

Case No.: KSC-CC-2026-32

Before: The Specialist Chamber of the Constitutional Court

Judge Vidar Stensland

Judge Roumen Nenkov

Judge Piotr Hofmański

Registrar: Dr Fidelma Donlon

Date: 10 July 2026

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Defence Reply to the Prosecution and Victims' Counsel's Submissions in Relation
to Referral KSC-CC-2026-32-F00004**

Specialist Prosecutor's Office

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Counsel for Victims

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I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (“Defence” and “Mr Shala”, respectively) hereby files this Reply to the Prosecution and Victims’ Counsel’s submissions¹ in relation to Mr Shala’s Referral to the Constitutional Court Panel concerning the violation of his fundamental rights guaranteed by Articles 30, 31 and 33 of the Kosovo Constitution, Articles 6 and 7 of the ECHR and Articles 14, 15, and 26 of the ICCPR.²

II. SUBMISSIONS

COMPLAINT 1: PASSAGE OF TIME

2. The SPO incorrectly characterises Complaint 1 as a request for a reassessment of the factual findings of the lower courts. Mr Shala's referral instead raises a distinct constitutional complaint. None of the lower courts meaningfully assessed whether the extraordinary lapse of 24 years between the alleged events and the trial impaired his ability to present an effective defence. This failure resulted in a violation of Mr Shala's right to a fair trial under Article 31(2) of the Constitution and Article 6(1) of the ECHR.

3. The SPO further submits that the mere passage of time does not automatically render proceedings unfair and refers to several domestic and international authorities concerning delayed war crimes prosecutions.³ Mr Shala does not dispute that assertion. Rather, he submits that, in the circumstances of the present case, the lower courts failed to assess the concrete consequences of the passage of time on the fairness of the proceedings. The issue is therefore not whether war crimes may be prosecuted

¹ KSC-CC-2026-32, F00011, Prosecution submissions on referral of Pjetër SHALA (KSC-CC-2026-32-F00004) with public Annex 1, 26 June 2026 (“Prosecution submissions”); KSC-CC-2026-32, F00010, Victims’ Counsel’s submissions in relation to referral KSC-CC-2026-32-F00004, 26 June 2026 (“Victims’ Counsel’s submissions”).

² KSC-CC-2026-32, F00004, Referral to the Constitutional Court Panel concerning the violation of Mr Shala’s fundamental rights guaranteed by Articles 30, 31 and 33 of the Kosovo Constitution, Articles 6 and 7 of the ECHR and Articles 14, 15, and 26 of the ICCPR, 1 June 2026 (“Referral”).

³ Prosecution submissions, para. 4.

decades after their commission, but whether the resulting prejudice to Mr Shala's defence was adequately examined.

4. The SPO also argues that Mr Shala failed to demonstrate concrete prejudice because it could not identify with precision the evidence allegedly lost through the passage of time.⁴ This argument overlooks the nature of the complaint. As submitted in the referral, the prejudice arises precisely because Mr Shala cannot know what witnesses, documents or investigative opportunities have been irretrievably lost over the course of 24 years. The very passage of time has eroded both testimonial and material sources: potential witnesses have died, disappeared, or can no longer reliably recall events, and key physical locations relevant to the allegations have ceased to exist. Requiring Mr Shala to identify material that can no longer be reconstructed imposes an impossible evidentiary burden inconsistent with the principle of equality of arms and has thereby infringed Mr Shala's right to a fair trial as guaranteed under Article 31(2) of the Constitution and Article 6(1) of the ECHR.⁵

5. Similarly, the SPO's reliance on alternative evidentiary safeguards does not answer Mr Shala's complaint.⁶ The Referral does not contend that written statements or other procedural safeguards were unavailable. Rather, it argues that the lower courts relied on the existence of those safeguards without examining whether they effectively remedied the prejudice resulting from the passage of time in this case.⁷ The mere existence of safeguards cannot replace the required assessment of whether they sufficiently preserved the fairness of the proceedings. By failing to undertake that

⁴ Prosecution submissions, para. 6.

