



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-CA-2024-03

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

Registrar: Fidelma Donlon

Date: 29 January 2026

Original language: English

Classification: Public

**Public Redacted Version of Decision on Defence Appeal Against
Reparation Order**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 172 and 176 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal by Mr Pjetër Shala (“Shala” or “the Defence”) against the Reparation Order in the case of the *Specialist Prosecutor v. Pjetër Shala*, KSC-BC-2020-04 (“Reparation Order”), which was delivered on 29 November 2024 in accordance with Rule 168 of the Rules. The Appeals Panel hereby issues the present Decision on Defence Appeal Against Reparation Order, together with Annex 1 detailing the abbreviations used and materials cited in this Decision.

I. BACKGROUND

A. PRE-TRIAL PROCEEDINGS

1. On 12 June 2020, the Pre-Trial Judge confirmed the indictment against Shala.²
2. Shala was arrested on 16 March 2021 in the Kingdom of Belgium³ and, on 15 April 2021, he was transferred to the detention facilities of the Specialist Chambers in The Hague, the Netherlands.⁴
3. On 19 April 2021, the initial appearance of Shala took place before the Pre-Trial Judge, during which Shala pleaded not guilty to all crimes charged.⁵

¹ Decision on Assignment.

² Confirmation Decision.

³ Notification of Arrest, paras 1, 5.

⁴ Notification of Reception in the Detention Facilities, para. 2.

⁵ Decision Setting the Date for the Initial Appearance, para. 22(a); Transcript, 19 April 2021, p. 11.

4. On 15 December 2021,⁶ 11 August 2022⁷ and 19 September 2022,⁸ the Pre-Trial Judge admitted a total of eight victims as victims participating in the proceedings (together, “Victims”).

5. On 1 November 2021, the SPO submitted a corrected confirmed indictment,⁹ following challenges to the form of the indictment.¹⁰

6. On 21 September 2022, the Pre-Trial Judge transmitted the case file to the Trial Panel.¹¹

B. TRIAL PROCEEDINGS

7. On 9 February 2023, the Trial Panel determined that reparation proceedings would be conducted concurrently with criminal proceedings in the present case and that, in case of a conviction, it would not refer the Victims to civil litigation in Kosovo courts, but would issue a reparation order pursuant to Articles 22(8) and 44(6) of the Law.¹²

8. The trial in this case opened on 21 February 2023 and closed on 17 April 2024.¹³ The Victims participated in the proceedings throughout the pre-trial and trial phases of the case,¹⁴ and the Trial Panel heard the testimony of five of those victims during the course of the trial.¹⁵

⁶ First Decision on Victims’ Participation, para. 50(a).

⁷ Second Decision on Victims’ Participation, para. 43(b).

⁸ Third Decision on Victims’ Participation, para. 43(a).

⁹ Indictment.

¹⁰ Decision on Defects in the Indictment.

¹¹ Decision Transmitting the Case File to Trial Panel I.

¹² Decision on Reparation Proceedings, para. 25.

¹³ Trial Judgment, paras 6, 12. On 24 February 2023, the Trial Panel set out the participating victims’ procedural rights at trial. See Decision on Victims’ Procedural Rights at Trial.

¹⁴ See Trial Judgment, para. 13.

¹⁵ See Reparation Order, para. 11.

9. On 30 June 2023, Victims' Counsel submitted two expert reports,¹⁶ one concerning the physical and mental harm caused to V01/04 ("iMMO Expert Report"),¹⁷ which the Trial Panel admitted into evidence on 25 October 2023,¹⁸ and one concerning the material harm suffered by the Victims ("Lerz Report").¹⁹ On 13 November 2023, the Defence presented its own expert report concerning the economic loss of the Victims ("Defence Expert Report").²⁰ The Trial Panel did not make a determination on the admissibility of the Lerz Report and the Defence Expert Report, having found that Rule 168 of the Rules does not require a trial panel to decide on the admissibility of an expert report which solely concerns reparations. However, the Trial Panel noted that it would refer to their contents and related challenges, as necessary.²¹

10. On 4 March 2024, Victims' Counsel filed a request for reparations,²² and on 25 March 2024, the Defence filed its response.²³ On the same day, Victims' Counsel submitted a statement on the impact of the alleged crimes on the Victims.²⁴

11. On 16 July 2024, the Trial Panel delivered the Trial Judgment, convicting Shala of having committed, as a member of a JCE, the war crimes of arbitrary detention (Count 1), torture (Count 3) and murder (Count 4) pursuant to Articles 14(1)(c) and 16(1)(a) of the Law.²⁵ The Trial Panel sentenced Shala to a single sentence of 18 years of imprisonment, with credit for time served.²⁶ The Trial Panel indicated that it would

¹⁶ Victims Submissions of 30 June 2023.

¹⁷ iMMO Expert Report.

¹⁸ Transcript, 25 October 2023, pp. 3151-3153.

¹⁹ Lerz Report.

²⁰ Defence Expert Report.

²¹ See Reparation Order, para. 191.

²² Victims Request for Reparations.

²³ Defence Response to Victims Request for Reparations.

²⁴ Impact Statement.

²⁵ Trial Judgment, paras 1037-1039, 1086, 1124.

²⁶ Trial Judgment, paras 1122-1123, 1125. The Trial Panel imposed the following individual sentences on Shala: (i) a term of six years of imprisonment for the war crime of arbitrary detention (Count 1); (ii) a term of 16 years of imprisonment for the war crime of torture (Count 3); and (iii) a term of 18 years of imprisonment for the war crime of murder (Count 4). Based on these individual sentences, the Trial Panel imposed a single sentence of 18 years of imprisonment, reflecting the totality of Shala's criminal

subsequently issue a Reparation Order pursuant to Articles 22(8) and 44(6) of the Law, and retained, to that effect, the necessary jurisdiction.²⁷

12. On 29 November 2024, the Trial Panel issued the Reparation Order against Shala, wherein it notably: (i) found that the Victims had shown to the balance of probabilities standard of proof that they were victims of the crimes of which Shala was convicted; (ii) awarded individual reparations in the form of compensation to V01/04 for the physical, mental and material harm suffered by him, and individual and collective reparations in the form of compensation to V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 in respect of mental and material harm; and (iii) ordered Shala to pay the reparation award for which he is liable, amounting to a total of 208,000 euros (EUR).²⁸

C. APPELLATE PROCEEDINGS

13. On 29 November 2024, the Appeals Panel informed the Defence, Victims' Counsel and the SPO that the time and word-limits applicable to an appeal against sentence pursuant to Article 44 of the Law, as set forth in Rules 176 and 179 of the Rules and Articles 47 to 50 of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers, shall apply to any appeal filed against the Reparation Order. The Appeals Panel further determined that, in light of limited staff availability

conduct, and deducted from the sentence the time he had spent in detention since his arrest on 16 March 2021. See Trial Judgment, paras 1121-1123.

²⁷ Trial Judgment, paras 1042, 1127.

²⁸ Reparation Order, para. 239(a)-(f). The Trial Panel ordered Shala to pay, as compensation for the harm inflicted: (i) to V01/04: 10,000 euros for physical harm, 30,000 euros for mental harm, and 60,000 euros for material harm; (ii) to V02/04: 8,000 euros for mental harm; (iii) to V03/04: 10,000 euros for mental harm; (iv) to V04/04: 8,000 euros for mental harm; (v) to V05/04: 8,000 euros for mental harm; (vi) to V06/04: 8,000 euros for mental harm; (vii) to V07/04: 8,000 euros for mental harm; (viii) to V08/04: 8,000 euros for mental harm; and (ix) to V02/04-V08/04, collectively, 50,000 euros for material harm. In addition, the Trial Panel, *inter alia*: (i) declared Shala indigent, at this stage, for the purpose of enforcing the Reparation Order; (ii) ordered the Registrar to take the necessary steps to implement the Reparation Order; and (iii) invited Kosovo to establish a new reparation mechanism for victims of crimes within the jurisdiction of the Specialist Chambers. See Reparation Order, para. 239(g)-(h), (j).

during the judicial recess, it was appropriate to vary the time limit for the submission of any notice of appeal until 17 January 2025.²⁹

14. On 14 January 2025, the Appeals Panel granted the Defence's request for an extension of time to file its notice of appeal against the Reparation Order, authorising the Defence to do so by 28 January 2025.³⁰

15. On 28 January 2025, Shala filed his notice of appeal against the Reparation Order.³¹

16. On 30 January 2025, the Panel clarified through an email to the Defence, Victims' Counsel and the SPO that the time limits it set on 29 November 2024 with respect to the briefing schedule would remain in effect.³²

17. On 12 February 2025, the Appeals Panel granted Shala's request for an extension of time to file his appeal brief, authorising him to do so by 14 March 2025.³³

18. On 14 March 2025, Shala filed his appeal brief, and on 19 March 2025, a corrected version thereof. The Defence raised five grounds appeal, requesting that the Court of Appeals Panel: (i) annul the reparation award issued by the Trial Panel; and (ii) remit the assessment of Shala's potential civil liability to a different panel.³⁴ The Defence further requested that the Appeals Panel suspend hearing the appeal against

²⁹ Email on Potential Appeal of the Reparation Order. The Panel ordered that: (i) a notice of appeal, if any, not exceeding 2,000 words, shall be filed by 17 January 2025; (ii) an appeal brief, not exceeding 12,000 words, shall be filed within 30 days of notification of the notice of appeal; (iii) any brief in response, not exceeding 12,000 words, shall be filed within 15 days of notification of the appeal brief; and (iv) any brief in reply, not exceeding 4,000 words, shall be filed within 10 days of notification of the brief in response. See Email on Potential Appeal of the Reparation Order.

³⁰ Decision on Extension of Time to File Notice of Appeal. See also Defence Request for Extension of Time to File Notice of Appeal.

³¹ Notice of Appeal.

³² Email on Time Limits of Briefing Schedule.

³³ Decision on Extension of Time to File Appeal Brief. See also Defence Request for Extension of Time to File Appeal Brief.

³⁴ Appeal Brief, paras 5, 52. See also Appeal Brief, paras 14, 22, 33, 44.

the Reparation Order until the main appeal against “Shala’s convictions” had been examined and all relevant factual findings had become final.³⁵

19. On 27 March 2025, the Appeals Panel granted Victims’ Counsel’s request for an extension of time to respond to the Appeal Brief, authorising him to do so by 4 April 2025.³⁶

20. On 4 April 2025, Victims’ Counsel filed his response brief.³⁷

21. On 16 April 2025, the Appeals Panel granted Shala’s request for an extension of time to file his brief in reply to the Response Brief, authorising him to do so by 24 April 2025.³⁸

22. On 24 April 2025, the Defence filed a reply brief.³⁹ On 7 May 2025, the Appeals Panel granted, in part, Shala’s request to extend the word limit for his brief in reply to the Response Brief, authorising him to re-file his reply brief, not exceeding 5,000 words, by 23 May 2025.⁴⁰

23. On 23 May 2025, the Defence re-filed its reply brief.⁴¹

24. On 14 July 2025, the Appeals Panel issued the Appeal Judgment on Shala’s conviction and sentence.⁴² The Panel granted, in part, Shala’s appeal on Grounds 7, 12 and 14, and reduced the single sentence imposed on Shala from 18 years to 13 years

³⁵ Appeal Brief, para. 51.

³⁶ Decision on Extension of Time to File Response Brief. See also Victims Request for Extension of Time for Response Brief.

³⁷ Response Brief.

³⁸ Decision on Extension of Time to File Reply. See also Defence Request for Extension of Time to File Reply.

³⁹ F00058, Reply to Counsel for Victims Response to Defence Appeal Brief against the Reparation Order, 24 April 2025 (confidential).

⁴⁰ Decision on Variation of Word Limits to File Reply.

⁴¹ Reply Brief.

⁴² Appeal Judgment.

of imprisonment, with credit for time served.⁴³ The Appeals Panel retained jurisdiction over Shala's appeal against the Reparation Order.⁴⁴

II. STANDARD OF REVIEW

A. SUBMISSIONS

25. Victims' Counsel submits that, absent any specific provisions in the Law and the Rules, the same standard of review should apply to appeals against reparation orders as the standard applicable to appeals under Article 46 of the Law, provided that the specificities of reparation proceedings, such as the different standard of proof or the use of presumptions, are duly considered.⁴⁵

26. In response, the Defence argues that applying the same standard of review for appeals against convictions to reparation proceedings is inappropriate as it sets an unfair and unjustifiably high threshold and would breach Shala's "right to effective access to court and an appeal".⁴⁶ Instead, the Defence invites the Panel to adopt the standard of review for alleged errors of law and fact set out by the ICC Appeals

⁴³ Appeal Judgment, para. 938. The Appeals Panel notes that the reversal of Shala's convictions for the arbitrary detention of two individuals and for the torture of five individuals does not concern the crimes committed against V01/04 or W04733. See Appeal Judgment, paras 560, 590, 605.

⁴⁴ Appeal Judgment, para. 938.

⁴⁵ Response Brief, paras 11-13. In this regard, Victims' Counsel refers to findings by the Court of Appeals Chamber in the *Mustafa* Appeal Judgment and by the ICC Appeals Chamber. See Response Brief, paras 14-18. In addition, Victims' Counsel recalls the jurisprudence of the Court of Appeals Chamber in relation to arguments that should be summarily dismissed on appeal. See Response Brief, paras 19-20. See also Response Brief, para. 21. This matter is addressed below. See below, paras 42-44.

⁴⁶ Reply Brief, paras 4, 6, 16. Shala also claims that his right to appeal and to an effective access to court would be denied should some of his arguments on appeal be rejected merely because they were not raised during trial. See Reply Brief, paras 13, 15-16. This argument is addressed below. See below, paras 42-44. The Defence further claims that, for an award to be considered fair, the specific harm must be demonstrated and shown as causally linked to the specific culpable conduct of the defendant. See Reply Brief, paras 9-10, 13-14. The Appeals Panel considers that this argument does not relate to the standard of review but to the merits of the appeal and will consider it under Ground 1. See below, paras 72-101. Similarly, the Panel considers that Shala's arguments related to the reparation proceedings being unfair due to these proceedings being conducted in parallel with the trial do not relate to the standard of review and will be addressed under Ground 5. See below, paras 64-71. See also Reply Brief, para. 11.

Chamber.⁴⁷ With respect to the standard on alleged errors of law, Shala takes issue with the principle that the Appeals Panel should only assess and reverse errors of law that invalidate a first-instance decision (and that alleged errors which have no prospect of changing the outcome of the decision may be rejected on that basis), arguing that due to the novelty of reparation proceedings, the law to be applied merits appellate consideration.⁴⁸

27. Regarding alleged errors related to factual findings, Shala submits that the standard adopted by the Appeals Panel in the *Mustafa* Appeal Judgment, and which Victims' Counsel suggests should be followed, that it will only overturn factual findings "where an error of fact occasioned a miscarriage of justice" is among the highest possible thresholds and fails to account for the special nature of reparation proceedings.⁴⁹ Instead, Shala submits that the Panel should follow the standard adopted by the ICC Appeals Chamber that it will not interfere with factual findings of the first-instance chamber unless it is shown that it "committed a clear error, namely, misappreciated the facts, took into account irrelevant facts, or failed to take into account relevant facts".⁵⁰ In this regard, Shala submits that the rights of the convicted person must be taken into consideration when resorting to factual presumptions, which he argues Victims' Counsel omits to reference in his submissions.⁵¹

⁴⁷ Reply Brief, paras 4-7. In relation to alleged errors of law, Shala highlights that the ICC Appeals Chamber found that it will not defer to the trial chamber's interpretation of the law, but rather will determine whether the trial chamber misinterpreted the law, and will only intervene if the error materially affects the impugned decision. See Reply Brief, para. 5, referring to *Lubanga* Appeal Judgment on Reparations, para. 28 and *Katanga* Appeal Judgment on Reparations, para. 39.

⁴⁸ Reply Brief, para. 4.

⁴⁹ Reply Brief, para. 6.

⁵⁰ Reply Brief, para. 7, referring to, *inter alia*, *Lubanga* Appeal Judgment on Reparations, para. 30 and *Katanga* Appeal Judgment on Reparations, para. 41.

⁵¹ Reply Brief, paras 3, 8.

B. ASSESSMENT OF THE COURT OF APPEALS PANEL

28. At the outset, the Appeals Panel notes that Article 46 of the Law sets out the standard of review for second instance appellate proceedings against judgments by trial panels, including sentencing.⁵² Under Article 46 of the Law, the Appeals Panel may affirm, reverse or revise the trial judgment, and take any other appropriate action, on the following grounds: (i) “an error on a question of law invalidating the judgement”; (ii) “an error of fact which has occasioned a miscarriage of justice”; or (iii) “an error in sentencing”.⁵³ The Panel further observes that the Law and the Rules do not provide for a specific standard of review for appeals against reparation orders.

29. The Panel notes Shala’s argument that the application of the standard of review adopted in the *Mustafa* Appeal Judgment to these reparation proceedings, as proposed by Victims’ Counsel, sets an unjustifiably high threshold, and his request that the Panel adopt instead the standard applied by the ICC Appeals Chamber.⁵⁴ In this regard, the Panel first emphasises the distinctive legal frameworks of the Specialist Chambers and the ICC, which provide for their own respective standards of appellate review.⁵⁵ In this context, the Panel also notes that the ICC Appeals Chamber applies the same standard of review for errors of law and errors of fact in relation to both appeals on the merits and appeals on reparations.⁵⁶

⁵² See Article 46 of the Law. The Panel observes that, pursuant to Articles 22(8) and 44(6) of the Law, the Specialist Chambers may make an order against an accused adjudged guilty of a crime specifying appropriate reparation to, or in respect of, participating victims collectively or individually.

⁵³ See Article 46(1)(a)-(c), (3) of the Law. See also Appeal Judgment, para. 27; *Mustafa* Appeal Judgment, para. 17; *Gucati and Haradinaj* Appeal Judgment, para. 21.

⁵⁴ See Reply Brief, paras 4-7, 16. However, the Panel notes that Victims’ Counsel in fact submits that the findings by the ICC Appeals Chamber and the Court of Appeals Chamber regarding the applicable standards of review are similar in many respects. See Response Brief, paras 11-18, and in particular, paras 17, 21.

⁵⁵ See e.g. *Ntaganda* Appeal Judgment, paras 36-43; *Ntaganda* Appeal Judgment on Addendum to Reparation Order, paras 13-15; *Ongwen* Appeal Judgment on Reparations, paras 26-27; *Lubanga* Appeal Judgment on Reparations, paras 27-28, 30.

⁵⁶ Compare e.g. *Ongwen* Appeal Judgment, paras 76-80; *Ntaganda* Appeal Judgment, paras 36-43 with *Ongwen* Appeal Judgment on Reparations, paras 26-27; *Ntaganda* Appeal Judgment on Addendum to Reparation Order, paras 13-15; *Ntaganda* Appeal Judgment on Reparations, para 28-30.

30. In the Panel's view, the same standard of appellate review as provided for in Article 46 of the Law – and further developed by the Court of Appeals Chamber in its jurisprudence – applies to both appeals on the merits and appeals on reparations. Furthermore, the Panel considers that Shala has not provided cogent reasons justifying a departure from this jurisprudence for the purpose of these reparation proceedings.⁵⁷

31. In view of the above, the Panel dismisses Shala's request that the Appeals Panel set aside the Law and its own jurisprudence on appellate review and adopt the standard of review set out by the ICC Appeals Chamber.

32. The Panel will now recall the standard of review for appellate proceedings. In relation to errors of law under Article 46(4) of the Law:

When the Court of Appeals Panel determines that a Trial Panel has made an error of law in a judgement arising from the application of an incorrect legal standard, the Court of Appeals Chamber shall articulate the correct legal standard and apply that standard to the evidence contained in the trial record to determine whether to sustain, enter or overturn a finding of guilty on appeal.⁵⁸ The party alleging an error of law must identify it, present arguments in support of its claim and explain how the error invalidates the decision.⁵⁹ In addition, when a party alleges an error of law on the basis of a lack of a reasoned opinion, it must identify the specific issues, factual findings or arguments which the trial panel is alleged to have omitted, and explain why this omission invalidates the decision.⁶⁰

The Appeals Panel considers that an alleged error of law which has no prospect of changing the outcome of the decision may be rejected

⁵⁷ See also below, para. 54.

⁵⁸ See Appeal Judgment, para. 29; *Mustafa* Appeal Judgment, para. 19; *Gucati and Haradinaj* Appeal Judgment, para. 23, referring to Article 46(4) of the Law. See also *Ongwen* Appeal Judgment, para. 76; *Mladić* Appeal Judgment, para. 17; *Nyiramasuhuko et al.* Appeal Judgment, para. 31.

⁵⁹ See Appeal Judgment, para. 28; *Mustafa* Appeal Judgment, para. 18; *Gucati and Haradinaj* Appeal Judgment, para. 22. See also *Ongwen* Appeal Judgment, para. 76; *Mladić* Appeal Judgment, para. 16; *Nyiramasuhuko et al.* Appeal Judgment, para. 30; *Merhi and Oneissi* Appeal Judgment, para. 29.

