

In: KSC-SC-2025-06
The Specialist Prosecutor v. Pjetër Shala

Before: **Supreme Court Panel**
Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Dr Fidelma Donlon

Filing Participant: Victims' Counsel

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**Victims' Counsel's Response to "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 Articles 22(3), (6) and (8), 47(2), and 48 of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law"), Rule 114(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), and the direction of the Supreme Court Panel,¹ Victims' Counsel hereby submits this Response to the Defence Request for Protection of Legality on Reparations² on behalf of the eight victims participating in the proceedings ("VPPs").
2. The Defence raises four grounds claiming substantial violations of the procedure, none of which meet the requirements of Rule 193, and the Request should therefore be dismissed.

II. CLASSIFICATION

3. This Response Brief is filed as public, following the filing of the Public Redacted Version of the Request.³

III. PROCEDURAL HISTORY

4. Eight VPPs have been admitted to participate in the proceedings.⁴
5. On 4 March 2024, Victims' Counsel filed a request for reparations.⁵ The Defence responded on 25 March 2024.⁶

¹ KSC-SC-2025-06/PL002/F00004, Order on the Time-Limits for Submissions, 11 May 2026 ("Order").

² PL002/F00001, Defence Request for Protection of Legality against the Decision on Defence Appeal Against the Reparation Order with public Annex 1, 29 April 2026 (notified on 30 April 2026) ("Request").

³ KSC-SC-2025-06/PL002/F00001/RED, Public Redacted Version of Defence Request for Protection of Legality against the Decision on Defence Appeal Against the Reparation Order with public Annex 1, 29 April 2026 (notified on 18 May 2026).

⁴ KSC-BC-2020-04/F00123, First Decision on Victims' Participation, 15 December 2021, para. 50(a); KSC-BC-2020-04/F00249, Second Decision on Victims' Participation, 11 August 2022, para. 43(b); KSC-BC-2020-04/F00279, Third Decision on Victims' Participation, 19 September 2022, para. 43(a).

⁵ 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 ("Reparation Request").

⁶ KSC-BC-2020-04/F00819, Defence Response to Victims' Counsel's Request for Reparations to Address the Physical, Mental, and Material Harm Suffered by Victims Participating in the Proceedings, 25 March 2024.

6. On 25 and 26 March 2025, the Parties filed their final trial briefs and Victims' Counsel filed the impact statement.⁷
7. On 16 July 2024, Trial Panel I found Mr Shala guilty and sentenced him to 18 years of imprisonment, with credit for time served.⁸
8. On 29 November 2024, Trial Panel I issued the Reparation Order.⁹
9. Mr Shala filed his notice of appeal against the Reparation Order on 28 January 2025¹⁰ and his appeal brief on 14 March 2025 which was corrected on 19 March 2025.¹¹
10. On 4 April 2025, Victims' Counsel filed his response brief.¹²
11. On 24 April 2025, the Defence filed its reply,¹³ which was re-filed on 23 May 2025¹⁴ in order to comply with the applicable word limit.¹⁵
12. On 14 July 2025, the Appeals Panel issued the Appeal Judgment in relation to Mr Shala's conviction and sentence.¹⁶

⁷ KSC-BC-2020-04/F00818, Prosecution Final Trial Brief with confidential Annexes 1 and 3 and public Annex 2; 25 March 2024 ("SPO Final Trial Brief"); KSC-BC-2020-04/F00821, Defence Final Trial Brief, 26 March 2024 ("Defence Final Trial Brief"); KSC-BC-2020-04/F00815, Victims' Counsel's Statement on the impact of the alleged crimes on victims participating in the proceedings in Case 04, 25 March 2024 ("Victims' Counsel's Impact Statement").

⁸ KSC-BC-2020-04/F00847, Trial Judgment and Sentence with one confidential annex, 16 July 2024, paras 1124-1125 ("Trial Judgment").

⁹ KSC-BC-2020-04/F00866, Reparation Order against Pjetër Shala, 29 November 2024 ("Reparation Order").

¹⁰ KSC-CA-2024-03/F00042, Defence Notice of Appeal of the Reparation Order, 28 January 2025 ("Notice of Appeal").

¹¹ KSC-CA-2024-03/F00049/COR, Corrected Version of Defence Appeal Brief against the Reparation Order, 19 March 2025 ("Appeal Brief").

¹² KSC-CA-2024-03/F00055, Victims' Counsel's Response to the Defence Appeal of the Reparation Order, 4 April 2025 ("Response Brief").

¹³ KSC-CA-2024-03/F00058, Reply to Counsel for Victims Response to Defence Appeal Brief against the Reparation Order, 24 April 2025.

