



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2023-12

**The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,  
Isni Kilaj, Fadil Fazliu and Hajredin Kuçi**

**Before:** Single Trial Judge

Judge Christopher Gosnell

**Registrar:** Fidelma Donlon

**Date:** 22 April 2026

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Request for Admission of Report  
Prepared by Thaçi Defence Witness DHT-02**

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**Specialist Prosecutor**  
Kimberly P. West

**Specialist Counsel for Hashim Thaçi**  
Sophie Menegon  
Luka Mišetić

**Specialist Counsel for Bashkim Smakaj**  
Jonathan Rees  
Huw Bowden

**Specialist Counsel for Isni Kilaj**  
Iain Edwards  
Joe Holmes

**Specialist Counsel for Fadil Fazliu**  
David Young

**Specialist Counsel for Hajredin Kuçi**  
Alexander Admiraal

**THE SINGLE TRIAL JUDGE**, pursuant to Article 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rule 138 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers,<sup>1</sup> hereby issues this decision.

## I. PROCEDURAL BACKGROUND

1. On 2 April 2026, the Defence for Hashim Thaçi ("Thaçi Defence") requested, pursuant to Rule 138 and from the bar table, the admission of a report prepared by [REDACTED] ("DHT-02").<sup>2</sup> On the same day, pursuant to oral instructions from the Single Trial Judge,<sup>3</sup> the Thaçi Defence also filed a motion requesting, in the alternative, the admission of the report prepared by DHT-02 ("Report") pursuant to Rule 149.<sup>4</sup>

2. On 16 April 2026, the Specialist Prosecutor's Office ("SPO") responded to both requests.<sup>5</sup>

3. On 21 April 2026, the Thaçi Defence replied.<sup>6</sup>

## II. SUBMISSIONS

4. The Thaçi Defence characterises DHT-02 as "an expert in Kosovar law."<sup>7</sup> The Report is said to address "some of the provisions of the Kosovo Criminal

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<sup>1</sup> All references to "Article" and "Rule" shall be understood, unless otherwise indicated, as referring to the Law and Rules.

<sup>2</sup> KSC-BC-2020-12, F00839, Thaçi Defence, *Thaçi Defence Request for Admission of Document through the Bar Table* ("Bar Table Motion"), 2 April 2026, confidential, para. 16, with Annex 1, confidential, Item 78, listing DHT-02 Report ([REDACTED]).

<sup>3</sup> KSC-BC-2023-12, Transcript of Hearing, *Defence Preparation Conference*, 1 April 2026, p. 751, lines 22-24, public.

<sup>4</sup> KSC-BC-2020-12, F00840, Thaçi Defence, *Thaçi Defence Motion pursuant to Rule 149 and Associated Requests* ("Rule 149 Motion"), 2 April 2026, confidential. In the same motion, the Thaçi Defence also sought the admission of the report of witness DHT-03, which will be addressed in a separate decision.

<sup>5</sup> KSC-BC-2023-12, F00858, Specialist Prosecutor, *Prosecution Response to Thaçi Defence Requests Relating to DHT-02 and DHT-03* ("Response"), 16 April 2026, confidential.

<sup>6</sup> KSC-BC-2023-12, F00868, Thaçi Defence, *Thaçi Defence Reply to Prosecution Response to requests relating to DHT-02 and DHT-03*, 21 April 2026, confidential. ("Reply").

<sup>7</sup> Bar Table Motion, para. 33; Rule 149 Motion, para. 16 ("in Kosovan domestic law").

Code (“KCC”) which underpin the Indictment, and explain how these provisions are understood in Kosovar law, with references to domestic case law.”<sup>8</sup> The Report “essentially presents an overview of the relevant domestic case law, and it may assist the Single Trial Judge in its interpretation of the relevant provisions, being noted that the Kosovo Specialist Chambers are a hybrid court.”<sup>9</sup> The Report is said to be relevant to “arguments which the Defence will include in its closing brief.”<sup>10</sup> The Defence argues that while it is uncommon for [expert] reports on matters of law to be tendered before international criminal tribunals, doing so is not prohibited, and that the practice is common before domestic courts “on areas of law in which the judges lack expertise.”<sup>11</sup> The Defence cites to domestic caselaw in support of this proposition, and to purported examples of this practice before the Kosovo Specialist Chambers (“KSC”) and another international criminal tribunal.<sup>12</sup> The Defence emphasises that the Report does not provide “opinions regarding how the relevant provisions of Kosovar law apply to the alleged facts of the present case.”<sup>13</sup>

