

**Case No.:** KSC-SC-2025-06/PL002  
**Specialist Prosecutor v. Pjetër Shala**  
**Before:** **The President of the Specialist Chambers**  
Judge Ekaterina Trendafilova  
**Registrar:** Dr Fidelma Donlon  
**Date:** 29 April 2026  
**Filing Party:** Specialist Defence Counsel  
**Original Language:** English  
**Classification:** Public

**THE SPECIALIST PROSECUTOR**

**v.**

**PJETËR SHALA**

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**Public Redacted Version of Defence Request for Protection of Legality against the  
Decision on Defence Appeal Against the Reparation Order**

**with public Annex 1**

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## I. INTRODUCTION

1. Pursuant to Article 48(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 193 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), the Defence for Mr Pjetër Shala files this Request for Protection of Legality against the Decision on Defence Appeal against the Reparation Order ("Decision") issued by a Panel of the Court of Appeals Chamber ("Appeals Panel") on 29 January 2026.<sup>1</sup>

2. The Defence seeks a finding of the existence of substantial violations of procedure in the Decision and a return of the case to a separately constituted Panel of the Court of Appeals in order to revise the Decision by taking into account the following:

- a. **Ground 1:** In substantial violation of Article 3(2) and Article 21 of the Law, Rule 5 of the Rules, Article 31 of the Constitution of the Republic of Kosovo ("Constitution"), and Article 6 of the European Convention of Human Rights ("ECHR"), the Appeals Panel erred by (i) failing to apply a relevant provision of the Rules when it comes to addressing a lacuna in the Rules as to the applicable standard of review in appellate reparation proceedings, and subsequently, (ii) incorrectly interpreting the Law by erroneously applying the same standard of review for appeals against convictions to reparation proceedings, breaching the rule of law and violating Mr Shala's right to effective access to court and an appeal.
- b. **Ground 2:** The Trial Panel committed a substantial violation of procedure and breached Mr Shala's right to a fair trial, as protected by Article 31 of the Constitution, Article 21(2) of the Law and Article 6 of

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<sup>1</sup> KSC-CA-2024-03, F00073, Decision on Defence Appeal Against Reparation Order, 29 January 2026 (confidential) ("Decision on Defence Appeal against Reparation Order"), para. 176.

the ECHR by conducting reparation proceedings before the criminal conviction was final on appeal and violating Mr Shala's right to be presumed innocent until proven guilty and his right to a fair hearing on all matters arising from the criminal proceedings.

- c. **Ground 3:** The Trial Panel committed a substantial violation of procedure by infringing Mr Shala's right to a fair trial, as guaranteed under Article 31 of the Constitution, Article 21(2) of the Law, and Article 6 of the ECHR by referring to 'crime and harm', rather than 'wrongful conduct and harm', as the starting point of the test for legal causation, and by failing to assess the extent of the link between any culpable conduct by Mr Shala and the specific harm suffered by the victims, thereby reaching arbitrary and unjust conclusions.
- d. **Ground 4:** The Trial Panel committed a substantial violation of procedure by not requiring data on W04733's medical costs in determining the award for material harm suffered by the Indirect Victims and thus, misinterpreting and misapplying Article 22 of the Law and Rule 168 of the Rules that require "appropriate reparations".

## II. ADMISSIBILITY

3. On 29 November 2024, the Trial Panel issued the Reparation Order against Mr Shala, wherein it, *inter alia*, ordered Mr Shala to pay the reparation award for which he is liable, amounting to a total of 208,000 euros.<sup>2</sup>

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<sup>2</sup> KSC-BC-2020-04, F00866, Reparation Order against Pjetër Shala, 29 November 2024 (confidential) ("Reparation Order"), para. 239 (a)-(f).

4. On 14 March 2025, Mr Shala filed his Appeal Brief against the Reparation Order, and on 19 March 2025, a corrected version thereof.<sup>3</sup>

5. On 29 January 2026, the Appeals Panel issued its Decision on the Defence Appeal Against the Reparation order affirming the Reparation Order in its entirety.<sup>4</sup>

6. The Request is admissible as it is filed within three months of the date of delivery of the Decision. All grounds raised have been presented consistently at trial and on appeal and the Defence has exhausted all available remedies before submitting the present Request.