⁶⁰ Appeal Judgment, para. 28; *Mustafa* Appeal Judgment, para. 18; *Gucati and Haradinaj* Appeal Judgment, para. 22. See also *Ongwen* Appeal Judgment, para. 88; *Mladić* Appeal Judgment, para. 16; *Merhi and Oneissi* Appeal Judgment, para. 29.

on that basis.⁶¹ However, even if a party's arguments are insufficient to support the contention of an error, the Panel may find an error of law based on other reasons.⁶² In exceptional circumstances, the Appeals Panel may also consider arguments raised by a party in an appeal concerning errors of law that would not lead to the invalidation of the decision, if they are of general significance to the Specialist Chambers' jurisprudence.⁶³ The Appeals Panel will review the Trial Panel's findings of law to determine whether they are correct.⁶⁴

33. The Panel further notes that, when a party alleges on appeal that its right to a fair trial has been infringed, it must demonstrate that this violation caused prejudice amounting to an error of law which, in turn, invalidates the challenged decision.⁶⁵ With regard to Shala's claim that applying the standard of review set out in Article 46 of the Law to the reparation appellate proceedings would infringe on his right to appeal and his right to an effective remedy,⁶⁶ the Appeals Panel finds that Shala has

⁶¹ Appeal Judgment, para. 28; *Mustafa* Appeal Judgment, para. 18; *Gucati and Haradinaj* Appeal Judgment, para. 22. See also *Mladić* Appeal Judgment, para. 16; *Merhi and Oneissi* Appeal Judgment, para. 29. The Appeals Panel notes that Shala takes issue, in particular, with this finding by the Court of Appeals Chamber (that an alleged error of law which has no prospect of changing the outcome of the decision may be rejected on that basis). See Reply Brief, para. 4. However, the Panel recalls its further related finding that *in exceptional circumstances*, the Appeals Panel may also consider arguments raised by a party in an appeal concerning errors of law that would not lead to the invalidation of the decision, if they are of general significance to the Specialist Chambers' jurisprudence. See below, fn. 63, and references cited therein. See also Response Brief, para. 14 (wherein Victims' Counsel refers to this specific aspect of the standard of review from the *Mustafa* Appeal Judgment).

⁶² Appeal Judgment, para. 28; *Mustafa* Appeal Judgment, para. 18; *Gucati and Haradinaj* Appeal Judgment, para. 22. See also *Karadžić* Appeal Judgment, para. 15; *Merhi and Oneissi* Appeal Judgment, para. 29.

⁶³ See Appeal Judgment, para. 31; *Mustafa* Appeal Judgment, para. 21. See also *Prlić et al.* Appeal Judgment, para. 18; *Haradinaj et al.* Appeal Judgment, para. 9; *Kupreškić et al.* Appeal Judgment, para. 22; *Nahimana et al.* Appeal Judgment, para. 12.

⁶⁴ Appeal Judgment, para. 28; *Mustafa* Appeal Judgment, para. 18; *Gucati and Haradinaj* Appeal Judgment, para. 22. See also *Merhi and Oneissi* Appeal Judgment, para. 29. The Panel further notes that where the Appeals Panel itself applies the correct legal standard to the evidence contained in the trial record and determines whether it is satisfied as to the requisite standard of proof of the challenged factual finding, it will only take into account evidence referenced in the Reparation Order, and evidence contained in the trial record to which the parties refer. See Appeal Judgment, para. 30; *Mustafa* Appeal Judgment, para. 20; *Gucati and Haradinaj* Appeal Judgment, para. 24. See also *Karadžić* Appeal Judgment, para. 17; *Nyiramasuhuko et al.* Appeal Judgment, para. 31.

⁶⁵ Appeal Judgment, para. 32; *Mustafa* Appeal Judgment, para. 22. See also *Haradinaj* First Appeal Decision on Detention, para. 44; *Karadžić* Appeal Judgment, para. 26; *Galić* Appeal Judgment, para. 21; *Kordić and Čerkez* Appeal Judgment, para. 119.

⁶⁶ See Reply Brief, para. 16.

not demonstrated that this alleged violation has caused him prejudice amounting to an error of law invalidating the Reparation Order and, consequently, the Panel dismisses this argument.⁶⁷

34. Turning to errors of fact, Article 46(5) of the Law provides that:

In reviewing the factual findings of the Trial Panel, the Court of Appeals Panel shall only substitute its own findings for that of the Trial Panel where the evidence relied on by the Trial Panel could not have been accepted by any reasonable trier of fact or where the evaluation of the evidence is wholly erroneous.

35. The Appeals Panel recalls that it will not lightly overturn a trial panel's factual findings, as it is primarily the latter's task to hear, assess and weigh the evidence presented at trial.⁶⁸ The Appeals Panel will only overturn a decision by a trial panel where an error of fact occasioned a miscarriage of justice.⁶⁹ In this regard, the Panel notes that mere disagreement with the conclusions that the Trial Panel drew from available facts or the weight it accorded to particular factors is not enough to establish a clear error.⁷⁰ With respect to the standard of proof, the Appeals Panel notes that, in the Reparation Order, the Trial Panel applied the "balance of probabilities" standard.⁷¹ The Panel observes that this standard is different from that of "beyond reasonable doubt", pursuant to which trial panels enter factual findings underpinning a conviction under Articles 21(3) and 43 of the Law.⁷² In this regard, the ICC Appeals

⁶⁷ In relation to Shala's argument on the summary dismissal of arguments raised only at the appellate stage, see below, paras 43-44.

⁶⁸ Appeal Judgment, para. 34; *Mustafa* Appeal Judgment, para. 24; *Gucati and Haradinaj* Appeal Judgment, para. 26. See also *Ongwen* Appeal Judgment on Reparations, para 27; *Katanga* Appeal Judgment on Reparations, para. 41.

⁶⁹ Appeal Judgment, para. 34; *Mustafa* Appeal Judgment, para. 24; *Gucati and Haradinaj* Appeal Judgment, para. 26. See also *Mladić* Appeal Judgement, para. 18; *Nyiramasuhuko et al.* Appeal Judgement, para. 32; *Lubanga* Appeal Judgment, para. 25; *Merhi and Oneissi* Appeal Judgment, para. 31.

⁷⁰ Appeal Judgment, para. 34; *Mustafa* Appeal Judgment, para. 24; *Gucati* First Appeal Decision on Arrest and Detention, para. 64.

⁷¹ Reparation Order, para. 69.

⁷² See *Ongwen* Appeal Judgment on Reparations, para. 28; *Ntaganda* Appeal Judgment on Addendum to Reparation Order, para. 16; *Katanga* Appeal Judgment on Reparations, para. 42; *Lubanga* Appeal Judgment on Reparations, para. 33; *Ntaganda* Appeal Judgment on Reparations, para. 31.

Chamber has held that reparation proceedings are fundamentally different from proceedings at trial and therefore “a less exacting standard should apply”.⁷³ The Appeals Panel considers that the applicable standard in reparation proceedings is the balance of probabilities and the Panel will therefore apply the standard of review on appeal with this standard in mind.⁷⁴ The Panel further observes that a party challenging a finding under the balance of probabilities standard must demonstrate that no reasonable trier of fact could have found that it was *more probable than not* that the victim suffered harm as a consequence of one of the crimes of which the accused was convicted.⁷⁵

36. With regard to presumptions of fact, the Appeals Panel notes that a trial panel may rely on presumptions to establish a given fact in the absence of direct evidence.⁷⁶ The Panel further observes that circumstantial evidence can be used to establish such presumptions and that the trial panel has discretion in this regard.⁷⁷ However, the Panel also notes that, while a trial panel has discretion in its evaluation of evidence of harm in a particular case and to rely on factual presumptions in reparation proceedings, such discretion is not unlimited.⁷⁸ When relying on factual

⁷³ See e.g. *Lubanga* Appeal Judgment on Principles of Reparations, para. 81. The Panel observes that the ICC Appeals Chamber held that, in the context of reparation proceedings, the applicant must “provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case”. See *Lubanga* Appeal Judgment on Principles of Reparations, para. 81, wherein the ICC Appeals Chamber further found that for the purpose of determining what is sufficient, “[t]rial [c]hambers should take into account any difficulties that are present from the circumstances of the case at hand”.

⁷⁴ See *Ntaganda* Appeal Judgment on Addendum to Reparation Order, para. 16; *Katanga* Appeal Judgment on Reparations, para. 42; *Lubanga* Appeal Judgment on Reparations, para. 33; *Ntaganda* Appeal Judgment on Reparations, para. 31. See also *Ongwen* Appeal Judgment on Reparations, para. 28. The Panel recalls that taking guidance from the case law of the ICC is appropriate. See below, para. 39.

⁷⁵ See Reparation Order, para. 69 (emphasis added). See also *Lubanga* Amended Decision Establishing Principles on Reparation, para. 65, fn. 37; *Katanga* Reparation Order, para. 50.

⁷⁶ See Reparation Order, para. 70; *Katanga* Appeal Judgment on Reparations, para. 75. See also *Lubanga* Appeal Judgment on Principles of Reparations, para. 81.

⁷⁷ See Reparation Order, para. 70; *Katanga* Appeal Judgment on Reparations, para. 75. See also *Katanga* Reparation Order, para. 61.

⁷⁸ See *Katanga* Appeal Judgment on Reparations, paras 4, 75 (“Resort to factual presumptions in reparations proceedings is within a trial chamber’s discretion. However, this discretion is not unlimited, and a trial chamber must respect the rights of victims as well as the convicted person when resorting to presumptions”).

presumptions, a trial panel must respect the rights of victims as well as those of the convicted person.⁷⁹ Finally, the Panel observes that, considering the standard of review, a party challenging a factual presumption must demonstrate that no reasonable trier of fact could have formulated the presumption in question in light of the particular set of circumstances in that case.⁸⁰

37. Lastly, the Appeals Panel recalls that it is not bound by a party's characterisation of an alleged error as a question of law or fact.⁸¹ Where a party mischaracterises an alleged error, the Appeals Panel will apply the correct standard of review.⁸² Furthermore, where the Appeals Panel identifies a mixed error of law and fact, the Panel will first examine the applicable law and then determine whether the factual conclusion reached by the trial panel was one which no reasonable trier of fact could have reached.⁸³

III. GENERAL CONSIDERATIONS

38. The Panel recalls that the Law explicitly provides that the Specialist Chambers shall adjudicate in accordance with: (a) the Constitution; (b) the Law as the *lex specialis*; (c) other provisions of Kosovo Law as expressly incorporated and applied by the Law; (d) customary international law as given superiority over domestic laws; and (e) international human rights law which sets criminal justice standards including the ECHR and ICCPR, as given superiority over domestic laws by Article 22 of the Constitution.⁸⁴

⁷⁹ See Reparation Order, para. 70; *Katanga* Appeal Judgment on Reparations, paras 4, 75.

⁸⁰ See *Katanga* Appeal Judgment on Reparations, para. 77.

⁸¹ Appeal Judgment, para. 35; *Mustafa* Appeal Judgment, para. 25. See also *Dragomir Milošević* Appeal Judgement, para. 18; *Strugar* Appeal Judgement, paras 252, 269; *Blagojević and Jokić* Appeal Judgement, paras 144-145.

⁸² Appeal Judgment, para. 35; *Mustafa* Appeal Judgment, para. 25. See also *Dragomir Milošević* Appeal Judgement, para. 18; *Strugar* Appeal Judgement, paras 252, 269; *Blagojević and Jokić* Appeal Judgement, paras 144-145.

⁸³ Appeal Judgment, para. 35; *Mustafa* Appeal Judgment, para. 26. See also *Strugar* Appeal Judgement, para. 269.

⁸⁴ Article 3(2) of the Law.

39. The Panel further recalls that, in adjudicating this appeal, Judges may be assisted by sources of international law, including subsidiary sources such as the jurisprudence from the international *ad hoc* tribunals, the ICC and other criminal courts. These subsidiary sources can guide the Judges' reflection in instances where primary sources do not provide guidance on a specific matter.⁸⁵ In this regard, the Panel notes that, in accordance with Article 22(7) of the Law, the Trial Panel outlined the reparation principles on which it would rely.⁸⁶ In addition, noting that the relevant provisions on reparations under the Specialist Chambers' legal framework partially mirror the wording of the relevant provisions in the legal texts of the ICC – the first international criminal jurisdiction to introduce a reparation system for victims of crimes within its jurisdiction – the Trial Panel explained that it found it appropriate to take guidance from the case law of the ICC.⁸⁷ Therefore, for the same reasons, the Appeals Panel is of the view that taking guidance from the case law of the ICC may be appropriate.⁸⁸

A. FORMAL REQUIREMENTS ON APPEAL AND SUMMARY DISMISSAL

40. Having determined that the standard of review applicable to appeals against judgments on the merits apply to appeals against reparation orders, the Panel considers that the formal requirements on appeal⁸⁹ should equally apply, *mutatis mutandis*, to the appellate proceedings on reparations.

41. The Appeals Panel recalls that its ability to assess a party's arguments depends on the latter presenting its case clearly, logically and exhaustively.⁹⁰ The appealing party is required to provide precise references to relevant paragraphs in the impugned

⁸⁵ See Appeal Judgment, para. 37.

⁸⁶ Reparation Order, paras 33-48.

⁸⁷ Reparation Order, para. 30.

⁸⁸ Reparation Order, para. 30. Compare Article 22 (1), (7) and (8) of the Law and Rule 168 of the Rules with Article 75 of the Rome Statute and Rule 85 of the ICC Rules.

⁸⁹ See Appeal Judgment, paras 38-42.

⁹⁰ Appeal Judgment, para. 38; *Mustafa* Appeal Judgment, para. 29; *Gucati and Haradinaj* Appeal Judgment, para. 29.

decision, and to the jurisprudence cited in support of its arguments.⁹¹ The Appeals Panel cannot be expected to consider a party's submissions if they are obscure, contradictory, vague, unsubstantiated or suffer from other formal and obvious insufficiencies.⁹²

42. The Appeals Panel further recalls that, pursuant to Article 46(2) of the Law, an appeal is not a trial *de novo*.⁹³ A party may not merely repeat arguments that did not succeed in first instance, unless it can demonstrate that the Trial Panel's rejection of those arguments constituted an error warranting the Appeals Panel's intervention.⁹⁴ Furthermore, a party should not remain silent on a matter which was apparent during the course of the trial, only to raise it for the first time on appeal.⁹⁵ The importance of a timely objection rests on the fact that a panel must be afforded an opportunity to remedy the alleged deficiencies. The Appeals Panel considers 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.⁹⁶

⁹¹ Practice Direction on Filings, Articles 32(2), 47(1)(b)(2)-(3), 48(1)(b)(1)-(2). See also Appeal Judgment, para. 38; *Mustafa* Appeal Judgment, para. 29; *Gucati and Haradinaj* Appeal Judgment, para. 29; *Ongwen* Appeal Judgment, para. 88; *Mladić* Appeal Judgement, para. 21; *Nyiramasuhuko et al.* Appeal Judgement, para. 35. The appeal brief shall also contain an annex containing the list of authorities referred to in the appeal brief. See Practice Direction on Filings, Article 48(1)(e).

⁹² Appeal Judgment, para. 38; *Mustafa* Appeal Judgment, para. 29; *Gucati and Haradinaj* Appeal Judgment, para. 29; *Mladić* Appeal Judgement, para. 21; *Nyiramasuhuko et al.* Appeal Judgement, para. 35.

⁹³ Article 46(2) of the Law; Appeal Judgment, para. 39; *Mustafa* Appeal Judgment, para. 30; *Gucati and Haradinaj* Appeal Judgment, para. 21; *Šainović et al.* Appeal Judgement, para. 223; *Tadić* Appeal Judgement, para. 55.

⁹⁴ Appeal Judgment, para. 39; *Mustafa* Appeal Judgment, para. 30; *Gucati and Haradinaj* Appeal Judgment, para. 29. See also *Mladić* Appeal Judgement, para. 20; *Nyiramasuhuko et al.* Appeal Judgement, para. 34.

⁹⁵ Appeal Judgment, para. 39; *Mustafa* Appeal Judgment, para. 30. See also *Karadžić* Appeal Judgement, paras 25, 312; *Haradinaj et al.* Appeal Judgement, para. 112; *Tolimir* Appeal Judgement, para. 183; *Šainović et al.* Appeal Judgement, paras 125, 223; *Kayishema and Ruzindana* Appeal Judgment, para. 91; *Niyitegeka* Appeal Judgement, para. 199.

⁹⁶ Appeal Judgment, para. 39; *Mustafa* Appeal Judgment, para. 30. See also *Karadžić* Appeal Judgement, paras 25, 312; *Prlić et al.* Appeal Judgement, para. 165; *Kunarac et al.* Appeal Judgement, para. 61; *Niyitegeka* Appeal Judgement, para. 199; *Ongwen* Sentencing Appeal Judgment, para. 108.

43. In this regard, the Panel notes that, in response to Victims' Counsel's submissions,⁹⁷ Shala argues that the formal requirement precluding hearing submissions raised for the first time on appeal should not be applied to the reparation proceedings, as new elements and issues were brought up for the first time in the Reparation Order and it would be neither realistic nor fair under the circumstances to expect the Defence to have contested such considerations in the first instance.⁹⁸ In Shala's view, the formal dismissal of the Defence's challenge to the Trial Panel's findings merely because it was not raised at first instance would amplify the unfairness and deny Shala's right to effective access to a court and the right to lodge a meaningful appeal.⁹⁹

44. The Appeals Panel recalls that summary dismissal is warranted in circumstances where matters were "apparent" during the course of the trial and the appealing party could "reasonably" have contested them before the Trial Panel. In the Panel's view, an assessment of what could reasonably have been raised at trial is necessarily done on a case-by-case basis and having regard to the specific context and nature of the argument. Therefore, the Panel considers that a general waiver of the principle, as suggested by Shala, is not justified, but its application will be assessed on a case-by-case basis such as to alleviate any concerns of unfairness. For these reasons, the Panel dismisses Shala's submissions.

45. The Appeals Panel may also decline to consider issues raised in an appeal brief or brief in reply which were not contained in the notice of appeal, unless a timely request for an amendment has been made and authorised by the Appeals Panel, in

⁹⁷ Victims' Counsel submits that Shala's arguments regarding the test of causation under Ground 1 and the harm resulting from social stigma under Ground 2 were not raised at any stage of the reparation litigation and should therefore be summarily dismissed in accordance with the jurisprudence of the Court of Appeals Chamber. See Response Brief, paras 20, 49, 66. See also Response Brief, para. 21.

⁹⁸ Reply Brief, paras 12-13.

⁹⁹ Reply Brief, para. 13.

accordance with Rule 176(3) of the Rules.¹⁰⁰ Furthermore, the grounds of appeal and arguments in the appeal brief shall be set out and numbered in the same order as in the appellant's notice of appeal, unless otherwise varied with leave of the Appeals Panel.¹⁰¹ In principle, failure to do so warrants summary dismissal. However, the Appeals Panel may exceptionally decide to consider such submissions where the Panel deems it necessary out of fairness to the accused and in the interests of justice.¹⁰²

46. The Panel may also decline to consider issues raised in a notice of appeal that are not subsequently developed in an appeal brief.¹⁰³ Generally, arguments made in a notice of appeal should be developed in the appeal brief, or they are deemed to have been "abandoned".¹⁰⁴ However, the Appeals Panel may nevertheless, as a matter of fairness, decide to consider such arguments.¹⁰⁵

47. Moreover, arguments which do not have the potential to cause the impugned decision to be reversed or revised may be dismissed by the Panel immediately and need not be considered on the merits.¹⁰⁶ The Appeals Panel has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and may dismiss arguments which are evidently unfounded without providing detailed

¹⁰⁰ Appeal Judgment, para. 40; *Mustafa* Appeal Judgment, para. 31; *Gucati and Haradinaj* Appeal Judgment, para. 30. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, paras 370, 524; *Vasiljević* Appeal Judgement, para. 15; *Galić* Appeal Judgement, para. 78.

¹⁰¹ Practice Direction on Filings, Article 48(2). See also Appeal Judgment, para. 40; *Mustafa* Appeal Judgment, para. 31; *Gucati and Haradinaj* Appeal Judgment, para. 30.

¹⁰² Appeal Judgment, para. 40; *Mustafa* Appeal Judgment, para. 31.

¹⁰³ Appeal Judgment, para. 41; *Mustafa* Appeal Judgment, para. 32. See also *Merhi and Oneissi* Appeal Judgment, fn. 69; *Nyiramasuhuko et al.* Appeal Judgement, fn. 441; *Kayishema and Ruzindana* Appeal Judgment, para. 46.

¹⁰⁴ Appeal Judgment, para. 41; *Mustafa* Appeal Judgment, para. 32. See also *Nyiramasuhuko et al.* Appeal Judgement, fn. 441.

¹⁰⁵ Appeal Judgment, para. 41; *Mustafa* Appeal Judgment, para. 32. See also *Nyiramasuhuko et al.* Appeal Judgement, fn. 441.

¹⁰⁶ Appeal Judgment, para. 42; *Mustafa* Appeal Judgment, para. 33; *Gucati and Haradinaj* Appeal Judgment, para. 31. See also *Mladić* Appeal Judgement, para. 20; *Nyiramasuhuko et al.* Appeal Judgement, para. 34; *Merhi and Oneissi* Appeal Judgment, para. 33; *Ongwen* Appeal Judgment, para. 89.

reasoning.¹⁰⁷ In particular, the Appeals Panel notes that the following types of arguments may be summarily dismissed:

- (i) arguments that fail to identify the challenged factual findings, that misrepresent the factual findings or the evidence, or that ignore other relevant factual findings;
- (ii) mere assertions that the trial chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence could have reached the same conclusion as the trial chamber;
- (iii) arguments that are clearly irrelevant, that lend support to, or that are not inconsistent with the challenged finding;
- (iv) arguments contrary to common sense;
- (v) challenges to factual findings where the relevance of the factual finding is unclear and has not been explained by the appealing party;
- (vi) mere repetition of arguments that were unsuccessful at trial without any demonstration that their rejection by the trial panel constituted an error warranting the intervention of the Appeals Panel;
- (vii) allegations based on material not on the trial record;
- (viii) mere assertions unsupported by any evidence, undeveloped assertions, failure to articulate an error; and
- (ix) mere assertions that the trial panel failed to give sufficient weight to evidence or failed to interpret evidence in a particular manner.¹⁰⁸

¹⁰⁷ Appeal Judgment, para. 42; *Mustafa* Appeal Judgment, para. 31; *Gucati and Haradinaj* Appeal Judgment, para. 31. See also *Mladić* Appeal Judgment, para. 21; *Nyiramasuhuko et al.* Appeal Judgment, para. 35; *Merhi and Oneissi* Appeal Judgment, para. 33.

