

1 Monday, 14 July 2025

2 [Open session]

3 [Appeal Judgment]

4 [The appellant appeared via videolink]

5 --- Upon commencing at 11.30 a.m.

6 JUDGE PICARD: [via videolink] Good morning and welcome,  
7 everyone.

8 Mr. Court Officer, could you please call the case.

9 THE COURT OFFICER: Good morning, Your Honours. This is the  
10 file number KSC-CA-2024-03, The Specialist Prosecutor versus  
11 Pjeter Shala. Thank you, Your Honours.

12 JUDGE PICARD: [via videolink] Thank you, Mr. Court Officer.

13 I note that Mr. Shala is not physically present in the courtroom  
14 but he is attending the hearing via video-conference.

15 Mr. Shala, can you follow the proceedings in a language you  
16 understand?

17 THE APPELLANT: [via videolink] [Interpretation] Good morning,  
18 Your Honour. Yes, I can hear and understand clearly.

19 JUDGE PICARD: [via videolink] Thank you, Mr. Shala.

20 I will kindly ask the parties and Victims' Counsel to introduce  
21 themselves, starting with counsel for Mr. Shala.

22 MR. GILISSEN: Thank you very much for taking me the floor. I  
23 am Mr. Gilissen. We are here with Mr. Shala, as Mrs. President said,  
24 and we are here with my counsel and co-counsel, Mr. Aouini,  
25 Ms. Cariolou; Ms. Dzeneta Petravica, associate legal officer;

1     Judit Kolbe, assistant legal officer; Seloua Ameziane, intern; Imelda  
2     Mustafai, intern; and Paola Ripoll, intern too. Thank you very much.

3             JUDGE PICARD: [via videolink] Thank you, Mr. Gilissen.

4             Now for the Specialist Prosecutor's Office.

5             MR. DE MINICIS: Good morning, Your Honours. For the SPO  
6     appearing today is Kimberly West, Peadar Thompson, Line Pedersen,  
7     Maria Wong, Sarah Clanton, and Filippo de Minicis.

8             JUDGE PICARD: [via videolink] Thank you.

9             Now I turn to the Victims' Counsel.

10            MR. LAWS: Good morning, Your Honours. I am Simon Laws, counsel  
11     for the victims in this case, together with my co-counsel,  
12     Maria Radziejowska.

13            JUDGE PICARD: [via videolink] Thank you.

14            Now I turn to the Registry.

15            THE REGISTRAR: Good morning, Your Honours. Fidelma Donlon,  
16     Registrar, together with Jonas Nilsson, Deputy Registrar.

17            JUDGE PICARD: [via videolink] Thank you.

18            For the record, I am Michele Picard, Presiding Judge in this  
19     case, and my colleague Judges are Kai Ambos and Nina Jorgensen.

20            I will now give the floor to my colleague Judge Ambos who will  
21     read the summary of the judgment with Judge Jorgensen. After the  
22     reading of the summary and the disposition, I will then conclude the  
23     hearing.

24            JUDGE AMBOS: Good morning, everybody. This is a very extensive  
25     summary, so please bear with us.

1           A Panel of the Court of Appeals Chamber is sitting today to  
2     pronounce the appeal judgment in the case of the  
3     Specialist Prosecutor versus Pjeter Shala. This appeal judgment is  
4     pronounced in public, in the name of the people of Kosovo, and in the  
5     presence of the accused via video-conference. This summary contains  
6     the essential issues on appeal and the central findings of the  
7     Appeals Panel, and does not constitute the official and authoritative  
8     appeal judgment. The written judgment is the only authoritative  
9     account of the Appeals Panel's findings. The appeal judgment, in  
10    both confidential and public redacted versions, will be made  
11    available in electronic form following this hearing. A certified  
12    copy of the English version of the appeal judgment will be provided  
13    to Mr. Shala today, and the Albanian version will be provided when it  
14    is ready.

15           The Specialist Chambers were created in connection with serious  
16    allegations of inhumane treatment, killing of persons, and other  
17    serious crimes during and in the aftermath of the armed conflict in  
18    Kosovo between 1 January 1998 and 31 December 2000.

19           This appeal judgment marks an important milestone for the  
20    Specialist Chambers as it constitutes the second appeal judgment in a  
21    war crimes case at this Tribunal. It is a significant step towards  
22    providing justice to victims and ensuring accountability.

23           This judgment addresses the appeal against the Trial Panel's  
24    finding regarding the responsibility of Mr. Shala, a member of the  
25    Kosovo Liberation Army, or the KLA, for crimes committed at a former

1 metal works factory in Kukes, Republic of Albania, called the Kukes  
2 metal factory, or KMF, between approximately 7 May 1999 and 5 June  
3 1999.

4 On 16 July 2024, the Trial Panel delivered the trial judgment,  
5 convicting Mr. Shala on three counts of war crimes. He was found  
6 guilty for the war crimes of arbitrary detention, torture, and murder  
7 under Counts 1, 3, and 4, respectively, and not guilty for the war  
8 crime of cruel treatment under Count 2. The Trial Panel sentenced  
9 Mr. Shala to a single sentence of 18 years of imprisonment, with  
10 credit for time served.

11 The Trial Panel found that between approximately 7 May 1999 and  
12 5 June 1999 at the KMF, at least 18 persons were deprived of their  
13 liberty by Mr. Shala and other KLA members. The Trial Panel found  
14 that this occurred in the context of a non-international armed  
15 conflict between the KLA and the Serbian forces. The Trial Panel  
16 further found that, during the same timeframe, Mr. Shala and other  
17 KLA members held these KMF detainees in inhumane and degrading  
18 conditions and routinely assaulted them, both physically and  
19 psychologically, for the purpose of obtaining information or a  
20 confession from them, and/or to punish, intimidate, coerce, and/or  
21 discriminate against them on political grounds. Lastly, the  
22 Trial Panel found that the person referred to as the Murder Victim  
23 died while still in detention at the KMF, on or about 5 June 1999,  
24 from the consequences of gunshot wounds inflicted by a KLA member in  
25 the presence of Mr. Shala, combined with a denial of appropriate

1 medical treatment. While Mr. Shala was not found to be the one to  
2 shoot the Murder Victim, the Trial Panel found that he was present in  
3 the room when the Murder Victim was shot and further participated in  
4 his mistreatment both before and after the shooting.

5 Mr. Shala filed an appeal challenging his convictions under  
6 Counts 1, 3, and 4 of the indictment and a number of related findings  
7 made by the Trial Panel.

8 Mr. Shala requested that the Appeals Panel quash the convictions  
9 entered by the Trial Panel on Counts 1, 3, and 4 or, alternatively,  
10 remit the case to the Trial Panel for retrial or, alternatively,  
11 reduce the imposed sentence.

12 Mr. Shala also appealed the Reparation Order issued by the  
13 Trial Panel on 29 November 2024, awarding reparations to eight  
14 victims participating in the proceedings. The judgment on  
15 Mr. Shala's appeal against the Reparation Order will be issued  
16 separately in due course.

17 The Appeals Panel heard oral submissions from the parties and  
18 Victims' Counsel on 15th and 16th May 2025.

19 Mr. Shala's appeal against the trial judgment consists of 14  
20 grounds, in which he raises arguments on alleged errors of law, fact,  
21 and sentencing by the Trial Panel.

22 The Appeals Panel first recalls the standard of review for  
23 appeals against trial judgments under Article 46 of the Law. The  
24 Appeals Panel may affirm, reverse or revise the Trial Judgment, and  
25 take any other appropriate action on the following grounds: First,

1 "an error on the question of law invalidating the judgment"; second,  
2 "an error of fact which has occasioned a miscarriage of justice"; or,  
3 third, "an error in sentencing."

4 For reasons further developed in the appeal judgment, the Panel  
5 recalls the broad discretion afforded to the Trial Panel in assessing  
6 the evidence and in determining the appropriate sentence. In this  
7 regard, the Panel notes that it will not lightly overturn a  
8 Trial Panel's factual findings unless its evaluation is wholly  
9 erroneous, as the Trial Panel is best placed to hear, assess, and  
10 weigh the evidence presented at trial. Furthermore, the  
11 Appeals Panel will not interfere with a Trial Panel's sentence unless  
12 it has committed a discernible error in the exercise of its  
13 discretion or failed to follow the applicable law.

14 The Panel notes that to maintain the public nature of the  
15 present hearing, protected witnesses and victims are not identified  
16 and are referred to generally where necessary. Further details are  
17 provided in the appeal judgment.

