



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

File number: KSC-SC-2025-06

Before: A Panel of the Supreme Court Chamber

Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Fidelma Donlon

Date: 25 June 2026

Original language: English

Classification: Public

Decision on Pjetër Shala's Request for Protection of Legality

Victims' Counsel

Simon Laws

Counsel for Pjetër Shala

Jean-Louis Gilissen

THE PANEL OF THE SUPREME COURT CHAMBER of the Kosovo Specialist Chambers (“Supreme Court Panel” or “Panel”) noting Article 162(2) of the Kosovo Constitution,¹ Articles 3, 22(8), 44(6) and 48(6), (7) and (8) of the Law on Specialist Chambers and Specialist Prosecutor’s Office² (“Law”) and Rules 193 and 194 of the Rules of Procedure and Evidence (“Rules”)³ is seised of the “Defence Request for Protection of Legality against the Decision on Defence Appeal Against the Reparation Order with Public Annex 1” (“Request”).⁴

I. PROCEDURAL BACKGROUND

1. On 16 July 2024, Trial Panel I issued its judgment and sentenced Mr Pjetër Shala to 18 years of imprisonment with credit for the time served in detention (“Trial Judgment”).⁵
2. On 29 November 2024, Trial Panel I issued the “Reparations Order against Pjetër Shala” (“Reparation Order”), wherein it ordered Mr Shala to pay 208,000 Euros as compensation for the harm inflicted on the victims of the crimes for which he was convicted.⁶
3. On 14 July 2025, the Appeals Panel issued the Appeal Judgment, wherein it, *inter alia*, reversed, in part, Mr Shala’s convictions under Counts 1 and 3 insofar as they “rely on the arbitrary detention of two individuals and the torture of five

¹ Constitution of Kosovo (with amendments I-XXIV), 5 August 2015.

² Law on the Specialist Chambers and Specialist Prosecutor’s Office, No. 05/L-053, 3 August 2015.

³ Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, (adopted on 17 March 2017, revised on 29 May 2017, amended on 29 and 30 April 2020).

⁴ 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 (confidential). A public redacted version was filed on 18 May 2026 (F00001/RED).

⁵ KSC-BC-2024-04/F00847/RED, Trial Judgment and Sentence with One Confidential Annex, 16 July 2024, para. 1125.

⁶ KSC-BC-2024-04/F00866, Reparation Order against Pjetër Shala, 29 November 2024 (confidential), para. 239. A public redacted version was issued on 23 December 2024, F00866/RED.

individuals”.⁷ The Appeals Panel dismissed Mr Shala’s appeal “in all other aspects”,⁸ and affirmed his convictions for the war crimes of arbitrary detention, torture, and murder.⁹ The Appeals Panel set aside the sentences imposed for Counts 3 and 4 and imposed a revised sentence of 13 years’ imprisonment with credit for time served.¹⁰

4. On 29 January 2026, the Appeals Panel issued the “Decision on Defence Appeal Against Reparation Order” (“Appeal Decision” or “Impugned Decision”), wherein it denied Mr Shala’s appeal against the Reparation Order in its entirety.¹¹

5. On 29 April 2026, Mr Shala filed the Request.

6. On 1 May 2026, the President filed the “Decision Assigning a Supreme Court Panel”.¹²

7. On 26 May 2026, the Victims’ Counsel filed the “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” (“Response”).¹³

8. On 28 May 2026, the Panel issued the “Decision on Request for Extension of Time” wherein it granted Mr Shala’s request for an extension to file his reply to the Response until 10 June 2026.¹⁴

9. On 10 June 2026, Mr Shala filed the “Defence Reply to the Victims’ Counsel Responses to the Defence Request for Protection of Legality against the Decision on

⁷ KSC-CA-2024-03/F00069, Appeal Judgment, 14 July 2025, para. 938.

⁸ Appeal Judgment, para. 938.

⁹ Appeal Judgment, para. 938.

¹⁰ Appeal Judgment, para. 938.

¹¹ KSC-CA-2024-03/F00073, Decision on Defence Appeal Against Reparation Order, 29 January 2026 (confidential). A public redacted version was filed on the same day (KSC-CA-2024-03/F00073/RED).

¹² PL002/F00002, Decision Assigning a Supreme Court Panel, 1 May 2026.

¹³ PL002/F00005, 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, 26 May 2026.

¹⁴ PL002/F00007, Decision on Request for Extension of Time, 28 May 2026.

Defence Appeal Against the Reparation Order” (“Reply”).¹⁵

II. ADMISSIBILITY

10. The Panel notes that this is the first request for protection of legality filed in relation to a reparation order. Unlike the previous requests for protection of legality, the decision underlying the Request, namely the Reparation Order, while issued during the criminal proceedings in accordance with Article 22(8) of the Law, is civil in nature. The Panel observes, however, that Article 48(6) of the Law does not distinguish between decisions of a criminal or a civil nature. Article 48(6) of the Law only requires that the underlying ruling be final.

11. The Panel notes that with the issuance of the Appeal Decision, the Reparation Order has become final within the meaning of Article 48(6) of the Law. The Panel further observes that the Request was filed within three months from the issuance of the Appeal Decision as required under Article 48(6) of the Law and Rule 193(1) of the Rules. The Request is therefore admissible in this respect.

III. STANDARD OF REVIEW

12. The Panel recalls that protection of legality cannot be characterized as a third instance appeal,¹⁶ 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 avenue of appeal.¹⁷

¹⁵ PL002/F00008, 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, 10 June 2026.

¹⁶ See Article 47 of the Law.