### III. MERITS

#### GROUND 1: ERROR IN THE APPLICABLE STANDARD OF REVIEW

7. In substantial violation of Article 3(2) and Article 21 of the Law, Rule 5 of the Rules, Article 31 of the Constitution, and Article 6 of the ECHR, the Appeals Panel erred by (i) failing to apply a relevant provision of the Rules when it comes to addressing a lacuna in the Rules as to the applicable standard of review in appellate reparation proceedings, and subsequently, (ii) incorrectly interpreting the Law by erroneously applying the same standard of review for appeals against convictions to reparation proceedings, breaching the rule of law and violating Mr Shala's right to effective access to court and an appeal.<sup>5</sup>

8. Rule 5 of the Rules provides that where, in the course of the proceedings, a question arises which is not addressed by the Rules, the Panel shall rule in accordance with Article 19(2) and (3) of the Law, and the principles set out in Rule 4 of the Rules. Meaning, it must reflect the highest standards of international human rights law,

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<sup>3</sup> KSC-CA-2024-03, F00049COR, Corrected Version of Defence Appeal Brief against the Reparation Order with public Annex 1, 19 March 2025 (confidential) ("Corrected Version of Defence Appeal Brief against the Reparation Order").

<sup>4</sup> Decision on Defence Appeal Against Reparation Order, para. 176.

<sup>5</sup> Decision on Defence Appeal Against Reparation Order, para. 30.

including the ECHR to ensure a fair trial. While the Appeals Panel acknowledged a lacuna in the Rules,<sup>6</sup> it failed to apply Rule 5 of the Rules in its assessment of the applicable standard of review in the appellate reparation proceedings. Instead, the Appeals Panel merely asserted that in its view, the same standard of appellate review as provided for in Article 46 of the Law applies to both appeals on the merits and appeals on reparations.<sup>7</sup>

9. The Appeals Panel erred in incorrectly interpreting Article 46 of the Law to be applicable to reparation proceedings, completely disregarding the plain wording and ordinary meaning of the provision.<sup>8</sup> It is clear from the wording of Article 46 of the Law, and by examining the Law as a whole, that there is a distinction between a judgment and a reparation order and that the standard set out in Article 46 of the Law was never intended to be applied to reparations proceedings.<sup>9</sup> The Appeals Panel's expansive interpretation of the applicability of Article 46 of the Law has led to a manifestly arbitrary decision and has resulted in a violation of due process and the fundamental fairness of proceedings, in particular, the principle of legal certainty, one of the basic elements of the rule of law.<sup>10</sup>

10. The Law 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 in and applied by the Law; (d) customary international law as given superiority over domestic laws; and (e) international human rights law,

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<sup>6</sup> Decision on Defence Appeal Against Reparation Order, para. 28.

<sup>7</sup> Decision on Defence Appeal Against Reparation Order, para. 30.

<sup>8</sup> Article 31(1) of Vienna Convention on the Law of Treaties. While the Law is not an international treaty, Article 31(1) has been used as a reference point for the interpretation of language contained in non-treaties. See e.g., ICTY, *Prosecutor v. Aleksovski*, Appeal Judgment, IT-95-14/1-A, 24 March 2000, para. 98; International Criminal Court ('ICC'), *The Prosecutor v. Al Hassan et al.*, ICC-01/12-01/18, Public Redacted version of 'Decision on requests related to the submission into evidence of Mr Al Hassan's statements', 20 May 2021, paras. 34, 40-41; *The Prosecutor v. Paul Gicheru*, ICC-01/09-01/20, Public Redacted Decision on the Request to Exclude Audio Recordings Pursuant to Article 69(7) of the Statute, 18 February 2022, para. 45.

<sup>9</sup> See Article 43 and Article 44(6) of the Law.

