



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

**Classification:** Public

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**Corrected Version of Decision on the Admission of Expert Evidence of W04826**

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**Specialist Prosecutor**

Kimberly P. West

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Rodney Dixon

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

**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 Proceedings<sup>1</sup> in relation to the upcoming testimony of three proposed expert witnesses: W04826, W04874 and W04875 ("Expert Witnesses").<sup>2</sup>

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

3. On 11 October 2024, the SPO filed a motion for the admission of the evidence of the Expert Witnesses and a related request to amend its list of exhibits ("Motion").<sup>4</sup>

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

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

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

<sup>4</sup> See above footnote 3.

4. On 8 November 2024, upon authorisation by the Panel,<sup>5</sup> the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”) jointly responded to the Motion (“Response”).<sup>6</sup>
5. On 18 November 2024, the SPO replied (“Reply”).<sup>7</sup>
6. On 16 December 2024, the Panel rendered a decision on the Motion (“Decision F02787”), finding, *inter alia*, that W04826, 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).<sup>8</sup>
7. On 27 January 2025, W04826 (“Expert Witness”) testified *viva voce* in these proceedings.<sup>9</sup>
8. On the same day, upon the conclusion of W04826’s testimony, pursuant to the Panel’s instructions,<sup>10</sup> 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 W04826” (“W04826’s Proposed Evidence”).<sup>11</sup>

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<sup>5</sup> 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).

<sup>6</sup> F02703, Specialist Counsel, *Joint Defence Consolidated Response to F02620 and F02633*, 8 November 2024, confidential, with Annexes 1-4, confidential (a public redacted version was filed on 19 December 2024, F02703/RED; a further public redacted version was filed on 2 January 2025, F02703/RED2).

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

<sup>8</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, confidential, paras 30, 36-37, 43(d) (a public redacted version was issued on the same day, F02787/RED).

<sup>9</sup> Transcript of Hearing, 27 January 2025, pp. 24503-24581.

<sup>10</sup> Transcript of Hearing, 27 January 2025, p. 24582, lines 2-5.

<sup>11</sup> CRSPD804, *Email from SPO to Trial Panel Parties Participants re Items tendered for admission pursuant to Rules 138 and/or 149 in relation to W04826* (“CRSPD804”), 27 January 2025, confidential.

9. On 30 January 2025, upon the Panel's instructions,<sup>12</sup> the Defence filed supplemental submissions on the admissibility of W04826's Proposed Evidence ("Supplemental Response").<sup>13</sup>

10. On 3 February 2025, upon the Panel's instructions,<sup>14</sup> the SPO replied to the Supplemental Response ("Supplemental Reply").<sup>15</sup>

## II. SUBMISSIONS

11. The SPO requests the admission of the Expert Witness's report ("Expert Report"), associated source material ("Associated Source Material") and associated exhibits ("Associated Exhibits") pursuant to Rules 138 and 149.<sup>16</sup>

12. The Defence does not object to the admission of W04826's Expert Report, letter of instruction dated 30 July 2012 ("SPO Letter of Instruction") and *curriculum vitae* ("W04826's CV"). The Defence does object to the remaining material tendered for admission. The Defence submits that autopsies and reports carried out by the Expert Witness are suitable for admission, but notice should be taken as to how much weight such documents are afforded, considering their clear reliability issues which transpired throughout the Expert Witness's testimony.<sup>17</sup>

13. The SPO replies that the Supplemental Response is equivocal, misrepresents the framework governing expert evidence, ignores established admissibility standards, focuses on factors potentially relevant, if at all, to weight, rather than admissibility, and misstates and misrepresents W04826's evidence.<sup>18</sup>

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<sup>12</sup> Transcript of Hearing, 27 January 2025, p. 24582, lines 5-6.

<sup>13</sup> F02876, Specialist Counsel, *Joint Defence Response to Prosecution Request for Admission of Expert Report and Source Material of W04826*, 30 January 2025, confidential.

<sup>14</sup> Transcript of Hearing, 27 January 2025, p. 24582, lines 5-6.

<sup>15</sup> F02894, Specialist Prosecutor, *Prosecution Reply to 'Joint Defence Response to Prosecution Request for Admission of Expert Report and Source Material of W04826' (F02876)*, 3 February 2025, confidential.

<sup>16</sup> See Motion, para. 1.

<sup>17</sup> Supplemental Response, para. 1.

<sup>18</sup> Supplemental Reply, para. 1.

### III. APPLICABLE LAW

14. 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.<sup>19</sup> 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. [...] <sup>20</sup>

### IV. DISCUSSION

#### A. PRELIMINARY MATTERS

15. The Panel notes that the SPO seeks the admission of W04826's Proposed Evidence under Rules 138 and 149, or through the bar table, pursuant to Rules 137 and 138.<sup>21</sup>

16. First, the Panel notes that several items lack corresponding translations (*e.g.*, it appears that SITF00175086-SITF00175147, pp. SITF00175096-SITF00175104,<sup>22</sup> among others, does not have an Albanian translation) and orders the SPO to

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<sup>19</sup> Decision F02787, paras 13-16.

<sup>20</sup> Order on the Conduct of Proceeding, paras 121, 123-124.

<sup>21</sup> See Motion, paras 1-2, 42; reply, para. 1; Supplemental Reply, paras 5, 10.

