



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-04
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

Registrar: Dr Fidelma Donlon

Filing Party: Specialist Prosecutor's Office

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'Prosecution response to 'Defence First Request for the Admission of Non-Oral Evidence''

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby responds to the First Request,¹ whereby the Defence seeks to tender in evidence 44 documents ('Items'), listed in Annex 1 to the First Request, relating to SPO witnesses TW4-01, TW4-02, TW4-04, TW4-05, TW4-10, W04887, W01448, and W04733.² The SPO objects to the admission of Items 1-10, 14, 17-19, 21-26, 29-33, 36-37, 39-41, and 43-44 listed in Annex 1.
2. The nature of the SPO objections is essentially twofold. First, a number of Items tendered by the Defence should have been, as appropriate, used with and tendered through witnesses when they testified in this trial. The Defence chose not to put these documents to these witnesses, and in keeping with applicable jurisprudence it should now be barred from seeking their admission by way of written motion. Second, several Items are or amount to, in effect, prior statements of witnesses. Pursuant to applicable jurisprudence, their testimonial nature is a bar to their admission through Rule 138, as the admissibility of witness statements *in lieu* of oral testimony is specifically regulated by Rules 153-155 of the Rules.³
3. Finally, a residual category of objections concerns Items in relation to which the Defence has failed to sufficiently substantiate relevance, or are cumulative in nature with evidence already on record or other documents tendered through the First Request.

¹ Defence First Request for the Admission of Non-Oral Evidence with Confidential Annex 1, KSC-BC-2020-04/F00688, 13 October 2023, confidential ('First Request').

² First Request, KSC-BC-2020-04/F00688, para.1.

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein are to the Rules, unless otherwise specified.

II. SUBMISSIONS

A. LEGAL PRINCIPLES APPLICABLE TO THE SPO OBJECTIONS TO ITEMS TENDERED THROUGH THE FIRST REQUEST

1.A number of Items listed in Annex 1 should have been tendered through witnesses who testified at trial

4. The first category of objections concerns documents that the Defence could – and should – have put to the relevant SPO witnesses during their cross-examination. Written requests for the admission of documentary evidence should not be used as a way to undermine the principle of orality enshrined in Rule 141(1). They should not, as a general matter, become an alternative to presenting exhibits through witnesses who are in position to speak to and be cross-examined about them.⁴

5. Application of this principle is especially important with respect to documents going to the credibility of a witness. Evident reasons of fairness require that a witness be put in a position to explain any alleged inconsistency between his testimony and a document, or to provide context to other information which is alleged to otherwise undermine his or her credibility. International criminal tribunals have declined to admit such documents by way of written motion, without giving the witness a chance to comment on them, unless the other party did not object,⁵ especially when admission of a document was sought *after* a witness had testified, and the tendering party had had the opportunity to put that document to that witness, but failed to do so.⁶

⁴ *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Prosecution Request for Admission of Items Through the Bar Table, KSC-BC-2020-07/F00334, 29 September 2021 (*Gucati and Haradinaj* Decision'), para.22. See also International Criminal Tribunal for the former Yugoslavia ('ICTY'), *Prosecutor v. Karadžić*, Decision on Prosecution's First Bar Table Motion for the Admission of Intercepts, IT-95-5/18-T, 14 May 2012 (*Karadžić* Decision'), para.16.

⁵ ICTY, *Prosecutor v. Stanisić and Simatović*, Decision on the Simatović Defence First Bar Table Motion, IT-03-69-T, 28 June 2012, paras 9-10.

⁶ See ICTY, *Karadžić* Decision, paras 16-17; *Prosecutor v. Halilović*, Decision on Admission into Evidence of Prior Statement of a Witness, IT-01-48-T, 5 July 2005 (*Halilović* Decision'), p.1.

2. A number of Items listed in Annex 1 are of testimonial nature, constituting prior statements of witnesses, and are unsuitable for submission in writing under Rule 138(1)

6. The Defence also seeks to tender a number of documents which are testimonial in nature, such as investigators' notes of a meeting with a witness and official notes of information received by the SPO from individuals it interviewed in the course of its investigations.

