

Summary of Trial Judgment

Specialist Prosecutor v. Pjetër Shala (KSC-BC-2020-04)

1. Trial Panel I will render today the Trial Judgment in the case of the *Specialist Prosecutor v. Pjetër Shala*. The Panel is composed of Judges Roland Dekkers, Gilbert Bitti, Vladimir Mikula, as Reserve Judge, and myself, Mappie Veldt-Foglia, as Presiding Judge. This Judgment is pronounced in public, in the name of the people of Kosovo, and in the presence of Mr Shala, the Accused.
2. This case concerns the acts and conduct of the Accused, Pjetër Shala, in the time period between approximately 17 May 1999 and 5 June 1999.
3. Today's Judgment is the second Judgment of this tribunal that addresses the commission of war crimes. It contributes to delivering justice for victims and promotes accountability for serious violations of international humanitarian and criminal law within the jurisdiction of the Specialist Chambers.
4. In the following, I will read out a summary of the central findings made by the Panel. This summary is not part of the Trial Judgment, which is the only authoritative document containing the Panel's ruling and findings. The Judgment will be notified at the end of today's hearing. The summary will also be available on the website of the Specialist Chambers.
5. The present case concerns war crimes committed at a former metal works factory in the town of Kukës, Albania, between approximately 17 May 1999 and 5 June 1999. Throughout the time relevant to the charges, the Kukës Metal Factory – to which I will refer as KMF – served as a headquarters for the Kosovo Liberation Army (KLA) and was used for a variety of purposes, including recruitment, mobilisation and logistics. The Panel has received credible, consistent and mutually corroborative evidence

during the course of this trial, from multiple witnesses, that the KMF was also used by certain KLA members to detain, interrogate and mistreat persons who were perceived to collaborate with, be associated with, or sympathize with the Serbian authorities, or who were considered to be not sufficiently supportive of the KLA effort. The total number of detainees who were held at the KMF during the time relevant to the charges is unknown, but it is estimated to be around 40 people, including at least three female detainees. The Panel was able to identify eighteen (18) persons who were detained at the KMF during the relevant period.

6. The Panel conducted this trial against the backdrop of a persistent climate of witness intimidation. This climate has had a visible impact, albeit to different degrees, on the evidence provided by some of the witnesses who appeared before the Panel. That being said, it is worth highlighting that the Panel has received several first-hand accounts of witnesses in the course of this trial about the traumatic events they experienced during their detention at the KMF and the continuous physical and psychological impact these events have had on their lives and on the lives of their family members. The victims were predominantly Kosovar Albanians, having suffered at the hands of other Kosovar Albanians. Their accounts were graphic, detailed and compelling. Some of these witnesses are also participating victims in this case.

7. Witnesses also spoke about their search for justice over the past twenty-five (25) years. To quote one of them: “[I]f [...] the rule of law had existed [in Kosovo], [...] this would have been sorted out [...]. But who -- who could do that? No one would [dare] take the case file and deal with it there” – end of quote.

8. In the following, I will briefly recall the charges, and then summarise the Panel’s findings in the Trial Judgment with regard to the Accused, Mr Shala.

THE CHARGES

9. I will start with the charges.

10. Mr Shala is a Belgian national, born on 17 September 1963, in Prizren, Kosovo. He is also known by his nickname "Ujku", which means "Wolf" in English.

11. The SPO charged Mr Shala with four (4) counts of war crimes under various forms of criminal responsibility, pursuant to Articles 14(1)(c) and 16(1)(a) of the Law on Specialist Chambers and Specialist Prosecutor's Office. The war crimes charged are arbitrary detention, cruel treatment and torture of at least nine persons and the murder of one person, committed between approximately 17 May and 5 June 1999, at the KMF.

12. Mr Shala pleaded not guilty on all counts.

MR SHALA'S BACKGROUND AND POSITION

13. Let me turn to Mr Shala's background and position.

14. Mr Shala was a KLA member both before and throughout the time relevant to the charges. He first joined the KLA in March 1998 and was soon after appointed as a commander or officer to the KLA Military Police in Jablanica/Jabllanicë. He remained with the KLA until sometime in the Summer of 1998, when he left Kosovo for Belgium.

15. Mr Shala re-joined the KLA, in Albania, in Kukës, at the end of March 1999 and remained with the KLA until sometime in June/July 1999, after the end of the armed conflict. Throughout the period relevant to the charges, Mr Shala was physically present at the KMF on several occasions. He came to and left the KMF very often and without restrictions. While he did not have a particular rank or official position there, he enjoyed a certain degree of autonomy.