18 The Panel will now summarise the main findings of its judgment  
19 starting with Ground 9 of Mr. Shala's appeal on alleged violations of  
20 the rights of Defence.

21 First, under Ground 9(A), Mr. Shala alleged repeated disclosure  
22 violations by the SPO. Mr. Shala pointed to the specific example of  
23 Witness 2540, claiming that the late disclosure of items relating to  
24 this witness caused him prejudice as he would otherwise have called  
25 the witness to testify. The Appeals Panel finds that Mr. Shala's

1 general claims of alleged disclosure violations should be dismissed  
2 as they lack the necessary substantiation. With respect to the issue  
3 of late disclosure of evidence concerning Witness 2540, as further  
4 developed in the appeal judgment, notably under Ground 10, the  
5 Appeals Panel finds that Mr. Shala has failed to substantiate his  
6 claim of prejudice and that the Trial Panel committed no error in  
7 rejecting Mr. Shala's argument at trial.

8 The Appeals Panel therefore dismisses Ground 9(A).

9 Second, the Panel turns to Mr. Shala's contention under  
10 Ground 9(B) that the Trial Panel erred in imposing undue restrictions  
11 on which witnesses the Defence could call. The Appeals Panel finds  
12 that Mr. Shala has waived his right to challenge on appeal the  
13 Trial Panel's decision ordering the removal of five witnesses from  
14 his Defence witness list. He neither raised this objection during  
15 trial nor demonstrated special circumstances justifying consideration  
16 of his submissions for the first time on appeal.

17 Accordingly, the Panel dismisses Ground 9(B).

18 Third, under Ground 9(C), Mr. Shala challenged the fact that the  
19 trial started before the Defence was ready and had completed its  
20 investigations. The Appeals Panel finds that Mr. Shala has failed to  
21 demonstrate any error by the Trial Panel. The Panel further finds  
22 that the Trial Panel, in fact, took measures to accommodate the  
23 Defence progress in its investigations and preparations for trial.

24 Accordingly, the Appeals Panel dismisses Ground 9(C).

25 Finally, under Ground 9(D), Mr. Shala argued that the

1 Trial Panel failed to acknowledge the impact of the passage of time  
2 between the events charged in the indictment and the trial on his  
3 ability to defend himself.

4 The Appeals Panel finds that Mr. Shala merely repeated arguments  
5 rejected at trial without showing how their rejection by the  
6 Trial Panel was erroneous. The Panel further finds that Mr. Shala  
7 has failed to demonstrate how his ability to prepare his case was  
8 fatally jeopardised as a result of the passage of time.

9 Accordingly, the Appeals Panel dismisses Ground 9(D).

10 In light of the above, the Appeals Panel dismisses Ground 9.

11 The Appeals Panel will now turn to allegations of errors  
12 regarding Mr. Shala's prior statements under Grounds 1, 2, and 8(B).

13 Mr. Shala alleged several errors committed by the Trial Panel in  
14 relation to the admission and assessment of his prior statements  
15 under different grounds, namely, Grounds 1, 2, and 8(B). The Panel  
16 has considered these grounds together. The reference to Mr. Shala's  
17 prior statements in the appeal judgment encompasses the transcripts  
18 of the interviews given by Mr. Shala to the Office of the Prosecutor  
19 of the International Criminal Tribunal for the former Yugoslavia, or  
20 ICTY, in 2005 and 2007, and to the Belgian Federal Judicial Police in  
21 2016 and 2019.

22 First, under Ground 1, Mr. Shala challenged the Trial Panel's  
23 admission and reliance on the prior statements on the ground that  
24 they were allegedly taken in violation of his fair trial rights.

25 The Panel recalls that in a decision delivered at the trial



1 stage, the Court of Appeals Chamber addressed similar concerns and  
2 upheld the Trial Panel's decisions to admit both the 2005 and 2007  
3 ICTY statements into evidence.

4 Accordingly, as far as the ICTY statements are concerned, the  
5 Panel fails to see how a Panel's reliance on evidence properly  
6 admitted at trial could, in itself, be constitutive of the violation  
7 of Mr. Shala alleged.

8 Regarding the Belgian statement, the Court of Appeals Chamber  
9 found, in a previous decision, that Mr. Shala was barred from  
10 accessing a lawyer during the 2016 Belgian interview and that the  
11 Trial Panel erred by concluding otherwise. Nonetheless, in light of  
12 the other procedural guarantees offered to Mr. Shala in the context  
13 of this interview, the scope of the violation was found to be limited  
14 and the Court of Appeals Chamber upheld the Trial Panel's decision to  
15 consider the 2016 Belgian statement as "not admissible."

16 Ultimately, the Trial Panel did not rely on the 2016 Belgian  
17 statement for any of its findings in the trial judgment. Therefore,  
18 the Panel rejects Mr. Shala's arguments suggesting the contrary.

19 Further, for reasons elaborated in the appeal judgment, the  
20 Panel rejects Mr. Shala's argument that because the 2016 Belgian  
21 statement was obtained in breach of his rights, the doctrine of the  
22 "fruit of the poisonous tree" precludes the use of the 2019 Belgian  
23 statement.

24 Turning to Mr. Shala's submission regarding the 2019 Belgian  
25 statement, the Court of Appeals Chamber rejected similar allegations

1 of violations during the trial phase. The Panel further rejects  
2 Mr. Shala's argument that the Trial Panel violated his fair trial  
3 rights in relying heavily on the 2019 Belgian statement in the trial  
4 judgment. The Panel finds in this respect that the 2019 Belgian  
5 statement was treated with appropriate caution and relied upon only  
6 when corroborated by other evidence. The Panel also rejects  
7 Mr. Shala's remaining arguments related to this statement.

8 Accordingly, the Appeals Panel dismisses Ground 1.

9 Under Ground 2, Mr. Shala argued that the Trial Panel erred in  
10 refusing to rule on the admissibility of numerous items of non-oral  
11 evidence during the course of the proceedings. For the reasons  
12 explained in the appeal judgment, the Panel limits its assessment to  
13 arguments related to the 2016 and the 2019 Belgian statements. The  
14 Panel is of the view that Rule 138(1) of the Rules, read in  
15 connection with Article 40(6)(h) of the Law, does not impose a duty  
16 on a Trial Panel to rule on the admissibility of evidence within a  
17 specific timeframe. The Panel notes in this regard that in the  
18 Framework Decision on non-oral evidence dated 17 March 2023, the  
19 Trial Panel decided to assess the admissibility of items of non-oral  
20 evidence at the end of the trial when deliberating on the judgment.  
21 The Trial Panel nonetheless foresaw the possibility to issue rulings  
22 on admission of evidence upon its submission during trial in  
23 exceptional circumstances. The Panel considers that making use of  
24 this exception was warranted with respect to the Belgian statements  
25 in light of the incriminatory nature of the impugned evidence and

1 because the parties had expressly requested the Trial Panel to issue  
2 a ruling on the admissibility of these statements.

3 Thus, the Appeals Panel finds that Mr. Shala demonstrated that  
4 the Trial Panel committed an error in failing to issue a ruling on  
5 the admissibility of the Belgian statements either upon submission or  
6 in the context of the Framework Decision on non-oral evidence.  
7 However, Mr. Shala failed to show that he suffered any prejudice in  
8 that regard.

9 Accordingly, the Appeals Panel dismisses Ground 2.

10 In relation to Ground 8(B), the Panel carefully reviewed the  
11 Trial Panel's findings challenged by Mr. Shala, but finds that he  
12 failed to demonstrate that the language the Trial Panel used in its  
13 assessment of some of his prior statements shifted the burden of  
14 proof to the Defence.

15 Accordingly, the Appeals Panel dismisses Ground 8(B).

16 The Appeals Panel will now turn to Mr. Shala's allegation under  
17 Ground 3 that the Trial Panel violated the principle of legality.

18 And I pass the floor to Judge Jorgensen.

19 JUDGE JORGENSEN: Under Ground 3, Mr. Shala submitted that the  
20 Trial Panel, in convicting him under a joint criminal enterprise, or  
21 JCE, and for the war crime of arbitrary detention in a  
22 non-international armed conflict, violated the principle of legality  
23 enshrined in Article 33 of the Constitution, Article 6 and 7 of the  
24 European Convention on Human Rights, and Article 15 of the  
25 International Covenant on Civil and Political Rights.

