



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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:** 8 May 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Prosecution Request for Admission of Documents Shown to W04739**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-139 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 2-4 and 22 April 2024, W04739 testified in these proceedings.<sup>1</sup>
2. On 8 April 2024, the Specialist Prosecutor’s Office (“SPO”) filed a request for admission of four items used with W04739 during questioning (“SPO Request”).<sup>2</sup>
3. On 18 April 2024, the four Defence teams (collectively, “Defence”) filed a joint response to the SPO Request (“Response”).<sup>3</sup>
4. On 29 April 2024, the SPO replied to the Response (“Reply”).<sup>4</sup>

## II. SUBMISSIONS

5. The SPO submits that the four items it seeks to tender (“Items”)<sup>5</sup> all meet the requirements for admissibility and should be admitted.<sup>6</sup> It also submits that the Items have long been noticed as SPO evidence and that the SPO has been clear in its intent to rely upon them.<sup>7</sup>

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<sup>1</sup> Transcript of Hearing, 2 April 2024, pp. 14119-14256, confidential (“2 April 2024 Transcript”); Transcript of Hearing, 3 April 2024, pp. 14288-14397, confidential (“3 April 2024 Transcript”); Transcript of Hearing, 4 April 2024, pp. 14400-14506, confidential (“4 April 2024 Transcript”); Transcript of Hearing, 22 April 2024 (“22 April 2024 Transcript”), pp. 14521-14626, confidential.

<sup>2</sup> F02228, Specialist Prosecutor, *Prosecution Submissions on Admissibility of Items Used with W04739*, 8 April 2024, confidential, in particular, paras 1, 13.

<sup>3</sup> F02252, Specialist Counsel, *Joint Defence Response to ‘Prosecution Submission on Admissibility of Items Used with W04739 (F02228)’*, 18 April 2024, confidential.

<sup>4</sup> F02267, Specialist Prosecutor, *Prosecution Reply to Defence Response on Admissibility of Items Used with W04739*, 29 April 2024, confidential.

<sup>5</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>6</sup> SPO Request, paras 1-2, 13. *See also* SPO Request, paras 3-10.

<sup>7</sup> SPO Request, para. 12.

6. In its Response, the Defence requests that the Panel: (i) delay resolution of the SPO Request until the conclusion of further questioning of W04739 by the Defence (“First Defence Request”);<sup>8</sup> and (ii) reject the SPO Request in its totality (“Second Defence Request”) or, alternatively, reject it and order the SPO to file a bar table motion instead, should it still seek to rely on the Items (“Third Defence Request”).<sup>9</sup> The Defence submits, in particular, that: (i) the requirements of Rule 138(1) have not been satisfied;<sup>10</sup> (ii) the SPO has not discharged its burden to lay the proper foundation to tender the Items and cannot rely on the Panel to do so;<sup>11</sup> and (iii) considerations of fairness and integrity require that the SPO Request be rejected, particularly as more appropriate measures, such as the filing of a bar table motion or admission of the Items through Rule 132, would be available.<sup>12</sup>

7. In its Reply, the SPO maintains that the Items are admissible.<sup>13</sup> It submits that the Defence misunderstands the standard applicable to the admission of evidence and suggests that related Defence challenges to judges’ questioning have already been rejected by the Court of Appeals Panel.<sup>14</sup> The SPO argues, in particular, that: (i) the Items are all on the SPO’s list of exhibits; (ii) it is immaterial whether items tendered by the SPO are first used in the courtroom by the Panel; (iii) ultimately, it is also immaterial whether an item is admitted as an exhibit of the SPO, the Defence or the Panel; and (iv) there is no reason why tendering the Items through a bar table motion would be better or meaningfully different.<sup>15</sup>

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<sup>8</sup> Response, paras 6, 41(a).

<sup>9</sup> Response, in particular, paras 1, 41(b)-(c).

<sup>10</sup> Response, paras 2, 15-39.

<sup>11</sup> Response, paras 1, 7, 9-11, 40.

<sup>12</sup> Response, paras 1-2, 7-18, 40.

<sup>13</sup> Reply, para. 5.

<sup>14</sup> Reply, paras 1, 5.

