnesses have provided evidence about the circumstances of the Murder Victim's apprehension (albeit essentially hearsay evidence), [REDACTED], the search for his body and visit to the ZDC in [REDACTED] 1999, [REDACTED] and, lastly, [REDACTED].<sup>167</sup> Considering that all six witnesses [REDACTED] and have provided evidence about the same set of events, the Panel assesses their credibility together.

93. The witnesses were largely consistent in the evidence they provided and, notwithstanding their close relationship, the Panel has detected no signs of collusion. While they attested to the same facts, they described the events from different vantage points, providing varying details and using different language. This shows to the Panel that the witnesses did not align or memorise their evidence. The Panel has also not detected any incentive or motive to lie, conceal, fabricate or distort information.

94. Further, their evidence was clear and spontaneous. They provided many details (such as names of locations and persons) and graphic descriptions, which left the Panel convinced that they spoke from personal experience.<sup>168</sup> To the extent that they gave information on events that they did not personally experience, they distinguished these events, with clarity, from those that they witnessed, and often

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<sup>165</sup> [Decision Admitting W04712's Written Statements](#), para. 37(b).

<sup>166</sup> [Decision Admitting W04648's Written Statements](#), para. 16(b).

<sup>167</sup> [REDACTED]; **W04390**: T. 24 November 2021, confidential, p. 1900, lines 7-11; **W04674**: T. 13 December 2021, confidential, p. 1935, line 9 to p. 1936, line 2; p. 1940, lines 10-25.

<sup>168</sup> *For example*, **W04676** recalled that [REDACTED] had brought a coffin, a white plastic bag, gloves and a shawl at the exhumation of his body; *see* **W04676**: T. 17 November 2021, confidential, p. 1606, line 22 to p. 1607, line 3. She also gave details about the clothes the Murder Victim was wearing when his body was exhumed [REDACTED]; *see* **W04676**: p. 1653, line 15 to p. 1654, line 6; p. 1661, line 14 to p. 1662, line 25. **W04391** recalled how the detainees [REDACTED] were exhausted, dirty and unwashed and had marks on their faces from beatings and ill-treatment; *see* **W04391**: T. 22 November 2021, public, p. 1744, lines 10-19. *See also* **W04390**: T. 24 November 2021, confidential, p. 1867, line 2 to p. 1870, line 20; p. 1872, line 20 to p. 1873, line 7; **W04712**: 077816-TR-ET Part 1 RED1, p. 8, line 17 to p. 10, line 2; **W04674**: T. 13 December 2021, confidential, p. 1935, line 9 to p. 1936, line 2; p. 1940, lines 10-25.

without being prompted to do so.<sup>169</sup> The witnesses made visible efforts to be accurate, acknowledging outright when they did not know or could not remember certain details,<sup>170</sup> and intervening to provide additional information when they could.<sup>171</sup>

95. [REDACTED].<sup>172</sup> [REDACTED].<sup>173</sup>

96. The Panel has noted certain discrepancies across the witnesses' testimonies and/or statements, [REDACTED]. Notwithstanding, the Panel does not find that these discrepancies affect the witnesses' general credibility, considering: (i) the time that has passed since the events; (ii) [REDACTED]; (iii) the witnesses' different vantage points;<sup>174</sup> (iv) their age at the relevant time;<sup>175</sup> and (v) the fact that, at times, their evidence is hearsay.<sup>176</sup> Ultimately, the essence of the witnesses' evidence is consistent

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<sup>169</sup> See, for example, **W04391**: T. 22 November 2021, confidential, p. 1735, line 17 to p. 1736, line 10; **W04712**: 077816-TR-ET Part 1 RED1, p. 10, line 3 to p. 11, line 2; **W04674**: T. 13 December 2021, confidential, p. 1933, lines 5-13; p. 1943, line 16 to p. 1944, line 18; p. 1992, line 7 to p. 1993, line 9.

<sup>170</sup> See, for example, **W04676**: T. 17 November 2021, confidential, p. 1601, line 7 to p. 1602, line 4; p. 1646, lines 1-8; p. 1651, line 15 to p. 1652, line 5; p. 1664, line 2 to p. 1665, line 23; **W04391**: T. 23 November 2021, confidential, p. 1819, line 6 to p. 1820, line 3; **W04390**: T. 24 November 2021, confidential, p. 1864, lines 10-13; p. 1873, lines 8-23; **W04674**: T. 13 December 2021, public, p. 1994, lines 23-24.

<sup>171</sup> **W04391**: T. 22 November 2021, confidential, p. 1744, line 25 to p. 1745, line 4.

<sup>172</sup> **W04676**: T. 17 November 2021, confidential, p. 1633, line 3 to p. 1635, line 15; p. 1641, line 24 to p. 1643, line 10; **W04391**: T. 22 November 2021, confidential, p. 1763, line 24 to p. 1764, line 12; p. 1786, lines 3-10; **W04390**: T. 24 November 2021, confidential, p. 1882, lines 9-25; p. 1893, line 14 to p. 1894, line 11; **W04674**: T. 13 December 2021, confidential, p. 1945, lines 10-21; p. 1965, line 21 to p. 1969, line 5.

<sup>173</sup> **W04676**: T. 17 November 2021, confidential, p. 1667, line 14 to p. 1669, line 17; **W04674**: T. 13 December 2021, confidential, p. 1977, line 6 to p. 1978, line 22.

<sup>174</sup> For example, W04390 explained that, [REDACTED], she did not spend too much time with them: "I didn't talk to them. I didn't stay with them. [REDACTED]. I didn't talk to them"; see **W04390**: T. 24 November 2021, confidential, p. 1906, line 17 to p. 1907, line 4. This may explain why her account of the visit differs in some respects from that of W04391.

<sup>175</sup> For example, W04390 was 21 years old at the time [REDACTED]; see **W04390**: T. 24 November 2021, confidential, p. 1859, line 16; p. 1882, lines 9-23.

<sup>176</sup> For example, W04674 and W04712 provided somewhat different accounts than W04390 and W04391 regarding an encounter with W04600 [REDACTED]. However – unlike W04390 and W04391 – neither W04674 nor W04712 were present there and they learnt about the encounter from [REDACTED], which may explain their diverging accounts; see **W04674**: T. 13 December 2021, confidential, p. 1982, lines 11-21; **W04712**: 077816-TR-ET Part 1 RED1, p. 12, line 8 to p. 13 lines 15; **W04390**: T. 24 November 2021, confidential, p. 1867, lines 2-25; **W04391**: T. 22 November 2021, confidential, p. 1738, line 6 to p. 1739, line 11.

across their testimonies and statements. The Panel has discussed these inconsistencies, to the extent necessary to enter its factual findings, in its evidentiary analysis.

97. In this context, the Panel has paid particular attention to the statements of W04648 – including, among others, several [REDACTED] statements and an undated and unsigned statement<sup>177</sup> – across which there are visible discrepancies regarding dates and persons present at certain encounters.<sup>178</sup> The Panel does not consider that these discrepancies affect W04648's general credibility considering: (i) his advanced age at the time he gave the statements; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED];<sup>179</sup> and (v) the fact that, in writing one of the statements (*i.e.* the undated and unsigned statement), he was assisted by another person (W04391), a fact attested to by W04391 in court, and visible on the statement itself, as it clearly contains third-party observations.<sup>180</sup>

98. However, the Panel has not relied on: (i) any part of W04648's undated and unsigned statement;<sup>181</sup> and (ii) the information in his [REDACTED] statement [REDACTED] that the Murder Victim was “kidnapped and killed [...] on the [REDACTED]” [REDACTED].<sup>182</sup> This information has been demonstrated to be inaccurate by other, more reliable, evidence on the record, as discussed by the Panel at length in its evidentiary analysis. Other inaccuracies do not relate to matters of

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<sup>177</sup> The undated and unsigned statement is part of a [REDACTED] statement; *see* pp. SPOE00128339-00128343 of [REDACTED] statement SPOE00128333-00128343 RED1. The same undated and unsigned statement is also available at pp. SPOE00130686-00130687 of SPOE00130685-00130687 RED1.

<sup>178</sup> **W04648**: SPOE00128333-00128343 RED1; SPOE00128158-00128162 RED1; SPOE00128087-00128091 RED1; SPOE00128061-00128064 RED1; SPOE00128069-00128086 RED1; SPOE00130685-00130687 RED1.

<sup>179</sup> **W04648**: SPOE00128069-00128086, p. SPOE00128074 (stating: “[REDACTED]”).

<sup>180</sup> **W04391**: T. 23 November 2021, confidential, p. 1808, lines 7-10; p. 1815, lines 14-15 (testifying that “[t]his is a statement that was written by both my father and me”); **W04648**: SPOE00128333-00128343 RED1, pp. SPOE00128339-00128343; SPOE00130685-00130687 RED1, pp. SPOE00130686-00130687.

<sup>181</sup> Accordingly, the Panel has not relied on pp. SPOE00128339-00128343 of the UNMIK statement SPOE00128333-00128343 RED1, which contain the undated and unsigned statement. The Panel has also not relied on pp. SPOE00130686-00130687 of SPOE00130685-00130687 RED1, which contain the same statement.

<sup>182</sup> **W04648**: SPOE00128333-00128343 RED1, p. SPOE00128333.

consequence. W04648's evidence that [REDACTED] is consistent across his statements and has been sufficiently established by other corroborating evidence.

99. In light of all of the above, the Panel finds all six witnesses credible and has relied on their evidence, as discussed in the Panel's evidentiary analysis, with the caveat made above concerning limited parts of W04648's evidence.

## 7. W04600

100. W04600 testified before the Panel on 23, 24 and 27 September 2021,<sup>183</sup> with in-court protective measures,<sup>184</sup> and was provided assurances under Rule 151(3) of the Rules in respect of self-incrimination.<sup>185</sup>

101. W04600 was a KLA member and, throughout the timeframe of the charges, [REDACTED].<sup>186</sup> W04600 testified about the organisation of the KLA within the Llap OZ, the relationship between [REDACTED] and the BIA, the BIA's leadership and its base in Zllash/Zlaš, and importantly, the circumstances of the [REDACTED].

102. The Panel finds W04600 generally credible regarding core aspects of his testimony. First, the witness was generally frank, forthcoming and clear throughout his examination by the Parties and Victims' Counsel. The Panel is particularly attentive to the fact that the witness admitted outright that he – together with KLA soldiers [REDACTED]<sup>187</sup> – [REDACTED], a fact highly incriminating for him, of which the witness seemed to be well aware.<sup>188</sup>

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<sup>183</sup> **W04600**: T. 23 September 2021, confidential, pp. 710-743; T. 24 September 2021, confidential, pp. 747-822; T. 27 September 2021, confidential, pp. 825-850.

<sup>184</sup> First Decision on Protective Measures, para. 39(c).

<sup>185</sup> Oral order, T. 20 September 2021, public, p. 489, line 14 to p. 490, line 11. **W04600**: T. 23 September 2021, public, p. 706, line 10 to p. 707, line 13.

<sup>186</sup> **W04600**: T. 23 September 2021, confidential, p. 712, line 9 to p. 713, line 10.

<sup>187</sup> **W04600**: T. 23 September 2021, confidential, p. 725, lines 8-15.

<sup>188</sup> See **W04600**: T. 23 September 2021, confidential, p. 769, line 5 to p. 773, line 9 (indicating, *inter alia*, that he told the Accused: "[REDACTED]").

103. Second, his account was structured and full of detail, which shows that he testified about events that he personally experienced. For example, he described the circumstances and sequence of events surrounding the Murder Victim's apprehension in a chronological and detailed manner, which included [REDACTED].<sup>189</sup>

104. Third, W04600 was quick to specify the extent of his knowledge and admitted when he did not know or could not remember certain details.<sup>190</sup> He made visible efforts to provide accurate information and gave clarifications without being prompted.<sup>191</sup>

105. Fourth, W04600's account is corroborated by W04603 and, with the caveat made below, also by some of the Murder Victim's family members.

106. That said, the Panel is persuaded that W04600, at times, provided implausible evidence concerning certain encounters [REDACTED], which is discussed in detail in the Panel's evidentiary analysis.<sup>192</sup> He also sought to downplay the circumstances surrounding the [REDACTED], [REDACTED].<sup>193</sup> The Panel considers that his (softer) account is explained [REDACTED]. In the estimation of the Panel, albeit benefiting from assurances against self-incrimination, W04600 clearly felt uncomfortable giving evidence on his past conduct and sought to protect his interests, while attempting to fulfil his oath to tell the truth. Accordingly, the Panel has relied on aspects of W04600's

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<sup>189</sup> **W04600**: T. 23 September 2021, confidential, p. 722, line 24 to p. 733, line 16; p. 729, line 4 to p. 740, line 24; *see also* the sketches made by the witness, REG00-003, REG00-004, REG00-005.

<sup>190</sup> *See, for example*, **W04600**: T. 23 September 2021, public, p. 715, line 23 to p. 716, line 11; p. 719, lines 1-5; p. 721, lines 11-14; T. 24 September 2021, public, p. 750, lines 4-25; p. 763, lines 15-19.

<sup>191</sup> **W04600**: T. 23 September 2021, confidential, p. 728, lines 6-8 (clarifying, without being prompted, that one of the soldiers who accompanied him initially, did not go with him all the way to Zllash/Zlaš); T. 24 September 2021, confidential, p. 766, lines 4-15; p. 768, lines 7-12; p. 793, line 9 to p. 794, line 19.

<sup>192</sup> *See* para. 597; **W04600**: T. 24 September 2021, confidential, p. 759, line 9 to p. 761, line 25.

<sup>193</sup> *See* para. 463; **W04600**: T. 23 September 2021, confidential, p. 725, lines 1-7 (when the SPO suggested that W04600 [REDACTED]); p. 727, lines 10-20; T. 24 September 2021, confidential, p. 803, line 25 to p. 804, line 19.

evidence concerning [REDACTED] only when these details were corroborated [REDACTED], as discussed in the Panel's evidentiary analysis.

107. In light of all of the above, the Panel finds W04600 credible and has relied on his evidence, to the extent specified above.

## 8. W04603

108. W04603 testified before the Panel on 2 and 3 November 2021<sup>194</sup> with in-court protective measures.<sup>195</sup>

109. W04603 was a KLA member and, throughout the time relevant to the charges, [REDACTED].<sup>196</sup> [REDACTED]. His testimony focused primarily on these events.

110. The Panel finds W04603 overall credible. The witness was generally forthcoming and admitted [REDACTED], a fact highly incriminating for him.<sup>197</sup> He expressed remorse [REDACTED]: "I felt really bad. [...] [REDACTED]", lending further credibility to his testimony.<sup>198</sup> Importantly, key aspects of his account, including details [REDACTED], are corroborated by evidence [REDACTED], as discussed in the Panel's evidentiary analysis.

111. The Panel notes that, [REDACTED], W04603 downplayed the circumstances [REDACTED].<sup>199</sup> The Panel considers that his (softer) account is explained [REDACTED]. The Panel has relied on this part of W04603's testimony only to the extent that it was corroborated [REDACTED], as discussed in the Panel's evidentiary

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<sup>194</sup> **W04603**: T. 2 November 2021, confidential, pp. 1289-1352; T. 3 November 2021, confidential, pp. 1358-1377.

<sup>195</sup> Second Decision on Protective Measures, para. 51(f).

<sup>196</sup> **W04603**: T. 2 November 2021, confidential, p. 1289, line 24 to p. 1291, line 7.

<sup>197</sup> **W04603**: T. 2 November 2021, confidential, p. 1296, line 9 to p. 1305, line 18.

<sup>198</sup> **W04603**: T. 2 November 2021, public, p. 1313, line 25 to p. 1314, line 15; T. 3 November 2021, confidential, p. 1368, line 19 to p. 1370, line 18.

<sup>199</sup> See para. 463; **W04603**: T. 2 November 2021, confidential, p. 1302, line 17 to p. 1303, line 17; T. 3 November 2021, confidential, p. 1368, lines 13-18.

analysis. The Panel does not find however that this aspect of his testimony affects his overall credibility.

112. In light of all of the above, the Panel finds W04603 credible and has relied on his evidence, to the extent specified above.

## 9. Fatmir Sopi (W04485)

113. Fatmir Sopi (Mr F. Sopi) testified before the Panel on 18 and 19 January 2022, without protective measures.<sup>200</sup>

114. Mr F. Sopi was a KLA member, before and during the time relevant to the charges.<sup>201</sup> He was involved in the creation of Brigade 153 (within the Llap OZ), which had its headquarters in his house, in Zllash/Zlaš, from approximately February 1999 to March 1999.<sup>202</sup> Mr F. Sopi held different command positions within the Brigade: first, as the person in charge of civilian protection and, later, as deputy commander of the Brigade.<sup>203</sup> He testified about: the structure and command of Brigade 153; the structure and command of the BIA unit; the BIA base in Zllash/Zlaš; the Accused's role; the Accused's authority over the BIA base and over BIA members; his presence in Zllash/Zlaš; and the possible detention and/or mistreatment of persons in Zllash/Zlaš.

115. The Panel finds Mr F. Sopi generally credible regarding, in particular, the structures and operations of the KLA in the area of Zllash/Zlaš and the Accused's role, his authority over the BIA and his presence in Zllash/Zlaš during the relevant time. Mr F. Sopi was forthcoming in his answers on these topics and provided clear and

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<sup>200</sup> **Mr F. Sopi:** T. 18 January 2022, confidential, pp. 2031-2123; T. 19 January 2022, confidential, pp. 2128-2182.

<sup>201</sup> **Mr F. Sopi:** T. 18 January 2022, public, p. 2032, line 20 to p. 2033, line 4.

<sup>202</sup> **Mr F. Sopi:** T. 18 January 2022, public, p. 2033, line 8 to p. 2035, line 2; p. 2043, line 23 to p. 2044, line 3.

<sup>203</sup> **Mr F. Sopi:** T. 18 January 2022, public, p. 2036, lines 6-25; T. 19 January 2022, public, p. 2164, lines 2-6.

realistic information overall.<sup>204</sup> He gave unique and detailed evidence, grounded in his first-hand insider knowledge, and consistent with his position as a high-ranking KLA member. For example, he provided evidence about a meeting that took place in his house, in February 1999, when Brigade 153 was formally established, giving details about the persons present and the appointments made then for the Brigade command.<sup>205</sup> Considering that he was also stationed in the Zllash/Zlaš area at the relevant time, the Panel is satisfied that his evidence originated from his personal knowledge and experience.

116. Mr F. Sopi remained consistent during his cross-examination.<sup>206</sup> He did not evince any incentive or motive to fabricate information or embellish his evidence on the topics mentioned above.

117. Importantly, his evidence on these matters is consistent with, and corroborated by, the evidence of other witnesses – both former KLA members and crime-based witnesses – as well as by the Accused, as discussed in detail in the Panel’s evidentiary analysis, thus conferring further credibility to Mr F. Sopi.<sup>207</sup>

118. However, Mr F. Sopi was confrontational and evasive when answering questions about his possible knowledge of the detention and/or mistreatment of persons in Zllash/Zlaš. For example, he testified that he never heard about any persons

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<sup>204</sup> See, for example, **Mr F. Sopi**: T. 18 January 2022, public, p. 2036, lines 24-25; p. 2059, lines 7-16; p. 2074, line 15 to p. 2075, line 24; p. 2076, lines 12-13.

<sup>205</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2034, line 9 to p. 2036, line 13.

<sup>206</sup> See, for example, when questioned about BIA members: **Mr F. Sopi**: T. 18 January 2022, public, p. 2077, lines 8-18; T. 19 January 2022, confidential, p. 2133, lines 17-21.

<sup>207</sup> For example, Mr F. Sopi testified that the BIA used as a base a village house, which was lent to the KLA by a local villager, an aspect corroborated by the Accused; see **Mr F. Sopi**: T. 18 January 2022, public, p. 2048, lines 5-13; p. 2088, line 25 to p. 2089, line 19; **Mr Mustafa**: 069404-TR-ET, Part 3, p. 20, lines 8-16. Mr F. Sopi also testified that Nazif Musliu (nicknamed Tabuti) was a member of the BIA unit, which is consistent with the evidence of Sejdi Veseli – also a KLA member – and some of the crime-based witnesses who identified Tabuti as one of the soldiers who mistreated them; see **Mr F. Sopi**: T. 18 January 2022, public, p. 2077, lines 16-18; T. 19 January 2022, confidential, p. 2133, lines 17-21; **Mr Veseli**: T. 25 January 2022, public, p. 2202, lines 10-12; paras 543-544, 555 below.

being detained in Zllash/Zlaš and was “convinced there weren’t any”.<sup>208</sup> He stated that he never discussed the subject of “spies or collaborators” with the Accused and, when asked whether he had heard of any persons being mistreated in Zllash/Zlaš, he answered: “[t]his makes me laugh, because it’s impossible. It’s something that could never happen. Not in Zllash but everywhere”.<sup>209</sup>

119. The witness’s categorical denial of detentions and mistreatment in Zllash/Zlaš is overwhelmingly contradicted by the mutually corroborative evidence of multiple witnesses, by documentary evidence and by the Accused himself, who stated to the SPO that he was aware of soldiers and possibly civilians being detained at the BIA base in Zllash/Zlaš in April 1999.<sup>210</sup> The Panel finds it implausible that Mr F. Sopi would not have heard or known about persons being at least detained at the BIA base, if not mistreated, considering his high-ranking position and his presence in Zllash/Zlaš at the relevant time.

120. Further, it is telling in the Panel’s view that, when questioned on this topic, Mr F. Sopi emphasised that it was not possible for anyone to have been mistreated by the KLA or by the Accused because the KLA waged a “liberation war” and because the Accused was himself a former political prisoner. He went on to state that any mistreatment that occurred was “perpetrated by the Serb forces when they stayed in Zllash”,<sup>211</sup> although later in his testimony he contradicted himself, stating: “I don’t know [what the Serbs did at the ZDC] because it was impossible for us to know. We only knew that they burnt all the houses”.<sup>212</sup>

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<sup>208</sup> **Mr F. Sopi:** T. 18 January 2022, public, p. 2107, lines 15-19; p. 2114, lines 11-17.

<sup>209</sup> **Mr F. Sopi:** T. 19 January 2022, public, p. 2161, lines 14-22; p. 2162, line 23 to p. 2163, line 2.

<sup>210</sup> See the Panel’s factual findings on arbitrary detention (Count 1), cruel treatment and torture (Counts 2 and 3); **Mr Mustafa:** 069404-TR-ET Part 7, p. 15, lines 7-15.

<sup>211</sup> **Mr F. Sopi:** T. 18 January 2022, public, p. 2162, lines 3-18.

<sup>212</sup> **Mr F. Sopi:** T. 19 January 2022, public, p. 2177, lines 4-5.

121. The content and manner of his answers on this topic demonstrate that Mr F. Sopi strategically directed his testimony to protect the Accused, with whom he had regular contacts during the relevant times.<sup>213</sup> Mr F. Sopi also attempted to insulate the BIA unit, and the KLA in general, given that Brigade 153 – including himself – were stationed in Zllash/Zlaš at the time. In doing so, the witness sought to lay down his own interpretation of the events and to dispel any allegations of mistreatment or wrongdoing on the part of the KLA. This considerably reduces any faith which might have otherwise been placed in his testimony on this point.

122. In light of the above, the Panel considers Mr F. Sopi's evidence regarding, in particular: the structures and operations of the KLA in the area of Zllash/Zlaš; the Accused's role in, and authority over, the BIA; and the Accused's presence in Zllash/Zlaš at the relevant time, to be generally credible and has relied on it. Conversely, the Panel attaches no weight to the witness's evidence regarding the detention and mistreatment of detainees in Zllash/Zlaš.

#### 10. Sejdi Veseli (W04484)

123. Sejdi Veseli (Mr Veseli) testified before the Panel on 25 January 2022, without protective measures.<sup>214</sup>

124. Mr Veseli was a KLA member before and during the time relevant to the charges.<sup>215</sup> He held the position of deputy commander of Brigade 153<sup>216</sup> and was stationed in Zllash/Zlaš, including at Mr F. Sopi's house, which served as Brigade 153

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<sup>213</sup> **Mr F. Sopi:** T. 18 January 2022, public, p. 2155, lines 15-19 ("I saw him many times. We were comrades in arms. We were positioned in the same location [...] we did have routine meetings. We would routinely meet each other").

<sup>214</sup> **Mr Veseli:** T. 25 January 2022, confidential, pp. 2189-2273.

<sup>215</sup> **Mr Veseli:** T. 25 January 2022, public, p. 2189, line 15 to 2191, line 1.

<sup>216</sup> **Mr Veseli:** T. 25 January 2022, public, p. 2191, lines 2-14.

headquarters from approximately February 1999 to March 1999.<sup>217</sup> Mr Veseli was also a trainer at the recruits' centre located in the local school in Zllash/Zlaš.<sup>218</sup> Mr Veseli testified about: the functioning of Brigade 153; the relationship between Brigade 153 and the BIA unit; the BIA base in Zllash/Zlaš; his knowledge of BIA operations and its members; the Accused's role in, and authority over, the BIA; the Accused's presence in Zllash/Zlaš; and the possible detention and/or mistreatment of persons in Zllash/Zlaš.

125. The Panel finds Mr Veseli generally credible regarding, in particular: the structures and operations of the KLA in the area of Zllash/Zlaš; the Accused's role in, and authority over, the BIA; and the Accused's presence in Zllash/Zlaš. Mr Veseli was overall forthcoming in his answers on these topics and provided clear, detailed and realistic information. The Panel discerns that Mr Veseli was deeply involved in the creation of the KLA, specifically Brigade 153, and the information he provided is grounded in his first-hand insider knowledge and consistent with his position as a high-ranking KLA member and his role in the formation of Brigade 153. Considering that he was also stationed in the Zllash/Zlaš area at the relevant time, the Panel is satisfied that his evidence on the above-mentioned topics originated from his personal knowledge and experience.

126. Mr Veseli did not evince any incentive or motivation to fabricate information or embellish his evidence on these topics. Importantly, his evidence on these matters is consistent with, and corroborated by, evidence presented by other witnesses – both former KLA members and crime-based witnesses – as well as by the Accused, as

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<sup>217</sup> This is corroborated by Mr F. Sopi himself (**Mr F. Sopi**: T. 18 January 2022, public, p. 2034, lines 22-24; p. 2043, line 23 to p. 2044, line 3).

<sup>218</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2192, lines 17-24; p. 2195, lines 8-13.

discussed in detail in the Panel's evidentiary analysis. These circumstances confer further credibility to Mr Veseli's testimony.<sup>219</sup>

127. However, the Panel has also received evidence from Mr Veseli categorically denying the existence of any detention or mistreatment practice in Zllash/Zlaš, at any point in time.<sup>220</sup> When questioned on this matter, Mr Veseli stressed that "it was not the mission of the Kosovo Liberation Army to maltreat people, and I don't believe that a KLA soldier [...] violated the oath".<sup>221</sup> He also testified that he was proud to have been a KLA member and that he is "ready to be so again, should the need arise".<sup>222</sup> When referring to the armed conflict, Mr Veseli specified that he prefers to call it "a national liberation war which was imposed on us".<sup>223</sup> Speaking about the Accused, the witness stated that "nobody can convince me that Salih Mustafa has done such a thing. Someone who has devoted his life to the good of his people and who has spent his life in jails, I don't think he can trample such a thing".<sup>224</sup> He also testified that he "had good relations with [the Accused] before the war" and considers him a "co-fighter".<sup>225</sup> Mr Veseli concluded that such acts of detention and mistreatment "have been done by the Serb army and police".<sup>226</sup>

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<sup>219</sup> For example, Mr Veseli stated that the Accused was often in Zllash/Zlaš in April 1999, which is consistent with the evidence of other witnesses, as discussed in greater detail in the Panel's findings on alibi; see **Mr Veseli**: T. 25 January 2022, public, p. 2233, lines 1-3. Mr Veseli also testified that the Accused (aka Cali) was the BIA commander and in charge of the BIA base in Zllash/Zlaš, thus corroborating the evidence of the Accused himself as well as other witnesses; see **Mr Veseli**: T. 25 January 2022, public, p. 2195, line 25 to p. 2196, line 6; p. 2198, line 1 to p. 2199, line 8; see paras 338-340. He also provided evidence that the BIA base was located uphill relative to the village school in Zllash/Zlaš, where a training centre for recruits was located, consistent with other evidence on record; see **Mr Veseli**: T. 25 January 2022, public, p. 2195, line 8; p. 2197, lines 17-22; see para. 354.

<sup>220</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2223, line 4 to p. 2224, line 7.

<sup>221</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2224, lines 5-7.

<sup>222</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2189, lines 19-21.

<sup>223</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2189, lines 17-18.

<sup>224</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2224, lines 12-15.

<sup>225</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2202, line 25 to p. 2203, line 4.

<sup>226</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2224, line 18.

128. Mr Veseli's categorical denial of detentions and mistreatment in Zllash/Zlaš is overwhelmingly contradicted by the mutually corroborative evidence of multiple witnesses, by documentary evidence, and by the Accused himself, who conceded that people were detained at the BIA base, possibly including civilians.<sup>227</sup> The Panel finds it implausible that Mr Veseli would not have heard or known about persons being at least detained, if not mistreated, by the BIA in Zllash/Zlaš, considering his high-ranking position and physical presence in Zllash/Zlaš at the relevant time. His denial of any knowledge on this topic is also implausible given the witness's own admissions about (certain) BIA members, whom he disapproved of and about whom he stated: "[p]eople who have such nicknames, Tabut, Death, I don't think a normal person would call [...] himself [...] death",<sup>228</sup> they were "repeat offenders",<sup>229</sup> and constituted a "bad, dirty part of [...] history".<sup>230</sup>

129. The content and manner of Mr Veseli's answers on the topic of detentions and mistreatment demonstrate that Mr Veseli strategically directed his testimony to protect the Accused, and more generally the KLA and its reputation. Mr Veseli is motivated, in the Panel's view, by the profound respect that he has to this day for the KLA and its cause, and the respect he has for the Accused as a "co-fighter". The Panel observes that Mr Veseli also intended to distance himself from the BIA unit and its members.<sup>231</sup> The fact that Brigade 153 was also stationed in Zllash/Zlaš at the relevant time further affected, in the Panel's view, his willingness to answer specific questions in a truthful and comprehensive manner, considerably reducing any faith which might have otherwise been placed in his testimony on such issues.

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<sup>227</sup> See the Panel's factual findings on arbitrary detention (Count 1), cruel treatment and torture (Counts 2 and 3); **Mr Mustafa**: 069404-TR-ET Part 7, p. 15, lines 7-15.

<sup>228</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2201, lines 20-21.

<sup>229</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2202, lines 10-16; p. 2206, lines 7-11.

<sup>230</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2204, line 16 to p. 2205, line 9.

<sup>231</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2200, lines 1-5; p. 2202, lines 12-16.

130. In light of all of the above, the Panel considers Mr Veseli's evidence regarding, in particular: the structures and operations of the KLA in the area of Zllash/Zlaš; the Accused's role in, and authority over, the BIA; and the Accused's presence in Zllash/Zlaš at the relevant time, to be generally credible and has relied on it. Conversely, the Panel attaches no weight to the witness's evidence regarding the detention and mistreatment of detainees in Zllash/Zlaš.

#### 11. Fatmir Humolli (W04849)

131. Fatmir Humolli (Mr Humolli) testified before the Panel on 1 and 2 February 2022, without protective measures.<sup>232</sup> Mr Humolli was originally proposed as a witness by the Defence (WDSM1900)<sup>233</sup> and he gave a statement to the Defence on 24 and 25 March 2021.<sup>234</sup>

132. Mr Humolli was a KLA member and, during the time relevant to the charges, he was in charge of the civil administration of the Llap OZ.<sup>235</sup> He was appointed to that role by a member of the General Staff of the KLA, to whom he reported directly.<sup>236</sup> Mr Humolli testified about: the formation and structure of the KLA; the KLA's operations in the Llap OZ; the situation of displaced persons in Zllash/Zlaš; the Accused's background, role and position as commander of the BIA; and the Accused's movements before and during the time relevant to the charges.

133. The Panel found many aspects of Mr Humolli's testimony not credible. For instance, Mr Humolli testified that the BIA did not have the mandate to arrest and

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<sup>232</sup> **Mr Humolli**: T. 1 February 2022, public, pp. 2292-2372; T. 2 February 2022, public, pp. 2384-2455.

<sup>233</sup> KSC-BC-2020-05, F00106/COR/A02, Defence, *Annex 2 to Submission of the of the Pre-Trial Brief, Witness List, and Exhibits List - Witnesses list pursuant to Rule 95(5)(c)*, 30 April 2021, confidential, p. 2.

<sup>234</sup> DSM00100-00118; DSM00119-00133.

<sup>235</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2292, line 25 to p. 2294, line 3.

<sup>236</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2293, line 18 to p. 2295, line 2.

detain anyone,<sup>237</sup> evidence which is overwhelmingly contradicted by clear and mutually corroborating evidence pointing at persons being detained at the BIA base in Zllash/Zlaš in April 1999. Moreover, as elaborated in greater detail in relation to the Accused's alibi,<sup>238</sup> Mr Humolli showed considerable difficulty in providing exact, or even approximate, dates and remaining consistent on them during his testimony. When confronted with his prior statements, which were at times in contradiction with his testimony in court, Mr Humolli failed to provide any convincing explanation for the discrepancies.<sup>239</sup>

134. The Panel further notes that Mr Humolli confirmed in court his bias against the Specialist Chambers, which he had publicly expressed as recently as 2021.<sup>240</sup> Mr Humolli asserted that the Specialist Chambers was an "unjustly established" court, a "Guantanamo for the KLA", and an "unfair, essentially racist court and human rights violator [...] [which was] regrettably voted in by our Assembly".<sup>241</sup> Mr Humolli also expressed scepticism that the Specialist Chambers can deliver fair judgments.<sup>242</sup> Ultimately, the witness stated that, since Kosovo institutions established the tribunal, he respects it "despite the mistakes".<sup>243</sup>

135. In addition, the Panel observes that Mr Humolli confirmed in court that he had publicly expressed his support for the Accused on social media, with included a post made the day after the Accused's arrest (25 September 2020). Mr Humolli noted that he approached the Accused's family to offer himself as a witness for the Defence.<sup>244</sup>

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<sup>237</sup> **Mr Humolli**: T. 2 February 2022, public, p. 2429, lines 14-18.

<sup>238</sup> See paras 316-318.

<sup>239</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2340, line 15 to p. 2343, line 14.

<sup>240</sup> 104784-104833, pp. 104790, 104793; 104803-104804.

<sup>241</sup> **Mr Humolli**: T. 2 February 2022, public, p. 2384, line 11 to p. 2393, line 18.

<sup>242</sup> **Mr Humolli**: T. 2 February 2022, public, p. 2384, line 11 to p. 2393, line 18.

<sup>243</sup> **Mr Humolli**: T. 2 February 2022, public, p. 2386, lines 13-15.

<sup>244</sup> **Mr Humolli**: T. 2 February 2022, public, p. 2396, line 15 to p. 2399, line 13; 104784-104833, pp. 104798, 104800.

The Panel finds that the personal ties between Mr Humolli and the Accused are rooted in the pre-armed conflict period, when the two met, in 1996, and collaborated with others to form what would be later called the KLA.<sup>245</sup> Regarding the time relevant to the charges, Mr Humolli testified that he met the Accused for “routine meetings [...] maximum every ten days”.<sup>246</sup> On the basis of such interactions, the Panel finds that Mr Humolli and the Accused share close personal ties that go back to the founding of the KLA and have survived to this day. This is further confirmed by photographs in evidence, in which the two are seen together on social occasions.<sup>247</sup>

136. The Panel considers that the strong public expressions of bias against the judicial process before the Specialist Chambers, coupled with the evident support for, and personal ties with, the Accused – as confirmed in court by Mr Humolli – indicate an inclination by the witness to provide evidence generally favourable to the Accused and unfavourable to the SPO. The Panel regards the above bias and personal ties as factors greatly affecting the witness’s credibility.

137. In light of all of the above, Mr Humolli’s evidence has been considered by the Panel with extreme caution.

#### F. GENERAL ASSESSMENT OF DEFENCE WITNESSES

138. The Panel will hereunder undertake a general assessment of the evidence provided at trial by the Defence witnesses, including issues of credibility and reliability.

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<sup>245</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2297, line 6 to p. 2298, line 22.

<sup>246</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2355, line 19 to p. 2356, line 5.

<sup>247</sup> 104784-104833, pp. 104796, 104797, 104802.

## 1. Brahim Mehmetaj (WDSM200)

139. Brahim Mehmetaj (Mr Mehmetaj) testified before the Panel on 23-24 March 2022, without protective measures.<sup>248</sup>

140. Mr Mehmetaj was the Accused's deputy commander or assistant,<sup>249</sup> and took orders through, but also from, the Accused himself.<sup>250</sup> He also confirmed that: (i) he was called "Bimi" in March/April 1999;<sup>251</sup> and (ii) he was in Zllash/Zlaš, at the "safe house that the BIA guerrilla unit had" there in March/April 1999.<sup>252</sup> The Panel takes due regard of the fact that [REDACTED] identified Mr Mehmetaj as the person he knew as Bimi; that Bimi was one of the persons [REDACTED] from the ZDC [REDACTED];<sup>253</sup> and that in the Confirmed Indictment, Bimi is mentioned as having allegedly participated in the crimes charged.<sup>254</sup>

141. The Panel also notes that Mr Mehmetaj testified that he read the Confirmed Indictment after the Accused was arrested and transferred to the Specialist Chambers.<sup>255</sup> This affected the stance taken by Mr Mehmetaj during his testimony with regard to the questions posed to him. In this context, the Panel noted a strong reluctance by Mr Mehmetaj to answer questions regarding those allegedly collaborating against the KLA and his awareness of detentions at ZDC; this included instances where the witness was confronted with prior statements, or was prompted by the Presiding Judge to respond.<sup>256</sup> This indicated, in the Panel's assessment, a clear

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<sup>248</sup> **Mr Mehmetaj**: T. 23 March 2022, public, pp. 2612-2716; T. 24 March 2022, public, pp. 2719-2766.

<sup>249</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2618, lines 18-20 and p. 2666, lines 4-6.

<sup>250</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2665, lines 4-9 and p. 2666, lines 7-9, 19-20.

<sup>251</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2662, line 18 to p. 2663, line 12.

<sup>252</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2635, lines 9, 11-13, p. 2638, lines 22-23, p. 2640, lines 1-5, p. 2641, lines 23-25 and p. 2642, lines 3-25.

<sup>253</sup> [REDACTED].

<sup>254</sup> [Confirmed Indictment](#), para. 125.

<sup>255</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2700, lines 12-16 and p. 2701, line 16 to p. 2702, line 3.

<sup>256</sup> **Mr Mehmetaj**: T. 23 March 2022, p. 2677, line 19 to p. 2685, line 1.

intention to distance himself and the Accused from any involvement in BIA-related issues in Zllash/Zlaš, especially concerning KLA actions against alleged collaborators and detention practices. Such intention may have also affected his willingness to truthfully answer specific questions, thereby negatively impacting the witness's overall credibility. Moreover, Mr Mehmetaj's statements are inconsistent with the Accused's admission to the SPO that he was aware of soldiers and possibly civilians being detained in the BIA base in Zllash/Zlaš.<sup>257</sup>

142. Mr Mehmetaj considers the Accused more than a friend to him.<sup>258</sup> The witness testified that from 18 years of age he had always been close to the Accused,<sup>259</sup> and they started up the BIA unit together on 20 May 1998, after the Accused's release from prison.<sup>260</sup> As a confirmation of the close relationship between the two, the Panel notes that a number of photographs are part of the evidentiary record, where Mr Mehmetaj and the Accused appear together.<sup>261</sup>

143. The witness confirmed, furthermore, that he posted on Facebook several times in support of the Accused.<sup>262</sup> For instance, after Mr Mustafa was summoned for an interview by the SPO, the witness posted a photo on Facebook showing the two of them at Prishtinë/Priština airport, right before Mr Mustafa left for The Hague to be interviewed by the SPO.<sup>263</sup> In the description of that Facebook post, Mr Mehmetaj wrote: "[s]hame on those who summoned him and also those who cook it".<sup>264</sup> In connection to that, the Panel finds that only a few days after the Accused's arrest,

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<sup>257</sup> **Mr Mustafa:** 069404-TR-ET, Part 7, p. 15, lines 7-15.

<sup>258</sup> **Mr Mehmetaj:** T. 23 March 2022, public, p. 2697, lines 14-17.

<sup>259</sup> **Mr Mehmetaj:** T. 23 March 2022, public, p. 2694, line 18.

<sup>260</sup> **Mr Mehmetaj:** T. 23 March 2022, p. 2615, lines 7-10.

<sup>261</sup> **Mr Mehmetaj:** T. 24 March 2022, public, p. 2720, line 17 to p. 2725, line 11; SPOE00222617-00222617; SPOE00222690-00222690; SPOE00222600-00222600; SPOE00222631-00222631; SPOE00222695-00222695; SPOE00222548-00222548.

<sup>262</sup> **Mr Mehmetaj:** T. 23 March 2022, public, p. 2697, lines 18-20.

<sup>263</sup> **Mr Mehmetaj:** T. 23 March 2022, public, p. 2698, lines 2-22.

<sup>264</sup> **Mr Mehmetaj:** T. 23 March 2022, public, p. 2699, lines 14-16; SPOE00325261-00325261.

Mr Mehmetaj posted a photo on Facebook wearing a t-shirt with the face of Mr Mustafa on the side of his heart, as a sign of support, and to express “[t]he hatred against the locals who voted for the Specialist Chambers and in so doing offered a great service to the enemy and became subservient to some internationals”.<sup>265</sup> Relatedly, the day after Mr Mehmetaj himself was summoned by the SPO, he published the summons he had received from the SPO on Facebook and wrote: “I will proudly attend as summonsed even though I continue to think that this is an unjust and biased court”.<sup>266</sup> The witness also stated that he believed that this process was based on fake statements and news<sup>267</sup> and that the court (referring to the Specialist Chambers) “was set up against the Albanians who fought for liberation”.<sup>268</sup> After receiving the summons and giving his interview to the SPO, on 23 January 2020, Mr Mehmetaj testified that he talked with the Accused.<sup>269</sup> In addition, Mr Mehmetaj confirmed that he had a call with the Accused on 22 January 2020, the day before his SPO interview.<sup>270</sup> They had another call only five minutes after Mr Mehmetaj concluded the interview.<sup>271</sup> The Panel notes that the witness was reluctant to answer the question of whether he talked to the Accused before and/or after his SPO interview.<sup>272</sup> The witness tried to evade the question by answering that he had always been close to the Accused.<sup>273</sup>

144. From the above, the Panel discerns strong and deep ties between Mr Mehmetaj and the Accused, which are rooted in their time together in the BIA and the close

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<sup>265</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2702, line 21 to p. 2704, line 3; SPOE00325407-00325408, pp. 1-2.

<sup>266</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2692, line 16 to p. 2693, line 20; SPOE00325248-00325248.

<sup>267</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2698, lines 23-24; p. 2699, line 19 and p. 2704, lines 8-10.

<sup>268</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2699, lines 9-10.

<sup>269</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2694, line 15 to p. 2695, line 10.

<sup>270</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2696, line 15 to p. 2697, line 7; SPOE00325449-00325450.

<sup>271</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2696, line 15 to p. 2697, line 7; SPOE00325449-00325450.

<sup>272</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2694, lines 15 to p. 2695, line 19. The Presiding Judge had to caution the witness to answer the question (p. 2694, line 25 to p. 2695, line 1).

<sup>273</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2695, lines 1-19.

subordinate-superior relationship between the two. The Panel is of the view that such ties have survived to date, which is clearly reflected in the close interaction that Mr Mehmetaj and the Accused had before and after Mr Mehmetaj's SPO interview, as well as in the strong expressions of disbelief that Mr Mehmetaj showed on social media against the judicial processes before the Specialist Chambers – especially those against the Accused. These factors, in the Panel's view, indicate a possible coordination between the two as to the information to be provided to the SPO and an inclination by Mr Mehmetaj to provide evidence generally favourable to the Accused and unfavourable to the SPO. The Panel regards these factors as greatly affecting the witness's credibility. Mr Mehmetaj's evidence has therefore been considered with extreme caution.

## 2. Ahmet Ademi (WDSM300)

145. Ahmet Ademi (Mr Ademi) testified before the Panel on 28 March 2022, without protective measures.<sup>274</sup>

146. Mr Ademi is registered on the KLA Veterans' Association list (Veterans' Association) owing to his contribution to the logistics of the KLA.<sup>275</sup> In this respect, the Panel noted a tangible reluctance by the witness to admit any membership to the KLA and to the Veterans' Association, and a clear intent to evade any related questions – initially denying a fact and later admitting it, when confronted with contrary evidence such as his name on the Veterans' Association list.<sup>276</sup> Without being asked any such information, the witness stressed that he was "in favour of humanism", did not participate in the war, did not benefit from the Veterans' Association, and was not in

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<sup>274</sup> **Mr Ademi:** T. 28 March 2022, public, pp. 2776-2860.

<sup>275</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2839, lines 10-15; 105296-105317, p. 105297.

<sup>276</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2841, line 18 to p. 2842, line 11; T. 28 March 2022, public, p. 2824, lines 11-13; 105296-105296-ET.

the KLA but was simply “serving them”.<sup>277</sup> This indicates, in the Panel’s assessment, a clear intention to distance himself from any KLA-related issues and to deny any link with it; this approach with regard to the KLA may have affected his willingness to answer truthfully any question thereupon, thus impacting negatively on the witness’s overall credibility.

147. The Panel also notes that Mr Ademi has been very active on social media in relation to the proceedings before the Specialist Chambers, particularly with regard to the present case. He publicly expressed his support for the Accused — and conveyed shame on those who summoned him — by commenting on a Facebook post of Mr Mehmetaj, in which Mr Mehmetaj and the Accused appear at Prishtinë/Priština airport.<sup>278</sup> The Panel observes that Mr Ademi commented on Mr Mehmetaj’s post as follows: “[r]espect to Commander Cali”.<sup>279</sup> Mr Ademi also commented on another Facebook post of Mr Mehmetaj<sup>280</sup> the day after the latter was summoned by the SPO, stating: “respect to you commander, with you Brahim Mehmetaj, Bimi”.<sup>281</sup> While it is clear to the Panel, based on such social media activity, that Mr Ademi knows Mr Mehmetaj, the witness testified in court that he did not know Mr Mehmetaj, which the Panel considers plainly not true and a further indication of the witness’s inclination to conceal evidence regarding the KLA and the BIA more specifically.<sup>282</sup> Moreover, Mr Ademi admitted in court that he reposted the logo of the Skifterat/BIA

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<sup>277</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2824, lines 11-13; p. 2829, line 15 to p. 2830, line 5; p. 2839, lines 2-16; p. 2842, line 12 to p. 2843, line 24.

<sup>278</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2846, line 17 to p. 2847, line 25; SPOE00325261-SPOE00325261.

<sup>279</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2849, lines 15-20; SPOE00325274-SPOE00325274 and SPOE00325274-SPOE00325274-ET.

<sup>280</sup> SPOE00325284-SPOE00325284-ET. This is the Facebook post in which Mr Mehmetaj commented on his summons to attend the SPO interview.

<sup>281</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2850, line 14 to p. 2851, line 8; SPOE00325318-SPOE00325318-ET.

<sup>282</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2844, lines 13-22.

guerrilla unit, already shared by Mr Mehmetaj on social media.<sup>283</sup> This reveals another discrepancy with what the witness alleged also during his in-court testimony, when he testified: “I don’t know and I didn’t know, even now I don’t know what BIA means”.<sup>284</sup> Again, this element leads the Panel to believe that Mr Ademi intended to approach his role as witness before the Panel with a view to conceal any possible link with the KLA and the BIA in particular.

148. The Panel is of the view that the reticence of Mr Ademi to respond to questions related to the KLA and the BIA, together with the active support shown to Mr Mehmetaj and the Accused, as two superiors within the BIA, are clear indications of Mr Ademi’s inclination to provide evidence generally favourable to the Accused and unfavourable to the SPO. The Panel regards these factors as greatly affecting the witness’s credibility. Mr Ademi’s evidence has therefore been considered with extreme caution.

### 3. Jakup Ismaili (WDSM400)

149. Jakup Ismaili (Mr Ismaili) testified before the Panel on 29 March 2022, without protective measures.<sup>285</sup>

150. Mr Ismaili stated that he was a KLA soldier in the BIA guerrilla unit,<sup>286</sup> and that he is registered as a veteran fighter with the Veterans’ Association.<sup>287</sup>

151. The witness first met the Accused in March 1999,<sup>288</sup> and kept in touch with him after the war.<sup>289</sup> In the witness’s words, Mr Mustafa is a “[c]lose friend. Good

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<sup>283</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2852, lines 8-11; 105322-105322.

<sup>284</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2838, lines 3-13.

<sup>285</sup> **Mr Ismaili:** T. 29 March 2022, public, pp. 2867-2938.

<sup>286</sup> **Mr Ismaili:** T. 29 March 2022, public, p. 2906, line 22 to p. 2907, line 5.

<sup>287</sup> **Mr Ismaili:** T. 29 March 2022, public, p. 2907, lines 15-19 and p. 2908, lines 1-2.

<sup>288</sup> **Mr Ismaili:** T. 29 March 2022, public, p. 2888, line 15.

<sup>289</sup> **Mr Ismaili:** T. 29 March 2022, public, p. 2923, lines 11-19.

friend”.<sup>290</sup> Strikingly, in the view of the Panel, when confronted with call data records originating from the Accused’s [REDACTED] mobile phone,<sup>291</sup> Mr Ismaili confirmed that he exchanged 138 instant messages and 193 calls with the Accused between 24 July 2019 and 22 September 2020; a total of 27 calls were placed between 15 September and 23 September 2020.<sup>292</sup> Furthermore, after the Accused’s arrest, on 25 September 2020, the witness conceded having talked with him every week.<sup>293</sup> He testified that, in those conversations, he had expressed his discontent regarding the charges against the Accused.<sup>294</sup> The above indicates, in the Panel’s view, strong ties between Mr Ismaili and the Accused, which are rooted in their time at the BIA and in their subordinate-superior relationship. Such ties have clearly survived to date. This — jointly with the staggering amount of interaction between the two in the pre- and post-arrest period of the Accused and the expressed discontent regarding the charges against the Accused — reveals, in the Panel’s assessment, that Mr Ismaili was inclined to provide (only) evidence generally favourable to the Accused and unfavourable to the SPO. The Panel regards these factors as greatly affecting the witness’s credibility. Mr Ismaili’s evidence has therefore been considered with extreme caution.

152. In addition, the Panel observes that the witness highlighted more than once that he had problems remembering dates accurately after 23 years.<sup>295</sup> The Panel, as a

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<sup>290</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2923, lines 15-19.

<sup>291</sup> [REDACTED].

<sup>292</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2924, lines 4-25 and p. 2925, lines 8-11; SPOE00325590-00325606. Mr Ismaili recognised his phone number on top of the first page of the extraction report and did not contest that the other number belonged to the Accused (p. 2924, lines 1-3), who is registered as “Cali”. As discussed and established elsewhere, “Cali” was the nickname of the Accused, as admitted by the Accused himself (**Mr Mustafa**: 069404-TR-ET, Part 1, p. 4, lines 23-25).

<sup>293</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2929, line 24 to p. 2930, line 3.

<sup>294</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2930, lines 9-13.

<sup>295</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2888, lines 14-18 (“it’s an issue for me to mention accurate dates after 23 years. [...] [i]t’s impossible for me to remember and I have problems, issues with my memory”); p. 2912, lines 9, 19-20 (“I have issues with my memory”); p. 2917, lines 17-18 (“I have great problems with my memory”); p. 2923, line 10 (“I have issues with my memory”).

general principle applicable to all witnesses, makes allowances for memory fading over time. Nevertheless, since Mr Ismaili was called by the Defence to testify in particular about a possible alibi, the Panel has to take Mr Ismaili's systematic difficulties in remembering dates into account when assessing the Accused's alibi, as this is a factor potentially affecting the reliability of the witness's evidence.

#### 4. Hazir Borovci (WDSM500)

153. Hazir Borovci (Mr Borovci) testified before the Panel on 30-31 March 2022, without protective measures.<sup>296</sup>

154. Mr Borovci was a member of the KLA in Prishtinë/Priština since January 1998, and part of the BIA unit.<sup>297</sup> The Panel notes that Mr Borovci responded extensively and candidly regarding his membership in the KLA, but only reluctantly mentioned — upon insisting questioning by the SPO — that he was specifically part of the BIA unit.<sup>298</sup> An example of such reluctance to speak about the BIA and to associate himself with it occurred in cross-examination by the SPO, when Mr Borovci was confronted with his prior statement to the Defence in which he stated that he did not have “a lot of knowledge” about the BIA.<sup>299</sup> Nevertheless, during the same cross-examination he was confronted with a Facebook photo he had posted in 2013, which depicts Mr Borovci and some of his comrades, and to which Mr Borovci appended the following comment: “[d]uring the war, when the BIA guerrilla unit Skifterat [...] was formed”.<sup>300</sup> After Mr Borovci identified himself, Gani Sopi (WDSM600) and Mr Ismaili in the picture, he very reluctantly admitted that they were all part of the BIA,

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<sup>296</sup> **Mr Borovci**: T. 30 March 2022, public, pp. 2950-3047; T. 31 March 2022, public, pp. 3051-3067.

<sup>297</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2951, lines 20-21; p. 2972, lines 7-10; p. 2973, lines 15-17 and p. 2985, line 25 to p. 2986, line 18.

<sup>298</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2985, line 25 to p. 2986, line 18.

<sup>299</sup> **Mr Borovci**: T. 30 March 2022, public, p. 3003, line 10 to p. 3005, line 7; DSM00570-00570, pp. 7-8.

<sup>300</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2986, line 20 to p. 2987, line 18; SPOE00325566-00325566-ET.

specifying that “[j]ust before 24 March when the bombing started, we understood it was BIA”; he repeatedly emphasised that they were part of the Prishtinë/Priština section of the guerrilla unit BIA.<sup>301</sup> In addition, when asked to comment on when the picture was taken, Mr Borovci completely evaded the question, and started talking about availability of uniforms during the war time, while none of those depicted in the photograph have uniforms.<sup>302</sup> All of the above suggests, in the Panel’s view, a strong reticence of Mr Borovci to respond truthfully to questions related to the BIA unit or its members, and an intention to distance himself from BIA branches other than the Prishtinë/Priština one, which in turn affects the credibility of the witness on this topic.

155. The Panel further notes that Mr Borovci stated in court that he is a friend of the Accused and that the two share “the common work for the freedom of the country, for the liberation of Kosovo”.<sup>303</sup> To reinforce the sense of camaraderie expressed by the witness in this regard, in 2013, Mr Borovci posted a picture on Facebook depicting the witness with the Accused and other KLA comrades.<sup>304</sup>

156. In addition, in response to the SPO’s question as to whether he considers the Accused a friend, the witness expanded his answer without being asked to do so, and stated: “I am very convinced [...] that Salih Mustafa — and you will be convinced of that, I have trust in you — that he will be declared innocent”.<sup>305</sup> Moreover, Mr Borovci confirmed that he commented on the photo posted by Mr Mehmetaj on Facebook, depicting Mr Mehmetaj and the Accused at the Prishtinë/Priština airport ahead of the

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<sup>301</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2988, line 2 to p. 2992, line 14.

<sup>302</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2993, line 7 to p. 2994, line 11.

<sup>303</sup> **Mr Borovci**: T. 30 March 2022, public, p. 3018, lines 13-18.

<sup>304</sup> SPOE00325564-00325564; **Mr Borovci**: T. 30 March 2022, public, p. 3007, line 24 to p. 3012, line 17. On the basis of the picture, Mr Borovci identified the Accused, Adem Shehu, Fatmir Sopi, and Jakup Ismaili.

<sup>305</sup> **Mr Borovci**: T. 30 March 2022, public, p. 3018, lines 13-24.

Accused's SPO interview, in which he stated: "[h]ave a good journey, honourable commander Salih Mustafa! I'm convinced that you are unblemished. Respect forever and ever to all Liberators".<sup>306</sup> Mr Borovci also testified that he is a friend of Mr Mehmetaj, as they grew up together and they are neighbours,<sup>307</sup> and therefore meet often.<sup>308</sup>

157. Similarly, the evidence indicates a strong friendship and professional relationship between Mr Borovci and another Defence witness, Gani Sopi (Mr G. Sopi): the two have known each other and have worked together since they were "very young, for 40 years".<sup>309</sup> In this respect, and as elaborated further in its findings on the alibi, the Panel notes that both Mr Borovci and Mr G. Sopi changed, in a strikingly similar manner, the date of their departure from Prishtinë/Priština to Butovc from 28 March 1999 (as declared in their prior statements to the Defence) to 31 March 1999 (as declared in court before the Panel), which is relevant to assess their possible interaction with the Accused in early April 1999 from the perspective of an alibi. When looking at this adjustment made by Mr Borovci and Mr G. Sopi, in light of their sense of respect and support for the Accused, as well as their mutual friendship, the Panel discerns a readiness by Mr Borovci and Mr G. Sopi to align their evidence to that of other witnesses in a manner that is beneficial to the Accused.

158. From the above, the Panel discerns a clear deference that Mr Borovci has in relation to the Accused as BIA commander and therefore as the witness's superior during the war. The Panel also perceives a strong sense of camaraderie and respect for

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<sup>306</sup> **Mr Borovci:** T. 30 March 2022, public, p. 3019, line 24 to p. 3020, line 23; SPOE00325271-SPOE00325271-ET.

<sup>307</sup> **Mr Borovci:** T. 30 March 2022, public, p. 3021, lines 6-10.

<sup>308</sup> **Mr Borovci:** T. 30 March 2022, public, p. 3021, line 25 to p. 3022, line 2. Mr Borovci confirmed that Mr Mehmetaj posted on Facebook a photo where the two are together (T. 30 March 2022, public, p. 3021, lines 17-22; SPOE00325578-SPOE00325578-ET). Mr Borovci was tagged in a post from Mr Mehmetaj saying: "[t]oday I met my friend, my co-fighter, Mr Hazir Borovci (SPOE00325578-SPOE00325578-ET)".

<sup>309</sup> **Mr Borovci:** T. 30 March 2022, public, p. 2989, lines 19-24.

other BIA members, such as Mr Mehmetaj (the deputy of the Accused and, thus, also a superior of Mr Borovci during the war) and Mr G. Sopi, who are also Defence witnesses. Under these circumstances, the Panel finds that the strong relationship that Mr Borovci has with the Accused and more generally with BIA members, rooted in the war time, continues to this day. This, in turn, signals an inclination by Mr Borovci to provide evidence generally favourable to the Accused and unfavourable to the SPO, and to align his evidence to that of other witnesses. The Panel regards these as factors greatly affecting the witness's credibility. Mr Borovci's evidence has therefore been considered with extreme caution.

## 5. Gani Sopi (WDSM600)

159. Gani Sopi (Mr G. Sopi) testified before the Panel on 4 April 2022, without protective measures.<sup>310</sup>

160. Throughout his testimony in court, and similarly to Mr Borovci, the Panel noted a strong reticence, by Mr G. Sopi, to respond to questions about his alleged membership in specific KLA units, notably the BIA. In this respect, the witness testified that he was a KLA soldier since January 1998 and, after initially denying being part of a specific unit or brigade,<sup>311</sup> he acknowledged that before the end of the war he "realised" that he was part of the BIA guerrilla unit.<sup>312</sup> This indicates, in the Panel's assessment, a clear intention to distance himself from any BIA-related issue and to deny any link with it. The Panel sees this reticence as an attempt not to have to

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<sup>310</sup> **Mr G. Sopi:** T. 4 April 2022, public, pp. 3076-3174.

<sup>311</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3136, line 22 to p. 3138, line 2.

<sup>312</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3087, lines 7-11; p. 3136, lines 13-15 and p. 3139, line 16 to p. 3140, line 1.

tell that the Accused was his commander at the time when the witness was a member of the BIA.<sup>313</sup>

161. During cross-examination by the SPO, the witness was confronted with the very same photo<sup>314</sup> shown to Mr Borovci on his Facebook account, which depicts certain people and bears the comment of Mr Borovci: “[d]uring the war, when the BIA guerrilla unit Skifterat [...] was formed”. Mr G. Sopi identified himself as being present in the picture, together with Mr Borovci and others.<sup>315</sup> However, Mr G. Sopi strongly denied that the picture relates to the war time and to the creation of the BIA unit but conceded that at least three persons<sup>316</sup> belonged to the BIA unit whereas the others were “well-wishers who happened to be there”.<sup>317</sup>

162. The reaction of Mr G. Sopi to this photograph, in the Panel’s assessment, confirms a striking reticence to provide any meaningful information concerning the BIA and its members. In fact, when assessing jointly the evidence of Mr Borovci and Mr Sopi, the Panel is convinced that the picture shown to both of them clearly relates to the BIA unit and its establishment during the war time, based on the comments by Mr Borovci to the photo posted on his Facebook account, and irrespective of whether all people in the picture were BIA members or not. From this perspective, the testimony of Mr G. Sopi according to which he only learned about his membership to BIA in May 1999 is utterly implausible.<sup>318</sup> This again indicates a strong reticence, by Mr G. Sopi, to respond truthfully to questions related to the BIA unit or its members, thus impacting negatively on the witness’s overall credibility and his evidence.

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<sup>313</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3143, line 5 to p. 3144, line 8.

<sup>314</sup> SPOE00325566-00325566-ET.

<sup>315</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3149, line 6 to p. 3151, line 11; SPOE00325566-00325566-ET.

<sup>316</sup> Mr G. Sopi himself, Jakup Ismaili and Hazir Borovci.

<sup>317</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3151, line 19 to p. 3153, line 9.

<sup>318</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3140, lines 8-25; p. 3149, line 6 to p. 3152, line 20; SPOE00325566-00325566-ET.

163. Based on the evidence, the Panel also understands that the witness considers Mr Mustafa as “his comrade-in-arms” and as a friend, and that the two have also family relations, as the daughter of Mr G. Sopi’s brother is Mr Mustafa’s wife.<sup>319</sup> In addition, the witness’s house and that of Mr Mustafa are not very far from each other.<sup>320</sup> The two have known each other since Mr Mustafa was released from prison in 1996 or 1997,<sup>321</sup> and according to the witness, considering their family relations, it is possible that they met during family celebrations, as well as on the anniversaries and celebrations of the KLA.<sup>322</sup> The Panel further notes that, when asked by the SPO whether he still feels a strong association with the KLA, Mr G. Sopi stated: “I always loved it and I will love it until I am on this earth”.<sup>323</sup>

164. As discussed above in relation to Mr Borovci, the Panel considers that the alignment in the evidence of Mr Borovci and Mr G. Sopi in relation to their date of departure from Prishtinë/Priština to Butovc is not coincidental but rather intentional. Accordingly, in the Panel’s assessment, this indicates a readiness by Mr G. Sopi and Mr Borovci, to align their evidence to that of other witnesses in a manner that is beneficial to the Accused.

165. Based on all these factors taken as a whole, the Panel discerns a clear deference by Mr G. Sopi, both personally and professionally, to the Accused as BIA commander and therefore the witness’s superior, as well as a relative. In addition, the Panel cannot fail to note the strong sense of camaraderie and respect for other BIA members, such as Mr Borovci, who is also a Defence witness. Under these circumstances, the Panel finds that the strong relationship that Mr G. Sopi has with the Accused and more generally with BIA members, rooted in the time of the armed conflict, continues today.

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<sup>319</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3078, lines 13-16; p. 3128, lines 2-22; p. 3131, lines 4-9.

<sup>320</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3130, lines 4-9.

<sup>321</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3130, lines 10-14.

<sup>322</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3129, lines 7-13.

<sup>323</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3155, lines 4-6.

This signals an inclination by Mr G. Sopi to provide evidence generally favourable to the Accused and unfavourable to the SPO, and to even align his evidence to that of other witnesses. The Panel regards these as factors greatly affecting the witness's credibility. Mr Sopi's evidence has therefore been considered with extreme caution.

166. The Panel also notes that the witness confirmed his prior SPO statement in which he stated that he suffers from memory lapses due to the alleged maltreatment received when he was kidnapped by the Serbian forces.<sup>324</sup> The witness also requested some lenience regarding dates, because of the time that has elapsed and his difficulty remembering every detail and date.<sup>325</sup> The Panel underlines that it is generally accepted that trauma and/or the elapse of time can have a major influence on the accuracy and reliability of the memory of a witness, which however is, in itself, already a sufficient reason to assess the witness statement with due caution. Regarding to Mr G. Sopi, the Panel notes that in re-examination by the Defence, the witness claimed to remember an alleged encounter with the Accused between "the end of March 1999 until early April of 1999 [...] in Butovc".<sup>326</sup> This event will be discussed in the Panel's findings on the Accused's alibi. Nonetheless, since Mr G. Sopi was called by the Defence to testify about a possible alibi, the Panel has to take Mr G. Sopi's admission with regard to memory lapses and difficulty remembering dates into account when assessing the Accused's alibi, as this is a factor potentially affecting the reliability of the witness's evidence provided in court.

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<sup>324</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3122, lines 19-24; p. 3124, lines 6-16.

<sup>325</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3114, line 23 to p. 3115, line 3.

<sup>326</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3166, lines 2-11.

## 6. Bislim Nreci (WDSM700)

167. Bislim Nreci (Mr Nreci) testified before the Panel on 5 April 2022, without protective measures.<sup>327</sup>

168. Mr Nreci declared straightforwardly that he was a KLA soldier and that he is “very proud of that”.<sup>328</sup> However, the Panel noted a general reticence by the witness to associate himself with the BIA, and to answer questions on the topic. The Panel recalls that, to the simple yes-or-no question “were you a member of this unit [BIA]?”, Mr Nreci answered in an evasive and meaningless manner: “[o]fficially and based on documentation, I don’t know”.<sup>329</sup> In the view of the Panel, this is an implausible answer to the extent that, if the witness had truly consulted official sources and documentation, he would at least know whether he was a BIA member or not. Ultimately, during direct examination by the Defence and then in cross-examination by the SPO, Mr Nreci acknowledged that he was part of the BIA unit, although he cautioned that he “cannot say whether we were or not because, officially, we did not know. We knew that we were part of guerrilla, a smaller unit, but that we understood after the war”.<sup>330</sup> This, in the view of the Panel, is also implausible, as the witness must have known the structure in which he was integrated during the war, the people from whom he received his orders and to whom he reported. The witness also added that as far as the acronym BIA was concerned “they found out what it meant quite later”.<sup>331</sup>

169. In the Panel’s assessment, the reluctance shown by Mr Nreci to associate himself with the BIA indicates a strong reticence of Mr Nreci to respond truthfully to questions related to the BIA unit or its members, which in turn affects the credibility

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<sup>327</sup> **Mr Nreci:** T. 5 April 2022, public, pp. 3181-3277.

<sup>328</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3182, lines 11-15.

<sup>329</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3219, line 18.

<sup>330</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3219, lines 10-25. *See also* p. 3247, lines 4-23.

<sup>331</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3247, lines 22-23.

of the witness on this topic. In this respect, the Panel further notes that the witness has followed part of the proceedings in the present case where the role and activities of the BIA were discussed extensively, which may have influenced the stance taken by Mr Nreci during his testimony with regard to such topic.<sup>332</sup> In addition, the support shown by Mr Nreci to the Accused and other BIA members (also Defence witnesses), has further affected Mr Nreci's willingness to associate himself to the BIA and provide truthful information in that regard. On this point, the Panel observes that Mr Nreci commented as follows on the Facebook post shared by Mr Mehmetaj, depicting the latter and the Accused together: "[e]ternal respect for the Liberators and their family".<sup>333</sup> Moreover, Mr Nreci declared to have maintained contact with Mr Mustafa, even though they had not met after the Accused's arrest.<sup>334</sup>

170. The Panel finds that the subordinate-superior relationship within the BIA between Mr Nreci and the Accused during the war, together with his knowledge of other testimonies and the resulting reluctance to associate himself to or speak about the BIA unit, indicate an inclination, by Mr Nreci, to provide evidence generally favourable to the Accused and unfavourable to the SPO, and to even align his evidence to that of other witnesses. This can be inferred from the testimony of Defence witness Nazmi Vrbovci (WDSM800), who testified in court that together with Mr Nreci "[i]t may be possible that we discussed [the case of Salih Mustafa] because our friend is imprisoned, and that's a pain".<sup>335</sup> The Panel regards these as factors

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<sup>332</sup> **Mr Nreci**: T. 5 April 2022, public, p. 3255, line 22 to p. 3256, line 6. In particular, the witness mentioned that he followed the testimony of Fatmir Humolli. The Panel recalls that during Mr Humolli's testimony, the BIA unit was mentioned around 20 times (**Mr Humolli**: T. 1 February 2022, public, pp. 2292-2372; T. 2 February 2022, public, pp. 2384-2455).

<sup>333</sup> **Mr Nreci**: T. 5 April 2022, public, p. 3251, line 3 to p. 3252, line 9; SPOE00325341-00325341; SPOE00325348-00325348; SPOE00325348-00325348-ET.

<sup>334</sup> **Mr Nreci**: T. 5 April 2022, public, p. 3253, line 12 to p. 3254, line 3.

<sup>335</sup> **Mr Vrbovci**: T. 6 April 2022, public, p. 3378, lines 17-22.

greatly affecting the witness's credibility. Mr Nreci's evidence has therefore been considered with extreme caution.

171. The Panel also notes that although Mr Nreci testified about a meeting with the Accused on two occasions in the period March-April 1999, he could not be accurate about the dates of his encounter, explaining that he may have mixed up the dates "because it's been 23 years since then" and "[t]hose dates are easily confused".<sup>336</sup> Since Mr Nreci was called by the Defence to testify about a possible alibi, the Panel has to take his admission with regard to memory lapses and difficulty remembering dates into account when assessing the Accused's alibi, as this is a factor potentially affecting the reliability of the witness's evidence provided in court.

## 7. Nazmi Vrbovci (WDSM800)

172. Nazmi Vrbovci (Mr Vrbovci) testified before the Panel on 6 April 2022, without protective measures.<sup>337</sup>

173. The Panel notes that Mr Vrbovci and Mr Nreci have known each other "very well" since childhood; they were together in the KLA; they still live in Barilevë/Bariljevo;<sup>338</sup> and they meet "very often as friends, as brothers, as neighbours".<sup>339</sup>

174. In cross-examination by the SPO, Mr Vrbovci also admitted that, after giving his statement to the Defence, on 21 March 2021, he spoke to some former fellow KLA members, including Mr Nreci, to make sure he had stated the correct date(s) as regards his alleged meetings with the Accused,<sup>340</sup> which is relevant to the Accused's

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<sup>336</sup> Mr Nreci: T. 5 April 2022, public, p. 3231, lines 4-5.

<sup>337</sup> Mr Vrbovci: T. 6 April 2022, public, pp. 3285-3400.

<sup>338</sup> Mr Vrbovci: T. 6 April 2022, public, p. 3325, lines 5-18.

<sup>339</sup> Mr Vrbovci: T. 6 April 2022, public, p. 3378, line 8.

<sup>340</sup> Mr Vrbovci: T. 6 April 2022, public, p. 3335, line 16 to p. 3336, line 21; *see also* p. 3375, lines 10-23.

alibi. Specifically, in his prior statement to the Defence, the witness had stated that the first encounter with the Accused in Barilevë/Bariljevo occurred on 2 or 3 April 1999, rather than on 1 or 2 April 1999 as stated in court before the Panel,<sup>341</sup> and as suggested by the persons with whom Mr Vrbovci spoke after giving his Defence statement,<sup>342</sup> who according to the witness were not even present in Barilevë/Bariljevo on that day.<sup>343</sup> The Panel discerns that the witness did not give his statement independently, but agreed with others, including Defence witness Mr Nreci. This impairs the credibility of the witness's testimony in court and its use as evidence by the Panel.

175. The witness added that, together with Mr Nreci, "[i]t may be possible that we discussed [the case of Salih Mustafa] because our friend is imprisoned, and that's a pain".<sup>344</sup> In addition, the Panel notes that Mr Vrbovci admitted having followed the testimony of "several" witnesses, including Mr Borovci, Bimi (the nickname of Mr Mehmetaj),<sup>345</sup> and Mr Humolli.<sup>346</sup> From the interaction that Mr Vrbovci had with other people, including Mr Nreci (to whom the witness declared to be very close) and based on his knowledge of other witness testimonies in the present case, the Panel concludes that there is a high likelihood that a large part of Mr Vrbovci's evidence does not come from his own recollection of the events. Rather, the witness has sought to align his testimony with that of other witnesses or was at a minimum influenced by other persons in respect of crucial aspects of his evidence, notably the timeframe of his alleged encounter with the Accused, which is relevant to the alibi put forward by the Defence. The Panel regards these as factors greatly affecting the witness's

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<sup>341</sup> **Mr Vrbovci**: T. 6 April 2022, public, p. 3329, line 22 to p. 3330, line 11; DSM00076-00089, p. 9.

<sup>342</sup> **Mr Vrbovci**: T. 6 April 2022, public, p. 3335 line 16 to p. 3337, line 6; p. 3375, lines 3-7.

<sup>343</sup> **Mr Vrbovci**: T. 6 April 2022, public, p. 3337, lines 7-23.

<sup>344</sup> **Mr Vrbovci**: T. 6 April 2022, public, p. 3378, lines 17-22.

<sup>345</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2662, lines 18-21.

<sup>346</sup> **Mr Vrbovci**: T. 6 April 2022, public, p. 3326, lines 2-19.

credibility. Mr Vrbovci's evidence has therefore been considered with extreme caution.

176. Furthermore, and as a justification for seeking the advice of third persons in relation to his alleged encounter with the Accused, Mr Vrbovci added that he does not "remember things very well and I was afraid that I [...] might have given the incorrect dates" and that he "would easily mix up the days of the week, let alone dates".<sup>347</sup> While the Panel makes allowance for memory fading over time, since Mr Vrbovci was called by the Defence to testify about a possible alibi, the Panel has to take Mr Vrbovci's difficulties in remembering the date(s) of his alleged encounter with the Accused into account when assessing the Accused's alibi, as this is a factor potentially affecting the reliability of the witness's evidence provided in court.

## 8. Kapllan Parduži (WDSM900)

177. Kapllan Parduži (Mr Parduži) testified before the Panel on 11 April 2022, without protective measures.<sup>348</sup>

178. Mr Parduži joined the KLA in May 1998, and considers himself a KLA member "until now".<sup>349</sup> Even though the witness met rarely with the Accused after the war, he has been in contact with the Accused's brother, Arben Mustafa.<sup>350</sup> Mr Parduži considers Nuredin Ibishi, another Defence witness, "more than a friend" and the two have met 10 to 14 days before Mr Parduži's testimony.<sup>351</sup>

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<sup>347</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3336, line 22 to p. 3337, line 2.

<sup>348</sup> **Mr Parduži:** T. 11 April 2022, public, pp. 3411-3514.

<sup>349</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3412, lines 19-23.

<sup>350</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3503, line 23 to p. 3504, line 15.

<sup>351</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3499, lines 4-6, 11-12.

179. The Panel noted a general hostility and reticence of Mr Parduži when responding to questions posed by the SPO in cross-examination.<sup>352</sup> Mr Parduži testified that he considers the arrest of the Accused “unjust” and stated that “there is no basis and there are no facts, and we think this is all lies or [sic] fake witnesses and of the Serbian prosecutor’s office, because you have also given [sic] them commendations. To the people who have killed us, you have cooperated with them, and you have given them high praise”.<sup>353</sup> He also indicated that the willingness of the witnesses to cooperate with the Specialist Chambers and the SPO was misused by the SPO.<sup>354</sup>

180. The witness also stated that he has been following the proceedings “partially”, but his wife followed “90 percent of the time”, and in the evening they would discuss the testimony of some Defence witnesses.<sup>355</sup>

181. The Panel considers that Mr Parduži carries profound bias against the Specialist Chambers and the SPO, and that his statement of support for the Accused jointly with the reluctance to respond to the SPO questions (as opposed to questions of the

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<sup>352</sup> See, for example, **Mr Parduži**: T. 11 April 2022, public, p. 3459, lines 13-18 (the Presiding Judge had to recall the witness, who stated that he did not understand how the SPO was getting its answers from the context: “we are all trying to be respectful. So Madam Prosecutor is citing from the transcript what you said and trying to clarify something”); p. 3470, lines 4-10 (when asked what injuries he suffered during the conflict, the witness replied with a confrontational tone: “[d]o you want to see them or should I just describe them?” and the Presiding Judge remarked that “it’s clear that we are not going to ask you here to show them . We just want to have a description”); p. 3473, line 20 to p. 3474, line 3 (after avoiding to answer a question and remarking “I already answered your question. If you have another question, I am here”, the Presiding Judge intervened and stated “[i]t does not work like that [...] there is a question asked, and I ask you to answer it, and you are not the one deciding which question to answer or not”); p. 3484, lines 18-21 (“I don’t know how many times do I have to explain this. If you want, I can go on and explain it to you the whole day. It’s not a problem. We can talk about this for a week, but I am trying to be as short as possible”).

<sup>353</sup> **Mr Parduži**: T. 11 April 2022, public, p. 3505, lines 3-4; p. 2506, lines 9-13.

<sup>354</sup> **Mr Parduži**: T. 11 April 2022, confidential, p. 3508, lines 17-24 (the witness complained about the SPO practice of sending summonses and the way the SPO treated the witnesses, stating that “[w]e are not jungle people. We are people [...] with knowledge, you understand”).

<sup>355</sup> **Mr Parduži**: T. 11 April 2022, public, p. 3505, line 5 to p. 3506, line 6.

Defence) signals an inclination by the witness to provide evidence generally favourable to the Accused and unfavourable to the SPO. This approach may have been facilitated by Mr Parduži's general knowledge of the content of other testimonies as he was following the proceedings and discussing these testimonies with his wife. The Panel regards these as factors greatly affecting the witness's credibility. Mr Parduži's evidence has therefore been considered with extreme caution.

182. In addition to the factors affecting the credibility of the witness, the Panel also identifies a serious issue of reliability with regard to the evidence provided by the witness. With regard to the alibi evidence concerning the period around 10 April 1999, Mr Parduži stated that, due to sniper rifle injuries at both shoulders and the chest,<sup>356</sup> he was bleeding<sup>357</sup> and lost consciousness during the trip to the Potok hospital, and they had to stop along the way, "rest and receive some medications, some sedatives or IV drips".<sup>358</sup> In addition, in cross-examination Mr Parduži stated that he was not able to determine the location and the time when he allegedly saw Mr Mustafa during the medical transportation.<sup>359</sup> In light of the witness's vague recollection of this event, his medical condition, the medications (including sedatives) taken during the journey, and the poor weather conditions, the reliability of his in court testimony during which he claimed that he saw Mr Mustafa on the road from Turiqice to Bellopojë/Belo Polje or Rimanishtë/Rimanishte is severely undermined. Since Mr Parduži was called by the Defence to testify about a possible alibi, the Panel has to take into account the above circumstances, surrounding the medical transport of this witness, as these are factors potentially affecting the reliability of the witness's evidence provided in court.

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<sup>356</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3470, lines 10-11.

<sup>357</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3470, lines 13-14.

<sup>358</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3472, lines 17-20.

<sup>359</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3479, lines 11-14; p. 3480, line 6 to p. 3481, line 13 (asked when in those days the witness saw him [the Accused], the witness answered: "[s]o I cannot tell you whether it was the 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> or 13<sup>th</sup>. This is what I said then and this is what I am saying today. I do not know what the date is. I didn't have time to think [...] what day it was").

