

**In:** KSC-BC-2020-06  
**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi  
Specialist Counsel for Kadri Veseli  
Specialist Counsel for Rexhep Selimi  
Specialist Counsel for Jakup Krasniqi

**Date:** 17 January 2025

**Language:** English

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**Joint Defence Response to Prosecution Request for Admission of the Expert  
Report and Source Material of W04875**

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## I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. The Defence herewith provides supplementary submissions opposing the admission of the expert evidence of W04875 and other materials tendered by the SPO. As developed below, W04875 was not involved in any of the testing and was not provided with the raw data or unencrypted results from any testing in order to be able to verify them. As a result, the reports and materials do not assist the Panel and do not meet the threshold for admission.
2. On 13 January 2025, Prosecution expert witness William Goodwin (W04875 or, the “Expert Witness”) testified live before the Trial Panel.
3. On 11 October 2024, the SPO had filed its motion for admission of evidence of W04826, W04874, and W04875 (together, the “Expert Witnesses”) pursuant to Rules 138, 149, and 154 (F02633).<sup>1</sup>
4. On 9 October 2024, by way of inter-parties’ correspondence, the Defence informed the SPO that it: (a) does not challenge the qualifications of the Experts, noting that the ultimate determination of expertise is for the Panel; (b) does not agree with the reports of the Experts, or the reports underlining the Expert’s conclusions; and (c) wishes to cross-examine the Experts.<sup>2</sup>

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<sup>1</sup> F02633, Specialist Prosecutor, Prosecution motion for admission of evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and related request with confidential Annexes 1-3, 11 October 2024 (“SPO Expert Evidence Motion”), confidential (a public redacted version was subsequently filed).

<sup>2</sup> Email from Co-Counsel for Mr. VESELI on behalf of the Defence to the SPO dated 9 October 2024 at 20:49. This Email confirmed the position set out by the Defence teams in their respective Expert Notices, filed on 1 December 2021.

5. On 8 November 2024, the Defence jointly filed a consolidated response to F02620 and F02633,<sup>3</sup> and the SPO filed a reply to the Defence's response on 18 November 2024.<sup>4</sup>
6. On 16 December 2024 the Trial Panel issued its Decision on the Prosecution Motion for Admission of Evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and Related Request.<sup>5</sup> The Panel declined to make a preliminary ruling on the admissibility of the expert evidence and deferred its decision until after testimony and questioning of each of the witnesses, pursuant to Rules 149(4).<sup>6</sup> The Panel held that, "in the course of direct examination, it will be incumbent upon the Prosecution to demonstrate that the Expert Reports meet the requirements for admission of Rules 138 (1) and 149."<sup>7</sup>
7. Following the completion of W04875's testimony, the Panel granted permission to the Defence to file supplemental submissions on the admissibility of expert evidence tendered for admission by the SPO through W04875.<sup>8</sup>

## II. APPLICABLE LAW

8. The relevant legal principles which apply to the admissibility of expert evidence were set out by the Defence in the Joint Defence Consolidated Response to the SPO's Expert Evidence Motion.<sup>9</sup> In summary, Rule 149 is the

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<sup>3</sup> F02703, Specialist Counsel, Joint Defence Consolidated Response to F02620 and F02633, 8 November 2024, confidential, ("Joint Defence Consolidated Response to SPO Expert Evidence Motion").

<sup>4</sup> F02732, Specialist Prosecutor, Prosecution reply relating to request to admit expert witness evidence (F02633), 18 November 2024, public.

<sup>5</sup> F02787, Panel, Decision on Prosecution Motion for Admission of Evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and Related Request, 16 December 2024 ("The Panel's Decision on the Admission of Expert Evidence"), confidential.

<sup>6</sup> *Ibid*, at para.37.

<sup>7</sup> *Ibid*, at para.36.

<sup>8</sup> KSC-BC-2020-06, Transcript of 13 January 2025, T.23689 lines 20-25.

<sup>9</sup> Joint Defence Consolidated Response to SPO Expert Evidence Motion, paras. 5-8.

