PUBLIC
Date original: 23/05/2025 14:48:00
Date public redacted version: 30/05/2025 15:46:00

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:	23 May 2025
Filing Party:	Specialist Counsel for Pjetër Shala
Original language:	English
Classification:	Public

Public Redacted Version of Reply to Counsel for Victims Response to Defence Appeal Brief against the Reparation Order with public Annex 1

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws KC

Maria Radziejowska

Specialist Defence Counsel

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

Table of Contents

I. INTRODUCTION

1. The Defence for Mr Pjetër Shala hereby submits its Reply to Victims Counsel ("VC")'s Response to its Appeal Brief against the Reparations Order issued by Trial Panel I on 29 November 2024 ("Impugned Decision").

2. The Defence reiterates its position that the Reparations Order is legally flawed and should be annulled while the reparations proceedings be remitted to a new panel to assess Mr Shala's civil liability after the underlying factual findings become definitive. The Defence presents the following submissions in reply to VC and requests the Panel for an opportunity to develop its submissions in an oral hearing after the determination of the Appeals Panel of the merits of the main appeal.

A. The Applicable Law Proposed by VC is Inappropriate for Reparation Proceedings

3. The Defence notes the submission made by VC that the standard of review applicable to Article 46 appeals should apply to appeals against reparation orders "provided that the specificities of the reparation proceedings are duly considered".[1] By way of example, VC refers to the different standard of proof and "the use of presumptions". The cursory submission related to the use of presumptions is left undeveloped: which specificities of reparation proceedings require different rules on the use of presumptions? Why is it fair to apply different rules on presumptions? Which rules should apply to presumptions in the context of reparation proceedings? VC provides no answer. In this respect, the Defence reiterates that a trial chamber's discretion when it comes to relying on factual presumptions is not unfettered and the

[1] Response, para. 13.

rights of the convicted person need to be taken into consideration when resorting to presumptions.[2]

4. Similarly, VC does not justify his submission that the standard of review that applies to appeals against convictions should apply to appellate reparation proceedings. As he concedes,[3] reparation proceedings are very different in nature and purpose. With regard to the review of alleged errors of law, VC provides no justification for suggesting that the Appeals Panel should only assess and reverse errors of law that invalidate a first-instance decision and that an alleged error of law which has no prospect of changing the outcome of the decision may be rejected on that basis.[4] In light of the novelty of reparation proceedings, the law to be applied is in itself a matter that deserves appellate consideration. The Defence invites the Appeals Panel to reject the *Mustafa* standard proposed by VC which sets an unjustifiably high threshold that is ill-suited to reparation proceedings.

5. The Defence invites the Panel to adopt instead the standard adopted by the ICC Appeals Panel which provides:

> "[T]he Appeals Chamber will not defer to the Trial Chamber's interpretation of the law. Rather, it will arrive at its own conclusions as to the appropriate law and determine whether the Trial Chamber misinterpreted the law. If the Trial Chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the Impugned Decision."[5]

6. Equally, VC does not justify the high threshold he suggests for overturning factual findings. The Appeals Panel should carefully consider whether reasons

[2] *Katanga* Appeal Judgment on Reparations, para 4.
[3] Response, para. 13.
[4] Response, paras. 13, 14.
[5] *Lubanga* Judgment on Reparation Appeals, para. 28; *Katanga* Appeal Judgment on Reparations, para. 39.

of fairness allow overturning a decision only, as VC suggests, where "an error of fact occasioned a miscarriage of justice."[6] His suggestion fails to make sufficient provision for the special nature of reparation proceedings. The requirement of occasioning a miscarriage of justice is among the highest possible thresholds; adopting it is bound to lead to unfairness, particularly when reparation proceedings, held simultaneously with the main trial, require the parties to take a position before the factual findings in the trial become definitive.