¹⁷ *Specialist Prosecutor v. Hashim Thaçi et al.*, KSC-BC-2020-06/PL002/F00005, Decision on Mr Veseli’s Request for the Protection of Legality, 19 December 2025 (“Veseli Decision”), para. 17; *Specialist Prosecutor v. Hashim Thaçi et al.*, KSC-BC-2020-06/PL003/F00004, Decision on Krasniqi Defence Request for Protection of Legality Against ‘Decision on Jakup Krasniqi’s Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention (IA035/F00005)’, 29 December 2025 (“Krasniqi Decision”), para. 18; *Specialist Prosecutor v. Salih Mustafa*, KSC-SC-2024-02/F00018, Decision on Salih Mustafa’s Request for Protection of Legality, 29 July 2024 (“Mustafa Decision”), para. 11; *Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj*, KSC-SC-2023-01/F00021, Decision on Requests for Protection of Legality, 18 September 2023 (“Gucati and Haradinaj Decision”), para. 9.

Rather, and similar to the Kosovo Criminal Procedure Code,¹⁸ 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.¹⁹

13. Strict admissibility requirements accordingly apply to the grounds underlying a request for protection of legality.²⁰

14. Arguments that reasonably could have been advanced before the first and second instance panels, cannot be raised *de novo* before the Supreme Court Panel.²¹ 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.²² Mere disagreement with the factual assessment of the first and second instance courts or verbatim repetitions of submissions of the previous appeal without 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.²³

15. In assessing a request for protection of legality and depending on the nature of the violation alleged by a party, the Panel shall determine whether a violation of the criminal law contained within the Law or a substantial violation of the procedures set

¹⁸ See Article 432 of the Kosovo Criminal Procedure Code No. 08/L-032, Official Gazette No. 24, 17 August 2022.

¹⁹ Kosovo Supreme Court, S.S., Pml.Kzz 42/2017, Judgment, 10 May 2017, para. 23; Veseli Decision, para. 17; Krasniqi Decision, para. 18.

²⁰ Veseli Decision, para. 18; Krasniqi Decision, para. 19.

²¹ Veseli Decision, para. 20; Krasniqi Decision, para. 21; Mustafa Decision, para. 14; Gucati and Haradinaj Decision, para. 10.

²² Rule 193(3) of the Rules. See also Veseli Decision, para. 21; Krasniqi Decision, para. 22; Mustafa Decision, para. 15; Gucati and Haradinaj Decision, para. 10.

²³ Veseli Decision, para. 22; Krasniqi Decision, para. 23; Mustafa Decision, para. 16; Gucati and Haradinaj Decision, para. 10; Veseli Decision, para. 25.

out in the Law and in the Rules has been identified.²⁴

16. In this context, the Panel recalls the high threshold established by Article 48(7)(b) of the Law in relation to substantial procedural violations.²⁵ More specifically, the Panel ruled that a “substantial violation” of the procedures occurs when it “materially affects the judicial finding”.²⁶ 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.²⁷

17. 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.²⁸

18. The Panel will apply this same standard to alleged substantial violations of the procedure in relation to final decisions on reparation orders.

19. The Panel also established the applicable standard of review with respect to violation(s) of the criminal law as set out in Article 48(7)(a) of the Law.²⁹ The Panel found that this article does not require that a violation of the criminal law be “substantial”.³⁰

²⁴ Article 48(7) of the Law; Veseli Decision, para. 19; Krasniqi Decision, para. 20.

²⁵ Veseli Decision, para. 23; Krasniqi Decision, para. 24; Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 14.

²⁶ Veseli Decision, para. 23; Krasniqi Decision, para. 24; Mustafa Decision, para. 17; Gucati and Haradinaj Decision, para. 14.

²⁷ See also Kosovo Supreme Court, NV, Pml.Kzz 91/2015, Judgment, 14 May 2015, paras 4, 10-12; AM, Pml.Kzz 84/2015, Judgment, 12 May 2015, pp 3-4; *M.I.*, Pml.Kzz 26/2015, Judgment, 18 March 2015, pp 5-7; Veseli Decision, para. 23; Krasniqi Decision, para. 24.

²⁸ Veseli Decision, para. 24; Krasniqi Decision, para. 25; Mustafa Decision, para. 18; Gucati and Haradinaj Decision, para. 14.

²⁹ Mustafa Decision, para. 19; Gucati and Haradinaj Decision, para. 17.

³⁰ Mustafa Decision, para. 19; Gucati and Haradinaj Decision, para. 17.

20. The Panel observes that the Reparation Order was issued separately, after the issuance of the judgment and sentence. However, the Panel notes that the issuance of a reparation order is contained within Article 44 of the Law, which is entitled “punishments”. The Panel further notes that Article 44(6) of the Law introduces the possibility of ordering a convicted person to make restitution or pay compensation “in addition to imprisonment”, which suggests that the Law envisions the issuance of a reparation order as part of the overall punishment imposed on a convicted person.³¹

21. The Panel therefore finds that, among the exhaustive list of violations of the criminal law provided for in Article 385(1) of the Kosovo Criminal Procedure Code, the following violation to be the relevant one with respect to reparation orders: in rendering a decision on punishment, alternative punishment or judicial admonition, or in ordering a measure of mandatory rehabilitation treatment or the confiscation, the court exceeded its authority under a law.³²

22. The Panel notes that a request for protection of legality could also be premised on Article 48(8) of the Law, which stipulates that an extraordinary legal remedy may also be filed on the basis of rights available under the Law, which are also protected under the European Convention on Human Rights (“ECHR”). The Panel considers that any alleged violation of the rights available under the Law, which are also protected under the ECHR, must meet the same standard of review as set out above.³³

23. The Panel has further held that a party requesting protection of legality must clearly identify the alleged legal violation, substantiate it, and, in case of a procedural violation, demonstrate how it materially affected the impugned judgment or

³¹ Cf. United States Supreme Court, *Ellingburg v. United States*, 607 U.S., 20 January 2026.