⁵ ECtHR, *Öcalan v. Turkey*, no. 46221/99, 12 May 2005, para. 140; ECtHR, *Foucher v. France*, no. 22209/93, 18 March 1997, para. 34; ECtHR, *Bulut v. Austria*, no. 17358/90, 22 February 1996, para. 47; ECtHR, *Faig Mammadov v. Azerbaijan*, no. 60802/09, 26 January 2017, para. 19.

⁶ Prosecution submissions, para. 7.

⁷ KSC-SC-2025-06, PL001-F00001, Defence Request for Protection of Legality with confidential annex 1, 14 October 2025 ("Defence Request for Protection of Legality"), paras. 9-10; KSC-CA-2024-03, F00029COR, Corrected Version of Defence Appeal Brief with confidential Annexes 1 and 2, 25 November 2024, para. 190.

assessment, the lower courts infringed Mr Shala's right to a fair trial under Article 31(2) of the Constitution and Article 6(1) of the ECHR.

6. The SPO further characterises Mr Shala's submissions regarding unavailable witnesses as speculative.⁸ However, the Defence specifically identified Mr Ruzhdi Saramati as a witness whose evidence Mr Shala was unable to obtain and explained that, as a key figure in Kukës in 1999, his testimony may have contradicted the Prosecution's account.⁹ More fundamentally, Mr Shala's complaint was never limited to a single witness but concerned the cumulative impact of the passage of time on its ability to investigate the case as a whole.

7. Finally, the SPO reiterates that the Trial and Appeals Panels applied a holistic assessment of the evidence.¹⁰ This does not address Mr Shala's argument. As submitted in its referral, the constitutional complaint concerns the double standard applied by the Trial Panel in relying on the passage of time to justify evidentiary imprecisions in the Prosecution's evidence, while failing to consider how that very same passage of time impaired Mr Shala's ability to investigate the allegations, challenge the Prosecution's case, and present exculpatory evidence. It is this asymmetrical treatment of the passage of time that gives rise to the present constitutional complaint.

8. COMPLAINT 2: ADMISSION AND RELIANCE ON SELF-INCRIMINATORY STATEMENTS IN VIOLATION OF THE RIGHT TO LEGAL ASSISTANCE

9. Mr Shala maintains that Complain 2 is admissible and well-founded. The SPO's response fails to engage with the central constitutional issues raised by Mr Shala: that statements obtained in violation of his right to legal assistance were admitted into the evidentiary record, remained available for deliberation, and were relied upon in a

⁸ Prosecution submissions, paras. 2, 6.

⁹ Defence Request for Protection of Legality, para. 9.

¹⁰ Prosecution submissions, para. 7.

process which the Trial Panel itself described as a holistic evaluation of all evidence taken as a whole.¹¹

10. The SPO argues that the Supreme Court dismissed the relevant claims because Mr Shala failed to engage sufficiently with appellate findings and that Complaint 2 must therefore be rejected for non-exhaustion.¹² That approach is overly formalistic and incompatible with the substance of the exhaustion requirement. Guidance may be drawn, by analogy, from the case law of the European Court of Human Rights, which has consistently held that the rule of exhaustion of domestic remedies “must be applied with a degree of flexibility and without excessive formalism”, and that it is “neither absolute nor capable of being applied automatically”, regard being had to the particular circumstances of each case.¹³ Similarly instructive is the ECtHR's well-established position that a Convention complaint need not be raised explicitly before the domestic courts, provided that it was raised at least in substance.¹⁴ Mr Shala raised, throughout the proceedings the essential elements now presented constitutionally: the absence of legal assistance prior and during questioning; the self-incriminatory nature of the statements; the taint attaching to the 2016 Belgian statement and its effect on the 2019 statement; the unfairness resulting from the admission and use of those statements; and the prejudice cause by their availability to the Trial Panel in its deliberations.¹⁵ The fact that the Supreme Court considered the arguments

¹¹ KSC-BC-2020-04, F00847, Trial Judgment and Sentence with One Confidential Annex, 16 July 2024 (“Trial Judgment”), paras. 75, 78.

¹² Prosecution submissions, para. 9.

