

Case No.: 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 Judge

Registrar: Dr Fidelma Donlon

Date: 13 October 2023

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Further Public Redacted Version of Defence First Request for the Admission of
Non-Oral Evidence with Confidential Annex 1**

Specialist Prosecutor's Office

Ward Ferdinandusse

Counsel for Victims

Simon Laws KC

Maria Radziejowska

Specialist Counsel for the Accused

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

I. INTRODUCTION

1. Pursuant to the Trial Panel's order dated 25 September 2023,¹ Article 37 of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law"), and Rules 137-139 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), the Defence for Mr Pjetër Shala ("Defence" and "Accused", respectively) hereby requests the admission into evidence of the items listed in Annex 1 to this Request. The items include both material falling under Article 37 of the KSC Law and other material, namely:
 - (i) evidence relating to Prosecution witness TW4-01;
 - (ii) evidence relating to Prosecution witness TW4-02;
 - (iii) evidence relating to Prosecution witness TW4-04;
 - (iv) evidence relating to Prosecution witness TW4-05;
 - (v) evidence relating to Prosecution witness TW4-10;
 - (vi) evidence relating to Prosecution witness W04887;
 - (vii) evidence relating to Prosecution witness W04733; and
 - (viii) evidence relating to Prosecution witnesses W04733 and W01448.
2. The items listed in Annex 1 are all relevant, have probative value and sufficient indicia of authenticity, and their probative value is not outweighed by any prejudicial effect. Annex 1 contains, for each item, a description of their relevance and probative value and indicia of authenticity. The items should be admitted into evidence.

¹ Email from the Court Management Unit of the Registry to the Parties and Victims' Counsel, 25 September 2023, at 5:23 pm. *See also* T. 2 October 2023 p. 2724.

II. PROCEDURAL BACKGROUND

3. On 17 March 2023, the Panel issued the “Decision on the submission and admissibility of non-oral evidence”.²
4. On 25 August 2023, the Panel ordered the Defence to submit any applications for the admission of non-oral evidence, including material pursuant to Article 37 of the KSC Law and any other material, by 29 September 2023.³
5. On 22 September 2023, the Defence requested for an extension of the time limit to submit its applications for the admission of non-oral evidence until 27 October 2023.⁴
6. On 25 September 2023, the Panel granted the extension request and ordered the Defence to file its first application for the admission of non-oral evidence by 13 October 2023 and the second application by 27 October 2023.⁵

III. APPLICABLE LAW

7. Article 37 of the KSC Law provides that:

1. Evidence collected in criminal proceedings or investigations within the subject matter jurisdiction of the Specialist Chambers prior to its establishment by any national or international law enforcement or criminal investigation authority or agency including the Kosovo State Prosecutor, any police authority in Kosovo, the ICTY, EULEX Kosovo or by the SITF may be admissible before the Specialist Chambers. Its admissibility shall be decided by the assigned panels pursuant to international standards on the collection of evidence and Article 22 of the Constitution. The weight to be given to any such evidence shall be determined by the assigned panels.

² KSC-BC-2020-04, F00461, Decision on the submission and admissibility of non-oral evidence, 17 March 2023. All further references to filings in this Request concern Case No. KSC-BC-2020-04 unless otherwise indicated.

³ T. 25 August 2023 p. 2437.

⁴ F00666, Defence Request for an Extension of Time for the Submission of Applications for the Admission of Non-Oral Evidence, 22 September 2023 (confidential), paras. 1, 3, 9.

⁵ Email from the Court Management Unit of the Registry to the Parties and Victims’ Counsel, 25 September 2023, at 5:23 pm. *See also* T. 2 October 2023 p. 2724.

2. [...]
3. Subject to judicial determination of admissibility and weight in paragraphs 1 and 2,
 - a. transcripts of testimony of witnesses given before the ICTY and records of depositions of witnesses made before the ICTY in accordance with Rule 71 of the ICTY Rules of Procedure and Evidence may be admissible before the Specialist Chambers provided that the testimony or deposition is relevant to a fact at issue in the proceedings before the Specialist Chambers;
 - b. transcripts of testimony of witnesses given before a Kosovo court, including pre-trial testimony or testimony preserved as part of a Special Investigative Opportunity under any criminal procedure code applicable in Kosovo at the relevant time, may be admissible before the Specialist Chambers, regardless of whether the judges sitting on the Panel heard the original testimony;
 - c. original documents, certified copies, certified electronic copies and copies authenticated as unaltered in comparison to their originals and forensic evidence collected by any authority listed in paragraph 1 may be admissible in proceedings before the Specialist Chambers; and
 - d. the report or statement of an expert witness admitted into evidence at the ICTY or the testimony of an expert before the ICTY may be admissible before the Specialist Chambers, whether or not the expert attends to give oral evidence before the Specialist Chambers.
4. [...]
5. When deciding on the relevance or admissibility of evidence collected by a State or State authorities other than Kosovo or its authorities, the Specialist Chambers shall not rule on the application of another State's national law.
8. Rule 138(1) of the Rules provides that “[u]nless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect”.⁶

