



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 27 May 2025

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Decision on the Admission of Expert Evidence of Witness W04875

Specialist Prosecutor

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TRIAL PANEL II ("Panel"), pursuant to Articles 21, 37 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 137, 138 and 149 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 7 October 2024, the Specialist Prosecutor's Office ("SPO") filed the information required by paragraphs 73 and 74 of the Order on the Conduct of Proceedings¹ in relation to the upcoming testimony of three proposed expert witnesses: W04826, W04874 and W04875 ("Experts").²

2. On 9 October 2024, the Defence informed the SPO that it: (i) did not challenge the qualifications of the Experts; (ii) did not agree with the reports of the Experts, or the reports underlining the Experts' conclusions; and (iii) wished to cross-examine the Experts.³

3. On 11 October 2024, the SPO filed a motion for the admission of the evidence of the Experts pursuant to Rules 138, 149 and 154 and a related request to amend its list of exhibits ("Motion").⁴

¹ F01226/A01, Panel, *Order on the Conduct of Proceedings* ("Order on the Conduct of Proceedings"), 25 January 2023.

² F02620/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of Witnesses for 18 November 2024 to 30 January 2025*, 7 October 2024, confidential, pp. 66-80, 90-154.

³ 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*, 11 October 2024, confidential, with Annexes 1-3, confidential, para. 17 (a public redacted version was filed on the same day, F02633/RED).

⁴ See above footnote 3.

4. On 8 November 2024, upon the Panel's authorisation,⁵ the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, "Defence" and "Accused") jointly responded to the Motion ("Response").⁶
5. On 18 November 2024, the SPO replied ("Reply").⁷
6. On 16 December 2024, the Panel rendered a decision on the Motion ("Decision F02787"), finding, *inter alia*, that W04875, a forensic geneticist, qualifies as an expert within the meaning of Rule 149, and deferring its decision on the admission of his proposed evidence until after the conclusion of his testimony, in accordance with Rule 149(4).⁸
7. On 13 January 2025, W04875 testified *viva voce* in these proceedings.⁹
8. On the same day, upon the conclusion of W04875's testimony, the SPO tendered his proposed evidence for admission ("Proposed Evidence").¹⁰
9. On 17 January 2025, upon the Panel's instructions,¹¹ the Defence filed supplemental submissions on the admissibility of W04875's Proposed Evidence ("Supplemental Response").¹²

⁵ F02648, Panel, *Decision on Joint Defence Request for an Extension of Time to Respond to F02620, F02625 and F02633*, 14 October 2024, para. 13(b)(ii).

⁶ F02703, Specialist Counsel, *Joint Defence Consolidated Response to F02620 and F02633*, 8 November 2024, confidential, with Annexes 1-4, confidential (a further public redacted version was filed on 2 January 2025, F02703/RED2).

⁷ F02732, Specialist Prosecutor, *Prosecution Reply Relating to Request to Admit Expert Witness Evidence (F02633)*, 18 November 2024.

⁸ 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, confidential, paras 32, 36-37, 43(d) (a public redacted version was filed on the same day, F02787/RED).

⁹ Transcript of Hearing, 13 January 2025, pp. 23546-23686.

¹⁰ Transcript of Hearing, 13 January 2025, p. 23557, line 20 to p. 23558, line 18, referring to Annex 1 to 124392-124406. See also Transcript of Hearing, 13 January 2025, p. 23686, lines 14-20.

¹¹ Transcript of Hearing, 13 January 2025, p. 23689, line 20, to p. 23690, line 13.

¹² F02836, Specialist Counsel, *Joint Defence Response to Prosecution Request for Admission of the Expert Report and Source Material of W04875*, 17 January 2025.

10. On 20 January 2025, upon the Panel's instructions,¹³ the SPO replied to the Supplemental Response ("Supplemental Reply").¹⁴

II. SUBMISSIONS

11. The SPO requests admission of W04875's Proposed Evidence,¹⁵ encompassing his expert reports, source material and exhibits associated therewith.¹⁶ In the Motion, the SPO submitted that the Proposed Evidence meets the requirements of the Rules.¹⁷ In particular, the SPO argued that the Expert Reports: (i) are relevant;¹⁸ (ii) authentic and reliable;¹⁹ and (iii) have probative value which is not outweighed by any prejudice.²⁰ The SPO submitted that the Source Material forms an indispensable and inseparable part of the Expert Reports and satisfies the

¹³ Transcript of Hearing, 13 January 2025, p. 23689, line 20, to p. 23690, line 18.

¹⁴ F02840, Specialist Prosecutor, *Prosecution Reply to 'Joint Defence Response to Prosecution Request for Admission of the Expert Report and Source Material of W04875' (F02836)*, 20 January 2025.

