

The Hague, 14 July 2025

SUMMARY OF THE APPEAL JUDGMENT

Specialist Prosecutor v. Pjetër Shala, Case No. KSC-CA-2024-03

Please find below the summary of the Appeal Judgment delivered by a Panel of the Court of Appeals Chamber, as read out by this Panel.

A Panel of the Court of Appeals Chamber is sitting today to pronounce the Appeal Judgment in the case of the *Specialist Prosecutor v. Pjetër Shala*. This Appeal Judgment is pronounced in public, in the name of the people of Kosovo, and in the presence of the Accused via video-conference.

This summary contains the essential issues on appeal and the central findings of the Appeals Panel, and does not constitute any part of the official and authoritative Appeal Judgment. The written Judgment is the only authoritative account of the Appeals Panel's findings. The Appeal Judgment will be made available in electronic form following this hearing. A certified copy of the English version of the Appeal Judgment will be provided to Mr Pjetër Shala today, and the Albanian version will be provided when it is ready.

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

This Appeal Judgment marks an important milestone for the Specialist Chambers, as it constitutes the second appeal judgment in a war crimes case at this tribunal. It is a significant step towards providing justice to victims and ensuring accountability.

This Judgment addresses the appeal against the Trial Panel's findings regarding the responsibility of Mr Shala, a member of the Kosovo Liberation Army, or the KLA, for crimes committed at a former metal works factory in Kukës, Republic of Albania (the Kukës Metal Factory, or KMF), between approximately 17 May 1999 and 5 June 1999.

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

The Trial Panel found that between approximately 17 May 1999 and 5 June 1999, at the KMF, at least 18 individuals were deprived of their liberty by Mr Shala and other KLA members. The Trial Panel found that this occurred in the context of a non-international armed conflict between the KLA and Serbian forces. The Trial Panel further found that, during the same timeframe, Mr Shala and other KLA members held these KMF detainees in inhumane and degrading conditions of detention and routinely assaulted them, both psychologically and physically, for the purpose of obtaining information or a confession from them, and/or to punish, intimidate, coerce and/or discriminate against them on political grounds. Lastly, the Trial Panel found that a person referred to as the Murder Victim died while in detention at the KMF, on or about 5 June 1999, as a consequence of gunshot wounds inflicted by a KLA member in the presence of Mr Shala, combined with the denial of appropriate medical treatment. While Mr Shala was *not* found to be the one to have shot the Murder Victim, the Trial Panel found that he was present in the room when the Murder Victim was shot and further participated in his mistreatment, both before and after the shooting.

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

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

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

The Appeals Panel heard oral submissions from the Parties and the Participants on 15 and 16 May 2025.

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

The Appeals Panel first recalls the standard of review for appeals against trial judgments under Article 46 of the Law. The Appeals Panel may affirm, reverse or revise the Trial Judgment, and take any other appropriate action, on the following grounds: (i) "an error on a question of law invalidating the judgement"; (ii) "an error of fact which has occasioned a miscarriage of justice"; or (iii) "an error in sentencing". For reasons further developed in the Appeal Judgment, the Panel recalls the broad discretion afforded to a trial panel in assessing the evidence and in determining an appropriate sentence. In this regard, the Panel notes that it will not lightly overturn a trial panel's factual findings unless its evaluation is wholly erroneous, as the trial panel is best placed to hear, assess and weigh the evidence presented at trial. Furthermore, the Appeals Panel will not interfere with a trial panel's sentence unless it has committed a discernible error in the exercise of its discretion or failed to follow the applicable law.

The Panel notes that to maintain the public nature of the present Summary, protected witnesses and victims are not identified and are referred to generally, where necessary. Further details are provided in the Appeal Judgment.

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

Alleged Violations of Fair Trial Rights

First, under Ground 9A, Mr Shala alleged repeated disclosure violations by the SPO, and, pointing to the specific example of W02540, claimed that the late disclosure of items relating to this witness caused him prejudice as he would otherwise have called the witness to testify. The Appeals Panel finds that Mr Shala's general claims of alleged disclosure violations should be dismissed as they lack the necessary substantiation. With respect to the issue of late disclosure of evidence concerning W02540, as further developed in the Appeal Judgment, notably under Ground 10, the Appeals Panel finds that Mr Shala has failed to substantiate his claim of prejudice and that the Trial Panel committed no error in rejecting Mr Shala's arguments at trial. The Appeals Panel therefore dismisses Ground 9A.

Second, under Ground 9B, with respect to Mr Shala's contention that the Trial Panel erred in imposing undue restrictions on which witnesses the Defence could call, the Appeals Panel finds that Mr Shala has waived his right to challenge on appeal the Trial Panel's decision ordering the removal of five witnesses from his Defence Witness List. He neither raised this objection during trial nor demonstrated special circumstances justifying consideration of his submissions for the first time on appeal. Accordingly, the Panel dismisses Ground 9B.

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

Finally, under Ground 9D, Mr Shala argued that the Trial Panel failed to acknowledge the impact of the passage of time between the events charged in the Indictment and the trial on his ability to defend himself. The Appeals Panel finds that Mr Shala merely repeated arguments rejected at trial without showing how their rejection by the Trial Panel was erroneous. The Panel further finds that Mr Shala has failed to demonstrate how his ability to prepare his case was fatally jeopardised as a result of the passage of time. Accordingly, the Appeals Panel dismisses Ground 9D.

