



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:** 3 May 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
“Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to  
Rule 155”**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 19, 21, and 37 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, 138(1), 139 and 155 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 26 February 2024, the Specialist Prosecutor’s Office (“SPO”) filed a Rule 155 motion in respect of six proposed witnesses, which it says are unavailable (“Motion”).<sup>1</sup>
2. On 8 March 2024, the Defence filed a joint response to the Motion (“Response”).<sup>2</sup>
3. On 18 March 2024, the SPO filed a reply to the Response (“Reply”).<sup>3</sup>

## II. SUBMISSIONS

4. The SPO seeks admission pursuant to Rule 155 of witness statements and written records and exhibits associated therewith (collectively, the “Proposed Evidence”) of the following witnesses: W00067, W00083, W00900, W04358, W01504 and W01914 (collectively, “Witnesses”).<sup>4</sup> The SPO submits that the Proposed Evidence meets the requirements of Rules 137, 138(1) and 155 and that its admission is in the interest of justice.<sup>5</sup>

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<sup>1</sup> F02152, Specialist Prosecutor, *Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155*, 26 February 2024, confidential, with confidential Annexes 1-7. A public redacted version was filed on the same day (F02152/RED).

<sup>2</sup> F02173, Specialist Counsel, *Joint Defence Response to Prosecution fourth Motion for Admission of Evidence Pursuant to Rule 155*, 8 March 2024, confidential. A public redacted version was filed on 21 March 2024.

<sup>3</sup> F02188, Specialist Prosecutor, *Prosecution Reply to Joint Defence Response to Fourth Rule 155 Motion*, 18 March 2024, confidential. A public redacted version was filed on 19 March 2024 (F02188/RED).

<sup>4</sup> Motion, para. 1.

<sup>5</sup> Motion, para. 2.

5. The Defence objects to the admission of the Proposed Evidence. It reiterates its concerns regarding untested evidence that has already been admitted onto the case record and recalls that the principle of orality should remain the general rule in order to ensure the fairness of the proceedings.<sup>6</sup>

6. The SPO replies that the evidence proposed in the Motion satisfies all applicable criteria and should be admitted for a proper determination of the charges in the case.<sup>7</sup>

### III. APPLICABLE LAW

7. The Panel incorporates by reference the applicable law as set out in its first Rule 155 Decision (“First Rule 155 Decision”).<sup>8</sup>

### IV. DISCUSSION

#### 1. W00067

8. The SPO submits that the Proposed Evidence of W00067 is: (i) relevant;<sup>9</sup> (ii) authentic and reliable;<sup>10</sup> and (iii) its admission would not cause undue prejudice.<sup>11</sup>

9. The Panel notes that the SPO has submitted the following W00067’s Proposed Evidence: (i) International Criminal Tribunal for the former Yugoslavia (“ICTY”) Witness Statement of W00067, dated 2 December 2000; (ii) United Nation Mission in Kosovo (“UNMIK”) Record of Witness Examination of W00067, dated 10 June

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<sup>6</sup> Response, para. 2.

<sup>7</sup> Reply, para. 1.

<sup>8</sup> F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, paras 10-19.

<sup>9</sup> Motion, paras 10-13.

<sup>10</sup> Motion, paras 14-15.

<sup>11</sup> Motion, para. 16.

2006 and the following: UNMIK Record of Witness Examination of W00067 dated 10 June 2006 and associated exhibits (photo line-up shown to W00067 during UNMIK witness examination).<sup>12</sup>

10. The Defence submits that the portions of these statements which concern W00067's identification of Jakup Krasniqi ("Mr Krasniqi") in the Malishevë/Mališevo police station in July 1998 should not be admitted as they: (i) go directly to the alleged acts and conduct of Mr Krasniqi; (ii) are fundamentally contradictory and inconsistent, which diminishes their probative value; and (iii) are uncorroborated.<sup>13</sup> Lastly, the Defence requires that, should the Panel admit the tendered portions that refer to the acts and conduct of Mr Krasniqi, fairness requires that all of W00067's statements, including those that have not been tendered by the SPO, also be admitted.<sup>14</sup>

11. The SPO replies that W00067's statements, including the portions challenged by the Defence, should be admitted as the Defence had the opportunity to adequately test and challenge W00067's evidence to the extent that it was used in questioning W00498 and W02153. The SPO does not oppose the Defence's request that W00067's statements that have not been offered by the SPO also be admitted.<sup>15</sup>

12. The Panel notes that the SPO has submitted W00067's death certificate.<sup>16</sup> The Defence did not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

13. With regard to the *prima facie* reliability of W00067's prior statements, the Panel notes that: (i) both statements were recorded by duly empowered authorities in the presence of interpreters understood by the witness; (ii) during

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<sup>12</sup> Annex 1 to the Motion.

<sup>13</sup> Response, para. 10.

<sup>14</sup> Response, para. 27.

<sup>15</sup> Reply, para. 5.

<sup>16</sup> Annex 7 to the Motion, item 1.

both interviews, the witness was advised of her rights and obligations as a witness; (iii) both statements were prepared on official forms and templates; (iv) both statements contain the date, time and place of the interviews; and (v) the statements contain the witness's personal details. The Panel also notes that the photo line-up forms an inseparable and indispensable part of the UNMIK Record of Witness Examination statement. Lastly, the Panel observes that the Defence does not dispute that the statements given to the ICTY and UNMIK are *prima facie* reliable other than in the limited respect outlined above.<sup>17</sup>

14. Regarding W00067's identification of Mr Krasniqi, the Panel observes that this evidence might be relevant to establishing the presence of Mr Krasniqi at a relevant location and, possibly, elements of the alleged acts and conduct of the Accused. The Panel is, nevertheless, prepared to admit this evidence for the following reasons. First, the Panel recalls that Rule 155 does not exclude evidence going to acts and conduct of the Accused but only requires the Panel to account for this fact when exercising its discretion whether to admit such evidence.<sup>18</sup> Second, the Panel notes that at least six SPO witnesses are scheduled to give evidence about the circumstances in relation to which the witness's evidence pertains.<sup>19</sup> Two of these witnesses have already testified and were extensively cross-examined by the Defence.<sup>20</sup> In addition, three other witnesses are expected to testify and the Defence will be able to cross-examine those witnesses if they are called.<sup>21</sup> Third, the Panel reiterates that the admission of evidence pursuant to Rule 155 is not conditioned on the existence of corroborating evidence.<sup>22</sup> The lack

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<sup>17</sup> Response, para. 10.