<sup>10</sup> ECtHR, *Beian v. Romania*, Appl. No. 30658/05, 6 December 2007, para. 39.

which sets criminal justice standards, including the ECHR and the International Covenant on Civil and Political Rights, as given superiority over domestic laws by Article 22 of the Constitution.<sup>11</sup>

11. By interpreting Article 46 of the Law to be applicable to appellate reparation proceedings, which was not foreseeable to the Defence and set an unjustifiably high threshold that is ill-suited to reparation proceedings, the Appeals Panel breached the rule of law and the fair trial rights of Mr Shala stemming from Article 31 of the Constitution, Article 21 of the Law, Article 6 of the ECHR. This also resulted in a breach of core procedural principles stemming from these provisions, such as legal certainty, fairness, and effectiveness of remedies as the Defence was effectively forced to file its submissions without clarity as to the applicable standard of review, which prevented it from effectively tailoring its submissions to ensure that the appropriate standard could be met.

12. Additionally, the Defence submitted that the Trial Panel erred by considering Mr Shala liable for specific harm perceived as misfortune or loss of opportunity with regard to all victims resulting from the social stigma suffered because the primary victims (V01/04 and W04733) were considered by the KLA as traitors; for instance, because of collaboration with enemy forces.<sup>12</sup> Due to the inappropriate standard of review applied by the Appeals Panel, it considered the Defence's argument to be without merit.<sup>13</sup>

13. The Defence submits that the appropriate standard of review that should have been adopted regarding errors of law is the standard that the Appeals Chamber of the International Criminal Court ("ICC") implemented, which provides for the following:

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<sup>11</sup> Article 3(2) of the Law.

<sup>12</sup> Corrected Version of Defence Appeal Brief against the Reparation Order, para. 19.

<sup>13</sup> Decision on Defence Appeal Against Reparation Order, paras. 117, 118.

“[T]he Appeals Chamber will not defer to the Trial Chamber’s interpretation of the law. Rather, it will arrive at its own conclusions as to the appropriate law and determine whether the Trial Chamber misinterpreted the law. If the Trial Chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the Impugned Decision. [An Impugned Decision] is ‘materially affected by an error of law’ if the Trial Chamber ‘would have rendered a [decision] that is substantially different from the decision that was affected by the error, if it had not made the error.’”<sup>14</sup>

14. With regard to errors of fact, the appropriate standard of review that should have been adopted is that set out by the ICC Appeals Chamber which provides that it: “will not interfere with factual findings of the first-instance Chamber unless it is shown that the Chamber committed a clear error, namely, misappreciated the facts, took into account irrelevant facts, or failed to take into account relevant facts.”<sup>15</sup>

15. The aforementioned standards are more appropriate to reparation proceedings in the present case considering that both the Trial and Appeals Panel found it appropriate to take guidance from the case law of the ICC for the purposes of reparation proceedings. For example, by adopting the standards set out by the ICC regarding applicable standard of proof and the use of presumptions.<sup>16</sup>

16. These procedural errors constitute a substantial violation of the procedures set out in the Rules and the Law and warrants an intervention by the Supreme Court Panel.

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<sup>14</sup> ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-3466-Red, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, 18 July 2019, para. 28 (“*Lubanga Appeal Judgment on Reparations*”); ICC, *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3778-Red, Public redacted Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, 9 March 2018, para. 39 (“*Katanga Appeal Judgment on Reparations*”).

<sup>15</sup> This test was applied *inter alia* in ICC, *Lubanga Appeal Judgment on Reparations*, para. 30; ICC, *The Prosecutor v. Mathieu Ngudjolo Chui*, ICC-01/04-02/12-271-Corr, Judgment on the Prosecutor’s appeal against the Decision of Trial Chamber II entitled “Judgment pursuant to article 74 of the Statute”, 7 April 2015, para. 22; ICC, *Katanga Appeal Judgment on Reparations*, para. 41.

<sup>16</sup> Decision on Defence Appeal Against Reparation Order, paras. 35, 36, 39.

17. As a result of these errors, the Supreme Court Panel should annul the Decision on Defence Appeal against the Reparation Order and return the case for a new decision to a competent panel.