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

Alleged Errors Regarding Mr Shala's Prior Statements

Mr Shala alleged several errors committed by the Trial Panel in relation to the admission and assessment of his Prior Statements under different grounds, namely Grounds 1, 2 and 8B. The Panel has considered these grounds together. The reference to Mr Shala's Prior Statements in the Appeal Judgment encompasses the 2005 International Criminal Tribunal for the former Yugoslavia (ICTY) Statement, the 2007 ICTY Statement, the 2016 Belgian Statement and the 2019 Belgian Statement.

First, under Ground 1, Mr Shala challenged the Trial Panel's admission of and reliance on the Prior Statements on the ground that they were allegedly taken in violation of his fair trial rights. The Panel recalls that in a decision delivered at the trial stage, the Court of Appeals Chamber addressed similar concerns and upheld the Trial Panel's decision to admit both the 2005 and 2007 ICTY Statements into evidence. Accordingly, as far as the ICTY Statements are concerned, the Panel fails to see how a panel's reliance on evidence properly admitted at trial could, in itself, be constitutive of the violation Mr Shala alleged.

Regarding the Belgian Statements, the Court of Appeals Chamber found, in a previous decision, that Mr Shala was barred from accessing a lawyer during the 2016 Belgian Interview and that the Trial Panel erred by concluding otherwise. Nonetheless, in light of the other procedural guarantees offered to Mr Shala in the context of this interview,

the scope of the violation was found to be limited and the Court of Appeals Chamber upheld the Trial Panel's decision to consider the 2016 Belgian Statement as "not inadmissible". Ultimately, the Trial Panel did not rely on the 2016 Belgian Statement for any of its findings in the Trial Judgment. Therefore, the Panel rejects Mr Shala's arguments suggesting the contrary. Further, for reasons elaborated in the Appeal Judgment, the Panel rejects Mr Shala's argument that because the 2016 Belgian Statement was obtained in breach of his rights, the doctrine of the "fruit of the poisonous tree" precludes the use of the 2019 Belgian Statement.

Turning to Mr Shala's submissions regarding the 2019 Belgian Statement, the Court of Appeals Chamber rejected similar allegations of violations during the trial phase. The Panel further rejects Mr Shala's argument that the Trial Panel violated his fair trial rights in relying heavily on the 2019 Belgian Statement in the Trial Judgment. The Panel finds in this respect that the 2019 Belgian Statement was treated with appropriate caution and relied upon only when corroborated by other evidence. The Panel also rejects Mr Shala remaining arguments related to this statement. Accordingly, the Appeals Panel dismisses Ground 1.

Under Ground 2, Mr Shala argued that the Trial Panel erred in refusing to rule on the admissibility of numerous items of non-oral evidence during the course of the proceedings. For the reasons explained in the Appeal Judgment, the Panel limits its assessment to arguments related to the 2016 and the 2019 Belgian Statements. The Panel is of the view that Rule 138(1) of the Rules, read in connection with Article 40(6)(h) of the Law, does not impose a duty on a trial panel to rule on the admissibility of evidence within a specific timeframe. The Panel notes in this regard that in the Framework Decision on Non-Oral Evidence dated 17 March 2023, the Trial Panel decided to assess the admissibility of items of non-oral evidence, at the end of the trial, when deliberating on the judgment. The Trial Panel nonetheless foresaw the possibility to issue rulings on admission of evidence upon submission during trial in exceptional circumstances. The Panel considers that making use of this exception was

warranted with respect to the Belgian Statements in light of the incriminatory nature of the impugned evidence and because the Parties had expressly requested the Trial Panel to issue a ruling on the admissibility of these Statements. Thus, the Appeals Panel finds that Mr Shala demonstrated that the Trial Panel committed an error in failing to issue a ruling on the admissibility of the Belgian Statements either upon submission or in the context of the Framework Decision on Non-Oral Evidence. However, Mr Shala failed to show that he suffered any prejudice in that regard. Accordingly, the Appeals Panel dismisses Ground 2.

In relation to Ground 8B, the Panel carefully reviewed the Trial Panel's findings challenged by Mr Shala, but finds that he failed to demonstrate that the language the Trial Panel used in its assessment of some of his Prior Statements shifted the burden of proof to the Defence. Accordingly, the Appeals Panel dismisses Ground 8B.

Alleged Errors Related to the Trial Panel's Compliance with the Principle of Legality

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

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

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

The Panel observes that Mr Shala mostly repeats arguments already raised before and dismissed by the Court of Appeals Chamber in previous rulings which the Trial Panel relied upon. It finds that Mr Shala has failed to demonstrate any cogent reasons that would lead the Panel to reach a different conclusion regarding the Specialist Chambers' jurisdiction over JCE or over arbitrary detention in a non-international armed conflict. With respect to Mr Shala's additional arguments on foreseeability, the Panel finds them unconvincing in light of the overall assessment of the relevant factors, the evidence on the record and other findings by the Trial Panel.

In light of the above, the Appeals Panel finds that Mr Shala has failed to demonstrate an error, and accordingly dismisses Ground 3.