<sup>18</sup> First Rule 155 Decision, paras 15, 116; F01864, Panel, *Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155*, 17 October 2023, confidential, para. 41 ("Second Rule 155 Decision"); F02013, Panel, *Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155*, 15 December, confidential, para. 44 ("Third Rule 155 Decision").

<sup>19</sup> See Motion, FN 61, referring to W00498, W02153, W04278, [REDACTED], W04577, and W00092.

<sup>20</sup> Transcript of 20 February 2024 (W00498); Transcript of 18-19 July 2023 (W02153).

<sup>21</sup> W04278, [REDACTED] and W00092.

<sup>22</sup> F01671, Panel, *Decision on Thaçi, Veseli & Krasniqi Defence Request for Certification to Appeal the 'Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155'*, 13 July 2023, para. 11.

of corroboration, in respect of a statement or a portion thereof, does not render it inadmissible.<sup>23</sup> When the Panel admits such evidence, the absence of corroboration is relevant to its assessment of the probative value and weight of the evidence in light of the entire body of evidence admitted at trial, in accordance with Rule 139.

15. Lastly, the Panel is satisfied that, having accounted for the Defence's arguments about the accuracy or detail of the witness's identification, the proposed evidence is *prima facie* probative of the fact it discloses.<sup>24</sup> The considerations highlighted by the Defence will be accounted for by the Panel when assessing the weight to be given to this witness's evidence on that point, taking into account the fact that the Defence was unable to cross-examine the witness.

16. Based on the above, the Panel finds that W00067's Proposed Evidence is *prima facie* reliable.

17. With regard to the Defence request to admit into evidence other statements of W00067 that have not been tendered by the SPO in its Motion,<sup>25</sup> the Panel has already indicated that a respondent should not normally include a fresh application in its Response.<sup>26</sup> The Panel notes, however, that the SPO does not object to the admission of those documents. On an exceptional basis, the Panel will, therefore, entertain the Defence application. The Panel is satisfied that the documents offered by the Defence are admissible ("Defence Exhibits"), as they are

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<sup>23</sup> ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 19 February 2009, para. 47.

<sup>24</sup> Response, paras 20-23.

<sup>25</sup> Response, para. 24, referring to: U000-5328-U000-5329-ET RED3; P00235, pp. SPOE40010577-SPOE40010578; L000-9884-L000-9885 RED2, p. L000-9884; SPOE00195761-00195763 RED2; K019-5141-K019-5146 RED2, p. K019-5143; SITF00062540-SITF00062542-ET RED; SITF00062645-SITF00062667-ET, Q&A 107.

<sup>26</sup> First Rule 155 Decision, para. 50; Second Rule 155 Decision, para. 48; Third Rule 155 Decision para. 52.

*prima facie* relevant, including for the purpose of assessing the reliability of the W00067's Proposed Evidence, and meet the other requirements of the Rules.<sup>27</sup>

18. With regard to the requirements of Rule 138(1), the Panel is satisfied that the evidence offered by the SPO is relevant (including in respect of crimes allegedly committed in Malishevë/Mališevo) and *prima facie* authentic and probative. Furthermore, the Panel is satisfied that the probative value of this evidence is not outweighed by its prejudicial effect to the Accused. In particular, the Panel notes that witness testimony relevant to several aspects of W00067's evidence has been and are likely to be offered at trial, which the Defence will be able to confront if and where it disputes it. In light of the foregoing, the Panel finds that the probative value of the W00067's Proposed Evidence is not outweighed by its prejudicial effect.

19. Regarding the associated exhibit, the Panel is satisfied that it was shown and discussed in W00067's UNMIK statement and as such it forms an indispensable and inseparable part of her evidence.<sup>28</sup>

20. Accordingly, the Panel finds that W00067's Proposed Evidence and the Defence Exhibits are admissible pursuant to Rules 138(1) and 155. The Panel is also satisfied that the documents offered by the Defence meet the same requirements and are therefore admissible.

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<sup>27</sup> The Panel notes that the Defence seeks admission of P00235, pp. SPOE40010577-SPOE40010578 (Response, FN 55), However, as those ERNs are already admitted into evidence, the Panel has not included them in its order below. *See also* Second Rule 155 Decision, para. 20.

<sup>28</sup> Discussed at SITF00062645- SITF00062667-ET RED, pp. SITF0062663- SITF0062665.

## 2. W00083

21. The SPO submits that the Proposed Evidence of W00083 is: (i) relevant;<sup>29</sup> (ii) authentic and reliable;<sup>30</sup> and (iii) its admission would not cause undue prejudice.<sup>31</sup>

22. The Panel notes that the SPO has submitted the following W00083's Proposed Evidence: (i) Transcript of SITF interview with W00083, dated 23 April 2013; (ii) ICTY witness statement of W00083, dated 7 August 2001; (iii) UNMIK witness statement of W00083, dated 10 December 2005; (iv) Audio-video recording of SITF Interview with W00083 (Parts 1-3), dated 23 April 2013; and the following associated exhibits: Collection of ICRC Certificate; UNMIK Confirmations of Identity and Handwritten Notes, dated 23 September 2003.<sup>32</sup>

23. The Defence argues that there is no reasonable justification for admitting duplicative material and that the similar statements do not provide any added value, but rather unnecessarily expand the evidential record.<sup>33</sup> In terms of material relating to W00083's unavailability, the Defence argues that the SPO has produced no evidence as to when her memory issues started.<sup>34</sup>

24. The Defence objects to the admission of W00083's SITF statement. It argues that the reliability and authenticity of the SITF statement is undermined by the cognitive capacity of the witness when the statement was taken. The Defence also opposes the admission of the associated exhibit in connection with this statement.<sup>35</sup>

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<sup>29</sup> Motion, paras 17-18.

<sup>30</sup> Motion, paras 19-22.

<sup>31</sup> Motion, para. 23.

<sup>32</sup> Annex 2 to the Motion.

<sup>33</sup> Response, paras 29-30.

<sup>34</sup> Response, para. 31.

<sup>35</sup> Response, para. 32.