## GROUND 2: BREACH OF DUE PROCESS BY DECIDING CIVIL LIABILITY ON THE BASIS OF NON-DEFINITIVE FINDINGS

18. The Trial Panel committed a substantial violation of procedure and breached Mr Shala's right to a fair trial, as protected by Article 31 of the Constitution, Article 21(2) of the Law and Article 6 of the ECHR, by conducting reparation proceedings before the criminal conviction was final on appeal, thus violating Mr Shala's right to be presumed innocent until proven guilty and his right to a fair hearing on all matters arising from the criminal proceedings.

19. It is only logical that reparation proceedings follow the proceedings challenging the factual findings on which a conviction is based. A discernible trend can be identified whereby appeal proceedings against a reparation order (if any) are initiated after conviction, and thereby the findings on which a reparation order is based, become final. In most cases heard by the ICC, for instance in *Katanga*, *Al Mahdi*, and *Ongwen*, the relevant reparation orders were issued after the judgments on convictions became final on appeal.<sup>17</sup>

20. In the present case, in its Reparation Order, the Trial Panel stressed that it is "bound by the factual and legal findings made in the Trial Judgment" and that it has thus relied on "relevant findings made therein" for the purposes of its order.<sup>18</sup> While the Trial Panel stated in the Reparation Order that the reparation proceedings should not "prejudice or be inconsistent with the rights of the accused or convicted person to

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<sup>17</sup> ICC, *The Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017; ICC, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Reparations Order, 17 August 2017; ICC, *The Prosecutor v. Ongwen*, Case No. ICC-02/04-01/15, Reparations Order, 28 February 2024 ("*Ongwen* Reparation Order").

<sup>18</sup> Reparation Order, para. 86.

fair and expeditious proceedings”,<sup>19</sup> by conducting the reparations proceedings as well as the appeal proceedings against the reparation order before the relevant first-instance findings became final, Mr Shala was denied of his fair trial rights.

21. This is not merely a procedural technicality, as the Appeals Panel in its Appeal Judgment reversed the torture convictions related to five individuals and arbitrary detention conviction related to two individuals, therefore altering the factual and legal foundation on which the Reparation Order should have been based.<sup>20</sup> This is especially relevant when considering that the ‘gravity’ of the crimes was accepted as a “contextual observation” in understanding the extent of the harm.<sup>21</sup> If this is the case, it follows that the reversal of the findings in relation to two victims of arbitrary detention and five victims of torture – which the Appeals Panel duly noted as “almost one third of the number of victims for this count”<sup>22</sup> – should equally be considered as a “contextual observation” informing the determination of Mr Shala’s liability for reparations. Such an observation could only have been made following the final conviction from the Appeals Panel.

22. Moreover, the right to appeal must cover all legal consequences and by issuing a reparation order before the factual and legal findings are final, the accused is effectively challenging moving targets on appeal and unable to fully challenge the final basis of liability, leading to a due process violation.

23. The Appeals Panel observed that Mr Shala was able to lodge an appeal against the Reparation Order and that the Appeals Panel adjudicated the appeal after having delivered the Appeal Judgment on the merits. It further considered that the reparation proceedings were neither prejudicial to Mr Shala, nor breached his right to fair and

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<sup>19</sup> Reparation Order, para. 46.

<sup>20</sup> KSC-CA-2024-03, F00069, Appeal Judgment, 14 July 2025 (confidential) (“Appeal Judgment”), paras. 560, 590, 605.

<sup>21</sup> Decision on Defence Appeal against Reparation Order, para. 168.

<sup>22</sup> Appeal Judgment, para. 934.

expeditious proceedings.<sup>23</sup> However, it failed to consider that Mr Shala never had the chance to contest reparations in light of the Appeal Judgment on the merits and was denied a full and informed opportunity to be heard on reparations as they stand and thus, he was hindered from his right to have a proper assessment of his civil liability. The Reparation Order was issued on 29 November 2024 and the Defence was obligated to submit its Notice of Appeal of the Reparation Order by 29 January 2025, while the Appeal Judgment on the merits was only issued on 14 July 2025 – months after the deadline for the Notice of Appeal and the Defence Appeal Brief against the Reparation Order, which was due on 13 March 2025. As a result, the Defence had to walk on eggshells to contest claims by victims, without making admissions or concessions that could harm its case since the reparation proceedings were held whilst it was still unknown whether Mr Shala would be convicted; that he would be convicted as a member of a JCE, a JCE consisting of known and unidentified members, as well as that he would be convicted as a member of a JCE aimed at the commission of arbitrary detention, torture and murder.