Alleged Errors Related to the Indictment

The Appeals Panel will now address Mr Shala's challenges regarding the Indictment. Under Ground 5, Mr Shala alleged that the Trial Panel erred in convicting him under the counts of arbitrary detention and torture in respect of at least 18 victims while the Indictment only charged him in respect of nine victims. The Appeals Panel first notes that the Trial Panel did not engage in examining whether the Indictment was defective in this respect. The Panel considers that the Trial Panel should have provided reasons for deciding to enter convictions against Mr Shala in respect of a larger number of

persons than initially pleaded in the Indictment. The Appeals Panel finds that the Trial Panel's failure to do so constitutes an error of law.

Turning to whether the Indictment was defective, the Panel is mindful of the previous Court of Appeals Chamber's rulings in the present case that the Indictment adequately pleaded the identity and number of alleged victims. However, this finding was based on the premise that the SPO case was limited to "at least nine persons". Bearing in mind the limited scope of the present case, the Panel considers that a higher degree of specificity than in larger-scale cases is required and the pleading requirements with regard to the alleged victims is correspondingly higher. The Appeals Panel therefore finds that the reference to "at least nine persons" in the Indictment was insufficiently specific and that the Indictment was defective in relation to the nine additional persons alleged to have been detained at the KMF.

For reasons further detailed in the Appeal Judgment, the Panel finds that this defect in the Indictment was nevertheless curable as it did not constitute a new charge – introducing a new basis for conviction distinct from allegations already present in the Indictment – and did not lead to a radical transformation of the SPO case against Mr Shala.

The Panel finds that the defect in the Indictment was subsequently cured, through the information contained in the SPO Pre-Trial Brief, which expressly referred to the arbitrary detention and mistreatment of at least 18 persons. Consequently, the Panel finds that Mr Shala received adequate notice that he was charged with respect to at least 18 victims and that he was able to prepare a meaningful defence against these allegations. This conclusion is further bolstered by a review of the conduct of Mr Shala's defence which reflects his awareness that he was charged with regard to allegations involving at least 18 victims.

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

The Appeals Panel will now turn to address Ground 4A, under which Mr Shala challenged the fact that the Trial Panel convicted him on the basis of a defective Indictment lacking sufficient particulars with respect to (i) the identity of three alleged JCE members and (ii) the identity of alleged victims.

First, with respect to JCE members, the Panel notes that the Trial Panel identified Mr Osman Kryeziu and Mr Fatmir Limaj as JCE members in the Trial Judgment while they were not expressly listed as such in the Indictment. As to Mr Sokol Dobruna, the Panel notes that contrary to Mr Shala's contention, the Trial Panel did not name him as a JCE member. Recalling that the Indictment does not need to set out the evidence proving the pleaded material facts underpinning the charges, the Panel considers that identifying Mr Kryeziu and Mr Fatmir Limaj as members of the JCE does not constitute a material fact but rather an evidentiary matter. The Indictment is consequently not defective since these persons fall within the category of "certain other KLA soldiers, police and guards" referred to in the Indictment. Based on the above, the Panel is satisfied that the Trial Panel made no error in ultimately identifying, on the basis of the evidence presented at trial, Mr Kryeziu and Mr Fatmir Limaj as additional named members of the JCE.

Second, turning to the issue of victims, the Panel finds that the Indictment was not sufficiently specific with respect to the identity of the nine additional victims. The Appeals Panel finds that the Trial Panel erred in failing to address whether the Indictment was defective and, ultimately, in failing to find that the Indictment was defective in that respect. However, the Panel finds that the defect in the Indictment was cured by the information contained in the SPO Pre-Trial Brief and that Mr Shala received adequate notice of the identity of these additional victims. As a result, the

Appeals Panel considers that the Trial Panel's errors do not invalidate its decision to convict Mr Shala on this basis. Accordingly, the Panel dismisses Ground 4A.

With respect to Ground 4B, Mr Shala argued that the Indictment contained impermissible cumulative charging for the counts of torture and cruel treatment. For reasons developed in the Appeal Judgment, the Panel finds that Mr Shala failed to demonstrate any error in the Trial Panel's approach with respect to cumulative charging and failed to demonstrate that he suffered any prejudice as a result of the cumulative charging of torture and cruel treatment in the Indictment. Accordingly, the Appeals Panel dismisses Ground 4B.

The Appeals Panel will now turn to Mr Shala's challenges to the Trial Panel's approach regarding the assessment of witnesses. These relate to Grounds 6 and 10.

Alleged Errors Related to the Trial Panel's Assessment of Key SPO Witnesses

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

Under Grounds 6A, 6B and 6C, Mr Shala challenged the Trial Panel's assessment of the credibility of three key SPO witnesses. For the reasons developed in the Appeal Judgment, the Appeals Panel finds that Mr Shala failed to show any abuse in the Trial Panel's exercise of its discretion in the way it assessed the credibility of TW4-01, W04733 and W01448. Turning to Mr Shala's challenges under Ground 6D, the Panel finds that Mr Shala failed to demonstrate that the Trial Panel erred in finding that there was no contamination or collusion among SPO witnesses, including among the family

members of W04733. Finally, with respect to Ground 6E, and as further elaborated in the Appeal Judgment, the Panel finds that Mr Shala failed to demonstrate that the Trial Panel abused its discretion and applied any double standards when reaching different conclusions with respect to inconsistencies in the evidence of witnesses.

In conclusion, the Appeals Panel dismisses Ground 6.