¹⁰⁸ See Appeal Judgment, para. 42; *Mustafa* Appeal Judgment, para. 33; *Gucati and Haradinaj* Appeal Judgment, para. 32. See also Appeal Decision on Provisional Release, para. 8; *Haradinaj* First Appeal Decision on Detention, para. 29; *Gucati and Haradinaj* Appeal Decision on Preliminary Motions, para. 15; *Thaçi et al.* Appeal Decision on Fourth Victim Participation, paras 8, 17, 24; *Thaçi et al.* Appeal Decision on Fifth Victim Participation, para. 29.

B. LIMITED GROUNDS FOR APPELLATE INTERVENTION

1. Trial Panel's Reasoned Opinion

48. The Appeals Panel notes that, in order to fulfil its obligation to provide a reasoned opinion, a trial panel must provide reasoning in support of its findings on the substantive considerations relevant for a decision. However, it is neither required to articulate every step of its reasoning, nor to address all of the arguments raised by the parties or every item of evidence relevant to a particular finding, provided that it indicates with sufficient clarity the basis for its decision.¹⁰⁹ It is presumed that a trial panel evaluated all of the evidence before it, as long as there is no indication that it completely disregarded any particular piece of evidence.¹¹⁰ Accordingly, if a trial panel did not refer to a specific piece of evidence in its findings, it is to be presumed that it assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings. This presumption may be rebutted when evidence which is clearly relevant to the findings is not addressed by a trial panel's reasoning.¹¹¹

49. Furthermore, an accused's right to a reasoned opinion does not require a detailed analysis of the credibility of witnesses, as long as the trial panel provides reasons for accepting a witness's testimony despite any alleged or material inconsistencies.¹¹²

¹⁰⁹ Appeal Judgment, para. 43; *Mustafa* Appeal Judgment, para. 34; *Gucati and Haradinaj* Appeal Judgment, para. 33; *Veseli* First Appeal Decision on Interim Release, para. 72; *Thaçi et al.* Appeal Decision on Jurisdiction, para. 154. See also *Ntaganda* Appeal Judgment on Reparations, paras 58-60.

¹¹⁰ Appeal Judgment, para. 43; *Mustafa* Appeal Judgment, para. 34; *Gucati and Haradinaj* Appeal Judgment, para. 33. See also *Halilović* Appeal Judgement, para. 121; *Kvočka et al.* Appeal Judgement, para. 23.

¹¹¹ Appeal Judgment, para. 43; *Mustafa* Appeal Judgment, para. 34; *Gucati and Haradinaj* Appeal Judgment, para. 33. See also *Halilović* Appeal Judgement, para. 188; *Kvočka et al.* Appeal Judgement, para. 23.

¹¹² Appeal Judgment, para. 44; *Mustafa* Appeal Judgment, para. 35. See also *Popović et al.* Appeal Judgement, para. 133; *Kajelijeli* Appeal Judgement, paras 60-61.

2. Trial Panel's Discretion

50. The Appeals Panel recalls that, where the decision that is being challenged is a discretionary decision, a party must demonstrate that the lower level panel has committed a discernible error in that the decision is: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the lower level panel's discretion.¹¹³

51. The Panel also recalls that a trial panel is best placed to assess the credibility of a witness and the reliability of the evidence presented by the parties,¹¹⁴ and therefore has broad discretion in determining the appropriate weight to be given to witness testimony.¹¹⁵ There is no general requirement that the testimony of a witness be corroborated if otherwise deemed credible.¹¹⁶ In fact, corroboration is neither a condition nor a guarantee of reliability of a single piece of evidence.¹¹⁷ A trial panel has the discretion to decide, in the circumstances of each case, whether corroboration of evidence is necessary, and to rely on uncorroborated, but otherwise credible, witness testimony.¹¹⁸

¹¹³ Appeal Judgment, para. 45; *Mustafa* Appeal Judgment, para. 36. See also Appeal Decision on Prior Statements, para. 8; *Gucati and Haradinaj* Appeal Decision on Defence Witnesses, para. 14. See also *Ntaganda* Appeal Judgment on Reparations, paras 34-35; *Ongwen* Appeal Judgment on Reparations, para. 30.

¹¹⁴ Appeal Judgment, para. 47; *Mustafa* Appeal Judgment, para. 38; *Gucati and Haradinaj* Appeal Judgment, para. 36. See also *Strugar* Appeal Judgment, paras 437, 464, 1296; *Lukić and Lukić* Appeal Judgment, para. 296; *Dorđević* Appeal Judgment, para. 395; *Limaj et al.* Appeal Judgment, para. 88; *Aleksovski* Appeal Judgment, para. 63; *Kayishema and Ruzindana* Appeal Judgment, para. 187.

¹¹⁵ Appeal Judgment, para. 47; *Mustafa* Appeal Judgment, para. 38. See also *Popović et al.* Appeal Judgment, para. 131; *Dorđević* Appeal Judgment, paras 781, 797, 819; *Ndahimana* Appeal Judgment, paras 43, 93; *Lukić and Lukić* Appeal Judgment, paras 86, 235, 363, 375; *Kupreškić et al.* Appeal Judgment, para. 32; *Rutaganda* Appeal Judgment, para. 28.

¹¹⁶ Rule 139(3) of the Rules; Appeal Judgment, para. 47; *Mustafa* Appeal Judgment, para. 38; *Gucati and Haradinaj* Appeal Judgment, para. 36. See also *Ntaganda* Appeal Judgment, para. 782; *Dragomir Milošević* Appeal Judgment, para. 215; *Ntawukulilyayo* Appeal Judgment, para. 21.

¹¹⁷ Appeal Judgment, para. 47; *Mustafa* Appeal Judgment, para. 38. See also *Dragomir Milošević* Appeal Judgment, para. 248; *Limaj et al.* Appeal Judgment, para. 203.

¹¹⁸ Appeal Judgment, para. 47; *Mustafa* Appeal Judgment, para. 38. See also *Karera* Appeal Judgment, para. 45; *Ntawukulilyayo* Appeal Judgment, para. 21; *Dragomir Milošević* Appeal Judgment, para. 215.

52. The Panel further notes that, where an alleged violation of fair trial rights concerns a discretionary decision, the appellant must show that the trial panel committed a discernible error resulting in prejudice to that appellant.¹¹⁹

3. Trial Panel's Presumption of Impartiality

53. The Panel recalls that there is a presumption of impartiality which attaches to the Judges of a trial panel, and it is for the appealing party to rebut this presumption on the basis of adequate and reliable evidence.¹²⁰

C. LEGAL CERTAINTY

54. The Panel notes that, in the interests of legal certainty and predictability, an appeals panel is expected to follow previous decisions by the Court of Appeals Chamber and should only depart from them for cogent reasons in the interests of justice.¹²¹ Therefore, a party requesting such departure must demonstrate that it is justified for cogent reasons.¹²² In this context, the Appeals Panel is mindful that this is the first appeal against a reparation order before the Specialist Chambers and involves issues not previously presented before a panel of the Specialist Chambers.

¹¹⁹ Appeal Judgment, para. 48; *Mustafa* Appeal Judgment, para. 39. See also *Mladić* Appeal Judgement, paras 63, 107; *Nyiramasuhuko et al.* Appeal Judgement, para. 431; *Prlić et al.* Appeal Judgement, para. 119.

¹²⁰ Appeal Judgment, para. 49; *Mustafa* Appeal Judgment, para. 40. See also e.g. *Veseli* Third Appeal Decision on Detention, para. 34; *Akayesu* Appeal Judgment, para. 91; *Furundžija* Appeal Judgement, paras 196-197.

¹²¹ Appeal Judgment, para. 50; *Mustafa* Appeal Judgment, para. 41; *Gucati and Haradinaj* Appeal Judgment, para. 37. See also *Thaçi et al.* Appeal Decision on Fifth Victim Participation, para. 10; Appeal Decision on Jurisdiction, para. 15; *Mladić* Appeal Judgement, para. 14; *Semanza* Appeal Decision, para. 92; *Aleksovski* Appeal Judgement, paras 107-111; *Šešelj* Appeal Judgement, para. 11 (wherein the IRMCT Appeals Chamber held, *inter alia*, that instances where cogent reasons in the interests of justice would require departure from previous appeals decisions include where decisions were made on the basis of a wrong legal principle or where the judges were ill-informed about the applicable law).

¹²² Appeal Judgment, para. 50; *Mustafa* Appeal Judgment, para. 41. See also *Mladić* Appeal Judgement, para. 14; *Karadžić* Appeal Judgement, para. 13; *Šešelj* Appeal Judgement, para. 11.

D. PRINCIPLES ON REPARATIONS

55. The Appeals Panel notes that, in the Reparation Order, the Trial Panel recalled the principles applicable to reparation proceedings before the Specialist Chambers.¹²³ The Panel agrees with the Trial Panel that the objective of reparations at the Specialist Chambers serves to acknowledge and repair, to the extent possible, the harm caused to victims.¹²⁴

IV. PRELIMINARY MATTERS

A. REQUEST FOR ORAL HEARING

56. The Defence requests the Appeals Panel to set an oral hearing to allow it to develop its submissions.¹²⁵ The Panel notes that Rule 180 of the Rules provides that “[a]fter the expiry of the time limits for the filing of the briefs provided for in Rule 179, the Court of Appeals Panel may set the date of an appeal hearing, *if necessary*”.¹²⁶ The Panel considers that this Rule shall apply, *mutatis mutandis*, to the present proceedings.

57. While acknowledging the novelty of the issues presented given that this is the first appeal against an order for reparations before the Specialist Chambers, the Appeals Panel is satisfied that the written submissions in relation to the specific grounds raised are exhaustive, and that an appeal hearing is not warranted. The Panel further considers that an appeal hearing would not be in the interests of expeditious proceedings. Shala’s request for an oral hearing is therefore denied.

¹²³ See Reparation Order, paras 33-48. See also *Mustafa* Reparation Order, paras 66-81, and references cited therein.

¹²⁴ See Reparation Order, para. 33.

¹²⁵ Reply Brief, para. 2.

¹²⁶ Emphasis added.

B. ADMISSIBILITY OF VICTIMS' COUNSEL'S SUBMISSIONS

58. At the outset, the Appeals Panel recalls the standard set out in previous decisions in relation to victim participation in appellate proceedings before the Specialist Chambers.¹²⁷ Specifically, victim participation in appellate proceedings is permissible as long as it: (i) complies with the Law and the Rules; (ii) is limited to issues impacting the personal interests of victims; and (iii) is not prejudicial to or inconsistent with the rights of the accused.¹²⁸ Furthermore, the Panel recalls that, having considered that the rules governing trial proceedings shall apply, *mutatis mutandis*, to proceedings before the Appeals Panel and the need for procedural coherence, it applied in the context of the Appeal Judgment a regime of victim participation similar to the one established during the trial proceedings, subject to necessary adjustments.¹²⁹

59. Victims' Counsel submits that the Victims have standing in the present appellate proceedings against the Reparation Order given that: (i) the right of victims to reparations is explicitly provided for in Article 22(3) and (8) of the Law; (ii) pursuant to Article 46(9) of the Law, victims are entitled to appeal a reparation order;¹³⁰ and (iii) as recognised by the Trial Panel, "reparations at the [Specialist Chambers] ought to be victim-centred".¹³¹ On this basis, Victims' Counsel argues that the interests of Victims in submitting the Response Brief and in their continued participation in these appellate proceedings are self-explanatory and apparent.¹³² In this context, Victims' Counsel responds to Shala's five grounds of appeal against the Reparation Order.¹³³

¹²⁷ See Decision on Victim Participation in Appellate Proceedings, paras 7-11; *Mustafa* Decision on Victim Participation in Appellate Proceedings, paras 9-14.

¹²⁸ See Decision on Victim Participation in Appellate Proceedings, paras 3, 7, 10; *Mustafa* Decision on Victim Participation in Appellate Proceedings, paras 5-6. See also Article 22(6) of the Law.

¹²⁹ Decision on Victim Participation in Appellate Proceedings, para. 4.

¹³⁰ Response Brief, para. 23. See also Rule 173(2) of the Rules.

¹³¹ Response Brief, para. 23, referring to Reparation Order, para. 35 and *Mustafa* Reparation Order, para. 68.

¹³² Response Brief, paras 23, 25. See also Response Brief, para. 24.

¹³³ Response Brief, paras 26-115.

60. Shala does not challenge the right of victims to participate in appellate reparation proceedings.¹³⁴ However, as regards Victims' Counsel's assertion that "reparations at the [Specialist Chambers] ought to be victim-centred", Shala clarifies that, while he took no issue with the Trial Panel's description as such, the fact that reparation proceedings ought to be "victim-centred" should not entail "making awards for undemonstrated and generalised claims to compensation for harm which is not linked [...] to the defendant's culpable conduct".¹³⁵

61. The Appeals Panel recalls that, pursuant to Article 22(3) and (8) of the Law, the Victims have a personal interest and right to reparation. In this context, the Panel also recalls that, pursuant to Article 46(9) of the Law, the Victims may, through assigned counsel, appeal a reparation order. The Panel considers that, unlike appeals in other stages of the proceedings pursuant to Articles 45(1) and 46(1) of the Law, the Victims are, through their assigned counsel, considered parties to the reparation proceedings and not participants who may present their views and concerns where their personal interests are impacted.¹³⁶ The Panel notes that this interpretation is consistent with the approach followed at the ICC.¹³⁷

62. In view of the above, the Appeals Panel finds that the Victims may, as of right, make submissions responding to Shala's submissions on appeal against the Reparation Order.

V. DISCUSSION

63. Shala submits five grounds of appeal against the Reparation Order.¹³⁸ Shala requests that the Appeals Panel "annul the reparation award issued by the Trial Panel

¹³⁴ See Reply Brief, para. 17.

¹³⁵ Reply Brief, para. 18.

¹³⁶ See Article 22(6) of the Law.

¹³⁷ See *Lubanga* Appeal Decision on Appeals Admissibility, para. 67; *Ongwen* Order for Submission on Reparations, para. 5, fn. 4 (noting that, for purposes of the reparation proceedings, the parties are the Defence and the Legal Representatives of Victims). See also Response Brief, para. 24.

¹³⁸ Appeal Brief, paras 5-51; Notice of Appeal, paras 1-16.

and remit the assessment of [his] potential civil liability to a different [p]anel to issue a fair and proportionate award, if such an award is required following the judgment on the merits of [...] Shala's appeal against conviction."¹³⁹

A. ALLEGED BREACH OF DUE PROCESS BY DECIDING CIVIL LIABILITY ON THE BASIS OF NON-DEFINITIVE FINDINGS (GROUND 5)

64. In the Trial Judgment, the Trial Panel retained the necessary jurisdiction to issue in due course a reparation order pursuant to Articles 22(8) and 44(6) of the Law.¹⁴⁰ On 29 November 2024, before the Appeals Panel delivered the Appeal Judgment, the Trial Panel issued the Reparation Order.¹⁴¹

65. Shala argues that the Trial Panel erred in holding reparation proceedings before the first-instance findings had become final.¹⁴² Victims' Counsel responds that Shala's argument constitutes neither an error of law nor an error of fact and should therefore be dismissed.¹⁴³

1. Submissions

66. Shala submits that the Trial Panel stressed that it was "bound by the factual and legal findings made in the Trial Judgment", and that it thus relied on relevant findings made therein for the purpose of issuing the Reparation Order.¹⁴⁴ He argues that, should these findings be reversed on appeal, even partially, the reparation award would have to be re-examined.¹⁴⁵ In Shala's view, holding reparation proceedings before the first-instance findings become final hinders the right of the convicted

¹³⁹ Appeal Brief, para. 5. See also Appeal Brief, paras 14, 22, 33, 44, 52; Reply Brief, para. 2. See also Notice of Appeal, para. 17.

¹⁴⁰ Trial Judgment, paras 1042, 1127. See also Reparation Order, para. 21.

¹⁴¹ See Reparation Order, para. 239.

¹⁴² Appeal Brief, paras 45-50.

¹⁴³ Response Brief, para. 114.

¹⁴⁴ Appeal Brief, para. 45.

¹⁴⁵ Appeal Brief, para. 46; Notice of Appeal, para. 16.

person to have a proper assessment of his civil liability, and goes against the interests of justice and judicial economy.¹⁴⁶

67. In particular, Shala maintains that the reparation award is based on factual findings related to his conduct and alleged ill-treatment of V01/04 and W04733 that he challenged in his appeal on the merits, and that fair and reasonable reparations can only be determined once the underlying factual findings become definitive.¹⁴⁷ Shala argues that the Trial Panel erred in finding him “personally liable for [the] ‘long-standing’ physical and mental harm suffered by V01/04 and W04733”.¹⁴⁸

68. Shala hence requests the Appeals Panel to suspend hearing the appeal against the Reparation Order until the appeal against his conviction is examined and all the factual findings are final.¹⁴⁹

69. Victims’ Counsel responds that the argument raised by Shala is an appellate scheduling matter as it relates to the sequence in which appeals are to be heard.¹⁵⁰ Accordingly, Victims’ Counsel requests that the Appeals Panel reject this ground of appeal.¹⁵¹

2. Assessment of the Court of Appeals Panel

70. The Appeals Panel recalls that, on 14 July 2025, it issued the Appeal Judgment on Shala’s conviction and sentence.¹⁵² The Panel granted, in part, Shala’s appeal on Grounds 7 and 12,¹⁵³ as well as on Ground 14.¹⁵⁴ The Appeals Panel reversed, in part,

¹⁴⁶ Appeal Brief, paras 46-47. To illustrate his argument, Shala contends that, in most cases, the ICC practice is to issue reparation orders after the judgments on convictions have become final on appeal. See Appeal Brief, para. 48.

¹⁴⁷ Appeal Brief, para. 49; Reply Brief, para. 35.

¹⁴⁸ Appeal Brief, para. 50, referring to Reparation Order, paras 195-196.

¹⁴⁹ Appeal Brief, para. 51; Notice of Appeal, paras 16-17. See also Reply Brief, para. 35.

¹⁵⁰ Response Brief, para. 114.

¹⁵¹ Response Brief, para. 115.

¹⁵² Appeal Judgment.

¹⁵³ Appeal Judgment, paras 560, 590, 601, 605-606, 733-734, 792, 938.

¹⁵⁴ Appeal Judgment, paras 913, 919, 933, 938.

Shala's convictions under Counts 1 and 3 to the extent that they relied on the arbitrary detention of two individuals and on the torture of five individuals.¹⁵⁵ The Appeals Panel notes that these findings do not concern the crimes committed against V01/04 or W04733,¹⁵⁶ and, therefore, do not affect the crimes that could form the basis of the causal link between the crime(s) and the alleged harm(s) suffered by the Victims for the purposes of reparations.¹⁵⁷ In addition, the Appeals Panel affirmed the remainder of Shala's convictions for the war crime of arbitrary detention pursuant to Articles 14(1)(c) and 16(1)(a) of the Law under Count 1 of the Indictment, the war crime of torture pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law under Count 3 of the Indictment, and the war crime of murder pursuant to Articles 14(1)(c)(i) and 16(1)(a) of the Law under Count 4 of the Indictment.¹⁵⁸ Ultimately, the Appeals Panel reduced the single sentence imposed on Shala from 18 years to 13 years of imprisonment, with credit for time served.¹⁵⁹

71. Owing to the completion of the Appeal Judgment,¹⁶⁰ the Appeals Panel considers moot Shala's request to suspend the hearing of the appeal against the

¹⁵⁵ See Appeal Judgment, paras 560, 590, 605.

¹⁵⁶ See also above, fn. 43. See Appeal Judgment, paras 560, 590, 605. See also Reparation Order, para. 61.

¹⁵⁷ See Appeal Judgment, paras 560, 590, 605. See also Reparation Order, para. 61.

¹⁵⁸ Appeal Judgment, para. 938.

¹⁵⁹ Appeal Judgment, paras 934-935, 938.

¹⁶⁰ Under the framework of the Specialist Chambers, an appeal judgment on the merits constitutes a final judgment for the purposes of ordinary appellate remedies. Although Article 47(1) of the Law permits a narrowly circumscribed form of third-instance appellate review, this is only available "if the Court of Appeals Panel has modified an acquittal and has instead entered a conviction or when the criminal sanction of life-long imprisonment has been imposed". Outside these exceptional statutory grounds, appeal judgments on the merits are final. This understanding of finality is reinforced by Article 48(6) of the Law, related to "Extra-ordinary Legal Remedy", which provides that "[a] party may request protection of legality within three (3) months of the final judgment or final ruling against which protection of legality is sought". By specifying that protection of legality is available only after a "final judgment", Article 48(6) of the Law presupposes that the ordinary appellate proceedings have concluded, which in practice means that appeal judgments are final. Protection of legality is therefore an extra-ordinary remedy available only once ordinary appellate remedies have been exhausted and, as provided by Article 48(7) of the Law, is limited to addressing alleged violations of criminal law or procedural violations, without reopening the merits. The jurisprudence of the Specialist Chambers supports the finality of appeal judgments and the extraordinary nature of protection of legality. See *Veseli* Supreme Court Decision on Protection of Legality, paras 18, 21; *Mustafa* Supreme Court Decision

Reparation Order. In addition, observing that Shala was able to lodge an appeal against the Reparation Order and that the Panel now adjudicates this appeal after having delivered the appeal judgment on the merits, the Appeals Panel considers that the present reparation proceedings are neither prejudicial to Shala, nor breach his right to fair and expeditious proceedings. Accordingly, the Appeals Panel dismisses Shala's Ground 5.