7. The Defence invites the Panel to adopt the better suited standard of review set out by the ICC Appeals Chamber which provides that it: "will not interfere with factual findings of the first-instance Chamber unless it is shown that the Chamber committed a clear error, namely, misappreciated the facts, took into account irrelevant facts, or failed to take into account relevant facts."[7] Contrary to the suggestion made by VC, the ICC Appeals Chamber standard of review of factual findings is quite different to the standard applied in *Mustafa*.[8]

8. Lastly, the Defence would draw the Panel's attention to the fact that the applicable law proposed by VC with regard to the ICC standard on "errors concerning factual presumptions" omits reference to the fundamental elements of fairness and consideration of the rights of the defendant. Specifically, while reference is correctly made to the standard of reasonableness, VC specifically omits to refer to the required element which demands consideration and respect for the rights of the convicted person.[9]

[6] Response, para. 16.
[7] This test was applied inter alia in *Lubanga* Judgment on Reparation Appeals, para. 30; *Ngudjolo Chui* Judgment on Appeal, para. 22; *Katanga* Appeal Judgment on Reparations, para. 41.
[8] Response, para. 17.
[9] *Contrast* Response, para. 18 and *Katanga* Appeal Judgment on Reparations, paras. 75, 76.

9. For an award to be considered fair, the specific harm must be demonstrated and shown as causally linked to the conduct of the defendant. As VC concedes,[10] to the extent possible the award needs to restore the *status quo* existing prior to the harm caused by the defendant. In the event that that is not possible monetary compensation is considered an appropriate remedy. However, monetary awards are not issued in approximation. Claims need to be specific and demonstrated in order to be awarded.[11]

10. As the ICC Appeals Chamber noted in *Katanga* "[r]ather than attempting to determine the 'sum-total' of the monetary value of the harm caused, trial chambers should seek to define the harms and determine the appropriate modalities for repairing the harm caused with a view to, ultimately, assessing the costs of the identified remedy."[12]

11. The reparation proceedings in this case were fundamentally unfair. First, because they were conducted in parallel with the trial.[13] The Defence had to walk on eggshells to contest claims by victims without making concessions that could harm its case. Second, during the reparation proceedings it was still unknown whether Mr Shala would be convicted and, despite the fact that JCE liability was not part of the applicable law of Kosovo in 1999, he would be convicted as a JCE member essentially being found liable for the acts and omissions of known and unknown others.[14]

12. The Defence had to focus its scarce resources during the trial on the criminal proceedings. Any award for reparation is premised on the accused's conviction and before such conviction is entered the focus and priority for the defence has

[10] Response, para. 98.
[11] ECtHR, *Mikheyev v. Russia,* paras. 155-162.
[12] *Katanga* Appeal Judgment on Reparations, para. 42.
[13] KSC-BC-2020-04/F00347, paras. 6-15.
[14] KSC-BC-2020-04/F00054, paras. 20-45.

been to ensure that the assessment of any criminal liability remains fair. This in itself indicates that the rule that normally applies in ICL appellate proceedings which prevents hearing submissions for the first time on appeal makes no sense in this context. There were new elements and issues that were brought up essentially for the first time in the Reparations Award. For instance, the Trial Panel's conclusion that Mr Shala is deemed liable for the perceived "social stigma" and the influence that the latter had on private choices by direct and indirect victims, such us the termination of schooling for the children of a direct victim, was a consideration set out for the first time in the Reparation award.[15] Expecting the Defence to contest such considerations at first-instance, was neither realistic nor fair. It is entirely unreasonable to suggest that Mr Shala, even on the basis of the Trial Panel's findings concerning W4733 (which the Defence does not accept), *has caused* W4733's children to drop out from school.[16]

13. The Trial Panel's interpretation of the applicable causal requirements deviates to an unacceptable degree from the meaning and requirements ordinarily attached to causation. Mr Shala did not cause W4733's children to drop out from school. He did not cause them to drop out from school as a matter of fact and he did not cause them to drop out from school as a matter of law. Suggesting that the Defence challenge to such findings should be rejected merely because it was not raised at first-instance would amplify the unfairness and deny Mr Shala of his right to effective access to a court as well as his right to lodge a meaningful appeal. It would result in the type of "formalism" that is in breach of Article 6 of the Convention.[17]

[15] Impugned Decision, paras. 119, 139, 141, 143, 200-201. In fact, this point was raised by VC for the first time in his Impact Statement which was filed simultaneously with the Defence's response to the VC's request for reparations, see KSC-BC-2020-04/F00815, paras. 173-174 and KSC-BC-2020-04/F00819.
[16] Impugned Decision, paras. 139, 143, 200.
[17] ECtHR, *Witkowski v. Poland*; ECtHR, *Ivanova and Ivashova v. Russia*; ECtHR, *Howald and Others v. Switzerland*; ECtHR, *Walchli v. France*; ECtHR, *Davran v. Turkey*.

