

1 Friday, 16 December 2022

2 [Pronouncement of Trial Judgment]

3 [Open session]

4 [The accused entered court]

5 --- Upon commencing at 9.00 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning and welcome.

7 Before we start, I would like to give the photographers the
8 opportunity to make some pictures.

9 Please proceed. Thank you.

10 Court Officer, can you please call the case.

11 THE COURT OFFICER: Good morning, Your Honours. This is
12 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 First of all, I will call the appearances.

15 Mr. Prosecutor, could you tell us who is present for this
16 Specialist Prosecutor's Office.

17 MR. MICHALCZUK: Good morning, Your Honours. Good morning,
18 everybody in and outside of this courtroom. The Prosecution is
19 represented today by Mr. Alex Whiting, acting Specialist Prosecutor;
20 Prosecutors Silvia D'Ascoli and Filippo de Minicis; our Case Manager,
21 Julie Mann; and I am Cezary Michalczuk, SPO Prosecutor.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 Victims' Counsel, you have floor.

24 MS. PUES: Thank you. And good morning, Your Honours. Good
25 morning, everybody. The participating victims in this case are this

1 morning represented by Jack Provan as Junior Legal Associate;
2 Brechtje Vossenbergh as co-counsel; and by myself, Anni Pues, as
3 counsel.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5 Defence counsel, you have the floor.

6 MR. VON BONE: Good morning, Your Honour. Good morning, the
7 people inside and outside this courtroom. The Defence is represented
8 by myself, Julius von Bone, lead counsel; my co-counsel,
9 Mr. Betim Shala; investigator and interpreter Mr. Fatmir Pelaj; and
10 investigator Avdi Mehmeti. And joining us in the courtroom is also
11 present today Mr. Salih Mustafa, the accused. Thank you very much.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, counsel.

13 Now I turn to the Registry.

14 MR. NILSSON: Good morning, Your Honours. And good morning,
15 colleagues. Jonas Nilsson, head of Judicial Services Division,
16 representing the Registry today, together with head of Court
17 Management, the senior court officer. Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Trial Panel I will render today the trial judgment in the case
20 of the Specialist Prosecutor versus Salih Mustafa. The Panel is
21 composed of Judges Roland Dekkers, Gilbert Bitti, and Vladimir Mikula
22 as Reserve Judge, and myself, Mappie Veldt-Foglia as Presiding Judge.

23 This judgment is pronounced in public in the name of people of
24 Kosovo and in the presence of Mr. Mustafa.

25 While I will read a summary of the central findings made by the

1 Panel, this summary is not part of the trial judgment, which is the
2 only authoritative account of the Panel's rulings and findings. The
3 non-authoritative summary will be available on the web site of the
4 Specialist Chambers.

5 These proceedings concern the alleged acts of Mr. Mustafa at a
6 compound in Zllash in Kosovo between approximately 1 April 1999 and
7 around the end of April 1999. Today's judgment marks a milestone for
8 the Specialist Chambers. It constitutes the first judgment for war
9 crimes of this tribunal. It represents another step towards
10 delivering justice and promoting accountability for serious
11 violations of international humanitarian and criminal law allegedly
12 committed in Kosovo between 1 January 1998 and 31 December 2000.

13 Before turning to the Panel's findings on the charges against
14 Mr. Mustafa, the Panel wishes to address a few important issues.

15 Firstly, there seems to be a misconception that these charges
16 were brought against the Kosovo Liberation Army as such or against
17 the people of Kosovo as a whole. Nothing could be further from the
18 truth. It was the people of Kosovo, through their Parliament, who
19 chose to create and empower this institution.

20 In addition, criminal responsibility before the Specialist
21 Chambers is only personal. This principle is enshrined in the legal
22 framework of the Specialist Chambers. It grants the Specialist
23 Chambers jurisdiction over natural persons only. In the present
24 case, the charges presented by the Specialist Prosecutor relate
25 solely to the individual criminal responsibility of Mr. Mustafa and

1 his involvement in war crimes of arbitrary detention, cruel
2 treatment, torture, and murder as alleged in the charges of the
3 Specialist Prosecutor.

