

Case No.: KSC-CC-2026-34

Before: The Specialist Chamber of the Constitutional Court

Judge Vidar Stensland

Judge Roumen Nenkov

Judge Piotr Hofmański

Registrar: Dr Fidelma Donlon

Date: 15 September 2026

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Referral to the Constitutional Court Panel concerning the violation of Mr Shala's
fundamental rights guaranteed by Article 31 of the Kosovo Constitution and
Article 6 of the European Convention on Human Rights**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 31 and 113(7) of the Constitution of the Republic of Kosovo ("Constitution"), Article 49(3) of the Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 4 and 20 of the Rules of Procedure for the Specialist Chamber of the Constitutional Court ("SCCC Rules"), the Defence for Mr Pjetër Shala ("Defence") introduces this Referral. Mr Shala complains of a violation of his rights under Article 31 of the Constitution and Article 6 of the European Convention on Human Rights ("ECHR") as a result of the Supreme Court Panel's Decision on the Defence Request for Protection of Legality ("Impugned Decision"), wherein all Grounds raised by the Defence were dismissed.¹

II. PROCEDURAL BACKGROUND

2. On 16 July 2024, Trial Panel I found Mr Shala guilty of the war crimes of arbitrary detention, torture and murder, and sentenced him to 18 years of imprisonment, with credit for time served.²
3. On 29 November 2024, the Trial Panel issued the Reparation Order against Mr Shala, wherein it, *inter alia*, ordered Mr Shala to pay the reparation award for which he is liable, amounting to a total of 208,000 euros.³
4. On 14 March 2025, Mr Shala filed his Appeal Brief against the Reparation Order, and on 19 March 2025, a corrected version thereof.⁴

¹ KSC-SC-2025-06, PL002-F00009, Decision on Defence Request for Protection of Legality, 25 June 2026 ("Impugned Decision").

² KSC-BC-2020-04, F00847, Trial Judgment and Sentence with One Confidential Annex, 16 July 2024.

³ KSC-BC-2020-04, F00866, Reparation Order against Pjetër Shala, 29 November 2024 ("Reparation Order"), para. 239 (a)-(f).

⁴ KSC-CA-2024-03, F00049, Corrected Version of Defence Appeal Brief against the Reparation Order with public Annex 1, 19 March 2025.

5. On 14 July 2025, the Appeals Panel affirmed Mr Shala's convictions for the war crimes of arbitrary detention, torture, and murder, whilst partly granting Mr Shala's Grounds 7, 12, and 14 in part.⁵ Moreover, the Appeals Panel reversed, in part, his convictions under Counts 1 and 3 and set aside the sentences imposed for Counts 3 and 4, imposing a revised sentence of 13 years imprisonment with credit for time served.⁶
6. On 29 January 2026, the Appeals Panel issued its Decision on the Defence Appeal Against the Reparation order affirming the Reparation Order in its entirety.⁷
7. On 29 April 2026, the Defence submitted its Request for Protection of Legality against the Decision on Defence Appeal Against the Reparation Order.⁸
8. On 25 June 2026, the Supreme Court Panel issued the Decision on Pjetër Shala's Request for Protection of Legality, rejecting the request in its entirety.⁹
9. On 1 July 2026, the Defence submitted its Request for an Extension of Time to File a Referral to the Constitutional Court.¹⁰
10. On 3 July 2026, the Specialist Chamber of the Constitutional Court ("SCCC") extended the deadline for the Defence to file a Referral to the Constitutional Court to 15 September 2026.¹¹

⁵ KSC-CA-2024-03, F00847, Appeal Judgment, 14 July 2025 ("Appeal Judgment").

⁶ Appeal Judgment, paras. 934, 935.

⁷ KSC-CA-2024-03, F00073, Decision on Defence Appeal Against Reparation Order, 29 January 2026, para. 176 ("Decision on Defence Appeal Against Reparation Order").

⁸ 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 ("Defence Request for Protection of Legality").

⁹ Impugned Decision, para. 81.

¹⁰ KSC-CC-2026-34, F00001, Defence Request for an Extension of Time to File a Referral to the Constitutional Court, 1 July 2026.

¹¹ KSC-CC-2026-34, F00003, Decision on Pjetër Shala's Request for an Extension of Time to File a Referral to the Constitutional Court, 3 July 2026.