14. In any event, the Defence repeats that had it not been for the errors of law tainting the Trial Panel's rationale and decision, each of the issued awards would be different. The Defence position is this: the Panel should have taken its factual findings as to individual and specific harm suffered by each victim as a starting point and draw, if possible, a causal link between such harm and Mr Shala's culpable conduct. Any injury or harm not forming part of that causal chain should have been excluded from consideration for the purpose of making the award. In addition, the Panel should have assessed the level of contribution of Mr Shala's specific culpable conduct to each specific harm. To what extent or portion can Mr Shala specifically be considered liable for each specific harm. Is he 10% responsible for any physical injury suffered by a direct victim? Is he 15% responsible because, for instance, his conduct increased any risk of harm for a specific victim? The level and portion of his deemed contribution should be reflected in the award issued.[18] For instance, if the Trial Panel considered that the appropriate monetary award for the harm caused by the crimes committed against the victims at the Kukes Metal Factory amounts to 208,000 euros (a figure contested by the Defence), the award against Mr Shala should be proportionate to his individual portion of responsibility. If the Trial Panel considered him 15% responsible for a specific injury, the award against him should be 15% of the total amount of compensation deemed equitable. Such an assessment should have been made particularly in a case such as this. Mr Shala who is alleged to have taken part in the commission of crimes jointly with others is the only person sitting in the dock and the only person against whom a reparation order was issued. Contrary to what VC suggests, reasons of fairness must take priority over reasons of convenience. Reasons of fairness demand that proper consideration is given to the specific culpable conduct of Mr Shala that is deemed to have caused a specific injury. An award for

[18] *The State of the Netherlands v. Stichting Mothers of Srebrenica et al.*, paras. 4,7.8, 4,7.9, 5.1.

reparations against a specific defendant should reflect no more and no less than the precise level of his or her contribution to causing a specific harm. The fact that he is deemed liable for the crimes jointly with others does not change the need to consider the causal link between specific demonstrated harm and his own culpable conduct.

15. VC's suggestion that the Appeals Panel should apply the rule, otherwise applicable to appeals against conviction, that "absent special circumstances, if a party fails to raise an issue in a timely manner during trial, when it reasonably could have done so, it has effectively waived its right to raise it on appeal" is flawed.[19] First, the fact that this rule is applied in ICC appeals against conviction (which is the only foundation of VC's suggestion) does not give it any more weight or relevance for the purposes of reparation proceedings. As the Defence has argued above,[20] this rule would cause unfair results and a breach of the right to be heard and an effective right to access court.

16. The Defence submits that the suggested standard of review would deprive Mr Shala of an effective review of first-instance findings adopted in reparation proceedings. It would constitute a breach of his right to effective access to court and an appeal.

B. Victims' Standing in Appellate Reparation Proceedings

17. The Defence does not challenge the right of victims to participate in appellate reparation proceedings, particularly in cases such as these where the Prosecution has not challenged the Defence appeal.

18. As to VC's submission that the Defence has not contested the Trial Panel's statement that "reparation proceedings at the SC ought to be victim-centred",[21]

[19] Response, para. 20.
[20] See para. 13 above.
[21] Response, para. 23.

the Defence notes this: the Defence took no issue with the Trial Panel describing reparation proceedings in the manner in which it did. What the Defence did challenge with its five grounds of appeal is the flawed interpretation and application of the law on reparation proceedings. Reparation proceedings should not be "victim-centred" in the sense of making awards for undemonstrated and generalized claims to compensation for harm which is not linked, and in some instances is far remote, to the defendant's culpable conduct.

C. Reply

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

19. The Defence reiterates that the Panel erred by holding Mr Shala liable to repair harm which was not caused by his acts or omissions; without linking the specific harm caused to victims with his culpable conduct; without assessing the level to which his conduct contributed to the harm caused; and, generally, by applying an erroneous test of causation that required a connection between "the crime" and the harm.[22]

20. As can be seen by the manner in which the test was applied, the link or foreseeability assessment, did not consider specifically the culpable conduct of Mr Shala or the extent to which such culpable conduct may have contributed to any harm suffered by the victims. The Trial Panel made the additional error of specifying that, in its view, the "crime's" contribution "to the harm" need not even be significant for causation to be considered established.[23] In its view, *any* contribution to the harm suffices for being considered as the crime's cause and basis for civil liability. This constitutes an error of law in that it conflates