5. The Report is tendered, in the first instance, pursuant to Rule 138 from the bar table or, alternatively and upon the instructions of the Single Trial Judge, pursuant to Rule 149.<sup>14</sup>

6. The SPO opposes the admission of the Report on the basis that it “would usurp [the Single Trial Judge’s] functions as the ultimate arbiter of fact and law.”<sup>15</sup> Whereas the “[t]he interpretation and application of the Law is the core mandate” of the Single Trial Judge, the Report is said to be “in essence, a legal

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<sup>8</sup> Bar Table Motion, para. 33.

<sup>9</sup> Bar Table Motion, para. 33.

<sup>10</sup> Bar Table Motion, para. 33.

<sup>11</sup> Bar Table Motion, para. 34; Rule 149 Motion, para. 18.

<sup>12</sup> Bar Table Motion, para. 34; Rule 149 Motion, para. 18.

<sup>13</sup> Bar Table Motion, para. 35; Rule 149 Motion, para. 19.

<sup>14</sup> Rule 149 Motion, paras 2-3, 12 and 43.

<sup>15</sup> Response, para. 19.

opinion providing comment on the interpretation and application of the crimes and modes of liability charged in this case.”<sup>16</sup> The Single Trial Judge, it is submitted, “does not need – and cannot appropriately receive – the assistance of an outside ‘expert’ to interpret the Law or to dictate the manner in which it should be applied to ultimate issues in this case.”<sup>17</sup> The international caselaw cited by the Defence is said to be inapposite, as it does not “concern the interpretation of the Law over which they were the ultimate arbiter, but rather other matters of law outside the jurisdiction of the Panel, which did not concern substantive legal issues related to the specific crimes with which the Accused were charged.”<sup>18</sup> The SPO also questions DHT-02’s qualifications as an expert and requests that, if his Report is admitted, he appear as a witness and be subject to cross-examination.<sup>19</sup>

### III. APPLICABLE LAW

7. A Trial Panel may, pursuant to Article 40(6)(h), admit evidence prior to or during the trial. Rule 138 prescribes that “[u]nless challenged or *proprio motu* excluded”, evidence submitted by a party “shall” be admitted “if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect”. The decision whether to admit evidence “is one within the Trial Panel’s discretion in its assessment of the relevance, authenticity and probative value of the submitted evidence”.<sup>20</sup>

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<sup>16</sup> Response, para. 19.

<sup>17</sup> Response, para. 19.

<sup>18</sup> Response, paras 20-21.

<sup>19</sup> Response, para. 22.

<sup>20</sup> KSC-CA-2022-01, F00114, Court of Appeals Panel, [Appeal Judgment](#) (“Gucati and Haradinaj Appeal Judgment”), 2 February 2023, public, para. 35. See also KSC-CA-2023-02, F00038/RED, Court of Appeals Panel, [Public Redacted Version of Appeal Judgment](#) (“Mustafa Appeal Judgment”), 14 December 2023, public, para. 99 (“The Appeals Panel emphasises the broad discretion afforded to the Trial Panel in determining a document’s authenticity”); KSC-BC-2020-06, F03602, Trial Panel II, [Decision on Krasniqi Defence Second Application for Admission of Material through the Bar Table](#) (“Case 06 Decision F03602”), 1 December 2025, public, para. 28 (“the Panel is prepared, in the exercise of its discretion, to consider Proposed Exhibit 32 as relevant”).

8. Relevance “is assessed on the basis of whether the proposed evidence relates to elements of the offence(s) or mode(s) of liability pleaded in the indictment, or to other facts or circumstances material to the parties’ case”.<sup>21</sup> This connection must be more than “tenuous or remote”,<sup>22</sup> and the tendering party must “specify the relevance of the proposed exhibit”.<sup>23</sup>

9. Authenticity is the quality of a document being “what the moving party purports it to be”,<sup>24</sup> whether “in origin or authorship”.<sup>25</sup> *Prima facie* indications, not definitive proof, of authenticity are required for admissibility.<sup>26</sup> Indeed, other evidence may cast doubt on, or enhance, the authenticity of admitted evidence and impact on its weight.<sup>27</sup> The *prima facie* indications of authenticity

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<sup>21</sup> [Gucati and Haradinaj Appeal Judgment](#), para. 35.