*lex specialis* with regard to the admission of all expert evidence while Rule 138 is the *lex generalis*.<sup>10</sup>

9. Importantly, the proposed expert evidence must meet the minimum standard of reliability, there must be sufficient information as to the sources relied on in order to reach the conclusions in the report upon which the Panel is being invited to rely, the proposed expert reports must be relevant and of probative value, and the content of the material must fall within the accepted expertise of the relevant witness.<sup>11</sup>

### III. SUBMISSIONS

10. The Defence objects to the admission into evidence of the two reports authored by William Goodwin (the “DNA Reports”),<sup>12</sup> as well as the items associated with the reports,<sup>13</sup> and all the reports and other items tendered for admission in Annex 1 of W04875’s Preparation Note (the “Underlying Material”).<sup>14</sup>
11. At the outset, the Defence notes that it has previously made submissions on the admissibility of expert evidence generally, and objected, *inter alia*, to the admission of evidence produced by third-party experts who are not on the SPO witness list through any of the Expert Witnesses<sup>15</sup> and the admission of

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<sup>10</sup> *The Prosecutor v. Casimir Bizimungu et. al.*, Decision on Prosecutor's Motion Objecting to the Admission of Professor Geoffrey Corn's Report (16 May 2008); *Prosecutor v Radovan Karadžić*, Trial Chamber decision On Prosecution's Motion for Admission of Evidence of Eight experts pursuant to rules 92 bis and 94 bis, (9 November 2009).

<sup>11</sup> *Ibid.*

<sup>12</sup> ERN 103373-103387, Forensic Expert Report compiled by W04875 pursuant to the SPO’s Letter of Instruction of 30 July 2021, dated 22 September 2021; and ERN 111160-111162 Updated DNA Forensic Expert Report Prepared by W04875 on 6 March 2023.

<sup>13</sup> ERN 103392-103400, CV of W04875; ERN 102472-102482 SPO Letter of Instruction W04875 dated 30 July 2021; and ERN 111165-111169

<sup>14</sup> Annex 1 of ERN 123392-124406, SPO Note of W04875 Preparation Note, 7 January 2025 (“Annex 1”)

<sup>15</sup> Joint Defence Consolidated Response to SPO Expert Evidence Motion, paras. 19-27.

documents which are beyond the expert's field of expertise.<sup>16</sup> For the avoidance of doubt, the Defence continues to rely on those submissions.

12. Further, W04875's evidence undermined the reliability and probative value of the DNA Reports tendered by the SPO and highlighted significant gaps in the Underlying Material. As a result, the DNA Reports and the Underlying Material should not be admitted into evidence. They do not meet the requirements of Rule 149 and cannot be shown to be accurate or reliable.

**A. Forensic Expert Reports compiled by W04875 and related items**

*i. DNA testing carried out by third-party experts*

13. W04875 confirmed that he was not involved in any part of the initial DNA extraction, analysis or production of the Underlying Material.<sup>17</sup> During his live testimony, W04875 confirmed that he did not, and could not, carry out any re-analysis of the DNA profiles in order to verify the accuracy of the results and conclusions in any of the reports contained in the Underlying Material. He was not asked by the SPO to assess or comment on the methodology which was relied on in carrying out the DNA testing,<sup>18</sup> and did not have the opportunity to consult or speak to the persons who carried out DNA testing.<sup>19</sup>

14. Neither in his reports, nor during his testimony, did W04875 adopt any of the conclusions which are set out in the Underlying Material as his own. He could not do so, as he could not carry out any independent analysis of the DNA profiles which underpin the conclusions set out in the Underlying Material.

15. Fundamentally, in both the DNA Reports and in his live testimony, W04875 has provided no independent conclusions or opinion in respect of the

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<sup>16</sup> *Ibid*, paras. 35-38.

<sup>17</sup> KSC-2020-06, Transcript of 13 January 2025, T.23571 lines 1-9.

<sup>18</sup> Transcript of 13 January 2025, T.23575- T.23576.

<sup>19</sup> *Ibid*, T.23571, lines 14-16.

likelihood of the purported matches set out in the Underlying Materials, nor can he - given the lack of disclosure of the relevant material he would require in order to do so.

