



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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

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**Public Redacted Version of
Decision on Remand on Admission of Expert Evidence of Witness 8**

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THE SINGLE TRIAL JUDGE, pursuant to Rules 137(2), 138 and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers,¹ hereby issues this decision.

I. PROCEDURAL BACKGROUND

1. On 15 December 2025, the Specialist Prosecutor's Office ("SPO") requested the admission of Witness 8's expert report and associated materials ("Report" and "Associated Materials") pursuant to Rules 138 and 149.²

2. On 5 January 2026, the Defence for Hashim Thaçi ("Mr Thaçi") ("Thaçi Defence"), the Defence for Bashkim Smakaj ("Mr Smakaj") ("Smakaj Defence") and the Defence for Isni Kilaj ("Mr Kilaj") ("Kilaj Defence") (collectively, "the Defence") responded, arguing that the Single Trial Judge should defer his decision on the qualification of Witness 8 (or "Mr Herlaar") as an expert and on the admission of his Report until after his examination in court, and requested the opportunity to make further submissions on the admissibility of the witness' evidence after his testimony had been heard.³

3. On 26 January 2026, the Single Trial Judge issued his "Interim Decision on Prosecution Motion for Admission of Evidence of Witness 8", deferring his decision on Witness 8's qualifications as an expert and the admissibility of the Report and Associated Materials until after his testimony.⁴

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

² KSC-BC-2023-12, F00620/RED, SPO, *Public Redacted Version of Prosecution Response to Filing F00586 and Motion for Admission of Evidence of Witness 8* ("SPO Witness 8 Motion"), 15 December 2025, confidential, with Annex 1, confidential (public redacted version filed on 7 January 2026, F00620/RED). The abbreviations "Witness 8's evidence" or "Mr Herlaar's evidence" will be used interchangeably to refer to Witness 8's Report and testimony.

³ KSC-BC-2023-12, F00648, Defence, *Joint Defence Response to Prosecution Motion for Admission of Evidence of Witness 8* (F00620), 5 January 2026, public, para. 7.

⁴ KSC-BC-2023-12, F00691, Single Trial Judge, [*Interim Decision on Prosecution Motion for Admission of Evidence of Witness 8*](#) ("Interim Decision"), 26 January 2026, public, paras 10-11, 14(a).

4. Witness 8 testified from 3 to 4 March 2026.⁵
5. On 27 March 2026, having received further submissions from the Defence and the SPO, the Single Trial Judge issued the “Decision on the Admission of Expert Evidence of Witness 8”, in which he denied admission of Witness 8’s Report, Associated Exhibits and related testimony.⁶ More specifically, the Single Trial Judge found that Witness 8’s evidence did not meet the standard for admission on the basis of: (i) an absence of transparency in the methodology applied by Mr Herlaar;⁷ (ii) a refusal by Mr Herlaar during his testimony to answer certain questions relevant to his Report;⁸ and (iii) a failure to establish that the methodology applied in the Report was a reflection of an expertise.⁹
6. On 9 April 2026, the SPO filed a request for certification to appeal the First Decision.¹⁰ On 20 April 2026, the Defence responded jointly and the SPO replied on 28 April 2026.¹¹
7. On 29 April 2026, the Single Trial Judge granted the SPO’s leave to appeal the First Decision on three grounds.¹²
8. On 30 June 2026, the Court of Appeals Panel (“Appeals Panel”) rendered its “Decision on Specialist Prosecutor’s Appeal Against Decision on Admission of Expert Evidence of Witness 8”, granting the SPO’s appeal in part and

⁵ T. 3 March 2026, 490:13-599:7; T. 4 March 2026, 602:6-656:14.

⁶ KSC-BC-2023-12, F00825, Single Trial Judge, *Decision on the Admission of Expert Evidence of Witness 8* (“First Decision”), 27 March 2026, confidential (public redacted version filed on 1 May 2026, [F00825/RED](#)).

⁷ First Decision, paras 25-32, 63.

⁸ First Decision, paras 33-51, 63.

⁹ First Decision, paras 56-62, 63.

¹⁰ KSC-BC-2023-12, F00851, Specialist Prosecutor, *Prosecution Request for Leave to Appeal Decision F00825*, 9 April 2026, confidential (public redacted version filed on 4 May 2026, F00851/RED).