<sup>22</sup> See Annex 1 to 124921-12437. See also CRSPD804. See also Annex 2 to the Motion, item 19.

review the Proposed Evidence and provide without delay any missing translations thereof.

17. The Panel also recalls that, at the end of the testimony of W04826, it ordered the SPO to provide the Panel and the other Parties and participants with a list of the items related to the Expert Witness tendered for admission.<sup>23</sup> The Panel is of the view that the SPO's request for the admission of W04826's Proposed Evidence, as set out in its email of 27 January 2025,<sup>24</sup> does not fully comply with the Panel's direction. In particular, the SPO has failed to make individual submissions on which items it tenders under Rules 138 and 149 as related to W04826's evidence, and which may be unrelated to that evidence but which the SPO considers to be suitable for admission from the bar table. The SPO has also failed to make specific submissions as to how any documents unrelated or insufficiently related to W04826's evidence meet the Rule 138(1) requirements. The Panel has therefore exercised caution in its scrutiny of any materials tendered by the SPO which appear to the Panel to be unrelated to the testimony of W04826,<sup>25</sup> reminding the SPO that as tendering Party it bears the onus of establishing the requirements for admission.<sup>26</sup>

18. The Panel also notes that the SPO has tendered certain items, which concern DNA evidence, in the Associated Source Material<sup>27</sup> and has tendered the same items for admission through expert witness W04875, a forensic geneticist.<sup>28</sup> The Panel is of the view that this evidence falls more clearly within W04875's area of

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<sup>23</sup> See above para. 8.

<sup>24</sup> CRSPD804.

<sup>25</sup> See below para. 34.

<sup>26</sup> F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("First Bar Table Decision"), 31 March 2023, confidential, para. 9.

<sup>27</sup> SPOE00071376-00071442 RED2, pp. SPOE00071434-SPOE00071436, SPOE00071439-SPOE00071440; SPOE00071973-00072032, pp. SPOE00071988-SPOE00071989; SPOE00072456-00072525 RED2, pp. SPOE00072462-SPOE00072463; SPOE00071462-00071538 RED2, pp. SPOE00071470-SPOE00071471, SPOE00071475-SPOE00071476; SPOE00072678-00072750 RED2, pp. SPOE00072691-SPOE00072692.

<sup>28</sup> 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.

expertise and can be better assessed as part of his proposed evidence. The Panel will therefore address the admissibility of these items in its decision on the admission of W04875's expert evidence.

19. The SPO has tendered other items as Associated Source Material<sup>29</sup> in the Motion, and has tendered the same items separately for admission from the bar table in its filing F02784.<sup>30</sup> These items are not referenced in the Expert Report and the Expert Witness was unable to contextualise them.<sup>31</sup> The Panel will therefore address the admissibility of these items in its decision on F02784. The Panel will now consider the admissibility of the remainder of W04826's Proposed Evidence.

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<sup>29</sup> IT-03-66 P228; SITF00030155-SITF00030184 RED2, pp. SITF00030181-SITF00030182; SITF00188171-00188185, p. SITF00188174; SPOE00194606-00194608.

<sup>30</sup> F02784, Specialist Prosecutor, *Prosecution Motion for Admission of Documents Concerning Murder Victims and Related Request*, 13 December 2024, with Annexes 1-2, confidential.

<sup>31</sup> Transcript of Hearing, 27 January 2025, p. 24540.



## B. ADMISSIBILITY OF THE REMAINDER OF THE PROPOSED EVIDENCE

20. The SPO submits that the Proposed Evidence of W04826<sup>32</sup> is relevant,<sup>33</sup> authentic and reliable,<sup>34</sup> and that its probative value is not outweighed by any prejudice.<sup>35</sup>

