



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**

The Specialist Prosecutor v. Pjetër Shala

Before: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 15 September 2023

Language: English

Classification: **Public**

Public redacted version of

**Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the
Indictment**

Acting Deputy Specialist Prosecutor

Ward Ferdinandusse

Counsel for the Accused

Jean-Louis Gilissen

Victims' Counsel

Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment.

I. PROCEDURAL BACKGROUND

1. On 12 June 2020, the Pre-Trial Judge confirmed the indictment against Pjetër Shala (Pjetër Shala or Accused)¹ and on 19 June 2020, the Specialist Prosecutor's Office (SPO) submitted the confirmed indictment.²

2. On 1 November 2021, the SPO submitted a corrected confirmed indictment (Corrected Indictment),³ following the Pre-Trial Judge's "Decision on Motion Challenging the Form of the Indictment".⁴ According to the Corrected Indictment, the Accused is charged with the war crimes of arbitrary detention (Count 1), cruel treatment (Count 2), torture (Count 3) and murder (Count 4),⁵ allegedly committed at a former metal works factory in Kukës, Albania (Kukës Metal Factory), between approximately 17 May 1999 and 5 June 1999 (in the case of arbitrary detention, cruel treatment and torture), and on or about 5 June 1999 (in the case of murder). The Accused is charged with having committed the crimes through his participation in a joint criminal enterprise and/or aiding and abetting the commission of the crimes.

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

² KSC-BC-2020-04, F00010/A01, Specialist Prosecutor, *Annex I to Submission of Confirmed Indictment*, 19 June 2020, strictly confidential and *ex parte*. Confidential redacted versions were filed on 31 March and 25 May 2021, F00016/A01 and F00038/A01, respectively, and a public redacted version was filed on 31 March 2021, [F00016/A02](#).

³ KSC-BC-2020-04, F00098/A01, Specialist Prosecutor, *Annex 1 to Submission of corrected indictment*, 1 November 2021, confidential. A public redacted version was filed on 16 November 2021, [F00107/A01](#).

⁴ KSC-BC-2020-04, F00089, Pre-Trial Judge, *Decision on Motion Challenging the Form of the Indictment*, 18 October 2021, confidential. A public redacted version was filed on the same day, [F00089/RED](#).

⁵ Article 14(1)(c) and 14(1)(c)(i) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law).

He is also charged with having physically committed certain of the acts underlying the crimes of arbitrary detention, cruel treatment and torture.⁶

3. On 27 March 2023, the Panel heard the testimony of the first witness called by the SPO.⁷ The SPO closed its case on 6 July 2023.⁸

4. On 24 August 2023, following an extension of time and word limit,⁹ the Defence for Pjetër Shala (Defence) filed a motion under Rule 130 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules), requesting the Panel to dismiss the charge of murder in the Corrected Indictment (Count 4) (Defence Rule 130 Motion).¹⁰

5. On 29 August 2023, following a shortening of the time limit by the Panel,¹¹ the SPO and Victims' Counsel requested, *via* e-mail, an extension of the time limit for their responses. On the same day, the Panel directed the SPO and Victims' Counsel, also *via* e-mail, to file their responses by 6 September 2023 and to include the request for an extension of the time limit in their responses.¹²

6. On 6 September 2023, the SPO and Victims' Counsel responded to the Defence Rule 130 Motion.¹³

⁶ Article 16(1)(a) of the Law.

⁷ KSC-BC-2020-04, Transcript of Hearing, 27 March 2023, public.

⁸ KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

⁹ KSC-BC-2020-04, F00580, Trial Panel I, *Decision on the Defence request for an extension of time and word limit for its motion under Rule 130 of the Rules*, 11 July 2023, public; Transcript of Hearing, 24 August 2023, public, p. 2365, line 16 to p. 2368, line 21.

¹⁰ KSC-BC-2020-04, F00623, Defence, *Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment*, 24 August 2023, confidential. A public redacted version was filed on 28 August 2023, F00623/RED.

¹¹ KSC-BC-2020-04, F00580, Trial Panel I, *Decision on the Defence request for an extension of time and word limit for its motion under Rule 130 of the Rules*, 11 July 2023, public, para. 12(c).

