



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: 13 November 2023

Language: English

Classification: **Public**

Public redacted version of

**Decision on requests for admission of items used with DW4-06, DW4-02, DW4-05
and W04754 during their in-court testimonies**

with one public annex

To be notified to:

Specialist Prosecutor

Kimberly P. West

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 DW4-06, DW4-02, DW4-05 and W04754 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” (Framework Decision on Evidence), in which it set out the principles governing the admission of non-oral evidence in the present case.¹ The Panel further ordered the Parties and Victims’ Counsel to submit, no later than one week after completion of each evidentiary block, their applications for the admission of any material used during their questioning of the witnesses whose testimonies were completed within that block.²
2. On 20 and 21 September 2023, witness DW4-06 testified before the Panel,³ and on 26 and 28 September 2023, the Specialist Prosecutor’s Office (SPO) and the Defence for Pjetër Shala (Defence and Accused, respectively) filed their requests for admission of items used during their examinations of DW4-06.⁴

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

² [Framework Decision on Evidence](#), para. 56.

³ KSC-BC-2020-04, Transcript of Hearing, 20 September 2023, public, pp. 2449-2576; Transcript of Hearing, 21 September 2023, public, pp. 2577-2721.

⁴ KSC-BC-2020-04, F00669, Specialist Prosecutor, *Prosecution request for admission of exhibits from the SPO’s examination of DW4-06* (SPO Request Concerning DW4-06), 26 September 2023, public, with Annex 1, confidential, and Annex 2, public (containing the public redacted version of Annex 1); F00671, Defence, *Defence Request for Admission of Material Used in Court with Witness DW4-06* (Defence Request Concerning DW4-06), 28 September 2023, confidential, with Annex 1, confidential. A public redacted version of the main filing was submitted on 3 October 2023, F00671/RED.

3. On 2 and 3 October 2023, witnesses DW4-02 and DW4-05 testified before the Panel,⁵ and on 10 October 2023, the SPO and the Defence filed their requests for admission of items used during their examinations of DW4-02 and DW4-05.⁶

4. From 23 to 25 October 2023, witness W04754 testified before the Panel,⁷ and on 31 October and 1 November 2023, the Defence and the SPO filed their respective requests for the admission of items used during their examinations of W04754.⁸

5. Victims' Counsel did not file any request and no objections or observations were submitted with respect to any of the filed requests (collectively, SPO and Defence Requests).

II. APPLICABLE LAW

6. 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).

⁵ KSC-BC-2020-04, Transcript of Hearing, 2 October 2023, public, pp. 2722-2807; Transcript of Hearing, 3 October 2023, public, pp. 2808-2904.

⁶ KSC-BC-2020-04, F00684, *Prosecution request for admission of material used during the cross-examination of DW4-02 and DW4-05* (SPO Request Concerning DW4-02 and DW4-05), 10 October 2023, public, with Annex 1, confidential; F00685, Defence, *Defence Request for Admission of Material Used in Court During the Seventh Evidentiary Block* (Defence Request Concerning DW4-02 and DW4-05), 10 October 2023, confidential, with Annexes 1 and 2, confidential. A public redacted version of the main filing was submitted on 13 October 2023, F00685/RED.

⁷ KSC-BC-2020-04, Transcript of Hearing, 23 October 2023, public, pp. 2905-3007; Transcript of Hearing, 24 October 2023, confidential, pp. 3008-3127; Transcript of Hearing, 25 October 2023, public, pp. 3128-3163.

⁸ KSC-BC-2020-04, F00700, Defence, *Defence Request for Admission of Material Used in Court with W04754* (Defence Request Concerning W04754), 31 October 2023, confidential, with Annex 1, confidential. A public redacted version of the main filing was submitted on 8 November 2023, F00700/RED2; F00702, Specialist Prosecutor, *Prosecution request for admission of material used during the cross-examination of W04754* (SPO Request Concerning W04754), 1 November 2023, public, with Annex 1, confidential.