16. The SPO have therefore failed to call evidence which can substantiate the reliability or accuracy of the third-party DNA reports. Significantly, these reports cannot be considered by the Panel to be accurate or reliable on their face, due to a number of inexplicable obscurities and anomalies in the reports identified by the expert. W04875 could not definitively explain these issues – he could merely speculate about the potential reasons for these anomalies.<sup>20</sup>

17. There is insufficient information about the nature and content of the underlying DNA reports upon which the Panel is being invited to rely – information which is necessarily required to explain how the conclusions therein were reached.

*ii. No access to underlying DNA profiles (electropherograms)*

18. W04875 made clear the SPO did not provide to him, and he did not review, any of the “raw DNA profiles”<sup>21</sup> which should form the basis of the conclusions set out in each individual DNA report in the Underlying Material.<sup>22</sup>

19. Without access to the raw DNA profiles, W04875 was unable to comment on whether the DNA profiles were interpreted correctly, and could not make any assessment as to the quality of the of the DNA samples that were provided.<sup>23</sup>

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<sup>20</sup> W04875 specifically listed his concerns with the Underlying Material, both in his report (ERN 103373-103387 at p.12) and re-confirmed the scope of these concerns during cross-examination. See T.23627, starting at line 9 -T.23628.

<sup>21</sup> Transcript of 13 January 2025, T.23580, lines 6-17.

<sup>22</sup> In the context of forensic DNA testing, extracted DNA samples (the raw DNA profile) are analysed using computer software which “amplifies” particular pieces of the DNA (specific “loci”). The results of the analysis are represented in a standard format known as an electropherogram (“EPG”), in the form of a graph. The graph illustrates the result of the analysis by showing where specific loci “peaks”. This was explained by W04875 during his live testimony (see KSC-2020-06, Transcript of 13 January 2025, T.23589 from line 12 to T.23590, line 16).

<sup>23</sup> Transcript of 13 January 2025, T.23610, lines 1-13.

At its highest, W04875 could only say that the findings in the Underlying Materials appeared reasonable or appropriate from the limited material that he had been given.<sup>24</sup>

20. W04875 was not provided with the necessary material to explain or verify the reports. For instance, W04875 was not provided with any reasons explaining the prior probabilities assumed in the DNA reports,<sup>25</sup> which are capable of affecting the percentages expressed in the conclusions.<sup>26</sup> Further, W04875 highlighted that none of the conclusions contain a population substructure adjustment.<sup>27</sup> As a result, all of the conclusions are wrongly too high by the order of 10 or 20.<sup>28</sup> W04875 gave one example where the likelihood ratio should be reduced from 216,000 to 15,000, which he himself described as “much lower”.<sup>29</sup> None of the other conclusions have been recalculated to take into account this adjustment.

21. Accordingly, W04875 did not – and was not asked to – provide an independent expert opinion as to the veracity of the conclusions reached in the Underlying Material. To the contrary, he confirmed he could not do so.<sup>30</sup>

## **B. Underlying Material**

*i. The DNA reports tendered are third party expert reports and inadmissible under Rule 149*

22. The Underlying Materials contain twenty-two expert DNA reports. Each of these reports includes a summary of findings from DNA testing carried out by unknown analysts comparing DNA material said to be extracted from bone

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<sup>24</sup> *Ibid.*, T.23637, lines 6-10.

<sup>25</sup> *Ibid.*, T.23667, lines 19-22; T.23668 lines 7-9, 18-21.

<sup>26</sup> *Ibid.*, T.23668, line 22 – T.23669 line 3.

<sup>27</sup> *Ibid.*, T.23671, lines 16-20.

<sup>28</sup> *Ibid.*, T.23672, lines 11-19.

<sup>29</sup> *Ibid.*, T.23672 lines 2-7, T.23554 line 5.

<sup>30</sup> *Ibid.*, T.23645, lines 1-4.

fragments recovered or exhumed in Kosovo with DNA samples said to be provided by various missing persons' family members. Each report contains a short conclusion which sets out the relevant analyst's opinion on the likelihood that the DNA material extracted from a labelled bone fragment, belongs to a named victim. W04875 accepted that the DNA report summaries which he reviewed amount to expert reports<sup>31</sup> - and, notably, his evidence on this issue was unchallenged.

23. W04875's evidence commented upon a number of issues pertaining to the reports contained within the Underlying Material. However, in the absence of the underlying DNA profiles, W04875 was not able to resolve any of the issues he raised or commented on.