⁶ See also F00491, Decision on the Specialist Prosecutor's motion for admission of documentary evidence, 20 April 2023 (confidential), para. 24.

9. In its “Decision on the submission and admissibility of non-oral evidence”, the Panel found that for applications for the admission of non-oral evidence, the Parties and Victims’ Counsel are ordered to: (i) describe shortly the asserted relevance of each piece of material in relation to the factual allegation in question; (ii) suggest the asserted probative value of each piece of material; and (iii) provide information as to the authenticity of each piece of material, if available.⁷ In addition, where appropriate, the information under points (i)-(iii) may be summarized for groups of documents.⁸

IV. SUBMISSIONS

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

(a) Evidence relating to court proceedings (Item 1)

10. Item 1 is a letter from the [REDACTED] which contains information that TW4-01 sent his friend [REDACTED] to the [REDACTED] on his behalf as he was afraid of appearing in person. This information contradicts TW4-01’s testimony ⁹ and refers to TW4-01 [REDACTED] organs trafficking [REDACTED]. Item 1 is relevant to the assessment of TW4-01’s testimony and has probative value in relation to his credibility.
11. Items 1 bears multiple indicia of authenticity which amply satisfy the threshold of authenticity. It contains the logo and stamp of the [REDACTED] and is signed by the [REDACTED] and dated.

(b) Documents relating to [REDACTED] (Items 2-10)

12. Items 2-10 are [REDACTED] court documents relating to [REDACTED] and include [REDACTED] notes, receipts documents, and a document from the

⁷ F00461, Decision on the submission and admissibility of non-oral evidence, 17 March 2023, para. 52.

⁸ F00461, Decision on the submission and admissibility of non-oral evidence, 17 March 2023, n. 69.

⁹ T. 5 June 2023, pp. 1851-1854.

[REDACTED]. These documents show that TW4-01 was [REDACTED] and that on [REDACTED], two days before the [REDACTED] in the [REDACTED], [REDACTED] requested that the [REDACTED] in [REDACTED] be urgently [REDACTED] to [REDACTED].¹⁰ The [REDACTED] concerned the “ [REDACTED] in connection with events falling within the scope of [REDACTED]”.¹¹ The [REDACTED] request was granted and as soon as the [REDACTED] and, specifically, on [REDACTED], [REDACTED].¹² As these documents relate to the [REDACTED] TW4-01 on facts and events falling within the scope of [REDACTED], they are relevant to the factual allegations in the case and the credibility of TW4-01.

13. Items 2-10 contain indicia which sufficiently satisfy the threshold of authenticity. Item 2 bears the [REDACTED] logo and is signed by the witness and the interviewers and dated. Item 3 bears the stamp of the [REDACTED] and is signed by the relevant [REDACTED] and [REDACTED] and dated. Item 4 bears the stamp of the [REDACTED] and is signed by its director and dated. Items 5-9 bear the [REDACTED] logo and is dated and signed by the [REDACTED], the [REDACTED], or the relevant recipient and deliverer. Item 10 is a collection of documents which bear the [REDACTED] or [REDACTED] logo and is dated and signed by the [REDACTED] or the relevant recipient and deliverer.

(c) Evidence relating to the [REDACTED] of TW4-01 (Items 11-24)

14. Item 11 is a collection of documents relating to [REDACTED] TW4-01, including information on [REDACTED], an order concerning the [REDACTED] by TW4-01 for [REDACTED], and TW4-01's [REDACTED]. Items 12 and 13 are reports from the [REDACTED] which contain information on the [REDACTED]

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

of TW4-01 for [REDACTED] and the [REDACTED] of TW4-01 along with [REDACTED].