183. The Panel further notes that the remainder of the alibi evidence provided by the witness with regard to late April/early May 1999 is irrelevant as it does not touch upon instances when the Accused was allegedly present at the location of the crimes or it simply falls outside of the temporal framework of the charges.

## 9. Nuredin Ibishi (WDSM1000)

184. Nuredin Ibishi (Mr Ibishi) testified before the Panel on 12 April 2022, without protective measures.<sup>360</sup>

185. The Panel noted a general hostility of Mr Ibishi to respond to questions by the SPO and a tendency to evade answers by adding irrelevant explanations or details not otherwise requested; the witness had to be warned more than once in this respect.<sup>361</sup>

186. The Panel further underlines that Mr Ibishi reacted with regret to the Accused's arrest, stating that it was "unjust" and that the proceedings will "show the reality", and expressed strong criticism and opposition to the establishment of the Specialist Chambers and the SPO.<sup>362</sup> The stance of Mr Ibishi towards the present proceedings and more generally against the Specialist Chambers and the SPO casts serious doubt on his willingness to provide evidence that can assist the Panel in its determination of the truth and on the credibility of the witness.

187. The Panel also notes that Mr Ibishi followed the proceedings in the present case, including the testimonies of Mr Mehmetaj, Mr Humolli and Mr Parduzi (whom he considers a friend).<sup>363</sup> In the Panel's view, the knowledge of the evidence given by other witnesses and, thus, of the contours of the case against the Accused, may have

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<sup>360</sup> **Mr Ibishi**: T. 12 April 2022, public, pp. 3522-3654.

<sup>361</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3581, line 21 to p. 3582, line 4 (the witness stated that the SPO's question was "discriminating" and that he was "offended"); p. 3602, lines 5-6; p. 3619, line 24 to p. 3620, line 3 (the witness tried to evade answering the Prosecutor's question by asking himself questions in return, to signify that the question posed was unclear or incomplete).

<sup>362</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3643, line 21 to 3645, line 5.

<sup>363</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3634, line 2 to p. 3635, line 13.

further contributed to the witness's general hostility toward the Specialist Chambers and the SPO, as shown during his testimony.

188. In the Panel's assessment, the witness's hostility jointly with the statement of support for the Accused and his firm opposition to the establishment of the Specialist Chambers and the SPO indicate that Mr Ibishi may have been inclined to provide evidence generally favourable to the Accused and unfavourable to the SPO. The Panel regards these as factors greatly affecting the witness's credibility. Mr Ibishi's evidence has therefore been considered with extreme caution.

189. In addition, like Mr Parduži, Mr Ibishi was seriously injured, after which he had to lie down on a trailer covered with a tarpaulin and under the rain.<sup>364</sup> Moreover, Mr Ibishi stated that he "was not able to see outside [the trailer]".<sup>365</sup> The medical and travel conditions experienced by Mr Ibishi, in the Panel's view, severely undermine the reliability of Mr Ibishi's recollection of the events, which must be therefore taken with great caution by the Panel. On the other hand, Mr Ibishi stayed consistent with two previous statements on certain very specific aspects related, for example, to the presence of Latif Gashi during the journey to Potok hospital and his role in providing security to the transport.<sup>366</sup> This consistency must be taken into account when considering the witness's evidence.

## 10. Sheqir Rrahimi (WDSM1100)

190. Sheqir Rrahimi (Mr Rrahimi) testified before the Panel on 13 April 2022, without protective measures.<sup>367</sup>

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<sup>364</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3559, lines 24-25; p. 3582, lines 7-9.

<sup>365</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3562, lines 21-22.

<sup>366</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3573, line 15 to p. 3577, line 20. *See also* DSM00460-00475, p. 8; SPOE00123560-00123574, p. 12.

<sup>367</sup> **Mr Rrahimi**: T. 13 April 2022, public, pp. 3660-3712.

191. The witness was a KLA member (Brigade 151).<sup>368</sup>

192. The Panel notes that Mr Rrahimi has been called as Defence witness on the basis of his purported participation in the medical transport of Mr Parduži and Mr Ibishi. However, the Panel observes that according to Mr Rrahimi's account, the alleged presence of the Accused could have taken place during not only a limited leg of the journey (from Koliq/Kolić to Rimanishtë/Rimanishte),<sup>369</sup> but also the last part of this journey,<sup>370</sup> which was the closest to Zllash/Zlaš. Thus, in the Panel's view, his first-hand account of this trip and of the purported presence of the Accused is of rather limited importance from the perspective of providing an alibi defence to the Accused.<sup>371</sup> Furthermore, Mr Rrahimi's recollection of the number of tractors constituting the medical convoy, the location and the time when they joined and parted ways is confused and inconclusive. In addition, Mr Rrahimi's recollection of his "contact" with someone named "Cali" is contradictory and vague. In this regard, in direct examination by the Defence, the witness stated that during the journey from Koliq/Kolić to Rimanishtë/Rimanishte, two other persons joined the convoy and the witness heard one of them addressing the other by the name "Cali".<sup>372</sup> However, Mr Rrahimi stated, assertively, that he did not have any contact with these two persons<sup>373</sup> and that he is not in a position to identify the person named "Cali" as being Mr Mustafa.<sup>374</sup> Instead, in cross-examination by the SPO, Mr Rrahimi changed his

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<sup>368</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3661, lines 20-23.

<sup>369</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3666, lines 21-25; p. 3667, lines 15-16.

<sup>370</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3712, lines 13-19.

<sup>371</sup> From the map (DSM00090-00099, p. DSM00099) used during the testimony to highlight the various villages through which the convoy transited (Turucicë/Turučica, Rakinicë/Rakinica, Bllatë/Blato, Kalaticë/Kalatica, Krushevicë/Krushevica, Ballaban, Koliq/Kolić, Sharban, and Rimanishtë/Rimanishte) it is readily understandable that the last leg from Koliq/Kolić to Rimanishtë/Rimanishte is the closest to Zllash/Zlaš and that the distance is limited.

<sup>372</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3667, line 25 to p. 3668, line 2 and p. 3671, lines 3-14.

<sup>373</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3667, line 25 to p. 3668, line 2.

<sup>374</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3672, lines 10-15.

testimony and stated that the person named Cali “approached the trailer” and “asked what happened”.<sup>375</sup> Mr Rrahimi tried to explain this contradiction with the passing of the time and by qualifying such purported contact with the person named “Cali” as something else than a “conversation”.<sup>376</sup> The Panel further observes that the surrounding conditions on the day when this purported contact occurred made it difficult to see and hear, thus rendering the evidence of Mr Rrahimi generally unreliable. Specifically, at that time, it was raining and engine tractors were on,<sup>377</sup> making it difficult for Mr Rrahimi, in the Panel’s view, to hear and understand properly what was happening around him. In conclusion, it seems implausible to the Panel that Mr Rrahimi was in a position to recognise the Accused at any point in time, also considering that the witness himself testified that at the relevant time he did not know the Accused by name or by the nickname “Cali”, nor had he heard of him.<sup>378</sup>

193. The Panel considers the evidence of Mr Rrahimi so unclear that it is essentially impossible to extract meaningful information from it in order to assist the Panel in its determination of the truth. In addition, the time span when Mr Rrahimi would have allegedly seen the Accused and the surrounding conditions of the medical convoy are such that they render the account given by the witness wholly unreliable. Under these circumstances, the Panel has not relied on Mr Rrahimi’s evidence.

## 11. Musli Halimi (WDSM1300)

194. Musli Halimi (Mr Halimi) testified before the Panel on 20-21 April 2022, without protective measures.<sup>379</sup>

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<sup>375</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3695, line 23 to p. 3696, line 4.

<sup>376</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3697, lines 14-18.

<sup>377</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3667, line 4; p. 3694, lines 18-22; p. 3695, lines 2-3.

<sup>378</sup> **Mr Rrahimi:** T. 13 April 2022, public, p. 3676, lines 9-19.

<sup>379</sup> **Mr Halimi:** T. 20 April 2022, public, pp. 3719-3822; T. 21 April 2022, public, pp. 3846-3859.

195. Mr Halimi was the commander of the training centre for recruits located at the school in Zllash/Zlaš.<sup>380</sup> In this respect, he provided information regarding the activities and routine of the training, which the Panel considers credible as it could only come from someone with first-hand knowledge of the training centre. In addition, such evidence corroborates that of W01679, W04669 and Mr F. Sopi, thereby conferring credibility also to these witnesses in so far as they took part in the training (W01679 and W04669) or had knowledge thereof in their capacity as trainers themselves (Mr F. Sopi). The Panel has entertained a specific Defence challenge on this matter in its finding on arbitrary detention (Count 1).<sup>381</sup>

196. The Panel, however, notes certain fundamental contradictions in Mr Halimi's evidence, which call into question the credibility of the witness in relation to certain aspects of the training that was conducted at the centre. In direct examination by the Defence, Mr Halimi stated that no one could leave the training or could be taken away before completion, and that "[e]very recruit [...] started the training and completed the training".<sup>382</sup> Mr Halimi assertively stated this with "full responsibility".<sup>383</sup> However, Mr Halimi partly contradicted himself in cross-examination, when he stated that actually there were cases, albeit a few, when recruits were sent home and returned the following day due to sickness, although no one completely left the training.<sup>384</sup> In the Panel's view, it is implausible that such strict regime would apply to what appears to be a rather informal training. In addition, the Panel considers it implausible that no recruit ever left the training, considering the winter conditions (including snow) in February and March 1999, the altitude of the training centre (1200 metres), and the fact that there is no information as to whether recruits were

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<sup>380</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3720, line 7; p. 3721, lines 17-19; p. 3727, line 1.

<sup>381</sup> See para. 380 and following.

<sup>382</sup> **Mr Halimi:** T. 20 April 2022, confidential, p. 3761, lines 19-20; see also p. 3758, lines 4-5.

<sup>383</sup> **Mr Halimi:** T. 20 April 2022, confidential, p. 3761, line 19.

<sup>384</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3784, lines 16-18.

properly medically checked before the beginning of the training.<sup>385</sup> From this perspective, Mr Halimi appears to lack credibility.

197. In addition, the Panel is of the view that Mr Halimi lacks a proper basis of knowledge to accurately testify about recruits' attendance during the various training generations. In fact, Mr Halimi declared in court that it was impossible for him to know the names of all the recruits,<sup>386</sup> and that he was not sure "100 per cent" that everything was reported to him.<sup>387</sup> This is logical, in the Panel's assessment, because as Mr Halimi admitted during direct and cross-examination, hundreds of recruits participated in the different generations (lasting two weeks each)<sup>388</sup> between early February and mid-April 1999.<sup>389</sup> In addition, the fact that Mr Halimi could not have a comprehensive overview of who was present during the training is confirmed by the witness himself, who declared that he was dealing with matters related to the very training itself, and nothing else.<sup>390</sup> Under this light, the assertive statement of Mr Halimi "with full responsibility" that "there was no chance for somebody to come and pick up somebody from the training centre"<sup>391</sup> appears baseless, as he could not have a comprehensive overview of all recruits in the training.

198. On another matter, Mr Halimi testified that, during his time in Zllash/Zlaš, he saw the Accused "once or twice" "on the way [to Zllash/Zlaš]",<sup>392</sup> but that "it was not

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<sup>385</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3746, lines 16-24; p. 3730, lines 10-14.

<sup>386</sup> **Mr Halimi:** T. 20 April 2022, confidential, p. 3756, lines 3-4. The witness even stated in cross-examination that he remembered only a small percentage of those coming for training, and that he was not interested in who they were or where they came from but his sole interest was to follow his plan and carry his tasks (T. 20 April 2022, public, p. 3778, lines 11-15).

<sup>387</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3811, lines 13-16.

<sup>388</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3726, lines 4-5.

<sup>389</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3734, lines 1-2; p. 3741, lines 4-8; p. 3773, line 4 to p. 3777, line 12. The witness states that apart from the first generation of trainees — which comprised around 50 people — the subsequent groups comprised each around 150 recruits.

<sup>390</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3772, lines 12-17.

<sup>391</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3761, lines 17-19.

<sup>392</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3813, lines 1, 19-22.

up to me to know or to ask, to inquire after his [the Accused's] position. I didn't have the right to [...] explore who he was".<sup>393</sup> Despite having seen the Accused in Zllash/Zlaš, Mr Halimi stated that he did not know anything about the BIA unit or that they had a base in Zllash/Zlaš,<sup>394</sup> and added that he was not interested to know "what [the Accused] was doing there".<sup>395</sup> The Panel finds it implausible that Mr Halimi, as the commander of the training centre in Zllash/Zlaš, who spent around three months there, did not know that the BIA had a presence in Zllash/Zlaš. From this, the Panel discerns a clear intention by Mr Halimi to distance himself from the Accused and the BIA, as well as to protect the Accused by withholding any information about the BIA's presence and activities in Zllash/Zlaš.

199. The witness's intention to distance himself from the Accused is clearly confirmed by his tangible reluctance to admit that the Accused had his phone number, which required the intervention of the Presiding Judge.<sup>396</sup> In this respect, the Panel notes that when questioned on this matter by the SPO, Mr Halimi became very defensive and confrontational, stating that "I'm repeating it because you're asking me the same question three, four times", adding that "[e]ven if that is the case, it wouldn't be something out of the usual. It was not forbidden for me to have his phone number or to talk with him",<sup>397</sup> and stated multiple times that he did not remember.<sup>398</sup>

200. In light of the above, the Panel considers that Mr Halimi may have been inclined to provide evidence generally favourable to the Accused and unfavourable to the SPO.

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<sup>393</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3816, lines 3-5.

<sup>394</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3816, lines 11-14.

<sup>395</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3816, line 18.

<sup>396</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3819, line 11 to p. 3820, line 22 (the Presiding Judge, facing the reluctance of Mr Halimi to identify his phone number in the Accused's phone contact list that appeared on the screen, exclaimed: "[i]s this your phone number [...]? [...] It's very difficult to say that it is your phone number? Do you understand me, what I'm saying?" at which point Mr Halimi said "[y]es, this is my phone number" (p. 3820, lines 14-22)).

<sup>397</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3818, lines 13-14; p. 3818, line 24 to p. 3819, line 1.

<sup>398</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3818, line 24; p. 3819, line 9; p. 3821, lines 2-3.

The Panel regards these as factors greatly affecting the witness's credibility. Mr Halimi's evidence has therefore been considered with extreme caution.

## 12. Selatin Krasniqi (WDSM1400)

201. Selatin Krasniqi (Mr Krasniqi) testified before the Panel on 21-22 April 2022, without protective measures.<sup>399</sup>

202. Mr Krasniqi was a KLA soldier and a BIA member at the relevant time; however, the witness was unable to specify exactly when he joined the BIA and provided a number of contradictory, evasive and implausible responses, despite repeated questions by the SPO and the Panel in this respect.<sup>400</sup> In this vein, the Panel discerns a very strong reticence by the witness to provide any meaningful information concerning the BIA and even to associate himself with that unit.

203. In addition, the Panel notes that when repeatedly asked, in direct and cross-examination, who was in charge of the BIA base in Zllash/Zlaš, Mr Krasniqi mentioned a variety of names but remarkably he never mentioned the name of the Accused among those in command.<sup>401</sup> When questioned by the Panel, Mr Krasniqi admitted that the Accused was his commander in the BIA and had authority over the BIA members in Zllash/Zlaš,<sup>402</sup> which renders his initial omission of the Accused's

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<sup>399</sup> **Mr Krasniqi:** T. 21 April 2022, public, pp. 3865-4005; T. 22 April 2022, public, pp. 4011-4049.

<sup>400</sup> **Mr Krasniqi:** T. 21 April 2022, confidential, p. 3953, line 24 to p. 3957, line 11. The witness stated, for example: "[l]ater, yes [I was a BIA member]" (p. 3953, line 25); "[o]n 17 April [1999] [...] I went to Viti with BIA soldiers to Marec and I stayed there with them ever since" (p. 3954, lines 2-3); "[i]n the papers it says that as of February [1999] I was a member of BIA" (p. 3954, line 15); "[m]aybe I was [a BIA member in February 1999]" (p. 3955, line 11).

<sup>401</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3912, line 21 to p. 3913, line 2; p. 3988, lines 11-19; p. 3994, line 8 to p. 3995, line 4.

<sup>402</sup> **Mr Krasniqi:** T. 22 April 2022, public, p. 4047, line 10 to p. 4048, line 23.

name wholly implausible and contradictory. It is also contrary to the Accused's own evidence that he was the BIA commander.<sup>403</sup>

204. The Panel also notes that Mr Krasniqi had a strong emotional bond with the Accused, as exemplified by his statement: "[w]e are all friends and we will remain friends until we die and after death".<sup>404</sup>

205. Crucially, in the Panel's assessment, the witness belongs to the Krasniqi family that owned the property<sup>405</sup> where the crimes charged were allegedly committed, and supposedly has knowledge of the ZDC and its different buildings and functions, coming from the extensive time spent there in the past and still today.<sup>406</sup>

206. On the one hand, the Panel considers that Mr Krasniqi showed a tangible reticence to be forthcoming in his evidence concerning the BIA, his own BIA-related activities and the activities of the BIA at the family compound. From this point of view, the Panel notes that Mr Krasniqi went even further and declared that the allegations that the family compound was used as a detention centre "caused [his family] great damage".<sup>407</sup> The stance taken by the witness in this respect and his strong bond with the Accused lead the Panel to believe that Mr Krasniqi had a marked inclination to provide evidence favourable to the Accused and unfavourable to the SPO, and in general not to implicate himself in any BIA-related activities.

207. On the other hand, the Panel did not fail to note the detailed evidence provided by Mr Krasniqi on the structure of the family compound and the purpose of different

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<sup>403</sup> **Mr Mustafa:** 069404-TR-ET, Part 1, p. 31, lines 13-21.

<sup>404</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3974, lines 14-15.

<sup>405</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3866 line 22 to p. 3867, line 3; p. 3874, lines 5-18; DSM00026.

<sup>406</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3940, lines 17-18 ("I would go there in the summer for three months with the family"); T. 22 April 2022, public, p. 4022, lines 12-13 ("I go there every day at 8.00. [...] It is my place, every day"); p. 4046, line 6 ("[t]hat is where I grew up. That is where I spent my holidays").

<sup>407</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3912, line 11.

buildings therein,<sup>408</sup> except for his omission of the building which is alleged to have been a crime scene by the SPO.<sup>409</sup> The Panel discerns a general willingness to describe the family property with accuracy,<sup>410</sup> which adds to the credibility of the witness on certain selective aspects of his evidence regarding the family compound. However, the Panel considers that, in general, the witness's credibility is severely affected. Mr Krasniqi's evidence has therefore been considered with extreme caution, and on very discrete topics only.

### 13. Muhamet Ajeti (WDSM1500)

208. Muhamet Ajeti (Mr Ajeti) testified before the Panel on 22 April 2022, without protective measures.<sup>411</sup>

209. Mr Ajeti became a KLA member at the end of June/beginning of July 1998, when he was 17 years old, and was a member of BIA from mid-October 1998 until June 1999.<sup>412</sup> During the war, Mr Ajeti was also called by his nickname "Shyt Mareci", "Shyt", or "Shyti".<sup>413</sup> He knew the Accused from that time and considered himself as a "soldier of" the Accused, confirming that the Accused was indeed commander of

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<sup>408</sup> **Mr Krasniqi**: T. 21 April 2022, public, p. 3876, line 4 to p. 3885, line 19.

<sup>409</sup> **Mr Krasniqi**: T. 21 April 2022, public, p. 3932, line 23 to p. 3934, line 18.

<sup>410</sup> The Panel also notes that the description of the ZDC matches with the description given by other witnesses who had been there: **Mr Mehmetaj**: T. 23 March 2022, public, p. 2642, lines 11-12 ("there was a yard with a number of houses around it"); **Mr F. Sopi**: T. 18 January 2022, public, p. 2048, lines 18-22 ("it consisted of several houses. [...] there was a barn"). See also REG00-013 – the UNMIK Aerial Booklet view of the family compound marked by Mr Krasniqi when explaining the property – which matches the photograph from the UNMIK Ground Booklet, DSM00028-00028 (marked by the witness as REG00-015) and representing the left side of his family property.

<sup>411</sup> **Mr Ajeti**: T. 22 April 2022, public, pp. 4054-4174.

<sup>412</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4056, lines 17-21; p. 4057, line 19; p. 4086, lines 19-20; p. 4096, lines 4-7.

<sup>413</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4087, line 25 to p. 4088, line 3; p. 4113, line 21 to p. 4114, line 14; p. 4116, lines 3-7; p. 4118, line 13 to p. 4119, line 9.

the BIA unit.<sup>414</sup> The Panel understands that Mr Ajeti regards the Accused as his superior.

210. The witness and the Accused are still friends.<sup>415</sup> The last time they met, according to the witness, was on 28 or 29 July 2020,<sup>416</sup> and after that they maintained weekly contact via Viber or WhatsApp.<sup>417</sup> From June 2019 to September 2020, they exchanged a total of 113 calls.<sup>418</sup> The witness testified that Mr Mustafa would call the witness “son”, and the witness would call Mr Mustafa “commander” or “Babush”, which means father.<sup>419</sup>

211. The witness posted a photo on his Facebook profile in which he is depicted with Mr Mustafa in Zllash/Zlaš, in December 1998.<sup>420</sup> Underneath the photo, he commented: “I’m proud that, as a 18-year-old fighter, I had a commander like you”.<sup>421</sup> By posting this photo, the witness concedes that he wanted to show his moral support to Mr Mustafa.<sup>422</sup> In cross-examination by the SPO, the witness was confronted with other pictures taken with Mr Mustafa, including a Facebook post depicting the witness, Mr Mehmetaj, the Accused and others in a restaurant in 2019.<sup>423</sup> The witness testified that he also considered Mr Mehmetaj a friend during the war, although they knew each other very little, and became friends after the war.<sup>424</sup> It is therefore clear to

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<sup>414</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4086, lines 22-23 and p. 4096, line 16.

<sup>415</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4096, line 23 to p. 4097, line 4.

<sup>416</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4117, lines 19-23.

<sup>417</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4121, lines 3-17.

<sup>418</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4119, lines 10-25; SPOE00325853-00325865, p. 1.

<sup>419</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4122, lines 3-11; SPOE00325865-00325876; SPOE00325865-00325876-ET.

<sup>420</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4125, lines 10-18; SPOE00325825-00325825-ET.

<sup>421</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4125, lines 21-22; SPOE00325825-00325825-ET.

<sup>422</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4126, lines 10-14.

<sup>423</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4127, line 8 to p. 4128, line 23; p. 4132, line 23 to p. 4133, line 13; SPOE00222559-00222559; SPOE00222587-00222587; SPOE0032835-0032835.

<sup>424</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4101, lines 4-10 to p. 4102, line 6; SPOE00325827-SPOE00325827-ET.

the Panel that the sense of camaraderie among BIA members and respect for the Accused as their commander remains solid, and this is especially the case for Mr Ajeti.

212. The Panel notes that the witness was reluctant to reply to questions about whether or not he knew certain members of the BIA who held higher positions in 1999, and attempted to evade such questions. Only upon confrontation in cross-examination by the SPO with names of prominent BIA members, deputy commanders of the Accused — including Mr Mehmetaj and Bahri Gashi — did the witness concede that he knew them.<sup>425</sup> This suggests, in the Panel's view, a reticence of Mr Ajeti to respond truthfully to questions related to high-ranking members of the BIA unit, which in turn affects the credibility of the witness on this topic.

213. Based on the evidence mentioned above, the Panel considers that Mr Ajeti has developed extremely close ties with the Accused, rooted in their subordinate-superior relationship in the BIA during the war time. Such ties clearly continue to date as exemplified by the considerable exchange of messages between the two and the fact that they call each other "son" and "father", which signals clearly a nearly family-like relationship. All of this indicates, in the Panel's view, a very strong inclination by Mr Ajeti to provide evidence generally favourable to the Accused and in support of the BIA, and unfavourable to the SPO. The Panel regards these as factors greatly affecting the witness's credibility. Mr Ajeti's evidence has therefore been considered with extreme caution.

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<sup>425</sup> **Mr Ajeti:** T. 22 April 2022, public, p. 4097, lines 15-23; p. 4098, lines 5-19; p. 4099, line, 9-14; p. 4102, 7-13; p.4104, lines 1-12.

#### 14. Teuta Hadri (WDSM1600)

214. Teuta Hadri (Ms Hadri) testified before the Panel on 11-12 May 2022, without protective measures.<sup>426</sup>

215. Ms Hadri does not have particular ties with the KLA or the Accused. The Panel notes that her alleged arrival to Zllash/Zlaš was on 16 April 1999 and she stayed for four days, as stated in direct examination and confirmed in cross-examination.<sup>427</sup> The witness testified that she stayed at the ZDC, where the crimes charged were allegedly committed.<sup>428</sup> Ms Hadri further testified that she saw the Accused, whom she knew by his pseudonym “Cali”, for the first time one night before the offensive started.<sup>429</sup>

216. More generally, the Panel notes that Ms Hadri’s knowledge of the area in Zllash/Zlaš and of the location where she stayed is very limited.<sup>430</sup> In fact, she admitted in cross-examination that she had never been there, she had never heard of that village, she did not leave the room where she was, and she was “very busy with the patients, examining them” and therefore she “did not have much time to go outside the room”.<sup>431</sup> Under these circumstances, the Panel considers that Ms Hadri possesses a very limited basis of knowledge to testify about the events in Zllash/Zlaš that are relevant to the charges. The evidence of Ms Hadri refuting<sup>432</sup> the SPO’s claim that individuals were detained in Zllash/Zlaš — which has been entertained in the section concerning arbitrary detention (Count 1) — has been relied upon by the Panel with this consideration in mind.

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<sup>426</sup> **Ms Hadri:** T. 11 May 2022, public, pp. 4181-4283; T. 12 May 2022, public, pp. 4292-4314.

<sup>427</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4191, lines 10-20; p. 4255, lines 16-25.

<sup>428</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4189, lines 7-10; p. 4190, line 7 to p. 4191, line 3; p. 4195, lines 15 20; DSM00144.

<sup>429</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4214, lines 9-15.

<sup>430</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4205, lines 20-25 (when asked by the Defence if the witness could tell more about the space outside, she testified: “[t]here were three or four houses there in the yard, and I don’t remember anything else but those three or four houses”).

<sup>431</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4234, line 19 to p. 4236, line 2.

<sup>432</sup> *See, for example, Ms Hadri:* T. 11 May 2022, public, p. 4209, lines 12-19.

217. Overall, the Panel considers Ms Hadri generally credible, but a large part of her evidence is essentially irrelevant to the charges, or lacks a proper basis of personal knowledge to be reliably used.

### 15. Ibadete Canolli-Kaciu (WDSM1700)

218. Ibadete Canolli-Kaciu (Ms Canolli-Kaciu) testified before the Panel on 12 May 2022, without protective measures.<sup>433</sup>

219. The Panel notes that Ms Canolli-Kaciu testified that she had never been to Zllash/Zlaš before April 1999 and never went back since, she was not able to provide a meaningful description of the property where she was, she did not pay attention to the buildings in the premises where she was, she stayed mostly inside her room, and she did not visit other buildings on the premises, because she had a lot of work to do.<sup>434</sup> Under these circumstances, the Panel considers that Ms Canolli-Kaciu possesses a very limited basis of knowledge to testify about the events in Zllash/Zlaš that are relevant to the charges.

220. The Panel further notes that Ms Canolli-Kaciu was part of the KLA from March 1998 and is included on the Veterans' Association list.<sup>435</sup> Indeed, in cross-examination by the SPO, it appeared that according to the list of the Veterans' Association she was member of the BIA guerrilla in Prishtinë/Priština from

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<sup>433</sup> **Ms Canolli-Kaciu:** T. 12 May 2022, public, pp. 4321-4397.

<sup>434</sup> **Ms Canolli-Kaciu:** T. 12 May 2022, public, p. 4324, line 4 to p. 4326, line 18; p. 4377, lines 7-24; p. 4378, lines 12-15; p. 4379, lines 22-25; p. 4381, lines 2-3, 18-19.

<sup>435</sup> **Ms Canolli-Kaciu:** T. 12 May 2022, public, p. 4322, line 22 to p. 4323, line 10; p. 4339, lines 9-17; p. 4340, lines 2-14.

January 1999.<sup>436</sup> In addition, she has the status of a KLA veteran.<sup>437</sup> From January 1999 onwards, she made contributions and helped in the organisation with Mr Mustafa.<sup>438</sup>

221. According to her own admission, the witness knew the Accused from the beginning of 1999, and was aware that he had a leading position as the commander of the BIA unit.<sup>439</sup> She confirmed that the Accused was her commander and that he could have given orders to her and she would have implemented them.<sup>440</sup>

222. In relation to the photo posted on Facebook by Mr Mehmetaj, showing Mr Mehmetaj and the Accused at the airport of Prishtinë/Priština, Ms Canolli-Kaciu showed her support to Mr Mustafa by appending a clenched fist as a comment on Facebook; the witness explained that it meant “stay strong” and that she wanted to express moral support for the Accused.<sup>441</sup> The witness was confronted with another Facebook photo — posted by Mr Mehmetaj — upon which she had commented by appending a “like” and stated: “[a]lways in the service of the homeland, justice for the liberators”; by so doing, the witness meant that “these proceedings [...] be completed in a just way, in a fair and just way” and wanted to convey moral support for the Accused.<sup>442</sup>

223. Based on the above, the Panel assesses that Ms Canolli-Kaciu showed a clear and deep respect for the Accused as BIA commander and a willingness to support him. This, jointly with her membership in the BIA, signals an inclination from the witness to provide evidence generally favourable to the Accused and unfavourable to the SPO. The Panel regards these as factors greatly affecting the witness’s credibility.

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<sup>436</sup> Ms Canolli-Kaciu: T. 12 May 2022, public, p. 4339, lines 9-17 and p. 4340, lines 2-11.

<sup>437</sup> Ms Canolli-Kaciu: T. 12 May 2022, public, p. 4340, lines 12-14.

<sup>438</sup> Ms Canolli-Kaciu: T. 12 May 2022, public, p. 4340, lines 18-24.

<sup>439</sup> Ms Canolli-Kaciu: T. 12 May 2022, public, p. 4351, lines 12, 18-20; p. 4354, lines 5-7.

<sup>440</sup> Ms Canolli-Kaciu: T. 12 May 2022, public, p. 4356, lines 2-3.

<sup>441</sup> Ms Canolli-Kaciu: T. 12 May 2022, public, p. 4383, line 3 to p. 4384, line 7; SPOE00325261-SPOE00325261-ET; SPOE00325266-SPOE00325266.

<sup>442</sup> Ms Canolli-Kaciu: T. 12 May 2022, public, p. 4384, line 23 to p. 4385, line 21; 105327-105328-ET; SPOE00325377-SPOE00325377-ET.

Ms Canolli-Kaciu's evidence — when otherwise not irrelevant or lacking a proper basis of knowledge — has therefore been considered with extreme caution.

G. REMARKS ON SELECTED DOCUMENTS RELIED UPON BY THE PANEL

224. This case involves, among others, four documents that are relied upon extensively throughout the judgment and in relation to which the Parties have had the opportunity to raise their objections. Even though the Panel has already ruled on whether the material concerned is available for the purposes of the judgment, it considers it appropriate to further discuss specific aspects of the material (such as provenance, authorship or prejudicial effect) in order to complete its reasoning.

**1. List of Prisoners (U001-0310-U001-0322-ET)**

225. Document U001-0310-U001-0322-ET (List of Prisoners), which has been admitted,<sup>443</sup> is a compilation of hand-written notes, belonging to a larger collection of material seized by the Serbian forces in various KLA bases in Kosovo between 1998 and 1999 and which was handed over to the ICTY and, subsequently to the Special Investigative Task Force, the predecessor of the SPO.<sup>444</sup>

226. The Panel notes, at the outset, that in the document there are no signatures, logos or other apparent information about its authorship and time. However, the Panel notes that the List of Prisoners contains numerous details that lend credence to its authenticity and reliability. First, the Panel notes that the List of Prisoners records correctly the personal details (first name, last name, date and place of birth) of

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<sup>443</sup> KSC-BC-2020-05, F00369, Trial Panel I, [Decision on items used with witnesses W04484, W04485 and W04849 during their in-court testimony and on evidence collected prior to the establishment of the Specialist Chambers](#), 29 March 2022, public, with Annex 1, public, paras 21-23, 25(d).

<sup>444</sup> SPO Final Trial Brief, footnote 547. See also KSC-BC-2020-05, F00279, Specialist Prosecutor, [Prosecution notice of disclosure pursuant to Rule 102\(4\)](#), 7 December 2021, public, with annex 1, confidential, paras 2-3.

W01679,<sup>445</sup> W03593,<sup>446</sup> W03594,<sup>447</sup> and the Murder Victim<sup>448</sup> as well as the full name of other identified detainees, [REDACTED], including the date of arrest of all these persons.<sup>449</sup> In this regard, the List of Prisoners and the testimonial evidence of the above witnesses, [REDACTED], is mutually corroborative as to the aforementioned detainees' respective presence at the ZDC. Second, the List of Prisoners lists as many as 19 names, which corroborates the evidence of W01679, W03593, W04669, and other documentary evidence, according to which there were more than six detainees at the ZDC in April 1999.<sup>450</sup> Third, the List of Prisoners contains handwritten notes corroborating the evidence of W03594 on his alleged interrogation [REDACTED].<sup>451</sup> Lastly, the List of Prisoners contains an annotation "[f]or Cali" which, as established by the Panel, was the nickname of the Accused at the relevant time of the charges, as admitted by Mr Mustafa himself and corroborated by multiple sources.<sup>452</sup>

227. The Panel is of the view that, regardless of the lack of indications as to the authorship of the List of Prisoners, the entries in relation to the personal details of the prisoners as well as the details of their interrogation could have been compiled only by people with knowledge of the detention status of such victims. The Panel finds that the List of Prisoners is a contemporaneous document and that it is highly implausible that it was forged, or even altered, after the events. It is equally implausible, in the

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<sup>445</sup> U001-0310-U001-0322-ET, p. U001-0310; **W01679**: T. 4 October 2021, confidential, p. 861, lines 20-25.

<sup>446</sup> U001-0310-U001-0322-ET, p. U001-0310; **W03593**: T. 20 September 2021, confidential, p. 393, lines 21-25.

<sup>447</sup> U001-0310-U001-0322-ET, p. U001-0310; **W03594**: T. 12 October 2021, confidential, p. 1032, lines 13-16.

<sup>448</sup> U001-0310-U001-0322-ET, p. U001-0310; **W04391**: T. 22 November 2021, confidential, p. 1738, lines 6-7; **W04390**: T. 24 November 2021, confidential, p. 1867, lines 4-6; **W04712**: 077816-TR-ET, Part 1, p. 13, lines 9-13.

<sup>449</sup> U001-0310-U001-0322-ET, p. U001-0310; *see* para. 195.

<sup>450</sup> U001-0310-U001-0322-ET, p. U001-0310; *see* para. 485 and following.

<sup>451</sup> U001-0310-U001-0322-ET, p. U001-0313; **W03594**: T. 12 October 2021, confidential, p. 1075, lines 11-12.

<sup>452</sup> *See* para. 340; **Mr Mustafa**: 069404-TR-ET, Part 1, p. 4, lines 23-25.

Panel's view, that within this framework, there would be coincidentally a reference to the nickname of the Accused ("Cali").

228. For these reasons, the Panel has relied on the List of Prisoners.

## 2. UNMIK Booklets (SPOE00128386-00128420 and SPOE00213459-00213487)

229. Document SPOE00128386-00128420 (UNMIK Ground Booklet), which has been admitted,<sup>453</sup> is a compilation of photographs taken by UNMIK personnel on [REDACTED] 2006, depicting infrastructures and locations, including the ZDC, as it is established in the Panel's factual findings on arbitrary detention (Count 1).

230. Document SPOE00213459-00213487 (UNMIK Aerial Booklet), which has also been admitted,<sup>454</sup> is a compilation of aerial photographs taken by UNMIK personnel on [REDACTED] 2006, depicting the Zllash/Zlaš area, including the ZDC.

231. Both documents are part of the UNMIK investigation case file [REDACTED] concerning the [REDACTED]. The two documents, considered together with the testimonial evidence of W04648, [REDACTED], are mutually reinforcing on this crucial point.<sup>455</sup>

232. The Panel notes that the UNMIK Ground Booklet and the UNMIK Aerial Booklet are linked to: (i) an official interoffice memorandum with the UNMIK logo, names of officials involved in the investigation [REDACTED], the case reference ([REDACTED]), and a summary of the facts which corroborates the testimony of witnesses [REDACTED];<sup>456</sup> and (ii) an air mission request with the UNMIK logo,

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<sup>453</sup> [Article 37 & Other Material Decision](#), para. 26(e).

<sup>454</sup> [Article 37 & Other Material Decision](#), para. 26(e).

<sup>455</sup> See **W04648**: SPOE00128333-00128343 (2 February 2002); SPOE00128158-00128162 (4 March 2003); SPOE00128061-00128064 (18 April 2006); SPOE00128069-00128086 (29 May 2006). See also the corroborating evidence of **W04676**: T. 18 November 2021, confidential, p. 1708, lines 20-24.

<sup>456</sup> SITF00318201-00318202.

names of the same officials involved in the investigation, grid for target areas to photograph, date and references to “KLA detention compound in 1999” [REDACTED].<sup>457</sup>

233. The Panel further notes that the Defence has never challenged the admissibility of either the UNMIK Ground Booklet or the UNMIK Aerial Booklet as such, but rather it has objected to the use of the UNMIK Ground Booklet in the identification exercises undertaken with SPO witnesses in court, which will be dealt with in the findings of the Panel regarding arbitrary detention (Count 1).

234. For these reasons, the Panel has relied on the UNMIK Aerial Booklet and the UNMIK Ground Booklet.

### **3. Statement of the Accused to the SPO (069404, Parts 1-8)**

235. 069404, Parts 1-8, is the Accused’s statement to the SPO, which has been determined by the Panel to be available for consideration for the purpose of its deliberation and judgment.<sup>458</sup>

236. The Panel considers this evidence highly relevant, authentic, and corroborative of other evidence, as it will be set out in the factual findings, regarding: (i) the Accused’s presence at relevant times in April 1999 at the alleged crime location in Zllash/Zlaš; (ii) his ability to move to and from Zllash/Zlaš and across the surrounding territory during April 1999; (iii) the availability of different vehicles, including vehicles suitable for difficult and mountainous terrain; (iv) the ownership of the ZDC, which housed the BIA base; and (v) the commanding position of the Accused within the BIA and his power to give binding orders to his BIA subordinates.

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<sup>457</sup> SPOE00128266-00128273 RED3.

<sup>458</sup> [Article 37 & Other Material Decision](#), paras 23, 26(f).

237. As discussed in greater detail in its findings, the Panel considers that regarding the above issues the Accused volunteered significant information, details and explanations. Even though the Panel has detected attempts to shield or downplay his knowledge of potential wrongdoings in the BIA base in Zllash/Zlaš, the Accused's evidence remains overall credible and reliable in so far as it corroborates a vast amount of testimonial evidence coming from different sources (crime-based as well as insider witnesses). In the Panel's estimation, it is wholly implausible that all of them, including the Accused, would have testified coincidentally in the same manner.

238. Regarding the potential prejudice resulting from relying on the Accused's SPO statement, the Panel recalls that it did not find any violation of the Law and the Rules.<sup>459</sup> Moreover, the Panel underlines that the Defence never challenged the admissibility or use of this evidence. Accordingly, the Panel finds that there is no prejudice in using the Accused's SPO statement for the purpose of the judgment.

239. For these reasons, the Panel has relied on the Accused's SPO statement.

## V. FACTUAL FINDINGS

### A. THE ALIBI PRESENTED BY THE ACCUSED

240. The Defence elected to present an alibi as part of its case. In its Final Trial Brief, the Defence analyses each of its witnesses and their evidence.<sup>460</sup> By so doing, the Defence argues that the time, place and the alleged actions by the Accused, as alleged in the Confirmed Indictment, "cannot stand and hold".<sup>461</sup> Some witnesses, who were allegedly in locations other than Zllash/Zlaš, testified that they had seen or had been together with the Accused at different times between 1 April and the end of

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<sup>459</sup> [Article 37 & Other Material Decision](#), para. 22.

<sup>460</sup> Defence Final Trial Brief, p. 9.

<sup>461</sup> Defence Final Trial Brief, p. 9.

April 1999. The relevant locations are Butovc, Prishtinë/Priština, Barilevë/Bariljevo, Rimanishtë/Rimanishte, and Bellopojë/Belo Polje. Other witnesses provided evidence that, during April 1999, the Accused was not or was not seen in Zllash/Zlaš.

241. The Panel recalls that the alibi (which literally means elsewhere) is an assertion by the Accused that he was not in a position to commit the crime(s) charged because he was in another place when the alleged acts were committed. Accordingly, evidence of alibi is expected to provide the location(s) of the Accused in a place other than the crime scene at relevant times. While the passing of time and other factors (for example the medical condition of the witnesses and climate or travel conditions at the time of the commission of the alleged crimes) may naturally affect the precision of alibi evidence, the Panel must nonetheless be in a position to determine the Accused's position at a given time and place, based on the evidence received. In other words, with a view to determining whether the alibi evidence is likely to raise a reasonable doubt with regard to the SPO case,<sup>462</sup> the Panel may not be left to guess or fill gaps in the evidence to reconstruct the possible location(s) of the Accused at relevant times.

242. The Panel notes that when reference is made to Zllash/Zlaš, what is meant is the ZDC, namely the BIA base where, according to the SPO, the crimes charged against the Accused were allegedly committed.

243. The Panel further clarifies that it will entertain the alibi raised by the Accused vis-à-vis the SPO's allegations regarding the Accused's presence at the crime, notably within the first two weeks of April 1999.

244. The Panel has assessed the evidence of alibi against the backdrop set out above. In this vein, evidence indicating the position of the Accused elsewhere than Zllash/Zlaš at any other time than the first two weeks of April 1999 is irrelevant to the alibi, and has either not been discussed or has been touched upon tangentially by the

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<sup>462</sup> See para. 46.

Panel. Similarly, evidence generally suggesting that the Accused was simply not present or was not seen in Zllash/Zlaš in April 1999 is not, strictly speaking, evidence of alibi, as it does not assist the Panel in determining the location of the Accused at relevant times.

245. When assessing whether there is any reasonable possibility that the alibi asserted by the Accused is true,<sup>463</sup> in conformity with Rule 139(2) of the Rules, the Panel has evaluated the evidence holistically with regard to the alleged movements of the Accused during the timeframe of the Confirmed Indictment. In addition, in order to assess the Accused's alibi, the Panel considers it necessary to evaluate the alibi witnesses in light of: (i) the statement given by the Accused to the SPO during the investigation stage; and (ii) the evidence concerning the ability and the time needed to move across the territory surrounding Zllash/Zlaš during April 1999.

246. In his SPO statement, the Accused has provided relevant information on his location(s) and movements at the time of the Confirmed Indictment. The Panel considers that such statement is relevant to the overall assessment of the alibi.

247. Furthermore, as elaborated by the Panel below, a diverse range of witnesses provided evidence indicating that people in general, and the Accused specifically, had the ability to move across the territory by a variety of means of transportation during the relevant time of the Confirmed Indictment, and that distances between different locations relevant to this case were comparatively small, could therefore be covered in a reasonable amount of time. In this regard, all the locations mentioned by the Defence, including Zllash/Zlaš, are in Kosovo, and more precisely within a limited area, north-east of Prishtinë/Priština. The Panel has relied on this evidence and assessed the alibi under this light.

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<sup>463</sup> See similarly ICTY, [Popović et al. Appeal Judgement](#), para. 343.

## 1. The Accused

248. The Panel notes that in his statement to the SPO, the Accused admitted that before the Serbian offensive started, on or about 16 or 17 April 1999, during the time relevant to the Confirmed Indictment, he was in Zllash/Zlaš, specifically for 15 to 20 days leading up to that time “not constantly, but [he] [...] was there”.<sup>464</sup> The Accused further stated that he “might have slept there [Zllash/Zlaš] overnight two times, three times, for a couple of nights.”<sup>465</sup>

249. The Accused admitted that when he was there, he would sleep at the safe house location, on the first floor.<sup>466</sup> In another excerpt of his SPO statement, the Accused stated that he actually left Zllash/Zlaš “either on the 14<sup>th</sup> or the 13<sup>th</sup> April, either two or three days before the start of the offensive”,<sup>467</sup> or “either on the 12<sup>th</sup>, the 13<sup>th</sup>, or the 14<sup>th</sup>.”<sup>468</sup>

250. The Accused claimed in his SPO statement that he later went back to Zllash/Zlaš on 20 April 1999, since in his words “I was called on the radio and I was asked to pick up the injured people and take them to the hospital.”<sup>469</sup> Regarding communications, the Panel notes that the Accused confirmed that they would use also satellite phones to pass on information.<sup>470</sup> In the morning of 21 April 1999, the Accused stated that he left with the injured people and the guerrilla soldiers towards the Llap OZ.<sup>471</sup>

251. The Panel considers that the Accused had all possible incentives to conceal or deny his presence in Zllash/Zlaš during April 1999, given that the SPO questioned him, *inter alia*, on whether individuals were detained and mistreated at that location.

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<sup>464</sup> Mr Mustafa: 069404-TR-ET, Part 7, p. 16, lines 9-15.

<sup>465</sup> Mr Mustafa: 069404-TR-ET, Part 7, p. 10, lines 16-21.

<sup>466</sup> Mr Mustafa: 069404-TR-ET, Part 7, p. 16, lines 13-15.

<sup>467</sup> Mr Mustafa: 069404-TR-ET, Part 7, p. 22, lines 10-11.

<sup>468</sup> Mr Mustafa: 069404-TR-ET, Part 7, p. 22, lines 17-18.

<sup>469</sup> Mr Mustafa: 069404-TR-ET, Part 7, p. 22, lines 6-8.

<sup>470</sup> Mr Mustafa: 069404-TR-ET, Part 2, p. 12, lines 13-20; 069404-TR-ET, Part 4, p. 6, lines 1-7.

<sup>471</sup> Mr Mustafa: 069404-TR-ET, Part 7, p. 23, lines 1-5.

This notwithstanding, the Accused volunteered significant information, according to which he was present in Zllash/Zlaš during part of April 1999, an admission consistent with the SPO's claim in this respect. The credibility of the Accused on this topic is further enhanced by the fact that he actively provided temporal signposts (notably the bombardment on 24 March 1999 and the later Serbian offensive on the second half of April 1999) to identify with more specificity the times when he was or was not in Zllash/Zlaš.

252. The Panel sees no reason to doubt the Accused on the gist of the evidence concerning his presence in and movements out of Zllash/Zlaš, which can be synthesized in the fact that he was in Zllash/Zlaš at times during April 1999 and repeatedly moved in and out of that location. The Panel has therefore relied on such evidence.

## 2. Ability to Move Across the Territory around Zllash/Zlaš

253. The Panel has received evidence in relation to the ability of the Accused to move across the territory surrounding Zllash/Zlaš during the time relevant to the Confirmed Indictment (on or around 1-19 April 1999), which is, in turn, directly relevant to the assessment of the Accused's alibi and his ability to travel to multiple locations in one and the same day.

254. The Panel notes, as a starting point, that the Accused himself, in his SPO statement, stated that he was in Zllash/Zlaš during April 1999 but not constantly, as he would also travel to Kamenice, Gjilan, and Prishtinë/Priština,<sup>472</sup> which implies, in the view of the Panel, that he could travel to and from Zllash/Zlaš. The Accused also

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<sup>472</sup> See, for example, **Mr Mustafa**: 069404-TR-ET, Part 7, p. 10, lines 16-21; p. 12, lines 6-14 ("I would usually stay a day, two. I'd gone to Kamenice, Gjilan, Prishtina. I didn't stay there [Zllash/Zlaš] constantly"); p. 17, lines 9-12; p. 22, lines 10-18; **Mr Mustafa**: 069404-TR-ET, part 7, p. 12, lines 6-9.

stated that he could go back to Zllash/Zlaš when need arose, upon being informed by radio,<sup>473</sup> which also signals the possibility for the Accused to travel to Zllash/Zlaš on relatively short notice. In this respect, the Panel underlines that even with the Serbian offensive approaching, the Accused stated, twice, that on 20 April 1999 he went back to Zllash/Zlaš to evacuate some wounded persons, and left again in the morning of 21 April 1999 with “various jeeps, cars”.<sup>474</sup>

255. The Accused’s ability to move in and out of Zllash/Zlaš during the relevant time is corroborated by other witnesses. Mr Nreci testified, before the Panel, that the Accused and Jusuf Shalaku had a Golf II car (four-wheel drive) at their disposal.<sup>475</sup> Mr Vrbovci confirmed in court that Jusuf Shalaku indeed had such a car.<sup>476</sup> Mr Nreci used that vehicle to drive the Accused and Jusuf Shalaku from Barilevë/Bariljevo to Llapashtice.<sup>477</sup> The Panel assesses Mr Nreci as credible on this topic, in particular because the witness associated this event with the apparent excitement of sitting in a four-wheel drive Golf, which resulted in a “very special feeling” and made him “important and strong, having such a vehicle”.<sup>478</sup> Mr Nreci also testified, consistent with his prior statement, that there was another vehicle in Radashec that was used by the Accused, which was more suitable to the terrain between Radashec and Zllash/Zlaš.<sup>479</sup> The Accused’s access to, and use of a car is further confirmed by

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<sup>473</sup> **Mr Mustafa:** 069404-TR-ET, Part 7, p. 22, lines 6-8.

<sup>474</sup> **Mr Mustafa:** 069404-TR-ET, Part 7, p. 22, line 6 to p. 23, line 6.

<sup>475</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3207, lines 2-4. The actual owner, according to the witness, was Jusuf Shalaku (p. 3221, lines 6-9).

<sup>476</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3306, line 25 to p. 3307, line 2.

<sup>477</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3206, line 21 to p. 3207, line 8; p. 3222, line 24 to p. 3223, line 3. Llapashtice is located north of Barilevë/Bariljevo (SPOE00238094).

<sup>478</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3207, line 5; p. 3223, line 3.

<sup>479</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3274, line 13 to p. 3275, line 6; DSM00056-00067, p. DSM00062.

Mr Humolli.<sup>480</sup> Relatedly, other witnesses further corroborated the evidence according to which the Accused was regularly on the move.<sup>481</sup>

256. The evidence discussed above — indicating a clear ability by the Accused to move across the territory — must be further seen in light of a generalised availability of means of transportation to KLA members, on the one hand, and relatively limited distances in the area surrounding Zllash/Zlaš, on the other. For example, Mr Mehmetaj testified that the members of the units in charge of retrieving supplies would travel from Butovc to Prishtinë/Priština on their own vehicles, such as tractors or cars.<sup>482</sup> This is corroborated by other witnesses, who testified that people would go to Prishtinë/Priština by car, tractor or even by foot to get supplies.<sup>483</sup> In this respect, Mr Krasniqi testified that he had a tractor during the war, which he used to take families from one location to another.<sup>484</sup> During his medical evacuation, Mr Ibishi testified that from Rimanishtë/Rimanishte onward they were transported by jeep.<sup>485</sup> Further, as established by the Panel in its factual findings on arbitrary detention (Count 1), W04600 transported at least two detainees, on two separate occasions, [REDACTED].<sup>486</sup> By the same token, W03593 and W03594 were taken from [REDACTED] to the BIA base in Zllash/Zlaš via jeep<sup>487</sup> and a Niva car,<sup>488</sup> respectively.

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<sup>480</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2328, line 13.

<sup>481</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2905, lines 16-18 (“I do remember that there were some wounded and that he moved, went to where those wounded were. I did see him there on two, three occasions on the move”); p. 2912, lines 13-18 (the witness and the Accused went together to Prishtinë/Priština to retrieve some medicaments and returned to Butovc); **Mr Borovci**: T. 30 March 2022, public, p. 2967, lines 22-23; **Mr G. Sopi**: T. 4 April 2022, public, p. 3093, line 9; **Mr Vrbovc**: T. 6 April 2022, public, p. 3305, lines 5-7, 14-20.

<sup>482</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2629, lines 1-7; T. 24 March 2022, public, p. 2742, lines 14-24. *See also* **Mr Ademi**: T. 28 March 2022, public, p. 2789, lines 12-14.

<sup>483</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2971, lines 13-17.

<sup>484</sup> **Mr Krasniqi**: T. 21 April 2022, confidential, p. 3888, lines 16-17.

<sup>485</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3560, lines 1-2, p. 3583, lines 10-17.

<sup>486</sup> *See* paras 447, 461.

<sup>487</sup> **W03593**: T. 20 September 2021, public, p. 395, line 12; T. 20 September 2021, confidential, p. 398, lines 6-7.

<sup>488</sup> **W03594**: T. 12 October 2021, public, p. 1036, lines 11-12.

[REDACTED] was also taken by W04600 from the village of [REDACTED] to the BIA base in Zllash/Zlaš with a [REDACTED].<sup>489</sup>

257. Despite the risks due to the presence of enemy forces<sup>490</sup> and the intensification of the Serbian offensive as a result of the bombing by the North Atlantic Treaty Organisation (NATO),<sup>491</sup> the Panel considers that the evidence taken as a whole indicates that movements across the territory surrounding Zllash/Zlaš during the relevant time continued, including by relying on vehicles suitable for mountain and difficult terrain, such as jeeps and tractors.

258. The finding that movements to and from Zllash/Zlaš and the surroundings continued during April 1999 is confirmed by ample and corroborating evidence showing that the distances between different locations in the surrounding area of Zllash/Zlaš were limited, both in terms of kilometres and time. The Panel takes no issue with the credibility of the witnesses on the matter of distances and travelling time, as they provided such information based on their personal knowledge and movements at the time, and the natural differences in their accounts are clearly the result of every witness's own recollection and estimate.

259. In terms of kilometres, for example, according to Mr G. Sopi, the distance between Butovc and Zllash/Zlaš is about 13 kilometres.<sup>492</sup> Mr Veseli stated that the distance between Prishtinë/Priština and the village of Zllash/Zlaš, which is located east of the former, is "about 20 kilometres",<sup>493</sup> whereas the distance between

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<sup>489</sup> [REDACTED].

<sup>490</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2629, lines 7-8; **Mr Borovci**: T. 30 March 2022, public, p. 2970, line 22 to p. 2971, line 20.

<sup>491</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2093, lines 2-7; **Mr Humolli**: T. 1 February 2022, public, p. 2423, line 2 to p. 2424, line 2; p. 2448, lines 1-3; **Mr Mehmetaj**: T. 23 March 2022, public, p. 2625, lines 15-18; **Mr Ademi**: T. 28 March 2022, public, p. 2786, lines 14-16; **Mr Ismaili**: T. 29 March 2022, public, p. 2874, lines 2-5; **Mr G. Sopi**: T. 4 April 2022, public, p. 3108, lines 2-12; **Mr Ajeti**: T. 22 April 2022, public, p. 4055, lines 13-16.

<sup>492</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3081, line 23 to p. 3082, line 1.

<sup>493</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2192, line 18.

Zllash/Zlaš and Mramor (which is situated between Prishtinë/Priština and Zllash/Zlaš)<sup>494</sup> is “maybe 3 kilometres [...]. Not more than that”.<sup>495</sup> Mr Humolli testified that the distance between Prishtinë/Priština and Barilevë/Bariljevo, which is located north of the former, is “about 10 kilometres in the paved street”.<sup>496</sup> According to [REDACTED], the distance from Ugrij to the BIA base in Zllash/Zlaš was “about 5 kilometres to 10 kilometres and the road was not paved”.<sup>497</sup>

260. In terms of travel time, for example, Mr Krasniqi testified that he went from Zllash/Zlaš to Prishtinë/Priština and back in the same day, returning after nightfall.<sup>498</sup> According to Mr Parduzi, it could have taken anywhere between one and a half hour and 24 hours to get from Bradash to Zllash/Zlaš by car, depending on the “circumstances and the obstacles”.<sup>499</sup> The itinerary Barilevë/Bariljevo-Radashec and return by tractor would take a night.<sup>500</sup> Furthermore, according to Mr Ajeti, by foot it would only take four or five hours from Prishtinë/Priština to Zllash/Zlaš,<sup>501</sup> which is corroborated by W03593, who testified that he walked from Zllash/Zlaš to Prishtinë/Priština in “five or six hours”.<sup>502</sup> The trip lower Butovc- Prishtinë/Priština, according to Mr G. Sopi could take on foot, in normal circumstances, as little as “one hour, one hour and 20 minutes” and could take longer “depending on the circumstances at the time” due to the enemy positions.<sup>503</sup> According to [REDACTED],

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<sup>494</sup> See, for example, map, SPOE00238094.

<sup>495</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2268, line 11. [REDACTED] largely corroborated the limited distance between Zllash/Zlaš and Mramor stating: [REDACTED]). While the Panel does not expect precise distances from witnesses, it notes that the estimates given, for example, by Mr Veseli and [REDACTED] do not differ much, and indicate a limited distance between Zllash/Zlaš and Mramor.

<sup>496</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2311, line 4.

<sup>497</sup> [REDACTED].

<sup>498</sup> **Mr Krasniqi**: T. 22 April 2022, public, p. 4041, lines 4-14.

<sup>499</sup> **Mr Parduzi**: T. 11 April 2022, public, p. 3422, line 4 to p. 3423, line 10.

<sup>500</sup> **Mr Nreci**: T. 5 April 2022, public, p. 3275, lines 14-18.

<sup>501</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4058, lines 6-8.

<sup>502</sup> **W03593**: T. 21 September 2021, public, p. 557, lines 19-20.

<sup>503</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3082, lines 6-7. The circumstances depended on the enemy positions along the route, according to the witness (p. 3082, line 8-10).

it took about “one hour, half an hour” on unpaved road to be taken from [REDACTED]<sup>504</sup> to the BIA base in Zllash/Zlaš.<sup>505</sup> Mr Halimi testified that he walked on a daily basis between 7 and 10 April 1999 from the training centre in Zllash/Zlaš to Prapashticë/Prapaštica (around 10 kilometres apart),<sup>506</sup> thus showing that movement was not impeded also in that direction (north east of Zllash/Zlaš).

261. The Panel considers that based on the evidence, it is rather difficult to establish precise travelling times between different locations, as these were wholly dependent on the specific circumstances at the time of each trip. However, the evidence taken as a whole establishes that distances between relevant locations in the area surrounding Zllash/Zlaš were relatively small and that people in general, and the Accused in particular, were able to move, and did in fact regularly move, across the territory during the relevant time of the Confirmed Indictment. The Panel is therefore satisfied that the Accused, during the relevant time of the charges, had the ability to travel to and from Zllash/Zlaš whenever necessary. In this regard, the Panel also notes that Zllash/Zlaš and the villages around it were seen as a relatively safe area with a limited presence of Serbian forces.<sup>507</sup> Accordingly, moving around the area was not too difficult, especially for someone with the knowledge and experience of the Accused. The Panel also notes that the Accused was requested to transport people and goods in that area,<sup>508</sup> thus indicating his ability to move easily in that region, which he knew very well.

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<sup>504</sup> [REDACTED].

<sup>505</sup> [REDACTED].

<sup>506</sup> **Mr Halimi**: T. 20 April 2022, public, p. 3803, line 10 to p. 3805, line 8; *see also* map SPOE00238094 to determine the location of Prapashticë/Prapaštica in relation to Zllash/Zlaš.

<sup>507</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2641, line 23 to p. 2642, line 9; **Mr F. Sopi**: T. 19 January 2022, public, p. 2172, line 13 to p. 2173, line 4; 069474-TR-ET, Part 2, p. 20, lines 13-16; **Mr G. Sopi**: T. 4 April 2022, public, p. 3082, lines 6-10 (the witness specified that the difficult stretch because of enemy positions was Prishtinë/Priština-Butovc, and not Zllash/Zlaš).

<sup>508</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2905, lines 16-18 (“I do remember that there were some wounded and that he moved, went to where those wounded were. I did see him there on two, three

262. Accordingly, the alibi provided by the Accused will be assessed in light of: (i) the general ability, including that of the Accused, to move across the territory surrounding Zllash/Zlaš; and (ii) the relatively limited distances between locations in the area surrounding Zllash/Zlaš and Prishtinë/Priština.

### 3. Presence of the Accused in Butovc

#### (a) Mr Mehmetaj

263. Mr Mehmetaj testified that he had a meeting with the Accused in Butovc, at the location where BIA guerrilla soldiers were stationed. During this meeting, the Accused asked the witness to keep up the morale of the soldiers and to survey the movements of the Serbian forces.<sup>509</sup> Mr Mehmetaj initially stated that such meeting took place during the “two, three first days of April [1999]” when he returned from Prishtinë/Priština to Butovc,<sup>510</sup> but then clarified: “on 31 March [1999] I returned to Prishtine, where I stayed two or three days, so it may have been 4, 5, or 7 of April when I stayed in Butovc where I often talked to Cali”.<sup>511</sup> According to the witness, the Accused slept in Butovc and they spent two nights together.<sup>512</sup>

#### (b) Mr Ismaili

264. Mr Ismaili testified that he had met the Accused for the first time in Butovc, around 27, 28 or 29 March 1999.<sup>513</sup> Nevertheless, the witness specified that the dates

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occasions on the move”); p. 2912, lines 13-18 (the witness and the Accused went together to Prishtinë/Priština to retrieve some medicaments and returned to Butovc); **Mr Borovci**: T. 30 March 2022, public, p. 2967, lines 22-23 (speaking about instances where the Accused would go “to the city to get food”).

<sup>509</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2631, line 22 to p. 2632, line 16; p. 2632, line 22 to p. 2633, line 9.

<sup>510</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2631, lines 22-23; p. 2633, lines 1-3.

<sup>511</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2633, lines 1-3.

<sup>512</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2633, lines 10-12.

<sup>513</sup> **Mr Ismaili**: T. 29 March 2022, public, p. 2879, lines 8-9; p. 2881, lines 18-23.

may not be accurate after 23 years, because of his memory issues and, in general, the difficulties he has in remembering.<sup>514</sup> This first meeting between the witness and the Accused took place, according to Mr Ismaili, at the house of the cousin of Sabit Krasniqi, in Butovc.<sup>515</sup> On that occasion, Mr Ismaili stated that he did not have any direct contact with the Accused.<sup>516</sup>

265. According to the witness, a second meeting occurred “in the beginning of April, 7, 8 April [1999]. From the first meeting where I [Mr Ismaili] did not take part to the second meeting, there were seven or eight days [...] that was seven or eight days after”.<sup>517</sup> The witness and the Accused met at a strategic point where the witness observed the movements of the Serb forces.<sup>518</sup> In the witness’s words “[t]his is where officially I got introduced to him [Mr Mustafa]”.<sup>519</sup> Mr Ismaili stated that they discussed strategic plans on how to supply the civilian population for up to seven hours.<sup>520</sup>

266. The witness further testified that in the following days, he saw the Accused at the house of Mustafe Sopi, and sometimes on the ground where they were located.<sup>521</sup> Mr Ismaili claimed to have seen the Accused over approximately seven or eight days in Butovc.<sup>522</sup> At the same time, because of some wounded persons, he saw the Accused on the move on two or three occasions.<sup>523</sup>

267. In cross-examination by the SPO, the witness also testified that on 20 April 1999, he travelled together with the Accused to Prishtinë/Priština with the intention of

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<sup>514</sup> Mr Ismaili: T. 29 March 2022, public, p. 2888, lines 14-18.

<sup>515</sup> Mr Ismaili: T. 29 March 2022, public, p. 2888, lines 21-22.

<sup>516</sup> Mr Ismaili: T. 29 March 2022, public, p. 2889, line 1.

<sup>517</sup> Mr Ismaili: T. 29 March 2022, public, p. 2900, lines 19-25.

<sup>518</sup> Mr Ismaili: T. 29 March 2022, public, p. 2889, lines 6-23; p. 2890, line 10.

<sup>519</sup> Mr Ismaili: T. 29 March 2022, public, p. 2891, lines 18-19.

<sup>520</sup> Mr Ismaili: T. 29 March 2022, public, p. 2892, line 19 to p. 2893, line 6.

<sup>521</sup> Mr Ismaili: T. 29 March 2022, public, p. 2897, lines 9-11.

<sup>522</sup> Mr Ismaili: T. 29 March 2022, public, p. 2905, lines 9-12.

<sup>523</sup> Mr Ismaili: T. 29 March 2022, public, p. 2905, lines 16-18.

retrieving some medicaments.<sup>524</sup> When testifying about this event, the witness emphasised again his memory issues.<sup>525</sup>

(c) Mr Borovci

268. Mr Borovci testified that he saw the Accused in Butovc, on 2 or 3 April 1999, at the house of Mustafe Sopi,<sup>526</sup> where they were celebrating the small Bajram.<sup>527</sup> The witness specified that the celebration of Bajram is the reason why he recalls the date of the first meeting with the Accused; according to the witness “usually we Muslims have two feasts, the big Bajram and the small one. The big Bajram lasts longer, two, three, four days, and that’s why I recalled the date when we were celebrating Bajram. So it means the first week of April of 1999.”<sup>528</sup>

269. In addition to that first meeting, Mr Borovci also testified that he again saw and spoke to the Accused “three, four, five times. I can’t be precise”, as the Accused stayed in Butovc for approximately two weeks, until 15, 16 or 17 April 1999.<sup>529</sup> According to the witness, the Accused would stay overnight in Butovc, except for those occasions when he would go to Prishtinë/Priština to get food.<sup>530</sup> The witness however stated that he “[...] did not see or meet him [Mr Mustafa] on a daily basis. He [Mr Mustafa] was staying with the Sopi family. I was staying with the Recica family”.<sup>531</sup>

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<sup>524</sup> **Mr Ismaili:** T. 29 March 2022, public, p. 2912, lines 13-18.

<sup>525</sup> **Mr Ismaili:** T. 29 March 2022, public, p. 2912, lines 9, 19-20.

<sup>526</sup> **Mr Borovci:** T. 30 March 2022, public, p. 2963, lines 7-14.

<sup>527</sup> **Mr Borovci:** T. 30 March 2022, public, p. 2963, line 20 to p. 2964, line 1.

<sup>528</sup> **Mr Borovci:** T. 30 March 2022 public, p. 2964, lines 5-8.

<sup>529</sup> **Mr Borovci:** T. 30 March 2022, public, p. 2964, lines 18-22; p. 2964, line 25 to p. 2965, line 4; p. 2966, lines 5-7; T. 31 March 2022, public, p. 3062, lines 18-23.

<sup>530</sup> **Mr Borovci:** T. 30 March 2022, public, p. 2967, line 20 to p. 2968, line 6.

<sup>531</sup> **Mr Borovci:** T. 31 March 2022, public, p. 3062, lines 24-25.

(d) Mr G. Sopi

270. Mr G. Sopi testified that he saw the Accused in Butovc during the first two weeks of April 1999.<sup>532</sup> According to the witness, the Accused was particularly close to the witness's brother, Mustafe Sopi, and for that reason the Accused went to visit him in Butovc during Bajram.<sup>533</sup> The witness testified that around the third, the fourth or the fifth day of small Bajram, the Accused went to congratulate Mustafe Sopi and the witness, and celebrated with them.<sup>534</sup>

271. Besides this first meeting on the occasion of Bajram, the witness claimed that he met again with the Accused in the course of the first and the second week of April 1999 during some meetings between the Accused and Mustafe Sopi, in which the witness took part as well.<sup>535</sup> During his testimony, the witness specified that such meetings occurred during the day and at night.<sup>536</sup> The witness added that he, the Accused, Mustafe Sopi and other co-fighters would often go together to strategic points where they would observe the position of the enemy.<sup>537</sup>

272. Mr G. Sopi contended that the Accused was initially accommodated at the house of Mustafe Sopi, which was the house of the witness's parents, where the witness himself was also accommodated.<sup>538</sup> However, in the witness's words, "from there, he [Mr Mustafa] moved about".<sup>539</sup>

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<sup>532</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3089, lines 20-22.

<sup>533</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3089, line 25 to p. 3090, line 2.

<sup>534</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3098, lines 22-24; p. 3165, line 24 to p. 3166, line 1.

<sup>535</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3090, lines 19-24; p. 3091, lines 19-21.

<sup>536</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3091, lines 19-21.

<sup>537</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3091, lines 2-6; p. 3104, lines 14-20.

<sup>538</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3093, lines 8-9, 13, 16-19.

<sup>539</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3093, line 9.

## (e) Conclusion

273. Regarding Mr Mehmetaj, the Panel recalls that the witness's credibility is severely undermined by the factors identified by the Panel in its general assessment.<sup>540</sup>

274. In addition, the Panel considers that, even making allowance for the approximate timeframe provided by the witness as to his presence in Butovc — which may range anywhere from 2 April 1999<sup>541</sup> and 7 April 1999 — the Panel is unable to determine the Accused's position during that time. In this respect, the Panel considers that, notwithstanding the passing of the time and the effect that it may or may not have on human memory, the Panel cannot simply conclude that generic evidence pointing at vague timeframes regarding the Accused's position in a given location is capable of accounting, *prima facie*, for the Accused's position elsewhere than Zllash/Zlaš, thus creating a reasonable doubt as to the SPO's case. This is all the more so, considering the limited distance between Butovc and Zllash/Zlaš (about 13 kilometres), and the means of transportation at his disposal, which made it very possible for him to be within the same day in both places, therefore rendering the defence of alibi completely inoperant.

275. Regarding Mr Ismaili, the Panel recalls that the credibility of the witness is severely undermined by the factors identified in the Panel's general assessment.<sup>542</sup> In addition, the Panel considers that the fact that the witness highlighted repeatedly memory issues<sup>543</sup> significantly affects the reliability of his evidence, which must therefore be considered with great caution when it comes to recollecting dates.

276. The alibi timeframe provided by Mr Ismaili with regard to his first alleged meeting with the Accused (27-29 March 1999) falls outside the temporal framework of

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<sup>540</sup> See paras 139-144.

<sup>541</sup> As the witness initially put it "the two, three first days of April" (**Mr Mehmetaj**: T. 23 March 2022, public, p. 2631, lines 22-23).

<sup>542</sup> See paras 149-152.

<sup>543</sup> See para. 152.

the charges and, thus, is irrelevant, not only to the alibi, but more generally to the scope of the case. With regard to the second alleged meeting with the Accused, the timeframe of Mr Ismaili is so general and vague that such meeting could have occurred anywhere between approximately 2 April and 8 April 1999. While the second meeting theoretically falls within the first two weeks of April 1999, the approximation of such dates, in light of the flawed memory of the witness, is such that the Panel is unable to determine the Accused's position at that time. As with Mr Mehmetaj's evidence, also with Mr Ismaili the Panel considers that it cannot conclude *prima facie*, on the basis of generic evidence encompassing a rather large time span, that the Accused was only in Butovc and, as a consequence, not in Zllash/Zlaš, thus creating a reasonable doubt as to the SPO's case.

277. Regarding Mr Borovci, the credibility of the witness is severely undermined by the factors identified in the Panel's general assessment.<sup>544</sup>

278. The Panel, however, paid due regard to Mr Borovci's evidence, as the alibi timeframe of 2-3 April 1999, as provided by the witness, is slightly more precise than other alibi witnesses. In this respect, the Panel notes that in direct examination by the Defence, Mr Borovci stated that he moved to Butovc on 31 March 1999.<sup>545</sup> On this basis, Mr Borovci declared, during his direct examination, that he allegedly met the Accused on the "2<sup>nd</sup> or the 3<sup>rd</sup> of April, 1999" connecting this date to the celebration of the "small, second Bajram".<sup>546</sup>

279. When cross-examined by the SPO on this topic, Mr Borovci was confronted with the fact that, in his prior Defence statement, he had declared that he left Prishtinë/Priština for Butovc on 28 March 1999 (as opposed to 31 March 1999), to

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<sup>544</sup> See paras 153-158.

<sup>545</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2958, lines 9-12.

<sup>546</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2963, line 7 to p. 2964, line 1.

which he responded that he got confused between the two dates.<sup>547</sup> Mr Borovci reiterated that the reason why he remembers the date of this meeting with the Accused is its link to the small Bajram celebration, “which was not on the 28<sup>th</sup> [March 1999] but on 31 March [1999]”.<sup>548</sup> The witness nonetheless conceded that he does not remember the dates of Muslim celebrations well.<sup>549</sup> Pressed by the SPO on the reason why the witness was now convinced that the small Bajram fell on 31 March 1999 and not on 28 March 1999, as initially thought, Mr Borovci admitted that this change in his evidence was not based on his personal knowledge but that he had asked “the Muslim priest, the hoxha, and they explained to me that it [the small Bajram] was on the 31<sup>st</sup> [March 1999]”.<sup>550</sup>

280. In fact, the Panel notes that evidence in the form of a table listing the Muslim celebrations of Eid al-Adha (or small Bajram) through the years has been submitted, according to which such celebration in 1999 took place on 28 March — as initially thought by Mr Borovci — as opposed to 31 March 1999.<sup>551</sup> The Panel takes no issue with the reliability of such table, as it is an open source item coming from the internet, which can be easily verified for its reliability and authenticity as to the dates of said celebrations through the years. Accordingly, considering that Mr Borovci linked his alleged meeting with the Accused to the celebration of Small Bajram, the Panel is convinced that such meeting, if at all, may have taken place at the end of March 1999 rather than on 2-3 April 1999. As such, it would not clash with the alleged instances of direct perpetration by the Accused of the crimes charged.

281. Relatedly, the Panel notes that both Mr Borovci and Mr G. Sopi changed, in a strikingly similar manner, the date of their departure from Prishtinë/Priština to Butovc

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<sup>547</sup> **Mr Borovci**: T. 30 March 2022, public, p. 3026, lines 10-21.

<sup>548</sup> **Mr Borovci**: T. 30 March 2022, public, p. 3027, lines 7-11.

<sup>549</sup> **Mr Borovci**: T. 30 March 2022, public, p. 3027, lines 15-16.

<sup>550</sup> **Mr Borovci**: T. 30 March 2022, public, p. 3029, line 23 to p. 3031, line 15.

<sup>551</sup> SPOE00325821-00325821.

from 28 March 1999 (as declared in their prior statements to the Defence) to 31 March 1999 (as declared in court before the Panel). The Panel also recalls that Mr Borovci and Mr G. Sopi share a strong and long friendship.<sup>552</sup> In the Panel's view, since Mr Borovci admitted to have sought advice from third persons regarding his evidence, such alignment raises concerns that both Mr Borovci and Mr G. Sopi may also have coordinated these changes, thus leading the Panel to consider Mr Borovci not credible on his alibi evidence.

282. Regarding the reminder of Mr Borovci's evidence concerning approximately the first two weeks of April 1999 and the fact that he allegedly saw the Accused three to five times in Butovc, the Panel finds it too vague and generic to establish an alibi, as the witness testified that he did not see the Accused in Butovc every day and that he was on the move.<sup>553</sup> In the Panel's assessment, this is perfectly compatible with the Accused's ability to move across the territory, as established by the Panel, and therefore with the presence of the Accused in Zllash/Zlaš at relevant times during the first two weeks of April 1999.

283. Accordingly, when looking at the evidence of Mr Borovci and the Accused together, it is fully plausible, in the Panel's view, that the Accused could be travelling between Butovc and Zllash/Zlaš during the first two weeks of April 1999. In this respect, the Panel considers that parts of Mr Borovci's evidence actually supports the SPO case rather than providing an alibi to the Accused.

284. Regarding Mr G. Sopi, the Panel considers that, since the witness declared to be suffering from memory lapses, his evidence must be taken with caution when it comes

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<sup>552</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2989, lines 19-24.

<sup>553</sup> **Mr Borovci**: T. 30 March 2022, public, p. 2967, line 20 to p. 2968, line 6; p. 3039, line 24; p. 3044, lines 9-12, 21-22.

to recollecting dates.<sup>554</sup> In addition, the credibility of the witness is severely undermined by the factors identified in the Panel's general assessment.<sup>555</sup>

285. As far as his alibi evidence is concerned, the Panel observes that, as is the case with Mr Borovci, Mr G. Sopi took the celebration of small Bajram as signpost to determine the time of his alleged meeting or encounter with the Accused in Butovc.<sup>556</sup> According to Mr G. Sopi, small Bajram occurred "around 30, 31 March [1999]".<sup>557</sup> The Panel, however, has already established that small Bajram occurred on 28 March 1999.<sup>558</sup> The testimony in court of Mr G. Sopi was that he interacted with the Accused "at the beginning of April [1999], in the first weeks of April";<sup>559</sup> more specifically "it was the first and the second week of April [1999] when we met and talked".<sup>560</sup>

286. The Panel notes, however, that in his prior statements to the Defence and the SPO, Mr G. Sopi consistently declared that he arrived in Butovc on 28 March 1999, in connection with the small Bajram.<sup>561</sup> Moreover, Mr G. Sopi stated in his prior SPO statement that the Accused visited Butovc at a more precise time-span than the one put forward in court, notably "towards the end of the first week of April [1999]" and that he stayed "[s]ometime until the end of the second week".<sup>562</sup> When the SPO confronted Mr G. Sopi with such a different approach between his prior statements and his in-court testimony, the witness ultimately took the position that he cannot remember well after 23 years but that it was "around that time" (*i.e.* as initially

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<sup>554</sup> See para. 166.

<sup>555</sup> See paras 159-165.

<sup>556</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3098, line 18 to p. 3099, line 6.

<sup>557</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3096, lines 23-24.

<sup>558</sup> SPOE00325821-00325821.

<sup>559</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3089, lines 20-22.

<sup>560</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3090, lines 19-20.

<sup>561</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3110, line 12 to p. 3118, line 12; DSM00177-00186, pp. 2, 4-5, 8; 104551-TR-ET Part 1, p. 31, lines 16-19.

<sup>562</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3119, lines 11-23; 104551-TR-ET Part 1, p. 31, lines 7-12, 20-24.

testified in his prior statement to the SPO).<sup>563</sup> The Panel has already established that the statements of Mr Borovci and Mr G. Sopi have changed in a strikingly similar manner regarding their departure date from Prishtinë/Priština to Butovc. Such alignment raises concerns that both Mr Borovci and Mr G. Sopi may have coordinated such changes, thus leading the Panel to consider Mr G. Sopi not credible on his alibi evidence.

287. In addition, from the evidence of Mr G. Sopi taken as a whole, the Panel discerns a considerable difficulty, by the witness, to place his alleged interaction with the Accused in time with any minimum degree of precision. In fact, the evidence can only establish that Mr G. Sopi may have seen and talked to the Accused in Butovc anywhere between 28 March 1999 and the end of the second week of April 1999. In any case, considering the generic evidence presented by the Defence encompassing a rather large time span, partly outside of the timeframe of the charges, the Panel cannot conclude, *prima facie*, that the Accused was in another location — Butovc — at the time relevant for the charges, therefore raising a reasonable doubt as to his presence in Zllash/Zlaš.

288. In addition, the Panel observes that Mr G. Sopi specified that he was not always in the Accused's company during that time,<sup>564</sup> which supports the Panel's finding that the Accused could move from one location to the other, including Zllash/Zlaš. In this respect, the Panel notes that Mr G. Sopi himself testified that the Accused was on the move from Butovc,<sup>565</sup> which corroborates the ample evidence — including by the

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<sup>563</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3114, line 22 to p. 3115, line 5; p. 3118, lines 2-3; p. 3120, lines 22-25. During direct examination, Mr G. Sopi had already taken a similarly cautious position in respect of recollecting dates (p. 3090, lines 17-20: "I would rather not refer to dates because of the time that has passed and I might have forgotten after 23 years").

