



OSSERVATORIO SUI TRIBUNALI INTERNAZIONALI PENALI N. 4/2023

1. *YESTERDAY'S HEROES, TODAY'S CRIMINALS: THE WORK OF THE KOSOVO SPECIALIST CHAMBERS AND THE CONTROVERSIAL ROLE OF CRIMINALISATION IN TRANSITIONAL JUSTICE*

1. *Prologue*

The indictments by the Kosovo Specialist Chambers (KSC) and Specialist Prosecutor's Office (SPO) against former leaders of the Kosovo Liberation Army (KLA/UÇK), including the then serving President Hashim Thaçi, reveal the challenges of pursuing transitional justice in the context of unresolved ethno-national conflicts.

The KLA, from which most of the current the political élites in Kosovo emerged, is the ethnic-Albanian paramilitary liberation group which sought the separation of Kosovo from (the former) Yugoslavia during the 1990s. Their efforts eventually led to the unilateral [declaration of independence](#) of the Republic of Kosovo/Kosova in 2008, later upheld by the 2010 [Advisory Opinion](#) of the International Court of Justice. KLA leaders are widely hailed as war heroes in Kosovo, yet some are now facing accusations of committing atrocity crimes during the conflict. In a context marked by ethno-national divisions and ongoing tensions with Serbia, legitimising criminal proceedings against KLA members faces multi-level complexities. As Atkins aptly points out, the challenges faced in the pursuit of justice in Kosovo are practical, theoretical, substantive, procedural, legal, and political ([M. ATKINS, *Ghosts of Kosovo: A Test for International Criminal Law in the Balkans*, in *Willamette J. International Law & Dispute Resolution*, Vol. 29\(1\), 2022](#)).

This contribution provides an overview of the current state of the art of the KSC's work. The next section briefly outlines the KSC's mandate, and the discussion around its nature as a special hybrid institution. Section 3 examines the current proceedings and the outcomes of the decisions to date, while section 4 reflects on some of controversies surrounding the works of the KSC, such as the decision to concentrate prosecutorial efforts on KLA members, and the accountability gap concerning sex-related crimes. The conclusion offers final remarks on the role of transitional justice and criminalisation in the conclusion.

2. *Origin and jurisdiction of the KSC*

The KSC was established as a temporary international tribunal in The Hague, the Netherlands, with a mandate to investigate and prosecute crimes against humanity, war crimes, and other crimes under the law of Kosovo allegedly committed on the territory of Kosovo between January 1, 1998, and December 31, 2000, by or against citizens of Kosovo

or the (then) Federal Republic of Yugoslavia. The KSC also has jurisdiction over offenses relating to public order and administration of justice where they relate to its official proceedings and officials.

The mandate of the KSC has its origin in the [Council of Europe Parliamentary Assembly Report](#) of 7 January 2011 by Dick Marty, reporting «numerous concrete and convergent indications» of inhuman treatment and illicit trafficking in human organs allegedly committed by members of the KLA. The Report identified three categories of victims: prisoners of war, disappeared, and victims of organized crime. The Marty Report, in turn, originates from details exposed by Carla Del Ponte's 2008 [book](#) *La caccia - Io e i criminali di Guerra*, which sparked shock and controversy on Kosovo's liberation movement and its leaders.

Partially in response to the Marty Report, in 2011 the European Union (EU) established the Special Investigative Taskforce of the European Union Rule of Law Mission in Kosovo (EULEX). On 3 August 2015, the Kosovo Assembly adopted [amendment No. 24](#) to Kosovo's Constitution and the implementing [Law No.05/L-053](#) (KSC Statute) to enable the creation of the KSC, with financial support from the EU and other contributing countries. While the KSC's jurisdiction is thus grounded in Kosovo's domestic law, the staff, including judges, specialist prosecutors, and registrars, are international personnel. Of the nineteen judges serving in the Court, only five are women, including the first elected President, Ekaterina Trendafilova. Since Article 6(1) of the KSC Statute states that the KSC has subject matter jurisdiction over crimes «which relate to the Council of Europe Assembly Report», personal jurisdiction is *de facto* limited to KLA members and their «affiliates in Albania» for the crimes mentioned in the report. Amongst the eight individuals accused to date, there are high-profile politicians as well as former chiefs of the KLA intelligence services. All defendants are former members of the KLA.

