



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

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 pursuant to Rule 154 and related request with confidential Annexes 1-7'

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ and Rules 118(2), 137-138 and 154 of the Rules,² the Specialist Prosecutor's Office ('SPO') requests (i) the addition of W04765's [REDACTED] SPO interview transcripts to the Exhibit List,³ and (ii) the admission of these transcripts and the other statements (collectively, 'Rule 154 Statements'), together with associated exhibits,⁴ of the following witnesses: W03170, W04043, W04444, W04571, W04765, W04811, and W04870 (collectively, 'Witnesses').⁵ These witnesses have been noticed as scheduled and reserve witnesses for evidentiary blocks between 30 October and 13 December 2023.⁶

2. The Rule 154 Statements and associated exhibits (collectively, 'Proposed Evidence') meet the requirements of the Rule, are relevant, authentic and reliable, and have probative value, which is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁷

3. Attached to this motion are seven annexes, one for each of the Witnesses. Each annex contains a table identifying the proposed statements that collectively comprise the proposed Rule 154 Statement for that witness.⁸ In addition, where applicable, the annexes contain a second table identifying the associated exhibits tendered for admission for each witness.

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

³ See paras 51-52 below.

⁴ The Rule 154 Statements and associated exhibits are referred to herein as the 'Proposed Evidence'.

⁵ In the interest of expeditiousness and as also set out below, the SPO: (i) reduced the examination time for W04571 from two hours to one hour; (ii) reduced the examination time for W04811 from 1.5 hours to one hour; and (iii) is now seeking to admit W03170 and W04765's prior statements under Rule 154 (they were previously fully *viva voce*) and, subject to a decision on this request, has reduced the examination estimate for W04765 from eight hours to two hours, and the examination estimate for W03170 from 4.5 to 1.5 hours.

⁶ Prosecution submission of list of witnesses for 30 October to 13 December 2023, KSC-BC-2020-06/F01828, 2 October 2023.

⁷ The applicable law has been set out in previous submissions and decisions in this case. See e.g. Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, paras 26-35.

⁸ In this motion, relevant statements are often referred to using their base or English version ERN. The full reference and specific ERNs tendered are included in the relevant Annex for each witness.

II. SUBMISSIONS

4. Consistent with Rule 154, the Witnesses are anticipated to: (i) be present in court, (ii) be available for cross-examination and any questioning by the Panel, and (iii) attest that the written statement or transcript accurately reflects that witness's declaration and what they would say if examined. As detailed below, and in the accompanying Annexes, the Proposed Evidence also fulfils the admissibility requirements under Rules 137 and 138(1). Accordingly, the Rule 154 Statements, together with associated exhibits, are admissible in lieu of direct examination.

A. W03170

5. *Relevance.* W03170 was an LDK member, [REDACTED]. [REDACTED].

6. [REDACTED]. [REDACTED] and W03170 were [REDACTED] and driven away from [REDACTED]. [REDACTED]. [REDACTED] and W03170 were told that they were under arrest. [REDACTED] and W03170 were blindfolded, their hands were bound, and they were threatened and beaten.

7. [REDACTED] and W03170 were taken to a location in [REDACTED], where they were detained [REDACTED]. [REDACTED] and W03170 were taken to another detention site prior to being released [REDACTED].

8. [REDACTED]. [REDACTED]. [REDACTED].

9. [REDACTED].

10. W03170's evidence is thus relevant to the charged crimes in the Indictment.⁹

11. *Authenticity and reliability.* W03170's Rule 154 Statement is *prima facie* authentic and reliable, bearing sufficient indicia of reliability.¹⁰ W03170's [REDACTED]¹¹ and [REDACTED]¹² statements are, *inter alia*, dated and signed by the witness, and contain

⁹ See, *inter alia*, Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras [REDACTED]; Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief'), paras [REDACTED].

¹⁰ For an individualised assessment of reliability, see Annex 1.

¹¹ [REDACTED].