<sup>32</sup> W04826's Proposed Evidence consists of the following items, including any translations thereof: (i) 103427-103470 (P02003 MFI) ("Expert Report"); and (i) 031049-031095; (ii) SITF00372709-00372732, pp. SITF00372721-SITF00372722; (iii) SITF00019134-SITF00019150 RED; (iv) SITF00019793-00019810 RED; (v) SITF00175086-SITF00175147, pp. SITF00175096-SITF00175104; (vi) SITF00167694-00167703 RED; (vii) SITF00167626-00167634 RED; (viii) 073685-073786 RED2, pp. 073695-073696, 073703-073704, 073711-073719; (ix) SPOE00068589-00068605; (x) SPOE00068606-00068615; (xi) SPOE00068616-00068623; (xii) SITF00200595-00200618 RED, pp. SPOE00200612-SPOE00200613; (xiii) SPOE00212883-SPOE00212893 RED, pp. SPOE00212883-SPOE00212884, SPOE00212892-SPOE00212893; (xiv) SPOE00212901-SPOE00212906 RED; (xv) SPOE00213012-SPOE00213036 RED; (xvi) SPOE00068661-00068678, pp. SPOE00068663-SPOE00068664, SPOE00068667-SPOE00068668; (xvii) SITF00062883-SITF00062887 RED; (xviii) SPOE00068643-00068651; (xix) SPOE00068652-00068660; (xx) SPOE00068687-00068696; (xxi) SPOE00068697-00068706; (xxii) SPOE00068707-00068710; (xxiii) SPOE00068679-00068686; (xxiv) SPOE00213050-SPOE00213055 RED; (xxv) SPOE00212917-SPOE00212929; (xxvi) SPOE00212786-00212799 RED; (xxvii) SPOE00212987-SPOE00213007, pp. SPOE00212988-SPOE00213007; (xxviii) SPOE00213056-00213066 RED; (xxix) SPOE00212836-SPOE00212847; (xxx) SPOE00068711-00068728; (xxxi) SPOE00068582-00068588 RED; (xxxii) SPOE00068575-00068581 RED; (xxxiii) 019284-019290 RED; (xxxiv) SPOE00068547-00068553; (xxxv) 019297-019303 RED; (xxxvi) SPOE00068521-00068527; (xxxvii) SPOE00068515-00068520; (xxxviii) SITF00168743-00168749 RED; (xxxix) SPOE00068493-00068499 RED; (xl) SPOE00068554-00068560 RED; (xli) SITF00169843-00169851 RED; (xlii) SPOE00208422-00208440 RED, pp. SPOE00208436-SPOE00208440; (xliii) SPOE00071376-00071442 RED2; (xliv) SPOE00072033-00072033 until SPOE00072048-00072048; (xlv) SPOE00071973-00072032; (xlvi) SPOE00072049-00072049 until SPOE00072071-00072071; (xlvii) SPOE00071953-SPOE00071972 pp. SPOE00071955-SPOE00071956; (xlviii) SPOE00072456-00072525 RED2; (xlix) SPOE00072239-00072239 until SPOE00072253-00072253; (l) SPOE00071462-00071538 RED2; (li) SPOE00072193-00072193 until SPOE00072217-00072217; (lii) SPOE00072678-00072750 RED2; (liii) SPOE00072264-00072264 until SPOE00072282-00072282; (liv) SPOE00071692-00071751 RED2; (lv) SPOE00072219-00072219 until SPOE00072238-00072238; (lvi) SPOE00072570-00072617; (lvii) SPOE00072254-00072254 until SPOE00072263-00072263; (lviii) IT-03-66 P228; (lix) SITF00030155-SITF00030184 RED2, pp. SITF00030181-SITF00030182; (lx) SITF00188171-00188185; (lxi) SPOE00325698-00325769, pp. SPOE00325704-SPOE00325705, SPOE00325706-SPOE00325721, SPOE00325737-SPOE00325752, SPOE00325755-SPOE00325764; and (lxii) SPOE00194606-00194608 (collectively, "W04826's Associated Source Material"); and (i) 103409-103410 (P02001 MFI) ("W04826's CV"); (ii) 102443-102471 (P02002 MFI) ("SPO Letter of Instruction"); (iii) REG01201-REG01201 (P02004 MFI); and (iv) REG01202-REG01202 (P02005 MFI) (collectively, "Associated Exhibits"). See Annex 1 to 124921-12437. See also CRSPD804.

<sup>33</sup> Motion, paras 25-27. See also Motion, paras 29-30.

<sup>34</sup> Motion, para. 28. See also Motion, paras 29-30.

<sup>35</sup> Motion, para. 31. See also Motion, paras 29-30.



21. The Defence maintains its previous objections to: (i) the admission of evidence produced by third-party experts who are not on the SPO's witness list, through any of the Expert Witnesses; (ii) the admission of documents which are beyond the expert's field of expertise; and (iii) the admission of witness statements of third parties.<sup>36</sup> The Defence does not object to the admission of the Expert Report and Associated Exhibits, but objects to the admission of the Associated Source Material<sup>37</sup> on the basis that certain items do not meet the requirements of Rule 149 nor Rule 138 and therefore should not be admitted, namely: (i) autopsies not carried out by W04826;<sup>38</sup> (ii) autopsies with contradicting information;<sup>39</sup> (iii) documents unsigned or signed on W04826's behalf;<sup>40</sup> (iv) documents unrelated to the evidence of W04826;<sup>41</sup> (v) documents outside of W04826's area of expertise;<sup>42</sup> and (vi) documents amounting to witness statements.<sup>43</sup>

22. The SPO replies that the Defence objecting to some of the Associated Source Material is illogical given the non-objection to the admissibility of the Expert Report addressing that material.<sup>44</sup> In particular, the SPO submits that: (i) neither the condition of the victims' examined remains, nor whether a cause of death can be ascertained in relation to certain victims, impacts the *prima facie* admissibility of W04826's Proposed Evidence;<sup>45</sup> (ii) it is irrelevant, for the purposes of admissibility, whether autopsy reports and death certificates are authored or signed by the same person;<sup>46</sup> (iii) the fact that certain items do not bear W04826's signature does not render them inadmissible as they contain other indicia of

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<sup>36</sup> Supplemental Response, para. 13, *referring to* Response, paras 19-38.

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

<sup>38</sup> Supplemental Response, paras 16-17.

<sup>39</sup> Supplemental Response, paras 18-19.

<sup>40</sup> Supplemental Response, paras 20-21.

<sup>41</sup> Supplemental Response, paras 22-23.

<sup>42</sup> Supplemental Response, paras 24-26.

<sup>43</sup> Supplemental Response, p. 10, para. 25.

<sup>44</sup> Supplemental Reply, para. 2.

<sup>45</sup> Supplemental Reply, para. 4.