<sup>15</sup> Reply, paras 2-4.

### III. DISCUSSION

8. At the outset, the Panel notes that the Defence has had a full and fair opportunity to put questions to W04739 in respect of the documents in question, including in respect of the Items, and that W04739's testimony has now been concluded.<sup>16</sup> Accordingly, the Panel finds that the First Defence Request is moot.

9. The Panel takes note of the Defence's submissions that it is more appropriate to seek the admission of the Items through the filing of a bar table motion or through Rule 132 rather than admitting the Items, at this stage, as SPO exhibits.<sup>17</sup> In this regard, the Panel recalls that, pursuant to paragraph 119 of the Order on the Conduct of Proceedings,<sup>18</sup> it "will generally hear and rule upon submissions from the Parties and participants about the admissibility of each exhibit at the time that the exhibit is tendered in evidence". And while certain documents might be more appropriate for tender through a witness or from the bar table, that decision is primarily one to be taken by the offering Party. The Panel, in paragraph 22 of the Order on the Conduct of the Proceedings, invited the parties, with a view to ensuring the expeditiousness of the proceedings, to "consider the submission of evidence through bar table motions".<sup>19</sup> However, the Rules do not prescribe that proposed exhibits should be tendered in a particular manner or that their admission should be refused if the most suitable method has not been used, as long as they meet the requirements of the Rules for admission.

10. All four items appear on the SPO exhibit list. This put the Defence on notice of the SPO's intention to tender these documents at some point in the proceedings. Upon the SPO indicating that it would offer the Items for admission, it was agreed

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<sup>16</sup> 22 April 2024 Transcript, pp. 14522-14560 (Veseli Defence); pp. 14561-14600 (Selimi Defence); pp. 14600-14617 (Krasniqi Defence); pp. 14619-14626 (Thaçi Defence); p. 14626, lines 2-7 (end of testimony).

<sup>17</sup> Response, paras 12-13.

<sup>18</sup> F01226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings* ("Order on the Conduct of Proceedings"), 25 January 2023.

<sup>19</sup> Order on the Conduct of Proceedings, para. 22.

that written submissions would be filed in respect of this,<sup>20</sup> notably to allow the Defence to meaningfully respond in writing, rather than having to make submissions immediately in court. As previously held by the Panel, there is no rule in the applicable legal framework that would require the Panel to postpone its decision on an item's admission if it is satisfied that the requirements of Rule 138(1) have been met.<sup>21</sup> Similarly, there is no rule that would require the Panel to direct the SPO to submit a bar table motion instead or to admit the item under Rule 132, if it is satisfied that the tendering party has demonstrated that the requirements of Rule 138(1) have been met.

11. Furthermore, as acknowledged by the Defence,<sup>22</sup> the Panel has previously admitted an item that had been shown to a witness during judicial questioning and which was subsequently tendered by the SPO.<sup>23</sup> Contrary to the Defence's contention,<sup>24</sup> permitting the SPO to tender items which feature on its exhibit list and are used during judicial questioning does not give rise to an appearance of impartiality. The fact that a document is relevant to a Party's case cannot mean that it might not, also, be relevant to the ascertainment of the truth, which the Panel is responsible to establish. The suggestion that the use during judicial questions of a Party's listed exhibits would affect the appearance of judicial impartiality is therefore without foundation. In accordance with the tendering party's duty to demonstrate that the admissibility criteria are met,<sup>25</sup> the SPO has provided submissions in relation to the admissibility of the Items.<sup>26</sup> It is based on

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<sup>20</sup> 4 April 2024 Transcript, p. 14508, line 24 to p. 14509, line 3; p. 14511, lines 19-23.

<sup>21</sup> F02241, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046* ("Leave to Appeal Decision on P1046"), 15 April 2024, para. 15.

<sup>22</sup> Response, para. 14.

<sup>23</sup> F01963, Panel, *Decision on Admission of Documents Shown to W04769*, 27 November 2023, in particular, paras 23-24.

<sup>24</sup> See on this e.g. Response, paras 8-9, 11.

