

Summary of Reparation Order in  
*The Specialist Prosecutor v. Pjetër Shala (KSC-BC-2020-04)*

1. This Reparation Order arises from the conviction of Mr Pjetër Shala (Mr Shala) on 16 July 2024. Mr Shala was found guilty by this Panel of three counts of war crimes - namely arbitrary detention, torture, and murder - which he committed, as part of a joint criminal enterprise, between approximately 17 May 1999 and 5 June 1999, at the Kukës Metal Factory (KMF), a former metal works factory in Kukës, Albania. Mr Shala was sentenced to eighteen (18) years of imprisonment, with credit for the time served since 16 March 2021.

**Applicable Law and Principles**

2. The Panel emphasises that the objective of reparations at the Specialist Chambers is not solely to punish the convicted person as foreseen in Article 44(6) of the Law, but also to acknowledge and to repair, to the extent possible, the harm caused to the victims. Accordingly, victims should receive reasonable, appropriate, and prompt reparations.

3. As to the principles applicable to the liability of a convicted person for reparations, the Panel finds that a reparation order cannot go beyond the crimes of which the convicted person was held liable and it must be issued in all circumstances against the convicted person. The responsibility of other persons, organisations, or State responsibility is irrelevant in determining the convicted person's liability for reparations.

4. Likewise, the convicted person's indigence is irrelevant to this determination.

### **Evidence assessment**

5. As regards the Panel's approach to the assessment of the evidence, the Panel relied on the factual and legal findings made in the Trial Judgment, which led to the conviction and sentencing of Mr Shala.
6. The Panel also considered the Victims' Counsel Reparations Request, the Impact Statement, and expert reports submitted by Victims' Counsel and Defence Counsel pertaining to the harm suffered by the eight Victims seeking reparations in this case (Victims).

### **Scope and Extent of Harm**

7. As to **the scope and extent of harm** suffered by the Victims in this case, the Panel considered the submissions of Victims' Counsel and Defence Counsel.

#### Victims' Counsel's submissions

8. Victims' Counsel claims that Victim 01 suffered physical, mental, and material harm as result of the war crimes of arbitrary detention, torture and murder committed by Mr Shala.
9. He further contends that Victims 02, 03, 04, 05, 06, 07 and 08 all suffered long-lasting mental harm as well as material harm, as a result of the war crimes of arbitrary arrest and torture committed by Mr Shala against their family member (W04733), with whom they had a close relationship.

#### Defence submissions

10. In response, the Defence argues that Victims' Counsel failed to identify the scope and extent of the physical harm suffered by Victim 01, and how the physical and mental harm suffered by Victim 01 was a direct result of the crimes for which Mr Shala has been convicted.
11. With regard to Victims 02-08, the Defence also argues that Victims' Counsel failed to provide proof to the requisite standard of the material harm.

12. More broadly, the Defence argues that the physical and mental harm suffered by the Victims was not directly caused by the crimes for which Mr Shala was convicted, as the acts causing the harm were not carried out by Mr Shala. Consequently, according to the Defence, Mr Shala cannot be held responsible to repair the material harm suffered by the Victims. The Defence therefore requests the Panel to reject Victims' Counsel Reparations Request and reject issuing a Reparations Order.

### The Panel's Assessment

#### *Victim 01.*

13. The Panel relies on the findings made in the Trial Judgment establishing that Victim 01 was arbitrarily detained and tortured at the KMF by Mr Shala and other Kosovo Liberation Army (KLA) members and suffered physical, mental and material harm as a result thereof.

14. **As to the physical harm suffered by Victim 01,** the Panel considers that this victim was severely mistreated throughout his time in detention. He was subjected to routine beatings, harassment and humiliation by members of the KLA, including by Mr Shala. He was held in inhumane and degrading conditions of detention. While in detention, Victim 01 was hit with, *inter alia*, metal bars, baseball bats, rubber batons and - on at least one occasion - a gun. He was mistreated for hours on end. As a result of his detention and severe mistreatment, he sustained multiple injuries, including to his head. To this day, he has visible scars from the physical abuse he suffered. He continues to experience pain in his ribs and bones, and he suffers from headaches.