<sup>564</sup> **Mr G. Sopi:** T. 4 April 2022, public, p. 3121, line 10 to p. 3122, line 15; 104551-TR-ET Part 1, p. 34, lines 17-22.

<sup>565</sup> **Mr G. Sopi:** T. 4 April 2022, confidential, p. 3093, line 9.

Accused himself — indicating that he was regularly moving across the territory of north-eastern Kosovo in April 1999.<sup>566</sup>

289. Critically, the witness added that the distance between lower Butovc and Zllash/Zlaš is about “13 kilometres”.<sup>567</sup> On this topic, the Panel considers the witness credible and reliable, as Mr G. Sopi was born in Butovc and was able to provide a detailed description of the features of the area — including the different neighbourhoods constituting Butovc — and the distance and travel time to other locations, without hesitation.<sup>568</sup> Considering the limited distance between Butovc and Zllash/Zlaš, the Panel is of the view that, even assuming some degree of accuracy in Mr G. Sopi’s recollection of events, the Accused could have covered that ground within the same day, even multiple times if necessary. Ultimately, therefore, the Panel finds that, based on the evidence taken as a whole, Mr G. Sopi’s alibi timeframe is not incompatible with the Accused’s presence in Zllash/Zlaš at relevant times during the first two weeks of April 1999.

290. In light of all the above considerations and based on the evidence taken as a whole,<sup>569</sup> the Panel concludes that the alibi provided by the above witnesses does not account *prima facie* for the Accused’s presence in Butovc to the extent that it would raise a reasonable doubt as to the Accused’s presence in Zllash/Zlaš at relevant times during the first two weeks of April 1999.

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<sup>566</sup> See paras 254-255.

<sup>567</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3081, line 23 to p. 3082, line 6.

<sup>568</sup> **Mr G. Sopi**: T. 4 April 2022, public, p. 3079, lines 4-16; p. 3081, line 23 to p. 3082, line 10. The witness was also able to provide distances between locations not based on a straight line (“as crow flies” to put it in the witness’s words), but based on travelling distance on the ground.

<sup>569</sup> See the Panel’s findings with regard to Mr Mustafa’s presence at the ZDC, paras 468-473, 541-545, 551-554.

#### 4. Presence of the Accused in Barilevë/Bariljevo

##### (a) Mr Vrbovci

291. Mr Vrbovci testified that he lived in Barilevë/Bariljevo in 1999.<sup>570</sup> According to Mr Vrbovci, in March/April 1999 KLA soldiers would pass through the Verbovc neighbourhood, where the KLA had a unit stationed at the witness's house. When the Accused would pass by Barilevë/Bariljevo, he would stay at Mr Vrbovci's house unit.<sup>571</sup> He clarified that the Accused would arrive in the evening every now and then, and he would rest there for one or two hours.<sup>572</sup>

292. Mr Vrbovci testified that he saw the Accused twice in April 1999 at his house in Barilevë/Bariljevo.<sup>573</sup> The first time was on 1 or 2 April 1999, when the Accused went to the witness's house, "rested for a short while, he greeted Jusuf Shalaku, and continued" for a location unknown to the witness.<sup>574</sup> With regard to that first encounter he also testified that Mr Mustafa went to his house on 1 April 1999; he then left and returned the next day, on 2 April 1999.<sup>575</sup> The Accused stayed for two to three hours, no more than that.<sup>576</sup> The second encounter, on 20-21 April 1999, is irrelevant to the alibi as it falls outside of the relevant timeframe for its assessment to this effect.

##### (b) Mr Nreci

293. According to Mr Nreci, he met the Accused in Barilevë/Bariljevo on one occasion, between approximately 12 and 22 April 1999.<sup>577</sup> The witness testified that

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<sup>570</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3285, line 13.

<sup>571</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3289, lines 18-20; p. 3294, line 23 to p. 3295, lines 1-3; p. 3297, line 23 to p. 3298, line 1.

<sup>572</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3297, line 23 to p. 3298, line 1.

<sup>573</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3304, line 20 to p. 3305, line 8.

<sup>574</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3305, lines 5-7, 14-20.

<sup>575</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3351, line 25 to p. 3352, line 8.

<sup>576</sup> **Mr Vrbovci:** T. 6 April 2022, public, p. 3328, lines 2-3.

<sup>577</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3214, lines 6-10; p. 3215, lines 12-14.

during this time, he drove the Accused to Majac, with Jusuf Shalaku's four-wheel Golf II.<sup>578</sup> The witness stated that he was subsequently taken to the road used by the civilian population to move from one location to another.<sup>579</sup> At that point, as testified by Mr Nreci, the Accused headed in the direction of Zllash/Zlaš.<sup>580</sup> When asked by the Defence if he remembered the reason why the Accused and Jusuf Shalaku had to go to Zllash/Zlaš, the witness replied that it "didn't make any sense to even ask them, 'Why are you going there?' because they were staying somewhere there, not where we were".<sup>581</sup> When confronted with his previous statement to the Defence, the witness stated that the Accused was called on the (satellite) phone and had to leave in a hurry to Zllash/Zlaš because there were many wounded in that area.<sup>582</sup>

294. On direct examination, the witness confirmed his previous statement to the Defence, stating that such encounter took place four or five days before 22 April 1999.<sup>583</sup> However, the witness contradicted himself in cross-examination by the SPO, when he testified that he cannot be precise as to the date of the second meeting: "[...] I cannot give you an exact date. 13<sup>th</sup> or 14<sup>th</sup> or 19<sup>th</sup> or 22, I cannot give an exact date for me to be certain [...]"<sup>584</sup>

295. Furthermore, according to the witness, the Accused went to Barilevë/Bariljevo other times, between 24 March 1999 and the day of their last encounter, but the witness was not able to provide further details.<sup>585</sup>

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<sup>578</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3206, line 21 to p. 3207, line 8; p. 3216, lines 12-14; p. 3221, lines 6-9.

<sup>579</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3216, lines 12-15.

<sup>580</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3216, lines 19-21.

<sup>581</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3216, lines 22-25.

<sup>582</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3217, line 1 to p. 3218, line 1; DSM00056-00067, p. DSM00062.

<sup>583</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3218, lines 6-12; DSM00056-00067, p. DSM00061.

<sup>584</sup> **Mr Nreci:** T. 5 April 2022, public, p. 3236, line 17 to p. 3237, line 12.

<sup>585</sup> **Mr Nreci:** T. 5 April 2022, confidential, p. 3218, lines 13-24.

(c) Conclusion

296. Regarding Mr Vrbovci, the Panel recalls that the witness's credibility is severely undermined by the factors identified by the Panel in its general assessment, and that his evidence does not originate exclusively from the witness's own knowledge or recollection of the events, but was influenced by third persons, including Defence witness Mr Nreci, especially as regards the date of his alleged encounter with the Accused.<sup>586</sup>

297. In addition, the Panel considers that Mr Vrbovci's testimony according to which the Accused went to his house on 1 or 2 April 1999 does not preclude the Accused's presence in Zllash/Zlaš, as Mr Vrbovci testified that the Accused stayed "for a short while" and then left for an unknown location. Elsewhere, the witness stated that Mr Mustafa went to his house on 1 April 1999; he then left and returned the next day, on 2 April 1999. In this respect, the Panel recalls that it has already found that the Accused, during the relevant time of the Confirmed Indictment, had the ability to move across the territory, enabling him to be in multiple locations within one and the same day. The testimony of Mr Vrbovci actually supports this finding rather than providing an alibi to the Accused.

298. Regarding Mr Nreci, the Panel recalls that the witness's credibility is severely undermined by the factors identified by the Panel in its general assessment.<sup>587</sup>

299. In addition, Mr Nreci's evidence is very vague in terms of temporal references with regard to the potential presence of the Accused in Barilevë/Bariljevo. Therefore, the Panel is not left with a reasonable doubt affecting its findings as to the Accused's presence at the crime scene at any relevant time of the Confirmed Indictment. Even if the Panel were to rely on Mr Nreci's evidence as to his alleged encounter with the

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<sup>586</sup> See paras 174-175.

<sup>587</sup> See paras 167-170.

Accused between 12 and 22 April 1999, the evidence concerning the Accused's ability to move in and out of Zllash/Zlaš and across the territory, defeats any possible alibi provided for by Mr Nreci, as the Accused could have been in Zllash/Zlaš at relevant times in accordance with the Confirmed Indictment.

300. In this respect, the witness himself testified that after parting ways, the Accused and Jusuf Shalaku travelled in the direction of Zllash/Zlaš. The Panel considers Mr Nreci particularly credible on this point. In fact, when the Defence asked the witness if he remembered the reason why the Accused and Jusuf Shalaku had to go to Zllash/Zlaš, Mr Nreci replied that it "didn't make any sense to even ask them [the reason]" because "they [the Accused and Jusuf Shalaku] were staying somewhere there [Zllash/Zlaš], not where we were". Even if he then confirmed his previous statement to the Defence to the effect that the Accused was called to Zllash/Zlaš by satellite phone due to the presence of many wounded there, this nevertheless confirms, in the Panel's view, that the Accused was able to travel to and from Zllash/Zlaš and in fact did that repeatedly during April 1999, especially when requested to do so. The fact that the Accused had at his disposal a satellite phone, as confirmed by Mr Mustafa himself,<sup>588</sup> also allowed him to adjust his movements throughout the region.

301. In light of the above, and based on the evidence taken as a whole,<sup>589</sup> the Panel concludes that the alibi provided by the above witnesses does not account *prima facie* for the Accused's presence in Barilevë/Bariljevo to the extent that it would raise a reasonable doubt as to the Accused's presence in Zllash/Zlaš at relevant times, during the first two weeks of April 1999.

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<sup>588</sup> **Mr Mustafa:** 069404-TR-ET, Part 2, p. 12, lines 13-20; 069404-TR-ET, Part 4, p. 6, lines 1-7.

<sup>589</sup> See the Panel's findings with regard to Mr Mustafa's presence at the ZDC, paras 468-473, 541-545, 551-554.

## 5. Presence of the Accused in Rimanishtë/Rimanishte and Bellopojë/Belo Polje

### (a) Mr Parduži

302. On 10 April 1999, Mr Parduži was wounded, taken to Turiqice first, and afterwards to an improvised hospital in the village of Potok.<sup>590</sup> According to the witness, it took more than forty-eight hours to traverse the distance from Turiqice to Potok.<sup>591</sup> During such transportation from Turiqice to Potok, the witness claimed to have personally seen the Accused.<sup>592</sup> According to Mr Parduži, the Accused escorted the witness more than half of the way, until Bellopojë/Belo Polje or Rimanishtë/Rimanishte, at which point the Accused went back.<sup>593</sup>

303. Mr Parduži further stated that during the journey, the Accused approached twice the trailer on which the witness was being transported, and asked him how he was doing.<sup>594</sup> He testified that the Accused approached him asking “whether when [sic] we would stop for a short rest or to give me [...] a painkiller or an IV drip, and then he continued”.<sup>595</sup> Mr Parduži also testified that “it was a covered trailer, and it was raining heavily”.<sup>596</sup> He repeated that “atmospheric conditions were very bad. It kept raining all the time. It was uninterrupted rain, and it was very cold.”<sup>597</sup>

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<sup>590</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3427, line 15; p. 3428, lines 3-4; p. 3429, lines 16-19.

<sup>591</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3429, lines 20-23.

<sup>592</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3430, lines 17-19; p. 3431, lines 4-10.

<sup>593</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3432, lines 1-7; p. 3443, lines 10-21.

<sup>594</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3431, lines 9-13.

<sup>595</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3484, lines 12-14.

<sup>596</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3484, line 15.

<sup>597</sup> **Mr Parduži:** T. 11 April 2022, public, p. 3443, lines 5-6.

(b) Mr Ibishi

304. On 10 April 1999, Mr Ibishi was wounded and evacuated to the hospital in Potok together with Mr Parduzi.<sup>598</sup> According to the witness, the transport to Potok began at around 19:00 or 20:00 hours on 10 April 1999 and ended within 48 hours.<sup>599</sup> The witness stated that due to the injuries (he was wounded in the stomach) that he and Mr Parduzi suffered, the convoy “had to take breaks [...] recommended by the medical personnel”.<sup>600</sup> In addition, Mr Ibishi specified that both he and Mr Parduzi were wounded in the stomach and had to lie during transportation as it was “less stressful”.<sup>601</sup>

305. Mr Ibishi testified that up to Rimanishtë/Rimanishte the trailer on which the two were being transported was covered “with a tarpaulin” due to the weather conditions and that it was raining all the time.<sup>602</sup> He added that from Rimanishtë/Rimanishte they were transported by a jeep vehicle.<sup>603</sup>

306. Mr Ibishi further testified that inside the trailer there was a medical person and an assistant nurse and that Latif Gashi was also nearby and that he undertook security measures.<sup>604</sup> On cross-examination Mr Ibishi stated that Latif Gashi was in charge of keeping watch during the trip from Turiqice to Potok.<sup>605</sup>

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<sup>598</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3557, line 14 to p. 3559, line 1.

<sup>599</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3559, lines 9-12.

<sup>600</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3559, lines 20-22.

<sup>601</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3582, lines 7-9.

<sup>602</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3559, lines 16-25; p. 3563, lines 1-2; p. 3583, lines 10-17. Mr Ibishi stayed consistent on the point of the adverse weather conditions both during direct and cross-examination.

<sup>603</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3560, lines 1-2.

<sup>604</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3562, lines 22-24.

<sup>605</sup> **Mr Ibishi:** T. 12 April 2022, public, p. 3576, lines 7-12.

## (c) Conclusion

307. The Panel recalls that Mr Parduži's and Mr Ibishi's credibility is severely undermined by the factors identified by the Panel in its general assessment.<sup>606</sup>

308. However, the Panel has no reason to disbelieve the witnesses with regard to their medical condition as well as the difficult weather and travel conditions they faced while in the covered trailer. They both testified clearly on these topics, emphasising the difficult conditions that they experienced, corroborating each other quite closely. Accordingly, the Panel considers that the medical condition of Mr Parduži, together with the weather and travel conditions faced by him during the journey, significantly hampered the reliability of his recollection of the events. Indeed, it seems implausible to the Panel that this seriously injured person, transported on a covered trailer under constant and heavy rain, lying down, was in a reliable physical and mental condition to recognise the Accused as being present during the journey.

309. The fact that the alibi evidence of this witness is unreliable as to the Accused's presence during the journey is corroborated by a major inconsistency between the testimony of Mr Parduži and Mr Ibishi. While the first one stated that he had seen the Accused, the latter did not mention the Accused as being present in those circumstances, nor in charge of the medical transport. Rather, Mr Ibishi mentioned, in addition to two medics, that Latif Gashi was present and in charge of ensuring the security of the transport.<sup>607</sup> On the presence of Latif Gashi and his task of securing the medical transport, the Panel notes that during his in-court testimony, Mr Ibishi stayed consistent with his previous statement to the Defence and with a previous deposition given before a Kosovo investigative judge.<sup>608</sup> The Panel considers Mr Ibishi credible on this point and, accordingly, concludes that Mr Parduži was either mistaken — due

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<sup>606</sup> See paras 177-182; 184-189.

<sup>607</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3562, lines 22-24.

<sup>608</sup> **Mr Ibishi**: T. 12 April 2022, public, p. 3573, line 15 to p. 3577, line 20. See also DSM00460-00475, p. 8; SPOE00123560-00123574, p. 12.

to medical and environmental conditions — in identifying the Accused as being present, or sought to provide alibi evidence in favour of the Accused, which is consistent with the profound bias shown by the witness against the Specialist Chambers and the SPO and with his support for the Accused.

310. In any event, in light of the Panel's finding that the Accused could move across the territory and cover multiple locations in one and the same day, the alibi provided by the Rimanishtë/Rimanishte and Bellopojë/Belo Polje witnesses is pointless, even if the Panel were to attach the highest probative value to their evidence. Indeed, the Panel believes that the distances between Rimanishtë/Rimanishte, Bellopojë/Belo Polje and Zllash/Zlaš were so limited that, even in critical travel conditions, the Accused could have well been in all these locations in one and the same day.

311. In light of all the above considerations and based on the evidence taken as a whole,<sup>609</sup> the Panel concludes that the alibi provided by the above witnesses does not account *prima facie* for the Accused's presence in Rimanishtë/Rimanishte and Bellopojë/Belo Polje to the extent that it would raise a reasonable doubt as to the Accused's presence in Zllash/Zlaš at relevant times, during the first two weeks of April 1999.

## 6. Presence of the Accused in Prishtinë/Priština

### (a) Mr Ademi

312. According to Mr Ademi, on 30 March 1999 or 2, 3 or 4 April 1999, he received three KLA members at his house in Prishtinë/Priština.<sup>610</sup> The witness testified that one

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<sup>609</sup> See the Panel's findings with regard to Mr Mustafa's presence at the ZDC, paras 468-473, 541-545, 551-554.

<sup>610</sup> **Mr Ademi**: T. 28 March 2022, public, p. 2776, lines 24-25; p. 2777, lines 7-17; p. 2795, lines 12-17; p. 2809, lines 7-12; p. 2810, lines 8-15;

of them was the Accused.<sup>611</sup> Mr Ademi's claimed that the Accused came in the evening, stayed there one night, slept at the house of the witness's paternal uncle and then left the next day around 22:00 or 23:00 hours.<sup>612</sup>

(b) Mr Humolli

313. Mr Humolli testified that he was with the Accused for one day around 1 April 1999 in Prishtinë/Priština.<sup>613</sup> According to the witness, in the early morning of 1 April 1999, he left the town with the Accused on foot; they stopped in the Llumnicve neighbourhood of Barilevë/Bariljevo, and then they parted ways in the afternoon.<sup>614</sup>

(c) Conclusion

314. Regarding Mr Ademi, the Panel recalls that the witness's credibility is severely undermined by the factors identified in the Panel's general assessment.<sup>615</sup>

315. In addition, the Panel considers that the temporal reference provided by Mr Ademi (30 March 1999 or 2, 3 or 4 April 1999 — Mr Ademi didn't remember the exact date)<sup>616</sup> is either partly outside the temporal framework of the charges (and thus irrelevant to the case) or is too general to generate a reasonable doubt as to the Accused's presence at the crime scene at relevant times of the Confirmed Indictment. Moreover, in light of the finding by the Panel that the Accused could move across the territory and could be in multiple locations within the same day, the alibi evidence of Mr Ademi is not incompatible with the Accused's presence in Zllash/Zlaš at relevant times in the first two weeks of April 1999. This is further confirmed by the fact that the

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<sup>611</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2809, lines 15-16;

<sup>612</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2809, line 25 to p. 2810, line 1; p. 2810, line 7; p. 2813, lines 13-14.

<sup>613</sup> **Mr Humolli:** T. 1 February 2022, public, p. 2306, lines 1-21, p. 2307, line 23 to p. 2308, line 20.

<sup>614</sup> **Mr Humolli:** T. 1 February 2022, public, p. 2307, line 6 to p. 2310, line 23; p. 2327, lines 1-21.

<sup>615</sup> See paras 145-148.

<sup>616</sup> **Mr Ademi:** T. 28 March 2022, public, p. 2860, lines 2-3.

distance between Prishtinë/Priština and Zllash/Zlaš is limited to about 20 kilometres.<sup>617</sup>

316. Regarding Mr Humolli — besides the great caution to be exercised by the Panel given the personal support shown to the Accused and the witness's bias towards the Specialist Chambers<sup>618</sup> — the Panel notes that Mr Humolli was uncertain about each and every date or temporal reference he provided. Specifically, Mr Humolli indicated, in court, that his arrival in Prishtinë/Priština occurred “[a]t the end of March [1999]. Probably 30 March or early morning of 31 March”.<sup>619</sup> When confronted by the SPO with his prior Defence statement — in which he stated that he entered Prishtinë/Priština “sometime on 28 March 1999”,<sup>620</sup> Mr Humolli replied that it was “the end of March” and that 20 years have passed from that time.<sup>621</sup> Subsequently, when confronted with his prior SPO statement — in which he stated that his entry date in Prishtinë/Priština could be “either 31 March or 1 April [1999]”<sup>622</sup> — Mr Humolli replied: “I’m not 100 per cent certain about the days, but I remember that it was the beginning of April or the end of March [1999] [...] I cannot tell you the exact dates today”.<sup>623</sup> When testifying about the time when he and the Accused parted ways in Barilevë/Bariljevo, Mr Humolli indicated that it was “[i]n the afternoon I believe. I can’t give you an exact hour”.<sup>624</sup>

317. On a related note, the Panel considers that Mr Humolli repeatedly and confidently connected his alleged meeting with the Accused with the exodus of the

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<sup>617</sup> **Mr Veseli:** T. 25 January 2022, public, p. 2192, line 18.

<sup>618</sup> See para. 134.

<sup>619</sup> **Mr Humolli:** T. 1 February 2022, public, p. 2304, lines 8-9.

<sup>620</sup> DSM00119-00133, p. DSM00123.

<sup>621</sup> **Mr Humolli:** T. 1 February 2022, public, p. 2305, lines 3, 16-17.

<sup>622</sup> **Mr Humolli:** T. 1 February 2022, public, p. 2334, line 6 to p. 2335, line 2; 100954-TR-ET Part 2, p. 28, lines 9-12.

<sup>623</sup> **Mr Humolli:** T. 1 February 2022, public, p. 2335, lines 1-10.

<sup>624</sup> **Mr Humolli:** T. 1 February 2022, public, p. 2327, line 18.

civilian population towards Macedonia, through Prishtinë/Priština, which according to the witness took place on 1 April 1999.<sup>625</sup> However, the Panel notes that documentary evidence on record indicates that this exodus began on 24 March 1999, shortly after the NATO bombing, and continued until at least 6 April 1999.<sup>626</sup> The Panel takes no issue with the reliability of such material, as it originates from well-known international entities that operated in Kosovo at the relevant time (OSCE, UNHCR), media outlets with a presence on the field and a book whose content is clearly based on open source and eye-witness accounts. These items corroborate each other on the timeframe of the exodus and the Panel relies on them. In addition, the Panel notes that the starting date of the exodus is further corroborated by the testimony of Mr F. Sopi, who testified that the population started leaving Prishtinë/Priština in large numbers after the commencement of the NATO strikes.<sup>627</sup> Similarly, Mr Veseli testified that “there was an influx of population [...] before the [NATO] bombing started and the numbers grew even more after the bombings”.<sup>628</sup> The evidence therefore indicates, in the Panel’s view, that this exodus commenced on or around 24 March 1999 and continued through the subsequent days.

318. Taking into consideration the difficulties shown by Mr Humolli to provide exact (or even approximate) dates and to remain consistent on them, as well as the evidence countering Mr Humolli’s account on the timeframe of the population exodus, it is reasonable to conclude that the alleged date of departure from Prishtinë/Priština in Mr Mustafa’s company (1 April 1999), and the time when the two parted ways (afternoon of the same day) may also be inaccurate and therefore unreliable. In fact,

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<sup>625</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2306, lines 1-4; p. 2309, lines 13-18; p. 2336, lines 2-4.

<sup>626</sup> SPOE00061256-00061258, p. SPOE00061257; SPOE00061259-00061261, p. SPOE00061260; SPOE00061262-00061265, pp. SPOE00061263, SPOE00061264; SPOE00058374-SPOE00058374-ET; 106471-106474; 106465-106470, pp. 106465-106466; SPOE00054089-00054655, p. SPOE00054543.

<sup>627</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2093, lines 3-15.

<sup>628</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2210, lines 6-16.

the Panel concludes that the alleged meeting between Mr Humolli and the Accused could have taken place at any time from 24 March 1999 onwards.

319. In any case, even assuming that the date of 1 April 1999 provided by Mr Humolli was accurate, the Panel notes that by leaving Prishtinë/Priština in the early morning and parting ways in Barilevë/Bariljevo, the Accused could have been present in Zllash/Zlaš on the same day. This conclusion, as stated repeatedly, is supported by extensive and convincing evidence indicating that the Accused had access to various means of transportation to travel across the territory, which in fact he did during April 1999.<sup>629</sup>

320. In light of all the above considerations and based on the evidence taken as a whole,<sup>630</sup> the Panel concludes that the alibi provided by the above witnesses does not account *prima facie* for the Accused's presence in Prishtinë/Priština to the extent that it would raise a reasonable doubt as to the Accused's presence in Zllash/Zlaš at relevant times, during the first two weeks of April 1999.

## 7. Presence of the Accused in Zllash/Zlaš

### (a) Mr Krasniqi

321. Mr Krasniqi stated that he saw Mr Mustafa in Zllash/Zlaš, in the ZDC, in April 1999 without further specification as to the precise or approximate date.<sup>631</sup> The witness stated that "he [Mr Mustafa] was there a few days before the [Serb] offensive. He stayed one night and then he continued. [...] I don't know where he went and I'm

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<sup>629</sup> See paras 248-252, 254-255.

<sup>630</sup> See the Panel's findings with regard to Mr Mustafa's presence at the ZDC, paras 468-473, 541-545, 551-554.

<sup>631</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3905, line 24 to p. 3906, lines 3; p. 3922, lines 13-16; p. 3922, line 23 to p. 3923, line 1. See paras 349-351 (where the Panel established that Mr Krasniqi's family owned the compound used by the BIA).

not very certain about the dates".<sup>632</sup> However the witness specified that the Accused stayed at the location one night, then the witness did not see him until 21 April 1999.<sup>633</sup>

322. On 21 April 1999, the witness and the Accused met again, in the evening, and went together to Koliq/Kolić to escort the wounded.<sup>634</sup> Once in Koliq/Kolić, they parted ways as the witness continued his journey with the wounded towards Majac.<sup>635</sup>

(b) Ms Hadri

323. Ms Hadri testified that she arrived in Zllash/Zlaš on 16 April 1999.<sup>636</sup> According to the witness, she stayed at the location where the crimes charged were allegedly committed.<sup>637</sup> Ms Hadri testified that she saw Mr Mustafa there on 17 April 1999, one night before the Serb offensive started on 18 April 1999.<sup>638</sup> The witness contended that at that time, she did not know that Mr Mustafa was Commander Cali, she only found out later, on the day of the offensive when she asked who that young man was: "on 18<sup>th</sup>, I asked when this great offensive started, [...] "Who is this young man?" and that's when I learned that that was Cali."<sup>639</sup> The witness specified that on 18 April 1999, the Accused was organising the withdrawal of the wounded, and that is when she understood from the other soldiers that he was called Cali.<sup>640</sup>

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<sup>632</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3922, line 25 to p. 3923, line 2.

<sup>633</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3922, lines 16-18.

<sup>634</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3922, lines 18-21.

<sup>635</sup> **Mr Krasniqi:** T. 21 April 2022, public, p. 3922, lines 21-22.

<sup>636</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4191, lines 7-10.

<sup>637</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4206, lines 19-25, p. 4207, lines 1-6. The Panel notes that Ms Hadri has identified the compound, and specific buildings where she stayed, based on a photograph from the UNMIK Aerial Booklet (REG00-020) and a photograph from the UNMIK Ground Booklet (DSM00134-00143, p. DSM00144), which are exactly the same as identified by Mr Krasniqi as being his family property (REG00-013, REG00-017). These are also the same photographs identified by several crime-based witnesses and KLA members. The Panel has established, in its factual findings regarding arbitrary detention (Count 1) that this property was the BIA base referred to in the Confirmed Indictment as the crime scene (*see paras 348-378*).

<sup>638</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4214, lines 12-16; p. 4223, lines 24-25.

<sup>639</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4214, lines 16-17, 21-24; p. 4223, line 25 to p. 4224, line 3.

<sup>640</sup> **Ms Hadri:** T. 11 May 2022, public, p. 4224, lines 1-3.

## (c) Ms Canolli-Kaciu

324. Ms Canolli-Kaciu testified that she stayed in Zllash/Zlaš, at the location where the crimes charged allegedly occurred, between 16 and 21 April 1999 to offer medical assistance to civilians or members of the army.<sup>641</sup> The witness testified that she met the Accused in Zllash/Zlaš, on 21 April 1999, when they began the evacuation of the wounded to Majac.<sup>642</sup>

## (d) Mr Ajeti

325. Besides testifying that he did not see Mr Mustafa in Zllash/Zlaš in April 1999,<sup>643</sup> Mr Ajeti stated before the Panel that, on 21 or 22 April 1999, he met the Accused in Koliq/Kolić where he was with some wounded.<sup>644</sup>

## (e) Conclusion

326. The Panel finds that the witnesses who testified about the Accused's presence in Zllash/Zlaš did not provide proper alibi evidence, as they simply testified that they saw the Accused in Zllash/Zlaš at given times during April 1999 or that they did not generally see him there, which in itself does not contradict what the Accused stated to the SPO in his written statement, as he was moving in and out of that location on a regular basis.<sup>645</sup>

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<sup>641</sup> **Ms Canolli-Kaciu**: T. 12 May 2022, public, p. 4322, lines 1-2; p. 4331, lines 7-9; p. 4331, line 25 to p. 4332, line 8. The Panel notes that Ms Canolli-Kaciu did not identify photographically the location where she was (**Ms Canolli-Kaciu**: T. 12 May 2022, public, p. 4325, line 14 to p. 4326, line 19; DSM00156, DSM00159). However, as Ms Canolli-Kaciu met and talked to Ms Hadri during the same days, the Panel infers that they were in the same compound in Zllash/Zlaš (**Ms Canolli-Kaciu**: T. 12 May 2022, public, p. 4335, lines 1-5).

<sup>642</sup> **Ms Canolli-Kaciu**: T. 12 May 2022, public, p. 4330, lines 21-22.

<sup>643</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4083, line 24 to p. 4084, line 1.

<sup>644</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4084, lines 11, 13-14.

<sup>645</sup> *See, for example*, the Accused's evidence that he stayed at the safehouse location in Zllash/Zlaš for 15 to 20 days (albeit not constantly) leading up to the April offensive by Serbian forces: **Mr Mustafa**: 069404-TR-ET, Part 7, p. 16, lines 9-15; p. 20, lines 13-17. *See also* 069404-TR-ET, Part 3, p. 19, lines 17-19.

327. Regarding Mr Ajeti, for example, the Panel considers that his evidence is essentially that he did not see the Accused in Zllash/Zlaš in April 1999,<sup>646</sup> without any detail as to where he might actually have been. The Panel therefore considers that Mr Ajeti's evidence is irrelevant to the alibi. Mr Ajeti also stated that, on 21 or 22 April 1999, he met the Accused in Koliq/Kolić where he was with some wounded,<sup>647</sup> which is also irrelevant to the alibi, as such timeframe falls outside the first two weeks of April 1999, when the allegations of the Accused's presence at the crime scene are at stake.

328. With regard to Mr Krasniqi, his evidence is essentially that he saw Mr Mustafa "before the offensive"; that he "stayed for one night"; and that he did not see him again until 21 April 1999,<sup>648</sup> without any further detail as to the potential location(s) of Mr Mustafa away from the alleged crime scene. In this vein, the witness's evidence on the alibi is essentially irrelevant and does not assist the Panel in determining whether the Accused may have been in some other location(s) and, therefore, may not have been in Zllash/Zlaš at relevant times of the Confirmed Indictment. The Panel is of the view that evidence suggesting that the Accused was present in Zllash/Zlaš at a certain time does not exclude in any way that he was in that same location at other relevant times during April 1999.

329. By the same token, the evidence of Ms Hadri and Ms Canolli-Kaciu according to which they both saw the Accused in Zllash/Zlaš, relate to dates when the Accused is not alleged to have directly perpetrated any of the crimes charged. Accordingly, their evidence is also irrelevant to the alibi.

330. Overall, the Panel considers that the limited alibi evidence according to which the Accused was not in Zllash/Zlaš is overwhelmingly contradicted by ample and

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<sup>646</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4083, line 24 to p. 4084, line 1.

<sup>647</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4084, lines 11-14.

<sup>648</sup> **Mr Krasniqi**: T. 21 April 2022, public, p. 3922, lines 16-18.

corroborating evidence indicating that the Accused was in fact there, and often. This evidence, which will be discussed in detail in the factual findings on the crimes charged, encompasses: (i) crime-based witnesses such as W01679 and W03593, who testified about being mistreated by the Accused in person;<sup>649</sup> (ii) W04600, who saw and talked to the Accused in the ZDC<sup>650</sup> (iii) Mr Veseli, who stated that the Accused was often in Zllash/Zlaš in April 1999;<sup>651</sup> and (iv) the Accused himself, who also declared that he was often in Zllash/Zlaš during April 1999, as established above.<sup>652</sup>

331. In light of all the above considerations and based on the evidence taken as a whole,<sup>653</sup> the Panel concludes that the alibi provided by the above witnesses regarding the Accused's absence from Zllash/Zlaš does not account *prima facie* for the Accused's presence elsewhere than the alleged crime location, to the extent that it would raise a reasonable doubt as to the Accused's presence in Zllash/Zlaš at relevant times during the first two weeks of April 1999.

## 8. General Conclusion on the Accused's Alibi

332. The Panel has established that the Accused repeatedly moved to and from Zllash/Zlaš at the times relevant to the Confirmed Indictment, including on a need basis and upon being informed via radio or satellite phone. The Panel has also established that different vehicles, some of them particularly suitable for mountain and difficult terrain (tractors, 4x4, jeeps), were available to the Accused and more generally to the KLA members, who used them to move across the territory surrounding Zllash/Zlaš. Furthermore, the Panel has found that the evidence, taken as a whole, in relation to the presence of the Accused in Butovc, Barilevë/Bariljevo,

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<sup>649</sup> See paras 541-545, 551-554.

<sup>650</sup> See paras 468-473.

<sup>651</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2233, lines 1-3.

<sup>652</sup> See paras 248-252.

<sup>653</sup> See the Panel's findings with regard to Mr Mustafa's presence at the ZDC, paras 468-473, 541-545, 551-554.

Rimanishtë/Rimanishte and Bellopojë/Belo Polje, and Prishtinë/Priština at relevant times during the timeframe of the charges is inconclusive. In particular, the Panel is not satisfied that the Accused was *not* present in Zllash/Zlaš at the relevant times of the charges.

333. In light of the foregoing, and considering the findings of the Panel in relation to Counts 1-4 regarding the Accused's presence at the crime scene,<sup>654</sup> the alibi presented by the Defence is incapable of raising a reasonable doubt as to the Accused's presence at the crime scene at relevant times according to the Confirmed Indictment.

B. THE BIA UNIT, THE ACCUSED'S ROLE AND THE BIA'S RELATIONSHIP WITH THE LLAP OZ COMMAND

1. The Creation and Structure of the BIA

334. According to mutually corroborating testimonial evidence, the BIA<sup>655</sup> was a guerrilla unit of the KLA within the Llap OZ.<sup>656</sup> The Llap OZ encompassed the areas of Prishtinë/Priština (including Zllash/Zlaš) and Podujevë/Podujevo.<sup>657</sup> Besides the BIA, Brigades 151, 152 and 153 also operated within the Llap OZ.<sup>658</sup> On the orders of the KLA General Staff, the headquarters of the Llap OZ had taken measures to recruit,

<sup>654</sup> See paras 468-473, 541-545, 551-554.

<sup>655</sup> The acronym BIA stood for the names of three KLA members who had died in the war: Bahri Fazliu, Ilir Konushefci, and Agron Rrahmani. See **Mr Mustafa**: 069404-TR-ET Part 1, p. 24, lines 18-21; 7000650-7000660, p. 7000653; **Mr F. Sopi**: T. 18 January 2022, public, p. 2045, lines 7-10; **Mr Veseli**: T. 25 January 2022, public, p. 2195, lines 23-24.

<sup>656</sup> **Mr Mustafa**: 069404-TR-ET Part 1, p. 26, line 11 to p. 27, line 9; 069404-TR-ET Part 2, p. 13, line 4 to p. 14, line 19; 069404-TR-ET Part 3, p. 25, lines 15-17; **Mr F. Sopi**: T. 18 January 2022, public, p. 2059, lines 11-16; **Mr Mehmetaj**: T. 23 March 2022, public, p. 2656, line 24 to p. 2657, line 1.

<sup>657</sup> SPOE00238090-00238090; SPOE00238092-00238092. See also SPOE00055705-SPOE00055708-ET, p. 00055708; SPOE00208166-00208166; SPOE00238093-00238093; SPOE00238094-00238094.

<sup>658</sup> [Decision on Adjudicated Facts](#), para. 14; [Adjudicated Facts](#), Facts 45, 47-48. See also, for example, **Mr Mustafa**: 069404-TR-ET Part 1, p. 27, lines 10-12; **Mr F. Sopi**: T. 18 January 2022, public, p. 2113, lines 1-25; 069474-TR-ET Part 1, p. 12, lines 3-10; p. 14, line 25 to p. 15, line 11.

train, and deploy new soldiers, as well as to structure, expand and consolidate command structures for the Llap OZ.<sup>659</sup> The Llap OZ was commanded by Rrustem Mustafa (aka Remi) throughout the time period relevant to the charges.<sup>660</sup>

335. The Panel finds, on the basis of the evidence, that the BIA, also known as “Skifterat” or “Skifteri”,<sup>661</sup> was created on 20 May 1998 and operated in the Prishtinë/Priština area and eventually also in Podujevë/Podujevo.<sup>662</sup> It had several hundred members, at times between 500 and 600, the number changing during the time of its existence.<sup>663</sup>

336. At the relevant time, some BIA soldiers wore camouflage or black uniforms with the official KLA or BIA insignia and were armed, while others wore civilian clothing.<sup>664</sup> All BIA soldiers had an ID and a plaque around the neck identifying them as guerrilla soldiers.<sup>665</sup> The symbol of the BIA was a hunting bird.<sup>666</sup>

<sup>659</sup> See SPOE00055705-SPOE00055708-ET, p. 00055705; SPOE00055799-SPOE00055868-ET, pp. 1-10.

<sup>660</sup> Kadri Kastrati (aka Daja) was the Deputy Commander of the Llap OZ, Mr Ibishi (aka Leka) the Chief of Staff, and Latif Gashi (aka Lata) the head of intelligence within the Llap OZ Command Staff; see [Decision on Adjudicated Facts](#), para. 14; [Adjudicated Facts](#), Facts 46-47. See also **Mr F. Sopi**: T. 18 January 2022, public, p. 2036, lines 24-25; p. 2075, lines 2-9; p. 2076, lines 12-13; 7000669-7000676 RED, p. 7000671; 7000593-7000609 RED, p. 7000596, 7000597; 069474-TR-ET Part 1, p. 14, lines 3-23; **Mr Humolli**: T. 2 February 2022, public, p. 2417, lines 16-25. See also SPOE00055705-SPOE00055708-ET, p. 00055705.

<sup>661</sup> See, for example, **Mr Mustafa**: 069404-TR-ET Part 3, p. 24, line 3 to p. 25, line 12; **Mr F. Sopi**: T. 18 January 2022, public, p. 2045, lines 4-6; **W04600**: T. 23 September 2021, confidential, p. 723, line 8.

<sup>662</sup> **Mr Mustafa**: 069404-TR-ET Part 1, p. 26, line 11 to p. 27, line 9; 069404-TR-ET Part 2, p. 4, lines 17-25; p. 8, lines 23-25; p. 13, lines 7-13; 069404-TR-ET Part 3, p. 12, line 12 to p. 16, line 13; p. 25, lines 8-17; **Mr F. Sopi**: T. 18 January 2022, public, p. 2059, lines 11-16; **Mr Veseli**: T. 25 January 2022, public, p. 2197, lines 4-5. See also SPOE00055705-SPOE00055708-ET, p. 00055708.

<sup>663</sup> **Mr Mustafa**: 069404-TR-ET Part 1, p. 27, line 18 to p. 28, line 5; 069404-TR-ET Part 2, p. 9, lines 21-25; **Mr Mehmetaj**: T. 23 March 2022, public, p. 2670, lines 9-14.

<sup>664</sup> On the KLA insignia, see [Adjudicated Facts](#), Fact 52. See further **W01679**: T. 4 October 2021, public, p. 865, lines 21-25; p. 887, lines 12-21; **W03593**: T. 20 September 2021, public, p. 441, line 23 to p. 442, line 10; T. 22 September 2021, public p. 576, lines 23-24; **W04669**: T. 10 November 2021, confidential, p. 1437, lines 15-19; p. 1441, line 21 to p. 1442, line 18; **W03594**: T. 13 October 2021, public, p. 1198, lines 11-24; **Mr Mustafa**: 069404-TR-ET Part 4, p. 2, lines 7-12.

<sup>665</sup> **Mr Mustafa**: 069404-TR-ET, Part 3, p. 26, lines 2-4.

<sup>666</sup> **Mr Mustafa**: 069404-TR-ET Part 3, p. 26, lines 13-25.

337. The Panel has no reason to doubt the credibility of such evidence, as it originates primarily from KLA members, including the Accused, who have thorough knowledge of the KLA in general, the Llap OZ activities and structures, and the BIA in particular. In addition, the witnesses corroborated each other.

## 2. The Accused's Role within the BIA

338. The Panel notes that the Accused provided comprehensive and credible evidence on his role within the BIA, which is also corroborated by other testimonial evidence. In this regard, the Panel is satisfied that the Accused joined the KLA in the beginning of September 1997.<sup>667</sup> In May 1998, he was appointed by the then commander of the KLA's Llap OZ, Rrustem Mustafa (aka Remi), as the Commander of the newly created BIA.<sup>668</sup> According to his own statements, the Accused held this position until approximately mid-June 1999, when the unit was disbanded.<sup>669</sup> As stated by the Accused himself, he "was the headquarters", namely he was the overall and only BIA commander throughout the BIA's existence, including in April 1999,<sup>670</sup> and was also in charge of intelligence gathering.<sup>671</sup> His position as commander is confirmed by the fact that until February 1999, Mr Mehmetaj (aka Bimi)

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<sup>667</sup> **Mr Mustafa:** 069404-TR-ET Part 1, p. 8, lines 15-16.

<sup>668</sup> **Mr Mustafa:** 7000650-7000660, pp. 7000651, 7000656, 7000657; 069404-TR-ET Part 1, p. 24, line 16 to p. 25, line 2 (in light of the remainder of Mr Mustafa's statement, the Panel considers the word "left" on p. 24, line 17 to be a mistake; it should read instead "led"); p. 32, lines 13-14; 069404-TR-ET Part 2, p. 22, line 15 to p. 23, line 8. *See also, for example, W04600:* T. 23 September 2021, public, p. 718, lines 22-23.

<sup>669</sup> **Mr Mustafa:** 069404-TR-ET Part 7, p. 30, lines 17-19; p. 24, line 12 to p. 26, line 15; 7000650-7000660, pp. 700653, 700658.

<sup>670</sup> **Mr Mustafa:** 069404-TR-ET Part 1, p. 29, lines 2-5; p. 31, lines 13-24; p. 32, line 14; 069404-TR-ET Part 2, p. 14, line 17 to p. 15, line 3. *See also, for example, Mr Humolli:* T. 2 February 2022, public, p. 2418, lines 1-6; p. 2443, lines 1-6.

<sup>671</sup> **Mr Mustafa:** 069404-TR-ET Part 1, p. 32, lines 6-14; 069404-TR-ET Part 6, p. 13, lines 1-16; **Mr Mehmetaj:** T. 23 March 2022, public, p. 2620, line 22 to p. 2621, line 25; p. 2666, line 21 to p. 2667, line 3; p. 2668, line 16 to p. 2670, line 8.

was the Accused's deputy and first assistant;<sup>672</sup> whereas from February 1999 to 21 April 1999, it was Isa Kastrati, followed by Bahri Gashi (aka Bafta).<sup>673</sup> The Panel also notes that the Accused, together with other KLA members, went to the Krasniqi family<sup>674</sup> in Prishtinë/Priština in order to request authorisation to use their property in Zllash/Zlaš, which then became a BIA base.<sup>675</sup>

339. The BIA, and the Accused as the BIA commander, directly received orders from, and reported to the staff of the Llap OZ command: Rustem Mustafa, Kadri Kastrati, Mr Ibishi, and Latif Gashi.<sup>676</sup> According to the evidence, the Accused had the exclusive power to make appointments within the BIA, including for the positions of his deputy commanders and first assistants.<sup>677</sup> As stated by the Accused himself, and corroborated by other witnesses in court, he also had the power to issue orders to his subordinates, including in relation to monitoring the movements of the Serbian forces, identifying potential military objectives and delivering medical supplies.<sup>678</sup>

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<sup>672</sup> **Mr Mustafa**: 069404-TR-ET Part 4, p. 3, lines 18-20; **Mr Mehmetaj**: T. 23 March 2022, public, p. 2618, lines 17-20; p. 2665, lines 21-25.

<sup>673</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2713, line 13 to p. 2714, line 11.

<sup>674</sup> [REDACTED].

<sup>675</sup> **Mr Mustafa**, 069404-TR-ET Part 3, p. 20, lines 15-18; **Mr Krasniqi**: T. 21 April 2022, public, p. 3957, line 13 to p. 3958, line 25; T. 22 April 2022, p. 4039, line 21 to p. 4040, line 2.

<sup>676</sup> **Mr Mustafa**: 069404-TR-ET Part 1, p. 23, line 24 to p. 24, line 8; 069404-TR-ET Part 2, p. 13, lines 7-10; p. 14, lines 17-19; p. 15, line 4 to p. 16, line 5; 069404-TR-ET Part 3, p. 3, lines 13-21; 069404-TR-ET Part 4, p. 12, line 18 to p. 13, line 15; 069404-TR-ET Part 6, p. 13, lines 18-21. *See also Mr Mehmetaj*: T. 23 March 2022, public, p. 2656, line 24 to p. 2657, line 1; p. 2665, lines 4-20; p. 2668, lines 12-21; p. 2670, lines 3-8; **Mr F. Sopi**: T. 18 January 2022, public, p. 2059, lines 11-16; **Mr Veseli**: T. 25 January 2022, public, p. 2196, lines 20-21. On Latif Gashi's nickname "Lata", *see, for example, Mr Veseli*: 069889-TR-ET Part 1, p. 15, lines 4-5.

<sup>677</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2666, lines 4-6.

<sup>678</sup> **Mr Mustafa**: 069404-TR-ET, Part 2, p. 3, line 14 to p. 4, line 10; p. 8, lines 1-25; **Mr Mehmetaj**: T. 23 March 2022, public, p. 2621, lines 20-22; p. 2665, lines 2-9; p. 2666, lines 4-20; p. 2668, lines 12-21; T. 24 March 2022, public, p. 2741, lines 17-23; **Ms Canolli-Kaciu**: T. 12 May 2022, public, p. 4355, line 25 to p. 4356, line 3. This is also confirmed by W03593 who stated: "I base my sayings that the other soldiers would not do a thing without the [A]ccused telling them what to do, so the [A]ccused was the main person, and that's what it is" (**W03593**: T. 20 September 2021, public, p. 414, lines 7-9).

Furthermore, he received information about violations committed by BIA soldiers and had the power to discipline them.<sup>679</sup>

340. The Accused stated that he went by the nickname “Cali”<sup>680</sup> and that he was also referred to as “Commander Sali”.<sup>681</sup> Ample and mutually corroborating testimonial evidence by former KLA members (including BIA members) confirms the statement of the Accused regarding his position as BIA commander and his nickname being “Cali”.<sup>682</sup> In this regard, the Panel considers that most of these KLA members held commanding positions at various levels within the KLA, which in the Panel’s assessment equates to knowledge about the KLA operational structures. This gives further strength to the corroborating character of such evidence, when viewed together with the Accused’s statements. Moreover, W01679 and W03593 further corroborated that the Accused was the BIA commander and that he was known as “Cali”, as they heard other BIA members referring to him as such.<sup>683</sup>

341. According to his own admissions, corroborated by other testimonial evidence, the Accused wore, at least for a certain period of time,<sup>684</sup> a red hat or beret,<sup>685</sup> which

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<sup>679</sup> **Mr Mustafa:** 069404-TR-ET Part 6, p. 2, line 10 to p. 3, line 22; p. 5, line 24 to p. 6, line 20; 069404-TR-ET Part 5, p. 22, lines 4-18.

<sup>680</sup> **Mr Mustafa:** 069404-TR-ET Part 1, p. 4, lines 23-25. *See also, for example, Mr Veseli:* T. 25 January 2022, public, p. 2196, lines 3-6; **W04600:** T. 23 September 2021, public, p. 718, lines 22-25.

<sup>681</sup> **Mr Mustafa:** 069404-TR-ET Part 8, p. 7, lines 3-9; p. 8, lines 2-4.

<sup>682</sup> **Mr F. Sopi:** T. 18 January 2022, public, p. 2060, line 4 to p. 2061, line 6; **Mr Veseli:** T. 25 January 2022, public, p. 2195, line 25 to p. 2196, line 6; **Mr Humolli:** T. 1 February 2022, public, p. 2303, lines 19-22; **W04600:** T. 23 September 2021, public, p. 718, lines 22-25; **Mr G. Sopi:** T. 4 April 2022, public, p. 3143, line 10 to p. 3144, line 8; **Mr Ibishi:** T. 12 April 2022, public, p. 3550, lines 23-25; p. 3611, lines 23-25; *see also* para. 89 (where the Panel attaches little weight to W04669’s evidence that there were two persons by the nickname Cali).

<sup>683</sup> **W01679:** T. 4 October 2021, public, p. 872, line 18 to p. 873, line 18; p. 877, lines 13-21; p. 882, lines 3-12; T. 4 October 2021, confidential, p. 876, lines 9-13; **W03593:** T. 20 September 2021, confidential, p. 435, line 8 to p. 438, line 11; T. 22 September 2021, public, p. 652, line 6 to p. 654, line 18; p. 656, line 13 to p. 657, line 9.

<sup>684</sup> **Mr Mustafa:** 069404-TR-ET Part 3, p. 27, lines 10-12.

<sup>685</sup> **Mr Mustafa:** 069404-TR-ET Part 4, p. 3, lines 1-3; 069404-TR-ET Part 8, p. 7, lines 3-9. The Accused indicated he would occasionally wear also a black beret and an American hat with a visor:

was not part of the standard BIA uniform.<sup>686</sup> In this respect, the Panel finds that there is no evidence that anyone else in the BIA or in Zllash/Zlaš, was referred to as Commander Cali, or wore a red beret.<sup>687</sup> In fact, the Accused himself stated: “I think amongst all the guerrilla, I think I was the only one [in Zllash/Zlaš] that had a red beret”.<sup>688</sup>

### 3. The Relationship between the BIA and Brigade 153

342. The Panel has also received mutually corroborating evidence indicating that the BIA was independent from the other brigades within the Llap OZ, including Brigade 153.<sup>689</sup> Based on the evidence, the Panel finds that from February 1999 onwards, the newly formed Brigade 153<sup>690</sup> had its headquarters in Zllash/Zlaš, but always at a certain distance from the BIA base,<sup>691</sup> whose location has been established by the Panel

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069404-TR-ET Part 3, p. 27, lines 10-12. *See also* **W04600**: T. 24 September 2021, public, p. 765, lines 7-14; 082249-082258, p. 082256; *see also* multiple pictures of the Accused wearing a red hat which are available to the Panel as evidence and a series of which were also discussed in court: SPOE00222549-00222549; SPOE00222550-00222550; SPOE00222551-00222551; SPOE00222552-00222552; SPOE00222554-00222554; SPOE00222556-00222556; SPOE00222557-00222557; SPOE00222563-00222563; SPOE00222565-00222565; SPOE00222567-00222567; SPOE00222568-00222568; SPOE00222569-00222569; SPOE00222570-00222570; SPOE00222572-00222572; SPOE00222582-00222582; SPOE00222585-00222585; SPOE00222589-00222589; SPOE00222600-00222600; SPOE00222602-00222602; SPOE00222619-00222619; SPOE00222639-00222639; SPOE00222682-00222682; SPOE00222688-00222688; SPOE00222695-00222695.

<sup>686</sup> **Mr Mustafa**: 069404-TR-ET Part 4, p. 3, line 3.

<sup>687</sup> *See also* **Mr Mustafa**: 069404-TR-ET Part 8, p. 7, lines 3-21; 069404-TR-ET Part 4, p. 3, lines 1-3.

<sup>688</sup> **Mr Mustafa**: 069404-TR-ET Part 4, p. 3, lines 1-3; 069404-TR-ET Part 8, p. 8, lines 5-7.

<sup>689</sup> **Mr Mustafa**: 069404-TR-ET Part 2, p. 14, lines 20-21; 069404-TR-ET Part 3, p. 20, line 19 to p. 24, line 2; **Mr F. Sopi**: T. 18 January 2022, public, p. 2059, lines 7-10; p. 2074, lines 15-17; [REDACTED]. *See also* **Mr Veseli**: T. 25 January 2022, public, p. 2192, lines 13-14; p. 2196, lines 18-25; p. 2198, lines 4-6; p. 2263, lines 22-24; **Mr Humolli**: T. 2 February 2022, public, p. 2418, lines 1-14.

<sup>690</sup> Combat orders and other documents issued by the Brigade Command show that Brigade 153 was operational during the time period relevant to the Confirmed Indictment, *see, for example*, U001-0399-U001-0400-ET; U000-9175-U000-9175-ET; U000-4319-U000-4321-ET; U000-4205-U000-4206-ET.

<sup>691</sup> Initially, the headquarters of Brigade 153 were located at Mr F. Sopi's house (two to three kilometres from the BIA base), later in the house of Mr F. Sopi's uncle, next to the primary school “Avni Rustemi” in Zllash/Zlaš (one to two kilometres from the BIA base), and finally, after “the Serb offensive of 18 April 1999”, in the house of Shaban Gashi; *see* **Mr F. Sopi**: T. 18 January 2022, public, p. 2043, line 3 to p. 2044, line 23; 069474-TR-ET Part 1 RED, p. 25, line 19 to p. 26, line 3; **Mr Veseli**: T. 25 January 2022, public, p. 2192, lines 15-18; p. 2194, line 23 to p. 2195, line 5; p. 2198, lines 4-6; p. 2226, lines 10-14;

in its factual findings with regard to arbitrary detention (Count 1).<sup>692</sup> Brigade 153 also had a training centre in the local school in Zllash/Zlaš.<sup>693</sup> Brigade 153, and specifically its commander, communicated directly with the Llap OZ, namely its commander (Rrustem Mustafa) or his deputy (Kadri Kastrati).<sup>694</sup>

343. The Panel considers this evidence to be credible, not only due to its thorough mutually corroborating nature, but also because it stems from KLA members, including high-ranking officials, as well as the Accused, with knowledge of the KLA structures and no detectable incentive to fabricate information thereon.

344. Furthermore, the Panel has received corroborating evidence that Adem Shehu, Mr Veseli and Mr F. Sopi were part of the command of Brigade 153, with Adem Shehu having been formally appointed as Brigade Commander in February 1999 and having assumed this position in March 1999.<sup>695</sup> Mr Veseli was his deputy until late April 1999, before being replaced by Mr F. Sopi, who was initially the Brigade's Assistant Commander for Civilian Protection.<sup>696</sup>

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[REDACTED]. *See also* **Mr Mustafa**: 069404-TR-ET Part 3, p. 12, lines 1-7; p. 13, line 2 to p. 14, line 8; 069404-TR-ET Part 7, p. 3, lines 1-21. *See also* SPOE00055870-SPOE00055988-ET, p. 43; **Mr Mehmetaj**: T. 23 March 2022, public, p. 2650, line 23 to p. 2651, line 2.

<sup>692</sup> *See* paras 354-355.

<sup>693</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2044, lines 10-18; T. 18 January 2022, confidential, p. 2102, line 23 to p. 2104, line 6; 069474-TR-ET Part 1 RED, p. 23, lines 11-20; 069474-TR-ET Part 2, p. 5, lines 11-12; **Mr Veseli**: T. 25 January 2022, public, p. 2195, lines 6-13; 069889-TR-ET Part 1, p. 21, line 22 to p. 22, line 18; **W01679**: T. 4 October 2021, public, p. 864, lines 7-20; SPOE00128386-00128420 RED2, p. 00128412. *See also* SPOE00213459-00213487.

<sup>694</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2074, line 18 to p. 2075, line 24.

<sup>695</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2035, line 22 to p. 2038, line 3.

<sup>696</sup> **Mr Mustafa**: 069404-TR-ET Part 3, p. 11, line 4 to p. 12, line 11; **Mr F. Sopi**: T. 18 January 2022, public, p. 2035, line 22 to p. 2038, line 21; 069474-TR-ET Part 1, p. 25, lines 8-18; 069474-TR-ET Part 2, p. 1, lines 14-23; p. 8, lines 8-14; 7000593-7000609 RED, p. 7000597; **Mr Veseli**: T. 25 January 2022, public, p. 2191, line 7 to p. 2192, line 9; p. 2210, line 23 to p. 2211, line 3; 069889-TR-ET Part 1, p. 17, line 2 to p. 18, line 25; 069889-TR-ET Part 2, p. 2, lines 10-19. *See also* SITF00427788-00427788; SITF00427789-00427789; U000-4204-U000-4204-ET; U000-4319-U000-4321-ET; U000-4204-U000-4204-ET; U001-0399-U001-0400-ET; SPOE00055870-SPOE00055988-ET, p. 42.

345. Lastly, the Panel finds that there is sufficient corroborating evidence that Agron Xhemajli (aka Agimi) (Mr Xhemajli)<sup>697</sup> was part of Brigade 153.<sup>698</sup> He formed part of the Brigade Staff<sup>699</sup> and assumed the function of head of the information service,<sup>700</sup> which was essentially an intelligence service.<sup>701</sup>

### C. ARBITRARY DETENTION (COUNT 1)

346. Before making its factual findings in relation to arbitrary detention (Count 1), the Panel wishes to clarify the following. The charges related to Count 1 (as well as those related to Counts 2-4, for that matter) have a specific geographical scope, namely what the Confirmed Indictment refers to as the ZDC.<sup>702</sup> However, the Panel may analyse factual allegations or circumstances outside the geographical scope of the charges, if they are relevant for the determination of matters falling within the scope of the charges, such as the circumstances of the initial apprehension of individuals who were subsequently allegedly detained. The same applies to factual allegations or circumstances outside the temporal scope of the charges. In addition, the Panel may use such information in assessing witness credibility or for contextualisation purposes.

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<sup>697</sup> **W04648**: SPOE00128333-00128343 RED1, p. 00128339; SPOE00130685-00130687 RED1, p. 00130686; [REDACTED].

<sup>698</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2102, lines 9-11; **Mr Ajeti**: T. 22 April 2022, public, p. 4131, line 23 to p. 4132, line 1; [REDACTED]. The Panel notes that Mr Veseli testified differently, notably that Mr Xhemajli was not a member of Brigade 153. However, in the Panel's view, he stated so mainly to underline that Mr Xhemajli did not report to the command of Brigade 153, but rather to the Llap OZ (**Mr Veseli**: T. 25 January 2022, public, p. 2214, line 16 to p. 2215, line 8). Considering the corroborating evidence provided by Mr F. Sopi, Mr Ajeti [REDACTED], Mr Veseli's testimony does not detract from the Panel's conclusion that Mr Xhemajli was a member of Brigade 153.

<sup>699</sup> SITF00427789-00427789.

<sup>700</sup> [REDACTED].

<sup>701</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2215, lines 2-4. [REDACTED].

<sup>702</sup> [Confirmed Indictment](#), paras 18-20, 35.

347. The Panel will proceed hereunder to assess the evidence and enter its factual findings as to whether or not at least six persons,<sup>703</sup> including [REDACTED] (W01679), [REDACTED]<sup>704</sup> (W03593), [REDACTED] (W03594), [REDACTED] (W04669), the Murder Victim,<sup>705</sup> a person known as [REDACTED],<sup>706</sup> and [REDACTED], were arbitrarily deprived of their liberty without due process of law by the Accused and certain members of the KLA, in particular the BIA unit, between approximately 1 April 1999 and 19 April 1999. When possible, the Panel elects to discuss the evidence detainee by detainee, in order to clearly set out the facts related to each alleged prisoner, notably: (i) the circumstances of their initial apprehension, if known; (ii) the detention location; (iii) the presence and identification of co-detainees; (iv) the time and circumstances of their release; and (v) the lack of procedural guarantees.

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<sup>703</sup> The Panel uses the formulation “at least six persons” throughout the judgment, although it identifies seven of the victims, as it reflects the charges as presented by the SPO as set out in the Confirmed Indictment; see [Confirmed Indictment](#), para. 18.

<sup>704</sup> W03593 is also referred to as [REDACTED] (W01679: T. 4 October 2021, confidential, p. 889, lines 4-13) or simply [REDACTED] (W03594: T. 12 October 2021, confidential, p. 1046, lines 18-24). In the SPO written statement of W03594, the witness had identified [REDACTED], who was accused of collaborating with Serbs (W03594: 061016 TR-ET, Part 1, p. 21, lines 17-21). Before the Panel, W03594 confirmed the identification of W03593 but added that he “forgets things sometimes” (W03594: T. 12 October 2021, confidential, p. 1047, line 19 to p. 1050, line 23). Based on the totality of evidence, the Panel understands the person referred to above as being W03593.

<sup>705</sup> W03593 refers [REDACTED] because the latter was from the village of [REDACTED]; the witness specifies, upon questioning, that he knew [REDACTED] (W03593: T. 20 September 2021, confidential, p. 404, line 1 to p. 405, line 1). Later on, W03593 stated that [REDACTED] are the same person (W03593: T. 20 September 2021, confidential, p. 473, lines 11-15). Also W03594 referred to [REDACTED] (W03594: T. 12 October 2021, confidential, p. 1046, lines 18-24). In the SPO written statement of W03594, the witness had identified [REDACTED] (W03594: 061016 TR-ET, Part 1; p. 22, lines 6-10). Before the Panel, W03594 confirmed the identification of [REDACTED] but added that he “forgets things sometimes” (W03594: T. 12 October 2021, confidential, p. 1047, line 19 to p. 1050, line 23). Based on the totality of evidence, the Panel understands the person referred to above as being [REDACTED].

<sup>706</sup> W03594 referred to [REDACTED] (W03594: T. 13 October 2021, confidential, p. 1187, lines 7-10). Based on the evidence as a whole, the Panel does not take any issue with this minor different spelling of the name, and finds that [REDACTED] are one and the same person.

## 1. The Compound Where the Charged Crimes Were Committed

348. The Panel must first determine whether the location mentioned by the SPO in the Confirmed Indictment is in fact the location where the charged crimes were allegedly perpetrated. In this regard, the SPO claims that the crimes charged were committed at the ZDC, a compound located in Zllash/Zlaš, which served as a BIA base during April 1999.<sup>707</sup>

### (a) Presence of a BIA base in Zllash/Zlaš in April 1999

349. At the outset, the Panel observes that the Accused himself, in his SPO statement and in his previous statement in the *Agron Zeqiri* case, provided evidence as to the presence of BIA members in Zllash/Zlaš during the timeframe of the charges.<sup>708</sup> In this respect, the Accused stated that the BIA occupied a specific compound,<sup>709</sup> with a “safe house”,<sup>710</sup> and that the property was owned by a local villager, from whom the Accused and his colleagues asked permission to stay there.<sup>711</sup> The Panel regards the Accused’s evidence on this topic particularly credible, in light of the Accused’s own admissions that he was the BIA commander<sup>712</sup> and that he personally spent time at that compound.<sup>713</sup> Accordingly, the Panel finds that he possessed first-hand

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<sup>707</sup> [Confirmed Indictment](#), paras 5, 35.

<sup>708</sup> **Mr Mustafa**: 069404-TR-ET, Part 3, p. 18, lines 6-13. In this respect, the Accused was consistent with his previous statement in the *Agron Zeqiri* case (**Mr Mustafa**: 7000650-7000660, p. 8).

<sup>709</sup> **Mr Mustafa**: 069404-TR-ET, Part 8, p. 1, line to 19 to p. 4, line 15.

<sup>710</sup> **Mr Mustafa**: 069404-TR-ET, Part 3, p. 14, lines 14-15; p. 18, lines 19-22; Part 7, p. 5, lines 11-12.

<sup>711</sup> **Mr Mustafa**: 069404-TR-ET, Part 3, p. 20, lines 8-16; *see also* para. 338.

<sup>712</sup> **Mr Mustafa**: 069404-TR-ET, Part 1, p. 32, lines 13-14; Part 3, p. 24, line 22; Part 7, p. 30, lines 18-19; Part 8, p. 7, lines 3-9; p. 34, lines 4-6. The Panel notes that the Accused was consistent with his previous statement in the *Agron Zeqiri* case regarding his role as BIA commander (**Mr Mustafa**: 7000650-7000660, p. 7000651). *See also Mr F. Sopi*: T. 18 January 2022, public, p. 2060, lines 4-7; **Mr Veseli**: T. 25 January 2022, public, p. 2195, line 25 to p. 2196, line 2; **Mr Humolli**: T. 1 February 2022, public, p. 2303, lines 20-22.

<sup>713</sup> **Mr Mustafa**: 069404-TR-ET, Part 3, p. 20, lines 4-5.

knowledge of that location, making him the best placed person to describe it in an accurate and reliable manner.

350. In addition, the Panel notes that the Accused's evidence on this matter is corroborated by other witnesses. For example, Mr Mehmetaj testified that he was a member of the BIA unit and that this unit had a safe house in Zllash/Zlaš, because there were "no enemy forces in that location" and, therefore, it was a safe place for KLA soldiers to rest between assignments.<sup>714</sup> Mr F. Sopi confirmed and clarified his previous SPO statement on the same issue, testifying that the BIA occupied a location "in the highest point" of Zllash/Zlaš,<sup>715</sup> which was safer for its soldiers in comparison to Prishtinë/Priština, as it was out of the Serbian forces' reach.<sup>716</sup> According to Mr F. Sopi, such property belonged in fact to a local villager, Adem Krasniqi, whose family was willing to lend the property to the KLA.<sup>717</sup> A member of the same family and a witness in this case, Mr Krasniqi, confirmed that the compound belonged to his family, including in April 1999, and was put at the KLA's disposal.<sup>718</sup>

351. The evidence above is mutually corroborative and emanates from persons with inside knowledge of the KLA, and in particular the BIA, including the Accused and Mr Mehmetaj. The Panel cannot identify any reason why the Accused and all these witnesses would have fabricated such consistent information. Accordingly, it regards such evidence as credible and relies on it.

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<sup>714</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2618, lines 15-16; p. 2641, line 23 to p. 2642, line 9.

<sup>715</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2045, lines 1-15.

<sup>716</sup> **Mr F. Sopi**: T. 19 January 2022, public, p. 2172, line 13 to p. 2173, line 15. *See also Mr F. Sopi*: 069474-TR-ET, Part 2, p. 20, lines 13-16.

<sup>717</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2048, lines 5-13; p. 2088, line 25 to p. 2089, line 19.

<sup>718</sup> **Mr Krasniqi**: T. 22 April 2022, public, p. 3866, line 22 to p. 3867, line 3; p. 3877, line 13; p. 3879, lines 2-4; p. 3952, lines 8-13. The Accused confirmed that one of the Krasniqi family member was "also a soldier of mine" (**Mr Mustafa**: 069404-TR-ET, Part 3, p. 20, lines 17-18). For his part, Mr Krasniqi testified that he was indeed a BIA member (**Mr Krasniqi**: T. 22 April 2022, public, p. 3953, line 24 to p. 3955, line 11).

352. Regarding the control over the compound, the Panel notes corroborating testimonial evidence by different KLA members indicating that the BIA controlled the compound and used it as a base.<sup>719</sup> In addition, witnesses such as Mr Veseli and W04600 stated in court that the Accused was in charge of the base,<sup>720</sup> which is a logical consequence, in the Panel's view, of the Accused's position as the BIA commander, based on the evidence provided by the Accused himself and corroborated by other KLA members.<sup>721</sup> The Panel also considers that the evidence suggesting that, at times, soldiers from other KLA units or civilians may have been present at the BIA base in Zllash/Zlaš<sup>722</sup> does not affect the finding that the base was in fact controlled by the BIA and by its commander, the Accused. In this vein, the Panel considers that the presence of other KLA members, and civilians, is fully compatible with the evidence above, according to which one of the functions of the compound was to provide safety and security to those staying there on a temporary basis, due to the absence of enemy forces in the vicinity.

353. Based on the evidence taken as a whole, the Panel is therefore satisfied that the BIA had a base in Zllash/Zlaš at the time of the charges, which was under the control and authority of the BIA commander, the Accused.

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<sup>719</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2049, lines 20-22; p. 2089, lines 23-25 (“[t]hat compound was regarded as the base of the BIA or Skifteris [...]”); T. 19 January 2022, public p. 2172, lines 2-8; **Mr Veseli**: T. 25 January 2022, public, p. 2195, line 18 to p. 2197, line 19; **W04600**: T. 23 September 2021, public, p. 718, lines 14-21; T. 24 September 2021, public, p. 811, line 23 to p. 812, line 8; p. 814, lines 8-11.

<sup>720</sup> **Mr Veseli**: T. 25 January 2022, public, p. 2198, line 1 to p. 2199, line 8; **W04600**: T. 27 September 2021, public, p. 846, lines 14-15.

<sup>721</sup> **Mr Mustafa**: 069404-TR-ET, Part 1, p. 29, lines 2-5; p. 31, lines 19-21; p. 32, lines 13-14; Part 7, p. 30, lines 18-19; Part 8, p. 7, lines 3-9; p. 34, lines 4-6. The Panel notes that the Accused was consistent with his previous statement in the *Agron Zeqiri* case regarding his role as BIA commander (**Mr Mustafa**: 7000650-7000660, p. 7000651). *See also Mr F. Sopi*: T. 18 January 2022, public, p. 2060, lines 4-7; **Mr Veseli**: T. 25 January 2022, public, p. 2195, line 25 to p. 2196, line 2; **Mr Humolli**: T. 1 February 2022, public, p. 2303, lines 19-22.

<sup>722</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2642, lines 17-25; **Mr F. Sopi**: T. 18 January 2022, public, p. 2089, line 23 to p. 2090, line 1; **Mr Mustafa**: 069404-TR-ET, Part 3, p. 14, lines 12-24.

## (b) Location of the BIA base in Zllash/Zlaš

354. The evidence before the Panel unequivocally proves that the BIA base was located in a specific area of Zllash/Zlaš, at the highest point “where you could observe the area quite easily”.<sup>723</sup> The BIA base was separated from other KLA controlled structures also present in Zllash/Zlaš, namely a school, which was used as a training centre for new KLA recruits, the headquarters of Brigade 153 and the Karadak Operational unit.<sup>724</sup> On this topic the Panel received clear and corroborating evidence. According to witnesses’ testimony, the BIA base was located in the Sfarç neighbourhood of Zllash/Zlaš,<sup>725</sup> uphill in comparison to the village school,<sup>726</sup> which is in line with other evidence suggesting that the BIA base was in a somewhat remote and uphill part of Zllash/Zlaš, in order to provide a safe refuge to those stationed there. Mr F. Sopi explained that the “part of Zllash where BIA was based was more protected”, as it was higher up than the school and more difficult to reach.<sup>727</sup>

355. Based on the evidence taken as a whole, the Panel is therefore satisfied that the BIA base was located in an uphill area of Zllash/Zlaš, separated from the rest of the village and from other KLA facilities there.

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<sup>723</sup> **Mr Mustafa:** 069404-TR-ET, Part 3, p. 16, lines 3-6.

<sup>724</sup> *See, for example, W04600:* T. 23 September 2021, public, p. 717, lines 2-4; **W04603:** T. 2 November 2021, public, p. 1292, lines 10-15; **Mr Veseli:** T. 25 January 2022, public, p. 2195, lines 6-21; **Mr Mustafa:** 069404-TR-ET, Part 3, p. 14, lines 4-5; **Mr F. Sopi:** T. 18 January 2022, public, p. 2044, line 12; p. 2053, lines 6-16 (Mr F. Sopi identified through photograph SPOE00128412, the Zllash/Zlaš school where the training centre was located); **Mr Halimi:** T. 20 April 2022, public, p. 3721, lines 17-19; **W04669:** T. 10 November 2021, public, p. 1402, lines 3-11.

<sup>725</sup> Sfarç was not the name of the location in Zllash/Zlaš where the BIA base was located, but rather the term with which the family living at that location (Krasniqi) was referred to. *See W04600:* T. 23 September 2021, public, p. 718, line 14 to p. 722, line 5. Mr Krasniqi confirmed that the compound belonged to his family, including in April 1999 (**Mr Krasniqi:** T. 22 April 2022, public, p. 3867, line 22 to p. 3868, line 3; p. 3879, lines 2-4).

<sup>726</sup> Specifically, W04600 stated that it was approximately “1 to 1 and a half kilometres” (**W04600:** T. 23 September 2021, public, p. 719, line 20). *See also Mr Veseli:* T. 25 January 2022, public, p. 2197, lines 17-22; **Mr F. Sopi:** T. 18 January 2022, public, p. 2047, line 1 to p. 2048, line 1.

<sup>727</sup> **Mr F. Sopi:** T. 19 January 2022, public, p. 2181, lines 16-25.

(c) Photographic identification of the BIA base in Zllash/Zlaš

356. Having determined the position of the BIA base in Zllash/Zlaš – in particular compared to the village school and other KLA controlled structures in Zllash/Zlaš – the Panel turns to the photographic identification of the BIA base by the witnesses who testified in court, including witnesses who were allegedly detained there.

i. Defence challenges to photographic identification and description evidence

357. The Defence submits that W03593,<sup>728</sup> W01679,<sup>729</sup> W03594,<sup>730</sup> and W04669<sup>731</sup> could not have been detained at the ZDC, because they were not in a position to accurately describe the property; or, that they described a layout that is different from the one indicated by Defence witnesses Ms Hadri, Ms Canolli-Kaciu, Mr Krasniqi and Mr Ajeti, and SPO witness Mr Humolli.<sup>732</sup>

358. The Defence also challenges the reliability and probative value of the identification evidence of W03593 and W01679, based on the fact that these witnesses

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<sup>728</sup> According to the Defence, W03593 could not have identified the ZDC, as he had a bag over his head, was unfamiliar with the place, which he described partially, omitting many of the nine structures that should have been there (T. 14 September 2022, public, p. 4641, lines 3-22).

<sup>729</sup> According to the Defence, W01679 could not have identified the ZDC, as he had a bag over his head; his description is general; and even upon release he did not state anything regarding the detention location (T. 14 September 2022, public, p. 4642, line 18 to p. 4643, line 9).

<sup>730</sup> According to the Defence, W03594, who did not have any sack on his head and could therefore look around, could not have identified the ZDC as he described a different location, with less buildings than the nine constituting the ZDC (T. 14 September 2022, public, p. 4646, line 25 to p. 4647, line 16; p. 4690, line 9 to p. 4692, line 3).

<sup>731</sup> According to the Defence, W04669, who did not have any sack on his head and could therefore look around, identified a maximum of three buildings (as opposed to the nine constituting the property) and stated that such location was only 200 metres away from the school in Zllash/Zlaš, thus describing a different location than the ZDC (T. 14 September 2022, public, p. 4649, lines 5-23).

<sup>732</sup> T. 14 September 2022, public, p. 4670, lines 16-24. For example, the Defence argues that some SPO witnesses described the ZDC as having a fence, whereas Defence witnesses described it as an open area. Similarly, the Defence opines that some SPO witnesses failed to describe the yard in the middle of the ZDC, including by omitting the nine structures present there (T. 14 September 2022, public, p. 4650, line 3 to p. 4654, line 10; p. 4654, line 11 to p. 4660, line 23).

were shown a single photograph, as opposed to multiple photographs depicting similar buildings to choose from.<sup>733</sup> Similarly, the Defence challenges the reliability of W04669's identification evidence, as his description of the outside of the buildings is too general.<sup>734</sup>

359. The SPO responds that the victims' testimonies are credible, and that their representations were corroborated by one another and by independent evidence, such as the List of Prisoners, which would not be possible if their accounts were fabricated or if they had not been detained at the BIA base in Zllash/Zlaš.<sup>735</sup> The SPO further responds that the issue of photographic identification should have been addressed at trial. The SPO also submits that it did not only show one photo to the witnesses, but a whole set of photos and that the identification of those buildings was, in fact, made in court during trial in the presence of the Defence.<sup>736</sup>

360. Victims' Counsel responds that the evidence must be looked at holistically and, in this light, the evidence submitted is sufficient to link the events in the Confirmed Indictment to the ZDC.<sup>737</sup>

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<sup>733</sup> T. 14 September 2022, public, p. 4671, lines 2 to p. 4675, lines 22; p. 4686, line 10 to p. 4690, line 8.

<sup>734</sup> T. 14 September 2022, public, p. 4692, line 4 to p. 4694, line 19. The Panel notes that the Defence also submitted that W04669, when giving his statement to the SPO, identified a photo from the UNMIK Ground Booklet as possible detention location (SPOE00128386-00128420, p. 00128407) which is different than the one identified in court (082020-082023 RED1, p. 082022). The Panel notes that when making this point, the Defence relied on an excerpt of W04669's SPO prior statement that is not available to the Panel for its judgment as it was not discussed with the witness in court (notably, 082023-TR-ET, Part 2, pp. 29-30). Despite that, when comparing the two photographs (the one shown to the witness when giving his SPO prior statement and the one identified in court), the Panel finds that they represent exactly the same set of buildings, simply from two different stand points. Accordingly, the Panel does not find anything misleading or improper in the fact that the SPO showed W04669 in court a different photo (depicting the same set of buildings).

<sup>735</sup> T. 15 September 2022, public, p. 4802, line 15 to p. 4803, line 8.

<sup>736</sup> T. 15 September 2022, public, p. 4816, line 21 to p. 4818, line 6 (*referring to* 100807-TR-ET, Part 1; 100957-TR-ET, Part 1; 082023-TR-ET, Part 2).

<sup>737</sup> T. 15 September 2022, public, p. 4826, line 1 to p. 4827, line 16. *See also* T. 15 September 2022, public, p. 4828, lines 13-15 (for the reference to W01679's testimony).

361. The Defence replies that the records do not indicate that a whole set of photos was shown to the witnesses. The Defence adds that, even if that was the case, there are only very few buildings in the photo booklet and, essentially, always the same buildings.<sup>738</sup>

362. At the outset, the Panel notes that the Defence never raised any objections during the trial regarding the appropriateness of showing a single picture to witnesses. The Defence could and should have raised these issues during the examination of the witnesses concerned.

363. On the merits of these challenges, the Panel recalls that pursuant to Rule 139(2) of the Rules, it shall evaluate the evidence holistically and taken as a whole. It follows that it should not look at the individual challenges tabled by the Defence in respect of specific issues and/or witnesses in isolation. Rather, the Panel shall evaluate if and how such challenges affect the overall assessment of all the evidence on a given matter, in this case the photographic identification and description of the BIA base by SPO witnesses.

364. Taking into account the entirety of the identification evidence, the Panel considers that W01679, W03593, and W04669 identified in closed session the very same buildings, on the basis of exactly the same photographs from the UNMIK Ground Booklet, as the location where they were imprisoned in April 1999.<sup>739</sup> The Panel finds the mutually corroborating identification by the above witnesses very credible, as it would be implausible to assume that they all identified, coincidentally, one and same set of buildings as the location of their victimisation, based on the very same photographic material. It would be equally implausible that, without knowing

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<sup>738</sup> T. 15 September 2022, public, p. 4838, line 18 to p. 4839, line 12.