<sup>25</sup> Order on the Conduct of Proceedings, para. 49; F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("First Bar Table Decision"), 31 March 2023, confidential, paras 9, 11-12; F01705, Panel, *Third Decision on Specialist Prosecutor's Bar Table Motion*, 27 July 2023, para. 42; Leave to Appeal Decision on P1046, para. 22.

<sup>26</sup> SPO Request, paras 2-10.

these submissions of admissibility, as well as the respective arguments from the Response and the Reply, that the Panel will assess the admissibility of the Items.

#### A. FIRST DOCUMENT<sup>27</sup>

12. Regarding relevance, the Panel observes that the First Document relates, as is apparent from its title, to the formation of the General Staff of the Kosovo Liberation Army (“KLA” and “General Staff”).<sup>28</sup> It contains information on, *inter alia*: (i) the alleged positions of the Accused in the General Staff and/or the Provisional Government of Kosovo;<sup>29</sup> and (ii) [REDACTED].<sup>30</sup> W04739 testified extensively on both topics.<sup>31</sup> The Panel is satisfied that the First Document is relevant.

13. Regarding authenticity, the Panel recalls that, as it is called upon to make a *prima facie* assessment of authenticity, absolute proof of authenticity is not required for the purpose of admissibility.<sup>32</sup> Nor is it required that the witness authenticate the document, as its *prima facie* authenticity can, for instance, also be demonstrated through indicators of origin and/or authenticity apparent from the item itself. The Panel observes in this regard that the First Document bears Jakup Krasniqi’s (“Mr Krasniqi”) name on the header of the first page and its content substantially overlaps with information provided in Mr Krasniqi’s book, parts of which have already been admitted into evidence.<sup>33</sup> The Panel also observes

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<sup>27</sup> [REDACTED].

<sup>28</sup> First Document, p. 1.

<sup>29</sup> See e.g. First Document, pp. 2, 4-5, 7, 11.

<sup>30</sup> See e.g. First Document, p. 10. See also e.g. 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, F01415/A01, and a confidential lesser redacted version, F01594/A03, were filed on 3 April and 9 June 2023, respectively).

<sup>31</sup> See e.g. 2 April 2024 Transcript, pp. 14129-14142, 14203-14206, 14242-14243, 14245-14254; 3 April 2024 Transcript, pp. 14348-14360, 14380-14382.

<sup>32</sup> See e.g. First Bar Table Decision, para. 11 (with further references).

<sup>33</sup> See SPO Request, para. 4 (with further references).

that the SPO has asserted that this document was seized from Mr Krasniqi.<sup>34</sup> Furthermore, there is no indication that this document has been interfered with or tempered with. The Panel is satisfied that the First Document is *prima facie* authentic.

14. Regarding probative value, the Panel notes that W04739 was questioned on different parts of the document and was able to confirm certain details contained therein,<sup>35</sup> thereby bolstering its reliability. The Panel is satisfied that the First Document is *prima facie* probative, particularly in relation to the elements mentioned above regarding relevance.<sup>36</sup> With respect to the arguments raised by the Defence,<sup>37</sup> the Panel recalls that the extent to which a witness was able to authenticate a document and meaningfully comment on its contents or confirm the truth or accuracy of information contained therein, will be taken into account when deciding what weight to assign to this item.<sup>38</sup>

15. Regarding prejudice, the Panel observes that the item was disclosed to the Defence in July 2021 pursuant to Rules 102(1)(b) and 103<sup>39</sup> and was included in the SPO's list of exhibits notified to the Defence in December 2021 ("December 2021 Exhibit List").<sup>40</sup> It was therefore foreseeable for the Defence that this document was likely to be used during trial. Furthermore, in addition to having had the opportunity to file detailed written submissions on the admissibility of this item in the Response, the Defence had more than two weeks to prepare for further

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<sup>34</sup> SPO Request, para. 3. *See also* F02234, Specialist Prosecutor, *Prosecution Submission of Seized Items Chart for W04739* ("Seized Items Chart"), 12 April 2024, confidential, para. 1 ([REDACTED]).

<sup>35</sup> 4 April 2024 Transcript, pp. 11459-11461, 11468-11473.

<sup>36</sup> *See above*, para. 12.

<sup>37</sup> Response, paras 19, 21-22.