¹³ ECtHR, *Selmouni v. France*, no. 25804/94, 28 July 1999, paras. 74-77; ECtHR, *Salah Sheekh v. The Netherlands*, no. 1948/04, 11 January 2007, para. 121; ECtHR, *Ringeisen v. Austria*, no. 2614/65, 16 July 1971, para. 89; ECtHR, *Lehtinen v. Finland*, no. 39076/97, 14 October 1999, p. 7; ECtHR, *Gherghina v. Romania*, no. 42219/07, 09 July 2015, para. 87; ECtHR, *Kozacıoğlu v. Turkey*, no. 2334/03, 19 February 2009, para. 40; ECtHR, *Sejdovic v. Italy*, no. 56581/00, 01 March 2006, para. 46; ECtHR, *Paksas v. Lithuania*, no. 34932/04, 06 January 2011, para. 75.

¹⁴ ECtHR, *Castells v. Spain*, no. 11798/85, 23 April 1992, para. 32; ECtHR, *Ahmet Sadik v. Greece*, no. 18877/91, 15 November 1996, para. 33; ECtHR, *Azinas v. Cyprus*, no. 56679/00, 28 April 2004, para. 38; ECtHR, *Kemal Çetin v. Turkey*, no. 3704/13, 26 May 2020, paras. 28-30.

¹⁵ KSC-CA-2024-03, F00029COR, Corrected Version of Defence Appeal Brief with confidential Annexes 1 and 2, 25 November 2024, paras. 4-15; KSC-SC-2025-06, PL001-F00001, Defence Request for Protection of Legality with confidential Annex 1, 13 October 2025, paras. 14-25.

insufficiently developed in some respects does not erase that the substance and constitutional grievance was squarely raised. Additionally, the Supreme Court did not simply decline to consider the matter altogether but addressed the substance of the issues concerning statements and thus, the issue is therefore exhausted.

11. The SPO further contends that the Referral “misleads” the Chamber by not sufficiently acknowledging earlier findings.¹⁶ That is not correct. The referral expressly recognises that prior panels reached adverse conclusions.¹⁷ Mr Shala’s position is not that those findings do not exist. It is that those findings do not resolve the constitutional defect. Specifically, Mr Shala challenges the legal conclusion that an admitted statement obtained in breach of the right to legal assistance may remain in the evidentiary record for deliberative constitution without impacting the fairness of the proceedings. That is a legitimate constitutional complaint, not a misrepresentation.

12. The SPO attempts to minimise the defect by splitting the statements into categories and emphasising that for some interviews, Mr Shala was informed of a right to counsel and waived it, while for the 2016 Belgian interview the violation was said to be “limited”.¹⁸ However, the constitutional inquiry is not satisfied by labels. The question is whether, in the circumstances of the case, the procedural safeguards surrounding questions were sufficient to secure a practical and effective right to legal assistance and to preserve the fairness of the proceedings as a whole.

13. Mr Shala maintains that they were not. As set out in the Referral,¹⁹ Mr Shala was a vulnerable suspect with minimal education, questioned in contexts carrying obvious legal jeopardy, and without the effective benefit of legal advice either before or during questioning. In such circumstances, formal notification of rights or purported waiver cannot be treated as dispositive without rigorous scrutiny of

¹⁶ Prosecution submissions, para. 10.

¹⁷ Referral, paras. 25, 26

¹⁸ Prosecution submissions, paras. 12,13.

¹⁹ Referral, para. 24.

whether the waiver was truly informed, unequivocal and attended by minimum safeguards proportional with the importance of the right being relinquished. The SPO's submissions do not engage meaningfully with that practical reality. Instead, they rely on the existence of prior findings that waivers occurred.²⁰ Mr Shala's position is that the constitutional problem lies deeper: the proceedings allowed self-incriminatory statements to enter and remain in the case notwithstanding the absence of effective legal assistance at critical moments.

14. The SPO attempts to maintain a sharp distinction between admission and reliance and insists that the 2016 Belgian statement was not relied upon by the Trial Panel,²¹ however, that distinction does not resolve the issue on the facts of this case. The Trial Panel expressly stated that it considered, during deliberation, the evidence that formed part of the evidentiary record, and that its evaluation was a holistic weighting of all the evidence taken as a whole.²² Once the 2016 statement was admitted and remained available for consideration, it became part of the deliberative process from which the verdict emerged. Where the adjudicator states that all admitted evidence was considered holistically, the risk of influence is not conjectural, it is a direct consequence of the panel's own methodology.