¹⁴ KSC-CA-2024-03/F00063, Reply to Counsel for Victims Response to Defence Appeal Brief against the Reparation Order, 23 May 2025 ("Reply Brief").

¹⁵ KSC-CA-2024-03/F00060, Decision on Defence Request for Variation of Word Limit of Reply to Victims' Counsel Response to Reparations Appeal, 7 May 2025.

¹⁶ KSC-CA-2024-03/F00069, Appeal Judgment, 14 July 2025 ("Appeal Judgment").

13. On 29 January 2026, the Appeals Panel issued its Decision on Defence Appeal Against Reparation Order.¹⁷
14. On 29 April 2026, the Request was filed.
15. On 11 May 2026, the Panel of the Supreme Court Chamber issued an order in respect of the time-limits for submissions in relation to the Request.¹⁸

IV. SUBMISSIONS

A. Victims' standing

16. Relying on Articles 22(3) and (8), 46(9), 45(1), and 46(1) of the Law, the Appeals Panel found that the victims participating in the proceedings are "considered parties to the reparation proceedings"¹⁹ and "may, as of right, make submissions responding to Mr Shala's submissions on appeal against the Reparation Order."²⁰
17. The Request concerns the Reparation Order issued as a result of a reparation request submitted by Victims' Counsel. As parties to the reparation proceedings, VPPs have standing in these proceedings before the Supreme Court Panel which concern reparations awarded to them by the Reparation Order.

B. Applicable law

18. Rule 193(3) provides:

A request for protection of legality shall comply with Article 48(7) of the Law and shall not be filed on the ground of an erroneous or incomplete determination of the facts of the case. The Supreme Court Panel shall address only those violations of law alleged in the request for protection of legality.

¹⁷ KSC-CA-2024-03/F00073, Decision on Defence Appeal Against Reparation Order, 29 January 2026 ("Decision on Appeal Against Reparation Order").

¹⁸ Order.

¹⁹ Decision on Appeal Against Reparation Order, para. 60.

²⁰ Decision on Appeal Against Reparation Order, para. 61.

C. Standard of review

19. The Supreme Court Panel in *Mustafa* held that:

[P]rotection of legality cannot be characterized as a third instance appeal, as set forth in Article 47 of the Law, nor does it raise matters under Article 48(1) to (5) of the Law. It is an extraordinary legal remedy provided for in Article 48(6) and (7) of the Law and Rules 193 and 194 of the Rules. It is not meant to create another general avenue of appeal. Rather, and similar to the Kosovo Criminal Procedure Code, protection of legality is limited to the specific instances defined in the Law and the Rules. As the Kosovo Supreme Court stated:

[T]he request for protection of legality, as one of the extraordinary legal remedies, is the exceptional legal remedy aiming to correct possibly wrong application of the material and procedural law. Strict requirements of the admissibility are designed to ensure that this legal remedy would not be used as a general third instance against all decisions in the criminal proceedings.²¹

20. The Supreme Court Panel further stated that:

Strict admissibility requirements accordingly apply to the grounds underlying a request for protection of legality.

In the assessment of each ground, the Panel shall determine whether a violation of the criminal law contained within the Law or a substantial violation of the procedures set out in the Law and in the Rules has been identified.

Arguments that reasonably could have been advanced before the first and second instance panels, cannot be raised *de novo* before the Supreme Court Panel.

Furthermore, grounds underlying a request for protection of legality alleging erroneous or incomplete determinations of the facts are beyond the competence of this Panel and are thus inadmissible.

Mere disagreement with the factual assessment of the first and second instance courts or verbatim repetitions of submissions of the previous appeal without

²¹ KSC-SC-2024-04/F00006, *Prosecutor v. Salih Mustafa*, Decision on Mustafa's and Specialist Prosecutor's Requests for Protection of Legality, 25 February 2025, para. 14 ("*Mustafa* Second Protection of Legality Decision"), citing Kosovo, Supreme Court, S.S., Pml.Kzz 42/2017, Judgment, 10 May 2017, para. 23. See also KSC-SC-2025-06/PL001/F00008, *Prosecutor v. Pjetër Shala*, Decision on the Defence Request for Protection of Legality, 9 March 2026, para. 13 ("*Shala* Decision on Protection of Legality (Conviction and Sentence)").

engaging substantively with the impugned decision or final judgment identifying the specific alleged error or violation are equally insufficient to meet the admissibility threshold for such grounds.²²

21. In defining a “substantial violation” of the procedures, the Supreme Court

Panel explained:

[A] “substantial violation” of the procedures occurs when it “materially affects the judicial finding”. An alleged substantial violation of the procedures set out in the Law and the Rules should be assessed on a case-by-case basis in view of the circumstances underlying each particular request.²³

Specifically:

20. The Supreme Court Panel further recalls that it may find a substantial violation of the procedures if the Court of Appeals Panel, for example: (i) omitted to apply a provision of the Law or the Rules; (ii) incorrectly applied the Law and/or the Rules; or (iii) violated the rights of the Defence in a manner which has influenced the rendering of a lawful and fair decision.²⁴

D. Response to specific grounds

1. GROUND 1: ALLEGED ERROR IN THE APPLICABLE STANDARD OF REVIEW

22. The Defence argument under this ground is twofold. First, that the Court of Appeals Panel (“Appeals Panel”) failed to apply Rule 5 to address what is asserted to be a lacuna in the Rules as to the applicable standard of review.²⁵ Second, that the Appeals Panel erroneously interpreted Article 46 of the Law as setting out a standard of review applicable not only to appeals against the judgment on the merits, but also to reparation proceedings.²⁶

²² *Mustafa* Second Protection of Legality Decision, paras 15-19; *Shala* Decision on Protection of Legality (Conviction and Sentence), paras 14-18.

²³ *Shala* Decision on Protection of Legality (Conviction and Sentence), para. 19.

²⁴ *Shala* Decision on Protection of Legality (Conviction and Sentence), para. 20.

²⁵ Request, paras 7-8.

²⁶ Request, paras 7, 9-10.

(a) Alleged failure to apply Rule 5

23. It is argued that there is a lacuna in the Rules in relation to the standard of review in appeals against reparation orders and that the Court of Appeal Panel ought to have filled this lacuna by reference to Rule 5.²⁷
24. Victims' Counsel notes at the outset that the Defence has at no prior stage raised Rule 5, nor has it clarified in its submissions how the Appeals Panel should apply this provision in determining the standard of review applicable to appeals in respect of reparations.
25. Furthermore, the fact that no standard of review on appeal is provided for in the Rules does not mean that there is a lacuna within them. Article 46 of the Law provides the relevant standard. The fact that neither the Law nor the Rules provide for a separate, specific standard of review for reparation proceedings does not mean that the Appeals Panel's finding as to the applicable standard of review was inconsistent with the Law or applicable human rights standards within Rule 5.
26. Rather, and as set out below, the standard of review provided for in Article 46 of the Law, as found by the Appeals Panel, applies to both appeals on the merits and appeals in relation to reparations.²⁸

(b) Alleged erroneous interpretation of Article 46

27. According to the Defence, the Appeals Panel disregarded the "plain wording" of Article 46 of the Law, adopted an "expansive interpretation" of it, and incorrectly decided that it applies also to appeals against reparation orders.²⁹

²⁷ Request, paras 7-8.

²⁸ Decision on Appeal Against Reparation Order, para. 30.

²⁹ Request, para. 9.

28. This argument depends entirely on the submission that Article 46 is not applicable to appeals against reparation orders because they are not “judgements”.³⁰

29. This is obviously wrong.

30. It is the Defence, not the Appeals Panel who have ignored the “plain wording” of Article 46. In particular, Article 46(9) (not cited or referred to by the Defence) deals with reparation orders in these terms:

The Court of Appeals may also hear appeals against **judgement** by a Trial Panel by Victims’ Counsel but only in respect of a Panel’s decision on Victim Status or a Reparation Order. (emphasis added).

31. As is apparent from these words, the Law uses the term “judgement” to include a Reparation Order. The Rules adopt the same terminology. Specifically, Rule 173(2) provides:

Victims’ Counsel may appeal a Judgment by the Trial Panel within the limits of Article 46(9) of the Law.

32. It follows that the Defence argument that there is a lacuna in the legal framework that the Appeals Panel has filled without regard to Rule 5 is misconceived. There is no such lacuna.

33. Furthermore, the Defence has failed to identify any human rights standard suggesting that a different standard of review should apply to an appeal in relation to reparations than that applicable to an appeal on the merits.

34. Contrary to the Defence’s submissions,³¹ the Appeals Panel correctly identified the applicable standard of review provided for in Article 46 in a manner that ensures holistic and inherently consistent interpretation of the Law and the Rules.

³⁰ Request, para. 9 (“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.”).

³¹ Request, para. 9.

