



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: 23 June 2023

Language: English

Classification: **Public**

**Public Redacted Version of Decision on the Specialist Prosecutor's requests to
admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules**

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Victims' Counsel
Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the Specialist Prosecutor's requests to admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules.

I. PROCEDURAL BACKGROUND

1. On 24 February 2023, the Panel rendered the "Decision on the conduct of the proceedings", ordering the Specialist Prosecutor's Office (SPO) to file any applications under Rule 153 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules), no later than 20 March 2023.¹
2. On 17 May 2023, the SPO filed a request for admission of the evidence of TW4-02 in writing *in lieu* of his oral testimony (First Request).²
3. On 25 May 2023, the Defence for Pjetër Shala (Defence and Accused, respectively) responded to the First Request, asking the Panel to reject it and instead call TW4-02 to testify live as scheduled (Defence Response to First Request).³
4. Victims' Counsel did not file a response.
5. On 5 June 2023, the SPO filed its reply (Reply).⁴

¹ KSC-BC-2020-04, F00434/RED, Trial Panel I, [Public redacted version of Decision of the conduct of the proceedings](#) (Decision on Conduct of Proceedings), 24 February 2023, public, paras 67, 82(b).

² KSC-BC-2020-04, F00513, Specialist Prosecutor, *Prosecution application for the admission of TW4-02's evidence pursuant to Rule 153*, 17 May 2023, confidential, with confidential Annex 1. A public redacted version was filed on the same day, F00513/RED.

³ KSC-BC-2020-04, F00523, Defence, *Defence Response to the Prosecution Application for the Admission of TW4-02's Evidence Pursuant to Rule 153*, 25 May 2023, confidential, para. 2. A public redacted version was filed on 1 June 2023, F00523/RED.

⁴ KSC-BC-2020-04, F00532, Specialist Prosecutor, *Prosecution Reply to KSC-BC-2020-04/F00523*, 5 June 2023, confidential. A public redacted version was filed on the same day, F00532/RED.

6. On 14 June 2023, the SPO filed a request for admission of the evidence of TW4-04 in writing *in lieu* of his oral testimony (Second Request).⁵
7. On 19 June 2023, following a shortening of the time limit,⁶ the Defence responded to the Second Request asking the Panel to reject it and instead call TW4-04 to testify live as scheduled (Defence Response to Second Request).⁷
8. Victims' Counsel did not file a response and the Panel did not entertain a reply.⁸

II. SUBMISSIONS

A. FIRST REQUEST

1. SPO

9. The SPO seeks the admission of transcripts of [REDACTED] of TW4-02, dated [REDACTED] and [REDACTED], an [REDACTED], as well as associated exhibits (collectively, TW4-02's Written Statements).⁹
10. The SPO submits that TW4-02's Written Statements: (i) do not go to proof of the acts and conduct of the Accused; (ii) are cumulative to evidence given by other witnesses who have appeared live before the Panel – in particular TW4-10 and TW4-11 – whom the Defence has had an opportunity to cross-examine, as well as the Accused's statements;¹⁰ and (iii) are relevant, reliable, of probative value and suitable

⁵ KSC-BC-2020-04, F00546, Specialist Prosecutor, *Prosecution application for the admission of TW4-04's evidence pursuant to Rule 153*, 14 June 2023, confidential, with Annex 1, confidential.

⁶ KSC-BC-2020-04, F00540, Trial Panel I, *Order on the filing of the Rule 153 request concerning witness TW4-04 and shortening time limits* (Order), 12 June 2023, public, paras 6, 8.

⁷ KSC-BC-2020-04, F00550, Defence, *Defence Response to the Prosecution Application for the Admission of TW4-04's Evidence Pursuant to Rule 153*, 19 June 2023, confidential. A public redacted version was filed on 22 June 2023, F00550/RED.

⁸ Order, paras 6, 8.

⁹ See Annex 1 to the First Request, listing the material.

¹⁰ First Request, paras 2, 6-8, 9-13.

for admission in written form.¹¹ According to the SPO, the admission of TW4-02's Written Statements will not cause undue prejudice to the Accused and will ensure the efficiency and expeditiousness of the proceedings.¹²

11. The SPO adds that it filed the First Request past the deadline set by the Panel in an effort to streamline the presentation of its case and expedite proceedings, and in light of the fact that the Court of Appeals Panel recently upheld the Panel's decision on the admissibility of the Accused's statements,¹³ which also contain information covered by TW4-02's Written Statements.¹⁴

2. Defence

12. The Defence opposes the First Request and objects to the admission into evidence of TW4-02's Written Statements. The Defence submits that the First Request is untimely and the SPO fails to justify the interference with the Accused's right to confront witnesses against him and contravenes the Panel's explicit preference for hearing witnesses live in court.¹⁵ The Defence further asserts that TW4-02's Written Statements: (i) relate to the acts and conduct of the Accused, and therefore cannot be admitted under Rule 153 of the Rules;¹⁶ (ii) are neither cumulative nor corroborative in nature;¹⁷ (iii) pertain to issues central to the SPO's case;¹⁸ and (iv) are unreliable.¹⁹

¹¹ First Request, paras 2, 14-17.