¹⁵ W04875's Proposed Evidence consists of the following expert reports, associated exhibits and source material, including any translations thereof: (i) 103373-103387 (P01951 MFI); and (ii) 111160-111162 (P01953 MFI) (collectively, "Expert Reports"); (i) 103392-103400 (P01950 MFI); (ii) 102472-102482 (P01952 MFI); and (iii) 111165-111169 (P01954 MFI) (collectively, "Associated Exhibits"); and (i) 110668-110674; (ii) SITF00012453-00012464; (iii) U015-4164-U015-4164 RED; (iv) SPOE00072678-00072750RED2, pp. SPOE00072691-SPOE00072692; (v) 073685-073786 RED2, pp. 073693, 073700; (vi) SPOE00291803-00291803 RED; (vii) SPOE00291804-00291804; (viii) SPOE00291805-00291805 RED; (ix) SPOE00291806-00291806 RED; (x) SPOE00291807-00291807 RED; (xi) SITF00205653-00205678 RED, pp. SITF00205670, SITF00205672-SITF00205673; (xii) SITF00205645-00205652 RED, pp. SITF00205645, SITF00205647-SITF00205648; (xiii) SPOE00291802-00291802 RED; (xiv) SITF00203713-00203733 RED, pp. SITF00203728-SITF00203729; (xv) SITF00201179-00201199 RED, pp. SITF00201194-SITF00201195; (xvi) SITF00200790-00200812 RED, pp. SITF00200809-SITF00200810; (xvii) SITF00200221-SITF00200249-ET RED, pp. SITF00200239, SITF00200245-SITF00200246; (xviii) SITF00204864-00204872 RED, pp. SITF00204864, SITF00204866; (xix) SPOE00071376-00071442 RED2, pp. SPOE00071434-SPOE00071440; (xx) SPOE00071973-00072032, pp. SPOE00071988-SPOE00071989; (xxi) SPOE00072456-00072525 RED, pp. SPOE00072462-SPOE00072463; and (xxii) SPOE00071462-00071538 RED2, pp. SPOE00071470-SPOE00071471, SPOE00071475-SPOE00071476 (collectively, "Source Material"). See Transcript of Hearing, 13 January 2025, p. 23557, line 20 to p. 23558, line 18, *referring to Annex 1 to 124392-124406*.

¹⁶ See *above* para. 8, footnote 10.

¹⁷ Motion, paras 2, 40.

¹⁸ Motion, paras 2, 35-36.

¹⁹ Motion, paras 2, 37.

²⁰ Motion, paras 2, 40.

requirements of Rule 138(1).²¹ Finally, the SPO argued that the Associated Exhibits are relevant to W04875's qualifications as an expert, his credibility and the compilation of the Expert Reports.²²

12. The Defence objects to the admission into evidence of the Expert Reports, the Source Material and the Associated Exhibits.²³ The Defence avers that W04875's testimony undermined the reliability and probative value of the Proposed Evidence.²⁴ The Defence objects to admission of the Expert Reports on the basis that W04875 failed to provide his independent expert opinion and to adopt the conclusions set out in the Source Material, particularly in light of: (i) the fact that he was not involved in carrying out the DNA analyses underlying the Expert Reports; and (ii) the lack of essential data and information.²⁵

13. As regards the Source Material, the Defence argues that this cannot be deemed reliable,²⁶ has no probative value,²⁷ and should not be admitted into evidence and relied upon by the Panel,²⁸ in particular in view of W04875's failure to clarify the lack of essential underlying information and unusual aspects of the Source Material.²⁹ In addition, the Defence argues that the documents within the Source Material are themselves reports of third-party experts, and their admission through a witness other than their author is impermissible under the Rules.³⁰ Their admission without affording the Defence the chance to cross-examine their authors would also be, in the Defence's submission, highly prejudicial.³¹

²¹ Motion, para. 38.

²² Motion, para. 39.

²³ Supplemental Response, paras 10, 43.

²⁴ Supplemental Response, para. 12.

²⁵ Supplemental Response, paras 13-21. *See also* Supplemental Response, paras 29-39.

²⁶ Supplemental Response, para. 32. *See also* Supplemental Response, para. 16.

²⁷ Supplemental Response, para. 39.

²⁸ Supplemental Response, paras 38, 40.

²⁹ Supplemental Response, paras 29-31, 33-37, 39. *See also* Supplemental Response, paras 18-21.

³⁰ Supplemental Response, paras 22-26, 28. *See also* Response, paras 19-23, 27.

³¹ Supplemental Response, para. 27. *See also* Response, para. 27.

14. Finally, the Defence submits that several items among the Proposed Evidence cannot be admitted through W04875, as they either: (i) were not shown to or commented upon by W04875 during direct examination;³² or (ii) fall outside the scope of W04875's expertise.³³

15. The Panel also notes that, during its cross-examination of W04875, the Defence for Kadri Veseli ("Veseli Defence") tendered an item marked by the witness for admission, contingent upon the admission of the underlying Expert Report.³⁴ The item was marked for identification as 2D00035 MFI.³⁵

16. The SPO replies that the Panel should admit the Proposed Evidence, which meets the requirements of Rules 138(1) and 149.³⁶ The SPO further avers that the Defence: (i) misstates and misrepresents the evidence given by W04875, which enhanced the reliability and probative value of the Source Material;³⁷ (ii) impermissibly repeats, in the Supplemental Response, arguments set out in the Response;³⁸ and (iii) misrepresents the framework governing expert evidence and ignores established admissibility standards.³⁹ The SPO argues that items tendered as Source Material are not reports within the meaning of Rule 149,⁴⁰ and that the Defence's submissions that the SPO cannot tender through W04875 items not shown to him in court are unsubstantiated.⁴¹

17. In respect of the Defence's objection to the admission of two items purportedly falling outside of W04875's expertise, the SPO clarifies that it seeks

³² Supplemental Response, para. 41, *referring to* U015-4164-U015-4164 RED; SPOE00072678-00072750 RED2; 073685-073786 RED2.

³³ Supplemental Response, para. 42, *referring to* SPOE00072678-00072750 RED2; SITF00200221-SITF00200249-ET RED. *See also* Response, paras 35-38.

³⁴ Transcript of Hearing, 13 January 2025, p. 23606, lines 6-7.

³⁵ Transcript of Hearing, 13 January 2025, p. 23606, lines 17-22.

³⁶ Supplemental Reply, paras 1, 11.

³⁷ Supplemental Reply, paras 1-6.

³⁸ Supplemental Reply, paras 1, 7.

³⁹ Supplemental Reply, para. 1.

⁴⁰ Supplemental Reply, para. 7.

