In:	KSC-SC-2024-02
	The Specialist Prosecutor v. Mr. Salih Mustafa
Before:	**A Panel of the Supreme CourtChamber**
	Judge Ekaterina Trendafilova, Presiding
	Judge Christine van den Wyngaert
	Judge Daniel Fransen
Registrar:	Fidelma Donlon
Filing Participant:	Défense of Salih Mustafa
Date:	14 March 2024
Language:	English
Classification:	Public

Defence Request for Protection of Legality

with Confidential Annex 1 and 2

pursuant to Article 48 (6) to (8) of the Law and Rule 193 of the Rules

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Counsel for Victims:

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I. INTRODUCTION

1. Pursuant to Article 32 of the Constitution of the Republic of Kosovo ("Kosovo Constitution"), Articles 48(6) to 46(8) of the Law on Specialist Chambers and Specialist Prosecutor's Office No 05/L-053 ("Law") and Rule 193 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), the Defence for Mr. Salih Mustafa ("Accused") files this Request for Protection of Legality following the Judgment of the Panel of the Court of Appeals Chamber ("AP") of 14 December 2023 ("Appeal Judgment").
2. Mustafa seeks a finding of the existence of violations of law in the Appeal Judgment and a return of the case to a separately constituted Panel of the Court of Appeals Chamber in order to revise the Appeal Judgment by taking account of the following incorrect interpretations and application of the Law as enumerated in the Grounds.
3. Pursuant to Art.48 (6)-(8)-of the Law and Rule 193-and-194-of the Rules, Mustafa hereby requests:

   (a)-protection of legality against the Trial-Judgment and the Appeal-Judgment, and (b)-the modification of the impugned judgments so that-Mustafa-is acquitted of all counts, or the impugned judgments are annulled in whole in part and the case be returned for retrial, or otherwise the sentence is reduced.

II. PROCEDURAL BACKGROUND

4. On 24 September 2020, Mr. Mustafa was arrested[1] and transferred to the detention facilities of the Specialist Chambers in The Hague, the Netherlands.[2]

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[1] 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.

[2] 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.

5. On 15 September 2021, the trial commenced.[3]
6. On 20 June 2022, the Panel closed the evidentiary proceedings, pursuant to Rule 134 (a) of the Rules.[4]
7. From 13 to 15 September 2022, the hearing on the closing statements was held, and on 15 September 2022 the case was closed.[5]
8. On 16 December 2022, the Trial Panel delivered the Trial Judgment, convicting the Accused of the war crimes of arbitrary detention to 10 years (Count 1), for torture to 22 years (Count 3) and for murder (Count 4) to 25 years, and imposed a single sentence of 26 years of imprisonment, with credit for time served [6].
9. On 9 January 2023, pursuant to a request by the Accused, an extension to file notice of appeal was granted.[7]
10. On 2 February 2023, the Accused filed his Notice of Appeal.[8] In it, the Accused requested: (a) reverse the convictions on Counts 1, 3 and 4 and either (i) acquit him of all counts or (ii) return the case to the Trial Panel; or (b) in case all, or any, convictions are affirmed, reduce the imposed sentence.[9]
11. On 24 April 2023, the Accused filed his Appeal Brief and, on 2 May 2023, a corrected version thereof.[10]
12. On 5 June 2023, Victims' Counsel and the SPO filed their response briefs.[11]

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3 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.

4 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.

5 T. 15 September 2022, public, p. 4859, line 15.

6 Trial Judgment, paras 828-831.

7 Decision on Extension of Time to File Notice of Appeal, para. 11; Defense Motion for Extension of Time to File Notice of Appeal.

8 Notice of Appeal. The Panel notes that, in this Appeal Judgment, it will refer to each sub-ground as a "ground of appeal".

9 Notice of Appeal, para. 2; Appeal Brief, paras 3, 446. See also Appeal Brief, paras 323, 341, 367, 378, 390, 400, 438; Reply Brief, paras 3, 5, 138.

10 For the purposes of the present Judgment, the corrected version of appeal brief filed by the Accused on 2 May 2023 is referred to as "Appeal Brief".

11 Victims Response Brief; SPO Response Brief.

13. On 26 and 27 October 2023, the AP heard oral submissions from the Parties and Participants regarding the appeal. Further to questions raised by the Panel during the Appeal Hearing, the Parties filed additional written submissions relating to the charge of murder.[12]
14. On 16 December 2023 the AP rendered an Appeal Judgment against Mustafa, affirming the Judgment of the First Instance Court and commuting the sentence from 26 years of imprisonment to: 8 years (count 1), 20 years (count 3) and 22 years (count 4) and an overall sentence of 22 years of imprisonment with credit for time served,[13]

III. APPLICABLE LAW

15. The right to request protection of legality under Art.48-Law ensures the protection of rights, fair trial and of judicial review guaranteed by the Constitution[14].
16. A protection of legality request, under Article 48 (7), must allege:

    (a)-A violation of the criminal law contained within this Law; or

    (b)-A substantial violation of the procedures set out in this Law and in the KSC Rules.
17. A protection of legality request may also be filed "on the basis of rights available under this Law which are protected under the Constitution or the ECHR".
18. A procedural violation must be "substantial", i.e. one which materially affects the judicial finding.
19. Art.48(7)(a)-Law does not require that a violation of the criminal law is substantial.
20. A substantial violation of procedure exists if the Court in its Judgment did not fully adjudicate the substance of the charge or the Judgment was not drawn up in accordance with the relevant procedural code.
21. Rule 159(3),164(2) and 183(3) require judgments to be reasoned. A request for protection of legality will be well-founded where the impugned judgment does not give sufficiently clear and consistent reasons or fails to address key evidence. It must be clear from the

[12] Further SPO Submissions on *Mens Rea* for Murder; Further Defence Submissions on *Mens Rea* for Murder.

[13] KSC-CA-2023-02/F00038, Appeal Judgment. Paragraph 480 and 484.

[14] Article 32 of the Constitution

decision that the essential issues of the case have been addressed and the grounds for the decision indicated with sufficient clarity.