III. ANALYSIS

A. MATERIAL FALLING UNDER ARTICLE 37 OF THE LAW

7. The Panel notes that two items tendered by the Parties, which were used with DW4-06 (U000-8992-U000-8992 and U000-8992-U000-8992-ET Revised)⁹ and with W04754 (SITF00372465-00372466),¹⁰ were collected prior to the establishment of the Specialist Chambers, within the meaning of Article 37 of the Law. The Panel will therefore proceed to rule on their admissibility.¹¹

8. The Panel is satisfied that item U000-8992-U000-8992-ET Revised is relevant to assess DW4-06's credibility, as it concerns his role and position prior and during the indictment period and can establish the basis of his awareness regarding topics he testified about. The document appears to be authentic and reliable, as its content is corroborated by DW4-06's testimony.¹² The Panel is finally satisfied that its probative value is not outweighed by its prejudicial effect, seeing that no objections were raised regarding its admissibility.

9. In light of the foregoing, the Panel admits item U000-8992-U000-8992-ET Revised (including its original, U000-8992-U000-8992) into evidence.

10. The Panel is further satisfied that item SITF00372465-00372466 is relevant, as [REDACTED]. The document is corroborated by evidence provided by Defence witness W04754, [REDACTED],¹³ thereby lending credence to its authenticity and reliability. The Panel is finally satisfied that the item's probative value is not outweighed by its prejudicial effect, seeing that no objections were raised regarding its admissibility.

⁹ SPO Request Concerning DW4-06, para. 3; Annex 1 to SPO Request Concerning DW4-06, item 1.

¹⁰ Defence Request Concerning W04754, para. 4(ii); Annex 1 to Defence Request Concerning W04754, item 5.

¹¹ See [Framework Decision on Evidence](#), paras 27-28.

¹² KSC-BC-2020-04, Transcript of Hearing, 21 September 2023, public, p. 2615, line 2 to p. 2616, line 19.

¹³ [REDACTED].

11. In light of the foregoing, the Panel admits item SITF00372465-00372466 into evidence.

B. OTHER MATERIAL

12. As to the remaining items tendered by the SPO or the Defence, the Panel does not consider it necessary to exercise its discretion with a view to excluding any of them.¹⁴ Therefore, in accordance with the Framework Decision on Evidence, and absent any indication that the items fall within the ambit of Article 37 of the Law, the Panel dispenses with rendering a discrete item-by-item admissibility ruling and considers all items to be available to the Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused,¹⁵ with the following remarks.

13. First, the Panel notes that the SPO submits into evidence two statements of witnesses who have not been called to testify in the present proceedings, but which were used in court with DW4-06 (item 075522-075551 and its Albanian version, 075522-075551-AT)¹⁶ and with DW4-05 (item 065236-TR-ET Part 2 RED and its Albanian version, 065236-TR-AT Part 2 Revised RED).¹⁷ While the SPO has put only one paragraph of item 075522-075551 to DW4-06 (paragraph 117), it submits that the statement should be admitted in its entirety as other parts are relevant to identify DW4-06, who is referred to in paragraph 117.¹⁸ Similarly, while the SPO has put only one page of item 065236-TR-ET Part 2 RED to DW4-05 (page 11), it submits that pages 5 to 10 should also be admitted, as they are necessary for a full understanding of the discussion on page 11, concerning DW4-05's presence at the relevant location.¹⁹

¹⁴ [Framework Decision on Evidence](#), para. 11.

¹⁵ [Framework Decision on Evidence](#), paras 21, 57.

¹⁶ SPO Request Concerning DW4-06, paras 3-4; Annex 1 to SPO Request Concerning DW4-06, item 3.

¹⁷ SPO Request Concerning DW4-02 and DW4-05, paras 4, 6; Annex 1 to SPO Request Concerning DW4-02 and DW4-06, item 6.

¹⁸ SPO Request Concerning DW4-06, paras 3-4.

¹⁹ SPO Request Concerning DW4-02 and DW4-05, para. 6.

14. As (parts of) both statements were put to the respective witnesses in court and are therefore essential for a full understanding of their testimonies, the Panel considers such parts to be available for its deliberations and judgment, more specifically: paragraph 117 of item 075522-075551 and page 11 of item 065236-TR-ET Part 2 RED. The Panel may rely on other parts of these items, as necessary, to assess the correct meaning and context of the parts put to the witnesses in court. Mindful of the principle of orality and the Rules – which provide for specific procedures for the admission of written statements *in lieu* of oral testimony²⁰ – the Panel will not rely on these statements for any other purposes than those for which they were used with the witnesses in court.

