



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** **KSC-BC-2020-04**

**The Specialist Prosecutor v. Pjetër Shala**

**Before:** **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 9 February 2024

**Language:** English

**Classification:** **Public**

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**Public redacted version of**  
**Decision on requests for admission of items used with witnesses**  
**W03887, W04441, W04440, DW4-03, W04280 and W04405**

**with one public annex**

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**To be notified to:**

**Specialist Prosecutor**

Kimberly P. West

**Counsel for the Accused**

Jean-Louis Gilissen

**Victims' Counsel**

Simon Laws

**TRIAL PANEL I** (Panel) hereby renders this decision on requests for admission of items used with witnesses W03887, W04441, W04440, DW4-03, W04280 and W04405.

## I. PROCEDURAL BACKGROUND

1. On 17 March 2023, the Panel issued the “Decision on the submission and admissibility of non-oral evidence” (Framework Decision on Evidence), in which it set out the principles governing the admission of non-oral evidence in the present case.<sup>1</sup>
2. Between 20 and 29 November 2023, the following witnesses testified during the ninth evidentiary block: W03887 (Zijadin Hoxha),<sup>2</sup> W04441 (Safete Hadergjonaj),<sup>3</sup> W04440 (Time Kadrijaj),<sup>4</sup> DW4-03 (André De Villiers Horne)<sup>5</sup> and W04280.<sup>6</sup>
3. On 9 and 10 January 2024, witness W04405 (Safet Gashi) testified during the tenth evidentiary block.<sup>7</sup>

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<sup>1</sup> KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#), 17 March 2023, public.

<sup>2</sup> KSC-BC-2020-04, Transcript of Hearing, 20 November 2023, public, pp. 3164-3283; Transcript of Hearing, 21 November 2023, public, pp. 3284-3407; Transcript of Hearing, 22 November 2023, public, pp. 3408-3463.

<sup>3</sup> KSC-BC-2020-04, Transcript of Hearing, 22 November 2023, public, pp. 3464-3518; Transcript of Hearing, 23 November 2023, public, pp. 3519-3539.

<sup>4</sup> KSC-BC-2020-04, Transcript of Hearing, 23 November 2023, public, pp. 3540-3611; Transcript of Hearing, 24 November 2023, public, pp. 3612-3625.

<sup>5</sup> KSC-BC-2020-04, Transcript of Hearing, 27 November 2023, public, pp. 3628-3720.

<sup>6</sup> KSC-BC-2020-04, Transcript of Hearing, 28 November 2023, public, pp. 3728-3829; Transcript of Hearing, 29 November 2023, public, pp. 3830-3870. Witness W04280 was granted in-court protective measures: *see* Transcript of Hearing, 28 November 2023, confidential, pp. 3732-3733.

<sup>7</sup> KSC-BC-2020-04, Transcript of Hearing, 9 January 2024, public, pp. 3885-3999; Transcript of Hearing, 10 January 2024, public, pp. 4000-4076.

4. On 5 December 2023,<sup>8</sup> 6 December 2023,<sup>9</sup> and 8 December 2023,<sup>10</sup> Victims' Counsel, the Defence for Pjetër Shala (Defence and Accused, respectively) and the Specialist Prosecutor's Office (SPO) filed their respective requests for admission of material used during the testimony of witnesses W03887, W04441, W04440, DW4-03 and W04280 (First Victims' Counsel Request; Defence Request; First SPO Request, respectively). No responses or replies were filed in relation to the above requests.
5. On 15 January 2024, Victims' Counsel and the SPO filed their respective requests for admission of items used during the testimony of W04405 (Second Victims' Counsel Request; Second SPO Request, respectively).<sup>11</sup> The Defence did not file a request.
6. On 22 January 2024, the Defence filed a consolidated response to the Second Victims' Counsel Request and Second SPO Request (Defence Response).<sup>12</sup>
7. On 23 January 2024 and 25 January 2024, Victims' Counsel and the SPO filed their respective replies (Victims' Counsel Reply; SPO Reply, respectively).<sup>13</sup>

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<sup>8</sup> KSC-BC-2020-04, F00734, Victims' Counsel, *Victims' Counsel's Request for admission of an exhibit for the examination of Defence expert André De Villiers Horne*, 5 December 2023, confidential, with Annex 1, confidential.

<sup>9</sup> KSC-BC-2020-04, F00737, Defence, *Defence Request for Admission of Items Used with W03887, DW4-03, and W04280 During Their In-Court Testimonies*, 6 December 2023, confidential, with Annex 1, confidential. A public redacted version of the main filing was filed on 11 December 2023, F00737/RED.

<sup>10</sup> KSC-BC-2020-04, F00742, Specialist Prosecutor, *Prosecution request for admission of material used during the cross-examination of W03887, W04441, W04440 and DW4-03*, 8 December 2023, confidential, with Annex 1, confidential. A public redacted version of the main filing was filed on 14 December 2023, F00742/RED.