22. Rule 194(1) provides that where the Supreme Court grants a request by the Accused, it shall:

(a)-Modify the impugned judgment;

(b)-Annul in whole or in part the judgment and return the case for a retrial to the competent Panel; or

(c)-Confine itself to establishing the existence of a violation of law

IV. THE LEGAL GROUNDS

Ground I- Violation of Article 44 (2) of the Law and consequently article 33 (2) (4) of the Constitution of Kosovo as well as Article 22 of the Constitution of Kosovo.

23. The AP considered the arguments of the Defence with regard to the application of the *lex mitior*. It discussed certain elements of the *lex mitior* in a couple of paragraphs. In this regard it considered it in paragraphs 465, 467 and 469 in particular. First in paragraph 465, the AP stated how it understood the *lex mitior*.

24. The AP, in paragraph 465 of its judgment, recalled that:

> "The AP now turns to Mustafa's arguments concerning the principle of *lex mitior*. In this regard, the Panel recalls that:
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> The principle of *lex mitior* is understood to mean that, if the law relevant to the offence of the accused has been amended, the less severe law should be applied. It is an inherent element of this principle that the relevant law must be binding upon the court. Accused persons can only benefit from the more lenient sentence if the law is binding, since they only have a protected legal position when the sentencing range must be applied to them. The principle of *lex mitior* is thus only applicable if a law that binds the International Tribunal concerned is subsequently changed to a more favourable law by which the International Tribunal is also obliged to abide".[15] (emphasis added)

[15] Appeal Judgment, paragraph 465, quoting Appeal Decision, para. 57, in *Thaçi et al.*, para. 57, quoting *Nikolić* Sentencing Appeal Judgement, para. 81. (see also footnote 1267 of the Appeal Judgment)

25. The AP's understanding of the *lex mitior* is too limited and therefore wrong. It concentrates on the law regarding the criminal offence. However, the punishment of the criminal offence is an equal part of the Law. The criminal offence and its punishment are "2 sides from the same coin". They are inherently interconnected with each other.
26. Therefore, the AP's focus on the possible amendment only, of the criminal offence, is wrong and too limited. It must equally focus on the punishment of that criminal offence.
27. In addition, in this paragraph the AP stated that an Accused person can only benefit from the more lenient sentence if the law is binding.
28. The Defence submits that the law in question (Article 44 sub 2 under a) and b) is binding, and that the AP wrongly states that the law would not be binding for the Specialist Chambers. Article 44 (2) sub (a) and sub (b) specifically refer to Kosovo Law. So, the correct application of this Article includes Kosovo Law, in particular on sentencing ranges.
29. Lastly, as cited in the paragraph 465 of its Judgment, the AP considers that "The principle of *lex mitior* is thus only applicable if a law that binds the International Tribunal concerned is subsequently changed to a more favourable law by which the International Tribunal is also obliged to abide".
30. The Kosovo Specialist Chambers (KSC) is NOT an International Tribunal. It is a Domestic Court and falls within the complete framework of Republic of Kosovo. The International Criminal Court is an organization established by a multi-lateral agreement between State Parties, the "Members States". Ad-hoc Tribunals, such as the ICTY, were established through resolutions of the United Nations as an interim institution.[16]. But the KSC were established by the Parliament of Kosovo. [17]
31. Therefore, the KSC is bound by the laws of Kosovo and the Article 44 (2) of the Law, in conjunction with Article 33 (2) of the Constitution of Kosovo are binding laws for the Kosovo Specialist Chambers.

[16] S/RES/827 (1993) of 25 May 1993
[17] Law 05/L-053, Adopted on 3 August 2015 by the Assembly of the Republic of Kosovo.

32. The AP further considered in paragraph 467 that:

> "Therefore, given that Article 44(2) of the Law does not make domestic sentencing ranges binding on the Specialist Chambers,[18] the principle of *lex mitior* is not engaged vis-à-vis these domestic provisions and, accordingly, the AP finds no error in the Trial Panel not conducting a *lex mitior* analysis."

33. The AP found no error in the trial Panel not conducting a *lex mitior* analysis. The defence submits that this is wrong. The basis is the AP's conclusion that Article 44 (2) does not make domestic sentencing ranges binding on the Specialist Chambers.
34. The defence submits that this conclusion is wrong. The domestic sentencing ranges are binding. The AP failed to acknowledge that Article 44 (2) (a) enshrines the *lex mitior*, which is not only within the Constitution of Kosovo, but can be equally found in the Article 7 of the European Convention on Human Rights, and has been adjudicated to this effect as well. The European Court of Human Rights in a case concluded to that effect that Article 7 of the Convention had been violated where the sentencing provisions of the 1976 code should have been applied in the applicants' cases.[19]
35. While AP agreed with the Defence's assertion that the word "shall" (as in "shall take into account" of Article 44 (2) of the Law) indicates an imperative, the Panel finds that this refers to an obligation to "take [the factors] into account", rather than to, for example, apply them as binding sources of law.[20] The violation of this interpretation is further elaborated under the next ground of this document. At this point it suffices to state that in paragraph 465 of the Appeals Judgment, where the AP in its definition of *lex mitior* states that "an (accused person) only has a protected legal position when the sentencing range must be applied to them".

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18 Appeal Judgement Footnote 1271 (page 220): See also Article 3(2)(c), (4) of the Law; *Gucati and Haradinaj* Appeal Judgment, para. 149; *Lajçi* Appeal Decision on Investigation, para. 22.

