



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

**The 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: Fidelma Donlon

Date: 16 April 2024

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Motion for Admission of
Evidence of W01978, W02540, W02677, W02714, W02951, W03865, W03881, W04371,
W04710, and W04850 Pursuant to Rule 154 and Amendment of Exhibit List
(F02196)**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21, 37 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 95(4)(c), 102(1)(b), 118(2), 137-138, 141(1), and 154 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 16 March, 9 June, 10 July, 24 July, 10 October, 2 November, 1 December 2023, 8 January and 12 February 2024, the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 in respect of fifty-nine (59) witnesses.¹

2. On 30 May, 10 July, 12 July, 25 August, 19 September, 3 November, 15 December 2023, 15 January and 15 March 2024, upon authorisation from the

¹ F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“First Rule 154 Decision”), 16 March 2023, confidential (a public redacted version was filed on 7 November 2023, F01380/RED); F01593, Panel, *Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block*, 9 June 2023, confidential (a public redacted version was filed on 31 October 2023, F01593/RED); F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154*, 9 June 2023, confidential (a corrected version was issued on 10 August 2023, F01595/COR) (a public redacted version was filed on 9 November 2023, F01595/COR/RED); F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential (a public redacted version was filed on 27 November 2023, F01664/RED); F01700, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154*, 24 July 2023, confidential (a public redacted version was filed on 7 November 2023, F01700/RED); F01848, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154 (F01788)* (“Sixth Rule 154 Decision”), 10 October 2023, confidential (a public redacted version was filed on 14 November 2023, F01848/RED); F01901, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830)*, 2 November 2023, confidential (a public redacted version was filed on the same day, F01901/RED); F01976, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00498, W01140, and W01763 Pursuant to Rule 154* (“F01976”), 1 December 2023, confidential (a public redacted version was filed on the same day, F01976/RED); F02044, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01163, W02144, W02749, W04230, W04445, W04489, W04576, W04739, W04741, and W04820 Pursuant to Rule 154 and Related Request*, 8 January 2024, confidential (a public redacted version was filed on the same day, F02044/RED); F02117, Panel, *Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005)*, 12 February 2024, confidential (a public redacted version was filed on the same day, F02117/RED).

Panel,² the SPO amended its list of proposed exhibits (“Exhibit List”).³

3. On 22 March 2024, the SPO filed a Rule 154 motion in relation to ten (10) additional witnesses whose evidence is offered pursuant to that Rule (“Motion”).⁴

4. On 8 April 2024, following an extension of time to respond,⁵ the Defence for all four Accused (collectively, “Defence”) responded jointly to the

² F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters*, 8 March 2023, confidential (a public redacted version was issued on 1 November 2023, F01352/RED); F01544, Panel, *Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List*, 23 May 2023; Transcript of Hearing, 12 July 2023, p. 5551, line 9 to p. 5553, line 19; F01656, Panel, *Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List*, 7 July 2023, confidential (a public redacted version was issued on 14 November 2023, F01656/RED); F01739, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01728)*, 24 August 2023, confidential (a public redacted version was issued on 15 November 2023, F01739/RED); F01785, Panel, *Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747)*, 12 September 2023, confidential (“12 September 2023 Decision”) (a public redacted version was issued on 10 November 2023, F01785/RED); F01902, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01858)*, 3 November 2023; F01995, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01844)*, 8 December 2023, confidential (a public redacted version was issued on the same day, F01995/RED); F02044, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01163, W02144, W02749, W04230, W04445, W04489, W04576, W04739, W04741, and W04820 Pursuant to Rule 154 and Related Request*, 8 January 2024, confidential (a public redacted version was issued on the same day, F02044/RED); F02167, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F02099)*, 7 March 2024, confidential (a public redacted version was issued on the same day, F02167/RED).

³ F01562, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 30 May 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01662, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 10 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01669, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 12 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01744, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 25 August 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01802, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 19 September 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01906, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 3 November 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F02014, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 15 December 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F02061, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 15 January 2024, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F02184, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 15 March 2024, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

⁴ F02196, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W01978, W02540, W02677, W02714, W02951, W03865, W03881, W04371, W04710, and W04850 Pursuant to Rule 154 and Related Requests*, 22 March 2024, confidential, with Annexes 1-10, confidential (a public redacted version was filed on 25 March 2024, F02196/RED).

⁵ F02209, Panel, *Decision on Selimi Defence Request for Extension of Time to Respond to F02195, F02196, and F02204*, 28 March 2024, paras 2, 4, 5(b).

Motion (“Response”).⁶

5. On 15 April 2024, the SPO replied to the Response (“Reply”).⁷

II. SUBMISSIONS

6. The SPO requests the addition of three items to the Exhibit List and admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of ten witnesses: W01978, W02540, W02677, W02714, W02951, W03865, W03881, W04371, W04710, and W04850.⁸ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and that the admission of these is not outweighed by any prejudice and is therefore in the interests of justice.⁹

7. The Defence objects to the admission of parts of the Proposed Evidence on the basis that the additional time required by the SPO for direct examination appears to be excessively long. The Defence responds that the SPO should consider calling the relevant witnesses *viva voce* or, alternatively, should be ordered to reduce the time of the direct examination.¹⁰

8. The SPO replies that the Motion should be granted as the Response oversimplifies the purposes of Rule 154 of the Rules and ignores the standard for admissibility of associated exhibits.¹¹ The SPO submits that it will ensure that direct examination is not duplicative of admitted Rule 154 statements, and Rule 154 admission will therefore contribute to the expeditiousness of the proceedings.¹² The SPO further submits that it will continue to review its direct

⁶ F02229, Specialist Counsel, *Joint Defence Consolidated Response to F02195 and F02196*, 8 April 2024, confidential, with Annexes 1-12, confidential.

⁷ F02239, Specialist Prosecutor, *Prosecution Reply Relating to Rule 154 Motion F02196*, 15 April 2024.

⁸ Motion, para. 1.

⁹ Motion, para. 2.

¹⁰ Response, para. 8.

¹¹ Reply, paras 1, 7.

¹² Reply, para. 2.

examination estimates for Rule `154 witnesses.¹³

III. APPLICABLE LAW

9. The Panel incorporates by reference the applicable law as set out in its First Rule 154 Decision¹⁴ and the principles set out in its 12 September 2023 Decision on the amendment of the Exhibit List.¹⁵

IV. DISCUSSION

A. W01978

(a) Request to Add SITF00014555-00014563 to the Exhibit List

10. The SPO seeks authorisation from the Panel to amend the Exhibit List by adding SITF00014555-00014563 (“Photo-board”).¹⁶ The SPO submits that there is good cause and limited prejudice to the Defence, if any.¹⁷

11. The Defence does not oppose the addition of the Photo-board to the Exhibit List.¹⁸

12. As regards the timeliness of notice, the Panel notes the SPO’s submission that the Photo-board was only identified in the course of preparing for this witness’s testimony.¹⁹ The Panel further notes that it was previously disclosed to the Defence under Rule 102(3) on 13 October 2022.²⁰ Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,²¹

¹³ Reply, para. 3.

¹⁴ First Rule 154 Decision, paras 11-35.

¹⁵ 12 September 2023 Decision, paras 15-17.

¹⁶ Motion, para. 11.

¹⁷ Motion, paras 11-12.

¹⁸ Response, para. 10.

¹⁹ Motion, para. 11.

²⁰ See Disclosure Packages 503, 512, 534, 571.

²¹ See e.g. F01785, Panel, *Decision on Prosecution Requests to Amend the Exhibit List* (F01689 and F01747) (“12 September 2023 Decision”), 12 September 2023, confidential, paras 32, 38, 65, 71, 77, 88 (a public redacted version was filed on 10 November 2023, F01785/RED); IA019/F00006, Court of Appeals Panel,

and considering the fact that the witness is not expected to testify until the end of May 2024, the Panel finds the notice provided by the SPO to be timely.