<sup>11</sup> KSC-BC-2020-04, F00765, Victims' Counsel, *Victims' Counsel's Request for admission of an exhibit used during the examination of W04405*, 15 January 2024, confidential, with Annex 1, confidential; F00768, Specialist Prosecutor, *Prosecution request for admission of material used during the cross-examination of W04405*, 15 January 2024, public, with Annex 1, confidential.

<sup>12</sup> KSC-BC-2020-04, F00779, Defence, *Defence Consolidated Response to Prosecution and Victims' Counsel's Requests for Admission of Material Used During the Examination of W04405*, 22 January 2024, confidential. A public redacted version was filed on 24 January 2024, F00779/RED.

<sup>13</sup> KSC-BC-2020-04, F00781, Victims' Counsel, *Victims' Counsel's Reply to Defence Consolidated Response to Prosecution and Victims' Counsel's Requests for Admission of Material Used During the Examination of W04405*, 23 January 2024, confidential; F00788, Specialist Prosecutor, *Prosecution reply to 'Defence Consolidated Response to Prosecution and Victims' Counsel's Requests for Admission of Material Used During the Examination of W04405'*, 25 January 2024, public

## II. SUBMISSIONS

### A. W03887 (ZIJADIN HOXHA)

8. The Defence requests admission into evidence of: (i) a number of items marked by W03887 during his examination in chief by the Defence; and (ii) several photographs and videos shown to the witness.<sup>14</sup> The Defence submits that the requested items form an integral part of the oral testimony of W03887, and that they are relevant, authentic, have probative value and their admission is in the interests of justice.<sup>15</sup>

9. The SPO tenders the following items: (i) partial excerpts of the SPO interview of W03887, dated September 2020; (ii) five out of a set of 296 photographs taken at the Kukës Metal Factory in May 2019; and (iii) a redacted version of an SPO interview of W03887 dated September 2020, in video format.<sup>16</sup> According to the SPO, these items are relevant as they were used during the cross-examination of W03887 to assist the witness to clarify certain matters and test the witness' credibility on certain aspects of his evidence.<sup>17</sup> They are also authentic, have probative value and their admission would cause no undue prejudice to the Accused.<sup>18</sup>

10. Victims' Counsel does not seek the admission of any item in relation to this witness.

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<sup>14</sup> Defence Request, para. 6; Annex 1 to the Defence Request, pp. 1-5, items no 1-15 (REG00982-REG00982; REG00983-REG00983; REG00984-REG00984; REG00985-REG00985; REG00986-REG00986; REG00987-REG00987; REG00988-REG00988; REG00989-REG00989; 075138-01; DPS00879; 075138-02; REG00990-REG00990; DPS00878; 078252-01; 075138-03).

<sup>15</sup> Defence Request, para. 9.

<sup>16</sup> First SPO Request, para. 3 (077857b Part 1 Partial; 077857b Part 2 Partial; SPOE40010264-40010559, pp. 11, 165, 19, 27, 26; and 077857B Part 2 RED time stamp 10:28-12:00; 50:15-51:34; still image at 11:45).

<sup>17</sup> First SPO Request, para. 4.

<sup>18</sup> First SPO Request, para. 2.

B. W04441 (SAFETE HADERGJONAJ)

11. The SPO requests the admission into evidence of three Facebook posts (dated January 2021, May 2023 and December 2022) discussed with the witness during her cross-examination.<sup>19</sup> The SPO submits that the items are relevant as they were used to test the credibility of the witness, are publicly available on open sources and their admission will cause no undue prejudice to the Accused.<sup>20</sup>

12. The Defence and Victims' Counsel do not seek the admission of any item in relation to this witness.

C. W04440 (TIME KADRIJA)

13. The SPO requests the admission into evidence of seven items used during the cross-examination of W04440: (i) the record of Milaim Zeka's testimony in the *Geci et al.* trial; (ii) the record of a witness statement provided in the context of the investigations against Xhemshit Krasniqi and Sabit Geci; (iii) the testimony of witness M in the *Geci et al.* trial; (iv) the transcript of the SPO interview with W04735; (v) the transcript of an audio file of a recorded conversation between [REDACTED]; (vi) a EULEX officer report, and (vii) an online media article reporting statements allegedly made by W04440 concerning the Kosovo Specialist Chambers.<sup>21</sup> The SPO submits that all of the above items are relevant to the assessment of the charges in this case and the credibility of W04440's evidence, have probative value and their admission would cause no undue prejudice to the Accused.<sup>22</sup> While the SPO specifies

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<sup>19</sup> First SPO Request, para. 5; Annex 1 to First SPO Request, items nos 5-7 (SPOE00342376-SPOE00342376-ET; SPOE00342374-SPOE00342374-ET; SPOE00342377-SPOE00342377-ET).

<sup>20</sup> First SPO Request, para. 5.