⁴¹ Supplemental Reply, para. 8.

admission only of selected pages of those items, which contain DNA analyses.⁴² Finally, the SPO replies that admission of the Proposed Evidence would not be prejudicial to the Defence, and that the issues raised in the Supplemental Response go to weight, rather than admissibility.⁴³

III. APPLICABLE LAW

18. The admission of expert evidence is primarily regulated by Rule 149 and Rule 138(1), and the Panel incorporates by reference the applicable law as set out in Decision F02787.⁴⁴ The Panel also recalls that, in the Order on the Conduct of Proceedings, it ordered that:

Pursuant to Rule 149, the calling Party shall file with the expert report a concise summary of the instructions provided by the calling Party to the expert before the expert produced its first draft of the report, and of any further instructions provided by the calling Party to the expert after receipt of the first and any subsequent drafts of the report.

[...]

When an expert witness produces a report, that report may be admitted in evidence, subject to the requirements of relevance and probative value. Source material will be admitted upon request, when justified.

Proposed expert witnesses shall strictly meet the requirements of expertise and impartiality. [...]⁴⁵

⁴² Supplemental Reply, para. 9, *contra* Supplemental Response, para. 42, referring to SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692; SITF00200221-SITF00200249-ET RED, pp. SITF00200239, SITF00200245-SITF00200246.

⁴³ Supplemental Reply, para. 10.

⁴⁴ Decision F02787, paras 13-15.

⁴⁵ Order on the Conduct of Proceedings, paras 121, 123-124.

IV. DISCUSSION

19. The Panel preliminarily notes that, in the Supplemental Reply, the SPO clarifies that it only seeks admission of selected pages of SPOE00072678-00072750 RED2 and SITF00200221-SITF00200249-ET RED.⁴⁶ Moreover, the Panel observes that two items used in the Expert Reports⁴⁷ were already admitted by the Panel as P00854 and P00855.⁴⁸

20. The Panel also notes that pp. SITF00200245-SITF00200246 of item SITF00200221-SITF00200249-ET RED, tendered after the conclusion of W04875's testimony,⁴⁹ are missing their content, which is, however, included in pp. SITF00200245-SITF00200246 of SITF00200221-SITF00200249 RED, the version of the same item originally tendered in the Motion.⁵⁰ Therefore, in the present decision, the Panel has assessed those pages as they appear in SITF00200221-SITF00200249 RED. In light of the above, the Panel orders the SPO to provide a revised version of SITF00200221-SITF00200249-ET RED, pp. SITF00200239, SITF00200245-SITF00200246 that includes the missing content no later than **Tuesday, 10 June 2025**.

21. Finally, the Panel notes that several items lack corresponding translations (*e.g.*, it appears that U015-4164-U015-4164 RED,⁵¹ among others, does not have an Albanian translation) and orders the SPO to review the Proposed Evidence and provide without delay any missing translations thereof.

⁴⁶ See Supplemental Reply, para. 9.

⁴⁷ See Annex 3 to the Motion, items 10-11.

⁴⁸ F01983, Panel, *Sixth Decision on Specialist Prosecutor's Bar Table Motion* ("Sixth Bar Table Decision"), 5 December 2023, paras 57, 80, 130(b) (a corrected version was issued on 29 November 2024, F01983/COR)

⁴⁹ See Annex 1 to 124392-124406, item 22.

⁵⁰ See Annex 3 to the Motion, item 25.

⁵¹ See Annex 1 to 124392-124406, item 8. See also Annex 3 to the Motion, item 9.

A. ADMISSIBILITY OF EXPERT EVIDENCE

22. *Expert Reports*. At the outset, the Panel recalls that, in accordance with previous practice of the Specialist Chambers and established international jurisprudence, an expert report can be deemed admissible if: (i) the proposed witness is regarded as an expert; (ii) the expert statement or report meets the minimum standards of reliability, relevance and probative value, in accordance with Rule 138(1); and (iii) the content of the expert statement or report falls within the accepted expertise of the expert witness and is permissible.⁵² A permissible expert opinion necessarily involves and is limited to specialised knowledge or experience of the expert, which would otherwise be outside the experience and knowledge of the Panel, and expert evidence may not in principle stray outside that field of expertise.⁵³

23. The Panel recalls its finding in Decision F02787 that W04875 can be regarded as an expert within the meaning of Rule 149.⁵⁴

⁵² KSC-BC-2020-07, F00470, Trial Panel II, *Decision on Prosecution Requests in Relation to Proposed Defence Witnesses* ("Case 07 Decision"), 3 December 2021, para. 63; *see also* paras 64-66 (with further references); ICTY, *Prosecutor v. Perišić*, IT-04-81-T, Trial Chamber I, [Decision on Admissibility of Expert Report of Patrick Treanor](#), 27 November 2008, para. 8; *Prosecutor v. Popović et al.*, IT-05-88-AR73.2, Appeals Chamber, [Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness](#) ("Popović Decision"), 30 January 2008, para. 21; *Prosecutor v. Milošević*, IT-98-29/1-T, Trial Chamber III, [Decision on Defence Expert Witnesses](#), 21 August 2007, paras 6-10 (with further references).

⁵³ Case 07 Decision, para. 66, *referring to* ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1159, Trial Chamber VI, [Decision on Defence Preliminary Challenges to Prosecution's Expert Witnesses](#) ("Ntaganda Decision"), 9 February 2016, para. 8; ICTY, *Prosecutor v. Perišić*, IT-04-81-T, Trial Chamber I, [Decision on Expert Reports by Richard Butler](#), 4 March 2009, para. 9; ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Trial Chamber III, [Decision on Prosecution Motion for Reconsideration of the Decision on Prospective Experts Guichaoua, Nowrojee and Des Forges, or for Certification](#), 16 November 2007, para. 21; ICTY, *Prosecutor v. Martić*, IT-95-11-T, Trial Chamber I, [Decision on Defence's Submission of the Expert Report of Professor Smilja Avramov pursuant to Rule 94bis](#), 9 November 2006, para. 7; SCSL, *Prosecutor v. Norman*, 2004-14-AR72(E), Appeals Chamber, [Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures](#), 21 June 2005, p. 4; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-A, Appeals Chamber, [Decision by a Defence Motion for the Appearance of an Accused as an Expert Witness](#), 9 March 1998, p. 2.

