



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

Language: English

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Decision on the Admission of Expert Evidence of W04874

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 ("Expert Witnesses").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 evidence of Expert Witnesses 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 2024*, 7 October 2024, confidential, pp. 66-80, 90-100-154.

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* ("Motion"), 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 authorisation by the Panel,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 W04874, a forensic pathologist, 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 22 and 23 January 2025, W04874 (“Expert Witness”) testified *viva voce* in these proceedings.⁹
8. On 23 January 2025, upon the conclusion of W04874’s testimony, pursuant to the Panel’s instructions,¹⁰ the Prosecution provided the Panel and the other Parties and participants with “a list of all items tendered for admission pursuant to Rules 138 and/or 149 in relation to W04874”.¹¹

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 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. 31, 37, 43(d) (a public redacted version was filed on the same day, F02787/RED).

⁹ Transcript of Hearing, 22 January 2025, pp. 24220-24328; Transcript of Hearing, 23 January 2025, pp. 24357-24449.

¹⁰ Transcript of Hearing, 23 January 2025, p. 24449, lines 20-22.

¹¹ CRSPD808, Email from SPO to Trial Panel Parties Participants re Items tendered for admission pursuant to Rules 138 and/or 149 in relation to W04874 (“CRSPD808”), 23 January 2025, confidential. *See also* Transcript of Hearing, 22 January 2025, p. 24231, lines 17-22.

9. On 29 January 2025, upon the Panel's authorisation,¹² the Defence filed supplementary submissions on the admissibility of the proposed evidence of W04874 in light of the witness's testimony ("Supplemental Response").¹³

10. On 31 January 2025, the SPO replied to the Supplemental Response ("Supplemental Reply").¹⁴

II. SUBMISSIONS

11. The SPO requests admission of W04874's Proposed Evidence,¹⁵ encompassing his expert report ("Expert Report"), source material ("Source Material") and exhibits associated therewith ("Associated Exhibits").¹⁶ In the Motion, the SPO submits that the proposed evidence of W04874 meets the requirements of the Rules.¹⁷ In particular, the SPO argues that the Expert Report: (i) is relevant,¹⁸ (ii) *prima facie* authentic and reliable,¹⁹ and (iii) has probative value which is not outweighed by any prejudice.²⁰ Moreover, the SPO submits that: (i) the Source Material is an inseparable and indispensable part of the Expert Report and satisfies

¹² Transcript of Hearing, 23 January 2025, p. 24449, line 12 to p. 24450, line 16.

¹³ F02871/COR, Specialist Counsel, *Corrected Version of Joint Defence Response to Prosecution Request for Admission of the Expert Report and Source Material of W04874*, 29 January 2025 (date original: 29 January 2025), confidential.

¹⁴ F02884, Specialist Prosecutor, *Prosecution Reply to 'Corrected Version of Joint Defence Response to Prosecution Request for Admission of the Expert Report and Source Material of W04874'* (F02871/COR), 31 January 2025, confidential.

¹⁵ The proposed evidence of W04874 ("Proposed Evidence") consists of the following Expert Report, Associated Exhibits and Source Material, with any translations thereof: (i) 103108-103132 (P01991 MFI) ("Expert Report"); and (i) 103133-103135 (P01989 MFI); (ii) 102430-102442 (P01990 MFI); (iii) REG01199-REG01199 (P01992 MFI); and (iv) REG01200-REG01200 (P01993 MFI) (collectively, "Associated Exhibits"); and (i) SITF00414169-SITF00414223-ET; (ii) SPOE00113617-SPOE00113639-ET; (iii) SPOE00111801-00111808; (iv) SPOE00111910-SPOE00111913; (v) IT-04-84bis P00484.E; (vi) U002-6536-U002-6539; (vii) IT-04-84bis P00488; (viii) SPOE00068507-00068514 RED; (ix) SITF00200337-00200340-ET; (x) 0189-0855-0189-0857-ET Revised; (xi) SITF00405633-SITF00405638-ET; and (xii) 0189-0858-0189-0874-ET Revised (collectively, "Source Material"). *See also* CRSPD808.

¹⁶ Transcript of Hearing, 22 January 2025, p. 24231, lines 17-22.

¹⁷ Motion, paras 2, 24. *See also* Supplemental Reply, paras 11, 15.

¹⁸ Motion, paras 2, 19-20.

¹⁹ Motion, paras 2, 21; Annex 1 to the Motion. *See also* Supplemental Reply, para. 15.