¹² First Request, paras 2, 18.

¹³ Referring to KSC-BC-2020-04, IA006/F00007, Court of Appeals Panel, [Decision on Shala's Appeal Against Decision Concerning Prior Statements](#), 5 May 2023, public; F00364/COR/RED, Trial Panel I, [Public redacted version of Corrected version of Decision concerning prior statements given by Pjetër Shala](#), 6 December 2022 (date of public redacted and corrected version, 26 January 2023), public.

¹⁴ First Request, paras 5, 19.

¹⁵ Defence Response to First Request, paras 12-15, 16-19, 36-37.

¹⁶ Defence Response to First Request, paras 21-24.

¹⁷ Defence Response to First Request, paras 25-28.

¹⁸ Defence Response to First Request, paras 29-32.

¹⁹ Defence Response to First Request, paras 33-35.

3. SPO Reply

13. The SPO replies that the Defence has failed to substantiate how the admission of TW4-02's evidence in writing would concretely prejudice the rights of the Accused.²⁰ The SPO further asserts that it is its prerogative to determine the organisation and presentation of the evidence in its case, and this encompasses the decision of which witnesses to call, the modality in which the evidence is to be tendered, as well as the timing of any such decision.²¹ The SPO also takes issue with the way the Defence frames the legal tests for "acts and conduct of the Accused" and "issues central to the SPO's case".²² As regards the cumulative nature of TW4-02's Written Statements, the SPO avers that this is to be assessed against the charges in the Confirmed Indictment.²³ As regards reliability, the SPO submits that potential inconsistencies in TW4-02's statements or [REDACTED] do not render his evidence unreliable *per se*.²⁴ The credibility and weight to be given to his evidence will be assessed by the Panel in light of the entire evidentiary record, consistent with the Rules.²⁵

B. SECOND REQUEST

1. SPO

14. The SPO seeks the admission of: (i) [REDACTED], dated [REDACTED] and [REDACTED]; (ii) [REDACTED], dated [REDACTED]; (iii) [REDACTED], dated [REDACTED] and [REDACTED]; and (iv) [REDACTED], conducted [REDACTED] and [REDACTED], including associated exhibits.²⁶ In addition, the SPO further seeks

²⁰ Reply, para. 2.

²¹ Reply, para. 3.

²² Reply, paras 4, 6.

²³ KSC-BC-2020-04, F00098/A01, Specialist Prosecutor, *Corrected Indictment*, 1 November 2021. A public redacted version was filed on 16 November 2021, [F00107/A01](#).

²⁴ Reply, para. 6.

²⁵ Reply, para. 7.

²⁶ See Annex 1 to the Second Request, listing the material.

the admission of [REDACTED], dated [REDACTED],²⁷ which [REDACTED]²⁸ (collectively, TW4-04's Written Statements).

15. The SPO submits that TW4-04's Written Statements are suitable for admission under Rule 153 of the Rules as they: (i) do not relate to the acts and conduct of the Accused;²⁹ (ii) are cumulative and corroborative of the testimonies of witnesses who have appeared live before the Panel – in particular TW4-01 and TW4-11 – whom the Defence has had an opportunity to cross-examine;³⁰ (iii) are relevant, reliable and will not prejudice the Accused, but will foster expeditiousness and judicial economy;³¹ and (iv) satisfy the procedural requirements set forth in Rule 153(2) of the Rules.³² The SPO adds, regarding the timing of the Second Request, that it made the assessment that it was no longer necessary to call TW4-04 live after TW4-01 completed his testimony.³³

2. Defence

16. The Defence opposes the Second Request and objects to the admission into evidence of TW4-04's Written Statements.³⁴ The Defence submits that: (i) the Second Request is out of time, as it was filed past the 20 March 2023 deadline set by the Panel for the submission of applications under Rule 153 of the Rules;³⁵ (ii) the admission of TW4-04's Written Statements would constitute an interference with the Accused's right to confront witnesses against him and would seriously prejudice the fairness of

²⁷ SITF00013348-00013349 RED.

²⁸ SITF00013336-00013347 RED; *see* Second Request, fn. 4.

²⁹ Second Request, paras 2, 6-8, 26.

³⁰ Second Request, paras 1, 9-20, 26.

³¹ Second Request, paras 2, 21, 26.

³² Second Request, paras 2, 22-25.

³³ Second Request, paras 4-5.

³⁴ Defence Response to Second Request, paras 2, 17, 45-46, 48.