7. Panels of the Kosovo Specialist Chambers and courts with similar admissibility frameworks have consistently adopted a substantive, rather than formalistic, approach to what constitutes a written statement of a witness.⁷ In this context, SPO official notes recording information given by witnesses and prepared in the context of criminal proceedings are generally considered to be prior statements.⁸ In application of the same principle, minutes of meetings with a witness, or other summaries of a witness's evidence, including as prepared by an investigator in the course of an investigation, are also prior statements for admissibility purposes.⁹

8. Rule 141(1) requires the testimony of a witness to be given orally at trial. Relevant exceptions to this rule are set out in Rules 153-155, which are *leges speciales vis-à-vis* Rule 138(1),¹⁰ and prescribe stringent requirements for the admissibility of witness statements *in lieu* of oral evidence. In its *Decision on the Submission and Admissibility on Non-Oral Evidence*, the Trial Panel ('Panel') has provided clear guidance to the parties in this regard, stating that evidence that is testimonial in nature is inadmissible when

⁷ *Gucati and Haradinaj* Decision, KSC-BC-2020-07/F00334, para.84; International Criminal Court, *Prosecutor v. Ongwen*, ICC-02/04-01/15, Decision on Defence Request to Submit 470 Items of Evidence, 14 November 2019, para.15; Special Tribunal for Lebanon, *In the matter of El Sayed*, CH/AC12011/01, Appeals Chamber, *Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge's Decision of 12 May 2011*, 19 July 2011, paras 72-73, 85-86.

⁸ *Gucati and Haradinaj* Decision, KSC-BC-2020-07/F00334, paras 83-87; *Specialist Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F01852, 11 October 2023 ('*Thaçi et al.* Decision'), para.8.

⁹ *Gucati and Haradinaj* Decision, KSC-BC-2020-07/F00334, para.86.

¹⁰ *Gucati and Haradinaj* Decision, KSC-BC-2020-07/F00334, para.87.

not elicited orally or when the preconditions for the introduction of written statements/transcripts under Rules 153-155 of the Rules are not met.¹¹

9. In application of these principles, the Panel should find that a number of documents tendered through the First Request, which are identified in the next Section of this response, are inadmissible.

B.SPO OBJECTIONS IN RELATION TO SPECIFIC DOCUMENTS TENDERED THROUGH THE FIRST REQUEST

1. Items relating to TW4-01 (1-25)

(a) Item 1

10. The SPO objects to the admission of **Item 1**, a letter sent [REDACTED], which summarises information provided [REDACTED] by a witness, [REDACTED].

11. During the cross-examination of TW4-01, the Defence put to the witness questions relating to some information recorded in the document, [REDACTED], which TW4-01 denied.¹² After the witness denied to have ever [REDACTED],¹³ the Defence did not put to the witness any information to the contrary or details of these allegations recorded in Item 1, [REDACTED].¹⁴ The Defence's choice not to put this document to the witness during his cross-examination, when it had the opportunity to do so, should prevent its admission at this stage by way of written motion.¹⁵

12. Furthermore, Item 1 essentially relays a statement made by [REDACTED] to [REDACTED] prosecutors, who are authorised to conduct investigations and collect evidence in the context of criminal proceedings. Further, this statement was subsequently transmitted to the [REDACTED] in relation to the criminal

¹¹ Decision on the submission and admissibility of non-oral evidence, KSC-BC-2020-04/F00461, 17 March 2023 ('Decision on Non-Oral Evidence'), para.32.

¹² Transcript (TW4-01), 5 June 2023, pp.1851-1854.

¹³ Transcript (TW4-01), 5 June 2023, p.1853.

¹⁴ 5007244-5007250 RED, pp.1-2.

¹⁵ See Section II(A)(1) above.

investigations conducted by that organisation.¹⁶ It thus amounts to a statement of [REDACTED], the admission of which is precluded through Rule 138.¹⁷

(b) Items 2-10

13. The SPO objects to the admission of **Items 2-10**, some of which concern [REDACTED].¹⁸

14. Preliminarily, it is noted that **Item 4** does not relate to the subject matter indicated by the Defence. It is a document prepared by the [REDACTED] in the wake of the announcement, made in June 2020 by the former Specialist Prosecutor, of the filing of an indictment against Hashim Thaçi and the other accused in KSC-BC-2020-06.¹⁹ It has no connection with TW4-01 [REDACTED]. The Defence has failed to make any submissions on the *prima facie* relevance and probative value of this document, aside from submitting, without explanation, that it relates to [REDACTED].²⁰ On this basis, the Defence have failed to satisfy the criteria for admissibility pursuant to Rule 138,²¹ and admission of Item 4 should be denied.