<sup>21</sup> First SPO Request, para. 6; Annex 1 to First SPO Request items nos 8-14 (SITF00016056-00016103 RED, p. 15; SITF00013515-00013550 RED, p. 13; SITF00015744-00015815 RED3, p. 15; 083218-TR-ET Part 6 RED5, p. 24; SPOE00012603-00012662, p. 23; SITF00432727-00432728 RED3, p. 1; 116107-116107-ET).

<sup>22</sup> First SPO Request, paras 7-8.

that items (i)-(v) constitute statements of witnesses who were not called to testify in the present proceedings, the SPO avers that the Panel should rely on them, in line with its previously established approach in this trial.<sup>23</sup>

14. The Defence and Victims' Counsel do not seek the admission of any item in relation to this witness.

D. DW4-03 (ANDRÉ DE VILLIERS HORNE)

15. Victims' Counsel requests admission into evidence of an item [REDACTED] used during his questioning of DW4-03.<sup>24</sup>

16. The Defence requests admission into evidence of the following items used with the witness during his questioning: (i) pp. 8-11 of the forensic report prepared by its expert witness, DW4-03 (André De Villiers Horne), dated 3 February 2023 (Expert Witness Report); (ii) a video of DW4-03 at a shooting range, and (iii) a photograph of a shooting target from DW4-03.<sup>25</sup>

17. The SPO requests the admission into evidence of: (i) a portion of a video; (ii) two pages of the Expert Witness Report used in cross-examination, and (iii) the video of DW4-03 at a shooting range, already requested by the Defence.<sup>26</sup> The SPO further submits that, to the extent that the Defence is not seeking admission of the entirety of the Expert Witness Report, all pages should be admitted to enable a full understanding of DW4-03's findings and conclusions.<sup>27</sup> All items, according to the

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<sup>23</sup> First SPO Request, para. 7 and accompanying footnote.

<sup>24</sup> First Victims' Counsel Request, para. 1; Annex 1 to First Victims' Counsel Request, item no. 1 (DPS01724-DPS01725).

<sup>25</sup> Defence Request, para. 7; Annex 1 to Defence Request, p. 5, item nos 1-3 (DPS00864-DPS00875; DPS01727; DPS01728).

<sup>26</sup> First SPO Request, paras 9-11; Annex 1 to the First SPO Request, items nos 15-17 (072508-01, time stamp 05:50-06:15, still image at 6:01; DPS00864-00875 pp. 6-7; DPS01727). *See also* Defence Request, para. 7 and Annex 1 to the Defence Request, pp. 5-6, item 2 (DPS01727).

<sup>27</sup> First SPO Request, para. 11 and accompanying footnote.

SPO, are relevant, authentic, have probative value and their admission would cause no undue prejudice to the Accused.<sup>28</sup>

E. W04280

18. The Defence requests the admission into evidence of three items used during the examination in chief of W04280, including an SPO note and two documents [REDACTED].<sup>29</sup>

19. The SPO submits that all of the items used during the cross-examination of W04280 have already been admitted by the Panel and therefore does not include them anew in the present request.<sup>30</sup>

20. Victims' Counsel does not seek the admission of any items in relation to this witness.

F. W04405 (SAFET GASHI)

21. Victims' Counsel requests admission of one document used during the questioning of W04405, which represents part of W04405's statement to the SPO [REDACTED]. Victims' Counsel submits that the document is relevant, authentic, has probative value and its admission would cause no undue prejudice to the Accused. Victims' Counsel points out that the document was read out to the witness in court and confirmed by W04405 to be accurate. Victims' Counsel avers that the item (and

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<sup>28</sup> First SPO Request, paras 2, 10.

<sup>29</sup> Defence Request, para. 8; Annex 1 to the Defence request, p.6, item nos 1-3 (059113-059144, p. 059122; SITF00372523-00372525 RED, pp. 2, 3; SITF00374418-00374419, p.2).

<sup>30</sup> First SPO Request, para. 12.



associated testimony) should be considered by the Panel in assessing the evidence of the witness.<sup>31</sup>

22. The SPO requests admission of two items: (i) a Facebook post; and (ii) parts of the SPO interview of W04453.<sup>32</sup> The SPO argues that both items are relevant, authentic, have probative value and their admission would cause no undue prejudice to the Accused.<sup>33</sup> In relation to the second item, the SPO submits that although W04453 has not been called as witness in this case, his statement which was put to W04405, should be relied upon by the Panel for a full understanding of W04405's testimony and to assess his credibility, in line with the approach adopted in this trial.<sup>34</sup> While the SPO only put certain pages (8-9, 19, 22, 27, 30 of 065236-TR-ET Part 2 RED) to W04405, it submits that also pages 7, 18, 20-21, 23-24 and 31-32 should be considered by the Panel for the proper assessment of the evidence provided by W04405 in court.<sup>35</sup>

23. The Defence has not sought the admission of any item but has submitted in response that it objects to both Victims' Counsel Second Request and the SPO Second Request. The Defence asserts that, notwithstanding the Panel's approach, the parts of the SPO interview of W04453 that were not put to W04405 in court cannot be considered by the Panel. The Defence submits that the SPO has made no effort to explain how the additional specific pages it requests the Panel to consider are relevant and necessary for a full understanding of W04405's testimony.<sup>36</sup> The Defence takes the same issue with Victims' Counsel's request, arguing it has tendered Part 3 of the transcript in its entirety, without explaining how the rest of the item is relevant to the

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<sup>31</sup> Second Victims' Counsel Request, paras 1-6 ; Annex 1 to Second Victims' Counsel Request, item no.1 (063317-TR-ET PART3 RED2, pp. 7-8).