Given its domestic legal foundation and its contextual international composition and sitting, the nature of the KSC is debated. It has been defined as an «international tribunal inside the national judicial system» ([M. S. CATALETA, *The Kosovo Specialist Chambers, an International Tribunal Inside the National Judicial System*, in *Journal of International Criminal Law*, Vol 3\(1\), 2022, p. 1](#)), as «technically an institution of the Kosovo judiciary» ([ATKINS, *cit.* p. 11](#)), and neither as a national nor as an international court, but as a special «new generation» of hybrid courts ([S. STEFAŃSKA, *Kosovo Specialist Chambers as a New Hybrid Court in the International Judiciary*, in *Wroclaw Review of Law, Administration & Economics*, Vol. 11\(2\), 2021, p. 84](#)) and a regional variation of mixed criminal tribunals ([E. CIMIOTTA, *The Specialist Chambers and the Specialist Prosecutor's Office in Kosovo: The 'Regionalization' of International Criminal Justice in Context*, *Journal of International Criminal Justice*, Vol. 14\(1\), 2016, pp. 53–72](#); on the distinction between internationalised and mixed tribunals, see [A. DEL VECCHIO, *International Courts and Tribunals between Globalisation and Localism*, *The Hague*, 2012, pp. 156–180](#)). Others explain it as a «*sui generis* criminal tribunal project» involving elements of the domestic law of the Republic of Kosovo, the EU's external relations law, and international criminal law ([E. HASANI, F. KORENICA, *"Two Courts" for One Constitution: Fragmentation of Constitutional Review in the Law of the Kosovo Specialist Chambers in The Hague*, in *German Law Journal*, Vol. 24\(2\), 2023, p. 386](#)).

This is ever more so relevant given the current debate around the nature of a potential «tribunal for Ukraine» and related questions about subsidiarity, effectiveness, and the desirability of international interventions. While the domestic legal grounds of the KSC help overcome most of these issues, its uncertain nature also prompts criticism and new

conceptual and legal difficulties. Critics have questioned whether the choice of this unorthodox tribunal conceals political interests. Muharremi, for example, has argued that the KSC was created as a «national court» with the view to protect international actors from possible legal exposure in connection with their involvement in Kosovo during the time when the alleged crimes were committed ([R. MUHARREMI, *The Kosovo Specialist Chambers from a Political Realism Perspective Get access Arrow*, in *International Journal of Transitional Justice*, Vol. 13\(2\), 2019, pp. 290–309](#)). A Serbian scholar, Aleksandar Gajić, instead, dismissively framed the KSC as being completely incorporated into the «so-called judicial system of the Republic of Kosovo», a situation which prevents cooperation with states that have not recognised Kosovo's independence ([A. V. GAJIC, *The Nature and the Status of the Kosovo Specialist Chambers and Specialist Prosecutor's Office: The European Union Project Implemented through "Kosovo Legislation"*, in *CRIMEN*, 2022, pp. 231-246](#)). Gajić also suggests that the KSC's establishment was not aimed to achieve justice for KLA unpunished crimes, strengthen the rule of law, and promote reconciliation, but to legitimise NATO intervention and the recognition of Kosovo as a state. Amid such criticism, the atypical hybrid nature of the KSC reflects the efforts to mediate between the competing needs to internationally oversee the process of international criminal justice, domestically legitimise accountability efforts, and continue to promote transitional justice and reconciliation (*cf.* ATKINS, *cit.*).