¹² [REDACTED].

an advisement of his rights. W03170 recognised his signatures on these statements during his SPO interview.¹³ W03170's audio-video recorded SPO interviews, as recorded in verbatim transcripts, are authentic, including details such as the date, time, and attendees.¹⁴ During the SPO interviews, W03170 was made aware of his rights as a witness.¹⁵ W03170 confirmed that the content of these recorded statements is true and accurate, that his statements were given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statements were taken.¹⁶

12. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 1 – consisting of photographs, articles, videos and KLA documents depicting or concerning the location and circumstances of W03170's detention and release, and documents concerning relations between the KLA and LDK¹⁷ – should be admitted as they are an inseparable and indispensable part of W03170's Rule 154 Statement, in that they are used and explained in W03170's evidence. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.¹⁸

13. *Suitable for Rule 154 admission.* W03170's Proposed Evidence satisfies the requirements of Rule 154. W03170 will be: (i) present in court; (ii) available for cross-examination and any questioning by the Panel; and (iii) able to attest that the Rule 154 Statement accurately reflects his evidence and that it is an accurate reflection of what he would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

¹³ [REDACTED], pp.5-7.

¹⁴ See, e.g., [REDACTED], p.1.

¹⁵ See, e.g., [REDACTED], pp.2-3.

¹⁶ See, e.g., [REDACTED], pp.23-25.

¹⁷ See Annex 1.

¹⁸ See Annex 1.

14. W03170's [REDACTED]¹⁹ and [REDACTED]²⁰ statements are brief, and extensively referred to during his SPO interview, making their admission necessary for a full comprehension of W03170's evidence. Further, W03170's [REDACTED] statement is that closest in time to the relevant events. Altogether, their size is manageable and would not unduly burden the record.

15. The SPO originally indicated it would call this witness to testify live with 4.5 hours of direct examination.²¹ Rule 154 admission for W03170's Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of 1.5 hours. During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W03170's evidence.

B. W04043

16. *Relevance.* On 9 February 1999, W04043 was abducted by KLA soldiers while driving in the Vushtrri/Vučitrn area. At a KLA checkpoint, KLA soldiers moved W04043 out of his car and placed him in the back seat of another car, where W04043 encountered an abducted man who W04043 later identified as Veljko MARKOVIĆ. After departing, W04043 and MARKOVIĆ were separated during a stop. After driving further, the KLA soldiers stopped the cars again near Resnik village and escorted W04043 into a house. At that time, W04043 saw MARKOVIĆ being escorted out of the house. KLA soldiers mistreated W04043 there by pressing a gun into his temple. KLA soldiers placed W04043 and MARKOVIĆ into the trunks of separate cars and continued driving in the direction of the Çiçavica mountains. During another stop, W04043 was placed into the same trunk as MARKOVIĆ. While in the trunk together, W04043 spoke with MARKOVIĆ who confirmed that he was the same person who W04043 had previously encountered, and that MARKOVIĆ was a Serbian

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte* ('Witness List'), [REDACTED].

police officer. W04043 managed to open the trunk and escaped, while MARKOVIĆ remained. From a distance, W04043 saw the car proceeding further up the Çiçavica mountains.

17. After having escaped, W04043 heard from co-workers that Veljko MARKOVIĆ and Nebojsa DJURIČIĆ, another Serbian police officer, had gone missing on the same day as W04043 after leaving a cafe in Fushe Kosove/Kosovo Polje together and travelling towards Vushtrri/Vučitrn. Family members of DJURIČIĆ confirmed the same information to W04043. W04043 received further information from MARKOVIĆ's father about the brand, model and colour of the car owned by Veljko MARKOVIĆ, which matched those of the car from which W04043 escaped. W04043 was also interviewed by the OSCE and shown a photo of Veljko MARKOVIĆ, in which W04043 recognized MARKOVIĆ because he had the same body type and was wearing the same distinctive jacket as the person he had encountered on the 9 February 1999.