25. The Defence submits that the UNMIK statement is more suitable for admission under Rule 155 than the ICTY statement. It argues that, if the Panel admits this statement, any excerpts relating to Mr Krasniqi should be excluded from the record as they are unfounded, unreliable, irrelevant to the charges and uncorroborated.<sup>36</sup>

26. With regard to the requirement of unavailability of the witness to testify orally, the Panel has carefully reviewed the information submitted by the SPO and WPSO.<sup>37</sup> The Panel notes that, following an examination conducted on 19 May 2023, the WPSO psychologist could not ascertain that the witness was fully orientated in time and space, which impacts her ability to provide testimony, her ability to consent and to interact with the Panel.<sup>38</sup> The Panel is satisfied, on the evidence before it, that this condition would prevent the witness from testifying effectively and meaningfully should she be required to appear before the Panel. The Panel is further satisfied that cross-examination of the witness would not provide an effective means of testing the witness's evidence due to her medical condition. In those circumstances, the Panel finds that the witness is unable to testify within the meaning of Rule 155(1)(a).

27. With regard to the *prima facie* reliability of W00083's prior statements, the Panel notes that: (i) the SITF interview was audio and video recorded and transcribed, and conducted by an interpreter understood by the witness; (ii) the witness was duly advised of her rights and obligations and the witness confirmed that the statement was given voluntarily and its contents are true and accurate; (iii) the ICTY statement was prepared on an official template and contains the witness's personal details and signature, the date, time and place and the confirmation by the witness of the truth and accuracy of the contents of the

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<sup>36</sup> Response, paras 33-36.

<sup>37</sup> F01539, Registrar, WPSO *Observations Regarding Assessment of Fitness to Testify for W00083 with one strictly confidential and ex parte Annex*, 19 May 2023, strictly confidential and *ex parte*.

<sup>38</sup> Annex 7, item 2 to the Motion.

statement; and (iv) the UNMIK interview records the date, time and place of the interview, the witness was duly advised of her rights and obligations as a witness and confirmed that she had no objections to the manner or process by which the statement was taken.

28. With regard to the Defence's argument that the evidence is duplicative, the Panel accepts that some of the records offered by the SPO are repetitious in part. However, the Panel is prepared in this case to admit all offered records as any inconsistency in the evidence might be relevant, *inter alia*, to assessing the reliability of that evidence.<sup>39</sup>

29. With regard to the Defence's argument that the SPO failed to provide evidence regarding when W00083's memory issues began, and specifically with regard to the Defence objection to the admission of W00083's SITF statement due to the cognitive capacity of the witness, the Panel notes that the account given by the witness has remained generally consistent over the course of the SITF interview and the specificity of the information she provided suggests that she was able at the time to give voluntary and informed accounts of relevant facts and circumstances. Periods of confusion during the SITF interview or inability to properly understand certain questions, as identified by the Defence, do not call for the exclusion of the evidence but will call for a degree of caution on the part of the Panel when assessing the weight and probative value of aspects of that evidence. To the extent that the Panel determines that there are inconsistencies in her statements, it will give consideration to that fact and the fact that the Defence was unable to cross-examine the witness in respect of those inconsistencies.

30. In light of the above, the Panel finds that W00083's Proposed Evidence is *prima facie* reliable.

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<sup>39</sup> See Second Rule 155 Decision, para. 20.

31. With regard to the requirements of Rule 138(1), the Panel is satisfied that the W00083's Proposed Evidence is relevant (including in respect of the July 1998 events in and around Rahovec/Orahovac, which are connected to the Malishevë/Mališevo crimes site) and *prima facie* authentic and probative. However, regarding the Defence's objection to the admissibility of the excerpt of the UNMIK statement that refers to Mr Krasniqi, the Panel notes that in its Reply the SPO does not appear to challenge the Defence's assertions that the evidence is unfounded, unreliable, irrelevant to the charges and uncorroborated. Nor does the SPO question the Defence's submission that this excerpt regarding Mr Krasniqi is not part of its case as pleaded in the Indictment, as further articulated in the SPO Pre-Trial Brief. The Panel concurs with the Defence that W00083 has not mentioned Mr Krasniqi in her prior or subsequent statements, and the part relating to Mr Krasniqi bears no identifiable link to the events that W00083's evidence centres on. The relevance of this information to the charges, if any, is also uncertain. Therefore, the Panel finds that the SPO has failed to establish the relevance of this evidence to this case. The Panel also finds that the SPO has failed to demonstrate that the probative value of this part of the W00083's Proposed Evidence would outweigh the prejudicial effect that would result from its admission. The SPO is instructed to provide a revised version of the UNMIK Statement, removing or redacting the section pertaining to the alleged incident in question concerning Mr Krasniqi.

32. Regarding the associated exhibit (Collection of ICRC Certificate, UNMIK Confirmations of Identity and Handwritten Notes), the Panel is satisfied that it was discussed in W00083's SITF interview on 23 April 2013, and it forms an indispensable and inseparable part of the evidence. The Panel is further satisfied that it fulfils the requirements for admission as an associated exhibit under Rules 138(1) and 155.

33. Subject to what has been said above in respect of the references concerning Mr Krasniqi in the UNMIK Statement, the Panel is further satisfied that the probative value of the W00083's Proposed Evidence is not outweighed by its prejudicial effect.

34. Accordingly, the Panel finds that W00083's Proposed Evidence is admissible pursuant to Rules 138(1) and 155 and will be admitted aside from the part of the UNMIK statement relating to Mr Krasniqi. The SPO is directed to prepare and tender a version of the latter document from which the impugned section is redacted or removed.

### 3. W00900

35. The SPO submits that the Proposed Evidence of W00900 is: (i) relevant;<sup>40</sup> (ii) authentic and reliable;<sup>41</sup> and (iii) its admission would not cause undue prejudice.<sup>42</sup>

36. The Panel notes that the SPO has submitted the following W00900's Proposed Evidence: (i) ICTY Witness Statement of W00900, dated 10 August 2001; (ii) Transcript of SITF Interview with W00900 (Parts 1-2), dated 28 January 2014; (iii) SITF Record of interview with W00900, dated 28 January 2014; (iv) Audio-video recording of SITF Interview with W00900 (Parts 1-2), dated 28 January 2014.<sup>43</sup>

37. The Panel notes that the SPO has submitted W00900's death certificate.<sup>44</sup> The Defence does not dispute that the witness is dead and unavailable to testify. The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

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<sup>40</sup> Motion, paras 25-26.