THE PANEL'S FINDINGS ON THE CRIMES CHARGED

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

17. *Arbitrary Detention.* I start with Count 1, arbitrary detention. Based on the evidence, the Panel has found that at least eighteen (18) identified persons were deprived of their liberty by KLA members at the KMF, between approximately 17 May and 5 June 1999.

18. The evidence shows that individuals were apprehended and detained on vague allegations of being "traitors" or "collaborators" of the Serbian authorities, sympathizing with Serbia, or not being sufficiently supportive of the KLA effort – be it financially, militarily or politically. The circumstances of arrest for a number of these individuals suggest that investigations about their whereabouts were made ahead of time: detainees were arrested at their place of residence, on the street, upon arrival in Albania from abroad, at refugee camps or wherever they had found shelter after being expelled from Kosovo. Detainees were either taken by cars or small buses directly to the KMF, or taken first to other (temporary) detention locations in northern Albania and later transferred to the KMF. The search, arrests and transfers of these detainees to the KMF must have required a significant degree of organisation, logistics and manpower.

19. Members of the KLA Military Police, were prominently involved in the apprehension and transfer of detainees to the KMF, alongside other KLA members. Mr Shala was directly involved in the transfer of one of the detainees to the KMF.

20. The detainees were brought to the KMF and released on an ongoing basis. Some were held at the KMF for a few days, while others were held for up to a month.

21. At no point during their detention were any of the detained persons provided with the basic guarantees to which they were entitled, pursuant to international humanitarian law. Specifically, they were not properly informed of the reasons for

their deprivation of liberty, were not brought promptly before a judge or other competent authority, and were not provided with an opportunity to challenge the lawfulness of their detention. To the contrary, throughout their detention, as I will elaborate shortly, a number of detainees were seriously mistreated by KLA members, including by Mr Shala. Some detainees were subjected to forced confessions and one of them was killed.

22. *Cruel Treatment and Torture.* I now turn to Counts 2 and 3, which are cruel treatment and torture, respectively. Based on the evidence, the Panel has further found that at least eighteen (18) identified detainees – who were deprived of their liberty at the KMF – were held in inhumane and degrading conditions throughout the time relevant to the charges. The detainees were kept in small rooms with no beds, with up to thirteen (13) detainees in one room. They were prevented from sleeping by KLA members, who harassed them or entered their room during the night to mistreat them. They were not provided with sufficient or adequate food and water. One witness recalled that sometimes two detainees shared a boiled egg. Other times they received no food at all. The detainees were not allowed to wash themselves or change their clothes. They had to ask for permission to use the toilets, which were poorly maintained. The detainees were escorted to the toilets, and they were sometimes harassed on their way. Witnesses stated that the conditions of detention, and I quote: “were such that even animals or cattle would not stay there” – end of quote. The detainees were not provided with sufficient medical care or were denied medical care altogether. Furthermore, the detainees were not allowed to talk to each other, which only reinforced their fear and anxiety.

23. The detainees were also subjected to harsh interrogations, most often during the night. The detainees were questioned about their jobs, their whereabouts prior to and during the war, their relationship with Serbs and their knowledge of Serb “collaborators”. They were also personally accused of being “Serb collaborators”, “spies”, “traitors”, “murderers”, or “rapists”. Some were forced to provide written

statements and confessions. The interrogations were done by different KLA members including, Mr Shala, Sabit Geci and Xhemshit Krasniqi. Mr Shala was present also when other KLA members interrogated detainees.

24. In addition to the inhumane and degrading conditions of detention and the harsh interrogations, the Panel has found, based upon the evidence, that the detainees were physically and psychologically abused by several KLA members, on a daily basis. They were beaten throughout the night until the early hours of the morning, forced to slap and hit one another, forced to pretend to have sexual intercourse with each other, and forced to provide manual labour. The detainees were also forced to witness and to listen to the physical abuse of their co-detainees. They were harassed and threatened with violence or death. As a result, they lived in constant fear and felt that they could be subjected to physical abuse at any time, or even be killed. "We were counting the minutes when we will die", one of them recalled, testifying to the atmosphere of terror and the unsafety they felt.

25. During interrogations, KLA members subjected some of the detainees to particularly brutal beatings and other forms of mistreatment. KLA members beat the detainees with batons and baseball bats all over their bodies. They kicked them, punched them, cut them with knives, burned them with cigarettes, and threw salt on their wounds. Some of the detainees were also shot. The mistreatment left them bruised, covered in blood, unable to stand, or even unconscious. One witness recalled, and I quote: "I don't know how many times I actually fainted"; "They poured water over my face to bring me back, whereas afterwards I fainted again. And this continued the whole night" – end of quote.

