



In: **KSC-BC-2023-10**

The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi 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

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Decision on the submission and admissibility of non-oral evidence

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TRIAL PANEL I (Panel) hereby renders this decision on the submission and admissibility of non-oral evidence.

I. PROCEDURAL BACKGROUND

1. On 24 September 2024, the Panel sought submissions from the Parties on whether the admissibility of non-oral evidence should be decided at the time of submission during the trial (admission model), or should be differed to the judgment on the guilt or innocence of the accused persons (Accused and submission model, respectively).¹

2. Between 28 September and 2 October 2024, the Specialist Prosecutor's Office (SPO),² the Defence for Haxhi Shala (Shala Defence),³ and the Defence for Sabit Januzi (Januzi Defence)⁴ made their submissions. Following further directions from the Panel,⁵ the Shala Defence made additional submissions on 17 October 2024 (Additional Submissions).⁶

3. The Defence for Ismet Bahtijari did not make any submissions in this regard.⁷

¹ KSC-BC-2023-10, F00479, Trial Panel I, [Decision setting the dates for trial preparation conferences, requesting submissions and on related matters](#), 24 September 2024, public, para. 19(b).

² KSC-BC-2023-10, F00491, Specialist Prosecutor, *Prosecution submissions in advance of trial preparation conferences* (SPO Submissions), 1 October 2024, confidential, with Annex 1, confidential. A public redacted version of the main filing was filed on 4 October 2024, F00491/RED.

³ KSC-BC-2023-10, F00482, Shala Defence, *Submission by the Defence of Haxhi Shala of written information as specified in paragraphs 12-20 of F00479* (Shala Defence Submissions), 28 September 2024, public, with Annex 1, public.

⁴ KSC-BC-2023-10, F00495, Januzi Defence, *Submissions for the Trial Preparation Conferences on behalf of Januzi* (Januzi Defence Submissions), 2 October 2024, public.

⁵ KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 368, lines 11-22.

⁶ KSC-BC-2023-10, F00539, Shala Defence, *Defence response to various submissions made by the SPO for the Trial Preparation Conference*, 17 October 2024, confidential.

⁷ See KSC-BC-2023-10, F00494, Bahtijari Defence, *Bahtijari submissions on trial preparation pursuant to F00479*, 2 October 2024, confidential, paras 24-30. A public redacted version was filed on 18 October 2024, F00494/RED.

II. SUBMISSIONS

4. The SPO advances that the admissibility of non-oral evidence should be decided at the time of submission, as this serves best the fairness and expeditiousness of the proceedings in the present case.⁸ More specifically, the SPO argues that: (i) the admission model provides greater clarity for the submitting Party as to whether it has met the requisite standard for admission, avoiding the need to continue throughout the trial to provide further support therefor; (ii) admissibility can best be assessed at the point of submission when, for example, a relevant witness is present to address any objections; and (iii) the universe of relevant materials is much clearer and the Parties need not address the admissibility of items declared inadmissible in their final submissions.⁹

5. The Shala Defence submits that it should be entitled to make submissions on the inadmissibility of any items of non-oral evidence adduced by the SPO at any stage of the trial proceedings.¹⁰ In its Additional Submissions, the Shala Defence adds that it concurs with the SPO on the adoption of the admission model, given the limited volume of evidentiary material in this case and the importance of certain items.¹¹

6. Similarly, the Januzi Defence submits that, considering the nature of the material objected to, its importance and its limited amount, admissibility should be decided at the time of submission (*i.e.* admission model).¹²

⁸ SPO Submissions, paras 29, 30, 32.

⁹ SPO Submissions, para. 31.

¹⁰ Annex 1 to Shala Defence Submissions, para. 19(b). The Panel has taken note of the Shala Defence's submission regarding filing KSC-BC-2023-10, F00287, *Request for a finding of inadmissibility of Items disclosed under Rule 102 of the Rules*, 13 May 2024, confidential, and will address it at the appropriate time. This matter falls outside the scope of the present decision.

¹¹ Additional Submissions, paras 9-11.

¹² Januzi Defence Submissions, para. 17.

III. APPLICABLE LAW

7. The Panel notes Articles 37, 40(2) and 40(6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 9, 99(4), 100, 137-139, 148(2), 149(4) and 153-155 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

IV. PRELIMINARY MATTERS

8. The Panel notes that the Shala Defence filed its Additional Submissions on 17 October 2024, while the time limit set by the Panel was 16 October 2024, at 16:00.¹³ The Shala Defence did not seek an extension of the time limit.

9. The Panel has previously urged the Parties to abide by the orders and time limits set and to seek an extension of time when this is not possible. The Panel has also stressed that it will exercise its discretion to dismiss filings made after the expiry of the time limit.¹⁴ Accordingly, the Panel dismisses the Additional Submissions as out of time and will not consider them further.

V. ANALYSIS

10. The present decision concerns the submission and admissibility of non-oral evidence, such as documents, audio-visual material, or any other type of evidence that is not given orally by a witness in court. The Panel hereby provides directions to the Parties as to the procedure for the submission of non-oral evidence and the Panel's approach to the admissibility of such evidence, setting out when non-oral evidence is considered to be properly before the Panel for the purpose of its judgment on the guilt or innocence of the Accused.

¹³ KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 368, lines 11-22.

¹⁴ KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 352, lines 3-13.

