



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: 24 January 2024

Language: English

Classification: **Public**

Public redacted version of

**Decision on Defence requests for admission of evidence (F00770/COR and F00771)
and on evidence called by the Panel**

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 Defence requests for admission of evidence (F00770/COR and F00771) and on evidence called by the Panel.

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), setting the principles which govern the admission of non-oral evidence in the present case.¹
2. On 15 January 2024, the Defence for Pjetër Shala (Defence and Accused, respectively) filed two requests for admission of evidence: (i) a request to admit the written statements of one witness pursuant to Rule 155 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules) (First Request);² and (ii) a request to admit 15 items consisting of documentary and audio-video material (Second Request).³ On the same day, the Defence also closed its case, submitting that there were no more witnesses to be called or additional evidence to be presented.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 KSC-BC-2020-04, F00770/COR, Defence, *Corrected Version of Defence Request to Admit Evidence Pursuant to Rule 155 of the Rules*, 15 January 2024 (date of corrected version, 18 January 2024), confidential. A public redacted version was filed on 18 January 2024, F00770/COR/RED.

³ KSC-BC-2020-04, F00771, Defence, *Defence Request for the Admission of Evidentiary Material*, 15 January 2024, confidential, with Annex 1, confidential. A public redacted version was filed on 18 January 2024, F00771/RED.

⁴ KSC-BC-2020-04, F00772, Defence, *Defence Notice of Closing its Case Pursuant to Rule 131 of the Rules*, 15 January 2024, public.

3. On 18 January 2024, following a shortening of the time limits by the Panel,⁵ the Specialist Prosecutor's Office (SPO) filed a consolidated response to the First and Second Request.⁶

4. Victims' Counsel did not file any response and the Panel did not entertain a reply.⁷

II. SUBMISSIONS

A. DEFENCE

1. First Request

5. The Defence seeks the admission into evidence, under Rule 155 of the Rules, of the written statements of [REDACTED] (Rule 155 Statements), [REDACTED].⁸ The Defence submits that the statements are relevant to assess the credibility of TW4-01 and W04405, are *prima facie* reliable, contain sufficient indicia of authenticity and have probative value, which is not outweighed by any prejudicial effect.⁹ The Defence further requests permission to amend its lists of witnesses and exhibits accordingly.¹⁰

⁵ KSC-BC-2020-04, F00766/RED, Trial Panel I, *Public redacted version of Decision on the Defence urgent request for an extension of the time limit for the closing of its case*, 15 January 2024 (date of public redacted version, 19 January 2024), paras 15, 18(c).

⁶ KSC-BC-2020-04, F00775, Specialist Prosecutor, *Prosecution consolidated response to Defence requests for admission of non-oral evidence (F00770 and F00771) (SPO Response)*, 18 January 2024, confidential. A public redacted version was filed on 19 January 2024, F00775/RED.

⁷ KSC-BC-2020-04, F00766/RED, Trial Panel I, *Public redacted version of Decision on the Defence urgent request for an extension of the time limit for the closing of its case*, 15 January 2024 (date of public redacted version, 19 January 2024), para. 15.

⁸ First Request, paras 1, 10-11, 20.

⁹ First Request, paras 12-17.

¹⁰ First Request, paras 1, 18.

2. Second Request

6. In its Second Request, the Defence seeks the admission into evidence of 15 items comprising judgments rendered by Kosovo courts, press articles, audio-video material and related transcripts, SPO official notes and other material.¹¹ The Defence submits that all items are relevant – in particular, for the purpose of sentencing in case of a conviction and to evaluate the evidence of SPO witnesses – they have probative value, sufficient indicia of authenticity and their probative value is not outweighed by any prejudicial effect.¹² The Defence further requests permission to amend its list of exhibits accordingly.¹³

B. SPO

1. First Request

7. The SPO does not object to the admission of the Rule 155 Statements.¹⁴ However, it submits that the First Request is untimely, with no good cause for its late filing, as the relevance of the Rule 155 Statements should have been apparent to the Defence, with regard to TW4-01's credibility, since the completion of his testimony on 6 June 2023 and, with regard to W04405, since the disclosure of his SPO interview on 15 December 2021.¹⁵ The SPO adds that the Defence should have put the Rule 155 Statements to TW4-01 in order to resolve any ambiguities between his testimony and the Rule 155 Statements and allow him to clarify and explain any such ambiguities.¹⁶

¹¹ Second Request, paras 1, 28; Annex 1 to the Second Request, listing the material.

¹² Second Request, paras 2, 12; Annex 1 to the Second Request.

¹³ Second Request, paras 1, 13, 29.

¹⁴ SPO Response, paras 2, 10, 23(a).

