



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**

The Specialist Prosecutor v. Pjetër Shala

Before: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 30 May 2023

Language: English

Classification: **Public**

Public redacted version of

**Decision on requests for admission of items used with witnesses TW4-08, TW4-06,
TW4-07, TW4-09, TW4-10 and TW4-11 during their in-court testimonies**

with one public annex

To be notified to:

Acting Specialist Prosecutor
Alex Whiting

Counsel for the Accused
Jean-Louis Gilissen

Victims' Counsel
Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on requests for admission of items used with witnesses TW4-08, TW4-06, TW4-07, TW4-09, TW4-10 and TW4-11 during their in-court testimonies.

I. PROCEDURAL BACKGROUND

1. On 17 March 2023, the Panel issued the “Decision on the submission and admissibility of non-oral evidence”, in which it, *inter alia*, set out the principles governing the admission of non-oral evidence in the present case and ordered the Parties and Victims’ Counsel to submit, no later than one week after the completion of each evidentiary block, an application for the admission of any material used during their respective questioning of the witnesses whose testimonies were completed within that block and which had not already been submitted to the Panel (Framework Decision on Evidence).¹

2. On 6 April 2023 and 10 May 2023, the Specialist Prosecutor’s Office (SPO) filed two requests for the admission of items used during its direct examination of witnesses TW4-08, TW4-09, TW4-10 and TW4-11, who testified in the course of the first and second evidentiary blocks (First SPO Request and Second SPO Request, respectively).²

3. The Defence for Pjetër Shala (Defence and Accused, respectively) and Victims’ Counsel did not respond or object to the First and Second SPO Requests.

¹ KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#), 17 March 2023, public, para. 56.

² KSC-BC-2020-04, F00478, Specialist Prosecutor, *Prosecution request for admission of exhibits from the direct examination of TW4-08 and TW4-09*, 6 April 2023, public, with Annex 1, confidential; F00506, Specialist Prosecutor, *Prosecution request for admission of exhibits from the SPO’s examination of TW4-10 and TW4-11*, 10 May 2023, public, with Annex 1, confidential.

4. On 6 April 2023, the Defence filed a request for the admission of items used during its cross-examination of witnesses TW4-08 and TW4-07, who testified in the course of the first evidentiary block (Defence Request).³

5. The SPO and Victims' Counsel did not respond or object to the Defence Request.

II. SUBMISSIONS

6. As regards the first evidentiary block, the SPO requests the admission of the items referred to in Annex 1 to the First SPO Request, namely: (i) two maps marked by TW4-08 during his direct examination and their original versions; (ii) one document used during the direct examination of TW4-08; and (iii) one map marked by TW4-09 during his direct examination and its original version.⁴ The SPO avers that the items are relevant, authentic, have probative value, and their admission would cause no undue prejudice to the Accused.⁵

7. As regards the second evidentiary block, the SPO requests the admission into evidence of: (i) a sketch marked by TW4-10 during his direct examination and its original version; and (ii) three photographs that were marked by TW4-10 during his direct examination and the original version of one of these photographs; (iii) a report used in the direct examination of TW4-11; and (iv) certain photographs used during the direct examination of TW4-11, including one photograph marked by the witness and its original version.⁶ The SPO avers that the material is relevant, authentic, has probative value, and its admission would cause no undue prejudice to the Accused.⁷

³ KSC-BC-2020-04, F00479, Defence, *Defence Request for Admission of Material Used in Court with Witnesses TW4-08 and TW4-07*, 6 April 2023, public.

⁴ First SPO Request, paras 3-5. *See also* Annex 1 to First SPO Request, listing the material.

⁵ First SPO Request, para. 2.

⁶ Second SPO Request, paras 3-7. *See also* Annex 1 to Second SPO Request, listing the material.

⁷ Second SPO Request, para. 2.

8. Likewise, the Defence seeks the admission into evidence of: (i) four photographs shown to TW4-08 and TW4-07, in their original versions, as well as the versions marked by the witnesses during their cross-examination; and (ii) a sketch drawn by TW4-08 during his cross-examination.⁸ The Defence submits that these items are sufficiently relevant, authentic, reliable, have probative value, and their admission into evidence is in the interests of justice.⁹

III. APPLICABLE LAW

9. The Panel notes Articles 37, 40(2), (5), and 6(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 24(1) and 137-138 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

IV. ANALYSIS

10. At the outset, the Panel notes that, where an item has been discussed with several witnesses,¹⁰ the Panel will consider such item only once.

11. The Panel turns first to item 3 of the First SPO Request and item 5 of the Second SPO Request, which consist of: (i) notes of a conversation with TW4-08 drafted by an investigator of the International Criminal Tribunal for the former Yugoslavia (ICTY)

⁸ Defence Request, paras 1-2, 4. The Panel notes that all four photographs were used during the cross-examination of TW4-08, namely DPS00065-DPS00068, and two of them were used during the cross-examination of TW4-07 by the Defence, namely DPS00065 and DPS00066. TW4-08 marked three out of the four photographs, namely DPS00065 (REG00940-REG00940), DPS00066 (REG00941-REG00941) and DPS00068 (REG00942-REG00942). TW4-07 marked one photograph, namely DPS00065 (REG00943-REG00943).