³⁵ Defence Response to Second Request, paras 18-21.

the proceedings;³⁶ (iii) TW4-04's Written Statements relate to the alleged acts and conduct of the Accused and cannot therefore be admitted under Rule 153 of the Rules;³⁷ (iv) they are neither cumulative nor corroborative in nature;³⁸ (v) they pertain to issues central to the SPO's case, which are subject to dispute;³⁹ and (vi) are unreliable, as they contain potential inconsistencies and contradictions.⁴⁰

III. APPLICABLE LAW

17. The Panel notes Article 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 9(5), 137-139, 141(1) and 153 of the Rules.

IV. ANALYSIS

A. LEGAL TEST

18. Rule 153 of the Rules allows the Panel to identify situations where it is not necessary for witnesses to give testimony in person, with a view to streamlining and expediting the proceedings,⁴¹ while preserving the fairness of the trial.

19. Pursuant to Rule 153 of the Rules, and subject to Rule 155 of the Rules, the Panel may admit, *in lieu* of oral testimony, the written statements of a witness, or a transcript

³⁶ Defence Response to Second Request, paras 22-25.

³⁷ Defence Response to Second Request, paras 26-30.

³⁸ Defence Response to Second Request, paras 26, 31-33.

³⁹ Defence Response to Second Request, paras 26, 34-38.

⁴⁰ Defence Response to Second Request, paras 3, 39-44.

⁴¹ KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#) (Admissibility Decision), 17 March 2023, public, para. 32; KSC-BC-2020-05, F00286/RED, Trial Panel I, [Public redacted version of Decision on the Prosecution application pursuant to Rule 153 of the Rules](#) (Mustafa Rule 153 Decision), 17 December 2021, public, para. 21.

of evidence and associated exhibits⁴² provided by a witness in proceedings before the Specialist Chambers, if the following requirements are met.

20. First, the written statement or transcript goes to proof of a matter other than the acts and conduct of the accused as charged in the (confirmed) indictment. The Panel recalls its previous jurisprudence that the expression “acts and conduct of the Accused” refers to the personal actions and omissions of the accused. In other words, it relates exclusively to those actions and omissions of the accused which are described in the charges brought against him/her, or which are otherwise relied upon to establish his/her criminal responsibility for the crimes charged. The expression does not encompass the actions and omissions of others which are attributable to the accused under the modes of liability charged by the SPO.⁴³

21. Second, the written statement or transcript shall meet certain formal requirements or procedural requisites as provided in Rule 153(2) of the Rules. The statement shall be signed by the person who records and conducts the questioning and by the witness and his/her Counsel, if present, as well as, where applicable, the Specialist Prosecutor or the Judge who is present. The record shall note the date, time and place, and all persons present during the questioning. If, in exceptional circumstances, the witness has not signed the record, the reasons thereof shall be noted.⁴⁴

⁴² [Admissibility Decision](#), para. 32, fn. 38, in which the Panel stated that the terms “written statement” and “transcript” also included annexes or other documents associated with the written statement/transcript, which were used or explained by the witness and which, as such, form an integral part of the written statement/transcript; *see also* [Mustafa Rule 153 Decision](#), para. 19, fn. 24.

⁴³ [Mustafa Rule 153 Decision](#), para. 19.

⁴⁴ [Mustafa Rule 153 Decision](#), para. 20.

22. Beyond these requirements, the Panel has discretion as to whether to admit the written statement or transcript *in lieu* of oral testimony.⁴⁵ Rule 153(1)(a) and (b) of the Rules provides for a set of factors that guide the Panel's discretion and militate either in favour or against the admission of a written statement or transcript. The Panel will consider these factors in its determination, but notes that they are not exhaustive⁴⁶ and, accordingly, it may take into account also other factors, as appropriate.

23. That said, the Panel recalls that, as in all instances where written statements are introduced, their admission must not be prejudicial to or inconsistent with the rights of the accused, as provided under Rule 141(1) of the Rules.⁴⁷

24. Lastly, while generally the standard admissibility criteria provided for in Rule 138(1) of the Rules (relevance, authenticity, probative value and absence of prejudicial effect) are deferred to the Panel's deliberation on the judgment, the Panel is required to render an admissibility ruling under Rule 153 of the Rules and will proceed accordingly.⁴⁸

B. ASSESSMENT

1. Preliminary Matters: Timing of the First Request and Second Request

25. At the outset, the Panel notes that both the First Request and the Second Request (collectively, Requests) were filed past the 20 March 2023 deadline set by the Panel.⁴⁹ Nevertheless, the Panel finds that the SPO has shown good cause by providing reasons for its late filing.

⁴⁵ As demonstrated by the use of the word "may" in the chapeau of paragraph (1) of Rule 153 of the Rules. See also [Admissibility Decision](#), para. 33; [Mustafa Rule 153 Decision](#), para. 21.

⁴⁶ See Rule 153(1)(a) of the Rules which provides that the factors "include, but are not limited to" and Rule 153(1)(b) of the Rules which also uses the word "include".