15. Lastly, the SPO says that the allegations of burden-shifting were already rejected,²³ however, that does not answer the issue raised. Mr Shala relies on the Trial Panel's language indicating that Mr Shala's statement did not "cast doubt on" or "discrediting" Prosecution evidence.²⁴ That language is significant because it shows how the impugned statements were operationalised. Rather than treating the Prosecution as bearing the burden to prove guilt beyond reasonable doubt without resort to tainted self-incrimination, the reasoning suggest that Mr Shala's own

²⁰ Prosecution submissions, para. 12.

²¹ Prosecution submissions, para. 14.

²² Trial Judgment, paras. 75, 78.

²³ Prosecution submissions, para. 15.

²⁴ Trial Judgment, para. 913.

statements were assessed in terms of whether they successfully undermined the Prosecution case.

COMPLAINT 3: BREACH OF THE PRINCIPLE OF LEGALITY

16. The SPO merely restated prior decisions of previous KSC panels to contend that the principle of legality was not breached. However, the repeated reference to previous panels may not serve as a substitute for an independent constitutional assessment. Mr Shala did not question in his Referral whether the issue of whether KSC panels have previously accepted the legality of JCE-I or arbitrary detention. Instead, Mr Shala is admissibly questioning whether his conviction satisfied the constitutional requirements of foreseeability and non-retroactivity.

17. The SPO correctly notes that Mr Shala does not dispute the Constitutional Court's general finding that customary international law ("CIL") may find individual criminal responsibility.²⁵ The Referral's challenge has a narrower focus and, thus, the CIL principle cited by the SPO does not resolve Mr Shala's specific challenge, *i.e.* the application of the JCE-I and arbitrary detention charge to Mr Shala's specific conduct.²⁶

18. With regard to the timing objection in the JCE-I's applicability, according to the SPO's submissions, the Pre-Trial Judge in *Thaci et al.* conducted an analysis of customary status and foreseeability of JCE-I in 1998-1999²⁷ as well as recognised these conclusions in *Mustafa*²⁸ and across five different decisions in *Shala*.²⁹ It describes that these decisions draw their authority from the finding that Articles 22 and 26 of the

²⁵ Prosecution submissions, para. 17, *citing* 2022 Referral, KSC-CC-2022-16/F00004, paras 68-72; *Krasniqi and Veseli* Decision, KSC-CC-2022-14/F00009, paras. 73-81.

²⁶ Prosecution submissions, para. 17.

²⁷ Prosecution submissions, para. 18, *citing* *Thaçi et al.* Jurisdiction Decision, KSC-BC-2020-06/F00412, paras. 180-201.

²⁸ Prosecution submissions, para. 19, *citing* *Mustafa* TJ, KSC-BC-2020-05/F00494/RED3/COR, para. 735.

²⁹ Prosecution submissions, para. 19, *citing* Jurisdiction Decision, KSC-BC-2020-04/F00088, paras. 90-97; Jurisdiction Appeal Decision, KSC-BC-2020-04/IA002/F00010, paras 35-40; Trial Judgment, KSC-BC-2020-04/F00847/RED, paras. 995-997; Appeal Judgment, KSC-CA-2024-03/F00069/RED, paras. 174-181; Legality Decision, KSC-SC-2025-06/PL001/F00008, paras. 70-81.