¹⁵ SPO Response, paras 2, 4-6.

¹⁶ SPO Response, paras 2, 7-9.

2. Second Request

8. In response to the Second Request, the SPO submits that the admission of the judgments rendered by the Kosovo courts (items 1-3 listed in Annex 1 to the Second Request) is unnecessary, as the judgments are public and can be referenced for sentencing purposes without being in evidence.¹⁷ The SPO further objects to the admission of several items (items 4 and 11-15 listed in Annex 1 to the Second Request), for lack relevance and/or because they are testimonial in nature and unsuitable for admission under Rule 138 of the Rules.¹⁸ The SPO does not object to the admission of the remaining items (items 5-10 listed in Annex 1 to the Second Request).¹⁹

III. APPLICABLE LAW

9. The Panel notes Articles 37 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 9(5)(a), 119(5), 132, 133, 137-139, 141(1), 155(1) and (4)-(5), and 163(3) of the Rules.

IV. ANALYSIS

A. FIRST REQUEST

10. The Panel incorporates by reference the legal test set out in its "Decision on the Specialist Prosecutor's motion for admission of evidence pursuant to Rule 155 of the Rules".²⁰

¹⁷ SPO Response, paras 3, 12, 23(b).

¹⁸ SPO Response, paras 3, 14-20, 23(b).

¹⁹ SPO Response, paras 3, 11.

²⁰ KSC-BC-2020-04, F00562/RED, Trial Panel I, [Public redacted version of Decision on the Specialist Prosecutor's motion for admission of evidence pursuant to Rule 155 of the Rules](#), 4 July 2023 (date of public redacted version, 16 August 2023), public, paras 11-15.

11. The Defence seeks the admission into evidence of the following statements given by [REDACTED]: (i) a statement provided to [REDACTED];²¹ and (ii) [REDACTED] (as defined above, Rule 155 Statements).²²

12. **Unavailability.** The Panel is satisfied that the witness is unavailable to testify [REDACTED], which is uncontested.²³

13. **Prima facie reliability.** The Panel finds that the Rule 155 Statements are *prima facie* reliable as: (i) they are signed by the witness, by the interpreters and by the police officers who took them [REDACTED];²⁴ (ii) they were taken within the framework of official investigations or prosecutions, by duly empowered authorities; (iii) they were taken with the assistance of an interpreter, in a language the witness understood;²⁵ (iv) the date, time, place and persons present were recorded;²⁶ (v) [REDACTED]; (vi) the witness confirmed that the statements were given voluntarily;²⁷ (vii) he was warned that he was obliged to tell the truth and that giving a false statement [REDACTED] would constitute a criminal offence;²⁸ and (viii) [REDACTED].²⁹

²¹ The Panel notes that a lesser redacted version of the statement has been disclosed by the SPO following the submission of the First Request and will consider this version; SITF00374132-00374148 RED2 (Disclosure Package 211, 18 January 2024).

²² The Panel notes that a lesser redacted version has been disclosed by the SPO following the submission of the First Request and will consider this version; SPOE00014640-00014668 RED2 (Disclosure Package 211, 18 January 2024).

²³ [REDACTED].

²⁴ SITF00374132-00374148 RED2, at SITF00374148; SPOE00014640-00014668 RED2, at SPOE00014653.

²⁵ SITF00374132-00374148 RED2, at SITF00374133, SITF00374138-00374139, SITF00374148; SPOE00014640-00014668 RED2, at SPOE00014640.

²⁶ SITF00374132-00374148 RED2, at SITF00374133-00374134, SITF00374138-00374139, SITF00374148; SPOE00014640-00014668 RED2, at SPOE00014640, SPOE00014653.

²⁷ SITF00374132-00374148 RED2, at SITF00374138, SITF00374148.

²⁸ SITF00374132-00374148 RED2, at SITF00374133; SPOE00014640-00014668 RED2, at SPOE00014644.

²⁹ SPOE00014640-00014668 RED2, at SPOE00014644.

14. **Potential prejudice.** The Panel is satisfied that the admission of the Rule 155 Statements is not prejudicial to or inconsistent with the rights of the Accused, considering that: (i) the statements do not go to proof of the acts and conduct of the Accused as charged in the Confirmed Indictment;³⁰ and (ii) the Defence requested their admission into evidence.

15. **Rule 138(1) criteria.** The Panel finds that the Rule 155 Statements are relevant to the crimes alleged in the Confirmed Indictment and to the credibility of TW4-01 and W04405. The Panel is also satisfied that the Rule 155 Statements are authentic and have probative value for the same reasons as provided above.³¹ Not least, the Panel considers that their probative value is not outweighed by any prejudicial effect seeing that: (i) the SPO does not oppose their admission;³² and (ii) the Panel will assess them in light of the entire body of evidence admitted or available for its deliberations and judgment.