Alleged Errors Related to the Trial Panel's Assessment of Defence Witnesses

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

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

The Panel further considers that the Trial Panel's consistent approach to its assessment of all witnesses shows no indication of a specific bias against Defence witnesses. The Appeals Panel finds that Mr Shala failed to demonstrate any error or abuse of discretion in the Trial Panel's assessment of Defence witnesses.

The Appeals Panel therefore dismisses Ground 10.

The Appeals Panel will now address Mr Shala's challenges to the Trial Panel's reliance on untested evidence. These relate to Grounds 7 and 12 (in part).

Alleged Errors Related to the Trial Panel's Reliance on Untested Evidence

Mr Shala argued under Ground 7 that, contrary to Rule 140(4)(a) of the Rules, the Trial Panel relied solely or decisively on untested evidence in entering what the Panel has termed "Impugned Essential Findings" in the Appeal Judgment, namely on the *mens rea* (mental element) for arbitrary detention and the *mens rea* and *actus reus* (material element) for torture; and on Mr Shala's membership of the JCE, his significant contributions to it, and the JCE common purpose. In addition, under Ground 7, Mr Shala challenged his convictions for the torture of four individuals, and the arbitrary detention of six individuals. Mr Shala's challenge to his conviction for the torture of a fifth individual, which was initially brought by Mr Shala under Ground 8A of his appeal, has been addressed by the Panel under Ground 7.

Turning first to the Trial Panel's Impugned Essential Findings on elements of the crimes of torture and arbitrary detention, and of the JCE, the Appeals Panel observes that the Trial Panel relied on untested evidence, to varying degrees, in reaching factual findings that underpinned the Impugned Essential Findings. However, in so doing, the Trial Panel also relied on live evidence of witnesses who appeared at trial. In particular, the Panel notes that each of the Impugned Essential Findings were partially underpinned by the Trial Panel's factual findings which were themselves based extensively on live testimony. These findings concern Mr Shala's personal involvement in the interrogation and mistreatment of detainees on two specific occasions, namely, what the Appeals Panel refers to in the Appeal Judgment as the 20 May 1999 Incident and the Leg-Shooting Incident (on or about 4 June 1999). In addition, the Impugned Essential Findings on the *actus reus* and *mens rea* for torture; on Mr Shala's JCE membership; and on the common purpose of the JCE, were partially underpinned by factual findings that were themselves also based, *inter alia*, on the evidence of multiple live witnesses. These include, for example, factual findings regarding an organised pattern of apprehension of KMF detainees; other instances of mistreatment of KMF detainees; and Mr Shala's presence and activities at the KMF.

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

The Appeals Panel will turn next to Mr Shala's challenge to his conviction for torture in respect of five specific individuals. In assessing the merits of Mr Shala's argument, and in accordance with relevant international criminal law and human rights principles, the Appeals Panel first examined the relied-upon evidence of the specific mistreatment of these five individuals. It also examined the evidence relied upon by the Trial Panel as corroboration for their specific mistreatment; and in this regard, the Panel was mindful that a determination as to whether reliance on untested evidence is "decisive" will depend on the strength of any supporting evidence.

In this respect, the Panel noted the Trial Panel's reliance on corroborative pattern evidence of collective mistreatment of detainees at the KMF. However, the Appeals Panel was also mindful of the Trial Panel's finding that collective mistreatment of KMF detainees effectively ended on or about 5 June 1999, with the arrival of new guards and the resulting material improvement in detention conditions at the KMF, including the ceasing of detainees' physical mistreatment. In this regard, the Appeals Panel recalls that the Parties were not able to point to any evidence on the trial record that would suggest any error in the Trial Panel's finding in this respect, or otherwise support a finding that collective and systematic mistreatment of KMF detainees continued after that date.

In assessing the sufficiency of this corroborative pattern of collective mistreatment, the Appeals Panel first considered whether the Trial Panel had determined that the individual was detained *prior* to this turning point in detention conditions at the KMF

on or about 5 June 1999 (in other words, while collective mistreatment was ongoing). Second, the Panel also considered whether Mr Shala had been afforded the opportunity to test the evidence relied upon to make such a critical determination.

Having conducted a holistic evaluation of the evidence in accordance with this approach, the Appeals Panel finds that no live evidence of these five individuals' specific mistreatment was led at trial; nor was live evidence led of these individuals having been detained at the KMF prior to the end of the collective mistreatment of KMF detainees on or about 5 June 1999. While the reasons for these findings are set out in detail in the Appeal Judgment, the Panel stresses that this deficiency was critical not only for the purposes of corroboration, but also for the Trial Panel's findings that these individuals were subjected to inhumane detention conditions while detained at the KMF. In fact, in respect of three individuals, the Panel notes that no live evidence was led in respect of their very detention at the KMF in the first place. The Panel therefore finds that the Trial Panel relied to a decisive extent on untested evidence in convicting Mr Shala of the torture of these five individuals.

Lastly, turning to Mr Shala's challenge to his conviction for arbitrary detention in respect of six specific individuals, the Panel first notes that, in convicting Mr Shala of the arbitrary detention of four of the six individuals in question, the Trial Panel relied to varying degrees on live evidence of the circumstances of their detention at the KMF. The Trial Panel also relied on evidential "operational patterns" whereby individuals who had been arrested and detained at the KMF were deprived of basic procedural guarantees. Having examined the evidential underpinnings of these patterns, the Appeals Panel finds that they were based in large part on live evidence. The Appeals Panel thus finds that Mr Shala did not establish that his convictions for arbitrary detention in respect of these four individuals were based solely or decisively on untested evidence; and it dismisses his challenges under Ground 7 in this respect.