<sup>739</sup> **W01679**: T. 4 October 2021, confidential, p. 920, line 1 to p. 925, line 25; 100801-100806 RED1, p. 100803; **W03593**: T. 21 September 2021, confidential, p. 512, line 5 to p. 518, line 19; 100966-100969, p. 100968; **W04669**: T. 10 November 2021, public, p. 1470, line 24 to p. 1472, line 6; 082020-082023 RED1, p. 082022 (W04669 identified the first building from the left the photograph).

their respective identities and testimonies – due to protective measures in place – they would have colluded to align their identification evidence. From a methodological point of view, the fact that these witnesses based their identification on a single photograph is not improper, in the view of the Panel, as they could have simply stated that they did not remember, refraining thus from identifying the buildings. Instead, the Panel finds that these witnesses made an effort to remember the set of buildings in which they were held. This resulted in W01679, W03593, and W04669 mutually identifying exactly the same set of buildings as their detention location, based on their evidently personal knowledge of that location.

365. Critically, the identification evidence of W01679, W03593, and W04669 is corroborated by W04600,<sup>740</sup> Mr F. Sopi<sup>741</sup> and Mr Krasniqi,<sup>742</sup> who were shown precisely the same photographs as W01679, W03593, and W04669, and identified the same set of buildings as the BIA base in Zllash/Zlaš. The Panel observes that, while W04600 declared that “[t]he buildings resembled each other not only in this compound but in the entire village”, he also confirmed his prior SPO statement, according to which one of the buildings shown in the UNMIK Ground Booklet belonged to the “Sfarc” property,<sup>743</sup> which, as established, was Adem Krasniqi’s property, lent to the KLA for the establishment of the BIA base in Zllash/Zlaš. Similarly, when confronted with the UNMIK Aerial Booklet— which represents the same property visible in the UNMIK Ground Booklet, but seen from above— W04600

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<sup>740</sup> **W04600**: T. 24 September 2021, public, p. 753, line 14 to p. 759, line 4.

<sup>741</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2053, line 22 to p. 2054, line 17; SPOE00128386-00128420, p. SPOE00128388.

<sup>742</sup> **Mr Krasniqi**: T. 22 April 2022, public, p. 3896, line 9 to p. 3898, line 9; DSM00028-00028 (marked by the witness as REG00-015). Mr Krasniqi identified and described the BIA base on the basis of the UNMIK Aerial Booklet (**Mr Krasniqi**: T. 22 April 2022, public, p. 3874, line 5 to p. 3893, line 20; *see also* DSM00026-00026, which was marked by the witness in court to identify each building in the family property (*see* REG00-013)).

<sup>743</sup> **W04600**: T. 24 September 2021, public, p. 758, line 12 to p. 759, line 4.

identified the entrance of the BIA base [REDACTED].<sup>744</sup> W04600's identification evidence, especially considered holistically and in addition to the other evidence, establishes a satisfactory level of corroboration to conclude that W04600 properly identified the same location as the BIA base, along with the other witnesses mentioned.

366. To corroborate the above identification evidence further, thus rendering it even more credible, the Panel considers that the layout of the property identified by these witnesses based on both the aerial and ground photographs, is fully compatible with the description provided by BIA or KLA members who had been there.<sup>745</sup>

367. Considering all the evidence as a whole, and the level of consistency between the witnesses' testimony, it is wholly implausible to assume that all these witnesses, both KLA members and victims of the crimes charged, would have been mistaken or would have somehow colluded with a view to identifying one and the same establishment as the BIA base and the location where they were detained, respectively.

368. With regard to W01679's, W03593's, and W04669's overall ability to (properly) describe the detention location, the Defence arguments are unpersuasive. First, the very identification evidence across these witnesses, as well as W04600, Mr F. Sopi and Mr Krasniqi, indicates that they must have formerly seen the buildings that they ultimately recognised in court. Second, the evidence does not suggest, as the Defence purports, that the alleged victims had their respective heads covered all the times. At the very least, at the time of their release, the alleged victims were able to see the detention location, and to leave the location freely — as discussed in the factual

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<sup>744</sup> **W04600**: T. 23 September 2021, confidential, p. 723, line 1 to p. 729, line 3; T. 24 September 2021, confidential, p. 750, line 4 to p. 752, line 16. The witness marked photograph SPOE00213459-00213487 (REG00-006), p. SPOE00213478, which is identical to DSM00026-00026 (REG00-013) shown to Mr Krasniqi.

<sup>745</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2642, lines 11-12 ("there was a yard with a number of houses around it"); **Mr F. Sopi**: T. 18 January 2022, public, p. 2048, lines 18-22 ("it consisted of several houses. [...] there was a barn").

findings on arbitrary detention (Count 1). This makes it wholly plausible that they would have seen the buildings where they were allegedly held, constituting the basis of their knowledge and ability to photographically identify these physical structures in court. In this regard, W03593 confirmed during his testimony in court all his previous statements, [REDACTED] and the SPO, as to the identification of the building where he was detained. Asked by the SPO how he could recognise the building, he replied: “It’s normal – it’s not that I have seen in full, but I have seen a little bit to know where I was” and he explained that he had seen enough to be able to recognise the building where he was detained in the photographs presented to him.<sup>746</sup> He was also able to draw sketches of the building, with the lower part, where were was kept, and the upper part, where he was interrogated.<sup>747</sup>

369. As a result, any difference that may exist in the description of the ZDC by the different SPO witnesses – including W03594 who did not undertake the photographic identification exercise – actually renders their account more credible, as their testimony is not systematically aligned to the extent that it could raise suspicions regarding their credibility. The fact that some witnesses did not describe each and every building constituting the ZDC actually renders their testimony more credible and compatible with the situation of detainees who were taken to an interrogation and mistreatment room and brought back to a detention barn, thus not having the time and the possibility to look around properly.<sup>748</sup> To the contrary, a more complete and possibly accurate description of the ZDC by some Defence witnesses, such as Ms Hadri, Ms Canolli-Kaciu, Mr Krasniqi, Mr Ajeti, and Mr Humolli, is logical, as there is no evidence indicating that their freedom of movement or

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<sup>746</sup> W03593: T. 21 September 2021, confidential, p. 517, lines 3-13.

<sup>747</sup> W03593: T. 21 September 2021, public, p. 517, line 14 to p. 518, line 19, *referring to* 061012-061015, p. 061013.

<sup>748</sup> In fact, the detention and interrogation buildings were on one side of the ZDC, as opposed to buildings on the other side of the property, which were across a (big) yard at some distance (W03594: T. 13 October 2021, public, p. 1145, line 1).

observation was restricted. Accordingly, in the Panel's evaluation, the description evidence provided by the victims and by the Defence witnesses is not contradictory, but simply reflects their respective statuses, as detainees or free people, which ultimately had a bearing on how they were able to observe their environment.

370. The same holds true in relation to whether or not a fence existed at the ZDC. The Panel notes that the evidence as a whole indicates that there might have been a fence, at least in the areas that the witnesses could observe. In fact, the evidence provided by the victims and the Defence witnesses does not clash on this point either, in so far as within the same property there might have been areas with a fence and others without. In the Panel's view, this is strongly corroborated by both the UNMIK Aerial Booklet and the UNMIK Ground Booklet, in which multiple photographs feature the clear remnants of a fence.<sup>749</sup> Considering that such photographs were taken in 2006, and a fence is still visible, the Panel finds that in April 1999 the ZDC had at least some areas with a fence and others without, in line with the testimony of both SPO and Defence witnesses on this topic. Again, the difference in the evidence describing the ZDC between the victims and the Defence witnesses is, in the Panel's assessment, the simple reflection of what they had respectively seen during their time at that location.

371. Accordingly, the Defence challenges to the identification and description evidence are dismissed.

ii. Findings on the photographic identification evidence

372. In light of the above evidence and considerations, the Panel is satisfied that within the BIA base, the buildings on the left side of the property, marked by Mr Krasniqi with numbers 4, 4A and 5 (ground view)<sup>750</sup> corresponding to

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<sup>749</sup> SPOE00128386-0012842, pp. SPOE00128389, SPOE00128392, SPOE00128407, SPOE00128410; REG00-013.

<sup>750</sup> DSM00028-00028 (marked by the witness as REG00-015).

buildings 12, 11 and 10 respectively (aerial view)<sup>751</sup> are the buildings relevant to the charges of arbitrary detention (Count 1), cruel treatment (Count 2), torture (Count 3), and murder (Count 4), which will be discussed in detail in their respective sections. In this respect, the Panel underlines that it is immaterial to the determination of the charges to assess, with absolute precision, which detainee was detained in which of these buildings, and for how long. The Panel must be satisfied — beyond reasonable doubt and based on the evidence as a whole — that the crimes charged took place in one or more of the buildings identified above, in the BIA base, between approximately 1 April and 19 April 1999 (or around the end of April 1999 for murder under Count 4), thus falling within the geographical and temporal scope of the charges in the Confirmed Indictment.

373. Under this light, the Defence's claim that the SPO deceived the Defence by changing its case with regard to the specific building(s) within the ZDC in which the victims were allegedly detained, rendering the proceedings unfair,<sup>752</sup> is groundless. The Defence had the opportunity to examine the SPO witnesses and tender evidence throughout trial based on the geographical scope of the charges, which clearly encompasses all buildings within the BIA base in Zllash/Zlaš. The Defence claim is therefore dismissed.

(d) Whether the BIA base was used for detention purposes

374. With respect to whether or not the BIA base was used for detention purposes — in addition to other purposes — the Panel notes that the Accused himself conceded

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<sup>751</sup> DSM00026-00026 (marked by the witness as REG00-013).

<sup>752</sup> T. 15 September 2022, public, p. 4771, lines 6-12; p. 4782, line 22 to p. 4785, line 2.

that soldiers were detained at the BIA base.<sup>753</sup> The Accused went even further stating that “there were rumours that civilians were being detained” and that this was not a secret.<sup>754</sup> While his evidence on the possible detention of civilians is presented as hearsay in nature, the Accused had no incentive whatsoever to volunteer any of this information, considering that he was being questioned by the SPO about his possible role in, or knowledge of, the detention and mistreatment of civilians, including in his capacity as the BIA commander. On this basis alone, the Panel considers the Accused’s evidence on this aspect particularly credible. Relatedly, the Panel notes that this information is also corroborated by another BIA member, Mr Mehmetaj, who stated, similarly to the Accused, that he heard of the existence of a room located in the BIA base where people were held.<sup>755</sup> Moreover, without entering into the individual circumstances of each victim, the Panel observes that W01679 testified that during his period of captivity at the BIA base “[...] they would bring other people”<sup>756</sup> who would stay “two or three days and then they would leave”.<sup>757</sup> Similarly, W03593 stated that “they were bringing people every night. We have been up to 17 people in that same room”.<sup>758</sup> W04669 equally stated that during his relatively short period of detention he was held with two other unidentified persons,<sup>759</sup> who according to the witness had

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<sup>753</sup> **Mr Mustafa:** 069404-TR-ET, Part 7, p. 2, line 11 to p. 8, line 10; Part 8, p. 1, line 19 to p. 4, lines 15; p. 6, lines 14-15 (“[e]verybody that was around there would call it detention room”).

<sup>754</sup> **Mr Mustafa:** 069404-TR-ET, Part 7, p. 15, lines 7-15; p. 18, lines 1-16.

<sup>755</sup> **Mr Mehmetaj:** T. 23 March 2022, public, p. 2683, line 15 to p. 2684, line 9. On this point, the Panel regards Mr Mehmetaj as credible, as he was the deputy commander of the Accused, with certain knowledge of the operations of the BIA at its base in Zllash/Zlaš. Based on its credibility assessment, according to which Mr Mehmetaj showed an inclination to provide evidence favourable to the Accused, his admission, although reluctantly, about rumours pointing at detention of people at the BIA base, is assessed as credible and worth probative value.

<sup>756</sup> **W01679:** T. 4 October 2021, confidential, p. 889, lines 4-6.

<sup>757</sup> **W01679:** T. 4 October 2021, public, p. 889, lines 20-21.

<sup>758</sup> **W03593:** T. 20 September 2021, public, p. 419, lines 7-8; T. 20 September 2021, confidential p. 439, lines 20-24.

<sup>759</sup> **W04669:** T. 10 November 2021, confidential, p. 1418, line 20 to p. 1419, line 12. The witness described the two detainees with much details: one man was 50-60 years old, with moustache, had two sons who had joined the KLA in the village of Shipol (Mitrovica) and was held because he had asked for his

been brought to the stable “three or four days” before him.<sup>760</sup> The Panel considers the above evidence credible, as it mutually corroborates the core fact that detainees were often brought in and out of the ZDC. The fact that each witness gave different accounts and numbers, while all confirming the presence of detainees, renders their evidence more realistic, as it reflects their own personal recollection of the events, including in which of the identified buildings they were detained.

375. Against this background, the Panel has received evidence by KLA members who categorically denied the existence of any detention and mistreatment practices in Zllash/Zlaš at any point in time<sup>761</sup> and testified that the BIA unit did not have the mandate to arrest and detain anyone.<sup>762</sup>

376. The Panel considers that such refutation evidence is unpersuasive when weighed against the evidence discussed above and the evidence of the victims regarding their own detention circumstances, as assessed below in the factual findings (Counts 1-3). First, all witnesses who denied the existence of detention and mistreatment practices in Zllash/Zlaš have been found by the Panel to show a strong inclination to provide evidence favourable to the Accused, to the BIA or to the KLA. Accordingly, the Panel is of the view that they had all possible incentives to deny any detention and mistreatment practices in Zllash/Zlaš. Second, the refutation evidence is in plain contradiction with the evidence of the Accused, who unequivocally admitted that soldiers (and possibly civilians) were detained at the BIA base in

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automatic weapon to be returned to him by the KLA. The other was from Gollak, 180-190 centimetres tall, 80 kilograms, about 5-10 years older than W04669 at the time.

<sup>760</sup> **W04669**: T. 10 November 2021, confidential, p. 1424, lines 19-20.

<sup>761</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2107, lines 15-17; p. 2114, lines 2-17; T. 19 January 2022, public, p. 2161, line 14 to p. 2163, line 2; **Mr Veseli**: T. 25 January 2022, public, p. 2223, line 4 to p. 2224, line 18; **Mr Ibishi**: T. 12 April 2022, public, p. 3621, line 8 to p. 3624, line 8 (Mr Ibishi stated there was no detention centre other than the one in Llapashtice; he added that at times people were held also in two other locations, Majac and Potok, but that it was still only one detention centre); **Mr Krasniqi**: T. 21 April 2022, public, p. 3909, line 19 to p. 3911, line 1; p. 3911, line 21 to p. 3912, line 11; p. 3950, lines 6-10; **Mr Ajeti**: T. 22 April 2022, public, p. 4076, lines 12-17; p. 4151, lines 13-17.

<sup>762</sup> **Mr Humolli**: T. 2 February 2022, public, p. 2429, lines 14-18.

Zllash/Zlaš. As stated above, the Panel considers the evidence of the Accused on this matter authoritative and credible, given his commanding role within the BIA and his first-hand knowledge and control of the BIA base. Moreover, the Accused's evidence is also corroborated by other witnesses, in particular victims in relation to whom the Panel has not detected any particular credibility risk factors. In this regard, the Panel stresses that the evidence discussed above concerning the photographic identification of the BIA base as the detention location is so clear, consistent, and persuasive that the evidence of categorical denial in relation to detention and mistreatment practices in Zllash/Zlaš cannot undermine the probative value of the former.

377. Overall, therefore, the Panel finds that the evidence indicates that one of the purposes of the BIA base in Zllash/Zlaš was to detain people. This conclusion is perfectly reconcilable with any other possible use of the base — taking into consideration its multiple buildings and its quite extended yard<sup>763</sup> — whether it was for rest and recuperation of soldiers or as a safe haven for civilians fleeing hostilities.

(e) Conclusion

378. In light of all the evidence assessed above, taken as a whole, the Panel is satisfied that the BIA base in Zllash/Zlaš corresponds to the ZDC referred to in the Confirmed Indictment as the location of the crimes charged. Accordingly, the Panel will make its findings with regard to the charged incidents of arbitrary detention, cruel treatment, torture and murder (Counts 1-4) with reference to the ZDC as the established geographical scope of the crimes charged against the Accused.

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<sup>763</sup> W03594: T. 13 October 2021, public, p. 1145, line 1.

## 2. W01679

### (a) Initial apprehension

379. Regarding the circumstances of his initial apprehension, W01679 testified that, while he was in Zllash/Zlaš at the local school for training with the KLA<sup>764</sup>, he was taken into custody by four men from the special unit called Skifterat,<sup>765</sup> who were armed and wore black uniforms with the BIA insignia.<sup>766</sup> According to the witness, the soldiers who told him that he had to come with them, did not show him any documentation.<sup>767</sup>

380. With regard to the witness's very presence at the training camp, the Defence challenges the truthfulness of W01679's evidence, as it would contradict the evidence of Defence witness Mr Halimi,<sup>768</sup> who was a trainer at the recruits centre.<sup>769</sup> In essence, Mr Halimi stated that it was not possible to join the recruits' training without being included in a specific list provided by the Brigade staff, nor was it possible to join half-way or leave the training before completion.<sup>770</sup> In the Defence submissions, this would

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<sup>764</sup> **W01679**: T. 4 October 2021, confidential, p. 863, line 25 to p. 864, line 11.

<sup>765</sup> The Panel notes that by specifying that the men who took him into custody belonged to the Skifterat unit, W01679 provided a particularly valuable detail which renders his testimony very credible, as Skifterat (or Skifteri(s)) was the other name with which the BIA was known, as stated by the Accused himself and other KLA members with knowledge of these matters (**Mr Mustafa**: 069404-TR-ET, Part 3, p. 24, lines 3-5; Part 8, p. 14, lines 9-19; **W04600**: T. 23 September 2021, confidential, p. 724, lines 16-17; p. 727, lines 19-21; **Mr F. Sopi**: T. 18 January 2022, public, p. 2045, lines 4-6; p. 2089, lines 24-25).

<sup>766</sup> **W01679**: T. 4 October 2021, public, p. 864, lines 10-11; p. 865, lines 2-9, 14-25; p. 866, lines 1-9; T. 5 October 2021, public, p. 978, line 11 to p. 979, line 11.

<sup>767</sup> **W01679**: T. 4 October 2021, confidential, p. 866, lines 15-21.

<sup>768</sup> Defence Final Trial Brief, para. 30. At the closing statements, the Defence made additional arguments by relying on the evidence of Adem Shehu. The Panel recalls, however, that the evidence of Adem Shehu has never been tendered before the Panel and, accordingly, is not available for consideration for the purposes of the judgement. The Defence's arguments in this respect are therefore dismissed (T. 14 September 2022, public, p. 4704, line 10 to p. 4705, line 10).

<sup>769</sup> **Mr Halimi**: T. 20 April 2022, public, p. 3738, lines 18-20.

<sup>770</sup> **Mr Halimi**: T. 20 April 2022, public, p. 3745, lines 5-21; p. 3753, lines 19-21.

contradict the evidence of W01679, who stated that he went to the Zllash/Zlaš school and essentially joined the recruits' training by registering on the spot.<sup>771</sup>

381. The Panel considers that the evidence of W01679 and Mr Halimi are not in contradiction, but rather in large part compatible and mutually corroborating. In fact, W01679 and Mr Halimi corroborated each other on various important aspects surrounding the training camp in Zllash/Zlaš, which demonstrates that they have personal knowledge of such training, stemming from their respective presence there.

382. For example, W01679 declared that at the time of joining the training he was asked to provide his full name, date of birth and place of residence, which is consistent with the type of information that would be included in the Brigade's list, which would normally be consulted by Mr Halimi.<sup>772</sup> In addition, according to both witnesses, recruits were not asked any question with regard to particular skills or capacities, but only personal details.<sup>773</sup> Further, W01679 declared that the trainers included Emin Borovci (Triumfi) and Adem Shehu, which was also corroborated by Mr Halimi.<sup>774</sup> Moreover, according to W01679,<sup>775</sup> the training involved physical and military exercises, which was confirmed by Mr Halimi,<sup>776</sup> and recruits participated in activities involving guard duties, as testified by both witnesses.<sup>777</sup>

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<sup>771</sup> **W01679**: T. 4 October 2021, confidential, p. 863, line 15 to p. 864, line 3.

<sup>772</sup> **W01679**: T. 5 October 2021, public, p. 965, lines 6-11; **Mr Halimi**: T. 20 April 2022, public, p. 3730, line 25 to p. 3731, line 2; p. 3756, lines 2-3.

<sup>773</sup> **W01679**: T. 5 October 2021, public, p. 974, lines 17-21; **Mr Halimi**: T. 20 April 2022, public, p. 3731, lines 3-6.

<sup>774</sup> **W01679**: T. 4 October 2021, public, p. 864, line 9 to p. 865, line 6; T. 5 October 2021, public, p. 972, lines 19-24; **Mr Halimi**: T. 20 April 2022, public, p. 3738, lines 21-24; p. 3793, line 7 to p. 3797, line 14 (*see also* Mr Halimi's prior statement to the Defence, DSM00539-00550, p. 00547, according to which Adem Shehu "participated in the training. He was the principal trainer").

<sup>775</sup> **W01679**: T. 5 October 2021, public, p. 969, line 1 to p. 970, line 2.

<sup>776</sup> **Mr Halimi**: T. 20 April 2022, public, p. 3740, lines 3-11; p. 3791, lines 12-14.

<sup>777</sup> **W01679**: T. 5 October 2021, confidential, p. 975, lines 5-11; **Mr Halimi**: T. 20 April 2022, public, p. 3744, lines 13-18.

383. On the basis of these similarities in the evidence of the two witnesses, the Panel finds that W01679 provided such specific details — consistent with the evidence originating from an actual KLA trainer at that centre — that it would be unrealistic to assume that W01679 fabricated such information. The clarity of W01679's recollection of the training's details and its consistency with the evidence of Mr Halimi, strengthen the credibility of W01679 and suggest, in the Panel's view, that he was in fact present in Zllash/Zlaš for training purposes prior to his deprivation of liberty.

384. The similarity between the evidence of W01679 and Mr Halimi concerning the training is further corroborated by W04669<sup>778</sup> and Mr F. Sopi,<sup>779</sup> who independently provided evidence perfectly compatible with that of W01679 and Mr Halimi.

385. In addition, the Panel recalls that Mr Halimi declared in court that it was impossible for him to know the names of all recruits, nor was he interested in knowing who they were or where they came from.<sup>780</sup> Furthermore, as per Mr Halimi's own admission during direct and cross-examination, hundreds of recruits participated in the different generations (lasting two weeks each)<sup>781</sup> between early February and mid-April 1999.<sup>782</sup> It thus appears implausible to the Panel that Mr Halimi had a full and

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<sup>778</sup> **W04669**: T. 10 November 2021, public, p. 1400, line 19 to p. 1401, line 9. *Mr Halimi was known as Commander Llapi*: **Mr Halimi**: T. 20 April 2022, public, p. 3729, lines 9-15; **W04669**: T. 10 November 2021, public, p. 1400, lines 16-17. *Mr Halimi had expertise in martial arts and was responsible for physical exercise*: **Mr Halimi**: T. 20 April 2022, public, p. 3739, lines 9-24; p. 3792, lines 6-8; **W04669**: T. 10 November 2021, public, p. 1400, line 16-17; p. 1401, lines 23-25.

<sup>779</sup> *Triumfi was one of the trainers*: **Mr F. Sopi**: T. 18 January 2022, public, p. 2072, lines 11-14; p. 2081, lines 14-16. *The training involved physical exercise, theory, and weapons training*: **Mr F. Sopi**: T. 18 January 2022, public, p. 2068, lines 2-4.

<sup>780</sup> **Mr Halimi**: T. 20 April 2022, confidential, p. 3756, lines 2-6; p. 3778, lines 10-15.

<sup>781</sup> **Mr Halimi**: T. 20 April 2022, public, p. 3726, lines 4-5.

<sup>782</sup> **Mr Halimi**: T. 20 April 2022, public, p. 3734, lines 1-2; p. 3741, lines 4-8; p. 3773, line 4 to p. 3777, line 12. The witness states that apart from the first generation of trainees – which comprised around 50 people – the subsequent groups comprised each around 150 recruits.

comprehensive overview and knowledge of all attendees at the training.  
[REDACTED].<sup>783</sup>

386. What is instead wholly plausible, according to the Panel, is that Mr Halimi may have simply not been aware of W01679 joining the training camp or being taken away at some point. In this regard, the Panel notes that, according to W01679, it was Mr F. Sopi in person who registered him for training.<sup>784</sup> As Mr F. Sopi was Mr Halimi's superior at that time,<sup>785</sup> it is reasonable to assume that he could have registered people for training in derogation of any established practice, without Mr Halimi necessarily knowing it.

387. Ultimately, the Panel considers that the evidence provided by W01679 on his subsequent detention at the ZDC is detailed, clear, consistent and mutually corroborating with that of other co-detainees. Accordingly, the Panel concludes that his description of the circumstances of his training with the KLA in Zllash/Zlaš does not cast any doubt on the credibility and reliability of the witness on matters of relevance to the charges, notably his detention at the ZDC.

388. Having established that W01679 was in fact at the training centre in Zllash/Zlaš prior to his initial apprehension, the Panel reverts to the circumstances of his transfer to the ZDC. The Panel notes that W01679 stated that, when the [REDACTED] Skifterat soldiers approached him, "there was nothing for me to think. There were people, [REDACTED] people, armed, who told [me] '[c]ome with us'. What could I do?"<sup>786</sup> The witness was able to identify the [REDACTED] Skifterat soldiers [REDACTED].<sup>787</sup> According to the witness, the Skifterat members stated that the "commander needs to

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<sup>783</sup> **Mr Halimi:** T. 20 April 2022, confidential, p. 3758, line 25 to p. 3759, line 17.

<sup>784</sup> **W01679:** T. 5 October 2021, public, p. 965, lines 5-11.

<sup>785</sup> **Mr Halimi:** T. 20 April 2022, public, p. 3727, lines 7-9.

<sup>786</sup> **W01679:** T. 4 October 2021, public, p. 866, lines 13-14.

<sup>787</sup> **W01679:** T. 5 October 2021, public, p. 1012, lines 20-23.

ask you something".<sup>788</sup> W01679 testified that it took them 20 minutes to walk from the school to the ZDC,<sup>789</sup> which is compatible with the location of the ZDC away from the Zllash/Zlaš school, as established by the Panel.<sup>790</sup> The Panel discerns similarities in the description of the circumstances of W01679's arrest with that of W04669,<sup>791</sup> W03593 and W03594,<sup>792</sup> in particular the fact that he was not shown any documentation and felt compelled to abide by what he was told, which the Panel finds credible, given that W01679 faced armed men. The Panel finds it implausible that W01679 testified incorrectly or purely coincidentally on this point, similarly to W03593 and W03594, given that the witnesses were apprehended at different times and places and by different KLA units.

389. While the witness did not state in court when he was initially taken into custody, the Panel observes that his full name, date and place of birth appear on the List of Prisoners, according to which W01679 was arrested on [REDACTED] April 1999.<sup>793</sup> At this juncture, the Panel clarifies that the exact date when detainees were taken into custody is immaterial to the determination of the charges, provided that it falls within the temporal scope of the Confirmed Indictment, unless any inconsistency around such date casts doubts on the credibility of the witness. The Panel has accordingly determined the dates when certain detainees were deprived of their liberty only with a view to making its findings as accurate as possible based on the evidence.

390. In light of the evidence taken as a whole, the Panel is satisfied that W01679 was deprived of his liberty on or around [REDACTED] April 1999, therefore within the timeframe of the charges.

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<sup>788</sup> **W01679**: T. 4 October 2021, public, p. 866, lines 17-18.

<sup>789</sup> **W01679**: T. 5 October 2021, public, p. 979, line 25 to p. 980, line 8.

<sup>790</sup> See paras 354-355.

<sup>791</sup> **W04669**: T. 10 November 2021, public, p. 1411, lines 10-15; p. 1456, lines 11-21.

<sup>792</sup> See paras 411, 442.

<sup>793</sup> U001-0310-U001-0322-ET, p. U001-0310.

## (b) Detention location

391. According to W01679, he was held in a room that he defined as a “barn” or a “cowshed”.<sup>794</sup> W01679 described the room as made of stone, with a wooden floor, some hay and dampness and, to the best of his recollection, without windows.<sup>795</sup> The Panel observes that his testimony as regards the location of detention is corroborated by the evidence provided by W03593 and W03594.<sup>796</sup> W01679 further stated that the room where they were kept was locked with chains and that guards were stationed outside, so that detainees could not go out,<sup>797</sup> a detail which is corroborated by W03594 and W03593.<sup>798</sup>

392. When identifying photographically the relevant buildings of the ZDC,<sup>799</sup> W01679 stated: “[t]o my recollection, this is how it was. And it should be that place”; and added: “[i]t resembles a lot to the image I had in front of my eyes when I was released. The basement is down there and there’s this part when they would take us and bring us upstairs”.<sup>800</sup> The Panel is convinced that W01679’s account of the detention room and its surroundings is genuine as the witness testified clearly on this topic. Moreover, his evidence is mutually corroborated by W03593 and W04669, who identified the very same set of buildings within the ZDC as the detention location.<sup>801</sup>

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<sup>794</sup> **W01679**: T. 4 October 2021, public, p. 870, lines 6-7; p. 882, lines 18-19. W01679 added that the room where he was held was clearly a place where animals were kept, as he had “seen in the past such locations, places where cows were kept” (**W01679**: T. 4 October 2021, public, p. 919, lines 4-10).

<sup>795</sup> **W01679**: T. 4 October 2021, public, p. 882, lines 20-23; T. 5 October 2021, public, p. 982, line 10 to p. 983, line 2.

<sup>796</sup> See paras 415-416, 435-437.

<sup>797</sup> **W01679**: T. 4 October 2021, public, p. 919, lines 11-20.

<sup>798</sup> **W03594**: T. 12 October 2021, public, p. 1044, lines 18-22; **W03593**: T. 20 September 2021, public, p. 403, line 11; p. 405, line 20 to p. 406, line 1; p. 417, lines 20-21; p. 480, lines 6-7.

<sup>799</sup> See para. 364.

<sup>800</sup> **W01679**: T. 4 October 2021, public, p. 920, lines 5-12. The fact that detainees were brought upstairs is also corroborated by W03594: “I got out in the yards and we went upstairs. We took the stairs. It was on the left-hand side where the staircase was located. And then via the staircase, we went upstairs, in the second floor” (**W03594**: T. 12 October 2021, public, p. 1073, lines 5-8).

<sup>801</sup> See para. 364.

393. In light of the above, the Panel is satisfied that W01679 was detained at the ZDC.

(c) Presence and identification of co-detainees

394. Regarding the presence and identification of other co-detainees, W01679 reported that when taken to the barn, he found four people, whose names he learned by talking to them during captivity: “[REDACTED] [W03594], [REDACTED] [W03593], [REDACTED]”.<sup>802</sup> The Panel notes that the presence of these detainees is also corroborated by the List of Prisoners.<sup>803</sup> The Panel further notes that W01679 was able to identify two other detainees, namely “[REDACTED] [W04669] and someone they called [REDACTED] [...] [REDACTED]”.<sup>804</sup> While the List of Prisoners indicates that W03594 was arrested on [REDACTED] April 1999, thus making it impossible for W01679 to find him upon arrival at the barn, the Panel makes allowance for imprecisions in W01679’s recollection of events, given the time that has passed. In fact, the Panel considers that W01679 gave evidence on the individuals he remembered as his co-detainees at the ZDC during April 1999, which does not necessarily mean that all of them were already detained there when W01679 was deprived of his liberty. This imprecision by W01679 does not affect his credibility and reliability as to the recollection of his detention time and of the co-detainees at the ZDC during the timeframe of the charges, given the high level of detail provided by the witness in relation to himself and his co-detainees.

395. The Defence challenges the evidence of W01679, as well as that of W03593, W03594 and W04669, arguing that they contradicted each other, as they did not all identify the same set of detainees. Accordingly, the Defence submits that their evidence has no probative value.<sup>805</sup>

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<sup>802</sup> **W01679**: T. 4 October 2021, confidential, p. 889, lines 4-13.

<sup>803</sup> U001-0310-U001-0322-ET, p. U001-0310.

<sup>804</sup> **W01679**: T. 4 October 2021, confidential, p. 889, lines 24-25.

<sup>805</sup> T. 14 September 2022, confidential, p. 4698, line 8 to p. 4703, line 16.

396. Victims' Counsel responds that such differences are natural, considering that the witnesses testified on traumatic events which, moreover, took place over 20 years ago. Together with objective elements, such as the List of Prisoners, the victims' testimonies make one clear and authentic account.<sup>806</sup>

397. The Panel is of the view that any such differences in the identification of co-detainees – as is the case for the description of the ZDC – is the natural result of each witness's personal recollection of the traumatic events they experienced. From this perspective, these differences strengthen the credibility of each witness, rather than weakening it. Ultimately, the Panel considers that the identification evidence of the witnesses carries a high level of corroboration,<sup>807</sup> which is further reinforced when compared to documentary evidence on record, such as the List of Prisoners.

398. Regarding W01679, the Panel notes that, when identifying his co-detainees, the witness attempted to provide accurate information, even when he did not know the name, such as in the case of [REDACTED], by giving a description of that person ([REDACTED]), which adds to the credibility of W01679. The Panel further observes that on the issue of people being brought to the barn and then taken away, the witness stayed consistent with his previous SPO statement.<sup>808</sup> When questioned by the Panel, W01679 recounted that there were six people in the barn and that one person came later.<sup>809</sup>

399. The Panel considers that the level of detail in the information that W01679 provided about the other detainees is such that the witness could have only obtained this information through direct discussions, however brief, with the other detainees.

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<sup>806</sup> T. 15 September 2022, public, p. 4827, line 17 to p. 4828, line 12.

<sup>807</sup> W03593 identified the Murder Victim, [REDACTED], and W03594 (*see* para. 417). W03594 identified W03593, the Murder Victim and [REDACTED] (*see* para. 438). W04669 identified the Murder Victim (*see* para. 451).

<sup>808</sup> 060698-TR-ET Part 1 Revised RED3, p. 11, lines 14-16.

<sup>809</sup> **W01679**: T. 5 October 2021, public, p. 1006, lines 10-14.

The Panel observes that W01679 was able to provide further details as to the co-detainees, including on their behaviour, which enriches the witness's account and strengthens the Panel's impression that W01679 recalled facts from personal experience. To this effect, W01679 testified that the Murder Victim was tied "most of the times" and that he was held because he was considered a [REDACTED],<sup>810</sup> as corroborated by W03594's testimony.<sup>811</sup> According to W01679, W03594 told him at the time that he "[REDACTED]";<sup>812</sup> when he went to the soldiers [REDACTED], he was taken into custody and was accused of "[REDACTED]".<sup>813</sup> With regard to [REDACTED], W01679 admitted that he had heard from W03594 that "he [[REDACTED]] had come [REDACTED]. He had come to join the army. They had taken the [REDACTED] away from him".<sup>814</sup> W01679 also stated that during their captivity, [REDACTED] disclosed that he was considered "a spy".<sup>815</sup> W01679, moreover, testified that during the detention period he talked to W04669,<sup>816</sup> who was held for "[t]hree or four days"<sup>817</sup> and was "accused of being a collaborator of the Serbs".<sup>818</sup> Specifically, according to W01679, W04669 "[...] [REDACTED]. And that's why they accused him of being a collaborator".<sup>819</sup> W01679 confirmed that he had received the above information directly from W04669 during the time they were held

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<sup>810</sup> **W01679**: T. 4 October 2021, confidential, p. 892, lines 9-13; p. 892, line 19 to p. 893, line 5; T. 5 October 2021, public, p. 990, lines 13-19.

<sup>811</sup> **W03594**: T. 12 October 2021, confidential, p. 1049, lines 3-18.

<sup>812</sup> **W01679**: T. 4 October 2021, confidential, p. 893, lines 23-24. *See also* T. 5 October 2021, confidential, p. 992, lines 20-25.

<sup>813</sup> **W01679**: T. 4 October 2021, confidential, p. 894, lines 6-9; T. 5 October 2021, confidential, p. 992, line 20 to p. 993, line 2.

<sup>814</sup> **W01679**: T. 4 October 2021, confidential, p. 894, line 25 to p. 895, line 4.

<sup>815</sup> **W01679**: T. 4 October 2021, public, p. 895, line 5.

<sup>816</sup> W01679 knew W04669's first name from before and learned his last name during their detention together (**W01679**: T. 4 October 2021, confidential, p. 897, lines 4-5).

<sup>817</sup> **W01679**: T. 4 October 2021, public, p. 896, line 22.

<sup>818</sup> **W01679**: T. 4 October 2021, confidential, p. 896, line 23.

<sup>819</sup> **W01679**: T. 4 October 2021, confidential, p. 896, line 24 to p. 897, line 1.

together.<sup>820</sup> Lastly, about [REDACTED],<sup>821</sup> W01679 stated that “[he] was not only scared of them [KLA] but he was also scared of us. [REDACTED]. He would never speak to us”.<sup>822</sup> W01679’s identification of co-detainees is corroborated by the testimony of some of these detainees themselves, who confirmed being held in the same facilities of the ZDC in the course of April 1999.<sup>823</sup>

400. Overall, in the Panel’s estimation, W01679 testified clearly and with great detail. Notably, the witness remained consistent with his prior statement — when parts of it were put to him. His testimonial evidence on the presence of the Murder Victim, W03593, W03594, and [REDACTED] is further corroborated by the List of Prisoners; while the presence of [REDACTED] is corroborated by other co-detainees.<sup>824</sup> Regarding his co-detainees’ presence, description, and the alleged reasons for their detention, the Panel notes W01679’s (very unique) details, and his attempts to clearly distinguish between what he personally knew and what he was told by other detainees. This reinforces the Panel’s general impression that the witness intended to truthfully recount his personal experiences. The Panel thus considers that it can rely on W01679’s evidence concerning the presence and identification of the other six co-detainees.

401. In light of the above, the Panel is satisfied that W01679 was detained in the ZDC together with the above-mentioned detainees.

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<sup>820</sup> **W01679:** T. 4 October 2021, confidential, p. 897, lines 4-7.

<sup>821</sup> **W01679:** T. 4 October 2021, confidential, p. 889, line 24.

<sup>822</sup> **W01679:** T. 4 October 2021, confidential, p. 900, lines 8-17.

<sup>823</sup> See the Panel’s findings on the “Presence and Identification of Co-Detainees” in respect of W03593, W03594, and W04669.

<sup>824</sup> See paras 417, 438.

## (d) Circumstances of release

402. W01679 stated that he was held for [REDACTED].<sup>825</sup> On this point, the Defence challenges the SPO case, arguing that if W01679's calculation were correct and considering that, based on the List of Prisoners, he was arrested on [REDACTED] April 1999, he should have been released on 20 April 1999. At that time, according to the Defence, Ms Hadri and Ms Canolli-Kaciu were already treating wounded in the very same building where W01679 claims to have been detained, thus implying that the witness could not have been held captive there.<sup>826</sup>

403. The Panel notes that W01679 explained that he knew he was released on the [REDACTED] day of his detention based on the light he could see "between the slats of the door to the barn" and, accordingly, in the witness's words, "I could tell when it was day, and that's how I counted the days".<sup>827</sup> On the basis of the date of arrest recorded in the List of Prisoners [REDACTED] together with the witness's calculation that he was released on the [REDACTED] day, his release date would indeed fall on 20 April 1999, as submitted by the Defence. However, in light of other evidence on the record indicating unequivocally that some detainees, including W01679 himself, [REDACTED] on or around 19 April 1999<sup>828</sup> upon their release from the ZDC, a release date on 20 April 1999 does not appear to be totally accurate. The Panel considers, however, that W01679's recollection of his release and the explanation of how he

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<sup>825</sup> [REDACTED].

<sup>826</sup> T. 14 September 2022, public, p. 4710, lines 12-24. The Defence also challenges W01679's recollection of his release date based on his prior [REDACTED] statement (7000680-7000686). However, since the Defence relied upon an excerpt (p. 7000685) that was not submitted to the witness and thus is not available in evidence for consideration in the judgment, this challenge must be dismissed.

<sup>827</sup> **W01679**: T. 5 October 2021, public, p. 1007, lines 16-25.

<sup>828</sup> **W01679**: T. 4 October 2021, confidential, p. 910, lines 7-13 ("[REDACTED]"); **W03593**: T. 22 September 2021, confidential, p. 613, lines 8-14; **W03594**: T. 13 October 2021, confidential, p. 1145, lines 11-12; **W04648**: SPOE00128333-00128343, p. SPOE00128333; **W04391**: T. 23 November 2021, confidential, p. 1816, line 24 to p. 1818, line 10; **W04390**: T. 24 November 2021, confidential, p. 1865, line 21 to p. 1869, line 20.

counted the days are detailed, realistic and plausible. The Panel further considers that a discrepancy of less than 24 hours is minimal and irrelevant in the specific circumstances, in light of the otherwise clear and detailed evidence provided by W01679 and considering that 23 years have passed since the events at stake. In addition, the circumstances of W01679's release are corroborated by other witnesses, such as W03593 and W03594, who were suddenly freed at the same time as W01679.<sup>829</sup> In conclusion, the Panel considers that W01679 was released on or around 19 April 1999, which does not clash with the Defence assertion that Ms Hadri and Ms Canolli-Kaciu may have been treating patients in the same building where W01679 was detained on 20 April 1999.

404. The Panel further recalls that W01679 testified that two individuals, whom he identified [REDACTED], opened the door and simply let W01679 and two other detainees out.<sup>830</sup> [REDACTED].<sup>831</sup> W01679 straightforwardly stated that he was "absolutely positive" about his recognition of [REDACTED] due to his "distinctive features, his face, his body type and height" and added that [REDACTED] "had not changed much", [REDACTED].<sup>832</sup> The Panel considers W01679 fully credible on this point, as the witness could not have fabricated a specific information such as the nickname of one of the perpetrators, as according to W01679, he knew the perpetrators only by their nicknames, not by their real names.<sup>833</sup> The reaction of W01679 at the sight of [REDACTED] testifying in court, and the prompt action by W01679 [REDACTED], support the conclusion that W01679's identification of [REDACTED] – is highly credible. [REDACTED].<sup>834</sup> The Panel accordingly finds that [REDACTED] who released W01679.

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<sup>829</sup> See paras 419-426, 440-441.

<sup>830</sup> [REDACTED].

<sup>831</sup> **W01679**: 105371-105372 RED, para. 2.

<sup>832</sup> **W01679**: 105371-105372 RED, para. 5; T. 1 June 2022, confidential, p. 4444, line 7 to p. 4445, line 22.

<sup>833</sup> **W01679**: 105371-105372 RED, para. 2.

<sup>834</sup> [REDACTED].

405. Ultimately, the level of detail in W01679's recollection of the circumstances of his sudden release, as corroborated by other witnesses, is such that the credibility of the witness regarding his release date remains unaffected.

406. In light of the above, the Panel is satisfied that W01679 was released on or around 19 April 1999, along with other detainees.

(e) Lack of procedural guarantees

407. The Panel recalls that deprivation of liberty becomes arbitrary if and when at least one of the three basic guarantees — which must be afforded to all persons deprived of their liberty in an armed conflict — is denied by the detaining party. The detaining party has the obligation: (i) to inform any person deprived of his or her liberty of the reasons for such deprivation; (ii) to bring any person deprived of his or her liberty promptly before a judge or other competent authority; and (iii) to provide any person deprived of his or her liberty with an opportunity to challenge the lawfulness of detention.<sup>835</sup>

408. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, W01679 claimed that, once he was taken into custody, he was not shown any documents but was only told “[c]ome with us. The commander needs to ask you something”.<sup>836</sup> Similarly, with regard to the time of his release, W01679 stated that he was not provided with any proof or document of release and, when asking [REDACTED] the reason for his captivity, he was simply told [REDACTED].<sup>837</sup> The Panel finds W01679 credible on this point, as he clearly identified [REDACTED] as the person who released him, and with whom he conversed regarding the reason for his detention. The information provided is so unique and

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<sup>835</sup> See para. 648.

<sup>836</sup> **W01679**: T. 4 October 2021, public, p. 866, lines 17-18.

<sup>837</sup> [REDACTED].

personal that the Panel concludes that it came from the witness's own knowledge. The Panel discerns that W01679, similarly to W03593, W03594 and W04669,<sup>838</sup> was not shown any documentation and felt compelled to abide by what he was told. It finds it implausible that the witness testified incorrectly or purely coincidentally on this point, as all these witnesses provided corroborative testimony despite being arrested at different locations, times, and by different KLA units.

409. Further, the Panel has established in relation to other detainees that they were not brought before a judge or a prosecutor and did not have an opportunity to challenge the lawfulness of their detention.<sup>839</sup> The Panel has also established in relation to Counts 2 and 3 of the Confirmed Indictment that W01679 endured various forms of mistreatment while detained at the ZDC on account of supposedly being a spy, a liar and a thief.<sup>840</sup> Considering that all the detainees at the ZDC were kept in similar conditions of detention and that W01679 was subjected to severe mistreatment in detention, the Panel finds that the only reasonable conclusion based on the evidence as a whole is that he was not brought before a judge or other competent authority, nor was he provided with an opportunity to challenge the lawfulness of his detention.

410. In light of the above, the Panel is satisfied that W01679 was not informed of the reasons for his deprivation of liberty; was not brought promptly before a judge or other competent authority; and was not provided with an opportunity to challenge the lawfulness of his detention.

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<sup>838</sup> See paras 427, 442, 456.

<sup>839</sup> See paras 409, 444, and 483.

<sup>840</sup> See paras 534-545.

### 3. W03593

#### (a) Initial apprehension

411. Regarding the circumstances of his initial apprehension, W03593 testified that he was taken into custody in [REDACTED] by two persons, whom the witness qualified without hesitation as KLA military police officers, as they were in camouflage uniforms “usually worn by the KLA” and they had automatic weapons.<sup>841</sup> According to the witness, he did not have any other choice but to go with them because “[i]f I didn’t go with them, I would have been killed by them right there”.<sup>842</sup> The witness did not waver and confirmed this detail in cross-examination.<sup>843</sup> While the witness did not remember the month, he made an effort and provided an approximate timeframe for his detention, stating that “[i]t happened on the 4<sup>th</sup>. I remember it as a date. And I was in Zllash until the 18<sup>th</sup>. What I know is that I was there for 18 days”.<sup>844</sup>

412. The Defence objects to W03593’s testimony that he was arrested “on the 4<sup>th</sup>” without any additional detail, as it is too general and cannot be relied upon.<sup>845</sup> Relatedly, the Defence submits that even the List of Prisoners does not corroborate W03593’s account, since the document indicates that the witness was arrested on 2 April 1999.<sup>846</sup>

413. The Panel considers it appropriate to make allowance for imprecisions or inconsistencies with regard to time, place, and descriptions, if such imprecisions or inconsistencies do not affect the overall credibility or reliability of the witness and if

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<sup>841</sup> **W03593**: T. 20 September 2021, confidential, p. 395, lines 8-10; T. 20 September 2021, public, p. 396, lines 12-21; p. 397, line 6.

<sup>842</sup> **W03593**: T. 20 September 2021, public, p. 397, lines 20-22.

<sup>843</sup> **W03593**: T. 21 September 2021, public, p. 556, lines 8-20 (“[t]hey had the usual KLA uniforms” and they “introduced themselves as military police”).

<sup>844</sup> **W03593**: T. 20 September 2021, public, p. 394, lines 24-25.

<sup>845</sup> T. 14 September 2022, public, p. 4711, lines 8-17.

<sup>846</sup> T. 14 September 2022, public, p. 4711, line 23 to p. 4712, line 6.

they can be reconciled by the holistic evaluation of other evidence on record. In this specific case, the Panel considers that while the temporal reference provided by W03593 is slightly imprecise, this may be due to the considerable amount of time (23 years) since the traumatic events occurred, coupled with the advanced age of the witness at the time of his testimony.<sup>847</sup> The Panel is of the view that W03593 provided as many temporal references as he reasonably could, including an approximate beginning date, total duration and release date. The Panel regards this as an element of genuineness in W03593's testimony, despite the evident difficulty to be precise. The Panel also notes that the time period of W03593's arrest and detention in the course of April 1999 is corroborated by W01679 and W03594, who identified him as a co-detainee during that time. This fact is further confirmed by the List of Prisoners, according to which W03593 was arrested on 2 April 1999.<sup>848</sup> Under this light, the Panel considers that W03593's imprecise date for his deprivation of liberty does not have any bearing on the credibility or reliability of his evidence, as he was nonetheless detained within the timeframe of the charges.

414. In light of the foregoing, the Panel is satisfied that W03593 was deprived of his liberty on or around 2 April 1999, therefore within the timeframe of the charges.

(b) Detention location

415. Regarding the detention location, W03593 clarified that, [REDACTED], he knew that they were headed in the direction of Zllash/Zlaš, despite his head being covered during the journey.<sup>849</sup> The witness testified that, during his time in detention, he was locked in at least two different rooms within the same location, both resembling barns

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<sup>847</sup> In this regard, W03593 stated that during his time in Zllash/Zlaš he "was lost. I didn't know what was happening to us" (W03593: T. 20 September 2021, public, p. 481, lines 4-5). At the time of the testimony, W03593 [REDACTED] (W03593: T. 20 September 2021, confidential, p. 393, lines 23-24).

<sup>848</sup> U001-0310-U001-0322-ET, p. U001-0310. See also W03593: T. 20 September 2021, confidential, p. 393, line 21 to p. 394, line 1.

<sup>849</sup> W03593: T. 20 September 2021, public, p. 400, lines 24-25; p. 401, lines 2-6, 11-14.

for animals.<sup>850</sup> The Panel considers the witness's description of the detention location to be credible, as it is corroborated by W01679 and W03594, who also described the room where they were held as a "barn" or "cowshed".<sup>851</sup> As already established by the Panel, W03593 positively identified the ZDC as the detention location, along with W01679 and W04669.<sup>852</sup>

416. In light of the foregoing, the Panel is satisfied that W03593 was detained in at least two separate barns at the ZDC.

(c) Presence and identification of co-detainees

417. Regarding the presence and identification of co-detainees, the Panel finds that W03593 asserted that in one of the two barns where he was held there was another person whom he knew from before, [REDACTED], who recognised W03593 and called him by name.<sup>853</sup> The Panel considers that, by mentioning the name of another co-detainee who addressed the witness by name, W03593 added an otherwise unnecessary complication to this account, consistent with the recollection of someone who personally experienced the events. In addition, W03593 identified [REDACTED] and W03594 as two other co-detainees.<sup>854</sup> In the view of the Panel, W03593's evidence therefore corroborates W01679's account regarding the presence of the co-detainees W03594, [REDACTED], and the Murder Victim, confirming that they were all detained in the identified buildings within the ZDC.<sup>855</sup>

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<sup>850</sup> **W03593**: T. 20 September 2021, public, p. 403, lines 17; T. 20 September 2021, confidential, p. 417, lines 4-13.

<sup>851</sup> See paras 391, 435.

<sup>852</sup> See para. 364.

<sup>853</sup> **W03593**: T. 20 September 2021, confidential, p. 403, line 20 to p. 404, line 5.

<sup>854</sup> **W03593**: T. 20 September 2021, confidential, p. 444, line 17 to p. 445, line 20; p. 452, line 19 to p. 453, line 16.

<sup>855</sup> **W03593**: T. 20 September 2021, confidential, p. 445, lines 16-20; **W01679**: T. 4 October 2021, confidential, p. 889, line 24 ([REDACTED]). **W03593**: T. 20 September 2021, confidential, p. 452, line 19 to p. 453, line 16; **W01679**: T. 4 October 2021, confidential, p. 893, lines 21-24 (for W03594). **W03593**: T.

418. Considering the mutual identification of the co-detainees when taking the evidence of W03593, W01679, W03594 and W04669 as a whole, the Panel is satisfied that W03593 was detained at the ZDC as the above-mentioned detainees.

(d) Circumstances of release

419. Regarding his release, W03593 testified that he remained in Zllash/Zlaš for a total of 18 days.<sup>856</sup> At the same time, however, the Panel notes that he stated that he was released on the 18<sup>th</sup> of the month, linking such release to the Serbian offensive.<sup>857</sup>

420. The Defence challenges the veracity of W03593's account on the basis that a calculation of the days spent in detention would point at a release date on 22 April 1999, while the offensive began on 18 April 1999.<sup>858</sup>

421. The Panel considers that the same considerations made in relation to the timeframe of W03593's initial apprehension apply to the circumstances of his release. Accordingly, the Panel makes allowance for such imprecision, which may be due to the passing of time since the traumatic events occurred, coupled with the advanced age of the witness at the time of his testimony.

422. In any event, under the specific circumstances of his testimony, the Panel considers that his deprivation of liberty at the ZDC during the timeframe of the charges, as well as his release time, are sufficiently set in time in light of other evidence on the record, considered altogether. First, the Panel notes that W03593 added further elements when describing his release, such as that a man in uniform opened the door, called some detainees by name, including the witness, and said " "[y]ou can go

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21 September 2021, public, p. 510, lines 1-8; **W01679**: T. 4 October 2021, confidential, p. 892, lines 9-13; p. 892, line 19 to p. 893, line 5 (for the Murder Victim).

<sup>856</sup> **W03593**: T. 20 September 2021, public, p. 418, lines 20-23.

<sup>857</sup> **W03593**: T. 20 September 2021, public, p. 418, line 25 to p. 419, line 2.

<sup>858</sup> T. 14 September 2022, public, p. 4713, lines 9-20.

whenever you want. You are free".<sup>859</sup> The sudden release of W03593, without any particular procedure or explanation, is also in line with the evidence of W01679 (who was released together with W03593 on or around 19 April 1999), thereby corroborating each other.<sup>860</sup>

423. Second, the Panel also notes, in this respect, that due to the Serbian offensive, the ZDC was evacuated,<sup>861</sup> which further supports the decision to suddenly release the detainees.

424. Third, as a further confirmation of the sudden release of these detainees on or around 19 April 1999, the Panel observes that in the List of Prisoners, the last column on the right records the date of release of the prisoners. While dates of release are annotated in relation to detainees who were freed on 9, 14, 15 and 17 April, no release date is listed for prisoners who were released after 17 April 1999, including W03593, W03594, and W01679. This demonstrates, in the view of the Panel, that BIA members who were filling in the List of Prisoners, did not have the time to record the release of detainees such as W01679, W03593, and W03594, exactly because a decision to release them was taken suddenly, due to the incoming Serbian offensive. Accordingly, the Panel finds that by linking the termination of his detention to an event such as the Serbian offensive, and by adding further details in line with W01679's evidence, W03593 demonstrated his ability to stay true to the event which, according to him, justified his release.

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<sup>859</sup> **W03593**: T. 20 September 2021, public, p. 481, line 15 to p. 482, line 11.

<sup>860</sup> **W01679**: T. 4 October 2021, confidential, p. 904, line 1 to p. 905, line 3.

<sup>861</sup> For the Panel's findings on the Serbian offensive *see* paras 625-638.

425. Fourth, a release date on or around 19 April 1999 is also compatible with the fact that W03593 [REDACTED],<sup>862</sup> as mentioned by the witness himself both during direct and cross-examination.<sup>863</sup>

426. In light of the above, the Panel is satisfied that W03593 was released on or around 19 April 1999, along with other detainees.

(e) Lack of procedural guarantees

427. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, according to W03593, when taken into custody, he was not provided with any document and he had no choice but to go with the KLA military police officers, otherwise he “would have been killed by them right there”.<sup>864</sup> In this regard, the Panel further notes that the arresting officers were armed,<sup>865</sup> which indicates, in the Panel’s view, an element of coercion and potential threat to the witness’s physical integrity in case of non-compliance. This is further demonstrated by W03593’s testimony that while heading to Zllash/Zlaš in the car, he was punched in the face and, thereafter, they put a bag over his head and kicked him.<sup>866</sup> Likewise, at the time of his release, the Panel notes that W03593 testified that he was not provided with any reason or documentation attesting to the release but was simply told that he could leave.<sup>867</sup> The Panel discerns that W03593, similarly to W01679,

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<sup>862</sup> **W01679**: T. 4 October 2021, confidential, p. 910, lines 7-13 (“[REDACTED]”); **W03593**: T. 22 September 2021, confidential, p. 613, lines 8-14; **W03594**: T. 13 October 2021, confidential, p. 1145, lines 11-12; **W04648**: SPOE00128333-00128343, p. SPOE00128333; **W04391**: T. 23 November 2021, confidential, p. 1817, line 4 to p. 1818, line 10; **W04390**: T. 24 November 2021, confidential, p. 1865, line 21 to p. 1869, lines 15-20.

<sup>863</sup> **W03593**: T. 20 September 2021, confidential, p. 486, line 22 to p. 487, line 2; the witness confirmed having been [REDACTED] during cross-examination by the Defence (p. 613, lines 8-14).

<sup>864</sup> **W03593**: T. 20 September 2021, public, p. 397, lines 13-22

<sup>865</sup> **W03593**: T. 20 September 2021, public, p. 397, line 6.

<sup>866</sup> **W03593**: T. 21 September 2021, public, p. 557, lines 7-9; p. 558, lines 7-10, 16-18.

<sup>867</sup> **W03593**: T. 20 September 2021, confidential, p. 484, lines 14-24.

W03594 and W04669,<sup>868</sup> was not shown any documentation and felt compelled to abide by what he was told to do. The Panel finds it implausible that W03593 testified incorrectly or purely coincidentally on this point, as all these witnesses provided corroborative testimony despite being arrested at different locations, times, and by different KLA units.

428. Regarding the obligation to bring a person deprived of his liberty promptly before a judge or other competent authority and the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of the detention, the Panel notes that during the time he was held at the ZDC, W03593 was not brought before a judge or a prosecutor.<sup>869</sup> He also testified that he did not have access to his family or to the outside world.<sup>870</sup> The Panel infers from the testimony of W03593, including the conditions of arrest and detention and the lack of contact with anyone outside of the ZDC, that W03593 was also not provided with an opportunity to challenge the lawfulness of his detention.

429. In light of the above, considering that all the detainees at the ZDC were kept in similar conditions of detention and that W03593 was subjected to severe mistreatment in detention, the Panel is satisfied that W03593 was not informed of the reasons for his deprivation of liberty; was not brought promptly before a judge or other competent authority; and was not provided with an opportunity to challenge the lawfulness of his detention.

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<sup>868</sup> See the Panel's findings on the "Lack of Procedural Guarantees" in relation to W01679, W03594, and W04669.

<sup>869</sup> **W03593**: T. 21 September 2021, public, p. 510, lines 9-11.

<sup>870</sup> **W03593**: T. 20 September 2021, public, p. 480, line 22 to p. 481, line 1.

#### 4. W03594

##### (a) Initial apprehension

430. W03594 stated that on [REDACTED] April, in [REDACTED], three KLA members in uniform told him “[REDACTED]”,<sup>871</sup> at which point W03594 got into a Niva car with them, having no idea where they were going.<sup>872</sup> [REDACTED].<sup>873</sup>

431. The Defence submits that the SPO changed its case, as in its Pre-Trial Brief it alleged that W03594 was arrested, while in its SPO Final Trial Brief it contends that W03594 went of his own free will with the people who looked for him.<sup>874</sup>

432. The Panel recalls that, pursuant to Articles 38(4) and 39(2) of the Law, the charges are laid down in the Confirmed Indictment, as submitted by the SPO and confirmed by the Pre-Trial Judge. To the contrary, the Pre-Trial Brief and Final Trial Brief are documents in which the Parties have the opportunity to elaborate upon their case, for the benefit of each other and for the benefit of the Panel. Therefore, whether the SPO changed its pleading between the Pre-Trial Brief and the Final Trial Brief is irrelevant to the determination of the charge of arbitrary detention (Count 1), which is that at least six persons were arbitrarily deprived of their liberty at the ZDC, between approximately 1 April 1999 and 19 April 1999, as set out in the Confirmed Indictment.<sup>875</sup> In this vein, it is also immaterial whether a victim went voluntarily or not with KLA members, or whether he was arrested in the proper meaning of the word, provided that he was subsequently arbitrarily detained at the ZDC.

433. Regarding the date of W03594’s initial apprehension, the Panel notes a small discrepancy of 24 hours between the witness’s in-court testimony and the List of

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<sup>871</sup> W03594: T. 12 October 2021, confidential, p. 1035, line 23 to p. 1036, line 2.

<sup>872</sup> W03594: T. 12 October 2021, confidential, p. 1036, lines 11-13.

<sup>873</sup> W03594: T. 12 October 2021, confidential, p. 1035, lines 3-5; p. 1036, lines 14-17. [REDACTED].

<sup>874</sup> T. 14 September 2022, public, p. 4713, lines 21-25.

<sup>875</sup> [Confirmed Indictment](#), para. 18.

Prisoners, [REDACTED].<sup>876</sup> The Panel is of the view that such minor discrepancy does not have any impact on the witness's credibility on this point, as it may be due to the passing of time resulting in the witness's memory fading with regard to this specific detail. The vast and consistent amount of (corroborating) testimonial and documentary evidence indicating that W03594 was deprived of his liberty at the ZDC is sufficient to render such inconsistency irrelevant upon a holistic review of the body of evidence. In this vein, the Panel reiterates that in so far as it is satisfied that W03594 was deprived of his liberty within the temporal framework of the charges, the precise day in which he was taken to the ZDC is irrelevant.

434. In light of the evidence taken as a whole, the Panel is satisfied that W03594 was deprived of his liberty on or around [REDACTED] April 1999, therefore within the timeframe of the charges.

(b) Detention location

435. The Panel notes that, according to the witness, upon transfer he was handed over in Zllash/Zlaš to two other individuals, with masks, who took the witness to a barn for animals,<sup>877</sup> an account which is consistent with the evidence of W01679, W03593, and W04669. Importantly, the Panel finds that W03594's presence in the barn is also confirmed by W01679 and W03593.<sup>878</sup> As articulated by W01679, W03594 also testified that the detainees were not allowed to go outside of the barn or to walk away at their discretion.<sup>879</sup>

436. The witness then confirmed his previous statement to the SPO, according to which, once in Zllash/Zlaš, he was taken to an office upstairs and was questioned by

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<sup>876</sup> U001-0310-U001-0325, p. U001-0310. *See also* **W03594**: T. 12 October 2021, confidential, p. 1032, lines 12-16.

<sup>877</sup> **W03594**: T. 12 October 2021, confidential, p. 1037, lines 16-23.

<sup>878</sup> *See* paras 394, 417.

<sup>879</sup> **W03594**: T. 12 October 2021, public, p. 1044, lines 18-22.

unidentified persons, [REDACTED].<sup>880</sup> The persons present in the room, who were wearing uniforms, openly admitted to the witness that “[t]here has been a mistake. You will be released soon”,<sup>881</sup> thus confirming, in the Panel’s assessment, that W03594 was in fact deprived of his liberty at that stage. Considering that his deprivation of liberty is further attested by the List of Prisoners, and that W03594 identified certain co-detainees, the Panel finds that the witness is credible in his assertion that he was detained by KLA members in the barn at the ZDC.

437. In light of the above, the Panel is satisfied that W03594 was detained at the ZDC.

(c) Presence and identification of co-detainees

438. The Panel notes that W03594 stated that he was held in the same room with four other persons,<sup>882</sup> including two persons whom W03594 recalled by first name: [REDACTED],<sup>883</sup> and another whom the witness identified as [REDACTED].<sup>884</sup> W03594 added that around 7-8 days after he was taken there, another person was brought in,<sup>885</sup> bringing the total to six persons in that same room.<sup>886</sup> The Panel finds that the identification of these detainees by W03594 is in line with the account given by W01679 and W03593, thereby corroborating each other<sup>887</sup> and rendering their accounts more credible, as it would be unrealistic to conclude that they all fabricated

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<sup>880</sup> 061016-TR-ET, Part 2, p. 8, lines 7-14; **W03594**: T. 12 October 2021, confidential, p. 1082, line 23 to p. 1083, line 7.

<sup>881</sup> **W03594**: T. 12 October 2021, confidential, p. 1084, lines 14-21.

<sup>882</sup> **W03594**: T. 12 October 2021, public, p. 1040, lines 3-4.

<sup>883</sup> **W03594**: T. 12 October 2021, confidential, p. 1046, lines 18-24; p. 1047, line 19 to p. 1050, line 23; 061016-TR-ET, Part 1, p. 21, lines 17-21; p. 22, lines 6-8. The witness then identified [REDACTED] (W03593) (**W03594**: T. 12 October 2021, confidential, p. 1048, lines 4-19; *see also* p. 1079, lines 2-13).

<sup>884</sup> **W03594**: T. 13 October 2021, confidential, p. 1187, lines 7-10.

<sup>885</sup> **W03594**: T. 12 October 2021, public, p. 1046, lines 10-13.

<sup>886</sup> **W03594**: T. 13 October 2021, public, p. 1186, lines 7-9.

<sup>887</sup> *See* paras 394-401, 417-418.

evidence concerning each other's presence in the same detention location and at the same time.

439. In light of the above, the Panel is satisfied that W03594 was detained at the ZDC together with the above-mentioned detainees.

(d) Circumstances of release

440. The Panel notes that W03594 stated that he was held in Zllash/Zlaš until 19 April,<sup>888</sup> which is consistent with the timeframe of W01679 and W03593 regarding their own release. As the evidence indicates that these detainees were held together at the ZDC, the Panel considers W03594's recollection of his release time overall credible. In addition, W03594's release on or around 19 April 1999 is corroborated [REDACTED].<sup>889</sup>

441. Accordingly, the Panel is satisfied that W03594 was released on or around 19 April 1999, along with other detainees.

(e) Lack of procedural guarantees

442. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation — consistent with the evidence of W01679 and W03593 — W03594 also stated that he was not provided with any reason or ground for his deprivation of liberty.<sup>890</sup> Since the evidence of these witnesses, taken together, establishes a pattern whereby detainees at the ZDC were not afforded the basic procedural guarantees, the Panel considers the account of W03594 to be credible and therefore relies on his evidence.

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<sup>888</sup> W03594: T. 12 October 2021, public, p. 1040, lines 19-21.

<sup>889</sup> [REDACTED].

<sup>890</sup> W03594: T. 12 October 2021, public, p. 1076, lines 1-4; T. 13 October 2021, confidential, p. 1211, lines 14-21.

443. Further, the Panel has established in relation to other detainees that they were not brought before a judge or a prosecutor and did not have an opportunity to challenge the lawfulness of their detention.<sup>891</sup> The Panel has also established in relation to Counts 2 and 3 of the Confirmed Indictment that W03594 was severely mistreated while detained at the ZDC.<sup>892</sup> Considering that all the detainees at the ZDC were kept in similar conditions of detention and that W03594 was subjected to severe mistreatment in detention, the Panel finds that the only reasonable conclusion based on the evidence as a whole is that he was not brought before a judge or other competent authority, nor was he provided with an opportunity to challenge the lawfulness of his detention.

444. In light of the above, the Panel is satisfied that W03594 was not informed of the reasons for his deprivation of liberty; was not brought promptly before a judge or other competent authority; and was not provided with an opportunity to challenge the lawfulness of his detention.

## 5. W04669

### (a) Initial apprehension

445. Regarding his initial apprehension, W04669 testified that he was taken into custody in the village of [REDACTED], on his way to Zllash/Zlaš, by some guards manning a checkpoint.<sup>893</sup> According to the witness, those guards then contacted [REDACTED].<sup>894</sup> During his testimony in court, W04669 identified [REDACTED].<sup>895</sup>

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<sup>891</sup> See paras 409, 428, and 483.

<sup>892</sup> See paras 557-566.

<sup>893</sup> **W04669**: T. 10 November 2021, confidential, p. 1410, lines 14-24.

<sup>894</sup> **W04669**: T. 10 November 2021, confidential, p. 1410, line 25 to p. 1411, line 1.

<sup>895</sup> **W04669**: T. 10 November 2021, confidential, p. 1412, line 13. [REDACTED].

[REDACTED],<sup>896</sup> the Panel considers that W04669 was taken into custody by a KLA unit. W04669 further testified that [REDACTED] told him to get into the car, that he had a Kalashnikov in the car and that he told him: “[n]ow I’m telling you what will happen” and then he took him to Zllash/Zlaš.<sup>897</sup>

446. As to the date of his initial apprehension, W04669 was unable to provide a precise timeframe. However, the Panel notes that W04669 volunteered additional explanatory details every time he attempted to provide a timeframe for his deprivation of liberty. Notably, he testified that: (i) he was deprived of his liberty for “at least four days, up to a week”;<sup>898</sup> (ii) he was interrogated and mistreated “on the second or third day [of his detention]”;<sup>899</sup> (iii) two or three days later he was released;<sup>900</sup> and (iv) when the Serbian offensive reached W04669’s village ([REDACTED]),<sup>901</sup> he had already been released for three or four days.<sup>902</sup> Considering that the evidence indicates that the Serbian offensive against the villages in the Gollak area took place between approximately 16 April and 22 April 1999,<sup>903</sup> the Panel assesses that W04669 was deprived of his liberty some days before the mid-April 1999.

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<sup>896</sup> [REDACTED].

<sup>897</sup> **W04669**: T. 10 November 2021, public, p. 1411, lines 10-15.

<sup>898</sup> **W04669**: T. 10 November 2021, public, p. 1449, lines 8-9. The witness added “I’m telling you the minimum and maximum length of time that [...] I personally stayed there” (**W04669**: T. 10 November 2021, public, p. 1449, lines 10-12).

<sup>899</sup> **W04669**: T. 10 November 2021, public, p. 1449, lines 15-19. The witness added that it was “[s]omewhere in the middle of the maximum length of time [...] spent in there” (**W04669**: T. 10 November 2021, public, p. 1449, lines 19-22).

<sup>900</sup> **W04669**: T. 10 November 2021, public, p. 1450, lines 8-9. The witness added some further explanation by stating “[b]efore me, they released another person. The one that I had mentioned earlier, the tall one. And after me, the older person remained. I don’t know when they released him” (**W04669**: T. 10 November 2021, public, p. 1450, lines 10-12).

<sup>901</sup> **W04669**: T. 10 November 2021, confidential, p. 1390, line 6.

<sup>902</sup> **W04669**: T. 10 November 2021, public, p. 1457, line 21 to p. 1458, line 1. The witness added a number of details about the incoming offensive as he witnessed it [REDACTED], including that he recognised Serbian forces from the white eagle on their arms, that he was shot at, and that his house saw a large influx of people trying to go to Prishtinë/Priština (**W04669**: T. 10 November 2021, confidential, p. 1458, line 1 to p. 1459, line 22).

<sup>903</sup> See paras 625-628.

447. The Panel further notes that W04669 provided specific and unique details about his transfer from [REDACTED] to the ZDC. In particular, W04669 testified that [REDACTED], and that he was wearing a military uniform and carrying a Kalashnikov.<sup>904</sup> At that point, according to W04669, [REDACTED] asked the witness [REDACTED].<sup>905</sup> W04669 added that “this person [[REDACTED]] sent me to Zllash. I had no idea that there was a detention centre anywhere there in Zllash”.<sup>906</sup> The Panel considers that such specific details, expressed by the witness in a clear and concise manner, could only originate from W04669’s personal recollection of the events, which the Panel assesses as genuine. In addition, the Panel notes that [REDACTED].<sup>907</sup> This detail, in the Panel’s assessment, indicates corroboration to the extent that one of the tasks of [REDACTED] was to transfer persons deprived of their liberty to the ZDC, thus confirming that W04669 was in fact taken there.

448. In light of the foregoing, the Panel is satisfied that W04669 was deprived of his liberty some days before mid-April 1999, thus within the timeframe of the charges.

(b) Detention location

449. The witness asserted that once at the detention location, he was handed over to a guard, who brought him into a barn.<sup>908</sup> Consistent with the evidence of W01679, W03593 and W03594, W04669 stated that the barn where he was held looked like a stable, with walls made of wood, hay and mud, with some openings through which it was possible to see outside; it was dark inside and there may have been a window, but it was closed and the light could not come in, he stated.<sup>909</sup> W04669 further stated

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<sup>904</sup> **W04669**: T. 10 November 2021, confidential, p. 1411, lines 3-13. [REDACTED].

<sup>905</sup> [REDACTED].

<sup>906</sup> **W04669**: T. 10 November 2021, public, p. 1411, lines 15-16.

<sup>907</sup> See paras 445-447.

<sup>908</sup> **W04669**: T. 10 November 2021, public, p. 1411, line 21 to p. 1412, line 1.

<sup>909</sup> **W04669**: T. 10 November 2021, public, p. 1430, lines 4-19; T. 11 November 2021, public, p. 1532, lines 13-22.

that the stable was locked and the entrance was guarded,<sup>910</sup> which corroborates the testimonial evidence of W01679 and W03593 and is akin to the evidence of W03594, according to whom the detainees could not go out of the barn in which they were imprisoned.<sup>911</sup> Consistent with the testimony of W01679 and W03593, W04669 identified the set of buildings at the ZDC where he was held.<sup>912</sup> W04669 described “two or three buildings very close to each other, almost attached to one another”.<sup>913</sup> The Panel reiterates that determining the specific building in which each detainee was held is irrelevant, provided that the Panel is satisfied that the victims were detained in the set of buildings identified as being part of the ZDC.

450. In light of the above, the Panel is satisfied that W04669 was detained at the ZDC.

(c) Presence and identification of co-detainees

451. W04669 testified that he saw two other unknown persons in the barn. [REDACTED].<sup>914</sup> The Panel notes that W04669 unambiguously identified in court the Murder Victim as being present, on two different moments, in the same stable as the witness, although he (the Murder Victim) was not kept there for a long time.<sup>915</sup> W04669 specified that the Murder Victim had his hands tied with a wire,<sup>916</sup> which is a peculiar detail, also corroborated by W01679 and W03593.<sup>917</sup> W04669 also stated in court, twice, that the Murder Victim was held because [REDACTED],<sup>918</sup> another particular detail

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<sup>910</sup> **W04669**: T. 10 November 2021, public, p. 1468, lines 17-19.

<sup>911</sup> **W03594**: T. 12 October 2021, public, p. 1044, lines 18-22.

<sup>912</sup> See para. 357. **W04669**: T. 10 November 2021, public, p. 1470, line 24 to p. 1472, line 6; 082020-082023, p. 082022 (W04669 identified the first building on the left-hand side of the photograph).

<sup>913</sup> **W04669**: T. 11 November 2021, public, p. 1543, lines 1-2.

<sup>914</sup> **W04669**: T. 10 November 2021, confidential, p. 1417, lines 21-22; p. 1418, line 20.

<sup>915</sup> **W04669**: T. 10 November 2021, p. 1440, lines 3-24.

<sup>916</sup> **W04669**: T. 10 November 2021, confidential, p. 1431, line 21 to p. 1432, line 3; p. 1441, lines 14-20; T. 10 November 2021, public, p. 1434, lines 5-6; p. 1440, lines 1-21;

<sup>917</sup> See paras 399, 569.

<sup>918</sup> **W04669**: T. 10 November 2021, public, p. 1438, lines 7-17; T. 11 November 2021, confidential, p. 1564, lines 19-23.

which is corroborated by both W01679<sup>919</sup> and W04674.<sup>920</sup> The Panel recalls that it has already established that W01679, W03593, and W03594 were detained at the ZDC at the same time as the Murder Victim, within the timeframe of the charges, and that they identified the latter as a co-detainee.<sup>921</sup> The Panel has further established that W04669 was equally detained at the ZDC within the timeframe of the charges.<sup>922</sup> Taking into consideration that W04669 has also identified the Murder Victim as a co-detainee — including by describing details that are corroborated by other witnesses — the Panel finds that W04669 was detained at the ZDC at overlapping times with W01679, W03593, W03594, and the Murder Victim. From this point of view, the imprecise temporal framework regarding his deprivation of liberty is irrelevant, as the mutual identification of the Murder Victim by W01679, W03593, W03594, and W04669 demonstrates that W04669 was also detained in the same set of identified buildings at the ZDC within the temporal scope of the Confirmed Indictment. It is implausible to assume that all these witnesses would have fabricated the very same corroborating evidence, including details concerning detainees, or would have testified purely coincidentally on these matters.

452. In light of the above, the Panel is satisfied that W04669 was detained at the ZDC as W01679, W03593, W03594, and the Murder Victim.

(d) Circumstances of release

453. The Panel recalls that it has established that W04669 was deprived of his liberty some days before the mid-April 1999, and W04669 testified in court that he was released a few days before the Serbian forces entered his village.<sup>923</sup> Considering that the witness testified that he was held for as long as four days to a week, the Panel

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<sup>919</sup> **W01679**: T. 4 October 2021, public, p. 892, line 25 to p. 893, line 5.

<sup>920</sup> **W04674**: T. 13 December 2021, confidential, p. 1978, lines 12-20;

<sup>921</sup> See paras 394, 399, 417, 438.

<sup>922</sup> See paras 449-450.

<sup>923</sup> **W04669**: T. 10 November 2021, public, p. 1457, line 24.

considers that he was detained at the ZDC until approximately mid-April 1999. In any event, the Panel stresses that the precise date of release (or initial apprehension for that matter) is immaterial to the determination of the charges, provided that the Panel is satisfied that such dates fall within the temporal framework of the Confirmed Indictment, as they do in respect of W04669.

454. The Panel considers that by using the Serbian offensive against his village as a reference point, and calculating a possible timeframe for release based on this event, W04669 demonstrated his ability to genuinely state the circumstances surrounding his release, even in the absence of a more precise temporal recollection.

455. In light of the above, the Panel has no reason to doubt the veracity of W04669's statement with regard to his release. Accordingly, the Panel is satisfied that W04669 was released approximately mid-April 1999, within the timeframe of the charges.

(e) Lack of procedural guarantees

456. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, the witness asserted that during his transfer to Zllash/Zlaš, [REDACTED], who was wearing a military uniform and carrying a Kalashnikov,<sup>924</sup> did not tell W04669 why he was being taken away.<sup>925</sup> While W04669 testified he did not feel threatened at that stage, the Panel notes that once in Zllash/Zlaš, the witness was handed over to a guard.<sup>926</sup> This is in line with other evidence before the Panel, according to which the detainees were taken into custody without being given any particular reason or documentation.<sup>927</sup> By the same token, the Panel finds that the witness was not provided with any documentation attesting to his

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<sup>924</sup> See para. 447.

<sup>925</sup> **W04669**: T. 10 November 2021, public, p. 1414, line 25 to p. 1415, line 15.

<sup>926</sup> See para. 449.

<sup>927</sup> See the Panel's findings on the "Lack of Procedural Guarantees" in relation to W01679, W03593, and W03594.

detention, either during his time at the ZDC or upon release.<sup>928</sup> This is again consistent with the lack of information, grounds and reasons for deprivation of liberty experienced by W01679, W03593, and W03594. Accordingly, in light of the corroborating evidence establishing a pattern of lack of guarantees for detainees held at the ZDC, the Panel finds the account of W04669 in this regard credible.

457. Further, the Panel has established in relation to other detainees that they were not brought before a judge or a prosecutor and did not have an opportunity to challenge the lawfulness of their detention.<sup>929</sup> W04669 testified that he did not have any access to his family or to the outside world.<sup>930</sup> The Panel has also established in relation to Counts 2 and 3 of the Confirmed Indictment that W04669 was severely mistreated while detained at the ZDC for supposedly collaborating with Serbs and being a spy and a liar.<sup>931</sup> Considering that all the detainees at the ZDC were kept in similar conditions of detention, that W04669 did not have any contact with anyone outside of the ZDC, and that he was subjected to severe mistreatment while detained, the Panel finds that the only reasonable conclusion based on the evidence as a whole is that W04669 was not brought before a judge or other competent authority, nor was he provided with an opportunity to challenge the lawfulness of his detention.

458. In light of the above, the Panel is satisfied that W04669 was not informed of the reasons for his deprivation of liberty; was not brought promptly before a judge or other competent authority; and was not provided with an opportunity to challenge the lawfulness of his detention.