<sup>41</sup> Motion, paras 27-28.

<sup>42</sup> Motion, para. 29.

<sup>43</sup> Annex 3 to the Motion.

<sup>44</sup> Annex 7, item 3 to the Motion.

38. With regard to the *prima facie* reliability of W00900's prior statements, the Panel notes that: (i) the interview with the SITF was audio-video recorded with an interpreter understood by the witness and with W00900 being duly advised of her rights and obligations as a witness; (ii) the statement contains the date, time and place of the interview and persons present; (iii) W00900 confirmed that the contents of her statement are true and accurate and was given voluntarily; and (iv) the ICTY statement was prepared on an official template, and contains the witness's personal details, signature and acknowledgment, and a signed interpreter certification.

39. The Defence objects to the admission of the SITF interview on the ground of unreliability, arguing that the transcript contains significant amounts of paraphrasing.<sup>45</sup> It requests that the SPO be ordered to produce a new transcript of the interview accurately reflecting the words spoken throughout the interview.<sup>46</sup> The Defence does not oppose the admission of the remaining items.<sup>47</sup>

40. The SPO replies that the transcript is an accurate record of the interview and contains no factual errors, therefore the production of a new transcript is not warranted.<sup>48</sup>

41. The Panel is satisfied that the W00900's Proposed Evidence is relevant to this case, which the Defence did not challenge. The Panel is also satisfied that the record is *prima facie* reliable. With regard to the Defence allegation that the transcript of the interview is not a verbatim record of what the witness said, the Panel notes that the Defence refers only to one short excerpt from pages 19 to 20 of the English version.<sup>49</sup> The Panel has carefully reviewed the transcript, and notes that in this excerpt the interpreter intervened to ask the speakers not to speak at

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<sup>45</sup> Response, para. 38.

<sup>46</sup> Response, para. 38.

<sup>47</sup> Response, para. 39.

<sup>48</sup> Reply, para. 6.

<sup>49</sup> See 009862-TR-ET Part 1, p. 19, line 10 – p. 20, line 7.

the same time in order to ensure the accuracy of the record. The Panel also notes that the SPO has tendered the audio-video recording and the original Serbian transcript of the interview. The Parties as well as the Panel are, therefore, in a position to evaluate the accuracy and completeness of the record made of this interview, where necessary. Thus, the request of the Defence that the SPO should produce a new transcript is not justified and is rejected.

42. The Panel notes that W00900's prior statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

43. Regarding the requirements of Rule 138(1), the Panel is satisfied that the W00900's Proposed Evidence is relevant (including in respect of alleged crimes committed in or around Rahovec/Orahovac during the period relevant to the charges) and *prima facie* authentic and probative. Furthermore, the Panel observes that several aspects of the witness's evidence are consistent with, and corroborated by, statements of other witnesses who testified in court and were available for cross-examination, and other material which has already been admitted.<sup>50</sup> As conceded by the Defence,<sup>51</sup> to the extent that W00900's evidence is contradicted or otherwise not corroborated by that of W04745 or W00208, the Panel may consider the impact that this should have on the weight to be assigned to W00900's evidence when that assessment is to be conducted.

44. The Panel is satisfied that the probative value of this evidence is not outweighed by any prejudicial effect to the Accused. In particular, the Panel notes that W00900's evidence does not go to proof of the acts and conduct of the Accused. The Panel also considers that evidence pertaining to many of the same facts and circumstances will be offered by witnesses who the Defence will be able

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<sup>50</sup> W00208 and W04745; U000-0009-U000-0016 RED2; SITF40010159-40010164-ET Revised RED; 007631-TRET Part 1 RED2, Part 2 RED2, Part 3 RED, Part 4, Part 5 RED; 0206-2089-0206-2095; 0351-5084-0351-5384, p.111.

<sup>51</sup> Response, para. 39.

to question.<sup>52</sup> In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

Accordingly, the Panel finds that W00900's Proposed Evidence are admissible pursuant to Rules 138(1) and 155.

#### 4. W04358

45. The SPO submits that the Proposed Evidence of W04358 is: (i) relevant;<sup>53</sup> (ii) authentic and reliable;<sup>54</sup> and (iii) its admission would not cause undue prejudice.<sup>55</sup>

46. The Panel notes that the SPO has submitted the following W04358's Proposed Evidence: (i) Audio/video recording of SPO interview with W04358, dated [REDACTED]; (ii) Transcript of SPO interview with W04358 (Parts 1-3), dated [REDACTED]; (iii) UNMIK, Minutes from the testimony of [REDACTED], [REDACTED]; (iv) UNMIK, Minutes from the testimony of W04358 in the case against [REDACTED]; (v) [REDACTED], Record of Hearing of W04358, related to the criminal investigation against [REDACTED]; and the following associated exhibits: (i) Exhibits shown to W04358 during SPO interview; (ii) [REDACTED]; (iii) [REDACTED].<sup>56</sup>

47. The Defence opposes the admission of the W04358's Proposed Evidence in its entirety for the following reasons: (i) the evidence of W04358 is central to allegations in the Indictment;<sup>57</sup> (ii) the evidence goes to acts and conduct of alleged subordinates to the Accused, within the Joint Criminal Enterprise ("JCE");<sup>58</sup> (iii) the evidence of W04358 is uncorroborated by any direct witness regarding his

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<sup>52</sup> In particular, W00208 and W04745.

<sup>53</sup> Motion, paras 31-33.

<sup>54</sup> Motion, paras 34-36.

<sup>55</sup> Motion, para. 38.

<sup>56</sup> Annex 4 to the Motion.

<sup>57</sup> Response, para. 46.