III. ADMISSIBILITY

11. Pursuant to Article 113(7) of the Constitution, Article 49(3) of the Law, and Rule 20(1) of the SCCC Rules, an individual may lodge a referral before the SCCC in relation to violations by the Specialist Chambers of his individual rights and freedoms guaranteed by the Kosovo Constitution, subject to two conditions:
 - (i) the individual has exhausted all remedies provided by law with regard to the alleged violation of his rights; and
 - (ii) the referral is filed within two months from the date of the notification of the final ruling concerning the alleged violation.
 12. The Referral concerns Mr Shala's fundamental rights as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.
 13. The Referral is admissible given that: (i) Mr Shala has exhausted all available legal remedies upon the Supreme Court Panel's Decision on the Defence Request for Protection of Legality, wherein all Grounds raised by the Defence were dismissed¹²; (ii) Mr Shala is a direct victim of the violation of his rights as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR; and (iii) the Referral is filed before the SCCC within two months – plus the additional 20 days granted by the SCCC – from the date of the notification of the final ruling concerning the violation of Mr Shala's rights, namely, 15 September 2026.
- A. Mr Shala Has Exhausted All Legal Remedies
14. At the present stage of proceedings, the Law does not allow any further appeals nor other (extra)ordinary remedies for the afore-mentioned violation of Mr Shala's rights. Mr Shala – having made a request for Protection of Legality

¹² Impugned Decision, para. 81.

which was subsequently denied in its entirety - has exhausted all available legal remedies.¹³

B. Victim Status of Mr Shala

15. The Kosovo Constitutional Court has interpreted constitutional provisions on fundamental rights and freedoms in a manner consistent with the case-law of the European Court of Human Rights ("ECtHR"), pursuant to Article 53 of the Constitution.¹⁴ Established case-law of the ECtHR requires, with regard to an applicant's victim status, that "[t]he individual concerned must be able to show that he or she was 'directly affected' by the measure complained of"¹⁵ and that "there must be a sufficiently direct link between the applicants and the harm which they consider they have sustained on account of the alleged violation".¹⁶
16. Mr Shala is directly affected by the Impugned Decision, wherein the Supreme Court Panel dismissed Mr Shala's arguments raised in the present Referral.
17. Considering the continuous impact of the violation of Mr Shala's rights and in line with the relevant jurisprudence of the ECtHR,¹⁷ the violations described

¹³ Impugned Decision, para. 81.

¹⁴ KSC-CC-2022-14, F00009, Decision on the Referral of Jakup Krasniqi Concerning the Legality of Charging Joint Criminal Enterprise and the Referral of Kadri Veseli Concerning Decision of the Appeals Panel on Challenges to the Jurisdiction of the Specialist Chambers, 13 June 2022, para. 45, referring to Constitutional Court, KI 207/19, Judgment, 10 December 2020 (5 January 2021), para. 109; KI 195/19, 5 May 2021, para. 94; KI 12/19, Resolution on inadmissibility, 10 April 2019, para. 38; *Gëzim and Makfire Kastrati against Municipal Court in Prishtina and Kosovo Judicial Council*, KI 41/12, Judgment, 25 January 2013, para. 58.

¹⁵ ECtHR, *Kalfagiannis and Pospert v. Greece*, no. 74435/14, 9 June 2020, para. 40, referring to *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, 15 September 2016, para. 50; *Association des amis de Saint Raphaël et de Fréjus et autres v. France* (dec.), no. 45053/98, 29 February 2000; *Dayras and Others and the association "SOS Sexisme" v. France* (dec.), no. 65390/01, 6 January 2005; and *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy (no.2)*, no. 26740/02, 31 May 2007, para. 20.

¹⁶ ECtHR, *Kalfagiannis and Pospert v. Greece*, para. 44, referring to *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, ECHR 2004-III, para. 35.

¹⁷ See, *inter alia*, KSC-CC-2022-18, F00004, Decision on the Referral of Pjetër Shala to the Constitutional Court Panel Concerning Fundamental Rights Guaranteed by Articles 30 and 31 of the Kosovo Constitution and Article 5 of the European Convention on Human Rights, 22 August 2022 (confidential), para. 18, referring to ECtHR, *Osmanov and Husseinov v. Bulgaria* (dec.), nos. 54178/00 and 59901/00, 4 September 2003.

must be remedied. Hence, the examination of the Referral at present is warranted. Direct and timely redress are crucial aspects of the effectiveness of Mr Shala's right to a remedy.¹⁸