¹¹ KSC-BC-2023-12, F00867, Defence, *Joint Defence Response to Prosecution Request for Leave to Appeal Decision on the Admission of Expert Evidence of Witness 8*, 20 April 2026, confidential (public redacted version filed on 5 May 2026, F00867/RED); F00885, Specialist Prosecutor, *Prosecution Reply to the Joint Defence Response F00867*, 28 April 2026, confidential (public redacted version filed on 4 May 2026, F00885/RED).

¹² KSC-BC-2023-12, F00888, Single Trial Judge, *Decision on Prosecution Request for Leave to Appeal Decision F00825*, 29 April 2026, confidential (public redacted version filed on 6 May 2026).

remanding the issue of the admissibility of Witness 8's evidence to the Single Trial Judge in accordance with its directions.¹³

9. On 1 July 2026, the Single Trial Judge invited the Parties to make additional submissions concerning the admissibility of Witness 8's evidence in light of the Appeal Decision by 6 July 2026, at 4:00 p.m.¹⁴

10. On 5 and 6 July 2026, the Smakaj Defence,¹⁵ the SPO,¹⁶ and the Thaçi and Kilaj Defence filed additional submissions.¹⁷

II. SUBMISSIONS

A. SPO

11. The SPO submits that, following the Appeal Decision, the Single Trial Judge should admit Witness 8's evidence, including his expert testimony, his Report, and Associated Materials.¹⁸ The SPO asserts that Mr Herlaar's evidence falls within the scope of his expertise, which is confirmed by the application of the additional factors identified in the Appeal Decision.¹⁹ Furthermore, the SPO argues that the Appeal Decision is "directly dispositive" in respect of several aspects of the Rule 138(1) assessment, leading to the conclusion that the evidence meets the

¹³ KSC-BC-2023-12, IA009-F00005/RED, Court of Appeals Panel, [Public Redacted Version of Decision on Prosecution Request for Leave to Appeal Decision F00825](#) ("Appeal Decision"), 30 June 2026, public, paras 99-100.

¹⁴ KSC-BC-2023-12, F00942, Single Trial Judge, [Order for Additional Submissions](#), 1 July 2026, public; see also CRSPD 326, *Email from Single Trial Judge to Parties re Defence Request for Extension of Time to File Additional Submissions*, 1 July 2026, confidential.

¹⁵ KSC-BC-2023-12, F00944, Smakaj Defence, *Smakaj Further Submissions Re F00942* ("Smakaj Submissions"), 5 July 2026, confidential.

¹⁶ KSC-BC-2023-12, F00946, Specialist Prosecutor, *Prosecution Submissions Pursuant to Order F00942* ("SPO Submissions"), 6 July 2026, confidential.

¹⁷ KSC-BC-2023-12, F00947, Thaçi and Kilaj Defence, *Joint Thaçi and Kilaj Defence Supplemental Submissions regarding the Admissibility of the Evidence of Witness 8* ("Joint Thaçi and Kilaj Submissions"), 6 July 2026, confidential.

¹⁸ SPO Submissions, paras 2, 14.

¹⁹ SPO Submissions, paras 3-4.

requirement of *prima facie* reliability.²⁰ Furthermore, applying the Appeal Panel's guidance on matters to be excluded from consideration, taking account of the "low threshold of transparency required",²¹ and given the specific factors identified in the Appeal Decision that counteract any potential prejudice arising from Mr Herlaar's refusal to answer questions, the probative value of Witness 8's evidence is not outweighed by any prejudice.²²

B.DEFENCE

12. The Thaçi and Kilaj Defence jointly submit that the Appeal Decision leaves open the questions of: (i) whether the content of Witness 8's Report falls within and is confined to the witness's experience; (ii) the reliability, relevance and probative value of Witness 8's evidence under Rule 138(1); (iii) whether prejudice was caused to the Defence because of Mr Herlaar's refusal to answer questions, even leaving aside the impact of the absence of a Rule 107 application by the SPO; and (iv) the balancing of any prejudice against the probative value of Witness 8's evidence in accordance with Rule 138(1).²³ It maintains that Mr Herlaar's evidence falls outside the scope of an accepted expertise.²⁴ It also argues that even if "microdot analysis" constitutes an expertise as such, that the core premise validating Mr Herlaar's results – namely that [REDACTED] – is not itself a reflection or product of any expertise, but is rather [REDACTED].²⁵ [REDACTED] is a basis for his Report which falls outside his expertise as such, notwithstanding [REDACTED].²⁶ The Thaçi and Kilaj Defence also argues that Mr Herlaar's refusal to answer questions caused prejudice, even leaving aside the issue, as instructed by the Appeal Decision, of whether the SPO had failed in an obligation to seek advance authorisation for those

²⁰ SPO Submissions, para. 5.