1 First, Mr. Shala argued that the direct application of customary  
2 international law by the Trial Panel, and thus his conviction for  
3 crimes under customary international law, violated the principle of  
4 legality given that neither the Constitution of the Socialist Federal  
5 Republic of Yugoslavia, which was applicable at the material time,  
6 nor the Kosovo Constitution allowed for the direction application of  
7 norms of international law unless they satisfy the "duality test."  
8 The Appeals Panel dismisses Mr. Shala's arguments, considering that  
9 they had already been addressed by the Pre-Trial Judge, the Court of  
10 Appeals Chamber, and the Constitutional Court Chamber.

11 Second, Mr. Shala submitted that JCE as a mode of liability and  
12 the war crime of arbitrary detention in a non-international armed  
13 conflict did not form part of Kosovo law, nor were they established  
14 under customary international law in 1999. He further argued that  
15 they were neither foreseeable nor accessible to the accused in the  
16 sense that he could not have known what acts and forms of liability  
17 constituted crimes. In this respect, Mr. Shala submitted that the  
18 Trial Panel should have considered, among other factors, his lack of  
19 an official position within the KLA and minimal education, the  
20 uncertainties surrounding the elements of the crime of arbitrary  
21 detention, and the absence of any organisational or other capacity of  
22 the KLA in 1999.

23 The Panel observes that Mr. Shala mostly repeats arguments  
24 already raised before and dismissed by the Court of Appeals Chamber  
25 in previous rulings which the Trial Panel relied upon. It finds that

1 Mr. Shala has failed to demonstrate any cogent reasons that would  
2 lead the Panel to reach a different conclusion regarding the  
3 Specialist Chambers' jurisdiction over JCE or over arbitrary  
4 detention in a non-international armed conflict.

5 With respect to Mr. Shala's additional arguments on  
6 foreseeability, the Panel finds them unconvincing in light of the  
7 overall assessment of the relevant factors, the evidence on the  
8 record, and other findings by the Trial Panel.

9 As such, the Appeals Panel finds that Mr. Shala has failed to  
10 demonstrate an error, and accordingly dismisses Ground 3.

11 The Appeals Panel will now address Mr. Shala's challenges  
12 regarding the indictment under Grounds 4 and 5. It will start with  
13 Ground 5.

14 Under Ground 5, Mr. Shala alleged that the Trial Panel erred in  
15 convicting him under the counts of arbitrary detention and torture in  
16 respect of at least 18 victims while the indictment only charged him  
17 in respect of nine victims.

18 The Appeals Panel first notes that the Trial Panel did not  
19 engage in examining whether the indictment was defective in this  
20 respect. The Panel considers that the Trial Panel should have  
21 provided reasons for deciding to enter convictions against Mr. Shala  
22 in respect of a larger number of persons than initially pleaded in  
23 the indictment.

24 The Appeals Panel finds that the Trial Panel's failure to do so  
25 constitutes an error of law.

1           Turning to whether the indictment was defective, the Panel is  
2 mindful of previous Court of Appeals Chamber's rulings in the present  
3 case that the indictment adequately pleaded the identity and number  
4 of alleged victims. However, this finding was based on the premise  
5 that the SPO case was limited to "at least nine persons."

6           Bearing in mind the limited scope of the present case, the Panel  
7 considers that a higher degree of specificity than in larger-scale  
8 cases is required and the pleading requirements with regard to the  
9 alleged victims is correspondingly higher. The Appeals Panel  
10 therefore finds that the reference to "at least nine persons" in the  
11 indictment was insufficiently specific and that the indictment was  
12 defective in relation to the nine additional persons alleged to have  
13 been detained at the KMF.

14           For reasons further detailed in the appeal judgment, the Panel  
15 finds that this defect in the indictment was nevertheless curable as  
16 it did not constitute a new charge - introducing a new basis for  
17 conviction distinct from allegations already present in the  
18 indictment - and did not lead to a radical transformation of the SPO  
19 case against Mr. Shala.

20           The Panel finds that the defect in the indictment was  
21 subsequently cured through the information contained in the SPO  
22 pre-trial brief, which expressly referred to the arbitrary detention  
23 and mistreatment of at least 18 persons. Consequently, the Panel  
24 finds that Mr. Shala received adequate notice that he was charged  
25 with respect to at least 18 victims and that he was able to prepare a

1 meaningful defence against these allegations. This conclusion is  
2 further bolstered by a review of the conduct of Mr. Shala's Defence  
3 which reflects his awareness that he was charged with regard to  
4 allegations involving at least 18 victims.

5 Therefore, the Appeals Panel finds that the Trial Panel's errors  
6 do not invalidate its decision to convict Mr. Shala on this basis.

7 Accordingly, the Appeals Panel dismisses Ground 5.

8 The Appeals Panel will now turn to address Ground 4(A), under  
9 which Mr. Shala argued that the Trial Panel convicted him on the  
10 basis of a defective indictment with respect to (i) the identity of  
11 three alleged JCE members and (ii) the identity of alleged victims.

12 First, with respect to JCE members, the Panel notes that the  
13 Trial Panel identified Mr. Osman Kryeziu and Mr. Fatmir Limaj as JCE  
14 members in the trial judgment while they were not expressly listed as  
15 such in the indictment. As to Mr. Sokol Dobruna, the Panel notes  
16 that contrary to Mr. Shala's contention, the Trial Panel did not name  
17 him as a JCE member.

18 Recalling that the indictment does not need to set out the  
19 evidence proving the pleaded material facts underpinning the charges,  
20 the Panel considers that identifying Mr. Kryeziu and Mr. Fatmir Limaj  
21 as members of the JCE does not constitute a material fact but rather  
22 an evidentiary matter. The indictment is consequently not defective  
23 since these persons fall within the category of "certain other KLA  
24 soldiers, police, and guards" referred to in the indictment. Based  
25 on the above, the Panel is satisfied that the Trial Panel made no

1 error in ultimately identifying, on the basis of the evidence  
2 presented at trial, Mr. Kryeziu and Mr. Fatmir Limaj as additional  
3 named members of the JCE.

4 Second, turning to the issue of victims, the Panel finds that  
5 the indictment was not sufficiently specific with respect to the  
6 identity of the nine additional victims. The Appeals Panel further  
7 finds that the Trial Panel erred in failing to address whether the  
8 indictment was defective and, ultimately, in failing to find that the  
9 indictment was defective in that respect. However, the Panel  
10 considers that the defect in the indictment was cured by the  
11 information contained in the SPO pre-trial brief and that Mr. Shala  
12 received adequate notice of the identity of these additional victims.  
13 As a result, the Appeals Panel finds that the Trial Panel's errors do  
14 not invalidate its decision to convict Mr. Shala on this basis.

15 Accordingly, the Appeals Panel dismisses Ground 4(A).

16 With respect to Ground 4(B), Mr. Shala argued that the  
17 indictment contained impermissible cumulative charging for the counts  
18 of torture and cruel treatment. For reasons developed in the appeal  
19 judgment, the Panel finds that Mr. Shala failed to demonstrate any  
20 error in the Trial Panel's approach with respect to cumulative  
21 charging. The Panel further finds that Mr. Shala failed to  
22 demonstrate that he suffered any prejudice as a result of the  
23 cumulative charging of torture and cruel treatment in the indictment.

24 Accordingly, the Appeals Panel dismisses Ground 4(B).

25 The Appeals Panel will now turn to Mr. Shala's challenges to the



1 Trial Panel's approach regarding the assessment of witnesses. These  
2 relate to Ground 6 and 10.

3 As a preliminary matter, the Appeals Panel recalls that the  
4 Trial Panel is vested with broad discretion to evaluate the  
5 credibility and reliability of witness testimony, and that the  
6 Appeals Panel will not lightly overturn the Trial Panel's factual  
7 findings in that respect. The Panel further recalls that an  
8 accused's right to a reasoned opinion does not require a detailed  
9 analysis of the credibility of witnesses, as long as the Trial Panel  
10 provides reasons for accepting a witness's testimony despite any  
11 alleged or material inconsistencies.

12 Under Grounds 6(A), 6(B), and 6(C), Mr. Shala challenged the  
13 Trial Panel's assessment of the credibility of three key SPO  
14 witnesses. For the reasons developed in the appeal judgment, the  
15 Appeals Panel finds that Mr. Shala failed to show any abuse in the  
16 Trial Panel's exercise of its discretion in the way it assessed the  
17 credibility of Witnesses 401, 4733, and 1448.