⁹ Defence Request, para. 3.

¹⁰ Annex 1 to First SPO Request, the original versions of items 1 and 4 (SPOE00330881-00330881); Annex 1 to Second SPO Request, the original versions of items 4 and 7 (074390-074391); Defence Request, paras 1-2 (DPS00065-DPS00068).

in 2003 which were used during the direct examination of TW4-08;¹¹ and (ii) a Photo Board Identification Procedure Report, [REDACTED] which was used by the SPO during its direct examination of TW4-11.¹² The Panel finds that the above-mentioned items were “collected” by either the ICTY or [REDACTED], within the meaning of Article 37 of the Law (Article 37 Material), and the Panel is accordingly compelled to rule on their admissibility.¹³ In this regard, the Panel recalls that, when assessing the admissibility of evidence, Rule 138(1) of the Rules establishes four cumulative criteria that the Panel shall apply when assessing the admissibility of an evidentiary item: relevance, authenticity, probative value and prejudicial effect.¹⁴

12. As regards the ICTY investigator’s notes, the Panel considers that they are relevant to the charges in the present case as they provide evidence regarding the alleged arrest of W4733, prior to his transfer to the Kukës Metal Factory, and the incidents preceding this arrest, in which the Accused and other soldiers of the Kosovo Liberation Army (KLA) were allegedly involved. Furthermore, the document containing the ICTY investigator’s notes appears to be authentic as it bears multiple indicia of authenticity, such as official logos, the place and date the notes were taken, as well as the name of the investigator who took the notes. The Panel further notes that the document is corroborated by evidence provided by SPO witnesses in this case which further lends credence to its authenticity and reliability.¹⁵ The Panel therefore finds that the ICTY investigator’s notes have probative value. In addition, the Panel is satisfied that no undue prejudice is caused to the Accused by their admission. In this regard, the Panel also notes that the Defence does not oppose the admission of this item.

¹¹ 061216-061218 RED. *See* First SPO Request, para. 4 and Annex 1 to First SPO Request, item 3.

¹² SITF00013100-00013122 RED3. *See* Second SPO Request, para. 5 and Annex 1 to Second SPO Request, item 5.

¹³ Framework Decision on Evidence, paras 27-28.

¹⁴ Framework Decision on Evidence, para. 10.

¹⁵ *See* Transcript of Hearing, 28 March 2023, pp. 770-831; Transcript of Hearing, 29 March 2023, pp. 832-879.

13. As regards the Photo Board Identification Procedure Report, the Panel finds that it is relevant to the charges as it pertains to an alleged member of the joint criminal enterprise in which the Accused allegedly participated at the time relevant to the charges. Moreover, the report bears several indicia of reliability such as the date and place of the identification procedure, the names of the investigators involved, as well as signatures of the investigators and the witness. The Panel therefore finds that the report appears to be authentic and has probative value. In addition, the Panel is satisfied that no undue prejudice is caused by the admission of this report into evidence. In this regard, the Panel also notes that the Defence does not oppose the admission of this item.

14. In light of the foregoing, the Panel admits the Article 37 Material into evidence. While only certain pages of these documents were used by the SPO during its direct examination of the witnesses, the Panel considers it appropriate to admit the Article 37 Material in their entirety with a view to allowing the Panel to properly assess the correct meaning and broader context of the portions relied upon by the SPO.

15. The Panel turns now to the remaining items that the SPO seeks to introduce into evidence with the First and Second SPO Requests and all items that the Defence seeks to introduce. The Panel does not consider it necessary to exercise its discretion with a view to excluding any of them.¹⁶ Therefore, in accordance with the Framework Decision on Evidence, the Panel dispenses with rendering a discrete item-by-item admissibility ruling and considers all these items available to the Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused,¹⁷ with the following remarks.

¹⁶ Framework Decision on Evidence, para. 11.

¹⁷ Framework Decision on Evidence, paras 21, 57.

16. The Panel recalls that, as a general rule, material shall be submitted for admission in its entirety, in order to allow the Panel to assess the correct meaning and broader context of the portion(s) relied upon by the Party or Victims' Counsel, as the case may be.¹⁸ Accordingly, the Panel will consider 059341-059350¹⁹ in its entirety, although the SPO has tendered only specific pages. In the same vein, the Panel will consider 074390-074391²⁰ in its entirety, even though only one page was used by the SPO during its direct examinations of TW4-10 and TW4-11. The Registry's Court Management Unit (CMU) is directed to record in the field "General comments" in Legal Workflow the exact portions used by the Parties and/or Victims' Counsel.