24. W04875 did not confirm or adopt the findings set out in any of the DNA report summaries within the Underlying Materials, and, in the absence of the EPGs, could not confirm the veracity of the conclusions reached therein, nor explain the anomalies or "highly unusual"<sup>32</sup> aspects of the report. W04875 confirmed that the allelic designations contained in certain reports "do not exist"<sup>33</sup>, and he could only speculate that the reports had been encrypted. Thus, the true allelic designations are hidden and are not before the Panel or the parties.

25. The Defence reiterates<sup>34</sup> that expert evidence cannot be admitted other than in accordance with Rule 149, which only permits admission of reports "of any expert witness to be called by a Party." It makes no provision for the admission of expert reports of third-party experts who will not be called. It is submitted the rationale behind this rule is clearly the right of the Defence to cross examine an expert on whom the SPO seek to rely. Rule 149 provides no means of

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<sup>31</sup> Transcript of 13 January 2025, T.23627, lines 1-5.

<sup>32</sup> *Ibid*, T.23622, lines 18-17.

<sup>33</sup> *Ibid*, T. 23678, line 18.

<sup>34</sup> Joint Defence Consolidated Response to SPO Expert Evidence Motion, paras.19-23.



admitting expert reports on paper where the Defence has asserted its right to cross examine such expert. To admit the DNA reports contained in the Underlying Material without affording the Defence the chance to cross-examine their purported authors would constitute a circumvention of Rule 149 and its safeguards aimed at preventing the admission of expert evidence which cannot effectively be tested.

26. The realities of this case make clear why this is impermissible in law: W04875 is not in a position to explain, justify, or affirm the conclusion of another unknown expert, nor can he provide the evidence the SPO needs to call to prove to the Panel that the underlying reports are reliable or probative.
27. The prejudice of seeking to do so in this case is also stark, considering that the results contained in several DNA Reports are highly unusual<sup>35</sup> and cannot be resolved, and the Defence cannot challenge the results through cross-examination of the actual authors of those reports. The Defence would be prohibited from exploring with the true author of the report why the reports are so unusual and contain allelic designations which the W04875 has made clear simply do not exist.<sup>36</sup> The Defence are also prejudiced because they are prevented from testing basic factual matters such as the conditions of the bone fragments, the chain of custody, the adequacy of the laboratories' procedures and whether the procedures were correctly applied in these cases.
28. For reasons unknown, the SPO chose to call an expert who was not involved in any of the DNA analysis conducted in this case and who could not adopt the reports they seek to tender. ICMP experts have given evidence at the ICTY.<sup>37</sup>

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<sup>35</sup> *Ibid*, T. 23620, lines 22-25.

<sup>36</sup> *Ibid*, T. 23678, line 18.

<sup>37</sup> See, for example, IT-95-5/18-T, *Prosecutor v Radovan Karadžić*, live testimony of Thomas Parsons (former forensic director of the ICMP) between 21 March 2012 and 22 March 2012; See also, IT-09-92-T, *Prosecutor v Ratko Mlatić*, live testimony of Thomas Parsons.

The SPO could have called an expert from the ICMP, who would have been able to explain the ICMP reports upon which the SPO relies, as well as the methodology and laboratory procedures employed by the ICMP at the time these reports were compiled. Having failed to do so, the SPO cannot tender the ICMP reports through W04875 because he was not in a position to verify them.

ii. *Lack of essential information in respect of procedures related to DNA extraction affecting all the Underlying Materials*

29. During cross-examination, W04875 accepted that he has no knowledge of the “specific methods used” in the process for extracting DNA from bones in respect of the underlying material.<sup>38</sup> He further confirmed that, in terms of standards which he would deem to be satisfactory for DNA extraction, “the requirement for an extraction [of DNA] would be that you recover DNA from a single source.”<sup>39</sup>

30. W04875 further accepted that the process of extracting DNA evidence from bones includes a heightened risk of contamination,<sup>40</sup> and that he had no knowledge of the procedures in place in these cases to mitigate against contamination risks.<sup>41</sup> W04875 did not have sight of the laboratories working notes from the extractions and analysis.