15. **Item 2** is the record of a statement given by TW4-01 to [REDACTED]. **Items 5** and **Item 9** are extracts of official notes recording information provided to the SPO by TW4-01 [REDACTED]. Admission of these documents should be denied for two reasons.

16. First, the Defence cross-examined TW4-01 extensively in relation to [REDACTED],²² but chose not to put any of these documents to the witness, despite having had ample opportunity to do so.²³ To the extent that the Defence believes there are any inconsistencies between Items 2, 5, and 9 and TW4-01's testimony in this trial, or that TW4-01 has omitted any facts during his testimony which are included in these

¹⁶ 5007244-5007250 RED, p.2, [REDACTED].

¹⁷ See Section II(A)(2) above.

¹⁸ First Request, KSC-BC-2020-04/F00688, para.12.

¹⁹ REG00826-REG00834-ET, p.REG00828.

²⁰ Annex 1, KSC-BC-2020-04/F00688/A01, p.2.

²¹ Decision on Non-Oral Evidence, KSC-BC-2020-04/F00461, para.10.

²² Transcript (TW4-01), 6 June 2023, pp.1865-1868, 1879-1884

²³ The Defence cross-examined TW4-01 for three days, on 2, 5 and 6 June 2023.

documents, it could – and should – have questioned TW4-01 on any such issue pursuant to Rule 141(2)(b) and (c). The Defence cannot seek admission of these documents now, after the witness’s testimony, depriving the witness of the opportunity to explain the contents of his statements and the SPO to conduct any re-direct examination it could have deemed necessary.²⁴

17. Furthermore, for the reasons set out in Section II(A)(2) above, Items 2, 5, and 9 all amount to previous statements of TW4-01. Admission of Items 2, 5, and 9 should thus also be denied as the stringent requirements of Rules 153-155 cannot be circumvented by seeking to tender through Rule 138 what, in effect, are previous statements of TW4-01.²⁵

18. Admission of **Items 3, 6, 7, 8, and 10** should also be denied. **Item 3** is [REDACTED]. **Item 10** contains other documents, many of which of administrative nature, relating to the [REDACTED]. The Defence is not seeking admission of [REDACTED],²⁶ which includes a background section setting out the circumstances considered by [REDACTED].²⁷ Should the Panel decide to admit Items 6-8, the SPO requests that, for completeness, [REDACTED] be also admitted in evidence.

19. TW4-01 has explained at trial [REDACTED],²⁸ which are now available to the Panel for consideration. To the extent that the Defence considers [REDACTED], relevant to the assessment of TW4-01’s credibility, it should have questioned TW4-01 on this matter, giving the witness the possibility to explain himself and allowing the SPO, if necessary, to conduct re-direct examination. Questioning TW4-01 on the impact, if any, [REDACTED] would have also assisted the Panel in conducting a more informed assessment of this information. The Defence, however, chose not to pursue

²⁴ See *Karadžić* Decision, paras 16-17; *Halilović* Decision, p.1.

²⁵ Decision on Non-Oral Evidence, KSC-BC-2020-04/F00461, para.32. See also *Thaçi et al.* Decision, KSC-BC-2020-06/F01852, para.8.

²⁶ [REDACTED].

²⁷ 108602-108608, paras 2-19.

²⁸ Transcript (TW4-01), 31 May 2023, pp.1557-1560; Transcript (TW4-01), 6 June 2023, pp.1865-1868, 1879-1884.

this matter when TW4-1 was available for questioning. The request to admit **Items 3, 6, 7, 8 and 10** should therefore be denied.²⁹

(c) Items 11-24

20. Consistent with the position taken at trial,³⁰ the SPO does not oppose admission of official documents, [REDACTED]. On this basis, and while, in fairness, these documents should have been put to the witness, the SPO does not oppose admission of **Items 11, 12, 13, 15, 16, and 20**, without prejudice to making submissions, at the appropriate time, on the weight – if any – that should be given to the information contained in these documents in assessing the evidence of TW4-01 in this case.

21. The SPO objects to the admission of **Item 14**, an official note dated [REDACTED] recording information concerning [REDACTED]. The Defence, which is tendering Item 14 for credibility purposes,³¹ should have questioned TW4-01 in cross-examination on the reasons for [REDACTED].³² Item 14, in fact, [REDACTED].³³ TW4-01's reasons [REDACTED], including fear, should have thus been explored by the Defence in cross-examination, or by the SPO in re-direct, before admitting Item 14 in evidence.