13. As regards good cause and the question of the relevance and importance of the Photo-board, the Panel recalls its previous finding that inadvertent omission, on its own and at this stage of the proceedings, does not normally constitute good cause.²² However, the Panel acknowledges that the relevance and importance of certain items may become apparent to a Party as the trial proceeds and as the facts in dispute are more clearly fleshed out. The Panel understands that the relevance and importance of this item and/or the need to use it with the witness became apparent to the SPO only recently during its preparations for the testimony of this witness. Furthermore, the Panel observes that the Photo-board is relevant to a charged crime-site.²³ In light of the above, the Panel is satisfied that the Photo-board is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

14. As regards prejudice, the Panel observes that the item is relatively limited in scope and length and was disclosed to all Defence teams on 13 October 2022, pursuant to Rule 102(3) and 12 March 2024 pursuant to Rule 102(1)(b).²⁴ The Panel also notes that the Defence did not object to the late addition of this document to the SPO's Exhibit List. The Panel is therefore satisfied that the Defence has sufficient time to adequately prepare before the relevant witness's testimony, in particular as the witness is not scheduled to testify until the end of May 2024, and that the effectiveness of the rights of the Accused is being preserved. The Panel is satisfied that no undue prejudice is caused by the addition of Photo-board to the Exhibit List.

Decision on Thaçi's Appeal against Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures ("Appeal Decision"), 12 July 2022, para. 21

²² F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters*, 8 March 2023, confidential, para. 30 (a public redacted version was filed on 1 November 2023, F01352/RED).

²³ Indictment, paras [REDACTED].

²⁴ Disclosure Packages 503, 512, 534, 571, 1143.

15. The Panel therefore grants leave to the SPO to add SITF00014555-00014563 to the Exhibit List.

(b) Rule 154 Request

16. The SPO submits that the proposed evidence of W01978²⁵ is: (i) relevant;²⁶ (ii) *prima facie* authentic and reliable;²⁷ and (iii) suitable for admission under Rule 154.²⁸

17. The Defence does not object to the admission of W01978's Proposed Evidence. However, the Defence submits that the current estimate of two hours for the SPO's in-court examination of the witness is excessive.²⁹

18. *W01978's Statements*. Regarding relevance, W01978 was a member of a political party and was arrested and detained by the Kosovo Liberation Army ("KLA") in three KLA detention sites. The SPO relies upon W01978's Statements in respect of, *inter alia*, the following allegations: (i) W01978's alleged arrest, detention and mistreatment; and (ii) the detention and mistreatment of others.³⁰ The Panel is satisfied that W01978's Statements are relevant to the charges in the

²⁵ The proposed evidence of W01978 ("W01978's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "W01978's Statements") and associated exhibits, including any translation thereof (collectively, "W01978's Associated Exhibits"). W01978's Statements consist of: (i) 060650-TR-ET Parts 1-4 RED3; (ii) SPOE00184749-00184842 RED2; and (iii) SITF00014548-00014554 RED. W01978's Associated Exhibits consist of: (i) SITF00013593-00013731 RED2, pp. SITF00013636-SITF00013650; (ii) SITF00014555-00014563; (iii) 060639-060649-ET, pp. 060639-060639-ET; (iv) 060639-060649-ET, pp. 060640-060640-ET; (v) 060639-060649-ET, pp. 060648-060648-ET; and (vi) 060639-060649-ET, pp. 060649-060649-ET. *See* Annex 1 to the Motion. The Panel notes that the SPO does not tender Associated Exhibit 5 for admission (*see* Annex 1 to the Motion, p. 4).

²⁶ Motion, paras 3-6.

²⁷ Motion, paras 7-8.

²⁸ Motion, paras 9-11.

²⁹ Response, para. 9.

³⁰ Motion, paras 3-6; F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte* paras [REDACTED] (a public redacted version was filed on 3 April 2023, F01415/A01; a confidential lesser redacted version was filed on 9 June 2023, F01594/A03).

Indictment.³¹

19. Regarding authenticity and reliability, the Panel notes that W01978's Statements consist of: (i) W01978's SPO interview; (ii) SPRK witness hearing record; and (iii) record of a witness hearing in a SPRK preliminary investigation. All of them contains multiple indicia of authenticity and reliability, including: (i) transcription of the audio-video recorded interview; (ii) the date (and time) of the interview; (iii) the attendees; (iv) the witness's personal details; (v) the stamp and signature of authorised officials; and (vi) witness warnings, rights and acknowledgment.³² In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W01978's Statements.

20. Regarding the *prima facie* probative value of W01978's Statements, having found W01978's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W01978's Statements also bear *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W01978's Statements is 251 pages in length (in English). The Panel also notes the Defence's suggestion that the SPO should reduce the time requested for W01978's direct examination.³³ In this regard, the Panel observes that the SPO reduced its initial estimate of ten hours and now intends to elicit oral testimony from W01978 for approximately two hours.³⁴ The Panel notes that the estimate of two hours of direct examination does not seem excessive in light of the nature and number of topics relevant to this witness's evidence.³⁵ However, the SPO should ensure that it makes effective use of that time and does not use it to re-elicit evidence already admitted in the witness's written evidence. The Panel is satisfied

³¹ See F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras [REDACTED] (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

³² Annex 1 to the Motion, pp. 1-2.

³³ Response, para. 9.

³⁴ Compare F00631, Specialist Prosecutor, *Submission on Pre-Trial Brief, with witness and exhibit lists with strictly confidential and ex parte Annexes 1-3*, 17 December 2021, confidential, Annex 2, p. 4, N 56.

³⁵ Motion, para. 10.

that the admission of W01978's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W01978's Statements is not outweighed by any prejudicial effect, and that W01978's Statements are suitable for admission pursuant to Rule 154.

21. *W01978's Associated Exhibits.* The Panel observes that W01978's Associated Exhibits consist of: (i) two SPRK photo board identifications shown to the witness; (ii) three sketches drawn by the witness during his SPO interview; and (iii) a photograph.³⁶ The Panel notes that W01978's Associated Exhibits are used and discussed in W01978's Statements and as such they constitute an indispensable and inseparable part of the statements to which they relate. Without the W01978's Associated Exhibits, relevant parts of W01978's Statements would become of lesser probative value. The Panel is therefore satisfied that W01978's Associated Exhibits are relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine this witness, the *prima facie* probative value of W01978's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W01978's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

22. In light of the above, the Panel finds that W01978's Proposed Evidence is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

³⁶ Motion, para. 9; Annex 1 to the Motion, pp. 3-5.

B. W02540

(a) Request to Add to 119101-119105 RED and [REDACTED] to the Exhibit List

23. The SPO seeks authorisation to amend the Exhibit List by adding 119101-119105 RED (“Official Note and Photograph”) and [REDACTED] (“Two Photographs”), (collectively, “Items”).³⁷ The SPO indicates that it does not intend to tender the Items under Rule 154, but intends to use them during the witness’s testimony.³⁸ The SPO also submits that there is good cause and limited prejudice, if any, resulting from the addition of these items to the Exhibit List.³⁹

24. The Defence objects to the SPO’s request to amend the Exhibit List in relation to the Official Note and Photograph and the Two Photographs. With regards to Official Note and Photograph, the Defence considers the request to be late.⁴⁰ With regard to the Two Photographs, the Defence submits that the SPO has been in possession of these photographs for some time and the request to amend the Exhibit List coupled with the simultaneous disclosure of those items to the Thaçi Defence shortly prior to W02450’s testimony, is untimely and prejudicial.⁴¹

25. The SPO replies that limited, if any, prejudice arises from the requested addition.⁴²

26. As regards the timeliness of notice, the Panel notes that the Official Note and Photograph were disclosed to the Defence under Rule 102(1)(b) on 13 February 2024,⁴³ shortly after the conversation memorialised in the Official Note, and the Two Photographs were disclosed to the Defence under Rule 102(3).⁴⁴ Taking into account the necessity to maintain a certain level of flexibility in the context of a complex trial involving multiple defendants, and considering the

³⁷ Motion, para. 21.