<sup>32</sup> Second SPO Request, paras 1-5 ; Annex 1 to the Second SPO Request, items nos 1-2 (108011-108040-ET, pp. 9-10; 065236-TR-ET Part 2 RED, pp. 7-9, 18-24, 27, 30-32).

<sup>33</sup> Second SPO Request, paras 2, 4.

<sup>34</sup> Second SPO Request, para. 5 and accompanying footnote.

<sup>35</sup> Second SPO Request, para. 5.

<sup>36</sup> Defence Response, para. 11.



assessment of W04405's testimony.<sup>37</sup> Finally, according to the Defence, the admission of the parts not used in court of these items will be highly prejudicial to the Accused, as it would violate the Accused's right to examine the witnesses against him. It would be also unfair to the witness who should have been given a chance to explain any contradictions or inconsistencies.<sup>38</sup>

24. Victims' Counsel replies that the Defence incorrectly asserted that Victims' Counsel seeks admission of the whole item. He submits that he specified the passage read out to the witness in court, in the Annex of his submission,<sup>39</sup> and reiterates his request that the item be admitted in evidence.<sup>40</sup>

25. The SPO replies asserting that the additional pages are necessary to assess the information put to W04405, are relevant and have probative value.<sup>41</sup> The SPO specifies in detail which page of W04453's statement relates to which aspect of the W04405's testimony in court.<sup>42</sup> In the SPO's view, each of the additional pages simply provides clarity, context or detail to individual topics discussed with W04405.<sup>43</sup> The SPO therefore reiterates its request to admit the two items into evidence.<sup>44</sup>

### III. APPLICABLE LAW

26. The Panel notes Articles 37, 40(2), (5) and 6(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 24(1), 82(5), 137-138 and

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<sup>37</sup> Defence Response, para. 12.

<sup>38</sup> Defence Response, para. 14.

<sup>39</sup> Victims' Counsel Reply, para. 2.

<sup>40</sup> Victims' Counsel Reply, para. 3.

<sup>41</sup> SPO Reply, paras 2, 11.

<sup>42</sup> SPO Reply, paras 3-9.

<sup>43</sup> SPO Reply, para. 10.

<sup>44</sup> SPO Reply, para. 13.

149(4) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

#### IV. ANALYSIS

##### A. W03887 (ZIJADIN HOXHA)

27. At the outset, the Panel recalls that, pursuant to its previous decision, it considers the entire collection of photographs taken at the Kukës Metal Factory (SPOE40010264-40010559) to be available for its deliberations and judgment.<sup>45</sup> Consequently, it considers this part of the First SPO Request, seeking admission of five of these photographs (SPOE40010264-40010559, pp. 11, 19, 26, 27 and 165), to be moot.<sup>46</sup>

28. As to the remaining items, the Panel does not identify any material among the requested items to fall under the scope of Article 37 of the Law and does not consider it necessary to exercise its discretion with a view to excluding any of the items.<sup>47</sup> It therefore considers all tendered items to be available to the Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused,<sup>48</sup> with the following comments.

29. Firstly, the Panel notes that in its First SPO Request, the SPO seeks admission of partial video excerpts corresponding to portions of a prior witness statement of W03887 taken by the SPO. The transcripts of the statement, in their relevant parts, were not read out to the witness in court during his cross-examination.<sup>49</sup> The Panel recalls that, as a general rule, any portions of the witnesses' prior statements that are read out and discussed with the witnesses in court become an integral part of their

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<sup>45</sup> KSC-BC-2020-04, F00714, Trial Panel I, *Decision on requests for admission of items used with DW4-06, DW4-02, DW4-05 and W04754 during their in-court testimonies*, 13 November 2023, confidential, with Annex 1, public, para. 15. A public redacted version was filed on the same day, F00714/RED.

<sup>46</sup> First SPO Request, para. 3 (ii).

<sup>47</sup> [Framework Decision on Evidence](#), para. 11.

<sup>48</sup> [Framework Decision on Evidence](#), paras 21, 57.

<sup>49</sup> First SPO Request, para. 3 (i) and (iii) and accompanying footnote; Items 1, 2 and 4 of Annex 1 to the First SPO Request.

testimony.<sup>50</sup> While the SPO did not read out the portions of the statement to the witness in court, it did play back these exact portions of the video recording of the SPO interview. In these circumstances, the Panel finds that the video excerpts that were put to the witness (alongside the relevant parts of the corresponding transcripts)<sup>51</sup> are automatically available to the Panel for its deliberations and judgment as part of the witness' in-court testimony.