15. **As to the mental harm suffered by Victim 01,** the Panel considers that when he was detained at the KMF, Victim 01 was not informed of the reasons for his deprivation of liberty, he did not know for how long that detention would last, nor did he have access to his family or to the outside world. While detained at the KMF, Victim 01 could hear his co-detainees being severely mistreated and saw the injuries

inflicted on them. This caused immense psychological strain. Until today, Victim 01 displays symptoms of severe post-traumatic stress disorder (PTSD). He fears for his safety and that of his family, and is constantly on watch.

16. In addition, as part of the mental harm he suffered, the Panel observes that Victim 01 was labelled by his captors as a “collaborator” with the Serbian authorities and a “spy”. Victim 01 described suffering profound hurt, confusion and betrayal from being stigmatised this way.

17. **As to the material harm suffered by Victim 01**, the Panel finds that Victim 01’s PTSD symptoms were so severe that they made it impossible for him to conduct his life as he would have before the events, and to provide for himself and his family. The Panel is persuaded that the crimes for which Mr Shala was convicted and the social stigma they entailed, contributed to Victim 01’s loss of opportunities and inability to regain his financial independence and provide for his family.

18. In light of the above, the Panel finds that Victim 01 experienced physical, mental and material harm, with long-lasting consequences, as a result of the war crimes of arbitrary detention, torture and murder of which Mr Shala was convicted.

#### ***Victims 02-08.***

19. The Panel finds that Victims 02-08 suffered harm as indirect victims of the crimes of arbitrary detention and torture of which Mr Shala was convicted, with regard to W04733. Victims 02-08 were family members of W04733 (Indirect Victims).

20. The Panel first sets out the findings with regard to W04733, in relation to whom his family members claim harm.

21. The Panel recalls that in the Trial Judgment it established beyond a reasonable doubt that W04733 was arbitrarily detained and mistreated at the KMF, by members of the KLA, including Mr Shala. Like other detainees, W04733 was kept in inhumane and degrading conditions of detention. W04733 was brutally and repeatedly beaten,

including by Mr Shala. As a consequence of the mistreatment, W04733 suffered multiple injuries and scars including a scar on his forehead, burn marks on his chest and shoulder, an injured elbow and broken teeth.

22. The Panel further notes that, like other detainees, W04733 experienced a climate of fear and brutality at the KMF. He was made to witness the suffering and humiliation of other detainees, including by Mr Shala, while also being beaten and humiliated in their presence. He was repeatedly interrogated and accused of collaborating with Serbian authorities. This had profound and long-lasting consequences on his psychological well-being: W04733 reported experiencing nightmares and living under constant stress. He became irritable. He was also fearful and constantly on watch, including fearing to even visit a doctor, despite the serious injuries he had sustained at the KMF.

23. **The impact of W04733's arbitrary detention and mistreatment on his physical and mental health had a devastating effect on his family, the Indirect Victims.**

24. As to the mental harm suffered by the Indirect Victims, they described suffering fear and anxiety from not knowing where W04733 was in the immediate aftermath of his arrest. They also described their distress at seeing W04733 in the mental and physical state that he was, upon his release: he was pale, unwashed, covered in blood, had wounds all over his body and had lost a lot of weight. The family also suffered mentally from the long-term impact of the detention and mistreatment on W04733's physical and psychological state. They had to learn to live with the changes in W04733's personality and behaviour, as well as the manifestations of his trauma. Three of W04733's sons described their father as being "destroyed", "aggressive", "not the one I used to know before" and "broken". In her own words, Victim 03 conveyed that the crimes committed against W04733 affected "the health of the entire family because we were also traumatised, used therapies, medicine". Lastly, the allegations made against W04733 by members of the KLA contributed to the

stigma cast on the family as well. As a result, the family felt unsafe, as they were afraid that more harm would come their way.

25. **As to the material harm suffered by the Indirect Victims**, the Panel recalls that as a result of his arbitrary detention and mistreatment at the KMF, W04733 was no longer able to provide for his family upon his return. As a result, the family was deprived of their main breadwinner.

26. In addition, the Panel observes that the Indirect Victims incurred certain costs with regard to the medical care provided to W04733 to address the physical injuries he suffered at the KMF, as well as his declining health over the years.