²¹ SPO Submissions, para. 8.

²² SPO Submissions, paras 8-12.

²³ Joint Thaçi and Kilaj Submissions, para. 13.

²⁴ Joint Thaçi and Kilaj Submissions, para. 15.

²⁵ Joint Thaçi and Kilaj Submissions, paras 16-17.

²⁶ Joint Thaçi and Kilaj Submissions, para. 20.

refusals.²⁷ The Appeal Decision is said to have recognised that at least some of the questions that Mr Herlaar refused to answer were relevant to his analysis,²⁸ and those refusals pertained to matters that were essential to his ultimate conclusion.²⁹ The Single Trial Judge is said to possess a discretion to exclude evidence where confidentiality conditions unfairly limit the Defence ability to challenge the reliability of a witness's testimony.³⁰

13. The Smakaj Defence argues that the Appeals Panel did not find that the evidence of Witness 8 was admissible, that it had any probative value, or that the Defence had suffered no prejudice as a result of Witness 8's refusal to answer certain questions during his testimony.³¹ A number of factual findings, with which the Appeal Decision did not interfere, continue to support the Single Trial Judge's ultimate factual finding that the Report lacks probative value,³² and that any probative value is outweighed by the prejudice arising from the questions that Mr Herlaar was unwilling or unable to answer.³³ The Smakaj Defence asserts that nothing in the Appeal Decision alters the Single Trial Judge's ultimate assessment that whatever minimal probative value Witness 8's evidence may have, if any, is clearly outweighed by prejudice caused.³⁴

III. APPLICABLE LAW

14. As set out in the Appeal Decision, expert evidence is admissible if:

- (i) The proposed witness can be regarded as an expert within the meaning of Rule 149 of the Rules; (ii) the expert statement or report meets the requirements of

²⁷ Joint Thaçi and Kilaj Defence Submissions, para. 24.

²⁸ Joint Thaçi and Kilaj Defence Submissions, para. 24.

²⁹ Joint Thaçi and Kilaj Defence Submissions, paras 25-28.

³⁰ Joint Thaçi and Kilaj Defence Submissions, para. 29.

³¹ Smakaj Submissions, paras 5-7.

³² Smakaj Submissions, paras 10-11.

³³ Smakaj Submissions, para. 12.

³⁴ Smakaj Submissions, para. 17.

Rule 138(1) of the Rules, including in respect of minimum standards of reliability, relevance and probative value; and (iii) the content of the expert statement or report falls within and does not offer an opinion on matters within the knowledge or exclusive competence of the panel.³⁵

15. The Appeal Decision has found that the Single Trial Judge committed three reversible errors in denying the admission of Mr Herlaar's evidence. First, concerning whether Mr Herlaar's evidence is a reflection of expertise, which is relevant to whether it has sufficient indicia of reliability and probative value to be admissible under Rule 138(1), the Appeals Panel found that the Single Trial Judge erred by "failing to give weight to relevant considerations [...] and applying a higher standard than required at the stage of admissibility."³⁶ Second, as to whether the methodology applied by Witness 8 was sufficiently transparent to permit an assessment of the reliability and probative value of the proposed expert evidence, the Appeals Panel concluded that "the Single Trial Judge committed a discernible error by excluding Witness 8's evidence on the basis that it lacked transparency."³⁷ Third, the Appeals Panel determined that the Single Trial Judge erred by assessing any prejudice arising from Mr Herlaar's refusal to answer questions in light of a purported failure by the SPO to have made an advance application under Rule 107 or 211 seeking to relieve the witness of the obligation to answer questions on certain topics.³⁸ Furthermore, the Appeals Panel commented that it was "not persuaded that these refusals restricted the Defence's right to cross-examination to an extent incompatible with the guarantees provided under Article 31 of the [Kosovo]

³⁵ Appeal Decision, para. 25.

³⁶ Appeal Decision, para. 36.

³⁷ Appeal Decision, para. 60.

³⁸ Appeal Decision, para. 94.