15. Second, the Panel notes that both Parties and Victims' Counsel have used various photographs during their questioning of the witnesses, all of which form part of a broader collection of photographs taken at the Kukës Metal Factory (item SPOE40010264-40010559).²¹ Although only certain photographs have been used, the Panel considers the entire collection to be available for its deliberations and judgment as: (i) the photographs are related, they were all taken at the Kukës Metal Factory, on the same day;²² (ii) multiple photographs have been used with different witnesses by all Parties and participants; and (iii) this will promote a more efficient conduct of the proceedings.

16. Third, the Panel observes that some of the items that the Defence seeks to tender are already available for its deliberations and judgment and has not considered them

²⁰ See Rules 153 to 155 of the Rules.

²¹ KSC-BC-2020-04, Transcript of Hearing, 21 September 2023, public, p. 2711; Defence Request Concerning DW4-02 and DW4-05, paras 5(iii), 6(iii); Annex 1 to Defence Request Concerning DW4-02 and DW4-05, item 3; Annex 2 to Defence Request Concerning DW4-02 and DW4-05, item 3; SPO Request Concerning DW4-02 and DW4-05, para. 4; Annex 1 to SPO Request Concerning DW4-02 and DW4-05, items 4, 5; SPO Request Concerning W04754, para. 3; Annex 1 to SPO Request Concerning W04754, item 4.

²² See the metadata associated with SPOE40010264-40010559 in Legal Workflow; see further [Framework Decision on Evidence](#), para. 41.

further in this decision (page 059127 of item 059113-059144;²³ and item SPOE00330362-00330362).²⁴

17. In addition to the items submitted by the Parties, the Panel considers also *proprio motu* the following audio-video material to be available for its deliberations and judgment: items 078249-01 and 075138-02, more specifically the excerpts as used in court, together with transcripts 075138-02-TR and 075138-02-TR-ET. These items were used by the Panel during its questioning of W04754.

C. FINAL REMARKS

18. 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 SPO, the Defence and/or 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 the Registry's Court Management Unit (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

²³ Defence Request Concerning DW4-06, para. 4 (vi) (the Panel considers the reference to exhibit 10, 059128, to be a clerical error, as the item shown to the witness was exhibit 9, 059127. Annex 1 to Defence Request DW4-06 correctly identifies it); *see* Annex 1 to Defence Request Concerning DW4-06, item 6, referring to page 15 which corresponds to ERN 059127. *See further* F00610, Trial Panel I, *Decision on requests for admission of items used with TW4-01 during his in-court testimony*, 16 August 2023, confidential, with Annex 1, public. A public redacted version was issued on the same day, F00610/RED.

²⁴ Defence Request Concerning DW4-02 and DW4-05, paras 5(ii), 6(i); Annex 1 to Defence Request Concerning DW4-02 and DW4-05, item 2; Annex 2 to Defence Request Concerning DW4-02 and DW4-05, item 1. *See further* F00491, Trial Panel I, *Decision on the Specialist Prosecutor's motion for admission of documentary evidence*, 20 April 2023, confidential. A public redacted version was issued on the same day, F00491/RED.

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.

19. 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.

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

IV. DISPOSITION

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

- a. **GRANTS** the SPO and Defence Requests;
- b. **ADMITS** into evidence items U000-8992-U000-8992, U000-8992-U000-8992-ET Revised and SITF00372465-00372466;
- 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 them as confidential;

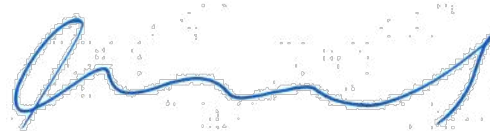
- d. **ORDERS** the Registry to reflect in the field “General comments” in Legal Workflow, as applicable, the portions of each item used with the witnesses by the Parties, Victims’ Counsel and/or the Panel;
- e. **ORDERS** the disclosing Party to immediately inform the other Party, Victims’ Counsel, the Panel, and CMU should any subsequent unredacted or lesser redacted versions of the aforementioned items be disclosed;
- f. **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 Monday, 13 November 2023

At The Hague, the Netherlands.