19 Case of Scoppola v. Italy (no. 2) (application no. 10249/03). See paragraph 120 and 121 of the Judgement. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-94135%22]}

20 Paragraph 466, line 5 to 6 of the Appeal Judgment

36. It is clear that the AP views Article 44 (2) of the law not as binding upon the Specialist Chambers, as the principle of *lex mitior* is thus only applicable if a law that binds International Tribunals concerned is subsequently changed (…).
37. The ECtHR in the case of *Scoppola vs. Italy* considered in paragraph 108-109 that:

> "In the light of the foregoing considerations, the Court takes the view that it is necessary to depart from the case-law established by the Commission in the case of X v. Germany and affirm that Article 7 § 1 of the Convention guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law. That principle is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant."[21]

38. In the case of Mustafa, the Defence argued that the Articles of the CCSFRY of 1976, in particular the Articles 38 and 142 thereof were applicable. The applicable sentencing range under those articles was 5 to 15 years of imprisonment for war crimes, as well as capital punishment. The capital punishment was abolished with UNMIK Regulation 1999/24, without a new sentencing range in place; thus, the sentencing ranges of 5 to 15 years remained in place.[22]
39. The principle of application of the most favourable law is also provided for in Article 3 of the Criminal Code of the Republic of Kosovo (Code 06/L-074), and was also provided for in the Article 3 of the Criminal Code of the Republic of Kosovo (Code 04/L-082) as well as in Article 2 of the Provisional Criminal Code of Kosovo.[23]

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[21] Ibid, Scoppola vs Italy para 108 and 109 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-94135%22]}

[22] This was confirmed by Kosovo Supreme Court and Constitutional Court. See Constitutional Court Judgment of 31 March of 2022, paras 48, 50; Kosovo Supreme Court Judgment of 20 March 2023, page 8, (English version). See also footnote 1282 of the Appeal Judgment in the case SPO vs Mustafa.

[23] Provisional Code of Kosovo-UNMIK/REG/2003/25 of 6 July 2003; Code 04/L-082 the Kosovo

40. According to the European Court of Human Rights the court in the case of Maktouf and Damjanovic,[24] the same criminal code which is involved in the case of Mustafa (the 1976 CCSFRY) "considers that there has been a violation of Article 7 of the Convention in the particular circumstances of the present case. This conclusion should not be taken to indicate that lower sentences ought to have been imposed, but simply that the sentencing provisions of the 1976 Code should have been applied in the Applicants' cases".[25]

41. Lastly, the AP rejected Mustafa's arguments that the TP's interpretation of Article 44 (2) of the Law is incompatible with the Kosovo Constitution. In paragraph 468 the AP considered in this regard that: "the AP recalls that: "Article 33(2) of the Kosovo Constitution states that "[n]o punishment for a criminal act shall exceed the penalty provided by law at the time the criminal act was committed." In addition, Article 33(4) of the Kosovo Constitution states that "[p]unishments shall be administered in accordance with the law in force at the time a criminal act was committed, unless the penalties in a subsequent applicable law are more favorable to the perpetrator." These provisions therefore enshrine the principle of *lex mitior* in the Kosovo Constitution. The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with it, and every entity in Kosovo is subject to the provisions of it.[26] This principle is, as stated above, only applicable if a law that binds the Specialist Chambers is,

Criminal Code of Republic of Kosovo, of 13 July 2012; Code 06/L-074, Criminal Code of the Republic of Kosovo of 14 January 2019.

24 ECtHR Judgment of 18 July 2013, application numbers 2312/08 and 34179/08 Maktouf and Damjanovic vs. Bosnia and Herzegovina, the case is also about war crimes and the 1976 Code of the CCSFRY was the issue on this case para 54, both Applicants complained under Article 7 of the Convention that a more stringent criminal law had been applied to them than that which had been applicable at the time of their commission of criminal offences; para 61 in which it is noted by the Applicants that the 2003 Criminal Code, being more severe than the 1976 Code, with regard to the minimum sentences for war crime should not have been applied in their case; paragraph 76, page 32.ECHR-case-of-Maktouf-and-Damjanovic.pdf;(trialinternational.org); https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-7636%22]}.

25 Ibid. Maktouf and Damjanovic vs. Bosnia and Herzegovina paragraph 76 (under the conclusion of the applicant's complaint about the violation of Article 7 of the ECHR.

26 Article 16 (1) and (4) of the Constitution of Kosovo, Supremacy of the Constitution.

subsequently changed to a more favourable law by which the Specialist Chambers are also bound.[27]

42. The Defence submits and maintains that the non-applications of the *lex mitior* violates the Constitution on 2 Articles of the Constitution, namely Article 33 and Article 22.

43. First, as the non-application violates the Article 33 (2) of the Constitution which prescribes the application of the *lex mitior*, a principle enshrined in article 7 of the European Convention on Human Rights.

44. Second, with the non-application of both Trial Panel, and in furtherance of it, the AP, lacks a legal basis for the imposed (longer) sentence to Mustafa. The applicable code is the 1976 CCSFRY prescribing a sentencing range of 5 to 15 years. In short, when the Panel imposes a sentence without applying the *lex mitior*, the legal basis of any higher penalty becomes absent, and therefore violates the principle of *nulla poena sine lege*, a principle equally enshrined in article 7 of the European Convention on Human Rights, which is directly applicable under Article 22 of the Constitution of Kosovo.

45. The ECtHR in this perspective ruled that:

> According to the Court's case-law, Article 7 of the Convention generally embodies the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and prohibits in particular the retrospective application of the criminal law where it is to the accused's detriment.[28];
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> And in paragraphs 36 and 37 the ECHR concluded that:
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> Para 36: In these circumstances, the Court concludes that the applicants were subjected to the imposition of a heavier sentence under the 1991 Act than the

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27 Appeal Judgment, paragraph 468 (referring to para 465 as written in footnote 1273)

28 (see *Kokkinakis v. Greece*, judgment of 5 May 1993, Series A no. 260-A, p. 22, § 52) https://hudoc.echr.coe.int/tkp197/view.asp#{%22fulltext%22:[%22Kokkinakis%20v.%20Greece,%20judgment%20of%2025%20May%201993,%20Series%20A%20no.%20260-A,%22],%22itemid%22:[%22001-57827%22]}
As well as case of Ecer and Zeyrek v. Turkey, ECHR 21 February 2001, case number 29295/95 and 29363/95 (para. 36-37); https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59221%22]}

sentence to which they were exposed at the time of the commission of the offence of which they were convicted.