27. Lastly, the Panel notes that, as a result of the crimes committed against W04733 at the KMF and the attached stigma, the family lived in fear for their safety, and as a consequence made choices and decisions which limited their future prospects.

28. Taking all of the above into account, the Panel concludes that Victims 02-08 suffered both mental and material harm, with long-lasting consequences, as a result of the war crimes of arbitrary detention and torture for which Mr Shala was convicted with regard to W04733.

### **Reparation Order Against Mr Shala**

29. This order is made directly against Mr Shala.

### **Beneficiaries of Reparations**

30. The beneficiaries of reparations are the Victims 01 to 08.

### **Types and Modalities of Reparations**

31. The Panel notes that the conviction and sentencing in the Trial Judgment already constitute a form of remedy - in the form of an acknowledgement - for the eight Victims.

32. Reparations also give the opportunity to the Victims to demand and receive justice for crimes against them or a family member committed more than two decades ago. Lastly, it contributes to the right for the Victims, their families and their communities, to have access to the truth.

33. For reasons set out in the Reparation Order, the Panel determines that compensation for each of the eight Victims constitutes the most appropriate type of reparations in this case. In the view of the Panel, compensation will provide some measure of financial relief to the Victims.

### **Scope of Mr Shala's liability for reparations**

#### Victims' Counsel's request

34. Victims' Counsel requests with respect to Victim 01: €10,000 for physical harm, €30,000 for mental harm and €60,000 for material harm.

35. In respect of Victim 03, Victims' Counsel requests €10,000 for mental harm.

36. In respect of Victims 02, 04, 05, 06, 07 and 08, Victims' Counsel requests €8,000 per person for mental harm.

37. Lastly, Victims' Counsel requests that a total sum of €50,000 be awarded collectively to the Indirect Victims 02, 03, 04, 05, 06, 07 and 08 for material harm.

#### The Panel's determination

38. First, Mr Shala is liable to repair the harm caused to all Direct and Indirect Victims of the crimes of which he was convicted. This is regardless of the mode of liability relied on in the conviction, and regardless of whether other person(s) may have also contributed to the harm.

39. Second, the Panel must set out an amount for each type of harm and also the overall amount of Mr Shala's financial liability – that it considers reasonable, in accordance with Article 22(3) of the Law.

40. Moreover, in setting the amount of Mr Shala's financial liability, the Panel considers the scope and extent of harm suffered by the eight Victims and the Victims' Counsel's Reparations Request.

41. It also takes into consideration relevant Kosovo legislation. This legislation regulates the rights and benefits to which different categories of persons affected by the armed conflict in Kosovo between 1998 and 1999 are entitled. These include: veterans and civilians who were harmed during the armed conflict; those who participated in the war effort; and family members of deceased or missing KLA members and civilians. The Panel considers this legislation as a reference point in order to set a reparation award that it deems reasonable in the context of Kosovo.

42. The Panel also notes the Kosovo Guidelines on Setting the Guiding Criteria and Amounts of Just Monetary Compensation for Immaterial Damage (Kosovo Guidelines), referred to both by Victims' Counsel and the Defence. The Panel notes that the Kosovo Guidelines are intended to provide guidance in civil litigation cases before Kosovo courts, and as such do not directly apply in reparations proceedings related to war crimes/crimes against humanity cases before the Specialist Chambers. The Panel therefore considers them relevant only insofar as they provide useful monetary estimates for the harm suffered, in the current economic context in Kosovo.

43. The Panel further considers the expert reports submitted by Victims' Counsel and the Defence regarding material harm (Victims' Counsel's Expert Report and Defence Expert Report, respectively).

44. The Panel notes that Victims' Counsel's Expert Report provided estimations of the material harm suffered by Victim 01 and Indirect Victims 02-08 as a result of the crimes committed by Mr Shala against Victim 01 and W04733 respectively. Such estimates demonstrate the extent of individual material harm suffered by the Victims, as would have been done in regular injury/compensation proceedings. They also largely surpass the individual reparation awards requested by Victims' Counsel. The



Panel finds that, as the figures in this report are only indicative, it may take them into account, but is not bound by them when determining the reparation award.

45. The Panel does not rely on the estimates provided in the Defence Expert Report as that report suffers a number of major deficiencies affecting the scope and validity of its findings.

