



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: 22 May 2024

Language: English

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**Public Redacted Version of Decision on Prosecution Motion for Admission of
Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and
W04764 Pursuant to Rule 154 (F02204)**

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

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 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 2023, 9 June 2023, 10 July 2023, 24 July 2023, 10 October 2023, 2 November 2023, 1 December 2023, 8 January 2024, 12 February 2024, 16 April 2024 and 3 May 2024 the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 with regard to seventy (70) witnesses.¹

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* (“Second Rule 154 Decision”), 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*, 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*, 12 February 2024, confidential (a public redacted version was filed the same day, F02117/RED); F02245, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01978, W02540, W02677, W02714, W02951, W03865, W03881, W04371, W04710, and W04850 Pursuant to Rule 154*, 16 April 2024, confidential (a public redacted version was filed the

2. On 27 March 2024, the SPO filed a Rule 154 motion with regard to seven additional witnesses (“Motion”).²
3. On 29 April 2024, following an extension of time to respond,³ and an extension of the word limit,⁴ the Defence for all four Accused (collectively, “Defence”) jointly responded to the Motion (“Response”).⁵
4. On 6 May 2024, the SPO replied to the Response (“Reply”).⁶

II. SUBMISSIONS

5. The SPO requests admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of seven witnesses: W01511, W04260, W04305, W04410, W04744, W04752, and W04764 (“Witnesses”).⁷ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and its admission is not outweighed by any prejudice and is therefore in the interests of justice.⁸
6. The Defence objects to the admission of parts of the Proposed Evidence on the basis that: (i) certain Associated Exhibits do not constitute an indispensable or inseparable part of the statements to which they relate; (ii) their probative value

same day, F02245/RED); F02281, Panel, *Decision on URGENT Prosecution Motion for Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-Conference Testimony (F02270)*, 3 May 2024, confidential (a public redacted version was filed the same day, F02281/RED). W02486’s proposed evidence was subsequently admitted under Rule 153. Transcript of Hearing, 7 May 2024, p. 15468, line 13 to p. 15459, line 19.

² F02204, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154*, 27 March 2024, confidential, with Annexes 1-8, confidential (a public redacted version was filed on the same day, F02204/RED).

³ F02209, Panel, *Decision on Selimi Defence Request for Extensions of the Time Limit to Respond to F02195, F02196, and F02204*, 28 March 2024, paras 2, 5(b).

⁴ Transcript of Hearing, 29 April 2024, p. 15073, lines 1-13.

⁵ F02272, Specialist Counsel, *Joint Defence Consolidated Response to F02204, and the Remaining Witnesses in F02195*, 29 April 2024, confidential, with Annexes 1-6, confidential (a public redacted version was filed on 8 May 2024, F02272/RED).

⁶ F02286, Specialist Prosecutor, *Prosecution Reply Relating to Rule 154 Motion F02204*, 6 May 2024, confidential (a public redacted version was filed on the same day, F02286/RED).

⁷ Motion, paras 1-2, 62.

⁸ Motion, paras 10-11, 16, 24, 29-31, 38. *See also* Annexes 1-5 to the Motion.

is outweighed by their prejudicial effect; and (iii) any potential time-saving function of admission pursuant to Rule 154 is nullified by the lengthy *viva voce* testimony sought by the SPO.⁹ The Defence further argues that some of the evidence sought to be tendered concerns matters of pivotal importance to the SPO's case and therefore admission via Rule 154 would prove highly prejudicial for the rights of the Accused.¹⁰ The Defence requests that the Panel: (i) deny the admission of the SPO's proposed Rule 154 materials for W01511 in whole or in part; (ii) order the submission of W01511's testimony from prior proceedings in another jurisdiction as a basis for W01511's Rule 154 Evidence; (iii) deny the admission of W04305's, W04744's, W04752's and W04764's evidence through Rule 154; and (iv) order the SPO to elicit evidence *viva voce* from W04305, W04744, W04752 and W04764.¹¹

7. The SPO replies that the Motion should be granted as the Response is based on the misconception that the centrality of a witness's evidence is a ground upon which admission pursuant to Rule 154 should be denied.¹² With regard to the Associated Exhibits, the SPO submits that admission should be granted because without them, the witnesses' testimony would become incomprehensible or of lesser probative value.¹³

III. APPLICABLE LAW

8. The Panel incorporates the applicable law as set out in its First Rule 154 Decision by reference.¹⁴

⁹ Response, paras 13-14.

¹⁰ Response, para. 15.

¹¹ Response, para. 64.

¹² Reply, para. 2.

¹³ Reply, para. 4.

¹⁴ First Rule 154 Decision, paras 11-35.

IV. DISCUSSION

A. W01511

9. The SPO submits that the proposed evidence of W01511¹⁵ is: (i) relevant;¹⁶ (ii) *prima facie* authentic and reliable;¹⁷ and (iii) suitable for admission under Rule 154.¹⁸

10. The Defence responds that while it accepts that the formal requirements of Rule 154 have been satisfied with regard to W01511's Statements, it requests that the Panel exercise its discretion to deny their admission in consideration of W01511's alleged impaired memory.¹⁹

11. *W01511's Statements*. Regarding relevance, W01511 joined the Kosovo Liberation Army ("KLA") and was later appointed to a commanding role.²⁰ W01511 observed prepared lists and notes of suspected collaborators and KLA opponents,²¹ and has knowledge of detentions, mistreatments and killings at certain locations relevant to this case.²² W01511 was also present at meetings attended by members of the General Staff at which relevant decisions were allegedly made.²³ The Panel notes that the SPO intends to rely upon W01511's Proposed Evidence regarding *inter alia*: (i) the structure of the KLA;²⁴ and (ii) the detention, mistreatment and killing of detainees by the KLA at locations relevant

¹⁵ The proposed evidence of W01511 ("W01511's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "W01511's Statements") and associated exhibits, including any translation thereof (collectively, "W01511's Associated Exhibits"). W01511's Statements consist of: (i) 074569-TR-ET Part 1 RED and 074569-TR-ET Parts 2 to 8; and (ii) [REDACTED]. W01511's Associated Exhibits consist of: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; and (vii) [REDACTED]. See Annex 1 to the Motion.

¹⁶ Motion, paras 3-8.

¹⁷ Motion, para. 9.

¹⁸ Motion, paras 10-11.

¹⁹ Response, paras 16-25.

²⁰ Motion, para. 3.

²¹ Motion, para. 5.

²² Motion, para. 6.

²³ Motion, para. 7.

²⁴ Motion, paras 4, 7.

to this case.²⁵ The Panel is satisfied that W01511's Proposed Evidence is relevant to the charges in the Indictment.²⁶

12. Regarding authenticity and reliability, the Panel notes that W01511's Statements consist of: (i) the record of W01511's SPO interview; and (ii) W01511's statements made in another jurisdiction. The Panel notes that each statement contains multiple indicia of authenticity and reliability, including: (i) the date of the interviews; (ii) the attendees of the interviews; (iii) the witness's personal details; (iv) witness warnings, rights and/or acknowledgments; and (v) confirmation by W01511 that the statements are true and accurate.²⁷ The Panel is satisfied of the *prima facie* authenticity and reliability of W01511's Statements.

13. Regarding the *prima facie* probative value of W01511's Statements, having found W01511's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W01511's Statements also bear *prima facie* probative value.

14. Regarding suitability for admission pursuant to Rule 154, the Panel notes that the admission of W01511's Statements pursuant to Rule 154 would materially enhance the efficiency of proceedings by reducing the time needed for examination-in-chief by one-third.²⁸ The Panel notes that while the Defence admits that the formal requirements of Rule 154 are fulfilled, it submits the Panel should nonetheless deny admission of W01511's Statements in light of W01511's alleged

²⁵ Motion, paras 5, 6.

²⁶ 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); 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*, in particular, 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).

