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KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In:	**KSC-BC-2020-06**
	The 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 Guénaël Mettraux
	Judge Fergal Gaynor, Reserve Judge
Registrar:	Fidelma Donlon
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Further Public Redacted Version of 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)

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TRIAL PANEL II ("Panel"), pursuant to Articles 21 and 37 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, 9 June, 10 July, 24 July and 10 October 2023, the Panel issued decisions on motions of the Specialist Prosecutor's Office ("SPO") pursuant to Rule 154 in respect of 34 witnesses.[1]

2. On 3 October 2023, the SPO filed a Rule 154 motion in relation to seven additional witnesses ("Motion").[2]

3. On 13 October 2023, the Defence for all four Accused (collectively, "Defence") responded jointly to the Motion ("Response").[3]

4. On 23 October 2023, the SPO replied to the Response ("Reply").[4]

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[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; F01593, Panel, *Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block*, 9 June 2023, confidential; F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154*, 9 June 2023, confidential (a corrected version was issued on 10 August 2023, F01595/COR) ("Second Rule154 Decision"); F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential; F01700, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154* ("Fourth Rule 154 Decision"), 24 July 2023, confidential; F01848, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491, and W04753 Pursuant to Rule 154 (F01788)*, 10 October 2023.

[2] F01830, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request*, 14 September 2023, confidential, with Annexes 1-7, confidential.

[3] F01857, Specialist Counsel, *Joint Defence Response to the Prosecution Motion for Admission of Evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Requests (F01830)*, 13 October 2023, confidential. The Panel notes that it granted an extension of the word limit to the Defence (Transcript of Hearing, 12 October 2023, p. 8539).

[4] F01876, Specialist Prosecutor, *Prosecution Reply Relating to Rule 154 Motion F01830 and Related Submissions*, 23 October 2023, confidential.

II. SUBMISSIONS

5. The SPO seeks authorisation to add W04765's interview transcripts ("Second Interview") to the exhibit list.[5] It also seeks admission of the statements, together with associated exhibits (respectively, "Statements" and "Associated Exhibits"; collectively, the "Proposed Evidence") of seven witnesses: W03170, W04043, W04444, W04571, W04765, W04811, and W04870 ("Witnesses").[6] The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and that admission thereof pursuant to Rule 154 is in the interests of justice.[7]

6. The Defence objects to the admission of parts of the Proposed Evidence on the basis that: (i) the SPO has failed to substantiate their relevance; (ii) some Associated Exhibits do not constitute an indispensable or inseparable part of the Statements to which they relate; (iii) their probative value is outweighed by their prejudicial effect; (iv) the lengthy *viva voce* testimony sought by the SPO overshadows the time-saving function of Rule 154 admission; and (v) admission of matters of pivotal importance to the Defence case would be highly prejudicial to the rights of the Accused.[8] The Defence requests that the Panel: (i) take notice of the Defence's objections; (ii) deny the admission of the items listed in paragraph 56(b) of the Response; and (iii) order the SPO to lead W03170, W04043, W04444 and W04571 *viva voce*.[9]

7. The SPO replies that the Response is based on misconceptions regarding the scope of evidence relevant to this case and the *prima facie* nature of admissibility assessments.[10] The SPO reiterates that the Motion should be granted.[11]

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[5] Motion, paras 51-52 *referring to* 108643-TR-ET Parts 1-7 (Second Interview).
[6] Motion, paras 1, 76.
[7] Motion, paras 2, 4. *See also* Annexes 1-7 to the Motion.
[8] Response, paras 2-3.
[9] Response, para. 56.
[10] Reply, para. 1.
[11] Reply, para. 8.

III. APPLICABLE LAW

8. The Panel incorporates by reference the applicable law as set out in its First Rule 154 Decision.[12]

IV. DISCUSSION

A. W03170

9. The SPO submits that the proposed evidence of W03170[13] is: (i) relevant;[14] (ii) *prima facie* authentic and reliable;[15] and (iii) suitable for admission under Rule 154.[16]

10. The Defence objects to the Rule 154 admission of W03170's Proposed Evidence.[17] It argues that the importance and centrality of the proposed evidence to the SPO's case command that W03170 be heard live.[18] It submits that W03170's Proposed Evidence (regarding: (i) the alleged [REDACTED] with the witness and another individual; and (ii) [REDACTED] in W03170's arrest ought to be elicited live because it diverges from the evidence of [REDACTED], is inconsistent, and/or unclear.[19] Lastly, the Defence avers that the volume of W03170's Proposed