18. W04043's evidence is thus relevant to the charged crimes in the Indictment.²²

19. *Authenticity and reliability.* W04043's Rule 154 Statement is comprised of W04043's SPO interview dated 21 April 2022.²³ The statement bears sufficient indicia of authenticity and reliability.²⁴ W04043's SPO interview consists of verbatim transcripts of the audio-video recorded interview. W04043 confirmed that the contents of this statement are true and accurate, his statement was given voluntarily without any threats, force, or guarantees, and he had no objections to the manner or process by which the statement was taken.

20. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 2—consisting of maps and an OSCE memorandum—should be admitted as an inseparable and indispensable part of W04043's Rule 154 Statement, in that they are used and explained in W04043's evidence. The associated

²² Indictment, KSC-BC-2020-06/F00999/A01, para.164; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 492, 506, 514.

²³ 106336-TR-ET Part 1 RED2, 106336-TR-ET Parts 2-4.

²⁴ For an individualised assessment, see Annex 2.

exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.

21. *Suitable for Rule 154 admission.* W04043's Proposed Evidence satisfies the requirements of Rule 154 and, considering that the witness will be available for cross-examination, its probative value is not outweighed by any prejudice. Rule 154 admission for W04034's Proposed Evidence will significantly reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W04043 for no more than 1 hour on essential matters that highlight, clarify, or explain certain aspects of his evidence.

C. W04444

22. *Relevance.* W04444, [REDACTED], lived in [REDACTED], in 1998. [REDACTED].

23. In [REDACTED], W04444 was arrested by eight or nine armed KLA members, most of whom were wearing masks. He was put into a vehicle with a mask on his head and his hands tied behind his back. The vehicle picked up another arrested person in [REDACTED].

24. W04444 and [REDACTED] were taken to [REDACTED], where they were brought to a room in a building in the centre of [REDACTED] and detained together. W04444, still wearing the mask, was punched and kicked all over the lower part of his torso. He was beaten so badly that he could not breathe, he fell down and lost consciousness.

25. W04444 was not given any explanation or reason for his arrest or detention. When family members went to [REDACTED] to find out whether W04444 was still alive, someone at the gate of the building in which he was held told them that [REDACTED].

26. After four days of being detained together with [REDACTED], W04444 was released by prison guards in black uniforms, while [REDACTED] remained in the

room. After his release, W04444 had to take medication to relieve the pain caused by the beatings. It took about 20-25 days for him to recover.

27. W04444's evidence is thus relevant to crimes charged in the Indictment.²⁵

28. *Authenticity and reliability.* W04444's Rule 154 Statement is comprised of his SPO interview.²⁶ W04444's audio-video recorded SPO interview, as recorded in verbatim transcripts, is authentic and reliable.²⁷ W04444 confirmed that the contents of his statement are true and accurate, his statement was given voluntarily without any threats, force, or guarantees, and he had no objections to the manner or process by which the statement was taken.²⁸

29. *The associated exhibits are admissible.* The associated exhibits forming part of W04444's Proposed Evidence in Annex 3—consisting of a map and an article—should be admitted as they are an inseparable and indispensable part of W04444's Rule 154 Statement, in that they are used and explained in W04444's evidence.

30. *Suitable for Rule 154 admission.* W04444's Proposed Evidence satisfies the requirements of Rule 154 and, considering that the witness will be available for cross-examination, its probative value is not outweighed by any prejudice. Rule 154 admission for W04444's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04444's evidence for a maximum of 1 hour.

D. W04571

31. *Relevance.* In or around August 1998, W04571 – [REDACTED] – was arrested at a checkpoint by three KLA soldiers, including one [REDACTED]. Upon arrest, W04571 was taken by car to the KLA headquarters in [REDACTED].

²⁵ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²⁶ [REDACTED].

²⁷ For an individualised assessment, see Annex 3.

²⁸ [REDACTED].