³² Article 385(1)(1.1-1.6) of the Kosovo Criminal Procedure Code. See also Mustafa Decision, para. 20; Gucati and Haradinaj Decision, para. 17.

³³ See Veseli Decision, para. 25; Krasniqi Decision, para. 26; Mustafa Decision, para. 21; Gucati and Haradinaj Decision, para. 18.

decision.³⁴

24. Lastly, the Panel recalls Rule 194(1) of the Rules, which stipulates that where the Supreme Court Panel grants a request for protection of legality, depending on the nature of the violation, it may either:

- (a) modify the impugned decision or judgment;
- (b) annul in whole or in part the impugned decision or judgment and return the case for a new decision or retrial to the competent Panel; or
- (c) confine itself only to establishing the existence of a violation of law.

IV. DISCUSSION

A. ERROR IN THE APPLICABLE STANDARD OF REVIEW (GROUND 1)

1. Submissions

25. Mr Shala submits that the Appeals Panel violated Articles 3(2) and 21 of the Law, Rule 5 of the Rules and Article 6 of the ECHR by failing to apply the correct standard of review to appellate proceedings related to reparations and thereby violating Mr Shala's right to "effective access to court and an appeal".³⁵ Specifically, Mr Shala contends that there is a lacuna in the Law with respect to the standard of review for reparation proceedings on appeal and the Appeals Panel failed to apply Rule 5 of the Rules.³⁶ According to Mr Shala, the Appeals Panel instead "expansively interpreted Article 46 of the Law [such that it] 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".³⁷ Mr Shala asserts that the procedural error constitutes a substantial violation of the procedures and the Supreme

³⁴ Veseli Decision, para. 26; Krasniqi Decision, para. 27; Mustafa Decision, para. 22; Gucati and Haradinaj Decision, para. 19. See also Veseli Decision, paras 37-38, 58, 70-71, 76, and Krasniqi Decision, paras 42-43, 49-50, 60, where the Panel applied this standard by finding that the Defence failed to identify a specific legal or procedural violation, raised factual disagreements, and did not demonstrate any material affected the impugned decision.

³⁵ Request, para. 7. See also Request, para. 11; Reply, para. 7.

³⁶ Request, para. 9.

³⁷ Request, para. 9. See also Request, para. 10; Reply, paras 3-6.

Court Panel should annul the Appeal Decision and “return the case for a new decision to a competent panel”.³⁸

26. Mr Shala submits that the lack of clarity on the standard of review applicable to reparation proceedings also breached “procedural principles” such as “legal certainty, fairness, and effectiveness of remedies”, which prevented him from “effectively tailoring [his] submissions to ensure that the appropriate standard could be met”.³⁹ To that end, Mr Shala contends that the unreasonably high standard applied by the Appeals Panel led to certain of his submissions being erroneously dismissed.⁴⁰

27. According to Mr Shala, the Appeals Panel should have applied the standard of review employed by the International Criminal Court (“ICC”), namely

“[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.’⁴¹

28. Mr Shala submits that with respect to errors of fact, the Appeals Panel should have used the ICC’s standard, 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”.⁴²

³⁸ Request, para. 17.

³⁹ Request, para. 11.

⁴⁰ Request, para. 12.

⁴¹ Request, para. 13, citing ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-3466-Red, Public Redacted 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 (“*Lubanga Appeal Judgment on Reparations*”), para. 28; 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 (“*Katanga Appeal Judgment on Reparations*”), para. 39.

⁴² Request, para. 14, citing *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

29. Victims' Counsel responds that this is the first time Mr Shala raises that there has been a violation of Rule 5 of the Rules and contends that Article 46 of the Law provides the relevant standard, which can be equally applied to reparation proceedings.⁴³ According to Victims' Counsel, Article 46 of the Law uses the term "judgment" to include a Reparation Order, which is also included in Rule 173(2) of the Rules.⁴⁴ Victims' Counsel submits that the Appeals Panel therefore did not "ignore the plain wording" of Article 46 of the Law.⁴⁵ Victims' Counsel asserts that Mr Shala further failed to demonstrate how the Appeals Panel's approach materially affected the Impugned Decision.⁴⁶

30. Mr Shala replies that Victims' Counsel "ignores the substance of the Defence submission" and reiterates that the Appeals Panel should have undertaken an analysis pursuant to Rule 5 of the Rules, given that the Law does not expressly regulate the standard of review for reparation proceedings.⁴⁷

2. The Supreme Court Panel's Assessment

31. The Panel notes Mr Shala's contention that there has been a substantial violation of the procedures and refers to Articles 3(2) and 21 of the Law, Rule 5 of the Rules and Article 6 of the ECHR.⁴⁸ In other words, Mr Shala generally refers to the provisions he considers constitute a violation, as well as the corresponding Article in the ECHR in relation to his fair trial rights. Accordingly, the Panel considers this Ground admissible and will proceed with its consideration thereof on the merits.

32. The Panel observes that the Appeals Panel determined that the standard of

Decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", 7 April 2015, para. 22; *Katanga* Appeal Judgment on Reparations, para. 41. See also Request, para. 15.

⁴³ Response, paras 24-25. See also Response, paras 32-35.

⁴⁴ Response, para. 31. See also Response, paras 37-39.

⁴⁵ Response, para. 30.

⁴⁶ Response, para. 36. See also Response, paras 41-42.

⁴⁷ Reply, para. 5. See also Reply, para. 6.

⁴⁸ See Request, para. 7.

review contained in Article 46 of the Law for appellate proceedings also applies to appeals against reparation orders.⁴⁹ The Appeals Panel concluded that while there is nothing explicitly set forth in the Law or the Rules in relation to the standard of review applicable to appeals against reparation orders, Article 46 of the Law and the jurisprudence developed by the Appeals Panel also applies to decisions on reparations.⁵⁰ Having carefully considered Mr Shala's submissions, the Panel is not persuaded by his assertion that the Appeals Panel erred in this respect.