22. The SPO further objects to **Item 17**, for two reasons. In the list [REDACTED], tendered as **Item 20** – which the SPO does not object to, as indicated above – [REDACTED]. [REDACTED]. Under these circumstances, the Defence should have questioned TW4-01 on this discrepancy with Item 17, thus allowing him to explain and possibly provide clarity on this issue, but it chose not to do so. With respect to the second issue recorded in this document, [REDACTED], the SPO objects for the reasons set out below under the objection in relation to Item 23.

²⁹ See Section II(A)(I) above.

³⁰ Transcript (TW4-01), 5 June 2023, p.1842.

³¹ First Request, KSC-BC-2020-04/F00688, paras 15, 17.

³² See Section II(A)(1) above.

³³ See e.g. Transcript (TW4-01), 30 May 2023, pp.1452-1453 and Transcript (TW4-01), 31 May 2023, pp.1531-1534.

23. The SPO objects, at this stage, to the admission of **Item 18** as the document is largely in Albanian. An English translation should be submitted by the Defence before the Panel decides on its admissibility.

24. The SPO also objects to **Item 19**, as the information recorded therein is cumulative with and less precise than that contained in Item 20, to which the SPO does not object. Item 19 lists in fact [REDACTED].

25. The SPO objects to **Item 21**, which is a summary of information provided by and relating to TW4-01, [REDACTED]. It is a document prepared in the context of [REDACTED] that contains, as also essentially acknowledged by the Defence,³⁴ what is in effect a statement of TW4-01. As such, it should not be admitted in writing through Rule 138.³⁵

26. With regard to the information recorded in this document that relates to TW4-01's [REDACTED],³⁶ it is unofficial and partly cumulative in nature with that contained in Item 20.³⁷ [REDACTED], and the Defence did not take issue with that, nor did it allege any discrepancies between his trial testimony and the information recorded in Item 21.³⁸

27. **Item 22** is a [REDACTED] investigative report, dated [REDACTED], containing a summary of the findings on the Kukës investigation at that time,³⁹ biographies of suspects in that case,⁴⁰ and what appear to be translations of Serbian media articles concerning alleged KLA crimes in Northern Albania, including Kukës.⁴¹ Item 22 does not contain, as instead argued by the Defence, any information that TW4-01 was [REDACTED].⁴² The SPO therefore objects to the admission of this document.

³⁴ See First Request, KSC-BC-2020-04/F00688, para.16, where the Defence submits that Item 21 contains a 'summary of the evidence given by TW4-01'.

³⁵ See Section II(A)(2) above.

³⁶ First Request, KSC-BC-2020-04/F00688, para.16; SITF00372696-00372704 RED2, p.SITF00372704.

³⁷ [REDACTED].

³⁸ Transcript (TW4-01), 5 June 2023, p.1843.

³⁹ SPOE00168130-00168138 RED, pp.1-4.

⁴⁰ SPOE00168130-00168138 RED, pp.5-6.

⁴¹ SPOE00168130-00168138 RED, pp.7-8.

⁴² First Request, KSC-BC-2020-04/F00688, para.16.

28. The SPO objects to the admission of **Item 23**, which is an official note recording a telephone conversation with TW4-01 in relation to [REDACTED]. To the extent that the Defence deems the document relevant to the assessment of TW4-01's credibility, it should have put the document to the witness at trial,⁴³ allowing TW4-01 to explain the circumstances of and reasons for [REDACTED], and the SPO to conduct any re-direct examination that it may have deemed necessary.

29. The SPO further objects to the admission of **Item 24**, [REDACTED]containing, *inter alia*, minutes of a meeting with TW4-01, a summary of a phone call with TW4-01's [REDACTED]. The minutes of the meeting with TW4-01 amount to a prior statement of TW4-01. As such, they are inadmissible through Rule 138.⁴⁴ If the Defence considered any of the information contained in this document relevant to assess TW4-01's credibility, it should have put that information to the witness at trial, but it chose not to do so.⁴⁵

30. Finally, the SPO objects to the admission of **Item 25**. The Defence mischaracterises this document, stating that it [REDACTED].⁴⁶ TW4-01 is only listed as [REDACTED] [REDACTED].⁴⁷ The unknown authorship of this document also undermines its *prima facie* reliability. In addition, to the extent that the Defence considers TW4-01's involvement [REDACTED] as relevant to assess his credibility, it should have questioned the witness at trial about it, putting to him the nature of the Defence case regarding the relevance of that information.⁴⁸ However, it chose not to do so.