A. GENERAL PRINCIPLE

11. According to Article 40(2) of the Law, the Panel, having heard the Parties, is vested with the discretionary power to organise the fair and expeditious conduct of the proceedings, in the way it sees fit. Notably, Article 40(6)(h) of the Law gives the Panel discretion (“may, as necessary”) to rule on the admissibility of evidence. Notwithstanding Article 37(1) of the Law, which contains an exception to the Panel’s discretionary power to rule on admissibility,¹⁵ these provisions of the Law do not impose a duty on the Panel to render an item-by-item ruling on the admissibility of each piece of evidence submitted at trial, either at the moment of submission or at any other stage of the proceedings.¹⁶

12. The same reading is deduced from the Rules, which shall be consistent with the Law.¹⁷ Rule 138(1) of the Rules establishes standard admissibility criteria that the Panel shall apply when assessing the admissibility of the evidence (relevance, authenticity, probative value and prejudicial effect). Importantly, it also stipulates that “unless challenged or *proprio motu* excluded”, the evidence submitted to the Panel shall be admitted if the aforementioned criteria are met, without imposing on the Panel an obligation to issue an item-by-item decision on the admissibility of each piece of evidence. In fact, Rule 138(1) of the Rules goes as far as to establish a presumption that the evidence submitted is considered as admitted, if the standard Rule 138(1) admissibility criteria are met. Accordingly, it is clear from this provision that, as a general rule, the Panel is not duty-bound to rule on the admissibility of each piece of

¹⁵ See further para. 28 below; see also KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#) (Pjetër Shala Framework Decision on Admissibility), 17 March 2023, public, para. 9; KSC-BC-2020-05, F00169, Trial Panel I, [Decision on the submission and the admissibility of evidence](#) (Mustafa Framework Decision on Admissibility), 25 August 2021, public, para. 12.

¹⁶ [Pjetër Shala Framework Decision on Admissibility](#), para. 9; [Mustafa Framework Decision on Admissibility](#), paras 11-12.

¹⁷ Article 19(3) of the Law. In the event of conflict between the Law and the Rules, the Law shall prevail, pursuant to Rule 4(2) of the Rules.

evidence submitted at trial, either at the moment of submission or at any other stage of the proceedings.¹⁸

13. This is however subject to a challenge presented by a Party or the Panel's general discretion to declare any item of evidence inadmissible *proprio motu*, in accordance with the criteria established in Rule 138(1) of the Rules, and without prejudice to the application of specific exclusionary rules, as will be developed below. In this context, it is worth underscoring that, under Rule 138(1) of the Rules, the *proprio motu* powers of the Panel, firmly rooted in Article 40(6)(h) of the Law, are not to be used to confirm the admissibility of a piece of evidence, but only to *exclude* a piece of evidence from the evidentiary record, as warranted by the specific circumstances at hand. This interpretation is further in harmony with the exclusionary rules set forth in Rules 138(2)-(3) and 148(2) of the Rules, which describe specific situations in which evidence is considered inadmissible, making admissibility rulings in these instances mandatory.¹⁹

14. Rule 139 of the Rules, on the other hand, concerns the Panel's *assessment* of evidence for the purposes of the judgment, *i.e.* after the presentation of evidence is concluded. Rule 139(1) of the Rules dictates that evidence declared inadmissible may not be considered by the Panel for the judgment. *A contrario*, evidence that has not been specifically excluded as inadmissible may be considered by the Panel for the determination of the guilt or innocence of the Accused. No duty to render an item-by-item admissibility ruling can be deduced from Rule 139 of the Rules either.²⁰

15. All of the above provisions demonstrate that the legal framework of the Specialist Chambers (SC) does not establish a general duty for the Panel to rule on the

¹⁸ [Pjetër Shala Framework Decision on Admissibility](#), para. 10; [Mustafa Framework Decision on Admissibility](#), para. 13.

¹⁹ [Pjetër Shala Framework Decision on Admissibility](#), para. 11; [Mustafa Framework Decision on Admissibility](#), para. 13.

²⁰ [Pjetër Shala Framework Decision on Admissibility](#), para. 12; [Mustafa Framework Decision on Admissibility](#), para. 14.

admissibility of each piece of evidence submitted at trial, unless the Law and/or the Rules specifically instruct the Panel to do so or the Panel is of the view, in accordance with its *proprio motu* power under Rule 138(1) of the Rules, that it shall issue a ruling, as further developed below. The legal framework also does not establish a general and automatic right of the Parties to receive a ruling on the admissibility of each and every piece of evidence they submit, either at the moment of submission or at any other stage of the proceedings, unless otherwise provided in the legal framework of the SC.²¹

16. In the view of the Panel, the standard Rule 138(1) admissibility criteria, in particular the relevance and probative value of a piece of evidence, are assessed more accurately after having received all the evidence presented at trial, in light of the entire body of evidence before the Panel.²² This is also in line with the Panel's duty, in accordance with Rule 139(2) of the Rules, to conduct a holistic evaluation and weighing of all the evidence taken as a whole. Moreover, the requirement for a reasoned judgment enables the Parties to verify precisely how the Panel has evaluated the evidence relied upon and has addressed the objections raised, and allows appellate review as appropriate.²³

17. The Panel is not persuaded by the Parties' arguments that the fairness and expeditiousness of the proceedings is best served in this case by the Panel ruling on the admissibility of non-oral evidence at the point of submission.²⁴

²¹ [Pjetër Shala Framework Decision on Admissibility](#), para. 13; [Mustafa Framework Decision on Admissibility](#), para. 15.

²² See KSC-BC-2020-04, F00847/RED, Trial Panel I, [Public redacted version of Trial Judgment and Sentence \(Pjetër Shala Judgment\)](#), public, para. 79, with Annex 1 public; KSC-BC-2020-05, F00494/RED3/COR, Trial Panel I, [Further redacted version of Corrected version of Trial Judgment \(Mustafa Judgment\)](#), 16 December 2022, public, para. 32. See also [Pjetër Shala Framework Decision on Admissibility](#), para. 14; [Mustafa Framework Decision on Admissibility](#), para. 19.

²³ [Pjetër Shala Framework Decision on Admissibility](#), para. 14; [Mustafa Framework Decision on Admissibility](#), para. 19.

²⁴ SPO Submissions, para. 29; Januzi Defence Submissions, para. 17.