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<sup>928</sup> **W04669**: T. 10 November 2021, public, p. 1456, lines 17-25.

<sup>929</sup> See paras 409, 428, 444, 483.

<sup>930</sup> **W04469**: T. 10 November 2021, public, p. 1467, line 12 to p. 1468, line 6.

<sup>931</sup> See paras 567-568.

## 6. The Murder Victim

### (a) Initial apprehension

459. The Panel notes that [REDACTED] provided [REDACTED] corroborating evidence regarding the apprehension and subsequent transfer of the Murder Victim to the ZDC, [REDACTED],<sup>932</sup> [REDACTED],<sup>933</sup> [REDACTED].<sup>934</sup> This account was confirmed and specified, in its relevant parts, [REDACTED],<sup>935</sup> [REDACTED],<sup>936</sup> [REDACTED].<sup>937</sup>

460. W04391 corroborated [REDACTED] evidence about the existence of an order to arrest the Murder Victim. W04391 testified that when he met [REDACTED] to “inquire about [...] [REDACTED]”, he asked [REDACTED] “to show [...] an arrest warrant” and [REDACTED] replied that “it was an order”.<sup>938</sup> [REDACTED],<sup>939</sup> [REDACTED].

461. Further, the Panel considers that the evidence provided by some [REDACTED] corroborates the circumstances surrounding the initial apprehension of the Murder Victim, as recounted [REDACTED]. In this vein, the Panel notes that W04391 provided direct evidence identifying [REDACTED], providing unique details — which W04391 confirmed during cross-examination. Specifically, that they [REDACTED].<sup>940</sup> These unique details render his account even more credible. In addition, W04390 provided hearsay evidence confirming W04391’s account, as she learned the circumstances of the Murder Victim’s apprehension from [REDACTED].<sup>941</sup>

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<sup>932</sup> [REDACTED].

<sup>933</sup> [REDACTED].

<sup>934</sup> [REDACTED].

<sup>935</sup> [REDACTED].

<sup>936</sup> [REDACTED].

<sup>937</sup> [REDACTED].

<sup>938</sup> **W04391**: T. 22 November 2021, public, p. 1737, lines 10-22.

<sup>939</sup> [REDACTED].

<sup>940</sup> [REDACTED].

<sup>941</sup> **W04390**: T. 24 November 2021, confidential, p. 1861, line 6 to p. 1865, line 17.

462. Given the ample set of corroborating evidence, [REDACTED], the Panel has no doubt about the credibility and accuracy of their overall recollection in this regard. In particular, the Panel underlines that [REDACTED] provided clear and consistent evidence despite the highly incriminating nature of such information. This adds to their credibility.

463. [REDACTED].<sup>942</sup> On this point, however, the Panel notes a contradiction with the account given by [REDACTED].<sup>943</sup> [REDACTED].<sup>944</sup> However, the circumstances described by [REDACTED] are still largely compatible with the pattern of apprehensions described by other witnesses, who faced armed KLA members, thus feeling compelled to comply.

464. That being said, the Panel ultimately does not attach much weight to this discrepancy in so far as it is not relevant to the charge of arbitrary detention under Count 1 of the Confirmed Indictment, which occurred at the ZDC. Further, similar to [REDACTED]'s circumstances, the fact that a person may not have posed resistance when taken into custody, does not detract from the fact that he was thereafter arbitrarily detained, taking into consideration the conditions to which the detainees were subject at the ZDC, *i.e.* locked in a barn, guarded, and lacking some or all basic procedural guarantees required to be afforded to detainees. In addition, [REDACTED] does not alter the sequence of events underpinning his subsequent transfer to the ZDC, which remains clear and consistent in light of the totality of the evidence provided by [REDACTED], as discussed below.

465. While the Panel notes that [REDACTED] was unable to provide a specific date [REDACTED], he firmly asserted in court that it was in April 1999,<sup>945</sup> which was

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<sup>942</sup> [REDACTED].

<sup>943</sup> [REDACTED].

<sup>944</sup> [REDACTED]

<sup>945</sup> [REDACTED].

corroborated [REDACTED].<sup>946</sup> In this regard, the Panel finds [REDACTED] evidence to be consistent with the evidence provided by other detainees who, upon imprisonment at the ZDC in [REDACTED] April 1999, already found the Murder Victim held at that location.<sup>947</sup> Importantly, these testimonial accounts are corroborated by the List of Prisoners, which records the full name, date and place of birth of the Murder Victim and indicates that he was arrested on [REDACTED] April 1999.<sup>948</sup> The Panel notes that the same date ([REDACTED] April 1999) is also reported in an [REDACTED] related to the arrest, detention and death of the Murder Victim,<sup>949</sup> [REDACTED].

466. The Panel observes that the only contradictory evidence is double hear-say provided by W04390, who stated that the Murder Victim [REDACTED], before being transferred to Zllash/Zlaš.<sup>950</sup> In addition, in one of his statements, W04648 stated that the Murder Victim was taken away on [REDACTED] April 1999.<sup>951</sup> However, since according to W04390 this information was referred by third persons to W04648, who in turn passed it on to W04390, the Panel considers that the probative value of such evidence is very low, particularly because it cannot be verified with the initial sources or [REDACTED]. The Panel notes that W04648, in another statement, declared that the Murder Victim's arrest took place on [REDACTED] April 1999, in line with the corroborating evidence. Accordingly, this discrepancy in W04648's evidence may simply be the result of an oversight and has no bearing on the temporal framework of the Murder Victim's deprivation of liberty, which falls within the timeframe of the charges and does not disturb the sequence of events and mutual identification among detainees at the ZDC.

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<sup>946</sup> [REDACTED].

<sup>947</sup> See paras 394, 399, 417,438, and 451.

<sup>948</sup> U001-0310-U001-0325, p. U001-0310.

<sup>949</sup> SITF00318201-00318202, p. SITF00318201.

<sup>950</sup> **W04390**: T. 24 November 2021, confidential, p. 1888, line 19 to p. 1889, line 14.

<sup>951</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333.

467. In light of the above, the Panel is satisfied that the Murder Victim was deprived of his liberty on or around [REDACTED] April 1999, within the timeframe of the charges.

(b) Detention location

468. Regarding the detention location of the Murder Victim, [REDACTED].<sup>952</sup> [REDACTED].<sup>953</sup> [REDACTED].<sup>954</sup>

469. On this point, the Defence objects that [REDACTED] from the entry gate of the ZDC, as another building – building no. 7 (as marked by Mr Krasniqi based on the UNMIK Aerial Booklet) – was necessarily standing in the way.<sup>955</sup>

470. The SPO responds that the account provided by the Defence is speculative, misleading and incomplete. The SPO submits that [REDACTED] had a clear line of sight to the [REDACTED]. His testimony in this regard is clear, credible and substantially corroborated. The SPO adds that the Defence did not challenge [REDACTED] on this point when he testified.<sup>956</sup>

471. The Defence replies that its account is not speculative but simply reflects [REDACTED] statements; and it is irrelevant whether the Defence challenged [REDACTED] testimony on this point.<sup>957</sup>

472. The Panel notes that [REDACTED].<sup>958</sup> In light of [REDACTED] testimony [REDACTED], and when comparing pictures from the UNMIK Ground Booklet and the UNMIK Aerial Booklet, the Panel finds that [REDACTED] was perfectly able to

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<sup>952</sup> [REDACTED].

<sup>953</sup> [REDACTED].

<sup>954</sup> [REDACTED].

<sup>955</sup> [REDACTED].

<sup>956</sup> [REDACTED].

<sup>957</sup> [REDACTED].

<sup>958</sup> [REDACTED].

have an all-round view of the ZDC, including anyone who could stand in any of the buildings therein. This conclusion is corroborated by [REDACTED] description of the house [REDACTED] on or around [REDACTED] April 1999, which is remarkably similar to the description given [REDACTED] of the house where he was staying at the ZDC.<sup>959</sup> The Panel is of the view that [REDACTED] was credible on his recollection [REDACTED] on or around [REDACTED] April 1999, as he had no reason to add a complication to his account, by explaining that [REDACTED] and marking sketches to clarify [REDACTED]. By providing such clarifications, [REDACTED] demonstrated that his recollection of this particular event is based on his personal knowledge.

473. Accordingly, the Defence's challenge on this point is rejected and the Panel is satisfied that the Accused was present on or around [REDACTED] April 1999 [REDACTED] at the ZDC.

474. Overall, the Panel finds the account of [REDACTED] credible. In fact, the Panel recalls that [REDACTED] identified, based on photographs, both the entrance of the ZDC [REDACTED], as well as the set of buildings present there, which other witnesses have themselves recognised as their place of detention.<sup>960</sup> The veracity of [REDACTED] account in relation [REDACTED] is confirmed by the very fact that, as established by the Panel, W01679, W03593, W03594, and W04669 were detained at the ZDC at the same time and in the same set of identified buildings as the Murder Victim.<sup>961</sup> In addition, the Panel considers that the detention location of the Murder Victim is further corroborated by the evidence [REDACTED]. In fact, W04391, W04648, and W04674 testified that, after the end of the NATO bombing, they located the barn in Zllash/Zlaš where they believed the Murder Victim had been held, in

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<sup>959</sup> [REDACTED]; see the comparison with **Mr Mustafa**: 069404-TR-ET, Part 8, p. 3, line 3 to p. 4, line 5 and [REDACTED] (sketch of the house made by [REDACTED]).

<sup>960</sup> See para. 364.

<sup>961</sup> See paras 379-458.

which they found [REDACTED].<sup>962</sup> In this regard, the Panel notes that W04391 stated that the upper floor of the building — the barn being beneath — was demolished.<sup>963</sup> This fact is corroborated by the pictures displayed in court during Mr Krasniqi's testimony, through which he explained that this particular building had been hit by shelling coming from Serbian tanks at the time of the offensive during the second half of April 1999.<sup>964</sup> W04674 identified, on the basis of the UNMIK Ground Booklet,<sup>965</sup> the set of buildings, including the basement, "where the prisoners stayed, and in the upper floor the soldiers stayed".<sup>966</sup> The Panel finds that the set of buildings identified by the witness as the Murder Victim's detention location is exactly the same as those identified by W01679, W03593, and W04669 as the place where they were detained. This further reinforces the Panel's finding that the Murder Victim was detained at the ZDC during April 1999.

475. In light of the unequivocal and corroborating evidence provided by other detainees as to the presence of the Murder Victim at the ZDC in April 1999, as further corroborated by the evidence of [REDACTED], W04674, W04391, W04648, and the List of Prisoners, the Panel is satisfied that the Murder Victim was detained at the ZDC during the timeframe of the charges.

(c) Presence and identification of co-detainees

476. As the Murder Victim was not a witness in this case, he did not provide any evidence, including on the presence and identification of co-detainees during his detention at the ZDC. However, the Panel recalls its findings that W01679, W03593,

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<sup>962</sup> **W04391**: T. 22 November 2021, confidential, p. 1747, line 1 to p. 1748, line 3; T. 23 November 2021, confidential, p. 1833, lines 8-17; **W04674**: T. 13 December 2021, confidential, p. 1945, lines 10-15; p. 1948, line 24 to p. 1949, line 9; **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>963</sup> **W04391**: T. 23 November 2021, public, p. 1834, line 11.

<sup>964</sup> **Mr Krasniqi**: T. 22 April 2022, public, p. 4041, line 25 to p. 4045, line 18.

<sup>965</sup> SPOE00128386-00128420, p. SPOE00128388.

<sup>966</sup> **W04674**: T. 13 December 2021, public, p. 1948, lines 14-15.

W03594, and W04669 were detained at the ZDC at the same time and in the same set of identified buildings as the Murder Victim.<sup>967</sup>

(d) Circumstances of release

477. The Panel notes that the evidence clearly indicates that, unlike other detainees, the Murder Victim was not released from the ZDC. As consistently testified by W01679, W03593, and W03594, when they were released on or around 19 April 1999, the Murder Victim was left behind in the barn [REDACTED].<sup>968</sup>

478. The established [REDACTED] of some of his co-detainees after their release, without the Murder Victim himself,<sup>969</sup> strongly corroborates the finding that the Murder Victim was indeed not released from the ZDC. The occurrence of this [REDACTED] was confirmed by some of the detainees (W01679, W03594 and W03593)<sup>970</sup> in addition to [REDACTED].<sup>971</sup>

479. The Defence submits, on this point, that W01679 was not mentioned by others as being present [REDACTED].<sup>972</sup> First, the Panel notes that W03594 refers, when speaking about the prisoners [REDACTED], to “the one that was dealing with

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<sup>967</sup> See paras 364, 379-458.

<sup>968</sup> **W01679**: T. 4 October 2021, confidential, p. 905, line 15 to p. 906, line 4 (W01679 stated that [REDACTED] told him that the Murder Victim would be released later); **W03593**: T. 20 September 2021, confidential, p. 484, lines 19-22; W03593 confirmed, in cross-examination by the Defence, that the Murder Victim was not released (**W03593**: T. 22 September 2021, public, p. 613, lines 4-7); **W03594**: T. 13 October 2021, confidential, p. 1145, lines 11-12.

<sup>969</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333; **W04391**: T. 23 November 2021, public, p. 1817, lines 6-7; **W04674**: SPOE00128189-00128201 RED2, p. SPOE00128189; T. 13 December 2021, confidential, p. 1935, lines 2-15. See also the findings of the Panel according to which the detainees were released from the ZDC on or around 19 April 1999 (see paras 406, 426, and 441).

<sup>970</sup> **W03593**: T. 22 September 2021, confidential, p. 613, lines 8-14; **W01679**: T. 4 October 2021, confidential, p. 910, lines 7-13 ([REDACTED]); **W03594**: T. 13 October 2021, confidential, p. 1191, lines 4-17.

<sup>971</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333; **W04391**: T. 23 November 2021, confidential, p. 1817, line 4 to p. 1818, line 10; **W04390**: T. 24 November 2021, confidential, p. 1865, line 21 to p. 1869, line 20.

<sup>972</sup> T. 14 September 2022, public, p. 4710, lines 7-11.

[REDACTED]. The one that I said was [REDACTED]”,<sup>973</sup> referring, in the Panel’s view, to W01679, whose occupation was, before being detained, [REDACTED].<sup>974</sup> Furthermore, the Panel considers that W01679 testified without any hesitation that he went [REDACTED] after his release. The Defence’s assertions do not cast any doubt in the mind of the Panel as to the veracity of W01679’s account. The fact that neither W03593 nor other [REDACTED] have mentioned W01679 as being present may simply be due to the fact that they did not notice, remember, or did not know W01679 at that time, thus failing to note his presence. In addition, the Panel makes allowance, in these specific circumstances, for imprecisions on the part of [REDACTED]. The Defence argument in relation to W01679’s attendance [REDACTED] is therefore without merit.

480. Regarding the information related to the Murder Victim continued detention, W04674 confirmed in court his previous statement, according to which the detainees who [REDACTED] “had been prisoners of [...] Skifterat [...] and [the Murder Victim] was with them and was still there with one other person”.<sup>975</sup> W04391 confirmed this account and testified that all detainees “[...] gave the same statement [...] that [the Murder Victim] was left behind in prison in Zllash”.<sup>976</sup> W04390 similarly testified that the detainees stated that “they had been released, but [the Murder Victim] remained in the cowshed”.<sup>977</sup>

481. In light of the corroborating evidence of the former detainees and of the Murder Victim’s family members, the Panel is satisfied that the Murder Victim was not

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<sup>973</sup> **W03594**: T. 13 October 2021, confidential, p. 1191, lines 15-16.

<sup>974</sup> **W01679**: T. 4 October 2021, confidential, p. 875, lines 4-5.

<sup>975</sup> **W04674**: SPOE00128189-00128201 RED2, p. SPOE00128189; T. 13 December 2021, confidential, p. 1938, lines 13-17.

<sup>976</sup> **W04391**: T. 23 November 2021, confidential, p. 1817, line 24 to p. 1818, line 1; **W04390**: T. 24 November 2021, confidential, p. 1865, line 21 to p. 1869, line 14.

<sup>977</sup> **W04390**: T. 24 November 2021, confidential, p. 1869, lines 21-22.

released from the ZDC together with the other detainees, but was left in the barn, together with one other detainee, [REDACTED].

(e) Lack of procedural guarantees

482. Regarding the obligation to inform a person who is deprived of his liberty of the reasons for such deprivation, the Panel has established that [REDACTED]. Subsequently, the Murder Victim was detained in a barn alongside others. From the recollection of the events between the time of the initial apprehension to his arrival at the ZDC and through his detention there, the Panel does not find any indication that the Murder Victim was ever provided with any reason or documentation regarding his deprivation of liberty, but rather he was mistreated the most among all detainees, [REDACTED].<sup>978</sup> In this regard, W04648 stated that when the Murder Victim was apprehended “they [REDACTED] didn’t tell what they wanted from him.”<sup>979</sup>

483. Regarding the obligation to bring a person deprived of his liberty promptly before a judge or other competent authority and the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of the detention, the Panel has established elsewhere the exceptional nature of the mistreatment suffered by the Murder Victim followed by his death,<sup>980</sup> and the fact that, for example, every time he was brought back to the barn, those who mistreated him ordered his co-detainees to shout: “[d]eath to the traitors, death the thieves, death to the thugs, and glory to the Kosovo Liberation Army”.<sup>981</sup> The Panel has also established with regard to Counts 2 and 3 of the Confirmed Indictment that other co-detainees of the Murder Victim endured various kinds of mistreatment on account of accusations of being

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<sup>978</sup> See paras 569-574.

<sup>979</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>980</sup> See para. 624.

<sup>981</sup> **W04669**: T. 10 November 2021, public, p. 1434, lines 18-21.

thieves and/or spies, among others.<sup>982</sup> Further, the Panel concluded in relation to other detainees that they were not brought before a judge or a prosecutor and did not have an opportunity to challenge the lawfulness of their detention.<sup>983</sup> Under these circumstances, considering that all detainees were kept in similar conditions of detention, the Panel finds that the only reasonable conclusion stemming from the evidence is that the Murder Victim was not brought before any judicial authority of any kind and was not afforded any opportunity to challenge the lawfulness of his detention.

484. In light of the above, the Panel is satisfied that the Murder Victim was not informed of the reasons for his deprivation of liberty; was not brought promptly before a judge or other competent authority; and was not provided with an opportunity to challenge the lawfulness of his detention, akin to his co-detainees.

## 7. Other Detainees

485. The Panel recalls that, in the Confirmed Indictment, the SPO alleges that between approximately 1 April 1999 and 19 April 1999, the Accused and other KLA members deprived *at least* six persons of their liberty without due process of law at the ZDC.<sup>984</sup> The Panel has received evidence that other persons in addition to W01679, W03593, W0394, W04669, and the Murder Victim were detained at the ZDC during the timeframe of the charges, as discussed hereunder.

486. The Panel finds that W01679 testified that during his period of captivity at the BIA base “[...] they would bring other people”<sup>985</sup> who would stay “two or three days

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<sup>982</sup> See paras 579-583.

<sup>983</sup> See the Panel’s findings on “Lack of Procedural Guarantees” in relation to W01679, W03593, W03594, and W04669.

<sup>984</sup> [Confirmed Indictment](#), para. 18.

<sup>985</sup> **W01679**: T. 4 October 2021, confidential, p. 889, lines 4-6.

and then they would leave”.<sup>986</sup> Similarly, W03593 stated that “they were bringing people every night. We have been up to 17 people in that same room”.<sup>987</sup> W04669 equally stated that he was held with two other persons.<sup>988</sup>

487. Concerning the number of detainees, the Defence submits that W03593 is the only witness who testified about 17 detainees being held at that location, which would be impossible, according to the Defence’s submissions, given the limited space available.<sup>989</sup>

488. In this respect, the Panel does not find anything problematic in W03593’s recollection of the presence, at some point in time, of 17 detainees, as this is the recollection of W03593 based on his personal experience as a detainee at the ZDC, as established by the Panel. As already stressed, some differences in the details of the witnesses’ recollections regarding their detention at the ZDC are a genuine reflection of their own personal experiences. Despite these minor differences, the witnesses-detainees who testified provided highly corroborating and consistent evidence on critical elements of the charges. In light of the fact that, according to the evidence, there was a high turnover of detainees in the set of barns used for detention purposes, it is fully plausible, in the Panel’s evaluation, that up to 17 detainees may have been held at once in one and the same barn. The Defence challenge in this respect is therefore groundless.

489. Besides evidence on the number of detainees held at the ZDC, the Panel finds that W01679, W03593, and W03594 provided unequivocal and mutually corroborating evidence as to the presence of a co-detainee known as [REDACTED], which included

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<sup>986</sup> **W01679**: T. 4 October 2021, public, p. 889, lines 20-21.

<sup>987</sup> **W03593**: T. 20 September 2021, public, p. 419, lines 7-8; T. 20 September 2021, confidential, p. 439, lines 20-24.

<sup>988</sup> **W04669**: T. 10 November 2021, confidential, p. 1418, line 20 to p. 1419, line 12; p. 1424, lines 19-20. The witness described the two detainees with much details: [REDACTED].

<sup>989</sup> T. 14 September 2022, public, p. 4699, lines 20-24.

details (such as that he was [REDACTED], that he was [REDACTED], and that, as the latter, he was also not released),<sup>990</sup> which could have only originated from the personal recollection of a co-detainee. The evidence presented regarding the detention of [REDACTED] is therefore credible.

490. Similarly, W01679 identified another co-detainee, [REDACTED].<sup>991</sup> W01679's testimony regarding this co-detainee included unique details as to why he was detained, details which could only come from W01679's own recollections of events as a co-detainee.<sup>992</sup> The Panel finds that the status of [REDACTED] as a detainee at the ZDC is further corroborated by the fact that W04391 and W04390 identified him as one of the detainees who [REDACTED] upon release on or around 19 April 1999.<sup>993</sup> In addition, [REDACTED] is also mentioned in the List of Prisoners, which indicates that he was detained as of [REDACTED],<sup>994</sup> thus further confirming his deprivation of liberty at the ZDC during the relevant time of the charges.

491. The List of Prisoners further corroborates the evidence of the above witnesses regarding a larger pattern of deprivation of liberty at the ZDC in April 1999. In fact, this document lists the full name, date of birth and date of arrest (in April 1999) of as many as 19 individuals, including [REDACTED],<sup>995</sup> which is in line with the evidence provided by W03593. Incidentally, the Panel notes that [REDACTED]'s detention in the ZDC is further confirmed by W04391 and W04674, who testified that this person was among the detainees who, [REDACTED] and reported that the Murder Victim

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<sup>990</sup> See paras 399, 417, and 438.

<sup>991</sup> See para. 394.

<sup>992</sup> See para. 399.

<sup>993</sup> **W04391**: T. 23 November 2021, confidential, p. 1817, lines 6-13; **W04390**: T. 24 November 2021, confidential, p. 1869, lines 15-20.

<sup>994</sup> U001-0310-U001-0325, p. U001-0310.

<sup>995</sup> U001-0310-U001-0325, p. U001-0310 ([REDACTED] was arrested on 6 April 1999 while [REDACTED] was arrested on 3 April 1999).

was “left behind in prison in Zllash”.<sup>996</sup> In the view of the Panel, at that point in time, [REDACTED] could have known about the Murder Victim not being released from the ZDC only through their own personal recollection and in their capacity as co-detainees. Therefore, the Panel finds the evidence of their detention at the ZDC and their subsequent [REDACTED] to be credible.

492. Tellingly, and in line with W01679’s evidence that some detainees were held for short periods of time, the List of Prisoners indicates that five detainees were indeed released shortly after their arrest.<sup>997</sup> As already established in its preliminary evidentiary assessment,<sup>998</sup> the Panel is convinced that, in light of its content, the List of Prisoners can only be a document compiled by BIA members in relation to detainees at the ZDC in April 1999.

493. In light of all the evidence above, which indicates a large number of detainees at the ZDC in April 1999, the Panel is satisfied that the only reasonable conclusion, based on the evidence as a whole, is that at least six individuals were detained at the ZDC during the timeframe of the charges.

494. In relation to the arbitrary character of such detention, the Panel has already found that W01679, W03593, W03594, W04669, and the Murder Victim were deprived of their liberty at the ZDC during April 1999 without any of the basic guarantees.<sup>999</sup> The Panel has also established in the above paragraph that at least six persons were detained at the ZDC during the timeframe of the charges. Considering the pattern of denial of basic guarantees against W01679, W03593, W03594, W04669, and the Murder Victim, jointly with the mistreatment in various forms that they endured during such

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<sup>996</sup> **W04674**: T. 13 December 2021, confidential, p. 1936, lines 5-17; **W04391**: T. 23 November 2021, confidential, p. 1817, line 4 to p. 1818, line 10; T. 24 November 2021, confidential, p. 1865, line 21 to p. 1869, line 14.

<sup>997</sup> U001-0310-U001-0325, pp. U001-0310 and U001-0311 (see rows 4, 12-14, and 19).

<sup>998</sup> See paras 225-228.

<sup>999</sup> See paras 379-457.

time,<sup>1000</sup> the Panel considers that the only reasonable conclusion based on the evidence is that all detainees at the ZDC, including [REDACTED], were subject to the same conditions of detention, conditions depriving them of the basic guarantees during their time in detention. In this respect, the Panel further considers that no evidence has been offered indicating or suggesting that the BIA members took any steps to ensure that the detainees were afforded any of the basic guarantees provided for under international humanitarian law. To the contrary, as established elsewhere in relation to the charges of cruel treatment (Count 2), torture (Count 3) and murder (Count 4), the Panel found that the detainees were subjected to deplorable conditions of detention, harsh interrogations, beating and other forms of mistreatment, and that the Murder Victim lost his life.

## 8. Conclusion

495. In light of all the evidence discussed above, taken as a whole, the Panel finds that at least six persons – including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED] – were deprived of their liberty by BIA members between approximately 1 April 1999 and on or around 19 April 1999 at the ZDC, the BIA base in Zllash/Zlaš, under the control and authority of the BIA commander, the Accused.

496. In addition, the Panel notes that each of the witnesses detained at the ZDC testified about being deprived of certain basic guarantees to which they were entitled while in detention, pursuant to international humanitarian law. The Panel finds that all of the above-mentioned persons were detained at the ZDC at the same time and underwent similar conditions of detention – including appalling conditions in the detention rooms and mistreatment as discussed in the Panel’s findings under Counts 2 and 3 of the Confirmed Indictment. Accordingly, the Panel finds that the only

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<sup>1000</sup> See paras 534-578.

reasonable conclusion based on the evidence as a whole is that none of the detainees were afforded any of the three basic guarantees. The evidence available to the Panel does not leave room for any other conclusion.

#### D. CRUEL TREATMENT AND TORTURE (COUNTS 2 AND 3)

497. In what follows, the Panel will assess the evidence and enter its factual findings as to whether or not the detainees at the ZDC, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED], were detained in inhumane conditions and whether they were physically and psychologically assaulted by the Accused and certain other KLA members, between approximately 1 April 1999 and 19 April 1999, as alleged in the Confirmed Indictment.<sup>1001</sup> The Panel will discuss, in turn: (i) the conditions of detention; and (ii) the physical and psychological assault suffered by the detainees.

498. Before doing so, the Panel finds it necessary to first determine whether the persons who established and maintained the conditions of detention and who physically and psychologically assaulted the detainees at the ZDC were KLA members. The Panel notes that the detainees were not always able to identify the persons who mistreated them.<sup>1002</sup> To the extent that they did, the Defence submits that there is no evidence that the individuals identified were at the ZDC throughout the timeframe of the charges, and there is no evidence of any relation or connection between them and the Accused.<sup>1003</sup> The Panel understands the Defence's submission to mean that the individuals identified by the detainees were not subordinates of the Accused.

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<sup>1001</sup> [Confirmed Indictment](#), paras 21-27, 29.

<sup>1002</sup> See, for example, **W03593**: T. 20 September 2021, public, p. 407, line 9 to p. 408, line 7; p. 410, lines 9-12; p. 441, lines 16-17.

<sup>1003</sup> T. 14 September 2022, public, p. 4638, lines 16-22.

499. In this regard, the Panel observes, first, that W01679 and W03593 identified (some of) the individuals who mistreated them by (nick)name.<sup>1004</sup> The Panel is satisfied, as set out below, that these individuals were BIA members.<sup>1005</sup> Second, W01679 testified that those who mistreated him introduced themselves as members of “Skifterat”,<sup>1006</sup> another name by which the BIA was known, as already found by the Panel.<sup>1007</sup> Third, both W01679 and W03593 gave evidence that the individuals who mistreated them acted under the authority of and pursuant to orders from the Accused,<sup>1008</sup> who was the overall and only BIA commander throughout the timeframe of the charges.<sup>1009</sup> On this basis, the Panel is satisfied that all these individuals were subordinates of the Accused and, therefore, BIA members. Fourth, W01679, W03593, W04669 and W03594 testified that the individuals who mistreated or questioned the detainees, stood guard at the barns, and/or escorted them around the ZDC premises were dressed (partially) in uniforms – some bearing the BIA or the KLA emblem – were armed, and spoke Albanian.<sup>1010</sup> Fifth, as found above, the ZDC was controlled throughout the timeframe of the charges by the BIA and was under the control and authority of the Accused.<sup>1011</sup> Lastly, the Panel observes, as described in detail below, that when mistreating the detainees the perpetrators used the same *modus operandi*.<sup>1012</sup>

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<sup>1004</sup> See paras 543, 555.

<sup>1005</sup> See paras 544, 555.

<sup>1006</sup> **W01679**: T. 4 October 2021, public, p. 865, line 11 to p. 866, line 21; T. 4 October 2021, confidential, p. 867, lines 18-21; p. 869, lines 16-20 (explaining that he was arrested by four soldiers who introduced themselves as members of “the special unit, Skifterat” and that he was beaten by these same four soldiers once he arrived at the ZDC).

<sup>1007</sup> See para. 335.

<sup>1008</sup> See paras 541, 551.

<sup>1009</sup> See para. 338.

<sup>1010</sup> See paras 543, 555; **W01679**: T. 4 October 2021, public, p. 865, lines 18-25; p. 887, lines 12-21; **W03593**: T. 20 September 2021, public, p. 410, lines 6-8; p. 418, lines 6-14; p. 441, line 16 to p. 442, line 10; T. 22 September 2021, public, p. 576, line 23 to p. 577, line 1; **W04669**: T. 10 November 2021, confidential, p. 1437, lines 15-21; T. 10 November 2021, public, p. 1442, line 11-18; **W03594**: T. 13 October 2021, public, p. 1198, lines 11-24.

<sup>1011</sup> See paras 349-353.

<sup>1012</sup> See paras 528, 534-535, 546-547, 567.

500. In light of all of the above, the Panel considers that the only reasonable conclusion based on the evidence as a whole is that the individuals who established and maintained the conditions of detention at the ZDC, and those who subjected the detainees to physical and psychological assault were KLA members belonging to the BIA unit.

### 1. Conditions of Detention

501. As set out in detail below, the evidence before the Panel shows that the detainees at the ZDC were held in inhumane conditions throughout the entire time that they were detained at the ZDC. The Panel will discuss: (a) the living and sleeping conditions; (b) the provision of food and water; (c) the hygienic conditions and access to sanitary facilities; (d) access to medical care; and (e) the extent to which the detainees could interact and talk to each other while in detention.

#### (a) Living and sleeping conditions

502. The evidence before the Panel, as detailed below, shows that the detainees at the ZDC were held in deplorable conditions, unfit for humans.

503. The Panel recalls that W01679, W03593, W03594 and W04669 all described in a mutually corroborative manner the place where they were detained as a “barn” or a “cowshed” fit for animals.<sup>1013</sup> W01679 and W04669 further explained that the barn

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<sup>1013</sup> See paras 391, 415, 435, 449; see further **W01679**: T. 4 October 2021, public, p. 870, lines 6-7; p. 882, lines 18-23; p. 919, lines 4-10; **W03593**: T. 20 September 2021, public, p. 403, lines 15-17 (speaking about the first barn in which he was held); T. 20 September 2021, confidential, p. 417, lines 4-11 (speaking about the second barn in which he was held); **W03594**: T. 12 October 2021, confidential, p. 1037, lines 20-23; T. 12 October 2021, public, p. 1039, lines 17-19; p. 1176, lines 1-10; **W04669**: T. 10 November 2021, public, p. 1411, line 24 to p. 1412, line 1; p. 1415, lines 11-18; T. 11 November 2021, public, p. 1545, line 24 to p. 1546, line 2.

where they were each kept was made of stone, wood and mud, with hay on the ground.<sup>1014</sup>

504. All four witnesses provided highly detailed, graphic and mutually corroborative evidence about the living and sleeping conditions in the barn(s). W01679 recalled that they slept “on the ground, on earth, stone, dampness”.<sup>1015</sup> He added that they only had a few blankets which were shared among the detainees.<sup>1016</sup> W03593’s account was similar. He testified that there were no beds, only some blankets used to cover horses, and he shared one with W03594.<sup>1017</sup> He distinctly remembered that the floor of the barn “was almost all water” and that they “slept in water for [...] days”.<sup>1018</sup> W04669 recalled that he slept in the animal trough and testified that they had only a few blankets, which were not enough for all of them, thereby corroborating W01679 and W03593 on the conditions of detention in the different barns used for that purpose at the ZDC.<sup>1019</sup> W03594 too testified that “the conditions were inhumane”, that there were no beds and that they only had some hay and some blankets.<sup>1020</sup>

505. Testifying further regarding the degrading conditions, both W04669 and W03594 recalled that they could smell and see livestock excrements.<sup>1021</sup> W03594 provided a

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<sup>1014</sup> See paras 391, 449; see further **W01679**: T. 4 October 2021, public, p. 882, lines 18-23; T. 5 October 2021, public, p. 982, lines 10-15; **W04669**: T. 10 November 2021, public, p. 1430, lines 4-16; T. 11 November 2021, public, p. 1545, lines 13-16.

<sup>1015</sup> **W01679**: T. 4 October 2021, public, p. 902, lines 16-21; see also T. 4 October 2021, public, p. 882, lines 20-23.

<sup>1016</sup> **W01679**: T. 4 October 2021, public, p. 902, lines 16-21; see also T. 4 October 2021, public, p. 882, lines 20-23.

<sup>1017</sup> **W03593**: T. 20 September 2021, public, p. 478, lines 22-23; p. 404, lines 17-19; p. 453, lines 1-9; p. 479, lines 19-23.

<sup>1018</sup> **W03593**: T. 20 September 2021, public, p. 417, lines 10-11; p. 478, lines 19-23; see also **W03593**: T. 20 September 2021, public, p. 411, lines 13-14 (referring to the first barn in which he was held); 061012-061015, p. 061013 (sketch drawn by W03593 showing that water was coming in through the walls).

<sup>1019</sup> **W04669**: T. 11 November 2021, public, p. 1544, line 14 to p. 1545 line 12.

<sup>1020</sup> **W03594**: T. 12 October 2021, public, p. 1040, line 22-24; p. 1042, lines 4-16.

<sup>1021</sup> **W04669**: T. 11 November 2021, public, p. 1545, lines 17-23; **W03594**: T. 13 October 2021, public, p. 1176, lines 1-10.

telling testimony, in the Panel's view, when he stated that these conditions made him feel like an animal, not a human being.<sup>1022</sup>

506. W01679, W03593 and W04669 consistently recalled that in the barn(s) it was always dark. They explained that they could see daylight only through cracks in the walls or openings between the wooden planks of the door.<sup>1023</sup>

507. With the caveat below regarding W03594's testimony, the Panel considers that the level of detail and consistency across the testimonies of the four witnesses is remarkable and strongly supports the Panel's assessment that they recounted the events based on their personal experience.

508. W03594's testimony was consistent with the testimonies of W01679, W03593 and W04669 on many discrete points, as shown above. He, however, also provided diverging evidence on certain other details, testifying, for instance, that they had enough blankets, that no water was coming into the barn, and that there was enough daylight.<sup>1024</sup> The Panel does not find W03594 credible on these points as: (i) his testimony is implausible and contradictory given his own admissions about the

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<sup>1022</sup> **W03594**: T. 12 October 2021, public, p. 1040, line 22 to p. 1041, line 4; p. 1066, lines 3-8; p. 1067, lines 3-7.

<sup>1023</sup> **W01679**: T. 5 October 2021, public, p. 982, line 23 to p. 983, line 2; p. 1007, lines 22-25; **W03593**: T. 20 September 2021, public, p. 417, lines 12-13; T. 22 September 2021, public, p. 577, lines 9-14; **W04669**: T. 10 November 2021, public, p. 1430, lines 4-19. The Panel notes that the witnesses' testimonies differ as to whether the barn had a window which was covered, or it had no window at all; *see also* **W03594**: T. 12 October 2021, public, p. 1039, lines 20-24; T. 13 October 2021, public, p. 1178, lines 10-22; UNMIK Ground Booklet, SPOE00128386-00128420, p. SPOE00128388 (where a window is visible in a photograph of the barns). The Panel considers that such differences between the witnesses' testimonies are the natural result of the passing of time and reflect each witness's personal recollection of the traumatic events they experienced. From this perspective, these differences strengthen the credibility of the witnesses, rather than weakening it. In any case, these differences have no consequence on the Panel's findings, as the witnesses are consistent on the fact that in the barns it was always dark. Whether that was because there was no window, or because the window was covered, is immaterial.

<sup>1024</sup> **W03594**: T. 12 October 2021, public, p. 1042, lines 4-16; T. 13 October 2021, public, p. 1178, lines 10-22; p. 1185, line 24 to p. 1186, line 2.

detention conditions;<sup>1025</sup> and (ii) he is further contradicted by the consistent accounts of W01679 and W03593, who were detained in the same barn as him. In any event, even if his evidence were to be accepted, the living and sleeping conditions would still remain inadequate, even by W03594's own admissions.

509. In light of the above, the Panel finds, based on the evidence before it, that the living and sleeping conditions at the ZDC were totally inadequate and degrading.

(b) Food and drinking water

510. The evidence before the Panel shows, as detailed below, that the detainees at the ZDC were provided inadequate amounts of food and water.

511. W03593 and W01679, in particular, provided mutually supporting testimonies, which were both detailed and graphic. W03593 testified that sometimes they would not be given anything to eat for 48 straight hours, and when they did receive food it was a piece of stale bread, "just to keep us alive", as he put it.<sup>1026</sup> His words are telling: "We would forget [...] when we would eat, because two or three days would go by without us having anything to eat at all".<sup>1027</sup> As for water, he explained that they were brought a container of water which was not enough for all of them.<sup>1028</sup> W01679 testified, just as W03593, that they received a small piece of bread once in two or three days.<sup>1029</sup> As for water, his account speaks for itself: "I asked them to bring us some

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<sup>1025</sup> *For example*, he testified that enough daylight came into the barn, but then explained that the window was covered with timber and that daylight came in only through openings between the wooden planks. The Panel finds it implausible that sufficient daylight would come in if the window was covered. Further, when asked by the Defence whether water was coming into the barn, he responded in a contradictory manner: "No, not at all. Only when it was raining. But even if it was raining, there was no water coming there"; see **W03594**: T. 13 October 2021, public, p. 1178, lines 10-22; p. 1185, line 24 to p. 1186, line 2.

<sup>1026</sup> **W03593**: T. 20 September 2021, public, p. 477, line 19 to p. 478, line 9.

<sup>1027</sup> **W03593**: T. 21 September 2021, public, p. 563, lines 15-23.

<sup>1028</sup> **W03593**: T. 20 September 2021, public, p. 478, lines 10-18.

<sup>1029</sup> **W01679**: T. 4 October 2021, public, p. 902, lines 4-15.

water. And then two [BIA] soldiers came. They beat me [...] [and then] they urinated upon me and said, 'Here's water for you'''.<sup>1030</sup> This happened not once, but twice, and in the presence of the other detainees.<sup>1031</sup>

512. The accounts of W01679 and W03593 are further corroborated by some of the [REDACTED], namely W04390 and W04391, who saw some of the detainees on the day of their release and recalled that they were thirsty and hungry as they had not eaten anything for two days.<sup>1032</sup>

513. The Panel has also received evidence from W04669 and W03594 which differs from that of W01679 and W03593 regarding the amount of food and water provided to the detainees. W04669 testified that they received a bowl of soup with bread twice a day and enough water.<sup>1033</sup> W03594 similarly testified that they received food and water twice a day.<sup>1034</sup> The Panel has no reason to doubt the experiences of W04669 and W03594 on this point, especially considering the detailed and graphic description W04669 gave in court of the food he was given.<sup>1035</sup> However, neither his testimony, nor that of W03594, undermine the accounts of W01679, W03593, W04390 and W04391. The Panel notes that: (i) W04669 was detained in another barn than the other

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<sup>1030</sup> **W01679**: T. 4 October 2021, public, p. 884, line 22 to p. 885, line 2; p. 902, lines 12-15.

<sup>1031</sup> **W01679**: T. 4 October 2021, public p. 885, lines 3-12; T. 4 October 2021, confidential, p. 897, line 8 to p. 898, line 25.

<sup>1032</sup> **W04390**: T. 24 November 2021, confidential, p. 1869, line 15 to p. 1870, line 20; p. 1872, line 20 to p. 1873, line 7; p. 1899, lines 11-21 (stating: "We gave them food [and] I cannot explain, describe how they ate their food"); **W04391**: T. 22 November 2021, public, p. 1744, lines 9-17; T. 23 November 2021, public, p. 1819, lines 20-24. In a mutually corroborative manner, W03593 also testified that he and other detainees [REDACTED]. He recalled that, by that point, they had not eaten anything for three or four days and were very hungry; *see* **W03593**: T. 20 September 2021, confidential, p. 486, line 22 to p. 487, line 7; T. 22 September 2021, confidential, p. 613, line 2 to p. 614, line 24.

<sup>1033</sup> **W04669**: T. 11 November 2021, public, p. 1543, line 10 to p. 1544, line 13.

<sup>1034</sup> **W03594**: T. 12 October 2021, public, p. 1040, lines 10-15; T. 13 October 2021, public, p. 1154, line 24 to p. 1155, line 1.

<sup>1035</sup> **W04669**: T. 11 November 2021, public, p. 1543, line 10 to p. 1544, line 2 (he explained that they received food in a "sort of bowl", which was about 20 centimetres high and made of metal resembling tin, and that the meals usually consisted of a porridge, made of soup and bread mixed together).

witnesses and for a shorter period of time;<sup>1036</sup> (ii) at a certain point in time, according to W03593 himself, the detainees started receiving more food;<sup>1037</sup> (iii) such differences between the witnesses' testimonies are a natural result of their personal recollection of the traumatic events they experienced and their own perception of these events;<sup>1038</sup> and (iv) it is highly implausible that W01679, W03593, W04390 and W04391 would all testify incorrectly – purely coincidentally – about the scarcity of food and water.

514. In light of the above, the Panel finds, based on the evidence before it, that at least for certain periods of time the detainees at the ZDC were provided inadequate amounts of food and water.

(c) Hygiene and access to sanitary facilities

515. The evidence before the Panel shows, as detailed below, that the detainees had limited to no access to sanitary facilities.

516. Once again, W03593's and W01679's accounts are remarkably similar and mutually corroborative. When asked whether he was able to wash himself, W03593 stated: "We couldn't even drink water, let alone washing ourselves and getting cleaned".<sup>1039</sup> He also testified that they were not provided any clothing to change, which is made worse, in the Panel's view, by the fact that they slept in water for days, as found above.<sup>1040</sup> W01679 too stated: "They did not give us water to drink, let alone to wash".<sup>1041</sup> He also testified that he developed an infection in the barn from an injury

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<sup>1036</sup> See paras 449-455.

<sup>1037</sup> **W03593**: T. 21 September 2021, confidential, p. 570, line 15 to p. 572, line 9.

<sup>1038</sup> See, for example, **W03594**: T. 12 October 2021, public, p. 1040, lines 10-15; T. 13 October 2021, public, p. 1154, line 24 to p. 1155, line 1 (where he states: "They would bring us food, enough food and water. *Enough in war circumstances, I mean*"; "like I said yesterday, we had enough food to eat there. *For me, it was enough*") (emphasis added).

<sup>1039</sup> **W03593**: T. 20 September 2021, public, p. 478, line 24 to p. 479, line 7.

<sup>1040</sup> **W03593**: T. 20 September 2021, public, p. 479, lines 11-23; see para. 504.

<sup>1041</sup> **W01679**: T. 4 October 2021, public, p. 902, line 23 to p. 903, line 1.

he had suffered after being beaten.<sup>1042</sup> [REDACTED] – that wounds, if not properly cared for, may become infected especially if the injured person is in an unhygienic environment.<sup>1043</sup> The Panel also recalls that livestock excrements were lying around in the barn(s).<sup>1044</sup> Based on this evidence, the Panel infers that the infection developed by W01679 was, in part, the result of the unhygienic conditions in which he was detained.

517. The accounts of W03593 and W01679 are corroborated by W03594 and some of [REDACTED]. W03594, even if he downplayed the severity of the conditions of detention, admitted: “I was unshaved. It was a long period of time since we cleaned ourselves”.<sup>1045</sup> W04390, W04391 and W04674 similarly recalled that, when the detainees [REDACTED], they were dirty, unshaved, uncombed and had long nails.<sup>1046</sup> “[T]hey were [...] like monkeys”, W04674 stated.<sup>1047</sup> Notably, both W04390 and W04674 recalled how they gave the detainees nail clippers to cut their nails and razors to shave.<sup>1048</sup> The Panel finds W04390, W04391 and W04674 credible and highly reliable on this point as they saw the detainees soon after they were released and their testimonies are graphic, vivid and mutually corroborative on a detailed level.

518. Turning to the sanitary facilities, while the testimonies of W01679, W03593, W03594 and W04669 differ in some respects, they corroborate each other on key aspects. W01679, W03593 and W03594 all testified that they relieved themselves inside

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<sup>1042</sup> [REDACTED].

<sup>1043</sup> [REDACTED].

<sup>1044</sup> See para. 505.

<sup>1045</sup> **W03494**: T. 13 October 2021, confidential, p. 1158, lines 13-23.

<sup>1046</sup> **W04390**: T. 24 November 2021, confidential, p. 1869, lines 21-24; p. 1872, line 20 to p. 1873, line 7; p. 1876, line 5 to p. 1877, line 7; p. 1899, line 11 to p. 1900, line 11; **W04391**: T. 22 November 2021, public, p. 1744, line 18-19; **W04674**: T. 13 December 2021, confidential, p. 1940, lines 10-25.

<sup>1047</sup> **W04674**: T. 13 December 2021, confidential, p. 1940, lines 10-14.

<sup>1048</sup> **W04390**: T. 24 November 2021, confidential, p. 1872, line 20 to p. 1873, line 7; p. 1900, line 7 to p. 1901, line 12; p. 1904, line 23 to p. 1905, line 3; p. 1906, lines 17-25; **W04674**: T. 13 December 2021, confidential, p. 1940, lines 10-25.

the barn, in a bucket, in front of each other.<sup>1049</sup> W03593 and W03594 added that sometimes they could use a toilet outside, but – according to W03593 – they were accompanied by armed BIA members.<sup>1050</sup> W03593's testimony is consistent on this point with W04669's account, who testified that he could use a toilet outside, but was accompanied by an armed BIA member and had to relieve himself at gun point.<sup>1051</sup> Accordingly, the Panel finds that the detainees at the ZDC did not have unrestricted access to a toilet and had to either relieve themselves inside the barn(s), in front of each other, or use a toilet outside under supervision.

519. In light of the above, the Panel finds based on the evidence before it that the hygienic and sanitary conditions at the ZDC were wholly inadequate and degrading.

(d) Medical care

520. The evidence before the Panel shows, as detailed below, that the detainees at the ZDC did not receive any medical care.

521. The testimonies of W03593, W01679 and W04669, which are mutually corroborative, reveal that the detainees at the ZDC received no medical attention.<sup>1052</sup> The accounts of W03593 and W01679, in particular, are telling. W03593 testified that “if you said that you were sick, you were brought outside and you would have been killed immediately”.<sup>1053</sup> Similarly, W01679 recalled that they could not ask for medical attention, because “[w]hatever you asked for, [...] as a reply, you would get more beating”.<sup>1054</sup> The denial of medical care is made worse, in the Panel's view, by the fact

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<sup>1049</sup> **W01679**: T. 4 October 2021, public, p. 903, lines 2-8; **W03593**: T. 20 September 2021, public, p. 479, line 24 to p. 480, line 12; **W03594**: T. 12 October 2021, public, p. 1042, line 17 to p. 1043, line 3.

<sup>1050</sup> **W03593**: T. 20 September 2021, public, p. 479, line 24 to p. 480, line 12; **W03594**: T. 12 October 2021, confidential, p. 1043, lines 4-14.

<sup>1051</sup> **W04669**: T. 10 November 2021, public, p. 1441, line 21 to p. 1442, line 5.

<sup>1052</sup> **W03593**: T. 20 September 2021, public, p. 480, lines 13-21; **W01679**: T. 4 October 2021, public, p. 903, lines 9-17; **W04669**: T. 10 November 2021, public, p. 1467, lines 7-11.

<sup>1053</sup> **W03593**: T. 20 September 2021, public, p. 480, lines 13-21.

<sup>1054</sup> **W01679**: T. 4 October 2021, public, p. 903, lines 9-17.

that the detainees were subjected to brutal physical assaults and suffered serious injuries while in detention, as described below.

522. In light of the above, the Panel finds based on the evidence before it that the detainees at the ZDC were denied medical care.

(e) Prohibition to interact with each other

523. Both W01679 and W03593 testified, in a straightforward and clear manner, that BIA members forbade the detainees from talking to each other under threat of death and recalled that, as a result, they were afraid to speak to one another.<sup>1055</sup>

524. The Panel has also heard evidence from W03594 that the detainees had plenty of time to talk, but considers that his testimony does not contradict the accounts of W01679 and W03593.<sup>1056</sup> What is key in the Panel's view is not so much whether the detainees had time to talk to each other, but whether they could do so freely.<sup>1057</sup> What the evidence of W01679 and W03593 shows is that they could not.

525. In light of the above, the Panel finds, based on the evidence before it, that the detainees at the ZDC were not able to communicate freely with each other, which reinforced their fears and anxiety.

(f) Final remarks

526. The Defence has put forward the argument that the conditions of detention were simply a result of the modest facilities available at the ZDC, or lack thereof, and that everyone there, including the refugees, lived in the same manner.<sup>1058</sup> The Panel is

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<sup>1055</sup> **W01679**: T. 4 October 2021, public, p. 889, lines 10-13; **W03593**: T. 20 September 2021, public, p. 404, lines 20-22; p. 406, lines 6-9; p. 416, line 24 to p. 417, line 3; p. 417, line 25 to p. 418, line 5; p. 455, lines 7-10.

<sup>1056</sup> **W03594**: T. 12 October 2021, public, p. 1046, lines 5-9.

<sup>1057</sup> W01679 himself acknowledged that they talked to each other, but highlighted that they did so in fear; **W01679**: T. 4 October 2021, public, p. 889, lines 10-13.

<sup>1058</sup> T. 14 September 2022, public, p. 4730, line 13 to p. 4732, line 15.

wholly unpersuaded by this argument, which does not explain the abhorrent conditions of detention: the fact that the detainees were kept in barns with livestock excrements lying around;<sup>1059</sup> that they were urinated on when they asked for water;<sup>1060</sup> that they were provided limited access to a toilet, modest as it may have been;<sup>1061</sup> that they were denied medical care;<sup>1062</sup> and that they were forbidden to interact and talk to each other under threat of death.<sup>1063</sup>

527. In light of the above, the Panel is satisfied based on the evidence before it taken as a whole that the detainees were kept in inhumane conditions of detention at the ZDC by BIA members, under the control and authority of the Accused.

## 2. Mistreatment

528. As set out in detail below, the evidence before the Panel shows that the detainees at the ZDC were routinely assaulted, both physically and psychologically. The evidence reveals that BIA members at the ZDC had a certain *modus operandi*: inside the barn(s), the detainees were subjected to kicks, punches and slaps on a daily basis; in addition, BIA members took detainees out of the barn(s), one by one, for interrogation, and brought them most of the time to a room located above one of the barns (the interrogation room), but also elsewhere on the ZDC premises, where they subjected the detainees to brutal beatings and other forms of mistreatment.<sup>1064</sup> The Panel notes the testimony of W01679 which clearly describes this *modus operandi*:

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<sup>1059</sup> See para. 505.

<sup>1060</sup> See para. 511.

<sup>1061</sup> See para. 518.

<sup>1062</sup> See paras 520-522.

<sup>1063</sup> See paras 523-525.

<sup>1064</sup> See the Panel's findings below; see further **W01679**: T. 4 October 2021, public, p. 886, line 22 to p. 887, line 1; p. 890, lines 12-14; p. 895, lines 9-10; **W03593**: T. 20 September 2021, public, p. 439, line 25 to p. 440, line 8; p. 477, lines 1-9; T. 21 September 2021, public, p. 517, line 14 to p. 518, line 19; 061012-061015, p. 061013 (sketch drawn by W03593, where the room above the barn is marked as "room used for beating"); **W04669**: T. 10 November 2021, public, p. 1425, lines 9-21.

“downstairs in the barn we had those lighter beatings. Upstairs it was heavier and more severe”.<sup>1065</sup> In what follows, the Panel will discuss, in turn: (a) the physical and/or psychological abuse the detainees were collectively subjected to in the barn(s); and (b) the mistreatment that W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED] each suffered individually in the interrogation room, or elsewhere on the ZDC premises.

(a) Mistreatment of detainees in the barn(s)

529. *Physical abuse.* W01679 and W03593 provided mutually corroborative evidence of the physical abuse the detainees endured daily in the barn where they were kept. W01679 testified that, except for [REDACTED], they were all kicked and punched on a daily basis.<sup>1066</sup> He recalled that “whoever opened that door would kick you or slap you. They wouldn’t leave without doing something to you”, attesting to how pervasive the abuse was.<sup>1067</sup> W03593 provided a similar account, testifying that, every night, BIA members entered the barn and slapped and kick all the detainees.<sup>1068</sup>

530. *Psychological abuse.* Further, the evidence shows that the detainees witnessed the brutal mistreatment inflicted on their co-detainees – which is described in detail below – and as a result they lived in constant fear that they could be next to be mistreated. W03593 recalled how, from the barn, he could hear people being beaten upstairs in the interrogation room and could hear their screams.<sup>1069</sup> He explained that this happened almost every night and that they could not sleep because they were scared

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<sup>1065</sup> **W01679:** T. 5 October 2021, public, p. 983, lines 11-12.

<sup>1066</sup> **W01679:** T. 4 October 2021, public, p. 885, lines 18-25; p. 886, lines 18-21; T. 4 October 2021, confidential, p. 888, line 21 to p. 890, line 14; p. 894, line 10 to p. 896, line 6; p. 900, line 9 to p. 901, line 10; T. 5 October 2021, public, p. 983, lines 8-10.

<sup>1067</sup> **W01679:** T. 4 October 2021, public, p. 885, lines 18-22.

<sup>1068</sup> **W03593:** T. 20 September 2021, public, p. 441, lines 5-15; p. 442, lines 17-21; T. 22 September 2021, confidential, p. 575, line 20 to p. 577, line 1.

<sup>1069</sup> **W03593:** T. 20 September 2021, public, p. 476, line 3 to p. 477, line 13.

that – at any time – they could be next.<sup>1070</sup> W01679 gave an even more graphic account, recalling: “you could hear people screaming, howling like dogs, making sounds like cats, screaming cats. Because of the torture and the pain”.<sup>1071</sup> His testimony speaks for itself as to the immense psychological strain they were under, as he explained that BIA members could take someone upstairs “whenever they felt like it”: “you just stayed and waited who will come to get you and take you upstairs for beating”, “[y]ou were just waiting for death, when it will come. Today, tomorrow. You were waiting [...] to be killed”.<sup>1072</sup>

531. In addition to hearing their co-detainees being mistreated, the detainees could also see the injuries inflicted on them, and the state they were in when they were brought back to the barn: bruised, bloodied, or unconscious.<sup>1073</sup> W03593 testified that, as soon as he was brought to the ZDC, he saw the Murder Victim beaten, unable to stand and hardly able to speak. He recalled how the Murder Victim told him: “They will kill you” and how he (W03593) responded in what can only be described as a state of despair: “What can I do? There’s nothing I can do”.<sup>1074</sup> W04669 testified, in the same vein, that seeing the Murder Victim being so brutally mistreated made him feel scared that the same could happen to him.<sup>1075</sup> His testimony echoed the same feeling of despair as W03593’s testimony: “we left our fate, we left our life in their hands”.<sup>1076</sup> The mutually corroborative accounts of W03593, W01679 and W04669 recalled above

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<sup>1070</sup> **W03593**: T. 20 September 2021, public, p. 476, lines 3-25.

<sup>1071</sup> **W01679**: T. 4 October 2021, public, p. 890, line 15 to p. 891, line 1; T. 4 October 2021, confidential, p. 896, lines 7-13.

<sup>1072</sup> **W01679**: T. 4 October 2021, public, p. 891, lines 3-8; p. 903, lines 20-24.

<sup>1073</sup> **W03593**: T. 20 September 2021, public, p. 440, lines 6-25; T. 22 September 2021, public, p. 576, lines 5-8; **W01679**: T. 4 October 2021, public, p. 891, lines 9-16; T. 4 October 2021, confidential, p. 896, lines 14-19.

<sup>1074</sup> **W03593**: T. 20 September 2021, public, p. 404, line 11-19.

<sup>1075</sup> **W04669**: T. 10 November 2021, public, p. 1441, lines 1-10; p. 1468, lines 7-16. *See further* the Panel’s findings on the mistreatment suffered by the Murder Victim, paras 569-574.

<sup>1076</sup> **W04669**: T. 11 November 2022, public, p. 1504, lines 16-21.

are so vivid, emotional and candid on this point that the Panel has no doubt that the witnesses recounted the events based on their personal experience. Further, W04669's account is corroborated by [REDACTED], which revealed that W04669 suffers from symptoms of post-traumatic stress disorder, specifically nightmares and flashbacks about the Murder Victim.<sup>1077</sup>

532. The atmosphere of constant fear was also fuelled by the fact that the detainees were not informed of the reasons for their deprivation of liberty,<sup>1078</sup> they had bags put on their heads when they were taken to or from the barn(s) and were told not to look around,<sup>1079</sup> were held in darkness,<sup>1080</sup> were not allowed to speak to each other,<sup>1081</sup> and were not allowed to sleep.<sup>1082</sup>

533. The Panel observes that W03594's testimony was markedly different from the testimonies of the above-mentioned witnesses. He stated that, with some exceptions, no one was hit while in the barn, no one was taken away from the barn, and no one

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<sup>1077</sup> [REDACTED].

<sup>1078</sup> The Panel notes that, apart from being accused of collaborating with Serbs, or of being spies, traitors, thieves, or liars, the detainees were not provided any documentation or official reason for their deprivation of liberty and, as attested by several witnesses, they did not understand why they were being detained; *see* paras 408, 410, 427, 429, 442, 444, 456, 458, 482, 484; **W04669**: T. 10 November 2021, public, p. 1441, lines 8-10 ("we were afraid, [...] we didn't know the reason as to why we were being kept there"); p. 1468, lines 7-10 ("it seemed very illogical to me why I was sent there"); T. 11 November 2021, public, p. 1504, lines 11-21 ("we were afraid because in reality we didn't know why what was happening was happening there"); **W03593**: T. 20 September 2021, public, p. 481, lines 2-5 ("I was lost. I didn't know what was happening to us"); **W03594**: T. 12 October 2021, confidential, p. 1037, lines 22-23; T. 12 October 2021, public, p. 1066, lines 9-12 (stating that he feared for his life because "I didn't know what would happen in the evening or in the morning. There was no explanation given to me").

<sup>1079</sup> **W03593**: T. 20 September 2021, public, p. 395, lines 17-19; p. 402, lines 3-4; p. 408, lines 2-12 ("they told us to put our head down and I didn't dare to see around. [...] We were just told not to look at them, just to hold our head down"); p. 475, line 23 to p. 476, line 2; p. 480, lines 6-7; **W01679**: T. 4 October 2021, public, p. 867, lines 4-9; p. 915, lines 14-18; **W04669**: T. 10 November 2022, public, p. 1425, lines 12-15; T. 11 November 2022, public, p. 1542, lines 21-23.

<sup>1080</sup> *See* para. 506.

<sup>1081</sup> *See* paras 523-525.

<sup>1082</sup> **W03593**: T. 20 September 2021, public, p. 479, lines 22-23; **W04669**: T. 11 November 2021, public, p. 1544, lines 14-17.

had any marks of mistreatment.<sup>1083</sup> The Panel notes, first, that W03594's account is clearly disproved by the consistent testimonies of W01679, W03593 and W04669.<sup>1084</sup> Second, when confronted in court with his prior statement made to the SPO – where W03594 had said that the detainees had scars and holes on their bodies and that one of them had been beaten so severely that he could not even stand – W03594 simply denied having made such disclosures and failed to provide any convincing explanation for this clear discrepancy.<sup>1085</sup> Third, his testimony on this point is difficult to reconcile with his own admissions in court regarding the constant fear that he, as well as his co-detainees, felt at the ZDC. W03594 testified repeatedly and in a manner consistent with the testimonies of the other detainees that he was afraid for his life and did not know whether the next morning would find him alive or dead.<sup>1086</sup> He also testified about his co-detainees that “[t]hey would fear beating again. [...] [T]hey were always under stress. They were always afraid of someone taking them or beating them”.<sup>1087</sup> He stated specifically about W03593, that every time BIA members entered the barn “he [would] come so close to me he would enter almost in my chest because of the fear that he had for them”.<sup>1088</sup> For these reasons, the Panel is not convinced by W03594's account and finds that he does not disprove the fully authentic and reliable

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<sup>1083</sup> **W03594**: T. 12 October 2021, confidential, p. 1049, line 19 to p. 1050, line 9; p. 1051, line 12 to p. 1054, line 24; p. 1058, line 8 to p. 1065, line 25; p. 1068, line 16 to p. 1072, line 19; T. 12 October 2021, public, p. 1076, line 5 to p. 1078, line 9; T. 13 October 2021, confidential, p. 1189, lines 2-23; T. 14 October 2021, public, p. 1266, line 24 to p. 1270, line 1.

<sup>1084</sup> See Section V.D.2.

<sup>1085</sup> **W03594**: T. 12 October 2021, public, p. 1051, line 12 to p. 1054, line 24; T. 12 October 2021, confidential, p. 1058, line 8 to p. 1065, line 25; T. 14 October 2021, public, p. 1266, line 24 to p. 1270, line 1; *referring to* 061016-TR-ET Part 1 RED1, p. 26, lines 13-14; 061016-TR-ET Part 3 RED1, p. 7, lines 5-17, 22-23; p. 10, lines 1-22.

<sup>1086</sup> **W03594**: T. 12 October 2021, public, p. 1066, lines 9-12, 21-22; p. 1067, lines 3-7; T. 12 October 2021, confidential, p. 1086, line 4 to p. 1087, line 3; T. 13 October 2021, public, p. 1136, lines 14-16.

<sup>1087</sup> **W03594**: T. 12 October 2021, public, p. 1079, lines 20-23.

<sup>1088</sup> **W03594**: T. 12 October 2021, confidential, p. 1079, lines 1-13.

evidence of W01679, W03593 and W04669 regarding the physical and psychological abuse suffered by the detainees.

(b) Mistreatment of detainees in the interrogation room or elsewhere at the ZDC

i. W01679

534. *Interrogation and mistreatment.* The evidence before the Panel shows that W01679, [REDACTED],<sup>1089</sup> was first interrogated and beaten on the day he was brought to the ZDC. The witness testified that, upon arrival at the ZDC, he was taken to the Accused, in the interrogation room above the barn, where he was later detained.<sup>1090</sup> There, the Accused questioned him about his reasons for being in Zllash/Zlaš and accused him of being a spy, a liar and a thief.<sup>1091</sup> Then, the witness recalled the Accused slapping him and ordering other BIA soldiers to “[f]inish him”.<sup>1092</sup> The BIA soldiers started kicking him, punching him and hitting him with a baseball bat and the handle of a hatchet until he lost consciousness.<sup>1093</sup> W01679 recalled that he was then taken downstairs in the barn, covered in blood.<sup>1094</sup>

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<sup>1089</sup> **W01679**: T. 4 October 2021, confidential, p. 900, line 25 to p. 901, line 3; U001-0310-U001-0322-ET.

<sup>1090</sup> **W01679**: T. 4 October 2021, confidential, p. 865, line 11 to p. 867, line 16; T. 4 October 2021, public, p. 882, lines 13-19.

<sup>1091</sup> **W01679**: T. 4 October 2021, confidential, p. 867, lines 10-16; p. 868, lines 22-24; p. 869, lines 11-18; p. 874, line 6 to p. 876, line 13 (*referring to W01679’s statement to [REDACTED], 7000687-7000691 RED 3, p. 7000687, which the witness confirmed in court*); T. 5 October 2021, public, p. 981, lines 3-20.

<sup>1092</sup> **W01679**: T. 4 October 2021, confidential, p. 869, lines 11-23; p. 877, lines 13-21; T. 5 October 2021, public, p. 981, lines 10-13.

<sup>1093</sup> **W01679**: T. 4 October 2021, confidential, p. 869, line 16 to p. 870, line 7; p. 874, line 6 to p. 876, line 13, *referring to W01679’s statement to [REDACTED], 7000687-7000691 RED 3, p. 7000687, which the witness confirmed in court.*

<sup>1094</sup> **W01679**: T. 4 October 2021, public, p. 870, lines 2-7; p. 882, lines 13-19.

535. The witness further testified that he was mistreated almost daily throughout his time in detention.<sup>1095</sup> He was hit with iron batons and handles of hatchets;<sup>1096</sup> burnt with hot candle wax<sup>1097</sup> and a hot iron,<sup>1098</sup> and electrocuted.<sup>1099</sup> He described compellingly and in detail how the electrocution was performed: two BIA soldiers – Dardan and Afrim, who were the “experts” in performing the electrocution – folded his trousers up, attached two wires connected to “a box” to the flesh on his feet and turned the “box” on, at which point W01679 would get a shock.<sup>1100</sup> The witness further testified that during the mistreatment, he was interrogated about his reasons for being in Zllash/Zlaš and accused of being a thief.<sup>1101</sup> Although the Accused did not beat him again after the first incident described above, according to the witness’s recollection, he was present and oversaw (some of the) other beatings.<sup>1102</sup>

536. W01679’s testimony remained entirely consistent when questioned by the Parties and Victims’ Counsel about the mistreatment he suffered. His account was clear, graphic and detailed to such a degree that the Panel has no doubt that he experienced the events personally.

537. Regarding his testimony that he was electrocuted, the Panel notes that it has received potentially contradictory evidence on the availability of electricity at the ZDC during April 1999. For example, one Defence witness, Mr Krasniqi, testified that the electricity was cut off at the ZDC towards the end of January 1999.<sup>1103</sup> Another Defence

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<sup>1095</sup> **W01679**: T. 4 October 2021, public, p. 885, lines 13-25; T. 5 October 2021, public, p. 983, lines 3-10.

<sup>1096</sup> **W01679**: T. 4 October 2021, public, p. 884, lines 2-5.

<sup>1097</sup> **W01679**: T. 4 October 2021, public, p. 884, lines 6-11.

<sup>1098</sup> **W01679**: T. 5 October 2021, public, p. 984, line 24 to p. 986, line 16.

<sup>1099</sup> **W01679**: T. 4 October 2021, public, p. 885, lines 13-25.

<sup>1100</sup> **W01679**: T. 5 October 2021, public, p. 986, line 17 to 987, line 15.

<sup>1101</sup> **W01679**: T. 5 October 2021, public, p. 983, line 18 to p. 984, line 2.

<sup>1102</sup> **W01679**: T. 5 October 2021, public, p. 983, line 18 to p. 984, line 8; p. 1004, line 19 to p. 1005, line 6.

<sup>1103</sup> **Mr Krasniqi**: T. 21 April 2022, public, p. 3890, lines 15-19.

witness, Ms Canolli-Kaciu, stated that while there was no electricity, they used “car batteries to make light”.<sup>1104</sup>

538. However, W04669 recalled that, when he was interrogated, a light bulb was on in the interrogation room.<sup>1105</sup> Similarly, when asked by the Defence whether there was electricity at the ZDC, W03594 replied: “Yes. [...] I saw the lamp in the ceiling, above”, speaking about the same interrogation room.<sup>1106</sup> Their evidence is supported by the testimony of Defence witness Ms Hadri (WDSM1600), who stated that, on or around 17 April 1999, there was electricity at the ZDC, at least in the morning, as she used to watch television there.<sup>1107</sup>

539. Taking the above evidence as a whole, and in light of the detailed and credible account of W01679 regarding the electrocution to which he was subjected, the Panel finds that electricity was available, even if at intermittent times, during April 1999, including when W01679 was electrocuted. In fact, W01679 recalled that when he was electrocuted “they had a box”,<sup>1108</sup> which is compatible with the possibility that the perpetrators used a car battery in case no electricity was available at the time. Whether electricity was later cut off completely is irrelevant to the Panel’s determination in respect of W01679.

540. Lastly, the evidence shows that the mistreatment left W01679 with long-lasting physical and psychological injuries. The witness testified that he sustained multiple head injuries, burns, cuts and broken teeth from the beatings.<sup>1109</sup> To this day, he suffers

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<sup>1104</sup> **Ms Canolli-Kaciu**: T. 12 May 2022, public, p. 4334, lines 3-6.

<sup>1105</sup> **W04669**: T. 10 November 2021, public, p. 1425, lines 18-21.

<sup>1106</sup> **W03594**: T. 13 October 2021, public, p.1184, line 25 to p. 1185, line 11. While the witness did not explicitly say that the light was on, he stated unequivocally that there was electricity at the ZDC. In the Panel’s view, the witness could not have known with such certainty that there was electricity unless the light was indeed on.

<sup>1107</sup> **Ms Hadri**: T. 12 May 2022, public, p. 4292, lines 9-19.

<sup>1108</sup> **W01679**: T. 4 October 2021, public, p. 883, line 19.

<sup>1109</sup> **W01679**: T. 4 October 2021, confidential, p. 929, line 12 to p. 930, line 10; p. 944, line 16 to p. 945, line 10; T. 1 June 2022, confidential, p. 4453, lines 3-4.

from headaches and pain in other parts of his body, he cannot make full use [REDACTED]<sup>1110</sup> and his [REDACTED].<sup>1111</sup> Psychologically, W01679 testified that he suffers from depression, has difficulty sleeping and experiences nightmares, flashbacks, and intrusive memories of the mistreatment.<sup>1112</sup> He added that he also developed [REDACTED].<sup>1113</sup> He explained further that his [REDACTED] was affected by what he suffered in Zllash/Zlaš and [REDACTED].<sup>1114</sup> He stated: “For years, [...] I couldn’t feel anything”, “[f]rom 1999, I was killed by them”, “made [...] half a person”.<sup>1115</sup> W01679’s account is strongly corroborated by [REDACTED], which revealed multiple scars that correspond to the violence to which W01679 was subjected and symptoms of post-traumatic stress disorder (nightmares and intrusive memories) which derive from said violence.<sup>1116</sup>

541. *Identification of the Accused and other BIA members.* While W01679 did not identify the Accused by name and did not know him at the time, the Panel is satisfied, for the reasons provided below, that the individual who first interrogated the witness, slapped him and gave the order to “finish him” was the Accused. First, W01679 testified that he was taken before the commander of Skifterat,<sup>1117</sup> known as “Commander Cali”.<sup>1118</sup> He explained that he knew this because: (i) the KLA soldiers who arrested him – and who identified themselves as Skifterat and wore BIA emblems

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<sup>1110</sup> **W01679**: T. 5 October 2021, confidential, p. 946, line 6 to p. 948, line 11.

<sup>1111</sup> **W01679**: T. 5 October 2021, confidential, p. 942, line 23 to p. 944, line 15.

<sup>1112</sup> **W01679**: T. 4 October 2021, confidential, p. 929, line 12 to p. 930, line 10; T. 5 October 2021, confidential, p. 939, line 24 to p. 940, line 21; T. 5 October 2021, public, p. 960, lines 8-9; T. 1 June 2022, confidential, p. 4446, lines 7-15; p. 4447, lines 14-16; p. 4451, lines 20-21; p. 4459, lines 20-24; p. 4466, lines 2-10; p. 4472, line 21 to p. 4473, line 13.

<sup>1113</sup> **W01679**: T. 4 October 2021, confidential, p. 941, lines 22-23.

<sup>1114</sup> **W01679**: T. 4 October 2021, confidential, p. 941, lines 11-23.

<sup>1115</sup> **W01679**: T. 4 October 2021, public, p. 941, line 23; T. 1 June 2022, confidential, p. 4472, line 23; p. 4473, lines 7-8.

<sup>1116</sup> [REDACTED].

<sup>1117</sup> The Panel recalls that Skifterat is another name by which BIA was known; see para. 335.

<sup>1118</sup> **W01679**: T. 4 October 2021, confidential, p. 867, lines 10-25.

– told the witness that they were taking him to their commander;<sup>1119</sup> and (ii) once there, he heard the soldiers address him as “commander” and “Cali”.<sup>1120</sup> Second, W01679 recalled that: (i) he heard the commander give the order to “[f]inish him”, which was followed right away by the BIA soldiers;<sup>1121</sup> and (ii) the BIA soldiers turned to him for directions, asking: “What shall we do, Cali?”.<sup>1122</sup> This account is consistent with the Accused’s position as commander of the BIA. The Panel recalls that the Accused was the overall and only BIA commander throughout the timeframe of the charges.<sup>1123</sup> By his own admission, he went by the nickname “Cali”, which was confirmed by several other former KLA members.<sup>1124</sup> Lastly, when shown photographs of the Accused in court, W01679 unequivocally recognised the Accused as “Cali”.<sup>1125</sup>

542. The Panel is not persuaded by the Defence’s argument that W01679’s testimony does not prove that the commander who interrogated him was the Accused since he never introduced himself to the witness as “Commander Cali”.<sup>1126</sup> The Panel considers this to be of no relevance given the overwhelming evidence pointing to the fact that the commander in question was the Accused. In the Panel’s estimation, the only

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<sup>1119</sup> **W01679**: T. 4 October 2021, public, p. 865, line 11 to p. 866, line 24; T. 5 October 2021, public, p. 980, lines 15-20.

<sup>1120</sup> **W01679**: T. 4 October 2021, confidential, p. 868, lines 1-10; p. 873, lines 16-18; p. 877, lines 13-21; p. 882, lines 3-12.

<sup>1121</sup> **W01679**: T. 4 October 2021, confidential, p. 869, line 21 to p. 870, line 1.

<sup>1122</sup> **W01679**: T. 4 October 2021, confidential, p. 877, lines 13-21; T. 4 October 2021, public, p. 882, lines 9-12; T. 5 October 2021, public, p. 981, lines 10-11.

<sup>1123</sup> See para. 338; see further **Mr Mustafa**: 7000650-7000660, p. 7000651, 7000656; 069404-TR-ET Part 1, p. 29, lines 2-5; p. 31, line 15 to p. 32, line 14; 069404-TR-ET Part 3, p. 24, line 3 to p. 25, line 12; 069404-TR-ET Part 7, p. 30, lines 17-19; **Mr F. Sopi**: T. 18 January 2021, public, p. 2060, lines 4-7; **W04600**: T. 23 September 2021, public, p. 718, lines 17-23; **Mr Veseli**: T. 25 January 2021, public, p. 2195, line 25 to p. 2196, line 2; **Mr Ibishi**: T. 12 April 2022, public, p. 3550, line 23 to p. 3551, line 4; **Mr Humolli**: T. 1 February 2022, public, p. 2303, lines 19-22.

<sup>1124</sup> See para. 340; see further **Mr Mustafa**: 069404-TR-ET Part 1, p. 4, lines 19-25; **Mr F. Sopi**: T. 18 January 2021, public, p. 2061, lines 5-6; **W04600**: T. 23 September 2021, public, p. 718, lines 24-25; **Mr Veseli**: T. 25 January 2021, public, p. 2196, lines 3-6.

<sup>1125</sup> **W01679**: T. 5 October 2021, public, p. 1005, lines 9-24; SPOE00222559 (and version marked by the witness in court, REG00-008); SPOE00222547.

<sup>1126</sup> T. 15 September 2022, public, p. 4785, line 11 to p. 4787, line 3.

reasonable conclusion based on the evidence as a whole is that the individual who first interrogated W01679, slapped him and gave the order to “finish him” was the Accused.

543. As to the identity of the other perpetrators, W01679 identified the persons who mistreated him throughout his detention as Fatmir, Bimi, Dardan, Afrim,<sup>1127</sup> Tabuti (whose real name the witness later learnt was Nazif), Ilmi Vela and, on one occasion, also two women.<sup>1128</sup> W01679 stated that he learnt their nicknames while at the ZDC.<sup>1129</sup> He recalled that, although at times they were dressed in civilian clothes, they usually wore uniforms with a BIA emblem.<sup>1130</sup>

544. Contrary to the Defence’s submissions,<sup>1131</sup> several SPO and Defence witnesses, as well as the Accused himself, confirmed that the persons identified by W01679 were BIA members. Mr Mehmetaj, a former BIA member,<sup>1132</sup> confirmed that in the BIA there was one person named Dardan<sup>1133</sup> and another Fatmir.<sup>1134</sup> Mr Ajeti, also a former BIA member,<sup>1135</sup> similarly testified that he knew a person in the BIA nicknamed Dardan.<sup>1136</sup> The Accused and several SPO and Defence witnesses, all former KLA members,

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<sup>1127</sup> The witness recalled that Dardan and Afrim were the ones who usually performed the electrocution; **W01679**: T. 5 October 2021, confidential, p. 987, lines 11-15.

<sup>1128</sup> **W01679**: T. 4 October 2021, public, p. 866, lines 18-21; T. 4 October 2021, confidential, p. 867, lines 18-21; p. 869, lines 16-18; p. 886, line 9 to 888, line 8; T. 5 October 2021, public, p. 984, line 22 to p. 987, line 15; T. 4 October 2021, confidential, p. 1012, lines 6-23 (explaining that, the soldiers who beat him on the first day were [REDACTED] Fatmir, Bimi, Dardan and Afrim).

<sup>1129</sup> **W01679**: T. 5 October 2021, public, p. 1012, lines 6-19.

<sup>1130</sup> **W01679**: T. 4 October 2021, public, p. 887, lines 12-21.

<sup>1131</sup> The Defence submits that there is no relation or connection between the Accused and these persons, there is no evidence that they were at the ZDC at the relevant time and they were never identified or interviewed; *see* T. 14 September 2022, public, p. 4638, lines 16-22. The Panel considers it irrelevant that some of the perpetrators were identified only by their nickname, and not by their name, as what is key is that they were BIA members and were present at the ZDC.

<sup>1132</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2618, lines 15-16.

<sup>1133</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2653, line 25 to p. 2654, line 4; p. 2715, lines 1-15.

<sup>1134</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2714, lines 17-23.

<sup>1135</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4056, lines 17-21; p. 4057, line 19; p. 4086, lines 19-20; p. 4096, lines 4-7.

<sup>1136</sup> **Mr Ajeti**: T. 22 April 2022, public, p. 4108 to p. 4109, line 6.

confirmed that the person nicknamed Tabuti was a member of the BIA and that his name was Nazif Musliu.<sup>1137</sup> The Accused and Mr Mehmetaj further confirmed that Ilmi Vela, nicknamed Vdekja, was a BIA member.<sup>1138</sup> Lastly, the Panel recalls that Bimi is Mr Mehmetaj himself.<sup>1139</sup> The evidence above is mutually corroborative and emanates from persons with inside knowledge of the KLA, and in particular the BIA, including the Accused. The Panel cannot identify any reason why the Accused and all these witnesses would have fabricated such consistent information. Accordingly, it regards such evidence as credible and relies on it.