46. Ultimately, considering the aforementioned findings, the Panel finds that the sums requested by Victims' Counsel both reflect the scope and extent of the harm suffered by the eight Victims *and* are reasonable as foreseen in Article 22(3) of the Law.

47. Taking all the aforementioned considerations into account, bearing in mind the scope and extent of the harm suffered by the Direct and Indirect Victims, and resolving uncertainties in favour of the convicted person, the Panel sets the total reparation award for which Mr Shala is liable at €208,000 (two hundred and eight thousand euro).

48. Accordingly, Mr Shala is ordered to pay, as compensation for the harm inflicted:

- €100,000 to Victim 01;
- €10,000 to Victim 03;
- €8,000 per person to Victims 02, 04, 05, 06, 07 and 08; and
- €50,000 collectively to Victims 02, 03, 04, 05, 06, 07 and 08.

## **Implementation and Execution**

### Monitoring and Oversight

49. The Panel notes that its jurisdiction in this case ceases with the issuance of the Reparation Order. As a result, the Panel invites the President of the Specialist Chambers to assign a Single Judge in charge of monitoring and overseeing the implementation and execution of this Reparation Order.

## Funding of the Reparation Order

### ***By the convicted person.***

50. As to the execution of the Reparation Order, the Panel recalls that the responsibility to pay the compensation awarded by this Panel to the Victims, lies exclusively with Mr Shala.

51. The Panel notes however that at the time of issuance of the Reparation Order, the Panel has no indication that Mr Shala would be in a position to fully compensate the reparation award.

52. In light of this circumstance, the Panel discusses which other actors ought to step in, to execute the Reparation Order.

### ***By Kosovo.***

53. The Panel recalls that, in the context of the *Mustafa* proceedings, the Kosovo Ministry of Justice already informed the Panel that victims of crimes under the jurisdiction of the Specialist Chambers may be awarded compensation or restitution from the victim compensation program, which was established pursuant to the Law on Crime Victim Compensation. This compensation program may be triggered when it is established that the convicted person is unable to pay the award, in whole or in part.

54. In order to preserve the anonymity of the eight Victims requesting reparations in the present proceedings before the Specialist Chambers and to ensure their protection, the Panel orders that the Registrar, in coordination with Victims' Counsel, seeks compensation from the Crime Victim Compensation Program, on behalf of the eight Victims. The Panel considers that, in case of need, the Single Judge assigned with monitoring and overseeing the implementation and execution of the Reparation Order, may certify that the eight Victims, on behalf of whom the Registrar/Victims' Counsel may apply to the Crime Victim Compensation Commission, are indeed the ones awarded compensation by the Reparation Order.

55. The Panel also observes that other means of execution need to be envisaged to fully execute the Reparation Order, considering that there is a maximum sum per victim which can be awarded by the Crime Victim Compensation Program, which falls below the sum awarded in the Reparation Order.

56. The Panel takes notice of the fact that Kosovo has still not taken any concrete steps to prepare for the need to ensure reparations for victims of crimes under the jurisdiction of the Specialist Chambers. The Panel also notes that, in contrast, Kosovo foresaw the need to financially support the defence of suspects and accused before the Specialist Chambers, and continues to provide substantial support.

57. The Panel also observes that legislation in Kosovo, which addresses harm and injuries suffered in the context of the armed conflict in Kosovo in 1998-1999, refers exclusively to the victims of the enemy forces (i.e. Serbian forces) and not to all victims during the armed conflict in Kosovo. In the view of the Panel, these laws create a discrimination between the victims of this armed conflict.

58. The Panel observes that although it has no power to order Kosovo to pay the compensation awarded to the eight Victims, it nevertheless finds it important to - once again - remind Kosovo of its obligations pertaining to the Victims' right to an effective remedy, as enshrined in Article 54 of the Constitution and under international treaties. This right comprises a duty to ensure that such a remedy is enforceable.

59. Accordingly, the Panel again urges Kosovo to enact the necessary laws and to establish a reparation mechanism for the purpose of fully compensating victims of crimes under the jurisdiction of the Specialist Chambers. In the view of the Panel, this would ensure, within the legal system of Kosovo, equal treatment between the victims and the suspects or accused before the Specialist Chambers.