IV. MERITS

COMPLAINT 1: NO EFFECTIVE OPPORTUNITY TO CHALLENGE THE FINAL BASIS OF REPARATIONS

18. Mr Shala complains of a violation of his right to a fair trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR as a result of being denied a genuinely effective opportunity to contest the factual and legal basis of his civil liability because the proceedings required him to challenge a reparation determination before his criminal findings on which that determination was expressly based had become final and as a result of a lack of proper legal reasoning by the Supreme Court Panel regarding Mr Shala's argument that the reversal of findings constituted a material change in the factual and contextual landscape relevant to the assessment of Mr Shala's liability.
19. Mr Shala was required to formulate his challenge to the Reparation Order before the factual and legal findings upon which that order was expressly based had become definitive, while the subsequent alteration of those findings did not afford him a corresponding opportunity to present a fully informed challenge to his resulting liability. On top of it, Mr Shala was required to litigate his civil liability while simultaneously defending unresolved criminal allegations on the same underlying factual matrix. This created a structural difficulty in presenting his reparation case, because positions that might assist

¹⁸ ECtHR, *Bezmyannaya v. Russia*, no. 21851/03, 22 December 2009, para. 21 (with respect to the rights guaranteed under Article 6 of the ECHR). See also *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2010, para. 107; *Melnik v. Ukraine*, no. 72286/01, 28 March 2006, para. 68 (with respect to the rights secured under Article 3 of the ECHR).

his challenge to civil liability could potentially prejudice his criminal defence before the merits appeal had become final.

20. The Reparation Order, which was bound by the factual and legal findings made in the Trial Judgment, was issued on 29 November 2024.¹⁹ The Defence was obligated to submit its Notice of Appeal of the Reparation Order by 29 January 2025, while the Appeal Judgment on the merits was only issued on 14 July 2025 – months after the deadline for the Notice of Appeal and the Defence Appeal Brief against the Reparation Order, the latter of which was due on 14 March 2025.
21. The Appeals Panel noted that Mr Shala was able to appeal the Reparation Order and therefore, found that he had not been prejudiced, and dismissed Mr Shala's contention that the Reparation Order should have been issued after the delivery of the Appeal Judgment.²⁰ This erroneous reasoning was subsequently accepted by the Supreme Court Panel.²¹ Additionally, the Supreme Court Panel noted that the Appeals Panel considered and reflected on the findings it made in the Appeal Judgment to determine whether any of these findings impacted the Reparation Order that was issued before the Appeal Judgment.²² However, this is not equivalent to giving the Defence an opportunity to make submissions about the consequences of that later judgment. Those are two different and separate matters. The question is, what procedural opportunity did Mr Shala have to respond to the consequences of the Appeal Judgment? The answer – none and the subsequent appellate process cannot necessarily cure the problem by having the appellate panel itself look at the later developments.

¹⁹ Reparation Order, para. 86.

²⁰ Decision on Defence Appeal Against Reparation Order, para. 71.

²¹ Impugned Decision, paras. 47, 52.

²² Impugned Decision para. 47.

22. According to the case law of the ECtHR, the right to a fair trial entails the right of the parties to submit any observations that they consider relevant to the case. The purpose of the ECHR is to guarantee not rights that are theoretical or illusory but rights that are practical and effective and this right can only be seen to be effective if the observations are “heard” and duly considered by the court.²³ Therefore, the existence of a formal right to appeal does not by itself establish that the appeal was an effective remedy if the applicant was required to formulate that appeal before the factual and legal basis of the impugned liability was settled and was subsequently unable to make submissions addressing material changes to that basis. In the present case, an appeal cannot procedurally be fair merely because the Appeals Panel possessed the relevant material – the Appeal Judgment. Mr Shala should have had a meaningful opportunity to address it.
23. The consequences of this erroneous reasoning are real. As noted by Mr Shala in his Request for Protection of Legality, the Appeals Panel accepted the ‘gravity’ as a “contextual observation” in understanding the extent of the harm.²⁴ As such, the reversal of the findings in relation to two victims of arbitrary detention and five victims of torture – which the Appeals Panel duly noted as “almost one third of the number of victims for this count”²⁵ – should have equally been considered as a “contextual observation” informing the determination of Mr Shala’s liability for reparations. However, Mr Shala had no opportunity to raise such an observation prior to its Request for Protection of Legality since such an observation could only have been made following the final conviction from the appeals panel.

²³ ECtHR, *Perez v. France*, no. 47287/99, 12 February 2004, para. 80.

²⁴ Decision on Defence Appeal against Reparation Order, para. 168.

²⁵ Appeal Judgment, para. 934.