Para 37: Accordingly, there has been a violation of Article 7 § 1 of the Convention.[29]

46. Lastly, the AP considered that: in paragraph 469:

"Contrary to Mustafa's submissions, the AP finds that these constitutional provisions do not require the Specialist Chambers to apply contemporaneous and/or subsequent domestic law on war crimes as these latter laws are not binding on the Specialist Chambers. This finding results from a plain reading of the Law. First, the AP notes that, under Article 14(1) of the Law, war crimes are defined "under customary international law". Second, pursuant to Article 3(2)(b) and (c) of the Law, the Specialist Chambers shall adjudicate in accordance with, *inter alia*, the Law as the *lex specialis* and other provisions of Kosovo law as expressly incorporated and applied by the Law.[30] Pursuant to Article 3(4) of the Law, any other Kosovo law, or regulation which has not been expressly incorporated into the Law shall not apply to the jurisdiction of the Specialist Chambers.[31] As the aforementioned domestic laws are not "expressly incorporated and applied" by the Law, the Specialist Chambers are not required to consider the various domestic laws on war crimes to comply with the *lex mitior* principle under the Kosovo Constitution. Consequently, the Panel finds that there is no conflict between Article 44(2) of the Law and Article 33(2) and (4) of the Kosovo Constitution".

47. The Defence submits that by the plain wording of Article 44 (2) of the Law the domestic law on sentencing ranges <u>is</u> expressly incorporated in the Law. Not only does the Constitution of Kosovo prescribes it, but also Article 44 (2) prescribes it as imperative to take into account the sentencing ranges for the crime under Kosovo Law at the time of its commission. Furthermore, the Specialist Chambers must exercise their functions in

[29] Ibid, case Ecer and Zeyrek vs, Turkey, para 36 and 37.
[30] Article 3(2)(b) and (c) of the Law.
[31] Article 3(4) of the Law.

accordance with the Constitution of Kosovo, which among other things encompasses the *lex mitior* (expressly) and Article 22 (under 2) of the Constitution.

48. With the Judgment of the Trial Panel, and in the furtherance of it the Judgment of the AP, regarding the punishment of Mustafa, violated the correct application of Article 44 (2) the Law, and violated the Articles 33 (2) and (4) of the Constitution as well as Article 7 of the European Convention of Human Rights, explicitly and directly applicable by Article 22 of the Constitution.
49. The defence requests the Supreme Court to grant this ground and therefore to apply either subparagraph a or subparagraph b of the Rule 194 (1) of the Rules.

Ground II: Violation of Article 44 (2) of the Law, Article 33 (2) of the Constitution and Article 7 of the ECHR

50. The AP in paragraph 466 of its judgment considered the following:

> "First, the Panel notes that Mustafa does not demonstrate any error in the Trial Panel's finding that the wording "shall take into account" in Article 44(2) of the Law requires it to consider the listed factors, but does not make them binding on the Trial Panel.[32] While the Defence is correct in its assertion that the word "shall" indicates an imperative, the Panel finds that this refers to an obligation to "take [the factors] into account", rather than to, for example, apply them as binding sources of law. This interpretation is clear from the plain wording of the provision, as well as international jurisprudence".[33]

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32 AP in footnote 1268 referring to Trial Judgment, para. 780.

33 AP in footnote 1269 referring to: *Stakić* Appeal Judgement, para. 398; *Blaškić* Appeal Judgement, paras 681-682; *Delalić et al.* Appeal Judgement, paras 813-818; *Tadić* Sentencing Appeal Judgement, para. 21, in which the ICTY Appeals Chamber also found that the existence of a provision allowing the ICTY to impose a sentence of up to life imprisonment showed that it was not bound by the lower maximum sentences applicable under domestic law at the time of the commission of the crimes. See also Article 44(1) of the Law, which allows the Specialist Chambers to impose imprisonment up to a maximum term of life imprisonment.

51. The defence submits that the AP wrongly interpreted and wrongly applied Article 44 (2) of the Law.
52. The AP interprets here the wording "shall take into account" and qualifies the subparagraph 2 under a) an b) as "factors".
53. The defence submits that the interpretation that the AP makes here is wrong. The Panel wrongly finds that the obligation "shall take into account" refers to an obligation that "the factors" need to be taken into account.
54. The a) and b) of paragraph 2 of Article 44 of the Law are not "factors". They are laws. Laws that give the range of sentencing regarding crimes. The defence submits that Kosovo Laws cannot be merely qualified as a "factor".
55. Factors are of a different kind, usually undefined and dealt with within circumstances and particularities of a case. Factors are of a subjective and selective nature and usually applied on a random bases, given the circumstances of a case or a criminal offence. We point in this regard to Article 44 (5) in which it is stipulated that: "the Specialist Chambers shall take into account aggravating and mitigating factors" (..).

    Such factors, in particular the factors that the AP listed, are of a nature that a Pannel can weigh and use as arguments for a conviction. The Defence submits that Kosovo Law cannot be viewed as a factor that would be applied on a random basis. Such random application violates the *lex certa* i.e. the certainty upon which the accused may count when, like in the present case, punishment for crimes is to be considered. If the legislator had intended that subparagraphs a) and b) would be "factors", then it would have certainly phrased it in that manner. But laws – as indicated in these subparagraphs- are obviously not "factors".
56. Irrespective of the qualification of the wording ("factors"), it is fundamentally wrong that Kosovo Laws regarding sentencing ranges for the crime, as worded under Article 44 (2) a) and b), would not be, and in the present case were not, applied. As Article 3 of the Law expressly enumerates "foundational principles", among which the Constitution of Kosovo and other provisions of Kosovo Law as expressly incorporated and applied by this Law.