18 Turning to Mr. Shala's challenges under Ground 6(D), the Panel  
19 finds that Mr. Shala failed to demonstrate that the Trial Panel erred  
20 in finding that there was no contamination or collusion among SPO  
21 witnesses, including among the family members of Witness 4733.

22 Finally, with respect to Ground 6(E), and as further elaborated  
23 in the appeal judgment, the Panel finds that Mr. Shala failed to  
24 demonstrate that the Trial Panel abused its discretion and applied  
25 double standards when reaching different conclusions with respect to

1 inconsistencies in the evidence of witnesses.

2 In conclusion, the Appeals Panel dismisses Ground 6.

3 The Panel will now turn to the assessment of the evidence of  
4 Defence witnesses.

5 Under Ground 10, Mr. Shala challenged the Trial Panel's  
6 assessment of Defence witnesses, namely that it considered irrelevant  
7 factors such as the witness's support for the KLA, their political  
8 opinions, and hostility towards the Specialist Chambers.

9 The Panel first finds that the Trial Panel correctly articulated  
10 its approach to assessing evidence in this case, in particular with  
11 respect to evaluating the credibility of witnesses and the  
12 reliability of their testimony before relying on their evidence. As  
13 developed further in the appeal judgment, the Panel also considers  
14 that the Trial Panel carefully assessed the credibility of the  
15 challenged Defence witnesses and provided sufficient reasoning to  
16 support its conclusions to treat their evidence with caution, extreme  
17 caution or as wholly unreliable.

18 The Panel further considers that the Trial Panel's consistent  
19 approach to its assessment of all witnesses shows no indication of a  
20 specific bias against Defence witnesses.

21 The Panel finds that Mr. Shala failed to demonstrate any error  
22 or abuse of discretion in the Trial Panel's assessment of Defence  
23 witnesses.

24 The Appeals Panel therefore dismisses Ground 10.

25 The Appeals Panel will now address Mr. Shala's challenges to the

1 Trial Panel's reliance on untested evidence. These relate to  
2 Grounds 7 and 12, in part.

3 Mr. Shala argued under Ground 7 that, contrary to Rule 140(4) (a)  
4 of the Rules, the Trial Panel relied solely or decisively on untested  
5 evidence in entering some specific findings. These findings were  
6 termed "Impugned Essential Findings" by the Appeals Panel in the  
7 appeal judgment and concern the *mens rea*, or the mental element, for  
8 arbitrary detention and the *mens rea* and *actus reus*, or material  
9 element, for torture, as well as Mr. Shala's membership of the JCE,  
10 his significant contributions to it, and the JCE common purpose. In  
11 addition, Mr. Shala challenged his convictions for the torture of  
12 four individuals and the arbitrary detention of six individuals.  
13 Mr. Shala's challenge to his conviction for the torture of a fifth  
14 individual, which was initially brought under Ground 8(A) of  
15 Mr. Shala's appeal, has been addressed by the Panel under Ground 7.

16 Turning first to the Trial Panel's Impugned Essential Findings  
17 on the elements of the crimes of torture and arbitrary detention and  
18 of the JCE, the Appeals Panel observes that the Trial Panel relied on  
19 untested evidence, to varying degrees, in reaching factual findings  
20 that underpinned the Impugned Essential Findings. However, in so  
21 doing, the Trial Panel also relied on live evidence of witnesses who  
22 appeared at trial. In particular, the Panel notes that each of the  
23 Impugned Essential Findings were underpinned by the Trial Panel's  
24 factual findings which were themselves based extensively on live  
25 testimony. These findings concerned Mr. Shala's personal involvement

1 in the interrogation and mistreatment of detainees on two specific  
2 occasions, namely, what the Appeals Panel refers to in the appeal  
3 judgment as the 20 May 1999 Incident and the Leg-Shooting Incident on  
4 or about 4 June 1999.

5 In addition, the Impugned Essential Findings on the *actus reus*  
6 and *mens rea* for torture on Mr. Shala's JCE membership and on the  
7 common purpose of the JCE were underpinned by factual findings that  
8 were themselves also based, notably, on the evidence of multiple live  
9 witnesses. These include, for example, factual findings regarding an  
10 organised pattern of apprehension of KMF detainees, other instances  
11 of mistreatment of KMF detainees, and Mr. Shala's presence and  
12 activities at the KMF.

13 In light of this, the Panel concludes that Mr. Shala failed to  
14 demonstrate that the Trial Panel relied solely or decisively on  
15 untested evidence in entering the Impugned Essential Findings on the  
16 elements of arbitrary detention and torture and of the JCE, contrary  
17 to Rule 140(4)(a) of the Rules. The Panel thus dismisses Mr. Shala's  
18 challenges under Ground 7, and Ground 12 in part, insofar as they  
19 pertain to the Impugned Essential Findings.

20 Still under Ground 7, the Appeals Panel will turn next to  
21 Mr. Shala's challenge to his conviction for torture in respect of  
22 five specific individuals.

23 In assessing the merits of Mr. Shala's argument, and in  
24 accordance with relevant international criminal law and human rights  
25 principles, the Appeals Panel first examined the relied-upon evidence

1 of the specific mistreatment of these five individuals. It also  
2 examined the evidence relied upon by the Trial Panel as corroboration  
3 for their specific mistreatment. In this regard, the Panel was  
4 mindful that a determination as to whether reliance on untested  
5 evidence is "decisive" will depend on the strength of any supporting  
6 evidence.

7 In this respect, the Panel noted the Trial Panel's reliance on  
8 corroborative pattern evidence of collective mistreatment of  
9 detainees at the KMF. However, the Appeals Panel was also mindful of  
10 the Trial Panel's finding that collective mistreatment of KMF  
11 detainees effectively ended on or about 5 June 1999. This coincided  
12 with the arrival of new guards and the resulting material improvement  
13 in detention conditions at the KMF, including the ceasing of  
14 detainees' physical mistreatment.

15 In this regard, the Appeals Panel recalls that the parties were  
16 not able to point to any evidence on the trial record that would  
17 suggest any error in the Trial Panel's finding or otherwise support a  
18 finding that collective and systematic mistreatment of KMF detainees  
19 continued after that date.

20 In assessing the sufficiency of this corroborative pattern of  
21 collective mistreatment, the Appeals Panel first considered whether  
22 the Trial Panel had determined that the individual was detained prior  
23 to this turning point in detention conditions at the KMF on or about  
24 5 June 1999, or, in other words, while collective mistreatment was  
25 ongoing.

1           Second, the Panel also considered whether Mr. Shala had been  
2           afforded the opportunity to test the evidence relied upon to make  
3           such a critical determination.

4           Having conducted a holistic evaluation of the evidence in  
5           accordance with this approach, the Appeals Panel finds that no live  
6           evidence of these five individuals' specific mistreatment was led at  
7           trial. It further finds that no live evidence was led of these  
8           individuals having been detained at the KMF prior to 5 June 1999.  
9           While the reasons for these findings are set out in detail in the  
10          appeal judgment, the Panel stresses that this deficiency was critical  
11          not only for the purposes of corroboration, but also for the  
12          Trial Panel's findings that these individuals were subjected to  
13          inhumane detention conditions at the KMF. In fact, in respect of  
14          three individuals, the Panel notes that no live evidence was led in  
15          respect of their very detention at the KMF in the first place. The  
16          Panel therefore finds that the Trial Panel relied to a decisive  
17          extent on untested evidence in convicting Mr. Shala of the torture of  
18          these five individuals.

19          Lastly, the Panel turns to Mr. Shala's challenge to his  
20          conviction for arbitrary detention in respect of six specific  
21          individuals.

22          The Panel first notes that, in convicting Mr. Shala of the  
23          arbitrary detention of four of the six individuals in question, the  
24          Trial Panel relied to varying degrees on live evidence of the  
25          circumstances of their detention at the KMF. The Trial Panel also

1     relied on evidential "operational patterns" whereby individuals who  
2     had been arrested and detained at the KMF were deprived of basic  
3     procedural guarantees. Having examined the evidential underpinnings  
4     of these patterns, the Appeals Panel finds that they were based in  
5     large part on live evidence. The Appeals Panel thus finds that  
6     Mr. Shala did not establish that his convictions for arbitrary  
7     detention in respect of these four individuals were based solely or  
8     decisively on untested evidence.