In contrast however, regarding the remaining two individuals who were the subject of Mr Shala's challenge, no live evidence was led of their very detention at the KMF, let alone of the circumstances of their detention there. The Panel recalls that it had sought submissions from the Parties at the Appeal Hearing as to whether any such evidence could be found on the trial record. In this respect, it notes that the Parties were unable to cite to evidence that, in the view of the Appeals Panel, could be convincingly understood as such. The Panel was also mindful that corroborative evidence of these two individuals' detention at the KMF was not led from SPO witnesses who testified live. In light of the fact that the only evidence on the trial record of these two individuals' very detention at the KMF was untested, the Appeals Panel considers that Mr Shala's conviction for the arbitrary detention of these two individuals was decisively based on untested evidence.

To conclude on Ground 7, the Appeals Panel therefore finds that Mr Shala's convictions for the torture of five individuals and the arbitrary detention of two individuals were entered in violation of Rule 140(4)(a) of the Rules and overturns these findings. The Panel thus grants Ground 7, in part, and dismisses the remainder of Mr Shala's challenges under this Ground. The impact of the Appeals Panel's conclusions with regard to Mr Shala's sentence will be discussed below.

The Appeals Panel will now turn to Mr Shala's challenges to the Trial Panel's findings on the war crime of arbitrary detention. These relate to Grounds 8, 11 and 12.

Alleged Errors Related to the Trial Panel's Findings on the War Crime of Arbitrary Detention (Count 1)

Under Grounds 8A, 11 and 12, Mr Shala challenged the Trial Panel's findings on the *actus reus* and *mens rea* for the war crime of arbitrary detention in a non-international armed conflict under Article 14(1)(c) of the Law, underpinning his conviction under Count 1 of the Indictment, committed under JCE I.

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

The Appeals Panel will first address alleged errors arising from the Trial Panel's finding that the detention of the detainees did not comply with basic procedural safeguards. The Appeals Panel will then address alleged errors arising from the Trial Panel's finding that the detainees were held without legal basis.

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

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

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

Next, Mr Shala contended that the Trial Panel's conclusion that detention review must be conducted by an independent authority is an "overly high standard". The Appeals

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

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

In light of the above, and the further reasoning contained in the Appeal Judgment, the Panel finds that Mr Shala has failed to demonstrate that the Trial Panel erred in law when it found that the detention of the detainees did not comply with basic procedural safeguards.

The Panel next turns to Mr Shala's alleged errors of fact.

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

First, the Panel notes that while Mr Shala contended that Mr Kryeziu exercised the functions of a competent authority, he failed to demonstrate that Mr Kryeziu had the required level of independence, or that he was in a position to independently oversee the lawfulness of the detention or order the release of any detainees. The Appeals Panel further considers that the Trial Panel conducted a careful and detailed assessment of the testimonies of TW4-02, TW4-11 and TW4-04, which confirmed that Mr Kryeziu did not have the power to exercise independent oversight over the lawfulness of the detention.

Second, the Panel will address Mr Shala's challenges to the Trial Panel's finding regarding W04733. The Panel finds that it was reasonable for the Trial Panel to find that Mr Dobruna did not exercise any kind of independent oversight over the lawfulness of W04733's detention based on the fact that Mr Dobruna interrogated W04733 with Mr Xhemshit Krasniqi, a JCE member who was involved in W04733's mistreatment.

In light of the above, and the further reasoning contained in the Appeal Judgment, the Panel further finds that Mr Shala has failed to demonstrate that the Trial Panel erred in finding that neither Mr Kryeziu, nor Mr Dobruna, nor any other KLA member exercised the function of a judge or competent authority, and that TW4-11, TW4-04, TW4-02, W04733 and TW4-05 were not brought promptly before a judge or other competent authority.

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

As regards Mr Shala's challenges concerning TW4-01, the Murder Victim, TW4-11, W01448 and TW4-05, for the reasons given in the Appeal Judgment, the Panel is satisfied that a reasonable trier of fact could have determined, on the basis of the totality of the evidence, that the only reasonable inference was that they were deprived of procedural guarantees and the opportunity to challenge the lawfulness of their detention.

In addition, Mr Shala challenged the Trial Panel's findings on the unlawful detention of seven other detainees. In light of the compelling evidence on the record on the conditions of detention and/or a consistent pattern of a lack of procedural guarantees at the KMF, the Panel is satisfied in relation to six of the detainees that a reasonable

trier of fact could have determined that the only reasonable inference was that they were not afforded procedural guarantees.

With regard to the seventh detainee, the Panel finds that Mr Shala's challenge is moot as a result of the Panel's earlier findings under Ground 7 that Mr Shala's conviction for the arbitrary detention of this detainee was based to a decisive extent on the evidence of untested witnesses. Similarly, the Panel finds that Mr Shala's challenges regarding the interrogation and/or mistreatment of three detainees are also moot based on its findings under Ground 7 regarding the same detainees.