B. ALLEGED ERRORS IN DEFINING AND APPLYING THE LAW OF CAUSATION
(GROUND 1)

72. Relying on Article 22(1) of the Law and Rule 2 of the Rules, the Trial Panel recalled that "[a] Victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a *direct result* of a crime within the jurisdiction of the Specialist Chambers".¹⁶¹ It further considered that victims seeking reparations must provide sufficient proof of: (i) their identity as a natural person; (ii) the scope and extent of harm suffered; and (iii) the causal link between the *crime* for which a conviction has followed and the *harm* suffered.¹⁶²

73. Shala argues that the Trial Panel erred in the manner in which it interpreted the law of causation in the context of reparations proceedings.¹⁶³ He contends that the Trial Panel's errors with respect to causation led to absurd, arbitrary and unjust results, ultimately finding him liable to repair harm which was not caused by his acts or omissions, and that these errors merit appellate intervention.¹⁶⁴ Victims' Counsel

on Protection of Legality, paras 9, 11. Similarly, the finality of appeal judgments is not undermined by the Specialist Chamber of the Constitutional Court's review powers. Constitutional review under Article 49 of the Law is limited to alleged violations by the Specialist Chambers or SPO of the accused's and victims' individual rights and freedoms guaranteed by the Constitution and does not operate as a further appellate instance. See *Thaçi* Constitutional Court Decision on *Thaçi's* Referral, para. 41; *Hasani* Constitutional Court Decision on Prosecution Order, para. 50.

¹⁶¹ Reparation Order, para. 60 (emphasis in original).

¹⁶² Reparation Order, para. 66 (emphasis added). In relation to the causal link, see also Reparation Order, paras 60-65, 99.

¹⁶³ Appeal Brief, paras 6-14; Reply Brief, paras 19-27; Notice of Appeal, paras 2-5.

¹⁶⁴ Appeal Brief, paras 6, 11, 13; Notice of Appeal, para. 5.

responds that this ground of appeal should be dismissed as the Trial Panel applied the correct law of causation.¹⁶⁵

1. Submissions

74. Shala argues that, while the Trial Panel conceded that the applicable legal framework lacks specific directions on causation in the context of reparations, it erred in law by misidentifying and failing to provide a legal basis for the causal link that it required between the crime and the harm.¹⁶⁶ By contrast, Shala contends that the Trial Panel should have considered the causal link between Shala's own culpable conduct, through his acts and omissions, and the specific harm caused to Victims.¹⁶⁷ Shala further develops a number of arguments to this end.¹⁶⁸

75. Shala contends that the typical application of the "but/for" test requires an assessment of "whether the damage would have occurred if the tortfeasor had not acted in the way he did".¹⁶⁹

76. Additionally, Shala points to the Trial Panel's endorsement of the Pre-Trial Judge's finding that the harm suffered by a victim can be considered to have been caused by a crime "where [...] the acts or omissions of the perpetrator(s) would *most likely* bring about the harm, as viewed by an objective observer".¹⁷⁰ Shala takes issue with the Trial Panel's related findings that the contribution of the crime to the harm

¹⁶⁵ Response Brief, paras 26-50.

¹⁶⁶ Appeal Brief, paras 6-7, 11; Reply Brief, para. 19.

¹⁶⁷ Appeal Brief, para 6; Reply Brief, para. 24.

¹⁶⁸ The Appeals Panel notes that Shala's arguments under Ground 1 were not always clearly delineated in terms of whether they concern the Trial Panel's treatment of factual causation or the Trial Panel's treatment of legal causation. The Appeals Panel recalls that parties are required to present their arguments clearly, logically and exhaustively and to do otherwise warrants summary dismissal (see above, paras 41, 47). Nonetheless, given that the Appeal is the first appeal of a reparation order at the Specialist Chambers and given the importance of the law of causation in this context, the Appeals Panel has endeavoured to organise Shala's submissions by type of causation concerned and to address them accordingly.

¹⁶⁹ Appeal Brief, para. 6. See also Reply Brief, para. 23, on the relevance of ICC jurisprudence in this respect.

¹⁷⁰ Appeal Brief, para. 7 (emphasis in original), referring to Framework Decision on Victims' Applications, para. 45; Reply Brief, para. 23.

need not be significant for causation to be established,¹⁷¹ and that “there is sufficient proof that the harm suffered by the Victims in this case arises from the crimes of which Mr Shala has been convicted”.¹⁷² To this end, Shala contends that the Trial Panel erred in three respects.¹⁷³

77. First, Shala argues that the Trial Panel erred in failing to establish a link between his culpable conduct and each perceived harm that the Trial Panel considered required reparation.¹⁷⁴

78. Second, the Appeals Panel understands Shala to argue – referring to the “theory of contributory negligence”¹⁷⁵ – that the Trial Panel erred in its application of the foreseeability element of its causation assessment in that it did not consider the *extent* of the link between any culpable conduct by Shala (as opposed to another perpetrator) and the specific harm suffered by the Victims.¹⁷⁶ Shala adds that the Trial Panel’s approach led to such a wide definition of “cause” that it results in imposing civil liability on him for factors that are too remote from his conduct,¹⁷⁷ including the acts and conduct of other members of the JCE, which in turn led to “arbitrary and unjust results that merit appellate intervention”.¹⁷⁸

79. Finally, Shala submits that he cannot be held criminally liable for the death of the Murder Victim, as, in his view, the Trial Panel failed to consider the effect of the *novus actus interveniens* brought about by the refusal to allow the Murder Victim to be

¹⁷¹ Appeal Brief, para. 7. See also Reply Brief, paras 19-20. Shala further argues in this respect that, for the purposes of attribution of civil liability, not every factor contributing to the realisation of a crime can be considered as the cause of the crime. See Appeal Brief, para. 7.

¹⁷² Appeal Brief, para. 10, referring to Reparation Order, para. 99.

¹⁷³ The Appeals Panel notes that Shala repeats a number of Ground 1 arguments under Grounds 2 (see Appeal Brief, para. 17) and 3 (see Appeal Brief, paras 25-26; Response Brief, fn. 83). These arguments will be addressed under Ground 1.

¹⁷⁴ Appeal Brief, para. 9; Reply Brief, paras 19-21. See also Appeal Brief, para. 11; Reply Brief, paras 19-20.

¹⁷⁵ Appeal Brief, para. 9.

¹⁷⁶ Appeal Brief, paras 7-8 (emphasis added); Reply Brief, paras 20-21.

¹⁷⁷ Appeal Brief, para. 8; Reply, para. 20.

¹⁷⁸ Appeal Brief, paras 9, 13. See also Appeal Brief, paras 10-11; Reply Brief, paras 20-21, 25.

transferred to the hospital for medical treatment, which Shala contends was entirely unforeseeable to him.¹⁷⁹

80. Victims' Counsel responds that Shala merely disagrees with the Trial Panel's interpretation and application of the law on causation, without engaging with the Trial Panel's reasoning, which fully addressed his arguments,¹⁸⁰ and that he fails to demonstrate any error.¹⁸¹

81. Victims' Counsel further responds that the Defence wrongly suggests that, for the purpose of reparations, a causal link must be established between Shala's culpable conduct and the specific harm caused to the Victims.¹⁸² To this end, Victims' Counsel contends that Shala's argument conflates the issue of a 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.¹⁸³ Victims' Counsel adds that the "but/for relationship" between the crime and the harm has been relied upon by the ICC.¹⁸⁴

82. Concerning Shala's argument that the Trial Panel erred in finding that the contribution of the crime to the harm need not be significant, Victims' Counsel responds that the Trial Panel's position is grounded in the jurisprudence cited in the *Mustafa* Reparation Order and that the position adopted is correct.¹⁸⁵ Consequently, in the view of Victims' Counsel, the Trial Panel did not have to consider "specifically the

¹⁷⁹ Appeal Brief, para. 12; Reply Brief, para. 27.

¹⁸⁰ Response Brief, paras 29-30.

¹⁸¹ Response Brief, para. 26.

¹⁸² Response Brief, paras 27, 32, 37.

¹⁸³ Response Brief, para. 27.

¹⁸⁴ Response Brief, para. 28.

¹⁸⁵ Response Brief, paras 45-47.

culpable conduct of Mr Shala or the extent to which such culpable conduct may have contributed to any harm suffered by the victims”.¹⁸⁶

83. Victims’ Counsel adds, concerning Shala’s argument that a link must exist between his culpable conduct and the specific harm caused to the Victims, that the Trial Panel holding him liable to repair harm caused by others is not an error.¹⁸⁷ Rather, in Victims’ Counsel’s view, it is the direct consequence of Shala’s conviction as part of a JCE.¹⁸⁸ Victims’ Counsel contends that the law is settled in this respect that all participants in a JCE are jointly and severally liable for the harm caused to victims.¹⁸⁹ Further, Victims’ Counsel contends that where joint offending is concerned, there can be no justification at the reparation stage for liability ceasing to be joint and instead assessed on the basis of individual culpable acts.¹⁹⁰ Additionally, Victims’ Counsel responds that the only authority that Shala provides in support of his position is the doctrine of contributory negligence which has no discernible relevance to this case and does not undermine the well-established legal framework correctly identified and applied by the Trial Panel.¹⁹¹

84. Ultimately, Victims’ Counsel responds that whether other contributing factors could or could not be considered as the cause of the crime is irrelevant for the purpose of reparations.¹⁹²

¹⁸⁶ Response Brief, para. 47, referring to Appeal Brief, para. 7. Victims’ Counsel further contends that there is no need for a causal link between Shala’s actions and “specific harm”, in the sense of individual injuries. See Response Brief, para. 32.

¹⁸⁷ Response Brief, paras 33, 37.

¹⁸⁸ Response Brief, paras 33, 37.

¹⁸⁹ Response Brief, paras 34-36.

¹⁹⁰ Response Brief, para. 38. Victims’ Counsel also submits that the approach advanced by Shala would render reparations proceedings impractical. See Response Brief, para. 39.

¹⁹¹ Response Brief, paras 36, 40-42. Victims’ Counsel submits that, when invited to clarify its position on the issue of the liability of JCE members for reparations, the Defence conceded that Shala could be held liable for and ordered to repair harm caused by others who can be considered jointly liable. See Response Brief, paras 43-44.

¹⁹² Response Brief, para. 47.

85. Concerning Shala's argument related to his responsibility for murder and the theory of *novus actus interveniens*, Victims' Counsel responds that: (i) this argument should be summarily dismissed as it was not made in first instance before the Trial Panel;¹⁹³ and (ii) it should also be rejected on the merits since, following Shala's conviction for murder, this argument is of no relevance to the determination of his liability for reparations.¹⁹⁴

86. In his reply, Shala reiterates, with reference to jurisprudence of the ICJ, that the requirement to show a link between the wrongful conduct and the harm for the purpose of reparations is the essence of the applicable test of causation.¹⁹⁵ Shala adds that the "but/for" test applied by the ICC should not have been applied before the Specialist Chambers because of the "different context" of persons being charged before the ICC, who have "leading roles in armed conflicts".¹⁹⁶

87. Shala further replies that Victims' Counsel fails to explain why the fact that a conviction was entered against him on the basis of JCE liability should relieve the Trial Panel of its obligation to link specific harm suffered by victims to Shala's culpable conduct.¹⁹⁷ Shala adds that, in accordance with the ICC Appeals Chamber's findings in the *Ntaganda* Appeal Judgment on Reparations, the degree of culpability and the portion of liability should have been assessed by the Trial Panel.¹⁹⁸

88. Finally, with respect to his *novus actus interveniens* argument, Shala disagrees with Victims' Counsel's position that his argument should be dismissed on the basis that it was not specifically made before the Trial Panel.¹⁹⁹ To this end, Shala contends

¹⁹³ Response Brief, paras 48-49.

¹⁹⁴ Response Brief, paras 48, 50.

¹⁹⁵ Reply Brief, para. 24.

¹⁹⁶ Reply Brief, para. 23.

¹⁹⁷ Reply Brief, para. 25. Shala further replies that Victims' Counsel's statement that requiring a causal link between a defendant's culpable conduct and the harm is "impracticable" is not an argument capable of absolving the Trial Panel's responsibility for properly considering causation. See Reply Brief, para. 26.

¹⁹⁸ Reply Brief, para. 25, referring to *Ntaganda* Appeal Judgment on Reparations, paras 259-260, 274.

¹⁹⁹ Reply Brief, para. 27.

that in order to determine his civil liability for murder, his criminal conviction must first be final, and his intention and contribution to murder needs to be assessed and reflected in an award that is proportionate to his culpable conduct.²⁰⁰

2. Assessment of the Court of Appeals Panel

89. The Appeals Panel observes that the Trial Panel indicated the following with regard to the applicable causation standards:

The Panel recalls that, pursuant to Article 22(1) of the Law and Rule 2 of the Rules, “[a] Victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a *direct result of* a crime within the jurisdiction of the Specialist Chambers” [emphasis added]. It notes that neither the Law nor the Rules define the precise requirements of the causal link between the crime and the relevant harm for the purposes of reparations.

[...]

As for factual causation, the Panel adopts the “but/for” relationship between the crime and the harm, which means that but for the crime(s) committed by the convicted person, the harm would not have occurred.

As regards proximate cause or legal cause, the Panel endorses the Pre-Trial Judge’s conclusion in the context of victims’ participation, namely that the harm is the direct result of the crime: where, in the circumstances prevailing at the relevant place and time and taking in consideration the personal situation of the victim, the acts or omissions of the perpetrator(s) would most likely bring about that harm, as viewed by an objective observer.²⁰¹

90. The Appeals Panel observes that the causation standards set out above, beginning with Article 22(1) of the Law and Rule 2 of the Rules, and irrespective of whether factual or legal causation is concerned, require a link between the crime and the harm. The Appeals Panel considers that the ordinary meaning of Article 22(1) of the Law and Rule 2 of the Rules is clear in this respect. The Appeals Panel further considers that this reading of the Law and the Rules reflects the context in which

²⁰⁰ Reply Brief, para. 27.

²⁰¹ Reparation Order, paras 60-63 (references omitted).

reparations arise at the Specialist Chambers – namely, a legal system establishing individual criminal liability for crimes proscribed under the Law.²⁰² Thus, reparations are to be awarded based on the harm suffered as a direct result of the commission of a crime within the jurisdiction of the Specialist Chambers in relation to which a person has already been convicted.²⁰³ The Appeals Panel also observes that this interpretation is consistent with the well-established jurisprudence of the ICC.²⁰⁴

91. The Appeals Panel will now turn to Shala’s more specific arguments as to the Trial Panel’s alleged errors concerning, respectively, the factual and legal causation standards set out by the Trial Panel.

92. With respect to the “but/for” test for factual causation, Shala argues that the typical application of this test requires an assessment of “whether the damage would have occurred if the tortfeasor had not acted in the way he did”. The Appeals Panel notes that the source to which Shala refers is a textbook on tort liability.²⁰⁵ The Appeals Panel further observes that the “typical application” of the “but/for” test in the context of tort law does not include a nexus to a criminal conviction as is the case for the reparations ordered by the Trial Panel against Shala. In the current proceedings, there is a nexus to a criminal conviction. Therefore, the conviction forms the basis of the assessment for the “but/for” test.

93. As to Shala’s argument that the “but/for” test applied by the ICC should not have been applied before the Specialist Chambers because of the “different context”,²⁰⁶ the Appeals Panel notes, as a preliminary matter, that the Trial Panel relied on

²⁰² See similarly *Lubanga* Appeal Judgment on Principles of Reparations, para. 65.

²⁰³ See similarly *Lubanga* Appeal Judgment on Principles of Reparations, para. 79.

²⁰⁴ See *Ongwen* Reparation Order, para. 418; *Ntaganda* Reparation Order, para. 131; *Lubanga* Appeal Judgment on Principles of Reparations, para. 80. See above, para. 39.

²⁰⁵ Appeal Brief, para. 6, referring to Van Dam, C., *European Tort Law* (Second Edition), Oxford University Press 2023, p. 310.

²⁰⁶ Reply Brief, para. 23. Contra Reparation Order, para. 30.

jurisprudence of the ICC in setting out this test.²⁰⁷ The Appeals Panel considers that, irrespective of the accuracy of Shala's specific affirmation that persons convicted before the ICC have "leading roles in armed conflicts", Shala fails to demonstrate why this has any bearing on the applicable test for causation in reparation proceedings stemming from criminal convictions.²⁰⁸

94. Finally, while Shala refers to the jurisprudence of the ICJ – related to the international responsibility of States – he does not elaborate on its relevance to the present proceedings for the specific purposes of establishing the test for causation in the determination of the civil liability of individuals found guilty of international crimes.²⁰⁹

95. Turning to Shala's arguments which the Appeals Panel understands to concern legal causation, the Appeals Panel observes that the Trial Panel relied on jurisprudence of the ICC²¹⁰ in setting out the applicable legal causation standard.²¹¹

96. Shala submits that the Trial Panel erred in respect of two findings clarifying how it interpreted the test for legal causation.²¹² Specifically, Shala contests the Trial

²⁰⁷ See Reparation Order, fn. 91, referring to *Mustafa* Reparation Order, referring to *Lubanga* Amended Decision Establishing Principles on Reparation, para. 59.

²⁰⁸ The Appeals Panel moreover considers that Shala fails to explain the relevance of the role of the Trust Fund for Victims at the ICC to the establishment of the test for factual causation. See Reply Brief, para. 23.

²⁰⁹ See Reply Brief, para. 24, fn. 28. In addition, the Panel notes that the ICJ does not require a link between "the wrongful *conduct* and the harm" as alleged by the Defence but "a causal nexus between the internationally wrongful *act* and the injury suffered" (emphasis added). Compare Reply Brief, para. 24, with *Armed Activities in Congo* Reparations Judgment, para. 93; *Certain Activities by Nicaragua* Compensation Judgment, para. 32; *Ahmadou Sadio Diallo* Compensation Judgment, para. 14; *Application of the Convention against Genocide* Judgment, para. 462.

²¹⁰ Reparation Order, fn. 92, referring to Framework Decision on Victims' Applications, para. 45, referring to, *inter alia*, *Bemba* Fourth Decision on Victims' Participation, para. 77.

²¹¹ See above, para. 89.

²¹² See above, para. 89, referring to the Trial Panel's enunciation of the test for legal causation: "As regards proximate cause or legal cause, the Panel endorses the Pre-Trial Judge's conclusion in the context of victims' participation, namely that the harm is the direct result of the crime: where, in the circumstances prevailing at the relevant place and time and taking in consideration the personal situation of the victim, the acts or omissions of the perpetrator(s) would most likely bring about that harm, as viewed by an objective observer." See Reparation Order, paras 60-63.

Panel's findings that: (i) for the purpose of legal causation, "the crime [need not] have *significantly* contributed to the harm";²¹³ and (ii) sufficient proof of harm arising from the crimes for which Shala was convicted suffices to satisfy the test of legal causation.²¹⁴ Shala argues that, as a consequence of these findings, the Trial Panel failed to: (i) link his conduct with each perceived harm;²¹⁵ and (ii) consider the extent to which any culpable conduct by him, as opposed to other perpetrators, may have contributed to the harm.²¹⁶

97. The two findings contested by Shala refer to the crimes, rather than Shala's conduct, as the starting point of the test of legal causation. The Appeals Panel considers that at the core of Shala's arguments on legal causation is a lack of acceptance that the crimes for which he was convicted form the basis of his obligation to repair harm and are therefore the starting point of legal causation – irrespective of whether others were, as is the case in the Trial Judgment,²¹⁷ found to have jointly committed those crimes. The Appeals Panel has already addressed above²¹⁸ the legal basis for this starting point and Shala fails to provide any support capable of refuting this starting point. Shala refers to a domestic case concerning contributory negligence²¹⁹ – a bar to tort liability in some jurisdictions²²⁰ – but fails to explain its relevance. As to Shala's reference to the *Ntaganda* Appeal Judgment on Reparations,²²¹ the ICC Appeals Chamber specifically held that "[the *Ntaganda* Trial Chamber] correctly proceeded on the understanding that other persons' contribution to the harm

²¹³ Appeal Brief, para. 7, referring to Reparation Order, fn. 93 (emphasis in original), referring to *Mustafa* Reparation Order, para. 97, and references cited therein; Reply Brief, paras 19 (referring to Reparation Order, fn. 93), 20.

²¹⁴ Appeal Brief, para. 10, referring to Reparation Order, para. 99.

²¹⁵ See above, paras 76-77.

²¹⁶ See above, paras 76, 78.

²¹⁷ See Trial Judgment, paras 1003, 1008, 1037-1039, 1103.

²¹⁸ See above, paras 89-90.

²¹⁹ Appeal Brief, fn. 13, referring to England and Wales, House of Lords, *Caswell v. Powell Duffryn Associated Collieries, Ltd.*, [1940] AC 152, 1940, p. 165.

²²⁰ See Garner, Bryan A. (ed.), *Black's Law Dictionary*, Thomson Reuters 2015 (10th ed.), p. 870.