¹² KSC-BC-2020-04, CRSPD104, confidential.

¹³ KSC-BC-2020-04, F00641, Specialist Prosecutor, *Prosecution response to Defence Rule 130 motion (SPO Response)*, 6 September 2023, confidential. A public redacted version was filed on 12 September

II. SUBMISSIONS

A. DEFENCE

7. The Defence submits that the Panel should dismiss the charge of murder in the Corrected Indictment (Count 4), as the evidence presented by the SPO is manifestly unreliable.¹⁴ The Defence advances that only one SPO witness – TW4-01 – testified that the Accused was present during the shooting and participated in the beatings, before and after the shooting, that allegedly led to the death of [REDACTED], the alleged murder victim.¹⁵ His evidence is manifestly unreliable, according to the Defence, for the following reasons: (i) TW4-01 was prosecuted for [REDACTED];¹⁶ (ii) there is ample bad character evidence which shows that TW4-01 has a long criminal record, he has shown disregard for the administration of justice, he repeatedly lied during his testimony before the Panel and [REDACTED];¹⁷ and (iii) his testimony before the Panel is contradictory and inconsistent, both with his prior statements and with the testimonies of other witnesses.¹⁸ The Defence concludes that the evidence presented by the SPO is clearly insufficient to sustain the charge of murder, even when taken at its highest credence, under any of the modes of liability that the Accused is charged with.¹⁹

2023, F00641/RED; F00640, Victims' Counsel, *Victims' Counsel's Response to the Defence's Rule 130 Motion to Dismiss the Charge of Murder in the Indictment* (Victims' Counsel Response), 6 September 2023, confidential.

¹⁴ Defence Rule 130 Motion, paras 1-2, 37, 70, 72.

¹⁵ Defence Rule 130 Motion, paras 37, 57-63.

¹⁶ Defence Rule 130 Motion, paras 37-42, 65.

¹⁷ Defence Rule 130 Motion, paras 37, 43-50, 65.

¹⁸ Defence Rule 130 Motion, paras 37, 51-63, 65.

¹⁹ Defence Rule 130 Motion, paras 66-68.

B. SPO

8. The SPO submits that the Defence Rule 130 Motion should be denied,²⁰ as: (i) the evidence adduced during its case is capable of supporting the conviction of the Accused for murder;²¹ (ii) in arguing that the evidence of TW4-01 is manifestly unreliable the Defence is embarking on a credibility analysis which does not belong to the assessment required under Rule 130 of the Rules;²² and (iii) the credibility analysis offered by the Defence is marred by a selective and piecemeal approach, which falls short of demonstrating that TW4-01's evidence is manifestly unreliable.²³

9. The SPO further requests an extension of the time limit for its response, as envisaged above (SPO Request for Extension of Time).²⁴

C. VICTIMS' COUNSEL

10. Similarly, Victims' Counsel submits that the Defence Rule 130 Motion should be dismissed as:²⁵ (i) inconsistencies and contradictions in TW4-01's testimony are to be determined at the end of the case – considering all the evidence in the case – not at this stage;²⁶ (ii) accepting the Defence's arguments that TW4-01's evidence is manifestly unreliable because he [REDACTED] has a "bad character" would create a category of victims who, because of their past behaviours, could never ask for justice and against whom crimes could be committed with impunity;²⁷ and (iii) the Defence's submissions – which present a selective picture of the evidence and, at times, misstate the evidence

²⁰ SPO Response, paras 1, 77-78, 81.

²¹ SPO Response, paras 2, 5-55.

²² SPO Response, paras 57, 60-62.

²³ SPO Response, paras 63-73.

²⁴ See para. 5 above; SPO Response, para. 79.

²⁵ Victims' Counsel Response, para. 65.

²⁶ Victims' Counsel Response, paras 2, 13-17, 21.

²⁷ Victims' Counsel Response, para. 20.

– do not come close to establishing that the SPO’s evidence is unreliable, still less that it is manifestly unreliable.²⁸

11. Lastly, Victims’ Counsel requests an extension of the time limit for his response, as envisaged above (Victims’ Counsel Request for Extension of Time).²⁹

III. APPLICABLE LAW

12. The Panel notes Article 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (Law) and Rules 9(5), 76 and 130 of the Rules.