35. Ground 1 must therefore be dismissed.

(c) The alleged errors under Ground 1 have no material effect on the impugned Decision

36. Should Ground 1 be considered on the merits notwithstanding the above submissions, it is submitted that the Defence has failed to demonstrate how the approach of the Appeals Panel materially affected the impugned decision, and the Ground should be dismissed on this basis.

37. The Defence argues that the interpretation of Article 46 of the Law was (i) not foreseeable to the Defence, (ii) set an unjustifiably high threshold for the reparation proceedings,³² and (iii) therefore, the Appeals Panel “breached the rule of law” and the fair trial rights of Mr Shala.³³

38. Contrary to the Defence submissions,³⁴ the only foreseeable standard of review that the Appeals Panel could apply was that provided for in Article 46(1) and relevant jurisprudence. It is unreasonable for the Defence to argue otherwise given: (i) the clear wording of Article 46(1), (ii) no other relevant standard of review is specified by the Law or the Rules, and (iii) the practice of the ICC that applies the same standard of review to appeals on the merits and to appeals on reparations.³⁵

39. The Defence does not explain its submission that the standard of review envisaged by Article 46(1) is an “unjustifiably high threshold that is ill-suited for the reparation proceedings” or why the standard of review should be different for appeals on reparations as opposed to appeals on the merits.³⁶

40. Therefore, the Appeals Panel did not violate the rule of law or Mr Shala’s fair trial rights.

³² Request, para. 11.

³³ Request, para. 11.

³⁴ Request, para. 11.

³⁵ Decision on Appeal Against Reparation Order, para. 29.

³⁶ Request, para. 11.

41. The only example of the effect of the supposed error provided in the Request relates to the Appeals Panel's dismissal of the Defence argument, raised previously on appeal, that the two direct victims in the case were viewed as traitors by the KLA.³⁷
42. The Defence provides no basis for believing that the conclusion of the Appeals Panel (that this ground was without merit) would have been different if the Defence's suggested standard of review had been (erroneously) applied. To the contrary, the Appeals Panel's analysis demonstrates the misconceptions at the heart of the Defence submissions,³⁸ and the Defence signally fails to establish that an adjustment of the standard of review would have altered the impugned decision in any discernible way.
43. Therefore, this part of the argument should also be dismissed.

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

44. Ground 2 alleges that Mr Shala's rights were breached by the fact that the Trial Panel held the reparation proceedings before his conviction was final.³⁹
45. Reparation proceedings in this case were, as decided by the Trial Panel after hearing the Parties and Participants on the matter,⁴⁰ conducted in parallel to the trial. The Trial Panel found that this way of proceeding, i.e. gathering/hearing evidentiary material relevant to the reparation proceedings throughout the trial, did not breach the Accused's rights.⁴¹ It is worth noting here that the practice of the ICC is to use evidence from trial during the reparations phase, which is

³⁷ Request, para. 12.

³⁸ See in particular Decision on Appeal Against Reparation Order, paras 118 and 120.

³⁹ Request, paras 18-26.

⁴⁰ KSC-BC-2020-04/F00421, Decision on reparation proceedings, 9 February 2023 ("Decision on Reparation Proceedings").

⁴¹ Decision on Reparation Proceedings, 9 February 2023, paras 12-19.

conducted following the conviction.⁴² Despite the difference in the envisaged timing of the reparation proceedings before the ICC, in a number of cases, the reparation order was made before the conviction became final.⁴³

46. In the case of Mr Shala, although the Reparation Order was issued before his conviction became final, it was upheld by the Appeals Panel only after the conviction Judgment became final.⁴⁴

47. This way of proceeding did not result in any adverse impact on the fairness of the proceedings: in due course, all of the factual findings made by the Trial Panel that were of relevance to the Reparation Order were upheld in the Appeals Judgment confirming the convictions. The findings that were reversed⁴⁵ were irrelevant for the Reparation Order. The Defence does not explain the way in which the asserted unfairness actually impacted the Defence. Therefore, the Defence has failed to establish that the alleged error materially affected the impugned judgment.

3. GROUND 3: ALLEGED ERROR IN THE LAW OF CAUSATION

48. The argument as to the alleged erroneous understanding of causation in the *Shala* reparation proceedings has been fully addressed by the Appeals Panel,⁴⁶ and prior to that by the Trial Panel,⁴⁷ and, in the absence of any substantiated argument, must be dismissed.

⁴² ICC, *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15-2074, Reparation Order, 28 February 2024, paras 21-22.