[22] Defence Appeal Brief, paras. 6-14; Impugned Decision, paras. 62, 203-206.
[23] Impugned Decision, fn 93 ("The Panel does not subscribe to the Pre-Trial Judge's conclusion that the crime must have significantly contributed to the harm").

two distinct issues: whether as a matter of fact an element has some historical connection with a consequence, with the question whether that element can count in law as a cause. This error results in unfairness. First, because it leaves the law to be unclear. Second, because not every element having some historical connection with a consequence can be considered a cause in law and therefore a sufficient basis for imposing civil liability. The Trial Panel employed an unacceptably wide definition of "cause" that resulted in imposing civil liability for factors that are too remote to Mr Shala's conduct. In any event, the Panel ought to assess the level of contribution of specific conduct of the convicted person to the specific harm caused.

21. It is recalled that Mr Shala was convicted through the mode of liability of a JCE, therefore he stands convicted due to the acts and omissions of others who were considered by the Trial Panel as members of the alleged JCE.[24] The Defence has challenged the use of JCE liability at trial and on appeal. The statement that "Mr Shala cannot be held liable nor ordered to repair harm caused by others […] who cannot be considered jointly liable"[25] did not, as VC suggests, accept that Mr Shala can be held liable for harm caused by those considered by the Trial Panel jointly liable on the basis of a mode of liability the Defence repeatedly challenged as inapplicable and regardless of whether specific harm can be deemed as caused (in law) by Mr Shala's culpable conduct.[26] The statement did not suggest that the Defence accepts the imposition of civil liability to Mr Shala for the acts of identified and unidentified others found by the Panel to be members of an alleged JCE to which Mr Shala allegedly participated without considering and drawing any link between his own and specific culpable conduct and the specific harm in question and without

[24] Trial Judgment, paras. 1037-1039.
[25] T. 17 April 2024, p. 4365.
[26] Joint liability can occur as a result of the application of the mode of co-perpetration as applied in Kosovo in 1999, see KSC-BC-2020-04/F00054, paras. 25-28.

assessing the extent to which such conduct has contributed to the specific harm caused to a specific victim.

22. VC wrongly asserts that the Defence proposition that a causal link is required between the culpable conduct of Mr Shala and the specific harm caused "conflates the issue of the convicted person's liability for reparations with the issue of the causal link that must exist between the crimes for which an accused was convicted and the harm they are said to have caused."[27] The issue of the convicted person's liability for reparations turns on the causal link that must exist between the conduct of such person and the harm he or she is said to have caused. It is in fact VC who fails to note the difference between a defendant's culpable conduct and the crimes for which a defendant was convicted. These are difference concepts. The Appeals Panel is called to define the test to be applied in reparation proceedings. VC argues that the Trial Panel correctly failed to require a link between the convicted person's conduct and the harm in question. The Defence respectfully submits that this was an error of law that results in unfairness. As a matter of fairness, especially in a case such as this, it must be shown that the convicted person's conduct was a *necessary* element that caused the harm in question: had it not been for the convicted person's conduct, the harm would not have resulted. This is the correct test in law, and whether an award fairly compensates the victims for any harm suffered would turn on how this test is applied.

23. The fact that the "but/for relationship" between the crime and the harm has been applied in reparation proceedings before the ICC does not make it the correct test to be applied in KSC proceedings, nor does it make it fair particularly given the context of Mr Shala's case and his role. The different context of the ICC reparation proceedings that concern liability for those

[27] Response, para. 27.

having leading roles in armed conflicts and involve active participation of the ICC Trust Fund in executing reparation awards make the ICC test less relevant for our purposes.

24. The requirement to show a link between the wrongful conduct and the harm for the purposes of reparations is the essence of the applicable test of causation.[28] The wrongful conduct constitutes a required element of the crime for which a conviction is entered. VC fails to provide any explanation as to why the required causal link should skip the relationship between the culpable conduct and the crime and be restricted instead to the link between the crime and the harm. Why should the first part of that causal sequence be ignored or deemed irrelevant for the required causal nexus? No sound ground can justify failing to link the harm and the person deemed liable to repair it.