33. The Panel recalls that Article 46(9) of the Law and Rule 173(2) of the Rules provide that the Court of Appeals may hear appeals by Victims' Counsel in respect of a reparation order. It follows that the Appeals Panel could also hear appeals by a convicted person of a reparation order and that, in view of its inclusion within Article 46 of the Law, the standard of review for appeals set forth in this Article as well as the jurisprudence developed by the Appeals Panel equally applies to reparation orders. In the Panel's view, there is therefore no lacuna in the Law or the Rules, and the Appeals Panel correctly applied the standard of review as set forth in Article 46 of the Law to its consideration of the appeal against the Reparation Order.

34. As the Appeals Panel observed, the Specialist Chambers shall adjudicate and function in accordance with, *inter alia*, the Law as *lex specialis*.⁵¹ The Panel therefore considers that the Appeals Panel correctly reflected on the legal framework of the Specialist Chambers to determine the standard of review and was not required to apply that of a different court or tribunal. In other words, the Panel finds that Mr Shala cannot rely on the standard applied at another court, which is not binding on the Specialist Chambers, to claim a substantial violation of the procedures at the Specialist Chambers.

35. In any event, as noted by the Appeals Panel, the ICC Appeals Chamber, whose

⁴⁹ Appeal Decision, para. 30.

⁵⁰ Appeal Decision, para. 28. See also Appeal Decision, para. 30.

⁵¹ Appeal Decision, paras 29, 38. See also Article 3(2)(b) of the Law.

standard of review Mr Shala argues should instead be applied to reparation orders, “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”.⁵² In other words, the ICC Appeals Chamber does not maintain a different or lesser standard of review for appeals against reparation orders and decisions compared to appeals against trial judgments.

36. Moreover, the Panel notes that Mr Shala does not explain how, if at all, the standard of review for appeals against reparation orders at the Specialist Chambers and the ICC are materially different, aside from the wording. As noted above, the ICC Appeals Chambers similarly did not distinguish between judgments and reparation orders in the use of its standard of review.

37. Importantly, like the ICC Appeals Chamber, the Appeals Panel noted that the Trial Panel applied the “balance of probabilities” standard when it comes to the standard of proof and indicated that it would equally bear this standard in mind in the present case.⁵³ Finally, the Panel notes that Mr Shala does not demonstrate how the application of the ICC’s standard of review would have materially affected the Appeal Decision.⁵⁴

38. Considering the above, the Panel finds that Mr Shala has not demonstrated that the Appeals Panel erred in its use of the standard of review as set forth in Article 46 of the Law with respect to its consideration of the Reparation Order. The Panel therefore rejects Ground 1.

⁵² Appeal Decision, para. 29.

⁵³ Appeal Decision, para. 35.

⁵⁴ Request, paras 7-17.

B. BREACH OF DUE PROCESS (GROUND 2)

1. Submissions

39. Mr Shala contends that the Trial Panel committed a substantial violation of the procedures by conducting separate reparation proceedings before his convictions were considered final on appeal. According to Mr Shala, this violated his right to the presumption of innocence as well as his right “to a fair hearing on all matters arising from the criminal proceedings”.⁵⁵ Mr Shala asserts that these violations breached his rights as protected by Article 31 of the Kosovo Constitution, Article 21(2) of the Law and Article 6 of the ECHR.⁵⁶ Mr Shala contends that the Appeal Decision should be annulled and returned for a new decision by a competent panel.⁵⁷

40. Mr Shala submits that “it is only logical that reparations proceedings follow the proceedings challenging the factual findings on which a conviction is based” and that this “trend” can be discerned at the ICC, where reparation proceedings are initiated after convictions have become final.⁵⁸ Mr Shala contends that the Trial Panel used its factual findings in the judgment to underpin certain of its orders in terms of reparations; findings that were later reversed by the Appeals Panel when it comes to torture and arbitrary detention.⁵⁹ Mr Shala argues that if the gravity of the crimes of which he was convicted are relevant as contextual observations in understanding the harm, as the Trial Panel stated, then the reversal of certain findings should equally be relevant in terms of Mr Shala’s liability for reparations.⁶⁰

41. Mr Shala further submits that the right to appeal should cover all legal consequences and that by issuing a reparation order before all legal and factual findings become final, he is deprived of the ability to “fully challenge the final basis

⁵⁵ Request, para. 18.

⁵⁶ Request, para. 18. See also Request, para. 20.

⁵⁷ Request, para. 26.

⁵⁸ Request, para. 19.

⁵⁹ Request, paras 20-21.

⁶⁰ Request, para. 21; Reply, para. 9.

of liability”.⁶¹ While Mr Shala acknowledges that he was able to appeal the Reparation Order, he contends that he never had the opportunity to contest the reparations in light of the Appeal Judgment and the findings contained therein, which impact the extent of his liability for reparations.⁶² Mr Shala contends that the prejudice he suffered as a result was exacerbated by the Appeals Panel’s decision not to consider submissions raised for the first time on appeal.⁶³

42. Victims’ Counsel responds that the way the reparation proceedings were held did not result in any adverse impact on the fairness of the proceedings.⁶⁴ Specifically, Victims’ Counsel asserts that all the factual findings upon which the Trial Panel relied for purposes of the Reparation Order were upheld by the Appeals Panel.⁶⁵ According to Victims’ Counsel, Mr Shala therefore fails to demonstrate how the sequence of the proceedings materially affected the Impugned Decision.⁶⁶

43. Mr Shala replies that the fairness of the proceedings must be assessed at the time the Reparation Order was issued and “not with the benefit of hindsight once the appeal on the merits had concluded” and the Appeal Judgment upheld “certain findings”.⁶⁷

2. The Supreme Court Panel’s Assessment

44. The Panel notes Mr Shala’s contention that there has been a substantial violation of the procedures and refers to Article 31 of the Kosovo Constitution, Article 21(2) of the Law and Article 6 of the ECHR.⁶⁸ In other words, Mr Shala refers to the provisions he considers have been violated, as well as the corresponding Article in the

⁶¹ Request, para. 22.