²²¹ See above, para. 87.

resulting from the crimes for which the person has been convicted is irrelevant to that person's liability".²²²

98. Additionally, the Appeals Panel observes that the core of Shala's legal causation argument²²³ was addressed and dismissed by the Trial Panel.²²⁴ In this respect, Shala merely repeats an argument raised at trial without demonstrating that the Trial Panel's rejection of that argument constitutes an error warranting the intervention of the Appeals Panel.²²⁵

99. Finally, as to Shala's argument that he cannot be held criminally liable for the death of the Murder Victim because the Trial Panel failed to consider the *novus actus interveniens* of the refusal to transfer the Murder Victim to the hospital, the Appeals Panel notes that Shala did not previously raise the specific issue of *novus actus interveniens* either before the Trial Panel or the Appeals Panel.²²⁶ Moreover, the Appeals Panel recalls that Shala's conviction for murder is now final following the delivery of the Appeal Judgment.²²⁷ The Panel considers in this regard that appeal

²²² Ntaganda Appeal Judgment on Reparations, para. 271. See also Ntaganda Appeal Judgment on Reparations, paras 269, 273. The Appeals Panel notes that Shala refers to different passages of the Ntaganda Appeal Judgment on Reparations concerning a different matter, which the Appeals Panel does not find relevant to the present question (see Reply Brief, para. 25, referring to Ntaganda Appeal Judgment on Reparations, paras 259-260). The referred to portions of this judgment concern the Ntaganda Trial Chamber's failure to explain the manner in which it "discounted the amount of Mr Ntaganda's liability", if at all, when it considered the award of 30 million USD to be "fair" and in what way it was "appropriate" and took "a conservative approach". See Ntaganda Appeal Judgment on Reparations, paras 257-260.

²²³ The Appeals Panel observes that, before the Trial Panel, the Defence worded its argument in a slightly different manner, arguing that Victims' Counsel failed to demonstrate that the harm suffered was a *direct result* of the crimes for which Shala had been accused, and therefore failed to demonstrate the causal link between the harm and the crimes. See Defence Response to Victims Request for Reparations, paras 15, 29, 42, 58, 61. However, the Appeals Panel notes that the Trial Panel appears to have understood this argument as alleging that "the crimes which resulted in the Victims' suffering were not carried out by the acts of Mr Shala", which mirrors the Defence's first ground of appeal. Compare Reparation Order, para. 99, with e.g. Notice of Appeal, para. 3; Appeal Brief, para. 7; Reply Brief, para. 20.

²²⁴ Reparation Order, para. 99.

²²⁵ See above, paras 42, 47.

²²⁶ See generally Appeal Brief Against Trial Judgment; Defence Final Trial Brief.

²²⁷ See Appeal Judgment, paras 793-864, 938. See above, paras 70-71.

proceedings against the Reparation Order are not an opportunity for Shala to relitigate matters related to his criminal liability.²²⁸

100. In view of the above, the Appeals Panel considers that Shala fails to demonstrate that the Trial Panel misidentified and failed to provide a legal basis for the causal link that it required between the crime and the harm.

101. Accordingly, the Appeals Panel dismisses Shala's Ground 1.

C. ALLEGED ERRORS IN PRESUMING SPECIFIC HARM AND MAKING ARBITRARY AWARDS (GROUND 2)

102. As observed above, the Trial Panel found that the appropriate standard of proof for reparations is the "balance of probabilities" standard, according to which a victim must demonstrate that it is more probable than not that he or she suffered harm as a consequence of one of the crimes of which Shala was convicted.²²⁹ As further noted above, the Trial Panel considered that, once a victim has made such demonstration, certain harms may be presumed, and the Trial Panel "may rely upon circumstantial evidence when a victim lacks direct proof".²³⁰ However, the Trial Panel specified that, when resorting to presumptions, it must respect the rights of the victims as well as those of the convicted person.²³¹

103. Shala argues that the conclusions drawn by the Trial Panel on his civil liability, specifically on the basis of certain factual presumptions that he challenges, would not have been made by any reasonable trier of fact.²³² Victims' Counsel responds that Shala's claim should be dismissed, as, arguably, he does not demonstrate that any of the alleged instances of the use of presumptions are unreasonable and he

²²⁸ See *Ongwen* Appeal Judgment on Reparations, para. 197.

²²⁹ Reparation Order, para. 69. See also above, para. 35.

²³⁰ Reparation Order, paras 70, 90. See also above, para. 36.

²³¹ Reparation Order, para. 69.

²³² Appeal Brief, paras 15-22; Notice of Appeal, paras 6-10.

mischaracterises as presumptions conclusions made by the Trial Panel on the basis of evidence.²³³

1. Submissions

104. The Defence submits that two of the Trial Panel's factual presumptions as to the harm suffered by the Victims would not have been made by any reasonable trier of fact.²³⁴ First, Shala argues that the Trial Panel erred in that no reasonable trier of fact could have adopted the presumption that, had V01/04 and W04733 (the "Primary Victims") not been arbitrarily detained and tortured at the KMF, they would have more likely than not been able to pursue an average career path and continue to gain employment with regular income.²³⁵

105. Second, Shala contends that the Trial Panel presumed that the accusations about V01/04 and W04733 being traitors, spies and/or Serb collaborators were ill-founded.²³⁶ Instead, Shala argues that the Trial Panel should have considered whether there were sufficient grounds to believe that such allegations were accurate.²³⁷ Shala contends that, as a result of the above presumption, the Trial Panel erred by considering him liable for material harm with regard to W04733's family members - the "Indirect Victims" - in the form of the loss of opportunity due to the social stigma they experienced as a result of the allegations against W04733.²³⁸

²³³ Response Brief, paras 51-70.

²³⁴ Appeal Brief, para. 16; Notice of Appeal, paras 6-10. The Panel notes that, in footnote 18 of the Appeal Brief, the Defence cites several paragraphs of the Reparation Order, without demonstrating why it considers that the Trial Panel erred in these specific instances. Recalling that the Appeals Panel cannot be expected to consider a party's submissions if they are obscure, contradictory, vague, unsubstantiated or suffer from other formal and obvious insufficiencies, the Appeals Panel declines to address these submissions. See Appeal Brief, fn. 18. See also above, para. 41.

²³⁵ Appeal Brief, paras 17-18, 26, referring to Reparation Order, paras 118-119, 140-141.

²³⁶ Appeal Brief, para. 19.

²³⁷ Appeal Brief, paras 16, 19, 32.

²³⁸ Appeal Brief, paras 19-21, 23, 30-32. For the reasons developed below, the Appeals Panel considers that the following arguments Shala briefly mentions were either abandoned or are insufficiently developed, and therefore dismisses them: (i) while, in a footnote of the Notice of Appeal, Shala cites the paragraphs of the Reparation Order wherein the Trial Panel found that the accusations of being a "spy"

106. In support of his argument, Shala relies on ECtHR jurisprudence to contend that “[i]n the face of well-founded suspicions and/or accusations that the [Primary] [V]ictims had indeed collaborated with enemy forces, they cannot complain of the impact of their actions on their reputation”.²³⁹ Shala further argues that he cannot be held financially liable neither for “measures or acts targeting or affecting the participating victims *by others*”,²⁴⁰ nor for a loss of opportunity due to the Indirect Victims’ own decisions to interrupt formal education.²⁴¹

107. Victims’ Counsel responds that the use of presumptions in reparation proceedings in itself is not an error, and Shala fails to demonstrate that any of the alleged instances of the use of presumptions is wrong and unreasonable.²⁴² Additionally, Victims’ Counsel submits, with regard to Shala’s two lines of argument challenging presumptions, that Shala seems to confuse presumptions of harm with the assessment of evidence conducted against the balance of probabilities standard.²⁴³

108. First, Victims’ Counsel argues that it is reasonable to conclude 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

or a “collaborator” cast a long-lasting social stigma on V01/04 and his family, this argument has not been developed in the Appeal Brief or in the Reply Brief (see Notice of Appeal, fn. 10, referring notably to Reparation Order, paras 111-113); (ii) while Shala indicates that his argument as to the harm resulting from the stigma concerns “all victims”, in fact he only refers to the harm suffered by W04733’s family members (see Appeal Brief, fns 25, 28-29, referring to Reparation Order, paras 139, 143, 200-201); and (iii) while Shala briefly refers in his Appeal Brief to the paragraph of the Reparation Order wherein the Trial Panel found that the Indirect Victims suffered mental harm due to the social stigma on their family (see Appeal Brief, fns 25, 29, referring to Reparation Order, para. 139), he does not elaborate on such mental harm nor does he refer to the subsequent relevant paragraph of the Reparation Order wherein the Trial Panel established the appropriate amount imposed on Shala to repair such mental harm (see Appeal Brief, fns 25, 28-29, referring to Reparation Order, paras 139, 143, 200-201 (and not referring to Reparation Order, para. 198)). See above, paras 41, 46.

²³⁹ Appeal Brief, para. 20.

²⁴⁰ Appeal Brief, paras 20 (emphasis in original), 32.

²⁴¹ Appeal Brief, paras 21, 23, 30-31.

²⁴² Response Brief, para. 52.

²⁴³ Response Brief, para. 53. Victims’ Counsel refers to: (i) V01/04’s and W04733’s harm in the form of not being able to pursue an average career path; and (ii) their harm in the form of social stigma and loss of opportunities. See Response Brief, para. 53.

KMF.²⁴⁴ In Victims' Counsel's view, in entering these findings the Trial Panel did not rely on presumptions but drew conclusions from the evidence as to the likely way the future would have unfolded.²⁴⁵ Victims' Counsel submits that the Trial Panel's conclusion challenged by Shala with regard to V01/04's loss of earning and damage to his life plan is based on the Trial Panel's finding that he was not able to work as a result of fear connected to the crimes committed at the KMF, which was based on [REDACTED].²⁴⁶ Victims' Counsel contends that similar findings were made in relation to W04733.²⁴⁷ With respect to V01/04, Victims' Counsel adds that the amounts sought and ordered in the Reparation Order fall below what would have been necessary to repair his harm and, even if Shala was correct in his contention that following an average career path was an unreasonable conclusion, he fails to explain how the calculation of V01/04's material harm should have been approached differently.²⁴⁸

109. Second, Victims' Counsel submits that Shala's argument in relation to the harm resulting from loss of opportunities due to social stigma should be summarily dismissed as he did not raise it before the Trial Panel, and the suggestion that V01/04 and W04733 were, in fact, collaborators is a "fact-sensitive decision" unsuited to appellate proceedings.²⁴⁹ If considered on the merits, Victims' Counsel avers that the argument that the Victims may have contributed to their own loss of opportunities should be dismissed, since the evidence demonstrates that the social stigma of being perceived as a family of spies actually stemmed from the fact that the Primary Victims were detained and mistreated at the KMF.²⁵⁰ In Victims' Counsel's view, the ECtHR

²⁴⁴ Response Brief, sub-section (a) (p. 19), paras 54-59.

²⁴⁵ Response Brief, paras 54, 58-59.

²⁴⁶ Response Brief, para. 55, referring to Trial Judgment, para. 685.

²⁴⁷ Response Brief, para. 56, referring to Reparation Order, para. 140.

²⁴⁸ Response Brief, paras 60-61. In relation to Shala's claim that the Trial Panel failed to assess whether the harm could be imputed to him, Victims' Counsel refers to his submissions in respect of Ground 1. See Response Brief, para. 62.

²⁴⁹ Response Brief, paras 63-66, 95.

²⁵⁰ Response Brief, paras 67-68, 91, 94. See also Response Brief, para. 92.

case law on which Shala relies is irrelevant since there has been no finding that the stigma suffered by the Victims was a consequence of their own actions, and no meaningful comparison can be made with an alleged violation of Article 8 of the ECHR.²⁵¹ Finally, Victims' Counsel adds that such an argument constitutes an "egregious example of victim-blaming which is wholly unsubstantiated by the facts".²⁵²

110. Shala replies that he did not argue that the use of presumptions in reparation proceedings is itself an error.²⁵³ He reiterates that the Trial Panel's inferences that the Primary Victims would have been able to pursue an average career path and to gain full employment were based on presumptions and projections, which were erroneously taken for granted.²⁵⁴ Shala also contends that the evidence shows that V01/04 remained economically active after his detention at the KMF, and that the Trial Panel failed to explain what opportunities V01/04 is considered to have lost.²⁵⁵

111. Shala further replies that he previously raised during the trial the argument that the Primary Victims collaborated with the enemy, however he could neither foresee nor challenge a specific harm caused by the perceived "social stigma" because that question only materialised in the Reparation Order.²⁵⁶ While he admits that a comparison between a breach of Article 8 of the ECHR and the present case is not relevant, he reiterates his interpretation stemming from the ECtHR jurisprudence.²⁵⁷ Finally, Shala argues that he had no intention of victim-blaming, but finds it "unjust" that the Trial Panel found him liable to pay damages for the harm allegedly caused by

²⁵¹ Response Brief, paras 68-69.

²⁵² Response Brief, para. 70.

²⁵³ Reply Brief, para. 28.

²⁵⁴ Reply Brief, para. 29.

²⁵⁵ Reply Brief, para. 30.

²⁵⁶ Reply Brief, para. 31.

²⁵⁷ Reply Brief, para. 31.

the said social stigma, while he considers that the harm was a result of autonomous decisions made by some of the Victims.²⁵⁸

2. Assessment of the Court of Appeals Panel

112. The Appeals Panel first turns to Shala's claim that the Trial Panel erred in relying on a presumption in concluding that had V01/04 and W04733 – the Primary Victims – not been arbitrarily detained and tortured at the KMF, they would have more likely than not been able to pursue an average career path and continue to gain employment with regular income.²⁵⁹ As a preliminary matter, while noting that Shala argues that the Trial Panel based its finding on a presumption, the Appeals Panel observes that the wording used by the Trial Panel indicates that it entered these findings on the basis of the balance of probabilities standard.²⁶⁰ The Appeals Panel will thus proceed to examine whether no reasonable trier of fact could have reached these findings.

113. The Appeals Panel has considered the sub-findings and related evidence on which the Trial Panel relied in respect of the above findings.²⁶¹ The Appeals Panel observes, in particular, that the Trial Panel found that, as a direct result of the physical and/or mental harm arising from the crimes committed against them at the KMF, both V01/04 and W04733 were unable to work.²⁶² In coming to this conclusion, the Trial Panel found that they both suffered long-lasting physical and mental harm due the arbitrary detention and mistreatment that they endured at the KMF.²⁶³ The Trial Panel relied on the evidence available on the record to find that such physical and/or mental harm had an impact on other aspects of their lives, in particular on their capacity to

²⁵⁸ Reply Brief, para. 31.

²⁵⁹ Appeal Brief, paras 17-18, 26, referring to Reparation Order, paras 118-119, 140-141.

²⁶⁰ See Reparation Order, paras 119, 141 (in both instances, the Trial Panel explicitly uses the formulation "would have been more likely than not"). See also Reparation Order, para. 69.

²⁶¹ See Reparation Order, paras 103-113, 115-116, 118-122, 126-135, 140-141, 144, 195.

²⁶² Reparation Order, paras 115, 140.

²⁶³ Reparation Order, paras 103-113, 116, 126-135.

gain full employment and regular income.²⁶⁴ The Appeals Panel notes in this regard the Trial Panel's reliance on the [REDACTED] and V01/04's testimony with respect to himself,²⁶⁵ and on the testimonies of V03/04 and V02/04 in relation to W04733.²⁶⁶

114. With respect to Shala's claim that the evidence shows that V01/04 remained economically active after his detention at the KMF,²⁶⁷ the Panel observes that the exhibit to which Shala points, D00096, which indicates that V01/04 [REDACTED],²⁶⁸ was admitted into evidence and was therefore before the Trial Panel at the time it delivered the Trial Judgment and the Reparation Order.²⁶⁹ The Panel recalls that it is to be presumed that the Trial Panel evaluated all the evidence before it, as long as there is no indication that it completely disregarded any particular piece of evidence.²⁷⁰ Accordingly, if a trial panel did not refer to a specific piece of evidence in its findings, it is to be presumed that it assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.²⁷¹ Moreover, the Panel recalls that trial panels have broad discretion in determining the appropriate weight to be given to evidence.²⁷² The Appeals Panel notes that, in light of the evidence on the record, including exhibit D00096 of which the Panel considers the Trial Panel was aware,²⁷³ the Trial Panel nevertheless found that: (i) as a result of his fear, V01/04 was not able to continue his employment,²⁷⁴ and (ii) the crimes for which Shala was convicted contributed to V01/04's loss of earnings and damage to his life plan.²⁷⁵ In

²⁶⁴ Reparation Order, paras 118, 140, 196.

²⁶⁵ See Reparation Order, para. 115, fn. 182, and references cited therein; Trial Judgment, para. 685, and references cited therein.

²⁶⁶ See Reparation Order, para. 140, referring notably to Impact Statement, paras 178-179, and references cited therein; Transcript, 29 March 2023, pp. 875-876.

²⁶⁷ Reply Brief, para. 30, referring to D00096, pp. 1-4 (DPS01572-DPS01575) (confidential).

²⁶⁸ D00096 (DPS01572-DPS01575) (confidential).

²⁶⁹ See Trial Judgment, para. 1126.

²⁷⁰ See above, para. 48.

²⁷¹ See above, para. 48.

²⁷² See above, para. 51.

²⁷³ See Reparation Order, paras 191-193, 197; See also Lerz Report, ERN V4000005-V4000006, V4000009-V4000010, V4000013-V4000014; Defence Expert Report, ERN DPS01625, DPS01631, DPS01635.

²⁷⁴ Reparation Order, paras 115, 196; Trial Judgment, para. 685.

²⁷⁵ Reparation Order, para. 120.

other words, the Panel considers that whether V01/04 was economically active at some point after his detention – [REDACTED]²⁷⁶ – did not affect the Trial Panel’s finding establishing a causal link between the crimes and the harm suffered. The Panel notes in particular that the calculations in the Lerz Report actually took into account the factual elements included in this exhibit, i.e., the income earned by V01/04 [REDACTED].²⁷⁷ In addition, the Appeals Panel stresses that the award requested by Victims’ Counsel to compensate V01/04’s material harm – and found adequate and reasonable by the Trial Panel – was significantly lower than any of the amounts calculated by all experts corresponding to V01/04’s actual loss of income.²⁷⁸ The Appeals Panel therefore considers that the Defence fails to demonstrate that the Trial Panel erred in its assessment of the impact of V01/04’s economic activity after his detention, notably in relation to D00096.

115. Finally, the Panel turns to Shala’s argument that the Trial Panel failed to explain the opportunities that V01/04 lost.²⁷⁹ The Panel recalls that the Trial Panel found that, had the crimes not occurred and in light of his age at the time, V01/04 would have more likely than not been able “to pursue ‘an average career path’ and gain employment with regular income”.²⁸⁰ The Appeals Panel acknowledges that the Trial Panel did not provide further explanation regarding the specific opportunities V01/04 had lost. However, the Panel observes that all experts agreed that V01/04 incurred an income loss. More precisely, according to the Lerz Report, V01/04’s income loss amounted to either [REDACTED] euros in scenario 1 – where the starting point is

²⁷⁶ See e.g. Lerz Report, ERN V4000005; Defence Expert Report, ERN DPS01625, DPS01631, DPS01635; D00096 (DPS01572-DPS01575) (confidential).

²⁷⁷ See Lerz Report, ERN V4000005-V4000006, V4000009-V4000010, V4000013-V4000014. The Panel further notes that the Defence Expert Report also mentions this income on several occasions, and ultimately only calculates V01/04’s loss of income starting from [REDACTED]. See Defence Expert Report, ERN DPS01625, DPS01634-DPS01640.

²⁷⁸ The Panel notes that the final amount of 60,000 euros requested by Victims’ Counsel for V01/04’s loss of income is much lower than the calculations in the Lerz Report (amounting to [REDACTED]), as well as the calculations in the Defence Expert Report (amounting to [REDACTED] euros). See Reparation Order, para. 197, and references cited therein. See also Reparation Order, paras 191-193.

²⁷⁹ See Reply Brief, para. 30.

²⁸⁰ Reparation Order, para. 119. See also Reparation Order, para. 196.

[REDACTED], or to [REDACTED] euros according to scenario 2 – based on [REDACTED].²⁸¹ Moreover, the Defence expert calculated V01/04's income loss to reach a minimum of [REDACTED] euros,²⁸² an amount also significantly higher than the award the Trial Panel found reasonable to compensate for such material harm.²⁸³ While it may have been preferable for the Trial Panel to further elaborate its reasoning, the Panel considers that the income loss incurred by V01/04 – and therefore the material harm suffered – has been sufficiently established. Recalling that a trial panel is not required to articulate every step of its reasoning provided that it indicates with sufficient clarity the basis for its decision,²⁸⁴ the Appeals Panel considers that Shala fails to demonstrate that the Trial Panel provided insufficient reasoning.

116. In light of the above, the Appeals Panel finds that Shala fails to demonstrate that the Trial Panel erred in finding, based on the evidence before it, that had the crimes against V01/04 and W04733 not occurred, they would have more likely than not been able to pursue an average career path and gain employment with regular income.

117. The Appeals Panel now turns to Shala's second argument that the Trial Panel erred in finding him liable for material harm in the form of loss of opportunity for W04733's family members (V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04, together, the Indirect Victims) resulting from the social stigma they suffered because the Primary Victims were considered by the KLA as traitors, spies, and/or Serb collaborators.²⁸⁵ The Appeals Panel understands that the crux of Shala's claim is that he was held financially liable to provide compensation in respect of the material harm suffered by W04733's family members in the form of loss of opportunities, resulting from the stigma they experienced as a consequence of the allegations against

²⁸¹ Lerz Report, ERN V4000004-V4000015.

²⁸² Defence Expert Report, ERN DPS01634-DPS01640.