<sup>46</sup> Supplemental Reply, para. 5.

authenticity and have probative value;<sup>47</sup> (iv) the Defence's reference to certain dates in one item as 'inconsistent' is a mischaracterisation;<sup>48</sup> (v) W04826's failure to remember specific autopsies conducted decades ago has no bearing on the admissibility of the Proposed Evidence;<sup>49</sup> (vi) any alleged contradictions in evidence generally go to their weight rather than admissibility, and the SPO is under no obligation to state its case in relation to any alleged inconsistencies;<sup>50</sup> (vii) Defence submissions that the SPO is barred from tendering through W04826 any items it did not show to him in court are unsubstantiated and ignore the clear language of the Order on the Conduct of Proceedings;<sup>51</sup> (viii) the SPO is not seeking to tender evidence beyond W04826's expertise under Rule 149 as the evidence the SPO tendered in the Motion is also submitted, and admissible, under Rule 138;<sup>52</sup> (ix) the SPO is not seeking to tender any witness statements through W04826;<sup>53</sup> and (x) the submissions in the Supplemental Response go – if anything – to the weight to be attributed to the Proposed Evidence at the end of the trial and do not affect admissibility.<sup>54</sup>

23. The Panel recalls that, in accordance with previous practice of the Specialist Chambers ("SC") 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.<sup>55</sup>

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<sup>47</sup> Supplemental Reply, para. 6.

<sup>48</sup> Supplemental Reply, para. 6, *referring to* Supplemental Response, para. 21.

<sup>49</sup> Supplemental Reply, para. 7.

<sup>50</sup> Supplemental Reply, para. 8.

<sup>51</sup> Supplemental Reply, para. 9.

<sup>52</sup> Supplemental Reply, para. 10.

<sup>53</sup> Supplemental Reply, para. 11.

<sup>54</sup> Supplemental Reply, para. 12.

<sup>55</sup> KSC-BC-2020-07, F00470, Panel, *Decision on Prosecution Requests in Relation to Proposed Defence Witnesses*, 3 December 2021, para. 63 (*see also* paras 64-66, with further references); ICTY, *Prosecutor v.*

24. *W04826's Expert Report*. Regarding relevance, the Panel notes that W04826's Expert Report contains information regarding, *inter alia*, the circumstances of victims' death or mistreatment in locations referred to in the Indictment including Bajgorë/Bajgora, Llapushnik/Lapušnik, Drenoc/Drenovac, Malishevë/Mališevo, and Klečë/Klečka. The Panel is therefore satisfied that W04826's Expert Report is relevant to the charges in the Indictment.<sup>56</sup>

25. Regarding *prima facie* authenticity and reliability, the Panel notes that W04826's Expert Report includes: (i) reference to the SPO Letter of Instruction;<sup>57</sup> (ii) indication of the date of the report;<sup>58</sup> and (iii) W04826's name and signature.<sup>59</sup> W04826 confirmed that he authored the Expert Report and that its content is true and accurate.<sup>60</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04826's Expert Report.

26. Having found W04826's Expert Report to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04826's Expert Report has probative value. The Panel is also satisfied that the probative value of the Expert Report is not outweighed by any prejudice to the Accused, considering in particular that the

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*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](#), 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.

<sup>56</sup> See F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 59-61, 64, 67, 70, 78, 138, 146, 149, 154, 156, 164, 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*, 24 February 2022, confidential, paras 319, 333, 335-337, 352, 353, 357, 372, 375, 376, 378, 379, 421-423, 492, 506, 514, 517, 558, 564-569 (a public redacted version was filed on 3 April 2023, F01415/A01).

<sup>57</sup> Expert Report, p. 1.

<sup>58</sup> Expert Report, p. 1.

<sup>59</sup> Expert Report, p. 1.

<sup>60</sup> Transcript of Hearing, 27 January 2025, pp. 24506-24507, p. 24510, lines 3-16.

Defence was able to cross-examine W04826 extensively on his Expert Report and that the Defence does not object to the admission of the Expert Report.<sup>61</sup>

27. In light of the above, the Panel finds that W04826's Expert Report is admissible pursuant to Rules 138(1) and 149.

28. *W04826's Associated Source Material*. As noted, the Panel will address the admissibility of certain parts of the Associated Source Material in later decisions.<sup>62</sup>

29. The Panel considers that the admission of source material to the reports of expert witnesses is justified<sup>63</sup> when such material is necessary to understand the expert report and testimony.<sup>64</sup>

30. Regarding the Defence's objections to the admission of evidence produced by third-parties, the Panel notes that expert witnesses are ordinarily afforded wide latitude to offer opinions on matters within their expertise. 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 reported by others.<sup>65</sup> The evidence produced by third parties at issue here are autopsy documents and other documents concerning the death of victims. 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 W04826, a forensic pathologist who qualifies as an

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<sup>61</sup> Supplemental Response, paras 1, 12.

<sup>62</sup> See above paras 18-19

<sup>63</sup> Order on the Conduct of the Proceedings, para. 123.

<sup>64</sup> See e.g. ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Trial Chamber III, [Decision on Admission of Evidence Presented During the Testimony of András Riedlmayer](#), 14 April 2010, para. 19.