⁴⁷ See also [Mustafa Rule 153 Decision](#), para. 21.

⁴⁸ [Admissibility Decision](#), paras 21, 22, 33; see also [Mustafa Rule 153 Decision](#), para. 22.

⁴⁹ See para. 1 above.

26. The SPO submits that the proposed evidence of TW4-02 and TW4-04 is cumulative, in particular, of the evidence provided in court by witnesses TW4-10, TW4-11 and TW4-01, who testified between 1 May and 6 June 2023.⁵⁰ In this regard, the Panel accepts the SPO's submission that it may re-assess how to best present and streamline its case, considering the evolution of the proceedings, subject to the judicial oversight of the Panel, which will determine the most fair and appropriate modality of receiving the evidence for its truth-seeking function.⁵¹ The Panel is persuaded that, in this particular case, the SPO was in a position to make its (final) determination only after hearing the live testimonies of the aforementioned witnesses.

27. The Panel also recalls that it has repeatedly directed the Parties and Victims' Counsel to rely on Rules 153-155 of the Rules, where appropriate, in order to streamline and expedite the proceedings.⁵² The SPO's Requests are in line with the Panel's direction. The 20 March 2023 deadline was set by the Panel to ensure the proper organisation of the trial, but did not preclude later applications, provided that they are "accompanied by reasons for late filing".⁵³

28. The Defence fails to substantiate its submission that the "last-minute change in the mode of testimony" of witnesses TW4-02 and TW4-04 causes undue prejudice to the Accused. The Defence mixes arguments related to the timing of the Requests with arguments related to their substance.⁵⁴

29. For these reasons, and pursuant to Rule 9(5)(b) of the Rules, the Panel considers the Requests as validly made and will entertain them.

⁵⁰ First Request, paras 10-13; Second Request, para. 9.

⁵¹ See, for example, KSC-BC-2020-04, Transcript of Hearing, 4 May 2023, public, pp. 1352-1353.

⁵² [Decision on Conduct of Proceedings](#), para. 65; KSC-BC-2020-04, F00289, Trial Panel I, [Decision setting the date for trial preparation conferences and requesting submissions](#), 30 September 2022, public, Section C. 4. b, c, f, with Annex 1, strictly confidential and *ex parte*.

⁵³ [Decision on Conduct of Proceedings](#), para. 69.

⁵⁴ See Defence Response to First Request, para 14-15; Defence Response to Second Request, paras 20-21.

2. First Request

30. The Panel notes that in his Written Statements, TW4-02 provides information about, *inter alia*: (i) his alleged arrest and detention at the Kukës Metal Factory [REDACTED];⁵⁵ (ii) the involvement of [REDACTED] in his arrest and detention;⁵⁶ (iii) the use of the Kukës Metal Factory as a base by the Kosovo Liberation Army (KLA);⁵⁷ (iv) the opposition between the KLA and perceived supporters of the Democratic League of Kosovo (LDK);⁵⁸ (v) the layout of the Kukës Metal Factory, including the rooms allegedly used to detain individuals;⁵⁹ (vi) the alleged detention and mistreatment of other individuals;⁶⁰ (vii) the conditions of detention at the Kukës Metal Factory;⁶¹ and (viii) the presence of Osman Kryeziu at the Kukës Metal Factory, his function as an investigator/prosecutor, and his involvement in TW4-02's questioning during his detention.⁶²

31. For the reasons that follow, the Panel is satisfied that TW4-02's Written Statements are suitable for admission *in lieu* of his oral testimony.

32. First, the Panel notes that, contrary to the Defence's assertion, TW4-02's evidence does not go to proof of the acts and conduct of the Accused. The witness does not mention or provide information concerning the Accused or his role or involvement in the crimes charged and when asked whether he knew a man by the name of Pjetër Shala, he responded "no".⁶³ As previously set out in its jurisprudence, the Panel

⁵⁵ 060664-TR-ET Part 5 RED4, pp. 2, 4.

⁵⁶ 060664-TR-ET Part 2, pp. 3, 5.

⁵⁷ 060664-TR-ET Part 2, p. 9.

⁵⁸ 060664-TR-ET Part 2, pp. 13-15.

⁵⁹ 060664-TR-ET Part 3, pp. 2-15; 060664-TR-ET Part 4, pp. 2-5; 108837-108849 RED, pp. 4-11; 060653-060663-ET ; 108837-108849, pp. 3-13.

⁶⁰ 060664-TR-ET Part 2, pp. 4-5; 060664-TR-ET Part 3; 060664-TR-ET Part 5 RED4.

⁶¹ 060664-TR-ET Part 3, pp. 25-27.

⁶² 060664-TR-ET Part 2, pp. 11-13 and 060664-TR-ET Part 4, pp. 11, 19; 108850-TR-ET Part 1 RED, p. 10.