9             The Panel dismisses his challenges under Ground 7 in this  
10    respect.

11            In contrast, however, regarding the remaining two individuals  
12    who were the subject of Mr. Shala's challenge, no live evidence was  
13    led of their very detention at the KMF, let alone of the  
14    circumstances of their detention there. The Panel recalls that it  
15    had sought submissions from the parties at the appeal hearing as to  
16    whether any such evidence could be found on the trial record. In  
17    this respect, it notes that the parties were unable to cite to  
18    evidence that, in the view of the Appeals Panel, could be  
19    convincingly understood as such. The Panel was also mindful that  
20    corroborative evidence of these two individuals' detention at the KMF  
21    was not led from SPO witnesses who testified live. In light of the  
22    untested nature of the only evidence on the trial record concerning  
23    their detention at the KMF, the Appeals Panel considers that  
24    Mr. Shala's conviction for the arbitrary detention of these two  
25    individuals was decisively based on untested evidence.

1           To conclude on Ground 7, the Appeals Panel therefore finds that  
2   Mr. Shala's convictions for the torture of five individuals and the  
3   arbitrary detention of two individuals were entered in violation of  
4   Rule 140(4)(a) of the Rules and overturns these findings. The Panel  
5   thus grants Ground 7, in part, and dismisses the remainder of  
6   Mr. Shala's challenges under this ground.

7           The impact of the Appeals Panel's conclusions with regard to  
8   Mr. Shala's sentence will be addressed subsequently.

9           The Appeals Panel will now turn to Mr. Shala's challenges to the  
10   Trial Panel's findings on the war crime of arbitrary detention under  
11   Count 1. These relate to Grounds 8(A), 11, and 12.

12          Under Grounds 8(A), 11, and 12, Mr. Shala challenged the  
13   Trial Panel's findings on the *actus reus* and *mens rea* for the war  
14   crime of arbitrary detention in a non-international armed conflict  
15   and regarding his responsibility pursuant to the first category of  
16   JCE, or JCE I.

17          The Panel first turns to Mr. Shala's arguments concerning the  
18   *actus reus* of the war crime of arbitrary detention. At the outset,  
19   the Appeals Panel notes that the *actus reus* may be satisfied either  
20   through the demonstration that detainees were held without legal  
21   basis or through the demonstration that the detention did not comply  
22   with basic procedural safeguards.

23          The Appeals Panel will first address alleged errors arising from  
24   the Trial Panel's finding that the detention of the detainees did not  
25   comply with basic procedural safeguards. The Appeals Panel will then



1 addressed alleged errors arising from the Trial Panel's finding that  
2 the detainees were held without legal basis.

3 With respect to alleged errors of law, to the extent that  
4 Mr. Shala challenged the elements of the *actus reus* of the war crime  
5 of arbitrary detention as such, the Appeals Panel finds this argument  
6 unsubstantiated.

7 Further, Mr. Shala challenged the sources of law on which the  
8 Trial Panel relied in interpreting two out of the three basic  
9 safeguards. Those safeguards are the obligation to bring the  
10 detained person before a Judge or other competent authority and the  
11 obligation to provide the detained person with an opportunity to  
12 challenge the lawfulness of detention.

13 The Appeals Panel considers that Mr. Shala has failed to  
14 demonstrate an error in the sources of law relied upon by the  
15 Trial Panel. The Appeals Panel reaches this conclusion considering  
16 that: (i) the principle of legality does not prevent a Court from  
17 interpreting and clarifying the elements of a crime; (ii) the  
18 objectives of human rights law and international humanitarian law  
19 broadly converge with respect to arbitrary detention; (iii) Mr. Shala  
20 has not articulated why the identified principles do not apply  
21 equally to both international and non-international armed conflicts;  
22 and (iv) the Court of Appeals Chamber previously addressed and  
23 dismissed such arguments.

24 Next, Mr. Shala contended that the Trial Panel's conclusion that  
25 detention review must be conducted by an independent authority is an

1 "overly high standard."

2 The Appeals Panel finds that in an armed conflict context, the  
3 protective function of the prohibition on arbitrary detention would  
4 be nullified if the authority reviewing detention were not  
5 independent from the authority who ordered it. The Panel finds that  
6 Mr. Shala has failed to demonstrate otherwise.

7 Mr. Shala further challenged the Trial Panel's finding that it  
8 is irrelevant whether "the perpetrator [of arbitrary detention] is  
9 personally responsible for the failure to have the detainees'  
10 procedural rights respected." The Appeals Panel considers that  
11 Mr. Shala has not articulated why the Trial Panel erred in applying  
12 this principle to a war crime in a non-international armed conflict.

13 As a result, and in light of the further reasoning contained in  
14 the appeal judgment, the Panel finds that Mr. Shala has failed to  
15 demonstrate that the Trial Panel erred in law when it found that the  
16 detention of the detainees did not comply with basic procedural  
17 safeguards.

18 The Panel next turns to Mr. Shala's alleged errors of fact  
19 regarding the Trial Panel's findings on arbitrary detention.

20 Mr. Shala first challenged the Trial Panel's factual findings  
21 with respect to the basic procedural safeguards, and in particular  
22 its conclusion that the detainees were "not brought promptly before a  
23 judge or other competent authority." Mr. Shala submitted that the  
24 Trial Panel erred in finding that no KLA member at the KMF acted as a  
25 competent authority.

1 First, the Panel notes that while Mr. Shala contended that  
2 Mr. Kryeziu exercised the functions of a competent authority, he  
3 failed to demonstrate that Mr. Kryeziu had the required level of  
4 independence, or that he was in a position to independently oversee  
5 the lawfulness of the detention or order the release of any  
6 detainees. The Appeals Panel further considers that the Trial Panel  
7 conducted a careful and detailed assessment of the testimonies of  
8 Witnesses 402, 411, and 404, which confirmed that Mr. Kryeziu did not  
9 have the power to exercise independent oversight over the lawfulness  
10 of the detention.

11 Second, the Panel will address Mr. Shala's challenges to the  
12 Trial Panel's finding regarding Witness 4733.

13 The Panel finds that it was reasonable for the Trial Panel to  
14 find that Mr. Dobruna did not exercise any kind of independent  
15 oversight over the lawfulness of Witness 4733's detention based on  
16 the fact that Mr. Dobruna interrogated Witness 4733 with Mr. Xhemshit  
17 Krasniqi, a JCE member who was involved in the mistreatment of this  
18 witness.

19 The Panel further finds, for the reasons contained in the appeal  
20 judgment, that Mr. Shala has failed to demonstrate that the  
21 Trial Panel erred in finding that neither Mr. Kryeziu, nor  
22 Mr. Dobruna, nor any other KLA member exercised the function of a  
23 judge or competent authority, and that Witnesses 411, 404, 402, 4733,  
24 and 405 were not brought promptly before a judge or other competent  
25 authority.

1           The Panel now turns to Mr. Shala's arguments under Ground 8(A),  
2           specifically that the Trial Panel erred when it drew unreasonable  
3           inferences when finding that the detainees at the KMF were deprived  
4           of procedural guarantees, in particular of the opportunity to  
5           challenge the lawfulness of their detention.

6           As regards Mr. Shala's challenges concerning the Murder Victim  
7           and Witnesses 401, 411, 1448, and 405, for the reasons given in the  
8           appeal judgment, the Panel is satisfied that a reasonable trier of  
9           fact could have determined, on the basis of the totality of the  
10          evidence, that the only reasonable inference was that they were  
11          deprived of procedural guarantees and the opportunity to challenge  
12          the lawfulness of their detention.

13          In addition, Mr. Shala challenged the Trial Panel's findings on  
14          the unlawful detention of seven other detainees. In light of the  
15          compelling evidence on the record on the conditions of detention  
16          and/or a consistent pattern of a lack of procedural guarantees at the  
17          KMF, the Panel is satisfied in relation to six of the detainees that  
18          a reasonable trier of fact could have determined that the only  
19          reasonable inference was that they were not afforded procedural  
20          guarantees.

21          With regard to the seventh detainee, the Panel finds that  
22          Mr. Shala's challenge is moot as a result of the Panel's earlier  
23          findings under Ground 7; namely that Mr. Shala's conviction for the  
24          arbitrary detention of this detainee was based to a decisive extent  
25          on untested evidence.

1 Similarly, the Panel finds that Mr. Shala's challenges regarding  
2 the interrogation and/or mistreatment of three detainees are also  
3 moot based on the findings under Ground 7 regarding the same  
4 detainees.