Constitution, read in conjunction with Article 6 of the European Convention on Human Rights.”³⁹

16. In light of these three errors, the Appeals Panel directed the Single Trial Judge to:

- a. Re-assess Witness 8’s evidence and make a new determination on its reliability, relevance and probative value in accordance with the requirements under Rule 138(1) of the Rules, applying the *prima facie* standard applicable at the stage of admissibility and taking into consideration all relevant factors, consistent with the Panel’s findings in paragraphs 23-27 (Ground 1) and paragraphs 47-61 (Ground 2) above;
- b. Reassess and make a new determination on any prejudice caused to the Defence, excluding consideration of the absence of an advance authorisation pursuant to Rule 107 or Rule 211 of the Rules as a source of prejudice, and taking into consideration the low threshold of transparency required at the stage of admissibility, consistent with the Panel’s findings in paragraphs 77-95 above (Ground 3); and
- c. A proper balancing of any prejudice caused to the Defence against the probative value of Witness 8’s evidence, in accordance with Rule 138(1) of the Rules.⁴⁰

17. These instructions are applied in the present decision which, as indicated by the Appeals Panel, require a full re-assessment of the admissibility of Mr Herlaar’s evidence.⁴¹

³⁹ Appeal Decision, para. 91.

⁴⁰ Appeal Decision, para. 99.

⁴¹ Appeal Decision para. 98.

IV. DISCUSSION

a. First Requirement of Rule 138(1): Relevance

18. The asserted relevance of Mr Herlaar's evidence⁴² was not challenged following his testimony.⁴³ The Single Trial Judge finds that Mr Herlaar's evidence, concerning as it does the alleged transmission of confidential information and instructions amongst the Accused, to be manifestly relevant. This condition of admissibility is satisfied.⁴⁴

b. Second Requirement of Rule 138(1): Authenticity

19. No doubt or dispute arises concerning Mr Herlaar's authorship of his expert Report, which he affirmed having written.⁴⁵ Accordingly, the proffered expert evidence satisfies the authenticity requirement.

c. Third Requirement of Rule 138(1): "Has Probative Value"

i. Approach to Probative Value

20. As indicated in the Appeal Decision, the requirement of probative value also entails a requirement of "reliability."⁴⁶ As a threshold matter, this requirement can be satisfied only if: "(i) the proposed witness can be regarded as an expert within the meaning of Rule 149 of the Rules; [...] and (iii) the content of the expert statement or report falls within and is confined to the accepted expertise of the expert witness and does not offer an opinion on matters within the knowledge or exclusive competence of the panel."⁴⁷ As explained by Trial Chamber II:

⁴² SPO Witness 8 Motion, paras 4-9.

⁴³ See Smakaj Submissions; Joint Thaçi and Kilaj Submissions.

⁴⁴ Appeal Decision, para. 97 ("[T]he Panel notes that the Single Trial Judge did not fully or explicitly assess each of these elements in the Impugned Decision (i.e. including, for example, the relevance of Witness 8's evidence [...]).

⁴⁵ [REDACTED].

⁴⁶ Appeal Decision, paras 25, 29.

⁴⁷ Appeal Decision, para. 25.

[t]he 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, scientific or otherwise discrete set of ideas or concepts that is expected to fall outside of the lay person's ken.⁴⁸

If a proffered opinion is not based on such specialised knowledge, either because the expert is not qualified or because the opinion falls outside the scope of such specialised knowledge, then it would not meet the threshold of the *prima facie* reliability requirement for admissibility pursuant to Rule 138(1).

ii. Mr Herlaar Is an Expert

21. The Single Trial Judge, as found in the First Decision, does not doubt that there is a field of expertise known amongst its practitioners as “Striations, Impressions and Shape Analysis” (“SISA”).⁴⁹ Furthermore, the Single Trial Judge, as stated in the First Decision, considers Mr Herlaar to be a qualified expert within this field, based in particular on his *curriculum vitae* and the fact that he has been qualified by the Netherlands Forensic Institute (“NFI”) as an authorised signatory on reports within this field since 2019.⁵⁰ On this basis, the Single Trial Judge reaffirms his previous finding that Mr Herlaar can be regarded as an expert within the meaning of Rule 149. However, as discussed in more detail below, the precise scope of the “SISA” expertise is not self-evident and does not resolve the question of whether the “microdot analysis” conducted by Mr Herlaar is itself a recognised expertise.