4 At no point in time the KLA was on trial. Mr. Mustafa and his
5 alleged actions were on trial.

6 Secondly, the victims alleged to have suffered harm because of
7 the actions of Mr. Mustafa are citizens of Kosovo and of Albanian
8 ethnicity. Their efforts to seek justice and truth lie at the heart
9 of these proceedings.

10 Finally, the Panel has heard several first-hand accounts of
11 witnesses, some of whom are also participating victims in the case.
12 These witnesses testified on the traumatic events they experienced
13 and the continuous psychological impact these events have had on
14 their lives and on the lives of their families.

15 The Panel recognises that it takes a lot of courage to come
16 forward to testify. The victims did so in a pervasive climate of
17 fear and intimidation that persists in Kosovo to this day.

18 Throughout the course of this trial, the Panel has heard
19 evidence from multiple witnesses indicating that those who cooperate
20 or are believed to cooperate with the Specialist Chambers or with the
21 Specialist Prosecutor are labelled in Kosovo as traitors or
22 collaborators and are subject to threat and intimidation, either
23 themselves or their children.

24 The victims who have come forward as witnesses in this case now
25 live in constant fear that something will happen to them or their

1 families. They are still to this day unable to speak freely about
2 the traumatic events they experienced and the harm they suffered.

3 This climate of fear and intimidation directed against witnesses
4 who provide evidence in investigations or prosecutions of crimes
5 allegedly committed by former members of the KLA is one of the
6 reasons why this Court was created and is located here in The Hague
7 and not in Kosovo. It's also the reason why the Pre-Trial Judge and
8 the Panel have put in place protective measures for witnesses and
9 participating victims in order to conceal their identity from the
10 public. The identity of the witnesses was disclosed to Mr. Mustafa
11 and his lawyers to ensure his fair right to trial.

12 As a result of the protective measures for the witnesses and
13 participating victims, several trial hearings were conducted in
14 private session, without the public being able to hear what was
15 discussed in the courtroom. This guaranteed the effective protection
16 of the identity of those who wanted to tell their story before this
17 Panel. For the same reason, the Panel ordered the temporary
18 segregation of Mr. Mustafa and some restrictions to his
19 communications with the outside world.

20 The Panel, nonetheless, always has been attentive to the rights
21 of Mr. Mustafa and has at all times balanced the interest of
22 witnesses and victims on the one hand and Mr. Mustafa's rights on the
23 other.

24 I will now begin with the summary of the judgment. I will start
25 with the accused and the charges.

1 Mr. Salih Mustafa, the accused in this case, is a Kosovar
2 national born on 1 January 1972 in Prishtine, Kosovo. According to
3 the charges presented by the Specialist Prosecutor, and confirmed by
4 the Pre-Trial Judge, at all times relevant to the Confirmed
5 Indictment, Mr. Mustafa was the commander of the BIA guerilla unit, a
6 unit of the Kosovo Liberation Army.

7 According to the Confirmed Indictment, the BIA had its base in a
8 compound in Zllash in the Gollak region of Kosovo. This compound was
9 allegedly used by the BIA as a safe house and as a detention and
10 interrogation site. The Specialist Prosecutor asserts that the
11 crimes charged were committed at this compound, and I will refer to
12 it as the Zllash detention compound or the ZDC.

13 The Specialist Prosecutor charged Mr. Mustafa with four counts
14 of war crimes under Article 14(1)(c) of the Law: Arbitrary
15 detention, Count 1; cruel treatment, Count 2; torture, Count 3; and
16 murder, Count 4.

17 The Prosecution alleged that Mr. Mustafa is individually
18 criminally responsible under various modes of liability pursuant to
19 Article 16(1)(a) and (c) of the Law for the arbitrary detention,
20 cruel treatment, and torture of at least six persons at the ZDC
21 between approximately 1 April 1999 and 19 April 1999, and for the
22 murder of one person between approximately 19 April of that same year
23 and around the end of April 1999.

24 Mr. Mustafa pleaded not guilty to all counts.

25 I will give a short overview of the trial proceedings.

1 The trial commenced 15 September 2021 with the opening
2 statements of the Specialist Prosecutor's Office and the
3 Victims' Counsel. The Defence made its opening statements on
4 22 March 2022.