3. Current cases

The first indictments were issued and confirmed in 2020. To date, the only proceedings that have been finalized are those against Hysni Gucati and Nasim Haradinaj, resulting in the conviction of the defendants. The Trial Chamber also convicted Salih Mustafa, whose appeal is currently pending. Trials in the two most prominent cases – against Pjetër Shala and against Hashim Thaçi and others – have only started in 2023 and are still ongoing. Two additional individuals - Ismet Bahtjari and Sabit Januzi – [have been arrested](#) in Kosovo on 6 October 2023 for offences against the administration of justice. As these events occurred after the draft of this contribution was submitted, the case will not be analyzed in this section.

a) *Hysni Gucati and Nasim Haradinaj*

The case of *Gucati and Haradinaj* is the only proceeding that has come to an end to date. The [Trial judgment](#) issued in May 2022 was the first verdict handed down by the KSC after its establishment in 2015. The relatively speedy path, at least for the standards of international criminal justice, is due to the clear probatory framework and the nature of the case, related to offenses against public order and the administration of justice, pursuant to Article 15(2) KSC Statute. This pertains to obstructing officials in carrying out official duties, intimidation of witnesses, retaliation, and breach of confidentiality. Gucati and Haradinaj were accused of directly and intentionally trying to prevent effective investigations and prosecutions and of having revealed confidential documents, undermining investigations and witness security.

According to the [Indictment](#), between at least 7 and 25 September 2020, Gucati and Haradinaj (Chairman and Deputy Chairman of the Kosovo Liberation Army War Veterans' Association, respectively) revealed, without authorisation, information protected under the law of the Specialist Chambers, including the identifying details of potential witnesses.

Gucati and Haradinaj were immediately arrested in Priština on 25 September 2020 and then transferred to the KSC Detention Unit. The trial commenced on 7 October 2021, and the [judgment](#) was pronounced on 18 May 2022, finding both defendants guilty of obstructing official persons in performing their duties, intimidating witnesses (and potential witnesses) during criminal proceedings, and violating the secrecy of proceedings. They were sentenced to four and a half years' imprisonment and fined 100 euros each.

Both Guçati and Haradinaj appealed the verdict, and the Appeals Panel delivered the KSC's very first [Appeal Judgment](#) on 2 February 2023, upholding the convictions for intimidating witnesses (and potential witnesses) during criminal proceedings, violating the secrecy of proceedings through the unauthorised revelation of secret information, violating the secrecy of proceedings through the unauthorised revelation of the identities and personal data of protected witnesses, and obstructing official persons in performing official duties by serious threat (Judge Ambos dissenting on the latter). However, the Appeals Panel reversed the Trial Panel's finding on obstructing official persons in performing official duties by participating in the common action of a group and acquitted Guçati and Haradinaj on this count, reducing the sentence accordingly.

In particular, the Appeals Panel disagreed with the contextual conviction for the two crimes, contained in Article 401 of Kosovo's Criminal Code, of obstructing official persons in performing official duties through the use of force or serious threat (Art. 401(1)) and by participating in a group of persons for such purpose (Art. 401(2)). The Appeals Panel argued that when resulting from the same conduct, the crime of obstructing official persons in performing official duties by force or serious threat subsumes the crime of obstructing official persons in performing official duties in a group. The case is thus one of 'false concurrence' of crimes. Regarding sentencing, the Appeals Panel rejected the 'cumulative convictions test', derived from common law traditions and usually seen as the standard test generally of international criminal tribunals, and opted for the theory of 'concurrency of crimes', preferred by countries of civil law tradition, including Kosovo, which provides that where one person commits several criminal offences that are tried at the same time the court shall impose an aggregate punishment. In view of the findings, the Appeals Panel, by majority, reduced the detention sentences to four years and three months.