⁶³ 060664-TR-ET Part 5 RED4, p. 13.

considers the expression “acts and conduct of the Accused” to refer exclusively to the personal actions and omissions of the Accused, thus not encompassing the actions and omissions of others which are attributable to him under the modes of liability charged by the SPO.⁶⁴ The Defence has not advanced any argument for the Panel to depart from its jurisprudence. As a matter of fact, the Defence appears to suggest an interpretation whereby (almost) any evidence presented in support of any of the facts and circumstances pleaded in the Confirmed Indictment goes to proof of the acts and conduct of the Accused.⁶⁵ Adopting the Defence’s interpretation would practically defeat the purpose of Rule 153 of the Rules, as it would limit its application to statements that provide background information, or go to the contextual elements of the crimes charged, or to sentencing.⁶⁶ The Panel is therefore unpersuaded by the Defence’s argument that TW4-02’s Written Statements go to the acts and conduct of the Accused.

33. Second, the Panel observes that TW4-02 appears to have been detained at the Kukës Metal Factory [REDACTED], before being released,⁶⁷ and the witness himself stated [REDACTED].⁶⁸ Therefore, his evidence regarding the crimes charged, albeit relevant,⁶⁹ is limited in scope.

34. Third, to the extent that TW4-02’s Written Statements relate to the crimes charged in the Confirmed Indictment, they are cumulative or corroborative of the testimonies of witnesses who have provided live testimonies and who have been

⁶⁴ See para. 20 above.

⁶⁵ See Defence Response to First Request, para. 23.

⁶⁶ Similarly ICC, *The Prosecutor v. Al Hassan*, ICC-01/12-01/18-2222, [Judgment on the appeal of the Prosecution against Trial Chamber X’s “Decision on second Prosecution request for the introduction of P-0113’s evidence pursuant to Rule 68\(2\)\(b\) of the Rules”](#), 13 May 2022, public, paras 3, 55.

⁶⁷ 060664-TR-ET Part 5 RED4, pp. 2, 4.

⁶⁸ 060664-TR-ET Part 4, pp. 10-ff ; 060664-TR-ET Part 5 RED4.

⁶⁹ See para. 38 below.

cross-examined by the Defence. This includes notably TW4-10,⁷⁰ TW4-11⁷¹ and TW4-01.⁷² In relation to the aforementioned witnesses, the Accused has been given a fair opportunity to effectively confront them, including through cross-examination. In these circumstances, the Panel considers that the impossibility to examine TW4-02 does not adversely affect the Accused's position and overall right to examine the witnesses against him.

35. Fourth, contrary to the Defence's suggestion, potential inconsistencies between TW4-02's Written Statements and the testimonies of other witnesses do not render his evidence *per se* unsuitable for admission under Rule 153 of the Rules. The same goes for [REDACTED]. The Panel will assess the credibility and reliability of the evidence – including any inconsistencies and discrepancies across witness statements and testimonies – in its judgment on the guilt or innocence of the Accused.

36. Fifth, as regards the procedural requirements under Rule 153(2) of the Rules, the Panel notes that TW4-02's Written Statements were generated from an audio-video recording in the form of a word-by-word transcript. Accordingly, the transcripts were not physically signed by the witness. However, both [REDACTED] have recorded the date, time and place of the questioning, as well as all persons present [REDACTED].⁷³ In addition, [REDACTED],⁷⁴ which the Panel considers to be an integral part of [REDACTED], contains information confirming that the DVD containing the recording [REDACTED] was signed by the witness, the [REDACTED] and all other persons present, and the Panel is able to verify the authenticity of such signatures.

⁷⁰ See, for example, KSC-BC-2020-04, Transcript of Hearing, 1 May 2023, confidential, pp. 1070, 1073-1074, 1095, 1170-1171.

⁷¹ See, among others, Transcript of Hearing, 2 May 2023, confidential, pp. 1208-1209, 1211-1215, 1261.

⁷² See, among others, Transcript of Hearing, 30 May 2023, confidential, pp. 1409-1413, 1414, 1434.

⁷³ 060664-TR-ET Part 1 RED3, p. 1 [REDACTED]; 108837-108849 RED, p. 1 [REDACTED].

⁷⁴ 108837-108849 RED [REDACTED].

37. With regard to the associated exhibits,⁷⁵ the Panel notes that they have been numbered, signed and dated by TW4-02.⁷⁶ Additionally, the Panel observes that: (i) the [REDACTED] with TW4-02 were conducted [REDACTED] with an interpreter in a language understood by the witness;⁷⁷ (ii) he has confirmed that the contents of his statements are true and accurate;⁷⁸ (iii) his statements were given voluntarily without any threats, force, or guarantees;⁷⁹ and (iv) he had no objections to the manner or process by which the statements were taken.⁸⁰ Having considered the above, the Panel is satisfied that the requirements of Rule 153(2) of the Rules are fulfilled.