²⁸³ See Reparation Order, para. 197.

²⁸⁴ See above, para. 48.

²⁸⁵ See Appeal Brief, paras 19-21, 23, 30-32; Reply Brief, para. 31. See above, fn. 238.

W04733.²⁸⁶ For the reasons set out below, the Panel considers this argument to be without merit.

118. The Appeals Panel observes that the Reparation Order is structured as follows: the Trial Panel determined, first, the scope and extent of harm suffered by the Victims, and, second, the scope of Shala's liability for reparations, including the amount of the reparation award due to the Victims.²⁸⁷ The Appeals Panel notes that, in the latter part of the Reparation Order related to Shala's financial liability, the Trial Panel ordered Shala to pay a total sum of 50,000 euros to compensate collectively V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 for the material harm they suffered.²⁸⁸ The Panel observes that this total sum for material harm encapsulates an amount of 20,000 euros with regard to W04733's income loss, and of 30,000 euros to compensate for his medical costs.²⁸⁹ Consequently, with respect to the total amount of 50,000 euros granted to the Indirect Victims for material harm on the basis of the Victims Request for Reparations,²⁹⁰ the Panel notes that no portion of this amount is meant to

²⁸⁶ See notably Appeal Brief, para. 20 ("the relevant question for our purposes, namely the need to assess the fairness of the reparation award issued against Mr Shala, is [...] whether he, Mr Shala, can be deemed personally liable for measures or acts targeting or affecting the participating victims *by others*" (emphasis in original); "the award made to repair harm allegedly suffered by W04733's children [...] and the finding that Mr Shala bears responsibility for such hypothetical harm is arbitrary"); Reply Brief, para. 31 ("[t]he 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."). See also Appeal Brief, fn. 29, referring in particular to Reparation Order, paras 200-201.

²⁸⁷ See Reparation Order, para. 29. In relation to the scope and extent of harm, see Reparation Order, paras 101-144 (and, with respect to the Indirect Victims, see in particular Reparation Order, paras 136-144). With regard to the scope of Shala's liability for reparation, see Reparation Order, paras 176-181, 194-207 (with respect to the Indirect Victims, see in particular Reparation Order, paras 136-144, 198-202, 204, 206). See also Reparation Order, paras 182-193.

²⁸⁸ Reparation Order, paras 204, 206, 239.

²⁸⁹ Reparation Order, paras 199-201.

²⁹⁰ In this regard, the Trial Panel clearly indicated that Victims' Counsel's request of a final sum of 50,000 euros was "on the conservative end of any estimates of the material harm suffered by the family of W04733", notably because "the estimates of the Lerz Report *do not account for any loss of earnings incurred by the Indirect Victims themselves*". See Reparation Order, para. 200 (emphasis added); Victims Request for Reparations, paras 54, 58. In addition, the Trial Panel stated that "it will refrain from exceeding [the Victims Request for Reparations] when setting the amount of Shala's financial liability and corresponding reparation awards, except under exceptional circumstances". See Reparation Order, para. 180. See also Reparation Order, para. 178.

compensate for any loss of opportunities, or damage to the life plan of W04733's family members, including as a consequence of the social stigma that they were found to have endured.²⁹¹ In other words, the Panel understands that Shala was ultimately not held financially liable to compensate the material harm stemming from the lost opportunities of W04733's children, and was not ordered to pay any monetary award in this respect. Considering that Shala did not demonstrate any prejudice in terms of the financial award since he was ultimately not held financially liable for material harm in the form of loss of opportunities for the Indirect Victims stemming from the social stigma they encountered, the Appeals Panel considers that Shala's argument is without merit.²⁹²

119. The Appeals Panel notes that Shala further argues that the Trial Panel presumed that the accusations about V01/04 and W04733 being traitors, spies and/or Serb collaborators were ill-founded.²⁹³ Shala contends that this presumption led the Trial Panel to erroneously conclude that "the crimes committed against W04733 altered the family members' life path, as the stigma associated to what happened to W04733 at the KMF extended to the family, which was seen as a family of spies, and triggered an associated loss of opportunities".²⁹⁴ The Appeals Panel observes that the Trial Panel entered this finding in the general section of the Reparation Order related to the harm suffered by the Victims, as opposed to the section related to the scope of Shala's liability for reparations. For the following reason, the Appeals Panel finds that the alleged erroneous presumption was not the basis for the Trial Panel's recognition of the harm suffered by the Indirect Victims.

120. The Panel notes that the Trial Panel found that the social stigma experienced by W04733's family was the result of "what happened to W04733" and the crimes

²⁹¹ See Reparation Order, para. 143.

²⁹² The Appeals Panel recalls that the appealing party must demonstrate an error that either invalidated the decision or led to a miscarriage of justice. See above, para. 35.

²⁹³ See above, para. 105, and references cited therein.

²⁹⁴ See Reparation Order, para. 143.

committed against him.²⁹⁵ In other words, irrespective of the veracity of the KLA's allegations against W04733, the social stigma (and subsequent harm) experienced by his family was the result of W04733's detention and mistreatment at the KMF and is thus a direct consequence of the crimes for which Shala was convicted. Therefore, the *crimes*, rather than the said allegations, were the direct cause of the stigma and of the linked material harm in the form of loss of opportunities for W04733's children. In these circumstances, the Appeals Panel finds that it was not necessary for the Trial Panel to assess whether these accusations or suspicions of collaboration were ill-founded. It therefore rejects Shala's arguments²⁹⁶ in this respect.²⁹⁷

121. In view of the above, the Appeals Panel considers that Shala fails to demonstrate that no reasonable trier of fact could have found that: (i) had the crimes against V01/04 and W04733 not occurred, they would have more likely than not been able to pursue an average career path and gain employment with regular income; and (ii) the Indirect Victims suffered material harm as a result of the social stigma stemming from the crimes committed against W04733 at the KMF.

122. Accordingly, the Appeals Panel dismisses Shala's Ground 2.

²⁹⁵ Reparation Order, para. 143. See also Reparation Order, paras 200 ("the stigma the family experienced *as a result of W04733's detention at the KMF*" (emphasis added)), 201 ("the entire family as such has suffered mental and material harm *as a result of the crimes committed against W04733* and the associated stigma of being labelled as a 'traitor', 'spy', or 'Serb collaborator', as all the family members were seen 'as a family of spies by some people, or considered as such', *because of what happened to W04733.*" (emphasis added)).

²⁹⁶ See Appeal Brief, para. 19.

²⁹⁷ Since the Trial Panel found that the stigma was a result of the crimes committed against W04733, the Appeals Panel similarly rejects Shala's argument, citing ECtHR jurisprudence, that "[i]n the face of well-founded suspicions and/or accusations that the victims had indeed collaborated with enemy forces, they cannot complain of the impact of their own actions on their reputations". See Appeal Brief, para. 20.

D. ALLEGED ERRORS REGARDING COMPENSATION FOR UNDEMONSTRATED LOSSES
(GROUND 3)

123. In light of the victim-centred approach to reparations, the Trial Panel decided to primarily rely on the Victims Request for Reparations to determine the amount of Shala's financial liability.²⁹⁸ The Trial Panel stressed in this regard that:

[I]t is not a requirement to furnish data as to the costs of medical treatments or other harm of financial or patrimonial nature, considering notably: (i) the lapse of more than twenty years since the commission of the crimes; (ii) the fact that [REDACTED] W04733 reported refraining from seeking certain medical treatment for [REDACTED] physical injuries, primarily out of fear or due to stigma; and (iii) the fact that at least one victim ([REDACTED]) suffered mental harm which has reportedly remained untreated until today.²⁹⁹

124. Having found that V01/04, as well as V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 – W04733's family members – provided proof to the requisite standard of the material harm suffered as a result of the war crimes for which Shala was convicted,³⁰⁰ the Trial Panel found it appropriate to award 60,000 euros to V01/04, and 50,000 euros collectively to V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 (Indirect Victims).³⁰¹

125. The Defence argues that the Trial Panel erred in law and in fact by issuing compensation awards without requiring demonstration of the actual harm suffered.³⁰² Specifically, Shala contends that the Trial Panel erred in entering findings as to material harm resulting from: (i) V01/04's loss of earnings³⁰³ and W04733's loss of

²⁹⁸ Reparation Order, para. 178.

²⁹⁹ Reparation Order, para. 179 (references omitted).

³⁰⁰ Reparation Order, paras 118-122, 140-144.

³⁰¹ Reparation Order, paras 197, 199-201, 203-204, 206, 239.

³⁰² Appeal Brief, paras 23-24; Reply Brief, para. 32; Notice of Appeal, para. 11.

³⁰³ Appeal Brief, paras 23-25; Reply Brief, para. 32.

opportunities;³⁰⁴ and (ii) W04733's medical costs.³⁰⁵ Victims' Counsel responds that Ground 3 should be rejected since, *inter alia*, the Trial Panel's approach was consistent with the jurisprudence of the ECtHR and the ICC, and Shala fails to demonstrate any error in the Trial Panel's assessment of the evidence.³⁰⁶

1. Alleged Errors in the Trial Panel's Awards for Loss of Earnings and Loss of Opportunities

(a) Submissions

126. With respect to V01/04, Shala submits that the Trial Panel erred in awarding 60,000 euros in reparations in the absence of concrete evidence demonstrating a loss of earnings or damage to his life plan.³⁰⁷ Shala asserts that the Trial Panel also failed to adequately consider V01/04's "long criminal record" when assessing his ability to pursue an average career path and secure regular income, as well as V01/04's lack of formal education, the economic crisis in Kosovo after the war and the effects of the COVID-19 pandemic.³⁰⁸ Shala submits that the Trial Panel failed to explain what it considered to be "an average career path" in general, or specifically in relation to V01/04's circumstances and realistic prospects.³⁰⁹

127. With regard to W04733, Shala submits that, when the Trial Panel concluded that without the crimes committed against W04733, he would have more likely than not been able to pursue an average career path, the Trial Panel erred in that there was

³⁰⁴ Appeal Brief, paras 23-24, 26; Reply Brief, para. 32.

³⁰⁵ Appeal Brief, paras 27-29; Reply Brief, para. 32. The Appeals Panel notes that, while Shala briefly mentions medical expenses in relation to V01/04, he only refers to the Trial Panel's general considerations stating that there is no requirement to furnish data as to the costs of medical treatments. See Appeal Brief, para. 27, fn. 45, referring to Reparation Order, para. 179. In addition, the Panel notes that the Trial Panel did not find that V01/04 had suffered material harm in the form of medical expenses. See Reparation Order, paras 118-121, 197. Therefore, the Panel considers that Shala's argument related to his liability for material harm with respect to medical expenses only pertains to the medical costs incurred by W04733 and his family.

³⁰⁶ Response Brief, paras 71-95, 115.

³⁰⁷ Appeal Brief, paras 23, 25, referring to, *inter alia*, Reparation Order, paras 197, 203, 239(f).

³⁰⁸ Appeal Brief, para. 25; Reply Brief, para. 32.

³⁰⁹ Appeal Brief, para. 25.

an absence of evidence demonstrating any concrete loss of opportunity or earnings.³¹⁰ Specifically, Shala contends that the Trial Panel did not consider W04733's retirement prior to his detention at the KMF and his age at that time ([REDACTED] years old).³¹¹ In addition, Shala contends that the Trial Panel failed to specify how the injuries W04733 suffered, caused by incidents that occurred at the KMF, impacted his ability to work.³¹²

128. In response to Shala's arguments with respect to V01/04's loss of income, Victims' Counsel argues that there was a "proper evidential foundation" for the Trial Panel's decision to award reparations to him, based on V01/04's testimony, and [REDACTED].³¹³ In Victims' Counsel's view, the Defence fails to demonstrate that the amount awarded was not appropriate.³¹⁴ Victims' Counsel argues that the Trial Panel's finding that V01/04 would have pursued "an average career path" is not unreasonable, and the Defence fails to link any specific offences of which V01/04 has been convicted "to the way in which that would have impeded his employment prospects to such a degree that he would have earned less than [REDACTED] euros per year".³¹⁵ Victims' Counsel also responds that the impact of the COVID-19 pandemic and of the economic situation in Kosovo were taken into account in the Defence Expert Report and the Lerz Report and that, in any event, such minor

³¹⁰ Appeal Brief, para. 26, referring to, *inter alia*, Reparation Order, para. 141.

³¹¹ Appeal Brief, para. 26.

³¹² Appeal Brief, para. 28.

³¹³ Response Brief, para. 74.

³¹⁴ Response Brief, paras 74-76. Victims' Counsel argues that the Trial Panel relied on expert reports from both Victims' Counsel and the Defence. See Response Brief, para. 74. In addition, Victims' Counsel recalls that the amount awarded equates to [REDACTED] euros per year, and was a little over a third of the figure established by the Defence's expert. Victims' Counsel argues that ordering a lower amount would have been "simply inappropriately, even insultingly, low". See Response Brief, paras 75-76.

³¹⁵ Response Brief, para. 77. Victims' Counsel also implies that the Defence fails to provide: (i) a basis for the suggestion that V01/04 would have earned less than the amount awarded; and (ii) an alternative figure for reparations for V01/04's material harm. See Response Brief, para. 79.

adjustments would have had no bearing on the final sum awarded by the Trial Panel.³¹⁶

129. In relation to W04733's loss of opportunities, Victims' Counsel responds that the modest sum of 20,000 euros was awarded to reflect the fact that W04733 was unable to gain paid employment after his release from the KMF and until reaching retirement age.³¹⁷ Victims' Counsel contends that the Defence's suggestion that W04733 retired prior to 1998 is misleading since W04733 was in fact dismissed from his functions "as part of [the] purge of Albanians from the police force", and later "physically and psychologically 'broken'" as a result of his detention at the KMF and consequently unable to work.³¹⁸

130. In reply, Shala reiterates that the Trial Panel erred in issuing the specific awards without requiring demonstration of actual damage suffered.³¹⁹ Shala also replies that Victims' Counsel conflates annual income with annual loss of income, and that the award of [REDACTED] euros per year reflects a "loss of income" and not V01/04's annual income.³²⁰ Shala further reiterates that having a criminal record may well constitute an obstacle to securing gainful employment.³²¹

(b) Assessment of the Court of Appeals Panel

131. The Appeals Panel will first address Shala's arguments related to the material harm suffered by V01/04, and in particular the Trial Panel's alleged error in awarding him 60,000 euros without any specific claim demonstrating a concrete loss of earnings or damage to V01/04's life plan.³²² The Appeals Panel notes that the Trial Panel took

³¹⁶ Response Brief, para. 78.

³¹⁷ Response Brief, para. 83. Victims' Counsel also argues that the sum calculated by Dr Lerz was not addressed by the Defence Expert and that the Trial Panel was entitled to regard it as guidance. See Response Brief, para. 83.

³¹⁸ Response Brief, paras 80-82.

³¹⁹ Reply Brief, para. 32.

³²⁰ Reply Brief, para. 32.

³²¹ Reply Brief, para. 32.

³²² See Appeal Brief, paras 23, 25.

into consideration the Victims Request for Reparations, which included a compensation claim of 60,000 euros for material harm in the form of loss of income, as well as the Impact Statement justifying such claim.³²³ In addition, the Trial Panel carefully analysed the contents of the Lerz Report and the Defence Expert Report, including in light of Kosovo legislation, to determine whether the compensation claim was adequate and reasonable.³²⁴ The Panel considers that: (i) the Victims Request for Reparation includes specific claims of material harm;³²⁵ (ii) the Lerz Report and Defence Expert Report provide detailed calculations on concrete income loss incurred by V01/04;³²⁶ and (iii) the Impact Statement demonstrates that such income loss is a result of the crimes committed against V01/04 at the KMF.³²⁷ The Panel therefore finds that Shala merely disagrees with the Trial Panel's findings without any substantiation of his claim. Recalling that, pursuant to its standard of review, the Appeals Panel cannot be expected to consider a party's submissions if they are unsubstantiated,³²⁸ the Panel dismisses Shala's argument that the Trial Panel erred in awarding 60,000 euros to V01/04 without any specific claim demonstrating concrete loss of earnings or damage to his life plan.

132. The Panel now turns to Shala's argument that the Trial Panel allegedly failed to consider a number of factors which could have had an impact on V01/04's career prospects or income, such as V01/04's criminal record and lack of formal education, as well as the impact of the economic crisis in Kosovo and of the COVID-19 pandemic.³²⁹ The Panel observes that, while these factors are referenced in the Defence

³²³ Reparation Order, para. 117, referring to Victims Request for Reparations, paras 31-32, 34 and Impact Statement, paras 92-96.

³²⁴ Reparation Order, para. 197, and references cited therein. See also Reparation Order, paras 192-193.

³²⁵ See Victims Request for Reparations, paras 31-32, 34.

³²⁶ Lerz Report, ERN V4000004-V4000005, V40000010-V40000011, V40000014-V40000015; Defence Expert Report, ERN DPS01634-DPS01640.

³²⁷ Impact Statement, paras 92-96.

³²⁸ See above, para. 41. See also Practice Direction on Filings, Articles 32(2), 47(1)(b)(2)-(3), 48(1)(b)(1)-(2); Appeal Judgment, para. 38; *Mustafa* Appeal Judgment, para. 29; *Gucati and Haradinaj* Appeal Judgment, para. 29.

³²⁹ Appeal Brief, paras 23-25; Reply Brief, para. 32.

Expert Report and in the Lerz Report,³³⁰ Shala failed to raise before the Trial Panel the specific argument that any of these factors impacted V01/04's career prospects or income when he responded to the compensation claim of material harm for V01/04 made in the Victims Request for Reparations.³³¹ In addition, with respect to V01/04's criminal record specifically, the Panel notes that Shala raised it on several occasions during the pre-trial and trial phases of the proceedings notably to challenge V01/04's credibility as a witness,³³² and therefore considers that Shala could reasonably have raised that factor in the context of the reparation proceedings. Recalling that 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,³³³ the Panel dismisses this argument.

133. Turning to the Defence's argument that the Trial Panel failed to specify what an "average career path" is in general or in relation to V01/04's specific and realistic professional prospects,³³⁴ the Appeals Panel notes that this argument relates in part to Shala's argument under Ground 2 that the Trial Panel failed to explain the opportunities that V01/04 lost.³³⁵ The Panel further recalls that a trial panel is not required to articulate every step of its reasoning, provided that it indicates with sufficient clarity the basis for its decision.³³⁶

³³⁰ With respect to V01/04's criminal record, see e.g. Defence Expert Report, ERN DPS01625, DPS01635, DPS01690. With respect to V01/04's lack of formal education, see Defence Expert Report, ERN DPS01625. With respect to the economic context in Kosovo, see Defence Expert Report, ERN DPS01632. With respect to the COVID-19 pandemic, see Defence Expert Report, ERN DPS01626; Lerz Response to Defence Written Question, p. 6.

³³¹ See Defence Response to Victims Request for Reparations, paras 43-44.

³³² See e.g. Defence Final Trial Brief, para. 191, and references cited therein; Defence Pre-Trial Brief, para. 22, and references cited therein.

³³³ See above, para. 42.

³³⁴ Appeal Brief, para. 25.

³³⁵ See above, para. 115, wherein the Panel found that, while it may have been preferable for the Trial Panel to further elaborate its reasoning, the Panel considers that the income loss incurred by V01/04 – and therefore the material harm suffered – has been sufficiently established.

³³⁶ See above, para. 48.

134. The Appeals Panel acknowledges that it would have been preferable that the Trial Panel provide further explanation in relation to the meaning of an “average career path”.³³⁷ However, the Appeals Panel considers that the meaning of this specific notion can be interpreted in the context of the Trial Panel’s full reasoning. In this respect, the Appeals Panel notes that the Trial Panel considered that: (i) but for the crimes committed at the KMF, V01/04 “would have more likely than not been able to pursue ‘an average career path’ and *gain employment with regular income*”;³³⁸ (ii) the crimes for which Shala was convicted contributed to V01/04’s “*loss of opportunities*” and “*inability to regain his financial independence [REDACTED]*”;³³⁹ and (iii) V01/04 incurred a “*loss of earnings*” and “*damage to his life plan*”.³⁴⁰ In addition, the Panel observes that the Defence Expert Report and the Lerz Report include the use of terminology such as “average income”, “average salary”, “average turnover” or “average wage” in Kosovo to serve as a basis for the calculation of V01/04’s loss of income.³⁴¹

135. The Panel therefore considers that both the context in which the notion “an average career path” is used in the Reparation Order as well as the relevant substantive considerations in the Lerz Report and the Defence Expert Report clarify the meaning to be attributed to “average career path”. Consequently, in light of the context and relevant expert reports considered by the Trial Panel, as well as the standard in relation to adequate reasoning, the Appeals Panel considers that the Trial Panel did not err in not providing a more detailed explanation on the meaning of “an average career path” in general or specifically in relation to V01/04’s circumstances and realistic prospects.

³³⁷ See Reparation Order, para. 119. See also Reparation Order, para. 141.

³³⁸ Reparation Order, para. 119 (emphasis added).

³³⁹ Reparation Order, para. 119 (emphasis added).

³⁴⁰ Reparation Order, para. 120 (emphasis added).

³⁴¹ See e.g. Defence Expert Report, ERN DPS01625, DPS01629, DPS01636, DPS01638, DPS01640; Lerz Report, ERN V40000046-V40000047.

136. In light of the above, the Panel finds that Shala fails to demonstrate that the Trial Panel erred in respect of the compensation awarded to V01/04 to repair the material harm he suffered in the form of loss of earnings and damage to his life plan, that was the direct result of the crimes committed at the KMF and for which Shala was convicted.