32. He was first brought to the ground floor to be questioned by [REDACTED]. He was told that, as a [REDACTED], he had to help the KLA. Later, W04571 was taken to the basement of the KLA headquarters to a room where [REDACTED] were already being detained and showed severe signs of mistreatment. [REDACTED] were lying down in pain and were unable to talk due to their wounds. Their bodies were swollen and marked with bruises. [REDACTED].

33. On the third day of his detention, W04571 was questioned by masked people about [REDACTED]. [REDACTED]. Later that day, he was released while the two other detainees were still in detention.

34. Since his detention, [REDACTED]. [REDACTED]. [REDACTED].

35. W04571's evidence is thus relevant to the charged crimes in the Indictment.²⁹

36. *Authenticity and reliability.* W04571's Proposed Evidence is *prima facie* authentic and reliable. The W04571 Rule 154 Statement is comprised of a five-part transcript of his SPO interview.³⁰ The statement bears sufficient indicia of reliability.³¹ W04571's video-audio recorded interview, as recorded in a verbatim transcript, is authentic and reliable. W04571 was duly advised of his rights as a witness,³² and at the end of the interview, he confirmed that his statement was given voluntarily without any threat, and that the contents are true and accurate.³³

37. *The associated exhibits are admissible.* The associated exhibits forming part of W04571's Proposed Evidence in Annex 4—namely a sketch drawn by W04571 showing the location of his arrest and detention, and a document concerning his arrest—should be admitted as they are an inseparable and indispensable part of W04571's Rule 154 Statement, in that they are used and explained in W04571's

²⁹ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

³⁰ [REDACTED].

³¹ For an individualised assessment of reliability, *see* Annex 4.

³² [REDACTED].

³³ [REDACTED].

evidence. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein, as detailed in Annex 4.

38. *Suitable for Rule 154 admission.* W04571's Proposed Evidence satisfies the requirements of Rule 154, and given that W04571 will be available for cross-examination and any questioning by the Panel, the probative value of the Proposed Evidence is not outweighed by any prejudice. Rule 154 admission for W04571's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony from W04571 for approximately 1 hour³⁴ on essential matters that highlight, clarify or explain certain aspects of his evidence.

E. W04765

39. *Relevance.* W04765 was a member of the LPK [REDACTED] prior to [REDACTED] June 1998 to join the KLA. He [REDACTED] served in Budakovë/Budakovo [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

40. W04765 provides information on the structure of, and reporting lines within, the Pashtrik OZ, including its Military Police and Special Units. He provides information concerning KLA subordinates and other KLA members who are alleged to have been directly involved in various charged crimes, including in Budakovë/Budakovo in 1998 and 1999, and his knowledge of alleged charged crimes.

41. W04765 met and otherwise communicated with Hashim THAÇI, Rexhep SELIMI, Kadri VESELI and Jakup KRASNIQI as well as other members of the General Staff on multiple occasions in 1998 and 1999. He provides evidence on the roles of several General Staff members, and on information, including orders, received from the General Staff. W04765 also explains his understanding of the concepts of special warfare and collaboration.

³⁴ Reduced from the 2 hours indicated in the Witness List. See Witness List, KSC-BC-2020-06/F01594/A01, [REDACTED].

42. W04765 was based in [REDACTED] in June 1999 and provides information on the presence of other KLA units and members there, [REDACTED].

43. [REDACTED]. [REDACTED].

44. W04765 [REDACTED].

45. W04765's evidence is thus relevant to the charged crimes in the Indictment.³⁵

46. *Authenticity and reliability.* W04765's Rule 154 Statement is *prima facie* authentic and reliable. The SPO interviews bear sufficient indicia of reliability.³⁶ W04765's audio-video recorded SPO interviews, as recorded in verbatim transcripts, are authentic, including details such as the date, time, and attendees.³⁷ During the SPO interviews, W04765 was made aware of his rights [REDACTED].³⁸ W04765 confirmed that the content of his recorded statements is true and accurate, that his statements were given voluntarily without any threats or force, or guarantees, and that he had no objections to the manner or process by which the statements were taken.³⁹

47. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 5 – consisting of KLA documents [REDACTED], audio-visual items [REDACTED]⁴⁰ – should be admitted as they are an inseparable and indispensable part of W04765's Rule 154 Statement, in that they are used and explained in W04765's evidence. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.⁴¹

48. *Suitable for Rule 154 admission.* W04765's Proposed Evidence satisfies the requirements of Rule 154. W04765 will be: (i) present in court; (ii) available for cross-examination and any questioning by the Panel; and (iii) able to attest that the Rule 154 Statement accurately reflects his evidence and that it is an accurate reflection of what

³⁵ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

³⁶ For an individualised assessment of reliability, *see* Annex 5.

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ *See* Annex 5.

⁴¹ *See* Annex 5.

he would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

49. The admission of both SPO interviews is requested given that, in his [REDACTED] SPO interview, W04765 provides clarification and elaboration in relation to the contents of his [REDACTED] SPO interview and addresses additional relevant issues, including his knowledge of multiple charged crimes and the roles of KLA members allegedly involved in the commission thereof.

50. The SPO originally indicated it would call this witness to testify live with 8 hours of direct examination.⁴² Rule 154 admission for W04765's Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of 2 hours. During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04765's evidence.

51. *Request to amend the Exhibit List.*⁴³ W04765's [REDACTED] SPO interview,⁴⁴ available to the Defence since January 2023,⁴⁵ is not currently on the Exhibit List.⁴⁶ Pursuant to Article 40 and Rule 118(2), the SPO seeks authorisation to add this interview thereto. While the SPO did not seek addition earlier, as the witness was to be fully live, it reserved its right to do so if justified,⁴⁷ and the current application is in

⁴² Witness List, KSC-BC-2020-06/F01594/A01, [REDACTED].

⁴³ Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F01802/A01, 19 September 2023, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴⁴ [REDACTED].

⁴⁵ See Annex 20 to Prosecution request to amend the exhibit list and related matters, KSC-BC-2020-06/F01238/A20, 30 January 2023, Confidential. The items were formally disclosed under Rule 102(1)(b) on 15 March 2023 (Disclosure Package 717), following the required authorisation by the Panel. See Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023, Confidential ('Amendment Decision'), para.36(b).

⁴⁶ All exhibits associated with this interview that SPO tenders in Annex 5 are already on the Exhibit List; this amendment request is limited to the [REDACTED] SPO interview transcripts.

⁴⁷ See Prosecution request to amend the exhibit list and related matters, KSC-BC-2020-06/F01238, 30 January 2023, Confidential, paras 4-5, fn.13. See also KSC-BC-2020-06/F01238/A01; KSC-BC-2020-06/F01238/A20.

line with the Panel's previous guidance.⁴⁸ Addition to the exhibit list at this stage is timely and necessary as a result of the SPO's ongoing efforts to streamline its case and make the best use of courtroom time.⁴⁹ In this respect and as outlined above, the SPO has decided to propose W04765 as a Rule 154 witness, reducing the estimated time for direct examination from 8 to 2 hours. Further, resort to the interview may be necessary for other purposes during testimony, including to refresh the witness's memory. Without the ability to tender and use this interview, the quality, accuracy, and completeness of the witness's evidence and the expeditiousness of the proceedings would be undermined.

52. The addition of W04765's [REDACTED] SPO interview to the Exhibit List will cause no prejudice since the interview has been available to the Defence since January 2023, allowing for timely and effective Defence preparations. Further, the Defence has long been on notice of the anticipated scope of the witness's evidence through, *inter alia*, the witness's Rule 95 summary and disclosed statements.⁵⁰

F. W04811

53. *Relevance.* On the night of [REDACTED], heavily armed KLA soldiers entered W04811's home, searching for weapons, questioning and threatening the family, and

⁴⁸ Amendment Decision, KSC-BC-2020-06/F01352, para.20 (noting that, should the SPO foresee that that will use any such materials during witness testimonies, the obligation to seek the Panel's authorisation to amend the exhibit list would be triggered, and the SPO would be required to provide timely notice and show good cause, including why the SPO did not seek to leave to amend the exhibit list at an earlier point in time).