⁶² Request, para. 23; Reply, para. 10.

⁶³ Request, para. 24. See also Request, para. 25.

⁶⁴ Response, para. 47. See also Response, paras 44-46.

⁶⁵ Response, para. 47.

⁶⁶ Response, para. 47.

⁶⁷ Reply, para. 8.

⁶⁸ See Request, para. 18.

ECHR in relation to his fair trial rights. Accordingly, the Panel considers this Ground admissible and will proceed with its consideration thereof on the merits.

45. The Panel recalls that when alleging a substantial violation of the procedure, one must also demonstrate how this violation materially affected the Impugned Decision.⁶⁹

46. The Panel notes that the Appeals Panel determined that the findings it made in the Appeal Judgment “did not concern the crimes committed against V01/04 or W04733, 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”.⁷⁰ The Appeals Panel further noted that it affirmed the remainder of Mr Shala’s convictions for arbitrary detention, torture and murder as war crimes.⁷¹ The Appeals Panel noted that Mr Shala was able to appeal the Reparation Order, found that he had therefore not been prejudiced, and dismissed Mr Shala’s contention that the Reparation Order should have been issued after the delivery of the Appeal Judgment.⁷²

47. The Panel notes that neither the Law nor the Rules preclude the issuance of a reparation order before the delivery of an appeal judgment. Indeed, Article 22(8) of the Law provides that either the Trial Panel *or* the Appeals Panel may make an order against the accused specifying appropriate reparations. A convicted person against whom a reparation order is issued can appeal the order. Similarly, appeals panels can, as the current Appeals Panel has done, reflect on the findings it made in the Appeal Judgment, to determine whether any of these findings impact the Reparation Order that was issued before the Appeal Judgment. Indeed, the Appeals Panel considered the findings it made in the Appeal Judgment and determined that this did not impact

⁶⁹ See *supra*, para. 16.

⁷⁰ Appeal Decision, para. 70.

⁷¹ Appeal Decision, para. 70.

⁷² Appeal Decision, para. 71.

Mr Shala's civil liability within the context of the Reparation Order.⁷³

48. Moreover, the Appeals Panel did not "preclude hearing submissions raised for the first time on appeal", as Mr Shala suggested.⁷⁴ The paragraphs to which Mr Shala refers in support of this contention are part of the Appeals Panel's standard of review for appeals. This standard does not preclude Mr Shala from raising matters before the Appeals Panel, unless Mr Shala could have reasonably raised them before the Trial Chamber and failed to do so. The arguments rejected by the Appeals Panel without consideration of the merits to which Mr Shala points to substantiate the prejudice alleged caused to him, were in fact arguments the Appeals Panel considered could have reasonably been raised before the Trial Panel and were not.⁷⁵ In other words, the dismissal by the Appeals Panel of Mr Shala's arguments were not a result of the sequencing of the delivery of the Appeal Judgment and the Reparation Order, but of Mr Shala's failure to raise these arguments in the proceedings before the Trial Panel when he reasonably could have done so.

49. The Panel observes that Mr Shala does not cite to any jurisprudence of the European Court of Human Rights to substantiate his submission that there has been a violation of Article 6 of the ECHR.⁷⁶ Instead, Mr Shala refers to "a discernible trend" at the ICC, through which he seems to suggest that a violation has occurred at the Specialist Chambers.⁷⁷ The Panel finds that Mr Shala cannot rely on an alleged "discernible trend" at another court, which is not binding on the Specialist Chambers, to claim a substantial violation of the procedures at the Specialist Chambers.

50. In any event, the Panel notes that the ICC similarly does not provide for the

⁷³ See Appeal Decision, para. 70.

⁷⁴ Request, para. 24, *referring to* Appeal Decision, paras 42-44.

⁷⁵ See Request, para. 24, *referring to* Appeal Decision, paras 135, 146 and fn. 386.

⁷⁶ See Request, paras 18-26.

⁷⁷ Request, para. 19.

issuance of a reparation order after the delivery of the final judgment in that case.⁷⁸ Instead, Rules 143 and 144 of the ICC Rules of Procedure and Evidence, which refer to the Trial Chamber in the context of reparation hearings and the delivery of the judgment, including the sentence and reparations, suggest that these proceedings are generally meant to take place before a Trial Chamber. Like the Specialist Chambers, an appeal against a reparation order issued by a Trial Chamber can be filed before the ICC Appeals Chamber.⁷⁹

51. While some reparation orders at the ICC have indeed been issued after the judgment became final, as Mr Shala asserts,⁸⁰ other reparation orders were issued before the delivery of the final judgment in that case.⁸¹ Accordingly, there is no set practice at the ICC and its regulatory framework, like that of the Specialist Chambers' does not prevent the issuance of reparation orders before a judgment has become final. In other words, as long as the convicted person can appeal the reparation order, there is no prejudice to the convicted person.

52. The Panel therefore does not consider that the Appeals Panel erred in this respect, nor that Mr Shala was prejudiced by the sequence of the delivery of the Appeal Judgment and the Reparation Order. Accordingly, the Panel rejects Ground 2.

⁷⁸ See ICC, Article 75 of the Rome Statute, which refers generally to "the Court" rather than distinguishing between the Trial and the Appeals Chamber.