<sup>65</sup> ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber, [Decision on Deference Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting his Reports](#), 19 October 2012, para. 12.

expert within the meaning of Rule 149,<sup>66</sup> was entitled to consult and assess in preparing his Expert Report. The Panel is therefore satisfied that W04826 possesses specialised knowledge on the proposed evidence to assist the Panel on matters relating to autopsy reports and other documents concerning the death of victims.

31. Regarding the Defence's objections to the admission of witness statements of third parties, the Panel recalls that a 'statement' pursuant to the SC's legal framework is a record, in whatever form, of what the witness said in respect of facts and circumstances relevant to the case in the context of a criminal investigation or proceeding.<sup>67</sup> The items in question are autopsy reports and other documents concerning the deaths of victims. They are not a record of what a witness has said, and therefore do not fall under Rules 153-155's admissibility requirements.

32. Regarding the Defence's objections to the admission of autopsies with contradicting information, the Panel notes that, to the extent that any item of evidence is contradicted by other evidence, the Panel may consider the impact that this should have on the weight to be assigned when it conducts that assessment at the end of trial.<sup>68</sup>

33. Regarding the Defence's objections to the admission of unsigned documents, or documents signed on W04826 behalf, the Panel recalls that documents bearing no indication of a named source or other indicators of origin might be considered

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<sup>66</sup> Decision F02787, para. 30.

<sup>67</sup> 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 Thaçi Defence's Submissions Concerning Use of Prior Inconsistent Statements Pursuant to Rule 143(2)*, 15 February 2024, para. 15.

<sup>68</sup> F02283, Panel, *Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155*, 3 May 2024, confidential, para. 43 (a public redacted version was filed on the same day, F02283/RED).

to lack the requisite indicia of authenticity.<sup>69</sup> However, the fact that a document does not name a source, or that it is handwritten does not entail that there cannot be other indications as to who authored the item, or from where it originated.<sup>70</sup>

34. The Panel will now turn to the proposed Associated Source Material, with the exclusion of the items referred to in paragraphs 18-19 above, which the Panel will address in separate decisions. The Panel observes that some of that material is exhumation evidence, anthropological evidence, DNA evidence, and related evidence, which fall outside W04826's direct area of expertise and are not referred to in his Expert Report.<sup>71</sup> Consequently, the Panel denies admission of those portions of the Associated Source Material. The Panel further notes that a number of pages of the tendered Associated Source Material, though falling within

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<sup>69</sup> F02951, Panel, *Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request* ("Decision on Llap Zone Bar Table Motion"), 21 February 2025, para. 23; First Bar Table Decision, para. 59.

<sup>70</sup> Decision on Llap Zone Bar Table Motion, para. 23.

<sup>71</sup> 031049-031095, pp. 031072-031074, 031092-031093; SITF00167694-00167703 RED, pp. SITF00167697-SITF00167700; SITF00167626-00167634 RED, pp. SITF00167629-SITF00167630; SPOE00068589-00068605, pp. SPOE00068589, SPOE00068599; SPOE00068606-00068615, p. SPOE00068606; SPOE00068616-00068623, p. SPOE00068616; SPOE00212901-SPOE00212906 RED, p. SPOE00212903; SPOE00213012-SPOE00213036 RED, p. SPOE00213033; SITF00062883-SITF00062887 RED, p. SITF00062885; SPOE00068643-00068651, p. SPOE00068643; SPOE00068652-00068660, p. SPOE00068652; SPOE00068687-00068696, p. SPOE00068687; SPOE00068697-00068706, p. SPOE00068697; SPOE00068707-00068710, p. SPOE00068707; SPOE00068679-00068686, p. SPOE00068679; SPOE00213050-SPOE00213055 RED, p. SPOE00213052; SPOE00212917-SPOE00212929, p. SPOE00212926; SPOE00212786-00212799 RED, p. SPOE00212796; SPOE00212987-SPOE00213007, p. SPOE00213004; SPOE00213056-00213066 RED, p. SPOE00213063; SPOE00212836-SPOE00212847, p. SPOE00212844; SPOE00068711-00068728, p. SPOE00068711; SPOE00068582-00068588 RED, p. SPOE00068582; SPOE00068575-00068581 RED, p. SPOE00068575; 019284-019290 RED, p. 019287; SPOE00068547-00068553, p. SPOE00068547; 019297-019303 RED, p. 019300; SPOE00068521-00068527, p. SPOE00068521; SPOE00068515-00068520, p. SPOE00068515; SITF00168743-00168749 RED, p. SITF00168746; SPOE00068493-00068499 RED, p. SPOE00068493; SPOE00068554-00068560 RED, p. SPOE00068554; SITF00169843-00169851 RED, pp. SITF00169846-SITF00169848; SPOE00071376-00071442 RED2, pp. SPOE00071418-SPOE00071431; SPOE00071973-00072032, pp. SPOE00071996-SPOE00072004; SPOE00072456-00072525 RED2, pp. SPOE00072466-SPOE00072469, SPOE00072472-SPOE00072483; SPOE00071462-00071538 RED2, pp. SPOE00071487-SPOE00071501; SPOE00072678-00072750 RED2, pp. SPOE00072682-SPOE00072683, SPOE00072703-SPOE00072706, SPOE00072709-SPOE00072716; SPOE00071692-00071751 RED2, pp. SPOE00071700-SPOE00071701, SPOE00071740-SPOE00071751; SPOE00072570-00072617, pp. SPOE00072581-SPOE00072584; SPOE00325698-00325769, pp. SPOE00325739-SPOE00325745, SPOE00325757-SPOE00325758.