²⁰ Motion, paras 2, 24. *See also* Supplemental Reply, paras 13, 15.

the requirements of Rule 138;²¹ and (ii) the Associated Exhibits are relevant to W04874's qualification as an expert, his credibility and the compilation of the Expert Report.²²

12. The Defence objects to the admission into evidence of the Expert Report, the Source Material, and the Associated Exhibits.²³ Furthermore, the Defence raises the following issues in relation to the items tendered through W04874: (i) the SPO failed to state its case as to which aspects of the evidence tendered through W04874 – the accuracy of which W04874 expressly raised doubts about – it seeks to rely on for the truth of its content;²⁴ (ii) the autopsy reports tendered are third party expert reports and inadmissible under Rule 149;²⁵ (iii) evidence unrelated to the evidence of W04874, specifically those items which were not shown to or commented upon by W04874 during direct examination, cannot be tendered for admission through W04874;²⁶ and (iv) two items are witness statements and are not admissible through this witness.²⁷

13. The Panel further notes that, during its cross-examination of W04874, the Defence for Kadri Veseli ("Veseli Defence") tendered three pages of an item, contingent upon the admission of the items tendered by the SPO.²⁸ The three pages were marked for identification as 2D00041.²⁹ Furthermore, the Panel notes that, during its cross-examination of W04874, the Defence for Jakup Krasniqi

²¹ Motion, para. 22.

²² Motion, para. 23.

²³ Supplemental Response, paras 1, 10, 49.

²⁴ Supplemental Response, paras 15-21. *See also* Supplemental Response, paras 13-14, 29-44; Transcript of Hearing, 23 January 2025, pp. 24450-24451.

²⁵ Supplemental Response, paras 22-28. *See also* Supplemental Response, paras 11-12.

²⁶ Supplemental Response, para. 45.

²⁷ Supplemental Response, paras 46-48; *referring to* SPOE00111910-SPOE00111913, SITF00405633-SITF00405638-ET. *See also* Supplemental Response, para. 11.

²⁸ Transcript of Hearing, 23 January 2025, p. 24449, line 25 to p. 24450, line 2.

²⁹ Transcript of Hearing, 23 January 2025, p. 24370, lines 10-13.

("Krasniqi Defence") tendered two items for admission,³⁰ which were marked for identification as 4D00103³¹ and 4D00104³².

14. The SPO replies that the Panel should admit the Proposed Evidence, which meets the requirements of Rules 138 and 149.³³ The SPO submits that: (i) it is under no obligation to state its case in relation to certain evidence before the conclusion of the trial;³⁴ (ii) the fact that W04874 was not involved in the autopsies referred to in the Expert Report does not impact the *prima facie* admissibility of the Proposed Evidence;³⁵ (iii) the SPO is not required to call as witnesses the authors of every autopsy report;³⁶ (iv) the suggestion that because W04874 did not carry out any secondary autopsies to verify the veracity of the findings is a reason to reject the admission of autopsy reports is grossly unrealistic and unfounded;³⁷ (v) contrary to the Defence's assertion, W04874 did not raise serious concerns about the impartiality of any of the pathologists who conducted the autopsy reports;³⁸ and (vi) the SPO is not seeking to tender evidence beyond W04874's expertise,³⁹ and the Defence's submissions that the SPO is barred from tendering through W04874 items which were not shown to him in court is unsubstantiated and ignore the Order on the Conduct of Proceedings.⁴⁰ The SPO further submits that SPOE00111910-SPOE00111913 and SITF00405633-SITF00405638-ET are not witness statements and that the former was addressed at length in the Expert Report and W04874's testimony,⁴¹ while the latter's contents are paraphrased in

³⁰ Transcript of Hearing, 23 January 2025, p. 24431, lines 6-7; Transcript of Hearing, 23 January 2025, p. 24433, lines 20-21.

³¹ Transcript of Hearing, 23 January 2025, p. 24431, lines 11-16.

³² Transcript of Hearing, 23 January 2025, p. 24433, line 24 to p. 24434, line 2.

³³ Supplemental Reply, paras 1, 15.

³⁴ Supplemental Reply, para. 6.

³⁵ Supplemental Reply, para. 3.

³⁶ Supplemental Reply, para. 4.

³⁷ Supplemental Reply, para. 4.

³⁸ Supplemental Reply, para. 5. *See also* Supplemental Reply, paras 7-8.

³⁹ Supplemental Reply, para. 4.

⁴⁰ Supplemental Reply, para. 10.