26. The beatings were carried out by multiple KLA members, including Mr Shala, Sabit Geci and Xhemshit Krasniqi. The KLA members took turns in beating the detainees. One witness described the coordination amongst them as follows, and I quote: "While someone was beating me, I had to answer someone else's question. When I answered him, another one would say why I was not answering his question.

[...] I never had a chance to finish an answer before someone else would ask me another and beat me” – end of quote.

27. The physical and psychological mistreatment, coupled with the inhumane conditions of detention, left the detainees with long-lasting injuries, both physical and mental: head injuries, burn injuries, broken limbs and teeth, persistent and severe pain throughout their bodies, feelings of shame, fear (for example to go to work or to go outside unaccompanied), feelings of unsafety (in relation to themselves or their family members) and post-traumatic stress disorder, which includes symptoms such as nightmares, flashbacks and intrusive memories.

28. *Murder.* Lastly, I move to Count 4, murder. The Panel has found, based on the evidence that, on or about 4 June 1999, one of the detainees (the Murder Victim) was severely mistreated by a group of KLA members, including Mr Shala and Xhemshit Krasniqi, and was shot in the leg by the latter. Mr Shala participated in mistreating the Murder Victim both before and even after he was shot.

29. The mistreatment and shooting left the Murder Victim bruised all over his body. He was unable to walk or to urinate, and was bleeding profusely from the gunshot wounds in his leg due to the total destruction of an artery. A doctor advised that he be taken to the Kukës hospital. Otherwise, he would not survive. However, one of the KLA members in charge of the detainees at the KMF did not allow for his transfer and stated, and I quote: “We did not maltreat him to this point to send him to the hospital then” – end of quote.

30. The Murder Victim – after being in a terrible agony - died the next day, on or about 5 June 1999, while still in detention at the KMF, as a consequence of the gunshot wounds, combined with the denial of appropriate medical treatment.

31. *Context.* Before moving to Mr Shala’s participation in the crimes, I will say a few words regarding: (i) the existence of an armed conflict, in the context of which the crimes were committed; and (ii) the perpetrators’ awareness of this conflict. The Panel

has found that the crimes charged were committed in the context of a non-international armed conflict between the KLA and Serbian forces. Mr Shala and the KLA members at the KMF were aware of the circumstances establishing the non-international armed conflict. They were equally aware of the status of the victims as persons not taking active part in the hostilities, given that they were deprived of their liberty at the KMF.

MR SHALA'S PARTICIPATION IN THE COMMISSION OF THE CRIMES CHARGED

32. I will now turn to Mr Shala's participation in the commission of the crimes charged.

33. The Panel has found, based on the evidence, that Mr Shala participated – together with other KLA members – in the transfer under guard of one of the detainees to the KMF.

34. Mr Shala also participated in the interrogation and mistreatment of several detainees on two separate occasions – together with other KLA members, including Sabit Geci and Xhemshit Krasniqi. Mr Shala was the first to hit some of the detainees. Witnesses specifically recalled his brutality. One of the detainees stated that Mr Shala beat him with a baseball bat and a rubber baton, all over his body, including his head. As he was beating him, Mr Shala accused him of being a “spy”. Mr Shala also ordered detainees to beat each other, revealing that he had a certain degree of authority when it came to the mistreatment of detainees at the KMF. Further, he questioned one detainee with the goal of obtaining a confession.

35. At one point during the detention of a witness, Mr Shala also told a witness, and I quote: “We're going to kill you. We're going to execute you” – end of quote.

36. Mr Shala's personal participation in the transfer of one detainee to the KMF and his repeated participation in the interrogation and mistreatment of detainees, coupled with his knowledge that detainees were held at the KMF, demonstrate that he

participated in intentionally depriving these persons of their liberty and he knew that no basic guarantees were afforded to them for the duration of their respective detentions. In addition, Mr Shala had no reasonable grounds to believe that security concerns made the detention of these individuals absolutely necessary. For example, Mr Shala was in the room when accusations were levied against some detainees, including the Murder Victim, while they were being beaten. He even personally made accusations against some of the detainees. He was therefore fully aware that those individuals were not held at the KMF on specific charges and that security concerns did not make their detention absolutely necessary.

37. Mr Shala's personal participation in the interrogation and mistreatment of several detainees further demonstrates that he intentionally inflicted severe pain or suffering on the detainees, for the purpose of obtaining information or a confession, punishing, intimidating, coercing and/or discriminating against the detainees on political grounds.