15. Item 14 is a [REDACTED] case note showing that TW4-01 [REDACTED] and the [REDACTED] threat assessment for him. This document shows that TW4-01 [REDACTED] relating to [REDACTED]. Item 15 is a document from the [REDACTED] concerning the [REDACTED] of TW4-01, which relates to his [REDACTED] on [REDACTED], just a few days before his interview with the Prosecution at the KSC. Item 16 is a [REDACTED] which contains information regarding two incidents in [REDACTED] in which TW4-01 and [REDACTED] were involved in [REDACTED] and [REDACTED]. TW4-01 and [REDACTED] were [REDACTED] in a case involving [REDACTED], and in a case involving [REDACTED]. Item 17 is a Prosecution official note which states that TW4-01 [REDACTED] for [REDACTED] and was [REDACTED]. Item 18 is a [REDACTED] which contains information on ten [REDACTED] incidents involving TW4-01, including [REDACTED], etc, and item 19 is a document that lists these same ten incidents.
16. Item 20, an English translation of the subject profile of TW4-01 from the [REDACTED], contains the [REDACTED] of TW4-01. Item 21, a document supporting an application for inclusion in [REDACTED], contains a summary of the evidence given by TW4-01 and his [REDACTED], including an incident where he [REDACTED] as well as an incident involving [REDACTED]. Item 22 is a document from the [REDACTED], which shows that TW4-01 was [REDACTED] multiple times with [REDACTED] and that the two provided information about crimes perpetrated in Kukës. Item 23, a Prosecution internal document on conversations with TW4-01 and his mother, contains information that TW4-01 obtained a [REDACTED]. The document states that [REDACTED] informed TW4-01 that it could not help him and advised him to surrender to [REDACTED] as soon as possible as required. Item 24 is a collection of

documents which contain notes from a [REDACTED] meeting with TW4-01 and an email exchange mentioning that TW4-01 was [REDACTED] after [REDACTED]. In addition, the documents mention that the wife of TW4-01 had informed [REDACTED] that he was [REDACTED] but when [REDACTED] arrived, there was no visible sign of [REDACTED].

17. Items 11-24 are character evidence of TW4-01 which demonstrate that he has a [REDACTED], including for [REDACTED], and that he has repeatedly shown complete disregard for judicial processes. He was involved in [REDACTED] and has had [REDACTED]. These documents are relevant to and have probative value in relation to the character and credibility of TW4-01.
18. Items 11-24, which are all dated, contain indicia that demonstrate the authenticity of these material. Item 11 bears the logo of the [REDACTED]. Items 12, 13, 15, 19, and 20 are [REDACTED] documents which bear its logo, stamp, or staff signature. Items 16, 18, 21, 22, and 24 are [REDACTED] documents which bear its logo, and item 21 is signed by the [REDACTED]. Items 14, 17, and 23 are official Prosecution documents bearing its logo.

(d) Evidence relating to the Yellow House and organ trafficking [REDACTED] (Item 25)

19. Item 25 is a document listing [REDACTED] relating to the [REDACTED] and [REDACTED] investigations concerning crimes, including organ removal, committed in various locations in Albania between 24 May and 28 July 1999. The document lists TW4-01 [REDACTED] investigations and that he is a witness in the Kukës case which may form a greater part of the Yellow House case.

20. Regarding the Yellow House case, in [REDACTED], TW4-01 stated that he had no knowledge on it.¹³ In [REDACTED], he stated that he had heard about the Yellow House.¹⁴ In [REDACTED], TW4-01 told the Prosecution that he had heard rumors about a Yellow House where detainees would be killed and their kidneys would be taken.¹⁵ In the same statement, he then stated that he had never heard rumors about removing kidneys and that he did not even know where this house was.¹⁶ In addition, in [REDACTED], it is stated that TW4-01 had said that he was [REDACTED] regarding the organ trafficking [REDACTED].¹⁷
21. Item 25 relates to TW4-01 providing evidence to investigators regarding the Yellow House case and shows that he is a witness in the Kukës case. It is relevant to the factual allegations in this case and also demonstrates that TW4-01 has participated [REDACTED] organ trafficking [REDACTED]. Given the contradictions across his different accounts regarding this matter, the item is also relevant for the assessment of TW4-01's credibility.
22. Although item 25 does not bear intuitive indicia, the very content of the document, which refers to [REDACTED] reports and information, demonstrates the authenticity of the item.