⁴¹ Supplemental Reply, para. 11. *See also* Supplemental Reply, para. 4.

the Expert Report.⁴² In relation to 0189-0855-0189-0857 ET Revised, the SPO argues it was extensively addressed in the Expert Report and should be admitted.⁴³ Lastly, the SPO argues that the issues raised by the Defence in the Supplemental Response go to weight, not admissibility, and that the admission of the Proposed Evidence would not be prejudicial to the Defence.⁴⁴

III. APPLICABLE LAW

15. 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 F02787.⁴⁵ The Panel also recalls that it ordered in the Order on the Conduct of Proceedings 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. [...]⁴⁶

⁴² Supplemental Reply, para. 12. *See also* Supplemental Reply, para. 4.

⁴³ Supplemental Reply, para. 12.

⁴⁴ Supplemental Reply, para. 13.

⁴⁵ Decision F02787, paras 13-15.

⁴⁶ Order on the Conduct of Proceedings, paras 121, 123-124.

IV. DISCUSSION

16. The Panel incorporates by reference its findings concerning the criteria for admissibility of expert evidence as set out in Decisions F03201⁴⁷ and F03202⁴⁸.

17. The Panel notes that several items of the Proposed Evidence lack corresponding translations and orders the SPO to review the Proposed Evidence and provide without delay the missing translations thereof.

A. ADMISSIBILITY OF EXPERT EVIDENCE

18. *Expert Report.* Turning to the requirements under Rule 138(1), the Panel first observes that the Expert Report concerns general questions about forensic pathology matters and information pertaining to the circumstances of death of alleged victims named in the Indictment.⁴⁹ Therefore, the Panel finds that the Expert Report is relevant to the charges in the Indictment.⁵⁰ As regards *prima facie* authenticity and reliability, the Panel notes that, upon being shown the Expert Report during his testimony, W04874 confirmed: (i) his authorship thereof;⁵¹ (ii) that he was given the opportunity to review it and make clarifications;⁵² and (iii) that, subject to corrections, the Expert Report is accurate and truthful and reflects what he would say if examined.⁵³ The Expert Report contains additional

⁴⁷ F03201, Panel, *Decision on the Admission of Expert Evidence of W04826* ("W04826 Decision"), 27 May 2025, paras 23, 29.

⁴⁸ F03202, Panel, *Decision on the Admission of Expert Evidence of Witness W04875* ("W04875 Decision"), 27 May 2025, para. 22.

⁴⁹ See Motion, para. 19.

⁵⁰ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 59-63, 67, 73, 78, 99-100, 103, 115-116, 138-139, 142, 144, 153-154, 157, and Schedule B (a public lesser redacted version was filed on 27 February 2023, F01323/A01); see also F01594/A03, Specialist Prosecutor, *Annex 3 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief* ("SPO Pre-Trial Brief"), 9 June 2023, confidential, paras 273, 280, 290, 297-302, 372, 429, 434, 491, 504 (a public redacted version was filed on 3 April 2023, F01415/A01).

⁵¹ Transcript of Hearing, 22 January 2025, p. 24223, line 23 to p. 24224, line 1.

⁵² Transcript of Hearing, 22 January 2025, p. 24225, lines 1-3.

⁵³ Transcript of Hearing, 22 January 2025, p. 24231, lines 9-16.

indicia of reliability, including the date, W04874's signature and reference to the related letter of instruction from the SPO.⁵⁴ The Panel is therefore satisfied that the Expert Report is *prima facie* authentic and reliable. In light of the above, the Panel is also satisfied that the Expert Report has probative value.

19. As regards prejudice, the Panel notes that the Defence had the opportunity to cross-examine the witness, who testified *viva voce*, on the Expert Report and related documents.⁵⁵ Therefore, the Panel finds that there is no indication of any prejudicial effect outweighing the material's probative value. Accordingly, contrary to the Defence's submissions,⁵⁶ the Panel finds that the Expert Report satisfies the requirements under Rule 138(1).

20. With regard as to whether the content of the Expert Report falls within the accepted expertise of W04874 and is permissible, the Panel recalls its finding that W04874 is an expert in forensic pathology⁵⁷ and considers that his Expert Report concerns and is limited to forensic pathology.⁵⁸ Moreover, while the report is based upon information compiled by third-parties, the Panel considers that W04874 has sufficient direct knowledge of that information and possesses the necessary expertise to give evidence on it.⁵⁹ 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. 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

⁵⁴ See P01991 MFI, pp. 103108, 103132.