<sup>38</sup> *See e.g.* Transcript of Hearing, 5 December 2023, pp. 10576-10577 (Oral Order); Transcript of Hearing, 17 October 2023, pp. 8988-8990 (Oral Order).

<sup>39</sup> Disclosure Packages 44-45.

<sup>40</sup> F00631/RED/A03/CONF/RED, Specialist Prosecutor, *Annex 3 to Public Redacted Version of 'Submission of Pre-Trial Brief, with Witness and Exhibit Lists'*, KSC-BC-2020-06/F00631, dated 17 December 2021 (*Confidential Redacted List of Exhibits*), 21 December 2021, confidential (items [REDACTED]).

questioning of the witness on this document.<sup>41</sup> The Panel took into account the evidence provided by the witness during further questioning by the Defence<sup>42</sup> for the purpose of the present decision and will also take it into account when deciding what weight to assign to this item.

16. With respect to the Defence's argument that admission of this item would risk creating an unmanageable trial record,<sup>43</sup> the Panel considers that, while the item might overlap in part with other documents,<sup>44</sup> such overlap may be useful for the purposes of corroborating related documents. As the document is relatively limited in size (11 pages), its admission would only marginally increase the number of pages contained in the case record. Furthermore, while the witness did not specifically comment on all pages of this document, they are intrinsically linked so as to justify their admission as a whole.

17. In light of the above, the Panel is satisfied that the *prima facie* probative value of the First Document is not outweighed by its prejudicial effect.

18. Being satisfied that the admissibility requirements of Rule 138(1) are met, and recalling its considerations in paragraphs 9-11 above, the Panel admits the First Document, including its English translation, into evidence pursuant to Rule 138(1).

19. Accordingly, the Panel rejects the Second Defence Request and the Third Defence Request to the extent they relate to the First Document.

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<sup>41</sup> See also 4 April 2024 Transcript, p. 14509, line 17 to p. 14510, line 17.

<sup>42</sup> 22 April 2024 Transcript, pp. 14600-14604, 14610-14611.

<sup>43</sup> Response, para. 20.

<sup>44</sup> See SPO Request, para. 4 (with further references).



## B. SECOND DOCUMENT<sup>45</sup>

20. Regarding relevance, the Panel is satisfied that the Second Document is relevant as it relates, *inter alia*, to [REDACTED],<sup>46</sup> on which W04739 testified extensively, and associated issues pertaining to the structure, capabilities and functioning of the KLA at the relevant time.<sup>47</sup>

21. Regarding authenticity, the Panel refers to its considerations in paragraph 13 above and observes that this document appears to emanate from the General Staff and bears a protocol number, date, location, and classification.<sup>48</sup> The Panel also observes that the SPO asserts that this item was seized from Mr Krasniqi.<sup>49</sup> Based on these considerations, the Panel is satisfied that the Second Document is *prima facie* authentic.

22. Regarding probative value, the Panel notes that the witness added further context to this item's content, based on the specific knowledge he had by reason of his position.<sup>50</sup> Furthermore, the witness indicated that he did not have any reason to dispute any aspect of the account from this document that was put to him.<sup>51</sup> With respect to the arguments raised by the Defence in this regard,<sup>52</sup> the Panel recalls that the extent to which a witness was able to authenticate a document and meaningfully comment on its contents or confirm the truth or accuracy thereof, will be considered when deciding what weight to assign to this item.<sup>53</sup> Any potential discrepancies between this item's content and W04739's

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<sup>45</sup> [REDACTED].

<sup>46</sup> See *e.g.* SPO Pre-Trial Brief, paras [REDACTED].

<sup>47</sup> See *e.g.* 2 April 2024 Transcript, pp. 14139-14142, 14242-14243; 3 April 2024 Transcript, pp. 14380-14382.

<sup>48</sup> See Second Document, p. 1.

<sup>49</sup> SPO Request, para. 5. See also Seized Items Chart, para. 1 ([REDACTED]).

<sup>50</sup> 4 April 2024 Transcript, pp. 14463-14464.

<sup>51</sup> 4 April 2024 Transcript, p. 14464, lines 18-20.