⁴⁹ See, similarly, ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Prosecution's Motion to Add One Exhibit to its Rule 65 *ter* List and for Admission of Evidence of Witness Matija Bošković Pursuant to Rule 92*quater*, 9 March 2009, paras 11-13 (authorising an exhibit list amendment where a witness was originally *viva voce* (and their statement therefore not on the exhibit list), their proposed mode changed, and the witness was on the witness list and the statement had long been disclosed).

⁵⁰ Underlining the lack of prejudice, other chambers have not required a witness's prior statements to be on a party's exhibit list for admission, let alone for use to refresh a witness's memory during testimony, considering, *inter alia*, that the Defence has notice of the witness's expected evidence through their summaries and disclosed statements. See, for example, ICTY, *Prosecutor v. Perišić*, IT-04-81-T, Trial Chamber's Ruling on Defence Motion to Clarify Whether the Prosecution Must Request Leave to Amend Its Rule 65 *ter* Exhibit List, 17 November 2008, para.14; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision on Prosecution Motion to Admit Statements of Witnesses PRH575 and PRH703, 21 October 2015, paras 17-19.

ultimately taking [REDACTED] away. Only two of the KLA soldiers were not wearing masks, [REDACTED] and [REDACTED]. [REDACTED], who said his real name was [REDACTED], told the family that [REDACTED] would be at [REDACTED] the next day.

54. W04811 and other family members then made numerous attempts to see [REDACTED], going to the KLA's [REDACTED] headquarters and military police office, [REDACTED] headquarters, and later, [REDACTED]. W04811 will describe seeing [REDACTED] and other KLA commanders on these trips, and will detail what various KLA members said as she and her family members repeatedly attempted to see [REDACTED] and get food, medicine and clothing to him.

55. W04811 and other family members were allowed to see [REDACTED] twice after his capture. W04811 will describe the circumstances of these visits, [REDACTED] condition on each occasion, and what he said, including that he had been briefly released due to the NATO bombing but was soon recaptured and forced to work. He also told them he was being held and beaten by [REDACTED].

56. At the end of April 1999, W04811's family started hearing rumours that [REDACTED] had been killed, and later, that his body had been found in a grave. W04811 will discuss how the abduction, detention, and death of [REDACTED] have impacted the entire family.

57. W04811's evidence is thus relevant to the charged crimes in the Indictment.⁵¹

58. *Authenticity and reliability.* W04811's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement⁵² is comprised of W04811's SPO interview⁵³ and two statements given in [REDACTED].⁵⁴ Each bear sufficient indicia of reliability,⁵⁵

⁵¹ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁵² Lesser redacted versions of W04811's statements comprising the Rule 154 Statement, removing standard redaction that are no longer required, will be disclosed as soon as practicable.

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ For an individualised assessment of reliability, see Annex 6.

including W04811's confirmation that the contents of all three were true and accurate.⁵⁶

59. *The associated exhibits are admissible.* The associated exhibits forming part of W04811's Proposed Evidence in Annex 6 consist of two documents from the [REDACTED]. The first certifies [REDACTED], and the second is a photographic line-up in which W04811 identified one of the persons who kidnapped [REDACTED]. The associated exhibits should be admitted, as they are an inseparable and indispensable part of the Rule 154 Statement: both were used and explained in W04811's evidence and, without them, that evidence would have lesser probative value.

60. *Suitable for Rule 154 admission.* W04811's Proposed Evidence satisfies the requirements of Rule 154 and, considering that the witness will be available for cross-examination, its probative value is not outweighed by any prejudice. Rule 154 admission of this evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04811's evidence, for a maximum of 1 hour.⁵⁷

G. W04870

61. *Relevance.* W04870 is [REDACTED]. [REDACTED].