⁵⁵ Transcript of Hearing, 22 January 2025, p. 24245, line 9, to p. 24327, line 17; Transcript of Hearing, 23 January 2025, p. 24359, line 9, to p. 24434, line 8.

⁵⁶ Supplemental Response, paras 1, 10. See also below paras 30-32.

⁵⁷ Decision F02787, para. 31. See also P01989 MFI; P01991 MFI, p. 103108.

⁵⁸ See P01991 MFI.

⁵⁹ 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.

reported by others.⁶⁰ Therefore, the Panel is satisfied that the content of W04874's Expert Report falls within the witness's expertise and is permissible. Accordingly, in light of the above findings,⁶¹ and contrary to the Defence's submissions,⁶² the Panel finds that the Expert Report also satisfies the requirements under Rule 149.

21. In light of the above, the Panel finds that W04874's Expert Report is admissible pursuant to Rules 138(1) and 149, and instructs the Registry to reflect the evidentiary status of P01991 MFI as admitted.

22. *Associated Exhibits.* The Panel notes that the Associated Exhibits of W04874 consist of: (i) W04874's CV ("CV");⁶³ (ii) the letter of instruction W04874 received from the SPO to prepare the Expert Report ("Letter of Instruction");⁶⁴ and (iii) markings made by W04874 during direct examination on an already admitted exhibit⁶⁵ ("Markings").⁶⁶

23. As regards the CV, the Panel is of the view that it is relevant to assess whether the Expert Report falls within the accepted expertise of W04874, and the weight to be assigned to his evidence. The Panel further notes that W04874, during his testimony, recognised and confirmed the accuracy of his CV.⁶⁷ Accordingly, the Panel finds the CV forms an indispensable and inseparable part of the Expert Report. The Panel is therefore satisfied that the CV: (i) is relevant; (ii) bears sufficient indicia of *prima facie* authenticity; and (iii) has probative value. As

⁶⁰ W04875 Decision, para. 28, referring to 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; ; *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](#), 30 January 2008, para. 27 (with further references); ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1159, Trial Chamber VI, [Decision on Defence Preliminary Challenges to Prosecution's Expert Witnesses](#), 9 February 2016, para. 9 (with further references).

⁶¹ See above paras 18-20.

⁶² Supplemental Response, paras 1, 10. See also below paras 30-32.

⁶³ P01989 MFI.

⁶⁴ P01990 MFI.

⁶⁵ P00858.

⁶⁶ P01992 MFI; P01993 MFI.

⁶⁷ Transcript of Hearing, 22 January 2025, p. 24223, lines 5-10.

regards prejudice, the Panel notes that the Defence had the opportunity to cross-examine the witness on his CV. The Panel also finds that the CV's probative value is not outweighed by any prejudicial effect.

24. As regards the Letter of Instruction provided by the SPO to W04874, the Panel recalls that the calling Party shall file with the expert report a concise summary of the instructions provided to the expert witness.⁶⁸ The Panel notes that the Letter of Instruction contains sets of questions and ERNs to corresponding material, on which W04874 was asked to provide his expert opinion. The Panel therefore finds the Letter of Instruction to be relevant for the understanding of the Expert Report and to be an indispensable and inseparable part of it and has probative value. Further, the Panel notes that the Letter is signed and dated.⁶⁹ The Panel, therefore, finds the Letter of Instruction to be *prima facie* authentic. As regards prejudice, the Panel notes that the Defence had the opportunity to cross-examine the witness on the Letter of Instruction he received from the SPO. The Panel therefore finds that the probative value of the Letter of Instruction is not outweighed by any prejudicial effect.

25. The Panel considers that the Defence's objection to the admission of the CV and Letter of Instruction⁷⁰ is unsubstantiated. The Panel therefore dismisses that objection.

26. As regards the Markings, the Panel notes that they were made by W04874 during the course of his direct examination on a previously admitted document which concerns a victim named in the Indictment. The Panel finds the Markings to be relevant, *prima facie* authentic and probative. The Panel also notes that the Defence had the opportunity to cross-examine the witness on the Markings. The Panel therefore finds that the probative value of the Markings is not outweighed

⁶⁸ Order on the Conduct of the Proceedings, para. 121.

⁶⁹ See P01990 MFI.