<sup>22</sup> KSC-BC-2020-07, F00334, Trial Panel II, [Decision on the Prosecution Request for Admission of Items Through the Bar Table](#) (“Case 07 F00334 Bar Table Decision”), 29 September 2021, public, para. 12.

<sup>23</sup> KSC-BC-2023-12, F00642, Single Trial Judge, [Decision on the Conduct of Proceedings](#), 22 December 2025, public, para. 18(ii).

<sup>24</sup> International Criminal Tribunal for Rwanda (“ICTR”), *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, Trial Chamber, [Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole](#) (“*Bagosora et al.* 13 September 2024 Decision”), 13 September 2004, para. 8.

<sup>25</sup> [Case 07 F00334 Bar Table Decision](#), para. 13 (“Evidence is deemed to be authentic if it is what it professes to be in origin or authorship”).

<sup>26</sup> [Case 07 F00334 Bar Table Decision](#), para. 13 (“A *prima facie* case of authenticity must be made out in order for evidence to be deemed reliable so that it can be admitted”).

<sup>27</sup> KSC-BC-2020-06, F01596, Trial Panel II, [Second Decision on Specialist Prosecutor’s Bar Table Motion](#) (“Case 06 F01596 Bar Table Decision”), 9 June 2023, public, , paras 165-166 (“[t]he Panel considers that the documents are *prima facie* authentic. [...] The Panel notes, however, that the question of their authorship and whether signatures can be attributed to particular individuals is a matter to be established at trial [...]. All of these considerations impact the weight and probative value that the Panel might be prepared to give to any of these documents, unless corroborated and further contextualised”); KSC-BC-2020-05, F00281/RED, Trial Panel I, [Public redacted version of Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material](#) (“Case 05 Decision on Admission of Evidence”), 13 December 2021, public, para. 12 (“Absolute proof of authenticity is not required for admissibility, but is a matter for the weight of the evidence to be given by the Panel in its deliberations”); [Mustafa Appeal Judgment](#), para. 102 (“The Appeals Panel finds no error in the Trial Panel’s finding, which acknowledges the absence of certain features indicative of a document’s authenticity, but nevertheless finds sufficient indicia of authenticity to support its reliability”).

may be based on attributes intrinsic to the item itself,<sup>28</sup> or on other circumstances.<sup>29</sup>

10. Evidence is probative to the extent that it proves or disproves a fact or issue relevant to the case. This depends, in turn, on its reliability and its degree of relevance. Although this is primarily a question to be assessed in light of the totality of the evidence admitted, a *prima facie* showing of reliability is required.<sup>30</sup> Any probative value must not be outweighed by any prejudice arising from admission, which refers to unfairness or any other damage to the integrity of the proceedings, including prejudice which could arise from undermining the “effectiveness of the right of the Accused to confront the case that is presented against them”.<sup>31</sup>

11. Rule 138(1) applies to the admissibility of a report that reflects an expertise, regardless of whether Rule 149 also applies to the admission of that report. For the purpose of assessing admissibility, an expert has been described as:

“[A] person who by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute”. The purpose of expert testimony is to supply specialised knowledge that might assist the trier of fact in understanding the evidence before it; an expert witness offers a view based on specialised knowledge regarding a technical,

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<sup>28</sup> KSC-BC-2020-6, F03604, Trial Panel II, [Decision on Thaçi Defence Second Request for Admission of Documents Through the Bar Table](#), 1 December 2025, public, para. 23 (“the items contain[] either a logo or the name of the originating institution, seals, stamps and/or letterheads, the name of the author, and are dated. Some of these items are also signed”).

<sup>29</sup> [Case 07 F00334 Bar Table Decision](#), para. 13; [Bagosora et al. 13 September 2024 Decision](#), para. 8 (“Indicia of reliability which have justified admission of documents in the jurisprudence of the *ad hoc* Tribunals include: the place in which the document was seized, in conjunction with testimony describing the chain of custody since the seizure of the document; corroboration of the contents of the document with other evidence; and the nature of the document itself, such as signatures, stamps, or even the form of the handwriting”).