B. Evidence relating to TW4-02 (Items 26-33)

23. Item 26 is a [REDACTED] document which contains a summary of the earliest available account of TW4-02's alleged detention at the Kukës Metal Factory in 1999. It includes, *inter alia*, information that TW4-02 stated that he was never mistreated there, the presence of other alleged detainees and alleged

¹³ ERN SITF00372735-00372746 RED2, pp. 6, 7.

¹⁴ ERN SITF00012854-00012864 RED4, para. 49.

¹⁵ ERN 083219-TR-ET Part 12 Revised RED, p. 27.

¹⁶ ERN 083219-TR-ET Part 12 Revised RED, pp. 18, 28.

¹⁷ ERN 5007244-5007250 RED, p. 2.

perpetrators, and TW4-02's connection with [REDACTED]. Item 27 is a [REDACTED] intelligence report containing information related to TW4-02, including six [REDACTED] incidents of which TW4-02 was [REDACTED].

24. Item 28 is a judgement issued by the [REDACTED] on [REDACTED] in the case [REDACTED] TW4-02. The judgment shows that TW4-02 was [REDACTED]. Items 29-33 are internal Prosecution documents detailing the Prosecution's conversations with TW4-02 in [REDACTED] and [REDACTED]. These documents describe how TW4-02 requested the Prosecution to [REDACTED]. The Prosecution explained to TW4-02 that it could not do anything about [REDACTED], and TW4-02 expressed unwillingness to testify in this case due to his disappointment with the Prosecution.
25. Item 26, which contains the evidence of TW4-02, concerns facts on which the Prosecution relies to substantiate the alleged criminal responsibility of the Accused, the alleged crimes committed, and the alleged events and presence of individuals at the alleged crime location. Importantly, the document contains relevant information that TW4-02 stated that he was never mistreated, which has probative value for the Defence case. Items 27-33 demonstrate that TW4-02 has a [REDACTED] and are relevant to and have probative value in relation to his credibility.
26. Regarding the authenticity of items 26-33, these documents contain indicia that sufficiently satisfy the threshold of authenticity. Items 26 and 27 are [REDACTED] documents which bear its logo or reference number and are dated. Item 28 is a court document from the [REDACTED] with case and document numbers. Items 29-33 are dated Prosecution internal documents which bear its logo.

C. Evidence relating to TW4-04 (Items 34-37)

27. Item 34 is a [REDACTED] report on the Kukës case [REDACTED] and [REDACTED] regarding TW4-04. The report states that TW4-04 refused to [REDACTED]. Item 35 is a court order dated [REDACTED] from the [REDACTED], which [REDACTED] TW4-04 to [REDACTED]. Item 36 is a Prosecution internal document regarding its contact with TW4-04 dated [REDACTED]. The document shows that TW4-04 stated that the person who was involved in his alleged detention at the Kukës Metal Factory is in Kosovo, that he has accepted that he was detained by mistake, and that he is on good terms with the person. Item 37 is an internal Prosecution document concerning a telephone call with TW4-04 on [REDACTED]. The document shows that TW4-04 stated that he has nothing to testify about, that he was held in Kukës by mistake, and that Xhemshit Krasniqi did nothing to him.
28. Items 34 and 35 are relevant to the assessment of TW4-04's credibility. Items 36 and 37, which contain important information from TW4-04 regarding his detention at the Kukës Metal Factory and the lack of mistreatment, are relevant and have probative value in relation to the Defence case as they concern the lack of criminal responsibility of the Accused. The items also contain information relevant to the acts and conduct of a member of the alleged joint criminal enterprise that the Accused was allegedly part of, the alleged crimes committed at the alleged crime location, and the charges in the case.
29. Items 34-37 contain features which clearly support their authenticity and reliability. Item 34 is a [REDACTED] official note which bears its logo, is dated, and is signed by the [REDACTED] and [REDACTED]. Item 35 is a court document from the [REDACTED] which bears its logo and stamp and is signed by the witness and presiding judge. Items 36 and 37 are Prosecution internal documents which bear its logo and are dated.