IV. LEGAL STANDARD

13. Pursuant to Rule 130 of the Rules, after the closing of the SPO case, having heard the Parties and, where applicable, Victims’ Counsel, the Panel may dismiss some or all charges in the Indictment “if there is no evidence capable of supporting a conviction beyond reasonable doubt on the particular charge in question”. The possibility to submit motions to dismiss charges, in whole or in part, at the end of the prosecution case, is therefore available under the legal framework of the Specialist Chambers. Paying heed to subsidiary sources,³⁰ such motions are subject to a consistent legal standard applied across a number of international criminal tribunals, a standard that the Panel has also endorsed in its own jurisprudence.³¹ The Panel does

²⁸ Victims’ Counsel Response, paras 2, 23-62.

²⁹ See para. 5 above; Victims’ Counsel Response, para. 9.

³⁰ See Article 3(3) of the Law.

³¹ KSC-BC-2020-05, F00326/RED, Trial Panel I, [Public redacted version of Decision on the Defence Rule 130\(1\) motion to dismiss any or all charges of the Indictment](#) (Mustafa Rule 130 Decision), 23 February 2022, public, paras 9-16 and references therein; KSC-BC-2020-07, F00450, Trial Panel II, [Decision on the Defence Motions to Dismiss Charges](#) (Gucati and Haradinaj Rule 130 Decision), 26 November 2021, public, paras 18-24, and references therein. Motions for dismissal of charges at the end of the prosecution case

not see any reason to depart from such established legal standard, which is summarised below.

14. The Panel recalls that a decision on a motion to dismiss charges does not involve an evaluation of the guilt or innocence of the accused in light of all the evidence adduced by the end of the SPO case.³² Therefore, the Panel should not be drawn into evaluations of the credibility of witnesses, the quality and reliability of the evidence and/or the strengths and weaknesses of contradictory or different evidence.³³ These matters shall only be assessed when deliberating in order to pronounce a judgment pursuant to Rules 139 and 158 of the Rules. The function of Rule 130 of the Rules is not to terminate prematurely cases where the evidence appears to be weak.³⁴ Instead, the Panel shall merely assess the *capability* of the evidence to support a conviction; accordingly, if one possible view of the facts could support a conviction, then the Panel cannot dismiss the charge(s) at stake.³⁵ Thus, the test is not whether the Panel *would* in

are foreseen in the rules of procedure and evidence of the ICTY (Rule 98 bis), ICTR (Rule 98 bis), STL (Rule 167), SCSL (Rule 98), and IRMCT (Rule 121).

³² [Mustafa Rule 130 Decision](#), para. 10; [Gucati and Haradinaj Rule 130 Decision](#), para. 18. Similarly, ICTY, *Prosecutor v. Strugar*, IT-01-42-T, Trial Chamber, [Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98bis](#) (*Strugar 98bis Decision*), 21 June 2004, para. 10.

³³ [Mustafa Rule 130 Decision](#), para. 10; [Gucati and Haradinaj Rule 130 Decision](#), para. 18. Similarly, SCSL, *Prosecutor v. Norman et al.*, SCSL-04-14-T, Trial Chamber, [Decision on Motions for Judgement of Acquittal Pursuant to Rule 98](#), 21 October 2005, para. 38; *Prosecutor v. Brima et al.*, SCSL-04-16-T, Trial Chamber, [Decision on the Defence Motions for Judgment of Acquittal Pursuant to Rule 98](#) (*Brima et al. 98bis Decision*), 31 March 2006, para. 8; ICTY, *Prosecutor v. D. Milošević*, IT-98-29/1, Trial Chamber, [Oral Decision on Rule 98bis Motions](#), 3 May 2007, [Transcript](#), p. 5640; *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber, [Oral Decision on Rule 98bis Motions](#) (*Popović et al. 98bis Oral Decision*), 3 March 2008, [Transcript](#), p. 21461.