<sup>52</sup> Response, paras 25-27.

<sup>53</sup> See above, para. 14 and fn. 38.

account will also be considered by the Panel at that stage. The Panel is satisfied that the Second Document is *prima facie* probative.

23. Regarding prejudice, the Panel observes that the item was disclosed to the Defence in July 2023 pursuant to Rule 102(1)(b)<sup>54</sup> and was already included in the December 2021 Exhibit List.<sup>55</sup> It was therefore foreseeable for the Defence that this document would be used during trial. Furthermore, in addition to having had the opportunity to file detailed written submissions on the admissibility of this item in the Response, the Defence had more than two weeks to prepare for further questioning of the witness on this document.<sup>56</sup> However, none of the Defence teams put further questions to the witness in respect of this document.

24. Furthermore, while the witness did not specifically comment on all pages of this document, they are intrinsically linked and provide relevant context for those pages which were the subject of questioning so as to justify their admission as a whole. As the document is relatively limited in size (23 pages), its admission would only marginally increase the case record.

25. In light of the above, the Panel is satisfied that the *prima facie* probative value of the Second Document is not outweighed by its prejudicial effect.

26. Being satisfied that the admissibility requirements of Rule 138(1) are met, and recalling its considerations in paragraphs 9-11 above, the Panel admits the Second Document, including its English translation, into evidence pursuant to Rule 138(1).

27. Accordingly, the Panel rejects the Second Defence Request and the Third Defence Request to the extent they relate to the Second Document.

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<sup>54</sup> Disclosure Package 44.

<sup>55</sup> December 2021 Exhibit List, items [REDACTED].

<sup>56</sup> See also 4 April 2024 Transcript, p. 14509, line 17 to p. 14510, line 17.

C. THIRD DOCUMENT<sup>57</sup>

28. Regarding relevance, the Panel is satisfied that the Second Document is relevant as it relates to [REDACTED],<sup>58</sup> whereon W04739 testified extensively, as well as issues associated with this matter (in particular, in respect of the mechanisms, procedures and personnel involved in such proceedings).<sup>59</sup>

29. Regarding authenticity, the Panel refers to its considerations in paragraph 13 above and observes that the document appears to emanate from the KLA military police. While not containing a signature, it bears [REDACTED]'s name. Furthermore, it is dated and contains a document number. The Panel recalls that a missing signature or a witness's inability to authenticate a document are not obstacles to its admission, but will be considered by the Panel when deciding what weight to assign to this item.<sup>60</sup> The Panel also observes that the SPO asserts that this item was seized from Mr Krasniqi.<sup>61</sup> Based on the indicators of origin and authenticity contained in the document, the Panel is satisfied that the Third Document is *prima facie* authentic.

30. Regarding probative value and the Defence's respective arguments,<sup>62</sup> the Panel notes that, while W04739 stated that he had not seen the document before:<sup>63</sup> (i) he was able to confirm the accuracy of parts of this document;<sup>64</sup> (ii) the basis for his knowledge is set out in his admitted evidence;<sup>65</sup> and (iii) the content of this document corresponds to information contained in other items already admitted

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<sup>57</sup> [REDACTED].

<sup>58</sup> See e.g. SPO Pre-Trial Brief, paras [REDACTED].

<sup>59</sup> See e.g. 2 April 2024 Transcript, pp. 14149-14157, 14179-14180; 3 April 2024 Transcript, pp. 14367-14378; 4 April 2024 Transcript, pp. 14403-14405; 22 April 2024 Transcript, pp. 14587-14588, 14608-14609.

<sup>60</sup> See e.g. F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, para. 73; above, paras 13-14.

<sup>61</sup> SPO Request, para. 7. See also Seized Items Chart, para. 1 ([REDACTED]).

<sup>62</sup> In particular, Response, para. 31.

<sup>63</sup> See 22 April 2024 Transcript, p. 14607, lines 11-13.

<sup>64</sup> 4 April 2024 Transcript, pp. 14479-14480.

<sup>65</sup> E.g. P1097.6, pp. 1-15.

into evidence.<sup>66</sup> The Panel further recalls that the extent to which a witness was able to authenticate a document and meaningfully comment on its contents or confirm the truth or accuracy thereof, will be taken into account when deciding what weight to assign to this item.<sup>67</sup> The Panel is satisfied that the Third Document is *prima facie* probative.