²⁷ 074569-TR-ET Part 1 RED, pp. 1-5; 074569-TR-ET Part 8, pp. 18-19; [REDACTED], pp. 1, 23.

²⁸ Compare Motion, para. 11 with F01594/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("Witness List"), 9 June 2023, strictly confidential and *ex parte*, pp. 4, 99 (a confidential redacted version was filed on the same day, F01594/A02).

impaired memory.²⁹ The Defence requests that the Panel admit a different prior statement of W01511, in place of W01511's interview with the SPO, or alternatively, admit this additional statement along with the witness's interview with the SPO.³⁰ The issue of W01511's ability to accurately recall relevant events raised by the Defence is appropriate for consideration with regard to the weight, if any, to be given to W01511's Statements. The information before the Panel does not suggest that any such difficulties, as might affect the witness, would justify the non-admission of the proposed evidence pursuant to Rule 154. Additionally, if the Defence takes the view that another statement is necessary or relevant to assessing the witness's credibility, it can cross-examine the witness on that statement and/or seek admission of it should the relevant requirements be met.

15. In light of the above, the Panel is satisfied that the admission of W01511's Statements under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) not cause unfair prejudice to the Defence, given that the Defence will have an opportunity to cross-examine the witness. The Panel therefore finds that the *prima facie* probative value of W01511's Statements is not outweighed by any prejudicial effect, and that W01511's Statements are suitable for admission pursuant to Rule 154.

16. *W01511's Associated Exhibits*. The Panel observes that W01511's Associated Exhibits for which the SPO seeks admission consist of: (i) a record of command appointments within in the KLA;³¹ (ii) four written sets of minutes of meetings of relevant personnel;³² and (iii) two items of correspondence issued by a KLA commander to those under his command.³³ The Defence opposes their admission, as they correspond to the statements discussed above which the Defence claim

²⁹ Response, paras 18-25.

³⁰ Response, paras 18, 24-25.

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

should not be admitted.³⁴

17. The Panel notes that W01511's Associated Exhibits were used and discussed during W01511's Statements. The Panel notes the Defence's submissions that the Associated Exhibits should be not be admitted because W01511 cannot specifically recall the meetings or events to which the proposed Associated Exhibits pertain.³⁵ While W01511 cannot remember specific meetings to which particular exhibits pertain, W01511 confirms that meetings like those reflected in the Associated Exhibits did occur, that the list of those who attended is consistent with the individuals who appeared at such meetings, and that the contents of the Associated Exhibits suggest that they pertain to specific meetings that had in fact occurred.³⁶ Using these documents as a reference, W01511 discusses the pertinent roles of attendees³⁷ and elaborates upon the subject matters purportedly discussed during such meetings.³⁸ Accordingly, the Associated Exhibits constitute an indispensable and inseparable part of the statements to which they relate. Without W01511's Associated Exhibits, relevant parts of W01511's Statements would be of lesser probative value. The Panel is therefore satisfied that W01511'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 W01511's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W01511's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

18. In light of the above, the Panel finds that W01511'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.

³⁴ Response, para. 25.

³⁵ Response, para. 22.

³⁶ 074569-TR-ET Part 4, pp. 11-19; 074569-TR-ET Part 5, pp. 1-11; 074569-TR-ET Part 6, pp. 9-13, 22-34.

³⁷ 074569-TR-ET Part 4, pp. 11-19.

³⁸ 074569-TR-ET Part 5, pp. 1-11; 074569-TR-ET Part 6, pp. 12, 25.

B. W04260

19. The SPO submits that the proposed evidence of W04260³⁹ is: (i) relevant;⁴⁰ (ii) *prima facie* authentic and reliable;⁴¹ and (iii) suitable for admission under Rule 154.⁴²

20. The Defence objects solely to W04260's four-page statement given to investigators from another jurisdiction.⁴³ The Defence submits that the photo board discussed in this statement⁴⁴ is not included or offered, and without it, the statement is meaningless, and therefore inadmissible.⁴⁵

21. The SPO replies that the Defence misrepresents the content of this portion of W04260's statement, as it contains relevant information beyond the identification of those individuals found in the photo board.⁴⁶

22. *W04260's Statements.* Regarding relevance, it is alleged that W04260 was arrested, detained and mistreated by KLA members.⁴⁷ During W04260's detention, W04260 observed KLA members mistreating other detainees.⁴⁸ The SPO intends to rely upon W04260's Statements with regard to the following allegations: (i) W04260's alleged arrest, detention and mistreatment; (ii) the detention and mistreatment of others; and (iii) the identities of KLA soldiers present during his detention.⁴⁹

³⁹ The proposed evidence of W04260 ("W04260's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "W04260's Statements") and associated exhibits, including any translation thereof (collectively, "W04260's Associated Exhibits"). W04260's Statements consist of: (i) 054071-TR-ET Part 1, 054071-TR-ET Part 2 RED2, and 054071-TR-ET Part 3 to Part 5; (ii) [REDACTED]; (iii) [REDACTED]; (iv) SITF00184859-00184870 RED2; (v) SITF00184871-00184883 RED2; and (vi) [REDACTED]. W04260's Associated Exhibits consist of: (i) SITF00184871-00184883 RED2, at pp. SITF00184876, SITF00184883; and (ii) [REDACTED]. See Annex 2 to the Motion.

⁴⁰ Motion, paras 12-14.

⁴¹ Motion, paras 15-18.

⁴² Motion, paras 19-21.

⁴³ Response, para. 27.

⁴⁴ See [REDACTED]; Annex 2 to the Motion.

⁴⁵ Response, para. 27.

⁴⁶ Reply, para. 5.

⁴⁷ Motion, para. 12.

⁴⁸ Motion, paras 12-13.

⁴⁹ Indictment, paras [REDACTED]; Motion, paras 12-13; SPO Pre-Trial Brief, paras [REDACTED].

23. Regarding the Defence's objection and assertion that one of W04260's Statements is without meaning absent the photo board referred to therein, the Panel observes that the statement is not limited to a discussion of the photos.⁵⁰ W04260 discusses how detainees were kept at a particular location, kidnapped, and beaten by KLA soldiers.⁵¹ W04260 provides names for two of these individuals.⁵² In light of the fact that this statement provides information beyond mere references to missing photographs, the Panel is satisfied that it, as well as the entirety of W04260's Statements are relevant to the charges in the Indictment.⁵³

24. Regarding authenticity and reliability, W04260's Statements consist of: (i) the record of W04260's SPO interview;⁵⁴ (ii) two statements made in another jurisdiction;⁵⁵ and (iii) three statements provided to the United Nations Mission in Kosovo ("UNMIK").⁵⁶ Each statement contains multiple indicia of authenticity and reliability. W04260's Statements include, *inter alia*, (i) the time, date and location where the statement was given; (ii) the names of those present; (iii) the witness's personal details; and (iv) witness warnings, rights, declarations and/or acknowledgments.⁵⁷ The Panel is satisfied that W04260's Statements are *prima facie* authentic and reliable.

25. Regarding the *prima facie* probative value of W04260's Statements, having found W04260's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W04260's Statements also bear *prima facie* probative value.

26. Regarding suitability for admission pursuant to Rule 154, the Panel notes that the admission of W04260's Statements pursuant to Rule 154 would materially

⁵⁰ See generally, [REDACTED].

⁵¹ [REDACTED], paras 3, 6.

⁵² [REDACTED], para. 3.

⁵³ See Indictment, paras [REDACTED].

⁵⁴ 054071-TR-ET Part 1; 054071-TR-ET Part 2 RED2; 054071-TR-ET Part 3 to Part 5.

⁵⁵ [REDACTED].

⁵⁶ SITF00184859-00184870 RED2; SITF00184871-00184883 RED2; [REDACTED].