⁵⁴ Decision F02787, para. 32.

24. Turning to the requirements under Rule 138(1), the Panel first observes that the Expert Reports relate to the identification through DNA analysis of skeletal remains of alleged victims named in the Indictment.⁵⁵ Therefore, the Panel finds that the Expert Reports are relevant to the charges in the Indictment.⁵⁶ As regards *prima facie* authenticity and reliability, the Panel notes that, upon being shown the Expert Reports during his testimony, W04875 confirmed: (i) his authorship thereof;⁵⁷ (ii) that he was given the opportunity to provide clarifications and corrections;⁵⁸ and (iii) that, subject to those corrections, the Expert Reports are accurate and truthful, and reflect what he would say if examined.⁵⁹ The Expert Reports contain additional indicia of reliability, including the date, W04875's signature and reference to the related letters of instruction from the SPO.⁶⁰ The Panel is therefore satisfied that the Expert Reports are *prima facie* authentic and reliable.

25. The Panel is also satisfied that the Expert Reports have probative value. While the Panel is mindful of the SPO's failure to provide W04875 with certain underlying data in relation to the Source Material, the Panel is of the view that this does not undermine the *prima facie* reliability and probative value of the Expert Reports to the extent of warranting their rejection at this stage. The Panel will reserve such considerations for the assessment of the weight to be assigned to

⁵⁵ See Motion, para. 35.

⁵⁶ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 59-61, 63-64, 67, 78-79, 82, 96-98, 100-101, 103, 115-116, 119, 137-138, 144, 146, 153-154, 165, 167, and Schedule B (a public lesser redacted version was filed on 27 February 2023, F01323/A01); see also F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, confidential, paras 290, 297-298, 300-302, 319, 333, 335-336, 372-374, 492, 517-518, 558, 565-569 (a public redacted version was filed on 3 April 2023, F01415/A01).

⁵⁷ Transcript of Hearing, 13 January 2025, p. 23550, lines 16-20, p. 23556, lines 1-10.

⁵⁸ Transcript of Hearing, 13 January 2025, p. 23551, lines 19-22, p. 23557, lines 7-10. See also Transcript of Hearing, 13 January 2025, p. 23551, line 23, to p. 23552, line 3.

⁵⁹ Transcript of Hearing, 13 January 2025, p. 23557, lines 11-19.

⁶⁰ See P01951 MFI, pp. 103373, 103387; P01953 MFI, pp. 111160, 111162.

the Expert Reports in light of the evidence before it at the end of the trial.⁶¹ As regards prejudice, the Panel notes that the Defence had the opportunity to cross-examine the witness, who testified, *viva voce*, on the Expert Reports and related documents. Therefore, the Panel is satisfied that the probative value of this material is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Expert Reports satisfy the requirements under Rule 138(1).

26. In relation to the Defence's objections regarding W04875's alleged failure to conduct independent analysis, adopt the conclusions set out in the Source Material, and provide an independent opinion thereon,⁶² the Panel observes that, during his testimony, W04875 confirmed that the Expert Reports contain his independent opinion.⁶³ The Panel is of the view that, while W04875 may not have himself independently analysed the entirety of the data underlying the Source Material, and therefore was not in a position to fully adopt their results as his own, his Expert Reports convey his own independent opinion on that material. For example, the Expert Reports provide relevant background knowledge on DNA analysis, in addition to commentary on the format, content and results of the Source Material.⁶⁴ Ultimately, the Panel considers that, by providing such context and explanations on the Source Material, the Expert Reports may be capable of assisting the Panel in making its final determinations thereon.⁶⁵

⁶¹ ICTY, *Prosecutor v. Galić*, IT-98-29-T, Trial Chamber, [Decision on the Expert Witness Statements Submitted by the Defence](#) ("Galić Decision"), 27 January 2003, pp. 3-4; see also pp. 5-6. See similarly, *inter alia*, F03075, Panel, *Decision on Prosecution Fifth Motion for Admission of Evidence pursuant to Rule 155* ("Seventh Rule 155 Decision"), 3 April 2025, confidential, paras 55, 63 (a public redacted version was filed on the same day, F03075/RED); F02013, Panel, *Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155* ("Third Rule 155 Decision"), 15 December 2023, para. 51; F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155* ("First Rule 155 Decision"), 14 June 2023, confidential, para. 50 (a public redacted version was filed on 8 September 2023, F01603/RED. See also F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* ("First Rule 154 Decision"), 16 March 2023, confidential, para. 51 (a public redacted version was filed on 7 November 2023, F01380/RED).

⁶² Supplemental Response, paras 13-21. See also Supplemental Response, paras 29-39.

⁶³ Transcript of Hearing, 13 January 2025, p. 23551, lines 16-18, p. 23557, lines 4-6.

⁶⁴ See e.g. P01951 MFI, pp. 103373, 103376-103377; P01953 MFI, pp. 111160, 111162.

⁶⁵ See similarly [Galić Decision](#), p. 6.

27. The Panel further considers that the extent to which W04875 could independently analyse the Source Material, as well as the purported deficit of underlying information, are aspects that will be relevant to assessing the weight to be assigned to the Expert Reports, which will be carefully determined by the Panel at the end of the trial in light of all the evidence admitted in the case⁶⁶ and, particularly, of the evidence given by W04875 in court.