D. Evidence relating to TW4-05 (Items 38 and 39)

30. Item 38 is a [REDACTED] record of proceedings in the case against [REDACTED] dated [REDACTED] which states that TW4-05 failed to [REDACTED]. This item is relevant to the assessment of the credibility of TW4-05.
31. Item 39 is a Prosecution note on a conversation the Prosecution had with the wife of TW4-05 about the couple's time in Kukës. The information in the note corroborates TW4-05's testimony on his whereabouts and provides evidence on how TW4-05 was taken to the Kukës Metal Factory.¹⁸ As such, this item is relevant to the alleged crimes and location in the case.
32. Items 38 and 39 satisfy the threshold of authenticity. Item 38 is a [REDACTED] document which contains a case number, is signed by the public prosecutor, and is dated. Item 39 is a Prosecution note which bears its logo and is dated and signed.

E. Evidence relating to TW4-10 (Items 40 and 41)

33. Item 40 is an official Prosecution note on a conversation the Prosecution had with [REDACTED], who is [REDACTED], dated [REDACTED]. The note shows that [REDACTED] provided the Prosecution with the contact details of TW4-10. It therefore demonstrates a link between [REDACTED] and TW4-10 and further shows that [REDACTED] was in contact with many Prosecution witnesses. This item is relevant for the assessment of the credibility of [REDACTED] and TW4-10.
34. Item 41 is a Prosecution official note concerning its meeting with TW4-10 dated [REDACTED]. The note shows that TW4-10 stated that he did not know "anything about" the Accused and only heard rumours. In his testimony before the Panel, TW4-10 stated that the Accused was present the Kukës Metal Factory

¹⁸ ERN SITF00372498-00372510 RED4, pp. 3, 4; ERN SITF00013123-SITF00013153 RED, pp. 3-6.

when [REDACTED] were brought in.¹⁹ Thus, item 41 is relevant and has probative value in relation to the credibility of TW4-10.

35. Items 40 and 41 are authentic Prosecution official notes bearing its logo, the dates, the signature and/or names of the participating Prosecution personnel.

F. Evidence relating to W04887 (Item 42)

36. Item 42 is a Prosecution official note of a meeting held with W04887 on [REDACTED] on KSC premises. The note shows that the calculation the 2023 identification report for [REDACTED],²⁰ the alleged murder victim in the case, relied on the data of DNA profiles extracted in 2009. This item relevant to the charge of murder against the Accused.

37. Item 42 is a Prosecution official note bearing its logo, the relevant time, and author and is dated and signed, thus clearly indicating its authenticity.

G. Evidence relating to W04733 (Item 43)

38. Item 43 is an official Prosecution note concerning a phone conversation with W04733 dated [REDACTED]. The note shows that W04733 stated that [REDACTED] and that he expected the Prosecution to do something about it if it wanted him to testify. It further states that W04733 was still interested in receiving protective measures, but none of his conditions to testify had been met. This item is relevant for the assessment of the credibility of the evidence which W04733 has provided.

39. Item 43 is a dated official Prosecution note which contains its logo and indicates the names of the participating Prosecution personnel.

¹⁹ T. 1 May 2023 p. 1075.

²⁰ ERN 110668-110674.

H. Evidence relating to W04733 and W01448 (Item 44)

40. Item 44 is a list of [REDACTED] and documents provided by the [REDACTED]. The item contains a list of [REDACTED] regarding the organ trafficking [REDACTED], including W01448 and W04733. The item shows that these two witnesses participated [REDACTED] organ trafficking [REDACTED] and is thus relevant to the assessment of the credibility of their evidence in the case.
41. Item 44 is a list from [REDACTED] which bears indicia that demonstrate its authenticity, including [REDACTED]'s logo, official report numbers, and date of the document.
42. As demonstrated above, the items listed in Annex 1 comply with the requirements of Rule 138(1) of the Rules as they are all relevant, have probative value, and exhibit sufficient indicia of reliability and authenticity. Their admission is warranted as it will assist the Panel to evaluate the evidence of the Prosecution witnesses in the case. Their admission is in the interests of justice.

V. CLASSIFICATION

43. Pursuant to Rule 82(3) of the Rules, the Request and Annex 1 are filed as confidential as they contain confidential information. The Defence will file a public redacted version of the Request in due course.

VI. RELIEF REQUESTED

44. The Defence respectfully requests the Panel to admit into evidence the items listed in Annex 1 to the Request.

Word count: 4273

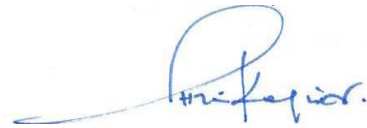
Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel



Hédi Aouini
Defence Co-Counsel



Leto Cariolou
Defence Co-Counsel

Friday, 13 October 2023

The Hague, the Netherlands