137. The Appeals Panel now turns to Shala's argument that the Trial Panel erred in its findings as to the harm suffered by the Indirect Victims on the basis that it erroneously concluded that without the crimes committed against W04733, he would have more likely than not been able to pursue an average career path.³⁴² Shala argues in this respect that there was an absence of evidence demonstrating any concrete loss of opportunity or earnings. More specifically, he contends that the Trial Panel failed to take into consideration W04733's retirement prior to his detention at the KMF and his age at that time.³⁴³ In relation to W04733's age, the Panel considers that Shala misrepresents the Reparation Order as the Trial Panel in fact expressly stated that it took this element into consideration.³⁴⁴ With respect to W04733's alleged "retirement", the Appeals Panel observes that the Trial Panel found in the Trial Judgment that W04733, who was Kosovo Albanian, worked as a police officer from 1968 "until his *dismissal* in 1997",³⁴⁵ not long before his arrest on 18 May 1999 and subsequent detention at the KMF.³⁴⁶ In other words, contrary to Shala's assertion, W04733 did not retire voluntarily prior to his detention but was dismissed from the police force. More importantly, the Appeals Panel also notes that the Trial Panel found that, as a result of the crimes committed at the KMF, W04733 suffered physical and mental harm which had long-lasting consequences,³⁴⁷ leading to the fact that W04733 was no longer able to provide for his family upon his return and to "*regain* his financial

³⁴² See above, para. 127, and references cited therein.

³⁴³ See Appeal Brief, para. 26.

³⁴⁴ Reparation Order, para. 141.

³⁴⁵ Trial Judgment, para. 177 (emphasis added).

³⁴⁶ Trial Judgment, paras 445, 455, 469.

³⁴⁷ Reparation Order, paras 126-135, 140.

independence”.³⁴⁸ The Appeals Panel considers that the Trial Panel clearly demonstrated that the direct cause of W04733’s inability to work again after his release was the crimes committed against him at the KMF.³⁴⁹ The Panel further finds that W04733’s dismissal prior to his detention is irrelevant to this finding, and to the Trial Panel’s conclusion that W04733’s family members suffered material harm due to W04733’s loss of opportunities as a direct result of the crimes for which Shala was convicted.³⁵⁰

138. The Panel now turns to Shala’s argument that the Trial Panel failed to specify how the injuries from which W04733 suffered as a result of his detention at the KMF impacted his ability to work.³⁵¹ The Appeals Panel notes that the Trial Panel, relying on oral testimonies and medical evidence,³⁵² specifically described W04733’s physical and mental injuries resulting from his mistreatment at the KMF.³⁵³ The Trial Panel similarly found that W04733 suffered long-term physical and mental consequences as a result of the crimes committed against him, as follows:

In the long term, W04733 reported having difficulty extending his left arm; [REDACTED]; and experiencing an exacerbation of his pre-existing [REDACTED] since the events at the KMF. In addition, W04733 reported having issues with his feet as a consequence of a specific instance in which Mr Shala beat him on the soles of his feet at the KMF.³⁵⁴

[...]

In the long term, as a consequence of his arbitrary detention and mistreatment, W04733 reported experiencing flashbacks, nightmares

³⁴⁸ Reparation Order, paras 140-141 (emphasis added). The Panel understands that, in stating that W04733 was unable to “regain” his financial independence, the Trial Panel was aware that he was no longer employed before his detention at the KMF, and found that, after his return, he was no longer able to find or hold a new position to “regain” his financial independence.

³⁴⁹ In this respect, the Trial Panel specifically noted that W04733 himself stated that he felt “broken down” as a result of what he experienced at the KMF. See Reparation Order, para. 134.

³⁵⁰ Reparation Order, paras 141, 144.

³⁵¹ See Appeal Brief, para. 28.

³⁵² Reparation Order, para. 125, and references cited therein.

³⁵³ Reparation Order, paras 127-128.

³⁵⁴ Reparation Order, para. 129 (references omitted).

and feeling under stress. He became irritable. He was also fearful and constantly on watch, wary that someone is following him and his family. Notably, he refrained from seeking medical help for the injuries he had sustained at the KMF out of fear that he was being followed. W04733 himself stated that he felt “broken down” as a result of what he experienced at the KMF.³⁵⁵

In the Panel’s view, these findings clearly demonstrate the impact of such physical and mental harm on W04733’s ability to work, in particular as a police officer.

139. In light of the above, the Panel finds that Shala fails to demonstrate that the Trial Panel erred when it concluded that, had the arbitrary detention and torture not occurred and considering his age at the time of the events, W04733 would have more likely than not been able to pursue an average career path and continue to gain employment with regular income.

2. Alleged Errors in the Trial Panel’s Award for Medical Expenses

(a) Submissions

140. Shala submits that the Trial Panel erred in considering that there was no “requirement to furnish data” to demonstrate harm and accordingly erroneously assumed, with respect to W04733, “the costs of medical treatments or other harm of financial or patrimonial nature”.³⁵⁶ Shala develops two arguments to this end. First, Shala contends that the Trial Panel’s approach of not requiring data is inconsistent with the jurisprudence of the ECtHR under Article 41 of the ECHR, and that the Trial Panel erred in considering the jurisprudence of the ECtHR to be of limited relevance.³⁵⁷ Second, Shala submits that the Trial Panel erred in its assessment of evidence of material harm. Specifically, Shala contends that there was not sufficient or credible evidence in support of Victims’ Counsel’s claim of material harm suffered by the Indirect Victims in the form of costs associated with the medical treatment for injuries

³⁵⁵ Reparation Order, para. 134 (references omitted).

³⁵⁶ Appeal Brief, para. 27, referring to, *inter alia*, Reparation Order, para. 179.

³⁵⁷ Appeal Brief, para. 27.

suffered by W04733.³⁵⁸ To this end, Shala argues that the Trial Panel erred in considering the awarding of 30,000 euros for W04733's medical costs to be adequate and reasonable based only on W04733's statement and V03/04's testimony.³⁵⁹ Shala further submits that the Trial Panel also failed to take into consideration the average cost of the relevant medical services at the time in Kosovo.³⁶⁰ Finally, Shala argues that the Trial Panel did not specify to what extent any ill-treatment suffered at the KMF might have affected W04733's medical conditions existing prior to, or after, detention,³⁶¹ and which injuries it considered were a result of incidents that occurred at the KMF.³⁶²

141. Victims' Counsel responds that the Trial Panel's approach does not contradict ECtHR case law.³⁶³ Victims' Counsel argues that the Trial Panel applied the correct law and evidentiary standard with regard to the absence of a requirement to furnish data, which is consistent with the jurisprudence of the ICC.³⁶⁴ Victims' Counsel further submits that the Trial Panel's finding was not unreasonable in light of the substantial costs incurred by W04733's family to fund his medical care with regard to the long-lasting physical consequences of his detention, and in light of the Trial Panel's own findings that W04733's family members were credible.³⁶⁵ Finally, in Victims' Counsel's view, requiring evidence such as the average cost of relevant medical services at the time in Kosovo would be burdensome and disproportionate.³⁶⁶

³⁵⁸ Appeal Brief, paras 27, 29.

³⁵⁹ Appeal Brief, para. 29. Shala challenges the Trial Panel's finding that the fact that W04733 refrained from seeking medical treatment could be considered a factor justifying the Trial Panel's "lax evidential requirements". See Appeal Brief, para. 27.

³⁶⁰ Appeal Brief, para. 27.

³⁶¹ Appeal Brief, para. 27, wherein the Defence points to a specific medical condition that W04733 suffered from prior his detention at the KMF.

³⁶² Appeal Brief, para. 28.

³⁶³ Response Brief, paras 87-89, and references cited therein.

³⁶⁴ Response Brief, paras 84-85.

³⁶⁵ Response Brief, para. 90.

³⁶⁶ Response Brief, para. 86.

(b) Assessment of the Court of Appeals Panel

142. The Panel will first address Shala's argument that the Trial Panel erred by not requiring data on W04733's medical costs in determining the award for material harm suffered by the Indirect Victims.³⁶⁷ Specifically, Shala submits that the Trial Panel's approach contradicts ECtHR case law under Article 41 of the ECHR, and that it erred in finding that ECtHR jurisprudence was of limited relevance.³⁶⁸ In this respect, the Panel notes that Shala fails to provide any references to the case law of the ECtHR or any other case law in support of these arguments.³⁶⁹

143. Moreover, the Appeals Panel observes that the Trial Panel specified the following:

The [Trial] Panel's assessment of the request for reparations [...] is undertaken on a balance of probabilities, considering the intrinsic coherence of the entire request, including supporting documentation, relevant findings in the Trial Judgment, and all relevant circumstances.³⁷⁰

[It] will consider any difficulties victims may have faced in gathering and producing information, such as medical, financial, and employment records, including due to the passage of time since the crimes were committed. [...] *In the absence of any documentation, a victim's coherent and credible account may be accepted as sufficient evidence to support a request for reparations on a balance of probabilities.*³⁷¹

³⁶⁷ See Appeal Brief, paras 23, 27, referring to, *inter alia*, Reparation Order, para. 179.

³⁶⁸ See Appeal Brief, para. 27.

³⁶⁹ See Appeal Brief, para. 27. The Appeals Panel recalls that the appealing party is required to provide precise references to the jurisprudence cited in support of its arguments. See above, para. 41.

³⁷⁰ Reparation Order, para. 88 (references omitted). See also Reparation Order, para. 178, wherein the Trial Panel stated that it will primarily rely on Victims Request for Reparations, and "will consider in this context any relevant submissions and material produced to assess the scope and extent of harm in financial terms".

³⁷¹ Reparation Order, para. 89 (references omitted) (emphasis added).

On this basis and notably in light of the passage of time, the Trial Panel found that, in the circumstances of the case, it was not a requirement to furnish data as to the costs of medical treatments.³⁷²

144. The Appeals Panel observes that the ICC Appeals Chamber affirmed a similar approach undertaken by several trial chambers, which took into consideration the difficulties faced by victims in providing documentation in support of their reparation claims, notably due to the passage of time, the displacement of victims, the lack of official records, the destruction or unavailability of evidence, etc.³⁷³ The ICC Appeals Chamber found that trial chambers will be expected to conduct an enquiry “on a case-by-case basis” in order to establish whether the appropriate standard of proof has been met.³⁷⁴ In the Appeals Panel’s view, the Trial Panel followed a comparable methodology in the present case, as described above.³⁷⁵ Accordingly, the Appeals Panel finds that Shala fails to demonstrate that the Trial Panel erred in finding that there is no requirement to furnish data as to the costs of medical treatments or other harm of a financial or patrimonial nature.

³⁷² Reparation Order, para. 179. In this respect, the Appeals Panel observes that the Defence misrepresents the Trial Panel’s findings when it asserts that: “the Trial Panel’s purported justification for its lax evidential requirements suggest that W04733 had in fact refrained from seeking treatment for his physical injuries”, while referring to only one of several factors in a non-exhaustive list taken into consideration by the Trial Panel. *Compare* Appeal Brief, para. 27 with Reparation Order, para. 179

³⁷³ See *Ongwen* Appeal Judgment on Reparations, paras 175-177, 183-184; *Lubanga* Appeal Judgment on Reparations, paras 202-204; *Katanga* Appeal Judgment on Reparations, para. 89. However, the ICC Appeals Chamber found that an acknowledgement that difficulties may exist for victims to produce documentary evidence “cannot be understood as providing *carte blanche* to victims to come forward without supporting evidence”. See *Ntaganda* Appeal Judgment on Reparations, para. 517. The ICC Appeals Chamber found that a person may be eligible for reparations in circumstances where he or she did not give reasons for his or her inability to provide supporting documentation. However, “to allow the trial chamber to properly reach a conclusion, it is in the interest of the person who is unable to supply any documentation to explain his or her reasons for this inability”. See *Lubanga* Appeal Judgment on Reparations, para. 204. See also *Ntaganda* Appeal Judgment on Reparations, para. 514.

³⁷⁴ See *Ntaganda* Appeal Judgment on Reparations, paras 515, 517.

³⁷⁵ See above, para. 143, referring to Reparation Order, paras 88-89, 178-179. See also below, para. 145. In addition, while it appears that W04733’s family members did not specifically provide reasons for their inability to provide supporting documentation, the Appeals Panel observes that, according to ICC jurisprudence, it is not in itself a bar to considering that a person may be eligible for reparations in such circumstances. See above, fns 373-374.

145. The Panel now turns to Shala's argument that the Trial Panel erred in considering the award of 30,000 euros for W04733's medical costs to be adequate and reasonable, based only on the evidence provided by W04733 and V03/04.³⁷⁶ In view of the principles developed above,³⁷⁷ the Appeals Panel considers that the question at issue is whether the relevant facts as to W04733's medical costs have been established to the applicable standard of proof.³⁷⁸ To this end, the Appeals Panel observes that the Trial Panel relied on the estimation of medical costs provided under oath by W04733 and V03/04.³⁷⁹ The Panel also observes that the Trial Panel expressly found W04733 [REDACTED] to be credible.³⁸⁰ The Panel recalls in this regard that trial panels are best placed to assess the credibility of a witness and the reliability of the evidence presented by the parties, and therefore have broad discretion in determining the appropriate weight to be given to witness testimony.³⁸¹ Moreover, the Panel recalls that a credible account may be accepted as sufficient evidence to support a request for reparations on a balance of probabilities.³⁸² Accordingly, the Appeals Panel considers that it was within the Trial Panel's discretionary power to rely on W04733's and V03/04's testimonies for the purpose of evaluating the material harm suffered by W04733's family members in the form of medical costs. The Panel therefore finds that Shala fails to demonstrate any error in this respect.

³⁷⁶ See Appeal Brief, para. 29.

³⁷⁷ See above, para. 144.

³⁷⁸ See *Ntaganda* Appeal Judgment on Reparations, para. 515.

³⁷⁹ See Reparation Order, para. 200, fn. 348, referring to Victims Request for Reparations, para. 52, reporting W04733's declaration (wherein he estimated that the repair of [REDACTED] cost [REDACTED] euros and that his [REDACTED] cost [REDACTED] euros) and V03/04's testimony (who estimated the overall costs of W04733's medical treatments [REDACTED] was as high as 150,000 euros). See also Reparation Order, fn. 126.

³⁸⁰ Reparation Order, para. 125.

³⁸¹ See above, para. 51.

³⁸² See above, paras 143-144. See also *Lubanga* Appeal Judgment on Reparations, para. 203: "[i]n the exercise of its discretion, a trial chamber may consider that a victim's account has sufficient probative value in light of the totality of the evidence so as to find that the allegations therein satisfy the burden of proof, even in the absence of supporting documents".

146. The Appeals Panel equally rejects Shala's argument that the Trial Panel failed to consider figures on the average cost of the medical services at the time in Kosovo generally or in relation to W04733's medical condition in particular.³⁸³ The Appeals Panel notes in this regard that Shala raises this argument for the first time on appeal,³⁸⁴ and that it is unsubstantiated.³⁸⁵

147. Finally, the Appeals Panel turns to Shala's argument that the Trial Panel failed to distinguish between W04733's medical conditions prior to his detention at the KMF, from medical conditions caused by incidents that occurred at the KMF.³⁸⁶ The Panel understands that, in essence, Shala argues that some aspects of W04733's medical conditions – and the associated material harm in the form of medical expenses – are not a direct consequence of the crimes for which Shala was convicted. In this respect, the Appeals Panel observes that, contrary to Shala's assertion, the Trial Panel did in fact describe the multiple injuries W04733 suffered as a direct consequence of his mistreatment at the KMF, including broken teeth.³⁸⁷ In addition, the Trial Panel recalled its findings that, during his detention at the KMF, W04733 had salt rubbed into his wounds and eyes³⁸⁸ and that, in the long-term, W04733 reported suffering from, *inter alia*, "[REDACTED] and an exacerbation of his pre-existing [REDACTED] since the events at the KMF".³⁸⁹ Moreover, while the Trial Panel indeed acknowledged that "not all of aspects of W04733's declining health over the years are a direct result

³⁸³ See Appeal Brief, para. 27.

³⁸⁴ See Defence Response to Victims Request for Reparations, paras 59-66. See also above, para. 42.

³⁸⁵ See Appeal Brief, para. 27. The Panel notes that the Defence does not provide any figures that would demonstrate that the Trial Panel erred in relying on the figures provided by W04733 and V03/04 in relation to the medical costs incurred. See also above, para. 41.

³⁸⁶ See Appeal Brief, paras 27-28. In relation to Shala's specific argument that "with regard to the alleged costs for surgery related to W04733's [REDACTED] the [Trial] Panel failed to consider the fact that W04733 was suffering from [REDACTED] prior to his detention at the KMF, and that his [REDACTED] requiring medical intervention may have been the result of the underlying [REDACTED]", the Panel notes that Shala failed to raise this argument before the Trial Panel and consequently dismisses it. See Appeal Brief, para. 27; Defence Response to Victims Request for Reparations, paras 59-60. See also above, para. 42.

³⁸⁷ Reparation Order, para. 127. See also Trial Judgment, para. 700.

³⁸⁸ Reparation Order, para. 126. See also Trial Judgment, para. 694.

³⁸⁹ Reparation Order, para. 129 (emphasis added).

of the crimes committed at the KMF”, it also expressly indicated that “[g]iven the brutality of those crimes [...] and the state in which he was when he arrived home from his detention at the KMF, the Panel finds that they can only have had an exacerbating effect on his overall health, [REDACTED]”.³⁹⁰ In light of the above, the Appeals Panel considers that the Trial Panel correctly found that these injuries and specific aspects of the deterioration of W04733’s medical condition, which later required medical care upon which the compensation claim is based,³⁹¹ were a direct result of the crimes committed against him at the KMF.³⁹² The Appeals Panel further finds that the sum awarded to compensate W04733’s medical costs adequately reflects this finding.³⁹³

148. In view of the above, the Panel considers that Shala fails to demonstrate that the Trial Panel erred in relying on the evidence of W04733 and V03/04 in awarding 30,000 euros to the Indirect Victims for the material harm suffered by them, in the form of medical costs to treat the injuries suffered by W04733 at the KMF.

149. Accordingly, the Appeals Panel dismisses Shala’s Ground 3.

E. ALLEGED ERRORS REGARDING THE IMPOSITION OF AN AWARD DISPROPORTIONATE TO THE FINDINGS ON SHALA’S ROLE IN THE CRIMES (GROUND 4)

150. The Trial Panel ordered Shala to pay a total reparation award of 208,000 euros,³⁹⁴ finding, *inter alia*, that it “does not matter whether he personally carried out individual acts resulting in said harm, nor is it necessary, or for that matter possible, to link each specific harm suffered to each specific instance of mistreatment”.³⁹⁵ The Trial Panel declared Shala indigent at this stage for the purpose

³⁹⁰ Reparation Order, para. 200.

³⁹¹ See Reparation Order, fn. 348, referring to Victims Request for Reparations, para. 52.

³⁹² See Reparation Order, paras 127-130, 142, 200.

³⁹³ See Reparation Order, para. 200.

³⁹⁴ Reparation Order, paras 205, 212, 239(e).

³⁹⁵ Reparation Order, para. 99.

of reparations but found that indigence was irrelevant to a determination of his liability for reparations.³⁹⁶

151. Shala argues that the Trial Panel erred by: (i) imposing a reparation award which is disproportionate to its findings as to Shala's role in the crimes; (ii) taking into account the gravity of the crimes in assessing the amount to be awarded to W04733's family; and (iii) failing to consider Shala's indigence.³⁹⁷ Victims' Counsel responds that Shala fails to demonstrate any error in the Trial Panel's findings on Shala's role in the crimes, the gravity of the crimes or the relevance of Shala's indigence to the determination of his liability for reparations.³⁹⁸

1. Submissions

152. Shala submits that the Trial Panel erred in fact and in law in awarding the amount of 208,000 euros in reparations against him as it is disproportionate to, and does not fairly reflect, his role in the commission of the crimes.³⁹⁹ Shala argues that when determining the reparation award, the Trial Panel erred by failing to consider: (i) how each specific harm is linked to any culpable action of Shala;⁴⁰⁰ and (ii) Shala's reduced role, responsibility and alleged participation – as a “simple soldier” – in the commission of the crimes.⁴⁰¹ Specifically, Shala argues that the Trial Panel erred by considering that the harm suffered by V01/04 and W04733 had a bearing on Shala's personal liability, as Shala was not involved in the acts committed against V01/04,

³⁹⁶ Reparation Order, paras 84, 176, 213, 239(g).

³⁹⁷ Appeal Brief, paras 34-44; Reply Brief, paras 26, 33-34; Notice of Appeal, paras 12-15.

³⁹⁸ Response Brief, paras 96-113.

³⁹⁹ Appeal Brief, paras 34, 40, 44; Reply Brief, para. 33. See also Appeal Brief, para. 43, wherein Shala argues that the disproportionate and excessive award will be unfairly perceived as reflecting his culpability in the crimes. Shala further refers to a finding by the ICC Appeals Chamber that the convicted person's liability for reparations must be proportionate to the harm caused and to his or her participation in the commission of the crimes for which he or she was found guilty. See Appeal Brief, para. 37, referring to *Lubanga* Amended Decision Establishing Principles on Reparation, para. 21.

⁴⁰⁰ Appeal Brief, para. 35.

⁴⁰¹ Appeal Brief, para. 36.