³⁴ [Mustafa Rule 130 Decision](#), para. 10; [Gucati and Haradinaj Rule 130 Decision](#), para. 18. Similarly, ICTY, [Strugar 98bis Decision](#), para. 20; *Prosecutor v. Hadzihasanović and Kubura*, IT-01-47-T, Trial Chamber, [Decision on Motions for Acquittal Pursuant to Rule 98bis of the Rules of Procedure and Evidence](#), 27 September 2004, para. 20.

³⁵ [Mustafa Rule 130 Decision](#), para. 10; [Gucati and Haradinaj Rule 130 Decision](#), para. 18. Similarly, SCSL, [Brima et al. 98bis Decision](#), para. 8.

fact arrive at a conviction beyond reasonable doubt on the SPO evidence, if accepted, but whether it *could*.³⁶

15. As a consequence, denying a motion to dismiss a particular charge at the close of the SPO case is not incompatible with an acquittal of the accused on that same count at the end of the trial.³⁷ At the close of the SPO case, the Panel may find that the SPO evidence is *sufficient* to sustain a conviction beyond reasonable doubt and yet, proceed to acquit at the end of the trial if, in the Panel's own view of the evidence, the SPO has not in fact *proved* the guilt of the accused beyond reasonable doubt.³⁸

16. When determining a motion to dismiss charges, the Panel must assume that the evidence adduced during the prosecution case is entitled to credence unless incapable of belief and must take such evidence at its highest, rather than pick and choose among parts of that evidence.³⁹ Where there is no evidence to sustain a charge or where the only relevant evidence is so incapable of belief that it could not properly sustain a conviction, even when the evidence is taken at its highest credence, the particular

³⁶ [Mustafa Rule 130 Decision](#), para. 10; [Gucati and Haradinaj Rule 130 Decision](#), para. 18. Similarly, ICTY, *Prosecutor v. Jelisić*, IT-95-10-A, Appeals Chamber, [Judgement](#) (Jelisić Appeal Judgment), 5 July 2001, para. 37; *Prosecutor v. Milošević*, IT-02-54-T, Trial Chamber, [Decision on Motion for Judgement of Acquittal](#) (Milošević 98bis Decision), 16 June 2004, para. 13(6); STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Trial Chamber, [Oral Decision on the Oneissi Defence Application for a Judgment of Acquittal Under Rule 167\(A\)](#) (Ayyash et al. 167(A) Oral Decision), 7 March 2018, Transcript, p. 3.

³⁷ [Mustafa Rule 130 Decision](#), para. 11; [Gucati and Haradinaj Rule 130 Decision](#), para. 19. Similarly, MICT, *Prosecutor v. Ngirabatware*, MICT-12-29-A, Appeals Chamber, [Judgement](#), 18 December 2014, para. 20.

³⁸ [Mustafa Rule 130 Decision](#), para. 11; [Gucati and Haradinaj Rule 130 Decision](#), para. 19. Similarly, ICTY, [Jelisić Appeal Judgment](#), para. 37; [Milošević 98bis Decision](#), para. 13(6).

³⁹ [Mustafa Rule 130 Decision](#), para. 12; [Gucati and Haradinaj Rule 130 Decision](#), para. 22. Similarly, SCSL, [Brima et al. 98bis Decision](#), para. 11; ICTY, *Prosecutor v. Karadžić*, IT-95-5-18-AR98bis.1, Appeals Chamber, [Judgement](#), 11 July 2013, para. 37; STL, [Ayyash et al. 167\(A\) Oral Decision](#), p. 3.

charge must be dismissed.⁴⁰ To be incapable of belief, the evidence must be manifestly unreliable.⁴¹

17. The evidence to be considered for the purpose of the Panel's determination under Rule 130(3) of the Rules encompasses both oral evidence received through witnesses testifying live or *via* video-link at trial, as well as all non-oral material admitted, as per Article 37 of the Law and Rules 149 and 153-155 of the Rules, or considered as part of the evidentiary record available for consideration by the Panel in the judgment.⁴²

18. Furthermore, the evidence should be examined in relation to each count, as opposed to each paragraph of the Indictment, as clarified by the reference to the word "charge" in Rule 130(1) and (3) of the Rules.⁴³

19. The determination whether there is evidence on the basis of which the Panel could convict under a specific count should be made on the basis of the evidence taken as a whole,⁴⁴ including Defence evidence adduced during the prosecution case.⁴⁵ Where the accused is charged under multiple modes of liability, it is sufficient if there

⁴⁰ [Mustafa Rule 130 Decision](#), para. 12; [Gucati and Haradinaj Rule 130 Decision](#), para. 22. Similarly, SCSL, [Brima et al. 98bis Decision](#), para. 11; ICTY, [Popović et al. 98bis Oral Decision](#), p. 21461.