28. With respect to whether the content of the Expert Reports falls within the accepted expertise of W04875 and is therefore permissible, the Panel recalls its finding that W04875 is an expert in forensic genetics,⁶⁷ and considers that his Expert Reports concern and are limited to forensic DNA analysis.⁶⁸ Moreover, while the reports are based upon information compiled by third-parties, the Panel considers that W04875 has sufficient direct knowledge of such information and possesses the necessary expertise to give expert evidence on the information contained therein.⁶⁹ Expert witnesses are ordinarily afforded wide latitude to offer opinions within their expertise, such that their views need not be based upon first-hand knowledge or experience.⁷⁰ Indeed, in ordinary cases, expert witnesses lack personal familiarity with the particular circumstances of a case and are required to give their professional opinion on such circumstances by applying their specialised knowledge and skills, often on the basis of facts observed and reported by others.⁷¹ Therefore, the Panel is satisfied that the content of W04875's Expert Reports falls within the witness's expertise and is therefore permissible.

⁶⁶ [Galić Decision](#), pp. 4-6. *See similarly, inter alia*, Seventh Rule 155 Decision, paras 55, 63; Third Rule 155 Decision, para. 51; First Rule 155 Decision, para. 50. *See also* First Rule 154 Decision, para. 51.

⁶⁷ Decision F02787, para. 32. *See also* P01950 MFI.

⁶⁸ *See* P01951 MFI; P01953 MFI. *See also* P01952 MFI, Annex 1; P01954 MFI, Annex 1.

⁶⁹ Compare with ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, [Decision on Prosecution Objections pursuant to Rule 94bis to Expert Evidence of Radovan Radinović](#), 5 October 2007, para. 4.

⁷⁰ ICTY, *Prosecutor v. Ratko Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Deference Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting his Reports](#), 19 October 2012, paras 12-13; [Popović Decision](#), para. 27 (with further references); ICC, [Ntaganda Decision](#), para. 9 (with further references).

⁷¹ *See above* footnote 70.

29. In light of the above, the Panel is satisfied that the Expert Reports satisfy the requirements under Rule 149 and are admissible pursuant to Rules 138(1) and 149.

30. *Associated Exhibits.* The Panel notes that W04875's Associated Exhibits consist of: (i) W04875's *curriculum vitae* ("CV");⁷² and (ii) two letters of instruction addressed from the SPO to W04875 ("Letters of Instruction").⁷³ During his testimony, W04875 was shown and commented upon both the CV and the Letters of Instruction,⁷⁴ which are also referred to in his Expert Reports.⁷⁵ Therefore, the Panel is satisfied that W04875's Associated Exhibits form an indispensable and inseparable part of W04875's testimony and Expert Reports, as, without them, the Expert Reports would be of lesser probative value. The Panel is also satisfied that the Associated Exhibits: (i) are relevant; (ii) bear sufficient indicia of *prima facie* authenticity; and (iii) have probative value, which is not outweighed by any prejudicial effect. The Panel also: (i) notes that the Letters of Instruction are dated and signed by the SPO;⁷⁶ (ii) emphasises that W04875, during his testimony, recognised and confirmed the accuracy of his CV⁷⁷ and Letters of Instruction;⁷⁸ and (iii) considers the Associated Exhibits to be relevant also to W04875's qualification as an expert and the scope of his Expert Reports, including in the context of the assessment of the weight to be assigned to his evidence.⁷⁹ In light of the above, the Panel is satisfied that the Associated Exhibits satisfy the requirements under Rule 138(1).

⁷² P01950 MFI.

⁷³ P01952 MFI and P01954 MFI.

⁷⁴ Transcript of Hearing, 13 January 2025, p. 23549, lines 7-19, p. 23550, line 21 to p. 23551, line 15, p. 23556, lines 8-24.

⁷⁵ P01951 MFI, p. 103373; P01953 MFI, p. 111160.

⁷⁶ See P01952 MFI, pp. 102472-102473; P01954 MFI, pp. 111165-111166.

⁷⁷ Transcript of Hearing, 13 January 2025, p. 23549, lines 7-19.

⁷⁸ Transcript of Hearing, 13 January 2025, p. 23550, line 21 to p. 23551, line 15, p. 23556, lines 8-24.

⁷⁹ See ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Trial Chamber III, [Decision on the Admission of Evidence Presented During the Testimony of Andras Riedlmayer](#) ("Šešelj Decision"), 14 April 2010, para. 40. See similarly KSC-BC-2020-04, F00639/RED, Trial Panel I, *Public Redacted Version of 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, with Annex 1, paras 30, 36, 38, 41, 43.

31. The Panel considers that the Defence's objection to the admission of the Associated Exhibits⁸⁰ is unsubstantiated. The Panel therefore dismisses that objection.

32. Accordingly, the Panel finds that the Associated Exhibits are admissible pursuant to Rule 138(1).

33. *Source Material*. The Panel considers that the admission of source material to the reports of expert witnesses is justified⁸¹ when such material is necessary to understand the reports as well as the expert witness's testimony.⁸²

34. The Panel notes that the Source Material consists of 22 DNA analyses for the identification of human remains, of which 20 were performed by the International Commission on Missing Persons ("ICMP DNA Analyses").⁸³ The remaining two documents consist of an initial DNA analysis performed by the Criminology Institute in Prague,⁸⁴ and a more recent updated DNA analysis relating to the same victim and accompanied by a SPO Official Note.⁸⁵

⁸⁰ Supplemental Response, paras 10, 43.

⁸¹ Order on the Conduct of the Proceedings, para. 123.

⁸² ICTY, [Šešelj Decision](#), para. 19.