18. First, regarding the SPO's argument that the admission model would avoid the need for the Parties to continue to provide support for the admissibility of tendered items throughout the trial,²⁵ the Panel underscores that the Parties have a duty to ensure that each and every piece of evidence they submit meets the standard Rule 138(1) admissibility criteria.²⁶ The Parties should present all relevant information and arguments in this regard at the point of submission. It is not the responsibility of the Panel to guide and advise the Parties and make preliminary rulings on the admissibility of the evidence before the entirety of the evidence has been heard.²⁷

19. Second, as to the SPO's argument that admissibility is best assessed at the point of submission when, for example, a relevant witness is present,²⁸ the Panel clarifies that nothing prevents the Parties from discussing and/or challenging any piece of evidence during trial, including by questioning a witness on any objections raised.²⁹ However, unless the Law, the Rules, or other compelling reasons require the Panel to rule on admissibility upfront, the Panel considers that the relevance and probative value of a piece of evidence is best assessed after having received all the evidence in the case, in order to conduct such assessments holistically, in light of the entire body of evidence before the Panel.³⁰

20. Third, as to the clarity of the evidentiary record,³¹ the Panel highlights that it will consider for its deliberations and judgment all the evidence that will have entered the evidentiary record in accordance with the procedure set out in the present decision.

²⁵ SPO Submissions, para. 31.

²⁶ See further para. 39 below; [Pjetër Shala Framework Decision on Admissibility](#), para. 38; [Mustafa Framework Decision on Admissibility](#), para. 18.

²⁷ [Pjetër Shala Framework Decision on Admissibility](#), para. 38; [Mustafa Framework Decision on Admissibility](#), para. 18.

²⁸ SPO Submissions, para. 31.

²⁹ [Pjetër Shala Framework Decision on Admissibility](#), para. 20; [Mustafa Framework Decision on Admissibility](#), para. 19.

³⁰ See para. 22 above; [Pjetër Shala Framework Decision on Admissibility](#), para. 20; [Mustafa Framework Decision on Admissibility](#), para. 19.

³¹ SPO Submissions, para. 31.

Such evidence will comprise: (i) the evidence that has been admitted, where the Panel is compelled to rule on the admissibility of the evidence prior to its deliberations on the judgment, or decides to do so *proprio motu*, as will be further explained below; and (ii) the evidence considered to be available to the Panel for the purpose of its deliberations and judgment, where the Panel defers its assessment of the standard Rule 138(1) admissibility criteria, in line with the general approach set out above.³² All such evidence will be marked by the Registry's Court Management Unit (CMU) in Legal Workflow accordingly, assigning it an exhibit number and reflecting its status. Thus, there will be no ambiguity as to which pieces of evidence are part of the evidentiary record and may be considered by the Panel for the judgment.³³

21. Lastly, the Panel does not find that rendering preliminary decisions on the standard Rule 138(1) admissibility criteria for each and every piece of evidence throughout the trial contributes to the expeditious conduct of the proceedings, even when the volume of evidentiary material is limited,³⁴ especially considering the amount of time invested in related litigation and discussions.³⁵ This argument is without merit.

22. In conclusion, and in light of the foregoing, the Panel will refrain, in general, from rendering discrete item-by-item admissibility rulings of evidence upon submission during trial, unless: (i) the evidence is challenged and the Panel finds compelling reasons to rule on the admissibility of a particular evidentiary item; (ii) the Panel exercises its *proprio motu* power to rule on the admissibility of individual evidentiary items with a view to excluding any of them; or (iii) the Panel is compelled to do so by specific legal provisions, as further discussed below. When deliberating on the judgment, the Panel will consider the standard admissibility criteria in

³² [Pjetër Shala Framework Decision on Admissibility](#), para. 17.

³³ [Pjetër Shala Framework Decision on Admissibility](#), para. 18.

³⁴ See SPO Submissions, paras 29, 32; Januzi Defence Submissions, para. 17.

³⁵ See [Mustafa Framework Decision on Admissibility](#), para. 20.

Rule 138(1) of the Rules as part of its assessment of the evidence when determining the guilt or innocence of the Accused and on the basis of a holistic evaluation of all items of evidence that are part of the evidentiary record in the present case,³⁶ though it may not necessarily discuss these aspects for every item in the judgment itself.³⁷ That being said, the Panel will now proceed to explain in which circumstances discrete admissibility rulings shall be rendered.³⁸

B. RULINGS ON ADMISSIBILITY

23. Notwithstanding the Panel's general approach to defer consideration of the standard Rule 138(1) admissibility criteria to the judgment stage, the Panel is required to render discrete decisions on admissibility prior to its assessment of the evidence for the purposes of the judgment when: (i) specific exclusionary rules apply (Section B.1); (ii) the Law or the Rules oblige the Panel to rule on the admissibility of certain evidence (Sections B.2-3); or (iii) provisions establishing certain preconditions or procedural requisites for the introduction of evidence apply (Section B.4). Evidence declared inadmissible shall not be considered by the Panel for the purposes of the judgment, pursuant to Rule 139(1) of the Rules.³⁹

1. Exclusionary Rules

24. Rules 138(2)-(3) and 148(2) of the Rules (the so-called exclusionary rules) describe specific situations in which evidence is considered to be inadmissible. Evidence declared inadmissible shall not be considered by the Panel for the purposes

³⁶ Rules 137(2) and 139(2) of the Rules.

³⁷ KSC-CA-2023-02, F00038/RED, Court of Appeal, [Public Redacted Version of Appeal Judgment](#), 14 December 2023, para. 34; KSC-CA-2022-01, F00114, Court of Appeal, [Appeal Judgment](#), 2 February 2023, para. 33, with further references to case-law.

³⁸ [Pjetër Shala Framework Decision on Admissibility](#), para. 21; [Mustafa Framework Decision on Admissibility](#), para. 21.