31. Regarding prejudice, the Panel observes that this item was disclosed to the Defence in July 2021 pursuant to Rules 102(1)(b) and 103<sup>68</sup> and was included in the December 2021 Exhibit List.<sup>69</sup> It was therefore foreseeable for the Defence that this document could be used during trial. Furthermore, in addition to having had the opportunity to file detailed written submissions on the admissibility of this item in the Response, the Defence had more than two weeks to prepare for further questioning of the witness on this document.<sup>70</sup> The Panel took into account the evidence provided by the witness during further questioning by the Defence<sup>71</sup> for the purpose of the present decision and will also take it into account when deciding what weight to assign to this item.

32. Lastly, with respect to the Defence's submission that it will not be able to cross-examine the two persons who would most likely have knowledge about this document, as they are not on the SPO's witness list,<sup>72</sup> the Panel notes the following. First, admission of a proposed exhibit is not conditioned by a requirement that the witness best positioned to comment upon it be called to testify to it. What information witnesses are able to add to an exhibit will go to the weight that can be attributed to that evidence. Secondly, the Defence could, if it so wishes, call

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<sup>66</sup> E.g. [REDACTED]; [REDACTED].

<sup>67</sup> See above, para. 14 and fn. 38.

<sup>68</sup> Disclosure Packages 44-45.

<sup>69</sup> December 2021 Exhibit List, items [REDACTED].

<sup>70</sup> See also 4 April 2024 Transcript, p. 14509, line 17 to p. 14510, line 17.

<sup>71</sup> 22 April 2024 Transcript, pp. 14606-14609.

<sup>72</sup> Response, para. 32.

these persons as Defence witnesses, although the Defence does not, of course, carry any burden of proof in respect of this matter.

33. In light of the above, the Panel is satisfied that the *prima facie* probative value of the Third Document is not outweighed by its prejudicial effect.

34. Being satisfied that the admissibility requirements of Rule 138(1) are met, and recalling its considerations in paragraphs 9-11 above, the Panel admits the Third Document, including its English translation, into evidence pursuant to Rule 138(1).

35. Accordingly, the Panel rejects the Second Defence Request and the Third Defence Request to the extent they relate to the Third Document.

#### D. FOURTH DOCUMENT<sup>73</sup>

36. Regarding relevance, the Panel observes that this item pertains to the [REDACTED],<sup>74</sup> a topic which was discussed in some detail with W04739, and which is relevant in turn to a variety of issues in the case (including what structures and procedures were in place to address disciplinary and criminal issues within the KLA, and who was responsible to address such matters).<sup>75</sup> The Panel is satisfied that the Fourth Document is relevant.

37. Regarding authenticity, the Panel observes that this item appears to emanate from the KLA General Staff. It bears a document number, date, classification, signature and a KLA General Staff stamp. The document was provided to the SPO by an international institution<sup>76</sup> and was signed, dated and stamped by that institution. The Panel recalls that a witness's inability to authenticate a document

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<sup>73</sup> [REDACTED].

<sup>74</sup> See e.g. SPO Pre-Trial Brief, paras [REDACTED].

<sup>75</sup> See e.g. 3 April 2024 Transcript, pp. 14372-14376; 22 April 2024 Transcript, pp. 14590-14591.

<sup>76</sup> SPO Request, para. 9.

is not an obstacle to its admission.<sup>77</sup> The Panel is satisfied that the Fourth Document is *prima facie* authentic.

38. Regarding probative value, the Panel notes that while W04739 had not seen the document before,<sup>78</sup> he provided further context to the document and details about the topic to which it relates.<sup>79</sup> Furthermore, the item's content corresponds to information contained in already admitted exhibits<sup>80</sup> and bears physical and substantive resemblance to other already admitted General Staff documents on similar matters.<sup>81</sup> Furthermore, the witness indicated that he did not contest (the content of) this document.<sup>82</sup> With respect to the arguments raised by the Defence in this regard,<sup>83</sup> the Panel recalls that the extent to which a witness was able to authenticate a document and meaningfully comment on its contents or confirm the truth or accuracy thereof, will be taken into account when deciding what weight to assign to this item.<sup>84</sup> The Panel is satisfied that the Fourth Document is *prima facie* probative.

