

**In:** KSC-CA-2024-03  
**The Specialist Prosecutor v. Pjetër Shala**

**Before:** A Panel of the Court of Appeals Chamber  
Judge Michèle Picard  
Judge Kai Ambos  
Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

**Date:** 28 January 2025

**Filing Party:** Specialist Counsel for Pjetër Shala

**Original language:** English

**Classification:** Public

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**Defence Notice of Appeal of the Reparation Order**

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1. The Defence for Mr Pjetër Shala (“Defence”) hereby submits its notice of appeal against Trial Panel I’s Reparation Order dated 29 November 2024.<sup>1</sup> The Defence presents the following grounds of appeal:

GROUND 1: THE TRIAL PANEL ERRED IN DEFINING AND APPLYING THE LAW OF CAUSATION

2. The Trial Panel erred by holding Mr Shala liable to repair harm which was not caused by his acts or omissions.<sup>2</sup> The Panel’s analysis fails to require a causal link between the culpable conduct of Mr Shala (as opposed to other perpetrators) and the specific harm caused. It employs an impermissibly wide definition of “cause” as a result of which it attributes liability to Mr Shala for circumstances and acts of third parties that are too remote to his conduct. It erred in considering that reparations within the KSC framework can have a “symbolic, preventive, or transformative value”, which error led it to interpret the law in an impermissibly broad manner, leading to arbitrary and unjust conclusions which breach Mr Shala’s right to fair proceedings.
3. At paragraphs 60, 62 and 99 of the Reparation Order, the Panel notes its position that Mr Shala is deemed liable for the harm caused to victims by the crimes in respect of which he was convicted, irrespective of his actions or whether each specific harm is linked to specific instances of mistreatment.<sup>3</sup> In its analysis of the requisite causation, the Panel acknowledges the need for applying a test of causation but erroneously identifies the required causal link,

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<sup>1</sup> Email from the Court Management Unit of the Registry to the Parties and Participants, 29 November 2024 at 12:12; KSC-BC-2020-04, F00866, Reparation Order against Pjetër Shala, 29 November 2024 (confidential)(“Order”).

<sup>2</sup> Order, paras. 60-66, 75 (holding that “[r]eparations may ... have a symbolic, preventative, or transformative value, and may assist in promoting reconciliation between the victims of the crime, the affected communities and the convicted person” relying on the very different ICC framework), 99, 176, 203-207.

<sup>3</sup> See also Order, para. 29

or the “but/for relationship” as it puts it, between the crime and the harm as opposed to Mr Shala’s culpable conduct and the harm.<sup>4</sup> In addition, the Panel clarified that, in its view, for civil liability to arise the crime’s contribution to the harm need not even be significant.<sup>5</sup> However, for attribution of civil liability not every factor contributing to the realization of a crime can be considered as the crime’s “cause”. The Panel also failed to provide a reasoned opinion as to the origins of the test it considered as the applicable law.

4. The Panel’s errors affected its findings on liability as to perceived harm considered to be caused by all crimes in respect of which Mr Shala was convicted. Specifically for murder, and the Defence strongly contests the view that Mr Shala can be considered criminally liable for the death of the “Murder Victim”, the Panel entirely failed to consider the effect of the lack of foreseeability as to what happened and the *novus actus interveniens* in the sequence of events leading up to the death of the Murder Victim which was brought about by the acts, decisions and omissions of others.
5. The Trial Panel erred in its interpretation and application of the law as to causation and attribution of civil liability and its errors have led to absurd, arbitrary and unjust results that merit appellate intervention.<sup>6</sup>

## GROUND 2: THE PANEL ERRED IN LAW BY PRESUMING SPECIFIC HARM AND MAKING ARBITRARY AWARDS

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<sup>4</sup> Order, para. 62.

<sup>5</sup> Order, fn. 95 (“The Panel does not subscribe to the Pre-Trial Judge’s conclusion that the crime must have significantly contributed to the harm”).

<sup>6</sup> The definition and application of the law of causation by the Panel was prejudicial and inconsistent with the rights of Mr Shala to fair proceedings (despite the Panel’s acknowledgment of the importance of Mr Shala’s rights in this respect, see Order, para. 46).