[12] First Rule 154 Decision, paras 26-35.
[13] The proposed evidence of W03170 ("W03170's Proposed Evidence") consists of the following five statements (collectively, "W03170's Statements") and ten associated exhibits (collectively, "W03170's Associated Exhibits"). W03170's Statements contain: (i) 051775-051780 RED2; (ii) 051765-051770-ET RED3 (with corresponding Albanian version); (iii) 053191-TR-ET Part 1 RED3 and 053191-TR-ET Parts 2-7 RED2 (with corresponding Albanian versions); (iv) 053343-TR-ET Parts 1-4 RED2 (with corresponding Albanian version); and (v) 053372-TR-ET Parts 1-3 RED2 (with corresponding Albanian version). W03170's Associated Exhibits contain: (i) SPOE00126366-00126366; (ii) SPOE00126367-00126368; (iii) SPOE00126369-00126369 (with corresponding English version); (iv) SPOE00126370-00126370 (with corresponding English version); (v) SPOE00126371-00126371 (with corresponding English version); (vi) 055928-01; 055928-01-TR (with corresponding English version); (vii) SPOE00126372-00126372 (with corresponding English version SITF00316652-00316655, p.SITF00316652); and (viii) SPOE00126373-00126373 (with corresponding English version); (ix) 053346-053346 (with corresponding English version). *See, generally,* Annex 1 to the Motion, items 1 to 8. The Panel notes that the SPO does not tender items 9 and 10 for admission.
[14] Motion, paras 5-10.
[15] Motion, para. 11.
[16] Motion, paras 13-15.
[17] Response, para. 4.
[18] Response, paras 5-7, 12.
[19] Response, paras 8-12.

Evidence outweighs the time that its Rule 154 admission would save.[20]

11. *W03170's Statements.* Regarding relevance, W03170 was the [REDACTED] at the relevant time.[21] The SPO relies upon W03170's Proposed Evidence in respect of, *inter alia*: (i) the interruption by Kosovo Liberation Army ("KLA") members of an [REDACTED] meeting and subsequent arrest of W03170 and another person by an individual claiming to be Sabit Geci; (ii) W03170 and another individual's detention in [REDACTED]; (iii) their subsequent release in the presence of [REDACTED] and others; and (iv) [REDACTED] with the witness during those events.[22] The Panel is satisfied that W03170's Proposed Evidence is relevant to the charges in the Indictment.

12. Regarding authenticity, W03170's Statements consist of: (i) W03170's statement to United Nations Mission in Kosovo ("UNMIK"); (ii) W03170's statement in the case against *Fatmir Limaj et al.*; and (iii) three interviews of W03170 with the SPO ("W03170's SPO Interviews").[23] Each of them contains multiple indicia of authenticity, including: (i) the date (and time) of the interview; (ii) the attendees; (iii) the witness's personal details; and (iv) witness warnings, rights and/or acknowledgments; and/or (vi) verbatim transcripts of audio-video recorded interviews.[24] In light of the above, the Panel is satisfied of the *prima facie*

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[20] Response, paras 13-14.
[21] Motion, para. 5.
[22] Motion, paras 5-10; F01594/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("Amended List of Witnesses"), 9 June 2023, strictly confidential and *ex parte*, p. 174 (a confidential redacted version was filed on the same day, F01594/A02); 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).
[23] *See* Annex 1 to the Motion. W03170's SPO Interviews consist of: (i) 053191-TR-ET Part 1 RED3 and 053191-TR-ET Parts 2-7 RED2 (with corresponding Albanian versions); (ii) 053343-TR-ET Parts 1-4 RED2 (with corresponding Albanian version); and (iii) 053372-TR-ET Parts 1-3 RED2 (with corresponding Albanian version).
[24] *See* Annex 1 to the Motion.

authenticity of W03170's Statements.

13. Regarding probative value, it has been submitted that parts of W03170's Statements are unclear or in contradiction with the evidence of other witnesses. Such considerations do not constitute an obstacle to admission, but would go to the weight, if any, to give to the evidence. They are also matter which the Defence will be able to test through cross-examination of the witness. The Panel is satisfied that W03170's Statements have *prima facie* probative value.