⁴⁸ KSC-BC-2020-06, F03305, Trial Panel II, *Decision on Victims' Counsel's Submissions of Expert Reports and Request to Admit Them into Evidence* (“Case 06 Decision on Expert Reports”), 3 July 2025, public, para. 22.

⁴⁹ First Decision, para. 56; T. 497:22-498:3.

⁵⁰ First Decision, para. 56.

iii. “Microdot Analysis” Is an Expertise that Meets the
Threshold of *Prima Facie* Reliability

22. The next question that must be addressed⁵¹ is whether Mr Herlaar’s evidence falls within an expertise that he possesses. As described by Mr Herlaar, “SISA” is a field that applies to a range of disparate circumstances. These include analysing the origins of “tool marks”,⁵² footprints,⁵³ and adhesive tape.⁵⁴

23. Mr Herlaar distinguished SISA from another field that he called “questioned documents and printers”,⁵⁵ which he said included “comparing documents one against another to ascertain whether the documents were produced by the same printer.”⁵⁶ Mr Herlaar does not claim to be an accredited examiner in this latter field, whether by the NFI or any other certifying authority. He was an accredited examiner within this field [REDACTED].⁵⁷ According to Mr Herlaar, the NFI decided some years ago to “ceas[e] its support in that field [of questioned documents and printers], and that field is being taken over by various other organisations”.⁵⁸ When asked whether “there [is] any overlap between the ‘questioned documents and printers’ field and the SISA fields”, Mr Herlaar at first answered “[n]o, there is not”.⁵⁹ He later commented, however, that “[t]here are some techniques which apply to the two fields, including techniques that I will testify on today”.⁶⁰ Later, Mr Herlaar

⁵¹ Appeal Decision, para. 97 (“[T]he Panel notes that the Single Trial Judge did not fully or explicitly assess each of these elements in the Impugned Decision (i.e. including, for example [...] whether his report falls within the scope of his expertise”). See also, Appeal Decision, para. 31.

⁵² T. 496:24-497:1.

⁵³ T. 497:1-3.

⁵⁴ T. 497:3-5.

⁵⁵ T. 499:19-21 (“In English, one generally refers to that field as questioned documents and printers”).

⁵⁶ T. 500:7-11.

⁵⁷ [REDACTED].

⁵⁸ T. 500:20-24.

⁵⁹ T. 500:19.

⁶⁰ T. 500:24-25.

clarified that [REDACTED].”⁶¹ Based on these answers, the Single Trial Judge understands that while “microdot analysis” may also be considered to be part of the field described as “questioned documents and printers,” Mr Herlaar [REDACTED] categorise it as a sub-set of SISA.

24. The Single Trial Judge does not consider [REDACTED] to be conclusive as to whether “microdot analysis” falls within the scope of Mr Herlaar’s expertise, however. This is because SISA, as described by Mr Herlaar, is a broad field with many potential applications, applying in disparate contexts, and potentially relying on different bodies of specialised knowledge depending on the particular subject-matter. For example, the body of knowledge or techniques that underlie an analysis of adhesive tape may be very different than those necessary to conduct a “microdot analysis” of a printed sheet. Indeed, the witness himself frequently used the specific term “microdot analysis”, rather than “SISA analysis”, to describe the expertise that he had applied in producing his report.⁶² Accordingly, the Single Trial Judge considers that he must examine at a more specific level whether the “microdot analysis” conducted by Mr Herlaar is an expertise whose application may satisfy the requirement of *prima facie* reliability under Rule 138(1).

25. The Single Trial Judge recalls that in the First Decision he held that the *prima facie* reliability standard required the expert analysis to be based on a “sufficiently organized or recognized as a reliable body of knowledge or experience with which the Witness could potentially provide assistance to the Chamber.”⁶³ This standard is considered to be substantially identical to that

⁶¹ [REDACTED]; [REDACTED] ([REDACTED]).

⁶² The Single Trial Judge notes that Mr Herlaar frequently used the expression “microdot analysis” to describe the nature of the expertise applied in his report. See [REDACTED] ([REDACTED]); [REDACTED] ([REDACTED]); [REDACTED] ([REDACTED]); [REDACTED] ([REDACTED]); T. 619:15-16 (“The NFI is not the only laboratory in the Netherlands that carries out analysis, microdot analysis”).