38. As regards the requirements under Rule 138(1) of the Rules, the Panel makes the following findings. First, the requirement of authenticity has been already undertaken by the Panel while assessing the requirements of Rule 153(2) of the Rules.⁸¹ Second, the Panel considers that the evidence provided in TW4-02's Written Statements – as summarized above⁸² – is relevant for its understanding of the alleged events at the Kukës Metal Factory, as well as for the evaluation of the credibility of other witnesses who testified on the same events. As such, the Panel is satisfied that the material is relevant and has probative value. Such assessment is without prejudice to the fact that, when deliberating the judgment, and in accordance with Rule 139(2) of the Rules, the Panel shall carry out a holistic evaluation and weighing of all the evidence taken as a whole to establish whether or not the facts at issue have been established.

39. Lastly, given that TW4-02's Written Statements are largely corroborative of testimonies provided by witnesses live in court and is limited in scope, the Panel

⁷⁵ The Panel considers that the term "associated exhibits" extends to both the exhibits in 060653-060663-ET as well as [REDACTED] which contains a number of exhibits (108837-108849 RED, pp. 3-13).

⁷⁶ See 060653-060663-ET and 108837-108849 RED, pp. 3-13.

⁷⁷ 060664-TR-ET Part 1 RED3 [REDACTED], p. 2; 108850-TR-ET Part 1 RED [REDACTED], pp. 1- 2.

⁷⁸ 108850-TR-ET Part 1 RED [REDACTED], p. 12.

⁷⁹ 060664-TR-ET Part 5 RED4 [REDACTED], pp. 22-23; 108850-TR-ET Part 1 RED [REDACTED], p. 12.

⁸⁰ 060664-TR-ET Part 5 RED4 [REDACTED], p. 23; 108850-TR-ET Part 1 RED [REDACTED], pp. 12-13.

⁸¹ See paras 36-37 above.

⁸² See para. 30 above.

considers that their introduction into evidence is not prejudicial to or inconsistent with the rights of the Accused or the fairness of the trial and will instead ensure the expeditious conduct of the proceedings.

40. In light of the above, the Panel grants the First Request and admits TW4-02's Written Statements into evidence, including their associated exhibits, pursuant to Rule 153 of the Rules.

3. Second Request

41. In his Written Statements,⁸³ TW4-04 provides information about, *inter alia*: (i) his alleged arrest [REDACTED], by KLA members, one of whom [REDACTED]; (ii) his subsequent alleged detention and transfer [REDACTED], [REDACTED], [REDACTED] Kukës (towards the end of May – beginning of June 1999); (iii) the conditions of detention; (iv) the layout of the alleged places of detention; (v) the persons involved in his detention and questioning; (vi) the presence and identities of other alleged detainees; (vii) the circumstances of his release; and (viii) the relationship between the KLA and the LDK before, during and after the period relevant to the Confirmed Indictment.

42. For the reasons that follow, the Panel is satisfied that TW4-04's Written Statements are suitable for admission *in lieu* of his oral testimony.

43. First, the Panel notes that TW4-04's Written Statements do not go to proof of the acts and conduct of the Accused. TW4-04 does not mention or provide information concerning the Accused or his role or involvement in the crimes charged and, when

⁸³ SITF00013336-00013347 RED; SITF00372810-00372850; SITF00013262-00013315 RED; SITF00015825-00015925 RED; SPOE00014669-00014751 RED; 064716-TR-ET Part 1 RED3; 064716-TR-ET Part 2 RED3; 064716-TR-ET Part 3 RED4; 064716-TR-ET Part 4 RED3; 064716-TR-ET Part 5 RED4; 108826-TR-ET Part 1 RED.

asked whether he knew a man by the name of Pjetër Shala, he responded “no”.⁸⁴ For the same reasons as provided above in relation to TW4-02,⁸⁵ the Panel is unpersuaded by the Defence’s submission that TW4-04’s Written Statements go to the acts and conduct of the Accused and will not entertain this argument further.

44. Second, the Panel notes that TW4-04 spent most of his alleged detention at locations and/or times that fall outside of the scope of the charges.⁸⁶ TW4-04 appears to have been taken to the Kukës Metal Factory towards the end of the timeframe relevant to the Confirmed Indictment⁸⁷ and was allegedly held there [REDACTED], after which he was released.⁸⁸ Thus, while his evidence is relevant,⁸⁹ it is relatively limited in scope.

45. Third, TW4-04’s evidence regarding his alleged detention in Kukës, in May-June 1999 (regarding, for instance, the conditions of detention, layout of the place of detention, presence and identities of other detainees) is cumulative and corroborative of the testimonies of other witnesses, notably TW4-01,⁹⁰ TW4-10⁹¹ and TW4-11,⁹² who have appeared live before the Panel and whom the Defence has cross-examined. The parts of his evidence which relate to the relationship between the KLA and the LDK further provide historical and political background. In these circumstances, the fact that the Defence will not be in a position to examine TW4-04 does not adversely affect

⁸⁴ 064716-TR-ET Part 5 RED4, p. 22, lines 20-22.