30. Secondly, regarding the items marked by W03887 during his examination, the Panel considers both the original versions of the items, as well as the versions marked by the witness, to be available to the Panel for the purpose of its deliberations and judgment, unless such items are already available.<sup>52</sup>

31. Thirdly, as far as video material is concerned,<sup>53</sup> the Panel considers its determination to extend to the associated English and Albanian transcripts.

32. Lastly, in addition to the items submitted by the Parties, the Panel considers also *proprio motu* the following items marked by W03887 in court to be available for its deliberations and judgment: REG00991-REG00991, REG00992-REG00992 and REG00994-REG00994. These items were marked by the witness during his examination by the SPO.

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<sup>50</sup> [Framework Decision on Evidence](#), paras 59-60.

<sup>51</sup> 077857-TR-ET Part 1 RED2, p. 13 and 077857-TR-ET Part 2 RED2, pp. 2, 5 and 22.

<sup>52</sup> See, similarly, F00528, Trial Panel I, *Decision on requests for admission of items used with witnesses TW4-08, TW4-06, TW4-07, TW4-09, TW4-10 and TW4-11 during their in-court testimonies*, 30 May 2023, confidential, with Annex 1, public, para. 17. A public redacted version was filed on the same day, F00528/RED.

<sup>53</sup> Annex 1 to the Defence Request, pp.1-5, items nos 9, 10, 11, 13, 14, 15.

B. W04441 (SAFETE HADERGJONAJ)

33. With regard to the three items tendered by the SPO, the Panel does not consider it necessary to exercise its discretion with a view to excluding any of them.<sup>54</sup> Therefore, in accordance with the Framework Decision on Evidence, the Panel considers all three items to be available to the Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused.<sup>55</sup>

C. W04440 (TIME KADRIJAJ)

**1. Material falling under Article 37 of the Law**

34. The Panel notes that certain of the items tendered by the SPO in relation to W04440 constitute material collected prior to the establishment of the Specialist Chambers for which Article 37(1) of the Law requires the Panel to take a decision on their admissibility. These items include: (i) the record of Milaim Zeka's testimony in the *Geci et al.* trial; (ii) the record of a witness statement provided in the context of the investigations against Xhemshit Krasniqi and Sabit Geci; (iii) the testimony of witness M in the *Geci et al.* trial, and (iv) a EULEX officer report.<sup>56</sup>

35. With regard to the record of Milaim Zeka's testimony in the *Geci et al.* trial (SITF00016056-00016103 RED, p. 15), the Panel is satisfied that the item is relevant for the purpose of testing W04440's credibility, in particular regarding her presence or absence at the Kukës Metal Factory on certain occasions throughout the period relevant to the Confirmed Indictment.<sup>57</sup> The Panel is further satisfied that the item is authentic and reliable as it bears all the necessary indicia of authenticity, including dates, signatures and names of the relevant judicial authorities. The Panel is finally

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<sup>54</sup> [Framework Decision on Evidence](#), para. 11.

<sup>55</sup> [Framework Decision on Evidence](#), paras 21, 57.

<sup>56</sup> Annex 1 to First SPO Request, items nos 8-10, 13.

<sup>57</sup> KSC-BC-2020-04, F00098/A01, Specialist Prosecutor, *Annex 1 to Submission of corrected indictment*, 1 November 2021, confidential. A public redacted version was filed on 16 November 2021, [F00107/A01](#).

satisfied that the item's probative value is not outweighed by its prejudicial effect. The Panel reiterates in this regard that although the statement emanates from a person not having testified in these proceedings, W04440 was presented with portions of the statement in court, and had an opportunity to respond to it. In line with its previous approach and mindful of the principle of orality, the Panel will not rely on this statement for any other purposes than that for which it was used with the witness in court. The Panel may rely on other parts of this item than those put to the witness in court only as necessary to assess the correct meaning and context of the parts put to the witness.<sup>58</sup> In light of the above, the Panel admits SITF00016056-00016103 RED, p. 15 into evidence.

36. With regard to the record of a witness statement provided in the context of the investigations against Xhemshit Krasniqi and Sabit Geci (SITF00013515-00013550 RED, p. 13), the Panel is likewise satisfied that the item is relevant. This item was put to the witness in court to test her credibility and clarify aspects of her in-court testimony. The Panel is furthermore satisfied that the document is authentic and has probative value as it contains a number of indicia of authenticity, such as the case number and date, the witness' name, as well as the relevant investigative authorities and individuals present during the interview. Finally, the Panel considers that the item's probative value is not outweighed by its prejudicial effect. In making this determination, the Panel notes that Witness W04440 had an opportunity to respond to the portions of the statement put to her<sup>59</sup> and the Panel applies the same approach as described above.<sup>60</sup> In light of the above, the Panel admits SITF00013515-00013550 RED, p. 13 into evidence.