³⁸ Motion, para. 21.

³⁹ Motion, paras 23-25.

⁴⁰ Response, para. 14.

⁴¹ Response, para. 15.

⁴² Reply, para. 5.

⁴³ Disclosure Package 1109.

⁴⁴ Disclosure Packages 139, 147, 149, 1173.

photographs were only discussed with the witness during his recent interview with the SPO, the Panel finds the notice provided by the SPO to be timely.

27. As regards good cause and the question of the relevance and importance of the Items, the Panel acknowledges that the relevance and importance of certain documents may become more apparent to a Party as the trial proceeds. The Panel observes that the Official Note explains the relevance and significance of the photographs and together the Items are proffered to corroborate W02540's account of the relevant charged crimes.⁴⁵ In light of the above, the Panel is satisfied that the Items are *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

28. As regards prejudice, the Panel observes that the Items are relatively limited in scope and length. The Panel also notes that the Official Note and Photograph were disclosed to all Defence teams pursuant to Rule 102(1)(b) on 13 February 2024. With regards to the Two Photographs, the Panel observes that they were disclosed to all Defence teams under Rule 102(3) by 27 January 2022 and to the Defence for Mr Thaçi on 22 March 2024.⁴⁶ The Panel is satisfied that the Defence will have sufficient time to adequately prepare before the relevant witness's testimony and that the effectiveness of the rights of the Accused is being preserved. The Panel is satisfied that no undue prejudice is caused by the addition of the Items to the Exhibit List.

29. The Panel therefore grants leave to the SPO to add 119101-119105 RED and [REDACTED] to the Exhibit List.

⁴⁵ Motion, paras 23-24.

⁴⁶ Motion, footnote 27; Response, para. 15; Disclosure Packages 139, 147, 149, 1173.

(b) Rule 154 Request

30. The SPO submits that the proposed evidence of W02540⁴⁷ is: (i) relevant;⁴⁸ (ii) *prima facie* authentic and reliable;⁴⁹ and (iii) suitable for admission under Rule 154.⁵⁰

31. The Defence does not contest the *prima facie* authenticity of W02540's Statements and takes no issue with W02540's Associated Exhibits.⁵¹ However, it submits that the duration of the proposed examination in chief would jeopardise time-saving purpose of Rule 154.⁵²

32. *W02540's Statements.* Regarding relevance, W02540 served in national forces present in Kosovo in 1999. In mid-June 1999, he was deployed within the KFOR contingent in the Prizren area. The Panel notes that W02540's Statements are being relied upon by the SPO in respect of, *inter alia*, the following allegations: (i) the detention, mistreatment and killing of prisoners by the KLA inside a particular location in Prizren; and (ii) a KFOR raid at another location in Prizren.⁵³ The Panel is satisfied that W02540's Statements are relevant to the charges in the Indictment.⁵⁴

33. Regarding *prima facie* authenticity and reliability, W02540's Statements consist of: (i) W02540's ICTY witness statement; and (ii) W02540's SPO Interview.

⁴⁷ The proposed evidence of W02540 ("W02540's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "W02540's Statements") and associated exhibits, including any translation thereof (collectively, "W02540's Associated Exhibits"). W02540's Statements consist of: (i) 069539-TR-ET Part 1 Revised 1 RED and 069539-TR-ET Parts 2-4 Revised 1; and (ii) [REDACTED]. W02540's Associated Exhibits consist of: (i) [REDACTED]; (ii) [REDACTED]; (iii) 054010-03 (14:00:00:00-14:05:55:01); (iv) 5005597-5005597-ET; (v) SITF00031163-SITF0003167, pp. SITF00031164-SITF00031165; and (vi) SITF00188892-SITF00188901-ET RED2. See Annex 2 to the Motion. The Panel notes that the SPO does not tender Associated Exhibits 4, 6, 7, 10-16 for admission (see Annex 2 to the Motion, pp. 5, 7-12).

⁴⁸ Motion, paras 13-17.

⁴⁹ Motion, para. 18.

⁵⁰ Motion, para. 20.

⁵¹ Response, para. 12.

⁵² Response, para. 13.

⁵³ Motion, paras 13-17; SPO Pre-Trial Brief, paras [REDACTED].

⁵⁴ See Indictment, paras [REDACTED].

W02540's Statements contain multiple indicia of authenticity and reliability, including: (i) the verbatim transcript of the audio-video recorded SPO interview with W02540; (ii) indication of the date, time and place of the interviews; and (iii) a statement of the witness's rights and the witness's signature.⁵⁵ The Panel also notes that the Defence is not disputing the *prima facie* authenticity of the W02540's Statements.⁵⁶ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W02540's Statements.

34. Regarding the *prima facie* probative value of W02540's Statements having found W02540's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W02540's Statements also bear *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W02540's Statements are of a manageable size (137 pages in English). Given the nature of the proposed evidence and the fact that the Defence will have an opportunity to cross-examine the witness, the Panel is satisfied that the admission of W02540's Statements under Rule 154 would not cause unfair prejudice to the Defence. The Panel finds that the *prima facie* probative value W02540's Statements is not outweighed by any prejudicial effect, and are suitable for admission pursuant to Rule 154.

35. Regarding the time to be allocated to direct examination, the Panel notes: (i) that the SPO reduced its initial estimate of twelve hours⁵⁷ and now intends to elicit oral testimony from W02540 for approximately two hours on essential matters;⁵⁸ and (ii) the Defence's submission that the SPO's proposed allocation of time for direct examination in addition to W02540's preparation session, would undermine the efficiency objectives of Rule 154.⁵⁹ The Panel notes that the estimate

⁵⁵ Motion, para. 18; Annex 2 to the Motion, pp. 1-2.

⁵⁶ Response, para. 12.

⁵⁷ Compare F00631, Specialist Prosecutor, *Submission on Pre-Trial Brief, with witness and exhibit lists with strictly confidential and ex parte Annexes 1-3*, 17 December 2021, confidential, Annex 2, p. 5, N 83.

⁵⁸ Motion, para. 20.

⁵⁹ Response, para. 13.

of two hours of direct examination while not per se excessive, adds a not insignificant amount of time to an already extensive written record. The Panel will therefore carefully monitor the use of time that the SPO makes of this opportunity. The Panel is satisfied that the admission of W02540's Statements under Rule 154 would contribute to the expeditiousness of the proceedings. However, the Panel reiterates its request that court time be used as efficiently as possible.

36. *W02540's Associated Exhibits.* The Panel observes that W02540's Associated Exhibits consist of: (i) three photographs of men in uniforms; (ii) four photos taken by soldiers of members of KFOR near a relevant location; (iii) a video showing various locations in Kosovo including locations relevant to the charges; (iv) a photograph shown to W03881 and W02195; (v) United Nations Interim Administration Mission in Kosovo ("UNMIK") File photographs of a relevant location; and (vi) a KFOR situation report. The Panel notes that each of W02540's Associated Exhibits is used and explained in W02540's Statement⁶⁰ and constitute an indispensable and inseparable part of the statements to which they relate. The Panel is therefore satisfied that W02540's Associated Exhibits are relevant, *prima facie* authentic and probative. The Panel also notes that the Defence does not oppose the admission of the material tendered for admission as associated exhibits.⁶¹ The Panel also finds that, given that the Defence will have an opportunity to cross-examine this witness, the *prima facie* probative value of W02540's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W02540's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

37. In light of the above, the Panel finds that W02540's Proposed Evidence is relevant, *prima facie* authentic, and its *prima facie* probative value is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to

⁶⁰ Motion, para. 19; Annex 2 to the Motion, pp. 3-8.