<sup>58</sup> Response, para. 47.

arrest, detention and the identification of those he allegedly saw whilst in detention;<sup>59</sup> and (iv) W04358's evidence includes inaccuracies and inconsistencies.<sup>60</sup> For these reasons the Defence alleges that the prejudice caused by the admission of the evidence of W04358 is high and incurable.<sup>61</sup>

48. The SPO replies that W04358 is a crime base witness with no evidence concerning the acts and conduct of the Accused.<sup>62</sup> It argues that while there is no requirement of corroboration pursuant to Rule 155, W04358's evidence is also supplemented by several adjudicated facts in relation to [REDACTED].<sup>63</sup> Lastly, the SPO submits that the alleged inconsistencies in W04358's statements are matters pertaining to the weight of the evidence and do not render the evidence inadmissible.<sup>64</sup>

49. With regard to the requirement of unavailability of the witness to testify orally, the Panel is satisfied that W04358's medical records establish that the witness's medical condition prevents him from testifying. The Panel also notes that the Defence does not dispute that the witness is unable to testify within the meaning of Rule 155(1)(a).

50. With regard to the *prima facie* reliability of W04358's Proposed Evidence, the Panel notes that: (i) the SPO interview was conducted with an interpreter understood by the witness; (ii) W04358 was duly advised of his rights and obligations as a witness and he confirmed that the contents of his statement are true and accurate, and that was given voluntarily; (iii) W04358's testimony in the [REDACTED] was recorded in a verbatim transcript containing details such as the date, time, and place, as well as the persons present; (iv) the witness was advised

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<sup>59</sup> Response, para. 48.

<sup>60</sup> Response, para. 62.

<sup>61</sup> Response, para. 64.

<sup>62</sup> Reply, para. 7.

<sup>63</sup> Reply, para. 8.

<sup>64</sup> Reply, para. 10.



of his rights and obligations and he confirmed that he testified voluntarily; (v)W04358's pre-trial testimony in front of an [REDACTED] includes details such as the case number, the date, time and place of the interview, the names and roles of the persons present, as well as the signatures of the [REDACTED], the court recorders, and the interpreters; and (vi) two of the associated exhibits are already admitted into evidence and the third form an inseparable and indispensable part of W04358's evidence.<sup>65</sup>

51. With regard to the Defence argument that W04358 provides unique evidence that is central to the allegations in the Indictment and that concerns the acts and conduct of alleged subordinates to the Accused, and as such cannot be admitted into evidence untested, the Panel notes the following. The Defence suggests that such evidence cannot be "fairly admitted into evidence untested",<sup>66</sup> but gives no legal authority for this assertion nor any reason why unfairness would result due to the nature of the evidence under the circumstances. As already noted, corroboration does not constitute a pre-requisite for admission of evidence. Furthermore, while the importance of the evidence and whether it goes to acts and conduct of the Accused is a factor of relevance to the discretion of the Panel to admit evidence under Rule 155, the importance of proposed evidence is not, in and of itself, ground to refuse admission. In this case, it is not entirely clear what aspect(s) of the proposed evidence would be said to go to 'acts and conduct' of the Accused. However, even if aspects of that evidence go to such an issue, it would not render the proposed evidence inadmissible in this case. Furthermore, as noted below, the Defence was able to question other witnesses in relation to various aspects of that evidence. Insofar as aspects of the offered evidence could not be fairly tested at trial, this will be accounted for by the Panel when evaluating the

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<sup>65</sup> P00098 (060596-060600); P00254 (SITF00299055- 00299087).

<sup>66</sup> Response, paras 47, 57.

weight, if any, and probative value of that evidence and whether to place reliance upon that evidence in compliance with Rule 140(4)(a).<sup>67</sup>

52. With regard to the Defence allegation that certain parts of W04358's evidence cannot be corroborated by any other direct witness, the Panel notes that the Defence was able to put questions to several witnesses about their knowledge of W04358's factual evidence.<sup>68</sup> In particular, the Panel observes that [REDACTED] testified about W04358 and other co-detainees' detention and mistreatment in [REDACTED]<sup>69</sup> and the Defence had the opportunity to test their evidence on these matters. The fact that [REDACTED]'s evidence is based upon hearsay information received from W04358, does not inherently invalidate its potential value as corroboration of W04358's account. The Panel will assess the weight and probative value of that evidence when considered as a whole. Moreover, the Panel determines that the Defence's assertion regarding W04358's prior statements as the sole and decisive evidence concerning the events involving [REDACTED] is incorrect. The Panel notes that the Defence already had the opportunity to cross-examine witnesses whose evidence pertains to some of the same facts and circumstances as form the basis of W04358's Proposed Evidence regarding these individuals.<sup>70</sup>

53. Finally, and accounting for the fact that the Defence in this case was not able to test their evidential basis, the Panel also notes that W04358's evidence is corroborated to some extent by several adjudicated facts in relation to [REDACTED] of which the Panel has taken judicial notice.<sup>71</sup>

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<sup>67</sup> See also ICTY, Trial Chamber I, *The Prosecutor v. Ramush Haradinaj et al*, IT-04-84-T, *Decision on Prosecution's Motion to Admit Five Statements of Witness 1 into Evidence Pursuant to Rule 92 Quarter*, 28 November 2007, para. 11.

<sup>68</sup> [REDACTED].

<sup>69</sup> [REDACTED].

<sup>70</sup> [REDACTED].

<sup>71</sup> Annex 2 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A02, 17 May 2023, [REDACTED].

54. The Defence has drawn the Panel's attention to purported inconsistencies and inaccuracies in W04358's evidence.<sup>72</sup> The Panel has examined the alleged inconsistencies and finds that they do not affect the *prima facie* reliability and/or admissibility of the W04358's Proposed Evidence. The Panel will consider these purported inconsistencies when deciding the probative value and weight, if any, to be given to that evidence.<sup>73</sup>

55. Regarding the requirements of Rule 138(1), the Panel is satisfied that the W04358's Proposed Evidence is relevant (in particular, in relation to crimes allegedly committed in [REDACTED] in or around June 1998) and *prima facie* authentic and probative. Furthermore, as already mentioned above, evidence going to several aspects of the witness's evidence was offered at trial, which the Defence was able to confront.<sup>74</sup> The Panel is therefore satisfied that the probative value of the W04358's Proposed Evidence is not outweighed by any prejudice to the Defence.

56. Regarding the associated exhibits, the Panel is satisfied that they constitute an integral and inseparable part of the record and that two of them have already been admitted into evidence.<sup>75</sup> The Panel is also satisfied that they are relevant and *prima facie* authentic and probative.