³⁹ [Pjetër Shala Framework Decision on Admissibility](#), para. 22; [Mustafa Framework Decision on Admissibility](#), para. 22.

of the judgment, as provided in Rule 139(1) of the Rules.⁴⁰ Accordingly, the Panel must ensure prior to its deliberations on the guilt or innocence of the Accused that evidence submitted at trial is not inadmissible by virtue of an exclusionary rule.⁴¹

25. Rule 138(2) of the Rules provides for the exclusion of evidence obtained by means of a violation of the Law or the Rules or standards of international human rights law. When conducting an assessment under Rule 138(2) of the Rules, the Panel applies a two-prong test. At first, the evidence must have been obtained by means of either a violation of the Law or the Rules, or standards of international human rights law. Only if such a violation is established will the Panel proceed to consider the two alternative conditions: (i) the violation casts substantial doubt on the reliability of the evidence; or (ii) the admission of the evidence would be antithetical to or would seriously damage the integrity of the proceedings.⁴²

26. In addition, Rule 138(3) of the Rules contains a further exclusionary rule according to which evidence obtained under torture or any other inhumane or degrading treatment is inadmissible and shall be excluded.

27. Lastly, Rule 148(2) of the Rules provides that, in cases of alleged sexual violence, evidence of prior or subsequent sexual conduct of the victim shall not be admitted in evidence.

2. Evidence Collected Prior to the Establishment of the Specialist Chambers

28. Article 37(1) of the Law provides that the admissibility of evidence collected in criminal proceedings or investigations within the subject matter jurisdiction of the SC

⁴⁰ [Pjetër Shala Framework Decision on Admissibility](#), para. 23; [Mustafa Framework Decision on Admissibility](#), paras 21-22.

⁴¹ [Pjetër Shala Framework Decision on Admissibility](#), para. 23; [Mustafa Framework Decision on Admissibility](#), para. 13.

⁴² [Pjetër Shala Framework Decision on Admissibility](#), para. 24; [Mustafa Framework Decision on Admissibility](#), para. 25; KSC-BC-2020-04, F00364/COR/RED, Trial Panel I, [Public redacted version of Corrected version of Decision concerning prior statements given by Pjetër Shala](#) (Decision on Pjetër Shala's Statements), 6 December 2022 (public redacted version issued on 26 January 2023), public, paras 18-19.

prior to its establishment “shall” be decided by the Panel pursuant to international standards on the collection of evidence and Article 22 of the Constitution of the Republic of Kosovo. Article 37(1) of the Law provides for an exception to the Panel’s discretionary power under Article 40(6)(h) of the Law. It instructs the Panel to render discrete admissibility rulings on evidence collected prior to the establishment of the SC, which includes evidence collected by any national or international law enforcement or criminal investigation authority or agency, including the Kosovo State Prosecutor, any police authority in Kosovo, the International Criminal Tribunal for the former Yugoslavia, the European Union Rule of Law Mission in Kosovo or by the Special Investigative Task Force.⁴³

29. Article 37(3) of the Law sets out certain types of evidence that *may* be considered by the Panel as admissible if certain conditions are met, subject to judicial determination of admissibility in accordance with Article 37(1) of the Law.

3. Expert Reports

30. Rule 149(4) of the Rules provides that, if certain preconditions are fulfilled, as set forth in Rule 149(2)(b) and (c) of the Rules, the Panel shall decide on the admissibility of the expert witness report following the testimony and questioning of the expert.⁴⁴

4. Written Statements and Transcripts in Lieu of Testimony

31. Rule 141(1), first sentence, of the Rules enshrines the principle of orality, according to which the testimony of a witness shall be given in person, unless otherwise provided. This means that witnesses must appear in open court, in person, and provide their evidence orally. The importance of in-court personal testimony is

⁴³ [Pjetër Shala Framework Decision on Admissibility](#), para. 27; [Mustafa Framework Decision on Admissibility](#), paras 12, 23. See also [Decision on Pjetër Shala’s Statements](#), para. 18.

⁴⁴ [Pjetër Shala Framework Decision on Admissibility](#), para. 29; [Mustafa Framework Decision on Admissibility](#), para. 24.

that the witness gives evidence under oath and under the observation and general oversight of the Panel. It allows the witness's evidence to be fully tested by questioning, with the Panel being able to assess its accuracy and reliability. Nevertheless, in-court testimony is not the exclusive mode by which the Panel may receive witness testimony.⁴⁵

32. Rule 100(1) of the Rules allows for the taking of depositions upon decision of the Pre-Trial Judge which may be used at trial without the person testifying orally before the Panel. Such evidence is preserved under the supervision of the Pre-Trial Judge with full respect for the rights of the opposing Party.⁴⁶ Upon transmission of the case file to the Trial Panel, the admissibility of Rule 100 material is governed by Rule 138 of the Rules, as clarified in Rule 99(4) of the Rules.⁴⁷

33. Rules 153-155 of the Rules are tools to expedite and streamline the proceedings.⁴⁸ They allow the introduction of written statements or transcripts replacing or complementing the oral testimony of a witness, provided that certain preconditions or procedural requisites are met.⁴⁹ Rules 153 and 155 of the Rules allow the introduction of statements/transcripts of witnesses who are not present before the Panel. Rule 154 of the Rules allows the introduction of statements/transcripts of witnesses who are present before the Panel. Thus, Rules 153 and 155 of the Rules are full exceptions to the principle of orality, while Rule 154 of the Rules only limits this

⁴⁵ [Pjetër Shala Framework Decision on Admissibility](#), para. 30; [Mustafa Framework Decision on Admissibility](#), para. 27.

⁴⁶ See, in particular, Rule 100(3)-(5) of the Rules.

⁴⁷ [Pjetër Shala Framework Decision on Admissibility](#), para. 31; [Mustafa Framework Decision on Admissibility](#), para. 28.