24. Furthermore, the Supreme Court Panel treated the reversal of findings regarding seven victims solely as a question of whether the victims were themselves amounting to the victims whose harm formed the direct basis of the Reparation Order.²⁶ It did not address Mr Shala's distinct submission that the reversal of findings concerned almost one-third of the victims constituted a material change in the factual and contextual landscape relevant to the assessment of Mr Shala's liability, particularly as the Appeals Panel had itself relied upon the gravity and circumstances of the crimes as contextual considerations.²⁷ The failure to engage with that distinct submission deprived Mr Shala of a reasoned determination of a relevant issue affecting the extent of his civil liability and violating Mr Shala's right to a reasoned decision, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

COMPLAINT 2: FAILURE TO PROVIDE ADEQUATE REASONS CONCERNING THE SCOPE OF CAUSATION AND PERSONAL REPARATIONS LIABILITY

25. Mr Shala complains of a violation of his right to a fair trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR as a result of failure of the Supreme Court Panel to provide sufficient reasons demonstrating how the crime-harm relationship establish the particular scope of Mr Shala's individual liability for the specific harm and losses awarded against him.
26. Even accepting the KSC crime-harm framework, the constitutional question is whether the Supreme Court Panel adequately explained the legal and factual bridge between the crimes for which Mr Shala was convicted and the categories of harm for which he was ordered to compensate the victims. Mr Shala submits that it did not.

²⁶ Impugned Decision, para. 46.

²⁷ Defence Request for Protection of Legality, para 21.

27. The statutory formulation that the victims must have suffered harm “as a direct result of a crime” identifies the relevant legal nexus. It does not, however, answer every subsequent question necessary to determine the amount for which a particular convicted person is liable.
28. The Appeals Panel recognised that victims seeking reparations must establish the scope and extend of the harm and the causal link between the crime and harm.²⁸ However, this does not answer the further question whether the evidence established that particular harm for which compensation is awarded falls within the causal scope of the crime and consequently, within Mr Shala’s personal liability. This distinction is particularly important where the harm extends over a prolonged period and where the evidence itself identifies pre-existing, or otherwise unrelated conditions.
29. The Trial Panel’s own reasoning demonstrates the relevance of this issue. In relation to W04733’s health, the Trial Panel acknowledged that not all aspects of this declining health over the years were a direct result of crimes. Nonetheless, it concluded that the brutality of the crimes and W04733’s condition upon returning home could “have had an exacerbating” effect on his health.²⁹ The Appeals Panel relied upon that reasoning.³⁰
30. The existence of an exerting effect may establish a causal relationship, it does not, however, by itself establish the extent of the resulting financial loss or the amount for which the convicted person is personally liable. The constitutional deficiency therefore lies in the absence of sufficient reasoning concerning the intermediate step between i) the crime established by the criminal judgment; ii) the particular harm suffered by victim; iii) any pre-existing or subsequent condition affecting that harm; iv) the extent to which the crime caused or

²⁸ Decision on Defence Appeal against Reparation Order, para. 72.

²⁹ Reparations Order, para. 200.

³⁰ Decision on Defence Appeal against Reparation Order, paras 147-149.

exacerbated the relevant harm; and v) the resulting scope of Mr Shala's personal reparations liability.

31. Without that reasoning, the conclusion risks becoming circular: because Mr Shala was convicted of the relevant crime, and because the victim subsequently suffered harm, the harm is treated as falling with Mr Shala's reparations liability without adequately explaining the intervening causal assessment.
32. The Supreme Court Panel rejected the Defence's argument because it considered that it had provided no further support for his interpretation of Article 22(1) of the Law and Rule 2 of the Rules, had no cited case law supporting this interpretation, and concluded that Mr Shala merely disagreed with the interpretation adopted by the Trial and Appeals Panels.³¹ This reasoning, however, does not answer the narrower constitutional complaint concerning the application of the causation principle to the reparations liability imposed. Mr Shala's concern was not simply that the phrase "crime and harm" was legally incorrect. It was that the use of that formulation had resulted in insufficient examination of the relationship between i) the crimes for which Mr Shala was convicted; ii) the specific harms identified in the Reparation Order; and iii) the extent to which those harms were attributable to the crimes as opposed to other causes.
33. In this respect, the Supreme Court Panel treated Mr Shala's challenge as an abstract disagreement over the applicable legal test rather than examining whether the test, once identified, had been adequately to the individual harms underlying the award.
34. Mr Shala therefore submits that the Impugned Decision violated Article 31 of the Constitution and Article 6 of the ECHR because the Supreme Court Panel

³¹ Impugned Decision, paras. 60-61.

did not adequately address the essential issue of how the crime-harm causation principle translated into Mr Shala's individual liability for the specific harms awarded.