60. The Panel also underlines that, when establishing such a reparation mechanism, consideration should be given to fund it through the budget of Kosovo. The Panel recalls that the defence of suspects and accused before the Specialist Chambers is also

financed through this budget. In the view of the Panel, this equal use of the budget of Kosovo would promote the mandate of the Specialist Chambers pursuant to Article 1(2) of the Law, as upheld by Kosovo and Members States of the European Union, together with other contributing countries financially supporting its work.

61. In this regard the Panel notes that the European Commission has recently underlined that:

“Kosovo has put in place a fund that dispenses legal aid to the accused at the Kosovo Specialist Chambers, as well as financial support to their families, without any proof of financial needs. However, no financial support has so far been made available for victims who have been found by the Kosovo Specialist Chambers to have suffered as a result of war crimes and crimes against humanity. The Kosovo Specialist Chambers has issued a first reparation order to victims. It is therefore not clear how the victims will be compensated in the absence of funds from the accused or a fund by Kosovo for this purpose. It is key that Kosovo addresses this inequality of treatment”.

***By the Specialist Chambers.***

62. Having said that, the Panel stresses that if victims of crimes under the jurisdiction of the Specialist Chambers cannot enforce their right to reparations, this right, would become meaningless.

63. In this regard, the Panel recalls that, in the context of the *Mustafa* proceedings, it recommended the establishment of a trust fund, at the initiative of the Specialist Chambers and to be administered by the Registrar, for the benefit of victims of crimes under the jurisdiction of the Specialist Chambers. Such fund ought to be financially supported above all by Kosovo, taking into consideration its obligations towards victims as specified earlier, as well as other States and donors wishing to support victims.

64. The Panel further notes that there is - at present - a possibility for the Specialist Chambers to receive non-earmarked voluntary donations for the purpose of contributing to the payment of reparations awarded to victims by a final reparation order issued by the Specialist Chambers. A dedicated email account for inquiries specifically with regard to such voluntary contributions is provided in the text of the Reparation Order.

65. However, the Panel underlines that the existence of such a possibility through the Specialist Chambers does not relieve in any way: (i) Mr Shala from his obligation to compensate the eight Victims in accordance with the Reparation Order, and (ii) Kosovo from upholding its obligations towards victims in a reasonable time through the establishment of a reparation mechanism as mentioned above.

66. Accordingly, for the reasons summarised above, the Panel hereby:

- a) **ISSUES** a Reparation Order against Mr Shala;
- b) **FINDS** that Victims 01, 02, 03, 04, 05, 06, 07 and 08 have shown to the standard of proof of balance of probabilities that they are victims of the crimes for which Mr Shala was convicted;
- c) **DECIDES**, to award reparations to the aforementioned Victims;
- d) **AWARDS** individual reparations, in the form of compensation, for, respectively, his physical, mental and material harm, to victim V01/04; and individual and collective reparations, in the form of compensation to V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 for, respectively, their mental and material harm;
- e) **SETS** the reparations award for which Mr Shala is liable at €208,000 (two hundred and eight thousand euro);
- f) **ORDERS** Mr Shala to pay, as compensation for the harm inflicted:
  - €100,000 to Victim 01 for physical, mental and material harm;

- €8,000 per person to Victims 02, 04, 05, 06, 07 and 08 for mental harm;
  - €10,000 to Victim 03 for mental harm; and
  - €50,000 collectively to Victims 02, 03, 04, 05, 06, 07 and 08 for material harm;
- g) **DECLARES** Mr Shala indigent, at this stage, for the purpose of the enforcement of this Reparation Order;
- h) **ORDERS** the Registrar to take the necessary steps to implement the Reparation Order;
- i) **INVITES** the President of the Specialist Chambers to designate a Single Judge in charge of monitoring and overseeing the implementation and execution of this Reparation Order;
- j) **INVITES** Kosovo to establish a new reparation mechanism for victims of crimes under the jurisdiction of the Specialist Chambers in order to correct the current inequalities in the Kosovo legal system as described in this Reparation Order; and
- k) **ORDERS** the Registrar to transmit the present Reparation Order, in its public redacted form, to the Government of Kosovo.

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