⁶¹ Response, para. 12.

Rules 138(1) and 154.

C. W02677

38. The SPO submits that the proposed evidence of W02677⁶² is: (i) relevant;⁶³ (ii) *prima facie* authentic and reliable;⁶⁴ and (iii) suitable for admission under Rule 154.⁶⁵

39. The Defence does not object the admission of W02677's Proposed Evidence.⁶⁶

40. *W02677's Statements*. Regarding relevance, W02677 is an ethnic Serb that lived in Prizren until 14 June 1999. Close relatives of W02677 were allegedly arrested, detained, and maltreated by the KLA at a location in Prizren. The Panel notes that W02677's Statement is being relied upon the SPO in respect of, *inter alia*, the following allegations: (i) the arrest of W02677's relatives; (ii) the conditions of their detention and mistreatment by the KLA at a charged location in Prizren; and (iii) the circumstances surrounding the release of W02677's relatives.⁶⁷ The Panel is satisfied that W02677's Statement is relevant to the charges in the Indictment.⁶⁸

41. Regarding *prima facie* authenticity and reliability, W02677's Statement consists of W02677's SPO Interview that contains multiple indicia of authenticity and reliability, including: (i) a verbatim transcript of the audio-video recorded SPO interview of the witness; (ii) indication of date and time of the interview; (iii) the witness's personal details; and (iv) a statement of the witness's obligations and rights and the witness's acknowledgment that the statement was given

⁶² The proposed evidence of W02677 ("W02677's Proposed Evidence") consists of the following statement, including any translation thereof: 076247-TR-ST Part 1-ET RED and 076247-TR-ST Part 2-ET RED ("W02677's Statement"). See Reply, para. 6. The Panel notes that the SPO does not tender Associated Exhibits 1-2 ("W02677's Associated Exhibits") for admission (see Annex 3 to the Motion, p. 2).

⁶³ Motion, paras 26-29.

⁶⁴ Motion, para. 30.

⁶⁵ Motion, para. 31.

⁶⁶ Response, para. 17.

⁶⁷ Motion, paras 26-29; SPO Pre-Trial Brief, paras [REDACTED].

⁶⁸ See Indictment, paras [REDACTED].

truthfully, accurately and voluntarily.⁶⁹ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W02677's Statement.

42. Regarding the *prima facie* probative value of W02677's Statement, having found W02677's Statement to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W02677's Statement also bears *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W02677's Statement is thirty-one (31) pages (in English). Moreover, the Panel observes that the SPO intends to elicit a maximum of one hour of additional oral testimony.⁷⁰ The Panel is satisfied that the admission of W02677's Statement under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W02677's Statement is not outweighed by any prejudicial effect, and that W02677's Statement is suitable for admission pursuant to Rule 154.

43. *W02677's Associated Exhibits*. The Panel observes that W02677's Associated Exhibits are not being tendered for admission as they have already been admitted by the Panel as exhibits P00858, P00858_ET, and P00858_AT and P00088 (video) and P00088_ET (transcript).⁷¹

44. In light of the above, the Panel finds that W02677's Proposed Evidence is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

⁶⁹ Motion, para. 30; Annex 3 to the Motion, p. 1

⁷⁰ Motion, para. 24.

⁷¹ See Annex 3 to the Motion, p. 2.

D. W02714

45. The SPO submits that the proposed evidence of W02714⁷² is: (i) relevant;⁷³ (ii) *prima facie* authentic and reliable;⁷⁴ and (iii) suitable for admission under Rule 154.⁷⁵

46. The Defence submits that there would be no time-saving benefit to admitting W02714's Proposed Evidence in writing as the SPO still intends to use around one and a half hours focused on the same topics covered in W02714's Proposed Evidence. The Defence argues that the SPO's direct examination would be repetitive and the purpose of Rule 154 would be undermined⁷⁶ and suggests that W02714 should provide his testimony *viva voce* particularly as he is the sole witness to speak to particular detention sites.⁷⁷

47. *W02714's Statements*. Regarding relevance, the Panel notes that W02714's Statements are being relied upon by the SPO in respect of, *inter alia*, W02714's alleged arrest, detention and mistreatment by KLA members at various locations relevant to the charges.⁷⁸ The Panel is satisfied that W02714's Statements are relevant to the charges in the Indictment.⁷⁹

48. Regarding *prima facie* authenticity and reliability, W02714's Statements consist of: (i) W02714's SITF Interview; and (ii) his statement to the Serbian MUP. Each of them contains multiple indicia of authenticity and reliability, including: (i) transcript of an audio/video recorded SITF interview; (ii) indication of date and time of the interview; (iii) witness warnings, rights and witness acknowledgment;

⁷² The proposed evidence of W02714 ("W02714's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, W02714's Statements"): (i) 025450-TR-ET Part 1 RED2; 025450-TR-ET Part 2; and (ii) 025447-025449-ET RED2. *See* Annex 4 to the Motion.

⁷³ Motion, paras 32-35.

⁷⁴ Motion, paras 36-37.

⁷⁵ Motion, para. 38.

⁷⁶ Response, para. 19.

⁷⁷ Response, para. 20.

⁷⁸ Motion, paras 32-35; SPO Pre-Trial Brief, paras [REDACTED].

⁷⁹ *See* Indictment, paras [REDACTED].

and (iv) identification of the participants.⁸⁰ The Panel is satisfied of the *prima facie* authenticity and reliability of W02714's Statements.

49. Regarding the *prima facie* probative value of W02714's Statements, having found W02714's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W02714's Statements also bears *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel observes that W02714's Statements amounts to thirty-six (36) pages (in English). Moreover, the Panel notes that the SPO intends to elicit a maximum one and a half hour of additional oral testimony.⁸¹ The Panel also notes the Defence's submission that there would be no time-saving benefit to admitting W02714's Proposed Evidence via Rule 154 and that the SPO's direct examination is likely to be repetitive of W02714's Statements.⁸² In this regard, the Panel reminds the SPO that it will closely scrutinise the use made of additional oral evidence in respect of any Rule 154 witness with a view to ensuring that: (i) evidence led orally is not unduly repetitive of the witness's written evidence; and (ii) the Panel and the Defence had adequate notice of any supplementary evidence elicited orally from the witness. In light of the above, the Panel is satisfied that the admission of W02714's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W02714's Statements is not outweighed by any prejudicial effect, and that W02714's Statements are suitable for admission pursuant to Rule 154.

50. In light of the above, the Panel finds that W02714's Proposed Evidence is relevant, *prima facie* authentic, has *prima facie* probative value which is not

⁸⁰ Annex 4 to the Motion.

⁸¹ Motion, para. 38.