⁵⁷ Motion, paras 15, 17-18; Annex 2 to the Motion, pp. 2-4.

enhance the efficiency of proceedings by reducing the time needed for the SPO's examination-in-chief from two hours to one hour.⁵⁸ The Panel is satisfied that the admission of W04260's Statements under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) not cause unfair prejudice to the Defence, as it will have an opportunity to cross-examine the witness. The Panel therefore finds that the *prima facie* probative value of W04260's Statements is not outweighed by any prejudicial effect, and that W04260's Statements are suitable for admission pursuant to Rule 154.

27. *W04260's Associated Exhibits.* The Panel observes that W04260's Associated Exhibits for which the SPO seeks admission consist of: (i) one photograph of a relevant location;⁵⁹ and (ii) two sketches.⁶⁰

28. The Panel notes that W04260's Associated Exhibits were used and discussed during W04260's Statements and constitute an indispensable and inseparable part of the statements to which they relate. Without W04260's Associated Exhibits, relevant parts of W04260's Statements would be of lesser probative value. The Panel is therefore satisfied that W04260'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 W04260's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04260's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

29. In light of the above, the Panel finds that W04260'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.

⁵⁸ *Compare Motion*, para. 21 with Witness List, pp. 9, 244.

⁵⁹ SITF00184871-00184883 RED2, pp. SITF00184876, SITF00184883.

⁶⁰ [REDACTED].

C. W04305

30. The SPO submits that the proposed evidence of W04305⁶¹ is: (i) relevant;⁶² (ii) *prima facie* authentic and reliable;⁶³ and (iii) suitable for admission under Rule 154.⁶⁴ In doing so, the SPO notes that the Panel has previously assessed the admissibility of W04305's Proposed Evidence in the context of the SPO's prior Rule 153 Motion,⁶⁵ applying the same factors of relevance, authenticity and reliability, and probative value.⁶⁶

31. The Defence responds that while it does not contest the *prima facie* relevance and authenticity of W04305's Proposed Evidence, its admission should be rejected because it fails to satisfy the requirement of reliability and it is inappropriate for admission pursuant to Rule 154.⁶⁷

32. The Panel recalls that it has previously found W04305's Statements to be relevant, as the SPO intends to rely upon them with regard to, *inter alia*, circumstances surrounding W04305's and others' detention, questioning and beatings by KLA members at certain locations.⁶⁸ The statements contain indicia of authenticity and reliability such as: (i) the date of the interviews; (ii) the attendees

⁶¹ The proposed evidence of W04305 ("W04305's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "W04305's Statements") and associated exhibits, including any translation thereof (collectively, "W04305's Associated Exhibits"). W04305's Statements consist of: (i) 076920-TR-ET Parts 1-3 RED2; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; and (viii) [REDACTED]. W04305's Associated Exhibits consist of: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED]. See Annex 3 to the Motion.

⁶² Motion, para. 22.

⁶³ Motion, para. 22.

⁶⁴ Motion, para. 23.

⁶⁵ See F01994, Specialist Prosecutor, *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*, 8 December 2023, confidential, with Annexes 1-10, confidential (a public redacted version was filed on the same day, F01994/RED).

⁶⁶ Motion, para. 22 (citing F02111, Trial 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* ["Rule 153 Decision"], 8 December 2023, confidential, paras 37-40; a public redacted version was filed on the same day, F02111/RED).

⁶⁷ Response, paras 29-30.

⁶⁸ See Rule 153 Decision, para. 37.

of the interviews; (iii) the witness's personal details; (iv) witness warnings, rights and/or acknowledgments; and (v) confirmation by W04305 that the statements are true and accurate.⁶⁹

33. The Panel notes the Defence's challenge to reliability based upon alleged prior inconsistent statements.⁷⁰ With regard to authenticity and reliability, the Panel's determination is conducted *prima facie* only. Factors and circumstances that go beyond that threshold can be explored in cross-examination and could be relevant to the Panel's determination regarding the weight and probative value to be attributed to that evidence at the end of the case. The Panel is satisfied of the *prima facie* authenticity and reliability of W04305's Statements.

34. Regarding the *prima facie* probative value of W04305's Statements, having found W04305's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W04305's Statements also bear *prima facie* probative value.⁷¹

35. Regarding suitability for admission pursuant to Rule 154, the Panel considers that the admission of W04305's Statements pursuant to Rule 154 would materially enhance the efficiency of proceedings by reducing the time needed for examination of the witness.⁷² While W04305's Statements extensively refer to the roles and actions of an alleged member of the joint criminal enterprise charged in the Indictment,⁷³ which ultimately precluded admission under Rule 153,⁷⁴ no such limitation exists with regard to admission pursuant to Rule 154.⁷⁵ With regards to the Defence's challenges to the suitability of W04305's Statements because they

⁶⁹ 076920-TR-ET Part 1 RED2, pp. 1-2; 076920-TR-ET Part 3 RED2, pp. 7-8; [REDACTED]; *see also* Rule 153 Decision, para. 38.

⁷⁰ Response, para. 29.

⁷¹ *See also* Rule 153 Decision, para. 40.

⁷² Motion, para. 24; *see also* Rule 153 Decision, para. 41.

⁷³ *See e.g.* 076920-TR-ET Part 1, p. 30; 076920-TR-ET Part 2 RED2, pp. 19-20; [REDACTED].

⁷⁴ *See* Rule 153 Decision, para. 42. *See also* Rule 153(1) (precluding admission of witness statements or transcripts that go to the matter of the acts and conduct of the Accused charged in the Indictment).

⁷⁵ *See* Rule 153 Decision, para. 42 (noting that the Panel's denial of admission under Rule 153, is without prejudice and will not preclude any application for admission pursuant to Rule 154).

allegedly contain hearsay,⁷⁶ the Panel has repeatedly pointed out that there is no procedural bar to the admission of hearsay evidence as long as it does not unfairly interfere with the rights of the Accused.⁷⁷ All of W04305's Statements, including those containing hearsay, can be explored and challenged by the Defence through cross-examination, ensuring the rights of the Accused remain protected. The Panel notes the Defence's submission that the voluminous nature of the materials tendered by the SPO would make their admission overly burdensome, given that W04305 will also testify in person.⁷⁸ Lastly, the Panel agrees with the Defence that W04305's Statements are voluminous. The Panel therefore directs the SPO and the Defence to conduct *inter partes* discussions with a view to identifying areas of the witness's proposed evidence that are not in dispute in order to determine whether parts of the proposed evidence needs tendering or not. The Parties are instructed to report to the Panel on Friday, 24 May 2024 regarding the outcome of their discussions. Should no agreement be reached, the entirety of the proposed record shall be treated as admissible pursuant to Rule 154.

36. Subject to the above, the Panel is satisfied that the admission of W04305's Statements under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) not cause unfair prejudice to the Defence, as it will have an opportunity to cross-examine the witness. The Panel also finds that the *prima facie* probative value of W04305's Statements is not outweighed by any prejudicial effect, and that W04305's Statements are suitable for admission pursuant to Rule 154.

37. *W04305's Associated Exhibits*. The Panel observes that W04305's Associated Exhibits for which the SPO seeks admission consist of: (i) a map;⁷⁹ and (ii) two

⁷⁶ Response, para. 29.

⁷⁷ F01716, Trial Panel, *Fourth Decision on Specialist Prosecutor's Bar Table Motion*, 8 August 2023, para. 32; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, para. 24.

⁷⁸ Response, para. 30.