57. As the AP rightly agreed with the Defence that the wording "shall take into account" expresses an imperative, then it follows that it is an imperative obligation to indeed apply the sentencing ranges as they are provided under Kosovo Law at the time of the commission of the crime (as under 44 (2) a) as well as any subsequent more lenient sentencing range for the crime provided in Kosovo Law (as under 44 (2) b).
58. The AP wrongly concluded that sub a) and b) do not bind the Specialists Chambers as binding sources of Law. They certainly do bind them.
59. If there is doubt that the legislator meant that subparagraphs a) and b) would not be binding, it follows that the accused must get the benefit of such doubt.
60. The jurisprudence that the AP refers to is stemming from international tribunals only. The Kosovo Specialist Chambers is NOT an international tribunal. It is a domestic court of Kosovo. Therefore, the cited jurisprudence has little or no effect as evidently Kosovo Laws must be considered the prime and binding sources of Law.
61. The AP furthermore considers that "the drafters of the Law did not intend to bind the Trial Panel to apply domestic law on sentencing ranges". This assertion is unsupported by any document of the drafters. It is therefore an assumption for which there is no factual ground.
62. With the interpretation and subsequently its application given by the AP regarding the application of Article 44 (2) of the law, the AP violated the correct application of this article of the Law.
63. With its wrong interpretation and application of Article 44 (2) of the Law, the AP violated the Accused's constitutional right as enshrined in Article 33 (2) (4) of the Constitution of Kosovo.
64. In addition to the above, the AP violated the Constitution of Kosovo. As article 33 (2) (4) of the Kosovo Constitution explicitly prescribes that no punishment for a criminal act shall exceed the penalty provided by law at the time the criminal act was committed. With its interpretation of article 44 (2) sub a and b) of the Law, it violated this article of the Constitution.

65. The punishment as a result of it cannot stand as the punishment does not follow from the correct application of the Law.
66. The defence requests the Supreme Court to grant this ground and therefore to apply either subparagraph a or subparagraph b of the Rule 194 of the Rules.

Ground III: Violation of the Article 44 (2) (c) of the Law

67. In the same paragraph 466 of the Appeals Judgment, the AP considered:

> "The AP also notes that, pursuant to Article 44(2)(c) of the Law, the Trial Panel's obligation to take into account these domestic sources of law is further tempered by the need to consider whether doing so would prejudice the extent of punishment under general principles of law recognized by civilized nations. The AP considers that this further supports the conclusion that the drafters of the Law did not intend to bind the Trial Panel to apply domestic law on sentencing ranges, but rather to take it into account within certain parameters". Under Article 7 of the ECHR such general principles recognized by civilized nations did also apply in the cases of Scoppola and Maktouf and Damjanovic, earlier referred to in this document under paragraphs 40,43 and 48.[34]

68. Under Ground II the imperative application of domestic law was already discussed.
69. However, under this ground the defence argues that, even if the domestic law would need to be taken into account "within certain parameters", the AP failed to do that. Mustafa's ultimate punishment by the AP did not take into account parameters stemming from domestic law, but mostly from international tribunals.
70. The AP notes in paragraph 472 that the Trial Panel failed to indicate with sufficient clarity its understanding of the sentencing ranges which came into effect subsequent to the commission of the crimes.

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[34] See earlier cited: *Scoppola v. Italy* in footnote 25, *Maktouf and Damjanovic* footnote 28 and *Kokkinakis v. Greece* footnote 31.

71. The AP in paragraph 473 rightly noted that with the abolishment of capital punishment by UNMIK Regulation 1999/24, resulted in an applicable sentencing range between 5 and 15 years of imprisonment under Article 38 and 142 of the CCSFRY.[35]

72. As the AP considered in paragraph 466:

> "The AP considers that this further supports the conclusion that the drafters of the Law did not intend to bind the Trial Panel to apply domestic law on sentencing ranges, but rather to take it (=the domestic law) into account within certain parameters". [36]

73. The AP provided no support for the interpretation above. However, the Appeal, in its para. 478, analysed international and Kosovo Jurisprudence concerning crimes comparable to those for which Mustafa was sentenced.

74. In fact, the AP analysed 12 judgments of international tribunals, as cited in footnote 1292 of the Appeal Judgement, and 4 Judgments of Kosovo Courts. Clearly, the jurisprudence of the Kosovo courts indicates that in no case (as cited in footnote 1293) the punishment was longer than 15 years. As for the analyses of the jurisprudence of international tribunals, the sentences applied range from somewhere between 18 years to 35 years.[37]

75. However, in the majority of the international cases (ICTY, ICTR, and ICC) that the AP analysed, the offenses (and the number of victims) that were committed were much more than the 3 offenses that found guilty for.

76. The defence submits that with regard to the analyses of the AP with regard to Kosovo jurisprudence,[38] these cases tend to better relate to the case of Mustafa.

First of all, because the jurisprudence indicates war crimes that were committed within the same conflict. Second, because on multiple occasions the cited jurisprudence of Kosovo indicates that the law that was applicable at the time (CCSFRY) was applied in conjunction with the appropriate UNMIK Regulations. Hence, the applicable law at the

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35 Appeal Judgment, paragraph 473 (referring to footnote 1282). This was confirmed by Kosovo's Supreme Court and Constitutional Court. See Kosovo Constitutional Court Judgment of 31 March 2022, paras 48, 50; Kosovo Supreme Court Judgment of 20 March 2023, p. 8 (English version).

36 Appeal Judgment para 466.

37 Ibid, para 478, referring to the cases in footnote 1292

38 Ibid, para 478

time of the commission of the crimes was applied. Third, Kosovo jurisprudence indicates cases which were committed at the same time period as the crimes that were allegedly committed by Mustafa. The three elements as above make the comparison of the crimes much better.

77. The AP however took a different course in its analysis. In undertaking its analysis, the AP was cognizant that international courts have found it inappropriate to set down a definitive list of sentencing guidelines, given the plethora of case-specific factors in sentencing, which cannot be easily quantified and which make the transposition of sentences from one case to another impossible. [39]

78. The AP therefore considered factors such as[40]:

> (i) the mode of liability;
> (ii) the gravity of the crime, including the number of victims, the effect of the crimes on them, the accused's individual culpability, and other indicators of gravity in the circumstances of the case;
> (iii) the various aggravating and mitigating factors;
> (iv) whether the Trial Panel or AP set out both individual sentences and an overall sentence, or only an overall sentence;
> (v) the other crimes, if any, for which an accused was also sentenced; and
> (vi) in relation to Kosovo judgments in particular, the sentencing ranges providing for much lower maximum incarceration durations than Article 44(1) of the Law and keeping in mind the requirements of Article 44(2)(c) of the Law.

79. These factors are by no means parameters for "sentencing range for the crime provided under Kosovo law at the time of commission" as listed under a) and b) of article 44 (2) of the Law. The factors (i) (ii) and (iii) relate in fact to the manner of the commission of the crime, (iv) relates to the form in which the sentences were imposed (v) relates to other sentences imposed to the accused. Only factor (vi) qualifies as a factor, though based on caselaw.