57. The Panel is satisfied that the probative value of this evidence is not outweighed by its prejudicial effect to the Accused. In particular, the Panel notes that W04358's evidence does not go to proof of the acts and conduct of the Accused or only to a most limited extent. The Panel also considers that evidence pertaining to many of the same facts and circumstances have been offered by witnesses which the Defence was be able to question.<sup>76</sup>

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<sup>72</sup> Response, para. 62.

<sup>73</sup> First Rule 155 Decision, para. 37; Second Rule 155 Decision, para. 83.

<sup>74</sup> [REDACTED].

<sup>75</sup> P00098 (060596-060600); P00254 (SITF00299055-00299087).

<sup>76</sup> [REDACTED].

58. Accordingly, the Panel finds that W04358's Proposed Evidence and the associated exhibits are admissible pursuant to Rules 138(1) and 155.

#### 5. W01504

59. The SPO submits that the Proposed Evidence of W01054 is: (i) relevant;<sup>77</sup> (ii) authentic and reliable;<sup>78</sup> and (iii) its admission would not cause undue prejudice.<sup>79</sup>

60. The Panel notes that the SPO has submitted the following W01504's Proposed Evidence: (i) Audio/video recording of SPO interview with W01504, dated 29 November 2018; (ii) Transcript of SPO interview with W01504 (Parts 1-4), dated 29 November 2018; (iii) [REDACTED] of W01504, including [REDACTED]; and (iv) [REDACTED], including [REDACTED] made by W01504.<sup>80</sup>

61. The Defence requests access to the document upon which the SPO relies to suggest that the witness is unavailable for the purpose of Rule 155.<sup>81</sup> The document was initially filed "confidential and *ex parte*". Pursuant to the Panel's order of 25 April 2024,<sup>82</sup> the document was made available to the Defence. The Panel notes that the Defence did not file any submission concerning that document.

62. The Defence objected to the admission of the evidence of this witness on a variety of grounds.<sup>83</sup> First, it objects to the admission of an excerpt of W01504's SPO interview that alleges that [REDACTED].<sup>84</sup> The Defence submits that such an assertion is vague, unsubstantiated and uncorroborated.<sup>85</sup> Second, the Defence argues that the [REDACTED] of the witness lacks reliability because it does not

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<sup>77</sup> Motion, paras 41-44.

<sup>78</sup> Motion, paras 45-46.

<sup>79</sup> Motion, para. 48.

<sup>80</sup> Annex 5 to the Motion.

<sup>81</sup> Response, para. 65.

<sup>82</sup> Correspondence CRSPD480.

<sup>83</sup> Response, para. 68.

<sup>84</sup> Response, para. 70.

<sup>85</sup> Response, para. 70.

seem to have been given under oath.<sup>86</sup> Lastly, the Defence objects to the admission of [REDACTED] on the ground that it does not form an integral part of W01504's [REDACTED].<sup>87</sup>

63. Regarding the availability of the witness, the SPO replies that W01504's health issues are severe and his condition has further deteriorated since 2018, not allowing him to testify. Furthermore, the SPO submits that the excerpt of W01504's SPO interview regarding [REDACTED] should not be excluded as it is corroborated by other evidence and W01504 also identifies his source of knowledge in relation to this matter.<sup>88</sup> Lastly, the SPO replies that W01504's SPO interview would be less comprehensible and incomplete without [REDACTED] is very limited in length and would not unnecessarily burden the record.<sup>89</sup>

64. With regard to the requirement of unavailability of the witness to testify orally, the Panel has carefully reviewed the SPO official note and the WPSO's observation regarding W01504's fitness to testify orally ("WPSO W01504's Assessment") and is satisfied that W01504's health condition prevent him from testifying orally.<sup>90</sup>

65. With regard to the *prima facie* reliability of W01504's Proposed Evidence, the Panel notes the following: (i) the SPO interview contains the date, time, place and attendees; (ii) was conducted with the assistance of an interpreter in a language understood by the witness; (iv) the witness was duly advised of his rights; and (v) he confirmed that the contents of his recorded statement are true and accurate and his statement was given voluntarily. The [REDACTED]: (i) were prepared using official templates; (ii) indicate the date, time and place of the interview;

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<sup>86</sup> Response, para. 72.

<sup>87</sup> Response, para. 72.

<sup>88</sup> Reply, para. 12.

<sup>89</sup> Reply, para. 13.

<sup>90</sup> F02097, Registrar, *WPSO Observations Regarding Assessments of Fitness to Testify for W04367, W01914 and W01504 with three strictly confidential and ex parte Annexes*, 1 February 2024, strictly confidential and ex parte, Annex 3; Annex 7, item 5 to the Motion.

(iii) include witness warnings and rights and the witness' personal details; and (iv) were taken in the presence of a qualified interpreter and the statements were given voluntarily and freely before duly empowered official authorities.

66. With regard to the Defence objection to the excerpt of W01504's SPO interview that refers to [REDACTED], the Panel notes the following. First, the Panel observes that the evidence goes to a matter that could fall within the scope of what qualifies as acts and conduct of [REDACTED]. In particular, the Panel notes that the excerpt refers to W01504's [REDACTED].<sup>91</sup> The W01504's Proposed Evidence would, however, only marginally go to an issue material to this case. Furthermore, as already noted, Rule 155 does not exclude evidence going to acts and conduct of the Accused, but only requires the Panel to account for this fact when exercising its discretion whether to admit it.<sup>92</sup> The Panel will in any case be mindful of the inability of the [REDACTED] to challenge the witness's evidence on that point when deciding what weight, if any, to give to it.<sup>93</sup>

67. Second, the Panel considers that, despite the fact that W01504's knowledge of this alleged event regarding [REDACTED] came from third parties, this does not render the excerpt inadmissible.<sup>94</sup> The Panel notes, in particular, that W01504 identifies the claimed origin of his knowledge concerning the matter in question. The hearsay nature of this part of the W01504's Proposed Evidence would be relevant to assessing its weight and probative value, but does not justify its non-admission.

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<sup>91</sup> [REDACTED].

<sup>92</sup> Second Rule 155 Decision, para. 41.

<sup>93</sup> Third Rule 155 Decision, para. 54.