⁴⁸ [Pjetër Shala Framework Decision on Admissibility](#), para. 32; [Mustafa Framework Decision on Admissibility](#), para. 29.

⁴⁹ The Panel understands that the term "written statement" and "transcript" also includes annexes or other documents associated with the written statement/transcript, which are used or explained by the witness and which, as such, are an integral part of the testimony itself; [Pjetër Shala Framework Decision on Admissibility](#), fn. 38; [Mustafa Framework Decision on Admissibility](#), fn. 27. This is without prejudice to the Panel's discretion to determine that certain annexes or other documents associated with the written statement/transcript are inadmissible.

principle. Evidence that is testimonial in nature is inadmissible when not elicited orally or when the preconditions for the introduction of written statements/transcripts under Rules 153-155 of the Rules are not met.⁵⁰

34. More specifically, Rule 153 of the Rules provides the Panel with discretionary powers to admit, *in lieu* of oral testimony, the written statement of a witness, or transcript of evidence provided by a witness in proceedings before the SC, which goes to proof of a matter other than the acts and conduct of the Accused as charged in the indictment. A set of non-exhaustive factors spelled out in Rule 153(2) and (3) of the Rules, which militate in favour or against admission, guide the Panel when deciding on the admissibility of such evidence. Moreover, Rule 153(2) of the Rules contains procedural requisites that aim at strengthening the probative value of the material introduced under Rule 153 of the Rules.⁵¹

35. Rule 154 of the Rules provides the Panel with discretionary powers to admit the written statement of a witness or transcript of evidence given by a witness in proceedings before the SC that goes to proof of the acts and conduct of the Accused as charged in the indictment, if the following procedural requisites are met: (i) the witness is present in court; (ii) the witness is available for cross-examination by the other Party and questioning by the Panel; and (iii) the witness attests that the written statement or transcript accurately reflects his or her declaration and what he or she would say if examined. The admitted written statement/transcript complements the oral testimony of the witness. The non-calling Party has the opportunity to test the entirety of the witness's testimony, both in relation to the in-court testimony and the written statement/transcript. Upon application of the calling Party, the Panel will issue rulings ahead of the relevant in-court testimony. However, in principle, the Panel will

⁵⁰ [Pjetër Shala Framework Decision on Admissibility](#), para. 32; [Mustafa Framework Decision on Admissibility](#), para. 29.

⁵¹ [Pjetër Shala Framework Decision on Admissibility](#), para. 33; [Mustafa Framework Decision on Admissibility](#), para. 30.

make its final determination only when the witness appears before the Panel and attests to the accuracy of his or her prior declaration sought to be introduced.⁵²

36. Lastly, Rule 155(1) of the Rules provides the Panel with discretionary powers to admit evidence in the form of a written statement, any other record written or otherwise expressed of what a person has said or transcript of a statement by a person who has died or who can no longer be traced with reasonable diligence, or who is by reason of physical or mental impairment or other compelling reason unable to testify orally, if the Panel is satisfied: (i) of the person's unavailability or inability to testify orally; and (ii) that the statement, the record or the transcript is *prima facie* reliable, having regard to the circumstances in which it was made, recorded, and maintained. Rule 155(2) of the Rules allows the admission of evidence in the form of a written statement, any other *prima facie* reliable record or transcript of a statement by a person, if the Panel is satisfied that: (i) the witness has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect; (ii) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion, as further described in Rule 155(3)(a) of the Rules; (iii) where appropriate, reasonable efforts have been made to secure the attendance of the witness as a witness under Rules 100 or 121 of the Rules or, if in attendance, to receive from the witness all material facts known to that witness; (iv) the proposed evidence or evidence to the same effect cannot be otherwise obtained; and (v) it is in the interests of justice, as further described in Rule 155(3)(b) of the Rules.⁵³

37. It is, in principle, up to the calling Party whether it uses the above modalities. However, this choice is subject to judicial oversight. In particular, the Panel shall

⁵² [Pjetër Shala Framework Decision on Admissibility](#), para. 34; [Mustafa Framework Decision on Admissibility](#), para. 31.

⁵³ [Pjetër Shala Framework Decision on Admissibility](#), para. 35; [Mustafa Framework Decision on Admissibility](#), para. 32.

interfere with the calling Party's choice regarding its presentation of evidence where potential prejudice arises to the rights of the Accused⁵⁴ – in particular, the right to confront and examine in court a person making allegations against any of the Accused – and to ensure that the proceedings are conducted in a fair and expeditious way,⁵⁵ in full respect of the principles of orality and publicity.⁵⁶ Lastly, a decision under Rules 153-155 of the Rules is made on a case-by-case basis, bearing the case-specific circumstances in mind.⁵⁷

C. PROCEDURE FOR THE SUBMISSION OF EVIDENCE

38. The Panel has taken note of the requests for admission of non-oral evidence submitted by the SPO⁵⁸ following the Panel's order.⁵⁹ Corresponding deadlines for the Defence with regard to the presentation of their respective cases, if any, will be set in due course. The following procedure for the submission of evidence applies to the SPO and the Defence equally for any future requests.

⁵⁴ Article 21(4)(c), (d), and (f) of the Law; Rule 138(1) of the Rules.

⁵⁵ Article 40(2) of the Law.

⁵⁶ Article 21(2) of the Law.

⁵⁷ [Pjetër Shala Framework Decision on Admissibility](#), para. 36; [Mustafa Framework Decision on Admissibility](#), para. 33.

⁵⁸ KSC-BC-2023-10, F00529, Specialist Prosecutor, *Prosecution motion for admission of documentary evidence*, 15 October 2024, confidential, with Annex 1, confidential. A public redacted version was filed on 17 October 2024, F00529/RED; F00532, Specialist Prosecutor, *Prosecution motion for admission of electronic evidence*, 15 October 2024, confidential, with Annex 1, confidential. A public redacted version was filed on 18 October 2024, F00532/RED.