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

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

The Appeals Panel considers that the Trial Panel's reasoning does not indicate that it probed whether the detention of the 18 detainees was absolutely necessary. The Appeals Panel notes in this regard that there is no separate paragraph in the Trial Judgment on this issue. Yet, the Trial Panel: (i) appears to have considered that nine out of the 18 detainees were explicitly accused of being spies, traitors or collaborators with the enemy; and (ii) considered that the detainees were detained following an "operational pattern". Concerning this operational pattern, the Appeals Panel understands the Trial Panel's conclusions to indicate that the detainees in this case

were singled out for detention by the KLA. Finally, the Appeals Panel takes note of the SPO's submission that the detainees "all denied" the truth of the allegations against them. The Appeals Panel considers that if the Trial Panel took this into account in arriving at the contested finding, it is not apparent from the Trial Panel's reasoning.

In light of the above, and the further reasoning contained in the Appeal Judgment, the Appeals Panel finds that Mr Shala has demonstrated that the Trial Panel failed to provide a reasoned opinion when it concluded that detainees "were not held at the KMF pursuant to any criminal charges and no security concerns made it absolutely necessary for any of them to be detained". The Appeals Panel therefore overturns this finding and grants, in part, Ground 12 of Mr Shala's appeal. In light of this, the Appeals Panel considers moot Mr Shala's further argument that the Trial Panel erred, in respect of the same finding, in concluding that it was the only reasonable inference.

As explained in the Appeal Judgment, this overturned finding, as such, has no impact on Mr Shala's conviction for the war crime of arbitrary detention.

The Panel now turns to Mr Shala's arguments concerning the *mens rea* for arbitrary detention.

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

As a preliminary matter and as a consequence of overturning the *actus reus* finding that detainees "were not held at the KMF pursuant to criminal charges and no security concerns made it absolutely necessary for any of them to be detained", the Appeals Panel, of its own motion, overturns the Trial Panel's related *mens rea* finding that "the perpetrators, including Mr Shala, had no reasonable grounds to believe that security

concerns made the detention of these individuals absolutely necessary”. Any impact of this finding will be explained after addressing Mr Shala’s challenges to the Trial Panel’s *mens rea* findings.

Mr Shala argued that his knowledge of the crime of arbitrary detention cannot be inferred from his mere presence at the KMF alone. The Appeals Panel finds that the Trial Panel did not conclude that Mr Shala had knowledge of arbitrary detention solely on the basis of his “mere presence at the KMF alone”. Rather, the Trial Panel’s conclusion on his knowledge was based on Mr Shala’s personal participation in and his attendance during the perpetration of the crime of arbitrary detention and other crimes. The Appeals Panel dismisses Mr Shala’s additional submissions in support of the same argument for reasons set out in the Appeal Judgment.

In light of the above, and the further reasoning contained in the Appeal Judgment, the Appeals Panel finds that Mr Shala has failed to establish that the Trial Panel erred in concluding that he satisfied the *mens rea* of the war crime of arbitrary detention in a non-international armed conflict.

However, the Appeals Panel recalls that it has, of its own motion, overturned the Trial Panel’s *mens rea* finding that the perpetrators, including Mr Shala, had no reasonable grounds to believe that security concerns made the detention of these individuals absolutely necessary. As explained in the Appeal Judgment, this overturned finding has, however, no impact on Mr Shala’s conviction for the war crime of arbitrary detention.

The Panel now turns to Mr Shala’s challenges to the Trial Panel’s findings on Mr Shala’s conviction for arbitrary detention pursuant to JCE I.

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

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

As such, the Panel finds that Mr Shala has failed to demonstrate that, based on the evidence before the Trial Panel, no reasonable trier of fact could have inferred that there was a common purpose shared by the JCE members to arbitrarily detain detainees at the KMF.

Turning to Mr Shala's arguments that the Trial Panel erred when assessing his personal contribution to the JCE for arbitrary detention, for the reasons explained in the Appeal Judgment, the Panel finds that Mr Shala has failed to demonstrate any error of fact or law in the Trial Panel's findings and its conclusion that Mr Shala made a significant contribution to the crime of arbitrary detention.

Finally, the Panel turns to Mr Shala's arguments that the Trial Panel erred in finding that he shared the intent of the other JCE members to commit arbitrary detention on the basis that JCE does not permit convictions based on guilt by association. The Appeals Panel considers that Mr Shala has not explained how the Trial Panel's findings on his intent would amount to "guilt by association". In any event, the link between Mr Shala and the crime of arbitrary detention does not follow from his membership in the JCE but from his significant contribution to the JCE, and the intent he shared with other JCE members to commit the crime of arbitrary detention and to participate in a common plan aimed at its commission. Therefore, the Panel rejects Mr Shala's argument in this respect.

In conclusion, the Appeals Panel dismisses Ground 8A, Ground 11, grants Ground 12 in part and dismisses the remainder of Ground 12.

Alleged Errors Related to the Trial Panel's Findings on the War Crime of Murder (Count 4)

The Panel will next summarise its findings on Mr Shala's challenges under Ground 13.