⁶³ First Decision, para. 61.

enunciated by Trial Chamber II, namely that an expert opinion must be based “on specialised knowledge regarding a technical, scientific or otherwise discrete set of ideas or concepts”.⁶⁴ The Appeal Decision does not state that this standard is erroneous.

26. The First Decision held that this requirement had not been established based on the submissions made and Mr Herlaar’s testimony. In particular, the Single Trial Judge noted the absence: (i) of any “significant academic publication or validation” of the body of knowledge being applied by Mr Herlaar; and (ii) “of any judicial decision recognising ‘comparative microdot analysis’ from any jurisdiction”.⁶⁵ The Single Trial Judge found these considerations to be decisive because they reflected that information necessary for the performance of Mr Herlaar’s analysis has apparently never been publicly revealed or evaluated.⁶⁶

27. The Appeals Panel reversed this finding, holding that “prior judicial recognition and academic or professional validation are neither prerequisites for nor dispositive of reliability and, consequently, admissibility.”⁶⁷ The Appeals Panel went on to hold that there were:

several indicators that are plainly apparent in the present case, but were not considered by the Single Trial Judge in his assessment. This includes, but is not limited to, adherence to industry standards and internal protocols, quality control through peer review, accreditation by a reputable institution (in this case, the NFI), the offering of academic courses and trainings on the applied methods, and the use of applied methods by [REDACTED]. [...] Moreover, the Panel notes that definite proof of reliability is not required at the stage of admissibility. Expert evidence is not subject to a more

⁶⁴ Case 06 Decision on Expert Reports, para. 22.

⁶⁵ First Decision, paras 60-61.

⁶⁶ First Decision, para. 62.

⁶⁷ Appeal Decision, para. 34.

stringent standard than other evidence and it is therefore sufficient that, on its face, the evidence possesses some indicia of reliability establishing a baseline of trustworthiness. [...] On the basis of the above, the Appeals Panel finds that the Single Trial Judge committed a discernible error by failing to give weight to relevant considerations in reaching his decision and by applying a higher standard than required at the stage of admissibility.⁶⁸

28. Accordingly, the Appeals Panel reversed the Single Trial Judge's conclusion that a showing of expertise had not been established⁶⁹ and, in this regard, identified five additional factors that it considered to be "plainly apparent in the present case": (i) "industry standards and internal protocols"; (ii) "quality control through peer review"; (iii) "accreditation by a reputable institution (in this case, the NFI)"; (iv) "the offering of academic courses and trainings on applied methods"; and (v) "the use of the applied methods by [REDACTED]". The Single Trial Judge will proceed to apply these factors, taking into consideration more broadly the guidance provided in the Appeal Decision.⁷⁰

29. First, Mr Herlaar did refer to industry standards⁷¹ (albeit confidential) and internal protocols (both their existence generally,⁷² and as followed by him as part of his analysis⁷³) to show that they exist and are applied in the context of "microdot analysis". Second, Mr Herlaar testified that there was a second review of his "microdot analysis", albeit limited, conducted by a colleague within the NFI, which affirmed his conclusions.⁷⁴ Third, [REDACTED]

⁶⁸ Appeal Decision, paras 34-36.

⁶⁹ Appeal Decision, paras 34-35.

⁷⁰ Appeal Decision, para. 99(a).

⁷¹ T. 502:25-503:17.

⁷² [REDACTED].

⁷³ T. 504:9-11; [REDACTED]; [REDACTED].

⁷⁴ T. 504:6-18; [REDACTED]; [REDACTED]; [REDACTED].

“microdot analysis” as falling within the field of SISA and [REDACTED].⁷⁵ Although this factor is not dispositive,⁷⁶ it is relevant and indicative of the existence of the expertise applied. Fourth, trainings and seminars concerning the knowledge and techniques applied by Mr Herlaar, [REDACTED], appear to take place in various contexts, [REDACTED].⁷⁷ Fifth, [REDACTED] and [REDACTED] make use of these methods.⁷⁸

30. The Appeal Decision has already made clear that the relevance of these factors is “plainly apparent in the present case”.⁷⁹ Furthermore, the Appeal Decision also makes clear that Mr Herlaar’s non-disclosure of certain information pertaining to the methodology does not, in the circumstances of this case, prevent a finding of *prima facie* reliability pursuant to Rule 138(1).⁸⁰ The Single Trial Judge considers these indications to be dispositive as to whether public disclosure, scrutiny and evaluation is a necessary prerequisite for the recognition of an expertise, which was the core element of the reasoning in the First Decision.⁸¹ On this basis, and applying the additional factors set out in the Appeal Decision, the Single Trial Judge finds that “microdot analysis” constitutes an expertise for the purpose of establishing the *prima facie* reliability of evidence given on the basis of that expertise. Furthermore, Mr Herlaar, in light of his training, knowledge, experience and authorisation to conduct such analyses by the NFI, possesses this expertise.