⁵⁹ KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 370, lines 11-22. At this stage, the Panel will, in principle, not entertain, additional requests for admission of non-oral evidence from the SPO, other than through a witness. The SPO will be given the opportunity to submit any additional applications for the admission of non-oral evidence before the closing of its case, as indicated in para. 65 below.

1. General Directions

39. At the outset, the Panel underscores that the Parties bear full responsibility for the selection and presentation of evidence in support of their arguments. Crucially, it is their duty to ensure that each and every piece of evidence they submit meets the standard Rule 138(1) admissibility criteria. The Parties are also responsible for furnishing further support for the admissibility of the evidence should questions or concerns arise during trial. The Panel's interference is foreseen only if disputes must be resolved or if specific legal provisions require the Panel to issue a ruling on the admissibility of the evidence, as set out above. Other than that, it is not the responsibility of the Panel to guide and advise the Parties upfront and to make preliminary rulings on the admissibility of individual pieces of evidence before the entirety of the evidence has been heard.⁶⁰

40. Further, the Parties are reminded to be selective in their requests for admission of evidence, allowing the trial to be completed within a reasonable time.⁶¹ They shall further ensure that they do not seek to submit items that have already been submitted in previous requests and/or have been admitted or are considered to be available to the Panel for its deliberations and judgment.

41. Importantly, the Panel reminds the Parties that the material concerned must have been disclosed to the opposing Parties and the Panel.⁶² In the following, the Panel provides general guidance that concerns all types of non-oral evidence, be it introduced through a witness or not.

⁶⁰ [Pjetër Shala Framework Decision on Admissibility](#), para. 38; [Mustafa Framework Decision on Admissibility](#), para. 18.

⁶¹ [Pjetër Shala Framework Decision on Admissibility](#), para. 39; [Mustafa Framework Decision on Admissibility](#), para. 34.

⁶² [Pjetër Shala Framework Decision on Admissibility](#), para. 40; [Mustafa Framework Decision on Admissibility](#), para. 34.

42. *Lengthy material.* As a general rule, material, even if lengthy, shall be submitted for admission in its entirety, in order to allow the Panel to assess the correct meaning and broader context of the portion(s) relied upon by the Parties. If the Panel intends to rely on portions of the material other than those proposed by the Parties, it will give notice accordingly.⁶³ However, the Panel retains its discretion to admit/consider as available for its deliberations and judgment only parts of the material if the volume or specific nature of the evidence warrant such approach. The submitting Party is instructed to indicate if the material in question is requested to be admitted only in part.⁶⁴

43. *Translations and/or Transcripts.* When making a request for the admission of material in a language other than English,⁶⁵ including audio-visual material, the Parties shall include the original material together with any associated translation(s) and/or transcript(s). If translation(s)/transcript(s) do not exist, the Parties shall indicate this in their requests. A decision to admit such material, including audio-visual material, or to consider it to be available to the Panel for its deliberations and judgment automatically extends to any associated translation(s)/transcript(s) which were duly disclosed and *vice versa*. CMU shall ensure that the status of the material is reflected accurately in Legal Workflow for all versions concerned, *i.e.* original, translation(s) and transcript(s).⁶⁶

44. *Unredacted/Lesser Redacted Versions.* A decision to admit an item or consider it to be available to the Panel for its deliberations and judgment automatically extends to

⁶³ [Pjetër Shala Framework Decision on Admissibility](#), para. 41.

⁶⁴ [Pjetër Shala Framework Decision on Admissibility](#), para. 41; [Mustafa Framework Decision on Admissibility](#), paras 38, 47; KSC-BC-2020-05, F00285/RED, Trial Panel I, [Public redacted version of Decision on items used with witnesses W03593, W04600, W01679, and W03594 during their in-court testimony](#) (Mustafa 17 December 2021 Decision), 17 December 2021, public, para. 15.

⁶⁵ KSC-BC-2023-10, F00033, Pre-Trial Judge, [Decision on Working Language](#), 12 October 2023, public; KSC-BC-2023-11, F00019, Pre-Trial Judge, [Decision on Working Language](#), 14 December 2023, public.

⁶⁶ This is irrespective of whether the Parties have included the translation(s)/transcript(s) in their requests, as long as the translation(s)/transcript(s) have been duly disclosed; [Pjetër Shala Framework Decision on Admissibility](#), para. 42, fn. 56; [Mustafa Framework Decision on Admissibility](#), paras 37, 47.

any subsequent unredacted or lesser redacted versions, subject to any objections of the Parties. For the purpose of maintaining an accurate record of the proceedings, should any unredacted or lesser redacted versions be subsequently disclosed, the disclosing Party shall immediately inform the other Parties, the Panel and the Registry (CMU). This will allow CMU to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the version admitted or considered to be part of the evidence for the purpose of the Panel's deliberations and judgment. Should the other Parties have any objections in relation to any such subsequent unredacted or lesser redacted versions, they shall inform the Panel thereof within five days of the notification of their disclosure.⁶⁷

2. Material Collected Prior to the Establishment of the Specialist Chambers

45. When making an application for the admission of material falling under Article 37 of the Law, the Parties shall: (i) describe shortly the asserted relevance of each piece of material in relation to the factual allegation in question; (ii) suggest the asserted probative value of each piece of material; and (iii) provide information as to the authenticity of each piece of material, if available.⁶⁸

46. Upon receipt of the application, the opposing Parties may respond and present objections and/or challenges to individual evidentiary items, if any.⁶⁹ Subsequently,

⁶⁷ [Pjetër Shala Framework Decision on Admissibility](#), para. 43; [Mustafa Framework Decision on Admissibility](#), paras 37, 47; KSC-BC-2020-05, F00281/RED, Trial Panel I, [Public redacted version of Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material](#), 13 December 2021, public, para. 25.