5 During the trial, the Panel has heard 28 witnesses, 13 called by
6 the Specialist Prosecutor and 15 by the Defence. The Panel has
7 further considered written statements, documentary evidence, and
8 expert reports. Moreover, eight victims have participated in the
9 proceedings, all of whom benefitted from protective measures.

10 Following the hearing of the closing statements, the
11 Presiding Judge closed the case on 15 September 2022 and the Panel
12 entered its deliberation for the 90-day period provided in
13 Rule 159(1) of the Rules.

14 Let me turn to how the Panel assessed the evidence presented in
15 this case by the Specialist Prosecutor's Office and the Defence.

16 Prior to entering its factual and legal findings, the Panel
17 conducted a general assessment on the credibility and reliability of
18 the Specialist Prosecutor and Defence witnesses. The Panel also took
19 into consideration the impact that the prevailing climate of witness
20 intimidation had on the evidence of these witnesses.

21 As concerns the witnesses of the Specialist Prosecutor, the
22 Panel found that their testimonies were to a great extent clear,
23 coherent, and consistent, their descriptions were graphic, rich in
24 detail, and narrated with emotion. Likewise, the testimonies of the
25 witnesses corroborated each other and were further corroborated by

1 other credible and reliable evidence before the Panel.

2 Overall, the Panel found that the evidence provided by the
3 witnesses called by the Prosecutor was credible and relied on it,
4 albeit to a different degree.

5 Turning to the Defence witnesses.

6 The Panel discerned several factors negatively affecting their
7 credibility. These factors included strong and deep ties between the
8 witnesses and Mr. Mustafa, rooted in their subordinate and superior
9 relationship when they were in the BIA unit in 1999 and personal
10 relationships, friends or related through family; close interactions
11 between witnesses and Mr. Mustafa before and after their interviews
12 with the Specialist Prosecutor; strong expressions of distrust or
13 bias on social media against the judicial process before the
14 Specialist Chamber; and reluctance by several witnesses to provide
15 information concerning the BIA and to associate themselves with any
16 BIA-related activities.

17 Moreover, the Panel took into consideration the readiness of
18 certain Defence witnesses to align their evidence to that of other
19 witnesses in a manner that was beneficial to Mr. Mustafa. The
20 evidence presented by these witnesses was, therefore, considered with
21 extreme caution. Further, some of the Defence witnesses lacked a
22 proper basis of knowledge to be reliably used. In other instances,
23 their evidence was essentially irrelevant to the charges and,
24 therefore, was not relied upon by the Panel.

25 Lastly, the Panel found that many witnesses had problems

1 remembering dates accurately or experienced memory lapses. Some of
2 these witnesses were called by the Defence to testify about a
3 possible alibi. The Panel considered the systematic difficulties in
4 remembering dates as a factor potentially affecting the reliability
5 of the witness evidence when assessing the alibi presented by the
6 Defence.

7 I will now go into the role of Mr. Mustafa.

8 Let me briefly summarise the Panel's finding in relation to the
9 role of Mr. Mustafa within the KLA at the time relevant to the
10 Confirmed Indictment.

11 The Panel found that in May 1998 Mr. Mustafa was appointed as
12 the commander of the then newly created BIA unit. The BIA unit
13 formed part of the KLA. Mr. Mustafa held this position until
14 approximately mid-June 1999, when the BIA was disbanded. Mr. Mustafa
15 was known by the nickname Cali and was also referred to as Commander
16 Sali. As stated by Mr. Mustafa himself, and corroborated by ample
17 evidence, he was the overall and only BIA commander throughout the
18 BIA's existence, including in April 1999, and was also in charge of
19 intelligence gathering. Mr. Mustafa had the power to make
20 appointments within the BIA unit, to issue orders to his
21 subordinates, and to discipline them.

22 Before moving to the Panel's finding in relation to the crimes
23 charged, I will summarise the findings concerning the alibi.