545. In light of the above, the Panel is satisfied that, while detained at the ZDC, W01679 was interrogated and accused of being a spy, a liar and a thief, and severely mistreated by BIA members, including by the Accused.

ii. W03593

546. *Interrogation and mistreatment.* The evidence before the Panel shows that W03593 was mistreated for the first time on the day he was brought to the ZDC. W03593 testified that, just one hour after he arrived at the ZDC, he was taken from the barn and beaten up by several BIA members in the presence of the Accused.<sup>1140</sup> He was kicked, hit with a piece of wood, and accused of collaborating with Serbs.<sup>1141</sup> The witness vividly recalled that at one point, the Accused put a revolver to his head and pulled the trigger. While no bullet was fired, the witness was left with the impression

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<sup>1137</sup> **Mr Mustafa:** 069404-TR-ET Part 8, p. 9, line 20 to p. 10, line 13; **Mr F. Sopi:** T. 18 January 2022, public, p. 2077, lines 8-18; T. 19 January 2022, confidential, p. 2133, lines 17-21; **Mr Veseli:** T. public, p. 2202, lines 1-16; **Mr Mehmetaj:** T. 23 March 2022, public, p. 2712, line 12 to p. 2713, line 8; **Mr Ajeti:** T. 22 April 2022, public, p. 4107, lines 11-19; **W04600:** T. 24 September 2021, public, p. 764, lines 3-21.

<sup>1138</sup> **Mr Mustafa:** 069404-TR-ET Part 8, p. 10, line 17 to p. 12, line 16; **Mr Mehmetaj:** T. 23 March 2022, public, p. 2705, line 22 to p. 2706, line 24.

<sup>1139</sup> [REDACTED].

<sup>1140</sup> **W03593:** T. 20 September 2021, public, p. 401, line 24 to p. 402, line 8; p. 407, lines 6-14; p. 408, lines 8-25; p. 414, lines 15-20; p. 431, lines 8-10.

<sup>1141</sup> **W03593:** T. 20 September 2021, public, p. 409, line 1 to p. 410, line 1.

that he was going to be killed. The Accused then said to the other BIA members: “let him be, because [he] is lucky”.<sup>1142</sup> The witness remembered that he was beaten for hours and that it was so severe that he fainted several times throughout.<sup>1143</sup> He testified – in a manner which in the Panel’s view is revealing of the extreme suffering that he endured – that, in these moments, he wished that he would be killed so his suffering would end.<sup>1144</sup>

547. In a separate incident, on or about 11-12 April 1999,<sup>1145</sup> W03593 recalled that two BIA soldiers took him from the barn to the interrogation room upstairs. There, the Accused threatened to kill him and questioned him regarding the identities of thieves.<sup>1146</sup> When W03593 responded that he had no such knowledge, the Accused started beating him, hitting him repeatedly with a baseball bat, all over his body.<sup>1147</sup> The beating lasted between half an hour and one hour, after which the Accused ordered two other BIA soldiers to return the witness to the barn.<sup>1148</sup>

548. W03593’s account of the mistreatment suffered was compelling and vivid and the Panel has no doubt that it is based on the witness’s personal experience. W03593’s account of being accused of collaborating with Serbs is corroborated by W03594 who recalled that W03593 was accused of being a spy, something which W03594 found

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<sup>1142</sup> **W03593**: T. 20 September 2021, public, p. 411, line 17 to p. 412, line 19; p. 413, lines 14-19; T. 20 September 2021, confidential, p. 414, line 25 to p. 415, line 6.

<sup>1143</sup> **W03593**: T. 20 September 2021, public, p. 409, lines 1-7; p. 411, lines 1-16; p. 413, lines 14-19; p. 414, lines 15-20.

<sup>1144</sup> **W03593**: T. 20 September 2021, public, p. 412, lines 18-19.

<sup>1145</sup> W03593 testified that this incident happened 7 or 8 days before his release; *see* **W03593**: T. 20 September 2021, public, p. 439, lines 2-4. The Panel refers to its previous finding that W03593 was released on or around 19 April 1999; *see* para. 426.

<sup>1146</sup> **W03593**: T. 20 September 2021, confidential, p. 419, line 15 to p. 421, line 2; T. 20 September 2021, public, p. 428, lines 20-23.

<sup>1147</sup> **W03593**: T. 20 September 2021, confidential, p. 419, line 15 to p. 420, line 12; p. 425, line 23 to p. 426, line 17; T. 20 September 2021, public, p. 428, lines 20-23.

<sup>1148</sup> **W03593**: T. 20 September 2021, confidential, p. 419, line 15 to p. 421, line 2; p. 425, line 23 to p. 426, line 17; p. 429, line 25 to p. 430, line 1; p. 438, line 12 to p. 439, line 7; T. 20 September 2021, public, p. 428, lines 20-23.

ridiculous.<sup>1149</sup> With regard to the second incident, the Panel also relies on the mutually corroborative evidence of W01679, who testified that W03593 was taken to the interrogation room upstairs and beaten.<sup>1150</sup> He also testified that W03593 was “not in a good condition” when released.<sup>1151</sup> Further, W04391 testified that he saw marks of beatings on the faces and bodies of all the detainees [REDACTED] on the day of their release and this included W03593.<sup>1152</sup>

549. The Panel has also received a different account from W03594, who testified that W03593 was well and had no injuries when released.<sup>1153</sup> However, W03594’s testimony is clearly disproved by the fully credible and consistent accounts of W03593, W01679 and W04391. His testimony is also difficult to reconcile with his own admission that W03593 was accused of being a spy, considering the pattern of accusations and mistreatment suffered by the detainees at the ZDC which emerges from the testimonies of the other witnesses detained there. Accordingly, the Panel attached no weight to this aspect of W03594’s testimony.

550. Lastly, the evidence shows that the mistreatment left W03593 with long-lasting physical and psychological injuries. The witness testified that the beating left him with [REDACTED]. These injuries affected his ability to work [REDACTED], and still cause him severe and persistent pain to this day.<sup>1154</sup> He stated candidly: “[a]ll my body aches. There is no single place in my body that doesn’t ache”, revealing that he is not fully

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<sup>1149</sup> **W03594**: T. 12 October 2021, confidential, p. 1048, line 4 to p. 1049, line 18.

<sup>1150</sup> **W01679**: T. 4 October 2021, confidential, p. 895, line 16 to p. 896, p. 6.

<sup>1151</sup> **W01679**: T. 4 October 2021, confidential, p. 907, line 5.

<sup>1152</sup> **W04391**: T. 22 November 2021, confidential, p. 1742, line 18 to p. 1743, line 3; p. 1782, lines 3-14; T. 22 November 2021, public, p. 1744, lines 9-17; T. 23 November 2021, public, p. 1819, lines 6-8.

<sup>1153</sup> **W03594**: T. 13 October 2021, confidential, p. 1192, lines 1-4.

<sup>1154</sup> **W03593**: T. 20 September 2021, public, p. 409, lines 1-7; T. 20 September 2021, confidential, p. 425, line 23 to p. 426, line 1; p. 420, lines 2-3; T. 21 September 2021, confidential, p. 523, line 7 to p. 526, line 11; p. 528, line 9 to p. 530, line 5; p. 537, line 7 to p. 538, line 22; p. 541, lines 5-8; p. 542, lines 15-25; T. 22 September 2021, confidential, p. 642, line 18 to p. 646, line 3.

recovered to this day.<sup>1155</sup> He added that, psychologically, he felt lost during the time in detention, as he did not know what was happening to him.<sup>1156</sup> He also felt ashamed after his release and, to this day, he had difficulty sleeping and experiences nightmares about his time in detention and mistreatment at the ZDC.<sup>1157</sup> W03593's medical records corroborate his account of the [REDACTED] injury and his difficulties sleeping.<sup>1158</sup>

551. *Identification of the Accused and other BIA members.* While W03593 did not identify the Accused by name, the Panel is satisfied, for the reasons provided below, that the individual who put the revolver to his head during the first incident and who beat and interrogated him during the second incident is the Accused. Contrary to the Defence's submissions,<sup>1159</sup> W03593 explained in detail how he identified the Accused. First, W03593 testified that, while he did not know the Accused at the time and was not able to see him properly as it was dark,<sup>1160</sup> he saw that he was wearing a red hat, on both occasions.<sup>1161</sup> The witness explained persuasively that he was able to see around, to a certain extent, because the BIA members had torches and he did not have

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<sup>1155</sup> **W03593**: T. 21 September 2021, public, p. 526, line 9; T. 21 September 2021, confidential, p. 541, lines 5-12.

<sup>1156</sup> **W03593**: T. 20 September 2021, public, p. 481, lines 2-5.

<sup>1157</sup> **W03593**: T. 21 September 2021, confidential, p. 529, line 19 to p. 530, line 5; p. 541, lines 9-12; T. 22 September 2021, confidential, p. 642, line 18 to p. 644, line 15.

<sup>1158</sup> SITF00296103-SITF00296121-ET RED3, p. SITF00296103, SITF00296104. The Panel notes that, according to his medical records, W03593 incurred [REDACTED] injury after slipping on ice. The witness explained in court that he had stated to the doctor that this was how he suffered the injury because he was ashamed and afraid to say that he had been mistreated by the KLA. The Panel finds the witness's explanation persuasive and does not consider that this discrepancy undermines his otherwise authentic and reliable evidence.

<sup>1159</sup> T. 14 September 2022, public, p. 4695, line 3 to p. 4697, line 5; p. 4712, lines 6-23; T. 15 September 2022, public, p. 4787, line 4 to p. 4790, line 11.

<sup>1160</sup> **W03593**: T. 20 September 2021, public, p. 413, lines 9-11; T. 20 September 2021, public, p. 420, lines 13-16; T. 22 September 2021, public, p. 583, line 19 to p. 585, line 3.

<sup>1161</sup> **W03593**: T. 20 September 2021, public, p. 413, lines 4-6; T. 20 September 2021, public, p. 420, lines 13-21; p. 421, lines 14-19; p. 432, lines 3-10; T. 23 September 2021, confidential, p. 428, line 24 to p. 429, line 12; T. 23 September 2021, public, p. 695, lines 21-25; p. 697, line 12 to p. 698, line 3.

a sack over his head when he was being beaten.<sup>1162</sup> He stated clearly: “while I was being beaten, I looked up once. I saw a person, and that was the [A]ccused, and he had the red hat” and “[h]e was wearing a red hat. The first time and the second time”.<sup>1163</sup> Second, the witness testified that the individual with the red hat “was the main person over there” and the other soldiers “would not do a thing without him telling them what to do”.<sup>1164</sup> He also stated, in the same vein, that he heard him giving orders to the other BIA soldiers, which were followed by the soldiers, and heard him being called “commander”.<sup>1165</sup> Third, after having his memory refreshed with his statement to the SPO, W03593 confirmed that he heard other BIA soldiers call him “Cali”.<sup>1166</sup> The witness was consistent when questioned (extensively) by both the SPO and the Defence on this topic, as well as by the Panel. He did not embellish, and he clearly distinguished the aspects he remembered confidently from those that he did not.<sup>1167</sup>

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<sup>1162</sup> **W03593**: T. 20 September 2021, public, p. 410, lines 15-21; T. 22 September 2021, public, p. 580, lines 10-14.

<sup>1163</sup> **W03593**: T. 20 September 2021, public, p. 429, lines 6-12; T. 22 September 2021, public, p. 698, lines 2-3.

<sup>1164</sup> **W03593**: T. 20 September 2021, public, p. 413, line 23 to p. 414, line 11; T. 22 September 2021, public, p. 583, line 19 to p. 585, line 3; p. 586, lines 10-18.

<sup>1165</sup> **W03593**: T. 20 September 2021, public, p. 413, lines 14-19; T. 21 September 2021, confidential, p. 510, line 12 to p. 511, line 5; T. 22 September 2021, confidential, p. 656, line 18 to p. 657, line 9. While the witness also stated at times, in apparent contradiction, that he had not heard the Accused giving orders (*see* T. 20 September 2021, public, p. 429, line 18 to p. 430, line 8), it is clear from his testimony, when read in its entirety, that he did hear him giving orders on both occasions. This apparent inconsistency does not affect his credibility and might have arisen from the fact that the witness was asked one and the same question several times, making him confused.

<sup>1166</sup> **W03593**: T. 20 September 2021, confidential, p. 432, line 20 to p. 438, line 11.

<sup>1167</sup> *See, for example*, **W03593**: T. 20 September 2021, public, p. 413, line 23 to p. 414, line 11; T. 23 September 2021, public, p. 697, line 12 to p. 698, line 3. While the witness refused to pronounce the Accused’s name in court (*see* T. 20 September 2021, public, p. 412, line 20 to p. 413, line 1; T. 20 September 2021, confidential, p. 433, line 19 to p. 434, line 6; T. 21 September 2021, public, p. 519, line 18 to p. 520, line 4; T. 21 September 2021, confidential, p. 521, line 25 to p. 522, line 10), this is immaterial as it is clear from his testimony that the individual he is referring to is the Accused. His refusal to name the Accused can be explained by the trauma the witness suffered, having been beaten by him personally. The witness himself explained that: “I cannot mention his name. Because when

552. The Panel recalls that according to the Accused himself, he wore a red beret for a period of time, and was the only one in Zllash/Zlaš to do so.<sup>1168</sup> This was also confirmed by W04600, who stated that most of the time “Commander Cali” wore a uniform and a red hat.<sup>1169</sup> The Panel has also seen multiple photos of the Accused wearing a red beret.<sup>1170</sup> Further, the Panel recalls its previous finding that the Accused was the overall and only BIA commander throughout the timeframe of the charges, and that his nickname was “Cali”.<sup>1171</sup>

553. The Panel is mindful that W03593 provided a slightly different account in his statement [REDACTED]. In that statement, which was put to the witness in court, W03593 stated that the person who put the revolver to his head was wearing a mask, and that he did not know who the commander in charge of the ZDC was.<sup>1172</sup> However, the Panel does not find that this affects the witness’s credibility or the reliability of his evidence. First, the Panel notes that W03593 stated consistently, both in court and in his statement to the SPO, that the faces of the persons who beat him were not covered.<sup>1173</sup> Second, whether the Accused was wearing a mask or not is irrelevant for the Panel’s determination, as the witness identified him not based on his facial

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I mention his name, I would immediately have a headache” (see T. 21 September 2021, confidential, p. 522, lines 1-2).

<sup>1168</sup> See para. 341; **Mr Mustafa**: 069404-TR-ET Part 3, p. 27, lines 9-12; 069404-TR-ET Part 4, p. 3, lines 1-3; 069404-TR-ET Part 8, p. 8, lines 5-7.

<sup>1169</sup> **W04600**: T. 24 September 2021, public, p. 765, lines 7-14.

<sup>1170</sup> 082249-082258, p. 082256; SPOE00222549-00222549; SPOE00222550-00222550; SPOE00222551-00222551; SPOE00222552-00222552; SPOE00222554-00222554; SPOE00222556-00222556; SPOE00222557-00222557; SPOE00222563-00222563; SPOE00222565-00222565; SPOE00222567-00222567; SPOE00222568-00222568; SPOE00222569-00222569; SPOE00222570-00222570; SPOE00222572-00222572; SPOE00222582-00222582; SPOE00222585-00222585; SPOE00222589-00222589; SPOE00222600-00222600; SPOE00222602-00222602; SPOE00222619-00222619; SPOE00222639-00222639; SPOE00222682-00222682; SPOE00222688-00222688; SPOE00222695-00222695; SPOE00222590-00222590.

<sup>1171</sup> See paras 338-340.

<sup>1172</sup> **W03593**: T. 23 September 2021, confidential, p. 676, line 20 to p. 681, line 15, referring to SPOE00127751-00127769 RED4, at SPOE00127752, SPOE00127756.

<sup>1173</sup> **W03593**: T. 23 September 2021, confidential, p. 676, line 23 to p. 677, line 23, referring to 061015-TR-ET Part 2 Revised RED3, p. 5, lines 6-7.

features, but based on his headgear, his role and authority over the other perpetrators, and his nickname. Third, it is equally irrelevant whether the witness knew who the commander at the ZDC was, since the Panel has received extensive evidence establishing, independently, that it was the Accused.<sup>1174</sup>

554. In light of the above, the Panel considers that the only reasonable conclusion based on the evidence taken as a whole is that the person who put the revolver to W03593's head during the first incident and who beat and interrogated him during the second incident is the Accused.

555. As to the other perpetrators, even though the witness did not further describe (all of them) them by (nick)name, appearance or clothing, the Panel is satisfied, for the reasons provided below, that they were members of the BIA unit. First, W03593 recalled that he heard one of them being called "Tabuti" or "Tabut".<sup>1175</sup> The same individual was also identified by W01679 as one of the perpetrators and he was, as found above, a BIA member.<sup>1176</sup> Second, W03593 was mistreated with the same tools as W01679 (such as a baseball bat) and was accused, just as W01679 was, of collaborating with Serbs – revealing a similar *modus operandi*. Third, the soldiers who mistreated him were acting under the authority of the Accused,<sup>1177</sup> indicating that they were his subordinates and therefore BIA members. Fourth, the ZDC was controlled at the relevant time by the BIA and, as such, by the Accused.<sup>1178</sup> Lastly, W03593 testified that the soldiers spoke Albanian.<sup>1179</sup> In the Panel's estimation, the only reasonable conclusion based on the evidence taken as a whole is that the individuals who beat W03593 were BIA members.

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<sup>1174</sup> See para. 338.

<sup>1175</sup> W03593:T. 20 September 2021, confidential, p. 430, line 21 to p. 431, line 19; T. 22 September 2021, public, p. 583, lines 5-14.

<sup>1176</sup> See paras 543-544.

<sup>1177</sup> See para. 551.

<sup>1178</sup> See paras 352-353.

<sup>1179</sup> W03593:T. 20 September 2021, public, p. 410, lines 6-8.

556. In light of the above, the Panel is satisfied that, while detained at the ZDC, W03593 was interrogated, accused of collaborating with Serbs, threatened with death and severely mistreated by BIA members, including by the Accused.

iii. W03594

557. W03594 testified in court that he was never physically abused while in detention.<sup>1180</sup> However, the evidence before the Panel shows, as explained below, that he was mistreated both in the barn and in the interrogation room upstairs.

558. W03594 – who was a member of the Democratic League of Kosovo (LDK)<sup>1181</sup> – acknowledged in court, after being confronted with his statement to the SPO, that he was hit on one occasion, on his hands, with a “thin wooden stick”, in the barn. He added that this was not painful, [REDACTED].<sup>1182</sup> While the Panel does not doubt that W03594 was truthful when stating that he was hit, as he had no reason to lie in this regard, the Panel does not find him credible as to the severity of the mistreatment suffered, for the reasons that follow.

559. First, the Panel notes that in his statement to the SPO the witness stated that he was hit multiple times with a “*thick* rubber stick”.<sup>1183</sup> When confronted with this statement in court, W03594 changed his account without any explanation, stating that it was in fact, not a *thick* stick, but a *thin* one. He also stated further that he did not know whether it was a rubber stick or a “wooden stick”.<sup>1184</sup> Second, the Panel finds it implausible that, after being hit several times, the witness felt no pain, [REDACTED], as stated by the witness himself. Lastly, W03594’s testimony is contradicted by the

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<sup>1180</sup> **W03594**: T. 12 October 2021, public, p. 1067, lines 8-14; T. 12 October 2021, confidential, p. 1072, line 25 to p. 1075, line 7.

<sup>1181</sup> **W03594**: T. 12 October 2021, confidential, p. 1032, line 17 to p. 1033, line 6.

<sup>1182</sup> **W03594**: T. 12 October 2021, confidential, p. 1067, line 15 to p. 1070, line 19; T. 14 October 2021, public, p. 1245, line 22 to p. 1246, line 2.

<sup>1183</sup> **W03594**: 061016-TR-ET Part 4 RED1, p. 2, lines 7-25 (emphasis added).

<sup>1184</sup> **W03593**: T. 20 September 2021, confidential, p. 1070, lines 12-13.

fully credible and reliable account of W03593, and is inconsistent with the pattern of mistreatment emerging from the testimonies of all other witnesses detained at the ZDC. W03593 recalled that W03594 was mistreated in the barn just the same as all the other detainees, and stated: “he was slapped just as I was”, “every time they came in to beat us, he was beaten too. They didn’t discriminate [...]. They would just beat us all and slap us all”.<sup>1185</sup> W03593 also recalled how W03594 had told him that he had pain in his arm and leg.<sup>1186</sup>

560. The Panel considers that W03594 downplayed the severity of the mistreatment he had suffered<sup>1187</sup> and finds, based on the evidence before it taken as a whole, that W03594 was hit on at least one occasion in the barn, by BIA members, causing him pain.

561. Turning to the mistreatment suffered in the interrogation room, W03594 stated in court that, approximately one week after he was arrested, he was taken from the barn to the interrogation room upstairs, where he was questioned by a number of BIA soldiers about the distribution of aid. The witness insisted that this was a friendly conversation and that he was treated humanely by the BIA soldiers.<sup>1188</sup> Once again, the Panel does not doubt the truthfulness of W03594’s testimony as far as he acknowledged that he was taken to the interrogation room. The Panel, however, does

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<sup>1185</sup> **W03593**: T. 20 September 2021, confidential, p. 453, lines 17-21; T. 22 September 2021, confidential, p. 576, line 9 to p. 577, line 1. The Panel is mindful that W01679 testified that, unlike the rest of the detainees, W03594 was never mistreated in the barn (*see* **W01679**: T. 4 October 2021, confidential, p. 894, lines 10-20; p. 896, lines 3-5). However, the Panel attaches little weight to his testimony on this point considering: (i) the pattern of mistreatment at the ZDC, established by the evidence of several witnesses, including W01679; (ii) the evidence of W03593 recalled above, which is consistent with this pattern; and (iii) the fact that W03594 himself acknowledged that he was hit on one occasion. W01679’s diverging testimony can well be explained by the passage of time.

<sup>1186</sup> **W03593**: T. 22 September 2021, public, p. 577, lines 2-8.

<sup>1187</sup> *See also* paras 78-83.

<sup>1188</sup> **W03594**: T. 12 October 2021, confidential, p. 1044, line 2 to p. 1045, line 13; p. 1072, line 25 to p. 1075, line 25; p. 1080, line 3 to p. 1089, line 13; T. 13 October 2021, public, p. 1198, lines 11-22; p. 1213, lines 18-25.

not find his assertions that he was treated humanely credible, for the following reasons.

562. First, W03594's account is contradicted by the fully credible and reliable evidence of W01679. W01679 testified that W03594 was taken from the barn to the interrogation room upstairs and mistreated there.<sup>1189</sup> He recalled that he saw (obvious) signs of mistreatment on W03594 when he was brought back to the barn and that he was "in a terrible state".<sup>1190</sup> W01679 also recalled that while W03594 was "being tortured", he was accused of [REDACTED]. W01679 heard this from the barn downstairs and also learnt it from W03594 while they were detained together.<sup>1191</sup>

563. Second, W03594's account is also contradicted by W04391, who testified that he saw marks of beatings on W03594's face and body [REDACTED].<sup>1192</sup>

564. Third, W03594's account is inconsistent with the pattern of mistreatment emerging from the testimonies of all other witnesses detained at the ZDC, who were routinely taken to the interrogation room, questioned, and brutally mistreated. The Panel finds it wholly implausible that W03594 would be detained under the same conditions as all other detainees, taken to the interrogation room, accused of having [REDACTED] LDK and yet have "friendly conversations" with the BIA members.

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<sup>1189</sup> **W01679**: T. 4 October 2021, confidential, p. 894, lines 10-20.

<sup>1190</sup> **W01679**: T. 4 October 2021, public, p. 894, lines 21-24; T. 4 October 2021, confidential, p. 896, lines 14-19.

<sup>1191</sup> **W01679**: T. 4 October 2021, confidential, p. 893, line 21 to p. 894, line 9; T. 5 October 2021, confidential, p. 992, line 8 to p. 993, line 4. The Panel is mindful that W03593 testified that W03594 was never taken away from the barn (*see* **W03593**: T. 20 September 2021, confidential, p. 453, lines 22-25; T. 22 September 2021, confidential, p. 576, line 9 to p. 577, line 1). However, the Panel attaches little weight to his testimony on this point considering: (i) the pattern of mistreatment at the ZDC, established by the evidence of several witnesses, including W03593; (ii) the evidence of W01679 recalled above, which is consistent with this pattern; and (iii) the fact that W03594 himself acknowledged that he was taken to the interrogation room above the barn on one occasion. The Panel considers that W03593's diverging testimony can well be explained by the passage of time.

<sup>1192</sup> **W04391**: T. 22 November 2021, confidential, p. 1742, line 18 to p. 1743, line 3; T. 22 November 2021, public, p. 1744, lines 9-17; T. 23 November 2021, public, p. 1819, lines 6-8.

565. Lastly, W03594's account is also inconsistent with his own admission that he was afraid for his life while at the ZDC and did not know whether the next morning would find him alive or dead.<sup>1193</sup>

566. In light of the above, the Panel considers that the only reasonable conclusion based on the evidence before it taken as a whole is that W03594 was severely mistreated by BIA members at the ZDC when he was taken to the interrogation room, where he was accused of having [REDACTED].

iv. W04669

567. W04669 – who was an LDK supporter<sup>1194</sup> – testified that, during his time in detention, he was taken for interrogation on one occasion.<sup>1195</sup> The witness recalled that he was questioned by two BIA soldiers, in the presence of two to four other BIA members, about a [REDACTED] that he was keeping and which was found on him and confiscated when he was taken to the ZDC.<sup>1196</sup> W04669 testified that he was accused of being a spy, a liar and of collaborating with Serbs.<sup>1197</sup> The two BIA soldiers then told him to undress the upper part of his body and hit him on his back 10 to 12 times with a rubber baton, leaving him bruised all over his back.<sup>1198</sup> W04669 described the incident in detail, graphically (pointing to areas of his back where he was hit), coherently and without embellishing. The Panel therefore finds his account highly

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<sup>1193</sup> **W03594**: T. 12 October 2021, public, p. 1066, lines 9-12; p. 1066, lines 21-22; p. 1067, lines 3-7; T. 12 October 2021, confidential, p. 1086, line 4 to p. 1087, line 3; T. 13 October 2021, public, p. 1136, lines 14-16.

<sup>1194</sup> **W04669**: T. 10 November 2021, public, p. 1390, lines 15-21.

<sup>1195</sup> **W04669**: T. 10 November 2021, public, p. 1445, lines 7-16; p. 1449, lines 2-12.

<sup>1196</sup> **W04669**: T. 10 November 2021, public, p. 1415, line 24 to p. 1416, line 4; p. 1443, line 15 to p. 1444, line 5; p. 1446, lines 1-7.

<sup>1197</sup> **W04669**: T. 10 November 2021, public, p. 1443, line 11 to p. 1444, line 5.

<sup>1198</sup> **W04669**: T. 10 November 2021, public, p. 1444, line 6 to p. 1448, line 16; p. 1449, line 5 to p. 1451, line 3; p. 1468, line 20 to p. 1470, line 8; T. 11 November 2021, public, p. 1506, lines 11-16.

credible.<sup>1199</sup> W04669's account is corroborated by W01679 as to the accusations made against him.<sup>1200</sup> Lastly, W04669 testified that his experiences in Zllash/Zlaš also had an impact on his [REDACTED].<sup>1201</sup>

568. In light of the above, the Panel is satisfied that, while detained at the ZDC, W04669 was interrogated, accused of being a spy, a liar and of collaborating with Serbs, and was severely mistreated by BIA members.

#### v. The Murder Victim

569. The evidence before the Panel shows that the Murder Victim – together with [REDACTED] – were the most severely mistreated detainees. W01679 and W03593 both testified that the Murder Victim was treated differently from the others, he was “mistreated the most”, “beaten the most”, “injured the most”.<sup>1202</sup> W01679 stated: “[e]veryone of us was beaten, but [...] he was massacred”, “[he] was exceptional”, “[he] was in a terrible state. I cannot find words to describe the state he was in”.<sup>1203</sup> Further, W01679, W03593 and W04669 (who was kept in a different barn, but saw the Murder Victim on two occasions, when he was brought to the barn where W04669 was),<sup>1204</sup> all testified that the Murder Victim was the only detainee whose hands were

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<sup>1199</sup> The Panel notes that [REDACTED] to be consistent with the mistreatment suffered during his time in detention. Yet, the Panel has not relied on this evidence, as: (i) [REDACTED] (whether they were caused by the mistreatment suffered during his time in detention, or something else); and (ii) the witness stated that he was not left with any physical symptoms or scars from the mistreatment suffered in detention; *see* [REDACTED]; **W04669**: T. 10 November 2021, public, p. 1468, line 20 to p. 1470, line 8 (describing the injuries that he suffered as a result of the mistreatment in Zllash/Zlaš, [REDACTED]).

<sup>1200</sup> *See also* **W01679**: T. 4 October 2021, confidential, p. 896, line 20 to p. 897, line 7.

<sup>1201</sup> **W04669**: T. 11 November 2021, confidential, p. 1508, lines 3-6; p. 1509, line 15 to p. 1510, line 17.

<sup>1202</sup> **W01679**: T. 4 October 2021, confidential, p. 891, line 22 to p. 892, line 8; **W03593**: T. 20 September 2021, confidential, p. 444, line 23 to p. 445, line 14; *see further* T. 20 September 2021, confidential, p. 470 line 1 to p. 473, line 15 ([REDACTED]).

<sup>1203</sup> **W01679**: T. 4 October 2021, confidential, p. 891, line 22 to p. 892, line 8, p. 907, lines 3-8.

<sup>1204</sup> **W04669**: T. 10 November 2021, public, p. 1440, lines 1-7.

tied.<sup>1205</sup> W03593 distinctly recalled how he used to feed the Murder Victim as he could not feed himself because of the binding of his hands.<sup>1206</sup>

570. W01679, W03593 and W04669 provided detailed, graphic and highly consistent evidence regarding the mistreatment to which the Murder Victim was subjected. They testified that he was beaten until he could no longer stand,<sup>1207</sup> burnt with an iron and stabbed with a knife.<sup>1208</sup> W04669 witnessed how the Murder Victim was beaten on one occasion by five or six BIA soldiers.<sup>1209</sup> All three witnesses recalled that his entire body was black from the bruises and his face swollen to the point that he could only slightly open his eyes.<sup>1210</sup> W01679 and W03593 stated that he was “deformed”<sup>1211</sup> and “destroyed”.<sup>1212</sup> The beating left him tired and exhausted.<sup>1213</sup> Both W01679 and W04669 testified that, at one point, he was only lying on the ground, unable to walk or speak, only crying in pain.<sup>1214</sup>

571. W01679 testified that, by the time other detainees were released, the Murder Victim was no longer able to stand or walk on his own and was in a state difficult to describe in words: “[h]is body, his injuries. The smell, the smell of flesh that we could

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<sup>1205</sup> **W01679**: T. 4 October 2021, confidential, p. 892, lines 9-18; **W03593**: T. 20 September 2021, confidential, p. 454, line 23 to p. 455, line 6; T. 21 September 2021, confidential, p. 510, lines 1-8; T. 23 September 2021, confidential, p. 690, lines 20-22; **W04669**: T. 10 November 2021, confidential, p. 1432, lines 1-8, p. 1435, lines 13-16; T. 10 November 2021, confidential, p. 1441, lines 11-20.

<sup>1206</sup> **W03593**: T. 20 September 2021, confidential, p. 454, line 23 to p. 455, line 6.

<sup>1207</sup> **W03593**: T. 20 September 2021, confidential, p. 403, line 21 to p. 405, line 9; **W01679**: T. 4 October 2021, confidential, p. 906, lines 5-9; **W04669**: T. 10 November 2021, public, p. 1438, lines 3-6.

<sup>1208</sup> **W01679**: T. 4 October 2021, public, p. 892, lines 3-6; **W03593**: T. 20 September 2021, public, p. 454, lines 7-22; T. 20 September 2021, public, p. 473, line 16 to p. 474, line 4.

<sup>1209</sup> **W04669**: T. 10 November 2021, confidential, p. 1434, line 10 to p. 1435, line 18; p. 1437, line 15 to p. 1438, line 6.

<sup>1210</sup> **W01679**: T. 4 October 2021, public, p. 892, lines 3-6; **W03593**: T. 20 September 2021, confidential, p. 454, lines 1-22; p. 473, line 16 to p. 474, line 4; **W04669**: T. 10 November 2021, confidential, p. 1432, line 1 to p. 1433, line 25.

<sup>1211</sup> **W01679**: T. 4 October 2021, confidential, p. 906, lines 5-9.

<sup>1212</sup> **W03593**: T. 20 September 2021, confidential, p. 454, lines 1-6.

<sup>1213</sup> **W01679**: T. 4 October 2021, confidential, p. 906, lines 5-9.

<sup>1214</sup> **W01679**: T. 4 October 2021, confidential, p. 928, lines 1-20; **W04669**: T. 10 November 2021, public, p. 1434, lines 1-9.

sense. It was terrible”, W01679 stated.<sup>1215</sup> According to W04669, he was “almost dead”.<sup>1216</sup> The Murder Victim – [REDACTED] – were not released with the other detainees.<sup>1217</sup>

572. W01679, W04669 and W03594 testified that the Murder Victim was accused of being a thief and of collaborating with Serbs.<sup>1218</sup> W04669 recalled that, whenever the Murder Victim was brought into the barn, the other detainees were ordered to shout: “[d]eath to the traitors, death to the thieves, death to the thugs, and glory to the Kosovo Liberation Army”.<sup>1219</sup> W01679 testified, in addition, that the Murder Victim [REDACTED].<sup>1220</sup>

573. The Panel also heard evidence from W03594 that the Murder Victim was in good physical condition and never had his hands tied.<sup>1221</sup> The Panel attaches no weight to W03594’s account on this point as it is clearly disproved by the consistent and fully credible testimonies of W01679, W03593 and W04669 regarding the terrible physical abuse suffered by the Murder Victim.<sup>1222</sup>

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<sup>1215</sup> **W01679**: T. 4 October 2021, confidential, p. 906, line 5 to p. 907, line 8; p. 928, lines 1-20; *see also* **W04669**: T. 10 November 2021, public, p. 1438, lines 3-6.

<sup>1216</sup> **W04669**: T. 10 November 2021, public, p. 1434, lines 5-9.

<sup>1217</sup> **W03593**: T. 20 September 2021, confidential, p. 484, lines 19-22; T. 21 September 2021, public, p. 606, line 21 to p. 607, line 4; **W01679**: T. 4 October 2021, confidential, p. 905, line 15 to p. 906 line 16.

<sup>1218</sup> **W01679**: T. 4 October 2021, confidential, p. 892, lines 19 to p. 893, line 16; T. 5 October 2021, confidential, p. 990, line 2 to p. 992, line 4; **W04669**: T. 10 November 2021, public, p. 1438, lines 7-17; **W03594**: T. 12 October 2021, confidential, p. 1049, lines 3-18.

<sup>1219</sup> **W04669**: T. 10 November 2021, public, p. 1434, lines 18-23.

<sup>1220</sup> **W01679**: T. 4 October 2021, confidential, p. 892, lines 13-16; p. 893, lines 6-20.

<sup>1221</sup> **W03594**: T. 13 October 2021, confidential, p. 1188, lines 9-15; T. 14 October 2021, confidential, p. 1265, line 8 to p. 1266, line 20.

<sup>1222</sup> The Panel notes that, on one occasion, when W03593 was asked in what state the Murder Victim was when he (W03593) was released, the witness responded that the Murder Victim was able to stand and walk and was normal; *see* **W03593**: T. 23 September 2021, confidential, p. 690, lines 2-19. The Panel attaches little weight to W03593’s testimony on this point as: (i) it is disproved by the consistent testimonies of W01679 and W04669 recalled above; and (ii) it is implausible considering W03593’s own admissions throughout the rest of his testimony regarding the severe mistreatment suffered by the Murder Victim. The Panel considers that this discrepancy is explained by the passage of time and the fact that, on the day he was released, W03593 was only concerned about himself and about leaving the

574. In light of the above, the Panel is satisfied, based on the evidence before it, that while detained at the ZDC, the Murder Victim was accused of being a thief and of collaborating with Serbs, and was gravely mistreated by BIA members.

vi. Other detainees

575. W01679 testified that he found [REDACTED] in the barn upon his arrival at the ZDC, that he was beaten both in the barn downstairs and in the interrogation room upstairs, and that he was accused of being a spy.<sup>1223</sup> W01679 stated that the beating left [REDACTED] tired, exhausted, and unable to stand.<sup>1224</sup> His testimony is supported by W04391's account, who testified that he saw marks of beatings on [REDACTED] face and body [REDACTED] on the day of the detainees' release.<sup>1225</sup>

576. In light of the above, the Panel is satisfied that, while detained at the ZDC, [REDACTED] was accused of being a spy and severely mistreated by BIA members.

577. Both W01679 and W03593 testified that [REDACTED] was beaten in the barn downstairs and frequently taken upstairs.<sup>1226</sup> Referring to both the Murder Victim [REDACTED], W03593 stated: "Those two were the ones who were mistreated the

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ZDC as soon as possible. Thus, at that moment, his attention was not focused on the Murder Victim, as much as it was during the days he spent in detention with him; *see* **W03593**: T. 20 September 2021, public, p. 482, lines 20-23; p. 484, line 25 to p. 485, line 5 ("So to tell you the truth, I was worried about myself. I just wanted to leave the place as soon as possible"); T. 20 September 2021, confidential, p. 485, line 25 to p. 486, line 4 ("I was not interested [REDACTED], [or the Murder Victim]; but, I was instead interested to leave that place as soon as possible"); T. 21 September 2021, public, p. 516, lines 12-15; p. 516, line 25 to p. 517, line 2; T. 23 September 2021, confidential, p. 690, lines 2-8 (referring to the Murder Victim, "I wasn't paying too much attention to him, to be honest, because I had my own problems. [...] I was just trying to get away from there as soon as possible").

<sup>1223</sup> **W01679**: T. 4 October 2021, confidential, p. 889, lines 1-5; p. 894, line 25 to p. 895, line 15.

<sup>1224</sup> **W01679**: T. 4 October 2021, confidential, p. 894, line 25 to p. 895, line 15.

<sup>1225</sup> **W04391**: T. 22 November 2021, confidential, p. 1742, line 18 to p. 1743, line 3; T. 22 November 2021, public, p. 1744, lines 9-17; T. 23 November 2021, public, p. 1819, lines 6-8.

<sup>1226</sup> **W01679**: T. 4 October 2021, confidential, p. 900, line 9 to p. 901, line 10; **W03593**: T. 20 September 2021, confidential, p. 444 line 23 to p. 445, line 14.

most, to tell you the truth".<sup>1227</sup> W01679 recalled that [REDACTED] was traumatised and shaking and would never speak to the other detainees.<sup>1228</sup> Both W01679 and W03593 further testified that [REDACTED].<sup>1229</sup> W01679's and W03593's evidence is corroborated by W03594 who, when confronted with his statement to the SPO, admitted that [REDACTED] was beaten so badly on one occasion that he could no longer stand up.<sup>1230</sup> [REDACTED] – just as the Murder Victim – was in a bad state and was not released with the other detainees.<sup>1231</sup>

578. In light of the above, the Panel is satisfied that, while he was detained at the ZDC, the person known as [REDACTED] was severely mistreated by BIA members.

### 3. Purpose of Infliction of Pain or Suffering

579. The evidence before the Panel shows, as described in detail above, that during their mistreatment, the detainees at the ZDC: (i) were interrogated (for example, about their reasons for being in Zllash/Zlaš, their knowledge of the identity of thieves, or about [REDACTED] found on them when they were arrested);<sup>1232</sup> (ii) were accused of being spies, traitors, thieves, liars, or of collaborating with Serbs;<sup>1233</sup> and (iii) were subjected to mock executions, in the case of W03593, threatened with death, or forced to witness the mistreatment of their co-detainees.<sup>1234</sup>

580. In addition, the evidence before the Panel shows that the mistreatment of the detainees by BIA members was also politically motivated. W04669 testified that

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<sup>1227</sup> **W03593**: T. 20 September 2021, public, p. 445, lines 13-14.

<sup>1228</sup> **W01679**: T. 4 October 2021, confidential, p. 900, lines 13-22.

<sup>1229</sup> **W03593**: T. 20 September 2021, confidential, p. 445, line 20 ([REDACTED]); **W01679**: T. 4 October 2021, confidential, p. 900, line 23 to p. 901, line 3 ([REDACTED]).

<sup>1230</sup> **W03594**: T. 12 October 2021, confidential, p. 1058, lines 8-18.

<sup>1231</sup> **W01679**: T. 4 October 2021, confidential, p. 905, line 15 to p. 907, line 8; **W03593**: T. 20 September 2021, confidential, p. 484, lines 19-22.

<sup>1232</sup> See paras 534-535, 545, 547, 556, 567-568.

<sup>1233</sup> See paras 534-535, 545, 556, 566-568, 572, 574-576.

<sup>1234</sup> See paras 523-525, 530-532, 546-547, 556.

whenever the Murder Victim was being brought into the barn, the other detainees were ordered to shout: “[d]eath to the traitors, death to the thieves, death to the thugs, and glory to the Kosovo Liberation Army”.<sup>1235</sup> Further, both W04669 and W03594, who were LDK supporters or members,<sup>1236</sup> explained that the LDK was considered a “pacifist” party and was viewed as opposed to the KLA.<sup>1237</sup> W04669 testified that he believed that he was interrogated and mistreated because he had expressed support for Ibrahim Rugova, the then president of the LDK.<sup>1238</sup> Similarly, W03594 testified that he believed one of the reasons he was arrested was that he was a member of the LDK.<sup>1239</sup> His account is consistent with, and supported by, W01679’s testimony that, while “being tortured”, W03594 was accused [REDACTED].<sup>1240</sup>

581. The Panel notes the Defence’s submission that the testimonies of W03594 and W04669 are insufficient to establish the reasons why they were detained and mistreated, as they are based on personal beliefs and analysis.<sup>1241</sup> However, the Panel highlights that their evidence is supported by and must be viewed together with: (i) W01679’s testimony recalled above regarding the accusations made against W03594;<sup>1242</sup> (ii) W04669’s account that he and other detainees were made to express support for the KLA;<sup>1243</sup> and (iii) the evidence concerning the other accusations levelled against the detainees (that they were traitors, spies or collaborating with Serbs).<sup>1244</sup>

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<sup>1235</sup> See para. 572; **W04669**: T. 10 November 2021, public, p. 1434, lines 18-23.

<sup>1236</sup> See paras 558, 567.

<sup>1237</sup> **W03594**: T. 13 October 2021, confidential, p. 1169, lines 5-21; **W04669**: T. 10 November 2021, public, p. 1446, line 8 to p. 1448, line 12.

<sup>1238</sup> **W04669**: T. 10 November 2021, public, p. 1446, line 8 to p. 1448, line 12.

<sup>1239</sup> **W03594**: T. 13 October 2021, confidential, p. 1169, lines 5-21; T. 14 October 2021, confidential, p. 1248, line 7 to p. 1250, line 15; **W04669**: T. 10 November 2021, public, p. 1446, line 8 to p. 1448, line 12.

<sup>1240</sup> See para. 562.

<sup>1241</sup> T. 14 September 2022, public, p. 4735, line 17 to p. 4738, line 23.

<sup>1242</sup> See para. 562.

<sup>1243</sup> See para. 572.

<sup>1244</sup> See para. 579.

582. The Panel is equally unpersuaded by the Defence's submissions that the mistreatment was inflicted with no particular aim or purpose.<sup>1245</sup> The evidence clearly shows that BIA members, including the Accused, sought: to obtain information from them; to make them confess that they were spies, liars, thieves or collaborating with Serbs; to punish them for it; to intimidate them, by subjecting them to mock executions or forcing them to witness the mistreatment of the other detainees; and/or to discriminate against them based on their political convictions.

583. In light of the above, the Panel is satisfied based on the evidence taken as a whole that the detainees at the ZDC, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED], were mistreated by BIA members, including the Accused, and kept in inhumane conditions of detention, for the purpose of obtaining information or a confession from them, and/or to punish, intimidate, coerce and/or discriminate against them on political grounds.

#### 4. Conclusion

584. In light of all the evidence discussed above taken as a whole, the Panel finds that, between approximately 1 April 1999 and on or around 19 April 1999, the detainees at the ZDC, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED], were held in inhumane and degrading detention conditions and were routinely physically and psychologically assaulted by the Accused and other BIA members under his authority at the ZDC. The detainees were kept in barns only suitable for animals. They were not provided any beds and made to sleep in the animal trough or on the ground – in water puddles, with livestock excrements lying around. They were kept in darkness. They were not provided adequate amounts of food and water and, when they asked for water, they were urinated on. They were not

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<sup>1245</sup> T. 15 September 2022, public, p. 4753, line 22 to p. 4760, line 25.

permitted to wash themselves or change their clothes and were only given limited access to a toilet, forcing them to relieve themselves inside the barn, in front of each other. The detainees were denied medical care. Not least, they were prevented from interacting and talking to each other, under threat of death.

585. The detainees lived in constant fear that they could be subjected to physical abuse at any time or even killed. W03593 was told by the Murder Victim as soon as he arrived at the ZDC: “They will kill you”, and W03593 could see that the Murder Victim had already been severely mistreated.<sup>1246</sup> W03593 was further subjected to a mock execution by the Accused himself just one hour after he was brought to the ZDC.<sup>1247</sup> The detainees were further forced to witness and to listen to the physical abuse of their co-detainees, they were not allowed to sleep, and were not informed of the reasons for their deprivation of liberty.

586. In addition, the Panel finds that the detainees, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED], were routinely physically assaulted by the Accused and other BIA members under his authority at the ZDC: beaten, burnt, electrocuted, stabbed, kicked, punched and slapped on a daily basis, until they were covered in blood, unconscious or unable to stand or speak.

587. Throughout their time in detention, the detainees were interrogated, accused of being spies, traitors, thieves, liars, or of collaborating with Serbs. They were threatened with death, intimidated, and made to express support for the KLA. Accordingly, the Panel finds that the inhumane conditions of detention, and the corresponding physical and psychological assaults, were inflicted on the detainees for the purpose of obtaining information or a confession from them, and/or to punish, intimidate, coerce and/or discriminate against them on political grounds.

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<sup>1246</sup> See para. 531.

<sup>1247</sup> See para. 546.

588. The physical and psychological assault, coupled with the inhumane conditions of detention, left the detainees with long-lasting injuries, both physical and mental, such as: head injuries, burn injuries, broken arms, fingers and/or teeth; persistent and severe pain throughout their bodies; damaged eyesight; feelings of shame; and symptoms of post-traumatic stress disorder (nightmares, flashbacks and intrusive memories).

E. MURDER (COUNT 4)

589. The Panel recalls its findings that the Murder Victim was arbitrarily detained at the ZDC, held in inhumane and degrading conditions of detention, and gravely mistreated during the timeframe of the charges.<sup>1248</sup> The Panel also recalls that it has established that, at the time of release of other detainees on or around 19 April 1999, the Murder Victim was kept in the barn, together with one other person.<sup>1249</sup>

590. With the above established facts in mind, and based on the evidence taken as a whole, the Panel will make its factual findings with regard to the charge of murder (Count 4) in the Confirmed Indictment.

**1. Efforts to Locate, Visit or Free the Murder Victim in April 1999**

591. At the outset, the Panel notes that, [REDACTED],<sup>1250</sup> [REDACTED].<sup>1251</sup> [REDACTED].<sup>1252</sup>

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<sup>1248</sup> See paras 459-484, 569-574.

<sup>1249</sup> See paras 477-481.

<sup>1250</sup> **W04600**: T. 23 September 2021, confidential, p. 723, line 5 to p. 726, line 6; [REDACTED].

<sup>1251</sup> **W04600**: T. 23 September 2021, confidential, p. 724, lines 11-17.

<sup>1252</sup> **W04603**: T. 2 November 2021, confidential, p. 1346, lines 21-25; **Mr F. Sopi**: T. 18 January 2022, p. 2102, lines 5-22.

592. The Panel further notes that, on that occasion, [REDACTED].<sup>1253</sup> As established by the Panel in its factual findings regarding arbitrary detention (Count 1), [REDACTED] the Murder Victim was taken to the ZDC on or around [REDACTED] April 1999.<sup>1254</sup>

593. With regard to the aftermath of the Murder Victim's deprivation of liberty, the Panel finds that the [REDACTED] attempted to make contact with the Murder Victim until on or around 10 April 1999, by approaching different KLA members. The evidence unequivocally indicates that [REDACTED] received misleading, evasive and sometimes violent responses and reactions from these KLA members.

594. Misleading and evasive responses included: (i) the Murder Victim was being questioned and would be released soon after;<sup>1255</sup> (ii) he was "[...] in [the] Llap zone, don't worry about it";<sup>1256</sup> (iii) [REDACTED] "[...] visited him last night and he is in good condition";<sup>1257</sup> and (iv) "nothing is going to happen to him".<sup>1258</sup> Also on the day [REDACTED] was told that the Murder Victim was in the Llap zone [REDACTED].<sup>1259</sup>

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<sup>1253</sup> **W04600**: T. 27 September 2021, confidential, p. 847, line 12 to p. 849, line 7. *See also* **W4600**: 072914-TR-ET Revised RED3, Part 3, p. 16, lines 10-19. The Panel notes that W04603 is a distant relative of the Murder Victim (**W04603**: T. 2 November 2021, confidential, p. 1296, lines 11-14; p. 1309, lines 21-25).

<sup>1254</sup> *See* para. 459.

<sup>1255</sup> **W04648**: SPOE00128158-00128162, p. SPOE00128158. The statement of W04648 is corroborated by W04391, who confirmed this conversation both in direct and cross-examination (**W04391**: T. 22 November 2021, confidential, p.1736, lines 19-20; T. 23 November 2021, confidential, p. 1799, lines 11-12).

<sup>1256</sup> **W04712**: 077816-TR-ET, Part 1, p. 12, lines 3-8. *See also* **W04391**: T. 23 November 2021, confidential, p. 1809, line 17 to p. 1810, line 22.

<sup>1257</sup> **W04391**: T. 23 November 2021, confidential, p. 1809, line 15 to p. 1810, line 1. Contrary to W04391, W04390 recalled that it was [REDACTED], to utter these words (**W04390**: T. 24 November 2021, confidential, p. 1869, lines 5-8). The Panel considers this to be a minor inconsistency which could simply be the result of an oversight or a mix up [REDACTED].

<sup>1258</sup> **W04391**: T. 23 November 2021, confidential, p. 1812, lines 8-16.

<sup>1259</sup> **W04712**: 077816-TR-ET, Part 1, p. 14 lines 12-13, where W04712 stated that W04600 replied that the Murder Victim was in the Llap zone and he could not come [REDACTED]. **W04648**: SPOE00128061-00128064, p. SPOE00128063 (in this statement, W04648 said that a person called "[REDACTED]" refused to let the Murder Victim go [REDACTED]).

595. On another occasion, as stated in court by W04391, [REDACTED].<sup>1260</sup>

596. In addition, the Panel finds that [REDACTED] faced violent reactions by KLA members [REDACTED]. W04391 attested to the fact that, upon requesting [REDACTED], W04600 stated that the Murder Victim was in the KLA Llap zone.<sup>1261</sup> According to both W04391 and W04390, W04600 subsequently grabbed W04390 [REDACTED]<sup>1262</sup> [REDACTED]<sup>1263</sup> [REDACTED].<sup>1264</sup> After that, W04600 told W04391 and W04390 that “[REDACTED]”.<sup>1265</sup>

597. Contrary to the Murder Victim’s family members, W04600 provided a different, softer account of this encounter. W04600 confirmed that there was an encounter with W04391 and W04390, [REDACTED].<sup>1266</sup> [REDACTED].<sup>1267</sup> [REDACTED].<sup>1268</sup>

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<sup>1260</sup> **W04391**: T. 23 November 2021, confidential, p. 1813, lines 3-7 (W04391 stated that W04648 “[...] came back [REDACTED] saying that they [REDACTED] had not allowed him [REDACTED]”).

<sup>1261</sup> **W04391**: T. 22 November 2021, confidential, p. 1739, line 5.

<sup>1262</sup> **W04391**: T. 22 November 2021, confidential, p. 1739, lines 6-8; **W04390**: T. 24 November 2021, confidential, p. 1867, lines 5-7; **W04648**: SPOE00128061-00128064, p. 3. While W04648 stated that it was [REDACTED] who grab W04390 by the hair, the Panel notes W04648 was not present at the scene on that occasion, whereas W04391 and W04390 were. As they both testified that it was W04600 who committed that action, the Panel gives more weight to the evidence of W04391 and W04390 on this matter.

<sup>1263</sup> **W04390**: T. 24 November 2021, confidential, p. 1867, line 7.

<sup>1264</sup> **W04391**: T. 22 November 2021, confidential, p. 1739, lines 6-8; **W04390**: T. 24 November 2021, confidential, p. 1867, line 9.

<sup>1265</sup> **W04390**: T. 24 November 2021, confidential, p. 1867, lines 11-12; **W04391**: T. 22 November 2021, confidential, p. 1739, lines 8-9. The words proffered by W04600 were corroborated by W04674 and W04712 (**W04712**: 077816-TR-ET, Part 1, p. 12 line 12 to p. 13, line 15; **W04674**: T. 13 December 2021, confidential, p. 1982, lines 13-17). In the Panel’s assessment, the level of corroboration on the words pronounced by W04600 in relation to the Murder Victim’s fate and the reaction of W04390 when assaulted is such that the Panel considers it implausible that [REDACTED] could have fabricated this detail or testified coincidentally in the same way. In addition, the veracity of this incident is also confirmed by W04390 herself, who declared in court that [REDACTED] (**W04390**: T. 24 November 2021, confidential, p. 1867, lines 10-11; p. 1879, line 24 to p. 1880, line 2). *See also* the Panel’s general assessment of these witnesses in paras 91 and following of the judgment.

<sup>1266</sup> **W04600**: T. 24 September 2021, confidential, p. 761, lines 1-6.

<sup>1267</sup> **W04600**: T. 24 September 2021, confidential, p. 761, lines 9-11.

<sup>1268</sup> **W04600**: T. 24 September 2021, confidential, p. 761, lines 13-18 (emphasis added).

[REDACTED]. [REDACTED].<sup>1269</sup> [REDACTED].<sup>1270</sup> [REDACTED].<sup>1271</sup> Accordingly, the Panel considers W04600 credible only on the general occurrence of the [REDACTED] encounter, which corroborates the evidence of W04390 and W04391.

598. According to the evidence, [REDACTED] made one last attempt [REDACTED] on or around 10 April 1999. W04648 reported in his statement that on or around that date<sup>1272</sup> he went to Zllash/Zlaš and was told by a person [REDACTED]: “We are still interrogating [REDACTED] [the Murder Victim]. We are not finished yet and I will not let him go until we finish with him”.<sup>1273</sup> According to W04648, at that point [REDACTED] threatened W04648 and his family, pushed him away and wanted to beat him up because he was asking [REDACTED].<sup>1274</sup> The witness added that after that threat, [REDACTED] he was afraid for the lives of his family members.<sup>1275</sup>

599. The Panel finds the evidence of this last attempt by W04648 [REDACTED] to be credible and genuine, in particular because it is part and parcel of a wider, progressively violent pattern of actions by KLA members, including W04600, to dissuade [REDACTED] from trying to obtain information about the Murder Victim, [REDACTED]. This, in the Panel’s evaluation, reflects the intention of KLA members to shield the Murder Victim as much as possible from any contact [REDACTED], given the severe mistreatment that he had endured by that point at the ZDC, which ultimately followed with his death.

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<sup>1269</sup> **W04600**: T. 23 September 2021, confidential, p. 723, lines 21-24.

<sup>1270</sup> *See* paras 459-484. In addition, the Panel assesses this line of evidence given by W04600 to be generally consistent with his approach to provide information regarding the circumstances surrounding the detention and death of the Murder Victim up to a certain extent, without crossing his self-imposed line of incrimination. [REDACTED].

<sup>1271</sup> **W04600**: T. 24 September 2021, confidential, p. 773, lines 4-9.

<sup>1272</sup> **W04648**: SPOE00128061-00128064, p. SPOE00128064.

<sup>1273</sup> **W04648**: SPOE00128061-00128064, p. 4.

<sup>1274</sup> **W04648**: SPOE00128061-00128064, p. SPOE00128064 (“[REDACTED]”).

<sup>1275</sup> **W04648**: SPOE00128061-00128064, p. SPOE00128064.

600. Following his last attempt described above, [REDACTED]. [REDACTED].<sup>1276</sup>

601. The Panel further observes that, in parallel to in-person attempts [REDACTED] were also told to make written requests, which they did, but never received a reply.<sup>1277</sup>

The Panel considers this evidence to be credible because it fits within the larger picture of attempts by KLA members with knowledge of the Murder Victim's condition and whereabouts to mislead [REDACTED]. The Panel further notes that other witnesses corroborate the fact that no visits were allowed for those detained at the ZDC.<sup>1278</sup>

602. Considering holistically all the evidence concerning the multiple attempts [REDACTED], the Panel is satisfied that [REDACTED] were not only impeded from seeing the Murder Victim during his detention at the ZDC, but that they also received evasive, misleading, verbally, and physically violent answers from KLA members, [REDACTED], concerning the Murder Victim's condition and whereabouts.

## 2. Efforts to Locate the Body of the Murder Victim

603. As established by the Panel, on or around 19 April 1999, upon release from the ZDC, several detainees [REDACTED] informed them that the Murder Victim had not been released but should be soon.<sup>1279</sup> The Panel notes that the next day, due to the Serbian offensive taking place in the area, [REDACTED].<sup>1280</sup> After the end of the offensive, [REDACTED].<sup>1281</sup>

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<sup>1276</sup> **W03593**: T. 20 September 2021, confidential, p. 487, lines 8-13.

<sup>1277</sup> **W04391**: T. 22 November 2021, confidential, p. 1740, line 24 to p. 1741, line 18.

<sup>1278</sup> **W03593** stated that his family could not visit him although they knew where he was (**W03593**: T. 20 September 2021, confidential, p. 481, lines 8-14). **W03594** confirmed that no visits were allowed at the ZDC (**W03594**: T. 13 October 2021, confidential, p. 1133, lines 8-11).

<sup>1279</sup> See paras 477-478.

<sup>1280</sup> **W04391**: T. 22 November 2021, confidential, p. 1745, lines 12-13; **W04674**: T. 13 December 2021, confidential, p. 1934, lines 17-21; p. 1935, lines 12-17 and p. 1944, lines 23-25.

<sup>1281</sup> **W04648**: SPOE00128158-00128162, p. SPOE00128158; SPOE00128061-00128064, p. 1; **W04712**: 077816-TR-ET, Part 1, p. 22, lines 7-13; **W04674**: T. 13 December 2021, confidential, p. 1946, lines 7-8; **W04391**: T. 23 November 2021, public, p. 1833, line 17.

604. Specifically, W04648 stated that his search for the Murder Victim resumed in June 1999,<sup>1282</sup> when the KLA “left the area”.<sup>1283</sup> According to the evidence, W04648 went “many times” to the village of Zllash/Zlaš to look for the Murder Victim,<sup>1284</sup> searching several houses<sup>1285</sup> until, together with W04391, he was able to find the exact location where the Murder Victim was kept.<sup>1286</sup> In the assessment of the Panel, the sequence of the events described by W04648 and W04391 is plausible, including the fact that the search for the Murder Victim resumed once hostilities decreased in the area. So is the fact that relevant information was provided by former co-detainees of the Murder Victim, in addition to what the [REDACTED] already knew from its earlier attempts [REDACTED]. Further, in terms of corroboration, the Panel considers it relevant that the description of the detention building provided by W04391, W04674, and W04648 corresponds to that of the ZDC.<sup>1287</sup> The Panel also pays attention to the fact that W04648 and W04391 recalled that they found some blankets inside,<sup>1288</sup> which corroborates the evidence of W01679, W03593, and W04669 that they had blankets

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<sup>1282</sup> **W04648**: SPOE00128158-00128162, p. SPOE00128158.

<sup>1283</sup> **W04648**: SPOE00128061-00128064, p. SPOE00128061. The Panel notes that W04648 did not refer explicitly to the KLA, but stated that he resumed his search for the Murder Victim “[o]nce [he] was told that *they* had left the area” (emphasis added). However, the Panel is satisfied based on the context that he referred to the KLA.

<sup>1284</sup> **W04648**: SPOE00128158-00128162, p. SPOE00128158. *See also* **W04712**: 077816-TR-ET, Part 1, p. 22, lines 7-13; **W04674**: T. 13 December 2021, confidential, p. 1946, lines 7-8.

<sup>1285</sup> **W04391**: T. 23 November 2021, public, p. 1833, line 17.

<sup>1286</sup> **W04391**: T. 22 November 2021, confidential, p.1747, lines 6-7 (“the prisoners that were released told us that it was only [the Murder Victim] that had remained there”); **W04648**: SPOE00128158-00128162, p. SPOE00128158 (“[t]hese witnesses [the former detainees] told this witness [W04648] where the Detention Center was [...]”); SPOE00128333-00128343, p. SPOE00128333 (“[s]even of them [the former detainees] were released around the 19<sup>th</sup> of April and they told me [W04648] where [REDACTED] was [...]”).

<sup>1287</sup> **W04391**: T. 22 November 2021, public, p.1756, lines 2-4 (referring to the prison as a “barn”); **W04674**: T. 13 December 2021, public, p. 1945, lines 12-13 (“[w]e found the prison building, the barn on the ground floor, and on the upper floor, there where the soldiers used to stay”); **W04648**: SPOE00128158-00128162, p. SPOE00128161 (the witness made a sketch of the detention location, particularly of a two-storey house indicating the ground floor as the “stables where prisoners were kept”).

<sup>1288</sup> **W04391**: T. 23 November 2021, public, p. 1834, lines 20-21; **W04648**: SPOE00128333-00128343, p. SPOE00128333.

used to cover horses.<sup>1289</sup> The fact that [REDACTED], at that point in time, had located the ZDC where the Murder Victim was held is ultimately confirmed, in the Panel's view, by the discovery of his identification card, his jacket, and his hospital discharge papers in the barn.<sup>1290</sup>

605. The Panel is attentive to W04648's evidence that, after locating the ZDC, he asked [REDACTED] if the Murder Victim "was in that house, he would probably be dead" [REDACTED]<sup>1291</sup> [REDACTED].<sup>1292</sup> W04674 corroborated this aspect of W04648's evidence and confirmed that this was the message conveyed to W04648 just one week after he resumed his search for the Murder Victim in June 1999.<sup>1293</sup>

606. Regarding the discovery of the body, the Panel notes W04674's words that, at this stage, the search for the Murder Victim became a search "for a dead person".<sup>1294</sup> W04648, [REDACTED] consistently explained that, whenever W04648 would see a pile of fresh earth or soil, with three branches on top, he would look for the body of the Murder Victim, uncovering the place.<sup>1295</sup> W04391 corroborated the original information provided in W04648's written statement and in his sketch, indicating that

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<sup>1289</sup> **W01679**: T. 4 October 2021, public, p. 902, lines 16-21; **W03593**: T. 20 September 2021, confidential, p. 453, lines 1-9; p. 479, lines 19-23; **W04669**: T. 11 November 2021, public, p. 1545, lines 4-12. Remnants of what appear to be thick blankets are also visible in the UNMIK Ground Booklet (SPOE00128386-00128420, pp. SPOE00128394, SPOE00128401)

<sup>1290</sup> **W04391**: T. 22 November 2021, confidential, p. 1747, line 1 to p. 1748, line 3; T. 23 November 2021, confidential, p. 1833, lines 8-17; **W04674**: T. 13 December 2021, confidential, p. 1945, lines 10-15; **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>1291</sup> [REDACTED].

<sup>1292</sup> [REDACTED] (**W04648**: SPOE00128069-00128086, p. SPOE00128171). A similar account was given by W04674 (**W04674**: T. 14 December 2021, public, p. 2016, line 25 to p. 2017, line 3).

<sup>1293</sup> **W04674**: T. 13 December 2021, confidential, p. 1945, lines 1-3.

<sup>1294</sup> **W04674**: T. 13 December 2021, confidential, p. 1945, line 10. [REDACTED]; *see* **W04648**: SPOE00128061-SPOE00128064, p. SPOE00128061.

<sup>1295</sup> [REDACTED]; **W04648**: SPOE00128061-00128064, p. SPOE00128061. *See also*, **W04648**: SPOE00128061-00128064, p. SPOE00128063 where W04648 says that he "was looking into every hole along the way", and **W04648**: SPOE00128333-00128343, p. SPOE00128333 where W04648 declared that he was searching" [REDACTED].

the body of the Murder Victim was eventually found [REDACTED].<sup>1296</sup> The Panel observes that the estimates provided by the witnesses, albeit not assisted by any instrument, are remarkably consistent with an UNMIK air mission request, which found the location of the gravesite of the Murder Victim to be [REDACTED].<sup>1297</sup> According to [REDACTED], the grave where the body was found was located in a meadow,<sup>1298</sup> in the midst of a forest,<sup>1299</sup> and was quite shallow, about 20 to 30 centimetres deep.<sup>1300</sup> The Panel notes that the depth of the grave is also visible in one of the pictures taken by [REDACTED] during the exhumation, which are available in evidence.<sup>1301</sup> In this regard, W04676 added that the grave was not a grave “like the ones that you would find opened under normal circumstances”.<sup>1302</sup>

607. The Panel observes that [REDACTED] W04648, [REDACTED], who all saw the grave, consistently recounted that two bodies were found therein.<sup>1303</sup> [REDACTED] stated that, at first, after they started digging, they found the corpse of a [REDACTED] unidentified man.<sup>1304</sup> W04648 stated that he saw “an entry hole in the body’s head, like

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<sup>1296</sup> **W04648**: SPOE00128158-00128162, pp. SPOE00128158 and SPOE00128161; **W04391**: T. 22 November 2021, confidential, p. 1747 lines 9-18. In the latter statement W04391 confirms that W04648 found the body [REDACTED], *see* T. 22 November 2021, public, p. 1755, line 25 to p. 1756, line 1. *See also*, **W04674**: T. 13 December 2021, public, p. 1948, line 21 to p. 1949 line 3 and p. 1951, lines 1-2.

<sup>1297</sup> SPOE00128266-00128273 RED3, p. SPOE00128271. The Panel recalls that this air mission request was prepared [REDACTED] and is one of the documents related to the preparation of the UNMIK Aerial Booklet. The Panel takes no issue with its reliability and has relied on it.

<sup>1298</sup> **W04676**: T. 17 November 2021, public, p. 1607, lines 3-4.

<sup>1299</sup> **W04676**: T. 17 November 2021, public, p. 1644, lines 2-3; **W04391**: T. 22 November 2021, public, p. 1755, line 25; **W04674**: T. 13 December 2021, public, p. 1986, lines 12-14.

<sup>1300</sup> **W04676**: T. 17 November 2021, public, p. 1607, lines 24-25; T. 17 November 2021, confidential p. 1615, lines 22-24; **W04391**: T. 22 November 2021, confidential, p. 1749, lines 23-25; **W04674**: T. 13 December 2021, public, p. 1951, lines 14-16 (W04674 stated that the grave was about 30 or 40 centimetres deep).

<sup>1301</sup> SPOE00209313-00209320, p. SPOE00209315. The Panel takes no issue with the authenticity of the eight pictures of the exhumation, as they were authenticated by W04676 in court (**W04676**: T. 17 November 2021, confidential, p. 1611, line 20 to p. 1612, line 10).

<sup>1302</sup> **W04676**: T. 17 November 2021, public, p. 1615 line 25 to p. 1616 line 2.

<sup>1303</sup> [REDACTED]; **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>1304</sup> [REDACTED].

if he was shot".<sup>1305</sup> According to the evidence, after digging further, W04648 immediately found a second body covered with a blanket.<sup>1306</sup>

608. The Panel notes that there are slightly divergent accounts regarding the date when these bodies were discovered, notably 3 July 1999,<sup>1307</sup> 4 July 1999,<sup>1308</sup> and 6 July 1999.<sup>1309</sup> However, the Panel considers that such divergencies have no impact on the general credibility of the relevant witnesses. In fact, the Panel considers that the sequence of relevant events arising out of their evidence is not disturbed and remains compatible with, for example, the exhumation date, which occurred on 7 July 1999, as established below. Most importantly, the Panel is of the view that the essence of the evidence on this point, which is consistent across the witnesses, revolves around the discovery of two bodies [REDACTED] between approximately 3 July and 6 July 1999.

609. The Panel notes that all witnesses explained that once they saw what they presumed to be the body of the Murder Victim (the second body discovered), they covered back the grave and left it as such.<sup>1310</sup> It also notes W04648's statement that he made a mark on the grave to indicate its location.<sup>1311</sup> The fact that a preliminary visit by W04648 was done before the actual exhumation took place was corroborated by W04676, who confirmed that, on the day of the exhumation, W04648 was already aware of the body's location.<sup>1312</sup> The Panel is particularly attentive to the fact that W04648 indicated that, in the aftermath of the discovery of the Murder Victim's presumed corpse, he contacted KFOR as well as the police, to inform them about his

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<sup>1305</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128334.

<sup>1306</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333. This is corroborated by W04676, who indicated that the Murder Victim was covered with a "navy blue" blanket [REDACTED].

<sup>1307</sup> **W04648**: SPOE00128158-00128162, p. SPOE00128158.

<sup>1308</sup> [REDACTED].

<sup>1309</sup> [REDACTED].

<sup>1310</sup> [REDACTED]; **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>1311</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>1312</sup> [REDACTED].

discovery, but that he was told that they did not have enough time to investigate his complaint.<sup>1313</sup>

610. The Panel finds that [REDACTED] described the discovery of the two bodies in a convincing and articulated manner, rich in detail and consistent, thus demonstrating personal knowledge of the discovery. The attempt to involve KFOR and the police, as law enforcement authorities, prior to the actual exhumation of the body, is a further realistic element that adds to the credibility of their evidence.

611. Based on the evidence taken as a whole, the Panel is satisfied that the grave [REDACTED] contained two bodies, which were found between approximately 3 July and 6 July 1999.

### 3. Exhumation and Identification of the Murder Victim's Body

612. The Panel notes that W04648, [REDACTED] provided evidence about the exhumation and identification of the body of the Murder Victim. The Panel heard evidence according to which between one day and a few days after the discovery of the two bodies in the grave, [REDACTED] went back to the grave to exhume the corpse presumably belonging to the Murder Victim.<sup>1314</sup> [REDACTED],<sup>1315</sup> which the Panel considers to be a very realistic and genuine detail, which could only come from the personal recollection of the witness. Those witnesses recounted that during the exhumation process, the body was removed from the grave, put in a plastic sheet,<sup>1316</sup> and inside a coffin,<sup>1317</sup> and then transported to the village of [REDACTED].<sup>1318</sup>

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<sup>1313</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333. This is corroborated by [REDACTED].

<sup>1314</sup> [REDACTED]; **W04648**: SPOE00128333-00128343, p. SPOE00128340.

<sup>1315</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>1316</sup> [REDACTED].

<sup>1317</sup> [REDACTED].

<sup>1318</sup> [REDACTED]. *See also*, **W04648**: SPOE00128333-00128343, p. SPOE00128333.

[REDACTED] was asked to help in the exhumation [REDACTED], which are available as evidence to the Panel.<sup>1319</sup>

613. Regarding the date of the exhumation, the Panel notes that W04648 indicated in one previous statement that the burial took place on 4 July 1999.<sup>1320</sup> However, [REDACTED] consistently indicated that the exhumation took place on 7 July 1999, which is corroborated by the digital stamps of the pictures in evidence.<sup>1321</sup> In addition, the Panel recalls that it has established that the discovery of the grave took place between approximately 3 July and 6 July 1999.<sup>1322</sup> The Panel therefore attaches more weight to the testimony of [REDACTED] as corroborated by the photographs available in evidence, which fits best in the sequence of events based on the totality of the evidence. Accordingly, the Panel finds that the exhumation took place on 7 July 1999.

614. Regarding the identification of the body, the Panel notes [REDACTED] testimonies that, on the day of the exhumation, the body was already decomposing,<sup>1323</sup> thus leaving it open whether it belonged to the Murder Victim or not. However, the Panel lays emphasis on W04648's statement, [REDACTED], who confirmed [REDACTED] that it was the body of the Murder Victim, [REDACTED].<sup>1324</sup> The Panel

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<sup>1319</sup> [REDACTED]. *See also*, **W04648**: SPOE00128158-00128162, p. SPOE00128158, where W04648 stated that a [REDACTED] and **W04648**: SPOE00128333-00128343, p. SPOE00128333, where W04648 instead confirmed that W04676 [REDACTED].

<sup>1320</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333.

<sup>1321</sup> [REDACTED].

<sup>1322</sup> *See* para. 611.

<sup>1323</sup> [REDACTED].

<sup>1324</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128333. In SPOE00128061-00128064, p. 3, where the witness stated that the Murder Victim had [REDACTED], and he recognised [REDACTED] because of "those very details, which were significant" to him. *See also*, [REDACTED]. The Panel notes a discrepancy among the witnesses' statements, some of them referring to [REDACTED] and others to a [REDACTED]. The Panel however gives weight to the fact that all witnesses provided corroborating evidence indicating that they were all able to identify the body of the Murder Victim due to [REDACTED], and considers that these inconsistencies do not decrease the credibility of the witnesses and the probative value of their evidence on this point.

also notes that [REDACTED] confirmed in-court that W04648 was indeed able to identify the body as belonging to the Murder Victim, because W04648 [REDACTED].<sup>1325</sup> In this regard, the Panel notes that W03593 confirmed that detainees were not able to [REDACTED] during their detention at the ZDC.<sup>1326</sup> Lastly, the Murder Victim's [REDACTED] also helped in the identification of the corpse, as he was [REDACTED], according to [REDACTED].<sup>1327</sup>

615. As mentioned above, the body of the Murder Victim was covered with a blanket.<sup>1328</sup> When confronted with a picture showing one of the blankets found in the ZDC,<sup>1329</sup> [REDACTED] immediately mentioned that it looked similar to the one found in the grave.<sup>1330</sup> [REDACTED] added that the body of the Murder Victim had no shoes on.<sup>1331</sup> The Panel notes that the pictures taken during the exhumation confirm that the corpse was indeed barefoot.<sup>1332</sup>

616. Relatedly, the Panel notes that the confirmed death of the Murder Victim is further corroborated by W04600, who testified in court that he had already become aware of the death of the Murder Victim "five, six days following the [Serb] offensive" of 18 April 1999.<sup>1333</sup>

617. The Panel considers the evidence provided by the witnesses on the exhumation and identification of the body of the Murder Victim to be highly credible, in light of [REDACTED] their consistent and detailed accounts, demonstrating that they recounted the events based on their personal experience.

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<sup>1325</sup> [REDACTED].

<sup>1326</sup> **W03593**: T. 20 September 2021, public, p. 479, lines 11-23.

<sup>1327</sup> [REDACTED].

<sup>1328</sup> [REDACTED].

<sup>1329</sup> **W04648**: SPOE00128386-00128420, p. SPOE00128401.

<sup>1330</sup> [REDACTED].

<sup>1331</sup> [REDACTED].

<sup>1332</sup> SPOE00209313-00209320, p. SPOE00209320.

<sup>1333</sup> **W04600**: T. 24 September 2021, confidential, p. 767, lines 4-13.

618. Based on the evidence as a whole, the Panel is satisfied that the second body found in the grave [REDACTED] in early July 1999 belonged to the Murder Victim.

#### 4. The Injuries to the Murder Victim

##### (a) The arms and legs

619. The Panel has received evidence concerning possible injuries on the Murder Victim's arms and legs. [REDACTED], who took part in the exhumation,<sup>1334</sup> testified that the arms and legs of the Murder Victim were broken.<sup>1335</sup> When asked how he could determine that the limbs were broken, he replied that "it was obvious" and that when they picked up the body, they could tell that they were broken.<sup>1336</sup> This account is corroborated by [REDACTED], who stated that W04648, [REDACTED] saw that "the limbs were broken, both legs and both arms".<sup>1337</sup> Similarly, [REDACTED], who was standing at some distance from the grave, heard someone saying that the Murder Victim's arms and legs were broken.<sup>1338</sup> On the other hand, the Panel observes that [REDACTED] stated that she did not hear from the persons present during the exhumation that the arms and legs of the Murder Victim were broken.<sup>1339</sup> However, [REDACTED] also testified that the exhumation was [REDACTED],<sup>1340</sup> making it wholly plausible, in the Panel's opinion, that [REDACTED] did not hear or notice this particular detail during the process. While determining the injuries of the Murder Victim's limbs is not crucial for the charge of murder – given that it is established that the body belonged to the Murder Victim – the Panel considers that the evidence taken

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<sup>1334</sup> [REDACTED].

<sup>1335</sup> [REDACTED].

<sup>1336</sup> [REDACTED].

<sup>1337</sup> [REDACTED].

<sup>1338</sup> [REDACTED].

<sup>1339</sup> [REDACTED].

<sup>1340</sup> [REDACTED].

as a whole is consistent in indicating serious injuries on the victim's arms and legs. The Panel notes, in this respect, that such injuries are compatible with the harsh mistreatment suffered by the Murder Victim during his detention at the ZDC and the fact that, by the end of the detention period, he was no longer able to stand or walk.<sup>1341</sup>

(b) The torso and the causes of death

620. The Panel notes that no evidence was provided in the form of an official autopsy report regarding the cause(s) and modalities of death of the Murder Victim.

621. Regarding the cause of death, the Panel considers it relevant that, when last seen by his co-detainees, the Murder Victim, who was severely mistreated on a daily basis for almost three weeks, was in a near-to-death condition and was unable to stand or walk.<sup>1342</sup> Furthermore, the Murder Victim was denied any medical aid that could have saved his life at that stage. The fact that the detainees at the ZDC were denied medical aid is supported by the testimonies of W01679, W03593, and W04669.<sup>1343</sup> For example, according to W01679 nobody medicated his wounds after the beatings.<sup>1344</sup> As testified by W03593, no detainee was ever provided with medical attention and it was impossible for the detainees to request medical attention, as they "would have been killed immediately".<sup>1345</sup> Against this background, however, the Panel notes that medical aid was generally available in Zllash/Zlas<sup>1346</sup> and, accordingly, detainees at the ZDC could have received it. In this respect, based on the evidence as a whole, taking into account the position of the Accused as BIA commander and the ensuing

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<sup>1341</sup> See paras 569-574.

<sup>1342</sup> See para. 571.

<sup>1343</sup> See paras 520-522. See also **W04669**: T. 10 November 2021, public, p. 1467, lines 9-10 ("I didn't ask for any medical attention nor did I receive any"); **W01679**: T. 4 October 2021, public, p. 903, lines 9-11.

<sup>1344</sup> **W01679**: T. 4 October 2021, public, p. 903, lines 12-13.

<sup>1345</sup> **W03593**: T. 20 September 2021, public, p. 480, lines 13-21.

<sup>1346</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2115, lines 22-25; p. 2116, lines 16-22; T. 19 January 2022, public, p. 2150, line 14 to p. 2151, line 16.

control he had over the ZDC, the Panel finds that the denial of medical aid to the detainees at the ZDC could only have been decided by the Accused.