6. The Panel erred by basing its awards on presumptions of harm it considered that the victims suffered, without assessing whether these could be imputed to Mr Shala.<sup>7</sup>
7. The Panel erred in making awards for material damages on the basis of the presumption, about both V01/04 and W4733, that had they not been detained at the KMF they “would have more likely than not been able to pursue ‘an average career path’ and gain employment with regular income”.<sup>8</sup> The Panel also erred in failing to consider and link such perceived harm to any culpable conduct by Mr Shala.<sup>9</sup>
8. The Panel also presumed that the cause of misfortune or loss of opportunity all victims complained of was the social stigma arising in Kosovar society generally or in the thoughts of specific third parties considering the primary victims (V01/04 and W04733) as traitors for collaborating with enemy forces. It then considered, without linking such perceived social stigma, to any culpable acts or omissions by Mr Shala, that any related harm (even theoretical harm such as general loss of opportunity for instance because of the victims’ personal decision to interrupt formal education) was caused by Mr Shala.<sup>10</sup> The Panel’s error is aggravated by its failure to examine whether there were, in fact, sufficient grounds to believe that the victims were collaborators, proceeding instead on the presumption (despite evidence to the contrary on the trial record) that the accusations or suspicions of collaboration were ill-founded.

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<sup>7</sup> Order, paras. 54, 58-59, 65, 67, 70, (“certain harms may be presumed, once a victim has demonstrated ... to be a victim”), 90 (“[t]he Panel will also, where it sees fit, proceed on presumptions”), 113, 118-119, 139, 140-141, 143, 200-201.

<sup>8</sup> Order, paras. 118-119, 140-141.

<sup>9</sup> See above [Ground 1]. See also KSC-BC-2020-04, F00819, Defence Response to Victims’ Counsel’s Request for Reparations to Address the Physical, Mental, and Material Harm Suffered by Victims Participating in the Proceedings, 25 March 2024 (confidential), para. 43.

<sup>10</sup> Order, paras. 111-113, 143-144.

9. While it is not doubted that being accused or considered a collaborator carries a social stigma, one cannot “complain of a loss of reputation which is the foreseeable consequence of one’s own actions”.<sup>11</sup> In the face of well-founded suspicions that the primary victims had collaborated with enemy forces, the victims cannot complain in law of the impact of their actions on their reputation and manner in which they are perceived or received in Kosovar society in the aftermath of the war and, subsequently, in the Kosovar society en route to democratic recovery.
10. The Panel erred in finding Mr Shala liable for the actual or hypothetical acts or omissions of third parties that were presumed to have resulted from such stigma and failed to give any weight to the impact of autonomous “choices and decisions” made by the victims themselves.<sup>12</sup> The conclusion that Mr Shala bears personal liability for such hypothetical decisions is arbitrary and not grounded on any causal link between the alleged unsubstantiated harm and any culpable conduct of Mr Shala. Appellate intervention is required to ensure respect for Mr Shala’s rights.

### GROUND 3: THE TRIAL PANEL ERRED IN ORDERING COMPENSATION IN RESPECT OF UNDEMONSTRATED LOSSES

11. The Panel erred in law and fact by issuing compensation awards without requiring demonstration of actual damage suffered.<sup>13</sup> The Panel erred in the

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<sup>11</sup> See, e.g., *ECtHR, Sidabras and Dziautas v. Lithuania*, nos. 55480/00 and 59330/00, 27 July 2004, para. 49.

<sup>12</sup> Order, para. 143.

<sup>13</sup> Order, paras. 67-68, 89, 90, 119-122, 141-144, 179, 195, 196, 197, 200-201, 203, 239(f) (to V01/04: €10,000 for physical harm; €30,000 for mental harm, and €60,000 for material harm; to V03/04: €10,000 for mental harm; to V02-04, V04/04, V05/04, V06/04, V07/04, V08/04: €8,000 for mental harm each; to V02/04-V08/04 collectively: €50,000 for material harm). See also KSC-BC-2020-04, F00716/A01, Defence Submission of an Expert Report for the Purposes of the Reparations Proceedings, 13 November 2023, (confidential), pp. DPS01631, DPS01637, DPS01640, DPS01643; KSC-BC-2020-04, F00736/A01, Defence Submission of Expert’s Answers to Written Questions from Victims’ Counsel, 6 December 2023 (confidential), pp. 2, 6-7.