24 The Defence submitted that Mr. Mustafa could not have committed
25 the crimes charged. It averred that during the time relevant to the

1 charges, Mr. Mustafa was in other locations than the Zllash detention
2 compound. The Panel has carefully analysed the totality of the
3 evidence and found that such evidence did not establish a reasonable
4 doubt with regard to Mr. Mustafa's presence at the crime scene. In
5 particular, the Panel found that the evidence of alibi was mostly
6 vague or inconsistent, particularly when weighed against the
7 consistent and ample evidence pointing at Mr. Mustafa's presence at
8 the crime scene at relevant times. In addition, credible and
9 corroborating evidence, including from Mr. Mustafa himself, showed
10 that he was able to move across the territory surrounding Zllash and,
11 in fact, did so repeatedly during the course of April 1999.

12 I turn now to the Panel's findings in relation to the crimes
13 charged in the Confirmed Indictment.

14 I will start with Count 1, regarding arbitrary detention.

15 Based on the evidence taken as a whole, the Panel found that at
16 least six persons were deprived of their liberty between
17 approximately 1 April 1999 and on or around 19 April of that same
18 year at the Zllash detention compound. Victims were apprehended by
19 BIA members or other KLA members in different locations around
20 Zllash. They were then handed over to BIA members at the Zllash
21 detention compound. The evidence clearly proves that the Zllash
22 detention compound was under the sole control of the BIA and its
23 commander Mr. Mustafa.

24 The Panel found that at no point during their detention the
25 victims were provided with any of the basic procedural safeguards

1 that are mandatory under international humanitarian law for persons
2 deprived of their liberty. Specifically, they were not informed of
3 the reasons for which they were deprived of their liberty, they were
4 not brought before a judge or other competent authority, and they
5 were not provided with an opportunity to challenge the lawfulness of
6 their detention.

7 In addition, the evidence established that Mr. Mustafa was
8 present at the Zllash detention compound on various occasions during
9 April 1999. These included the time when one of the victims was
10 handed over to BIA members at the Zllash detention compound at the
11 beginning of April and other instances in the course of the first two
12 weeks of April 1999. The Panel also found that Mr. Mustafa ordered
13 his BIA subordinates to take detainees back to their place of
14 detention after they were interrogated. Accordingly, the Panel found
15 that Mr. Mustafa intentionally deprived the victims of their liberty
16 and knew that no basic guarantees were afforded to them for the
17 entire duration of their detention.

18 The Panel, therefore, found that the Specialist Prosecutor has
19 established beyond reasonable doubt the war crime of arbitrary
20 detention under Count 1 and that it was committed against at least
21 six persons at the Zllash detention compound between approximately
22 1 April 1999 and on or around 19 April 1999.

23 I now turn to Counts 2 and 3, which are cruel treatment and
24 torture.

25 The Panel found that the detainees at the Zllash detention

1 compound were held in inhumane and degrading conditions of detention.
2 They were kept in barns suitable for animals, in deplorable
3 conditions, with livestock excrements lying around. They had to
4 sleep on the ground, in water puddles or hay. In the barns, it was
5 always dark. The detainees were not provided sufficient food.
6 Witnesses testified that two or three days would pass without them
7 having anything to eat at all. The detainees were also not provided
8 sufficient water, and when they asked for water, BIA soldiers
9 urinated upon them, saying, "Here's water for you." They were only
10 given limited access to a toilet and were forced to relieve
11 themselves inside of the barn in a bucket in front of each other.
12 The Chamber also found that the detainees were denied medical care
13 and were prevented from talking to each other under threat of death.

14 Furthermore, the evidence shows that Mr. Mustafa and his BIA
15 subordinates at the Zllash detention compound routinely assaulted the
16 detainees both physically and psychologically. The BIA members had a
17 certain *modus operandi*. Inside the barns where the detainees were
18 kept, the victims were kicked, punched, and slapped on a daily basis.
19 In addition, BIA members took detainees out of the barns one by one
20 and brought them, most of the time, to a room located above one of
21 the barns where they endured harsh interrogation and brutal beatings.

22 The detainees were beaten, often by several BIA members at the
23 same time. They were hit with baseball bats, iron and rubber batons.
24 They were burned, electrocuted, stabbed, kicked, punched, and
25 slapped.