2. Items relating to TW4-02 (Items 26-33 in Annex 1 to the First Request)

⁴³ See Section II(A)(1) above.

⁴⁴ See Section II(A)(2) above.

⁴⁵ See Section II(A)(1) above.

⁴⁶ First Request, KSC-BC-2020-04/F00688, para.21.

⁴⁷ SITF00445845-00445848, p.1.

⁴⁸ Rule 143(3).

31. The SPO does not oppose the admission of **Items 27** and **28**. With regard to Item 28, [REDACTED], the SPO however notes that the judgment is not final and may be reformed or quashed on appeal. The SPO objects to the admissibility of all other items tendered by the Defence in relation to TW4-02.

32. **Item 26** is a document drafted by a [REDACTED] investigator, prepared in the context of [REDACTED], summarising information provided by TW4-02 in relation to his detention in Kukës. It amounts in effect to a prior statement of TW4-02, and its admissibility must be considered in light of the stringent requirements of Rules 153-155. The Defence request to admit it pursuant to Rule 138 should be denied.⁴⁹

33. The SPO objects to the admission of **Items 29-33**, which are extracts of information provided to the SPO by TW4-02 relating to his indictment and conviction [REDACTED], recorded in Item 28. The basis for the objection is twofold. First, official information concerning this conviction is already included in Item 28, [REDACTED].⁵⁰ The information contained in Items 29-33 is thus cumulative and less authoritative than that contained in Item 28. In keeping with the Panel's directions to the parties to be selective in their requests for admission of evidence,⁵¹ admission of Items 29-33 should be denied.

34. Secondly, the Defence has failed to explain how [REDACTED],⁵² – [REDACTED]– may assist the Panel in assessing the credibility of his written evidence, admitted pursuant to Rule 153.⁵³ The first interview of TW4-02 with the SPO, which contains the bulk of the evidence of TW4-02 about his detention at the Kukës Metal Factory, is in fact dated [REDACTED],⁵⁴ and pre-dates the indictment against TW4-02

⁴⁹ See Section II(A)(2) above.

⁵⁰ Item 28, 108646-108682-ET, p.1.

⁵¹ Decision on the submission and admissibility of non-oral evidence, KSC-BC-2020-04/F00461, 17 March 2023, para.39.

⁵² See e.g. Item 32, 110997-110997.

⁵³ Decision on the Specialist Prosecutor's requests to admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules, KSC-BC-2020-04/F00556, 23 June 2023.

⁵⁴ See P00143_ET, P00144_ET, P00145_ET, P00146_ET, P00147_ET.

[REDACTED]by almost two years.⁵⁵ TW4-02's second interview, [REDACTED],⁵⁶ pre-dates TW4-02's [REDACTED] by several months.

3. Items relating to TW4-04 (Items 34-37 in Annex 1 to the First Request)

35. The SPO does not object to the admission of **Items 34** and **35**.

36. The SPO objects to the admission of **Items 36** and **37** as they are official notes recording conversations between the SPO and TW4-04, prepared in the context of criminal proceedings, which are testimonial in nature, amount to prior statements of TW4-02, and are thus inadmissible in writing pursuant to Rule 138 in the absence of the preconditions set forth in Rules 153-155.⁵⁷

4. Items relating to TW4-05 (Items 38-39 in Annex 1 to the First Request)

37. The SPO does not object to the admission of **Item 38**. It objects to the admission of **Item 39**, which is an official note of a phone conversation with [REDACTED] of TW4-05, as the information recorded therein is testimonial in nature and thus inadmissible in writing pursuant to Rule 138, in the absence of the preconditions set forth in Rules 153-155.⁵⁸

5. Items relating to TW4-10 (Items 40-41 in Annex 1 to the First Request)

38. The SPO objects to the admission of **Items 40**, which is the record of an SPO conversation with [REDACTED], was produced in the context of criminal proceedings, and is thus testimonial in nature. The Defence has questioned TW4-10 in cross-examination on the information recorded in Item 40, and TW4-10's answers, stating that he was unaware that [REDACTED], are part of the trial record.⁵⁹ If the

⁵⁵ [REDACTED], *see* 108646-108682-ET, p.37.

⁵⁶ 108850-TR-ET Part 1 RED.