⁴¹ [Mustafa Rule 130 Decision](#), para. 12; [Gucati and Haradinaj Rule 130 Decision](#), para. 22. Similarly, SCSL, [Brima et al. 98bis Decision](#), para. 11.

⁴² KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#), 17 March 2023, public, paras 9-36; [Mustafa Rule 130 Decision](#), para. 13.

⁴³ [Mustafa Rule 130 Decision](#), para. 14; [Gucati and Haradinaj Rule 130 Decision](#), para. 23. Similarly, SCSL, [Brima et al. 98bis Decision](#), para. 12.

⁴⁴ [Mustafa Rule 130 Decision](#), para. 15; [Gucati and Haradinaj Rule 130 Decision](#), para. 23. Similarly, ICTY, [Milošević 98bis Decision](#), para. 13(4).

⁴⁵ [Mustafa Rule 130 Decision](#), para. 15; [Gucati and Haradinaj Rule 130 Decision](#), para. 23. Similarly, ICTY, *Prosecutor v. Hadzihasanović and Kubura*, IT-01-47-A, Appeals Chamber, [Judgement](#), 22 April 2008, para. 55; STL, [Ayyash et al. 167\(A\) Oral Decision](#), p. 4.

is evidence capable of supporting a conviction on the basis of one of those modes of liability.⁴⁶

20. Where the Panel refers to specific evidence in support of its findings for the purpose of this particular decision, it does so for illustrative purposes. The fact that some evidence has been considered for the purpose of a decision under Rule 130 of the Rules is no indication that the Panel will ultimately accept that evidence or any part of it for the purposes of the judgment. Similarly, the fact that the Panel does not mention certain evidence in a decision under Rule 130 of the Rules does not mean that the Panel does not accept that evidence, nor does it mean that the Panel may not rely upon it in the judgment.⁴⁷

V. ANALYSIS

A. SPO AND VICTIMS' COUNSEL REQUESTS FOR EXTENSION OF TIME

21. The Panel finds that the SPO and Victims' Counsel requested an extension of the time limit sufficiently in advance,⁴⁸ as required by Rule 76 of the Rules, and, following the Panel's directions, put their requests on record. Mindful of the length and level of detail of the Defence Rule 130 Motion, the importance of such a motion, and the time limit ordinarily prescribed by Rule 130 of the Rules for responses to Rule 130 motions, the Panel also finds that the SPO and Victims' Counsel have shown good cause, within the meaning of Rule 9(5) of the Rules. Accordingly, the Panel grants the requested extension of time for the SPO and Victims' Counsel.

⁴⁶ [Mustafa Rule 130 Decision](#), para. 15; [Gucati and Haradinaj Rule 130 Decision](#), para. 23. Similarly, ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, *Oral Decision on Rule 98bis Motions*, 18 May 2007, [Transcript](#), p. 12772.

⁴⁷ [Mustafa Rule 130 Decision](#), para. 16; [Gucati and Haradinaj Rule 130 Decision](#), para. 24. Similarly, ICTY, [Popović et al. 98bis Oral Decision](#), p. 21462; STL, [Ayyash et al. 167\(A\) Oral Decision](#), p. 6.

⁴⁸ See para. 5 above.

B. DEFENCE RULE 130 MOTION

22. The Panel finds, for the reasons that follow, that the evidence presented by the SPO, if accepted, is capable of supporting a conviction of the Accused for the war crime of murder, under Count 4 of the Corrected Indictment. This finding is without prejudice of the assessment of the guilt or innocence of the Accused regarding this count when deliberating on the judgement.