14. Regarding the suitability of W03170's Statements for admission pursuant to Rule 154, the Panel takes note of the Defence's objection on the basis that: (i) the admission of 802 pages into the record to save three hours of direct examination would be a false economy;[25] and (ii) W03170's evidence should be heard live as it is inconsistent, contradicted by the evidence of other witnesses, central to the SPO's case, and goes to the acts and conduct of the Accused.[26] The Panel observes that W03170's Statements amount to approximately 367 pages (in English). While some parts may be duplicative, the Panel recalls that the consistency of successive records of interview over the course of time and across different investigative and judicial institutions could be relevant to assessing the reliability and credibility of the proposed evidence.[27] Moreover, the Panel observes that, by changing W03170's mode of testimony from live to Rule 154, the SPO reduced its estimate for W03170's direct examination to a maximum of 1.5 hours.[28] In light of the above, the Panel is satisfied that the admission of W03170's Statements under Rule 154 would: (i) 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. In addition, the Panel observes that the

[25] Response, paras 4, 13-14.
[26] Response, paras 6-12.
[27] *See e.g.* Fourth Rule 154 Decision, paras 25, 35; F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 155* ("Rule 155 Decision"), 14 June 2023, confidential, *e.g.* paras 93, 108, 208 (a public redacted version was issued on 8 September 2023, F01603/RED).
[28] Motion, fn. 21 and para. 15 (Rule 154, 1.5 hours). *See also* Amended List of Witnesses, p. 174 (live, 4.5 hours).

Defence will also have the opportunity to cross-examine another SPO witness who will testify to many of the same issues. The Panel is also satisfied that the *prima facie* probative value of W03170's Statements is not outweighed by any prejudicial effect, and that W03170's Statements are suitable for admission pursuant to Rule 154.

15. *W03170's Associated Exhibits.* The Panel observes that W03170's Associated Exhibits comprise: (i) six photos depicting two men and a house ("Photos");[29] (ii) news articles on the arrest of LDK Leaders and of W03170's testimony ("Articles");[30] (iii) a KLA request dated 17 December 1998 ("KLA Request");[31] (iv) a video dated 28 November 1998 ("Video");[32] (v) an announcement from the KLA Directorate ("KLA Announcement");[33] and (vi) a decision from the KLA General Staff dated 10 July 1997 ("KLA Decision").[34]

16. As regards the Articles, the Panel notes that the Defence opposes admission due to their low probative value and the fact that they do not form an integral part of W03170's Statements.[35] The Panel observes that the witness discussed the Articles in some detail in W03170's Statements.[36] Without the Articles, the relevant parts of W03170's Statements would become incomprehensible or of lesser probative value. The Panel is satisfied that the Articles form an indispensable and inseparable part of W03170's Statements. The Panel is also satisfied that the Articles are relevant since they concern W03170's detention, arrest and/or release.

[29] Photos: SPOE00126366-00126366.
[30] Articles: (i) SPOE00126367-00126368; (ii) SPOE00126369-00126369 (with corresponding English version); (iii) SPOE00126370-00126370 (with corresponding English version). *See also* Annex 1 to the Motion, Items 2-4, Exhibits 4-6.
[31] KLA Request: 055840-055840-ET and corresponding Albanian version SPOE00126371-00126371. *See also* Annex 1 to the Motion, Item 5, Exhibit 7.
[32] Video: 055928-01; 055928-01-TR; and 055928-01-TR-ET.
[33] KLA Announcement: SITF00316652-00316655, p. SITF00316652 and corresponding Albanian version SPOE00126372-00126372.
[34] KLA Decision: SPOE00126373-SPOE00126373-ET and corresponding Albanian version SPOE00126373-00126373.
[35] Response, paras 15-16, 20.
[36] *See* 053191-TR-ET Part 1 RED3, pp. 7-9; 053191-TR-ET Part 6 RED2, pp. 8-13, 28-33.

While their probative value is limited, the Panel recalls that the weight, if any, to be assigned to the Articles is a matter for the Panel's consideration ultimately and does not impact the admissibility stage.[37]

17. At this stage, the Panel is satisfied that the Articles are *prima facie* authentic and reliable. Given that the Defence will be able to explore during cross-examination any relevant issues raised therein, the Panel is also satisfied that any prejudicial effect of the Articles would not outweigh their *prima facie* probative value. Accordingly, the Panel finds the Articles appropriate for admission under Rules 138(1) and 154.