<sup>94</sup> See also ICTY, *Prosecutor v Tadić*, Decision on the Defence Motion of Hearsay, IT-94-1-T, 5 August 1996, para 15-19; ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

68. Finally, the Panel notes that the Defence will have the opportunity to explore the nature and extent of [REDACTED] through the cross-examination of several witnesses that the SPO plans to call.<sup>95</sup>

69. With regard to the Defence's argument that W01504's [REDACTED] does not seem to have been given under oath, the Panel notes the following. First, Rule 155 does not condition the admission of a statement to that statement having been given under oath. Secondly, W01504's [REDACTED] form an integral part of his SPO interview insofar as the witness was asked about them and commented upon their content. Thirdly, the proposed record is generally consistent with the evidence given before the [REDACTED] and, subsequently, to the SPO. The Panel therefore, does not accept the suggestion that the absence of an oath in respect of the [REDACTED] would cast doubts as to its reliability that would justify its exclusion. The fact that the evidence was not given under oath is a matter that the Panel will account for when assessing the weight and probative value of this evidence.<sup>96</sup>

70. With regard to the Defence's objection to the admission of the [REDACTED], the Panel regards it as an integral part of the offered statement. The Panel observes that, contrary to the Defence's assertion, the [REDACTED] was indeed shown to the witness and discussed during the [REDACTED], in which he recognised several individuals.<sup>97</sup>

71. Regarding the requirements of Rule 138(1), the Panel is satisfied that the W01504's Proposed Evidence is relevant (in particular, in relation to crimes allegedly committed in [REDACTED] in or around June 1998) and *prima facie* authentic and probative.

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<sup>95</sup> [REDACTED].

<sup>96</sup> See First Rule 155 Decision, para. 178; Second Rule 155 Decision, para. 57.

<sup>97</sup> 054060-TR-ET Part 1 RED2, pp.5-7 and in 054060-TR-ET Part 3 RED2, pp.14-16, 18, 21-22; SPOE00110375 -00110386 RED2, p. SPOE00110378.

72. Regarding the issue of prejudice, the Panel notes that the W01504's Proposed Evidence is consistent with, and corroborated at least in part by documentary evidence and statements of other witnesses in the case.<sup>98</sup> The Panel has not identified any unfair prejudice that would need to be measured against the probative value of the W01504's Proposed Evidence. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by any prejudicial effect.

73. Accordingly, the Panel finds that W01504's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

#### 6. W01914

74. The SPO submits that the Proposed Evidence of W01914 is: (i) relevant;<sup>99</sup> (ii) authentic and reliable;<sup>100</sup> and (iii) its admission would not cause undue prejudice.<sup>101</sup>

75. The Panel notes that the SPO has submitted the following W01914's Proposed Evidence: (i) Transcript of SPO Interview with W01914 (Parts 1-5), dated 12 September 2019; (ii) Audio/video recording of SPO interview with W01914, dated 12 September 2019; (iii) [REDACTED] of W01914, dated [REDACTED]; and the following associated exhibits: (i) Exhibits shown to W01914 during SPO interview of 12 September 2019; (ii) Photo 217/Aerial colour photo of two buildings in a rural area (from SPRK Case File re: Klecka case against [REDACTED]); (iii) Photo 220/Aerial colour photo of two buildings in a rural area (from SPRK Case File re: Klecka case against [REDACTED]); (iv) Photo 226/ Aerial photograph from collection relating to Klecka/Divjake; (v) Photo 230/ Aerial photo of two houses from case file 07/10 (Klecka); (vi) [REDACTED] related to

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<sup>98</sup> [REDACTED].

<sup>99</sup> Motion, paras 51-53.

<sup>100</sup> Motion, paras 54-55.

<sup>101</sup> Motion, para. 57.



[REDACTED] of W01914; (vii) [REDACTED]14/Collection of documents, related to the Klecka case PPS 07/2010, 0096-09-EWC2, P 766/12, P 425/11, GJPP 25/2010, PAKR 266/14.<sup>102</sup>

76. The Defence objects to the admission of the W01914's Proposed Evidence. The Defence argues that the absence of cross-examination, the importance of the proposed evidence and its lack of corroboration militate against admission and admission would be unduly prejudicial to the Defence.<sup>103</sup> The Defence also argues that (i) only W01914 provides evidence to the specifics of the point at which he was detained and how he and his brother were treated,<sup>104</sup> and that (ii) there are discrepancies between the two statements of W01914.<sup>105</sup> In addition, the Defence submits that additional information should have been disclosed to the Defence to substantiate W01914's medical condition. It considers that, absent specific details provided by a psychologist, and given the singular importance of the information provided by the witness, the Panel lacks complete information regarding W01914's ability to testify.<sup>106</sup> Lastly, the Defence does not dispute that the associated exhibits constitute an inseparable and indispensable part of W01914's statements.<sup>107</sup>

77. The SPO replies that the Defence's objections to the admission of W01914's Proposed Evidence are without merit. It argues that this is a crime base witness, who does not provide information about any of the Accused and his evidence is connected with and corroborated by the evidence of other witnesses.<sup>108</sup> With regard to the discrepancies alleged by the Defence, the SPO replies that comparable objections were previously raised unsuccessfully.<sup>109</sup> Lastly, it submits

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<sup>102</sup> Annex 6 to the Motion.

<sup>103</sup> Response para. 73-74.

<sup>104</sup> Response, para. 73.

<sup>105</sup> Response, para. 74.

<sup>106</sup> Response, para. 76.

<sup>107</sup> Response, para. 77.

<sup>108</sup> Reply, para. 14.

<sup>109</sup> Reply, para. 15.

that the Panel possesses sufficient information to reach an informed conclusion about W01914's inability to testify.<sup>110</sup>

78. With regard to the requirement of unavailability of the witness to testify orally, the Panel observes that the Defence requests access to the document upon which the SPO relies to suggest that the witness is unavailable for the purpose of Rule 155.<sup>111</sup> The document was initially filed "confidential and ex parte". Pursuant to the Panel's order of 25 April 2024,<sup>112</sup> the document was made available to the Defence. The Panel notes that the Defence did not file any submission concerning that document. The Panel has carefully reviewed the WPSO's observation regarding assessment of fitness to testify of W01914 ("WPSO W01914's Assessment") and is satisfied that W01914's health condition prevents him from testifying orally.<sup>113</sup>

79. With regard to the *prima facie* reliability of W01914's Proposed Evidence, the Panel notes that: (i) the SPO interview was conducted with an interpreter understood by the witness; (ii) it contains the date, time and place of the interview, as well as all persons present; (iii) W01914 was duly advised of his rights and obligations as a witness; and (iv) W01914 confirmed that the contents of his statement are true and accurate, and that his statement was given voluntarily. The [REDACTED] (i) was taken by a duly empowered investigator and translated by an interpreter into a language understood by the witness; and (ii) contains a witness acknowledgement, interpreter certification, and is signed by the witness and initialled on all pages. Lastly, the Panel finds that the associated exhibits constitute an inseparable and indispensable part of the prior statements.