On [2](#) and [3 May](#) 2023, Haradinaj and Guçati, currently serving their sentences, filed their requests for protection of legality (Haradinaj re-filed his request on [9 May](#) 2023). This is an extraordinary remedy before the Supreme Court Panel ex Rule 193 of the [Rules of Procedure and Evidence](#) and Article 48(6) to (8) KSC Statute, according to which a party can request a review of a final ruling within three months based on allegations of a violation of substantive or procedural provisions of the Statute, or violations of rights protected under Kosovo's Constitution or the European Convention on Human Rights ([ECHR](#)). Both Haradinaj and Guçati lamented the "incorrect interpretations" and "misapplication" of law on several, largely overlapping grounds including, *inter alia*, that threats against non-official witnesses and the disclosure of certain confidential information should not be considered, that sentencing was exorbitant, and that the Appeals Panel was not impartial. The Specialist Supreme Court Panel [rejected](#) both requests for protection of legality on 18 September 2023.

Despite the speedy and relatively straightforward trial, the case is significant from the perspective of both criminal justice and Kosovo's political landscape. Besides allegations of behind-the-scenes intimidation and undue disclosure of documents, Guçati and Haradinaj also publicly called witnesses "traitors", "spies", and "collaborators", and

revealed identity details of the witnesses. This endangered the safety of current witnesses, victims, and their relatives, as well as potentially deterred others from providing information and participating in the proceedings before the KSC. In addition, these statements further undermined the KSC's legitimacy in the eye of Kosovo's general public. The path to reconciliation does not look as an easy one.

b) *Salih Mustafa*

Salih Mustafa was allegedly the Commander of a guerrilla unit operating within the KLA, known as BIA. According to the 2020 [Decision on the Confirmation of the Indictment](#), Mustafa would bear individual criminal responsibility as well as command responsibility with respect to war crimes allegedly committed against protected persons held in the Detention Compound in the village of Zllash/Zlaš, located in the Gollak region of Kosovo. The crimes allegedly occurred in the context of and in association with a non-international armed conflict (NIAC) in Kosovo, including along the border with Albania, between the KLA and forces of the FRY and the Republic of Serbia. The Pre-Trial Judge described the KLA as an organised entity with a centralised command structure «disposing of a considerable operational capacity, including weaponry, and exercising territorial control» (Confirmation of the Indictment, para. 91, p. 37).

The Pre-Trial Judge confirmed the war crimes charges based on the Prosecutor's allegations that during the course of April 1999, Mustafa and other KLA soldiers, police, and guards shared a common purpose to interrogate and mistreat the victims – protected persons who were not taking active part in the hostilities due to their detention condition – at the detention compound, holding them incommunicado and without the opportunity of judicial review or appeal, and committing the war crimes of arbitrary detention, cruel treatment, torture, and murder. In particular, the allegation of murder pertains to a custodial death resulting from severe mistreatment and omission of medical care. The victim was found with a gunshot in the back and signs of mistreatment, including wounds and broken legs. During the detention, the victim had allegedly been subjected to burns, application of electric wires, and knife cuts.

The [Trial Judgment](#) was pronounced on 16 December 2022, finding Mustafa guilty of the commission of the war crimes of arbitrary detention, torture (fully absorbing cruel treatment) – both mental and physical –, and murder. He was sentenced to 26 years of imprisonment, and to pay an overall sum of €207,000 in reparations. On February 2, 2023, Mustafa's defence team lodged an appeal, subsequently [updated in May](#), contending that there were miscarriages of justice and errors in both legal interpretation and factual findings, lack of sufficient evidence – particularly in relation to causation and intent in the charge of murder, and both *actus reus* and *mens rea* for torture – and exclusion of evidence and witnesses favourable to the accused, in addition to an excessive application of the sentence, which they describe as 'capricious and manifestly excessive' (ground 9). The most interesting argument, however, is perhaps the supposed mischaracterisation of the legal nature of the conflict as NIAC instead of international (IAC) which, according to the defence, undermines the validity of the judgment since it relied on incorrect legal provisions. At the same time, this argument seemingly contradicts the defence's final argument that the charge of arbitrary detention should not be characterised as a war crime in the context of NIACs – an issue that has resurfaced in the following cases, as further examined in section 3.