W04826's area of expertise, are not mentioned in the Expert Report.<sup>72</sup> The Panel is therefore of the view that such pages form neither an indispensable nor an inseparable part of the Expert Report. Consequently, the Panel denies admission into evidence of the portions of the Associated Source Material identified in this paragraph ("Pages").

35. The Panel observes that the remainder of the Associated Source Material ("Remaining Material") consists of autopsy reports and other documents concerning the death and mistreatment of alleged victims, and was referenced in the Expert Report or is related to documents which are referred therein. The Panel considers that the Remaining Material therefore constitutes an indispensable and inseparable part of W04826's Expert Report, as, without it, the relevant portions of the Expert Report would become incomprehensible or of lesser probative value. The Panel is also satisfied that the Remaining Material: (i) is relevant and provides relevant context to the Expert Report; (ii) bears sufficient indicia of *prima facie* authenticity; and (iii) is probative, and its probative value is not outweighed by its prejudicial effect, considering that the Defence was able to cross-examine W04826 extensively on these items.

36. Accordingly, the Panel finds that, with the exception of the Pages which have been rejected by the Panel,<sup>73</sup> the Remaining Material is admissible pursuant to Rules 138.

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<sup>72</sup> 031049-031095, pp. 031094-031095; SITF00019134-SITF00019150 RED, pp. SITF00019134-SITF00019135; SPOE00071376-00071442 RED2, pp. SPOE00071437-SPOE00071438; SPOE00071973-00072032, pp. SPOE00071973-SPOE00071987; SPOE00072456-00072525 RED2, pp. SPOE00072456-SPOE00072461, SPOE00072464-SPOE00072465; SPOE00071462-00071538 RED2, pp. SPOE00071462-SPOE00071465, SPOE00071483-SPOE00071486, SPOE00071535-SPOE00071538; SPOE00072678-00072750 RED2, pp. SPOE00072678-SPOE00072681, SPOE00072699-SPOE00072702, SPOE00072707-SPOE00072708; SPOE00071692-00071751 RED2, pp. SPOE00071692-SPOE00071696, SPOE00071702-SPOE00071703, SPOE00071706-SPOE00071710; SPOE00072570-00072617, pp. SPOE00072570-SPOE00072573, SPOE00072617.

<sup>73</sup> See above para. 34.



37. *W04826's Associated Exhibits.* The Panel observes that W04826's Associated Exhibits consists of: (i) W04826's CV; (ii) the SPO Letter of Instruction; and (iii) markings made by W04826 during the SPO's examination-in-chief on 27 January 2025 ("Markings").<sup>74</sup>

38. W04826's CV was discussed with W04826 during his examination-in-chief<sup>75</sup> The Panel considers that the CV constitutes an indispensable and inseparable part of W04826's testimony, as, without it, the relevant portions of the testimony would become incomprehensible or of lesser probative value. The Panel is satisfied that W04826's CV is relevant as it outlines W04826's qualifications and experience. The Panel is also satisfied of the *prima facie* authenticity and probative value of the W04826's CV, as W04826 confirmed that this was his CV as well as the truth of its content.<sup>76</sup> The Panel is also satisfied that the CV has probative value, which is not outweighed by any prejudice to the Accused, as the Defence was able to cross-examine W04826 extensively and does not object to its admission. Accordingly, the Panel finds that W04826's CV is admissible pursuant to Rule 138.

39. The SPO Letter of Instruction was discussed with W04826 during his examination-in-chief.<sup>77</sup> The Panel considers that the letter constitutes an indispensable and inseparable part of W04826's testimony, as, without it, the relevant portions of the testimony would become incomprehensible or of lesser probative value. The Panel is satisfied that the Letter of Instruction is relevant as the Expert Report was prepared by W04826 in accordance therewith. The Panel is also satisfied of the *prima facie* authenticity and probative value of the SPO Letter of Instruction considering that the item is dated,<sup>78</sup> signed,<sup>79</sup> and that W04826

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<sup>74</sup> REG01201-REG01201 (P02004 MFI); REG01202-REG01202 (P02005 MFI).

<sup>75</sup> Transcript of Hearing, 27 January 2025, pp. 24505-24506.

<sup>76</sup> Transcript of Hearing, 27 January 2025, pp. 24505-24506.

<sup>77</sup> Transcript of Hearing, 27 January 2025, pp. 24507-24508.

<sup>78</sup> SPO Letter of Instruction, p. 1.

<sup>79</sup> SPO Letter of Instruction, p. 2.

confirmed that he prepared the Expert Report in accordance with it.<sup>80</sup> The Panel is also satisfied that the SPO Letter of Instruction has probative value, which is not outweighed by any prejudice to the Accused, as the Defence was able to cross-examine W04826 extensively and as the Defence does not object to its admission. Accordingly, the Panel finds that the SPO Letter of Instruction is admissible pursuant to Rule 138.