37. With regard to the testimony of witness M in the *Geci et al.* trial (SITF00015744-00015815 RED3, p. 15), the Panel finds that the item is relevant as it was used by the

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<sup>58</sup> F00714, para. 14; Transcript of Hearing, 23 November 2023, public, p.3578, lines 5-14.

<sup>59</sup> Transcript of Hearing, 23 November 2023, public, p.3593-3594.

<sup>60</sup> See para. 35 above and accompanying references.

SPO to test the credibility of W04440 and to clarify aspects of her in-court testimony. The Panel is satisfied that the item is authentic and has probative value, as it bears all the necessary indicia of authenticity, including dates, signatures and names of the relevant judicial authorities. Finally, the Panel is satisfied that the item's probative value is not outweighed by its prejudicial effect. In making this determination, the Panel applies the same approach to this item as described above.<sup>61</sup> In light of the above, the Panel admits SITF00015744-00015815 RED3, p. 15 into evidence.

38. With regard to the EULEX officer report, dated January 2011 (SITF00432727-00432728 RED3, p. 1), used by the SPO during the cross-examination of the witness, the Panel makes the following findings. First, the Panel considers that the report is relevant as it pertains to the credibility of W04440. Secondly, the Panel finds the report authentic as it bears both the logo of EULEX as well as the signature of the relevant official and the date of its issuance. Finally, the Panel is satisfied that the report has probative value and its probative value is not outweighed by its prejudicial effect, as the witness was given a chance to comment on it and give her oral testimony in court on the point raised in the report. The Panel further notes that no objections regarding its admissibility were raised. In light of the above, the Panel admits SITF00432727-00432728 RED3<sup>62</sup> into evidence.

## 2. Other material

39. With regard to the (three) remaining items tendered by the SPO,<sup>63</sup> the Panel does not consider it necessary to exercise its discretion with a view to excluding any of them.<sup>64</sup> Therefore, in accordance with the Framework Decision on Evidence, and

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<sup>61</sup> See para. 35 above and accompanying references.

<sup>62</sup> ERN range SITF00432727-00432728 RED3 includes both the English (p.1) and Albanian (p.2) versions of the item.

<sup>63</sup> Annex 1 to First SPO Request, items nos 11, 12, 14.

<sup>64</sup> [Framework Decision on Evidence](#), para. 11.

absent any indication that the items fall within the ambit of Article 37 of the Law, the Panel considers them to be available to the Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused.<sup>65</sup> The Panel specifies in relation to item 083218-TR-ET Part 6 RED 5, p. 4<sup>66</sup> – which constitutes (part of) a statement taken by the SPO from a witness who has not been called in these proceedings – that, in line with its approach described above,<sup>67</sup> it will not rely on this statement for any other purpose than that for which it was used with the witness in court. The Panel may rely on other parts of this item than those put to the witness in court only as necessary to assess the correct meaning and context of the parts put to the witness.

D. DW4-03 (ANDRÉ DE VILLIERS HORNE)

**1. Material falling under Article 37 of the Law**

40. With regard to the video excerpt dated 18 June 1999 included in the First SPO Request (072508-01, time stamp 05:50-06:15), the Panel makes the following findings. First, the Panel considers this item relevant, as it pertains to the charges of ill-treatment and/or murder brought against the Accused. Secondly, the Panel is satisfied that the video recording itself is authentic as it contains visual indications of the news outlet, specific program during which it was aired, as well as the reporting journalist. Finally, the Panel is satisfied that its probative value is not outweighed by its prejudicial effect, seeing that it was used for a specific purpose by the SPO and there are no objections raised regarding its admissibility. In light of the foregoing, the Panel admits 072508- 01

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<sup>65</sup> [Framework Decision on Evidence](#), paras 21, 57.

<sup>66</sup> Annex 1 to First SPO Request, item no. 11. While the SPO refers to p. 24 of this item, the Panel finds that the correct reference is p. 4.

<sup>67</sup> See para. 35 above and accompanying references.



into evidence. The Panel further recalls that, as per its general approach,<sup>68</sup> the SPO should have also submitted any transcript associated with the video, which in this case is 072508-01-TR-ET, disclosed in the same package as the video.<sup>69</sup> The Panel's determination regarding 072508-01 therefore extends to 072508-01-TR-ET.

## 2. Material falling under Rule 149(4) of the Rules

41. The Panel recalls that, if the opposing Party challenges an expert witness report or wishes to cross-examine the expert – as the SPO has<sup>70</sup> - Rule 149(4) of the Rules compels the Panel to decide on the admissibility of the expert witness report following the testimony and questioning of the expert. Thus, the Panel will proceed to rule on the admissibility of Expert Witness Report authored by DW4-03 (DPS00864-DPS00875) below, based on the four cumulative criteria set out in Rule 138(1) of the Rules, namely: relevance, authenticity, probative value and prejudicial effect.<sup>71</sup>

42. First, the Panel finds that the Expert Witness Report is relevant as it pertains to the charges of cruel treatment, torture and/or murder brought against the Accused. Notably, it contains the expert's expertise on firearms and ballistics and professional opinion [REDACTED]. The Expert Witness Report also engages with questions that have previously been asked to SPO expert witness W04826 (Marek Gasior) and addressed in his expert reports, which are already admitted by the Panel.<sup>72</sup> The Expert Witness Report was authenticated by DW4-03 during his in-court testimony as he answered a number of questions related to its content and findings. The Expert

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<sup>68</sup> [Framework Decision on Evidence](#), para. 42.