The case of *Mustafa* is currently pending before the Appeals Panel, and will probably conclude in 2024. The frequent references to witness bias and unreliability, from both the defence and the KSC, testify the climate of competing narratives around the proceedings. As the appeal unfolds, its outcome will inevitably intertwine with the trials of *Thaçi et al.* and *Shala*, and the persisting political controversies that surround the KSC.

c) *Thaçi et al.*

Probably the most-anticipated trial, the *Thaçi et al.* case commenced on 3 April 2023 and is currently pending before Trial Panel II. The case involves four former senior KLA officials and leaders, namely: the former President of Kosovo, Hashim Thaçi, who resigned on 5 November 2020 to renounce immunity and face charges; Kadri Veseli, former Chairman of Kosovo's Assembly and Intelligence Service, and leader of the Democratic Party; Rexhep Selimi, former Minister of Public Order and member of the parliamentary committee for Security and Internal Affairs, overseeing Kosovo Security Force; and Jakup Krasniqi, former acting President of Kosovo and former Chairman of the Assembly.

The indictment was amended several times, in order to include new allegations and withdraw others. According to the final version of the [indictment](#), the suspects committed persecution, imprisonment, other inhumane acts, torture, murder, enforced disappearance, and illegal or arbitrary arrest and detention, punishable as crimes against humanity and war crimes under Articles 13, 14, and 16(1) KSC Statute. The crimes charged took place in several locations across Kosovo and Albania, and the four defendants are accused of participating in a joint criminal enterprise with the common objective to gain and exercise control over Kosovo by means of unlawfully intimidating, mistreating, and removing and committing violence against opponents.

Besides being the most high-profile case to date, *Thaçi et al.* opens several interesting jurisdictional challenges that are likely to resurface on appeal, including whether arbitrary detention in a NIAC was already a war crime under customary international law at time of commission and, thus, applies to the 1998-1999 conflict in Kosovo. I will get back to this issue in Section 3.

d) *Pjetër Shala*

The trial of *Pjetër Shala* started in early 2023 and is currently pending before Trial Panel I. According to the [Decision on the Confirmation of the Indictment](#), Pjetër Shala, a member of KLA stationed in Kukës, Albania, is accused of personally committing and participating in acts of arbitrary detention, cruel treatment, torture, and murder in the context of a NIAC, punishable as war crimes under Article 14(1)(c) KSC Statute.

Mr Shala is accused of knowingly participating, together with other KLA members, in the transfer of detainees to the Kukës Metal Factory, where the victims were deliberately held incommunicado and without due process under armed guard in makeshift cells, handcuffed and tied, and deprived of their passports and money. They were held in inhumane detention conditions including inadequate provisions of food, water, sanitation and hygiene, bedding and medical care, and were routinely assaulted both physically and psychologically by means of beatings, including with batons and other instruments, throwing salt or vinegar on wounds or eyes, waterboarding, threats of death and serious

bodily injury, and forced labour. According to the SPO, Mr Shala was regularly present in the rooms where detainees were held, contributing to acts enforcing and continuing the detention, and failing to apply appropriate detention procedures. Mr Shala is also personally accused of shooting and beating wounded prisoners, and refusing them adequate medical treatment, including one episode that resulted in the death of a detainee. Among other things, Shala's defence has objected to the inclusion of arbitrary detention as a war crime in the context of NIACs.