18. As regards the KLA Request and the Photos, the Defence does not appear to object to their admission. The Panel observes that the witness discusses both items in some detail in W03170's Statements.[38] Without the KLA Request and the Photos, the relevant parts of W03170's Statements would become incomprehensible or of lesser probative value. The Panel is satisfied that the KLA Request and the Photos form an indispensable and inseparable part of W03170's Statements. The Panel is also satisfied that the KLA Request and the Photos are relevant as the KLA Request concerns items allegedly taken from W03170 upon his arrest and detention and the Photos allegedly depict where he was detained. The Panel is also satisfied that both items are *prima facie* authentic, and that any prejudicial effect would not outweigh their *prima facie* probative value. Accordingly, the Panel finds the KLA Request and the Photos appropriate for admission under Rules 138(1) and 154.

19. As regards the Video, the Panel notes that the Defence objects to its admission as it was not discussed in detail with W03170 but only briefly shown to him.[39] The Panel observes that the Video was shown to and discussed with W03170.[40] The Panel is satisfied that without it, W03170's Statements would be less

[37] *See e.g.* First Rule 154 Decision, para. 21.
[38] *See* 051765-051770 RED3, p. 051770; 053191-TR-ET Part 1 RED3, pp. 7-8; 053191-TR-ET Part 3 RED2, p. 6; 053191-TR-ET Part 7 RED2, pp. 1-7 (Photos); 053191-TR-ET Part 3 RED2, pp. 7-10 (KLA Request).
[39] Response, para. 19.
[40] *See* 053191-TR-ET Part 5 RED2, pp. 14-20

comprehensible. The Video therefore forms an indispensable and inseparable part of W03170's Statements. Further, as the Video depicts the alleged release of individuals relevant to these proceedings, it is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect. Accordingly, the Panel rejects the Defence's submissions and finds that the Video is appropriate for admission under Rules 138(1) and 154.

20. As regards the KLA Announcement, the Panel notes the Defence's position that its admission would duplicate another version already in evidence.[41] The Panel recalls that it previously denied admission of this item through the bar table on the basis that it was a duplicate and it was "not apparent to the Panel why more than one copy of the same document needs to be admitted".[42] That said, the Panel observes that the KLA Announcement is marked as an exhibit and initialled by the witness and is discussed by the witness in some detail in his Statements.[43] For these reasons, the Panel is satisfied that the KLA Announcement forms an indispensable and inseparable part of W03170's Statements as, without it, W03170's Statements would be less comprehensible. Furthermore, as the KLA Announcement concerns W03170 and another individual's arrests, the Panel is satisfied of its relevance. Regarding authenticity and reliability, the Panel notes that in his statement the witness explains that the version shown to him is a modified version of the original of which he has knowledge.[44] Any issue regarding the nature of the differences between the original and the version discussed by the witness are matters that can be addressed through questioning of the witness, if considered relevant by the Parties. The Panel is satisfied that the KLA Announcement meets the *prima facie* threshold of authenticity and reliability for admissibility. Accordingly, the Panel finds that the KLA Announcement is appropriate for admission under

[41] Response, paras 17-18 *referring to* SITF00316652-00316655 as a copy of the item.
[42] F01705, Panel, *Third Decision on Specialist Prosecutor's Bar Table Motion*, 27 July 2023 ("Third Bar Table Decision"), confidential, para. 12
[43] *See* 053191-TR-ET Part 6 RED2, pp. 8-13, 28-33.
[44] *See* 053191-TR-ET Part 6 RED2, pp. 8-13. *See also* Response, paras 17-18.

Rules 138(1) and 154.

21. As regards the KLA Decision, the Panel notes the Defence's position that its admission would duplicate another version already in evidence.[45] The Panel observes that the KLA Decision (SPOE00126373-SPOE00126373-ET) is another version of 1D00006_ET (053346-053346_ET). In that sense, the Panel is not persuaded that admitting the KLA Decision is necessary insofar as it duplicates an item already in evidence. That said, the Panel observes that the KLA Decision is marked as an exhibit, initialled by W03170, and discussed by the witness in some detail in W03170's Statements.[46] The Panel considers that, without it, the relevant parts of W03170's Statements would become incomprehensible or of lesser probative value. Maintaining the connection between this document and the witness's statement will enable the Panel and the Parties to readily associate his account with the document in question. For these reasons, the Panel is satisfied that the KLA Decision forms an indispensable and inseparable part of W03170's Statements. Furthermore, the Panel observes that the KLA Decision is dated, signed, and concerns the closure of the political parties' premises in 1997. The Panel is satisfied that the KLA Decision is relevant, *prima facie* authentic, and its *prima facie* probative value is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the KLA Decision is appropriate for admission under Rules 138(1) and 154.