16. In light of the above, the Panel admits the Rule 155 Statements into evidence, pursuant to Rule 155(1) of the Rules.

17. Turning to the Defence's related request to amend its lists of witnesses and exhibits, the Panel is not satisfied that the request was made in a timely manner, as already highlighted by the Panel.³³ Nonetheless, the Panel notes that the SPO ultimately does not oppose the admission of the Rule 155 Statements into evidence.³⁴ The Panel further finds that the Defence has shown good cause, as the Rule 155 Statements are relevant to the crimes alleged in the Confirmed Indictment and the

³⁰ 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](#).

³¹ See para. 13 above.

³² SPO Response, paras 2, 10, 23(a).

³³ See KSC-BC-2020-04, F00766, Trial Panel I, *Decision on the Defence urgent request for an extension of the time limit for the closing of its case*, 15 January 2024, confidential, para. 11. A public redacted version was issued on 19 January 2024, [F00766/RED](#).

³⁴ SPO Response, paras 2, 10.

credibility of TW4-01 and W04405, and will assist the Panel in its determination of the truth.

18. For these reasons, the Panel authorises the Defence to amend its lists of witnesses and exhibits, as requested.

B. SECOND REQUEST

19. The Panel notes that **items 1-3** listed in Annex 1 to the Second Request are not evidentiary items, but judgments rendered by Kosovo courts in the cases against *Sabit Geci et al.* and *Xhemshit Krasniqi*. Seeing that the Defence requests their admission for the purposes of sentencing in case of a conviction,³⁵ the Panel clarifies that the Parties and participants may refer to these judgments, and the Panel may consider them, for such purposes without the need for the judgments to be admitted into evidence. Accordingly, the Panel will not consider further the admissibility of these items.

20. The Panel also decides to exercise its discretion with a view to excluding **items 11-15**³⁶ listed in Annex 1 to the Second Request. The Defence has failed to sufficiently demonstrate the relevance of these items to the case at hand – to the crimes alleged in the Confirmed Indictment, the credibility of SPO or Defence witnesses, or any other facts or matters that to go the determination of the guilt or innocence of the Accused, sentencing, or reparations. In addition, the Panel notes that item 15 contains documents which amount to witness statements and, as such, they are not admissible under Rule 138(1) of the Rules.³⁷

³⁵ See Annex 1 to the Second Request, items 1-3, “Relevance/Probative Value”.

³⁶ An English translation of (part of) item 15 was provided on 23 January 2024, DPS01886-DPS01901-ET (Disclosure Package 212).

³⁷ DPS01784-DPS01901, at DPS01798 *et seq.*

21. As to the remaining items, **items 4-10** listed in Annex 1 to the Second Request, the Panel does not consider it necessary to exercise its discretion with a view to excluding any of them.³⁸ Therefore, in accordance with the Framework Decision on Evidence, the Panel dispenses with rendering a discrete item-by-item admissibility ruling and considers all of these items to be available to the Panel for the purpose of its deliberations and judgment on the guilt or innocence of the Accused.³⁹

22. Noting that the English translation of **item 4** (DPS01783) is available at DPS01783-ET, the Panel directs the Registry to assign an exhibit number to this item as well, in line with the Framework Decision on Evidence,⁴⁰ as being available to the Panel for its deliberations and judgment.

23. In light of the above, the Panel further grants the Defence's request to amend its list of exhibits in relation to **items 4-10** and rejects the remainder of the request.

C. EVIDENCE CALLED BY THE PANEL

24. The Panel has taken note of the documents concerning the Accused's criminal record provided by the SPO and obtained from [REDACTED] (118356-118384 and 118356-118384-ET) and from [REDACTED] (118557-118562 and 118557-118562-ET).⁴¹ The Panel considers that said documents are necessary for the determination of the sentence in case of a conviction, as provided by Rule 163(3) of the Rules, and decides to call them into evidence pursuant to Rule 132 of the Rules.

³⁸ An English translation of item 4 was provided on 23 January 2024, DPS01783-ET (Disclosure Package 212). The Panel notes that, as rightly highlighted by the SPO (*see* SPO Response, para. 14), item 4 does not go to the determination of the sentence in case of a conviction, but to its enforcement. Thus, while available to the Panel, item 4 is of limited value for the determination of the sentence.

³⁹ [Framework Decision on Evidence](#), para. 21.

⁴⁰ [Framework Decision on Evidence](#), para. 42.