The Pre-Trial Judge [found](#) that Mr Shala and other KLA members acted with the common purpose to: (i) deprive individuals of their liberty without due process of law; (ii) detain them in inhumane conditions; (iii) severely mistreat detainees for an extended period of time, including through physical assaults with various instruments; (iv) interrogate and punish detainees; and (v) kill or wilfully cause them serious bodily injuries leading to death (Confirmation of the Indictment, para. 117, pp. 44-45). As a result, the Pre-Trial Judge well-grounded suspicion that Mr Shala committed or, in alternative, aided and abetted, the crimes charged as a member of a joint criminal enterprise. Shala's defence asked the charge of murder to be dismissed because of the manifest unreliability of the evidence presented by the SPO, but Trial Panel I [dismissed](#) the motion on 15 September 2023, and the case is currently under way.

3. Controversies

One of the main legal controversies arising from the KSC proceedings concerns the charge of arbitrary detention as a war crime in the context of NIACs (on the topic, see [T. CASTELIJN, L. YANEV, *Arbitrary Detention in Non-International Armed Conflicts: A Tale of Two Hague Courts*, in *Ejil/Talk!*, 2023](#)). Arbitrarily depriving individuals of their liberty could constitute the war crime of "unlawful confinement" during IACs, as a grave breach of the Geneva Conventions, or the crime against humanity of "imprisonment" when committed as part of a widespread or systematic attack against a civilian population. However, "arbitrary detention" is not expressly listed a self-standing war crime in NIACs neither in any international instruments, nor in the KSC Statute.

Instead, the SPO has included arbitrary detention as a war crime in all the indictments in *Mustafa*, *Thaçi et al.* and *Shala*. This view was confirmed in a [decision](#) on motions challenging the KSC jurisdiction presented by the defence in *Thaçi et al.* in 2021, arguing that Common Article 3 of the Geneva Conventions – applicable to NIACs – requires to treat humanely all persons not taking active part in the hostilities and, as such, entails the prohibition of arbitrary detention. The list of "serious violations" of Common Article 3 enshrined in the KSC Statute is open-ended, so it allows for the inclusion of arbitrary detention. This view was later endorsed by the KSC Appeals Chamber in the [jurisdictional decision](#), while the Trial Panel I in the *Mustafa* judgment found the accused guilty of the war crime of arbitrary detention without engaging in the discussion of its nature in NIACs.

Such characterisation has been opposed by the defence of all the accused, who argue that no such war crime existed under customary international law during the Kosovo War. As mentioned, this is the first ground of appeal of *Mustafa*, and is likely to be a central point in the defence of *Thaçi et al.* and *Shala*. The KSC will have to fill a clear normative vacuum and elaborate on whether arbitrary detention is a serious violation of international humanitarian law and constitutes a war crime in the context of NIACs entailing individual criminal responsibility under customary international law. In such case, it will be the first

time that an international criminal tribunal finds arbitrary detention to be a self-standing war crime where committed during NIACs. Furthermore, it will have to explain not only whether it is a war crime now, as some have already suggested, but also that it was already a war crime at the time of the facts under trial.

If the KSC has been expansive in including arbitrary detention within its jurisdiction, charges relating to sexual and gender-based violence are instead remarkably absent. In the times preceding its establishment, there was an expectation that the KSC would tackle such crimes, given that the Marty Report abundantly mentioned trafficking of women and girls, sexual exploitation, and “sex trade”. Instead, none of the indictments to date mentions “women”, “girls”, their “exploitation” or “trafficking”. The only mention of sex-related offences appears in the [indictment](#) of *Thaçi et al.* where, in describing the crime of other inhumane acts and cruel treatment, it is reported that a KLA member ordered two detainees in Prizren to «undress and have sex» (para. 128, p. 41).

This shortcoming is not new to criminal justice initiatives in Kosovo and the region. According to Professor Paul Williams, for example, the International Criminal Tribunal for the former Yugoslavia (ICTY) offered a «[particularly egregious example](#)» of the accountability gap in its failure to appropriately seek justice for conflict-related sexual violence. While in [Djordjevic](#) and [Šainović et al.](#) the ICTY convicted high-level Serbian officials for crimes committed in Kosovo, including sexual assault, the three KLA members accused, *inter alia*, of rape (Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj) were eventually [acquitted](#).