⁸⁵ See para. 32 above.

⁸⁶ 064716-TR-ET Part 3 RED4, pp. 1-8.

⁸⁷ SPOE00014669-00014751 RED, at 00014689-00014690.

⁸⁸ SITF00013262-00013315 RED, at 00013273-00013274; SITF00015825-00015925 RED, at 00015854; SPOE00014669-00014751 RED, at 00014692; 108826-TR-ET Part 1 RED, pp. 7, 10, 13.

⁸⁹ See para. 49 below.

⁹⁰ See, for example, KSC-BC-2020-04, Transcript of Hearing, 30 May 2023, confidential, pp. 1409-1413, 1426-1440, 1449; Transcript of Hearing, 31 May 2023, confidential, pp. 1537-1540; Transcript of Hearing, 6 June 2023, confidential, p. 1918; REG00954; REG00955.

⁹¹ See, for example, KSC-BC-2020-04, Transcript of Hearing, 1 May 2023, public, pp. 1035-1052.

⁹² See, for example, KSC-BC-2020-04, Transcript of Hearing, 2 May 2023, confidential, pp. 1198-1199, 1206-1219; Transcript of Hearing, 3 May 2023, confidential, p. 1261.

the Accused's position and overall right to examine the witnesses against him. The Panel also stresses at this juncture that, contrary to the Defence's submissions,⁹³ witnesses need not corroborate each other on each and every aspect or detail of their evidence for their statements to be suitable for admission under Rule 153 of the Rules.

46. Fourth, the Panel notes that the Defence does not explain in which respect the issues that it describes as being "central" to the SPO's case⁹⁴ are indeed central. The Panel underlines that what the SPO has to prove is contained in the Confirmed Indictment and will not engage further with the Defence's submissions on this point.

47. Fifth, turning to the Defence's submission that TW4-04's Written Statements are unreliable,⁹⁵ the Panel recalls that inconsistencies, contradictions and inaccuracies do not automatically render a witness's evidence unreliable. The Panel will assess this in its judgment on the guilt or innocence of the Accused, in accordance with Rule 139(2) of the Rules, in light of the trial record as a whole.⁹⁶

48. Sixth, the Panel is satisfied that TW4-04's Written Statements fulfil the formal requirements provided for in Rule 153(2) of the Rules as: (i) they are signed by the witness⁹⁷ and/or [REDACTED] who conducted the questioning,⁹⁸ or by [REDACTED];⁹⁹ (ii) the transcripts constitute *verbatim* records [REDACTED]; (iii) the witness confirmed that [REDACTED] are true and accurate, that they were given

⁹³ See Defence Response to Second Request, paras 32-33.

⁹⁴ Defence Response to Second Request, paras 34-38.

⁹⁵ See Defence Response to Second Request, paras 39-44.

⁹⁶ KSC-BC-2020-05, F00494/RED3/COR, Trial Panel I, [Further redacted version of Corrected version of Public redacted version of Trial Judgment](#), 16 December 2022 (date of latest public redacted version, 8 June 2023), paras 32, 36.

⁹⁷ SITF00013336-00013347 RED; SITF00372810-00372850; regarding 064716-TR-ET Parts 1-5 and 108826-TR-ET Part 1, see Second Request para. 22, where the SPO submits that the DVDs containing [REDACTED] were signed by the witness and by [REDACTED]; see also 108816-108825 RED, at 108816-108817, 108822.

⁹⁸ SITF00013336-00013347 RED; SITF00372810-00372850; SITF00013262-00013315 RED.

⁹⁹ SITF00015825-00015925 RED; SPOE00014669-00014751 RED.

voluntarily, without any threat, force, promise, or guarantee in return, and that he had no objections to the manner in which they were obtained;¹⁰⁰ (iv) the [REDACTED] were conducted with the assistance of an interpreter, in a language the witness understands; and (v) all [REDACTED] record the date, time, place and persons present.

49. Lastly, the Panel is satisfied that the requirements of Rule 138(1) of the Rules have also been met. The Panel considers that TW4-04's Written Statements are relevant and have probative value, to the extent that they relate to his alleged arrest and subsequent detention at the Kukës Metal Factory, as they provide information on, *inter alia*, the alleged conditions of detention, the layout of the place of detention, the presence and identities of other alleged detainees, the circumstances of TW4-04's release, as well as the relationship between the KLA and the LDK. The Panel is further satisfied that TW4-04's Written Statements are authentic, as they were collected in compliance with the formal requirements provided for under Rule 153(2) of the Rules.¹⁰¹ Their admission into evidence is not prejudicial to or inconsistent with the rights of the Accused, for the reasons provided by the Panel in paragraphs 43-45 above.