⁷⁹ [REDACTED].

photographs.⁸⁰ The Defence does not object to the admission of the Associated Exhibits in light of the Panel finding W04305's Statements suitable for admission.⁸¹ The Panel notes that W04305's Associated Exhibits were used and discussed during W04305's Statements and constitute an indispensable and inseparable part of the statements to which they relate.⁸² Without W04305's Associated Exhibits, relevant parts of W04305's Statements would be of lesser probative value. The Panel is therefore satisfied that W04305's Associated Exhibits are relevant, *prima facie* authentic and probative. The Panel also finds, given that the Defence will have an opportunity to cross-examine this witness, the *prima facie* probative value of W04305's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04305's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

38. In light of the above, the Panel finds that W04305'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.

D. W04410

39. The SPO submits that the proposed evidence of W04410⁸³ is: (i) relevant;⁸⁴ (ii) *prima facie* authentic and reliable;⁸⁵ and (iii) suitable for admission under

⁸⁰ [REDACTED].

⁸¹ Response, para. 31.

⁸² See also Rule 153 Decision, para. 39.

⁸³ The proposed evidence of W04410 ("W04410's Proposed Evidence") consists of the following statement ("W04410's Statement"), including any translation thereof, and associated exhibits, including any transcripts (of video footage) and translations thereof (collectively, "W04410's Associated Exhibits"). W04410's Statement is contained in 061426-TR-ET Part 1 RED, 061426-TR-ET Part 2 RED, and 061426-TR-ET Part 3 RED. W04410's Associated Exhibits consist of: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED]; (x) [REDACTED]; (xi) [REDACTED]; (xii) [REDACTED]; (xiii) [REDACTED]. See Annex 4 to the Motion.

⁸⁴ Motion, paras 25-30.

⁸⁵ Motion, para. 31.

Rule 154.⁸⁶

40. The Defence does not object to the admission of W04410's Proposed Evidence under Rule 154.⁸⁷

41. *W04410's Statement*. Regarding relevance, W04410 was present at events and occasions when the Accused, and other individuals relevant to this case, were present.⁸⁸ The SPO intends to rely upon W04410's Proposed Evidence regarding, *inter alia*, the leadership structure of the KLA and the role of individual members of the group within that structure.⁸⁹ The Panel is satisfied that W04410's Statement is relevant to the charges in the Indictment.⁹⁰

42. Regarding authenticity and reliability, W04410's Statement is a transcript of an audio and video recorded interview with the SPO.⁹¹ The statement contains multiple indicia of authenticity and reliability, including: (i) the date and time when the statement was given; (ii) the names of those present; (iii) the witness's personal details; and (iv) witness warnings, rights, declarations and acknowledgment.⁹² The Panel is satisfied of the *prima facie* authenticity and reliability of W04410's Statement.

43. Regarding the *prima facie* probative value of W04410's Statement, having found W04410's Statement to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04410's Statement also bears *prima facie* probative value.

44. Regarding suitability for admission pursuant to Rule 154, the Panel notes that the admission of W04410's Statement pursuant to Rule 154 would materially enhance the efficiency of proceedings by reducing the time needed for

⁸⁶ Motion, paras 32-33.

⁸⁷ Response, para. 32.

⁸⁸ Motion, paras 32-33.

⁸⁹ Motion, paras 25-29; SPO Pre-Trial Brief paras [REDACTED].

⁹⁰ See Indictment, paras [REDACTED].

⁹¹ Motion, para. 31; Annex 4 to the Motion, p. 1.

⁹² 061426-TR-ET Part 1 RED, pp. 1-4; 061426-TR-ET Part 3 RED, pp. 12-14; Motion, para. 31; Annex 4 to the Motion, p. 2.

examination-in-chief.⁹³ In light of the above, the Panel is satisfied that the admission of W04410's Statement under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) not cause unfair prejudice to the Defence as it will have an opportunity to cross-examine the witness. The Panel therefore finds that the *prima facie* probative value of W04410's Statement is not outweighed by any prejudicial effect, and that W04410's Statement is suitable for admission pursuant to Rule 154.

45. *W04410's Associated Exhibits.* The Panel observes that W04410's Associated Exhibits for which the SPO seeks admission consist of: (i) video recordings⁹⁴ and associated transcripts; (ii) an index;⁹⁵ (iii) a newspaper article;⁹⁶ and (iv) an excerpt from a book.⁹⁷

46. The Panel notes that W04410's Associated Exhibits were used and discussed in W04410's Statement and constitute an indispensable and inseparable part of the statement to which they relate. Without W04410's Associated Exhibits, relevant parts of W04410's Statement would be of lesser probative value. The Panel is therefore satisfied that W04410'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 W04410's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04410's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

47. In light of the above, the Panel finds that W04410'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

⁹³ Motion, para. 33.

⁹⁴ [REDACTED].

⁹⁵ [REDACTED].

⁹⁶ [REDACTED].

⁹⁷ [REDACTED].

pursuant to Rules 138(1) and 154.

E. W04744

48. The SPO submits that the proposed evidence of W04744⁹⁸ is: (i) relevant;⁹⁹ (ii) *prima facie* authentic and reliable;¹⁰⁰ and (iii) suitable for admission under Rule 154.¹⁰¹

49. The Defence objects to W04744's Proposed Evidence, responding that W04744's Statement is unsuitable for admission pursuant to Rule 154 and that some of the Associated Exhibits are not *prima facie* authentic and reliable,¹⁰² or they do not form "an inseparable and indispensable" part of W04744's Statement.¹⁰³ Additionally, the Defence submits that admitting W04744's Statement via Rule 154 will not expedite proceedings because the SPO has allocated extensive time (4 hours) for direct examination.¹⁰⁴

50. The SPO replies that the Defence's argument that the centrality of W04744's evidence prevents its admission pursuant to Rule 154 is unfounded.¹⁰⁵ The SPO notes that permitting the admission of W04744's Proposed Evidence pursuant to Rule 154 will enable the SPO to reduce its examination time from four hours to two hours.¹⁰⁶

⁹⁸ The proposed evidence of W04744 ("W04744's Proposed Evidence") consists of the following statement, including any translation thereof ("W04744's Statement") and associated exhibits, including any translation thereof (collectively, "W04744's Associated Exhibits"). W04744's Statement is contained in 083249-TR-ET Parts 1-9 RED2. W04260's Associated Exhibits consist of: (i) [REDACTED]; (ii) 083226-083226-ET; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED]; (x) [REDACTED]; (xi) [REDACTED]; (xii) [REDACTED]; (xiii) [REDACTED]. See Annex 5 to the Motion.

⁹⁹ Motion, paras 34-39.

¹⁰⁰ Motion, para. 40.

¹⁰¹ Motion, paras 41-42.

¹⁰² Response, para. 33.

¹⁰³ Response, para. 33.

¹⁰⁴ Response, para. 36.

¹⁰⁵ Reply, para. 6.

¹⁰⁶ Reply, para. 6.

51. *W04744's Statement*. Regarding relevance, W04744 joined the KLA in 1998 and served in various capacities.¹⁰⁷ The SPO intends to rely upon W04744's Statement with regard to, *inter alia*, the following: (i) the areas of responsibility and structures of components of the KLA, including KLA members serving in them; (ii) the GS's role in making appointments and their direct communication with zone and brigade commands; (iii) accusations against a member of the KLA and his detention; and (iv) consolidation efforts within the KLA.¹⁰⁸ The Panel is satisfied that W04744's Statements are relevant to the charges in the Indictment.¹⁰⁹

52. Regarding authenticity and reliability, W04744's Statement is a transcript of an audio and video recorded interview with the SPO.¹¹⁰ The statement contains multiple indicia of authenticity and reliability, including: (i) the date and time when the statement was given; (ii) the names of those present; (iii) the witness's personal details; and (iv) witness warnings, rights, declarations and acknowledgment.¹¹¹ The Panel is satisfied of the *prima facie* authenticity and reliability of W04744's Statement.

53. Regarding the *prima facie* probative value of W04744's Statement, having found W04744's Statement to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04744's Statement also bears *prima facie* probative value.