⁷⁰ Supplemental Response, para. 10.

by their prejudicial effect. In addition, the Panel recalls its findings on the underlying document's compliance with Rule 138(1).⁷¹

27. In light of the above, the Panel finds that the Associated Exhibits satisfy the requirements under Rules 138(1) and are therefore admissible. Accordingly, the Panel instructs the Registry to reflect the evidentiary status of P01989 MFI, P01990 MFI, P01992 MFI and P01993 MFI as admitted.

28. *Source Material*. The Panel recalls that the admission of source material to the reports of expert witnesses is justified⁷² when that material is necessary to understand the reports as well as the expert witness's testimony.⁷³

29. The Panel notes that the Source Material consists of: (i) autopsy reports from the Institute of Forensic Medicine in Pristina, the Institute for Forensic Medicine of the Faculty of Medicine in Belgrade, the Office on Missing Persons and Forensics of the United Nations Mission in Kosovo ("UNMIK OMPF"), and the Office for Exhumations and Identification of Serbia and Montenegro and Republic of Serbia's Coordination Centre for Kosovo and Metohija;⁷⁴ (ii) a death certificate and medical report issued by the Pristina Institute of Forensic Medicine;⁷⁵ (iii) related photographs;⁷⁶ and (iv) investigation reports by the European Union Rule of Law Mission Kosovo ("EULEX"), an investigative judge of the District Court in Prizren, and Serbian police.⁷⁷

⁷¹ F01983, Panel, *Sixth Decision on Specialist Prosecutor's Bar Table Motion*, 5 December 2023, paras 48-51.

⁷² Order on the Conduct of the Proceedings, para. 123.

⁷³ ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Trial Chamber III, [Decision on the Admission of Evidence Presented During the Testimony of Andras Riedlmayer](#), 14 April 2010, para. 19.

⁷⁴ SITF00414169-SITF00414223-ET; IT-04-84bis P00484.E; IT-04-84bis P00488; SPOE00068507-00068514 RED; SITF00200337-SITF00200340-ET.

⁷⁵ 0189-0855-0189-0857.

⁷⁶ SPOE00113615-00113639; U002-6536-U002-6539; 0189-0858-0189-0874.

⁷⁷ SPOE00111801-00111808; SPOE00111910-SPOE00111913; SITF00405633-SITF00405638-ET.

30. Regarding autopsy reports not having been carried out by W04874,⁷⁸ the Panel recalls its findings regarding underlying information prepared by third-parties.⁷⁹ The Panel does not consider that these reports 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.⁸⁰ Rather, these reports are source material which W04874, a forensic pathologist who qualifies as an expert within the meaning of Rule 149, was entitled to consult and assess in preparing his expert report. The weight and probative value of the underlying material will be assessed in that light. The Panel therefore dismisses the Defence objections.

31. Regarding the Defence’s objections to autopsy reports whose findings W04874 was not able to adopt fully and in relation to which the Defence suggests bias by the forensic pathologist who carried out some of the underlying autopsies, the Panel is of the view that these issues go primarily to weight rather than admissibility. The Panel will consider W04874’s testimony in court on this point⁸¹ and relevant portions of the Expert Report⁸² when determining the weight to be assigned to the evidence at the end of trial, in light of the totality of the evidence. Further, in accordance with its previous findings,⁸³ the Panel rejects the argument that documents originating from Serbian authorities inherently bear a *prima facie* suspicion of bias or unreliability.⁸⁴

⁷⁸ See above para. 12.

⁷⁹ W04826 Decision, paras 30, 36; W04875 Decision, paras 23, 37-38. See also above para. 20.

⁸⁰ Supplemental Response, paras 11-12, 22.

⁸¹ See Transcript of Hearing, 22 January 2025, pp. 24233-24235; Transcript of Hearing, 23 January 2025, pp. 24434-24435, 24375-24377, 24379.

⁸² See P01991 MFI, pp. 103114, 103117, 103123-103124.

⁸³ See F01963, Panel, *Decision on Admission of Documents Shown to W04769*, 27 November 2023, para. 28; F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential, para. 35 (a public redacted version was filed on 27 November 2023, F01664/RED).

⁸⁴ *Contra* Supplemental Response, paras 1, 14, 26, 42; Transcript of Hearing, 23 January 2025, p. 24416, lines 4-9, p. 24417, lines 19-23, p. 24420, lines 15-21.

32. Turning to the Defence's objection regarding two items being third-party witness statements and thus inadmissible under Rules 138 and 149,⁸⁵ the Panel recalls the definition of a witness statement under the Specialist Chambers' ("SC") framework,⁸⁶ and finds the items concerned not to fall under that definition, as they constitute investigative reports compiled by an investigating judge⁸⁷ and Serbian police,⁸⁸ respectively, and they are not records of witness statements.