<sup>30</sup> [Case 07 F00334 Bar Table Decision](#), para. 14; [Case 05 Decision on Admission of Evidence](#), para. 13.

<sup>31</sup> [Case 06 F01596 Bar Table Decision](#), para. 84 (“‘Prejudice’ in this context does not refer to the evidential importance of a proposed item but to an unfairness that would arise from the admission of the document”); [Case 07 F00334 Bar Table Decision](#), para. 15 (“Prejudicial effect should not be confused with any negative impact on the Defence case; rather the admission of the item in question must adversely impact the fairness or expeditiousness of the proceedings”); [Case 05 Decision on Admission of Evidence](#), para. 14.

scientific or otherwise discrete set of ideas or concepts that is expected to fall outside the lay person's ken.<sup>32</sup>

12. The burden of satisfying these conditions rests with the tendering party. In order to establish that an expert opinion will assist a Panel of the KSC – i.e. that it has probative value – the tendering party must show that the opinion:

involves specialised knowledge or experience that renders the individual concerned capable of providing evidence which would otherwise be outside the experience and knowledge of the Panel. In this sense, the purpose and justification for expert evidence is to enlighten or assist the Panel with specialised knowledge which the Panel does not possess. Such specialised knowledge constitutes not just a pre-requisite for the possibility of expert evidence but also constitutes an intrinsic limitation upon it. Expert evidence is indeed confined to the area or areas of the expert's specialised knowledge and may not in principle stray outside that field of expertise. If the evidence proposed to be elicited from an expert is within the knowledge of the Panel, or the issue is one which the court can decide of its own experience, expert evidence may not be admitted. Therefore, expert evidence is not to be relied upon in order to place before the Panel facts or circumstances, which it could determine for itself or to guide that Panel upon matters which it was within the ordinary capacity of the judges to determine for themselves.<sup>33</sup>

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<sup>32</sup> [Case 06 Decision on Expert Reports](#), para. 22. See also KSC-BC-2020-06, IA040/F00011, Court of Appeals Panel, [Decision on Joint Defence Consolidated Appeal against Decisions F03201, F03202, F03203, F03211 and F03213](#), 8 October 2025, public, para. 35 (in the context where Rule 149 did not apply directly, “[t]he Panel notes, however, that the definition of an expert witness has been uniformly recognised in the jurisprudence of international courts and tribunals as a person who is qualified by knowledge, skill, experience, training or education to provide a scientific, technical, or other specialised opinion about the evidence or a fact at issue, in order to assist the court in understanding the evidence before it”).

<sup>33</sup> KSC-BC-2020-07, F00470, Trial Panel II, [Decision on Prosecution Requests in Relation to Proposed Defence Witnesses](#) (“*Gucati & Haradinaj* Decision on Defence Witnesses”), 3 December 2021, public, para. 66. See also KSC-BC-2020-07, IA006/F00006, Court of Appeals Panel, [Decision on Nasim Haradinaj's Appeal against Decision on Prosecution Requests in Relation to Proposed Defence Witnesses](#), 7 January 2022, para. 26 (“The Panel further notes that when determining the admissibility of an expert report or testimony, a panel, in addition to being satisfied that the proposed witness has the requisite qualifications to be deemed an expert, must determine that the proposed testimony: (i) would be of assistance; (ii) falls within the expertise of the witness; and (iii) does not usurp the functions of the panel as the ultimate arbiter of fact and law.”)

#### IV. DISCUSSION

13. Expert opinions on the law of the forum jurisdiction have been deemed inadmissible by international courts because they fall “directly within the competence” of the judges and, therefore, would not “enlighten the Trial Chamber on specific issues of a technical nature that are outside of its experience and knowledge.”<sup>34</sup> Even when one such legal opinion was characterised as concerning more broadly the “historical-legal evolution of genocide at the intersection of the law of state responsibility and individual criminal responsibility”, the Appeals Chamber of the ICTY upheld a Trial Chamber’s decision not to admit the report on the basis that this subject-matter “fell squarely within the field of customary international law, which the Tribunal constantly applies” and that “trial chambers have the discretion to bar the testimony of an expert witness called to give evidence on legal matters.”<sup>35</sup>