54. Regarding suitability for admission pursuant to Rule 154, the Panel notes that the admission of W04744's Statement pursuant to Rule 154 would materially enhance the efficiency of proceedings by reducing the time needed for the SPO's examination-in-chief from four hours to two hours.¹¹² The Panel takes note of the Defence's submission that W04744's Statement is inappropriate for admission

¹⁰⁷ Motion, para. 35.

¹⁰⁸ Motion, paras 34-38; SPO Pre-Trial Brief paras [REDACTED].

¹⁰⁹ See Indictment, paras [REDACTED].

¹¹⁰ 083249-TR-ET Parts 1-9 RED2.

¹¹¹ 083249-TR-ET Part 1 RED2, pp. 1-4; 083249-TR-ET Part 9 RED2, pp. 39-40; Motion, para. 40; Annex 5 to the Motion, p. 2.

¹¹² Motion, para. 42; Reply, para. 6.

pursuant to Rule 154 because the witness is a “reserve” witness.¹¹³ The status of a witness as a ‘reserve’ rather than a ‘scheduled’ witness has no bearing on the admissibility of his or her evidence pursuant to Rule 154. However, in light of the importance attached by the Defence to this witness, the Panel directs the SPO to treat this witness as a ‘scheduled’ witness so that the Defence has a clearer understanding of the timing of his testimony and is able to prepare accordingly.

55. The Defence claims that the significance of W04744’s evidence also makes W04744’s statement inappropriate for admission pursuant to Rule 154.¹¹⁴ As the Panel has noted previously, the level of importance of matters discussed in a statement offered pursuant to Rule 154 does not, as such, constitute an impediment to its admission.¹¹⁵ Additionally, the Defence’s ability to cross-examine this witness effectively is not negatively affected by the fact that his evidence is admitted pursuant to Rule 154.

56. In light of the above, the Panel is satisfied that the admission of W04744’s Statement under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) not cause unfair prejudice to the Defence, as it will have an opportunity to cross-examine the witness. The Panel therefore finds that the *prima facie* probative value of W04744’s Statements is not outweighed by any prejudicial effect, and that W04744’s Statements are suitable for admission pursuant to Rule 154.

57. *W04744’s Associated Exhibits.* The Panel observes that W04744’s Associated Exhibits for which the SPO seeks admission consist of: (i) an alleged report by an operational commander;¹¹⁶ (ii) a map;¹¹⁷ (iii) a handwritten report;¹¹⁸ (iv) nine KLA

¹¹³ Response, para. 35.

¹¹⁴ Response, para. 37.

¹¹⁵ See e.g. Second Rule 154 Decision, para. 70; Sixth Rule 154 Decision, para. 49.

¹¹⁶ See Annex 5 to the Motion, p. 3; [REDACTED].

¹¹⁷ 083226-083226-ET.

¹¹⁸ [REDACTED].

records and correspondence;¹¹⁹ and (v) the records of a ministry.¹²⁰

58. The Defence objects to the report by an operational commander,¹²¹ suggesting that it lacks sufficient indicia of reliability and W04474 is unable to corroborate the accuracy of its contents.¹²² In fact, W04744 goes through the document, affirming some statements, and challenging others, based upon W04744's own experiences and personal observations.¹²³ In doing so, the document becomes necessary to understanding W04744's statement. The Panel is therefore satisfied of the *prima facie* reliability of the report.

59. The Defence objects to an associated exhibit which provides the background of a KLA brigade¹²⁴ based on the suggestion that the source of the underlying information is not specified and that the document is editorial and not factual.¹²⁵ Upon review of W04744's statement, W04744 affirms that the contents of the document are true and accurate.¹²⁶ The author of the document is identified at the end of the document. Furthermore, its content has already been explored and verified with other witnesses.¹²⁷ W04744 offers the document as an accurate representation of his own experience and understanding.¹²⁸ The Panel therefore finds the document to be suitable for admission pursuant to Rule 154.

60. The Panel notes that each of W04744's Associated Exhibits were used and discussed during W04744's Statements and constitute an indispensable and inseparable part of the statements to which they relate. Without W04744's Associated Exhibits, relevant parts of W04744's Statements would be of lesser probative value. The Panel is therefore satisfied that W04744's Associated Exhibits

¹¹⁹ [REDACTED].

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

¹²² Response, para. 38.

¹²³ 083249-TR-ET Part 3 RED2, pp. 16-22.

¹²⁴ [REDACTED].

¹²⁵ Response, para. 39.

¹²⁶ 083249-TR-ET Part 1 RED2, pp. 20-21; 083249-TR-ET Part 9 RED2, p. 34.

¹²⁷ See e.g. [REDACTED].

¹²⁸ 083249-TR-ET Part 1 RED2, pp. 20-21.

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 W04744's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04744's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

61. In light of the above, the Panel finds that W04744'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.

F. W04752

62. The SPO submits that the proposed evidence of W04752¹²⁹ is: (i) relevant;¹³⁰ (ii) *prima facie* authentic and reliable;¹³¹ and (iii) suitable for admission under Rule 154.¹³²

63. The Defence responds that W04752's Proposed Evidence is not suitable for admission pursuant to Rule 154 due to W04752's central importance to the SPO's case¹³³ and the limited time savings that would be achieved.¹³⁴ The Defence also asserts that W04752's statement to the SPO cannot satisfy the requirements of

¹²⁹ The proposed evidence of W04752 ("W04752's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "W04752's Statements") and associated exhibits, including any translation thereof (collectively, "W04752's Associated Exhibits"). W04752's Statements consist of: (i) 083280-TR-ET Parts 1-14; and (ii) [REDACTED]. W04752's Associated Exhibits consist of: (i) [REDACTED]; (ii) [REDACTED]; (iii) 083275-083279; (iv) [REDACTED]; (v) 059718-059718-ET RED2; (vi) SPOE00119162-SPOE00119163-ET; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED]; (x) [REDACTED]; (xi) [REDACTED]; (xii) [REDACTED]; (xiii) [REDACTED]; (xiv) [REDACTED]; (xv) [REDACTED]; (xvi) [REDACTED]; (xvii) [REDACTED]; (xviii) [REDACTED]; (xix) [REDACTED]; (xx); (xxi) [REDACTED]; (xxii) [REDACTED]; (xxiii) [REDACTED]; (xxiv) [REDACTED]; (xxv) [REDACTED]; (xxvi) [REDACTED]; (xxvii) [REDACTED]; (xxviii) [REDACTED]; and (xxix) [REDACTED]. See Annex 6 to the Motion.

¹³⁰ Motion, paras 43-46.

¹³¹ Motion, paras 47-48.

¹³² Motion, paras 49-52.

¹³³ Response, paras 41-44.

¹³⁴ Response, paras 47-48.

Rule 154(c), thereby making the statement inadmissible.¹³⁵

64. The SPO replies that the Defence's argument that the centrality of W04752's evidence prevents its admission pursuant to Rule 154 is unfounded.¹³⁶ With regard to W04752's SPO statement, the SPO notes that the Defence mischaracterises the instructions provided to W04752 regarding the veracity of his statement.¹³⁷ The SPO also notes the Rule 154(c) requirement that the witness attest that the statement reflects what he or she would say if examined is a requirement that is satisfied during witness testimony, not beforehand.¹³⁸ The SPO notes that the length of W04752's examination-in-chief is estimated to be 10 hours if his Proposed Evidence is admitted pursuant to Rule 154 and 24 hours should W04752 testify as a *viva voce* witness.¹³⁹

65. *W04752's Statements*. Regarding relevance, W04752 is said to have entered Kosovo with other relevant individuals.¹⁴⁰ W04752 was assigned to a number of relevant roles and positions within the KLA.¹⁴¹ The SPO intends to rely upon his evidence regarding, *inter alia*: (i) the development, structure and composition of the KLA; (ii) the KLA's detention of certain individuals; (iii) KLA policies regarding collaborators; and (iv) distrust and threats toward professional officers in the KLA.¹⁴² The Panel is satisfied that W04752's Statements are relevant to the charges in the Indictment.¹⁴³

66. Regarding authenticity and reliability, W04752's Statements consist of: (i) the record of W04752's SPO interview;¹⁴⁴ and (ii) transcripts of his statements in

¹³⁵ Response, paras 45-46.