1 They were subjected to harsh interrogation and accused of being
2 spies, Serb collaborators, traitors, thieves, or liars. They were
3 ordered to express support for the KLA and made to shout, "Death to
4 the traitors, death to the thieves, death to the thugs, and glory to
5 the Kosovo Liberation Army," as one witness recalled.

6 The mistreatment left detainees severely injured, bruised,
7 covered in blood, unable to stand or speak, and sometimes even
8 unconscious. One detainee, the alleged murder victim, was so
9 severely mistreated that he ended up in a near-to-death state. One
10 witness testified, in a manner that is revealing of the extreme
11 suffering that he endured, that he wished he had been killed.

12 Mr. Mustafa himself interrogated and treated two of the
13 detainees personally on different occasions. He subjected one of
14 them to a mock execution. He also beat him repeatedly all over his
15 body. Mr. Mustafa further ordered his subordinates to beat one of
16 the detainees until he lost consciousness and was present at other
17 times when the detainees were mistreated by the BIA subordinates.

18 The detainees were also psychologically abused by BIA members.
19 From the barns where they were kept, they could see and hear their
20 co-detainees being beaten and saw the injuries inflicted on them. As
21 a result, they lived in constant fear that they could be next. One
22 witness stated, "You could hear people screaming, howling like dogs,
23 making sounds like cats, screaming cats. Because of the torture and
24 the pain." Another explained that they could hear this almost every
25 night and that they could not sleep. The testimony of one witness

1 speaks for itself about their immense psychological strain: "You
2 just stayed and waited who will come to get you and take you upstairs
3 for beating," "you were just waiting for death, when it will come.
4 Today, tomorrow. You were waiting ... to be killed."

5 The physical and psychological abuse, coupled with the inhumane
6 and degrading conditions of detention, left the detainees with
7 life-long injuries, both psychological and physical.

8 The Panel, thus, found that Mr. Mustafa and his BIA subordinates
9 intentionally inflicted severe physical and mental pain and suffering
10 upon at least six persons detained at the Zllash detention compound
11 for the purposes of obtaining information or a confession, punishing,
12 intimidating, coercing, and/or discriminating against them on
13 political grounds.

14 Taking the mistreatment suffered by the victims as a whole, the
15 Panel, therefore, found that the Specialist Prosecutor has
16 established beyond reasonable doubt that the war crime of torture
17 under Count 3 was committed against at least six persons at the
18 Zllash detention compound between approximately 1 April 1999 and on
19 or around 19 April 1999.

20 The Panel considered that the charge of cruel treatment was
21 fully consumed by the charge of torture and, thus, decided not to
22 consider it further, and this was for reasons of fairness to
23 Mr. Mustafa.

24 Let me move to Count 4, the murder.

25 The Panel determined that on or around 19 April 1999, in light

1 of the impending Serbian offensive in the area surrounding Zllash,
2 BIA members, under the authority of Mr. Mustafa as their commander,
3 released a number of detainees from the Zllash detention compound.
4 They also evacuated the premises of the compound. Nevertheless, and
5 despite exceptional circumstances created by the offensive, the Panel
6 found that two specific detainees were not released by Mr. Mustafa's
7 BIA subordinates. These two detainees were, not coincidentally in
8 the Panel's evidentiary assessment, the two most mistreated. One of
9 them was last seen by his co-detainees in a near-to-death state,
10 unable to move. He was later found dead. The Panel found that the
11 identity of the body of the victim was positively established,
12 through a combination of testimonies, documents, and photographs, as
13 one of the two detainees who were not released from the Zllash
14 detention compound.

15 Considering that Mr. Mustafa was the overall and only commander
16 of the BIA, with full control over the Zllash detention compound, the
17 Panel found that the only reasonable conclusion was that Mr. Mustafa
18 took the decisions to release specific detainees and to keep the
19 murder victim in detention, while denying him medical care. These
20 decisions taken by Mr. Mustafa in his capacity as BIA commander and
21 in the context of the impending Serbian offensive, effectively
22 equalled the decision to kill the murder victim, as at that stage he
23 was denied any chance of survival.