⁸² Response, para. 19.

outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

E. W02951

51. The SPO submits that the proposed evidence of W02951⁸³ is: (i) relevant;⁸⁴ (ii) *prima facie* authentic and reliable;⁸⁵ and (iii) suitable for admission under Rule 154.⁸⁶

52. The Defence objects to the admission of W02951's Statement pursuant to Rule 154 on the basis that it would not enhance the efficiency of proceeding, as: (i) direct examination is likely to be repetitive; and (ii) the information contained in W02951's Statement is, itself, at times repetitive and of little to no relevance to the charges.⁸⁷ In addition, the Defence opposes admission of W02951's Associated Exhibit, on the basis that it does not bear sufficient indicia of authenticity and reliability and lacks probative value.⁸⁸

53. *W02951's Statement*. Regarding relevance, W02951 was allegedly arrested, detained, and mistreated by the KLA in 1999. The Panel notes that W02951's Statement is being relied upon by the SPO in respect of, *inter alia*, the following allegations: (i) W02951's arrest by the KLA; (ii) the conditions of detention and mistreatment by the KLA of W02951 and of another detainee; and (iii) the circumstances surrounding W02951's release.⁸⁹ The Panel is satisfied that

⁸³ The proposed evidence of W02951 ("W02951's Proposed Evidence") consists of the following statement, including any translation thereof ("W02951's Statement") and associated exhibit, including any translation thereof ("W02951's Associated Exhibit"). W02951's Statement consists of 041337-TR-AT Parts 1-4 Revised-ET. W02951's Associated Exhibit consists of 041336-041336-ET. *See* Annex 5 to the Motion.

⁸⁴ Motion, paras 39-41.

⁸⁵ Motion, para. 42.

⁸⁶ Motion, para. 44.

⁸⁷ Response, paras 21-24.

⁸⁸ Response, paras 25-26.

⁸⁹ Motion, paras 39-40; SPO Pre-Trial Brief, paras [REDACTED].

W02951's Statement is relevant to the charges in the Indictment.⁹⁰

54. Regarding *prima facie* authenticity and reliability, W02951's Statement consists of the verbatim transcript of the audio-video recorded SPO interview with W02951 and contains multiple indicia of authenticity and reliability, including: (i) indication of date and time of the interview; (ii) a list of the attendees to the interview; (iii) the witness's personal details; and (iv) witness warnings, rights and acknowledgment.⁹¹ The Panel is satisfied of the *prima facie* authenticity and reliability of W02951's Statement.

55. Regarding the *prima facie* probative value of W02951's Statement, having found W02951's Statement to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W02951's Statement also bears *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes the Defence's argument that admitting W02951's Statement would have limited time-saving benefits. In this respect, the Panel observes that the estimate of maximum one hour of direct examination was based on W02951 being called to testify under Rule 154 and would likely not be as limited if the witness was called to testify live.⁹² In addition, the Panel has already directed the calling party to ensure that oral evidence is not duplicative of statements admitted under Rule 154.⁹³ Lastly, the Panel notes that W02951's Statement is ninety-four (94) pages in length (in English) and would not unduly increase the number of pages contained in the trial record. The Panel is, therefore, satisfied that the admission of W02951's Statement pursuant to Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W02951's Statement is not outweighed by any prejudicial

⁹⁰ See Indictment, paras [REDACTED].

⁹¹ Motion, para 42; Annex 5 to the Motion, p. 1.

⁹² Motion, para. 44.

⁹³ First Rule 154 Decision, para. 33.

effect, and that W02951's Statement is suitable for admission pursuant to Rule 154.

56. *W02951's Associated Exhibit*. The Panel observes that W02951's Associated Exhibit consists of a copy of a handwritten note. While it is true, as the Defence argues, that the document itself has no indication of authorship or date, the Panel notes that W02951 identified its purported author, and provided evidence regarding its origin.⁹⁴ However, the Panel notes that the item is mostly illegible and its relevance and *prima facie* probative value are, at present, not entirely clear to the Panel. For these reasons, the Panel is not satisfied that relevance and *prima facie* probative value of W02951's Associated Exhibit have been adequately demonstrated by the SPO. Accordingly, the Panel finds that W02951's Associated Exhibit is not appropriate for admission under Rules 138(1) and 154. This is without prejudice to the SPO tendering the document after showing it to this or other witnesses and providing further guidance as regards the purported relevance and probative value of this item.

57. In light of the above, the Panel finds that, save for W02951's Associated Exhibit, W02951's Proposed Evidence is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.⁹⁵

F. W03865

58. The SPO submits that the proposed evidence of W03865⁹⁶ is: (i) relevant;⁹⁷

⁹⁴ 041337-TR-AT Part 3 Revised-ET RED, pp. 5-6.

⁹⁵ 041337-TR-AT Parts 1-4 Revised-ET (including any translation thereof). See Annex 5 to the Motion.

⁹⁶ The proposed evidence of W03865 ("W03865's Proposed Evidence") the following statement, including any translation thereof ("W03865's Statements") and associated exhibit, including any translation thereof ("W03865's Associated Exhibit"). W03865's Statements consist of: (i) 078562-TR-ET Parts 1-4 RED; and (ii) SITF00032808-SITF00032820 RED, pp. SITF00032808-SITF00032810. W03865's Associated Exhibits consists of: (i) SITF00032811-SITF00032815-ET; and (ii) [REDACTED]. See Annex 6 to the Motion. The Panel notes that the SPO does not tender Associated Exhibit 3 for admission (see Annex 6 to the Motion, p. 2).

⁹⁷ Motion, paras 45-48.

(ii) *prima facie* authentic and reliable;⁹⁸ and (iii) suitable for admission under Rule 154.⁹⁹

59. The Defence does not object to the admission of W03865's Statements.¹⁰⁰ The Defence, does, however, oppose admission of W03865's Associated Exhibits on the basis that the witness did not authenticate them.¹⁰¹ Further, the Defence argues that there is no clear chain of custody for one of W02951's Associated Exhibits.¹⁰²

60. The SPO replies that the Response misunderstands the admissibility criteria for associated exhibits, and reiterates its submission that these criteria, in addition to the standard admissibility criteria, are met in respect of the associated exhibits proposed.¹⁰³

61. *W03865's Statements*. Regarding relevance, W03865 was member of a KLA Battalion and later served in other positions in the Pashtrik Zone. The Panel notes that W03865's Statements are being relied upon the SPO in respect of, *inter alia*, the following allegations: (i) his role in the KLA and in the Pashtrik Zone; (ii) the structure and activities of the KLA; (iii) the composition, role, and authority of, the KLA General Staff and members thereof; and (iv) the arrest, detention and treatment by the KLA of various individuals in 1998.¹⁰⁴ The Panel is therefore satisfied that W03865's Statements are relevant to the charges in the Indictment.¹⁰⁵

62. Regarding *prima facie* authenticity and reliability, W03865's Statements consist of: (i) the verbatim transcript of the audio-video recorded SPO interview with W03865; and (ii) W03865's witness statement to UNMIK. Both contain multiple indicia of authenticity and reliability, including: (i) indications of date and time of the interview; and (ii) the witness's personal details. W03865's UNMIK

⁹⁸ Motion, para. 49.

⁹⁹ Motion, para. 51.

¹⁰⁰ Response, para. 27.

¹⁰¹ Response, paras 28-29.

¹⁰² Response, para. 28, *referring to* [REDACTED].

¹⁰³ Reply, para. 4.

¹⁰⁴ Motion, paras 45-47; SPO Pre-Trial Brief, paras [REDACTED].

¹⁰⁵ *See* Indictment, paras [REDACTED].

Statement additionally contains the signatures of the witness and interpreter. W03865's SPO Interview also identifies the participants to the interview and contains witness warnings, rights and acknowledgment. Furthermore, during his SPO Interview, W03865 confirmed the accuracy of his UNMIK Statement and in particular that he: (i) provided it voluntarily; (ii) was intending to be truthful; (iii) had a better recollection of the events at that time; and (iv) recognised his own signature on the document.¹⁰⁶ The Panel is satisfied of the *prima facie* authenticity and reliability of W03865's Statements.