¹³⁶ Reply, para. 6.

¹³⁷ Reply, para. 9.

¹³⁸ Reply, para. 9.

¹³⁹ Reply, para. 10.

¹⁴⁰ Motion, para. 43.

¹⁴¹ Motion, para. 43.

¹⁴² Motion, para. 43; SPO Pre-Trial Brief paras [REDACTED].

¹⁴³ See Indictment, [REDACTED].

¹⁴⁴ 083280-TR-ET Parts 1-14.

another jurisdiction.¹⁴⁵ The Panel notes that the Defence argues that W04752's SPO interview is not sufficiently reliable to merit admission because W04752 may have interpreted an exchange with the SPO interviewer to mean that he was not obligated to tell the truth.¹⁴⁶ However, upon a careful review of the record, the Panel notes that W04752 expressed his intention to cooperate fully because he had nothing to hide¹⁴⁷ and he affirmed that his statements were truthful.¹⁴⁸ The Defence's claim is not supported by W04752's Statements and it can, in any case, be subject to cross-examination if regarded as relevant by the Defence.

67. Each statement contains multiple indicia of authenticity and reliability. W04752's SPO interview provides, *inter alia*: (i) the date, time and location where the statement was given; (ii) the names of those present; (iii) the witness's personal details; and (iv) witness warnings, rights, declarations and/or acknowledgments.¹⁴⁹ W04752's transcripts of his statements in another jurisdiction include, *inter alia*: (i) dates, case number and formatting consistent with official records; (ii) a swearing-in and oath of truthfulness by the witness; and (iii) challenges and scrutinization of the statement via cross-examination.¹⁵⁰ The Panel is satisfied of the *prima facie* authenticity and reliability of W04752's Statements.

68. Regarding the *prima facie* probative value of W04752's Statements, having found W04752's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W04752's Statements also bear *prima facie* probative value.

69. Regarding suitability for admission pursuant to Rule 154, the Panel notes that the admission of W04752's Statements pursuant to Rule 154 would materially

¹⁴⁵ [REDACTED].

¹⁴⁶ Response, para. 46.

¹⁴⁷ 083280-TR-ET Part 1, p. 9.

¹⁴⁸ 083280-TR-ET Part 14, pp. 47-48.

¹⁴⁹ 083280-TR-ET Part 1, pp. 1-12, 16; 083280-TR-ET Part 14, pp. 47-48; Motion, para. 48; Annex 6 to the Motion, p. 1.

¹⁵⁰ [REDACTED]; Motion, para. 48, Annex 6 to the Motion, p. 2.

enhance the efficiency of proceedings by reducing the time needed for the SPO's examination-in-chief from 24 hours to 10 hours.¹⁵¹

70. The Panel notes the Defence's objection to W04752's Statements being admitted pursuant to Rule 154 because they are of central importance to the SPO's case.¹⁵² As it has made clear previously, the perceived importance of matters discussed in a statement offered pursuant to Rule 154 does not, as such, constitute an impediment to its admission.¹⁵³ The Defence notes that W04752 will testify about KLA structure and operations at various levels, detentions, alleged collaborators, and the role of the Military Police.¹⁵⁴ The Panel recalls that it has previously admitted statements pursuant to Rule 154 that address such matters.¹⁵⁵ The Defence fails to explain how W04752's statements on these issues differ in nature from those offered by other witnesses and warrant a different mode of admission of this witness's evidence. The Defence will have a full opportunity to cross-examine the witness.

71. The Panel also takes note of the Defence's assertion that W04752's Statements are unsuitable for admission pursuant to Rule 154 because they address acts and conduct of the Accused.¹⁵⁶ However, this does not, as such, constitute an impediment to its admission under Rule 154. The fact that evidence offered pursuant to Rule 154 goes to the "acts and conduct of the Accused as charged in the indictment" does not render that evidence inadmissible under Rule 154 provided that the Defence has a meaningful opportunity to cross-examine the witness, as it does in the present matter.¹⁵⁷

72. Finally, the Defence claims that W04752's Statement fails to meet the criteria

¹⁵¹ Motion, para. 51; Reply, para. 10.

¹⁵² Response, paras 41-44.

¹⁵³ See *e.g.* Second Rule 154 Decision, para. 70; Sixth Rule 154 Decision, para. 49.

¹⁵⁴ Response, para. 43.

¹⁵⁵ See *e.g.* First Rule 154 Decision, paras [REDACTED]; Second Rule 154 Decision, [REDACTED]; Sixth Rule 154 Decision, [REDACTED].

¹⁵⁶ Response, para. 43.

¹⁵⁷ First Rule 154 Decision, para. 80.

for admission pursuant to Rule 154(c) because an interviewer informed W04752 that he was not obligated to tell the truth during his SPO interview, as he was a suspect at the time.¹⁵⁸ The Defence claims that W04752's statement cannot satisfy the requirement of Rule 154(c) that the witness attest that the written statement accurately reflects his or her declaration and what he or she would say if examined.¹⁵⁹ This argument reflects a fundamental misunderstanding regarding Rule 154. Rule 154 does not condition admissibility of witness statements to those given under oath or under threat of criminal prosecution, although such factors might be relevant to assessing the *prima facie* reliability of a statement. Rule 154 makes clear that the pre-conditions placed on a statement's admission are those which must be satisfied during in-court proceedings, namely that: (a) the witness is present in court; (b) the witness is available for cross-examination and any questioning by the Panel; and (c) the witness attests that the statement accurately reflects his or her declaration and what he or she would say if examined. It is for this reason that the Panel's Rule 154 decisions permit admission of Rule 154 statements only after the requirements of sub-paragraphs (a)–(c) of Rule 154 have been met at the time of the witness's testimony.¹⁶⁰ Further, as noted above, W04752 did in fact attest to the truthfulness of his statement at the conclusion of his interview.¹⁶¹ The Defence's argument is therefore without merit.

73. In light of the above, the Panel is satisfied that the admission of W04752'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 therefore finds that the *prima facie* probative value of W04752's Statements is not outweighed by any prejudicial effect, and that W04752's Statements are

¹⁵⁸ Response, paras 45-46.

¹⁵⁹ Response, paras 45-46.

¹⁶⁰ See e.g. First Rule 154 Decision, para. 131.

¹⁶¹ 083280-TR-ET Part 14, pp. 47-48.

suitable for admission pursuant to Rule 154.

74. *W04752's Associated Exhibits*. The Panel observes that W04752's Associated Exhibits for which the SPO seeks admission consist of: (i) KLA records and documents (orders, reports, memos, forms, minutes);¹⁶² (ii) photographs;¹⁶³ (iii) two maps;¹⁶⁴ (iv) a report from an international organisation;¹⁶⁵ and (v) a news report.¹⁶⁶

75. The Panel notes that the Defence opposes the admission of a number of proposed Associated Exhibits¹⁶⁷ primarily on the grounds of a lack of relevance or authentication by W04752.¹⁶⁸ The Panel has carefully reviewed the record with regard to these exhibits to determine whether they are relevant, and whether they were used and discussed during W04752's Statements and as such they constitute an indispensable and inseparable part of W04752's statements. W04752 reviewed [REDACTED], and discussed, *inter alia*, that the seal of the General Staff was used, that the document could therefore only have been issued by the Commander or Deputy Commander of the General Staff, and discussed whether the document was consistent with the general rules applicable at the time.¹⁶⁹ Regarding [REDACTED], W04752 states that one of the pictures reflects a house that is similar to one occupied by a KLA Brigade. Regarding [REDACTED], the record provides that W04752 recognised these documents as material which W04752 provided the prosecutor's office of another jurisdiction. W04752 provides that these documents were used to train commanders, and then goes through the forms provided on various pages. Regarding [REDACTED] and [REDACTED], W04752 identifies the documents and elaborates upon how they would be used, who would have used

¹⁶² [REDACTED]; 059718-059718-ET RED2; SPOE00119162-SPOE00119163-ET; [REDACTED].