31. The Thaçi and Kilaj Defence’s suggestion that the “microdot analysis” conducted by Mr Herlaar is not based on “specialised knowledge, skill or

⁷⁵ [REDACTED]; [REDACTED].

⁷⁶ *Supra* para. 24.

⁷⁷ [REDACTED]; [REDACTED].

⁷⁸ [REDACTED] ([REDACTED]); [REDACTED] ([REDACTED]); [REDACTED] ([REDACTED]).

⁷⁹ Appeal Decision, para. 34.

⁸⁰ Appeal Decision, paras 51-54.

⁸¹ The Single Trial Judge, in this respect, agrees with the SPO that the Appeal Decision’s findings concerning the transparency of the methodology applied by Mr Herlaar are relevant to, and largely dispositive of, the issue of the recognition of the expertise applied. *See* SPO Submissions, para. 5.

training”, but rather based, at least in part, [REDACTED]⁸² is unsustainable. The Appeal Decision makes clear that the [REDACTED] Mr Herlaar does not mean that it does not fall within the scope of expertise. This reasoning must apply equally to [REDACTED] Mr Herlaar, especially in the context of formalised trainings in the expertise [REDACTED].⁸³

32. The Single Trial Judge finds, based on these considerations and notwithstanding the absence of academic publications, judicial recognition or other publicly available validation of the expertise in question, that the expert analysis applied by Mr Herlaar meets the *prima facie* standard of reliability required by Rule 138(1).

iv. The Purported Lack of Transparency of Mr Herlaar’s
Evidence does Not Weigh Against Its Admissibility

33. Mr Herlaar failed to present in his evidence the [REDACTED],⁸⁴ the specific [REDACTED],⁸⁵ or [REDACTED].⁸⁶ Mr Herlaar also refused to answer questions during his testimony on these and other subjects. On these grounds, the Single Trial Judge concluded that the methods applied to produce the expert analysis were “not sufficiently transparent to permit a meaningful assessment of its probative value.”⁸⁷

34. The Appeals Panel found that the Single Trial Judge had applied “an unduly high threshold to meet the minimum degree of transparency required at the stage of admissibility.”⁸⁸ In particular, “the Single Trial Judge committed a discernible error by excluding Witness 8’s evidence on the basis that it lacked

⁸² Joint Thaçi and Kilaj Submissions, para. 19.

⁸³ See e.g. [REDACTED] [(REDACTED)].

⁸⁴ First Decision, para. 28.

⁸⁵ First Decision, para. 27.

⁸⁶ First Decision, para. 29.

⁸⁷ First Decision, paras 27-32, 63.

⁸⁸ Appeal Decision, para. 57.

transparency.”⁸⁹ The Appeals Panel, after examining each of the three considerations discussed in the First Decision, found that the basis of the “microdot analysis” performed by Mr Herlaar had been “sufficiently transparent”, and had not deprived the Defence of the opportunity to challenge Mr Herlaar’s evidence, including on his qualifications, applied methods, observations and conclusions, as well as the credibility of his analysis.⁹⁰

35. The Single Trial Judge understands from this guidance that the non-disclosure cited in the First Decision does not weigh against admission according to the *prima facie* standard of reliability applicable at the stage of admissibility. Accordingly, the Single Trial Judge finds that the disclosure of methods and sources provided by Mr Herlaar was sufficient to meet the *prima facie* reliability standard pursuant to Rule 138(1).

v. Conclusion on Reliability and Probative Value

36. Based on the foregoing, the Single Trial Judge considers that Mr Herlaar’s evidence meets the *prima facie* standard of reliability and probative value required for admission under Rule 138(1).

d. Fourth Requirement of Rule 138(1): Probative Value is Not Outweighed by Prejudicial Effect

37. In the First Decision, the Single Trial Judge found that Mr Herlaar’s refusals to answer certain questions on cross-examination, on the ground that he would contravene his own confidentiality obligations, violated the rights of the Accused under Article 21(4)(f).⁹¹ The Single Trial Judge also noted that the failure of the SPO to have requested, in advance of Mr Herlaar’s testimony, that

⁸⁹ Appeal Decision, para. 60.