1976 SFRY Criminal Code ‘mirror the constitutive elements of JCE-I’.³⁰ The SPO also cites domestic Kosovo case law as authoritative to support JCE-I as applicable to crimes committed in 1998-1998.³¹ However, what the SPO’s submissions fail to explain is how reliance on a general ‘post-WWII legal framework combined with a domestic law analogy referencing common-purpose criminal liability under Article 22 and 26 of the 1976 SFRY Criminal Code, was itself accessible and foreseeable to Mr Shala at the time of the alleged act. JCE-I as a mode of liability was first declared in the *Tadić* Appeal judgment, which then post-dated the conduct alleged against Mr Shala.³² Domestic law, especially Articles 22 and 26 of the 1976 SFRY Criminal Code, referenced in the SPO’s submissions merely address participation in a common criminal act generally and do not appropriately demonstrate that the specific doctrinal legal framework of JCE-I, which was later articulated in *Tadić*, including the extended form of this mode of criminal responsibility, was in fact accessible to a reasonable person in Kosovo at the time. The SPO does not speak to this gap but merely cites four separate instances when a panel declined to address the issue. Additionally, the SPO’s reliance on previous KSC decisions reinforces the issue put forth by the Referral. Judicial repetition does not remove the possibility of reviewing foreseeability as an issue of fact with constitutional scrutiny to assess whether the requirement to comply with the principle of *nullum crimen sine lege* has been fulfilled by previous panels. Criminal law retains the essential requirement that it shall be sufficiently accessible and precise so as to guide individuals in foreseeing to a reasonable degree the consequences of their conduct.³³

19. As for the charge of arbitrary detention, the SPO’s submissions address the existence of a prohibition and not the foreseeability of individual criminal

³⁰ Prosecution submissions, para. 19, citing *Thaçi et al.* Jurisdiction Decision, KSC-BC-2020-06/F00412, paras. 195-200.

³¹ Prosecution submissions, para. 19, citing Legality Decision, KSC-SC-2025-06/PL001/F00008, para. 78, fn. 130; Jurisdiction Appeal Decision, KSC-BC-2020-04/IA002/F00010, para. 38, fn. 127.

³² Referral, para. 34.

³³ ECtHR, *Del Río Prada v Spain* [GC], no. 42750/09, 21 October 2013, para. 69.

responsibility. The SPO cites *Thaçi et al.*³⁴ and *Mustafa*³⁵ to prove (1) that KSC panels have consistently reaffirmed the propositions that the list of grounds in Article 14(1)(c) of the Law is non-exhaustive, (2) that the arbitrary detention violates the principle of human treatment under Common Article 3, (3) that arbitrary detention constitutes a violation of CIL at the time in question and (4) that criminalisation of the conduct at issue was accessible and sufficiently foreseeable. However, the first three propositions, at most, prove that arbitrary detention constituted a violation of humanitarian law at the time of the conduct. They do not, however, provide that individual criminal liability for that violation was itself accessible as a matter of customary international law. The fourth assertion, *i.e.* that criminalisation itself was accessible and foreseeable, omits the reasoning by which the panels have arrived at the conclusion. It also fails to distinguish between foreseeability and accessibility and the conclusion that the underlying conduct is prohibited. Mr Shala requests that this distinction be addressed with the appropriate detail and not be overlooked as resolved by merely citing prior decisions addressing the prohibition alone, while leaving the issue of whether criminalisation itself was accessible and foreseeable unaddressed.

COMPLAINT 4: INSUFFICIENT NOTICE OF PROSECUTION'S CASE

20. Mr Shala reiterates that this is a constitutional notice issue – not a merits re-litigating of pleading rules – and that the SPO's "fourth-instance appeal" protest is misplaced. As the authorities make plain, Article 6(3)(a) of the ECHR requires that an accused be informed *in detail* of the nature and cause of the accusation, so that from the moment the indictment is served he "is formally put on written notice of the factual and legal basis of the charges". Thus, the question is whether, viewed as a whole, the proceedings gave Mr Shala "timely and adequate notice of the factual

³⁴ Prosecution submissions, para. 22, citing *Thaçi et al.*; Jurisdiction Decision, KSC-BC-2020-06/F00412, paras. 143-166; *Thaçi et al.*; Jurisdiction Appeal Decision, KSC-BC-2020-06/IA009/F00030, paras. 94-111.

³⁵ Prosecution submissions, para. 22, citing *Mustafa TJ*, KSC-BC-2020-05/F00494/RED3/COR, paras. 640-645; *Mustafa AJ*, KSC-CA-2023-02/F00038/RED, paras. 428-434.

basis” of the accusations.³⁶ The fact that the lower courts addressed these defects does not bar constitutional review if their conclusions left notice guarantees unsatisfied.