<sup>69</sup> Disclosure No.196, 24 November 2023.

<sup>70</sup> KSC-BC-2020-04, F00617, Specialist Prosecutor, *Prosecution submissions for the Defence preparation conference and Rule 149(2) notice*, 23 August 2023, public, paras 3, 5.

<sup>71</sup> [Framework Decision on Evidence](#), para. 10.

<sup>72</sup> See KSC-BC-2020-04, F00639, Trial Panel I, *Decision on the Specialist Prosecutor's and Defence's motions for admission of materials related to expert witnesses W04887, W04826 and W04875*, 6 September 2023, confidential, with Annex 1, public, para. 32. A public redacted version was filed on 26 September 2023, F00639/RED.

Witness Report also bears a number of additional indicia of authenticity, including dates, the name of DW4-03 as its author and logos of the relevant institution to which DW4-03 is affiliated. The Panel finds that the Expert Witness Report has probative value and its admission will not cause any undue prejudice. The Panel notes in this regard that it was the Defence who called the expert witness DW4-03 to testify and produce the Expert Witness Report, and that the SPO and Victims' Counsel had the opportunity to cross-examine the witness in court. In light of the above, the Panel admits the full Expert Witness Report (DPS00864-DPS00875) into evidence.

### **3. Other material**

43. As regards the remaining material, Panel does not consider it necessary to exercise its discretion with a view to excluding any of them.<sup>73</sup> Therefore, in accordance with the Framework Decision on Evidence, the Panel dispenses with rendering a discrete item-by-item admissibility ruling and considers all items to be available to the Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused.<sup>74</sup>

E. W04280

#### **1. Material falling under Article 37 of the Law**

44. The Panel notes that two of the items submitted by the Defence (SITF00372523-00372525 RED and SITF00374418-00374419) and used during the testimony of witness W04280, were collected prior to the establishment of the Specialist Chambers, within the meaning of Article 37 of the Law. The Panel will therefore proceed to rule on their admissibility.<sup>75</sup>

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<sup>73</sup> [Framework Decision on Evidence](#), para. 11.

<sup>74</sup> [Framework Decision on Evidence](#), paras 21, 57.

<sup>75</sup> [Framework Decision on Evidence](#), paras 27-28.

45. The Panel will address the items together, as they are similar in nature. The Panel is satisfied that they are relevant, as they each include photographs which were used by the Defence with witness W04280 [REDACTED]. They both bear relevant indicia of authenticity, such as the logo of the relevant agency, as well as the date of issuance. The Panel is finally satisfied that their probative value is not outweighed by any prejudicial effect, seeing that no objections were raised regarding their admissibility.

46. In light of the foregoing, the Panel admits both items (SITF00372523-00372525 RED and SITF00374418-00374419) into evidence.

## 2. Other Material

47. The Panel notes that the Defence also submits DPS01729, which is a redacted copy of underlying image 059122, part of ERN range 059113-059144 already available to the Panel pursuant to a previous decision.<sup>76</sup> The Panel considers DPS01729 likewise available for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused.

### F. W04405 (SAFET GASHI)

48. At the outset, the Panel notes that Victims' Counsel seeks admission of a part of W04405's prior statement, which was put to the witness and discussed with him in court. The Panel recalls in this regard that any portions of a witness's prior statements that are read out and discussed with the witness in court become an integral part of

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<sup>76</sup> KSC-BC-2020-04, F00610, Trial Panel I, *Decision on requests for admission of items used with TW4-01 during his in-court testimony*, 16 August 2023, confidential, with Annex 1, public, para. 24(c). A public redacted version was filed on the same day, F00610/RED.

their testimony and need not be submitted separately into evidence.<sup>77</sup> Accordingly, the Panel will not consider Victims' Counsel's request further.

49. As regards the remaining (two) items tendered by the SPO, the Panel does not consider it necessary to exercise its discretion with a view to excluding any of them.<sup>78</sup> Therefore, in accordance with the Framework Decision on Evidence, the Panel dispenses with rendering a discrete item-by-item admissibility ruling and considers both items to be available to the Panel for its deliberations and judgment.

50. The Panel makes however the following clarifications regarding the statement of W04453 (065236-TR-ET Part 2 RED).<sup>79</sup>

51. Firstly, in line with its previous approach the Panel will not rely on W04453's statement for any other purpose than that for which it was used with W04405 in court.<sup>80</sup> Secondly, having duly considered the objections of the Defence as to the admissibility of the portions of W04453's statement that were not put to W04405, the Panel considers that such other portions may be relied upon, as necessary, to assess the correct meaning and context of the parts put to the witness in court.<sup>81</sup> The Panel finds no cogent reason to depart from this practice notwithstanding the Defence's objections. Finally, the Panel is also satisfied with the SPO's submissions in the SPO Reply detailing in what way the other parts of this item relate to the topics discussed with the witness in court. Accordingly, the Panel considers it to be available for its deliberations and judgment.