622. Moreover, the Panel observes that W04648 stated that, at the time of the exhumation, he saw two entry holes resembling shooting wounds on the right side of the Murder Victim's stomach and two exit holes on the left side of his back.<sup>1347</sup> His evidence is supported by [REDACTED], who testified that there were three to four bullet holes on the Murder Victim's back.<sup>1348</sup> When asked to explain where the bullet holes were located, [REDACTED] first mentioned that they were located at the back of the head, adding that he was not sure if he remembered well,<sup>1349</sup> and later clarified three times that the bullet holes were "at the back of the body",<sup>1350</sup> where the lungs are.<sup>1351</sup> [REDACTED] further mentioned that he could notice the bullet holes when the body was turned.<sup>1352</sup> [REDACTED] equally provided evidence of bullet holes on the back of the body.<sup>1353</sup> [REDACTED], [REDACTED], stated that, aside from a hole on the Murder Victim's left side, there were no other marks that they paid attention to during the exhumation.<sup>1354</sup> However, [REDACTED] specified that only a superficial viewing was performed, and that other parts of the body, such as the chest and the back, had not been examined at the time.<sup>1355</sup> In addition, [REDACTED] explained [REDACTED] that it was not possible to indicate what caused such hole, as the body had started decomposing, and no forensic examination was undertaken at the time of the exhumation or thereafter.<sup>1356</sup>

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<sup>1347</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128334.

<sup>1348</sup> [REDACTED].

<sup>1349</sup> [REDACTED].

<sup>1350</sup> [REDACTED].

<sup>1351</sup> [REDACTED].

<sup>1352</sup> [REDACTED].

<sup>1353</sup> [REDACTED].

<sup>1354</sup> [REDACTED].

<sup>1355</sup> [REDACTED].

<sup>1356</sup> [REDACTED].

623. The Panel notes that the evidence of the witnesses discussed above is corroborated by the photographs of the exhumation, in which at least one hole is visible on the left side of the torso of the Murder Victim.<sup>1357</sup> This, in the view of the Panel, together with the evidence concerning the other unidentified body found in the same grave with “an entry hole in the body’s head, like if he was shot”,<sup>1358</sup> is consistent with the scenario that both individuals in the grave were hit by bullets.

624. While the evidence is inconclusive on the precise number and location of the bullet holes, the Panel finds that the evidence is consistent in indicating that there were holes in the torso. The Panel considers that such holes could have only been caused by bullets, as there is no evidence indicating otherwise. Taken together, the established mistreatment against the Murder Victim during his detention at the ZDC, causing serious bodily harm, and the denial of medical aid provided to him, in the context of the Accused’s decisions to neither release nor evacuate him, the Panel considers that the only reasonable conclusion based on the evidence as a whole, is that the Murder Victim died as a result of the combination between the severe mistreatment inflicted by BIA members who detained him, causing serious bodily harm; the denial of medical aid by BIA members; and gunshot wounds.

## 5. The Serbian Offensive in the Zilash/Zlaš Area

625. In the Panel’s view, and based on its factual findings above regarding the Murder Victim’s causes of death,<sup>1359</sup> it is uncontroversial that the mistreatment inflicted upon him and the denial of medical aid are solely attributable to the Accused’s acts and omissions, in his capacity as BIA commander, as well as to the acts and omissions of his BIA subordinates at the ZDC. Indeed, the evidence unequivocally proves that only

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<sup>1357</sup> SPOE00209313-00209320, p. SPOE00209318.

<sup>1358</sup> **W04648**: SPOE00128333-00128343, p. SPOE00128334.

<sup>1359</sup> See para. 624.

the Accused and his BIA subordinates had access to the Murder Victim at the ZDC between approximately [REDACTED] April 1999 and on or around 19 April 1999. As a consequence, the Accused and his BIA subordinates were the only ones to be able to create the circumstances that resulted in the Murder Victim's near-to-death state when he was last seen by his co-detainees on or around 19 April 1999.

626. At this juncture, the Panel recalls that the conduct of the perpetrators, whether commissive, omissive or both, must have been a substantial cause of the death of the victim.<sup>1360</sup> In this light, the Panel is satisfied that the extreme mistreatment against the Murder Victim — which included the use of potentially lethal objects — coupled with the lack of medical aid for about [REDACTED] days, were indeed substantial causes of the victim's death. In other words, had the Accused and his BIA subordinates stopped such extreme mistreatment or provided medical aid to the Murder Victim, he would not have died.

627. Nonetheless, considering that it has established a third cause of death (gunshot wounds from bullets fired at the victim),<sup>1361</sup> the Panel finds it appropriate to discuss whether the bullet holes found on the victim's body are attributable to the BIA members or to the Serbian troops.

628. In this regard, the Panel has received evidence concerning a Serbian offensive taking place in the area of Zllash/Zlaš in the second half of April 1999. Military documents originating from the Serbian Joint Command for Kosovo and Metohija indicate that the Serbian forces planned an offensive in that area on 18 April 1999.<sup>1362</sup> This finds confirmation in the statement of the Accused and in the testimony of

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<sup>1360</sup> See para. 687.

<sup>1361</sup> See para. 624.

<sup>1362</sup> IT-05-87.1 P01384.E, pp. 3-4 (“[c]arry out the battle in two phases over a period of 3-5 days”). In Serbian combat reports dated 19 April and 20 April 1999 it is stated that the offensive in, *inter alia*, the Zllash/Zlaš sector continues (IT-05-87.1 D00633.E, p. 0062; IT-05-87.1 D00634.E, p. 0097).

witnesses, who recounted, based on their personal knowledge, that an offensive in the Zllash/Zlaš area took place between approximately 16 April 1999 and 22 April 1999.<sup>1363</sup>

629. The evidence is however contradictory as to whether or not this offensive reached the ZDC. On the one hand, the evidence appears to establish that the Serbian troops reached the *village* of Zllash/Zlaš and caused damage to infrastructures.<sup>1364</sup> The evidence is inconclusive as to how long the Serbian troops stayed in the village of Zllash/Zlaš. The evidence in this respect establishes that the Serbian troops may have stationed there for a very short time, possibly under a day, also in light of the fact that the KLA forces did not retreat completely from Zllash/Zlaš.<sup>1365</sup>

630. On the other hand, the Panel is not in a position to conclusively determine whether the Serbian troops set foot on the ZDC, which, as established by the Panel, was in an elevated position, away from the village of Zllash/Zlaš.<sup>1366</sup> In this regard, the Panel can establish that, at the time of the sudden release of the detainees, on or around 19 April 1999, they could walk towards Prishtinë/Priština and other locations,

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<sup>1363</sup> The Accused stated that the offensive “began” on 16 April 1999 (**Mr Mustafa**: 069404-TR-ET, Part 7, p. 18, lines 21-23). Mr Krasniqi indicated instead that the offensive was “launched” on 17 April 1999 in Zllash/Zlaš, whereas in Prapashticë/Prapaštica and other villages it began earlier (**Mr Krasniqi**: T. 21 April 2022, public, p. 3869 lines 6-9). W04600, albeit not sure of the date, placed the offensive around 18-22 April 1999, specifying that it had lasted for seven or eight days (**W04600**: T. 24 September 2021, confidential, p. 767, lines 10-11). Mr F. Sopi and Ms Hadri consistently stated that the offensive occurred on 18 April 1999 (**W03593**: T. 20 September 2021, public, p. 418, line 25 to p. 419, line 2. *See also*, p. 419, lines 21-22 and T. 21 September 2021, public, p. 552, lines 13-24. **Mr F. Sopi**: T. 18 January 2022, public, p. 2036, lines 21-22, p. 2043, lines 20-21, p. 2078, lines 11-12. **Ms Hadri**: T. 11 May 2022, public, p. 4209, line 22 and p. 4210, lines 1-2).

<sup>1364</sup> **Mr F. Sopi**: T. 19 January 2022, public, p. 2175, lines 21-22; p. 2176, lines 17-18 (the Serbian troops “set on fire all the houses initially, and they entered almost every house in Zllash/Zlaš”).

<sup>1365</sup> **Mr Humolli**: T. 1 February 2022, public, p. 2450, lines 16 to p. 2451, line 2 (the Serbian troops left within the day, “immediately”); p. 2359, lines 18-20; **Mr Veseli**: T. 25 January 2022, public, p. 2271, lines 13-21 (“[the KLA] did not withdraw from Zllash, but we retreated towards the mountains on the outskirts. We did not abandon the region of Zllash, because the area was such that we were able to mount a defence”).

<sup>1366</sup> *See* paras 354-355.

relatively undisturbed.<sup>1367</sup> This indicates that the Serbian troops, at that point in time, were nowhere near the ZDC.

631. Mr Krasniqi, however, testified and explained in detail — on the basis of two pictures of the ZDC<sup>1368</sup> — that the Serbian troops, at some undetermined point in time during their offensive, shelled the ZDC from a distance, which resulted in the partial destruction of several buildings, but not in their demolition by tanks.<sup>1369</sup> Based on two photographs of the ZDC shown to Mr Krasniqi, the Panel can determine that the buildings which were damaged through shelling (but not totally destroyed or demolished) are located on the left side of the ZDC, and are in fact the buildings where the Murder Victim and other detainees were held and mistreated.<sup>1370</sup> In the Panel's assessment, it is clear from those pictures that the upper part of the building where the detainees were brought for harsh interrogations and mistreatment was partially destroyed by shelling. To the contrary, the basement (or barn) beneath, and the other barn(s) where the detainees were held, were not destroyed.<sup>1371</sup> This finds confirmation in the evidence of W04674, who reported that when entering the ZDC in search of the

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<sup>1367</sup> See the Panel's findings with regard to some detainees [REDACTED] upon release (*see* paras 403, 425, 440). In this regard, W03593 testified that on the day of his release, he did not see any enemy forces coming to Zllash/Zlaš (**W03593**: T. 21 September 2021, public, p. 553, lines 9-11).

<sup>1368</sup> DSM00030 and DSM00032.

<sup>1369</sup> **Mr Krasniqi**: T. 22 April 2022, public, p. 4042, line 24 to p. 4045, line 18.

<sup>1370</sup> Photograph DSM00030 is one of the pictures from the UNMIK Ground Booklet, and represents the very same building identified by the victims as one of their detention places (in the basement downstairs) and the interrogation room where the mistreatment and harsh interrogations took place (upstairs). Photograph DSM00032 represents the very same building but viewed from outside of the ZDC (**Mr Krasniqi**: T. 22 April 2022, public, p. 4045, lines 2-6).

<sup>1371</sup> **W04391**: T. 23 November 2021, public, p. 1834, , lines 2-21.

Murder Victim's body, he noted that the granary,<sup>1372</sup> made of wood, had bullet holes, which in the witness's view were caused by Serbian forces.<sup>1373</sup>

632. The Panel further notes Mr F. Sopi's evidence on this topic. First, he testified that the Serbs managed to reach the ZDC in Zllash/Zlaš.<sup>1374</sup> Elsewhere during his testimony, Mr F. Sopi replied: "I don't know [what the Serbs did at the ZDC] because it was impossible for us to know. We only knew that they burnt all the houses".<sup>1375</sup> When confronted by the Panel with the fact that the photographs from the UNMIK Ground Booklet — on the basis of which he identified the ZDC<sup>1376</sup> — did not show any sign of burning, Mr F. Sopi stated: "[t]hat part was not burnt down. However, the part of the houses on the other side, those were completely burned".<sup>1377</sup>

633. On the basis of the above, the Panel considers that there is a basis in the evidence, albeit inconclusive, that the Serbian forces shelled and fired at the ZDC, at least from a distance, causing damage to its infrastructures.

634. Against this background, the Panel finds that there is a temporal gap in the evidence. This gap runs from the time of the detainees' release, on or around 19 April 1999, to the time when some BIA members, including the Accused, returned to Zllash/Zlaš, on or around 20-21 April 1999, in order to evacuate the wounded from the area.<sup>1378</sup> However, the evidence available does not shed light as to whether the Accused and other BIA members returned to the premises of the ZDC or went

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<sup>1372</sup> Based on the UNMIK Aerial Booklet, as marked by Mr Krasniqi, it is possible to locate the granary on the left side of the ZDC (identified as building no. 13), which confirms that that side of the ZDC may have been hit by the Serbian forces (see REG00-013 and **Mr Krasniqi**: Transcript of Hearing, 22 April 2022, public, p. 4023, line 21 to p. 4024, line 5).

<sup>1373</sup> **W04674**: Transcript of Hearing, 14 December 2021, confidential, p. 2013, line 3 to p. 2014, line 15.

<sup>1374</sup> **Mr F. Sopi**: T. 19 January 2022, public, p. 2176, line 23 to p. 2177, line 1.

<sup>1375</sup> **Mr F. Sopi**: T. 19 January 2022, public, p. 2177, lines 4-5.

<sup>1376</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2053, line 22 to p. 2054, line 17; SPOE00128386-00128420, p. SPOE00128388.

<sup>1377</sup> **Mr F. Sopi**: T. 18 January 2022, public, p. 2177, lines 14-15.

<sup>1378</sup> **Mr Mustafa**: 069404-TR-ET, Part 7, p. 22, line 6 to p. 23, line 5. **Ms Canolli-Kaciu**: T. 12 May 2022, public, p. 4330, lines 21-22.

elsewhere in Zllash/Zlaš to assist those wounded persons. Accordingly, the Panel is unable to exclude that, in light of the shelling by Serbian forces and the damage inflicted on the ZDC, the Serbian forces ultimately neared or entered the premises of the crime scene on or around 20-21 April 1999, thus potentially having access to the Murder Victim and to the other detainee that was not released. The Panel is similarly unable to determine whether the Murder Victim, after he was last seen by his co-detainees at the time they were released, was moved elsewhere from the barn where he was detained, thereby potentially being the target of (stray) Serbian bullets, either at long or short distance. Relatedly, the Panel is not in a position to determine when the Murder Victim died, at least with some approximation, during the above-mentioned temporal gap or after.

635. However, the Panel recalls that it has established that the Murder Victim was deprived of his liberty upon the order of a KLA high-ranking official, [REDACTED].<sup>1379</sup> Subsequently, the victim was singled out for about [REDACTED] days and subject to an extreme level of mistreatment by the Accused's BIA subordinates, which included the use of potentially lethal objects.<sup>1380</sup> This mistreatment and the parallel denial of medical aid by BIA members under the Accused's authority left the Murder Victim in a near-to-death state, unable to stand and walk.<sup>1381</sup>

636. As established, the detainees were suddenly released from the ZDC, without explanation or documentation, on or around 19 April 1999, in light of the impending Serbian offensive in the area of Zllash/Zlaš.<sup>1382</sup> However, the Murder Victim [REDACTED] were not released with the other detainees.<sup>1383</sup> The Panel finds, on the

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<sup>1379</sup> See para. 459.

<sup>1380</sup> See para. 570.

<sup>1381</sup> See para. 571.

<sup>1382</sup> See the Panel's findings on the "Circumstances of Release" in relation to W01679, W03593, W03594.

<sup>1383</sup> See para. 477.

basis of the evidence taken as a whole, that the decision not to release the Murder Victim could only have been made by the Accused, in his capacity as overall commander of the BIA at the ZDC. As a confirmation that the decision not to release the Murder Victim could only have been made by the Accused, as the BIA commander, the Panel underlines that the release of the other detainees was executed by the Accused's BIA subordinates, including his deputy, Mr Mehmetaj (aka Bimi).<sup>1384</sup> Furthermore, the Panel notes that the Murder Victim was not evacuated from Zllash/Zlaš, a decision which must have been taken also by the Accused as he was in charge of the evacuation from Zllash/Zlaš of those wounded. These decisions of the Accused (not to release or evacuate the Murder Victim) effectively equalled a decision to kill him, considering that the other detainees walked away from the ZDC to safer zones, while the Murder Victim remained in detention, in a near-to-death state, while the Serbian offensive was approaching the area. Based on the evidence as a whole, the only reasonable conclusion is that the Accused intentionally and effectively deprived the Murder Victim of any chance to survive.

637. In light of the above, the Panel finds that, while the most probable conclusion is that the BIA members fired the bullets at the Murder Victim before leaving the ZDC, this is not the only reasonable conclusion based on the totality of the evidence. There exists, in fact, a reasonable doubt as to whether the bullet holes identified on the Murder Victim's body can be attributed to the BIA members or to the Serbian troops. The Panel considers that this doubt is not imaginary. Rather, it has a rational link to the evidence indicating that the Serbian forces fired at the ZDC, and to the lack of evidence as to whether or not the Murder Victim was moved, and if so when, from the detention barn after he was last seen by his co-detainees, as well as the lack of evidence as to when he died.

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<sup>1384</sup> [REDACTED].

638. However, even if the gunshots were attributable exclusively to the Serbian forces, the Panel considers that this would not relieve the Accused of his responsibility, as he had, in his capacity as overall and only BIA commander at the ZDC, full decisional powers regarding: (i) the severe mistreatment inflicted against the Murder Victim by his BIA subordinates; (ii) the denial of medical aid to the victim; and (iii) the refusal to either release him together with the other detainees or to evacuate him with the wounded, in light of the impending Serbian offensive. In this perspective, firing directly at the Murder Victim or putting him in a position to be fired at by the advancing Serbian forces — by abandoning him without protection in a near-to-death state at the ZDC — leads exactly to the same conclusion, namely that the required causation between the Accused's acts and omissions and the death of the victim remains unaffected. This is the case because the extreme level of mistreatment to which the Murder Victim was subject, jointly with the denial of medical aid, in the context of the Accused's decisions to neither release nor evacuate him, constitute substantial causes of the victim's death, irrespective of whether the victim was hit by one or more Serbian bullets. As a consequence, the Accused bears responsibility for the Murder Victim's death.

## 6. Conclusion

639. In light of the above, the Panel is satisfied that the Murder Victim was killed between on or around 19 April 1999 and around the end of April 1999 as a result of acts and omissions attributable to the Accused and his BIA subordinates, irrespective of the reasonable doubt that exists with regard to the attribution of the gunshot wounds identified on the victim's body to the BIA members or to the Serbian troops.

## VI. LEGAL FINDINGS

### A. ARBITRARY DETENTION (COUNT 1)

#### 1. Legal Requirements

##### (a) Legal basis

640. The Defence submits that the war crime of arbitrary detention in a non-international armed conflict has no legal basis in the applicable law of the Specialist Chambers. In particular, the Defence argues that arbitrary detention does not fall under Article 14(1)(c) of the Law, as it is not listed in this provision, nor under Article 3 of the four Geneva Conventions of 12 August 1949 (Common Article 3 and Geneva Conventions, respectively), particularly as the allegedly detained individuals were not protected persons within the meaning of the Geneva Conventions.<sup>1385</sup>

641. The SPO and Victims' Counsel disagree with the Defence, submitting, in particular, that the Court of Appeals has already confirmed the Specialist Chambers' jurisdiction over arbitrary detention as a war crime in a non-international armed conflict pursuant to Article 14(1)(c) of the Law.<sup>1386</sup>

642. At the outset, the Panel notes that, while arbitrary detention is not expressly mentioned in the list of acts under Article 14(1)(c) of the Law, the formulation

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<sup>1385</sup> T. 14 September 2022, public, p. 4721, line 16 to p. 4725, line 10; T. 15 September 2022, public, p. 4840, line 19 to p. 4841, line 5. *See also* T. 15 September 2022, public, p. 4794, lines 8-17.

<sup>1386</sup> **SPO**: T. 15 September 2022, public, p. 4811, line 13 to p. 4812, line 2 (*referring to* KSC-BC-2020-04, IA002-F00010, Court of Appeals, [Decision on Pjetër Shala's Appeal Against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers](#) (Case 04 Jurisdictional Appeal), 11 February 2022, public, para. 47; KSC-BC-2020-06, IA009-F00030, Court of Appeals, [Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers"](#) (Case 06 Jurisdictional Appeal), 23 December 2021, public, paras 86-89, 94-102, 106-111); **Victims' Counsel**: T. 15 September 2022, public, p. 4821, line 24 to p. 4822, line 1. For further arguments by Victims' Counsel, *see* T. 15 September 2022, public, p. 4822, line 2 to p. 4823, line 6.

“including any of the followings acts” means that the list is not exhaustive and that, accordingly, the Specialist Chambers’ jurisdiction is not limited to those acts expressly enumerated under Article 14(1)(c) of the Law.<sup>1387</sup> The Panel further recalls that the Court of Appeals confirmed that the Specialist Chambers has jurisdiction over arbitrary detention as a war crime committed in a non-international armed conflict, if such crime existed under customary international law during the Specialist Chambers’ temporal jurisdiction and if it constitutes a serious violation of Common Article 3.<sup>1388</sup>

643. As to whether arbitrary detention constitutes a serious violation of Common Article 3, the Panel recalls the Court of Appeals’ finding that, regardless of the (initial) legality of detention, detention becomes arbitrary and constitutes a serious violation of Common Article 3 when the principle of humane treatment is violated.<sup>1389</sup> The Court of Appeals confirmed that failure to provide basic procedural guarantees to persons deprived of their liberty will render such deprivation of liberty arbitrary.<sup>1390</sup>

644. As to whether this crime existed under customary international law during the Specialist Chambers’ temporal jurisdiction, the Panel recalls the Court of Appeals’ finding that even before 1998, arbitrary or unlawful detention was widely condemned and recognised as constituting a serious violation of international humanitarian law, including in non-international armed conflicts, and that such a violation could trigger consequences in terms of criminal responsibility. More specifically, the Court of Appeals confirmed that already in 1998 a rule existed under customary international

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<sup>1387</sup> [Case 06 Jurisdictional Appeal](#), para. 87; [Case 04 Jurisdictional Appeal](#), para. 44. See also [Confirmation Decision](#), para. 23.

<sup>1388</sup> [Case 06 Jurisdictional Appeal](#), para. 89. See also [Case 04 Jurisdictional Appeal](#), para. 44.

<sup>1389</sup> [Case 06 Jurisdictional Appeal](#), paras 97, 99, with further references; [Case 04 Jurisdictional Appeal](#), para. 45.

<sup>1390</sup> [Case 06 Jurisdictional Appeal](#), para. 102, where the Court of Appeals confirmed the Pre-Trial Judge’s findings in KSC-BC-2020-06, F00412, Pre-Trial Judge, [Decision on Motions Challenging the Jurisdiction of the Specialist Chambers](#), 22 July 2021 (Case 06 Jurisdictional Decision), public, paras 155-156.

law criminalising arbitrary detention as a war crime in non-international armed conflicts.<sup>1391</sup>

645. In light of the above, the Panel is satisfied that arbitrary detention committed in a non-international armed conflict constitutes a war crime pursuant to Article 14(1)(c) of the Law.

(b) Material elements (*actus reus*)

646. The war crime of arbitrary detention, within the meaning of Article 14(1)(c) of the Law, is committed through an act or omission resulting in depriving a person not taking active part in hostilities of his or her liberty without legal basis or without complying with basic procedural safeguards.

647. The deprivation of liberty is without legal basis when it is justified neither by criminal proceedings nor by reasonable grounds to believe that security concerns make it absolutely necessary.<sup>1392</sup>

648. The basic procedural safeguards encompass, in particular, the obligation: (i) to inform any person deprived of his or her liberty of the reasons for such deprivation; (ii) to bring any person deprived of his or her liberty promptly before a judge or other competent authority; and (iii) to provide any person deprived of his or her liberty with an opportunity to challenge the lawfulness of detention.<sup>1393</sup>

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<sup>1391</sup> [Case 06 Jurisdictional Appeal](#), paras 106-111. See also [Case 04 Jurisdictional Appeal](#), para. 46.

<sup>1392</sup> [Confirmation Decision](#), para. 50; ICTY, [Mucić et al. Appeal Judgement](#), paras 320-322; *Prosecutor v. Kordić and Čerkez*, IT-95-14-A/2-A, Appeals Chamber, [Judgement](#) (*Kordić and Čerkez Appeal Judgement*), 17 December 2004, paras 72-73; ECCC, *Co-Prosecutors v. Kaing*, 001/18-07-2007/ECCC/TC, Trial Chamber, [Judgement](#), 26 July 2010 (*Duch Trial Judgment*), para. 465.

<sup>1393</sup> See [Case 06 Jurisdictional Appeal](#), para. 99; [Case 06 Jurisdictional Decision](#), para. 150. See also Article 5(4) of the European Convention on Human Rights.

649. The rationale of affording basic procedural safeguards lies in the fact that the person deprived of his or her liberty is, at that point, *hors de combat* and, accordingly, does not pose any threat to the detaining power due to his or her detention condition.

650. When assessing the compliance with basic procedural safeguards, it is irrelevant whether: (i) the initial deprivation of liberty was justified;<sup>1394</sup> or (ii) the perpetrator is personally responsible for the failure to have the detainee's procedural rights respected.<sup>1395</sup>

(c) Mental elements (*mens rea*)

651. The perpetrator must have acted intentionally in relation to his or her conduct. Intent to commit a crime may be inferred from the Accused's knowledge that crimes are being committed and by his or her participation in the very perpetration of such crimes.<sup>1396</sup> In addition, the perpetrator must have no reasonable grounds to believe that security concerns of the parties to the conflict make the detention absolutely necessary, or the perpetrator must know that the detainees have not been afforded the requisite procedural guarantees, or be reckless as to whether those guarantees have been afforded or not.<sup>1397</sup>

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<sup>1394</sup> [Confirmation Decision](#), para. 52; ICTY, [Mucić et al. Appeal Judgement](#), para. 322. See also, ICTY, [Kordić and Čerkez Appeal Judgement](#), para. 73; ECCC, [Duch Trial Judgment](#), para. 465.

<sup>1395</sup> [Confirmation Decision](#), para. 52; ICTY, [Mucić et al. Appeal Judgement](#), para. 379.

<sup>1396</sup> ICTR, *Karemera and Ngirumpatse v. Prosecutor*, ICTR-98-44-A, Appeals Chamber, [Judgement](#) (*Karemera and Ngirumpatse Appeal Judgement*), 29 September 2014, para. 632; ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, [Judgement](#) (*Kvočka et al. Appeal Judgement*), 28 February 2005, paras 109-110.

<sup>1397</sup> [Confirmation Decision](#), para. 53; ICTY, [Mucić et al. Appeal Judgement](#), para. 378.

## 2. Findings

### (a) Material elements (*actus reus*)

652. The Panel has established that at least six persons, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED] were deprived of their liberty at the ZDC between approximately 1 April 1999 and on or around 19 April 1999.<sup>1398</sup> The Panel is therefore satisfied that the first material element of the war crime of arbitrary detention is met.

653. The Panel has further established that, at no point during their detention, the detainees were provided with the basic guarantees that shall be afforded pursuant to international humanitarian law to any person deprived of his or her liberty.<sup>1399</sup> Specifically, the detainees were not informed of the reasons for their deprivation of liberty; were not brought promptly before a judge or other competent authority; and were not provided with an opportunity to challenge the lawfulness of their detention. To the contrary, the victims were kept in detention, mistreated by BIA members, and one of them was even killed.<sup>1400</sup> The Panel therefore finds that the second material element of the war crime of arbitrary detention is satisfied.

### (b) Mental elements (*mens rea*)

654. The Panel has established that, throughout the timeframe of the charges, the Accused was the overall and only commander of the BIA and that the BIA controlled the ZDC.<sup>1401</sup> The Panel has also found that the Accused was present at the ZDC on multiple occasions during April 1999, including at critical times: (i) on or around [REDACTED] April 1999, when the Murder Victim was handed over [REDACTED] to

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<sup>1398</sup> See paras 495-496.

<sup>1399</sup> See paras 495-496.

<sup>1400</sup> See the Panel's factual findings in Section V on Counts 1-4.

<sup>1401</sup> See paras 338-341, 349-353.

a BIA member at the ZDC; and (ii) in the first two weeks of April 1999, specifically when the Accused personally mistreated or witnessed the mistreatment by his BIA subordinates of W01679 and W03593.<sup>1402</sup> Further, the Panel has established that the decision to release some detainees and to keep others in detention, despite the impending Serbian offensive, could only have been made by the Accused, in his capacity as BIA commander.<sup>1403</sup> Finally, the Accused himself declared in his SPO statement that he was aware or at least heard that people (including possibly civilians) were detained at the ZDC.<sup>1404</sup>

655. Similarly, BIA members were present at the ZDC during the relevant time of the charges and kept the victims locked in the detention barns, took some of them out of the barns for harsh interrogations, and mistreated them in a variety of manners, before taking them back to the detention barns.<sup>1405</sup> BIA members, including the deputy of the Accused, also personally released some of the detainees on or around 19 April 1999 ([REDACTED]), while keeping others in detention (the Murder Victim [REDACTED]).<sup>1406</sup>

656. Already on this factual basis, the Panel considers that the only reasonable conclusion is that the Accused and his BIA subordinates saw and knew that detainees were held at the ZDC between approximately 1 April 1999 and on or around 19 April 1999, and intentionally deprived them of their liberty during this time. With regard to the Accused in particular, the Panel recalls that he saw at least one detainee arriving at the ZDC, he personally mistreated two detainees at the ZDC, and after beating W03593, he ordered his BIA subordinates to bring him back to the detention

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<sup>1402</sup> See paras 473, 541-545, 551-556.

<sup>1403</sup> See para. 636.

<sup>1404</sup> **Mr Mustafa**: 069404-TR-ET Part 7, p. 15, lines 7-15.

<sup>1405</sup> See, for example, paras 534, 546, 547, 561, 567, and 572.

<sup>1406</sup> [REDACTED].

barn.<sup>1407</sup> The above demonstrates that, not only did the Accused know that the victims were detained in the ZDC, but he also had the intention to keep them detained.

657. Other circumstances confirm, unequivocally, the Accused's knowledge that detainees were held at the ZDC without basic guarantees, and that he intentionally kept them prisoners without such guarantees. In this respect, the Panel considers the Accused's position as the overall and only BIA commander<sup>1408</sup> to be of particular importance. By virtue of that position, the Accused was the person at the ZDC who had the responsibility to ensure that the detainees were afforded the basic guarantees. Notably, when W01679 was initially apprehended, BIA members stated that "[t]he commander needs to ask you something" and took him directly to the Accused upon arrival at the ZDC.<sup>1409</sup> On another occasion, after the Accused personally interrogated and beat W03593, he ordered two BIA members to bring the witness back to the stable.<sup>1410</sup>

658. Equally, the Panel considers that the Accused, in his capacity as overall and only BIA commander, was the only person at the ZDC empowered to release the detainees. The Accused in fact exercised his power in this respect, but only after some detainees were held and mistreated for almost three weeks. The Accused did so *exclusively* because of a critical change of circumstances — the Serbian offensive — which compelled BIA soldiers under his command, including his deputy Mr Mehmetaj (aka Bimi), to release detainees and evacuate the ZDC.<sup>1411</sup> At the same time, the Panel has found that, notwithstanding the sudden release of the detainees and the evacuation of the ZDC, the Murder Victim [REDACTED], the two most mistreated

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<sup>1407</sup> See paras 473, 541-545, 551-556.

<sup>1408</sup> See para. 338.

<sup>1409</sup> See para. 388.

<sup>1410</sup> See para. 547.

<sup>1411</sup> [REDACTED]. See also para. 636.

detainees, were not released.<sup>1412</sup> Based on the evidence, the Panel has established that the only reasonable conclusion is that these two decisions (releasing some of the detainees by calling their names, while keeping others in captivity) – taken in the very same context – could only have been made by the Accused, in his capacity as BIA commander at the ZDC.<sup>1413</sup>

659. In light of the above, the Panel concludes that the Accused's personal participation in the mistreatment of two detainees, coupled with his knowledge that detainees were held at the ZDC, demonstrate that the Accused intentionally deprived these persons of their liberty and knew that no basic guarantees were afforded to them for the entire duration of their detention. The same holds true for the BIA members present at the ZDC during the relevant time of the charges. The Panel is thus satisfied that the mental elements for the war crime of arbitrary detention are established.

## B. CRUEL TREATMENT (COUNT 2)

### 1. Legal Requirements

#### (a) Material elements (*actus reus*)

660. The war crime of cruel treatment, within the meaning of Article 14(1)(c)(i) of the Law, is committed through an act or omission, which causes serious mental or physical suffering or injury, or which constitutes a serious attack on human dignity.<sup>1414</sup>

661. The seriousness of the harm or injury must be assessed on a case-by-case basis, taking into account such factors as: (i) the severity of the alleged conduct; (ii) the

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<sup>1412</sup> See para. 477.

<sup>1413</sup> See para. 636.

<sup>1414</sup> ICTY, *Mucić et al. Appeal Judgement*, para. 424. See also, *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Appeals Chamber, *Judgement*, 19 July 2010, paras 93-94; *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Chamber, *Judgement*, 29 July 2004, para. 595.

nature of the act or omission; (iii) the context in which the conduct occurred; (iv) its duration and/or repetition; (v) its physical, mental and moral effects on the victim; and (vi) the personal circumstances of the victim, including age, gender, and health.<sup>1415</sup>

662. The suffering inflicted by the act or omission upon the victim does not need to be lasting, so long as it is real and serious.<sup>1416</sup>

(b) Mental elements (*mens rea*)

663. The perpetrator must have acted intentionally or with the knowledge that the serious mental or physical suffering or injury, or the serious attack on human dignity, was a probable consequence of the act or omission.<sup>1417</sup>

## 2. Relationship between Cruel Treatment and Torture

664. For reasons of fairness to the Accused, only distinct crimes may justify multiple convictions.<sup>1418</sup> The Panel considers that, where two offences protect the same value(s) or social interest(s), cumulative convictions for both offences based on the same conduct are in principle not permissible.<sup>1419</sup> If the same conduct fulfils two different

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<sup>1415</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, [Judgement](#), Vol. I (*Popović et al.* Trial Judgement), 10 June 2010, fn. 3249; [Kvočka et al. Appeal Judgement](#), paras 584-585; *Prosecutor v. Mrkšić et al.*, IT-95-13/1-T, Trial Chamber II, [Judgement](#) (*Mrkšić et al.* Trial Judgement), 27 September 2007, paras 516, 525, 537; *Prosecutor v. Krnojelac*, IT-97-25-T, Trial Chamber II, [Judgment](#) (*Krnojelac* Trial Judgment), 15 March 2002, para. 131.

<sup>1416</sup> ICTY, [Krnojelac Trial Judgment](#), para. 131.

<sup>1417</sup> ICTY, [Popović et al. Trial Judgment](#), para. 974; [Mrkšić et al. Trial Judgment](#), para. 516; *Prosecutor v. Limaj et al.*, IT-03-66-T, Trial Chamber II, [Judgement](#) (*Limaj et al.* Trial Judgement), 30 November 2005, para. 231; *Prosecutor v. Strugar*, IT-01-42-T, Trial Chamber II, [Judgement](#), 31 January 2005, para. 261.

<sup>1418</sup> See also ICTY, [Mucić et al. Appeal Judgement](#), para. 412; *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Appeals Chamber, [Judgement](#) (*Kunarac et al.* Appeal Judgement), 12 June 2002, para. 169.

<sup>1419</sup> On the “value test”, see also ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Chamber, [Judgement](#) (*Kupreškić et al.* Trial Judgement), 14 January 2000, paras 692-695; *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Chamber, [Decision on Defence Challenges to Form of the Indictment](#), 15 May 1998, para. 6 (on the question of whether or not the Prosecutor may bring cumulative charges); ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber I, [Judgement](#) (*Akayesu* Trial Judgment), 2 September 1998, para. 468; Stuckenberg, C., “Multiplicity of Offences: Concursum Delictorum”, in Fischer H., Kress C. and Lüder S.

legal provisions, both protecting the same value(s) or social interest(s), the more specific provision prevails.<sup>1420</sup> If one, and only one provision requires an additional element not required by the other, the former would typically be the more specific provision and would prevail,<sup>1421</sup> as in such instances it is not possible to commit the more specific offence without also (and simultaneously) committing the less specific one.<sup>1422</sup> In other words, the more specific offence fully encompasses or consumes the less specific offence.<sup>1423</sup>

665. Torture and cruel treatment within the meaning of Article 14(1)(c) of the Law protect the same value(s) or social interests(s), in particular, the physical and mental integrity and human dignity of persons not actively taking part in the hostilities.<sup>1424</sup> Further, as established below, torture requires an additional element, namely that the perpetrator must have inflicted the pain or suffering not only intentionally, but *also* for such purpose as obtaining information or a confession, or punishing, intimidating, coercing or discriminating against, on any ground, the victim or a third person.<sup>1425</sup> As established above, this additional mental element is not required for the crime of cruel treatment, and cruel treatment does not require an additional element compared

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(eds), *International and National Prosecution of Crimes Under International Law*, Berlin Verlag 2001, in particular pp. 582, 586.

<sup>1420</sup> See also ICTY, [Kupreškić et al. Trial Judgement](#), paras 683-685.

<sup>1421</sup> Similarly also, for example, ICTY [Mucić et al. Appeal Judgement](#), para. 413; [Kordić and Čerkez Appeal Judgement](#), para. 1032; [Kunarac et al. Appeal Judgement](#), para. 168; ICC, [Ongwen Trial Judgment](#), para. 2792; [Bemba et al. Trial Judgment](#), para. 951; [Ntaganda Trial Judgment](#), para. 1202; [Katanga Trial Judgment](#), para. 1695; [Bemba Trial Judgment](#), paras 747-748; [Bemba et al. Appeal Judgment](#), para. 750. Explicit national provisions on this issue can, for instance, be found in [Article 55\(2\) of the Dutch Criminal Code](#) and [Article 15 of the Italian Criminal Code](#).

<sup>1422</sup> Similarly, for example, ICTY, [Kunarac et al. Appeal Judgement](#), para. 170; *Prosecutor v. Krstić*, IT-98-33-A, Appeals Chamber, [Judgement](#), 19 April 2004, para. 218.

<sup>1423</sup> See also ICTY, [Kupreškić et al. Trial Judgement](#), paras 662, 665, 680-692, 707; ICC, [Ongwen Trial Judgment](#), para. 2796; [Bemba et al. Appeal Judgment](#), para. 751. An explicit and comprehensive national provision on this issue can, for instance, be found in [Article 8\(3\) of the Spanish Criminal Code](#).

<sup>1424</sup> See paras 660-663, 668-673; 2016 ICRC Commentary, regarding Article 3, para. 590; ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-T, Trial Chamber, [Judgement](#), 25 June 1999, para. 49; ICTY, *Prosecutor v. Mucić et al.*, IT-96-21-T, Trial Chamber, [Judgement](#) (*Mucić et al. Trial Judgement*), 16 November 1998, para. 551.

<sup>1425</sup> See paras 672-673, with further references.

to torture.<sup>1426</sup> In other words, the legal elements of cruel treatment are entirely encompassed within the legal elements of torture.<sup>1427</sup>

666. The Panel notes that the facts underlying the charge of cruel treatment (Count 2) and the facts underlying the charge of torture (Count 3) are identical.<sup>1428</sup> In assessing the seriousness or severity of the harm or suffering inflicted on the detainees, the Panel has considered all acts or omissions of the BIA members (including the Accused) taken as a whole, including the conditions of detention, the psychological assault suffered by the detainees and the physical assault they were subjected to in the barn(s), in the interrogation room, or elsewhere on the ZDC premises.

667. Accordingly, as the requirements of cruel treatment and torture as war crimes are fulfilled based on the same conduct, and torture is the more specific offence, the charge of cruel treatment will not be considered further for the purposes of conviction.<sup>1429</sup> The charge of cruel treatment is fully consumed by the charge of torture and the Accused's individual criminal responsibility is fully reflected by a conviction for torture.

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<sup>1426</sup> See paras 660-663, with further references. See, in particular, also ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Trial Chamber I, [Judgement](#) (*Haradinaj Trial Judgement*), 3 April 2008, para. 480; ICC, [Ongwen Trial Judgement](#), para. 2835.

<sup>1427</sup> See also ICTY, [Kupreškić et al. Trial Judgement](#), paras 679, 690-692 (with references to ECtHR, *Aksoy v. Turkey*, no. 21987/93, [Judgment](#), 18 December 1996, para. 64); [Mucić et al. Trial Judgement](#), para. 442.

<sup>1428</sup> See [Confirmed Indictment](#), paras 21-30; Section V.D.

<sup>1429</sup> See also ICTY, [Kupreškić et al. Trial Judgement](#), para. 719; ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-A, Appeals Chamber, [Judgement](#) (*Đorđević Appeal Judgement*), 27 January 2014, para. 839 (with further references in fn. 2447).

## C. TORTURE (COUNT 3)

### 1. Legal Requirements

#### (a) Material elements (*actus reus*)

668. The war crime of torture, within the meaning of Article 14(1)(c)(i) of the Law, is committed by an act or omission inflicting severe pain or suffering, whether physical or mental,<sup>1430</sup> upon another person.<sup>1431</sup> Whether an act or omission qualifies as an act of torture must be considered on a case-by-case basis,<sup>1432</sup> taking into account, for example: (i) the nature and context of the infliction of pain; (ii) the premeditated and institutionalised nature of the ill-treatment; (iii) the physical condition of the victim; (iv) the victim's age, gender and state of health; (v) the manner and methods used; (vi) the position of inferiority of the victim; (vii) the extent to which an individual has been mistreated over a prolonged period of time; and (viii) whether the victim has been subjected to repeated or various forms of mistreatment that are inter-related, follow a pattern, or are directed towards the same prohibited goal, in which case the severity of the acts should be assessed as a whole.<sup>1433</sup>

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<sup>1430</sup> ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Trial Chamber, [Judgement](#) (*Kvočka et al.* Trial Judgement), 2 November 2001, para. 149, holding that mental harm is, in fact, a prevalent form of inflicting torture.

<sup>1431</sup> ICTY, [Haradinaj Appeal Judgment](#), para. 290; [Kunarac et al. Appeal Judgement](#), para. 142. See also, ICC, [Ongwen Trial Judgment](#), para. 2700; *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Pre-Trial Chamber II, [Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Gombo](#), 15 June 2009, para. 292; ECCC, [Duch Trial Judgment](#), para. 354.

<sup>1432</sup> ICC, [Ongwen Trial Judgment](#), para. 2701; ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Appeals Chamber, [Judgement](#) (*Brđanin Appeal Judgement*), 3 April 2007, para. 251; *Prosecutor v. Naletilić and Martinović*, IT-98-34-A, Appeals Chamber, [Judgement](#) (*Naletilić and Martinović Appeal Judgement*), 3 May 2006, para. 299; [Kunarac et al. Appeal Judgement](#), para. 149.

<sup>1433</sup> ICTY, *Prosecutor v. Simić et al.*, IT-95-9-T, Trial Chamber II, [Judgement](#) (*Simić et al. Trial Judgement*), 17 October 2003, para. 80, referring to [Krnojelac Trial Judgment](#), para. 182; [Mrkšić et al. Trial Judgement](#), para. 514, referring to [Kvočka et al. Trial Judgement](#), para. 143. See also ECCC, [Duch Trial Judgment](#), para. 355.

669. Conditions imposed during detention such as beatings, sexual violence, prolonged denial of sleep, food, hygiene and medical care, as well as threats involving the torture, rape, or killing of relatives have been considered sufficiently severe so as to amount to torture.<sup>1434</sup> More specifically, exposing someone to the fear of, or threatening him or her with death, execution, torture or suffering, or more generally, instilling fear due to the conditions of detention, can cause severe mental anguish or psychological suffering and/or trauma.<sup>1435</sup> In particular, severe mental pain or suffering can be caused when detainees are compelled to live in a constant atmosphere of fear and anxiety that they might be subjected to physical abuse, or even killed. This is particularly the case when detainees: (i) witness, see or hear others being beaten or otherwise abused; (ii) witness others being taken away for such purposes – possibly combined with a (seemingly) arbitrary selection of detainees for abuse; and/or (iii) see the resulting injuries afterwards.<sup>1436</sup> Provided that the requisite mental element can be established, such acts can constitute torture.<sup>1437</sup>

670. Similarly, *forcing* someone to witness, by viewing or hearing, the mistreatment of others, be it their killing, execution, beatings, torture, or rape, can cause severe pain,

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<sup>1434</sup> ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-461-Corr-Red, Pre-Trial Chamber I, [Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 13 November 2019 (date of original: 30 September 2019), para. 231; ECCC, [Duch Trial Judgment](#), para. 355, referring to ICTY, [Mucić et al. Trial Judgement](#), para. 467; [Kvočka et al. Trial Judgement](#), para. 151.

<sup>1435</sup> ECtHR, *Soering v. the United Kingdom*, Plenary, Application no. 14038/88, [Judgment](#), 7 July 1989, paras 68, 81, 105, 111; *Ilaşcu and others v. Moldova and Russia*, Chamber, Application no. 48787/99, [Judgment](#) (*Ilaşcu et al. v. Moldova and Russia*), 8 July 2004, paras 240-253; *Tyrer v. the United Kingdom*, Chamber, Application no. 5856/72, [Judgment](#), 25 April 1978, paras 9-10, 33; *Campbell and Cosans v. the United Kingdom*, Chamber, Application no. 7511/76; 7743/76, [Judgment](#), 25 February 1982, para. 26 (specifying that a threat would have to be sufficiently real and immediate); *Hristovi v. Bulgaria*, Fourth Section, Application no. 42697/05, [Judgment](#), 11 October 2011, para. 80; *Gutsanovi v. Bulgaria*, Fourth Section, Application no. 34529/10, [Judgment](#), 15 October 2013, para. 125.

<sup>1436</sup> ICTY, *Limaj et al. Trial Judgement*, paras 293-294.

<sup>1437</sup> ICTY, [Simić et al. Trial Judgement](#), para. 772.

suffering and/or psychological abuse,<sup>1438</sup> and can constitute torture, provided that the requisite mental element is fulfilled.<sup>1439</sup>

671. The consequences of the act or omission need not be visible on the victim to constitute torture, nor is there a requirement that the injury be permanent.<sup>1440</sup> Furthermore, it is not required that the perpetrator acted in a public official capacity or as a person in authority.<sup>1441</sup>

(b) Mental elements (*mens rea*)

672. The perpetrator must have inflicted the pain or suffering intentionally and for such purpose as obtaining information or a confession, or punishing, intimidating, coercing or discriminating against, on any ground, the victim or a third person.<sup>1442</sup> This list of purposes is, however, not exhaustive.<sup>1443</sup> It is sufficient that one of the prohibited purposes forms part of the motivation behind the conduct; it need not be the

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<sup>1438</sup> ICTY, [Limaj et al. Trial Judgement](#), paras 290-293; *Prosecutor v. Brđanin*, IT-99-36-T, Trial Chamber II, [Judgement](#) (Brđanin Trial Judgement), 1 September 2004, paras 508-511; [Simić et al. Trial Judgement](#), paras 695, 771; *Prosecutor v. Furundžija*, IT-95-17/1-T, Trial Chamber, [Judgement](#) (Furundžija Trial Judgement), 10 December 1998, para. 267(ii); [Krnojelac Trial Judgment](#), paras 143-144; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber II, [Judgement](#) (Kayishema and Ruzindana Trial Judgement), 21 May 1999, para. 153; SCSL, *Prosecutor v. Fofana et al.*, SCSL-04-14-T, Trial Chamber I, [Judgement](#), 2 August 2007, para. 153; ICC, *Prosecutor v. Ali Kushayb*, ICC-02/05-01/20-433-Corr, Pre-Trial Chamber II, [Corrected version of 'Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman \('Ali Kushayb'\)](#), 23 November 2021 (date of original: 9 July 2021), paras 44-45; *Prosecutor v. Ongwen*, ICC-02/04-01/15-422-Red, Pre-Trial Chamber II, [Decision on the confirmation of charges against Dominic Ongwen](#), 23 March 2016, paras 111-112; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-717, Pre-Trial Chamber I, [Decision on the confirmation of charges](#), 30 September 2008, paras 361, 363.

<sup>1439</sup> ICTY, [Brđanin Trial Judgement](#), para. 524; [Kvočka et al. Trial Judgement](#), paras 149, 151; [Furundžija Trial Judgement](#), para. 268.

<sup>1440</sup> ICC, [Ongwen Trial Judgment](#), para. 2701; ECCC, [Duch Trial Judgment](#), para. 355.

<sup>1441</sup> ICTY, [Kunarac et al. Appeal Judgement](#), para. 148; [Kvočka et al. Appeal Judgement](#), para. 284.

<sup>1442</sup> ICTY, [Kunarac et al. Appeal Judgement](#), para. 153 (also addressing the distinction between intent and motivation); [Limaj et al. Trial Judgement](#), paras 235, 239; ECCC, [Duch Trial Judgment](#), para. 356.

<sup>1443</sup> See, for example, ICTY, [Mucić et al. Trial Judgement](#), para. 470; [Brđanin Trial Judgement](#), para. 487; [Mrkšić et al. Trial Judgement](#), para. 515; [Kvočka et al. Trial Judgement](#), para. 140; [Furundžija Trial Judgement](#), para. 162 (adding humiliation).

“predominant or sole purpose” behind the infliction of severe pain or suffering.<sup>1444</sup> If one prohibited purpose is fulfilled by the conduct, the fact that such conduct was also intended to achieve another purpose is immaterial.<sup>1445</sup>

673. The purpose of intimidation can, for instance, be fulfilled if a person is forced to witness others being executed.<sup>1446</sup> The purpose of intimidation can also be fulfilled if, for instance, violence is inflicted in a prison-camp setting by an armed person upon one detainee, with other detainees knowing that such violence is being inflicted, as this can create an atmosphere of fear and powerlessness among the detainees.<sup>1447</sup> In addition, subjecting a person to a mock execution can be indicative of a purpose of intimidation, and can amount to torture, as it generally increases the anxiety felt by the victim throughout his or her detention about the prospect of his or her execution.<sup>1448</sup>

## 2. Findings

### (a) Material elements (*actus reus*)

674. The Panel has established that at least six persons, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED], were routinely physically assaulted by the Accused and other BIA members at the ZDC.<sup>1449</sup> The detainees were: beaten using various instruments such as baseball bats, handles of hatchets, iron batons or wooden/rubber batons; burnt with an iron or hot candle wax; electrocuted;

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<sup>1444</sup> ICC, [Ongwen Trial Judgment](#), para. 2706; ICTY, [Simić et al. Trial Judgement](#), para. 81; [Kvočka et al. Trial Judgement](#), para. 153; [Mucić et al. Trial Judgement](#), para. 470; ECCC, [Duch Trial Judgment](#), para. 356.

<sup>1445</sup> ICTY, [Kunarac et al. Appeal Judgement](#), para. 155; *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-T, Trial Chamber, [Judgement](#), 22 February 2001, paras 486, 654.

<sup>1446</sup> See ICTY, [Brđanin Trial Judgement](#), paras. 503-507.

<sup>1447</sup> ICTY, [Mucić et al. Trial Judgement](#), para. 941; [Kvočka et al. Trial Judgement](#), para. 154.

<sup>1448</sup> ECtHR, [Ilaşcu et al. v. Moldova and Russia](#), paras 435, 442.

<sup>1449</sup> See paras 584, 586.

stabbed with a knife; and kicked, punched and slapped on a daily basis.<sup>1450</sup> The detainees were often mistreated by several BIA members at the same time and some were beaten for hours.<sup>1451</sup> The mistreatment left them bruised, swollen, bloodied, exhausted, unconscious, and unable to stand, walk or speak.<sup>1452</sup> The Murder Victim was mistreated so severely that he was almost dead by the time the other detainees were released.<sup>1453</sup> Some of the detainees were particularly [REDACTED] at the time: [REDACTED].<sup>1454</sup>

675. The Panel has also established that the detainees were routinely psychologically assaulted by the Accused and other BIA members at the ZDC. They lived in constant fear that they could be subjected to physical abuse at any time or even killed.<sup>1455</sup> On one occasion, the Accused subjected one of the detainees, W03593, to a mock execution.<sup>1456</sup> The detainees were also forced to witness the physical abuse of their co-detainees: they saw them being beaten, saw the injuries on their bodies and/or heard their screams as they were being mistreated.<sup>1457</sup> This atmosphere of constant fear was further fuelled by the fact that the detainees were not informed of the reasons for their deprivation of liberty, they had bags put on their heads when they were taken to or from the barn(s), were told not to look around, were held in darkness, were not allowed to speak to each other, and were not allowed to sleep.<sup>1458</sup>

676. The Panel has further found that BIA members established and maintained inhumane detention conditions at the ZDC.<sup>1459</sup> The detainees were held in barns

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<sup>1450</sup> See paras 529, 534, 535, 546, 547, 560, 567, 570.

<sup>1451</sup> See paras 534, 535, 546, 567, 570.

<sup>1452</sup> See paras 534, 546, 567, 569-571, 575, 577.

<sup>1453</sup> See para. 571.

<sup>1454</sup> See paras 534, 577.

<sup>1455</sup> See paras 530-531, 585.

<sup>1456</sup> See paras 546, 585.

<sup>1457</sup> See paras 530-531, 585.

<sup>1458</sup> See paras 532, 585.

<sup>1459</sup> See paras 527, 584.

destined for animals.<sup>1460</sup> They were not provided any beds and slept in the animal trough or on the ground, in water puddles, with livestock excrements lying around, having only some hay and some blankets as bedding.<sup>1461</sup> They were kept in the dark and prevented from talking to each other, under threat of death.<sup>1462</sup> They were provided inadequate amounts of food and water.<sup>1463</sup> When W01679 asked for water, he was urinated on.<sup>1464</sup> The detainees were not permitted to wash themselves or change their clothes.<sup>1465</sup> They were not given unrestricted access to a toilet, forcing them to relieve themselves inside the barn, in front of each other, in a bucket.<sup>1466</sup> Importantly, they were denied medical care, despite the serious injuries they suffered as a result of the mistreatment.<sup>1467</sup>

677. The physical and psychological abuse, coupled with the inhumane conditions of detention, left the detainees with long-lasting injuries, both physical and psychological, including: head injuries, burn injuries, broken arms, fingers and/or teeth, resulting in limited use of their hands; persistent and severe pain throughout their bodies; damaged eyesight; feelings of shame; and symptoms of post-traumatic stress disorder (nightmares, flashbacks and intrusive memories).<sup>1468</sup>

678. In light of the above, the Panel finds that the Accused and other BIA members inflicted severe physical and mental pain and suffering upon at least six persons detained at the ZDC, including W01679, W03593, W03594, W04669, the Murder

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<sup>1460</sup> See paras 503, 584.

<sup>1461</sup> See paras 503-505, 509, 584.

<sup>1462</sup> See paras 506, 523-525, 584.

<sup>1463</sup> See paras 510-514, 584.

<sup>1464</sup> See para. 511.

<sup>1465</sup> See paras 516-517, 584.

<sup>1466</sup> See paras 518, 584.

<sup>1467</sup> See paras 520-522, 584.

<sup>1468</sup> See paras 531, 540, 550.

Victim, [REDACTED]. The Panel therefore finds that the material element of the war crime of torture is satisfied.

(b) Mental elements (*mens rea*)

679. The Panel has established that the Accused: (i) personally slapped W01679 and ordered other BIA members to beat him until he lost consciousness;<sup>1469</sup> (ii) subjected W03593 to a mock execution, on one occasions, as other BIA members were beating him and accusing him of collaborating with Serbs; and (iii) personally beat W03593 with a baseball bat all over his body, threatening to kill him, on another occasion.<sup>1470</sup>

680. The Panel has also established that other BIA members at the ZDC, including Nazif Musliu (aka Tabuti), Ilmi Vela, Mr Mehmetaj (aka Bimi), Dardan, Afrim, and Fatmir: (i) repeatedly mistreated the detainees in a variety of manners: kicking and hitting them with iron or wooden/rubber batons and handles of hatchets, burning them, electrocuting them and stabbing them, leaving them bruised all over their bodies, bloodies, unable to stand or walk, unconscious, and – in the case of the Murder Victim – almost dead;<sup>1471</sup> (ii) had an established *modus operandi*, indicating that the mistreatment was institutionalised;<sup>1472</sup> (iii) threatened the detainees with death;<sup>1473</sup> (iv) did not provide them with adequate amounts of food and water, and urinated upon one of them (W01679) when he asked for water, in front of the other detainees;<sup>1474</sup> (v) denied them medical care and access to sanitary facilities;<sup>1475</sup> (vi) saw the conditions of detention when they brought the detainees to the barn(s) and when they

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<sup>1469</sup> See paras 534, 541-542.

<sup>1470</sup> See paras 546-547, 551-554.

<sup>1471</sup> See paras 498-500, 534-535, 543-544, 546, 555, 560, 566, 567, 569-571, 575-578.

<sup>1472</sup> See paras 528, 534-535, 546-547, 567.

<sup>1473</sup> See paras 523-525, 530-532.

<sup>1474</sup> See paras 510-514.

<sup>1475</sup> See paras 515-522.

enterend the barn(s) to assault them;<sup>1476</sup> and (vii) saw the condition the detainees were in and their injuries after interrogation and mistreatment when they brought the detainees back to the barn(s).<sup>1477</sup>

681. On this basis, the Panel finds that the only reasonable conclusion, based on the evidence as a whole, is that the Accused and other BIA members stationed at the ZDC in April 1999 intentionally inflicted severe pain or suffering on the detainees, including by keeping them in inhumane conditions of detention.

682. Further, the Panel has established that the Accused: (i) personally interrogated W01679 and accused him of being a spy, a liar and a thief; and (ii) personally interrogated W03593 and threatened him with death.<sup>1478</sup>

683. The Panel has also established that other BIA members at the ZDC, including Nazif Musliu (aka Tabuti), Ilmi Vela, Mr Mehmetaj (aka Bimi), Dardan, Afrim, and Fatmir: (i) interrogated the detainees and accused them of collaborating with Serbs, or of being spies, traitors, thieves, or liars;<sup>1479</sup> (ii) ordered the detainees to shout: “[d]eath to the traitors, death to the thieves, death to the thugs, and glory to the Kosovo Liberation Army”;<sup>1480</sup> (iii) detained some of the victims, at least in part, for being members or supporters of political parties perceived as opposing the KLA;<sup>1481</sup> (iv) threatenend the detainees with death;<sup>1482</sup> (v) forced them to witness the physical abuse of their co-detainees;<sup>1483</sup> and (vi) compelled them to live in constant fear that they could be subjected to physical abuse at any time or even killed.<sup>1484</sup>

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<sup>1476</sup> See, for example, paras 529, 534, 546-547.

<sup>1477</sup> See, for example, paras 534, 546-547.

<sup>1478</sup> See paras 534, 541-542, 547, 551-554.

<sup>1479</sup> See paras 498-500, 535, 543-546, 555-556, 566-568, 572, 574-576, 579.

<sup>1480</sup> See para. 572

<sup>1481</sup> See paras 580-581.

<sup>1482</sup> See paras 523-525, 579.

<sup>1483</sup> See paras 530-531, 579.

<sup>1484</sup> See paras 530-532.

684. On this basis, the Panel finds that the only reasonable conclusion, based on the evidence as a whole, is that the Accused and other BIA members stationed at the ZDC in April 1999 inflicted the pain or suffering on the detainees for the purpose of obtaining information or a confession, punishing, intimidating, coercing and/or discriminating against them on political grounds.

685. In light of the above, the Panel finds, based on the evidence as a whole, that the mental elements of the war crime of torture are met, namely that the perpetrators intentionally inflicted pain or suffering, for the purpose of obtaining information or a confession, punishing, intimidating, coercing or discriminating against the detainees.

#### D. MURDER (COUNT 4)

##### 1. Legal Requirements

###### (a) Material elements (*actus reus*)

686. The war crime of murder, within the meaning of Article 14(1)(c)(i) of the Law, is committed through an act or omission resulting in the death of a person, including, for instance, by causing serious bodily harm or omitting/denying medical care to a detainee.<sup>1485</sup>

687. The perpetrator's conduct does not have to be the sole cause of death of the victim, but it must at a minimum have contributed substantially thereto.<sup>1486</sup>

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<sup>1485</sup> ICTY, [Kvočka et al. Appeal Judgement](#), paras 259-261, 270-271; [Krnojelac Trial Judgment](#), paras 326-327.

<sup>1486</sup> ICTY, *Prosecutor v. Orić*, IT-03-68-T, Trial Chamber II, [Judgement](#) (Orić Trial Judgement), 30 June 2006, para. 347; [Kupreškić et al. Trial Judgement](#), paras 560-561; ICTR, [Akayesu Trial Judgement](#), para. 589. See also ICRC Commentary to GC I (2016), Article 50, para. 2952. With regard to the "substantial cause" requirement, see [Mucić et al. Trial Judgement](#), para. 424 and footnote 435 referring to national jurisprudence, whereby a "substantial" or "significant" contributing cause is considered to be sufficient in England and Australia, whereas Canada requires a contributing cause that is greater than *de minimus*.

(b) Mental elements (*mens rea*)

688. The perpetrator must have killed the person intentionally, or wilfully caused serious bodily harm or wilfully omitted/denied to provide medical care to a detainee, which the perpetrator should reasonably have known might lead to death.<sup>1487</sup>

## 2. Findings

(a) Material elements (*actus reus*)

689. In its factual findings on Count 4, the Panel found that the only reasonable conclusion as to the death of the Murder Victim is that he was killed between on or around 19 April 1999 and around the end of April 1999, as a result of the combination between: (i) the severe mistreatment inflicted by BIA members who detained him, causing serious bodily harm; (ii) the denial of medical aid by BIA members; and (iii) gunshot wounds caused by bullets, in respect of which the Panel has established that there exists a reasonable doubt as to their attribution to the BIA members or to the Serbian forces. The Panel also established in its factual findings that the causes of death mentioned under (i) and (ii) above constitute substantial causes of the Murder Victim's death and are attributable to the Accused, in the context of the his decisions to neither release nor evacuate the Murder Victim, and irrespective of whether the Murder Victim was hit by one or more Serbian bullets.<sup>1488</sup>

690. Based on these causes of death, the Panel therefore finds that the material element of the war crime of murder is satisfied.

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<sup>1487</sup> ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber I, [Judgment](#), Vol III (*Mladić Trial Judgment*), 22 November 2017, para. 3050; [Kvočka et al. Appeal Judgement](#), paras 261, 270-271; ICTR, [Setako Appeal Judgement](#), para. 257; ECCC, [Duch Trial Judgment](#), para. 333.

<sup>1488</sup> See para. 638.

(b) Mental elements (*mens rea*)

691. The Panel recalls that the Accused knew that on or around [REDACTED] April 1999 the Murder Victim was handed over to a BIA member [REDACTED] at the ZDC.<sup>1489</sup> The Panel has further found that the Accused had the intent to commit both the crimes of arbitrary detention and torture against the victims, including the Murder Victim.<sup>1490</sup> The Panel also takes into consideration that the Accused used a gun during the interrogation and mistreatment of W03593, and ordered his subordinates to “finish” W01679.<sup>1491</sup> These factors, albeit not directly related to the Murder Victim, indicate that the Accused accepted that some of the detainees in his custody might die as a result of the mistreatment.

692. Moreover, the Panel recalls that on or around 19 April 1999, when the detainees were suddenly released by BIA members in light of the impending Serbian offensive, the Murder Victim [REDACTED] were not released. These two detainees were — not coincidentally in the Panel’s view — the two most mistreated prisoners.<sup>1492</sup> While the Panel has found that the Accused must have exercised his authority as commander to release specific detainees and to evacuate the ZDC, he clearly exercised the very same authority to keep the Murder Victim in captivity, after he was subjected to far more serious mistreatment than any other detainee. In this respect, in its factual findings on Count 4, the Panel has found that the only reasonable conclusion, on the basis of the evidence taken as a whole, is that: (i) the decisions not to release or evacuate the Murder Victim could only have been made by the Accused, in his capacity as overall commander of the BIA at the ZDC; and (ii) the Accused’s decision not to release the victim, as executed by his BIA subordinates, jointly with the decision not to evacuate

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<sup>1489</sup> See paras 468-473.

<sup>1490</sup> See paras 659, 685.

<sup>1491</sup> See paras 546, 541.

<sup>1492</sup> See paras 569-574, 577.

him, effectively equalled a decision to kill the Murder Victim, considering that the other detainees walked away from the ZDC while the Murder Victim remained in detention and was denied a last opportunity to be saved.<sup>1493</sup>

693. The intent to kill is also confirmed by another important circumstance, namely the fact that the Murder Victim [REDACTED].<sup>1494</sup> [REDACTED]. Accordingly, the Panel finds that the Accused, as well as the BIA subordinates who mistreated the victim, could not afford to keep the Murder Victim alive at that stage, [REDACTED].

694. In addition, [REDACTED]<sup>1495</sup> [REDACTED].<sup>1496</sup> [REDACTED].<sup>1497</sup> On this point, the Panel finds [REDACTED] credible, as his recollection of such conversation is so peculiar that it is inconceivable that it could be fabricated or embellished. The Panel considers such exchange wholly plausible, as it fits within the evidentiary picture whereby the Accused intended to kill the Murder Victim and, subsequently, avoid any proceedings launched regarding his death.

695. All these circumstances taken together, lead the Panel to believe that the only reasonable conclusion, based on the evidence, is that through the acts and omissions attributable to the Accused and his BIA subordinates, they intended to kill the Murder Victim, thus establishing the requisite mental element for murder as a war crime.

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<sup>1493</sup> See para. 636.

<sup>1494</sup> See para. 572.

<sup>1495</sup> **W04600**: T. 24 September 2021, confidential, p. 770, line 10.

<sup>1496</sup> **W04600**: T. 24 September 2021, confidential, p. 772, lines 14-15.

<sup>1497</sup> **W04600**: T. 24 September 2021, confidential, p. 772, line 22 to p. 773, line 2.

## E. THE EXISTENCE OF AN ARMED CONFLICT

### 1. Legal Requirements

696. Article 14(2) of the Law provides that armed conflicts not of an international character take place in the territory of a state when there is protracted armed conflict between the organs of authority and organised armed groups or between such groups.<sup>1498</sup> Armed conflicts are characterised by the outbreak of hostilities that take place in the territory of a state.

697. In relation to the parties to the hostilities, Article 14(2) of the Law mentions two categories of possible parties to the armed conflict that ought to be construed in compliance with customary international law. "Organs of authority" include governmental authorities, such as a state's regular armed forces, police units, national guards or other authorities of a similar nature,<sup>1499</sup> including armed groups and militias incorporated in armed forces.<sup>1500</sup> "Organised armed groups" must have a degree of organisation but "do not necessarily need to be as organised as the armed forces of a State".<sup>1501</sup> They do not need to carry out sustained and concerted military operations, but they must be sufficiently organised to confront each other with military means.<sup>1502</sup> When deciding whether a non-state entity can carry out protracted armed violence, the following indicative factors may be taken into account: (i) existence of a command

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<sup>1498</sup> ICTY, *Prosecutor v. Tadić*, IT-94-1-AR72, Appeals Chamber, [Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction](#), 2 October 1995 (*Tadić* Decision on Jurisdiction), para. 70; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Appeals Chamber, [Judgement](#), 19 May 2010 (*Boškoski and Tarčulovski* Appeal Judgement), para. 21. See also ICC, [Ongwen Trial Judgment](#), para. 2683; [Ntaganda Trial Judgment](#), para. 701; [Lubanga Trial Judgment](#), para. 533.

<sup>1499</sup> ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber, [Judgement](#) (*Boškoski and Tarčulovski* Trial Judgement), 10 July 2008, paras 178, 195.

<sup>1500</sup> Article 43(3) of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I), of 8 June 1977.

<sup>1501</sup> ICTY, [Boškoski and Tarčulovski Trial Judgement](#), paras 195, 197; [Orić Trial Judgement](#), para. 254; [Haradinaj Trial Judgement](#), para. 60; [Limaj et al. Trial Judgement](#), para. 89.

<sup>1502</sup> ICTY, [Boškoski and Tarčulovski Trial Judgement](#), paras 197-198.

structure, including headquarters, a general staff or high command, identifiable ranks and positions, and internal regulations; (ii) issuance of political statements or communiqués and the use of spokespersons; (iii) operational capacity and the ability to carry out military operations; (iv) logistical capacity, including the availability of weapons and equipment, and the capacity to move troops and to recruit and train personnel; (v) territorial control, including a division into zones of responsibility; (vi) internal disciplinary system, including the implementation of international humanitarian law through the armed group's ranks; and (vii) ability to speak with one voice on behalf of the armed group, for example in political negotiations or cease-fire agreements.<sup>1503</sup>

698. In relation to the level of intensity of the conflict, Article 14(2) of the Law requires that hostilities between the parties must reach a certain degree of intensity, exceeding internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature. In this context, the notion of “protracted armed violence” informs the intensity test as it refers “more to the intensity of the armed violence than its duration”.<sup>1504</sup> Intensity may be inferred from, for example: (i) the seriousness and frequency of attacks; (ii) their spread over the territory and over a period of time, and whether any ceasefire orders have been issued; (iii) the increase and number of forces deployed; (iv) the mobilisation and distribution of weapons amongst the conflicting parties; (v) the type of weapons used, in particular the use of heavy artillery; (vi) the type of military equipment, in particular the use of tanks;

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<sup>1503</sup> See also Article 1(1) of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977 (Additional Protocol II). See also ICTY, [Boškoski and Tarčulovski Trial Judgement](#), paras 194-203. However, the degree of organisation of an armed group to a conflict to which Common Article 3 of the Geneva Conventions applies does not need to be at the level of organisation required for parties to Additional Protocol II armed conflicts, see ICTY, [Boškoski and Tarčulovski Trial Judgement](#), para. 197.

<sup>1504</sup> ICTY, [Haradinaj Trial Judgement](#), para. 49. See also [Kordić and Čerkez Appeal Judgement](#) para. 341; *Prosecutor v. Tadić*, IT-94-1-T, Trial Chamber, [Opinion and Judgment](#), 7 May 1997, para. 562.

(vii) whether the situation attracted the attention of the United Nations Security Council, or other international organisations; (viii) the effects on the civilian population, the extent of destruction and the number of persons killed or displaced; and (ix) the manner in which the armed group was treated by others and under which body of law it claimed to be operating.<sup>1505</sup>

699. The Panel recalls that a non-international armed conflict may exist alongside an armed conflict of international character.<sup>1506</sup> A non-international armed conflict may turn into an armed conflict of international character if an organised armed group is under the overall control of a third state.<sup>1507</sup>

700. Lastly, the temporal and geographical scope of armed conflicts not of an international character extends beyond the exact time and place of hostilities; the applicable rules apply beyond the cessation of hostilities until a peaceful settlement is achieved.<sup>1508</sup> Thus, the norms of international humanitarian law apply regardless of whether actual combat activities are taking place in a particular location.<sup>1509</sup> In case of persons whose liberty has been restricted, international humanitarian law continues to apply until such deprivation or restriction of liberty comes to an end.<sup>1510</sup>

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<sup>1505</sup> ICTY, [Boškoski and Tarčulovski Trial Judgement](#), para. 177, confirmed by the [Boškoski and Tarčulovski Appeal Judgement](#), paras 22, 24; ICC, [Ongwen Trial Judgment](#), para. 2684; [Ntaganda Trial Judgment](#), paras 703-704, 716; [Bemba Trial Judgment](#), para. 137; [Lubanga Trial Judgment](#), para. 538; [Katanga Trial Judgment](#), paras 1186-1187.

<sup>1506</sup> ICTY, [Đorđević Appeal Judgement](#), para. 521; *Prosecutor v. Tadić*, IT-94-1-A, Appeals Chamber, [Judgement](#) (*Tadić Appeal Judgement*), 15 July 1999, para. 84. See also ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2<sup>nd</sup> edition, 2016 (2016 ICRC Commentary) regarding Article 3, paras 404, 405, 413.

<sup>1507</sup> See, in particular, ICTY, [Tadić Appeal Judgement](#), paras 120, 137; ICC, [Ntaganda Trial Judgment](#), para. 727. See also 2016 ICRC Commentary regarding Article 3, paras 406-410.

<sup>1508</sup> ICTY, [Tadić Decision on Jurisdiction](#), paras 67-70; [Limaj et al. Trial Judgment](#), para. 84; *Prosecutor v. Vasiljević*, IT-98-32-T, Trial Chamber II, [Judgment](#), 29 November 2002, para. 25; [Kunarac et al. Appeal Judgement](#), para. 57.

<sup>1509</sup> ICTY, [Orić Trial Judgment](#), para. 255; [Tadić Decision on Jurisdiction](#), para. 70.

<sup>1510</sup> See also ICRC, *Commentary on the Additional Protocols to the Geneva Conventions*, 1987, regarding Article 2(2) of Additional Protocol II, paras 4491-4496.

## 2. Findings

701. The Panel recalls the Decision on Adjudicated Facts, according to which it has taken judicial notice of the existence of an armed conflict, including during the timeframe of the charges, between the KLA, on one side, and Serbian forces, on the other.<sup>1511</sup> By taking judicial notice of an adjudicated fact, the Panel established a well-founded presumption for the accuracy of this fact, which therefore does not have to be proven again at trial.<sup>1512</sup>

702. The Panel recalls that the Defence did not challenge the SPO's list of adjudicated facts and corresponding request to the Panel to take judicial notice thereof.<sup>1513</sup> Nor did the Defence submit any evidence during trial, in the form of testimonies or documentary evidence, to challenge the accuracy of the existence of a non-international armed conflict between the KLA and the Serbian forces at the time of the crimes charged. However, during the closing statements, the Defence challenged the characterisation of the armed conflict, arguing that, while the armed conflict in Kosovo was initially of a non-international character, it turned into an international armed conflict following the NATO intervention on 24 March 1999. Therefore, according to the Defence, Article 14(1)(c) of the Law, which governs war crimes committed in the course of a non-international armed conflict, is not applicable in the present case.<sup>1514</sup>

703. The SPO opposes the Defence's challenge.<sup>1515</sup> It responds that the SPO's pleading of a non-international armed conflict was clear from the outset, as all charges were

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<sup>1511</sup> [Decision on Adjudicated Facts](#), para. 12.

<sup>1512</sup> [Decision on Adjudicated Facts](#), para. 11.

<sup>1513</sup> [Decision on Adjudicated Facts](#), para. 5.

<sup>1514</sup> T. 14 September 2022, public, p. 4725, line 11 to p. 4728, line 15 (*referring to ICTY, Prosecutor v. Đorđević*, IT-05-87/1-T, Trial Chamber II, [Public Judgement with Confidential Annex](#), Vol II, (*Đorđević Trial Judgement*), 23 February 2011, paras 1580-1581). *See also* T. 14 September 2022, public, p. 4728, line 24 to p. 4729, line 3; T. 15 September 2022, public, p. 4749, lines 13-16.

<sup>1515</sup> T. 15 September 2022, public, p. 4812, line 3 to p. 4815, line 5.

brought under Article 14(1)(c) of the Law. Any challenge to the characterisation of the armed conflict or the charges is a jurisdictional challenge, which should have been raised in a preliminary motion under Rule 97 of the Rules.<sup>1516</sup> The SPO submits further that the alleged crimes all constitute serious violations of Common Article 3 of the Geneva Conventions, which applies under customary international law to both situations of international armed conflict and non-international armed conflict, without exceptions or limitations, and that all crimes charged would have equivalents under Article 14(1)(a) of the Law. Thus, regardless of the characterisation of the conflict, the crimes charged would fall under the Specialist Chambers' jurisdiction.<sup>1517</sup> The SPO also submits that: (i) it has proven the existence of a non-international armed conflict; and (ii) even though there was, as of 24 March 1999, an international armed conflict between the NATO forces and the Serbian forces, that armed conflict co-existed with the non-international armed conflict between the KLA and the Serbian forces.<sup>1518</sup>

704. Victims' Counsel concurs with the SPO's submissions.<sup>1519</sup>

705. The Defence replies that the characterisation of the conflict is not a jurisdictional issue but one of qualifying the crime under Article 14(1)(c) of the Law, under which the SPO charged Mr Mustafa, and which does not list the crime of arbitrary detention.<sup>1520</sup> Regarding the co-existence of an international and a non-international armed conflict, the Defence maintains its position that the whole conflict became

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<sup>1516</sup> T. 15 September 2022, public, p. 4812, lines 5-15.

<sup>1517</sup> T. 15 September 2022, public, p. 4812, line 16 to p. 4813, line 15.

<sup>1518</sup> T. 15 September 2022, public, p. 4813, line 16 to p. 4815, line 5 (*referring to* SPO Final Trial Brief, paras 261-278; ICTY, [Dorđević Appeal Judgement](#), para. 521; ICRC Commentary on the First Geneva Convention, 2016, on Article 3, paras 402-405; Kosovo Supreme Court, *Prosecutor v. Latif Gashi et al.*, AP-KZ-139/2004, [Decision of 21 July 2005](#), p. 10; Kosovo Supreme Court, *Prosecutor v. Kolasinac*, AP-KZ-230/2003, [Decision of 5 August 2004](#), p. 21).

<sup>1519</sup> T. 15 September 2022, public, p. 4821, lines 17-23.

<sup>1520</sup> T. 15 September 2022, public, p. 4836, lines 4-24.

international in character as of 24 March 1999, and argues that the ICTY case law, including the *Dorđević* case, does not deal with the conflict in April 1999.<sup>1521</sup>

706. At the outset, the Panel recalls that while the accuracy of adjudicated facts may be rebutted by the Defence, the latter must do so by presenting evidence at trial, and not by mere assertions or arguments made as late as during the closing statements.<sup>1522</sup>

707. That being said, the Panel considers it settled that under international humanitarian law a non-international armed conflict may exist alongside an international armed conflict.<sup>1523</sup> The Panel further notes that the ICTY established that, as of the end of May 1998 and until at least June 1999, an armed conflict existed in Kosovo between the Serbian forces and the KLA, which was characterised as non-international in nature.<sup>1524</sup>

708. As to the Defence's arguments on the intensity of the hostilities and the level of organisation of the Parties,<sup>1525</sup> the Panel endorses with approval the ICTY Trial Chamber's detailed findings in *Dorđević*,<sup>1526</sup> in particular that: (i) as of the end of May 1998, the conflict in Kosovo between the Serbian forces (which constituted governmental authorities) and the KLA had the requisite level of intensity to be

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<sup>1521</sup> T. 15 September 2022, public, p. 4836, line 25 to p. 4837, line 18.

<sup>1522</sup> Similarly, ICTY, *Prosecutor v. Lukić & Lukić*, IT-98-32/1-A, Appeals Chamber, [Appeal Judgement](#), 4 December 2012, para. 261, and references therein. See also the Panel's directions in [Decision on Adjudicated Facts](#), para. 11.

<sup>1523</sup> ICTY, [Dorđević Appeal Judgement](#), para. 521; [Tadić Appeal Judgement](#), para. 84; ICC, [Lubanga Trial Judgment](#), para. 540. See also ICRC Commentary on the First Geneva Convention, 2016, on Article 3, paras 404, 405, 413.

<sup>1524</sup> ICTY, [Dorđević Appeal Judgement](#), para. 521; [Dorđević Trial Judgement](#), paras 1578-1580. The Panel observes that the Pre-Trial Judge, in case KSC-BC-2020-06, went even further than that, finding that the non-international armed conflict between the KLA and the Serbian forces continued until 16 September 1999, when a lasting absence of armed confrontations was achieved and the situation had sufficiently stabilised, so as to equate a peaceful settlement, see KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, [Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi](#), 26 October 2020, public, paras 89, 136-137.

<sup>1525</sup> See T. 14 September 2022, public, p. 4727, line 7 to p. 4728, line 11.

<sup>1526</sup> [Dorđević Trial Judgement](#), paras 1532-1578.

considered as an armed conflict;<sup>1527</sup> and (ii) as of May 1998, the KLA possessed sufficient characteristics of an organised armed group to be able to engage in a non-international armed conflict.<sup>1528</sup>

709. On the other hand, the Panel considers that the conflict between the Serbian forces and the NATO forces, which may have existed as of 24 March 1999 until the end of the hostilities in June 1999, was characterised as international in nature.<sup>1529</sup> While the non-international armed conflict in Kosovo could have turned into an international armed conflict under specific conditions – namely if the KLA acted under the overall control of one or more of the NATO states taking part in the international armed conflict<sup>1530</sup> – the Panel considers that no evidence has been submitted that suggests this conclusion. Accordingly, the Panel sees no reason to further discuss the characterisation of the armed conflict at the time of the charges set forth in the Confirmed Indictment.

