

**Case No.:** KSC-SC-2025-06/PL002  
**Specialist Prosecutor v. Pjetër Shala**

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

**Registrar:** Dr Fidelma Donlon

**Date:** 10 June 2026

**Filing Party:** Specialist Defence Counsel

**Original Language:** English

**Classification:** Public

**THE SPECIALIST PROSECUTOR**

v.

**PJETËR SHALA**

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**Defence Reply to the Victims' Counsel Responses to the Defence Request for  
Protection of Legality against the Decision on Defence Appeal Against the  
Reparation Order**

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Jean-Louis Gilissen

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## I. INTRODUCTION

1. Victims' Counsel repeatedly characterises the Defence's submissions as mere disagreements with the conclusions reached by the Appeals Panel and asserts that the Defence has failed to demonstrate any material effect arising from the identified errors. In doing so, however, Victims' Counsel largely avoids engaging with the substance of the Defence complaints, namely the absence of the required reasoning, the failure to apply the proper legal framework, and the resulting impact on the fairness, legality, and integrity of the reparation proceedings.

2. Rather than addressing the legal deficiencies identified in the Request for Protection of Legality, Victims' Counsel repeatedly restates the conclusions reached by the Appeals Panel itself, without responding to the underlying procedural and interpretative errors raised by the Defence. In addition to the submissions developed in this Reply, the Defence refers the Supreme Court Panel to its Request for Protection of Legality, which remains fully self-standing.

## II. SUBMISSIONS

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

3. Victims' Counsel's response proceeds on a mischaracterisation of the Defence's argument and does not engage with the core issue under Ground 1. The Defence does not merely assert that Article 46 of the Law is inapplicable or incomplete but challenges the reasoning process adopted by the Appeals Panel once it acknowledged that the Rules do not expressly regulate the applicable standard of review in reparations proceedings.<sup>1</sup>

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<sup>1</sup> KSC-CA-2024-03, F00073, Decision on Defence Appeal Against Reparation Order, 29 January 2026 ("Decision on Defence Appeal against Reparation Order"), paras. 28-37, 176.

4. In those circumstances, the legal question raised by the Defence is ‘whether the Appeals Panel was required to engage Rule 5 of the Rules and the interpretative framework set out therein’. Victims’ Counsel’s attempt to rely on Article 46 of the Law does not answer this point, as it does not address why no Rule 5 analysis was undertaken at the moment the absence of an express provision was identified.

5. Furthermore, Victims’ Counsel ignores the substance of the Defence submission concerning Article 46(9) of the Law and reframes it as a purely textual issue. The Defence does not dispute the existence of Article 46(9) of the Law, but challenges the failure of the Appeals Panel to explain, through any Rule 5 or interpretative reasoning, why provisions framed in relation to judgments govern reparations appeals.<sup>2</sup>

6. That omission is significant because it bypasses the required analytical step once the Appeals Panel accepted that the Rules do not expressly regulate the standard of review in reparations proceedings. The issue is therefore not textual interpretation alone, but the *absence* of the reasoning required to justify the extension of Article 46 to a different procedural context. In particular, considering that the Trial Panel itself acknowledged that there is “a distinction between criminal proceedings *stricto sensu* concerning the determination of the charges presented against the Accused, and reparation proceedings leading eventually to the issuance of a Reparation Order.”<sup>3</sup>

7. The consequence is a failure of reasoning that directly affects the fairness and clarity of the appellate process and, accordingly, concerns legal certainty and effective appellate review under Article 31 of the Constitution and Article 6 of the ECHR.

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<sup>2</sup> KSC-SC-2025-06, 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, para. 11.

<sup>3</sup> KSC-BC-2020-04, F00421, Decision on reparation proceedings, 9 February 2023, para. 11.

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

8. Victims' Counsel's response seeks to justify the procedure by reference to its eventual appellate outcome.<sup>4</sup> The fact that the Appeals Judgment later upheld certain findings cannot answer the Defence objection that the Reparation Order and its appeal were determined before the conviction had become final, when the factual basis remained legally open to change. The fairness of the process must be assessed at the time the Reparation Order was issued and reviewed, not with the benefit of hindsight once the appeal on the merits had concluded.