17. As far as the items marked by the witnesses during their examination are concerned, the original versions, as well as the versions marked by the witnesses, will be considered to be available to the Panel for the purpose of its deliberations and judgment.²¹ In this regard, the Panel notes that one item is already available to the Panel pursuant to a prior decision and, therefore, the Panel need not rule on it again in the present decision.²²

18. In addition to the aforementioned items tendered by the Parties, the Panel will also *proprio motu* consider: (i) a photograph used during the examination of TW4-06 by Victims' Counsel;²³ (ii) two items used during the cross-examination of TW4-09 by the Defence;²⁴ and (iii) an item used by the SPO and the Panel during their questioning

¹⁸ Framework Decision on Evidence, para. 41.

¹⁹ Annex 1 to Second SPO Request, item 6.

²⁰ Annex 1 to Second SPO Request, original version of items 4 and 7.

²¹ Framework Decision on Evidence, para. 63.

²² 065597-065612. See KSC-BC-2020-04, F00491/RED, Trial Panel I, *Public redacted version of Decision on the Specialist Prosecutor's motion for admission of documentary evidence*, 20 April 2023, confidential, para. 36; F00431, Specialist Prosecutor, *Prosecution motion for admission of documentary evidence*, 22 February 2023, confidential, with Annex 1, confidential, item 52. A public redacted version of the motion, without its annex, was filed on 2 March 2023, F00431/RED.

²³ V4030001-V4030001. The Panel notes that the status of this item is currently recorded as "admitted" in Legal Workflow and directs the Registry to record it instead as "marked for identification" (MFI).

²⁴ 108351-108351 RED and 106493-106493 (including the corresponding Albanian version 106493-106493-AT).

of TW4-11.²⁵ The Panel considers all these items available for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused in their entirety. Nonetheless, as regards the last item, 108852-108857 RED, CMU is directed to record in the field “General comments” in Legal Workflow the exact portions used by the SPO and the Panel, *i.e.* pages 108852 and 108856, for record-keeping purposes.

19. Furthermore, in accordance with paragraph 43 of the Framework Decision on Evidence, any subsequent unredacted or lesser redacted versions of the items addressed in the present decision shall automatically be considered as admitted or available to the Panel for the purpose of its deliberations and judgement, as the case may be, subject to any objections of the Parties and Victims’ Counsel. For the purpose of maintaining an accurate record of the proceedings, should any unredacted or lesser redacted versions of these items be disclosed in the future, the disclosing Party shall immediately inform the other Party, Victims’ Counsel, the Panel, and CMU thereof. This will allow CMU to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the version admitted or considered part of the evidence for the purpose of the Panel’s deliberations and judgement pursuant to the present decision. Should the other Party or Victims’ Counsel have any objections in relation to any such subsequent unredacted or lesser redacted versions, they shall inform the Panel thereof within five (5) days of the notification of their disclosure.

20. Moreover, in accordance with paragraph 42 of the Framework Decision on Evidence, the Panel’s findings that any given item is admitted or is available to the Panel for its deliberations and judgement shall automatically extend to any translations thereof, any audio-visual material and/or any transcripts, as the case may be. Accordingly, CMU shall ensure that the status of the material is accurately reflected in Legal Workflow for all versions of any given item.

²⁵ 108852-108857 RED.

21. Lastly, for ease of reference, the Panel lists all items addressed in the present decision which should receive an exhibit number in an annex to the decision. CMU is directed to record in Legal Workflow, in the field “General comments” the portions thereof discussed with the witnesses.

V. DISPOSITION

22. For the above-mentioned reasons, the Panel hereby:

- a. **GRANTS** the First and Second SPO Requests and the Defence Request;
- b. **ADMITS** into evidence the Article 37 Material (061216-061218 RED and SITF00013100-00013122 RED3), including, as applicable, both the English and the Albanian versions;
- c. **ORDERS** the Registry to assign exhibit numbers to the items listed in the annex to the present decision, as indicated therein, including any translations, audio-video or transcribed versions thereof, for the (sole) purpose of maintaining an accurate record of the proceedings pursuant to Article 40(5) of the Law and Rule 24(1) of the Rules and to classify the items as confidential;
- d. **ORDERS** the Registry to reflect in the field “General comments” in Legal Workflow, as applicable, the portions of each item used with the witnesses by the Parties, Victims’ Counsel, and/or the Panel;
- e. **DIRECTS** the Registry to rectify the status of item V4030001-V4030001, from “admitted” to “marked for identification”, and its exhibit number, as indicated in the annex to the present decision;
- f. **ORDERS** the disclosing Party to immediately inform the other Party, Victims’ Counsel, the Panel, and CMU should any subsequent unredacted or lesser redacted versions of the aforementioned items be disclosed and **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; and

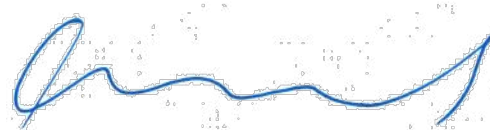
- g. **ORDERS** the non-disclosing Party and Victims' Counsel to file any objections to any such subsequent unredacted or lesser redacted versions within five (5) days of notification of their disclosure.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Tuesday, 30 May 2023

At The Hague, the Netherlands.