⁸³ U015-4164-U015-4164 RED; SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692; 073685-073786 RED2, pp. 073693, 073700; SPOE00291803-00291803 RED; SPOE00291804-00291804; SPOE00291805-00291805 RED; SPOE00291806-00291806 RED; SPOE00291807-00291807 RED; SITF00205653-00205678 RED, pp. SITF00205670, SITF00205672-SITF00205673; SITF00205645-00205652 RED, pp. SITF00205645, SITF00205647-SITF00205648; SPOE00291802-00291802 RED; SITF00203713-00203733 RED, pp. SITF00203728-SITF00203729; SITF00201179-00201199 RED, pp. SITF00201194-SITF00201195; SITF00200790-00200812 RED, pp. SITF00200809-SITF00200810; SITF00200221-SITF00200249-ET RED, pp. SITF00200239, SITF00200245-SITF00200246 (*see above* para. 20); SITF00204864-00204872 RED, pp. SITF00204864, SITF00204866; SPOE00071376-00071442 RED2, pp. SPOE00071434-SPOE00071440; SPOE00071973-00072032, pp. SPOE00071988-SPOE00071989; SPOE00072456-00072525 RED, pp. SPOE00072462-SPOE00072463; SPOE00071462-00071538 RED2, pp. SPOE00071470-SPOE00071471, SPOE00071475-SPOE00071476.

⁸⁴ SITF00012453-00012464.

⁸⁵ 110668-110674.

35. The Panel notes the SPO does not tender pages of two items among the Source Material⁸⁶ which the Defence had objected to as falling outside of W04875's expertise.⁸⁷ The Panel will therefore consider this objection to be moot.

36. The Panel observes that the Source Material was used with and discussed by W04875 in its entirety in his Expert Reports,⁸⁸ and, to some extent, also during his testimony.⁸⁹ The Panel therefore finds that the Source Material is necessary to understanding W04875's Expert Reports. The Panel is not persuaded by the Defence's argument that, for the Source Material to be admissible, each and every document therein should have been shown to W04875 during his testimony, in addition to having been discussed in his Expert Reports.⁹⁰ The Panel is of the view that the Defence fails to substantiate this argument, and considers that, for admission of the Source Material to be justified, a finding that the material is necessary to understand the Expert Reports and meets the requirements of Rule 138(1) is generally sufficient.⁹¹

37. As for Rule 138(1), the Panel observes that the Source Material concerns the identification through DNA analysis of the skeletal remains of alleged victims named in the Indictment.⁹² The Panel therefore finds that the Source Material is relevant to the charges in the Indictment.⁹³ Turning to *prima facie* authenticity and reliability, the Panel observes that the Source Material contains several indicia of reliability, including: (i) indication of the relevant documents' date and/or place

⁸⁶ Supplemental Reply, para. 9.

⁸⁷ Supplemental Response, para. 42.

⁸⁸ See P01951 MFI, pp. 7-15; P01953 MFI, pp. 1-3.

⁸⁹ See e.g. Transcript of Hearing, 13 January 2025, pp. 23559-23565, 23617-23636, 23667-23670, 23679-23683.

⁹⁰ Supplemental Response, para. 41.

⁹¹ See above para. 33, referring to ICTY, [Šešelj Decision](#), para. 19.

⁹² See Motion, para. 35.

⁹³ Indictment, paras 59-61, 63-64, 67, 78-79, 82, 96-98, 100-101, 103, 115-116, 119, 137-138, 144, 146, 153-154, 165, 167, and Schedule B; see also SPO Pre-Trial Brief, paras 290, 297-298, 300-302, 319, 333, 335-336, 372-374, 492, 517-518, 558, 565-569.

of preparation;⁹⁴ (ii) signatures of the relevant authors;⁹⁵ and (iii) official logos and/or templates of the organisations from which the documents originate.⁹⁶ The Panel also notes that the templates of the ICMP DNA Analyses are consistent and indicate case numbers.⁹⁷ While most signatures in the ICMP DNA Analyses are not identifiable at first sight, as they are not accompanied by a typed name, the Panel considers that this does not diminish their *prima facie* reliability, as all ICMP DNA

⁹⁴ See e.g. 110668-110674, pp. 110670, 110672-110673; SITF00012453-00012464, p. SITF00012453; U015-4164-U015-4164 RED; SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692; 073685-073786 RED2, p. 073700; SPOE00291803-00291803 RED; SPOE00291804-00291804; SPOE00291805-00291805 RED; SPOE00291806-00291806 RED; SPOE00291807-00291807 RED; SITF00205653-00205678 RED, p. SITF00205672; SITF00205645-00205652 RED, pp. SITF00205647-SITF00205648; SPOE00291802-00291802 RED; SITF00203713-00203733 RED, p. SITF00203729; SITF00201179-00201199 RED, p. SITF00201194; SITF00200790-00200812 RED, p. SITF00200810; SITF00200221-SITF00200249-ET RED, p. SITF00200246 (see above para. 20); SITF00204864-00204872 RED, p. SITF00204866; SPOE00071376-00071442 RED2, p. SPOE00071439; SPOE00071973-00072032, p. SPOE00071988; SPOE00072456-00072525 RED, p. SPOE00072462; SPOE00071462-00071538 RED2, p. SPOE00071475.

⁹⁵ See e.g. 110668-110674, p. 110671; SITF00012453-00012464, p. SITF00012458; U015-4164-U015-4164 RED; SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692; 073685-073786 RED2, pp. 073693, 073700; SPOE00291803-00291803 RED; SPOE00291804-00291804; SPOE00291805-00291805 RED; SPOE00291806-00291806 RED; SPOE00291807-00291807 RED; SITF00205653-00205678 RED, p. SITF00205672; SPOE00291802-00291802 RED; SITF00203713-00203733 RED, p. SITF00203729; SITF00201179-00201199 RED, p. SITF00201194; SITF00200790-00200812 RED, p. SITF00200810; SITF00200221-SITF00200249-ET RED, p. SITF00200246 (see above para. 20); SITF00204864-00204872 RED, p. SITF00204866; SPOE00071376-00071442 RED2, p. SPOE00071439; SPOE00072456-00072525 RED, p. SPOE00072462; SPOE00071462-00071538 RED2, p. SPOE00071475.