33. Nonetheless, the Panel agrees with the Defence's objection that SITF00405633-SITF00405638-ET falls outside the scope of expertise of W04874,⁸⁹ as it consists of a criminal investigation report concerning the circumstances of the disappearance of two victims named in the Indictment and does not concern any matters of forensic pathology. Similarly, the Panel notes that SPOE00111801-00111808 is not discussed in the Expert Report and accordingly does not form an indispensable and inseparable part of it, nor is it necessary for its understanding. Consequently, the Panel denies the admission of SITF00405633-SITF00405638-ET and SPOE00111801-00111808 into evidence.

34. As for the remaining items of the Source Material ("Remaining Items"),⁹⁰ the Panel observes that they are referenced in the Expert Report or are directly related to documents which are referred to therein. The Panel therefore finds that the Remaining Items are necessary to the understanding of W04874's Expert Report. The Panel further observes that the Remaining Items concern matters of forensic pathology such as autopsies of the remains of alleged victims named in the

⁸⁵ Supplemental Response, paras 11, 46-47.

⁸⁶ See W04826 Decision, para. 31, referring to F02580, Panel, *Reasons for Admission of W03780's Statements and Related Order*, 17 September 2024, confidential, para. 10 (a public redacted version was issued on the same day, F02580/RED), referring to F02130, Panel, *Decision on the Taçi Defence's Submissions Concerning Use of Prior Inconsistent Statements Pursuant to Rule 143(2)*, 15 February 2024, para. 15.

⁸⁷ SPOE00111910-SPOE00111913.

⁸⁸ SITF00405633-SITF00405638-ET.

⁸⁹ Supplemental Response, para. 47.

⁹⁰ SITF00414169-SITF00414223-ET; SPOE00113615-00113639; SPOE00111910-SPOE00111913; IT-04-84bis P00484.E; U002-6536-U002-6539; IT-04-84bis P00488; SPOE00068507-00068514 RED; SITF00200337-SITF00200340-ET; 0189-0855-0189-0857-ET Revised; 0189-0858-0189-0874-ET Revised.

Indictment.⁹¹ The Panel, therefore, finds that the Remaining Items are relevant to the charges in the Indictment.⁹²

35. Furthermore, the Panel observes that the Remaining Items contain indicia of reliability, including: (i) indications of the date and/or place of preparation;⁹³ (ii) signatures of the authors;⁹⁴ and (iii) official logos and/or templates of the organisations from which the documents originate.⁹⁵ The Panel also observes that the Remaining Items are probative, and their probative value is not outweighed by their prejudicial effect, considering that the Defence was able to cross-examine W04874 extensively on these documents.

36. Accordingly, the Panel finds that, with the exception of the documents rejected by the Panel in paragraph 33 above, the Remaining Items⁹⁶ are admissible pursuant to Rules 138.

⁹¹ See Motion, para. 19.

⁹² Indictment, paras 59-63, 67, 73, 78, 99-100, 103, 115-116, 138-139, 142, 144, 153-154, 157, and Schedule B; see also SPO Pre-Trial Brief, paras 273, 280, 290, 297-302, 372, 429, 434, 491, 504.

⁹³ See e.g. SITF00414169-SITF00414223-ET, pp. SITF00414169-SITF00414172, SITF00414177-SITF00414178, SITF00414282-SITF00414183, SITF00414188-SITF00414189, SITF00414195-SITF00414196, SITF00414201-SITF00414205, SITF00414209-SITF00414212; SPOE00113615-SPOE00113639-ET, p. SPOE00113627; SPOE00111910-SPOE00111913, p. SPOE00111910; IT-04-84bis P00484.E, p. 1; IT-04-84bis P00488, pp. U0087511, U0087515, U0087517; SPOE00068507-00068514 RED; SITF00200337-SITF00200340-ET, pp. SITF00200337, SITF00200339; 0189-0855-0189-0857-ET; 0189-0858-0189-0874-ET Revised, pp. 01890859, 01890870.