24 The Panel concluded that the murder victim died between on or
25 around 19 April 1999 and around the end of April 1999. The causes of

1 death were the severe mistreatment inflicted by the BIA members who
2 detained him for almost three weeks, the denial of medical aid by
3 those BIA members, and certain gunshot wounds identifiable on his
4 body. The evidence irrefutably demonstrated that the first two
5 causes of death, namely, the extreme mistreatment inflicted upon the
6 murder victim and the denial of medical aid, are exclusively
7 attributable to acts and omissions of Mr. Mustafa and his BIA
8 subordinates at the Zllash detention compound.

9 With regards to the third cause of death, namely, the gunshot
10 wounds, while the most probable conclusion was that BIA members fired
11 the bullets at the murder victim before leaving the Zllash detention
12 compound, this was not the only reasonable conclusion based on the
13 totality of the evidence. There exists, in fact, a reasonable doubt
14 as to whether the gunshot wounds identified on the body of the murder
15 victim could be attributed to the BIA members or to the Serbian
16 troops for reasons explained in detail in the judgment.
17 Nevertheless, the Panel concluded that this reasonable doubt had no
18 bearing on the attribution of the victim's death to Mr. Mustafa.
19 This was the case because the extreme mistreatment inflicted upon the
20 murder victim, jointly with the denial of medical aid, in the context
21 of Mr. Mustafa's decisions as BIA commander to neither release nor
22 evacuate the victim when the Serbian forces approached the area,
23 constituted substantial causes to the victim's death, irrespective of
24 whether the victim was hit by one or more Serbian bullets.

25 In other words, the Panel considered that firing directly at the

1 murder victim or putting him in a position to be fired at by the
2 advancing Serbian forces, by abandoning him without protection in a
3 near-to-death state at the Zllash detention compound, led exactly to
4 the same conclusion. The conclusion is that the death of the victim
5 could be attributed to acts and omissions of Mr. Mustafa in his
6 capacity as BIA commander.

7 Accordingly, the Panel found that Mr. Mustafa intended to kill
8 the murder victim.

9 The Panel, therefore, found that the Specialist Prosecutor has
10 established beyond reasonable doubt that the war crime of murder
11 under Count 4 was committed against one person at the Zllash
12 detention compound between approximately 19 April 1999 and around the
13 end of April 1999.

14 I will now turn to the armed conflict.

15 The Panel further found that the crimes charged were committed
16 in the context of a non-international armed conflict between the KLA
17 and Serbian forces. Mr. Mustafa was aware of the circumstances
18 establishing the non-international armed conflict. He was also aware
19 of the status of the victims as not taking active part in the
20 hostilities, given that they were deprived of their liberty at the
21 Zllash detention compound under his control.

22 Allow me to turn to the nature of Mr. Mustafa's participation in
23 the commission of the crimes charged.

24 The Panel found that Mr. Mustafa directly and personally
25 mistreated two detainees. In this respect, the Panel considered it

1 appropriate to reflect his conduct under direct commission as a mode
2 of liability. The reason is that Mr. Mustafa intended to engage in
3 that conduct, including with the required purpose of torture as a war
4 crime.

5 With regard to the remainder of the crimes, Mr. Mustafa,
6 together with his BIA subordinates and other KLA members, shared the
7 common purpose to detain and mistreat the detainees under BIA's
8 custody at the Zllash detention compound, and to detain, mistreat,
9 and ultimately kill the murder victim.

10 The Panel found that Mr. Mustafa significantly contributed to
11 the implementation of the common purpose. In particular, Mr. Mustafa
12 provided multiple significant contributions to the common purpose in
13 his capacity as BIA commander at the ZDC. He personally tortured two
14 detainees, thereby providing a model or incentive for his BIA
15 subordinates to perform similar actions against the detainees at the
16 ZDC. He ordered his BIA subordinates to torture some detainees and
17 to return them to their barns. He denied medical care to the
18 detainees despite their mistreatment and injuries. He did not
19 release the detainees, thus allowing his BIA subordinates to
20 mistreatment them, until an exceptional change of circumstances
21 occurred, namely, the Serbian offensive. And he never released nor
22 evacuated the murder victim who remained in detention while
23 Mr. Mustafa and his BIA subordinates left the Zllash detention
24 compound in light of the impending Serbian offensive.