23. The Panel has received evidence that [REDACTED] died, on or around [REDACTED] June 1999, while he was detained at the Kukës Metal Factory.⁴⁹ At the time, the Kukës Metal Factory was being used by the Kosovo Liberation Army (KLA) as headquarters.⁵⁰ [REDACTED].⁵¹

24. Regarding the events leading up to his death, the Panel has received evidence that [REDACTED] was arrested [REDACTED] and was placed in detention, together with [REDACTED] other detainees, in a room on the premises of the Kukës Metal Factory.⁵² While in detention, [REDACTED] were repeatedly mistreated by KLA members, including Pjetër Shala, Sabit Geci, Xhemshit Krasniqi, and KLA soldiers known as “Bedri” and “Van Damme”.⁵³

⁴⁹ [REDACTED].

⁵⁰ **TW4-10**: Transcript of Hearing, 1 May 2023, public, p. 1035, line 9 to p. 1057, line 8; p. 1090, line 13 to p. 1092, line 12; **TW4-01**: Transcript of Hearing, 30 May 2023, confidential, p. 1397, lines 12-16; p. 1401, line 5 to p. 1403, line 24; Transcript of Hearing, 30 May 2023, public, p. 1409, lines 12 to p. 1413, line 4; **W04733**: 082892-TR-AT-ET Part 9, p. 16, lines 3-19.

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ See paras 25-27 below; see also **TW4-01**: Transcript of Hearing, 31 May 2023, public, p. 1512, lines 18-20 (stating that “they would beat all of us up. Nobody would be saved, spared”); Transcript of Hearing, 31 May 2023, confidential, p. 1524, line 22 to p. 1525, line 2 (stating that “we were maltreated virtually every day”); **TW4-11**: Transcript of Hearing, 2 May 2023, public, p. 1221, line 24 to p. 1222, line 3 (stating: “All of us who were there in the room were beaten, one by one, without discrimination”); **W04733**: 082892-TR-AT-ET Part 4, p. 6, lines 1-3; p. 21, lines 13-15 (stating that all detainees but one were beaten and ill-treated [REDACTED]).

25. According to the evidence received, [REDACTED] were beaten with baseball bats and metal bars, so severely that they were left unable to stand and unconscious. The beating was carried out by multiple KLA members, including Pjetër Shala and Sabit Geci, with Xhemshit Krasniqi also being present.⁵⁴

26. On another occasion, Xhemshit Krasniqi and other KLA members [REDACTED].⁵⁵ [REDACTED].⁵⁶

27. The Panel has further received evidence that, [REDACTED] were again beaten by a group of KLA members, which included Pjetër Shala, Sabit Geci, Xhemshit Krasniqi, "Bedri" and "Van Damme". The beating lasted throughout the night, leaving [REDACTED] bruised all over his body and unable to stand. [REDACTED]. The beating continued afterwards, until the morning. [REDACTED].⁵⁷

28. The Panel has received expert evidence that [REDACTED] died as a result of gunshots [REDACTED] which "caused the total destruction of the artery and the bleeding".⁵⁸ According to expert evidence, such an injury, if not treated quickly and correctly, leads to death as a result of the bleeding or other complications.⁵⁹

29. Furthermore, as already described above,⁶⁰ the Panel has received evidence that the Accused intentionally took part in brutal beatings and the severe mistreatment of detainees, together with other KLA members, including Sabit Geci, Xhemshit Krasniqi, "Bedri" and "Van Damme", at the Kukës Metal Factory, during the time relevant to the charges. The beatings left [REDACTED] bruised all over their bodies,

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ 031049-031095 RED2, at 031052; **Marek Gasior**: Transcript of Hearing, 26 June 2023, public, p. 2094, line 6 to p. 2095, line 5.

⁵⁹ **Marek Gasior**: Transcript of Hearing, 27 June 2023, public, p. 2113, lines 13-25; Transcript of Hearing, 3 July 2023, public, p. 2172, line 12 to p. 2173, line 19; p. 2200, line 10 to p. 2202, line 2.

⁶⁰ See paras 25, 27 above.

unable to stand, or unconscious. The Panel has also received evidence according to which the Accused was, at least, present [REDACTED].⁶¹ It was therefore, at a minimum, foreseeable to him that the murder [REDACTED] might be perpetrated by one or more KLA members, as mentioned above, in furtherance of the common purpose of the joint criminal enterprise in which he participated. Likewise, the Panel heard evidence, as described above, that through his acts and omissions, the Accused provided practical assistance, encouragement and/or moral support, which had a substantial effect on the perpetration of the crime of murder.