80. With regard to the Defence's arguments regarding alleged discrepancies in W01914's prior statements, the Panel reiterates that as set out in Rule 139(6),

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<sup>110</sup> Reply, para. 16.

<sup>111</sup> Response, para. 75.

<sup>112</sup> Correspondence CRSPD480.

<sup>113</sup> Annex 7, item 5 to the Motion and WPSO's assessment.

inconsistencies in a piece of evidence do not per se require a Panel to reject it as unreliable.<sup>114</sup> The Panel is not satisfied that any of the alleged discrepancies, if any was indeed found to exist, would justify the exclusion of those statements or relevant parts thereof. Any such discrepancy, where it is found to exist, will be a matter of relevance in the Panel's assessment of the weight and probative value of that evidence as well as this witness's credibility.<sup>115</sup>

81. In light of the above, the Panel is satisfied that W01914's prior statements and associated exhibits are *prima facie* reliable.

82. Turning to the requirement set out in Rule 155(5), the Panel notes that W01914's prior statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment.

83. With regard to the Defence's argument that, given the centrality of W01914's Proposed Evidence to the Indictment, the prior statements should not be admitted, the Panel notes the following. First, W01914 is a crime base witness and does not offer any evidence regarding the acts and conduct of any of the Accused. Second, the Panel notes that several other witnesses have already testified about similar facts provided by W01914,<sup>116</sup> and other witnesses will be available to the Defence for cross-examination on the same general issues, facts and circumstances covered by W01914.<sup>117</sup> The Panel will conduct its assessment of the evidence of this witness in light of the evidence as a whole and, in particular, in light of any corroboration from witnesses which the Defence was able to question.<sup>118</sup>

84. Regarding the specific requirements of Rule 138(1), the Panel is satisfied that the W01914's Proposed Evidence is relevant (including in respect of alleged crimes

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<sup>114</sup> Third Rule 155 Decision, para. 13.

<sup>115</sup> Second Rule 155 Decision, para. 44.

<sup>116</sup> W03724, W02153, and W04147.

<sup>117</sup> W04264, W04752, W04067, and W04839.

<sup>118</sup> Second Rule 155 Decision, para. 94.

committed in or around Klečkë/Klecka [REDACTED]) and *prima facie* authentic and probative.

85. Lastly, the Panel notes W01914's Proposed Evidence does not go to proof of the acts and conduct of the Accused. Furthermore, the W01914's Proposed Evidence appears to be consistent with, and corroborated by, *inter alia*, documentary evidence and statements of others witnesses in the case.<sup>119</sup> The Panel also considers that evidence pertaining to many of the same facts and general circumstances is to be offered by witnesses who the Defence will be able to question if called. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by any prejudicial effect.

86. Accordingly, the Panel finds that W01914's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

## VI. DISPOSITION

87. For the foregoing reasons, the Panel hereby:

- a) **GRANTS**, the SPO's Rule 155 Motion, in part;
- b) **ADMITS** into evidence the following items and their corresponding translations: K019-5141-K019-5146 RED2; SITF00062645-SITF00062667-ET RED; SPOE00194018-00194046 RED; 000516b Parts 1-3 (Video); U000-0077-U000-0090 RED; 000508-000515 RED; 000509-000512-ET; 000514-000515-ET RED; K020-8261-K020-8267 RED2; 009862-TR-ET Part 1 RED2; 009862-TR-ET Part 2; 009857-009861-ET Revised RED; 009862b Part 1 RED 009862b Part 2(video); 059671b Parts 1-3 RED (video); 059671-TR-ET Part 1 RED2; 059671-TR-ET Part 2 RED2; 059671-TR-ET Part 3 RED2; SITF00181066-00181123, pp. SITF00181066-SITF00181093; SITF00181124-

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<sup>119</sup> W04264, W04752, W04067, W04839, W04147, W02153 and 0189-0855-0189-0857-ET Revised; 077493-077494.

00181156, pp. SITF00181124-SITF00181139; SPOE00125605-00125617; SPOE00208269-00208279; 054060b Parts 1-4; 054060-TR-ET Part 1 RED2; 054060-TR-ET Part 2; 054060-TR-ET Part 3 RED2; 054060-TR-ET Part 4; SPOE00110375-00110386 RED2, pp. SPOE00110376-SPOE00110381; SPOE00110375-SPOE00110375-ET; U003-1213-U003-1229 RED2, pp. U003-1213-U003-1227; U003-1228-U003-1229-ET; 064727-TR Part 1 Revised-ET RED; 064727-TR Part 2 Revised-ET; 064727-TR Part 3 Revised-ET; 064727-TR Part 4 Revised-ET; 064727-TR Part 5 Revised-ET; 064727b Parts 1-5 RED (video); SPOE00078820-00078851 RED2, pp. SPOE00078820-SPOE00078830; 064728-064729, p. 064728; SPOE00072812-00072812; SPOE00072818-SPOE00072818; SPOE00072822-00072822; U000-5328-U000-5329-ET RED3; L000-9884-L000-9885 RED2; SPOE00195761-00195763 RED2; SITF00062540-SITF00062542-ET RED and SITF00062645-SITF00062667-ET;

- a) **ADMITS**, SPOE00193614-00193638 RED under the conditions set out above in paragraph 31;
- b) **INSTRUCTS** the SPO to prepare and tender a version of SPOE00193614-00193638 RED from which the impugned section is removed or redacted, as set out in paragraph 31 above; and
- c) **INSTRUCTS** the Registry to assign exhibit numbers to the aforementioned items.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Friday, 3 May 2024

At The Hague, the Netherlands.