31. W04875 could not confirm that the DNA profiles which were used in the underlying testing were single-source profiles and not mixed profiles. Specifically, W04875 said he had to “take it on trust”<sup>42</sup> that the testing was done on single-source profiles. Ultimately, W04875 was not even able to confirm that the DNA which was tested met the standard that he himself said should apply.

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<sup>38</sup> *Ibid*, T.23579, lines 10-20.

<sup>39</sup> *Ibid*, T.23580, lines 8-10.

<sup>40</sup> *Ibid*, T.23581, lines 13-17.

<sup>41</sup> *Ibid*, T.23583, lines 12-15.

<sup>42</sup> *Ibid*, T.23588, lines 9-25 and T.23589, lines 1-6.

32. W04875 therefore cannot confirm the reliability of any of the analyses conducted. The SPO are therefore not in a position to prove to the Panel the reports are in fact reliable.

*iii. Lack of essential information relating to loci tested and anomalies in allelic designations*

33. W04875 confirmed during his testimony that DNA testing relies on analysing particular “loci” within a given genome. The terms locus/loci are used to identify various, scientifically recognised ‘locations’ within a human genome.<sup>43</sup> These locations are important because they represent the parts of a genome which contain alleles (types of genes) which are known to vary from person to person.<sup>44</sup> As a result, when carrying out DNA testing of a particular sample, if the alleles identified on these loci match with the alleles found on the loci of comparator samples provided by family members, the probability of the two samples being related to one another can be calculated by an expert.<sup>45</sup>

34. W04875 further confirmed that alleles in DNA testing are usually reflected within results tables in numeric form.<sup>46</sup> Importantly, in the course of cross-examination<sup>47</sup> and in the course of judges’ questions, the Expert Witness explained that allelic designations would most commonly be reflected as a whole number, sometimes as a whole number plus .1 or .2 and rarely as a whole number plus a .3 or .4. Allelic designation above 0.4 simply does not exist.<sup>48</sup>

35. Fourteen of the DNA report summaries contained within Annex 1<sup>49</sup> do not include information about the loci which were analysed from the relevant DNA

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<sup>43</sup> Transcript of 13 July 2025, T.23592-T.23593.

<sup>44</sup> *Ibid*, T.23593-T. T.23594.

<sup>45</sup> *Ibid*, T.23595.

<sup>46</sup> *Ibid*, T.23597.

<sup>47</sup> *Ibid*, T.23597, lines 23-25 and T.23598, lines 1-16.

<sup>48</sup> *Ibid*, T.23678-T23679.

<sup>49</sup> U015-4164-U015-4164 RED (Item 8); SPOE00291803-00291803 RED (Item 11); SPOE00291804-00291804 (Item 12); SPOE00291805-00291805 RED 9 (Item 13); SPOE00291806-00291806 RED (Item 14);

sample. As a result, W04875 was unable to confirm whether the results of the testing were in line with what he would expect when analysing results from those areas.

36. Additionally, 21 out of the 22 DNA report summaries contained at Annex 1<sup>50</sup> contain allelic designations which are impossible, and as such inexplicable. W04875 was referred to a sample DNA report summary during cross-examination<sup>51</sup> which contained allelic designations which (a) were not whole numbers and (b) included decimal places over .3.<sup>52</sup> He emphasised that the allelic designations contained in the document were “not typical” and agreed that they were not only “highly unusual”, but that they simply do not exist. W04875 stated that he could not know where those numbers came from, he could only *assume* that these inexplicable anomalies resulted from some type of encryption.<sup>53</sup> In short, W04875 made it clear that he was not able to confirm that the allelic designations within the DNA report summaries were correct.<sup>54</sup>

37. While W04875 assumed that the “highly unusual” figures were the result of encryption being applied to the data, he could not confirm that to be the case. Thus, it cannot be excluded that the reports are simply wrong, or another unknown issue is at play. The only matter which the Expert Witness stated he was sure of was that the results in the Underlying Material could not be allelic designations.<sup>55</sup> Even if W04875’s speculation is correct that the designations have been encrypted, that would mean that the true designations were not

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SPOE00291807-00291807 RED (Item 15); SITF00205653-00205678 RED (Item 16); SITF00205645-00205652 RED (Item 17); SPOE00291802-00291802 RED (Item 18); SITF00203713-00203733 RED (Item 19); SITF00201179-00201199 RED (Item 20); SITF00200790-00200812 RED (Item 21); SITF00200221-SITF00200249-AT (Item 22); SITF00204864-00204872 RED (Item 23).