25 In light of the above, the Panel finds that Mr. Mustafa is

1 criminally responsible as a direct perpetrator for the war crimes of
2 torture under Count 3, limited to those incidents against two
3 specific detainees in which Mr. Mustafa personally participated.

4 The Panel further finds that Mr. Mustafa is criminally
5 responsible through his significant contribution to a joint criminal
6 enterprise for the war crimes of arbitrary detention, Count 1; and
7 torture, Count 3, against at least six detainees; as well as for the
8 war crime of murder, Count 4, against one detainee.

9 About the sentencing.

10 Before pronouncing the verdict and the sentence, I will briefly
11 summarise the purpose of sentencing and the factors considered by the
12 Panel to determine the appropriate sentence for the crimes of which
13 Mr. Mustafa is criminally responsible.

14 Prior to that, the Panel wishes to inform that it will issue in
15 due course a reparation order pursuant to Article 22(8) and Article
16 44(6) of the Law and retains the necessary jurisdiction to that
17 effect.

18 The Panel recalls retribution and deterrence as the primary
19 purpose of sentencing an individual convicted of a crime.

20 Moreover, the Panel wishes to underline the importance of
21 bringing to justice the perpetrators of those serious crimes of
22 concern to the international community as a whole in order to end
23 impunity, even decades after the events concerned and notwithstanding
24 a prevalent and long-standing climate of witness intimidation in
25 Kosovo.

1 Another important purpose of sentencing is the acknowledgement
2 of harm and suffering caused to the victims and society.

3 The Panel lastly notes that the crimes in this case were
4 directed exclusively against Kosovar Albanians, and the Panel is of
5 the view that the establishment of the truth resulting from this
6 judgment may further the reconciliation among affected communities in
7 Kosovo in order to contribute to the restoration and maintenance of
8 the peace.

9 The Panel considered the gravity of the crimes and its
10 consequences, Mr. Mustafa's personal contribution to the crimes, the
11 individual circumstances of the convicted person, and mitigating and
12 aggravating circumstances as factors relevant to determine the
13 appropriate circumstances.

14 As to the gravity of the crimes, the Panel considered that
15 arbitrary detention is grave in nature because it exposed victims to
16 other additional human rights violations; torture represents an
17 assault to human dignity, security, and mental and physical
18 well-being; and murder is inherently one of the most serious crimes.

19 In this case, at least six detainees were deprived of their
20 liberty at the ZDC, in inhumane and degrading conditions, without any
21 basic guarantees, and were routinely psychologically and physically
22 assaulted. Moreover, one of the detainees died as a result of the
23 severe mistreatment inflicted by the BIA members who detained him for
24 almost three weeks, the denial of medical aid by the BIA members, and
25 the gunshot wounds identified on the body, in respect of which the

1 Panel has established that there exists a reasonable doubt as to the
2 attribution of the BIA members or to the Serbian forces. In this
3 respect, the Panel does not take into consideration this last cause
4 of death when determining this sentence.

5 As to the consequences of the crimes, the Panel considered that
6 the victims in this case suffered long-lasting injuries, both
7 physical and mental. They also experienced disruption in personal
8 relationships and family life. Some further struggled to make a
9 living. The Panel also took into account not only the impact the
10 murder had on the direct victim and those who witnessed his
11 mistreatment, but also on the family members of the murdered victim
12 left behind.

13 The Panel further considered two aggravating circumstances,
14 namely, that, as described earlier, the torture was committed with
15 particular cruelty, and that victims were particularly vulnerable or
16 defenceless, given their status, isolation and, in some instances,
17 their young age. One of them was, for example, 18 years old.

18 For these reasons, the Panel assessed the gravity of the crimes
19 considered as high.

20 As to Mr. Mustafa's personal contribution to the crimes, the
21 Panel considered the superior position and central role of
22 Mr. Mustafa in a system of illegal detentions and tortures at the
23 ZDC, together with his continued approval and endorsement of the same
24 acts in the period between 1 April 1999 and 19 April 1999.