¹⁶³ 083275-083279.

¹⁶⁴ [REDACTED].

¹⁶⁵ [REDACTED].

¹⁶⁶ [REDACTED].

¹⁶⁷ See Response, para. 50.

¹⁶⁸ See generally Response, para. 50.

¹⁶⁹ 083280-TR ET Part 6, pp. 3-5.

them, and where they would have been kept.¹⁷⁰ Regarding [REDACTED], a review of the record¹⁷¹ supports the SPO's claim that the document is relevant to establish the existence and functioning of a chain of command in May and June 1999.¹⁷² Regarding [REDACTED], the Defence asserts that W04752 should be required to clarify the numbering on the exhibit, which is a map, before it is admitted because W04752 marked it out of court.¹⁷³ The numbers on the exhibit were used to make W04752's testimony clear.¹⁷⁴ Regarding [REDACTED], W04752 testifies that he recognises the names provided in the document as those belonging to the command structure.¹⁷⁵ The Panel finds the foregoing Associated Exhibits mentioned in this paragraph to be necessary to fully understand W04752's testimony, and that they are relevant, reliable, and probative. They are therefore suitable for admission pursuant to Rule 154.

76. Regarding [REDACTED] and [REDACTED], W04752 notes the name provided on the respective signature block, but nothing else regarding their content.¹⁷⁶ Regarding [REDACTED], W04752 expresses no familiarity with the document, does not recall the author, and disputes its contents.¹⁷⁷ Regarding [REDACTED], W04752 is not asked a single question about the document, and does not comment on it.¹⁷⁸ The Panel agrees with the Defence that these exhibits do not sufficiently add to W04752's Statements to justify their admission as associated exhibits. The Panel therefore does not find these documents suitable for admission under Rule 154. This, however, does not prevent the SPO from putting the material to this or other witnesses should it wish to tender the documents through a witness.

77. The Defence also challenges the admission of [REDACTED] on the basis that

¹⁷⁰ See [REDACTED].

¹⁷¹ [REDACTED].

¹⁷² See Annex 6 to Motion, p. 12.

¹⁷³ Response, para. 50.

¹⁷⁴ See e.g. [REDACTED].

¹⁷⁵ [REDACTED].

¹⁷⁶ 083280-TR ET Part 2, pp. 36-37.

¹⁷⁷ [REDACTED].

¹⁷⁸ [REDACTED].

W04752 was only shown one page of a multiple-page document and that the remaining pages contain KLA orders not commented on by the witness.¹⁷⁹ In its Reply, the SPO asserts that the entirety of the document should be admitted because the description of the first page of the document applies to the other pages as well.¹⁸⁰ Based upon a careful review of the record, it is clear that the examiner states that the additional pages are similar to the first page, not the witness.¹⁸¹ The witness does not discuss the additional pages.¹⁸² Accordingly, these additional pages do not constitute an indispensable and inseparable part of the statement to which they are said to relate. The Panel therefore finds [REDACTED], page 1 suitable for admission and [REDACTED], pages 2-6 as unsuitable for admission as an associated exhibit to W04752's statement. This is without prejudice to the possibility for the SPO to present the other pages of the document to the witness prior to tendering it.

78. [REDACTED] is a video broadcast. In challenging the admission of this item, the Defence correctly notes¹⁸³ that an English translation of the contents of this video has not been offered by the SPO.¹⁸⁴ In its Reply, the SPO clarifies that it is only offering the video portion of [REDACTED] for admission, and excluding the audio content.¹⁸⁵ Accordingly, the Panel finds that the video portion only of [REDACTED] is suitable for admission as an associated exhibit of W04752's Statements.

79. The Panel finds that each of W04752's Associated Exhibits were used and discussed during W04752's Statements and constitute an indispensable and inseparable part of the statements to which they relate, with the exception of [REDACTED], [REDACTED], [REDACTED], [REDACTED], pages 2-6 of

¹⁷⁹ Response, para. 50.

¹⁸⁰ See Reply, para. 11(b).

¹⁸¹ See [REDACTED].

¹⁸² See [REDACTED].

¹⁸³ Response, para. 50.

¹⁸⁴ See Annex 6 to the Motion, p. 18.

¹⁸⁵ Reply, para. 11(d).

[REDACTED] and the audio portion of [REDACTED]. Without these associated exhibits which were used and discussed, relevant parts of W04752's Statements would be of lesser probative value. The Panel is satisfied that these associated exhibits which were used and discussed with W04752 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 these associated exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04752's Associated Exhibits are appropriate for admission under Rules 138(1) and 154, with the exception of [REDACTED], [REDACTED], [REDACTED], [REDACTED], pages 2-6 of [REDACTED] and the audio portion of [REDACTED]. [REDACTED], [REDACTED], [REDACTED], [REDACTED], pages 2-6 of [REDACTED] and the audio portion of [REDACTED] are not admitted at this stage.

80. In light of the above, the Panel finds that W04752's Proposed Evidence, excluding [REDACTED], [REDACTED], [REDACTED], [REDACTED], pages 2-6 of [REDACTED] and the audio portion of [REDACTED], 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.

G. W04764

81. The SPO submits that the proposed evidence of W04764¹⁸⁶ is: (i) relevant;¹⁸⁷ (ii) *prima facie* authentic and reliable;¹⁸⁸ and (iii) suitable for admission under

¹⁸⁶ The proposed evidence of W04764 ("W04764's Proposed Evidence") consists of the following statement, including any translation thereof ("W04764's Statement") and associated exhibits, including any translation thereof (collectively, "W04764's Associated Exhibits"). W04764's Statement is contained in 083717-TR-ET Parts 1-11 Revised RED. W04764's Associated Exhibits consist of: (i) 083693-083694-ET; (ii) 083699-083716-ET; (iii) 064533-064533; (iv) 083697-083697 RED; and (v) 013442-013444-ET. See Annex 8 to the Motion.

¹⁸⁷ Motion, paras 54-57.

¹⁸⁸ Motion, para. 58.

Rule 154.¹⁸⁹

82. The Defence objects to the admission of W04764's Statement because W04764's evidence addresses several matters that are central to the SPO's case¹⁹⁰ and because its contents are contradictory, ambiguous, or do not provide the basis of W04764's knowledge.¹⁹¹

83. The SPO replies that the Defence's arguments are unfounded and concern matters related to the weight of the evidence, not its admissibility.¹⁹² The SPO also notes that permitting the admission of W04764's evidence pursuant to Rule 154 would reduce the time needed for examination-in-chief from six hours to three hours.¹⁹³

84. *W04764's Statement*. Regarding relevance, W04764 joined the KLA in 1998 and held a number of positions during the conflict, as a result of which he acquired knowledge and information relevant to this case.¹⁹⁴ The SPO intends to rely upon W04764's Statement regarding, *inter alia*: (i) the authority of the General Staff and zone command, and the authority of the brigade commanders over units within the brigade; (ii) the whereabouts of specific KLA members in 1999; and (iii) KLA members present at a particular location in the summer of 1999.¹⁹⁵ The Panel is satisfied that W04764's Statement is relevant to the charges in the Indictment.¹⁹⁶

85. Regarding authenticity and reliability, W04764's Statement is a transcript of an audio and video recorded interview with the SPO.¹⁹⁷ The statement contains multiple indicia of authenticity and reliability, including: (i) the date and time when the statement was given; (ii) the names of those present; (iii) the witness's

¹⁸⁹ Motion, paras 59-60.