⁹⁴ See e.g. SITF00414169-SITF00414223-ET, pp. SITF00414169-SITF00414172, SITF00414176-SITF00414178, SITF00414181-SITF00414183, SITF00414187-SITF00414189, SITF00414194-SITF00414196, SITF00414200-SITF00414201, SITF00414203-SITF00414204, SITF00414206-SITF00414211; SPOE00111910-SPOE00111913, p. SPOE00111913; IT-04-84bis P00484.E, p. 6; U002-6536-U002-6539, p. U002-6539; IT-04-84bis P00488; SPOE00068507-00068514 RED, pp. SPOE00068507-SPOE00068512; SITF00200337-SITF00200340-ET, pp. SITF00200338, SITF00200340; 0189-0855-0189-0857-ET, pp. 0189-0856, 0189-0857.

⁹⁵ See e.g. SITF00414169-SITF00414223-ET, pp. SITF00414172, SITF00414176-SITF00414178, SITF00414181-SITF00414183, SITF00414187-SITF00414189, SITF00414194-SITF00414196, SITF00414200-SITF00414205, SITF00414207-SITF00414213; SPOE00113615-00113639, pp. SPOE00113617-SPOE00113628, SPOE00113630-SPOE00113636, SPOE00113638-SPOE00113639; IT-04-84bis P00484.E, pp. 1, 6; U002-6536-U002-6539, p. U002-6539; IT-04-84bis P00488, pp. U0087511, U0087515; SPOE00068507-00068514 RED, pp. SPOE00068507-SPOE00068512; SITF00200337-SITF00200340-ET, pp. SITF00200337, SITF00200339; 0189-0855-0189-0857-ET, pp. 0189-0856, 0189-0857; 0189-0858-0189-0874, pp. 01890859, 01890861-01890870, 01890872-01890874.

⁹⁶ See above footnote 90.

B. VESELI DEFENCE'S REQUEST TO ADMIT 2D00041 MFI

37. The Panel now turns to the Veseli Defence's submission that it seeks admission of 2D00041 MFI, should W04874's Proposed Evidence be admitted.⁹⁷

38. 2D00041 MFI consists of a three-page excerpt from an SPO Official Note concerning a meeting with W04874, which was discussed by W04874 during his testimony.⁹⁸ The Panel is satisfied that 2D00041 MFI meets the requirements under Rule 138(1) as it: (i) is relevant as it concerns victims named in the Indictment and whose autopsy reports are discussed in the Expert Report;⁹⁹ (ii) is *prima facie* authentic and reliable as W04874 confirmed his authorship thereof;¹⁰⁰ and (iii) is therefore probative, and its probative value is not outweighed by any prejudicial effect. The Panel further notes that the SPO did not object to the admission of 2D00041 MFI.¹⁰¹ Accordingly, the Panel finds that 2D00041 MFI meets the requirements under Rules 138(1), admits it into evidence, and instructs the Registry to reflect the evidentiary status of 2D00041 MFI as admitted.

C. KRASNIQI DEFENCE'S REQUEST TO ADMIT 4D00103 MFI AND 4D00104 MFI

39. In relation to the Krasniqi Defence's request to admit 4D00103 MFI and 4D00104 MFI,¹⁰² the Panel first observes that 4D00103 MFI has also been tendered by the SPO in F02784,¹⁰³ and will consider its admissibility in the present decision as it was used during the cross-examination of W04874.¹⁰⁴ The Panel further notes

⁹⁷ Transcript of Hearing, 23 January 2025, pp. 24449-24450.

⁹⁸ Transcript of Hearing, 22 January 2025, pp. 24311-24316; Transcript of Hearing, 23 January 2025, pp. 24367-24370, 24359-24361.

⁹⁹ See Transcript of Hearing, 22 January 2025, p. 24312.

¹⁰⁰ Transcript of Hearing, 22 January 2025, p. 24312.

¹⁰¹ Transcript of Hearing, 23 January 2025, p. 24370.

¹⁰² Transcript of Hearing, 23 January 2025, p. 24431, lines 6-7; Transcript of Hearing, 23 January 2025, p. 24433, lines 20-21.

¹⁰³ F02784, Specialist Prosecutor, *Prosecution Motion for Admission of Documents Concerning Murder Victims and Related Request*, 13 December 2024, with Annexes 1-2, confidential, Annex 1, item 76.

¹⁰⁴ See Transcript of Hearing, 23 January 2025, pp. 24429-24431.

that 4D00104 MFI has also been used during the cross-examination of W04874.¹⁰⁵ The Panel is satisfied that 4D00103 MFI and 4D00104 MFI meet the requirements under Rule 138(1) as they: (i) are relevant as they concern a victim named in the Indictment and whose death certificate is referred to in the Expert Report;¹⁰⁶ (ii) contain indicators of *prima facie* authenticity such as signatures and official logos; and (iii) are probative, and their probative value is not outweighed by any prejudicial effect. The Panel further notes that the SPO did not object to the admission of 4D00103 MFI¹⁰⁷ and 4D00104 MFI.¹⁰⁸ Accordingly, the Panel finds that 4D00103 MFI and 4D00104 MFI meet the requirements under Rules 138(1), admits them into evidence, and instructs the Registry to reflect the evidentiary status of 4D00103 MFI and 4D00104 MFI as admitted.