⁷⁹ See ICC Rule 150 of the Rules.

⁸⁰ See Request, para. 19, citing ICC, *Katanga Appeal Judgment on Reparations*; 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. Dominic Ongwen*, Case No. ICC-02/04- 01/15, Reparations Order, 28 February 2024 ("*Ongwen Reparations Order*").

⁸¹ Cf. ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06 A A 2 A 3, Judgment on the Appeals against the "Decision Establishing the Principles and Procedures to be Applied to Reparations" of 7 August 2012 with AMENDED Order for Reparations (Annex A) and Public Annexes 1 and 2, 3 March 2015 ("*Lubanga Appeal Judgment on Principles of Reparations*"); *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06 A4-A5, Judgment on the Appeals against the Decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 12 September 2022 ("*Ntaganda Reparations Judgment*").

C. ERROR IN THE LAW OF CAUSATION (GROUND 3)

1. Submissions

53. Mr Shala submits that the Trial Panel committed a substantial violation of the procedure by referring to “crime and harm” rather than “wrongful conduct and harm” as the starting point of the test for legal causation and the resulting failure to assess the causation between Mr Shala’s conduct and the harm suffered by the victims.⁸² According to Mr Shala, these failures have breached his right to a fair trial as guaranteed by Article 31 of the Kosovo Constitution, Article 21(2) of the Law and Article 6 of the ECHR.⁸³ Mr Shala argues that the Appeal Decision should be annulled and returned for a new decision by a competent panel.⁸⁴

54. Mr Shala submits that the Trial Panel erred by holding him liable to repair harm that was not caused by his acts or omissions, but by “the crimes in respect of which Mr Shala was convicted”.⁸⁵ Mr Shala further asserts that the Trial Panel correctly determined that there must be causation, but thereafter wrongly applied the test as a “but/for relationship” between the crime and the harm.⁸⁶ Mr Shala argues that the Appeals Panel erroneously concluded that a plain reading of Article 22(1) of the Law and Rule 2 of the Rules requires there to be a causation between the crime and the harm, particularly in view of the legal context in which reparations are awarded within the Specialist Chambers.⁸⁷ According to Mr Shala, this test leads to an “outcome-driven assessment, thereby collapsing the distinction between criminal occurrence and attributable responsibility”.⁸⁸

55. Victims’ Counsel submits that Mr Shala’s arguments related to causation in the

⁸² Request, para. 27.

⁸³ Request, para. 27.

⁸⁴ Request, para. 31.

⁸⁵ Request, para. 28.

⁸⁶ Request, para. 28.

⁸⁷ Request, para. 29.

⁸⁸ Request, para. 30. See also Reply, para. 11.

reparation proceedings were fully addressed by both Panels and Mr Shala is simply repeating arguments without any further authority or support therefor.⁸⁹

56. Mr Shala replies that Victims' Counsel fails to explain "why the causal inquiry should begin and end with the existence of the crime itself rather than the conduct attributable to Mr Shala".⁹⁰

2. The Supreme Court Panel's Assessment

57. The Panel notes Mr Shala's contention that there has been a substantial violation of the procedures and refers to Article 31 of the Kosovo Constitution, Article 21(2) of the Law and Article 6 of the ECHR.⁹¹ In other words, Mr Shala refers to the provisions allegedly violated, as well as the corresponding Article in the ECHR in relation to his fair trial rights. Accordingly, the Panel considers this Ground admissible and will proceed with its consideration thereof on the merits.

58. The Appeals Panel found that a plain reading of Article 22(1) of the Law and Rule 2 of the Rules reflects that a victim must have suffered harm *as a direct result of a crime within the jurisdiction of the Specialist Chambers*.⁹² In other words, the Appeals Panel found that the Trial Panel correctly determined 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".⁹³

59. The Appeals Panel was further not convinced by Mr Shala's interpretation of the manner in which the "but/for" test is to be applied, explaining that Mr Shala erroneously referred to tort law, rather than reparation orders issued in the context of

⁸⁹ Response, paras 48-49. See also Response, paras 50-52.

⁹⁰ Reply, para. 11.

⁹¹ See Request, para. 27.

⁹² Appeal Decision, para. 90, *citing Lubanga Appeal Judgment on Principles of Reparations*, para. 79.

⁹³ Appeal Decision, para. 90, *citing Lubanga Appeal Judgment on Principles of Reparations*, para. 79.

criminal proceedings, and dismissing Mr Shala's other arguments in this respect.⁹⁴

60. The Panel recalls that a person requesting protection for legality must provide arguments and support therefor.⁹⁵ The Panel observes that Mr Shala provides no further support or justification or any basis for his assertion that the Trial and the Appeals Panel erred in their consideration of the plain wording of Article 22(1) of the Law and Rule 2 of the Rules,⁹⁶ nor does he cite to any case law in support of his interpretation. Similarly, Mr Shala does not refer to anything in support of his contention that the Panels erred in the manner in which they applied the "but/for" test,⁹⁷ which is similarly applied at the ICC.⁹⁸ Mr Shala merely disagrees with the interpretation given by the Trial and Appeals Panel without substantiating his arguments.

61. The Panel accordingly finds that Mr Shala failed to show a substantial violation of the procedures by the Trial and Appeals Panel in their interpretation of Article 22(1) of the Law, Rule 2 of the Rules, and in their application of the "but/for" test in determining the reparations to be awarded to the victims. The Panel therefore rejects Ground 3 in its entirety.

D. ERROR IN THE AWARD OF MEDICAL EXPENSES (GROUND 4)

1. Submissions

62. Mr Shala argues that the Trial Panel substantially violated the procedures by not requiring data on W04733's medical costs to determine the award for material harm suffered by some of his family members, who were admitted as indirect victims.⁹⁹ According to Mr Shala, the Trial Panel's error resulted in a

⁹⁴ Appeal Decision, para. 92.