5 Therefore, the Panel finds that Mr. Shala has failed to  
6 demonstrate that the Trial Panel abused its discretion in making  
7 inferences when finding that detainees at the KMF were deprived of  
8 procedural guarantees.

9 The Appeals Panel now turns to Mr. Shala's challenges with  
10 respect to the Trial Panel's finding that the detainees were deprived  
11 of their liberty without legal basis. More specifically, Mr. Shala  
12 alleged that the Trial Panel erred in two respects when reaching the  
13 conclusion that detainees "were not held at the KMF pursuant to any  
14 criminal charges and no security concerns made it absolutely  
15 necessary for them to be detained." Mr. Shala argued that the  
16 Trial Panel erred (i) by failing to provide a reasoned opinion; and  
17 (ii) by finding that this conclusion was the only reasonable  
18 inference.

19 The Appeals Panel considers that the Trial Panel's reasoning  
20 does not indicate that it probed whether the detention of the 18  
21 detainees was absolutely necessary. The Appeals Panel notes in this  
22 regard that there is no separate paragraph in the trial judgment on  
23 this issue. Yet, the Trial Panel: First, appears to have considered  
24 that nine out of the 18 detainees were explicitly accused of being  
25 spies, traitors or collaborators with the enemy; and, second,

1 considered that the detainees were detained following an "operational  
2 pattern."

3 Concerning this operational pattern, the Appeals Panel  
4 understands the Trial Panel's conclusions to indicate that the  
5 detainees in this case were singled out for detention by the KLA.

6 Finally, the Appeals Panel takes note of the SPO's submission  
7 that the detainees "all denied" the truth of the allegations against  
8 them.

9 The Appeals Panel considers that if the Trial Panel took this  
10 into account in arriving at the contested finding, it is not apparent  
11 from the Trial Panel's reasoning.

12 In light of the above, and the further reasoning contained in  
13 the appeal judgment, the Appeals Panel finds that Mr. Shala has  
14 demonstrated that the Trial Panel failed to provide a reasoned  
15 opinion when it concluded that no criminal charges or security  
16 concerns made the detention of the 18 detainees absolutely necessary.  
17 The Appeals Panel therefore overturns this finding and grants, in  
18 part, Ground 12 of Mr. Shala's appeal. In light of this, the  
19 Appeals Panel considers moot Mr. Shala's further argument that the  
20 Trial Panel erred in respect of the same finding in concluding that  
21 it was the only reasonable inference.

22 As explained in the appeal judgment, this overturned finding, as  
23 such, has no impact on Mr. Shala's conviction for the war crime of  
24 arbitrary detention.

25 The Panel now turns to Mr. Shala's arguments concerning the

1     *mens rea* for arbitrary detention.

2             First, the Appeals Panel notes that, in addition to the  
3     demonstration that a perpetrator acted intentionally in relation to  
4     his or her conduct, the *mens rea* may be satisfied through the  
5     demonstration that the perpetrator either: First, had no reasonable  
6     grounds to believe that security concerns of the parties to the  
7     conflict made the detention absolutely necessary; or second, knew  
8     that the detainees had not been afforded the requisite procedural  
9     guarantees.

10            As a preliminary matter, and as a consequence of overturning the  
11    *actus reus* finding just discussed, the Appeals Panel, of its own  
12    motion, overturns the Trial Panel's related *mens rea* finding that  
13    "the perpetrators, including Mr. Shala, had no reasonable grounds to  
14    believe that security concerns made the detention of these  
15    individuals absolutely necessary."

16            Further to the reasons in the appeal judgment, this overturned  
17    finding has no impact on Mr. Shala's conviction for the war crime of  
18    arbitrary detention.

19            Returning to Mr. Shala's *mens rea* arguments, Mr. Shala contended  
20    that his knowledge could not be inferred from his mere presence at  
21    the KMF alone. The Appeals Panel finds that the Trial Panel did not  
22    conclude that Mr. Shala had knowledge of arbitrary detention solely  
23    on the basis of his "mere presence at the KMF alone." Rather, the  
24    Trial Panel's conclusion on his knowledge was based on Mr. Shala's  
25    personal participation in and his attendance during the perpetration

1 of the crime of arbitrary detention and other crimes. The  
2 Appeals Panel dismisses Mr. Shala's additional submissions in support  
3 of the same argument for reasons set out in the appeal judgment.

4 As a result, and in light of the further reasoning contained in  
5 the appeal judgment, the Appeals Panel finds that Mr. Shala has  
6 failed to establish that the Trial Panel erred in concluding that he  
7 satisfied the *mens rea* of the war crime of arbitrary detention in a  
8 non-international armed conflict.

9 The Appeals Panel now turns to Mr. Shala's challenges to the  
10 Trial Panel's findings on Mr. Shala's conviction for arbitrary  
11 detention pursuant to JCE I.

12 First, Mr. Shala argued that the Trial Panel erred by inferring  
13 the common purpose of the JCE from the pattern regarding the  
14 apprehension of detainees, the institutionalisation of detention, and  
15 the systemic mistreatment of detainees, while there were alternative  
16 reasonable inferences from the available evidence.

17 For reasons further discussed in the appeal judgment, the Panel  
18 finds that the Trial Panel did not err in finding that the JCE  
19 members had a common purpose to arbitrarily detain, interrogate, and  
20 torture detainees at the KMF who were accused of sympathising, or  
21 otherwise being associated, with Serbian authorities. The  
22 Appeals Panel further finds that Mr. Shala has failed to demonstrate  
23 any error in the Trial Panel's finding that the apprehension of  
24 detainees followed the same organised pattern.

25 As such, the Panel finds that Mr. Shala has failed to



1 demonstrate that, based on the evidence before the Trial Panel, no  
2 reasonable trier of fact could have inferred that there was a common  
3 purpose shared by the JCE members to arbitrarily detain detainees at  
4 the KMF.

5 Turning to Mr. Shala's arguments concerning the Trial Panel's  
6 assessment of his personal contribution to the JCE for arbitrary  
7 detention, for the reasons explained in the appeal judgment, the  
8 Panel finds that Mr. Shala has failed to demonstrate any error in the  
9 Trial Panel's findings and its conclusion that Mr. Shala made a  
10 significant contribution to the crime of arbitrary detention.

11 Finally, the Panel turns to Mr. Shala's arguments that the  
12 Trial Panel erred in finding that he shared the intent of the other  
13 JCE members to commit arbitrary detention on the basis that JCE does  
14 not permit convictions based on guilt by association.

15 The Appeals Panel considers that Mr. Shala has not explained how  
16 the Trial Panel's findings on his intent would amount to "guilt by  
17 association." In any event, the link between Mr. Shala and the crime  
18 of arbitrary detention does not follow from his membership in the JCE  
19 but from his significant contribution to the JCE and the intent he  
20 shared with other JCE members to commit the crime of arbitrary  
21 detention and to participate in a common plan aimed at its  
22 commission. Therefore, the Panel rejects Mr. Shala's argument in  
23 this respect.

24 In conclusion, the Appeals Panel dismisses Grounds 8(A) and 11,  
25 grants Ground 12 in part, and dismisses the remainder of Ground 12.

1           The Panel will next summarise its findings on Mr. Shala's  
2 challenges under Ground 13 regarding the war crime of murder.

3           Mr. Shala challenged the Trial Panel's findings concerning his  
4 conviction for the war crime of murder under Count 4 with respect to  
5 the Murder Victim, committed under JCE I on or about 5 June 1999 at  
6 the KMF.

7           In order to fully address Mr. Shala's arguments, the  
8 Appeals Panel has considered first his submissions that the  
9 Trial Panel erred by inferring that murder was part of the JCE common  
10 purpose. Then, the Appeals Panel has considered Mr. Shala's  
11 submissions that the Trial Panel erred in finding that he had the  
12 required intent to commit the crime of murder.

13           The Panel first observes that the scope of the JCE common  
14 purpose in this case is narrow, and in particular is marked by a  
15 limited period of less than three weeks between the initial detention  
16 of detainees at the KMF on approximately 17 May 1999 and the ultimate  
17 death of the Murder Victim on or about 5 June 1999. The Panel  
18 further observes that the Trial Panel's finding that the common  
19 purpose in this instance included murder does not amount to a finding  
20 that the KMF was a detention camp specifically established for the  
21 purpose of killing detainees.