⁹⁶ See e.g. 110668-110674, pp. 110670-110671; SITF00012453-00012464, p. SITF00012453; U015-4164-U015-4164 RED; SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692; 073685-073786 RED2, p. 073700; SPOE00291803-00291803 RED; SPOE00291804-00291804; SPOE00291805-00291805 RED; SPOE00291806-00291806 RED; SPOE00291807-00291807 RED; SITF00205653-00205678 RED, p. SITF00205672; SITF00205645-00205652 RED, pp. SITF00205647-SITF00205648; SPOE00291802-00291802 RED; SITF00203713-00203733 RED, p. SITF00203729; SITF00201179-00201199 RED, p. SITF00201194; SITF00200790-00200812 RED, p. SITF00200810; SITF00200221-SITF00200249-ET RED, p. SITF00200246 (see above para. 20); SITF00204864-00204872 RED, p. SITF00204866; SPOE00071376-00071442 RED2, p. SPOE00071439; SPOE00071973-00072032, p. SPOE00071988; SPOE00072456-00072525 RED, p. SPOE00072462; SPOE00071462-00071538 RED2, p. SPOE00071475.

⁹⁷ U015-4164-U015-4164 RED; SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692; 073685-073786 RED2, p. 073700; SPOE00291803-00291803 RED; SPOE00291804-00291804; SPOE00291805-00291805 RED; SPOE00291806-00291806 RED; SPOE00291807-00291807 RED; SITF00205653-00205678 RED, p. SITF00205672; SITF00205645-00205652 RED, pp. SITF00205647-SITF00205648; SPOE00291802-00291802 RED; SITF00203713-00203733 RED, p. SITF00203729; SITF00201179-00201199 RED, p. SITF00201194; SITF00200790-00200812 RED, p. SITF00200810; SITF00200221-SITF00200249-ET RED, p. SITF00200246 (see above para. 20); SITF00204864-00204872 RED, p. SITF00204866; SPOE00071376-00071442 RED2, p. SPOE00071439; SPOE00072456-00072525 RED, p. SPOE00072462; SPOE00071462-00071538 RED2, p. SPOE00071475; SPOE00071973-00072032, p. SPOE00071989.

Analyses appear to be signed by the same person,⁹⁸ whose name is provided.⁹⁹ In addition, several of the ICMP DNA Analyses are tendered together with declarations of receipt and confirmations of identity by the Office on Missing Persons and Forensics of the United Nations Mission in Kosovo, which are themselves dated and signed¹⁰⁰ and therefore provide further indicators of reliability. Finally, the Panel recalls that proof of provenance or authorship is, in any case, not required when assessing *prima facie* authenticity and reliability under Rule 138(1).¹⁰¹ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of the Source Material.

38. Having found the Source Material to be *prima facie* authentic and relevant, the Panel is also satisfied of its probative value. The Panel acknowledges that, as raised by the Defence in its Supplemental Response, W04875 mentioned the absence of certain underlying information, as well as certain “unusual” elements within the Source Material, such as the encryption of the DNA profiles.¹⁰² The Panel, when assessing the weight of the Source Material in light of all the evidence

⁹⁸ See e.g. U015-4164-U015-4164 RED; SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692; 073685-073786 RED2, pp. 073693, 073700; SPOE00291803-00291803 RED; SPOE00291804-00291804; SPOE00291805-00291805 RED; SPOE00291806-00291806 RED; SPOE00291807-00291807 RED; SITF00205653-00205678 RED, p. SITF00205672; SPOE00291802-00291802 RED; SITF00203713-00203733 RED, p. SITF00203729; SITF00201179-00201199 RED, p. SITF00201194; SITF00200790-00200812 RED, p. SITF00200810; SITF00200221-SITF00200249-ET RED, p. SITF00200246 (see above para. 20); SITF00204864-00204872 RED, p. SITF00204866; SPOE00071376-00071442 RED2, p. SPOE00071439; SPOE00072456-00072525 RED, p. SPOE00072462; SPOE00071462-00071538 RED2, p. SPOE00071475.

⁹⁹ See SPOE00071973-00072032, p. SPOE00071989.

¹⁰⁰ See e.g. 073685-073786 RED2, p. 073700; SITF00205653-00205678 RED, p. SITF00205670; SITF00203713-00203733 RED, p. SITF00203728; SITF00200790-00200812 RED, p. SITF00200809; SITF00200221-SITF00200249-ET RED, p. SITF00200245 (see above para. 20); SPOE00071376-00071442 RED2, pp. SPOE00071434, SPOE00071436; SPOE00072456-00072525 RED, pp. SPOE00072462-SPOE00072463; SPOE00071462-00071538 RED2, p. SPOE00071470.

¹⁰¹ F02951, Panel, *Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request*, 21 February 2025, para. 23, referring to F01596, Panel, *Second Decision on Specialist Prosecutor’s Bar Table Motion*, 9 June 2023, para. 82.

¹⁰² Supplemental Response, paras 18-21, 24, 29-39.

before it, will consider this matter carefully.¹⁰³ The Panel therefore accepts that W04875 may have been unable to assess the underlying data first hand but notes that, both during his testimony and in his Expert Reports, W04875 confirmed the appearance of reliability of the Source Materials and results contained therein, as well as of the ICMP itself as a highly respected organisation in the field.¹⁰⁴ The Panel considers that the above-mentioned indicia of authenticity and relevance of the Source Material¹⁰⁵ are sufficient to make a finding of *prima facie* reliability and probative value at this stage.

39. The Panel is also satisfied that the probative value of the Source Material is not outweighed by any prejudice. The Defence was able to properly cross-examine the witness on the purported absence of access by the witness to the underlying data, which is sufficient at the stage of admission.¹⁰⁶ In light of the above, the Panel finds that the Source Material satisfies the requirements under Rule 138(1).