24. The prejudice is further exacerbated by the Appeals Panel's decision to preclude hearing submissions raised for the first time on appeal.<sup>24</sup> As a result, several arguments raised by the Defence were dismissed by the Appeals Panel without examination of their merits.<sup>25</sup>

25. Consequently, the Appeals Panel erred by disregarding the prejudice and fair trial violations suffered by Mr Shala by deciding civil liability on the basis of non-definitive findings, and by failing to correctly assess whether a reparation order can validly be issued while an appeal judgment on the merits is pending.<sup>26</sup>

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<sup>23</sup> Decision on Defence Appeal against Reparation Order, para. 71.

<sup>24</sup> Decision on Defence Appeal against Reparation Order, paras. 42-44.

<sup>25</sup> Decision on Defence Appeal against Reparation Order, paras. 132, 146, and fn. 386.

<sup>26</sup> Corrected Version of Defence Appeal Brief against the Reparation Order, para. 47.

26. For these reasons, the Supreme Court Panel should annul the Decision on Defence Appeal against the Reparation Order and return the case for a new decision to a competent panel.

### GROUND 3: ERROR IN THE LAW OF CAUSATION

27. The Trial Panel committed a substantial violation of procedure by infringing on Mr Shala's right to a fair trial, as guaranteed under Article 31 of the Constitution, Article 21(2) of the Law, and Article 6 of the ECHR. This is the result of referring to 'crime and harm', rather than 'wrongful conduct and harm', as the starting point of the test for legal causation; and the result of failing to assess the extent of the link between any culpable conduct by Mr Shala and the specific harm suffered by the victims, thereby reaching arbitrary and unjust conclusions.

28. The Trial Panel erred by holding Mr Shala liable to repair harm which was not caused by his acts or omissions.<sup>27</sup> At paragraphs 60, 62 and 99 of the Reparation Order, the Trial Panel noted its position that Mr Shala is deemed liable for the harm caused to victims *by the crimes* in respect of which Mr Shala was convicted. In its analysis of the requisite causation, the Trial Panel acknowledged the need for applying a test of causation but erroneously identifies the required causal link, or the "but/for relationship" as it puts it, between the crime and the harm, as opposed to Mr Shala's culpable conduct and the harm caused to the individual victims participating in the proceedings against him.<sup>28</sup>

29. The Appeals Panel considered that the ordinary meaning of Article 22(1) of the Law and Rule 2 of the Rules makes it clear that irrespective of whether a factual or legal causation is concerned, the causation standards require a link between the crime and harm.<sup>29</sup> Furthermore, the Appeals Panel considered that this reading of the Law

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<sup>27</sup> Reparation Order, paras. 203-206.

<sup>28</sup> Reparation Order, para. 62.

<sup>29</sup> Decision on Defence Appeal against Reparation Order, para. 90.

and the Rules reflects the context in which reparations arise at the Specialist Chambers – namely, a legal system establishing individual criminal liability for crimes proscribed under the Law. 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.<sup>30</sup>

30. This approach improperly replaces a structural legal causation test with an outcome-driven assessment, thereby collapsing the distinction between criminal occurrence and attributable responsibility. This reasoning lacks a coherent legal basis and is therefore arbitrary within the meaning of Article 6 the ECHR.

31. For these reasons, the Supreme Court should annul the Decision on Defence Appeal against the Reparation Order and return the case for a new decision to a competent Panel.

#### GROUND 4: ERROR IN THE AWARD OF MEDICAL EXPENSES

32. The Trial Panel committed a substantial violation of procedure by not requiring data on W04733's medical costs to determine the award for material harm suffered by the Indirect Victims. This resulted in a misinterpretation and misapplication of Article 22 of the Law and Rule 168 of the Rules that require "appropriate reparations".