21. Moreover, the SPO is wrong to treat the identity of alleged JCE members as mere “evidentiary” detail.³⁷ The names of co-perpetrators are part of the *factual basis* of a JCE charge. In any event, even assuming *arguendo* that naming them was “evidentiary,” Article 6(3)(b) of the ECHR still requires that Mr Shala have *adequate time and facilities* to prepare his defence once new allegations are made. Learning, only in the judgment, that Kryeziu and Limaj were treated as JCE members meant the Defence could not meaningfully contest or investigate those allegations during the trial.³⁸ The relevant constitutional question is whether Mr Shala received timely notice of Kryeziu and Limaj’s alleged roles as JCE members, which formed part of the factual basis of the Prosecution’s case, so as to allow him to investigate, challenge, and respond to those allegations during the proceedings.

22. Finally, the SPO’s reliance on a post-indictment “cure” is equally misplaced.³⁹ The Appeals Panel itself found the indictment defective as to the additional victims, concluding only that later filings purported to “cure” that defect.⁴⁰ But Article 6’s safeguards cannot be overridden simply because the Prosecution corrected course after the fact. If an indictment omits important material facts of the case theory, and the Trial Panel ultimately bases its findings on a factual case theory that goes beyond the confines of the indictment, the accused loses the opportunity to make strategic and investigative decisions at the stage when they matter most. In short, Mr Shala’s Referral correctly frames the issue: was he given the detailed, timely notice that the

³⁶ As guaranteed by Article 30(1) of the Constitution and Article 6(3) of the ECHR.

³⁷ Prosecution submissions, para. 25.

³⁸ Referral, para. 40.

³⁹ Prosecution submissions, paras. 24, 25.

⁴⁰ KSC-CA-2024-03, F00847, Appeal Judgment, 14 July 2025 (“Appeal Judgment”), para. 200.

Constitution and ECHR require, so as to have a fair chance to prepare? The SPO's arguments do not answer that question.

COMPLAINT 5: ERRORS IN SENTENCING

23. The SPO argues that Mr Shala failed to engage with the Supreme Court's determination, however, this is not correct. The Referral directly challenges the result reached by the panels, including the Supreme Court Panel's acceptance of the interpretation under which the contemporaneous sentencing law was reduced to a discretionary factor rather than applied as the governing ceiling.

24. The SPO and Victims' Counsel contend that the equality before the law limb is inadmissible because it was not raised before the Supreme Court Panel in the same constitutional terms. That objection is too rigid. The equality complaint is closely bound up with the legality complaint. If the sentencing framework was unlawfully broadened, the distortion in sentencing necessarily bears on equal treatment. The Panel should therefore avoid artificially severing the two aspects of Complaint 5.

25. Victims' Counsel submits that the legality issue has already been decided in *Mustafa* and that the present complaint is therefore inadmissible because it adds no relevant new information. The Defence does not dispute that *Mustafa* addresses Article 44(2) of the Law, however, the existence of prior case law does not automatically render a later complaint inadmissible. A constitutional chamber remains competent to reconsider the application of its prior reasoning in a subsequent case, especially where the issue concerns the lawful maximum penalty and where the consequences are case-dispositive for sentence.

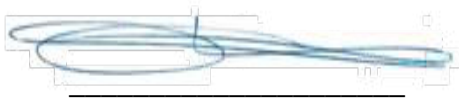
III. CONCLUSION

26. In light of the above, Mr Shala maintains the Complaints made in his Referral and requests the Constitutional Court Panel (i) to acknowledge the violations of Mr Shala's fundamental rights guaranteed under Articles 30, 31 and 33 of the

Constitution, Articles 6 and 7 of the European Convention on Human Rights and Articles 14, 15 and 26 of the ICCPR; and (ii) a referral of the case to the appropriate panel for a new determination that is aligned with the Constitutional Court Panel's conclusions regarding the violations.

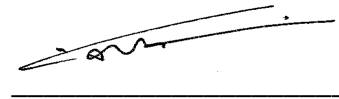
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Respectfully submitted,



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Friday, 10 July 2026

The Hague, the Netherlands