manner it effectively assumed “the costs of medical treatments or other harm of financial or patrimonial nature” and considered that there was no “requirement to furnish data” to demonstrate such harm.<sup>14</sup> The manner in which the Panel reached the amounts awarded was arbitrary as it did not require any substantiation of actual damage suffered. The Panel’s approach contradicts well-established case law under Article 41 of the ECHR that requires injury to be specifically demonstrated and substantiated to be recovered as just satisfaction. The Panel erred in holding that the ECHR “jurisprudence and practice” on reparation awards “remains of limited relevance”.<sup>15</sup> The Panel’s consideration and application of the applicable law was unfair and requires appellate intervention.

#### GROUND 4: THE PANEL ERRED IN IMPOSING AN AWARD WHICH IS DISPROPORTIONATE TO ITS FINDINGS AS TO SHALA’S ROLE

12. The Panel erred in law and in fact by making an award against Mr Shala which is disproportionate to, and does not fairly reflect, the Panel’s findings as to his role in the relevant circumstances leading up to each specific harm reflected in the reparation award as well as the fact that he was convicted for his perceived participation in a joint criminal enterprise.<sup>16</sup>
13. In addition, the Panel erred in law by taking into account an irrelevant factor, namely the gravity of the crimes, in assessing the amount to be awarded to

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<sup>14</sup> Order, para. 179.

<sup>15</sup> Order, para. 183. *Contrast with* Order, para. 32.

<sup>16</sup> Order, paras. 42 (“[t]he reparation award ought to be proportional to the harm caused”), 81, 83 (“[t]he responsibility of other persons ... is irrelevant to determine the convicted person’s liability”), 177, 205, 212, 239(e); KSC-BC-2020-04, F00847, Trial Judgment and Sentence with one confidential annex, 16 July 2024, paras. 1037-1039.

V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 as compensation for mental harm.<sup>17</sup>

14. In addition, the Panel erred by failing to take into consideration Mr Shala's indigence, considering him thus liable for disproportionately high awards given his personal circumstances.<sup>18</sup>

15. The Panel's errors have resulted in issuing an unreasonably high and disproportionate reparation award against Mr Shala making thus appellate intervention necessary.

#### GROUND 5: BREACH OF DUE PROCESS BY DECIDING CIVIL LIABILITY ON BASIS OF NON-DEFINITIVE FINDINGS

16. If the Trial Panel's findings, on which the conviction is based, are reversed on appeal, the reparation award will have to be re-examined.<sup>19</sup> Hearing the appeal against the reparation award at present when the convictions and important factual findings on which the convictions are based are not definitive but are heavily challenged on appeal goes against the interests of justice and judicial economy. Similarly, if any of the convictions entered in the Trial Judgment are reversed on appeal, the reparation order will have to follow suit; the monetary sums would have to be re-assessed and any implementation efforts reversed. Suspension of the appeal proceedings against the reparation order will ensure respect for Mr Shala's fair trial rights.

#### RELIEF SOUGHT

17. In light of the above errors as well as the resulting prejudice to Mr Shala's fair trial rights, the Defence respectfully requests the Appeal Panel to suspend

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<sup>17</sup> Order, paras. 198, 204, 206, 239(f).

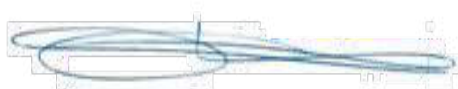
<sup>18</sup> Order, paras. 84, 176, 213-214.

<sup>19</sup> Order, para. 86.

hearing the appeal against the Reparation Order until the main appeal against Mr Shala's convictions is examined and/or vacate the award issued by the Trial Panel and remit the assessment of Mr Shala's potential civil liability to a different Panel to consider and correctly apply the law on causation and reparation awards.

Word count: 1896

Respectfully submitted,



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**Leto Cariolou**  
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Tuesday, 28 January 2025

The Hague, the Netherlands