50. Turning to the exhibits associated to the [REDACTED] (108816-108825 RED), the Panel notes that they were used and explained by the witness during [REDACTED]¹⁰² and thus form an integral part of it. The Panel also considers [REDACTED] (SITF00013348-00013349 RED), which explains [REDACTED],¹⁰³ to be an associated exhibit, as it is inseparable from the [REDACTED] and thereby forms an integral part of it.

¹⁰⁰ 064716-TR-ET Part 5 RED4, pp. 36-37; 108826-TR-ET Part 1 RED, p. 12.

¹⁰¹ See para. 48 above.

¹⁰² See 108826-TR-ET Part 1 RED.

¹⁰³ SITF00013336-00013347 RED.

51. In light of the above, the Panel grants the Second Request and admits TW4-04's Written Statements into evidence, including their associated exhibits, pursuant to Rule 153 of the Rules.

52. The Panel's determination in relation to both the First Request and the Second Request extends to any translations of the admitted material. It also extends to associated audio-visual material, if any and if duly disclosed. In this regard, noting the Defence's submission that it has no access to the audio-video recordings of [REDACTED],¹⁰⁴ the Panel directs the SPO to disclose [REDACTED], in redacted form, [REDACTED], as soon as possible. Should the SPO not be in a position to disclose the audio-video material with the required redactions, [REDACTED], it shall inform the Panel, the Defence and Victims' Counsel accordingly.

V. VARIATION OF TIME LIMITS

53. In light of the upcoming summer judicial recess, starting on Monday, 24 July 2023,¹⁰⁵ the Panel considers it appropriate to vary the time limit for requests for certification to appeal the present decision, should the Parties wish to do so, in order to enable the Panel to rule on any such requests before the summer judicial recess. Accordingly, pursuant to Rule 9(5)(a) of the Rules, any requests under Article 45(2) of the Law and Rule 77 of the Rules shall be made by **Friday, 30 June 2023**. Responses may be filed by **Friday, 7 July 2023**. The Panel will not entertain any reply.

VI. DISPOSITION

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

¹⁰⁴ Defence Response to Second Request, para. 43.

¹⁰⁵ KSCPR-2022/F00003, President of the Specialist Chambers, *Judicial Recess Periods for 2023*, 4 November 2022, public.

- a. **GRANTS** the First Request and the Second Request;
- b. **ADMITS** into evidence TW4-02's Written Statements: 108850-TR-ET Part 1 RED (Albanian version, 108850-TR-AT Part 1 RED); 060664-TR-ET Part 1 RED3 (Albanian version, 060664-TR-AT Part 1 RED3); 060664-TR-ET Part 2 (Albanian version, 060664-TR-AT Part 2 RED3); 060664-TR-ET Part 3 (Albanian version, 060664-TR-AT Part 3 RED4); 060664-TR-ET Part 4 (Albanian version, 060664-TR-AT Part 4 RED4); 060664-TR-ET Part 5 RED4 (Albanian version, 060664-TR-AT Part 5 RED4); and associated exhibits: 060653-060663 (English version, 060653-060663-ET) and 108837-108849 RED;
- c. **ADMITS** into evidence TW4-04's Written Statements: SITF00013336-00013347 RED and associated exhibit SITF00013348-00013349 RED; SITF00372810-00372850; SITF00013262-00013315 RED; SITF00015825-00015925 RED; SPOE00014669-00014751 RED; 064716-TR-ET Part 1 RED3 (Albanian version, 064716-TR-AT Part 1 RED4); 064716-TR-ET Part 2 RED3 (Albanian version, 064716-TR-AT Part 2 RED3); 064716-TR-ET Part 3 RED4 (Albanian version, 064716-TR-AT Part 3 RED3); 064716-TR-ET Part 4 RED3 (Albanian version, 064716-TR-AT Part 4 RED3); 064716-TR-ET Part 5 RED4 (Albanian version, 064716-TR-AT Part 5 RED4); 108826-TR-ET Part 1 RED (Albanian version, 108826-TR-AT Part 1 RED) and associated exhibit 108816-108825 RED;
- d. **ORDERS** the SPO to disclose any audio-video recordings of [REDACTED], in redacted form, as applicable, as soon as possible;
- e. **ORDERS** the Registrar to assign exhibit numbers to the aforementioned items (including any audio-video material to be disclosed), 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;

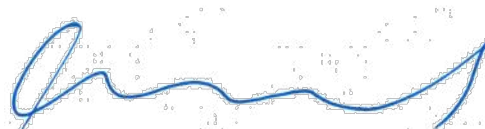
- f. **ORDERS** the Registrar to classify all aforementioned items as confidential; and
- g. **DECIDES** to vary the time limit for requests for certification to appeal the present decision, if any, and any responses thereof, as specified in paragraph 53 of the present decision.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 23 June 2023

At The Hague, the Netherlands.