62. Upon a request by [REDACTED], W04870 personally went with [REDACTED]. [REDACTED] was then kept and detained there. He was then provisionally released [REDACTED].

63. [REDACTED] he and other detainees were beaten and mistreated while in detention, [REDACTED]. [REDACTED] reported to his family [REDACTED] the names of other detainees held together with him [REDACTED]. He said they were all kept in appalling conditions.

⁵⁶ [REDACTED].

⁵⁷ Reduced from the 1.5 hours indicated in the Witness List. *See* Witness List, KSC-BC-2020-06/F01594/A01, [REDACTED].

64. [REDACTED].

65. During the months in which [REDACTED] was detained [REDACTED], W04870 went there almost daily, and often together with family members, [REDACTED]. However, they were never allowed to see [REDACTED]. W04870 tried to speak to several KLA Commanders [REDACTED].

66. After NATO entered Kosovo, W04870 tried to find out what happened to [REDACTED]. She learned [REDACTED] that [REDACTED] and others had been killed, and was given directions to the grave [REDACTED].

67. In July 1999, W04870 recovered and identified [REDACTED]'s remains [REDACTED]. [REDACTED].⁵⁸

68. W04870's evidence is thus relevant to the charged crimes in the Indictment.⁵⁹

69. *Authenticity and reliability.* W04870's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of (i) W04870's SPO interview,⁶⁰ and (ii) W04870's statement [REDACTED].⁶¹ Each statement bears sufficient indicia of reliability.⁶²

70. W04870's audio-video recorded SPO interview is a verbatim record of the interview [REDACTED]. W04870 was duly advised of her rights and obligations as a witness.⁶³ W04870 confirmed the truthfulness, accuracy and voluntariness of her statement, and she had no objections to the manner or process by which the statement was taken.⁶⁴

71. During her SPO interview, W04870 had an opportunity to review her prior statements, [REDACTED],⁶⁵ which is tendered as part of the Rule 154 Statement.

⁵⁸ See Indictment, KSC-BC-2020-06/F00999/A01, Schedule B, [REDACTED].

⁵⁹ Indictment, KSC-BC-2020-06/F00999/A01, 16-57, 59-61, [REDACTED]; Schedule B, [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² For an individualised assessment of reliability, see Annex 7.

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ See [REDACTED].

W04870 confirmed the content of that statement, and that her statement was voluntary, provided in a truthful and accurate manner, and to the best of her recollection.⁶⁶

72. *The associated exhibits are admissible.* The associated exhibits forming part of W04870's Proposed Evidence in Annex 7—consisting of: (i) a photo-board; (ii) excerpts from [REDACTED]; and (iii) [REDACTED]—should be admitted as they are an inseparable and indispensable part of W04870's Rule 154 Statement. The associated exhibits are integral to the Rule 154 Statement as they were used, explained and discussed therein, as detailed in Annex 7.

73. *Suitable for Rule 154 admission.* W04870's Proposed Evidence satisfies the requirements of Rule 154: W04870 will be (i) present in court, (ii) available for cross-examination and any questioning by the Panel, and (iii) able to attest that the Rule 154 Statement accurately reflects her evidence and is an accurate reflection of what she would say again in court, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

74. Rule 154 admission of W04870's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony from W04870 for approximately 1 hour on essential matters that highlight, clarify or explain certain aspects of the evidence.

III. CLASSIFICATION

75. This submission and its Annexes are confidential pursuant to Rule 82(4) and because they contain information concerning protected witnesses.

IV. RELIEF REQUESTED

76. For the foregoing reasons, the Trial Panel should: (i) authorise the addition of W04765's [REDACTED] SPO interview to the Exhibit List; and (ii) admit the Proposed

⁶⁶ See [REDACTED].

Evidence, subject to fulfilment of the Rule 154 conditions by the relevant witnesses during their appearances in court.

Word Count: 5,902

/signed/

Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Tuesday, 3 October 2023

At The Hague, the Netherlands.