33. The Trial Panel erred in the manner it effectively assumed "the costs of medical treatments or other harm of financial or patrimonial nature" and considered that there was no "requirement to furnish data" to demonstrate such harm.<sup>31</sup> The Trial Panel considered *inter alia* the fact that both [REDACTED] and W04733 refrained from seeking medical treatment for [REDACTED] physical injuries, primarily out of fear or due to stigma; and the fact that at least one victim ([REDACTED]) suffered mental harm which has reportedly remained untreated until today, as factors justifying the

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<sup>30</sup> Decision on Defence Appeal against Reparation Order, para. 90.

<sup>31</sup> Reparation Order, para. 179.

absence of a requirement to furnish data for harm suffered.<sup>32</sup> However, the Trial Panel's purported justification for its lax evidential requirements<sup>33</sup> suggests that W04733 had in fact refrained from seeking treatment for his physical injuries.<sup>34</sup> In any event, the Trial Panel erred by failing to require proof as to any amount due for medical costs, and nonetheless proceeded to "assume" such costs, finding "a figure of €30,000 for medical costs [a]s adequate and reasonable."<sup>35</sup> It also erred by failing to specify whether there were any pre-existing medical conditions prior to detention, and the extent to which any ill-treatment suffered exacerbated these.

34. Regarding medical costs borne by the family, the Trial Panel noted that W04733's family "incurred certain costs with regard to the medical care provided to W04733 to address the physical injuries he suffered at the [Kukës Metal Factory ("KMF")], as well as his declining health over the years".<sup>36</sup> However, it acknowledged that "not all aspects of W04733's declining health over the years are a direct result of the crimes committed against him at the KMF" but that "can only have had an exacerbating effect on his overall health, [REDACTED]".<sup>37</sup> The Trial Panel did not specify which injuries were deemed to have been caused by incidents that occurred at the KMF or how the injuries impacted W04733's ability to work.

35. The Trial Panel reached its conclusion that "a figure of €30,000 for medical costs is adequate and reasonable" based on W04733's statement regarding [REDACTED], and V03/04's testimony that the overall costs for W04733's medical treatments were as high as €150,000.<sup>38</sup> However, no medical documents or invoices were provided in support of these claims. In addition, as acknowledged by the Trial Panel, the Lerz Report estimates did not include any medical costs or expenses incurred in relation to

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<sup>32</sup> Reparation Order, para. 179.

<sup>33</sup> Reparation Order, para. 179.

<sup>34</sup> Reparation Order, paras. 142, 179.

<sup>35</sup> Reparation Order, para. 200.

<sup>36</sup> Reparation Order, para. 142.

<sup>37</sup> Reparation Order, para. 200.

<sup>38</sup> Reparation Order, para. 200, fn. 348.

the treatment W04733 would have received throughout the years as a result of the crimes committed against him at the Kukës Metal Factory.<sup>39</sup> There was no sufficient or credible evidence in support of the victims' claims for reparation for material harm stemming from the costs of medical treatment for W04733.

36. Regarding the Defence's argument that the Trial Panel erred by not requiring data on W04733's medical costs in determining the award for medical harm suffered by the Indirect Victims, the Appeals Panel noted case law of the ICC requiring the trial chamber to conduct an enquiry "on a case-by-case basis" in order to establish whether the appropriate standard of proof has been met.<sup>40</sup> In the present case, however, the Appeals Panel failed to conduct an assessment as to whether the appropriate standard of proof was met in light of the particular circumstances of the case. Instead, the Appeals Panel incorrectly observed that the methodology undertaken by the Trial Panel is comparable to that of the ICC.<sup>41</sup> In doing so, the Appeals Panel referred to case law of the ICC, that, instead of supporting the conclusions of the Trial Panel, highlights the erroneous nature its findings.<sup>42</sup> For example, in *Ongwen*, the victims' representatives submitted that most of the documentation that the victims could have relied upon was destroyed as a direct consequence of the crimes for which Mr Ongwen was convicted.<sup>43</sup> Victims' representatives further submitted that it was unfeasible for victims to obtain official or unofficial documentation in Northern Uganda due to the devastating outcome of the conflict and the large displacement of the population.<sup>44</sup> Then, as part of their determination, the Trial Chamber specifically noted that it had been made aware of the challenges the victims may face in producing documentary evidence to support their claims. Thus, in arriving at its determination,

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<sup>39</sup> Reparation Order, para. 199; KSC-BC-2020-04, F00558/A04, ANNEX four to Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel, 30 June 2023 (confidential).