22           The Panel turns to Mr. Shala's specific challenges on the JCE  
23 common purpose.

24           First, Mr. Shala argued that the Trial Panel erred by inferring  
25 that murder was part of the common purpose of the JCE based on the

1 manner in which some of the detainees were mistreated. The Panel  
2 considers that Mr. Shala's proposed alternative inference that the  
3 perpetrators only intended to mistreat rather than to kill any of the  
4 detainees is not supported by the evidence on the record. Such  
5 evidence includes the severe mistreatment of detainees, including  
6 during the 20 May 1999 Incident when the perpetrators continued to  
7 beat the detainees, with various tools, including a gun used as a  
8 blunt object, even after they lost consciousness. Mr. Shala also  
9 argued that the perpetrators did not possess the intent to kill  
10 before or during the Leg-Shooting Incident on or about 4 June 1999 as  
11 the Murder Victim was shot in the leg and returned to his room alive.  
12 The Panel finds this argument to be unpersuasive based on the  
13 Trial Panel's findings that: First, the JCE members continued to  
14 mistreat the Murder Victim after he was shot; second, the shooting  
15 caused extensive bleeding which required medical assistance; and,  
16 third, instead of seeking such medical care, the perpetrators  
17 continued to beat the Murder Victim.

18 Second, Mr. Shala argued that the Trial Panel erred by finding  
19 that the JCE common purpose included murder by relying on statements  
20 made by JCE members, including Mr. Shala, to show the intent to kill  
21 detainees.

22 In that respect, the Appeals Panel first considers that, in  
23 order to establish that the common purpose of the JCE included  
24 murder, it was not necessary for the Trial Panel to establish that  
25 Mr. Shala had the intent to kill a specific person, namely the

1 Murder Victim, but rather that he shared the intent of the other JCE  
2 members.

3 The Panel further considers persuasive the evidence relied upon  
4 by the Trial Panel to find that the JCE members had the intent to  
5 kill. This evidence included: First, the various statements which  
6 are discussed further in the appeal judgment; second, the fact that  
7 Mr. Shala participated in the mistreatment of the Murder Victim  
8 during the Leg-Shooting Incident on or about 4 June 1999; and, third,  
9 that Mr. Shala was present when other JCE members shot the  
10 Murder Victim and witnessed the consequences of the shooting.

11 As such, the Panel finds that the Trial Panel did not err when  
12 concluding that the JCE common purpose included murder and finding  
13 that the JCE members, including Mr. Shala, had the intent to kill  
14 detainees.

15 Finally, the Panel addresses Mr. Shala's third challenge to the  
16 Trial Panel's inference that murder was part of the common purpose of  
17 the JCE; namely, its finding that intent to kill was also manifested  
18 by the purposeful denial of medical treatment to the Murder Victim.

19 Regarding Mr. Shala's argument that the evidence suggests that  
20 KLA members regretted the death of the Murder Victim and immediately  
21 took measures to improve the conditions at the KMF, the Panel notes  
22 that Mr. Shala raised this argument at trial and it was dismissed by  
23 the Trial Panel, which warrants summary dismissal on appeal.

24 In any event, the Panel recalls the evidence considered by the  
25 Trial Panel that following the Leg-Shooting Incident on or about 4

1 June 1999, the Murder Victim clearly required medical assistance, and  
2 yet instead of seeking such medical care, the perpetrators continued  
3 to beat the Murder Victim and he later died in detention at the KMF.  
4 Based on further evidence discussed in the appeal judgment, and the  
5 Trial Panel's findings as a whole, the Panel finds that Mr. Shala  
6 failed to demonstrate that the Trial Panel erred by not considering  
7 that the change in conditions following the death of the  
8 Murder Victim showed regret by the JCE members.

9 As to Mr. Shala's argument that he had nothing to do with the  
10 order to deny medical care, the Appeals Panel recalls that, as a  
11 matter of law, Mr. Shala does not need to have been personally  
12 implicated in every fact on which the Trial Panel relied to infer the  
13 existence and nature of the common purpose. The Panel further  
14 observes that the Trial Panel did not base its conclusion that  
15 Mr. Shala contributed to the JCE on any findings as to his knowledge  
16 of, involvement in or responsibility for the denial of medical  
17 treatment to the Murder Victim.

18 The Panel therefore dismisses Mr. Shala's argument in this  
19 regard.

20 In conclusion, the Panel has considered the Trial Panel's  
21 inferences, taken cumulatively, in its finding that murder was part  
22 of the JCE common purpose and finds that Mr. Shala failed to  
23 demonstrate that no reasonable trier of fact could have reached the  
24 Trial Panel's conclusion as the only reasonable inference. The Panel  
25 thus dismisses Ground 13 in part.

1           The Appeals Panel now turns to Mr. Shala's further submissions  
2     under Ground 13 that the Trial Panel erred in finding that he had the  
3     required intent to commit the crime of murder.

4           The Panel will start with Mr. Shala's assertion that no evidence  
5     was presented based on which the Trial Panel could have reasonably  
6     inferred his desire to kill the Murder Victim. The Appeals Panel  
7     disagrees with these submissions and upholds the Trial Panel's  
8     reliance on Witness 4733's statement in which the witness reported  
9     that Mr. Shala told him, and I quote, "We're going to kill you.  
10    We're going to execute you." The Panel further upholds the  
11    Trial Panel's reliance on other circumstantial evidence in this case  
12    supporting the finding that Mr. Shala had the intent to commit the  
13    crime of murder. In that regard, the Panel refers to the  
14    Trial Panel's findings on Mr. Shala's active and personal involvement  
15    in the severe and brutal mistreatment of detainees during the 20 May  
16    1999 Incident. In addition, the Panel refers to the Trial Panel's  
17    findings that on or about 4 June 1999, Mr. Shala participated in the  
18    mistreatment of the Murder Victim, that he was present when other JCE  
19    members shot the Murder Victim, and that he continued to participate  
20    in the mistreatment of the Murder Victim after he was shot.

21          Turning to Mr. Shala's argument that, taken at its highest, the  
22    statement of Witness 4733 only indicates his intent to kill  
23    Witness 4733 rather than Murder Victim, the Panel recalls that for  
24    crimes committed as part of a JCE, it is not necessary to establish  
25    the participation of the accused in the commission of a specific

1 crime. In this case, the Trial Panel was required to establish the  
2 responsibility of the accused in furthering the common criminal  
3 purpose that included the murder of detainees at the KMF. The Panel  
4 is satisfied that the Trial Panel did not commit any error in relying  
5 on the statement of Witness 4733 to reach its findings.

6 As to the form of Mr. Shala's intent, although the Trial Panel's  
7 findings could have been clearer in some aspects, the Panel observes  
8 that the Trial Panel nonetheless stressed that Mr. Shala possessed  
9 direct intent to kill.

10 The Panel has also considered Mr. Shala's submissions that he  
11 did not perpetrate this crime of murder himself. However, the Panel  
12 recalls that Mr. Shala was not convicted for committing the *actus*  
13 *reus* of the crime of murder himself and that the law on JCE does not  
14 require an accused to have performed the *actus reus* of the crime, or  
15 any part thereof. In the Panel's view, the significance and scope of  
16 Mr. Shala's participation in the JCE was properly assessed by the  
17 Trial Panel.

18 Accordingly, Mr. Shala's argument regarding his lack of direct  
19 involvement in the perpetration in the crime of murder does not  
20 undermine the Trial Panel's findings on the significance of his  
21 contribution to the common plan.

22 The Appeals Panel finds that Mr. Shala failed to demonstrate  
23 that the Trial Panel erred in finding that he shared the intent to  
24 commit the crime of murder. The Appeals Panel therefore dismisses  
25 Ground 13.

1           The Panel will now address Mr. Shala's allegations of errors  
2     regarding sentencing raised under Ground 14.

3           JUDGE AMBOS: Finally, under Ground 14, Mr. Shala challenged the  
4     Trial Panel's findings relating to the imposition of a sentence of 18  
5     years of imprisonment for the three counts on which he was convicted.

6           First, with regard to the applicable sentencing regime, the  
7     Appeals Panel finds that the Trial Panel did not err in considering  
8     that it was required to take into account the domestic sentencing  
9     ranges, but it was not bound by them. The Appeals Panel also finds,  
10    in light of the judgment of the Constitutional Court Chamber in the  
11    Mustafa case, that the most lenient domestic sentencing range to be  
12    taken into account is 5 to 15 years of imprisonment in accordance  
13    with the 1976 Criminal Code of the Socialist Federal Republic of  
14    Yugoslavia, as amended by UNMIK Regulation 1990/24. In any event,  
15    this domestic sentencing range does not limit the discretionary power  
16    of the Specialist Chambers to impose a higher sentence up to  
17    life-long imprisonment, in accordance with Article 44(1) of the Law.  
18    In addition, for the reasons further explained in the appeals  
19    judgment, the Panel does not consider that there was a breach of the  
20    principle of legality in relation to the applicable law on  
21    sentencing.