COMPLAINT 3: FAILURE TO PROVIDE ADEQUATE AND NON-ARBITRARY REASONS FOR THE MEDICAL-EXPENSE AWARD

35. Mr Shala complains of a violation of his right to a fair trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR as a result of insufficient and arbitrary reasoning for the award of medical costs.
36. As soon as the Trial Panel decided that documentary evidence was unnecessary in the circumstances of the case,³² it was nevertheless required to explain why the remaining evidence established, on the balance of probability, the existence and amount of crime-related medical costs awarded.
37. The Appeals Panel recognized that a victim's account may in appropriate circumstances have sufficient probative value even without supporting documents. It nevertheless treated that proposition as falling within the Trial Panel's discretion.³³
38. The Supreme Court Panel subsequently concluded that the Trial Panel had considered a range of evidence in its determination in relation to the medical costs.³⁴ Mr Shala submits that this conclusion does not sufficiently address the specific reasoning deficiency identified in the proceedings.
39. The Trial Panel found that, in the circumstances of the case, it was not a requirement to furnish data concerning the costs of medical treatment,

³² Reparation Order, para. 179.

³³ Decision on Defence Appeal against Reparation Order, paras. 143-145.

³⁴ Impugned Decision, para. 75.

including considering the passage of time.³⁵ This, however, does not dispense the requirement to establish the claimed harm to the applicable standard of proof. The Reparation Order awarded €30,000 for W04733's medical costs.³⁶ The evidentiary record includes estimates of medical expenses, including evidence from W04733 and W03/04. The Appeals Panel notes that W04733 and W04733 and W03/04 provided estimates, with one estimate reaching as high as €150,000.³⁷ The existence of estimates does not establish that €30,000 was the amount proven. The central question is therefore: why €30,000?

40. The constitutional requirement of reasons does not require mathematical precision, and courts may exercise discretion whether exact quantification is impossible, however, the discretion itself must be reasoned. Where a court selects a particular amount from a range of evidence, it must provide sufficient reasons to make clear why that amount is considered fair, reasonable, and supported by evidence. This is particularly important as the Trial Panel acknowledge that not all aspects of W04733's declining health were directly caused by crimes.³⁸ The Trial Panel nonetheless concluded that the crimes could have had an exacerbating effect on health.³⁹ The reasoning therefore required an explanation of how the recognised exacerbation translated into the particular sum awarded.
41. The Supreme Court Panel stated that it was not for it to determine whether the Trial Panel had sufficient evidence upon which to determine the medical costs because it would constitute a factual assessment outside its mandate.⁴⁰ However, Mr Shala's complaints were not limited to evidentiary sufficiency.

³⁵ Reparation Order, para. 179.

³⁶ Reparation Order, para. 196, 200, 239.

³⁷ Decision on Defence Appeal against Reparation Order para. 145 citing Reparation Order, para. 200, fn. 348, referring to Victims Request for Reparation, para. 52.

³⁸ Reparation Order paras. 200.

³⁹ Reparation Order, para. 200.

⁴⁰ Impugned Decision, para. 75.

Mr Shala specifically identified a reasoning deficiency: neither the Trial Panel for the Appeals Panel had adequately explained why the evidence, in the absence of documentary support, satisfied the applicable standard of proof and justified the amount awarded.

42. The Supreme Court Panel answered the complaint by observing that the Trial Panel had relied upon “range of other evidence”.⁴¹ This does not, however, resolve the issue. The fact that different groups of evidence were considered does not necessarily demonstrate that the decision explained why those groups of evidence establish the amount awarded. A court may consider numerous pieces of evidence and still fail to provide sufficient reasoning for the conclusion drawn from the evidence. The Supreme Court Panel’s reasoning effectively conveyed a complaint about the adequacy of judicial reasoning into a prohibited complaint about the factual sufficiency of the evidence.
43. Mr Shala therefore submits that the reasoning supporting the €30,000 medical costs award fails to meet the requirements of Article 31 of the Constitution and Article 6 of the ECHR.

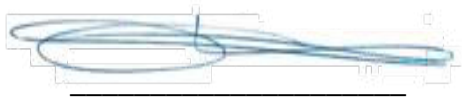
V. CONCLUSION

44. In light of the above, the Defence requests the SCCC to acknowledge the violations of Mr Shala’s fundamental rights and seeks (i) annul, to the extent necessary, the Impugned Decision as it rejected these constitutional complaints; and (ii) remit the matter to the competent panel for reconsideration consistent with the constitutional requirements identified by the SCCC.

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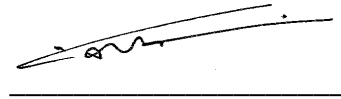
Respectfully submitted,

⁴¹ Impugned Decision, para. 75.



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Tuesday, 15 September 2026

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