<sup>40</sup> Decision on Defence Appeal against Reparation Order, para. 144.

<sup>41</sup> Decision on Defence Appeal against Reparation Order, para. 144.

<sup>42</sup> Decision on Defence Appeal against Reparation Order, para. 144, fn. 375.

<sup>43</sup> *Ongwen* Reparation Order, para. 436.

<sup>44</sup> *Ongwen* Reparation Order, para. 436.

the Chamber examined whether the victims, through their representatives, sufficiently explained and justified their inability to produce additional supporting documents.<sup>45</sup> In contrast to the present case, the Victims' Counsel never submitted difficulties faced by the victims as a reason for the lack of documentary support of their reparations claims.<sup>46</sup> With regard to the alleged costs for [REDACTED], even assuming a causal link, this conclusion is absolutely inappropriate. This is because [REDACTED] took place around [REDACTED] in [REDACTED], years after the conclusion of the war, thereby mitigating the effects of the lapse of time; and in light of [REDACTED] testimony alleging the existence of documentation attesting to the aforementioned [REDACTED].<sup>47</sup>

37. Regarding the Defence'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 on the evidence provided by W04733 and V03/04, the Panel failed to assess whether, in light of the circumstances at hand, the Trial Panel made the correct determination. Instead, without any examination, the Appeals Panel simply incorrectly considered that the reliance on W04733's and V03/04's testimonies for the purposes of evaluating the material harm suffered by W04733's family members was within the Trial Panel's discretionary power.<sup>48</sup> In support of its position, the Appeals Panel inaptly referred to the *Lubanga* case.<sup>49</sup> Unlike the present case, in *Lubanga*, the Trial Chamber did not make specific findings on the merits of requests for individual reparations; instead, it assessed the eligibility of victims from the sample for collective reparations.<sup>50</sup>

38. As such, the Appeals Panel failed to appropriately examine whether the Trial Panel erred in finding that there is no requirement to furnish data as to the costs of

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<sup>45</sup> *Ongwen* Reparation Order, para. 443.

<sup>46</sup> KSC-BC-2020-04, F00804, Victims' Counsel's Request for reparations to address the physical, mental, and material harm suffered by victims participating in the proceedings, 4 March 2024, para. 52.

<sup>47</sup> 082892-TR-AT-ET Part 9 RED2, p. 22; [REDACTED].

<sup>48</sup> Decision on Defence Appeal against Reparation Order, para. 145.

<sup>49</sup> Decision on Defence Appeal against Reparation Order, para. 145, fn. 382.

<sup>50</sup> *Lubanga* Appeal Judgment on Reparations, para. 201.

medical treatments or other harm of financial or patrimonial nature. This resulted in a misinterpretation and misapplication of Article 22 of the Law and Rule 168 of the Rules, which constitutes a substantial violation of procedural provisions governing reparation proceedings.

39. Had it not been for this error, the Appeals Panel would have determined that, considering the circumstances of the case, there was a requirement to furnish data on W04733's medical costs and ultimately, would have had to reassess the award for material harm suffered by the Indirect Victims.

40. For these reasons, the Supreme Court Panel should annul the Decision on Defence Appeal against the Reparation Order and return the case for a new decision to a competent Panel.

#### IV. CONCLUSION

41. Pursuant to Article 48 (7)-(8) of the Law and Rule 193 of the Rules, the Defence requests the Supreme Court Panel to annul the Decision on Defence Appeal against the Reparation Order and return the case for a new decision to a competent panel; or, in the alternative, grant such other relief as the Supreme Court Panel deems appropriate to ensure the protection of legality and the integrity of the proceedings.


**Word count: 4916**

Respectfully submitted,



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Wednesday, 29 April 2026

The Hague, the Netherlands