38. The Panel has also found that Mr Shala possessed the intent to kill. This is demonstrated by a number of factors, including: (i) the manner in which he beat the detainees (such as hitting them on the head with a baseball bat and a rubber baton); (ii) the fact that he explicitly told one of the detainees, and I quote: "We're going to kill you. We're going to execute you" – end of quote; (iii) the fact that he was present when other KLA members struck detainees with guns and even shot them, as in the case of the Murder Victim; (iv) the fact that he witnessed the extreme violence inflicted upon the detainees and saw that they were bleeding, including from the head, were unable to walk, and were rendered unconscious; and (v) Mr Shala continued to participate in the mistreatment of the detainees, including the Murder Victim, even after the Murder Victim was shot and bleeding heavily.

39. I will now turn to the Panel's Legal Findings. The Panel finds that each of the constitutive elements of the war crimes of arbitrary detention (Count 1), torture (Count 3) and murder (Count 4) are met. As to the war crime of cruel treatment

(Count 2), the Panel notes that the facts underlying the charge of cruel treatment are identical to the facts underlying the charge of torture. Considering that torture is the more specific offence, the charge of cruel treatment is fully consumed by the charge of torture. Accordingly, the Panel has not further considered this charge.

40. Turning to the nature of the Accused participation in these crimes and the mode of criminal liability, the Panel finds Mr Shala to be individually criminally responsible for the war crimes of arbitrary detention, torture and murder as part of a joint criminal enterprise, in its basic form.

41. The members of this joint criminal enterprise – which included Xhemshit Krasniqi, other members of the KLA Military Police, Sabit Geci and other KLA members – had a common purpose to arbitrarily detain, interrogate, torture and murder detainees at the KMF who were perceived to collaborate with, be associated with, or sympathize with the Serbian authorities, or those who were considered to be not sufficiently supportive of the KLA effort. Through his participation in the transfer, interrogation and mistreatment of detainees at the KMF, Mr Shala made a significant contribution to furthering this common purpose.

42. Mr Shala shared the intent to commit the war crimes of arbitrary detention, torture and murder with the other members of the joint criminal enterprise.

43. Therefore, based on the evidence as a whole, the Panel finds beyond reasonable doubt that Mr Shala is guilty, pursuant to Articles 14(1)(c) and 16(1)(a) of the Law, under Counts 1, 3 and 4 of the Confirmed Indictment, for having committed the following crimes: (i) arbitrary detention as a war crime (Count 1), against at least eighteen (18) persons, between approximately 17 May 1999 and 5 June 1999 at the Kukës Metal Factory; (ii) torture as a war crime (Count 3), against at least eighteen (18) persons, between approximately 17 May 1999 and 5 June 1999 at the Kukës Metal Factory; and (iii) murder as a war crime (Count 4), against one (1) person, on or about 5 June 1999 at the Kukës Metal Factory.

44. I will now turn to sentencing. Before pronouncing the verdict and the sentence, I will briefly summarise the purposes of sentencing and the factors considered by the Panel to determine the appropriate sentence for the crimes of which Mr Shala is criminally responsible.

45. The Panel recalls that retribution and deterrence constitute the primary purposes for sentencing an individual who has been convicted of a crime.

46. Moreover, the Panel underlines the importance of bringing to justice the perpetrators of those serious crimes of concern to the international community as a whole in order to end impunity – even decades after the events concerned and notwithstanding a prevalent and long-standing climate of witness intimidation in Kosovo.

47. The punishment must also reflect the call for justice from persons who have – directly or indirectly – been victims of the crimes. Another important purpose of sentencing is the acknowledgment of the harm and suffering caused to these victims and to society as a whole.

48. In addition, the purpose of the sentence imposed by the Panel is to make it abundantly clear that the rules of international humanitarian law have to be obeyed under all circumstances and in all places.

49. Lastly, the Panel considers that the implementation of the principle of equality before the law also constitutes a purpose of sentencing in the case at hand.

50. To put the Panel's assessment in perspective, I recall what the Parties have requested. The Specialist Prosecutor requested that a single sentence of 28 years' imprisonment be imposed upon Mr Shala, as this sum of years reflects the totality of his criminal conduct. The Defence submitted that, in case of conviction, the sentence must be fair and proportionate, carrying a certain humanizing message. Victims' Counsel did not request a particular sentence for each charge, but argued that such sentence would have to be "a very substantial one".

51. In determining the sentence, the Panel has considered the following factors: (i) the gravity of the crimes and their consequences; (ii) the convicted person's personal contribution to the crimes; (iii) the individual circumstances of the convicted person; and (iv) mitigating and aggravating circumstances related to those factors, if any.