⁶⁸ Where appropriate, the information under points (i)-(iii) may be summarized for groups of documents. [Pjetër Shala Framework Decision on Admissibility](#), para. 45, fn. 59; [Mustafa Framework Decision on Admissibility](#), para. 35.

⁶⁹ See Rules 76 and 138(1) of the Rules, second sentence. [Pjetër Shala Framework Decision on Admissibility](#), para. 46; [Mustafa Framework Decision on Admissibility](#), para. 36.

the Panel will proceed to decide on the admission of the material concerned, as foreseen in Article 37 of the Law and Rule 138 of the Rules.⁷⁰

47. Mindful of the principle of orality, Article 37 of the Law does not apply to statements or material related to witnesses who are called to testify before the Panel.⁷¹

3. Material Introduced Under Rules 153-155 of the Rules

48. Upon receipt of an application under Rules 153, 154 or 155(1) of the Rules, the opposing Parties may respond and present their objections, if any. Unless otherwise ordered, the time limits for responses and, if necessary, replies follow Rule 76 of the Rules.

49. Upon receipt of all required submissions, the Panel will: (i) as regards applications under Rules 153 and 155(1) of the Rules, proceed to decide on the admission of the written statement(s)/transcript(s); and (ii) as regards applications under Rule 154 of the Rules, proceed to decide preliminarily on the admission of the written statement(s)/transcript(s), pending the witness's in-court attestation.⁷²

50. As regards applications under Rule 155(2) of the Rules, the Panel instructs the Parties to make such applications as soon as practicable. Upon receipt of all required submissions, the Panel will subsequently proceed to decide on the admission of the written statement(s)/transcript(s) concerned.⁷³

⁷⁰ [Pjetër Shala Framework Decision on Admissibility](#), para. 46; [Mustafa Framework Decision on Admissibility](#), para. 36.

⁷¹ [Pjetër Shala Framework Decision on Admissibility](#), para. 47; [Mustafa Framework Decision on Admissibility](#), para. 39.

⁷² See paras 34-36 above. [Pjetër Shala Framework Decision on Admissibility](#), para. 49; [Mustafa Framework Decision on Admissibility](#), paras 40-41.

⁷³ [Pjetër Shala Framework Decision on Admissibility](#), para. 50; [Mustafa Framework Decision on Admissibility](#), para. 42.

4. Other Material

51. When making applications for the admission of material that does not fall under the aforementioned categories, the Parties shall: (i) describe shortly the asserted relevance of each piece of material in relation to the factual allegation in question; (ii) suggest the asserted probative value of each piece of material; and (iii) provide information as to the authenticity of each piece of material, if available.⁷⁴

52. Upon receipt of the application, the opposing Parties may respond and present objections and/or challenges to individual evidentiary items, if any.⁷⁵ Unless otherwise ordered, the time limits for responses and, if necessary, replies follow Rule 76 of the Rules.

53. Subsequently, the Panel will proceed as summarised in paragraph 22 above, subject to any exclusionary rules as discussed in paragraphs 24-27 above, or other compelling reasons to exclude the evidence. As a result, the Panel will, unless it excludes said material, consider all material included in the application as available for its deliberations and judgment on the guilt or innocence of the Accused, without rendering a discrete item-by-item ruling under Rule 138(1) of the Rules.⁷⁶

5. Submission of Material through a Witness

54. The following directions concern the procedure for the submission into evidence of the (selected) material used during the questioning of a witness, whose testimony

⁷⁴ Where appropriate, the information under points (i)-(iii) may be summarized for groups of documents. [Pjetër Shala Framework Decision on Admissibility](#), para. 52, fn. 69; [Mustafa Framework Decision on Admissibility](#), para. 43.

⁷⁵ See Rules 76 and 138(1), second sentence, of the Rules.

⁷⁶ [Pjetër Shala Framework Decision on Admissibility](#), para. 54; [Mustafa Framework Decision on Admissibility](#), para. 45.

was completed within a given evidentiary block and which has not already been submitted to the Panel.⁷⁷

55. No later than one week after the completion of an evidentiary block, the Parties shall submit an application for the admission of any material used during their respective questioning of the witnesses whose testimony was completed within that block. Within five (5) days of receipt of the application the opposing Parties may respond and present their objections, if any.⁷⁸ The submitting Party may reply, if it so wishes, within three (3) days of receipt of the objections.

56. Subsequently, the Panel will proceed as set out in paragraph 22 above, subject to any exclusionary rules⁷⁹ or other compelling reasons to exclude the evidence. As a result, unless it excludes said material, the Panel will consider it to be available for its deliberations and judgment, without rendering a discrete item-by-item ruling under Rule 138(1) of the Rules.⁸⁰

57. Importantly, the Parties may submit through a witness only material which has been disclosed and *actually* used during their questioning of the witness.⁸¹

58. Any portions of the witnesses' prior statements that are *read out* and discussed with the witnesses in court become an integral part of their testimony.⁸² The Panel

⁷⁷ [Pjetër Shala Framework Decision on Admissibility](#), para. 55; KSC-BC-2020-05, F00170, Trial Panel I, [Decision on the conduct of proceedings](#) (Mustafa Decision on Conduct of Proceedings), 26 August 2021, public, para. 37.

⁷⁸ See Rules 9(5), 76, and 138(1), second sentence, of the Rules.

⁷⁹ See paras 24-27 above.

⁸⁰ [Pjetër Shala Framework Decision on Admissibility](#), para. 57; [Mustafa Framework Decision on Admissibility](#), para. 37.

⁸¹ [Pjetër Shala Framework Decision on Admissibility](#), para. 58; KSC-BC-2020-05, F00422, Trial Panel I, [Decision on items used with Defence witnesses 200, 300, 400 and 500 during their in-court testimonies](#), 26 May 2022, public, para. 8.