40. On a separate note, and contrary to the Defence's submissions,¹⁰⁷ the Panel is not persuaded that the documents within the Source Material constitute expert reports themselves and, as such, cannot be admitted through W04875. The Panel does not consider that these documents are themselves "expert witness reports" within the meaning of Rule 149. Nor does the Panel consider their authors to be "third party experts", as submitted by the Defence. Rather, these documents are source material which W04875, who qualifies as an expert within the meaning of Rule 149,¹⁰⁸ was entitled to consult and assess in preparing his Expert Reports. Indeed, in ordinary cases, expert witnesses lack personal familiarity with

¹⁰³ ICTY, [Galić Decision](#), p. 4; *see also* pp. 5-6. *See similarly, inter alia*, Seventh Rule 155 Decision, paras 55, 63; Third Rule 155 Decision, para. 51; First Rule 155 Decision, para. 50. *See also* First Rule 154 Decision, para. 51.

¹⁰⁴ *See e.g.* Transcript of Hearing, 13 January 2025, pp. 23561-23565, 23609, 23676-23678; P01951 MFI, pp. 6, 11.

¹⁰⁵ *See above* para. 36.

¹⁰⁶ [Galić Decision](#), pp. 5, 7.

¹⁰⁷ Supplemental Response, paras 22-26, 28. *See also* Response, paras 19-23, 27.

¹⁰⁸ *See above* para. 28.

the particular circumstances of a case and are required to give their professional opinion on such circumstances by applying their specialised knowledge and skills, often on the basis of facts observed and reported by others.¹⁰⁹ The Panel is satisfied that the DNA analyses constitute source material upon which the Expert Reports are based, and can be admitted as such in accordance with Rule 138(1).

41. In light of the above, the Panel finds that the Proposed Evidence of W04875 meets the requirements under Rules 138(1) and 149 and admits it into evidence.

42. The Panel further observes that, during W04875's testimony, the witness also discussed and made markings¹¹⁰ on a document among the Source Material,¹¹¹ which was thereafter marked for identification as C00001 MFI.¹¹² No party sought its admission. The Panel is satisfied that the transcript of W04875's testimony accurately reflects his observations on the matter, and considers that it is unnecessary to admit C00001 MFI in evidence.

B. VESELI DEFENCE REQUEST TO ADMIT 2D00035 MFI

43. The Panel notes the Veseli Defence's submission that it seeks admission of 2D00035 MFI, which is a page of an already-admitted exhibit marked by the expert during his testimony,¹¹³ should the underlying Expert Report be admitted.¹¹⁴ As the Expert Report in question has been found to be admissible in the present decision,¹¹⁵ the Panel will now turn to the admissibility of 2D00035 MFI.

¹⁰⁹ See *above* para. 28, and references therein.

¹¹⁰ Transcript of Hearing, 13 January 2025, p. 23679, line 15 to p. 23683, line 16.

¹¹¹ REG01198-REG01198 (C00001 MFI). The ERN REG01198-REG01198 identifies the marked version of SPOE00291803-00291803 RED.

¹¹² Transcript of Hearing, 13 January 2025, p. 23683, lines 21-25.

¹¹³ See Transcript of Hearing, 13 January 2025, p. 23590, line 24 to p. 23600, line 22, p. 23602, line 22 to p. 23605, line 21.

¹¹⁴ See *above* para. 15, and references therein.

¹¹⁵ See *above* paras 29, 41.

44. The Panel is of the view that 2D00035 MFI, consisting of page 197 of admitted item P00854, meets the requirements under Rule 138(1), considering, in particular, that it is extracted from a document that the Panel already found suitable for admission.¹¹⁶ Accordingly, the Panel finds that 2D00035 MFI satisfies the criteria under Rule 138(1) and admits it into evidence.

V. CLASSIFICATION

45. The Panel instructs the Registry to assign confidential classification to 2D00035 and W04875's Proposed Evidence, with the exclusion of the CV, which can be classified as public.¹¹⁷

46. The Panel considers that, in order to ensure to the extent possible a public trial, the public should have access to redacted versions of W04875's Expert Reports and Letters of Instruction. Therefore, the Panel orders the SPO to provide redacted versions of the Expert Reports and Letters of Instruction by no later than **Tuesday, 10 June 2025**, and directs the Registry to: (i) assign those redacted versions exhibit numbers matching the corresponding confidential versions; and (ii) classify those redacted versions as public.

¹¹⁶ Sixth Bar Table Decision, paras 57, 80, 130(b).

¹¹⁷ See also Annex 3 to the Motion. See also below para. 47.c).

VI. DISPOSITION

47. For these reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence the Proposed Evidence of W04875 as identified in footnote 15 above, as well as 2D00035 MFI, and any translations or revised versions under paragraph 47(c) below;
- c) **ORDERS** the SPO to: (i) provide a revised version of SITF00200221-SITF00200249-ET RED, pp. SITF00200239, SITF00200245-SITF00200246 that includes the missing content as specified in paragraph 20 above, by no later than **Tuesday, 10 June 2025**; and (ii) identify and provide without delay any missing translations to W04875's Proposed Evidence;
- d) **INSTRUCTS** the Registry to assign exhibit numbers to, or, where applicable, remove the MFI marking from the admitted items referred to in paragraph 47(b) above, linking the admitted Source Material, and 2D00035 MFI, as well as the previously admitted P00854 and P00855, to the Expert Reports;
- e) **INSTRUCTS** the Registry to assign confidential classification to the admitted items referred to in paragraph 47(b) above, with the exclusion of the CV, which can be classified as public;
- f) **ORDERS** the SPO to submit public redacted versions of the Expert Reports and Letters of Instruction by no later than **Tuesday, 10 June 2025**; and

- g) **DIRECTS** the Registry to: (i) assign the redacted versions of the Expert Reports and Letters of Instruction exhibit numbers matching the corresponding confidential versions; and (ii) classify those redacted versions as public.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath.

Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 27 May 2025

At The Hague, the Netherlands.