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[39] Appeal Judgment, para 478, referring to footnote 1295, Gucati and Haradinaj Appeal Judgment, paras.434-435, and the jurisprudence cited in fns 966-967. See also E.G. Calimanzira Appeal Judgment, para 224; Karera Appeal Judgment, para 385; Nahimana et.al Appeal Judgment para 1037; also referring to para 449, 466 of the Appeal Judgment in the present case

[40] Ibid 478

80. The AP did therefore not, as stated by its own words "take into account" the domestic Kosovo law within certain parameters. It only analysed the jurisprudence regarding it, and subsequently sentences Mustafa to a different (more lenient) sentence.

81. Indeed, the Kosovo jurisprudence indicates clearly more lenient sentences for similar war crimes as (allegedly) committed by Mustafa. However, the defence submits that the analysed jurisprudence of Kosovo by the AP falls short of the bulk of cases that were treated in Kosovo.[41] The defence refers to this end to the cases as listed in the Annex 1 of

[41] **Gashi et.al** -Plm. Kzz. 18/2016 Supreme Court of Kosovo 13 may 2016 /(*P. no 448/2012 Basic Court of Prishtinë/Priština) (PAKR 440/13 Court of Appeals);* Judgment of Court of Appeals: https://hlckosovo.org/storage/app/media/Grupi%20i%20Llapit/Latif%20Gashi%20et%20al-Verdict-11.08.2015.pdf ; Judgment of the Supreme Court: https://www.eulex-kosovo.eu/eul/repository/docs/Judgement_Plm.Kzz_18-2016_ENG_(Redacted_1).pdf
Darko Tasic-Pml nr. 138/2021, Supreme Court of Kosovo, Supreme Court of Kosovo, https://hlc-kosovo.org/storage/app/media/Darko%20Tasiq/Darko-Tasiq-Aktgjykim-Supreme-05.05.2021.pdf; Decision no. KI210/21 of Constitutional Court of the Republic of Kosovo**,** https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=57231
Sabit Geci et al. -PAKR966/2012-Court of Appeals 11 September, 2013 15 Years of Imprisonment; https://hlc-kosovo.org/storage/app/media/Sabit-Geci-dhe-te-tjere-Verdict-11.09.2013_Redacted-2.pdf
Ejup Runjeva et alia-P. No. 215/04 District Court of Prishtine/Pristina, 12 May 2005, Fully Reasoned Verdict – draft and outline 1 (hlc-kosovo.org)
AP-KZ 477/05=Supreme Court of Kosovo Prishtinë/Priština, 25 January 2008 https://hlc-kosovo.org/storage/app/media/Rr.Dema-et-al-Verdict-25.01.2008.pdf
Selim Krasniqi -Pkl-Kzz 117/09 Supreme Court of Kosovo - acting upon a request for protection of legality 12 October 2010; https://hlc-kosovo.org/storage/app/media/Selim-Krasniqi-Verdict-12.10.2010-Redacted.pdf
Gjelosh Krasniqi-Ap-Kz-353/2009 Supreme Court of Kosovo - appeal against judgment of the District Court in Peja 14 June 2011, https://hlc-kosovo.org/storage/app/media/Gjelosh-Krasniqi-Verdict-14.06.2011_Redacted.pdf
Fahredin Gashi and Hysri Rama- Pml.Kzz 157/2014**.** 2 October 2014 Supreme Court of Kosovo, confirming the sentencing length of the Appeals decision. Court of Appeals Decision https://hlckosovo.org/storage/app/media/Fahredin%20Gashi%20dhe%20Hysni%20Rama/ENG/Fahredin%20Gashi-Judgment-10.02.2014_Redacted.pdf - Supreme Court decision https://hlc-kosovo.org/storage/app/media/Fahredin%20Gashi%20dhe%20Hysni%20Rama/ENG/Fahredin%20Gashi-%20Verdict%20-Request%20for%20Protection%20of%20Legality-02.10.2014_Redacted.pdf
Gani Gashi- AP-K 191/2009**,** Supreme Court of Kosovo, 8 December 2009/ District Court of Prishtina = 17 years;, Supreme Court = 15 years. https://hlc-kosovo.org/storage/app/media/Gani-Gashi-Verdict-08.12.2009_Redacted-2.pdf
Idriz Gashi -Ap-Kz-108/2010**.** Supreme Court of Kosovo 25 November 2010, confirmed 14 years of imprisonment https://hlc-kosovo.org/storage/app/media/Idriz%20Gashi/Idriz%20Gashi-Supreme%20Court%20Judgment-25.11.2010_Redacted.pdf
https://www.eulex-kosovo.eu/eul/repository/docs/129520-Ap.Kz._108_2010_Eng_Redacted.pdf

this document. In the 10 cases, 36 people were judged and the CCSFRY of 1976 was applied. The cases were adjudged with final judgment from 2008 to as recent as 2023.

82. The Defence submits that even if the Article 44 subparagraph 2 under a) and b) would indicate certain parameters within which the Kosovo domestic law would need to be taken into account, the AP failed to do that. And as a consequence, it did not correctly apply the Article 44 (2) of the Law, even though this – as the AP agreed- this was imperative.

83. As a consequence, the manner in which the AP interpreted and applied the Article 44 sub 2 under a) and b) violated Article 33 (2) and (4) of the Constitution.

84. Article 33 (2) of the Constitution dictates that: "No punishment for a criminal act shall exceed the penalty provided by law at the time the criminal act was committed". The plain text is clear.

    Even with the interpretation of the words "shall take into account" and its subsequent application by that standard (take it into account within certain parameters) of Article 44 (2) of the Law, the applied standard still violates the Article 33 (2) of the Constitution.

85. In addition, the interpretation of the words "shall take into account" and its subsequent application by that standard (take it into account within certain parameters) of Article 44 (2) of the law, the applied standard violates the Article 33 (4) of the Constitution.