63. Regarding the *prima facie* probative value of W03865's Statements, having found W03865's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W03865's Statements also bear *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W03865's Statements are one hundred and thirty (130) pages in length (in English). Moreover, the Panel observes that the SPO intends to elicit a maximum of two hours of additional oral testimony, having reduced the previous estimate of three hours.¹⁰⁷ The Panel is satisfied that the admission of W03865's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W03865's Statements is not outweighed by any prejudicial effect, and that W03865's Statements are suitable for admission pursuant to Rule 154.

64. *W03865's Associated Exhibits*. First, the Panel notes that the Defence objects to the admission of one item which is, however, not tendered for admission by the SPO under Rule 154.¹⁰⁸ As a consequence, the Panel will not address this objection

¹⁰⁶ Motion, para 49; Annex 6 to the Motion, p. 1.

¹⁰⁷ Motion, para. 51.

¹⁰⁸ Response, para. 29; see Associated Exhibit 3, Annex 6 to the Motion, p. 2.

before this item is offered for admission.

65. Regarding the items tendered by the SPO, the Panel observes that W03865's Associated Exhibits consist of: (i) photograph line-ups and W03865's related identification of relevant individuals ("Photograph Line-Ups"); and (ii) a register of soldiers part of W03865's KLA Battalion ("Register").¹⁰⁹ The Defence objects to the admission of the Register on the basis that W03865 was not able to authenticate it and provide evidence regarding its chain of custody, date, authorship and circumstances of elaboration are unknown.¹¹⁰ The Panel observes, however, that the Register was discussed in some detail in W03865's Statement, wherein W03865, while not being able to authenticate the Register with certainty, nevertheless provided comments on the Register and its contents.¹¹¹ The Panel is of the view that, without the Register, the relevant parts of W03865's Statement would become incomprehensible and of lesser probative value and is therefore satisfied that the Register forms an indispensable and inseparable part of W03865's Statement.

66. The Panel is also satisfied that the Register is relevant, *prima facie* authentic, and has *prima facie* probative value. The Panel notes the concerns raised by the Defence in relation to the Register's authenticity and reliability. The Panel observes, however, that while W03865 noted some inaccuracies and did not authenticate the document, he did not dispute its authenticity and was able to confirm the accuracy of information contained therein.¹¹² Furthermore, these concerns, as those regarding the witness's purported inability to authenticate or comment on the nature of the document, can be adequately addressed during cross-examination. Insofar as the Defence has a meaningful opportunity to cross-examine W03865, the Panel is also satisfied that the *prima facie* probative value of the Register is not outweighed by its prejudicial effect. Accordingly, the Panel

¹⁰⁹ See above footnote 96.

¹¹⁰ Response, para. 28.

¹¹¹ 078562-TR-ET Part 2 RED, pp. 11-15.

¹¹² 078562-TR-ET Part 2 RED, pp. 11-14.

finds that the Register is appropriate for admission under Rules 138(1) and 154.

67. The Panel notes that the Photograph Line-Ups, whose admission the Defence does not object to, were discussed and used in W03865's Statements.¹¹³ The Panel considers that without this item, the relevant parts of W03865's Statements would be incomprehensible or of lesser probative value. The Panel is therefore satisfied that the Photograph Line-Ups form an indispensable and inseparable part of W03865's Statements. The Panel is also satisfied that the Photograph Line-Ups are relevant, *prima facie* authentic and reliable. Accordingly, the Panel finds that the Photograph Line-Ups are appropriate for admission under Rules 138(1) and 154.

68. In light of the above, the Panel finds that W03865's Proposed Evidence is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

G. W03881

69. The SPO submits that the proposed evidence of W03881¹¹⁴ is: (i) relevant;¹¹⁵ (ii) *prima facie* authentic and reliable;¹¹⁶ and (iii) suitable for admission under Rule 154.¹¹⁷

70. The Defence does not object to the admission of W03881's Statement, but

¹¹³ Motion, para. 50; Annex 6 to the Motion, p. 2.

¹¹⁴ The proposed evidence of W03881 ("W03881's Proposed Evidence") consists of the following statement, including any translation thereof ("W03881's Statement") and associated exhibits, including any translation thereof (collectively, "W03881's Associated Exhibits"). W03881's Statement consists of 071136-TR-ET Part 1 Revised 1 RED; 071136-TR-ET Part 2 Revised 1; 071136-TR-ET Part 3 Revised 1 RED; 071136-TR-ET Part 4 Revised 1; 071136-TR-ET Part 5 Revised 1. W03881's Associated Exhibits contain: (i) 071142-071313-ET Revised 2; (ii) [REDACTED]; (iii) 054010-02 (video at relevant timestamps) and 054010-02-TR ET (transcript); (iv) 054010-03 (video at relevant timestamp) and 054010-03-TR-ET, pp. 1-2 (transcript). See Annex 7 to the Motion. The Panel notes that the SPO does not tender Associated Exhibits 5-9 for admission (see Annex 7 to the Motion, pp. 5-7).

¹¹⁵ Motion, paras 52-54.

¹¹⁶ Motion, para. 55.

¹¹⁷ Motion, para. 58.

suggests that the SPO be ordered to further reduce its estimated time for direct examination given the length of W03881's Statement.¹¹⁸ The Defence additionally opposes admission of one of W03881's Associated Exhibits in its entirety.¹¹⁹

71. *W03881's Statement*. Regarding relevance, W03881 is a former staff officer within KFOR. W03881 was present on 18 June 1999 when KFOR raided a particular location relevant to the charges in Prizren. W03881 saw the body of a detainee and other injured detainees. The SPO relies upon W03881's Statement in respect of, *inter alia*: (i) the KFOR raid on that location in June 1999; and (ii) the alleged detention, mistreatment and killing of prisoners by KLA members at that location.¹²⁰ The Panel is satisfied that W03881's Proposed Evidence is relevant to the charges in the Indictment.¹²¹

72. Regarding *prima facie* authenticity and reliability, W03881's Statement consists of a transcript of the SPO's interview with the witness. W03881's Statement contains multiple indicia of authenticity and reliability, including: (i) the date, place and time of the interview; (ii) the attendees; (iii) the witness's personal details; and (iv) a statement of the witness's obligations, rights and/or acknowledgments.¹²² The Panel is satisfied of the *prima facie* authenticity and reliability of W03881's Statement.

73. Regarding the *prima facie* probative value of W03881's Statement, having found W03881's Statement to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W03881's Statement also bears *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W03881's Statement is one hundred and thirty-two (132) pages in length (in English).¹²³ Moreover, the Panel notes that the estimate of one and a half hours of

¹¹⁸ Response, para. 30.

¹¹⁹ Response, para. 31.

¹²⁰ Motion, paras 52-54; SPO Pre-Trial Brief, paras [REDACTED].

¹²¹ See Indictment, paras [REDACTED].

¹²² Motion, para. 55; Annex 7 to the Motion.

¹²³ *Contra* Response, para. 30.

direct examination does not seem excessive in light of the topics to be covered in addition to the statement although the Panel would direct the SPO to ensure that *viva voce* evidence is kept to its strict minimum necessary to add relevant information or clarifications to what has already been admitted in writing.¹²⁴ The Panel is, therefore, satisfied that the admission of W03881's Statement under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to cross-examine the witness, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W03881's Statement is not outweighed by its prejudicial effect, and that W03881's Statement is suitable for admission pursuant to Rule 154.

74. *W03881's Associated Exhibits.* The Panel observes that W03881's Associated Exhibits comprise: (i) W03881's KFOR Diary ("Diary"); (ii) four photos taken by KFOR soldiers after release of prisoners ("Photographs"); and (iii) two videos showing various locations in Prizren ("Videos"). The Panel notes the Defence's objection to the admission of the Diary in its entirety, as this consists of almost two hundred pages (in English), many of which are not relevant to the charges in the Indictment.¹²⁵ The Panel observes that W03881 discussed the Diary extensively in his Statement and references several different entries, events and dates.¹²⁶ The Panel notes, however, that the witness did not specifically comment on every entry of the Diary and that from W03881's Statement it appears that only a limited number of entries would be relevant to the charges in the Indictment. The Panel considers that admission of the Diary in its entirety is likely to unnecessarily bloat the record. The Panel is therefore of the view that only those portions of the Diary put to the witness in court or without which W03881's Statement would become

¹²⁴ Motion, para. 58.