710. In light of the above, the Panel rejects the Defence’s challenge to the characterisation of the armed conflict and confirms its previous finding, based on the Decision on Adjudicated Facts, according to which a non-international armed conflict existed between the KLA and the Serbian forces at the time of the crimes charged.

711. Relatedly, with regard to the Defence’s argument that the detainees at the ZDC were not “protected persons” within the meaning of the Geneva Conventions,<sup>1531</sup> the Panel recalls, first, that the Defence erroneously referred to Article 14 of the Fourth Geneva Convention (GCIV)<sup>1532</sup> (which regulates the status of hospitals, safety zones

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<sup>1527</sup> [Dorđević Trial Judgement](#), para. 1536.

<sup>1528</sup> [Dorđević Trial Judgement](#), para. 1578.

<sup>1529</sup> [Dorđević Trial Judgement](#), para. 1580; [Dorđević Appeal Judgement](#), para. 521.

<sup>1530</sup> See [Tadić Appeal Judgement](#), paras 120, 137. See also ICRC Commentary on the First Geneva Convention, 2016, on Article 3, paras 406-410.

<sup>1531</sup> T. 14 September 2022, public, p. 4721, line 16 to p. 4725, line 10. See also T. 15 September 2022, public, p. 4794, line 9 to p. 4795, line 24. See further T. 14 September 2022, public, p. 4729, lines 4-9 (similar argument on Count 2); T. 15 September 2022, public, p. 4749, lines 13-22 (similar argument on Count 3).

<sup>1532</sup> T. 14 September 2022, public, p. 4723, line 7.

and localities), whereas the correct legal basis for its argument is Article 4 of GCIV, which defines protected persons. Be that as it may, the notion of protected persons pursuant to Article 4 of GCIV applies to international armed conflicts only, and not to non-international armed conflicts, which is the situation at stake before the Panel. In this respect, pursuant to the chapeau of Article 14(1)(c) of the Law (which refers to Common Article 3), the determination of whether or not a person is protected under international humanitarian law is based on his or her activities rather than on his or her status. Notably, the Panel shall assess whether the victim was actively taking part in the hostilities at the time the offence was committed.<sup>1533</sup> Thus, this Defence challenge is dismissed.

## F. NEXUS WITH NON-INTERNATIONAL ARMED CONFLICT

### 1. Legal Requirements

712. The alleged crimes must be sufficiently linked with the armed conflict. The armed conflict need not have been causal to the commission of the crime charged, but it must have played, at a minimum, a substantial part in the perpetrator's ability to commit the crime, his or her decision to commit it, the manner in which it was committed, or the purpose for which it was committed.<sup>1534</sup> In determining the nexus, one may consider: (i) the status of the perpetrator and victim; (ii) whether the act

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<sup>1533</sup> On the distinction between the notion of protected persons under the Geneva Conventions and persons taking no active part in hostilities in terms of Common Article 3 *see, similarly*, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1962, Appeals Chamber, [Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9"](#), 15 June 2017, paras 46-51; ICTY, [Tadić Decision on Jurisdiction](#), para. 81.

<sup>1534</sup> ICC, [Ntaganda Trial Judgment](#), para. 731; ICTY, [Kunarac et al. Appeal Judgement](#), para. 58; *Prosecutor v. Stakić*, IT-97-24-A, Appeals Chamber, [Judgement \(Stakić Appeal Judgement\)](#), 22 March 2006, para. 342; [Tadić Decision on Jurisdiction](#), para. 70; ICTR, [Setako Appeal Judgement](#), para. 249; *Rutaganda v. Prosecutor*, ICTR-96-3-A, Appeals Chamber, [Judgement](#), 26 May 2003, paras 569-570.

serves the ultimate goal of a military campaign; or (iii) whether the act was committed as part of, or in the context of, the perpetrator's official duties.<sup>1535</sup>

## 2. Findings

713. The Panel recalls its findings that the BIA was part of the KLA, which was engaged in a non-international armed conflict with the Serbian forces at the time of the charges.<sup>1536</sup>

714. The Panel finds that, in arbitrarily detaining the victims, torturing them and killing the Murder Victim, the BIA members, including the Accused, acted in the context of their official duties within the KLA. They took advantage of their status as BIA members, as they relied upon the BIA base in Zllash/Zlaš to commit the crimes charged. They also took advantage of their status as KLA members, as they utilised their wider KLA network in taking actions related to these crimes. More specifically, they apprehended the victims and took them to the ZDC with the assistance of [REDACTED] other KLA members, where they were arbitrarily detained, mistreated and killed (in the case of the Murder Victim).

715. As established, in addition to detaining people, the ZDC was also used for other armed conflict-related purposes, such as a rest and recuperation area for KLA soldiers, as a safe refuge for displaced civilians, and as a treatment facility for wounded persons.<sup>1537</sup> The Panel finds that BIA members, including the Accused, chose the ZDC to perpetrate the crimes because it was located in an isolated mountainous area, away from hostilities, and this could ensure the undisturbed commission of the crimes.

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<sup>1535</sup> ICTY, [Kunarac et al. Appeal Judgement](#), para. 59; ICC, [Bemba Trial Judgment](#), para. 143; ICC, [Ongwen Trial Judgment](#), para. 2689; [Ntaganda Trial Judgment](#), para. 732.

<sup>1536</sup> See paras 334, 710.

<sup>1537</sup> See paras 350-352.

716. In addition, the Panel finds that the ongoing non-international armed conflict played a substantial role in the commission of the crimes charged, as the detainees were held, interrogated, mistreated and killed (in the case of the Murder Victim) on the basis of, *inter alia*, accusations of being spies, Serbian collaborators, traitors, or supporters of political parties perceived as opposing the KLA.

717. Accordingly, the Panel finds that the nexus requirement for the crimes charged under Counts 1, 3, and 4 of the Confirmed Indictment is fulfilled.

G. AWARENESS OF NON-INTERNATIONAL ARMED CONFLICT AND STATUS OF THE VICTIMS

1. Legal Requirements

718. The perpetrator must be aware of the factual circumstances establishing the non-international armed conflict.<sup>1538</sup> Knowledge of the correct legal classification of the armed conflict is not necessary.<sup>1539</sup>

719. In addition, all war crimes must be committed against protected persons. The chapeau of Article 14(1)(c) of the Law, referring to Common Article 3(1), requires that the victim was not actively taking part in the hostilities at the time the offence was committed.<sup>1540</sup> Active participation in hostilities means carrying out acts as part of the

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<sup>1538</sup> ICTY, [Naletilić and Martinović Appeal Judgement](#), paras 118-121; [Boškoski and Tarčulovski Trial Judgement](#), para. 295. See also ICC, [Ongwen Trial Judgment](#), para. 2692; [Ntaganda Trial Judgment](#), paras 698, 733.

<sup>1539</sup> ICC, [Ntaganda Trial Judgment](#), para. 733; ICTY, [Naletilić and Martinović Appeal Judgement](#), para. 119; [Kordić and Čerkez Appeal Judgement](#), para. 311.

<sup>1540</sup> ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR73.9, Appeals Chamber, [Decision on Appeal from Denial of Judgement of Acquittal for Hostage-Taking](#) (Karadžić Decision 11 December 2012), 11 December 2012, paras 8, 21; IT-95-5/18-AR72.5, Appeals Chamber, [Decision on Appeal of Trial Chamber's Decision on Preliminary Motion to Dismiss Count 11 of the Indictment](#), 9 July 2009, paras 22-26; [Boškoski and Tarčulovski Appeal Judgement](#), para. 66; *Prosecutor v. Strugar*, IT-01-42-A, Appeals Chamber, [Judgement](#) (Strugar Appeal Judgement), 17 July 2008, paras 172, 178; [Mucić et al. Appeal Judgement](#), paras 420, 424.

conduct of hostilities intended by their nature or purpose to cause actual harm to the personnel or equipment of the adverse party.<sup>1541</sup> Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, are protected under Common Article 3. The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.<sup>1542</sup>

## 2. Findings

720. The Panel recalls that the tasks of the BIA included: intelligence and information gathering regarding, *inter alia*, persons believed to be assisting the Serbian forces;<sup>1543</sup> and raising awareness that the “war is the only way out” and was a “just war”.<sup>1544</sup> In addition, the Panel recalls that the Accused gave such orders to his subordinates in the BIA, which are clearly related to the armed conflict. These orders involved, for example, monitoring the movements of the Serbian forces, identifying potential military objectives and delivering medical supplies.<sup>1545</sup> BIA members also took part in the hostilities to counter the Serbian offensive, and assisted in the evacuation of the wounded from Zllash/Zlaš, under the leadership of the Accused.<sup>1546</sup> The Panel has also found that the Accused was regularly on the move to and from Zllash/Zlaš during April 1999, including when the Serbian offensive was approaching.<sup>1547</sup>

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<sup>1541</sup> ICTY, [Strugar Appeal Judgement](#), para. 178; ICC, [Katanga Trial Judgment](#), paras 789-790. *See also* Article 13(3) of Additional Protocol II.

<sup>1542</sup> ICTY, [Mladić Trial Judgment](#), para. 3017; [Karadžić Decision 11 December 2012](#), para. 22; [Boškoski and Tarčulovski Appeal Judgement](#), para. 66.

<sup>1543</sup> *See* para. 338; **Mr Mustafa**: 069404-TR-ET, Part 1, p. 28, lines 17-18; p. 32, lines 3-14. According to the Accused himself, intelligence and information gathering “was our [BIA’s] first mission”.

<sup>1544</sup> **Mr Mehmetaj**: T. 23 March 2022, public, p. 2622, line 3-10.

<sup>1545</sup> *See* para. 339; **Mr Mustafa**: 069404-TR-ET, Part 2, p. 3, line 14 to p. 4, line 10; p. 8, lines 1-25.

<sup>1546</sup> **Mr Mustafa**: 069404-TR-ET, Part 7, p.14, lines 3-12.

<sup>1547</sup> *See* paras 248-262.

721. Accordingly, the Panel finds that the Accused and the BIA members present at the ZDC in April 1999 were aware of the existence of the non-international armed conflict between the KLA and Serbian forces, as their movements, decisions and actions during the timeframe of the charges were dictated primarily by the armed conflict.

722. Regarding the protected status of the victims, the Panel finds that the detainees were taking no active part in hostilities due to their detention at the ZDC and, as a result, they were entitled to the protection of Common Article 3. In this respect, the Accused and his BIA subordinates were aware of the protected status of the victims, considering their knowledge of the presence of detainees at the ZDC and their personal participation in the victims' protracted detention and mistreatment (leading to the death of one of them — the Murder Victim).

#### H. THE INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED

723. The SPO pleads the following forms of responsibility: direct commission, commission pursuant to JCE I or JCE III (the latter limited to Count 4), as well as ordering, instigating, aiding and abetting, and superior responsibility.<sup>1548</sup>

724. The Panel notes that in the present case: (i) ordering, instigating, aiding and abetting are charged as alternatives to the forms of responsibility for commission;<sup>1549</sup> (ii) superior responsibility is charged as an alternative to the forms of responsibility

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<sup>1548</sup> See para. 25.

<sup>1549</sup> [Confirmation Decision](#), paras 142, 145.

under Article 16(1)(a) of the Law;<sup>1550</sup> and (iii) JCE III is charged as an alternative to JCE I for Count 4.<sup>1551</sup>

725. In light of its evidentiary findings,<sup>1552</sup> the Panel considers it appropriate to set out the legal requirements of the mode(s) of liability that best reflect(s) the full scope of the Accused's individual criminal responsibility, if a conviction is entered.<sup>1553</sup> It is the Panel's view that if the Accused's individual criminal responsibility is fully encapsulated by one mode of liability,<sup>1554</sup> there is no need to analyse his responsibility under other modes of liability, as pleaded. In the present case, if a conviction for commission (including by JCE)<sup>1555</sup> fully encapsulates the Accused's criminal responsibility, there is no need to further examine the Accused's responsibility for

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<sup>1550</sup> [Confirmation Decision](#), paras 5, 146, 151; [Confirmed Indictment](#), para. 14. In this regard, the Panel also notes that, according to the case law of the ICTY, it would be inadmissible to convict an accused both for a mode of liability under Article 7(1) of the ICTY Statute and for superior responsibility under Article 7(3) of the ICTY for the same crime; see, for example, ICTY, *Prosecutor v. Blaškić*, IT-95-14-T, Trial Chamber, [Judgement](#) (*Blaškić Trial Judgement*), 3 March 2000, para. 337; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Trial Chamber, [Judgement](#), 26 February 2001, para. 371; *Prosecutor v. Krstić*, IT-98-33-T, Trial Chamber, [Judgement](#), para. 605; [Orić Trial Judgement](#), para. 343 (holding, however, that the "additional wrongfulness associated with an accused's failure in his duties as a superior in terms of Article 7(3) of the [ICTY] Statute must be taken into account as an aggravating factor in the sentencing"); ICTR, [Kayishema and Ruzindana Trial Judgement](#), para. 223.

<sup>1551</sup> [Confirmation Decision](#), paras 130-131, 133, and fn. 15; [Confirmed Indictment](#), para. 8.

<sup>1552</sup> See Section V.

<sup>1553</sup> See, for example, ICTY, *Prosecutor v. Krajišnik*, IT-00-39-T, Trial Chamber I, [Judgement](#), 27 September 2006, para. 877; ICC, [Ongwen Trial Judgment](#), para. 2780; [Ntaganda Trial Judgment](#), para. 1200; *Prosecutor v. Al Mahdi*, ICC-01/12-01/15-171, Trial Chamber VIII, [Judgment and Sentence](#) (*Al Mahdi Trial Judgment*), 27 September 2016, para. 60.

<sup>1554</sup> See, for example, ICTY, [Dorđević Appeal Judgement](#), para. 832; ICTR, [Karemera and Ngirumpatse Appeal Judgement](#), para. 720; [Munyakazi Appeal Judgement](#), para. 160; *Kamuhanda v. Prosecutor*, ICTR-99-54A-A, Appeals Chamber, [Judgement](#), 19 September 2005, para. 77; ICC, [Al Mahdi Trial Judgment](#), para. 61.

<sup>1555</sup> See, for example, ICTY, [Tadić Appeal Judgement](#), para. 188; *Prosecutor v. Krnojelac*, IT-97-25-A, Appeals Chamber, [Judgement](#), 17 September 2003, paras 28-32, 73; ICTR, [Nahimana et al. Appeal Judgement](#), 28 November 2007, para. 478; *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Appeals Chamber, [Judgement](#) (*Ntakirutimana Appeal Judgement*), 13 December 2004, para. 462; *Prosecutor v. Simba*, ICTR-01-76-T, Trial Chamber I, [Judgement and Sentence](#), 13 December 2005, para. 385.

aiding and abetting, ordering or instigating, or as a superior under Article 16(1)(c) of the Law, with regard to the same crime.<sup>1556</sup>

726. The objective and subjective elements of the relevant modes of liability are set out below.

## 1. Direct Commission

### (a) Legal Requirements

#### i. Objective elements

727. Direct commission requires that the perpetrator physically carries out the objective elements of a crime, or omits to act when required to do so under the law.<sup>1557</sup>

#### ii. Subjective elements

728. The perpetrator must intend to commit the crime or must act in the awareness of the substantial likelihood that the crime would occur as a consequence of his or her conduct.<sup>1558</sup>

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<sup>1556</sup> See, for example, ICTY, *Prosecutor v. Stakić*, IT-97-24-T, Trial Chamber II, [Judgement](#) (*Stakić* Trial Judgment), 31 July 2003, paras 446, 468, 712, 914; [Blaškić Trial Judgment](#), para. 278; ICTR, [Akayesu Trial Judgment](#), para. 468; *Prosecutor v. Semanza*, ICTR-97-20-T, Trial Chamber III, [Judgement and Sentence](#), 15 May 2003, para. 397. In this regard, the Panel takes a different approach than the SPO, which, with the exceptions mentioned in paragraph 723 above, cumulatively charged several modes of liability (see, in particular, [Confirmed Indictment](#), para. 34).

<sup>1557</sup> ICTY, [Tadić Appeal Judgement](#), para. 188; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, [Judgement](#), 17 January 2005, para. 694; *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Trial Chamber III, [Judgement](#) (*Lukić* Trial Judgment), 20 July 2009, para. 897; ICTR, [Nahimana et al. Appeal Judgement](#), para. 478; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Appeals Chamber, [Judgment \(Reasons\)](#) (*Kayishema and Ruzindana* Appeal Judgment), 1 June 2001, para. 187.

<sup>1558</sup> ICTY, [Lukić Trial Judgment](#), para. 900; ICTR, [Kayishema and Ruzindana Appeal Judgment](#), para. 187.

(b) Findings

i. Objective elements

729. In relation to W01679, the Panel has established that the Accused personally interrogated W01679, accusing him of being a spy, a liar and a thief, and slapped him.<sup>1559</sup>

730. In relation to W03593, the Panel has established that — while beaten by several BIA members under the accusation of collaborating with Serbs — the Accused subjected W03593 to a mock execution.<sup>1560</sup> On a second occasion, while interrogating him about his knowledge of thieves, the Accused beat W03593 and threatened to kill him.<sup>1561</sup>

731. The Panel therefore finds that the Accused carried out the objective elements of the war crime of torture (Count 3).

ii. Subjective elements

732. The Panel has established that the Accused had the requisite *mens rea* for the war crime of torture (Count 3), since he participated directly and personally in the mistreatment of W01679 and W03593, did so repeatedly in the case of the latter, witnessed his BIA subordinates mistreat these two detainees and imparted orders that are clear indicators of his intent to commit these crimes.<sup>1562</sup> In addition, the type of actions in which the Accused engaged with W01679 and W03593, including the use of a revolver and the slapping, considered in the context of harsh interrogations with accusations of being spies, of collaborating with Serbs or of having knowledge of

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<sup>1559</sup> See paras 541-545.

<sup>1560</sup> See paras 551-554.

<sup>1561</sup> See paras 551-554.

<sup>1562</sup> See paras 534-556.

thieves, demonstrate that the Accused meant to engage in those actions for the requisite purposes of torture as a war crime.

733. The Panel therefore finds that the Accused inflicted severe pain or suffering upon W01679 and W03593 intentionally, and for such purpose as obtaining information or a confession, or punishing, intimidating, coercing or discriminating against them, thus satisfying the subjective element of direct commission under Article 16(1)(a) of the Law.

## 2. Joint Criminal Enterprise

### (a) Legal requirements

734. Joint criminal enterprise (JCE) as mode of liability encompasses three forms or categories (basic, systemic, and extended). In the basic form (JCE I), several perpetrators act on the basis of a common purpose. In the systemic form (JCE II), a variant of the first form, the crimes are committed within an organised system of ill-treatment, by members of military or administrative units, such as in concentration or detention camps. In the extended form (JCE III), criminal responsibility is established for acts of a co-perpetrator that go beyond the common plan, but which were a foreseeable consequence of the realisation of the plan.<sup>1563</sup>

735. The Court of Appeals found that the absence of explicit reference to JCE in the Law or the Rules should not be interpreted as a deliberate intention of the drafters of the Law to exclude JCE from the applicable modes of liability before the Specialist Chambers.<sup>1564</sup> On the contrary, pursuant to Article 3(3) of the Law, the Judges may be

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<sup>1563</sup> ICTY, [Kvočka et al. Appeal Judgement](#), paras 82-83; *Prosecutor v. Vasiljević*, IT-98-32-A, Appeals Chamber, [Judgement](#), 25 February 2004, para. 98; [Tadić Appeal Judgement](#), paras 196, 202-203, 228; ICTR, [Ntakirutimana Appeal Judgement](#), para. 464.

<sup>1564</sup> [Case 06 Jurisdictional Appeal](#), para. 136.

guided by the jurisprudence of the *ad hoc* tribunals,<sup>1565</sup> as well as by customary international law. The *ad hoc* tribunals have applied the doctrine of JCE to the core crimes of these courts as a form of commission on the basis of customary international law.<sup>1566</sup> Therefore, considering that Article 16(1) of the Law reflects almost verbatim the wording of Article 7(1) of the ICTY Statute and Article 6(1) of the Statute of the International Criminal Tribunal for Rwanda concerning individual criminal responsibility, the Panel finds that Article 16(1) of the Law, including the term “commission”, must be interpreted in accordance with customary international law as applicable at the time the alleged crimes were perpetrated.<sup>1567</sup> Finally, it would be inconsistent for the drafters of the Law to deliberately exclude from the jurisdiction of the Specialist Chambers one of the grounds upon which the tribunal was created, namely to ensure that persons acting jointly with others could be prosecuted.<sup>1568</sup>

736. In line with the principle set out in paragraph 725 above, the Panel will only entertain the individual criminal responsibility of the Accused under JCE I and not JCE III, on the basis that the former best reflects the criminality of the Accused as JCE member.

i. Objective elements

737. All forms of JCE require the following objective elements: (i) a plurality of persons who act pursuant to a common purpose; (ii) a common purpose which amounts to or involves the commission of a crime provided for in the Law; and (iii) participation of the perpetrator in furthering the common design or purpose.<sup>1569</sup>

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<sup>1565</sup> [Case 06 Jurisdictional Appeal](#), para. 136.

<sup>1566</sup> [Case 06 Jurisdictional Appeal](#), para. 138.

<sup>1567</sup> [Case 06 Jurisdictional Appeal](#), para. 138.

<sup>1568</sup> [Case 06 Jurisdictional Appeal](#), para. 139, with further references.

<sup>1569</sup> ICTY, [Mladić Trial Judgment](#), para. 3561; *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Public Redacted Version of Judgment Issued on 24 March 2016](#), 24 March 2016, para. 561, referring to [Tadić Appeal Judgement](#), para. 227; [Stakić Appeal Judgement](#), para. 64. See also ICTR, [Karemera and Ngirumpatse](#)

738. *Plurality of persons.* A JCE exists when a plurality of persons participates in the realisation of a common criminal objective.<sup>1570</sup> The persons participating in the criminal enterprise need not be organised in a military, political, or administrative structure.<sup>1571</sup> They must, however, be identified with specificity, for instance by name or by categories or groups of persons.<sup>1572</sup>

739. *Common purpose which amounts to or involves the commission of a crime.* There is no necessity for the plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.<sup>1573</sup> A common purpose does not presume preparatory planning or explicit agreement among JCE participants, or between JCE participants and third persons.<sup>1574</sup> Moreover, a JCE may exist even if none or only some of the physical perpetrators of the crimes are members of the JCE, yet are used by one or more members of the JCE to commit crimes pursuant to the common purpose.<sup>1575</sup>

740. *Contribution.* The perpetrator must have participated in the furthering of the common purpose at the core of the JCE by assisting in or contributing to the execution

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[Appeal Judgement](#), para. 110; [Ntakirutimana Appeal Judgement](#), paras 461-468; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/I/AC/R176bis, Appeals Chamber, [Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging](#), 16 February 2011, paras 236-249.

<sup>1570</sup> ICTY, [Haradinaj Trial Judgement](#), para. 138; [Kvočka et al. Trial Judgement](#), para. 307.

<sup>1571</sup> ICTY, [Mladić Trial Judgment](#), para. 3561; [Tadić Appeal Judgement](#), para. 227.

<sup>1572</sup> KSC-BC-2020-06, IA012-F00015, Court of Appeals Panel, *Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment*, 22 August 2022, confidential, para. 72 (with further references); a public redacted version was filed on the same day, [IA012-F00015/RED](#). See also ICTY, [Mladić Trial Judgment](#), para. 3561; *Prosecutor v. Krajišnik*, IT-00-39-A, Appeals Chamber, [Judgement](#) (*Krajišnik Appeal Judgement*), 17 March 2009, paras 156-157; [Brđanin Appeal Judgement](#), para. 430.

<sup>1573</sup> ICTY, [Tadić Appeal Judgement](#), para. 227; *Prosecutor v. Furundžija*, IT-95-17/1-A, Appeals Chamber, [Judgement](#), 21 July 2000, para. 119.

<sup>1574</sup> ICTY, [Haradinaj Trial Judgement](#), para. 138; [Brđanin Appeal Judgement](#), para. 418; [Kvočka et al. Appeal Judgement](#), paras 117-119.

<sup>1575</sup> ICTY, [Mladić Trial Judgment](#), para. 3561; [Krajišnik Appeal Judgement](#), paras 225-226, 235-236; [Brđanin Appeal Judgement](#), paras 410, 413.

of the common plan or purpose, but need not have performed any part of the *actus reus* of the crime charged.<sup>1576</sup> The perpetrator's contribution to the JCE need not be, as a matter of law, necessary or substantial, but it should at least be a significant contribution to the crimes for which he or she is found responsible.<sup>1577</sup> The contribution does not need to be criminal *per se*.<sup>1578</sup>

ii. Subjective elements

741. With regard to JCE I, the perpetrator must share the intent with the other participants to carry out the crimes forming part of the common purpose, including the special intent.<sup>1579</sup>

(b) Findings

i. Objective elements

742. *Plurality of persons*. The Panel found that BIA members, members of the KLA military police and other KLA members, including the Accused himself, Nazif Musliu (aka Tabuti), Ilmi Vela, Mr Mehmetaj (aka Bimi), Dardan, Afrim, and Fatmir: (i) apprehended, arbitrarily detained and tortured at least six persons between approximately 1 April 1999 and on or around 19 April 1999 at the ZDC, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED]; and (ii) killed the Murder Victim between on or around 19 April 1999 and around the end of April 1999.<sup>1580</sup>

743. The Panel considers that all these individuals are identified based on the evidence with sufficient specificity, either by name, nickname, and/or by their

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<sup>1576</sup> ICTY, [Krajišnik Appeal Judgement](#), paras 215, 218, 695; [Tadić Appeal Judgement](#), para. 227.

<sup>1577</sup> ICTY, [Mladić Trial Judgment](#), para. 3561; [Krajišnik Appeal Judgement](#), paras 215, 662, 675, 695-696; [Brđanin Appeal Judgement](#), para. 430; [Kvočka et al. Appeal Judgement](#), paras 97-98.

<sup>1578</sup> ICTY, [Krajišnik Appeal Judgement](#), para. 695.

<sup>1579</sup> ICTY, [Dorđević Appeal Judgement](#), para. 468.

<sup>1580</sup> See the Panel's factual and legal findings in Sections V.C to V.E, and VI.A to VI.D.

functions and affiliation to the BIA unit and, more generally to the KLA. In fact, on the basis of the evidence, the Panel considers that the above individuals were all linked to each other by the fact that their activities revolved around the ZDC, either because they were stationed there or because they went there to transport detainees to BIA members at the ZDC, or ordered that those detainees be delivered to BIA members at the ZDC.

744. The Panel therefore finds that there existed a plurality of persons within the meaning of JCE I, thus satisfying the first objective element of this mode of liability.

745. *Common purpose which amounts to or involves the commission of a crime.* The Panel infers the pursuit of the common purpose from the fact that the commission of the crimes charged followed the same pattern, through an institutionalised detention and mistreatment, during the timeframe of the charges. Most importantly, the Panel has found that at least six persons, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED] were detained, harshly interrogated and/or systematically tortured, including being subjected to appalling conditions of detention between approximately [REDACTED] April 1999 and on or around 19 April 1999.<sup>1581</sup> The Panel recalls that the victims were detained and tortured for purportedly collaborating with Serbs, being spies, traitors, thieves, liars, or members or supporters of political parties perceived as opposing the KLA.<sup>1582</sup> The Panel has also established that the identified BIA members, including the Accused himself, tortured the above detainees in a variety of manners, kicking, punching, slapping them, using multiple tools such as baseball bats, the handle of a hatchet, iron baton, wooden/rubber baton, knives, an electricity box, and a hot iron, and often did it in group.<sup>1583</sup>

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<sup>1581</sup> See the Panel's factual findings in Section V in relation to Counts 1-3.

<sup>1582</sup> See paras 579-583.

<sup>1583</sup> See paras 497-588.

746. Critically, the Panel has established that the detention, and by implication the torture of the detainees, was only discontinued due to their sudden release (with the exception of the Murder Victim [REDACTED], who were not released), which was triggered by an exceptional change of circumstances, namely the approaching Serbian offensive.<sup>1584</sup> At the same time, the Panel has established that the Murder Victim was the detainee who was tortured the most ([REDACTED]), was denied medical care, and was last seen at the time of the release of other detainees in a near-to-death state, unable to walk and stand.<sup>1585</sup> He was neither released nor evacuated and his body was found in a shallow grave [REDACTED].<sup>1586</sup> Therefore, the Panel concludes that the common purpose of the JCE included the killing of the Murder Victim.

747. Based on their unified acts and omissions, the Panel considers that the plurality of persons identified above, including the Accused, acted in concert, within their respective functions, with the common purpose to detain and torture detainees on account of the alleged suspicions against them, as well as to detain, torture and ultimately kill the Murder Victim for the same reasons. The Panel finds that this is the case irrespective of whether or not those individuals carried out also other tasks — unrelated to the commission of the crimes charged — such as treating or evacuating wounded persons, or providing shelter to displaced civilians or to other KLA members. The latter do not detract from the fact that the JCE members had the common purpose of committing the crimes charged.

748. The Panel therefore finds that the JCE members had a common purpose, which amounted to or involved the commission of the crimes charged under Counts 1, 3, and 4 of the Confirmed Indictment, thus satisfying the second objective element of JCE I.

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<sup>1584</sup> See para. 636. See also the Panel's findings on the "Circumstances of Release" in relation to W01679, W03593, and W03594.

<sup>1585</sup> See paras 569-574, 577, and 621.

<sup>1586</sup> See paras 612-618.

749. *Accused's contribution.* While the contribution element does not require the Accused to have performed any of the objective elements of the crimes charged and only requires a "significant" contribution, the Panel finds that the Accused's contribution, as a JCE member, went far beyond what is required to meet this element.

750. The Panel recalls that the Accused, in his capacity as overall and only BIA commander, with full control over the ZDC: (i) personally tortured W01679 and W03593 (twice), thereby providing a model or incentive for his BIA subordinates to perform similar actions against the detainees at the ZDC; (ii) ordered his BIA subordinates to torture the detainees and to detain them in the course of April 1999;<sup>1587</sup> (iii) did not provide medical care to the detainees despite their mistreatment and injuries; (iv) did not release the detainees, thus allowing his BIA subordinates to mistreat them, until an exceptional change of circumstances occurred, *i.e.* the Serbian offensive; and (v) never released nor evacuated the Murder Victim [REDACTED], who remained in detention while the Accused and his BIA subordinates left the ZDC in light of the impending Serbian offensive.<sup>1588</sup>

751. The Panel therefore finds that the Accused made a significant contribution to the execution of the common purpose, thus satisfying the third objective element of JCE I.

ii. Subjective elements

752. *Intent to carry out the crimes as part of the common purpose.* The Panel recalls its findings according to which the Accused possessed the requisite *mens rea* for the war crimes of arbitrary detention (Count 1), torture (Count 3), and murder (Count 4).<sup>1589</sup>

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<sup>1587</sup> The Panel established that the Accused gave orders to his BIA subordinates to torture some detainees or to bring them back to the detention barn; or he witnessed his subordinates torturing the detainees (*see* paras 534, 535, 546, and 547).

<sup>1588</sup> *See* paras 621-636.

<sup>1589</sup> *See* paras 654-659, 679-685, 691-695.

753. On this basis, the Panel finds that the Accused clearly shared the intent to commit arbitrary detention (Count 1) and torture (Count 3) with the other JCE members, as identified above, as they all contributed, in their respective capacity, to the apprehension, transfer, detention and torture of the detainees at the ZDC. In this respect, the Panel recalls that it found that certain KLA and/or BIA members ordered the arrest of the Murder Victim, and transported him, as well as W03593, W03594, W01679, and W04669, to the ZDC.<sup>1590</sup> The Panel also established that the BIA members at the ZDC locked the detention barns where the victims were held and guarded them; brought the detainees to the interrogation room and back to the barns after the torture, at times upon orders from the Accused himself; they tortured the detainees, often in group, under the Accused's watch or together with him.<sup>1591</sup> In addition, the Accused ordered other BIA members to beat one detainee (W01679) until he lost consciousness and he did not exercise his authority as commander to provide the detainees with basic guarantees or to release them, other than on or around 19 April 1999, in light of the impending Serbian offensive.<sup>1592</sup> All these actions, viewed together, demonstrate that the JCE members, including the Accused, shared the intent to commit the crimes under Counts 1 and 3 of the Confirmed Indictment.

754. The same holds true with regard to the charged murder under Count 4. During the time of his detention at the ZDC, the Murder Victim was subject to a level of mistreatment far more severe than any other detainee ([REDACTED]), which left him in a near-to-death state.<sup>1593</sup> The Panel considers that the Accused, along with other BIA members who participated in the torture, intended such lethal treatment to occur. The BIA members used potentially lethal means or methods of mistreatment against the

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<sup>1590</sup> See the Panel's findings on the "Initial Apprehension" in relation to W01679, W03593, W03594, W04669, and the Murder Victim.

<sup>1591</sup> See, for example, paras 391, 415, 449, 534-535, 546, 547, 561, 567, and 572.

<sup>1592</sup> See paras 534, 636.

<sup>1593</sup> See paras 569-574, and 577.

Murder Victim. In addition, the Accused was aware that the victim arrived at the ZDC on or around [REDACTED] April 1999, and intended such torture to carry on for around [REDACTED] days without providing medical care, basic guarantees or releasing him, which he had the power to do as BIA commander. This carried on until the Accused, in his capacity as BIA commander, decided not to release the Murder Victim — which effectively equalled a decision to kill him. As established by the Panel, the victim ultimately died as a result of the combination between the severe mistreatment inflicted by BIA members who detained him, causing serious bodily harm, and the denial of medical aid by BIA members.<sup>1594</sup>

755. The Panel further recalls that [REDACTED].<sup>1595</sup> [REDACTED].<sup>1596</sup> [REDACTED].<sup>1597</sup>

756. In the Panel's assessment, the evidence concerning: (i) the initial order to arrest the Murder Victim; (ii) the torture which the Accused intended to inflict upon him, resulting in his near-to-death condition; (iii) the violent quashing [REDACTED]; (iv) the denial of medical aid by BIA members; (v) the decisions taken by the Accused on or around 19 April 1999 to release some detainees, but not others (including the Murder Victim, which effectively equalled a decision to kill him), and which was executed by his BIA subordinates; and (vi) the attempts by the Accused and others to prevent any investigation and prosecution regarding those events,<sup>1598</sup> when viewed altogether, prove that the JCE members shared the intent to kill the Murder Victim and, thus, to commit the murder charged under Count 4 of the Confirmed Indictment.

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<sup>1594</sup> See paras 620-624, and 637-639.

<sup>1595</sup> **W04600**: T. 24 September 2021, confidential, p. 769, lines 21-25; p. 770, line 20 to p. 771, line 7.

<sup>1596</sup> **W04600**: T. 24 September 2021, confidential, p. 772, lines 23-24.

<sup>1597</sup> **W04600**: T. 24 September 2021, confidential, p. 773, lines 1-2.

<sup>1598</sup> See paras 459-460, 591-602, 621, 636, 679-685, 694.

757. In light of the above, the Panel finds that the Accused shared the intent to commit the crimes charged under Counts 1, 3, and 4 of the Confirmed Indictment with the other JCE members, thus satisfying the subjective element of JCE I.

#### I. CONCLUSION

758. In light of the above, the Panel finds beyond reasonable doubt that — in the context of the non-international conflict between the KLA and Serbian forces, being aware of the circumstances establishing the armed conflict and of the status of the victims — the Accused is guilty under Count 3 of the Confirmed Indictment, for having directly committed, within the meaning of Article 16(1)(a) of the Law, the following crime between approximately 1 April 1999 and on or around 19 April 1999 at the ZDC: torture as a war crime, pursuant to Article 14(1)(c)(i) of the Law, against W01679 and W03593, as established by the Panel in paragraphs 729-733 above (Count 3).

759. In addition, the Panel finds beyond reasonable doubt that — in the context of the non-international conflict between the KLA and Serbian forces, being aware of of the circumstances establishing the armed conflict and of the status of the victims — the Accused is guilty under Counts 1 and 3 of the Confirmed Indictment, for having committed, as part of a JCE I within the meaning of Article 16(1)(a) of the Law, the following crimes, between approximately 1 April 1999 and on or around 19 April 1999 at the ZDC: (i) arbitrary detention as a war crime, pursuant to Article 14(1)(c) of the Law, against at least six persons, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED] (Count 1); (ii) torture as a war crime, pursuant to Article 14(1)(c)(i) of the Law, against at least six persons, including W01679, W03593, W03594, W04669, the Murder Victim, [REDACTED] (Count 3), as established by the Panel in paragraphs 742-757 above and with the exception of the incidents for which the Accused is criminally responsible as a direct perpetrator.

760. Lastly, the Panel finds beyond reasonable doubt that — in the context of the non-international conflict between the KLA and Serbian forces, being aware of of the circumstances establishing the armed conflict and of the status of the victims — the Accused is guilty under Count 4 of the Confirmed Indictment, for having committed, as part of a JCE I within the meaning of Article 16(1)(a) of the Law, the crime of murder as a war crime, pursuant to Article 14(1)(c)(i) of the Law, against the Murder Victim, between on or around 19 April 1999 and around the end of April 1999, at the ZDC (Count 4).

## VII. SENTENCING

761. Having found Mr Mustafa guilty under Counts 1, 3, and 4, the Panel will now determine the appropriate sentence.

762. This section of the Judgment solely addresses the issue of sentencing pursuant to Article 44(1) of the Law. The Panel will issue in due course a Reparation Order pursuant to Articles 22(8) and 44(6) of the Law and retains, to that effect, the necessary jurisdiction.<sup>1599</sup>

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<sup>1599</sup> See KSC-BC-2020-05, F00310, Trial Panel I, *Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information*, 4 February 2022, confidential, para. 50(b). A public redacted version was filed on the same day, [F00310/RED](#).

## A. SUBMISSIONS

### 1. SPO

763. The SPO submits that the Panel enjoys broad discretion in determining the appropriate sentence and may impose up to a maximum of life imprisonment, as per Article 44(1) of the Law.<sup>1600</sup>

764. The SPO further submits that, pursuant to Article 44(2) of the Law, the Panel is not bound by the sentencing ranges provided under the law applicable in Kosovo at the time of the commission of the crimes, but is merely under a duty to take such law into account.<sup>1601</sup> In the view of the SPO, the relevant applicable law in force in Kosovo at that time was the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY).<sup>1602</sup> The SPO also avers that subsequent relevant laws adopted in Kosovo have provided for equal or more severe sentencing ranges, with higher minimum penalties and up to life imprisonment.<sup>1603</sup>

765. Concerning the factors to be taken into account in determining the sentence, the SPO submits that the sentence must reflect:<sup>1604</sup> (i) the gravity of the crimes committed by the Accused, which, in this case, were indisputably brutal;<sup>1605</sup> the severe impact of the crimes on the victims;<sup>1606</sup> (ii) the role of the Accused in the commission of the

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<sup>1600</sup> SPO Final Trial Brief, paras 346, 355. *See also* KSC-BC-2020-05, F00471, Specialist Prosecutor, *Prosecution submissions pursuant to Decision F00468 setting the agenda for the hearing on the closing statements and related matters* (SPO Submissions Concerning Closing Statements), 8 September 2022, confidential, paras 21, 18. A public redacted version was filed on 9 September 2022, F00471/RED.

<sup>1601</sup> SPO Final Trial Brief, para. 352; SPO Submissions Concerning Closing Statements, paras 11-13.

<sup>1602</sup> SPO Final Trial Brief, para. 349. Criminal Code of the Socialist Federal Republic of Yugoslavia, 1 July 1976.

<sup>1603</sup> SPO Final Trial Brief, para. 350.

<sup>1604</sup> SPO Final Trial Brief, paras 344, 356-383. *See also* T. 13 September 2022, public, p. 4590, lines 17-21.

<sup>1605</sup> SPO Final Trial Brief, paras 356-359. *See also* T. 13 September 2022, public, p. 4591, lines 12 to p. 4595, lines 11.

<sup>1606</sup> SPO Final Trial Brief, paras 360-364. *See also* T. 13 September 2022, public, p. 4595, lines 12-16.

crimes, which includes both directing others to commit the crimes and personally participating in them, displaying in front of his subordinates an utter disregard for human dignity, thereby ensuring that they would themselves engage in extreme violence;<sup>1607</sup> (iii) the importance of general deterrence, which in cases like the one at hand, demonstrates that difficulties in the investigation and prosecution will not preclude the Specialist Chambers from holding perpetrators accountable for their crimes;<sup>1608</sup> and (iv) the presence of multiple aggravating factors,<sup>1609</sup> and the lack of mitigating factors.<sup>1610</sup>

766. As for the applicable sentence for each charge in the Confirmed Indictment, the SPO requests that the Panel impose the following terms of imprisonment upon the Accused: (i) arbitrary detention (Count 1): 10 years; (ii) cruel treatment (Count 2): 20 years; (iii) torture (Count 3): 25 years; and (iv) murder (Count 4): 33 years.<sup>1611</sup> The SPO requests that a single sentence of 35 years' imprisonment should be imposed on the Accused, in order to reflect the totality of his criminal conduct.<sup>1612</sup>

767. In addition, the SPO argues that the Panel should order the Accused to make restitution or pay compensation to the victims in this case.<sup>1613</sup>

## 2. Victims' Counsel

768. Victims' Counsel submits that the sentence must reflect the inherent gravity of the crimes of which the Accused has been convicted, such as the particularly heinous

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<sup>1607</sup> SPO Final Trial Brief, paras 365-368. *See also* T. 13 September 2022, public, p. 4595, line 23 to p. 4596, line 16.

<sup>1608</sup> SPO Final Trial Brief, paras 369-370. *See also* T. 13 September 2022, public, p. 4590, lines 21-22.

<sup>1609</sup> SPO Final Trial Brief, paras 360, 372-378. *See also* T. 13 September 2022, public, p. 4596, line 17 to p. 4599, line 8.

<sup>1610</sup> SPO Final Trial Brief, paras 380-383. *See also* T. 13 September 2022, public, p. 4599, lines 12-25.

<sup>1611</sup> SPO Final Trial Brief, para. 384. *See also* T. 13 September 2022, public, p. 4600, lines 12-18.

<sup>1612</sup> SPO Final Trial Brief, paras 386, 388. *See also* T. 13 September 2022, public, p. 4600, line 25 to p. 4601, lines 1-2.

<sup>1613</sup> SPO Final Trial Brief, para. 345.

nature of the crime of torture, exacerbated by the subhuman conditions of detention of the victims.<sup>1614</sup>

769. As to the Accused's contribution to the crimes, the Victims' Counsel points out that two victims identified the Accused as an individual who directly participated in their maltreatment, and who instructed others to do the same.<sup>1615</sup> With regard to aggravating factors, the Victims' Counsel asserts that Mr Mustafa's position of responsibility as commander of the BIA unit, who directly participated in the victims' mistreatment, justifies a harsher sentence.<sup>1616</sup>

### 3. Defence

770. The Defence submits<sup>1617</sup> that the wording of Article 44(2) of the Law "shall take into account" denotes a mandatory requirement and thus the Panel is duty bound to apply any more lenient sentencing for the crime provided in Kosovo law.<sup>1618</sup> Moreover, the Defence submits that the CCSFRY is applicable to crimes during the period of the Confirmed Indictment.<sup>1619</sup> In this regard, as concerns the crime of arbitrary detention involving Kosovar Albanians, the Defence avers that this crime did not exist or apply under the CCSFRY at the time, and therefore no punishment can be imposed.<sup>1620</sup>

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<sup>1614</sup> Victims' Counsel Statement on Impact of the Crimes, paras 71-72.

<sup>1615</sup> Victims' Counsel Statement on Impact of the Crimes, paras 73-75.

<sup>1616</sup> Victims' Counsel Statement on Impact of the Crimes, paras 76-78.

<sup>1617</sup> The Defence responded in open court to questions posed by the Panel, *see* [Decision Setting Agenda for Closing Statements](#), paras 11-14.

<sup>1618</sup> T. 15 September 2022, public, p. 4792, lines 15-22.

<sup>1619</sup> T. 15 September 2022, public, p. 4793, lines 16-23.

<sup>1620</sup> T. 15 September 2022, public, p. 4794, lines 8-14, *see also* lines 15-17. The Defence also contends that civilian population as envisaged by Article 142 of the CCSFRY (which is entitled "War crime against civilian population" and includes the crime of illegal arrest and detention) may refer to the "civilian population of the enemy". The Defence avers that in this case "the occupying power" was Serbia and none of the detainees were Serbs. In the view of the Defence, as nationals of SFRY, the Kosovar Albanians detained were thus not protected (T. 15 September 2022, public, p. 4794, line 18 to p. 4795,

771. The Defence further submits that when determining the sentence, the Panel must also take into account the principles provided in Article 44(2)(a)-(c) of the Law.<sup>1621</sup> In this context, the Defence maintains that the Panel is also bound to apply the principles set forth in Articles 38 (Imprisonment), 41 (General principles in fixing punishment), 42 (Reduction of punishment), 43 (Mode of reducing punishments) and 48 (Combination of criminal acts) of the CCSFRY.<sup>1622</sup>

## B. LEGAL FRAMEWORK

### 1. Purposes of Sentencing

772. At the outset, the Panel recalls that the primary purposes of sentencing individuals under Article 14 of the Law are rooted in retribution, deterrence (both specific and general) and – to a lesser extent - the rehabilitation of the perpetrator.<sup>1623</sup>

773. Moreover, the Panel observes that the establishment of the Specialist Chambers recognises the importance of bringing to justice the perpetrators of those serious crimes that concern the international community as a whole in order to end impunity – even decades after the events concerned and notwithstanding a prevalent and long-standing climate of witness intimidation in Kosovo.<sup>1624</sup>

774. The punishment must also reflect the call for justice from persons who have – directly or indirectly – been victims of the crimes. Another important purpose of

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line 18). The Defence also advances that two of the detainees had been in training and therefore they were not protected under Article 3 of the Common Article 3 of the Geneva Conventions (T. 15 September 2022, public, p. 4795, lines 19-24).

<sup>1621</sup> T. 15 September 2022, public, p. 4796, line 6 to p. 4597, line 23.

<sup>1622</sup> T. 15 September 2022, public, p. 4797, line 25 to p. 4798, line 13.

<sup>1623</sup> See Article 38 of the Criminal Code of Kosovo, 14 January 2019, Code No. 06/L074 (KCC).

<sup>1624</sup> See para. 57. See also [Gucati and Haradinaj Trial Judgment](#), paras 577-578.

sentencing is the acknowledgment of the harm and suffering caused to them and to society.<sup>1625</sup>

775. Considering that the crimes in this case were directed exclusively against Kosovar Albanians, the Panel is also of the view that the establishment of the truth resulting from the judgment may further facilitate the reconciliation among affected communities in Kosovo, therefore contributing to the restoration and maintenance of peace.

776. In addition, the purpose of the sentence imposed by the Panel is to make it abundantly clear that the rules of international humanitarian law have to be obeyed under all circumstances and in all places.

777. Finally, the Panel considers that the implementation of the principle of equality before the law further constitutes a purpose of sentencing in the case at hand.<sup>1626</sup>

## 2. Sentencing Regime

778. When determining the sentence, by virtue of Article 3(2)(b)-(c) and (4) of the Law, the Panel shall apply the regime provided for under Articles 44(1), (2) and (5) of the Law and Rules 159(6) and 163(1), (3), (4) and (6) of the Rules.

779. Pursuant to Article 44(1) of the Law, the Panel may impose upon a convicted person a maximum sentence of life imprisonment.

780. The Panel interprets the wording “shall take into account” in Article 44(2) of the Law as requiring the Panel to take into consideration in determining the sentence, the punishments provided for crimes under the applicable law in Kosovo at the time of

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<sup>1625</sup> See Article 38(1)(1.3) of the KCC stating that one of the purposes of sentencing is “to provide compensation to victims or the community for losses or damages caused by the criminal conduct”.

<sup>1626</sup> Similarly, ICTY, [Stakić Trial Judgement](#), para. 901; *Prosecutor v. Nikolić*, IT-94-2-S, Trial Chamber II, [Sentencing Judgement](#), 18 December 2003, para. 124.

the commission of the crimes under consideration, and, in particular, any subsequent more lenient punishment.<sup>1627</sup> The Panel is however not bound by such considerations, contrary to what the Defence asserts.<sup>1628</sup>

781. In this regard, the Panel finds that the CCSFRY was the relevant applicable law in Kosovo at the time of the commission of crimes under consideration. It takes note that Article 142 of the CCSFRY entitled “War crime against the civilian population” provided for either “imprisonment for not less than five years or [...] the death penalty” and that Article 38 of the CCSFRY entitled “Imprisonment” provided that the “punishment of imprisonment may not be longer than 15 years” but that “a term of 20 years [may be imposed] for criminal acts eligible for the death penalty”.<sup>1629</sup> In the view of the Panel, the sentencing ranges applicable under the CCSFRY show that the most serious crimes, such as war crimes, attracted the most severe sentences.

### 3. Relevant Factors to Determine the Sentence

782. The Panel first identifies relevant factors pursuant to Article 44(5) of the Law and Rule 163(1) of the Rules and, second, weighs and balances all such factors, and determines the sentence.

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<sup>1627</sup> In contrast, Article 44(4) of the Law stipulates that punishments for “crimes under Article 15(2) *shall be in line with* the punishment for those crimes set out in the Criminal Code of Kosovo 2012, Law No. 04/L-082” (emphasis added), which denotes a mandatory requirement. *See also [Gucati and Haradinaj Trial Judgment](#)*, para. 941.

<sup>1628</sup> *See* paras 770-771.

<sup>1629</sup> The Panel notes that UNMIK Regulation 1999/24 of 12 December 1999 abolished the capital punishment. The Panel also notes that subsequent relevant laws or codes adopted in Kosovo provide equal or more severe sentencing ranges (*see* Article 118 of the Provisional Criminal Code of Kosovo, 6 July 2003, UNMIK Regulation No. 2003/26; Article 150 of the Criminal Code of Kosovo, 20 April 2012, Code No. 04/L082; and Articles 42, 144 and 145 of the KCC).

(a) Identifying relevant factors

783. The relevant factors in determining the sentence are the gravity of the crime and its consequences, the convicted person's personal contribution to the crime, the individual circumstances of the convicted person, and the mitigating and aggravating circumstances related to those factors.

(b) Balancing relevant factors

784. The Panel has discretion in weighing and balancing different factors to determine the sentence.<sup>1630</sup> These factors, which are further developed below, referred to in a non-exhaustive way in Article 44(5) of the Law and Rule 163(1) of the Rules, will be addressed hereunder in three categories: (i) the gravity of the crime(s) and its consequences; (ii) the convicted person's personal contribution to the crime(s); and (iii) the individual circumstances of the convicted person.

785. The Panel may consider aggravating and mitigating circumstances under any of the three categories. The Panel has a considerable degree of discretion, in the light of the circumstances of the case, in (i) determining what constitutes a mitigating or aggravating circumstance in addition to those explicitly set out in Rule 163(1) of the Rules, as well as in (ii) deciding how much weight, if any, to be accorded to them.

786. Furthermore, the Panel must explain the weight given to such circumstances and the specific evidence it relied upon.<sup>1631</sup> Likewise the convicted person must be

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<sup>1630</sup> See, *inter alia*, Article 44(5) of the Law and Rule 163(1)(a) and (b) and (3) of the Rules.

<sup>1631</sup> Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-3122, Appeals Chamber, [Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute"](#), 1 December 2014, public, para. 69; *Prosecutor v. Bemba et al.*, Trial Chamber VII, ICC-01/05-01/13-2123-Corr, [Decision on Sentence pursuant to Article 76 of the Statute](#) (*Bemba et al.* Sentencing), 22 March 2017, public, para. 26.

sufficiently put on notice of the facts that are taken into account to aggravate the sentence.<sup>1632</sup>

i. Gravity of the crime and its consequences

787. The Panel notes that the gravity of the crime and its consequences are key considerations in imposing the sentence. The Panel will examine the qualitative and quantitative dimensions of the gravity of the crime at stake. It will consider its nature, scope, and circumstances as well as its consequences.

788. Gravity is measured *in abstracto*, by analysing the nature of the crime in general terms and *in concreto*, by assessing the particular circumstances of the case. Not all crimes forming the grounds for conviction are necessarily of equivalent gravity and the Panel must weigh each of them.

789. Indicators of gravity include, *inter alia*, the scale of the crime, the number of victims, the vulnerability of the victims, the age of the victims, the extent of the victims' suffering and the impact on the victims' relatives. Any factors taken into consideration as aspects of the gravity of the crime cannot additionally be considered as separate aggravating circumstances, and *vice versa*.

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<sup>1632</sup> Similarly, ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-2276-Red, Appeals Chamber, [Public Redacted Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute"](#) (*Bemba et al.* Appeal Sentencing Judgment), 8 March 2018, public, para. 116. See also ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1819-Red, Trial Chamber IX, [Public Redacted Sentence](#) (*Ongwen* Sentencing), 6 May 2021, public, para. 58. For instance, proper notice may be provided in submissions on sentencing ([Bemba et al. Appeal Sentencing Judgment](#), para. 116).

ii. Personal contribution to the crime

790. With regard to the personal contribution to the crime, the Panel examines the convicted person's role and position, the means employed to execute the crime, and the degree of intent.<sup>1633</sup>

iii. Individual circumstances

791. With regard to the individual circumstances, the Panel examines the personal situation of the convicted person, such as his or her age, health, family situation, education, prior conviction<sup>1634</sup> or character.

iv. Mitigating and aggravating circumstances

792. Mitigating circumstances must relate directly to the convicted person; they need not however directly relate to the crime and are not limited to the scope of the charge.<sup>1635</sup> The Panel must be convinced of the existence of mitigating circumstances on a balance of probabilities.<sup>1636</sup> The existence of mitigating circumstances does not lessen the gravity of the crime, but becomes relevant for diminishing the sentence.<sup>1637</sup>

793. Aggravating circumstances must relate to the crime of which the person was convicted or the person him- or herself.<sup>1638</sup> The Panel must be convinced of the existence of aggravating circumstances beyond reasonable doubt.<sup>1639</sup> The absence of

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<sup>1633</sup> See [Gucati and Haradinaj Trial Judgment](#), para. 952. Similarly, ICC, [Ongwen Sentencing](#), para. 139; [Bemba et al. Sentencing](#), para. 74; *Prosecutor v. Al Mahdi*, ICC-01/12-01/15-171, Trial Chamber VIII, [Judgment and Sentence](#) (*Al Mahdi Sentencing*), 27 September 2016, paras 84-85.

<sup>1634</sup> Rule 163(3) of the Rules.

<sup>1635</sup> Similarly, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2442, Trial Chamber VI, [Sentencing judgment](#) (*Ntaganda Sentencing*), 7 November 2019, para. 24 with further references.

<sup>1636</sup> See [Gucati and Haradinaj Trial Judgment](#), para. 955 with further references.

<sup>1637</sup> Similarly, ICC, [Bemba et al. Sentencing](#), para. 24.

<sup>1638</sup> Similarly, ICC, [Bemba et al. Sentencing](#), para. 25 with further references.

<sup>1639</sup> See [Gucati and Haradinaj Trial Judgment](#), para. 955. Similarly, ICC, [Ongwen Sentencing](#), para. 53; [Bemba et al. Sentencing](#), para. 25; [Al Mahdi Sentencing](#), para. 73; ICTY, [Mucić et al. Appeal Judgement](#), para. 763; STL, *Prosecutor v. Ayyash*, STL-11-01/S/TC, Trial Chamber, [Sentencing Judgment](#) (*Ayyash Sentencing Judgment*), 11 December 2020, public, para. 181.

mitigating circumstances does not serve as an aggravating circumstance.<sup>1640</sup> Lastly, an element of the crime or mode of liability cannot at the same time be considered as an aggravating circumstance of the same crime.<sup>1641</sup>

#### 4. Determination of Sentence and Deduction of Time Detained

794. In determining an appropriate sentence, the Panel enjoys considerable discretion and may take into consideration sentencing practices of both national and international courts for similar crimes.

795. Pursuant to Rule 163(4) of the Rules, the Panel shall determine a sentence in respect of each charge in the Confirmed Indictment under which the person has been convicted and shall impose a single sentence reflecting the totality of the criminal conduct of the convicted person. The single sentence shall not be less than the highest individual sentence determined in respect of each charge. Finally, pursuant to Rule 163(6) of the Rules, when imposing a sentence of imprisonment, the Panel shall deduct the time, if any, during which the convicted person was detained prior to or during trial.

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<sup>1640</sup> Similarly, ICC, [Al Mahdi Sentencing](#), para. 73 with further references.

<sup>1641</sup> See [Gucati and Haradinaj Trial Judgment](#), para. 954. Similarly, ICTY, *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, Trial Chamber II, [Judgement](#), Vol. I (*Stanišić and Župljanin Trial Judgement*), 27 March 2013, para. 894; ICC, [Ntaganda Sentencing](#), para. 20; [Bemba et al. Sentencing](#), para. 25; [Al Mahdi Sentencing](#), para. 70; STL, [Ayyash Sentencing Judgment](#), public, para. 181.

## C. FINDINGS

### 1. Relevant Factors

#### (a) Gravity of the crimes and their consequences

##### i. Gravity of the crimes

796. The Panel notes that arbitrary detention is grave in nature because it exposes victims to other, additional human rights violations. In this case, at least six persons were deprived of their liberty by Mr Mustafa and his BIA subordinates between approximately 1 April 1999 and on or around 19 April 1999 at the ZDC. None of them was afforded any of the three basic guarantees which must be afforded to all persons deprived of their liberty in an armed conflict.<sup>1642</sup> As recalled hereunder, the detainees at the ZDC were further held in inhumane and degrading conditions of detention and were routinely psychologically and physically assaulted.

797. The right not to be subjected to torture is recognised as a norm of *jus cogens*.<sup>1643</sup> The crime of torture represents an assault on the human dignity, security, and mental and physical well-being. In this case, at least six individuals were held in inhumane and degrading conditions of detention by Mr Mustafa and his BIA subordinates between approximately 1 April 1999 and on or around 19 April 1999 at the ZDC: they were kept in barns only suitable for animals; they were not provided any beds and made to sleep in the animal trough or on the ground – in water puddles, with livestock excrements lying around; they were kept in darkness; they were not provided

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<sup>1642</sup> See paras 495-496, 652-659. Specifically, the detainees were not informed of the reasons for their deprivation of liberty; were not brought promptly before a judge or other competent authority; and were not provided with an opportunity to challenge the lawfulness of detention.

<sup>1643</sup> See similarly, ICTY, *Prosecutor v. Simić*, IT-95-9/2-S, Trial Chamber II, [Sentencing Judgement](#), 17 October 2002, para. 34; *Prosecutor v. Zelenović*, IT-96-23/2-S, Trial Chamber I, [Sentencing Judgement](#), 4 April 2007, para. 36.

adequate amounts of food and water; they were not permitted to wash themselves or change their clothes; they were only given limited access to a toilet, forcing them to relieve themselves inside the barn, in front of each other; they were denied medical care; and they were prevented from interacting and talking to each other, under threat of death.<sup>1644</sup> Moreover, the detainees were routinely psychologically assaulted by Mr Mustafa and his BIA subordinates at the ZDC: they lived in constant fear that they could be subjected to physical abuse at any time; they were forced to witness and listen to the physical abuse of their co-detainees; and they were not allowed to sleep.<sup>1645</sup> Likewise, they were routinely physically assaulted by Mr Mustafa and his BIA subordinates: beaten, stabbed, kicked, punched and slapped on a daily basis.<sup>1646</sup> Throughout their time in detention, the detainees were interrogated, accused of being spies, traitors, thieves, liars, or collaborating with Serbs. Moreover, they were intimidated and made to express support for the KLA.<sup>1647</sup> The inhumane and degrading conditions of detention and the physical and psychological assaults were inflicted on the detainees for the purpose of obtaining information or a confession from them, and/or to punish, intimidate, coerce and/or discriminate against them on political grounds.<sup>1648</sup>

798. Murder is inherently one of the most serious crimes:<sup>1649</sup> the value protected is human life. Moreover, relatives and dependants left behind are deprived of a family member, and thereby of love and care, of support, be it financial, physical, emotional, psychological, moral, or otherwise. In this case, the Murder Victim was killed between on or around 19 April 1999 and around the end of April 1999, as a result of the

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<sup>1644</sup> See paras 584, 676.

<sup>1645</sup> See paras 585, 675.

<sup>1646</sup> See paras 586, 674.

<sup>1647</sup> See paras 587, 679, 682, 683.

<sup>1648</sup> See paras 587, 684. See also 579, 583, 679.

<sup>1649</sup> Similarly, for example, ICC, [Ntaganda Sentencing](#), para. 44.

combination between: (i) the severe mistreatment inflicted by BIA members who detained him for almost three weeks, causing serious bodily harm; (ii) the denial of medical aid by BIA members; and (iii) gunshot wounds caused by bullets, in respect of which the Panel has established that there exists a reasonable doubt as to their attribution to the BIA members or to the Serbian forces.<sup>1650</sup>

799. The Panel considers the number of the victims as part of the gravity of the crimes, and will thus not consider it as an aggravating factor.<sup>1651</sup>

800. The Panel concludes that the above considerations are relevant in the assessment of the gravity of the offences.

ii. Consequences of the crimes

801. The Panel observes that, as a result of the arbitrary detention and torture, the victims suffered long-lasting injuries, both physical and mental, including: head injuries, burn injuries, broken arms, fingers and/or teeth; persistent and severe pain throughout their bodies; severely reduced eyesight; feelings of shame; and symptoms of post-traumatic stress disorder (nightmares, flashbacks and intrusive memories).<sup>1652</sup> They also experienced disruption in their personal relationships and family lives.<sup>1653</sup> Some further struggle(d) to make a living.<sup>1654</sup>

802. In addition, the Panel observes that the Murder Victim's torture and subsequent murder irreversibly impacted not only the direct victim and those who witnessed his

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<sup>1650</sup> See paras 639, 689-695. In this respect, the Panel does not take into consideration this last cause of death when determining the appropriate sentence.

<sup>1651</sup> See SPO Pre-Trial Brief, para. 376.

<sup>1652</sup> [REDACTED].

<sup>1653</sup> [REDACTED].

<sup>1654</sup> See para. 550.

mistreatment, [REDACTED].<sup>1655</sup> [REDACTED],<sup>1656</sup> [REDACTED],<sup>1657</sup> [REDACTED],<sup>1658</sup>  
[REDACTED].<sup>1659</sup>

803. The Panel lastly notes that [REDACTED].<sup>1660</sup>

804. For these reasons, the Panel finds that the crimes under consideration caused significant and long-lasting consequences, both physical and psychological, to the detained victims, and, psychological, to [REDACTED].

iii. Aggravating factor: Commission of torture with particular cruelty<sup>1661</sup>

805. The Panel recalls that the beatings were in some instances administered in group<sup>1662</sup> and/or lasted for hours<sup>1663</sup> and were so brutal that some detainees lost consciousness<sup>1664</sup> or were subsequently unable to walk or stand.<sup>1665</sup>

806. The Panel recalls in particular that: almost daily throughout his time in detention, W01679 was hit with iron batons and handles of hatchets, burnt with hot candle wax and a hot iron, and electrocuted;<sup>1666</sup> Mr Mustafa subjected W03593 to a mock execution with a firearm, and, during a beating, he was hit with a baseball bat which resulted [REDACTED],<sup>1667</sup> in that moment, he wished he had been killed;<sup>1668</sup> on a second occasion, while interrogating him about his knowledge of identities of

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<sup>1655</sup> [REDACTED].

<sup>1656</sup> [REDACTED].

<sup>1657</sup> [REDACTED].

<sup>1658</sup> [REDACTED].

<sup>1659</sup> [REDACTED].

<sup>1660</sup> [REDACTED].

<sup>1661</sup> Rule 163(1)(b)(iv) of the Rules. *See* Submission made by the SPO in its Final Trial Brief, paras 376-377.

<sup>1662</sup> *See* paras 534, 546, 570, 675.

<sup>1663</sup> *See* paras 546, 675.

<sup>1664</sup> *See* paras 531, 535, 546, 578, 586, 679, 680.

<sup>1665</sup> *See* paras 570-571, 680.

<sup>1666</sup> *See* paras 535, 539, 545.

<sup>1667</sup> *See* paras 546 675.

<sup>1668</sup> *See* para. 546.

thieves, Mr Mustafa beat W03593 and threatened to kill him,<sup>1669</sup> during an interrogation, W04669 was instructed by two BIA members to undress the upper part of his body and to bend down, and was hit on his back 10 to 12 times with a rubber baton, leaving him bruised all over his back.<sup>1670</sup>

807. The Panel also considers the telling account of W01679 who was subjected to humiliation when urinated upon in the presence of all the other detainees, and this, on two occasions: W01679 testified that when he asked for water, two soldiers urinated upon him, beat him and said, “[h]ere’s water for you”.<sup>1671</sup>

808. The Panel further recalls the torturous acts to which the Murder Victim was subjected,<sup>1672</sup> involving protracted pain and unthinkable agony, which can only be characterised as vicious and brutal. The Murder Victim – [REDACTED] – were the most severely mistreated detainees.<sup>1673</sup> The Murder Victim was the only detainee who had his hands tied.<sup>1674</sup> He was beaten until he could no longer stand, burnt with an iron and stabbed with a knife.<sup>1675</sup> On one occasion, the Murder Victim was beaten by five or six BIA soldiers.<sup>1676</sup> As a result of the severe mistreatment inflicted by BIA members, his entire body was black from the bruises and his face swollen to the point that he could only slightly open his eyes.<sup>1677</sup> The Murder Victim was last seen at the time of the release of other detainees in a near-to-death state, unable to walk and

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<sup>1669</sup> See para. 547.

<sup>1670</sup> See para. 567.

<sup>1671</sup> See paras 511, 584.

<sup>1672</sup> See paras 569-576.

<sup>1673</sup> See para. 569.

<sup>1674</sup> See para. 569.

<sup>1675</sup> See para. 570.

<sup>1676</sup> See para. 570.

<sup>1677</sup> See para. 570.

stand.<sup>1678</sup> W01679 testified that the Murder Victim was in a state difficult to describe in words: “[h]is body, his injuries. The smell, the smell of flesh that we could sense”.<sup>1679</sup>

809. For these reasons, the Panel finds that the aggravating circumstance under Rule 163(1)(b)(iv) of the Rules is established.

iv. Aggravating factor: Particularly vulnerable or defenceless victims<sup>1680</sup>

810. The Panel recalls that the detainees were abruptly apprehended, taken to and held in an isolated location; they did not know for how long that detention would last; and were unable to contact or communicate with the outside world, including with their family.<sup>1681</sup> The Panel also notes that some of the detainees were relatively young at the time of the crimes.<sup>1682</sup>

811. For these reasons, the Panel finds, as an aggravating circumstance under Rule 163(1)(b)(iii) of the Rules, that the victims in this case were particularly vulnerable and defenceless, given their status, isolation, and, in some instances, their young age.

v. Conclusion

812. Considering the nature and circumstances of the crimes, the extent of the victims’ suffering, as well as the two above-mentioned aggravating circumstances, the Panel assesses the gravity of the crimes under consideration as high.

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<sup>1678</sup> See para. 571.

<sup>1679</sup> See para. 571.

<sup>1680</sup> See Rule 163(1)(b)(iv) of the Rules. Both the SPO and Victims’ Counsel plead for the Panel to consider this factor as aggravating (SPO Final Trial Brief, paras 374-375; Victims’ Counsel Statement on Impact of the Crimes, para. 72).

<sup>1681</sup> See paras 428, 457.

<sup>1682</sup> [REDACTED].

(b) Personal contribution to the crimes

813. The Panel recalls that Mr Mustafa, directly committed the crime of torture and committed the crime of arbitrary detention, torture, and murder as part of a joint criminal enterprise with other BIA members.<sup>1683</sup>

814. At the outset, the Panel considers the superior position and central role of the Accused in a system of illegal detentions and tortures at the ZDC, together with his continued approval and endorsement of the same acts in the period between on or around 1 April 1999 and on and around 19 April 1999.

815. First, Mr Mustafa saw and knew that detainees were held at the ZDC between approximately 1 April 1999 and on or around 19 April 1999, and intentionally deprived them of their liberty during this time.<sup>1684</sup>

816. Second, Mr Mustafa, in his capacity as overall and only BIA commander, with full control over the ZDC: (i) ordered his BIA subordinates to torture the detainees, such as beating W01679 until he lost consciousness, and to detain them in the course of April 1999; (ii) did not provide the detainees with basic guarantees; (iii) denied medical care to the detainees despite their mistreatment and injuries; (iv) did not release the detainees, thus allowing his BIA subordinates to mistreat them, until an exceptional change of circumstances occurred, the Serbian offensive; and (iv) never released nor evacuated the Murder Victim [REDACTED], who remained in detention while Mr Mustafa and his BIA subordinates left the ZDC in light of the impending Serbian offensive.<sup>1685</sup>

817. Third, Mr Mustafa: (i) personally and intentionally slapped W01679, accusing him of being a spy, a liar and a thief; (ii) personally and intentionally subjected W03593 to a mock execution, while he was being interrogated and beaten by several

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<sup>1683</sup> See paras 758-760.

<sup>1684</sup> See paras 652-659.

<sup>1685</sup> See paras 750, 753.

BIA members under the accusation of collaborating with Serbs; and (iii) personally and intentionally beat W03593 with a baseball bat all over his body and threatened to kill him, while interrogating him about his knowledge of thieves.<sup>1686</sup> By doing so, Mr Mustafa provided a model or incentive for his BIA subordinates to perform similar actions against the detainees at the ZDC.<sup>1687</sup> He further witnessed the mistreatment of these detainees and gave orders to his BIA subordinates to mistreat them or to bring them back to the detention barn.<sup>1688</sup>

818. Fourth, in respect of the Murder Victim, Mr Mustafa was present on or around [REDACTED] April 1999, when the Murder Victim was handed over [REDACTED] to a BIA member at the ZDC. Mr Mustafa intended the lethal treatment inflicted upon the Murder Victim, and for such torture to carry on for around [REDACTED] days while denying him medical care, basic guarantees or releasing him, which he had the power to do as BIA commander. Eventually, Mr Mustafa, in his capacity as BIA commander, decided not to release the Murder Victim – which effectively equalled a decision to kill him.<sup>1689</sup>

819. In light of the above, the Panel assesses the degree of Mr Mustafa's personal participation in the crimes under consideration and intent as very high.

(c) Individual circumstances

820. At the outset, the Panel notes that the Defence has not expressly put forward any submissions with a view to mitigating Mr Mustafa's eventual sentence.<sup>1690</sup> Whilst the Panel is of the opinion that it is not under the obligation to search for information in

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<sup>1686</sup> See paras 679, 729-733.

<sup>1687</sup> See para. 750.

<sup>1688</sup> See paras 654, 750, 753.

<sup>1689</sup> See para. 754.

<sup>1690</sup> The Panel recalls that the Defence was expressly given the opportunity to make submissions on sentencing (See [Decision Closing the Evidentiary Proceedings](#), paras 22, 25; [Decision Setting Agenda for Closing Statements](#), paras 7-20).

the case record that the Defence does not see fit to put before it, it has nevertheless considered the circumstances and factors set forth below.

821. The Panel notes that Mr Mustafa is 50 years old,<sup>1691</sup> [REDACTED]<sup>1692</sup> [REDACTED].<sup>1693</sup> The Panel further notes that, to the best of its knowledge, Mr Mustafa has no relevant prior convictions.<sup>1694</sup>

822. In addition, the Panel observes that, during the closing statements, the Defence affirmed that Mr Mustafa:

has, during that detention, never violated any of the orders that were set by the Panel. The contact with his family has been extremely difficult, but he patiently endured the measures that were put in place. And they have been in place for a very long time, and continue to this day. However, he has never violated any order that was set out.<sup>1695</sup>

823. The Panel also notes that Mr Mustafa cooperated with the SPO to the extent that he came voluntarily to The Netherlands to be interviewed by the SPO.<sup>1696</sup>

824. In the view of the Panel, compliance with the law or court-imposed orders are expected of any person, and therefore does not, on its own, constitute a mitigating circumstance, unless exceptional.<sup>1697</sup> That being said, the Panel is not persuaded that

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<sup>1691</sup> **Mr Mustafa**: 069404-TR-ET Part 1, 19 November 2019, p. 5, line 2.

<sup>1692</sup> **Mr Mustafa**: 069404-TR-ET Part 1, 19 November 2019, p. 5, line 18; T. 14 September 2022, public, p. 4799, lines 14-15.

<sup>1693</sup> **Mr Mustafa**: 069404-TR-ET Part 1, 19 November 2019, p. 5, lines 18-19. KSC-BC-2020-05, F00172, Trial Panel I, *Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa*, 27 August 2021, confidential, paras 4, 13.

<sup>1694</sup> See KSC-BC-2020-05, F00050, Specialist Counsel, [Defence submission for the review on the detention of the Accused](#) (Defence 20 November 2020 Detention Review Submissions), 20 November 2020, public, para. 51; F00197, Specialist Counsel, [Defence submission for the review on the detention of the Accused](#), 12 September 2021, public, paras 27-33.

<sup>1695</sup> T. 15 September 2022, public, p. 4798, line 24 to p. 4799, line 4.

<sup>1696</sup> [Defence 20 November 2020 Detention Review Submissions](#), para. 21.

<sup>1697</sup> Similarly, ICC, [Bemba et al. Sentencing](#), para. 186; *Prosecutor v. Bemba*, ICC-01/05-01/08-3399, Trial Chamber III, [Decision on Sentence pursuant to Article 76 of the Statute](#), 21 June 2016, para. 81 referring to *Prosecutor v. Katanga*, ICC-01/04-01/07-3484-tENG-Corr, Trial Chamber II, [Decision on Sentence pursuant to article 76 of the Statute](#), (Katanga Sentencing), 23 May 2014, paras 127 to 128; ICTY, [Naletilić and Martinović Appeal Judgement](#), para. 630.

Mr Mustafa's behaviour in detention and cooperation have been exceptional. Therefore, the Panel does not accord any mitigation value to this circumstance.

825. Furthermore, the Panel observes that, during the closing statements, the Defence indicated for the first time that "Mr. Mustafa feels sorry for the victims, but he is not responsible for their pain or suffering".<sup>1698</sup> Whilst this could be considered as a mitigating circumstance pursuant to Rule 163(1)(a)(ii) of the Rules,<sup>1699</sup> the Panel notes that, throughout the proceedings, Mr Mustafa never expressed or displayed any sympathy for the victims. He declined to be present in the courtroom during the opening statements of Victims' Counsel.<sup>1700</sup> The Panel also recalls its findings as to Mr Mustafa's attempts to prevent any investigation and case regarding the death of the Murder Victim.<sup>1701</sup> Therefore, the Panel will not count this circumstance towards mitigating the sentence.

826. In light of the foregoing, the Panel is of the view that, Mr Mustafa's individual circumstances cannot be given any significant weight considering the nature and gravity of the proven crimes and his contribution to them.

## **2. Determination of an Individual Sentence for each Crime and of the Single Sentence**

827. Given that Mr Mustafa has been convicted of more than one crime, the Panel will proceed first with the determination of an individual sentence for each crime for which a conviction has been entered and second, with the determination of a single sentence for the totality of the criminal conduct of Mr Mustafa.

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<sup>1698</sup> T. 15 September 2022, public, p. 4799, lines 5-6.

<sup>1699</sup> See also ICTY, *Stanišić and Župljanin Trial Judgement*, para. 897 and references therein.

<sup>1700</sup> T. 15 September 2021, public, p. 305, line 155 to p. 344 line 15, in particular p. 335, line 25 to p. 336, line 1 ("Indeed, it is what the [A]ccused clarified to me, that he does not want to continue for this session, to attend this session further").

<sup>1701</sup> See paras 755-756.

828. Having weighed and balanced all factors set out above, including the gravity of the crimes and its consequences, Mr Mustafa's personal contribution to the crimes, and the individual circumstances of Mr Mustafa, including any mitigating and aggravating circumstances; and considered the aforementioned purposes of sentencing, the Panel is of the view that the punishment of imprisonment of a considerable duration is a justified reaction and therefore sentences Mr Mustafa:

- (i) to a term of 10 (ten) years of imprisonment for the war crime of arbitrary detention (Count 1);
- (ii) to a term of 22 (twenty-two) years of imprisonment for the war crime of torture (Count 3); and
- (iii) to a term of 25 (twenty-five) years of imprisonment for the war crime of murder (Count 4).

829. Having determined these sentences, the Panel imposes a single sentence of 26 (twenty-six) years for the war crimes of arbitrary detention (Count 1), torture (Count 3) and murder (Count 4) reflecting the totality of the criminal conduct of and the multiple crimes committed by Mr Mustafa.

### **3. Remaining Time of Imprisonment**

830. As regards credit for the time served, the Panel notes that Mr Mustafa was arrested on 24 September 2020 and has been detained at the detention facilities of the Specialist Chambers since then. The Panel accordingly deducts from the imposed sentence the time spent in detention since 24 September 2020.

## VIII. VERDICT

831. For the foregoing reasons, on the basis of the evidence available, considered holistically, as well as the submissions made before the Panel at trial, pursuant to Article 43 of the Law and Rule 158 of the Rules, the Panel finds:

**Mr SALIH MUSTAFA**

Under **Count 1** of the Confirmed Indictment, **GUILTY** of the war crime of **arbitrary detention**, pursuant to Articles 14(1)(c) and 16(1)(a) of the Law, committed against at least six persons between approximately 1 April 1999 and on or around 19 April 1999 at the Zllash/Zlaš Detention Compound;

Under **Count 3** of the Confirmed Indictment, **GUILTY** of the war crime of **torture**, pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law, committed against at least six persons between approximately 1 April 1999 and on or around 19 April 1999 at the Zllash/Zlaš Detention Compound; and

Under **Count 4** of the Confirmed Indictment, **GUILTY** of the war crime of **murder**, pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law, committed against one person between on or around 19 April 1999 and around the end of April 1999 at the Zllash/Zlaš Detention Compound.

The Panel finds Mr Mustafa **NOT GUILTY** of the war crime of **cruel treatment** under **Count 2** of the Confirmed Indictment.

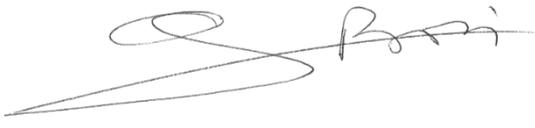
Mr Mustafa is sentenced to a single sentence of **twenty-six (26) years** of imprisonment, with credit for the time served.

The Panel **orders** the Registrar to assign exhibit numbers to all items of evidence previously marked for identification, for the purpose of maintaining an accurate record of the proceedings pursuant to Article 40(5) of the Law and Rule 24(1) of the Rules.

The Panel further **decides** to retain jurisdiction in this case for the purposes of issuing in due course a Reparation Order specifying appropriate reparation to, or in respect of, victims, in accordance with Articles 22(8) and 44(6) of the Law.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Friday, 16 December 2022

At The Hague, the Netherlands.

### Explanatory Note

The wording “[REDACTED]” with corresponding footnote has been added in paragraphs 459 and 605 as it had been inadvertently deleted when preparing the public redacted version.