⁹⁰ Appeal Decision, paras 55, 57 and 59-60.

⁹¹ First Decision, para. 51.

he be relieved of the obligation to answer certain questions, “heightened” the prejudice to the Defence.⁹²

38. The Appeals Panel found that the SPO was not required, as the Single Trial Judge had held, to have brought such an application in advance of Mr Herlaar’s testimony and that, accordingly, the Single Trial Judge committed an error by concluding that this “heightened” the prejudice to the Defence. Further, the Appeals Panel also disagreed that the witness’s refusal to answer questions “restricted the Defence’s right to cross-examination to an extent incompatible with the guarantees provided under Article 31 of the [Kosovo] Constitution, read in conjunction with Article 6 of the European Convention on Human Rights.”⁹³ The Appeals Panel subsequently directed the Single Trial Judge to conduct “[a] proper balancing of any prejudice caused to the Defence against the probative value of Witness 8’s evidence, in accordance with Rule 138(1) of the Rules.”⁹⁴

39. The Single Trial Judge notes the Appeals Panel’s finding that, under the circumstances which included the scope of the questions which the witness did answer and the Defence’s opportunity to bring its own evidence,⁹⁵ there has been no violation of the fair trial rights of the accused under Article 31 of the [Kosovo] Constitution or Article 6 of the European Convention on Human Rights.⁹⁶ The Single Trial Judge also notes that Mr Herlaar’s evidence is not the only evidence relevant to the issue of fact at stake, and that the ultimate probative weight to be assigned to Mr Herlaar’s Report will be assessed in the final trial judgment.⁹⁷ Indeed, the impact on the probative value of Mr Herlaar’s

⁹² First Decision, para. 63.

⁹³ Appeal Decision, paras 91-92.

⁹⁴ Appeal Decision, para. 99(c).

⁹⁵ Appeal Decision, para. 92.

⁹⁶ Appeal Decision, para. 91.

⁹⁷ The Single Trial Judge observes that the Thaçi and Kilaj Defence agree that the “probative value” component of the weighing exercise is assessed not with reference to admission, but rather the

evidence arising from his refusal to answer questions related to his evidence⁹⁸ are matters that can, and that the Single Trial Judge expects will, be addressed by the Parties in their final trial briefs.

40. In light of these considerations, the Single Trial Judge finds that, for the purposes of admission, the *prima facie* probative value of Mr Herlaar's evidence is not outweighed by the prejudicial effect of its admission.

e. Conclusion

41. The Single Trial Judge finds the Report, the Associated Materials and Mr Herlaar's testimony admissible pursuant to Rule 138(1).

V. DISPOSITION

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

- a. **ADMITS** the evidence of Witness 8 (Items bearing ERNs: 118299-118304; 127822-127830 RED; SPOE00408800-00408801 RED; SPOE00408800-SPOE00408801-ET; SPOE00408802-00408803 RED; SPOE00408802-SPOE00408803-ET; SPOE00408849-00408850 RED; SPOE00408849-SPOE00408850-ET; 119225-119225 RED; 119227-119227 RED; and 119228-119228 RED);
- b. **REVERSES** the decision to decline to admit Mr Herlaar's testimonial evidence;
- c. **ORDERS** the Registrar to assign exhibit numbers to the items listed above, including any translations thereof, and to classify the items as confidential;

"probative value the Single Trial Judge may ascribe to Witness 8's Evidence". See Joint Thaçi and Kilaj Submissions, para. 21.

⁹⁸ Joint Thaçi and Kilaj Submissions, paras 25-27.

- d. **ORDERS** the SPO - should any subsequent unredacted or lesser redacted versions of the aforementioned items be disclosed - to immediately inform the Defence and the Court Management Unit; and
- e. **ORDERS** the Registry to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the respective exhibit number(s) assigned pursuant to this decision.



Judge Christopher Gosnell
Single Trial Judge

Dated this Wednesday, 8 July 2026

At The Hague, the Netherlands.