⁹⁵ See *supra*, para. 14.

⁹⁶ See Request, paras 27-31.

⁹⁷ See Request, paras 27-31.

⁹⁸ See Appeal Decision, para. 90, *citing Ongwen* Reparations Order, para. 418; *Ntaganda* Reparations Judgment, para. 131; *Lubanga* Appeal Judgment on Principles of Reparations, para. 80.

⁹⁹ Request, para. 32.

“misinterpretation and misapplication of Article 22 of the Law and Rule 168 of the Rules [,which] require ‘appropriate reparations’”.¹⁰⁰ Mr Shala submits that the Appeal Decision should be annulled and returned to a competent panel for a new decision.¹⁰¹

63. Mr Shala contends that the Trial Panel erroneously “assumed ‘the costs of medical treatments or other harm of financial or patrimonial nature’” and found that there was no “requirement to furnish data” to demonstrate such harm.¹⁰² Mr Shala asserts that the Trial Panel further erred by failing to specify whether the victims suffered any pre-existing medical conditions prior to detention and the extent to which any ill-treatment exacerbated these conditions.¹⁰³

64. Mr Shala submits that the Appeals Panel failed to assess whether the appropriate standard of proof was met in the present case and instead erroneously observed that the same methodology was applied by the ICC.¹⁰⁴ Mr Shala asserts that the ICC case-law relied upon by the Appeals Panel is distinguishable from the present case, as the ICC cases included circumstances where there was no documentary evidence or it was not feasible for victims to obtain such documentation.¹⁰⁵ Mr Shala contends that the victims in his case were not required to produce any documentation in support of their claims nor asked to explain why they could or did not produce such documentation.¹⁰⁶

65. Victims’ Counsel responds that the Appeals Panel “exhaustively” analysed the Trial Panel’s findings, including relevant ICC jurisprudence.¹⁰⁷ According to Victims’ Counsel, “the Trial Panel was entitled to accept the evidence of W04733’s family members” and “the reparation awarded to the indirect victims was a fraction of the

¹⁰⁰ Request, para. 32.

¹⁰¹ Request, para. 40.

¹⁰² Request, para. 33. See also Request, para. 35.

¹⁰³ Request, para. 33. See also Request, para. 34; Reply, para. 16.

¹⁰⁴ Request, para. 36.

¹⁰⁵ Request, para. 36, *citing Ongwen* Reparations Order, para. 436.

¹⁰⁶ Request, para. 36. See also Request, paras 37-39; Reply, para. 14.

¹⁰⁷ Response, para. 54. See also Response, paras 55-57.

loss actually sustained”.¹⁰⁸

66. Mr Shala replies that Victims’ Counsel fails to address “the central deficiency identified” by him, 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”.¹⁰⁹

67. Mr Shala replies that the Appeals Panel’s finding that ICC jurisprudence does not “treat the absence of documentation as an automatic bar to reparations” does not absolve the Trial Panel from assessing whether there remains sufficient evidentiary basis to award reparations for medical costs in light of the circumstances of the particular case.¹¹⁰ According to Mr Shala, the Trial Panel, while acknowledging “that not all aspects of W04733’s declining health were directly linked to the crimes, did not provide a reasoned analysis as to which medical costs were causally connected to the established harm and on what evidentiary basis the amount awarded was determined”.¹¹¹

2. The Supreme Court Panel’s Assessment

68. The Panel notes Mr Shala’s contention that there has been a substantial violation of the procedures and refers to Article 22 of the Law and Rule 168 of the Rules.¹¹² In other words, Mr Shala generally refers to the provisions allegedly violated. Accordingly, the Panel considers this Ground admissible and will proceed with its consideration thereof on the merits.

69. Having reviewed the Reparation Order, the Appeals Panel determined that the Trial Panel followed a “comparable” method to that of the ICC, which takes into account the difficulties faced by victims of international crimes in providing

¹⁰⁸ Response, para. 58.

¹⁰⁹ Reply, para. 13.

¹¹⁰ Reply, para. 15. See also Reply, para. 17.

¹¹¹ Reply, para. 16.

¹¹² See Request, para. 32.

documentation in support of their reparation claims and conducting an enquiry on a *case-by-case* basis.¹¹³ The Panel notes that there is no dispute in relation to this method.¹¹⁴

70. The Appeals Panel noted in this regard the finding of the Trial Panel that “in the circumstances of the case, it was not a requirement to furnish data as to the costs of medical treatment”, including notably considering the passage of time.¹¹⁵

71. The Appeals Panel noted further the standard set forth by the ICC 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’.¹¹⁶

72. The Panel observes that the Appeals Panel was satisfied with the Trial Panel’s general finding that 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”.¹¹⁷ As the Appeals Panel correctly stated, the absence of specific reasons given by the indirect victims’ as to their inability to provide supporting documentation “is not in itself a bar to considering that a person may be eligible for reparations in such circumstances”.¹¹⁸

73. The Panel notes that the Trial Panel stated that participating victims are not required to provide data or supporting evidence in relation to their reparation

¹¹³ Appeal Decision, para. 144, *citing* ICC, *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15 A3, Judgment on the Appeal of Mr Dominic Ongwen against the Decision of Trial Chamber IX of 28 February 2024 entitled “Reparations Order”, 7 April 2025, paras 175-177, 183-184; *Lubanga* Appeal Judgment on Reparations, paras 202-204; *Katanga* Appeal Judgment on Reparations, para. 89.

¹¹⁴ See, e.g., Reply, para. 13.