39. Regarding prejudice, the Panel observes that this item was disclosed to the Defence in December 2020 pursuant to Rule 102(1)(a)<sup>85</sup> and was included in the December 2021 Exhibit List.<sup>86</sup> It was therefore foreseeable for the Defence that this document would be used during trial. Furthermore, in addition to having had the opportunity to file detailed written submissions on the admissibility of this item in the Response, the Defence had more than two weeks to prepare for further

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<sup>77</sup> See above, paras 13, 29.

<sup>78</sup> 4 April 2024 Transcript, p. 14485, line 3.

<sup>79</sup> See 4 April 2024 Transcript, p. 14484, line 25 to p. 14485, line 20.

<sup>80</sup> E.g. [REDACTED]; [REDACTED].

<sup>81</sup> E.g. [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

<sup>82</sup> 22 April 2024 Transcript, p. 14591, line 13. See also 4 April 2024 Transcript, p. 14485, lines 5, 10-12, 18-20.

<sup>83</sup> Response, paras 36-39.

<sup>84</sup> See above, para. 14 and fn. 38.

<sup>85</sup> Disclosure Package 9.

<sup>86</sup> December 2021 Exhibit List, items [REDACTED].

questioning of the witness on this document.<sup>87</sup> The Panel considered the evidence provided by the witness during further questioning by the Defence<sup>88</sup> for the purpose of the present decision and will also take it into account when deciding what weight to assign to this item.

40. Furthermore, as noted by the Defence,<sup>89</sup> other prospective witnesses may be in a position to comment on these documents and, thus, the Defence may put questions to these witnesses during cross-examination, should it wish to do so. Evidence provided by them will also be taken into account by the Panel when deciding what weight to assign to this item.

41. In light of the above, the Panel is satisfied that the *prima facie* probative value of the Fourth Document is not outweighed by its prejudicial effect.

42. Being satisfied that the admissibility requirements of Rule 138(1) are met, and recalling its considerations in paragraphs 9-11 above, the Panel admits the Fourth Document, including its English translation, into evidence pursuant to Rule 138(1).

43. Accordingly, the Panel rejects the Second Defence Request and the Third Defence Request to the extent they relate to the Fourth Document.

#### IV. CLASSIFICATION

44. The Panel takes note of the Parties' submissions regarding the confidential classification of their respective filings.<sup>90</sup> While the Panel accepts that a substantial part of the SPO Request would have to be redacted from a public version, it nevertheless considers that public redacted versions of the SPO Request and the Response are feasible. As for the Reply, the Panel considers that it may even be

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<sup>87</sup> See also 4 April 2024 Transcript, p. 14509, line 17 to p. 14510, line 17.

<sup>88</sup> 22 April 2024 Transcript, p. 14591.

<sup>89</sup> Response, para. 38.

<sup>90</sup> SPO Request, para. 11; Response, para. 3; Reply, fn. 12.

reclassified as public. To ensure the publicity of the proceedings to the greatest extent possible, the Panel therefore orders the Parties to submit public redacted versions of their respective filings or, as regards the Reply, request its reclassification, by **Wednesday, 15 May 2024**.

## V. DISPOSITION

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

- a) **GRANTS** the SPO Request;
- b) **DECLARES MOOT** the First Defence Request;
- c) **REJECTS** the Second Defence Request and the Third Defence Request;
- d) **ADMITS** the following items into evidence pursuant to Rule 138(1):  
[REDACTED] and [REDACTED]; [REDACTED] and [REDACTED];  
[REDACTED] and [REDACTED]; [REDACTED] and [REDACTED];
- e) **DIRECTS** the Registry to assign SPO exhibit numbers to the Items; and
- f) **ORDERS** the Parties to submit public redacted versions of their respective filings or, as regards the Reply, request its reclassification, by **Wednesday, 15 May 2024**.



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**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Wednesday, 8 May 2024

At The Hague, the Netherlands.