Sabit Tafil Geci et al-PAKR 55/14**,** Court of Appeals 29 October 2014 Eight (8) years of imprisonment,https://hlckosovo.org/storage/app/media/Sabit%20Geci%20at%20al/Sabit%20Geci%20at%20al_%20Judgment-29102014.pdf
Drenica 1 and Drenica 2, PAKR Nr 456/15, Court of Appeals of 14 September 2016. https://www.eulexkosovo.eu/eul/repository/docs/PAKR_45615Judgment_ENG_Redacted.pdf ; Basic Court of Prishtina: https://www.eulexkosovo.eu/eul/repository/docs/drenica_10_judgment_final_redacted.pdf
Goran Stanisić, -Pml.nr.26 / 2023, Supreme Court of Kosovo-Prishtina 16 February 2023,Basic Court: https://prishtine.gjyqesori-rks.org/wp-content/uploads/verdicts/PR__2020-017884_SQ.pdf; Court of Appeals:https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/AP_APS_2022-145840_SQ.pdf**;** Supreme Court: https://supreme.gjyqesori-rks.org/wp-content/uploads/verdicts/SUP_PML_2020-017884_SQ.pdf

86. As the Article 33 (4) of the Constitution dictates:

> "Punishment shall be in accordance with the law in force at the time the criminal act was committed (…)".

The plain text of the paragraph of the Constitution is clear. The application of the AP of Article 44 (2) sub a) and b), even by its own interpretation and standard, was wrong, as it ultimately resulted in a punishment that exceeded the penalty provided by law and was neither in accordance with the law at the time of its commission, nor in accordance with the cited articles of the Constitution of Kosovo.

87. The Defence requests the Supreme Court to grant this ground and therefore to apply either subparagraph a or subparagraph b of the Rule 194 (1) of the Rules.

Ground IV: Murder: in violation of the Article 14 (1) (C), and a substantial violation of the Articles 159 (3) and 183 (3) of the Rules.

88. First and foremost, Mustafa stresses that he has pleaded not guilty on all counts and maintains that position until today. Even though the Trial Panel and the AP convicted him for counts 1 (arbitrary detention), 3 (torture) and 4 (murder). With regard to the Murder, Mustafa contends that the murder, as defined in Article 14 (1) (c) was not appropriately adjudicated in his case. The Trial Panel, and in the furtherance of it the AP, construed only in a mere theoretical manner the crime of murder, and convicted Mustafa for it.
89. Mustafa submits that both judgments include substantial violations of the Rules, and cannot amount to murder as under Article 14 (1) of the Law.
90. Rule.159 (3),164(2) and 183(3) require judgments to be reasoned. A request for protection of legality will be well-founded where the impugned judgment does not give sufficiently clear and consistent reasons or fails to address key evidence. It must be clear from the decision that the essential issues of the case have been addressed and the grounds for the decision indicated with sufficient clarity. The defence submits that this is the case here.
91. The Trial Panel concluded that Mustafa and his BIA subordinates were primarily responsible for severe mistreatment and denial of medical aid, leading to the death of the victim. However, regarding the bullet holes in the victim's body, there was uncertainty

whether they were caused by BIA members or Serbian forces. Applying the principle of *in dubio pro reo* (favouring the accused in case of doubt), the Trial Panel assumed that Serbian forces shot the victim. Despite this assumption, the AP suggests that the Trial Panel should have considered whether the intervention of Serbian forces constituted a third-party action breaking the chain of causation, as raised on appeal.[42]

92. The AP acknowledges that neither the Parties nor Victims' Counsel could provide any precedent from international courts or tribunals involving a new third-party intervening event similar to the one in the present case. Consequently, the jurisprudence of international courts and tribunals does not offer clear guidance on how a new third-party intervening event may impact legal causation under the substantial contribution test for a direct perpetrator. As a result, there is no apparent basis to derive customary international law from international case law on this issue.[43]

93. In Judgment, paragraph 348, the AP considered:

> "While it would have been preferable for the Trial Panel to have directly acknowledged and set out its methodology for assessing a new third-party intervening event in relation to the substantial contribution test, the AP nonetheless understands the Trial Panel to have addressed this matter, at least implicitly, (…)
>
> (…) Moreover, applying the essence of the above referenced standards for *novus actus interveniens*, the AP observes that Trial Panel findings support the conclusion that the risk to the Murder Victim's life posed by advancing Serb forces was *foreseeable*. The Trial Panel found that Mustafa personally went to Zllash/Zlaš on or around 20 to 21 April 1999 in order to evacuate wounded persons "because of a critical change of circumstances — the Serbian offensive". In other words, Mustafa knew about the advancing enemy Serb forces and was worried enough to move his own personnel from harm's way. The Trial Panel's findings also support the

[42] Summary of Paragraph 345 of the AP Judgment
[43] Summary of the paragraph 346

> conclusion that the risk to the Murder Victim's life posed by advancing Serb forces was *part of the original sphere of risk* stemming from Mustafa's conduct. In this regard, the Trial Panel found, in the context of his knowledge of the advancing Serb forces, that Mustafa's decision to not release or evacuate the Murder Victim – a man in a "near-to-death state" when last seen by his co-detainees – "deprived [him] of any chance to survive". Finally, Trial Panel findings support the conclusion that the risk to the Murder Victim's life posed by advancing Serb forces was not so potent as to render the original risk *insignificant*. The Trial Panel found in this regard that "had the Accused and his BIA subordinates stopped such extreme mistreatment or provided medical aid to the Murder Victim, he would not have died" ".

94. The AP dismissed the argument raised by the Defence regarding *novus actus interveniens.*

95. The key elements that the AP used are the elements *foreseeable, part of the original sphere of risk* and (if the risk posed on the victim's life) *renders the original risk to a level that the risk becomes insignificant*.

96. The three elements above essentially assume each that there is a risk to the life of the Murder Victim. However, this assumption (the risk to the Murder Victim's life) has not been supported by any evidence, not by a reasoning as to why the advancement of Serbian troops would in fact pose a risk to life. It is an unsupported, assumption and without any reasoning as to why, or what kind of risk the victim would in fact have with the advancing forces. The Trial Panel, and in the furtherance of it the AP only assume it.