40. The Markings were discussed with W04826 during his examination-in-chief.<sup>81</sup> The Panel considers that the item constitutes an indispensable and inseparable part of W04826's testimony, as, without it, the relevant portions of the testimony would become incomprehensible or of lesser probative value. Regarding relevance, the Panel is satisfied that the Markings are relevant insofar as they help to illustrate and explain W04826's findings. The Panel is also satisfied of the *prima facie* authenticity and probative value of the W04826's Markings considering that W04826 made these marks during his testimony.<sup>82</sup> The Panel is also satisfied that the Markings have probative value, which is not outweighed by any prejudice to the Accused, as the Defence was able to cross-examine W04826 extensively and does not object to the admission of W04826's Markings. Accordingly, the Panel finds that W04826's Markings are admissible pursuant to Rule 138. Their MFI status can therefore be vacated.

41. Accordingly, the Panel finds that, with the exception of the Pages which have been rejected by the Panel,<sup>83</sup> and the items which the Panel will address in its decisions on the admissibility on the evidence of W04875 and on SPO filing

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<sup>80</sup> Transcript of Hearing, 27 January 2025, p. 24507, lines 4-5.

<sup>81</sup> Transcript of Hearing, 27 January 2025, pp. 24515-24516, 24523-24524.

<sup>82</sup> Transcript of Hearing, 27 January 2025, pp. 24515-24516, 24523-24524.

<sup>83</sup> See *above* para. 34.

F02784,<sup>84</sup> the remainder of W04826's Proposed Evidence<sup>85</sup> is admissible pursuant to Rule 138.

42. For the purposes of clarity of the record, the Panel has listed all items it has decided to admit in the Disposition.

## V. CLASSIFICATION

43. The Panel notes that the Supplemental Response and Supplemental Reply were filed confidentially. The Panel notes the SPO's request that the Supplemental Reply be reclassified as public insofar as it does not contain any confidential information.<sup>86</sup> The Panel therefore: (i) orders the Defence to submit a public redacted version or request the reclassification of the Supplemental Response by no later than **Tuesday, 10 June 2025**; and (ii) directs the Registry to reclassify the Supplemental Reply as public.

44. The Panel instructs the Registry to assign confidential classification to the items admitted in paragraphs 27, 36, and 41, with the exclusion of W04826's CV, which can be classified as public.<sup>87</sup>

The Panel considers that, in order to ensure to the extent possible a public trial, the public should have access to redacted versions of W04826's Expert Report, W04826's CV, and the SPO Letter of Instruction. Therefore, the Panel orders the SPO to provide redacted versions of the W04826's Expert Report and the SPO 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.

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<sup>84</sup> See above paras 18-19.

<sup>85</sup> Cf. above footnotes 32, 27, 29, 71-72.

<sup>86</sup> Supplemental Reply, para. 13.

<sup>87</sup> See also Annex 2 to the Motion.

## VI. DISPOSITION

45. For these reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence W04826's Expert Report, W04826's CV, the SPO Letter of Instruction, and the following items, and any translations thereof, including any translations under paragraph 45(d): 031049-031095, pp. 031049-031071, 031075-031091; SITF00372709-00372732, pp. SITF00372721-SITF00372722; SITF00019134-SITF00019150 RED, pp. SITF00019136-SITF00019150; SITF00019793-00019810 RED; SITF00175086-SITF00175147, pp. SITF00175096-SITF00175104; SITF00167694-00167703 RED, pp. SITF00167694-SITF00167696, SITF00167701-SITF00167703; SITF00167626-00167634 RED, pp. SITF00167626-SITF00167628, SITF00167631-SITF00167634; 073685-073786 RED2, pp. 073695-073696, 073703-073704, 073711-073719; SPOE00068589-00068605, pp. SPOE00068590-SPOE00068598, SPOE00068600-SPOE00068605; SPOE00068606-00068615, pp. SPOE00068607-SPOE00068615; SPOE00068616-00068623, pp. SPOE0006817-SPOE00068623; SITF00200595-00200618 RED, pp. SPOE00200612-SPOE00200613; SPOE00212883-SPOE00212893 RED, pp. SPOE00212883-SPOE00212884, SPOE00212892-SPOE00212893; SPOE00212901-SPOE00212906 RED, pp. SPOE00212901-SPOE00212902, SPOE00212904-SPOE00212906; SPOE00213012-SPOE00213036 RED, pp. SPOE00213012-SPOE00213032, SPOE00213034-SPOE00213036; SPOE00068661-00068678, pp. SPOE00068663-SPOE00068664, SPOE00068667-SPOE00068668; SITF00062883-SITF00062887 RED, pp. SITF00062883-SITF00062884, SITF00062886-SITF00062887; SPOE00068643-00068651, pp. SPOE00068644-SPOE00068651; SPOE00068652-00068660, pp. SPOE00068653-SPOE00068660;