Mr Shala challenged the Trial Panel's findings concerning the war crime of murder under Article 14(1)(c)(i) of the Law, underpinning his conviction under Count 4 of the Indictment, for the murder of the Murder Victim, committed under JCE I on or about 5 June 1999 at the KMF. In order to fully address Mr Shala's arguments, the Appeals Panel has considered first Mr Shala's submissions that the Trial Panel erred by inferring that murder was part of the JCE common purpose. Then, the Appeals Panel has considered Mr Shala's submissions that the Trial Panel erred in finding that he had the required intent to commit the crime of murder.

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

The Panel turns to Mr Shala's specific challenges on the JCE common purpose. First, Mr Shala argued that the Trial Panel erred by inferring that murder was part of the common purpose of the JCE based on the manner in which some of the detainees were mistreated. The Panel considers that Mr Shala's proposed alternative inference that the perpetrators only intended to mistreat rather than to kill any of the detainees is not supported by the evidence on the record. Such evidence includes the severe mistreatment of detainees, including during the 20 May 1999 Incident when the

perpetrators continued to beat the detainees, with various tools, including a gun used as a blunt object, even after they lost consciousness. With respect to Mr Shala's argument that the perpetrators did not possess the intent to kill before or during the Leg-Shooting Incident on or about 4 June 1999, as the Murder Victim was shot in the leg and returned to his room alive, the Panel finds this argument to be unpersuasive based on the Trial Panel's findings that: (i) the JCE members continued to mistreat the Murder Victim after he was shot; (ii) the shooting caused extensive bleeding which required medical assistance; and (iii) instead of seeking such medical care, the perpetrators continued to beat the Murder Victim.

Second, Mr Shala argued that the Trial Panel erred by finding that the JCE common purpose included murder by relying on statements made by JCE members, including Mr Shala, to show the intent to kill detainees. In that respect, the Appeals Panel first considers that, in order to establish that the common purpose of the JCE included murder, it was not necessary for the Trial Panel to establish that Mr Shala had the intent to kill a specific person, namely the Murder Victim, but rather that he shared the intent of the other JCE members. The Panel further considers persuasive the evidence relied upon by the Trial Panel to find that the JCE members had the intent to kill. This evidence included: (i) various statements in evidence, which are discussed further in the Appeal Judgment; (ii) the fact that Mr Shala participated in the mistreatment of the Murder Victim during the Leg-Shooting Incident on or about 4 June 1999; and (iii) that Mr Shala was present when other JCE members shot the Murder Victim and witnessed the consequences of the shooting. As such, the Panel finds that the Trial Panel did not err when concluding that the JCE common purpose included murder in finding that the JCE members, including Mr Shala, had the intent to kill detainees.

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

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

In any event, the Panel recalls the evidence considered by the Trial Panel, that following the Leg-Shooting Incident on or about 4 June 1999, the Murder Victim clearly required medical assistance, and yet instead of seeking such medical care, the perpetrators continued to beat the Murder Victim and he later died in detention at the KMF. Based on further evidence discussed in the Appeal Judgment, and the Trial Panel's findings as a whole, the Panel finds that Mr Shala failed to demonstrate that the Trial Panel erred by not considering that the change in conditions following the death of the Murder Victim showed regret by the JCE members.

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

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

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

Starting with Mr Shala's assertion that no evidence was presented based on which the Trial Panel could have reasonably inferred his desire to kill the Murder Victim, the Appeals Panel disagrees with these submissions and upholds the Trial Panel's reliance on W04733's statement in which the witness reported that Mr Shala told him: "We're going to kill you. We're going to execute you". The Panel further upholds the Trial Panel's reliance on other circumstantial evidence in this case supporting the finding that Mr Shala had the intent to commit the crime of murder. In that regard, the Panel refers to the Trial Panel's findings on Mr Shala's active and personal involvement in the severe and brutal mistreatment of detainees during the 20 May 1999 Incident. In addition, the Panel refers to the Trial Panel's findings that on or about 4 June 1999, Mr Shala participated in the mistreatment of the Murder Victim, that he was present when other JCE members shot the Murder Victim, and that he continued to participate in the mistreatment of the Murder Victim after he was shot.

Turning to Mr Shala's argument that, taken at its highest, W04733's statement only indicates his intent to kill W04733 rather than the Murder Victim, the Panel recalls that for crimes committed as part of a JCE, it is not necessary to establish the participation of the accused in the commission of a specific crime. In this case, the Trial Panel was required to establish the responsibility of the Accused in furthering the common criminal purpose that included the crime of murder of detainees at the KMF. The Panel is satisfied that the Trial Panel did not commit any error in relying on W04733's statement to reach its findings. As to the form of Mr Shala's intent, although the Trial Panel's findings could have been clearer in some aspects, the Panel observes that the Trial Panel nonetheless stressed that Mr Shala possessed direct intent to kill.

The Panel has also considered Mr Shala's submissions that he did not perpetrate this crime of murder himself. However, the Panel recalls that Mr Shala was not convicted for committing the *actus reus* of the crime of murder himself and that the law on JCE does not require an accused to have performed the *actus reus* of the crime, or any part thereof. In the Panel's view, the significance and scope of Mr Shala's participation in the JCE was properly assessed by the Trial Panel. Accordingly, Mr Shala's argument regarding his lack of direct involvement in the perpetration of the crime of murder, does not undermine the Trial Panel's findings on the significance of his contribution to the common plan.

The Appeals Panel finds that Mr Shala failed to demonstrate that the Trial Panel erred in finding that he shared the intent to commit the crime of murder.