¹¹⁵ Appeal Decision, para. 143, *citing* Reparation Order, para. 179. See also Reparation Order, paras 134, 139.

¹¹⁶ Appeal Decision, fn. 373, *referring to* *Lubanga* Appeal Judgment on Reparations, para. 204; *Ntaganda* Reparations Judgment, para. 514.

¹¹⁷ Appeal Decision, para. 143, *citing* the Reparation Order, para. 89.

¹¹⁸ Appeal Decision, fn. 375.

claims.¹¹⁹ However, the Trial Panel elsewhere in the Reparation Order also expressed the principled view that “to the extent available, alleged victims may present supporting documentation, such as medical certificates, medical prescriptions, photographs or any other records attesting to bodily injury suffered”.¹²⁰ It is thus clear that the Trial Panel did not discourage victims from providing documentation in support of reparation claims.

74. Indeed, the Panel considers that the analysis undertaken by the Trial Panel in relation to W04733’s medical expenses demonstrates that it in fact reviewed and reflected on the individual circumstances of W04733 with respect to the absence of supporting documents and the availability of other evidence. Specifically, the Trial Panel noted the difficulties associated with the gathering of such medical information in the present case given the passage of time,¹²¹ the Victims’ Counsel submissions in relation to W04733, which reflected as much,¹²² the stigma associated with the crimes W04733 was subjected to, and the fear he experienced after he returned home.¹²³

75. The Panel recalls that it is not for the Supreme Court to determine whether the Trial Panel indeed had sufficient evidence upon which to come to a determination in relation to the medical costs.¹²⁴ This constitutes a factual assessment that is not within the Supreme Court Panel’s mandate.¹²⁵ However, the Panel observes that the Trial Panel considered a range of other evidence in coming to its determination on the

¹¹⁹ Reparation Order, para. 179.

¹²⁰ Reparation Order, para. 98.

¹²¹ See Reparation Order, para. 89.

¹²² Reparation Order, para. 200, citing *Specialist Prosecutor v. Pjetër Shala*, KSC-BC-2020-04/F00804/RED, Public Redacted Version of Victims’ Counsel’s Request for Reparations to Address Physical, Mental, and Material Harm Suffered by Victims Participating in the Proceedings, 23 August 2024, paras 53-54. The confidential version was filed on 4 March 2024.

¹²³ Reparation Order, para. 134. See also Reparation Order, para. 89.

¹²⁴ See *supra*, para. 14.

¹²⁵ See *supra*, para. 14.

reparations to be awarded for W04733's medical costs,¹²⁶ including written evidence of W04733 and testimonial evidence of other witnesses whom the Trial Panel found to be credible, as well as relevant evidence about the estimated medical costs, and the facts established in the Trial Judgment.¹²⁷ In other words, the Trial Panel referred to a variety of evidence and its reasons for relying thereon as part of its assessment related to W04733's medical costs.

76. The Panel is therefore of the view that it is apparent from the analysis undertaken by the Trial Panel that the indirect victims were unable to provide specific documentation supporting the claim for W04733's medical costs in view of the particular circumstances of this case and that it relied on a wide range of other evidence upon which it based its decision to award reparation for these medical costs, in accordance with the method maintained by the ICC.

77. Accordingly, the Panel is not persuaded by Mr Shala's arguments that the Appeals and the Trial Panels erred in failing to require that the indirect victims provide supporting documentation for W04733's medical costs when deciding on the reparation claim. The Panel further does not find that the underlying panels failed to provide a reasoned decision as to the evidence upon which they relied to assess and review the amount to be awarded in reparations for W04733's medical costs.

78. The Panel notes that the Appeals Panel determined that the Trial Panel did, contrary to Mr Shala's contention, analyse whether W04733's injuries were sustained as a result of the crimes committed (rather than considering them "pre-existing conditions").¹²⁸ The Panel observes that the Trial Panel clarified that "victims are not required to document every individual injury incurred in the course of their

¹²⁶ See Reparation Order, paras 85-88, wherein the Trial Panel described generally the type of evidence it considered in "determining whether the victims demonstrated the existence of the harm alleged and the causal nexus between the harm and the crimes of which Mr Shala was convicted".

¹²⁷ See Reparation Order, paras 179, 199-200. See also Reparation Order, paras 125-130, 139, 142.

¹²⁸ Appeal Decision, para. 147, *citing* Reparations Order, para. 129.

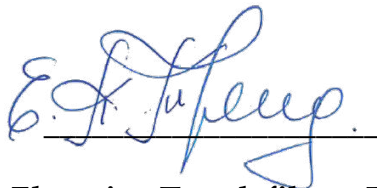
mistreatment [...], provided that the harm arises from the crimes of which Mr Shala has been convicted”.¹²⁹ As explained by the Appeals Panel, the Trial Panel further acknowledged that “not all aspects of W04733’s declining health over the years are a direct result of the crimes committed at” the Kükés Metal Factory.¹³⁰ However, the Trial Panel determined that the brutality of the crimes committed and the state in which he was when he returned home could “only have had an exacerbating effect on W04733’s health”.¹³¹

79. The Panel is therefore not satisfied that Mr Shala demonstrated that in the circumstances of this case, there was a substantial violation of the procedures in the consideration of the medical expenses awarded.

80. In view of the above, the Panel accordingly rejects Ground 4.

V. DISPOSITION

81. For these reasons, the Supreme Court Panel hereby REJECTS the Request in its entirety.



Judge Ekaterina Trendafilova, Presiding

Dated this Thursday, 25 June 2026

At The Hague, the Netherlands

¹²⁹ Reparation Order, para. 98.

¹³⁰ Appeal Decision, para. 147, *citing* Reparation Order, para. 200.

¹³¹ Appeal Decision, para. 147, *citing* Reparation Order, para. 200.