The UN Interim Administration Mission in Kosovo [only performed two retrials](#) for cases of conflict-related sexual violence, later passed along to EULEX, which prosecuted only two cases addressing conflict-related sexual violence among the 38 war crimes cases. Investigators, prosecutors, and judges also generally lacked the training necessary to identify and collect evidence, support victims, and successfully pursue justice for these crimes. As often for this type of crimes, recognition of the victims of wartime sexual violence used to be a long-lasting taboo surrounded by social stigma in Kosovo, discouraging victims from seeking redress. More recently, Kosovo’s judiciary has started domestic investigations. However, due to several difficulties with evidence collection, inadequate resources, and immunity, local judicial authorities are typically able to prosecute only lower-rank perpetrators when it comes to international crimes. Kosovo is no exception, with the [first conviction](#) by Kosovo’s domestic courts being handed down to a Serb policeman. International(ised) tribunals and institutions may be better positioned to overcome these barriers and arrange systematic investigations targeting high-level officials, but limited progress has been done so far.

The most controversial aspect of the work of the KSC, however, is [political](#). Since, as mentioned above, Article 6(1) of the KSC Statute *de facto* confines jurisdiction over crimes related to KLA members and affiliates, crimes committed by Serbian officials remain excluded. As a result, the KSC is often [portrayed](#) by local élites as a controversial, unfair, one-sided, politically charged institution committed to delivering a selective form of justice which fails to uncover a full-fledged truth and will feed a sense of injustice among the wider Albanian community in Kosovo. Critics have raised [concerns](#) about potential further polarisation of intra and inter-ethnic relations, competing narratives of victimhood, undermining of political stability and institutional reforms, negative impact on Kosovo’s international credibility and standing, and delays in the normalisation of Kosovo-Serbia relations – as the [recent escalation of tensions](#) in northern Kosovo demonstrate.

Given its focus on allegations against KLA members, the KSC has also attracted widespread scepticism from current Kosovar politicians and members of the public, who view former fighters as righteous [liberators](#) and [war heroes](#) rather than criminals and demand their acquittal. Yesterday's war hero have become today's war criminals – a fate Kosovars, still healing open wounds, are not ready to accept. Yet it is crucial to recognise that the legitimacy of causes, no matter how righteous they may seem, cannot justify resorting to atrocities. In the words of Dick Marty, «[t]he fact that [serious human rights violations] were committed in the context of a violent conflict could never justify a decision to refrain from prosecuting anyone who has committed such acts... There cannot and must not be one justice for the winners and another for the losers» (Marty Report, *cit.*, paras. 14-15, p. 4). Even when perceived as “collateral damage” of a “just war”, the commission of atrocities undermines the moral foundation of any cause and cannot be condoned. Justice should transcend political narratives, and legitimate liberation wars cannot involve violations of human rights and international humanitarian law.

4. Conclusion

The work of the KSC and the indictments against former KLA leaders, including former President Thaçi, shed light on the difficulties in delivering justice and seeking accountability in a context marked by unresolved ethno-national conflicts. To date, the only case that has come to an end is *Gucati and Haradinaj*, pertaining not to war crimes but to offenses against public order and the administration of justice. The case is nonetheless pivotal in illuminating the challenges that the KSC faces regarding due process standards and witness protection. The other three cases, *Mustafa*, *Thaçi et al.*, and *Shala*, are still pending before the Appeals Panel, Trial Panel II, and Trial Panel I, respectively. A common jurisdictional challenge has already emerged in all the three proceedings, and the KSC will have the task of unpacking whether “arbitrary detention” constitutes a war crime in the context of a NIAC. At the same time, the KSC is also facing strong political controversies amid domestic scepticism about the criminalisation of former “war heroes” and escalating tensions in the relations between Kosovo and Serbia. This highlights the difficulty of addressing past atrocities while simultaneously navigating the complexities of reconciling ongoing frictions.

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