9. Further, the argument that "all relevant findings were upheld" and that reversed findings were "irrelevant" does not address the Defence argument but merely restates a conclusion without reasoning. The Defence expressly relied on the fact that multiple convictions forming part of the underlying factual matrix were reversed on appeal, which by definition, calls into question the stability of the factual and legal foundation on which the liability was assessed. Simply characterising those reversals as irrelevant does not engage with their impact on the assessment of harm, gravity, and scope of responsibility underlying the Reparation Order.

10. Moreover, Victims' Counsel's allegation that the Defence has not demonstrated prejudice misstates the nature of the complaint.<sup>5</sup> The prejudice relied upon is structural and procedural – the Defence was required to contest civil liability on the basis of non-final findings, in circumstances where the final scope of conviction was still subject to

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<sup>4</sup> Victims' Counsel Response, paras. 44-47.

<sup>5</sup> Victims' Counsel Response, para. 47.

appellate determination. That defect is answered by addressing whether it was fair to determine and review reparations before the underlying conviction had attained finality.

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

11. Victims' Counsel's response does not explain why the causal inquiry should begin and end with the existence of the crime itself rather than the conduct attributable to Mr Shala. Instead, it relies on the fact that the Appeals Panel adopted that approach, without addressing the Defence's criticism that this collapses individual causation into a mere fact of conviction.

12. Furthermore, the assertion that the Defence has failed to demonstrate any material effect ignores that the causation framework adopted by the Appeals Panel directly informed the scope of liability and the harm for which reparations were awarded.<sup>6</sup> The alleged error therefore goes to the core of the impugned decision itself.

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

13. Victims' Counsel's response does not address the central deficiency identified by the Defence, namely that neither the Trial Panel nor the Appeals Panel explained why the absence of documentary support in the present case nonetheless satisfied the applicable standard of proof for an award of material damages. The Defence does not dispute that the ICC jurisprudence permits a chamber, in certain circumstances, to rely on testimonial evidence in the absence of supporting documentation. The issue is that the Appeals Panel failed to assess whether the specific circumstances relied upon in the ICC jurisprudence were present in this case.

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<sup>6</sup> Victims' Counsel Response, paras. 50-52.

14. In particular, the reliance on *Ongwen* and *Lubanga* does not answer the Defence argument. As set out in the Request, the relevant ICC jurisprudence involved situations where the inability to provide supporting documentation was specifically explained and justified by the factual circumstances of the case.<sup>7</sup> In contrast, Victims' Counsel did not identify any comparable impediment preventing the production of documentation relating to the alleged medical expenses in the present proceedings. The Appeals Panel nevertheless treated the absence of supporting material as immaterial, without conducting the case-specific assessment required by the jurisprudence on which it relied.

15. Further, Victims' Counsel's reliance on footnote 375 merely restates the conclusion reached by the Appeals Panel without addressing the underlying issue identified by the Defence. The fact that the ICC jurisprudence does not treat the absence of documentation as an automatic bar to reparations does not eliminate the obligation to assess whether the evidentiary basis remains sufficient in light of the circumstances of the particular case. The Defence submission is precisely that such an assessment was not carried out.

16. Victims' Counsel also does not engage with the Defence argument that the Appeals Panel failed to examine whether the Trial Panel properly distinguished between harm attributable to the crimes at the KMF and the broader deterioration of W04733's health over time. While the Trial Panel itself acknowledged that not all aspects of W04733's declining health were directly linked to the crimes, no reasoned analysis was undertaken as to which medical costs were causally connected to the established harm and on what evidentiary basis the amount awarded was determined.

17. Finally, the Defence does not merely "disagree" with the findings of the Trial Panel and Appeals Panel. The challenge concerns whether the award of material damages

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<sup>7</sup> The Request, paras. 32-40.

complied with the evidentiary and procedural requirements governing reparations proceedings under Article 22 of the Law and Rule 168 of the Rules. The failure to require or assess sufficiently reliable supporting evidence in relation to the claimed medical expenses directly affected the legality and reasonableness of the award.

### III. CONCLUSION

18. 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; 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.

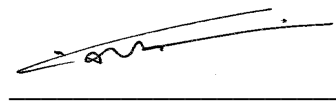
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Respectfully submitted,



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Wednesday, 10 June 2026

The Hague, the Netherlands