25 The Panel considered for the sentence also that he personally

1 and intentionally tortured two of the detainees.

2 Furthermore, the Panel considered that Mr. Mustafa intended the
3 lethal treatment inflicted upon the murder victim and for such
4 mistreatment to carry on for 19 days, while denying medical care,
5 basic guarantees, or releasing him, which he had the power to do so
6 as BIA commander. And eventually Mr. Mustafa, in his capacity as BIA
7 commander, decided not to release the murder victim, which
8 effectively equalled a decision to kill him.

9 Accordingly, the Panel assessed the degree of Mr. Mustafa's
10 personal contribution to the crimes and his intent as very high.

11 Finally, the Panel did not accord any significant weight to
12 Mr. Mustafa's individual circumstances, considering the nature and
13 the gravity of the proven crimes and his contribution to them.

14 I will now pronounce the verdict.

15 Mr. Salih Mustafa, please stand.

16 Mr. Mustafa, would you like to put on your headphones?

17 THE ACCUSED: No, I understand.

18 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

19 In the name of the people of Kosovo, for the reasons set out in
20 the judgment and summarised earlier, and having considered all of the
21 evidence and the arguments of the parties and victims, counsel, the
22 Panel, pursuant to Article 43 and 44 of the Law, and Rules 158, 159,
23 163, and 165 of the Rules, finds you, Mr. Mustafa, guilty of:

24 Count 3, torture as a war crime, under Article 14(1)(c)(i) and
25 Article 16 (1)(a) of the Law, direct commission;

1 Count 1, arbitrary detention as a war crime, under Articles
2 14(1)(c) and Article 16(1)(a) of the Law, as part of a joint criminal
3 enterprise, in its basic form;

4 Count 3, as a war crime, under Article 14(1)(c)(i) and 16(1)(a)
5 of the Law, as part of a joint criminal enterprise, in its basic
6 form;

7 Count 4, murder as a war crime, pursuant to Article 14(1)(c)(i)
8 of the Law, as part of a joint criminal enterprise, in its basic
9 form.

10 The Panel finds you not guilty of the war crime of cruel
11 treatment under Count 2.

12 And I will now pronounce the sentence.

13 Mr. Mustafa, given that you have been found guilty of more than
14 one crime, the Panel has determined an individual sentence for each
15 crime of which conviction has been entered, pursuant to Rule 163(4)
16 of the rules. I will first set out these individual sentences.
17 Thereafter, I will pronounce a single sentence for the totality of
18 your criminal conduct.

19 The Panel has determined a term of 10 years of imprisonment for
20 the war crime of arbitrary detention, Count 1; a term of 22 years of
21 imprisonment for the war crime of torture, Count 3; and a term of 25
22 years of imprisonment for the war crime of murder, Count 4.

23 The Panel sentences you to a single sentence of 26 years of
24 imprisonment with credit for the time served.

25 Mr. Mustafa, you may be seated.

1 The Registry shall now distribute the trial judgment in
2 electronic form.

3 Please proceed.

4 A certified copy of the English version will be provided to
5 Mr. Mustafa as soon as possible today, and the Albanian version shall
6 be served on you once it is ready.

7 The Panel will issue a public redacted version in due course of
8 this trial judgment, and the Panel recalls that it will retain
9 jurisdiction in this case, as said, for the purpose of issuing in due
10 course a reparation order specifying appropriate reparation to or in
11 respect of victims in accordance with Article 22(8) and 44(6) of the
12 Law.

13 And before adjourning, the Panel will also give an oral order.

14 The Panel considers that the remaining restrictions to the
15 contact and communications of Mr. Mustafa are no longer necessary nor
16 proportionate at this stage of the proceedings. Accordingly, the
17 Panel hereby decides to lift *proprio motu* any such measures effective
18 Wednesday, 21 December 2022 at noon. The Panel will issue a written
19 decision next week in accordance with Rule 75(2) of the rules.

20 The Court stands adjourned.

21 --- Whereupon the hearing adjourned at 9.49 a.m.

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