14. Some issues may arise that involve consideration of legal matters that do not fall squarely within the applicable law of the forum jurisdiction. Where a report “pertain[s] to foreign law or law outside of the expertise of the Panel,”<sup>36</sup> then it may be received as an expert opinion. Indeed, “foreign law” (that is, law other than that of the forum jurisdiction) may be indirectly relevant to the proper interpretation of the law of the forum jurisdiction. Hence, an expert opinion on the domestic law of a State Party was admitted at the International Criminal Court (“ICC”) when the Trial Chamber considered it relevant to the application of an internationally recognised human right under Article 69(7) of

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<sup>34</sup> International Criminal Tribunal for the Former Yugoslavia (“ICTY”), *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, [Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas](#) (“Popović Decision”), 1 July 2008, public, para. 8; *Prosecutor v. Stakić*, [Judgment](#) (“Stakić Appeal Judgment”), IT-97-24-A, 22 March 2006, para. 164 (“The Appeals Chamber agrees with the Trial Chamber that there was no justification for the introduction of expert testimony as to issues of international criminal law”).

<sup>35</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, [Appeal Judgment](#), 30 January 2015, para. 79.

<sup>36</sup> See [Gucati & Haradinaj Decision on Defence Witnesses](#), para. 97.

the Rome Statute to an investigation conducted in that State Party.<sup>37</sup> Similarly, at the ICTY, an expert opinion on the domestic law of a State was received for the purported purpose of assisting the judges to come to a proper view concerning the existence of customary international law through domestic practice.<sup>38</sup> Discretion plays a significant role in these assessments. In the latter case, the Appeals Chamber held that it was within the Trial Chamber's discretion to deny the admission of a second such expert report, where one had already been admitted for that purpose.<sup>39</sup>

15. In the *Gucati & Haradinaj* case, Trial Panel II admitted an expert report concerning "whistleblowing law and practice".<sup>40</sup> The author, who was a qualified lawyer in England, offered her opinion concerning the international definition of "whistleblower" based on a variety of different legal systems as well as her knowledge of its practical application working with a "network of non-profit organisations and civil society experts working around the world to protect whistleblowers."<sup>41</sup> Trial Panel II admitted the report, in part, on the basis that it was "evidence that *could* assist in providing for an understanding of the legal parameters" of the notion of "public interest," which could have a bearing

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<sup>37</sup> ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, ICC-01/05-01/13-1622, [Decision on Prosecution's Motion to Exclude the Testimony of Witness D23-1 and the Submission of his Report](#), 11 February 2016, public, para. 12 ("[f]urther, the Prosecution itself notes that '[A]rticle 69(7) may require a determination on national law such as where, as presumably suggested here, Mangenda asserts a violation of the right to privacy").

<sup>38</sup> See [Stakić Appeal Judgment](#), para. 164 (finding that there was "no justification for the introduction of expert testimony as to issues of international criminal law; the Trial Chamber was perfectly competent to pronounce on such issues without the assistance of a legal expert").

<sup>39</sup> [Stakić Appeal Judgment](#), para. 164 ("To the extent that the Appellant sought to introduce expert testimony as to domestic constitutional issues such as the legal obligations of the Crisis Staff, it would have been within the Trial Chamber's discretion to admit such testimony. However, particularly given that the Trial Chamber had already admitted, upon the Appellant's request, the report of Professor Nikolic on these issues, it was reasonable for the Trial Chamber to conclude that it was not necessary to hear further expert testimony.")

<sup>40</sup> KSC-BC-2020-07, *The Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj* ("*Gucati & Haradinaj* case"), F00376/A01, Specialist Counsel, *Submission of Expert Report from the Defence for Mr. Haradinaj* ("Myers Report"), 15 October 2021, public, Heading I.

<sup>41</sup> Myers Report, paras 7, 22-40.

on the proper interpretation of Article 200(4) of the KCC or the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, both of which were directly applicable law in the forum.

16. Although the Thaçi Defence argues that this demonstrates that the Panel was willing to receive expert opinions on Kosovo law,<sup>42</sup> the decision actually stands for the proposition that a Panel of the KSC, in applying Kosovo law, may be assisted by an expert opinion on a highly specialised area of international law, at least in the specific circumstances presented in that case.