¹²⁵ Response, para. 31.

¹²⁶ 071136-TR-ET Part 1 Revised 1 RED, pp. 6, 8; 071136-TR-ET Part 2 Revised 1, pp. 17-18, 36, 42, 46; 071136-TR-ET Part 3 Revised 1 RED, pp. 1, 20; 071136-TR-ET Part 4 Revised 1, pp. 3, 5, 9, 11, 21, 23; 071136-TR-ET Part 5 Revised 1, pp. 2-5, 9, 12, 15-17.

less comprehensible and of lesser probative value should be tendered into evidence. The Panel therefore orders the SPO to specify when offering this material for admission which pages of the Diary are being offered and what their relevance to the case is.

75. The Panel notes that the Photographs and the Videos are also used and discussed in W03881's Statement.¹²⁷ The Photographs and the Videos constitute an indispensable and inseparable part of the statements to which they relate. The Panel is therefore satisfied that the Photographs and the Videos are relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine this witness, the *prima facie* probative value of the Photographs and the Videos is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Photographs and the Videos are appropriate for admission under Rules 138(1) and 154.

76. In light of the above, the Panel finds that W03881's Proposed Evidence, excluding the Diary, is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.¹²⁸

¹²⁷ Motion, paras 56-57; Annex 7 to the Motion, pp. 2-4.

¹²⁸ 071136-TR-ET Part 1 Revised 1 RED; 071136-TR-ET Part 2 Revised 1; 071136-TR-ET Part 3 Revised 1 RED; 071136-TR-ET Part 4 Revised 1; 071136-TR-ET Part 5 Revised 1; [REDACTED]; 054010-02 (video at relevant timestamps) and 054010-02-TR ET (transcript); 054010-03 (video at relevant timestamp) and 054010-03-TR-ET, pp. 1-2 (transcript) (including any translation thereof). See Annex 7 to the Motion.

H. W04371

77. The SPO submits that the proposed evidence of W04371¹²⁹ is: (i) relevant;¹³⁰ (ii) *prima facie* authentic and reliable;¹³¹ and (iii) suitable for admission under Rule 154.¹³²

78. The Defence does not object to W04371's SPO interview and Associated Exhibits, but submits that W04371's UNMIK statement does not meet the minimum requirements of authenticity to be admitted pursuant to Rule 154 as: (i) the statement is unsigned; (ii) the interview was conducted on the phone; (iii) the record appears to be incomplete; and (iv) while the document appears to contain a witness warning, the boxes confirming that the witness understands his rights and wishes to give up his right to silence and talk to the investigator, as well as the box requiring the witness's signature to certify the understanding of his rights, are left blank.¹³³

79. *W04371's Statements.* Regarding relevance, W04371 is the relative of an alleged murder and enforced disappearance victim identified in the Indictment. The Panel notes that W04371's Statements are being relied upon by the SPO in respect of, *inter alia*, the following allegations: (i) his relative's alleged detention and mistreatment by the KLA in 1998; (ii) his actions in order to find out the reasons for his relative's detention; (iii) his arrest by the KLA; (iv) his inquiries of former KLA members to determine his relative's fate; and (v) the identification of

¹²⁹ The proposed evidence of W04371 ("W04371's Proposed Evidence") consists of the following statements, including any translations thereof (collectively, "W04371's Statements"), and associated exhibits, including any translations thereof (collectively, "W04371's Associated Exhibits"). W04371's Statements consist of: (i) 060207-TR-ET Parts 1-7 Revised RED2; and (ii) SITF00299810-SITF00299818 RED2. W04371's Associated Exhibits consist of: (i) SITF00299805-SITF00299809-ET; (ii) 060178-060189 RED2, pp. 060184, 060187-060189; (iii) SPOE00301664-SPOE00301673, pp. SPOE00301664-SPOE00301665; (iv) 060200-060206; (v) [REDACTED]; and (vi) SPOE00208402-00208421. *See* Annex 8 to the Motion. The Panel notes that the SPO does not tender Associated Exhibits 3 and 10 for admission (*see* Annex 8 to the Motion, pp. 2, 4).

¹³⁰ Motion, paras 59-62.

¹³¹ Motion, para. 63.

¹³² Motion, para. 65.

¹³³ Response, paras 32-35.

his relative's remains.¹³⁴ The Panel is satisfied that W04371's Statements are relevant to the charges in the Indictment.¹³⁵

80. Regarding *prima facie* authenticity and reliability, W04371's Statements consist of: (i) his SPO interview, which consists of verbatim transcripts of the audio-video recordings; and (ii) his UNMIK statement. W04371's Statements contain multiple indicia of authenticity and reliability, including: (i) the date and time of the interviews; (ii) the attendees; (iii) the witness's personal details; and (iv) in the SPO interview, witness warnings, rights and acknowledgment.¹³⁶ Notwithstanding the challenges to the authenticity of W04371's UNMIK statement, which the Defence will be in a position to explore in the course of its cross-examination of the witness, the Panel notes that: (i) in the course of his interview with the SPO, W04371 confirmed that his UNMIK statement was given voluntarily and in a truthful manner;¹³⁷ and (ii) the content of W04371's UNMIK statement is generally consistent with that of his SPO interview. The Panel is therefore satisfied of the *prima facie* authenticity and reliability of W04371's Statements.

81. Regarding the *prima facie* probative value of W04371's Statements, having found W04371's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W04371's Statements also bear *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W04371's Statements are relatively limited in size (263 pages in English). Moreover, the Panel notes that the SPO intends to elicit a maximum of one hour of additional oral testimony.¹³⁸ The Panel is satisfied that the admission of W04371's Statement under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to

¹³⁴ Motion, paras 59-61; SPO Pre-Trial Brief, paras [REDACTED].

¹³⁵ See Indictment, paras [REDACTED].

¹³⁶ Motion, para. 63; Annex 8 to the Motion, pp. 1-2.

¹³⁷ 060207-TR-ET Part 1 Revised, p. 8, lines 171-174.

¹³⁸ Motion, para. 65.

cross-examine the witness, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W04371's Statements is not outweighed by its prejudicial effect, and that W04371's Statements are suitable for admission pursuant to Rule 154.

82. *W04371's Associated Exhibits.* The Panel observes that W04371's Associated Exhibits consist of: (i) two letters signed by W04371; (ii) a fax sent by W04371 to UNMIK investigators, containing names of relatives and KLA members; (iii) a map marked by W04371; (iv) photographs shown to W04371 during his SPO interview; (v) a report from the OSCE Task Force for Kosovo, including a statement of W04371; and (vi) a forensic report. The Panel notes that each of W04371's Associated Exhibits is used and discussed in W04371's Statements.¹³⁹ W04371's Associated Exhibits constitute an indispensable and inseparable part of the statements to which they relate. The Panel is therefore satisfied that W04371's Associated Exhibits are relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine this witness, the *prima facie* probative value of W04371's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04371's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

83. In light of the above, the Panel finds that W04371's Proposed Evidence is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

¹³⁹ Motion, para. 64; Annex 8 to the Motion, pp. 2-4.