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<sup>77</sup> [Framework Decision on Evidence](#), paras 59-60.

<sup>78</sup> [Framework Decision on Evidence](#), para. 11.

<sup>79</sup> [Framework Decision on Evidence](#), paras 21, 57.

<sup>80</sup> The Panel considers that only the following pages were used with witness W04405 during his examination in court: pp.8-9, 19, 22, 27 and 30.

<sup>81</sup> See para. 35 above and accompanying references.

## V. CLASSIFICATION

52. The Panel notes that Victims' Counsel is yet to file public redacted versions of filings F00734 and F00765. The Panel further finds that filing F00781 can be reclassified as public, pursuant to Rule 82(5) of the Rules. Accordingly, the Panel instructs the Registry to reclassify filing F00781 from confidential to public, and instructs Victims' Counsel to file public redacted versions of filings F00734 and F00765 or request reclassification thereof, at the latest by **Friday, 16 February 2024**.

## VI. FINAL REMARKS

53. In accordance with paragraph 43 of the Framework Decision on Evidence, any subsequent unredacted or lesser redacted versions of the items addressed in the present decision shall automatically be considered as admitted or available to the Panel for the purpose of its deliberations and judgement, as the case may be, subject to any objections of the SPO, the Defence and/or Victims' Counsel. For the purpose of maintaining an accurate record of the proceedings, should any unredacted or lesser redacted versions of these items be disclosed in the future, the disclosing Party shall immediately inform the other Party, Victims' Counsel, the Panel, and the Registry's Court Management Unit (CMU) thereof. This will allow CMU to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the version admitted or considered part of the evidence for the purpose of the Panel's deliberations and judgement pursuant to the present decision. Should the other Party or Victims' Counsel have any objections in relation to any such subsequent unredacted or lesser redacted versions, they shall inform the Panel thereof within five (5) days of the notification of their disclosure.

54. Moreover, in accordance with paragraph 42 of the Framework Decision on Evidence, the Panel's findings that any given item is admitted or is available to the Panel for its deliberations and judgement shall automatically extend to any

translations thereof, any audio-visual material and/or any transcripts, as the case may be. Accordingly, CMU shall ensure that the status of the material is accurately reflected in Legal Workflow for all versions of any given item.

55. Lastly, for ease of reference, the Panel lists all items addressed in the present decision which should receive an exhibit number in an annex. CMU is directed to record in Legal Workflow, in the field "General comments" the portions thereof discussed with the witnesses.

## VII. DISPOSITION

56. For the above-mentioned reasons, the Panel hereby:

- a. **GRANTS** the First and Second SPO Requests, Victims' Counsel First Request and the Defence Request, to the extent specified in the present decision;
- b. **ADMITS** into evidence SITF00016056-00016103 RED, p. 15; SITF00013515-00013550 RED, p. 13; SITF00015744-00015815 RED3, p. 15; SITF00432727-00432728 RED3; 072508-01; 072508-01-TR-ET; DPS00864-DPS00875; SITF00372523-00372525 RED; and SITF00374418-00374419;
- c. **ORDERS** the Registry to assign exhibit numbers to the items listed in the Annex 1 to the present decision, as indicated therein, including any translations, audio-video or transcribed versions thereof, for the (sole) purpose of maintaining an accurate record of the proceedings pursuant to Article 40(5) of the Law and Rule 24(1) of the Rules and to classify them as confidential;
- d. **ORDERS** the Registry to reflect in the field "General comments" in Legal Workflow, as applicable, the portions of each item used with the witnesses by the Parties, Victims' Counsel and/or the Panel;

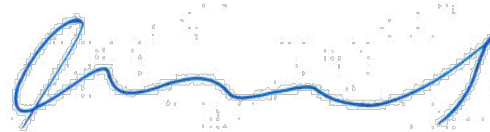
- e. **ORDERS** the disclosing Party to immediately inform the other Party, Victims' Counsel, the Panel, and CMU should any subsequent unredacted or lesser redacted versions of the aforementioned items be disclosed;
- f. **ORDERS** the Registry to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the respective exhibit number(s) assigned pursuant to this decision;
- g. **ORDERS** the non-disclosing Party and Victims' Counsel to file any objections to any such subsequent unredacted or lesser redacted versions within five (5) days of notification of their disclosure;
- h. **ORDERS** the Registry to reclassify filing F00781 from confidential to public; and
- i. **ORDERS** Victims' Counsel to submit public redacted versions of filings F00734 and F00765, or request reclassification thereof, at the latest by **Friday, 16 February 2024**.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Friday, 9 February 2024

At The Hague, the Netherlands.