25. VC also fails to explain why the fact that a conviction was entered on the basis of liability for Mr Shala's alleged participation in a JCE should relieve the Trial Panel from its obligation to link specific harm suffered by the victims to Mr Shala's culpable conduct. In addition, the degree of culpability and the portion of liability needs to be assessed and explained in a reasoned opinion.[29] As the ICC Appeals Panel considered in *Ntaganda* "the Trial Chamber should specifically set out the manner in which the imposition of joint liability impacts the overall amount and apportionment of the award as part of is reconsideration of these issues."[30] The Trial Panel's failure to assess and explain

[28] See mutatis mutandis ICJ, Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide, para. 462 ("[t]he question is whether there is a sufficiently direct and certain causal nexus between the wrongful act [….] and the injury suffered"); ICJ, Case Concerning Armed Activities on the Territory of Congo, para. 93; ICJ, Certain Activities Carried Out by Nicaragua in the Border Area, para. 32; ICJ, Case Concerning Ahmadou Sadio Diallo, para. 14.
[29] *Ntaganda* Judgment on Appeal of Reparation Order, paras. 259, 260, 274.
[30] *Ntaganda* Judgment on Appeal of Reparation Order, para. 274.

Mr Shala's degree of culpability and portion of liability merits appellate intervention and remittance for a fresh determination.

26. VC concedes, by citing ICC case law, that "[a] convicted person's liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case."[31] This analysis is precisely what is missing from the Trial Panel's analysis: attributing liability *proportionate to* the harm caused by Mr Shala specifically, setting out the precise *portion* he is deemed liable, and explaining why, by reference to the specific circumstances of the case.[32] Whether as VC suggests Mr Shala has "assume[d] responsibility for the acts of others",[33] for which acts of others, and to what extent and what were the consequences of any such decision by Mr Shala are matters that have not been specifically addressed in the Trial Panel's reparation order. The artificial conclusion that Mr Shala has assumed responsibility for each and every (specified and unspecified) act of each and every (identified and unidentified) other deemed to be a member in the alleged JCE is far-fetched and unjust. It is equally artificial to conclude that by "sharing the objective and intention of his co-perpetrators" the convicted is deemed liable for all consequences of each person's culpable acts. VC fails to explain how he perceives "the harm caused" other than considering it "a product of a joint endeavour to cause injury" which in his view justified "all perpetrators" to "share responsibility".[34] Such concepts need to be carefully defined in a reparations award. What can be considered as "the harm caused" by the joint endeavour? Even assuming that all perpetrators should "share responsibility" to what extent and to which portion is each considered personally liable?

[31] Response, para. 36, referring to *Ntaganda* Judgment on Appeal of Reparation Order, paras. 267-268.
[32] See also *The State of the Netherlands v. Stichting Mothers of Srebrenica et al.,* paras. 4,7.8, 4,7.9, 5.1.
[33] Response, para. 38.
[34] Response, para. 38.

Contrary to what VC appears to suggest the position of the Defence is that it is not only at the reparations stage that a panel needs to "parse and assess each individual's conduct". This should have been considered at the main trial and explained in Panel's judgment. The fact that VC finds the requirement to draw a causal link between a defendant's culpable conduct and the harm ensued "impracticable" is not a argument capable of absolving the Panel's responsibility for properly considering causation. In Mr Shala's case, there is no group of offenders wearing masks be it literally or metaphorically; linking Mr Shala's individual conduct to demonstrated harms suffered by victims should be possible and should have been done. The Panel's failure to do so, justifies appellate intervention.

27. The Defence raised the importance of the *novus actus interveniens* in disputing Mr Shala's liability for murder.[35] In any event, as argued above,[36] the argument that submissions not made specifically in the context of reparation proceedings should be dismissed on appeal solely on that basis is unfair. In assessing the extent to which Mr Shala can be considered liable for murder, first his conviction of murder needs to be definitive, and second his precise intention and contribution to the murder needs to be assessed and reflected in an award that is proportionate to his culpable conduct.

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

28. Contrary to what VC appears to suggest,[37] the Defence has not argued that the use of presumptions in reparation proceedings is in itself an error.

[35] Defence Appeal Brief, para. 12.
[36] See para. 13 above.
[37] Response, para. 52.

29. The Trial Panel's findings that V01/04 and W04733 would have been able to pursue an average career path and gain employment with regular income but for the crimes committed against them at the KMF[38] relied on the Panel's projection into how a hypothetical future would unfold which took for granted, and therefore presumed, certain elements. The fact that evidence was weighed to identify the elements to be presumed for the purposes of the Trial Panel's conclusions does not change the fact that presumptions and projections were made and that hypotheses were taken for granted in error.