I. W04710

84. The SPO submits that the proposed evidence of W04710¹⁴⁰ is: (i) relevant;¹⁴¹ (ii) *prima facie* authentic and reliable;¹⁴² and (iii) suitable for admission under Rule 154.¹⁴³

85. The Defence does not object to the admission of W04710's Proposed Evidence pursuant to Rule 154.¹⁴⁴

86. *W04710's Statement*. Regarding relevance, W04710 is the relative of an alleged murder and enforced disappearance victim identified in the Indictment. The Panel notes that W04710's Statement is being relied upon by the SPO in respect of, *inter alia*, the following allegations: (i) his relative's disappearance in 1998; (ii) his inquiries of former KLA members to determine his relative's fate; and (iii) the way W04710 and his family learned of their relative's death.¹⁴⁵ The Panel is satisfied that W04710's Statement is relevant to the charges in the Indictment.¹⁴⁶

87. Regarding *prima facie* authenticity and reliability, W04710's Statement consists of his SPO interview, which is recorded in verbatim transcripts. W04710's Statement contains multiple indicia of authenticity and reliability, including: (i) the date and time of the interview; (ii) the attendees; (iii) the witness's personal details; and (iv) witness warnings, rights and acknowledgment.¹⁴⁷ The Panel is satisfied of the *prima facie* authenticity and reliability of W04710's Statement.

88. Regarding the *prima facie* probative value of W04710's Statement, having

¹⁴⁰ The proposed evidence of W04710 ("W04710's Proposed Evidence") consists of statement 091696-TR-ET Parts 1-3 RED2, including any translation thereof ("W04710's Statement"), and associated exhibit 100829-100829-ET RED2, including any translation thereof ("W04710's Associated Exhibit"). See Annex 9 to the Motion. The Panel notes that the SPO does not tender Associated Exhibit 2 for admission (see Annex 9 to the Motion, p. 2).

¹⁴¹ Motion, paras 66-67.

¹⁴² Motion, para. 68.

¹⁴³ Motion, para. 70.

¹⁴⁴ Response, para. 36.

¹⁴⁵ Motion, para. 66; SPO Pre-Trial Brief, paras [REDACTED].

¹⁴⁶ See Indictment, paras [REDACTED].

¹⁴⁷ Motion, para. 68; Annex 9 to the Motion, p. 1.

found W04710's Statement to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W04710's Statement also bears *prima facie* probative value. Regarding and its suitability for admission pursuant to Rule 154, the Panel notes that W04710's Statement is limited in size (76 pages in English). Moreover, the Panel notes that the SPO intends to elicit a maximum of one hour of additional oral testimony.¹⁴⁸ In addition, the Defence does not object to the admission of W04710's Statement pursuant to Rule 154.¹⁴⁹ The Panel is satisfied that the admission of W04710's Statement under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to cross-examine the witness, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W04710's Statement is not outweighed by its prejudicial effect, and that W04710's Statement is suitable for admission pursuant to Rule 154.

89. *W04371's Associated Exhibit*. The Panel observes that W04710's Associated Exhibit consists of a letter which is used and discussed in W04710's Statement.¹⁵⁰ W04710's Associated Exhibit constitutes an indispensable and inseparable part of W04710's Statement. In addition, the Panel notes that the Defence does not object to the admission of W04710's Associated Exhibit pursuant to Rule 154.¹⁵¹ The Panel is therefore satisfied that W04710's Associated Exhibit is relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine this witness, the *prima facie* probative value of W04710's Associated Exhibit is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04710's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

90. In light of the above, the Panel finds that W04710's Proposed Evidence is relevant, *prima facie* authentic, has *prima facie* probative value which is not

¹⁴⁸ Motion, para. 70.

¹⁴⁹ Response, para. 36.

¹⁵⁰ Motion, para. 69; Annex 9 to the Motion, p. 2.

¹⁵¹ Response, para. 36.

outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

J. W04850

91. The SPO submits that the proposed evidence of W04850¹⁵² is: (i) relevant, *prima facie* authentic and probative;¹⁵³ and (ii) suitable for admission under Rule 154.¹⁵⁴

92. The Defence does not contest the *prima facie* authenticity and reliability of W04850's Proposed Evidence, but invites the Panel to exercise necessary caution when assessing such evidence if admitted via Rule 154, on account of its hearsay nature.¹⁵⁵

93. *W04850's Statements*. The Panel recalls that it has already found that W04850's Statements are relevant to the charges in the Indictment, *prima facie* authentic and probative.¹⁵⁶

94. Regarding the suitability of W04850's Statements for admission pursuant to Rule 154, the Panel notes that W04850's Statements are limited in size (51 pages in English). Moreover, the Panel notes that the SPO intends to elicit a maximum of one hour of additional oral testimony.¹⁵⁷ Turning to the Defence's concerns

¹⁵² The proposed evidence of W04850 ("W04850's Proposed Evidence") consists of the following statements, including any translations thereof ("W04850's Statements"): (i) SPOE00089545-00089570 RED; and (ii) SPOE00092352-00092379 RED, pp. SPOE00092355-0092379 RED. See Annex 10 to the Motion.

¹⁵³ Motion, para. 71, referring to F02111, Panel, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153* ("Second Rule 153 Decision"), 8 February 2024, confidential, paras 72-74 (a public redacted version was issued on the same day, F02111/RED).

¹⁵⁴ Motion, para. 72.

¹⁵⁵ Response, paras 37-38.

¹⁵⁶ Second Rule 153 Decision, paras 72-74. The Panel then found that the prejudicial effect of the admission of W04850's Statements without cross-examination outweighed its probative value at that stage and therefore rejected the Rule 153 application in relation to W04850, without prejudice to any future Rule 154 application (see Second Rule 153 Decision, paras 75-76, 93(c)).

¹⁵⁷ Motion, para. 73.

regarding the hearsay nature of W04850's Statements, the Panel recalls that the fact that a witness statement contains elements of hearsay does not constitute an impediment to admission under Rule 154.¹⁵⁸ What weight, if any, the Panel will attach to this evidence will be determined at the end of the proceedings, in light of all relevant evidence and circumstances.¹⁵⁹ The Panel is satisfied that the admission of W04850's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to cross-examine the witness, would not cause unfair prejudice to the Defence. The Panel is therefore satisfied that the *prima facie* probative value of W04850's Statements is not outweighed by its prejudicial effect, and that W04850's Statements are suitable for admission pursuant to Rule 154.

95. In light of the above, the Panel finds that W04850's Proposed Evidence is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

V. DISPOSITION

96. Based on the above, the Panel hereby:

- a. **GRANTS** the Motion with respect to W01978, W02540, W02677, W02714, W03865, W04371, W04710, and W04850 in full, and with respect to W02951 and W03881 in part;
- b. **FINDS** the Statements and Associated Exhibits of W01978, W02540, W02677, W02714, W02951, W03865, W03881, W04371, W04710, and W04850 as set out in paragraphs 16, 30, 38, 45, 57, 58, 76, 77, 84, 91 and the respective footnotes, appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of each witness and their statements and associated exhibits;

¹⁵⁸ See *e.g.* First Rule 154 Decision, para. 21; Transcript of Hearing, 18 July 2023, p. 5985, line 21 to p. 5986, line 4. See also Sixth Rule 154 Decision, para. 56.

¹⁵⁹ See *e.g.* Sixth Rule 154 Decision, para. 29.

- c. **FINDS** that the following Associated Exhibits of W02951 and W03881 are not appropriate for admission at this point, for the reasons set out in paragraphs 56 and 74: (i) W02951's Associated Exhibit; and (ii) the Diary;
- d. **GRANTS** the SPO leave to add SITF00014555-00014563, 119101-119105 RED and [REDACTED] to the Exhibit List; and
- e. **ORDERS** the SPO to file its amended Exhibit List by no later than **Friday, 19 April 2024**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 16 April 2024

At The Hague, the Netherlands.