SPOE00068687-00068696, pp. SPOE00068688-SPOE00068696;  
 SPOE00068697-00068706, pp. SPOE00068698-SPOE00068706;  
 SPOE00068707-00068710, pp. SPOE00068708-SPOE00068710;  
 SPOE00068679-00068686, SPOE00068680-SPOE00068686; SPOE00213050-  
 SPOE00213055 RED, pp. SPOE00213050-SPOE00213051, SPOE00213053-  
 SPOE00213055; SPOE00212917-SPOE00212929, pp. SPOE00212917-  
 SPOE00212925, SPOE00212927-SPOE00212929; SPOE00212786-00212799  
 RED, pp. SPOE00212786-SPOE00212795, SPOE00212797-SPOE00212799;  
 SPOE00212987-SPOE00213007, pp. SPOE00212988-SPOE00213003,  
 SPOE00213005-SPOE00213007; SPOE00213056-00213066 RED,  
 pp. SPOE00213056-SPOE00213062, SPOE00213064-SPOE00213066;  
 SPOE00212836-SPOE00212847, pp. SPOE00212836-SPOE00212843,  
 SPOE00212845-SPOE00212847; SPOE00068711-00068728,  
 pp. SPOE00068712-SPOE00068728; SPOE00068582-00068588 RED,  
 pp. SPOE00068583-SPOE00068588; SPOE00068575-00068581 RED,  
 SPOE00068576-SPOE00068581; 019284-019290 RED, pp. 019284-019286,  
 019288-019290; SPOE00068547-00068553, pp. SPOE00068548-  
 SPOE00068553; 019297-019303 RED, pp. 019297-019299, 019301-019303;  
 SPOE00068521-00068527, pp. SPOE00068522-SPOE00068527;  
 SPOE00068515-00068520, pp. SPOE00068516-SPOE00068520;  
 SITF00168743-00168749 RED, pp. SITF00168743-SITF00168745,  
 SITF00168747-SITF00168749 RED; SPOE00068493-00068499 RED,  
 pp. SPOE00068494-SPOE00068499; SPOE00068554-00068560 RED,  
 pp. SPOE00068555-SPOE00068560; SITF00169843-00169851 RED,  
 pp. SITF00169843-SITF00169845, SITF00169849-SITF00169851;  
 SPOE00208422-00208440 RED, pp. SPOE00208436-SPOE00208440;  
 SPOE00071376-00071442 RED2, pp. SPOE00071376-SPOE00071417,  
 SPOE00071432-SPOE00071433, SPOE00071441-SPOE00071442;  
 SPOE00072033-00072033 until SPOE00072048-00072048; SPOE00071973-

00072032, pp. SPOE00071990-SPOE00071995, SPOE00072005-SPOE00072032; SPOE00072049-00072049 until SPOE00072071-00072071; SPOE00071953-SPOE00071972 pp. SPOE00071955-SPOE00071956; SPOE00072456-00072525 RED2, pp. SPOE00072470-SPOE00072471, SPOE00072484-SPOE00072525; SPOE00072239-00072239 until SPOE00072253-00072253; SPOE00071462-00071538 RED2, pp. SPOE00071466-SPOE00071469, SPOE00071472-SPOE00071474, SPOE00071477-SPOE00071482, SPOE00071502-SPOE00071534; SPOE00072193-00072193 until SPOE00072217-00072217; SPOE00072678-00072750 RED2, pp. SPOE00072684-SPOE00072690, SPOE00072693-SPOE00072698, SPOE00072717-SPOE00072750; SPOE00072264-00072264 until SPOE00072282-00072282; SPOE00071692-00071751 RED2, pp. SPOE00071697-SPOE00071699, SPOE00071704-SPOE00071705, SPOE00071711-SPOE00071739; SPOE00072219-00072219 until SPOE00072238-00072238; SPOE00072570-00072617, pp. SPOE00072574-SPOE00072580, SPOE00072585-SPOE00072616; SPOE00072254-00072254 until SPOE00072263-00072263; SITF00188171-00188185, pp. SITF00188171-SITF00188173, SITF00188175-SITF00188185; SPOE00325698-00325769, pp. SPOE00325704-SPOE00325705, SPOE00325706-SPOE00325721, SPOE00325737-SPOE00325738, SPOE00325746-SPOE00325752, SPOE00325755-SPOE00325756, SPOE00325759-SPOE00325764; REG01201-REG01201 (P02004 MFI); and REG01202-REG01202 (P02005 MFI);

- c) **REJECTS** the admission of the Pages, as identified in paragraph 34 above;
- d) **ORDERS** the SPO to identify and provide without delay any missing translations to W04826's Proposed Evidence;

- e) **INSTRUCTS** the Registry to assign exhibit numbers to, or, where applicable, remove the MFI marking from the items referred to in paragraph 45(b), linking the admitted Associated Source Material with the Expert Report as identified in footnote 32;
- f) **INSTRUCTS** the Registry to assign confidential classification to the items admitted in paragraph 45(b) above, with the exclusion of W04826's CV, which can be classified as public;
- g) **ORDERS** the SPO to submit public redacted versions of W04826's Expert Report and the SPO Letter of Instruction by no later than **Tuesday, 10 June 2025**;
- h) **DIRECTS** the Registry to: (i) assign the redacted versions of W04826's Expert Report and the SPO Letter of Instruction exhibit numbers matching the corresponding confidential versions; and (ii) classify those redacted versions as public;
- i) **ORDERS** the Defence to submit a public redacted version or request the reclassification of the Supplemental Response by no later than **Tuesday, 10 June 2025**; and
- j) **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.



### Explanatory Note:

In paragraph 45(b), references to 031049-031095, pp. 031049-031071, 031075-031091; SITF00372709-00372732, pp. SITF00372721-SITF00372722; SITF00019134-SITF00019150 RED, pp. SITF00019136-SITF00019150; and SITF00019793-00019810 RED were added.