17. In the *Mustafa* case, Trial Panel I commissioned, apparently *proprio motu*, expert reports “to clarify whether national courts in Kosovo offer a realistic avenue for the victims [...] to claim reparations and, if reparations would be granted by judgments issued by national courts in Kosovo, to have such judgments enforced.”<sup>43</sup> The Panel did so in order to make a determination, before the start of trial proceedings, whether it should design its proceedings from the outset in order to be able to issue a reparations order under Article 22(7) and (8) or, in the alternative, to refrain from such a reparations order and leave this to further adjudication before Kosovo courts under Article 22(9).<sup>44</sup> The Panel’s primary concern was not legal interpretation, but rather whether there was, in practice, a “realistic avenue” for obtaining such reparations. The expert reports addressed “both legal and practical difficulties”; “the level of corruption among court staff”, both real and perceived; and made a prospective assessment that “existing judicial practice and the attitude towards the [K]SC do not suggest that the judicial or administrative authorities will be willing to compensate the victims who may be granted such status in

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<sup>42</sup> Rule 149 Motion, para. 18; Reply, para. 40.

<sup>43</sup> *The Specialist Prosecutor v. Salih Mustafa*, KSC-BC-2020-05, F00124, Trial Panel I, [Decision on the Appointment of Expert\(s\)](#), 20 May 2021, public, para. 20 (“*Mustafa* Decision on Experts”).

<sup>44</sup> [Mustafa Decision on Experts](#), paras. 10-15, 19.

judgments rendered by the [K]SC.”<sup>45</sup> The third expert report, in particular, noted “the poor performance of the judicial authorities with regard to the exercise of the right to compensation in war crimes cases, *despite the existence of relatively well-developed laws pertaining to this issue*”, “backlogs and delays”, “corruption”, and “political interference”.<sup>46</sup> Accordingly, although it is true that these expert reports included some discussion concerning Kosovo law, they also involved a substantial evaluation of practical implementation. Furthermore, they concerned an area of Kosovo law that would not be applied directly by the KSC.

18. The report prepared by DHT-02 differs significantly from the expert reports admitted in *Gucati & Haradinaj* and *Mustafa*. It addresses exclusively the proper legal interpretation of certain KCC provisions. Those provisions – namely, Articles 392 and 401 of the KCC,<sup>47</sup> whose violation is charged under Counts 1, 2, 3, 4, 5, 6, 7, 12, 14, and 16 of the Amended Confirmed Indictment<sup>48</sup> – are the very provisions to be applied in the present case. The Report also addresses the legal interpretation of commission, attempt, incitement, and agreement,<sup>49</sup> each of which are forms of participation charged in the Amended Confirmed Indictment.<sup>50</sup> Furthermore, the Report applies a strictly legal methodology, relying on sources such as “case law”,<sup>51</sup> “legal scholarship”,<sup>52</sup> and “principles of criminal law”.<sup>53</sup> The Report even purports to comment upon, and critique, caselaw of the KSC.<sup>54</sup>

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<sup>45</sup> KSC-BC-2020-05, F00310/RED, Trial Panel I, *Public Redacted Version of Decision on the Application of Article 22(9) of the Law, Setting Further Procedural Steps in the Case, and Requesting Information* (“Decision F00310”), 18 March 2022, public, paras 20-22.

<sup>46</sup> Decision F00310, para. 22 (italics added).

<sup>47</sup> Report, paras 1-26.

<sup>48</sup> KSC-BC-2023-12, F00254/A02, Specialist Prosecutor, *Public Redacted Version of Amended Confirmed Indictment* (“Amended Confirmed Indictment”), 16 April 2025, public.

<sup>49</sup> Report, paras 27-49.

<sup>50</sup> Amended Confirmed Indictment, paras 36-43.

<sup>51</sup> See e.g. Report, paras 30, 34-36, 47, 48.

<sup>52</sup> See e.g. Report, paras 7, 18, 19, 31, 40.

<sup>53</sup> See e.g. Report, para. 8.

<sup>54</sup> Report, paras 39-41.