⁴³ The most emblematic example is the case of Bemba who was convicted and then acquitted on appeal while reparation proceedings were ongoing, see ICC, *The Prosecutor v. Jean-Pierre Beba Gombo*, ICC-01/05-01/08-3653, Final decision on the reparation proceedings, 03 August 2018, see para. 8. Another example is the case of Ntaganda, who was convicted on 8 July 2019. The conviction was upheld on 30 March 2021, but the first instance reparation order was issued on 8 March 2021, see ICC, *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-2659, Reparation Order, 8 March 2021.

⁴⁴ On 16 July 2024, the Trial Panel delivered the Trial Judgment. Reparation Order was issued on 29 November 2024. The Appeals Judgement on the merits was issued on 14 July 2025, while the Reparation Order was upheld by the Appeals Panel on 29 January 2026.

⁴⁵ See Request, para. 21.

⁴⁶ Decision on Appeal Against Reparation Order, paras 89-101.

⁴⁷ Reparation Order, para. 99.

49. The Defence merely repeats its argument without providing any new authority, and has abandoned its reliance on the sole authority that it cited in support of its argument, which was concerned with an entirely unrelated area of the law.⁴⁸
50. The Defence argument culminates in the assertion that the Appeals Panel's "reasoning lacks a coherent legal basis and is therefore arbitrary within the meaning of Article 6 the ECHR."⁴⁹
51. However, this is to disregard the jurisprudence cited by the Appeals Panel, in particular the *Ntaganda* case.⁵⁰ Just as was the case before the Appeals Panel, the Defence asserts that there has been a legal error while at the same time providing no authority to support such a proposition and ignoring the clear and compelling authority to the contrary.
52. As the Defence merely repeats its previous arguments and fails to demonstrate any effect on the judgment arising from the alleged error, Ground 3 must be dismissed.

4. GROUND 4: ALLEGED ERROR IN THE AWARD OF MEDICAL EXPENSES

53. The Defence argues that the Trial Panel erred by not requiring data to determine W04733's medical costs,⁵¹ and that the Appeals Panel, having referred to ICC jurisprudence, failed to apply it correctly.⁵²
54. Contrary to the Defence submissions, the Appeals Panel did not fail to "conduct an assessment as to whether the appropriate standard of proof was met in light of the particular circumstances of the case".⁵³ This analysis is conducted

⁴⁸ Decision on Appeal Against Reparation Order, para. 97 and fn 213

⁴⁹ Request, para. 30.

⁵⁰ Decision on Appeal Against Reparation Order, para. 97, fn 222.

⁵¹ Request, paras 32-35. The Request, to a large extent, repeats its argumentation raised already on appeal, see Defence Appeal Brief, paras 27-29.

⁵² Request, para. 36.

⁵³ Request, para. 36.

exhaustively in paragraphs 144 and 145 of the Decision on Appeal Against Reparation Order.

55. Furthermore, the Defence is wrong to suggest that the Appeals Panel “incorrectly observed that the methodology undertaken by the Trial Panel is comparable to that of the ICC”, and in doing so “referred to case law of the ICC, that, instead of supporting the conclusions of the Trial Panel, highlights the erroneous nature its [sic] findings.”⁵⁴ These submissions are based on a selective reading of the Appeal Panel’s decision. The Appeals Panel cited to the relevant jurisprudence of the ICC,⁵⁵ assessed the Trial Panel’s finding in light of this jurisprudence, and specifically indicated in footnote 375 that:

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.

56. This assessment is consistent with the *Lubanga* jurisprudence cited by the Appeals Panel, according to which:

In 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.⁵⁶

57. Finally, it is submitted that, contrary to the Defence’s suggestion,⁵⁷ the nature of the reparations requested (individual or collective), is irrelevant for the purpose of determining harm suffered.

⁵⁴ Request, para. 36.

⁵⁵ Decision on Appeal Against Reparation Order, para. 144, fn 273-275.

⁵⁶ Decision on the Appeal Against Reparation Order, para. 145, fn 382; 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. 203.

⁵⁷ Request, para. 37 (“In support of its position, the Appeals Panel inaptly referred to the *Lubanga* case. Unlike the present case, in *Lubanga*, the Trial Chamber did not make specific findings on the merits of

58. The Trial Panel was entitled to accept the evidence of W04733's family members. The reparation awarded to indirect victims was a fraction of the loss actually sustained. The Defence does not demonstrate any admissible error but simply continues to disagree with the Trial Panel's findings and those of the Appeals Panel. For these reasons, Ground 4 must be dismissed.

V. CONCLUSION

59. For the foregoing reasons, Victims' Counsel respectfully requests that the Supreme Court Panel reject the Defence's request for protection of legality.

Word count: 3874



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26 May 2026
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requests for individual reparations; instead, it assessed the eligibility of victims from the sample for collective reparations.").