22           Second, in relation to the factors taken into consideration in  
23    sentencing, the Appeals Panel finds that Mr. Shala failed to identify  
24    any errors in relation to the Trial Panel's findings and rejects his  
25    related challenges.



1 With regard to Mr. Shala's argument related to his lack of  
2 leadership role at the KMF, the Appeals Panel finds that the  
3 Trial Panel erred in failing to give sufficient weight to the fact  
4 that Mr. Shala did not have a commanding role in relation to his  
5 personal contribution to the crime of murder. The Appeals Panel  
6 addresses below the impact of this error on Mr. Shala's sentence.

7 The Panel dismisses Mr. Shala's claims in relation to all other  
8 mitigating factors.

9 Finally, the Appeals Panel addresses Mr. Shala's argument  
10 concerning the Trial Panel's alleged failure to ensure equality and  
11 the alleged abuse of its discretion in imposing a sentence that is  
12 unreasonably disproportionate when compared to similar cases.

13 The Appeals Panel first dismisses Mr. Shala's argument that the  
14 Trial Panel failed to provide a reasoned opinion as to why it chose  
15 to significantly depart from the sentences imposed in those cases.

16 Turning to the merits of the complaint, the Panel recalls that  
17 it is fully cognisant of the Trial Panel's broad discretion in  
18 sentencing. However, taking into account all relevant factors and  
19 individual circumstances in this case, the Panel finds that there is  
20 a disparity between Mr. Shala's sentences and the other sentences it  
21 analysed. The Panel finds, in particular, that the final sentence of  
22 15 years imposed on Mr. Mustafa, who held a position of command,  
23 demonstrates that the Trial Panel here ventured outside of its  
24 discretionary bounds by imposing sentences on Mr. Shala which are out  
25 of reasonable proportion to comparable cases.

1           Therefore, the Appeals Panel grants, in part, Mr. Shala's  
2 challenges to the Trial Panel's findings on sentencing, and dismisses  
3 that remainder of his arguments under Ground 14.

4           Turning to the impact of the Appeals Panel's findings of errors  
5 on the sentences imposed on Mr. Shala, the Panel recalls, first, that  
6 it reversed the findings of the Trial Panel in relation to two  
7 victims of arbitrary detention and to five victims of torture.  
8 Second, it found that the Trial Panel did not give sufficient weight  
9 to the lack of commanding role of Mr. Shala in relation to the crime  
10 of murder. Third, the Trial Panel abused its discretion in imposing  
11 on Mr. Shala sentences that were disproportionate.

12           The Appeals Panel therefore finds it appropriate to reduce, in  
13 part, the individual sentence imposed on Mr. Shala by the  
14 Trial Panel. However, the Appeals Panel emphasizes that the  
15 reduction in Mr. Shala's sentences in no way suggests that the crime  
16 for which he has been convicted and sentenced are not grave.

17           The Appeals Panel also stresses that it has confirmed  
18 Mr. Shala's convictions for the war crimes of arbitrary detention,  
19 torture, and murder, under Counts 1, 3, and 4, respectively, for  
20 which he was found to be individually criminally responsible.

21           Finally, the Appeals Panel recalls that the Specialist Chambers  
22 only has jurisdiction over individuals, not groups or organisations.  
23 In that vein, the Appeals Panel emphasizes that neither the KLA nor  
24 the Kosovo people were the subject of these proceedings and they have  
25 not been found responsible for or convicted of these crimes.

1 I would now like to ask Mr. Shala to stand while I, on behalf of  
2 the Panel, read the full text of the disposition of the appeal  
3 judgment.

4 Mr. Shala, could you please stand.

5 JUDGE PICARD: [via videolink] Mr. Shala, could you please stand?

6 THE INTERPRETER: Could you please stand, Mr. Shala.

7 JUDGE AMBOS: Could perhaps the Defence counsel of Mr. Shala try  
8 to convince him to stand?

9 MR. GILISSEN: So may I dispose of some minutes or --

10 JUDGE AMBOS: Yes, maybe we can adjourn for two or three  
11 minutes. But otherwise, if he doesn't stand, we will go on and read  
12 out what I have to read out. Okay?

13 MR. GILISSEN: Thank you very much.

14 JUDGE AMBOS: So then let us adjourn the meeting for five  
15 minutes.

16 --- Break taken at 12.50 p.m.

17 --- On resuming at 1.03 p.m.

18 JUDGE AMBOS: So we reconvene. And, again, I would like to ask  
19 Mr. Shala to stand while I will read the full text of the disposition  
20 of the appeal judgment.

21 Thank you very much, Mr. Shala.

22 The disposition reads as follows:

23 For these reasons, having considered all of the arguments made  
24 by the parties and the participants, the Court of Appeals Panel,  
25 pursuant to Article 46 of the Law and Rules 182 and 183 of the Rules:

1 Grants Mr. Shala's Ground 7 in part, 12 in part, and 14 in part;  
2 Reverses, in part, Mr. Shala's conviction under Counts 1 and 3  
3 to the extent that they rely on the arbitrary detention of two  
4 individuals and on the torture of five individuals;

5 Dismisses Mr. Shala's appeal in all other aspects;

6 Affirms the remainder of Mr. Shala's conviction for the war  
7 crime of arbitrary detention pursuant to Article 14(1)(c) and  
8 Article 16(1)(a) of the Law under Count 1 of the indictment, the war  
9 crime of torture pursuant to Article 14(1)(c)(i) and Article 16(1)(a)  
10 of the Law under Count 3 of the indictment, and the war crime of  
11 murder pursuant to Article 14(1)(c)(i) and Article 16(1)(a) of the  
12 Law under Count 4 of the indictment;

13 Affirms the sentence of six years of imprisonment imposed with  
14 respect to Count 1;

15 Sets aside the sentence of 16 years of imprisonment imposed with  
16 respect to Count 3 and imposes a sentence of 13 years of  
17 imprisonment;

18 Sets aside the sentence of 18 years of imprisonment imposed with  
19 respect to Count 4 and imposes a sentence of 13 years of  
20 imprisonment;

21 Sets aside the single sentence of 18 years of imprisonment  
22 imposed on Mr. Shala and imposes a single sentence of 13 years of  
23 imprisonment on Mr. Shala, with credit for the time served;

24 Rules that this judgment shall be enforced immediately pursuant  
25 to Rule 185(1) of the Rules;

1 Orders that, in accordance with Article 50(1) of the Law and  
2 Rule 166(3) of the Rules, Mr. Shala shall remain in the custody of  
3 the Specialist Chambers pending the finalisation of the arrangements  
4 for his transfer to the State where his sentence will be served; and  
5 Remains seized of Mr. Shala's appeal against the Reparation  
6 Order.

7 Mr. Shala, you may be seated.

8 JUDGE PICARD: [via videolink] I don't know if you can hear me,  
9 but I cannot hear you anymore. I have no sound.

10 THE COURT OFFICER: Judge, can you hear us now?

11 JUDGE PICARD: [via videolink] Okay. I can hear you. Can you  
12 hear me?

13 THE COURT OFFICER: Absolutely, yes. Thank you.

14 JUDGE AMBOS: Yes.

15 JUDGE PICARD: [via videolink] Thank you. So the Registry shall  
16 now distribute the appeal judgment in electronic form.

17 Mr. Court Officer, can you please confirm that it has been  
18 distributed.

19 THE COURT OFFICER: Your Honours, the confidential appeal  
20 judgment and the public redacted version have now been notified  
21 electronically to the relevant and authorised recipients. Thank you,  
22 Your Honours.

23 JUDGE PICARD: [via videolink] Thank you.

24 This concludes the appellate proceedings with respect to  
25 Mr. Shala's appeal against the trial judgment in this case.

1           Before we adjourn, I would like to take this moment to thank the  
2 parties and participants and the Registry for their work and their  
3 attendance today. I would also like to express my gratitude to the  
4 interpreters, stenographers, audio-visual technicians, security  
5 personnel, and the Appeals Panel's legal support team for their  
6 excellent assistance.

7           The hearing is adjourned.

8                       --- Whereupon the hearing adjourned at 1.09 p.m.

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