¹⁹⁰ Response, para. 51.

¹⁹¹ Response, paras 53-54.

¹⁹² Reply, paras 12-13.

¹⁹³ Reply, para. 13.

¹⁹⁴ Motion, paras 54-55.

¹⁹⁵ Motion, para. 56; SPO Pre-Trial Brief, paras [REDACTED].

¹⁹⁶ See Indictment, paras [REDACTED].

¹⁹⁷ 083717-TR-ET Parts 1-11 Revised RED.

personal details; and (iv) witness warnings, rights, declarations and acknowledgment.¹⁹⁸ The Panel is satisfied of the *prima facie* authenticity and reliability of W04764's Statement.

86. Regarding the *prima facie* probative value of W04764's Statement, having found W04764's Statement to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04764's Statement also bears *prima facie* probative value.

87. Regarding suitability for admission pursuant to Rule 154, the Panel notes that the admission of W04764's Statements pursuant to Rule 154 would materially enhance the efficiency of proceedings by reducing the time needed for examination-in-chief from six to three hours.¹⁹⁹

88. The Panel also notes the Defence's suggestion that W04764's Statement is not suitable for admission because it addresses matters that are central to the SPO's case.²⁰⁰ As the Panel has noted previously, the level of importance of matters discussed in a statement offered pursuant to Rule 154 does not, as such, constitute an impediment to its admission.²⁰¹ The Panel notes, however, that importance is only one of the factors to be considered in determining whether testimony pursuant to Rule 154 is appropriate for a particular witness. When making such evaluation the Panel must ensure that admission pursuant to Rule 154 does not unfairly impact the rights of the Accused. The Panel notes that W04764's Statement can be explored and challenged by the Defence through cross-examination, ensuring the rights of the Accused remain protected.

89. The Defence also asserts that W04764's Statement is inappropriate for admission because its contents are ambiguous, contradictory, it fails to address

¹⁹⁸ 083717-TR-ET Part 1 Revised RED, pp. 1-4; 083717-TR-ET Part 11 Revised RED, pp. 4-5; Motion, para. 58; Annex 8 to the Motion, p. 1.

¹⁹⁹ Motion, para. 60; Reply, para. 13.

²⁰⁰ Response, paras 51-52.

²⁰¹ See e.g. Second Rule 154 Decision, para. 70; Sixth Rule 154 Decision, para 49.

the basis of W04764's knowledge of some events, and contains leading and insistent questioning.²⁰² While all of these circumstances may affect the weight, if any, the Panel chooses to give those portions of the Witness's Statement, it is not such as to lead the Panel to conclude that the proposed statement lacks *prima facie* reliability. A party can question a witness at trial about any discrepancy or inconsistency that it considers material to its case. Any inference to be drawn from the existence of a remaining uncertainty in the evidence of a witness will be accounted for by the Panel at the end of the case.²⁰³

90. In light of the above, the Panel is satisfied that the admission of W04764's Statement under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) not cause unfair prejudice to the Defence, as it will have an opportunity to cross-examine the witness. The Panel therefore finds that the *prima facie* probative value of W04764's Statement is not outweighed by any prejudicial effect, and that W04764's Statement is suitable for admission pursuant to Rule 154.

91. *W04764's Associated Exhibits*. The Panel observes that W04764's Associated Exhibits for which the SPO seeks admission consist of: (i) one order;²⁰⁴ (ii) a list of military police members of a KLA Brigade;²⁰⁵ (iii) two photographs;²⁰⁶ and (iv) a newspaper article.²⁰⁷ The Defence objects to the admission of the list of KLA military policemen on the basis that W04764 claims he did not draft the document, and it is therefore inauthentic. However, the list was discussed with W04764, and W04764 elaborated upon it in the context of specific events, the functioning of the military police and how some orders were not implemented.²⁰⁸ This associated exhibit is therefore necessary to fully understand W04764's Statement.

92. The Defence also objects to 013442-013444-ET, alleging that it was only read to

²⁰² Response, paras 53-55.

²⁰³ Response, para. 56.

²⁰⁴ 083693-083694-ET.

²⁰⁵ 083699-083716-ET.

²⁰⁶ 064533-064533; 083697-083697 RED.

²⁰⁷ 013442-013444-ET.

²⁰⁸ 083717-TR-ET Part 9 Revised 1 RED, pp. 8-13.

W04764 and W04764 disagreed with its contents.²⁰⁹ Upon careful review of W04764's statement, it is clear a limited portion of 013442-013444-ET was read into the record.²¹⁰ Accordingly, 013442-013444-ET itself would not add anything beyond what is already in W04764's Statement. As noted by the Defence,²¹¹ W04764 provided very little commentary on the portion read, and did not agree with or corroborate the contents of the article.²¹² The article itself does not provide greater understanding or probative value to W04764's Statement. The article is therefore not suitable for admission as an associated exhibit of W04764's Statement. The Panel notes that each of W04764's Associated Exhibits, with the exception of 013442-013444-ET, were used and sufficiently discussed during W04764's Statement such that they constitute an indispensable and inseparable part of the statement to which they relate. Without W04764's Associated Exhibits, excluding 013442-013444-ET, relevant parts of W04764's Statement would be of lesser probative value. The Panel is satisfied that W04764's Associated Exhibits, with the exception of 013442-013444-ET, 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 these associated exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04764's Associated Exhibits, with the exception of 013442-013444-ET, are appropriate for admission under Rules 138(1) and 154.

93. In light of the above, the Panel finds that W04764's Proposed Evidence, excluding 013442-013444-ET, 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.

²⁰⁹ Response, para. 61.

²¹⁰ 083717-TR-ET Part 10 Revised RED, p. 12.

²¹¹ Response, para. 61.

²¹² 083717-TR-ET Part 10 Revised RED, pp. 12-13.

V. CLASSIFICATION

94. The Panel notes that the Parties have filed public redacted versions of the Motion, the Response and the Reply.²¹³ The Panel further notes that the SPO has redacted some ERNs of the Proposed Evidence in the public redacted version of its filings. The Panel has, therefore, redacted those ERNs in the present decision. The Panel is of the view, however, that the ERNs of the Proposed Evidence may become public after the Witnesses have testified at trial, unless the SPO demonstrates good cause to maintain the redactions. The Panel, therefore, orders that, after the Witnesses' testimony, the SPO reassess and make submissions, within seven days of the end of the testimony of the last witness in the block of Witnesses, on whether the redaction of the ERNs of the Proposed Evidence remain justified.

VI. DISPOSITION

95. Based on the above, the Panel hereby:

- a. **GRANTS** the Motion with respect to W01511, W04260, W04305, W04410, and W04744;
- b. **GRANTS** the Motion, in part, with respect to W04752 and W04764;
- c. **FINDS** that W04752's associated exhibits [REDACTED], [REDACTED], [REDACTED], [REDACTED], pages 2-6 of [REDACTED] and the audio portion of [REDACTED] are inappropriate for admission for reasons set out in paragraphs 76-79;
- d. **FINDS** that W04764's associated exhibit 013442-013444-ET is inappropriate for admission for reasons set out in paragraph 92;
- e. **FINDS** the remainder of the Proposed Evidence of the Witnesses as set out in paragraphs 9, 19, 30, 39, 48, 62 and 81, and the respective footnotes appropriate for admission once the requirements of Rule 154(a)-(c) are met;

²¹³ See above, fns 2, 5, 6, respectively.

- f. **ORDERS** the Parties to report back on their *inter partes* discussions as set out in paragraph 35, by **Friday, 24 May 2024**; and
- g. **ORDERS** the SPO to reassess and make submissions, within seven days of the end of the testimony of the last witness in the block of Witnesses, on whether the redaction of the ERNs of the Proposed Evidence remains justified.



Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 22 May 2024

At The Hague, the Netherlands.