19. These are not matters of “foreign law” (as in the *Gucati & Haradinaj* case), and they do not involve practical assessments of the situation on the ground in Kosovo (as in the *Mustafa* case). The substantive criminal law applicable in this case consists of the very provisions of the KCC analysed in the Report. Issues of the proper interpretation of that law are, accordingly, not issues of fact or of foreign law, but issues of the law to be applied by the Single Trial Judge. Proof of that law is to be established through cogent and persuasive legal argument, including based on sources such as case law, legal scholarship and principles of criminal law, rather than presentation of evidence.

20. Neither the purported novelty of the legal issues<sup>55</sup> nor the absence from the bench of a jurist qualified in Kosovo<sup>56</sup> justify the admission of the Report as an expert opinion. Novel legal issues can, and should, be addressed through legal submissions. Any purported lack of familiarity by international judges with applicable Kosovo law is appropriately addressed not through an expert report, but through comprehensive and well-substantiated legal submissions as the Parties may deem appropriate in the circumstances.<sup>57</sup>

21. The domestic civil cases cited by the *Thaçi* Defence appear to be consistent with, rather than contrary to, the principle that expert opinions on the law of the forum jurisdiction are inappropriate. The English cases cited demonstrate that courts may utilise expert evidence on matters of foreign law where the applicable substantive law, for one reason or another, was not the law of the

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<sup>55</sup> Reply, para. 43.

<sup>56</sup> Bar Table Motion, para. 34; Reply, para. 42.

<sup>57</sup> See e.g. [Popović Decision](#), para. 8 (“[...]this finding is without prejudice to the use which may be made of the Report in the course of argument or within Final Briefs”); ICTR, *The Prosecutor v. Ferdinand Nihimana et al.*, ICTR-99-52-T, Trial Chamber I, [Decision to Reconsider the Trial Chamber’s Decision of 24 January 2003 on the Defence Expert Witnesses](#), 25 February 2003, public, p. 4 (“The Chamber is not persuaded to change its earlier assessment that Professor Baker’s testimony covers law-related issues for interpretation by the Chamber and that should appropriately be addressed in Counsel’s Closing Brief”).

forum.<sup>58</sup> The Hong Kong cases also appear to involve issues of foreign law deemed relevant to the proper interpretation or application of Hong Kong law. This was the case, for example, in the *Yau Yee Ping* case, which involved the interpretation of a specific term used in Hong Kong law (“concubine”) whose historical origins in Chinese law were considered relevant to its potential interpretation under Hong Kong law.<sup>59</sup> Such situations of the indirect relevance of foreign law are not uncommon in civil proceedings, and do not undermine the principle that expert opinions concerning the law of the forum jurisdiction are generally inappropriate.

22. Accordingly, the Single Trial Judge considers that the Report is inappropriate for admission pursuant to Rule 138(1), as it lacks probative value as required under that provision. As the general admissibility requirements under Rule 138 also apply to evidence tendered under Rule 149, the Single Trial Judge does not consider it necessary to address the separate applicability of Rule 149 to the Report.

23. The Single Trial Judge emphasises again the importance of receiving comprehensive submissions on the matters that are addressed in the Report, and that the page limits for final trial briefs will be determined accordingly.

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<sup>58</sup> UK Privy Council, *Perry v Lopag Trust* (No. 2) [2023] UKPC 16; UK Privy Council, *Alhamrani v Alhamrani* [2014] UKPC 37; Court of Appeal of England and Wales, *MCC Proceeds Inc v Bishopsgate Investment Trust Plc (No. 4)* [1999] CLC 417; High Court of England and Wales, *Banco Santander Totta SA v Companhia De Carris De Ferro De Lisboa SA* [2016] EWHC 465 (Comm).

<sup>59</sup> Hong Kong Court of Final Appeal, *Suen Toi Lee v Yau Yee Ping* [2002] 1 HKLRD 197; Hong Kong Court of First Instance, *Tang Chun Kit v Tang Lo Ping* [2004] HKEC 1105; Hong Kong Court of Appeal, *Tang Che Tai v Tang On Kwai* [2008] HKEC 143.

V. DISPOSITION

24. For the above reasons, the Single Trial Judge hereby:

**DENIES** admission of the Report (Item 78 of the Bar Table Motion).



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**Judge Christopher Gosnell**  
**Single Trial Judge**

Dated this Wednesday, 22 April 2026

At The Hague, the Netherlands.