30. The Panel considers that the evidence set out above goes to the SPO's allegation under Count 4 of the Corrected Indictment, that [REDACTED] was murdered, on or around [REDACTED] June 1999, while being detained at the Kukës Metal Factory, and that the Accused committed the crime of murder through his participation in a joint criminal enterprise and/or aided and abetted the commission of the crime of murder.⁶²

31. The Panel is not persuaded by the Defence's submissions that the evidence presented by the SPO is manifestly unreliable. First, the fact that TW4-01 [REDACTED] does not render his evidence in the present proceedings manifestly unreliable.⁶³ The Panel emphasises that no witness is *per se* unreliable, including a witness that [REDACTED].⁶⁴ The Panel will consider this aspect as part of its assessment of the credibility and reliability of TW4-01, which shall be carried out at the end of the proceedings, during the Panel's deliberations on the guilt or innocence

⁶¹ See para. 27 above.

⁶² [Corrected Indictment](#), paras 8-12, 28-29, 30-31.

⁶³ See Defence Rule 130 Motion, paras 38-42.

⁶⁴ [REDACTED].

of the Accused, and not at this stage. The same holds true with regard to the “bad character” evidence referred to by the Defence.⁶⁵

32. Second, turning to the Defence’s argument that TW4-01’s testimony is inconsistent with his prior statements and with the evidence of other witnesses,⁶⁶ the Panel stresses that such inconsistencies equally do not render TW4-01’s evidence manifestly unreliable. Rather, the coherence and consistency of his account with his prior statements and with other evidence on the record are factors to be considered by the Panel, among others, when assessing his credibility and reliability during its deliberations on the judgment.⁶⁷

33. Last, turning to the Defence’s submission that no other witness has provided direct evidence to corroborate the testimony of TW4-01 regarding the alleged murder and that it would be highly unjust to enter a conviction in the absence of corroboration,⁶⁸ the Panel recalls that, as provided in Rule 139(3) of the Rules, corroboration is not a legal requirement and 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.⁶⁹ This is an assessment that the Panel will make when deliberating on the judgment. The Defence is essentially requesting the Panel to enter into an assessment that is simply not meant for this stage of the proceedings.⁷⁰

34. In light of all of the above, the Panel finds, for the purposes of Rule 130 of the Rules, that the evidence presented during the SPO case, if accepted, is capable of

⁶⁵ See Defence Rule 130 Motion, paras 43-50.

⁶⁶ See Defence Rule 130 Motion, paras 51-56.

⁶⁷ KSC-BC-2020-05, F00494/RED3/COR, Trial Panel I, [Further redacted version of Corrected version of Public redacted version of Trial Judgment](#), (*Mustafa* Trial Judgment) 16 December 2022 (date of latest public redacted version, 8 June 2023), paras 35-36.

⁶⁸ Defence Rule 130 Motion, paras 57-63.

⁶⁹ [Mustafa Trial Judgment](#), para. 43.

⁷⁰ See para. 14 above.

supporting a conviction of the Accused under Count 4 of the Corrected Indictment, under one or more of the modes of liability with which he is charged.

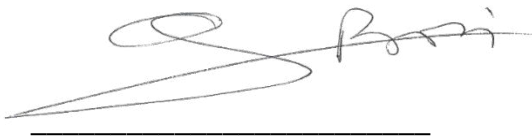
VI. DISPOSITION

35. For the above-mentioned reasons, the Panel hereby:

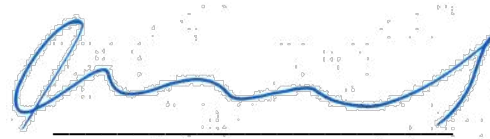
- a. **GRANTS** the SPO and Victims' Counsel Requests for Extension of Time;
- b. **REJECTS** the Defence Rule 130 Motion; and
- c. **ORDERS** Victims' Counsel to file a public redacted version of his response, filing F00640, within one week of notification of the present decision.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 15 September 2023

At The Hague, the Netherlands.