W04733 [REDACTED], nor in the further trauma suffered by V01/04 in relation [REDACTED], [REDACTED].⁴⁰²

153. Shala further avers that the Trial Panel erred by taking into account the gravity of the crimes in assessing the amount to award to W04733's family for the mental harm they suffered, thereby imposing a further punishment on Shala through the reparation award.⁴⁰³ Finally, according to Shala, the Trial Panel failed to consider Shala's indigence when imposing such an excessive award and that it will "haunt" him, and implicitly his family, for the rest of their lives.⁴⁰⁴

154. Victims' Counsel responds that Shala's arguments regarding the Trial Panel's errors in reflecting his role in the commission of the crimes when determining the reparation award substantially overlap with his arguments under Ground 1 and should be dismissed for the same reasons.⁴⁰⁵ In this regard, Victims' Counsel avers that reparation orders are not required to reflect the different roles of those involved in a JCE, as each offender is jointly and severally liable for the damage their crime has caused.⁴⁰⁶

155. Victims' Counsel further argues that the gravity of the crimes provides relevant context to understanding the extent of the harm and should be considered for the

⁴⁰² Appeal Brief, paras 38-40. In this regard, Shala argues that the Trial Panel found that: (i) Shala was not present during [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) Xhemshit Krasniqi, not Shala, hit W04733; and (v) [REDACTED], not Shala, used a knife to cut W04733. See Appeal Brief, paras 38-39. The Panel notes that at paragraphs 38 and 40 of the Appeal Brief, the Defence refers to V04/01 instead of V01/04; the Panel considers that these references are typographical errors and should refer to V01/04.

⁴⁰³ Appeal Brief, para. 41; Reply Brief, para. 33, wherein Shala argues, in response to Victims' Counsel's suggestion that the reparation award was issued to punish Shala, that this would render it unlawful as Shala was already sentenced to a term of imprisonment as punishment.

⁴⁰⁴ Appeal Brief, paras 42-43; Reply Brief, para. 34.

⁴⁰⁵ Response Brief, sub-section (a), p. 32, paras 97-98. See also Response Brief, paras 27-44, referring to, *inter alia*, Ntaganda Reparation Order, paras 217-219 and Ntaganda Appeal Judgment on Reparations, paras 267-268.

⁴⁰⁶ Response Brief, para. 97. See also Response Brief, paras 34, 38.

purpose of sentencing and reparations.⁴⁰⁷ Victims' Counsel notes that the UN Basic Principles on Reparations refer to gravity in the context of reparations, and specifically with respect to compensation.⁴⁰⁸ Victims' Counsel highlights that, unlike at the ICC, reparations are amongst the applicable punishments provided for under Article 44 of the Law, and therefore the ICC jurisprudence the Defence cites is not instructive on this point.⁴⁰⁹ According to Victims' Counsel, even if the Trial Panel erred in considering gravity as a factor in determining the reparation award, there is no basis for the argument that the amount may have been lower if it had not done so, nor for the argument that the Trial Panel sought to impose a further punishment on Shala; rather, the Trial Panel sought to repair the harm suffered by the Victims.⁴¹⁰

156. Victims' Counsel finally argues that Shala's indigence is irrelevant to the amount of the reparation award, as the aim of reparations is to acknowledge and repair harm and the award is calculated based on the damage sustained by the victims, not on an individual's ability to pay.⁴¹¹ In this regard, Victims' Counsel notes that the Registry has established a fund for victims into which contributions can be made to meet the Reparation Order against Shala and, therefore, the argument that such an order will "haunt" Shala and his family is unpersuasive.⁴¹²

157. Shala replies that Victims' Counsel concedes, by citing ICC jurisprudence, that a convicted person's liability for reparations must be proportionate to the harm caused and that the Trial Panel's "artificial conclusion" that Shala assumed responsibility for

⁴⁰⁷ Response Brief, sub-section (b), p. 33, paras 99-100, referring to *Katanga* Appeal Judgment on Reparations, paras 184-185 and *Lubanga* Appeal Judgment on Reparations, para. 309. See also Response Brief, paras 103-104.

⁴⁰⁸ Response Brief, paras 105-106, referring to UN Basic Principles on Reparations, Annex, IX, paras 18, 20.

⁴⁰⁹ Response Brief, paras 101-102.

⁴¹⁰ Response Brief, para. 107.

⁴¹¹ Response Brief, paras 108-111.

⁴¹² Response Brief, paras 112-113.

“each and every” act of “each and every” other member of the alleged JCE is “far-fetched and unjust”.⁴¹³

2. Assessment of the Court of Appeals Panel

158. The Appeals Panel first turns to Shala’s argument that the Trial Panel erred by failing to consider how each specific harm is linked to any culpable action of Shala.⁴¹⁴ The Appeals Panel recalls its finding above that reparations are to be awarded based on the harm suffered as a direct result of the commission of a crime within the jurisdiction of the Specialist Chambers in relation to which a person has already been convicted.⁴¹⁵ The Panel further recalls its finding above that Shala failed to demonstrate that the Trial Panel misidentified and failed to provide a legal basis for the causal link that it required between the crime and the harm.⁴¹⁶

159. In this regard, the Panel recalls that the ICC Appeals Chamber has found that whether other individuals may have also contributed to the harm resulting from the crimes for which the person has been convicted is irrelevant to his or her liability to repair that harm.⁴¹⁷ The Appeals Panel agrees with this assessment and is of the view that, contrary to Shala’s submission, the Trial Panel was not required to link his conduct with each specific harm, or to determine the extent to which any culpable conduct by him, as opposed to other perpetrators, may have contributed to the harm.

160. For the same reasons, the Panel considers that Shala’s specific argument that because he was not personally involved in the individual acts committed against V01/04, W04733 or the Murder Victim, the Trial Panel erred by considering the harm

⁴¹³ Reply Brief, para. 26.

⁴¹⁴ See Appeal Brief, para. 35; Reply Brief, para. 26.

⁴¹⁵ See above, para. 90. The Panel recalls that it observed that this interpretation is consistent with the well-established jurisprudence of the ICC. See above, para. 90.

⁴¹⁶ See above, para. 100.

⁴¹⁷ See above, para. 97. See also *Ntaganda* Appeal Judgment on Reparations, paras 269, 271, 273; Reparation Order, paras 99, 176.

suffered by V01/04 and W04733 in entering the total reparation award,⁴¹⁸ is without merit. The Panel observes that Shala's obligation to repair the harm arises from his individual criminal responsibility as a member of a JCE for having committed the crimes for which he was found guilty.⁴¹⁹ The Panel further observes that the ICC Appeals Chamber has held that, while a reparation order must not exceed the overall cost to repair the harm caused, it is not inappropriate to hold the convicted person liable for the full amount necessary to repair the harm.⁴²⁰

161. Finally, the Panel notes that Shala advanced this same argument before the Trial Panel, which was addressed and dismissed in the Reparation Order.⁴²¹ The Panel reiterates that appeal proceedings against the Reparation Order are not an opportunity for Shala to relitigate matters related to his criminal liability.⁴²²

162. In light of these observations, the Panel finds that it is not necessary to link the harm suffered by V01/04 and W04733 to specific acts committed by Shala and dismisses the Defence's challenge in that respect. As a result, the Panel finds that Shala's remaining arguments related to the Trial Panel's alleged errors in reflecting his role in the commission of the crimes when determining the reparation award⁴²³ are moot.

⁴¹⁸ See Appeal Brief, paras 38-40. See also Appeal Brief, paras 35-36.

⁴¹⁹ See e.g. *Ntaganda* Appeal Judgment on Reparations, paras 270-271; *Katanga* Appeal Judgment on Reparations, paras 178-179. See also Reparation Order, para. 99. The Panel recalls that Shala was convicted, as a member of a JCE, for having committed the war crimes of arbitrary detention, torture and murder. See Trial Judgment, paras 994, 1007, 1037-1039, 1086, 1124. See also above, para. 11. The Panel further recalls that the Appeals Panel upheld Shala's convictions, as a member of a JCE, for the war crimes of arbitrary detention, torture and murder on appeal. See Appeal Judgment, para. 938. See also above, para. 70.

⁴²⁰ See *Katanga* Appeal Judgment on Reparations, para. 178; *Ntaganda* Appeal Judgment on Reparations, para. 268. See also Reparation Order, paras 99, 176.

⁴²¹ See Reparation Order, para. 99. See also Defence Response to Victims Request for Reparations, paras 15, 29, 42, 58, 61. The Appeals Panel notes that the Defence does not demonstrate any error in the rejection of these arguments that would warrant the Appeals Panel's intervention. See e.g. Appeal Brief, paras 6-11, 35-36; Reply Brief, paras 19-22, 24-25. See also above, para. 98.

⁴²² See above, para. 99, referring to *Ongwen* Appeal Judgment on Reparations, para. 197.

⁴²³ See Appeal Brief, paras 34-36, 38-40, 43-44; Reply Brief, paras 26, 33.

163. The Panel next turns to Shala's argument that the Trial Panel erred by considering the gravity of the crimes in determining the reparation award for W04733's family for the mental harm they suffered, thereby imposing a further punishment on Shala.⁴²⁴ The Panel notes that in support of his argument, Shala relies on jurisprudence from the ICC (in the *Katanga* and *Lubanga* cases) stressing that criteria such as the gravity of the crimes are not relevant to determine the amount of reparations for which a convicted person is liable, as the primary consideration is the extent of the harm and cost it takes to repair that harm.⁴²⁵

164. At the outset, the Panel observes that the impugned finding pertains specifically to the amount to be awarded to V03/04 (W04733's wife), rather than to W04733's family, as referred to by Shala.⁴²⁶ In this respect, the Trial Panel considered that "while the requested [award] amount in relation to V03/04 *in particular* slightly exceeds the amount[]" suggested under the relevant legal framework in Kosovo, the gravity of the crimes committed against W04733 and the extent of the harm suffered by the family justify the proposed amounts.⁴²⁷

165. The Panel notes that, in relation to the scope of Shala's liability for reparations, the Trial Panel took into consideration numerous sources, including the Victims Request for Reparations,⁴²⁸ the relevant Kosovo legal framework⁴²⁹ and expert reports.⁴³⁰ Further, in assessing the harm suffered by V03/04 and [REDACTED], the Trial Panel found that they suffered mental and material harm, with long-lasting

⁴²⁴ See Appeal Brief, para. 41; Reply Brief, para. 33.

⁴²⁵ See Appeal Brief, para. 41, referring to *Katanga* Appeal Judgment on Reparations, para. 184 and *Lubanga* Appeal Judgment on Reparations, para. 314. The Panel notes that the *Lubanga* Appeal Judgment on Reparations refers verbatim to the findings of the *Katanga* Appeal Judgment on Reparations but does not further elaborate on this matter.

⁴²⁶ *Compare* Appeal Brief, para. 41 *with* Reparation Order, para. 198.

⁴²⁷ Reparation Order, para. 198 (emphasis added). See also Reparation Order, paras 204, 206, 239(f).

⁴²⁸ Reparation Order, para. 178.

⁴²⁹ Reparation Order, paras 184-190.

⁴³⁰ Reparation Order, paras 191-193.

consequences, as a result of the war crimes of arbitrary detention and torture committed against W04733, for which Shala was convicted.⁴³¹

166. In the context of assessing the extent of the harm suffered by V03/04 specifically to determine the appropriate amount to be awarded, the Trial Panel acknowledged that V03/04 was the wife of W04733 and that she is now his widow.⁴³² Taking into consideration the reasons given by Victims' Counsel, the Trial Panel found that it was appropriate to distinguish between the amount awarded to V03/04 and the amounts awarded to V02/04, V04/04, V05/04, V06/04, V07/04 and V08/04 ([REDACTED]).⁴³³ The Panel observes that Victims' Counsel had raised that V03/04 was married to W04733 for many years prior to his detention and mistreatment, she built a life together with him and brought up their children, and she continued to live with W04733 for [REDACTED] after the crimes committed at the KMF, until his death.⁴³⁴ In light of the above, the Panel is satisfied that the Trial Panel determined the amount to be awarded to V03/04 based on the nature of her relationship with W04733 and the extent of the harm she suffered as a result of the war crimes committed against W04733, for which Shala was convicted.

167. The Panel agrees that the Trial Panel's reference to the "gravity of the crimes committed against W04733" in the extract quoted by Shala⁴³⁵ could give the impression that the Trial Panel took gravity into account as an independent factor in support of its determination regarding the amount of compensation to award to V03/04. However, a review of the Trial Panel's assessment of the scope of Shala's liability for reparations, generally and more specifically as regards V03/04,⁴³⁶ shows

⁴³¹ Reparation Order, paras 136-144.

⁴³² Reparation Order, para. 123.

⁴³³ See Reparation Order, para. 198, referring to Victims Request for Reparations, paras 45, 58(A)(ii). The Appeals Panel notes that the Trial Panel awarded the sums of 10,000 euros to V03/04 (W04733's wife) and 8,000 euros to V02/04, V04/04, V05/04, V06/04, V07/04 and V08/04. See Reparation Order, paras 204, 206, 239(f).

⁴³⁴ Reparation Order, para. 167, referring to Victims Request for Reparations, paras 45, 58(A)(ii).

⁴³⁵ See Appeal Brief, para. 41, referring to Reparation Order, para. 198.

⁴³⁶ See above, paras 165-166.

that the Trial Panel properly determined the amount Shala was liable to pay based on the extent of the harm suffered by V03/04 and the costs to repair it, in line with ICC jurisprudence.⁴³⁷

168. In that regard, the Panel sees some merit in the submission of Victims' Counsel that the gravity of the crimes provides context to understand the extent of the harm.⁴³⁸ As underlined by Victims' Counsel, the Trial Panel's assessment "does not take place in a vacuum" and the gravity of the crimes provides "context for a finding that a victim has been seriously harmed".⁴³⁹ The Panel notes that these submissions are consistent with the requirement that a convicted person's liability for reparations must be "proportiona[te] to the harm caused, in the *specific circumstances of the case*".⁴⁴⁰ In these circumstances, the Panel is of the view that the Trial Panel's reference to the "gravity of the crimes committed against W04733" should be interpreted as a contextual observation.⁴⁴¹

169. Based on the above, the Panel finds that the Trial Panel properly determined the amount to be awarded to V03/04 based on the nature of her relationship with W04733 and the extent of the harm she suffered as a result of the war crimes committed against W04733 for which Shala was convicted, and therefore dismisses

⁴³⁷ *Ntaganda* Reparation Order, para. 98; *Katanga* Appeal Judgment on Reparations, paras 2, 72.

⁴³⁸ See Response Brief, sub-section (b), p. 33.

⁴³⁹ See Response Brief, para. 103.

⁴⁴⁰ See Reparation Order, para. 42 (emphasis added); *Ntaganda* Reparation Order, para. 96. See also e.g. UN Basic Principles on Reparations, Annex, IX, para. 18, providing *inter alia* that: "victims of gross violations of international human rights law and serious violations of humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation [...]".

⁴⁴¹ The Panel notes that in support of its observation, the Trial Panel refers to Victims Request for Reparations, para. 47. See Reparation Order, para. 198, fn. 342. In these submissions, Victims' Counsel refers to crimes committed against W04733 by members of the KLA and more generally to crimes inflicted by members of the KLA against other Kosovar Albanians. Victims' Counsel does not detail the gravity of each of the crimes charged against Shala, the circumstances of these crimes or the number of victims. See Victims Request for Reparations, para. 47, referring to Victims Request for Reparations, paras 16, 42. On the contrary, in the Trial Judgment, the Trial Panel individually assessed the question of gravity specifically in relation to the crimes of arbitrary detention, torture and murder and in light of Shala's involvement in these crimes. See Trial Judgment, paras 1086-1092.

Shala's allegation to the contrary. In light of this finding, the Panel finds that Shala's remaining arguments related to whether the Trial Panel imposed a further punishment on Shala through the reparation award⁴⁴² are moot.

170. Finally, turning to the Defence challenge that the Trial Panel failed to consider Shala's indigence when imposing the reparation award,⁴⁴³ the Panel notes the Trial Panel's finding that a convicted person's indigence at the time of the issuance of a reparation order is "neither an obstacle to the imposition of liability for reparations, nor does it give the convicted person any right to benefit from reduced liability".⁴⁴⁴ The Trial Panel further noted that, as Shala appeared – at the time the Reparation Order was issued – to be unable to pay the reparation award, other actors should step in to execute it.⁴⁴⁵ However, the Trial Panel emphasised that, nonetheless, Shala remains liable for the totality of the reparation award.⁴⁴⁶

171. The Panel first recalls that it will take guidance from ICC jurisprudence where appropriate.⁴⁴⁷ The Panel observes that, under ICC jurisprudence, a convicted person's indigence is not a relevant consideration when determining the amount of the reparation award, and does not give the convicted person any right to reduced liability.⁴⁴⁸ The Panel further observes that the ICC has recognised that a convicted person's financial situation may change following the issuance of a reparation award

⁴⁴² See Appeal Brief, para. 41; Reply Brief, para. 33.

⁴⁴³ See Appeal Brief, paras 42-43.

⁴⁴⁴ Reparation Order, paras 84, 176, referring to *Mustafa* Reparation Order, paras 117, 209, and references cited therein.

⁴⁴⁵ Reparation Order, para. 214. See also Reparation Order, para. 213, wherein the Trial Panel found Shala to be indigent for the purpose of reparations.

⁴⁴⁶ Reparation Order, para. 214. The Trial Panel further found that should a State (such as Kosovo) or any other institution advance the funds necessary to execute the Reparation Order for the benefit of the victims, it would not relieve Shala from his liability and he would still have the obligation to reimburse those funds if it was revealed, through ongoing monitoring of Shala's financial situation, that he has the means to comply with the Reparation Order. See Reparation Order, para. 214.

⁴⁴⁷ See above, para. 39.

⁴⁴⁸ See e.g. *Lubanga* Appeal Judgment on Principles of Reparations, paras 70, 102-105; *Katanga* Appeal Judgment on Reparations, paras 189-190; *Al Mahdi* Reparation Order, paras 113-114. See also *Mustafa* Reparation Order, para. 117.

and provided conditions in that respect.⁴⁴⁹ In this regard, the ICC Appeals Chamber has found that a reparation order can be enforced against a convicted person – who was earlier found to be indigent – when the monitoring of their financial situation reveals that they would have the means to comply with the order.⁴⁵⁰

172. The Panel notes that the Trial Panel fully considered such possibilities and provided for them adequately in the Reparation Order.⁴⁵¹ In particular, the Trial Panel foresaw a role for the Single Judge assigned to monitor and oversee the implementation and execution of the Reparation Order to also monitor Shala's financial situation on an ongoing basis.⁴⁵² Recalling that reparations serve to acknowledge and repair the harm and that the reparation award is calculated based on the damage sustained by the victims, not on an individual's ability to pay,⁴⁵³ the Panel considers that the Trial Panel did not err when finding that Shala's indigence was irrelevant to its determination on the total reparation award.

173. The Panel further notes Victims' Counsel's submission that the Registry has established a fund for victims into which contributions can be made to meet the Reparation Order against Shala, undermining his argument that it will "haunt" him and his family.⁴⁵⁴ The Panel observes that the Trial Panel noted that there is a possibility for the Specialist Chambers to receive non-earmarked voluntary donations for the purpose of contributing to the payment of reparations awarded to victims,⁴⁵⁵ and further notes that, on 28 November 2024, the Registry issued the Practice Direction on Voluntary Donations to Reparations to regulate the receipt and disbursement of

⁴⁴⁹ See e.g. *Lubanga* Appeal Judgment on Principles of Reparations, para. 104; *Katanga* Appeal Judgment on Reparations, paras 189-190. See also *Mustafa* Reparation Order, para. 117.

⁴⁵⁰ See e.g. *Lubanga* Appeal Judgment on Principles of Reparations, para. 104; *Katanga* Appeal Judgment on Reparations, paras 189-190. See also *Mustafa* Reparation Order, para. 117.

⁴⁵¹ See Reparation Order, paras 214, 239 (g).

⁴⁵² See Reparation Order, para. 214.

⁴⁵³ See above, paras 55, 171. See also e.g. *Katanga* Appeal Judgment on Reparations, para. 178.

⁴⁵⁴ Response Brief, para. 112, referring to Practice Direction on Voluntary Donations to Reparations. See also Response Brief, para. 113.

⁴⁵⁵ Reparation Order, para. 237.

such voluntary donations to contribute to reparations ordered by the Specialist Chambers.⁴⁵⁶ In the event that Shala is still found to be indigent,⁴⁵⁷ the Panel agrees with the Trial Panel that his indigency does not relieve him of the obligation to compensate the Victims in accordance with the Reparation Order.⁴⁵⁸ However, the Panel considers that such a fund for victims could assist in mitigating the costs for Shala.

174. In view of the above, the Appeals Panel finds that Shala fails to demonstrate that the Trial Panel erred in imposing a disproportionate award in relation to its findings on Shala's role in the crimes.

175. Accordingly, the Appeals Panel dismisses Shala's Ground 4.

⁴⁵⁶ Practice Direction on Voluntary Donations to Reparations.

⁴⁵⁷ See Reparation Order, para. 214, wherein the Trial Panel notes that Shala's financial situation will continue to be monitored on an ongoing basis.

⁴⁵⁸ See Reparation Order, para. 238. See also above, para. 172. The Panel notes that the Trial Panel also requested that Kosovo uphold its obligations towards victims through the establishment of a new reparation mechanism. See Reparation Order, paras 226-234, 238. See also *Mustafa* Reparation Order, paras 272-279.


VI. DISPOSITION

176. For these reasons, having considered all of the arguments made by Shala and Victims' Counsel, the Court of Appeals Panel, pursuant to Article 46 of the Law:

DENIES Shala's appeal in its entirety;

REJECTS Shala's request to annul the Reparation Order and remit the assessment of his civil liability to a different trial panel; and

AFFIRMS the Reparation Order.



**Judge Michèle Picard,
Presiding Judge**

Dated this Thursday, 29 January 2026

At The Hague, the Netherlands