52. As to the gravity of the crimes, the Panel considered that arbitrary detention is grave in nature because it exposes victims to additional human rights violations; torture represents an assault on the human dignity, security, and mental and physical well-being; and murder is inherently one of the most serious crimes, as the protected value is human life.

53. In the present case, at least eighteen (18) persons were held in inhumane and degrading conditions of detention at the KMF. They were routinely physically and psychologically assaulted; and they lived in constant fear that they could be subjected to physical abuse at any time or even be killed. They were forced to witness and listen to the physical abuse of their co-detainees and they saw their co-detainees covered in blood and having bruises, swollen limbs and broken teeth. The Murder Victim died while still in detention at the KMF, as a result of being shot and subsequently being denied appropriate medical treatment. The other detainees were forced to witness his terrible agony before he died.

54. As to the consequences of the crimes, the Panel observes that, as a result of the arbitrary detention and torture, the victims suffered long-lasting consequences from both physical and mental injuries, as I set out earlier. In addition, some victims lost the ability to earn a living, to provide for their family or regain financial independence. The Panel has also considered the impact of the Murder Victim's death on those who witnessed his mistreatment and death, and the effects it had on his family members.

55. The Panel further considered two aggravating circumstances, namely that the torture was committed with particular cruelty and that the victims were particularly vulnerable or defenceless.

56. For these reasons, the Panel assessed the gravity of the crimes as high.

57. As to Mr Shala's personal contribution to the crimes, the Panel notes that Mr Shala played an active role within the group of KLA members who arbitrarily detained, tortured and murdered the detainees at the KMF. He had a degree of autonomy and authority within the KLA at the KMF, without, however, holding a commanding role. In addition, the Panel recalls that Mr Shala personally and intentionally mistreated some detainees at the KMF.

58. Accordingly, the Panel assesses the degree of Mr Shala's personal participation and intent with regard to the crimes under consideration as high.

59. Lastly, as to Mr Shala's individual circumstances, while the Panel acknowledges that Mr Shala experienced conflict-related difficulties, it attaches little weight to these circumstances. The Panel has not identified any other individual circumstances that warrant reducing his sentence.

60. This completes the summary of the Panel's findings.

I will now pronounce the Verdict.

61. Mr Shala, please stand.

62. In the name of the people of Kosovo, for the reasons set out in the Judgment and summarised earlier, and having considered all of the evidence and the arguments of the Parties and Victims' Counsel, the Panel, pursuant to Articles 43 and 44 of the Law and Rules 158, 159 and 163 of the Rules, finds you, Mr Pjetër Shala, GUILTY of the following crimes:

- a) Count 1, Arbitrary Detention as a War Crime, under Articles 14(1)(c) and Article 16(1)(a) of the Law (as part of a joint criminal enterprise, in its basic form);
- b) Count 3, Torture as a War Crime, under Articles 14(1)(c)(i) and 16(1)(a) of the Law (as part of a joint criminal enterprise, in its basic form); and

c) Count 4, Murder as a War Crime, pursuant to Article 14(1)(c)(i) of the Law and 16(1)(a) of the Law (as part of a joint criminal enterprise, in its basic form).

The Panel finds you NOT GUILTY of the War Crime of cruel treatment under Count 2.

I will now pronounce the Sentence.

63. Mr Shala, given that you have been found guilty of more than one crime, the Panel has determined an individual sentence for each crime on which a conviction has been entered, pursuant to Rule 163(4) of the Rules. I will thus first set out these individual sentences, and then I will pronounce a single sentence for the totality of your criminal conduct.

64. The Panel has determined the following sentences:

(i) a term of six (6) years of imprisonment for the war crime of arbitrary detention (Count 1);

(ii) a term of sixteen (16) years of imprisonment for the war crime of torture (Count 3); and

(iii) a term of eighteen (18) years of imprisonment for the war crime of murder (Count 4).

The Panel sentences you to a single sentence of eighteen (18) years of imprisonment, with credit for the time served.

65. Mr Shala, you may be seated.

66. The Registry shall now distribute the confidential version of the Trial Judgment in electronic form. A certified copy of the English version will be provided to Mr Shala as soon as possible today. The Albanian version shall be served on Mr Shala once it is ready, and on this matter the Parties and Victims' Counsel are invited to liaise with the Registry if need be. The Panel will issue a public redacted version of the Trial Judgment for the public in due course.

67. Finally, the Panel recalls that it retains jurisdiction in this case for the purposes of issuing in due course a Reparation Order specifying appropriate reparations to, or in respect of victims, in accordance with Articles 22(8) and 44(6) of the Law.

The Court stands adjourned.