V. CLASSIFICATION

40. The Panel notes that the Supplemental Response was filed confidentially. The Panel therefore orders the Defence to request the reclassification or file a public redacted version of the Supplemental Response by no later than **Tuesday, 10 June 2025**. The Panel further notes that the SPO requests the reclassification of the Supplemental Reply,¹⁰⁹ and therefore instructs the Registry to reclassify it as public.

41. The Panel instructs the Registry to assign confidential classification to the items admitted in paragraphs 21, 27, 36, 38, and 39 above, with the exclusion of W04874's CV, which can be classified as public.¹¹⁰

¹⁰⁵ Transcript of Hearing, 23 January 2025, p. 24431-24433.

¹⁰⁶ See Transcript of Hearing, 23 January 2025, pp. 24429-24433.

¹⁰⁷ Transcript of Hearing, 23 January 2025, p. 24431.

¹⁰⁸ Transcript of Hearing, 23 January 2025, p. 24433.

¹⁰⁹ Supplemental Reply, para. 14.

¹¹⁰ See also Annex 1 to the Motion. See also below para. 43.i).

42. The Panel considers that, in order to ensure to the extent possible a public trial, the public should have access to redacted versions of the Expert Report and Letter of Instruction, and orders the SPO to provide redacted versions of the Expert Report and Letter 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.

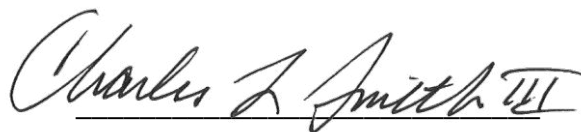
VI. DISPOSITION

43. For these reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence the following items, and any translations thereof, including translations under paragraph 43(i) below: (i) P01991 MFI; (ii) P01989 MFI; (iii) P01990 MFI; (iv) P01992 MFI; (v) P01993 MFI; (vi) SITF00414169-SITF00414223-ET; (vii) SPOE00113615-00113639; (viii) SPOE00111910-SPOE00111913; (ix) IT-04-84bis P00484.E; (x) U002-6536-U002-6539; (xi) IT-04-84bis P00488; (xii) SPOE00068507-00068514 RED; (xiii) SITF00200337-SITF00200340-ET; (xiv) 0189-0855-0189-0857-ET Revised; (xv) 0189-0858-0189-0874-ET Revised; (xvi) 2D00041 MFI; (xvii) 4D00103 MFI; and (xviii) 4D00104 MFI;
- c) **DENIES** the admission of the following items: (i) SITF00405633-SITF00405638-ET; and (ii) SPOE00111801-00111808;
- d) **INSTRUCTS** the Registry to assign exhibit number to the admitted items referred to in paragraph 43(b) above, linking the admitted Source Material and Associated Exhibits to the Expert Report (P01991 MFI);
- e) **INSTRUCTS** the Registry to reflect the evidentiary status of P01989 MFI, P01990 MFI, P01991 MFI, P01992 MFI, P01993 MFI, 2D00041 MFI,

4D00103 MFI and 4D00104 MFI as admitted;

- f) **INSTRUCTS** the Registry to assign confidential classification to the admitted items referred to in paragraph 43(b) above, with the exclusion of W04874's CV, which can be classified as public;
- g) **ORDERS** the SPO to provide redacted versions of the Expert Report and Letter of Instruction by no later than **Tuesday, 10 June 2025**;
- h) **DIRECTS** the Registry to: (i) assign the redacted versions of the Expert Report and Letter of Instruction exhibit numbers matching the corresponding confidential versions; and (ii) classify those redacted versions as public;
- i) **ORDERS** the SPO to identify and provide without delay any missing translations to W04874's Proposed Evidence identified in footnote 15 above;
- j) **ORDERS** the Defence to request the reclassification or file a public redacted version of the Supplemental Response by no later than **Tuesday, 10 June 2025**; and
- k) **DIRECTS** the Registry to reclassify the Supplemental Reply as public.



Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 27 May 2025

At The Hague, the Netherlands.