⁴¹ KSC-BC-2020-04, F00767, Specialist Prosecutor, *Notice of submission of criminal record of Pjetër SHALA and of further related inquiries*, 15 January 2024, confidential. A public redacted version was filed on 17 January 2024, F00767/RED.

25. Lastly, the Panel incorporates by reference its directions in paragraphs 42-43 of the Framework Decision on Evidence, concerning translations, audio-visual material/transcripts thereof, and subsequent unredacted or lesser redacted versions, which apply to all items concerned by the present decision.

D. MOTIONS TO SUPPLEMENT THE EVIDENTIARY PROCEEDINGS

26. The Panel orders the SPO to file any request to present evidence in rebuttal, if it so wishes, by **Friday, 26 January 2024**. As previously directed and in the interest of an efficient and expeditious conduct of the proceedings, to the extent that any such request concerns non-oral evidence, it shall be accompanied by a request to tender the evidence into the case record.⁴² The Defence and Victims' Counsel may respond, if they so wish, by **Tuesday, 30 January 2024**. The Panel will not entertain a reply.

27. In addition, the Panel orders the Defence to file any request to present evidence in rejoinder in relation to the evidence called by the Panel,⁴³ if it so wishes, by **Friday, 26 January 2024**. The SPO and Victims' Counsel may respond, if they so wish, by **Tuesday, 30 January 2024**. The Panel will not entertain a reply.

28. Finally, the Panel clarifies that the Defence will be given the opportunity to seek leave to present evidence in rejoinder in relation to SPO rebuttal evidence, if any, at a later stage.

⁴² KSC-BC-2020-04, Transcript of Hearing, 10 January 2024, public, p. 4074, lines 11-23.

⁴³ See para. 24 above; and KSC-BC-2020-04, F00769/COR, Trial Panel I, *Corrected version of Decision on Defence requests for admission of non-oral evidence and amendment of its exhibits list*, 15 January 2024 (date of corrected version, 22 January 2024), confidential, paras 37-38, 44(c). A public redacted version was filed on 22 January 2024, F00769/COR/RED.

V. DISPOSITION

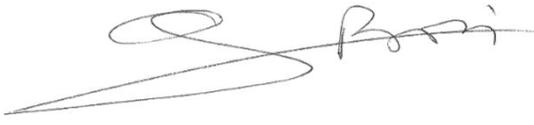
29. For the above-mentioned reasons, the Panel hereby:

- a. **GRANTS** the First Request;
- b. **ADMITS** into evidence the Rule 155 Statements: SITF00374132-00374148 RED2 and SPOE00014640-00014668 RED2, and **ORDERS** the Registrar to assign exhibit numbers to them and to classify them as confidential;
- c. **GRANTS** the Second Request to the extent specified in paragraphs 19-23 of the present decision;
- d. **REJECTS** the remainder of the Second Request;
- e. **ORDERS** the Registrar to assign exhibit numbers to **items 4-10** listed in Annex 1 to the Second Request and item DPS01783-ET 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, as specified in paragraphs 21-22 of the present decision, and to classify them as confidential;
- f. **ORDERS** the Defence to file its amended lists of witnesses and exhibits by **Friday, 26 January 2024**;
- g. **DECIDES** to call into evidence the documents **118356-118384, 118356-118384-ET, 118557-118562** and **118557-118562-ET**, concerning the Accused's criminal record, and **ORDERS** the Registrar to assign exhibit numbers to them 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;

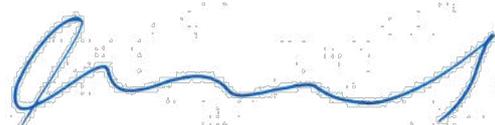
- h. **ORDERS** the disclosing Party to immediately inform the other Party, Victims' Counsel, the Panel, and the Court Management Unit should any subsequent unredacted or lesser redacted versions of the aforementioned items be disclosed and **ORDERS** the Registrar to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the respective exhibit number(s) assigned pursuant to this decision;
- i. **ORDERS** the non-disclosing Party and Victims' Counsel to file any objections to any such subsequent unredacted or lesser redacted versions within five days of notification of their disclosure;
- j. **ORDERS** the Parties and Victims' Counsel to always refer to evidence through their Evidence Registration Numbers (ERN);
- k. **ORDERS** the SPO to file any request to present evidence in rebuttal, if it so wishes, as directed in paragraph 26 of the present decision, by **Friday, 26 January 2024**, with responses to be filed by **Tuesday, 30 January 2024**; and
- l. **ORDERS** the Defence to file any request to present evidence in rejoinder in relation to the evidence called by the Panel, if it so wishes, by **Friday, 26 January 2024**, with responses to be filed by **Tuesday, 30 January 2024**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 24 January 2024

At The Hague, the Netherlands.