⁸² [Pjetër Shala Judgment](#), para. 77; [Pjetër Shala Framework Decision on Admissibility](#), para. 59; [Mustafa Judgment](#), para. 30.

notes that it does not suffice to refer only to the page(s), paragraph(s) or line number(s) of the written statements or transcripts.

59. Accordingly, such portions of prior statements do not need to be submitted separately into evidence; rather, they will be part of the official transcript of the witness's in-court testimony, on equal footing as any other statement of the witness reflected in the official transcript. They are automatically available to the Panel for its deliberations and judgment as part of the witnesses' in-court testimony. The same applies to any corresponding translations and/or audio-visual recordings of such portions of prior statements.⁸³ The Panel stresses that, in accordance with the principle of orality, only the portions discussed with the witnesses during their in-court testimony are part of the evidentiary record.⁸⁴ This is because evidence that is testimonial in nature is inadmissible when not elicited orally or introduced through Rules 153-155 of the Rules.⁸⁵

60. Accordingly, the Parties shall refer in their final trial briefs, or Rule 130 motions, as the case may be, to the witness's testimony in court where the prior statement was discussed, and not directly to the prior statement as such. The Panel will not consider any references made directly to prior statements, unless such statements were introduced under Rules 153-155 of the Rules.⁸⁶

61. Further, when questioning the witness, the Parties shall always, before confronting the witness with a particular statement, identify clearly the portions of prior statement(s) that they wish to put to the witness, by reference to the ERN number/range, relevant page, and relevant paragraph or line numbers. The Parties

⁸³ This is in line with the principle set out in para. 43 above. [Pjetër Shala Framework Decision on Admissibility](#), para. 60, [Mustafa 17 December 2021 Decision](#), para. 14.

⁸⁴ [Pjetër Shala Framework Decision on Admissibility](#), para. 60; KSC-BC-2020-05, Transcript of Hearing, 4 October 2021, public, p. 852, line 14 to p. 854, line 21.

⁸⁵ See para. 33 above.

⁸⁶ [Pjetër Shala Framework Decision on Admissibility](#), para. 61.

shall identify the relevant portions of both the English and the Albanian versions of said statements. The Parties shall also ensure that such references are correct and complete. They shall further avoid paraphrasing what the witness has said and instead read out the relevant portion(s) of the prior statement.⁸⁷

62. With regard to items marked by witnesses in court, both the original version and the version marked by the witness shall be submitted.⁸⁸

63. As indicated above,⁸⁹ the Parties shall ensure that they do not submit items that have already been submitted in previous requests and/or have been admitted or are considered to be available to the Panel for its deliberations and judgment. Before using an item during their questioning of a witness, the Parties shall indicate whether said item has already been admitted or is considered to be available to the Panel for its deliberations and judgment, or is otherwise subject to a previous request.⁹⁰

64. Following the completion of each witness's testimony in court, CMU shall circulate to the Parties and the Panel, *via* email, a list of all items used during their respective questioning of the witness. CMU shall indicate therein which items have already been admitted, or are considered by the Panel to be available for its deliberations and judgment, or are otherwise subject to a previous request. The Parties may object to CMU's record keeping, if they so wish, within one day.⁹¹

65. The Panel notes the SPO's submission that the Parties should be allowed to submit documentary evidence throughout the trial proceedings, without the evidence necessarily being introduced through a witness, and requests the Panel to adopt directions in this regard.⁹² The Panel clarifies that, consistent with its previous

⁸⁷ [Pjetër Shala Framework Decision on Admissibility](#), para. 62.

⁸⁸ [Pjetër Shala Framework Decision on Admissibility](#), para. 63.

⁸⁹ See para. 40 above.

⁹⁰ [Pjetër Shala Framework Decision on Admissibility](#), para. 64.

⁹¹ [Pjetër Shala Framework Decision on Admissibility](#), para. 65.

⁹² SPO Submissions, paras 36-37.

practice,⁹³ it intends to give the Parties an opportunity to submit any additional applications for the admission of non-oral evidence before the closing of their cases. The Panel does not find it necessary to adopt any further directions in this regard.

6. Consolidated List of Items

66. For the purpose of maintaining an accurate record of the proceedings, in accordance with Article 40(5) of the Law and Rule 24(1) of the Rules, within two weeks of the closing of the evidentiary proceedings in accordance with Rule 134 of the Rules, the Registry shall file in the case record a consolidated list of all items admitted or considered to be available to the Panel for the purpose of its deliberations and judgment. The Registry shall indicate, as applicable, the portions of each respective item used with the witnesses who testified in the present case.⁹⁴

VI. DISPOSITION

67. For the above-mentioned reasons, the Panel hereby:
- a. **ADOPTS** the procedure on submission and admissibility of non-oral evidence as set out in the present decision;
 - b. **INSTRUCTS** the Parties and the Registry to comply with the directions and time limits set out above; and
 - c. **DIRECTS** the Shala Defence to submit a public redacted version of its Additional Submissions (filing F00539), or request reclassification, no later than **Wednesday, 13 November 2024**.

⁹³ See, for example, KSC-BC-2024-04, Transcript of Hearing, 16 June 2023, public, p. 2017, lines 12-21; Transcript of Hearing, 29 November 2023, public, p. 3877, line 25 to p. 3878, line 9.

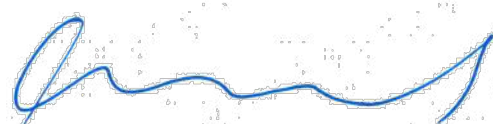
⁹⁴ Consistent with the Panel's direction at paras 58-59 above, the list need not include portions of prior statements discussed with the witnesses in court, as such portions are an integral part of the witnesses' testimonies; [Pjetër Shala Framework Decision on Admissibility](#), para. 66 and footnote 87.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 6 November 2024

At The Hague, the Netherlands.