30. VC notes that evidence showed that V01/04 [REDACTED] and that the Trial Panel accepted that he was no longer working as a result of fear connected to the crimes at the KMF. However, in fact the evidence also showed that V01/04 [REDACTED].[39] Therefore V01/04 has remained economically active after his detention and VC fails to demonstrate a "changed life plan" given that V01/04 [REDACTED] . The Trial Panel failed to explain what opportunities V01/04's is considered to have lost.

31. The Defence has previously raised the fact that evidence on the trial record indicates that direct victims were in fact collaborating with enemy forces.[40] The Defence could not challenge earlier the Trial Panel's conclusion that Mr Shala is deemed liable for consequences of the perceived "social stigma" related to suspicions of enemy collaboration as this is an issue that arose for the first time in the Reparation award. It is therefore entirely unfair to dismiss the Defence challenge on such grounds. A finding as to whether the direct victims could reasonably be considered collaborators or not should have been made at first instance particularly with regard to the charge of arbitrary detention. The

[38] Impugned Decision, paras. 119, 141.
[39] DPS01572-DPS01575.
[40] *See, e.g.,* T. 5 June 2023, pp. 1849, 1851-1854, 1863-1865; T. 6 June 2023 pp. 1862-1863; T. 2 June 2023 p. 1617; 058583-058585 RED2, p. 2; T. 16 April 2024, pp. 4254, 4273-4276.

Defence does not draw a comparison between a breach of Article 8 and the present case. The Defence referred to a sound proposition arising from Article 8 case law to point out to the fact that Mr Shala cannot be deemed liable for the victims' loss of reputation that was the foreseeable consequence of their own actions. There is no victim-blaming. The Trial Panel found it appropriate to hold Mr Shala liable to pay damages for harm suffered by the victims that was caused by the said "social stigma". The Defence finds this unjust as autonomous decisions made by victims cannot be causally linked to Mr Shala.

IV. GROUND 3: THE TRIAL PANEL ERRED IN ORDERING COMPENSATION FOR UNDEMONSTRATED LOSSES

32. The Defence repeats its submissions that the Panel erred in issuing the specific awards without requiring demonstration of actual damage suffered. In his response, VC conflates the figure awarded for loss of income with V01/04's annual income. The award of [REDACTED] euros reflects "loss of income" and not V01/04's annual income: when VC wonders how it is possible that V01/04 could "have earned less than [REDACTED] per year" he mistakes annual income with annual loss of income. Moreover, it is the Defence respectful submission that having a criminal record can very well form an obstacle to gainful employment.

V. GROUND 4: THE TRIAL PANEL ERRED BY IMPOSING AN AWARD WHICH IS DISPROPORTIONATE TO ITS FINDINGS AS TO SHALA'S ROLE

33. The Trial Panel erred in fact and in law in awarding the amount of €208,000 against Mr Shala which is disproportionate to, and does not fairly reflect, the Trial Panel's findings as to his role in the crimes.[41] To the extent that VC suggests that the reparation award was issued to punish Mr Shala the Defence

[41] Impugned Decision, paras. 205, 212, 239(e).

submits that this would render it unlawful as Mr Shala had already been sentenced to a term of imprisonment as punishment and imposing a further punishment on him in the form of a reparation award would breach his right not to be punished twice for the same offences.[42]

34. In addition, the Trial Panel erred by failing to take into consideration Mr Shala's indigence.[43] In assessing the amount to be awarded against a convicted person his ability to pay remains a relevant consideration.

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

35. The Defence reiterates its position that it is only logical that whether these awards can be considered fair and reasonable can be determined only once the underlying factual findings concerning Mr Shala's conduct become definitive.

Word count: 4957

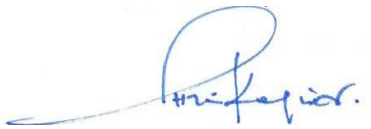
Respectfully submitted,

_____

Jean-Louis Gilissen

Specialist Defence Counsel

[42] Response, para. 101.
[43] Impugned Decision, paras. 84, 176.



Hédi Aouini

Defence Co-Counsel

Leto Cariolou

Defence Co-Counsel

Friday, 23 May 2025

The Hague, the Netherlands