⁵⁷ *See* Section II(A)(2) above.

⁵⁸ *See* Section II(A)(2) above.

⁵⁹ Transcript (TW4-10), 2 May 2023, pp.1153-1160.

Defence wishes to elicit the evidence of [REDACTED] on this issue, it must do so in compliance with the rules on the admissibility of testimonial evidence.⁶⁰

39. The SPO also objects to the admission of **Item 41**, an extract of an official note recording a conversation between an SPO investigator and TW4-10 in which TW4-10 spoke about his knowledge of the Accused. The Defence seeks to tender this document as relevant and probative in relation to the credibility of TW4-10.⁶¹ The Defence, however, chose not to put this document, nor the information recorded therein, to TW4-10 during his cross-examination. On this basis,⁶² and considering the testimonial nature of this document,⁶³ its admission should be denied.

6. Items relating to W04887 (Item 42 in Annex 1 to the First Request)

40. The SPO does not object to the admission in evidence of **Item 42**.

7. Items relating to W04733 (Item 43 in Annex 1 to the First Request)

41. The SPO objects to the admission of **Item 43**, an official note, dated [REDACTED], where W04733 informed the SPO about [REDACTED] is recorded as having stated that the SPO 'must do something if it wants him to come to The Hague to testify'.⁶⁴ The Defence contends that this document is relevant to assess 'the credibility of the evidence which W04733 has provided'.⁶⁵ However, the statements and interviews of W04733 admitted in this case pursuant to Rule 155 all date between [REDACTED],⁶⁶ years before the communication between the SPO and W04733 recorded in Item 43. On this basis, the Defence has failed to establish the *prima facie* relevance of this item, and the request for its admission should be rejected.

8. Items relating to W04733 and W01448 (Item 43 in Annex 1 to the First Request)

⁶⁰ See Section II(A)(2) above.

⁶¹ First Request, KSC-BC-2020-04/F00688, para.34.

⁶² See Section II(A)(1) above.

⁶³ See Section II(A)(2) above.

⁶⁴ 108352-108352 RED.

⁶⁵ First Request, KSC-BC-2020-04/F00688, para.38.

⁶⁶ Decision on the Specialist Prosecutor's motion for admission of evidence pursuant to Rule 155 of the Rules, KSC-BC-2020-BC/F00562, 4 July 2023, paras 31, 70.

42. The SPO objects to the admissibility of **Item 44** for lack of relevance. The Defence avers that the document contains a list of ‘witnesses who allegedly have information regarding the organ trafficking case, including W04733 and W01448’, that the document shows that these witnesses participated in the mounting of evidence concerning that case, and that it is thus relevant to the assessment of their credibility.⁶⁷

43. First, contrary to the Defence contention, Item 44 does not show that W04733 and W01448 provided any information concerning organ trafficking. They are simply listed as ‘Witnesses who *allegedly have some information* relating to the organs trafficking, as indicated by persons interrogated by the Acting Deputy Prosecutor.’⁶⁸

44. Secondly, even if the document did contain the information indicated by the Defence, which it does not, the Defence has failed to explain how the participation of W01448 and W04733 as witnesses in that investigation would be relevant to the assessment of their credibility in this case.

III. CLASSIFICATION

45. This filing is confidential pursuant to Rule 82(4). A public redacted version will be filed following the filing of a public redacted version of the First Request.

IV. RELIEF REQUESTED

46. Based on the foregoing, the SPO requests the Panel to deny admission of Items 1-10, 14, 17-19, 21-26, 29-33, 36-37, 39-41, and 43-44 listed in Annex 1.

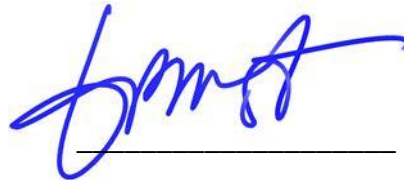
47. Should the Panel grant admission of Items 3, 6, 7, 8 and 10, the SPO requests that the [REDACTED] against TW4-01⁶⁹ be also admitted in evidence for reasons of completeness and to enable a full assessment.

Word Count: 4815

⁶⁷ First Request, KSC-BC-2020-04/F00688, para.40.

⁶⁸ 002762-002768 RED, p.5 (emphasis added).

⁶⁹ 108602-108608.



Kimberly P. West

Specialist Prosecutor

Friday, 27 October 2023

At The Hague, the Netherlands.