The Appeals Panel therefore dismisses Ground 13.

Alleged Errors Related to the Trial Panel's Findings on Sentencing

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

First, with regard to the applicable sentencing regime, the Appeals Panels finds that the Trial Panel did not err in considering that it was required to take into account the domestic sentencing ranges, but it was not bound by them. The Appeals Panel also finds, in light of the Judgment of the Constitutional Court Chamber in the *Mustafa* case, that the most lenient domestic sentencing range to be taken into account is five to 15 years of imprisonment in accordance with the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia, as amended by UNMIK Regulation 1999/24. In any event, this domestic sentencing range does not limit the discretionary power of the Specialist Chambers to impose a higher sentence up to life-long imprisonment, in accordance with Article 44(1) of the Law. In addition, for the reasons further explained

in the Appeal Judgment, the Panel does not consider that there was a breach of the principle of legality in relation to the applicable law on sentencing.

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

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

Finally, the Appeals Panel addresses Mr Shala's argument concerning the Trial Panel's alleged failure to ensure equality, and the alleged abuse of its discretion in imposing a sentence that is unreasonably disproportionate when compared to similar cases. The Appeals Panel first dismisses Mr Shala's argument that the Trial Panel failed to provide a reasoned opinion as to why it chose to significantly depart from the sentences imposed in those cases. Turning to the merits of the complaint, the Panel recalls that it is fully cognisant of the Trial Panel's broad discretion in sentencing. However, taking into account all relevant factors and individual circumstances in this case, the Panel finds that there is a disparity between Mr Shala's sentences and the other sentences it analysed. The Panel finds, in particular, that the final sentence of 15 years imposed on Mr Mustafa, who held a position of command, demonstrates that the Trial Panel ventured outside of its discretionary bounds by imposing sentences on Mr Shala which are out of reasonable proportion to comparable cases. Therefore the Appeals Panel grants, in part, Mr Shala's challenges to the Trial Panel's findings on sentencing, and dismisses the remainder of his arguments under Ground 14.

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

The Appeals Panel therefore finds it appropriate to reduce, in part, the individual sentences imposed on Mr Shala by the Trial Panel to the following sentences: (i) six years of imprisonment for Count 1, the war crime of arbitrary detention committed against at least 16 persons; (ii) 13 years of imprisonment for Count 3, the war crime of torture, committed against at least 13 persons; and (iii) 13 years of imprisonment for Count 4, the war crime of murder, committed against one person. Accordingly, the Appeals Panel must also now determine, pursuant to Rule 163(4) of the Rules, "a single sentence reflecting the totality of the criminal conduct of the Accused" which "shall not be less than the highest individual sentence determined in respect of each charge". In this regard, the Appeals Panel considers that a single sentence of 13 years of imprisonment, with credit for the time served since his arrest on 16 March 2021, reflects the totality of Mr Shala's criminal conduct in this case.

The Appeals Panel emphasises that this reduction in Mr Shala's sentences in no way suggests that the crimes for which he has been convicted and sentenced are not grave.

Finally, the Appeals Panel stresses that it has confirmed Mr Shala's convictions for the war crimes of arbitrary detention, torture and murder (Counts 1, 3 and 4) for which he was found to be individually criminally responsible.

As a general note, the Appeals Panel recalls that the Specialist Chambers only have jurisdiction over individuals, not groups or organisations. In that vein, the Appeals Panel emphasises yet again that neither the KLA nor the Kosovo people were the

subject of these proceedings, but that the Panel has only addressed the specific conduct of Mr Shala.

Disposition

For these reasons, having considered all of the arguments made by the Parties and the Participants, the Court of Appeals Panel, pursuant to Article 46 of the Law and Rules 182 and 183 of the Rules:

GRANTS Mr Shala's Grounds 7 in part, 12 in part, and 14 in part;

REVERSES, in part, Mr Shala's convictions under Counts 1 and 3 to the extent that they rely on the arbitrary detention of two individuals and on the torture of five individuals;

DISMISSES Mr Shala's appeal in all other aspects;

AFFIRMS the remainder of Mr Shala's conviction for the War Crime of Arbitrary Detention pursuant to Articles 14(1)(c) and 16(1)(a) of the Law under Count 1 of the Indictment, the War Crime of Torture pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law under Count 3 of the Indictment, and the War Crime of Murder pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law under Count 4 of the Indictment;

AFFIRMS the sentence of six years of imprisonment imposed with respect to Count 1;

SETS ASIDE the sentence of 16 years of imprisonment imposed with respect to Count 3 and **IMPOSES** a sentence of 13 years of imprisonment;

SETS ASIDE the sentence of 18 years of imprisonment imposed with respect to Count 4 and **IMPOSES** a sentence of 13 years of imprisonment;

SETS ASIDE the single sentence of 18 years of imprisonment imposed on Mr Shala and **IMPOSES** a single sentence of 13 years of imprisonment on Mr Shala, with credit for the time served;

RULES that this Judgment shall be enforced immediately pursuant to Rule 185(1) of the Rules;

ORDERS that, in accordance with Article 50(1) of the Law and Rule 166(3) of the Rules, Mr Shala shall remain in the custody of the Specialist Chambers pending the finalisation of the arrangements for his transfer to the State where his sentence will be served; and

REMAINS SEISED of Mr Shala's appeal against the Reparation Order.