<sup>50</sup> Annex 1, items 7-27.

<sup>51</sup> ERN U015-4164-U015-4164 RED (Item 8 in Annex 1)

<sup>52</sup> Transcript of 13 July 2025, T.23617-T.23620.

<sup>53</sup> *Ibid*, T.23621.

<sup>54</sup> *Ibid*, T.23611.

<sup>55</sup> *Ibid*, T.23585.

reviewed by W04875, are not before the Court, and cannot be checked or verified in any way.

38. Given that the Expert Witness cannot be sure of the veracity of the scientific results in question, in the absence of further explanatory or additional evidence, it is submitted that the Panel is similarly unable to rely on the results contained in the Underlying Material.

39. Fundamentally, the SPO has failed to obtain and disclose essential source material, without which the findings in each of the DNA report summaries cannot be verified. Although W04875 told the SPO in his reports that the underlying material was encrypted, there is no evidence that the SPO has taken any steps to obtain the unencrypted material or, indeed, the raw data. The DNA Reports are plainly unreliable in the circumstances: the expert called by the SPO has given evidence that the results set out on the face of the reports are simply not scientifically possible. As such, these reports have no probative value. Further, in light of the absence of the underlying DNA profiles, W04875 was unable to confirm whether the results contained within the Underlying Materials contained any errors or inconsistencies.<sup>56</sup>

40. The DNA reports contained within the Underlying Materials cannot meet the minimum requirements of the applicable and overarching provision, Rule 138, and as such should not be admitted as evidence.

### **C. Evidence not shown to W04875 and outside of W04875's Expertise**

41. During the Expert Witnesses' examination-in-chief, the SPO only took him to the documents contained at Items 1-5<sup>57</sup> and Items 8-10<sup>58</sup> of Annex 1. No other

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<sup>56</sup> *Ibid*, T.23684.

<sup>57</sup> These items consist of the items listed at Fn 11 and Fn 12 of this filing.

<sup>58</sup> U015-4164-U015-4164 RED (Item 8); SPOE00072678-00072750 RED2 (Item 9); 073685-073786 RED2 (Item 10).

items or documents contained within Annex 1 were shown to W04875 or commented upon in the course of his examination in chief. As such, those items cannot be tendered for admission through W04875.

42. Two of the items contained in Annex 1<sup>59</sup> and tendered for admission through W04875 contain (a) images (b) forensic autopsies and (c) information related to exhumation. All of these fall outside of the scope of W04875's expertise and as such, cannot be admitted in the manner proposed by the SPO.

#### IV. CONCLUSION

43. For the reasons set out above, the Defence invites the Panel to reject the SPO's request to admit all of the documents contained within Annex 1 to W04875's Preparation Note.

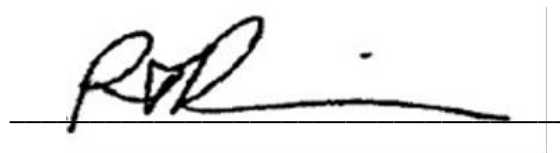
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**Respectfully submitted on FRIDAY, 17 January 2025, at the Hague.**



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Luka Misić  
Lead Counsel for Hashim Thaçi



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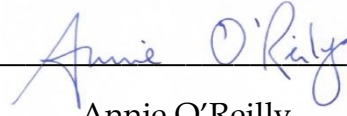
<sup>59</sup> SPOE00072678-00072750 RED2 (Item 9) and SITF00200221-SITF00200249-AT RED (Item 22).

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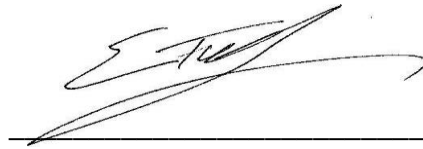
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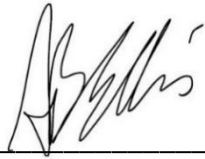
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