97. Neither the Trial Panel nor the AP established at which point in time the Serbian Forces actually advanced to the location where the murder victim was located. In fact, no findings were established if the Serbian forces at all entered the location where the murdered victim was, or that the Serbian forces remained far away from the location. Therefore, the assumed risk posed on the life of the murder victim lacks findings on this matter.

98. Even if the Serbian forces advanced at some point in time and assumed gunshots by Serb forces constituted a third-party intervention, it is important to know at which point in time that happened in order to assess whether there would be a break in the chain of causation. The time period in which these forces would have advanced is of importance as a determination has to be made on the *foreseeability* and *the original sphere of risk* depend, among other factors, on it.

99. In addition, the Trial Panel and in the furtherance of it the AP do not elaborate, nor give it any reasoning as to why it would be *foreseeable* for Mustafa that there would be any risk posed on the life of the Murder Victim, a civilian. As the Murder Victim allegedly was in a near to death state, one would not be able to determine whether the Serbian forces-if they arrived at the location at all-would in fact not help the victim, or otherwise do something with him. He was apparently unarmed, so why would they kill him? Or why would it be Serbs at all that killed him? It remains simply undetermined, as no findings were made to this effect.

100. The same counts for *the original sphere of risk*. This element itself remains undefined in the reasoning of the AP. It is assumed that there is a rational decision which lies under the assumption that the victim was not evacuated. There could have been numerous reasons why the person remained at the location or had to remain there. The AP does not in any manner defines what would be *the original sphere of risk*, and what particular risk that might be. It depends on all kinds of circumstances of which none were established.

101. Lastly the conclusion that the risk to the Murder Victim's life posed by advancing Serb forces was not so potent as to render the original risk *insignificant*.

102. This element cannot be read other than that it is connected to the previous element of the *original sphere of risk*. Apparently if the risk to life was not potent enough, vis-a-vis to the original risk, then this would result in the fact that the murder would not be attributable to Mustafa.

103. Both elements of *foreseeability* and what is within the *original sphere of risk* were simply not established. Neither by the Trial Panel, nor by the AP as no findings were made about it. They cannot be construed afterwards and certainly not stand without evidence to each of these elements.

104. Where the Judgments lack clarity as to what would be the *original sphere of risk*, the Defence submits that the Judgment, and the dismissal of the element of *novus actus interveniens*, was not well reasoned. At least not enough that the submission that no reasonable court could have come to this conclusion, was dismissed.

105. As the risk, or the *original sphere of risk* is undefined, and it is not established whether a risk in fact is life threatening, or if that is even *foreseeable*, it is essential that it is established with facts. The Defence submits that in the current case such risk and the *foreseeability* is merely assumed or pre-supposed. In particular where no evidence is used as to the situation at the time of the events took place on the location in question. The lack of establishments of these elements and the lack of proper findings on these elements, materially affect the judicial finding for the ultimate conclusion that the omissions of the accused substantially contributed to the death of the victim. Thus, it is not properly reasoned as Rule 159 (3) and 183 (3) of the Rules prescribe.

106. If no findings are made, as in the Appeal Judgment, no proper assessment was made regarding a third party intervening that broke the chain of causation. The substantial cause test as applied by the AP failed as there are too many unknown factors to conclude that Mustafa substantially contributed to murdered victim's death. Thus, based on assumptions of risk, the murder of the victim was wrongly attributed to Mustafa, and not properly reasoned by the AP.

107. The Defence submits that expose a person to a further undefined risk, cannot amount to murder, or to attribute the death of a person as murder to the Accused. It can equally not satisfy the necessary *actus reus* for murder.

108. The Defence submits that murder could not be established, and neither could murder be attributed in a case like the case at hand. It is therefore a violation of the Article 14 (1) (C) of the Law.

109. The Defence requests the Supreme Court to make a finding that the Trial Panel's, and in the furtherance of it the AP, reasoning, and to conclude that the death of the Murder Victim is attributed to Mustafa, is not in accordance with Rule 159 (3) and 183 (3) of the Rules. The reasoning lacks clarity and evidence to the extent that it is a substantial violation of the Rules.

110. The Defence requests to annul in whole or in part the impugned decision or judgment and return the case for a new decision or retrial to the competent Panel.

Ground V-Violation of Constitutional Rights of the Accused under Article 30 (1) and (3), and Article 22 (2) of the Constitution, and Article 6 (3) (a)(b).

111. A draft translation of the Appeal Judgment in the language that the Accused understands was available as late as 12 February 2024.

112. The lack of a judgment in his own language at an earlier stage, violates the rights to have adequate time for the preparation of his defence as well as to be promptly informed in a language he understands of the nature and the cause of the accusations as well as the Judgment by which he was convicted.[44]

113. Even given the fact that within the time period that Mustafa received the Judgment in Appeal and the deadline within which he had to file the current Request was further complicated by the fact that the decision of appointment of a new counsel was annulled.[45] This was confusing for Mustafa, and impaired his ability to properly prepare for his defence.

114. Mustafa submits that he is entitled to be informed about a judgment in the language he understands in a timely manner so he can subsequently prepare his defence regarding it.

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44 F00038sqi1, Record number: KSC-CA-2023-02/F00038/sqi1, Date of distribution: 12/02/2024 at 11:22 hrs.

45 F00008, Decision on Prosecution motion regarding conflict of interest of defense counsel, 25 January 2024, paragraph 11

115. Mustafa submits that for these reasons his rights under Article 30 (1) (3) were violated as well as his right under Article 6 (3) (a) (b) of the ECHR, which directly applicable under Article 22 of the Constitution.

116. Mustafa requests the Supreme Court to grant this ground and therefore to apply either subparagraph (a) or subparagraph (b) of the Rule 194 (1) of the Rules.

V. CONCLUSION

117. In light of the above, it is submitted that the Supreme Court should modify the judgments of Trial Panel and AP so as to:

(i)-To reverse the convictions on counts 1, 3, 4 and enter acquittals; or otherwise

(ii)-Annul the judgments and return the case for a retrial;

(iii)-Reduce the sentence

Word count: 8902

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14 March 2024 **Julius von Bóné**

At The Hague, the Netherlands **Defence Counsel**