22. In light of the above, the Panel finds that W03170's Proposed Evidence[47] is

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[45] Response, para. 18 *referring to* SPOE00126373-00126373 and corresponding English translation SPOE00126373-00126373-ET.

[46] *See* 053191-TR-ET Part 6 RED2, pp. 18-27. *See also* 053343-TR-ET Part 1 RED2, p. 7.

[47] Statement: (i) 051775-051780 RED2 ("UNMIK W03170's Statement"); (ii) 051765-051770-ET RED3 (with corresponding Albanian version) ("SPRK W03170's Statement"); (iii) 053191-TR-ET Part 1 RED3 and 053191-TR-ET Parts 2-7 RED2 (with corresponding Albanian versions); (iv) 053343-TR-ET Parts 1-4 RED2 (with corresponding Albanian version); and (v) 053372-TR-ET Parts 1-3 RED2 (with corresponding Albanian version). Exhibits: SPOE00126366-00126366 (Photos); SPOE00126367-00126368, SPOE00126369-00126369 (with corresponding English version), SPOE00126370-00126370 (with corresponding English version) (Articles); 055840-055840-ET and corresponding Albanian version SPOE00126371-00126371 (KLA Request); 055928-01, 055928-01-TR, and 055928-01-TR-ET (Video); SITF00316652-00316655, p.SITF00316652 and corresponding Albanian version SPOE00126372-

relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

B. W04043

23. The SPO submits that the proposed evidence of W04043[48] is: (i) relevant;[49] (ii) *prima facie* authentic and reliable;[50] and (iii) suitable for admission under Rule 154.[51]

24. The Defence responds that, in light of the scope of W04043's Statement, minimal time and resources would be saved by its admission pursuant to Rule 154.[52] It submits that questioning W04043 *viva voce* would streamline the record.[53]

25. *W04043's Statement*. Regarding relevance, the SPO relies upon W04043's Proposed Evidence in respect of, *inter alia*: (i) W04043's arrest and mistreatment by KLA members; (ii) W04043's encounter, while detained, with an individual who W04043 later identified as a Serbian police officer; and (iii) the disappearance of this individual, along with another Serbian police officer.[54] The Panel is therefore satisfied that W04043's Statement is relevant to the charges in the Indictment.

26. Regarding authenticity, W04043's Statement consists of the verbatim transcript of the audio-video recorded SPO interview with W04043. It contains

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00126372 (KLA Announcement); SPOE00126373-SPOE00126373-ET and corresponding Albanian version SPOE00126373-00126373 (KLA Decision).

[48] The proposed evidence of W04043 ("W04043's Proposed Evidence") consists of: (i) 106336-TR-ET Part 1 RED2; 106336-TR-ET Part 2; 106336-TR-ET Part 3; 106336-TR-ET Part 4 (with corresponding Serbian and Albanian versions) ("W04043's Statement"); and (ii) SPOE00341540-00341540 and 106334-106335 ("W04043's Associated Exhibits"). *See*, *generally*, Annex 2 to the Motion.

[49] Motion, paras 16-18.

[50] Motion, para. 19.

[51] Motion, para. 21.

[52] Response, para. 21.

[53] Response, para. 22.

[54] Motion, paras 16-18; Indictment, para. [REDACTED]; Amended List of Witnesses, pp. 226; SPO Pre-Trial Brief, paras [REDACTED].

multiple indicia of authenticity, including: (i) the date and place of the interview; (ii) the attendees; (iii) the witness's personal details; and (iv) witness warnings, rights and/or acknowledgments.[55] In light of the above, the Panel is satisfied that W04043's Statement is *prima facie* authentic.

27. Regarding probative value, the Panel observes that the witness confirmed that the content of W04043's Statement is true and accurate.[56] Combined with the above-mentioned assessment of relevance and indicia of authenticity, the Panel is satisfied that W04043's Statement has *prima facie* probative value.

28. Regarding the suitability of W04043's Statement for admission pursuant to Rule 154, the Panel observes that W04043's Statement amounts to 83 pages (in English). The Panel considers that this single statement is limited in size and would only marginally increase the number of pages contained in the trial record. The Panel rejects the Defence's submission to the contrary.[57] Further, the Panel notes that the SPO intends to elicit brief oral testimony from W04043 for less than one hour.[58] In light of the above, the Panel is satisfied that the admission of W04043's Statement under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel is also satisfied that the *prima facie* probative value of W04043's Statement is not outweighed by any prejudicial effect, and that W04043's Statement is suitable for admission pursuant to Rule 154.

29. *W04043's Associated Exhibits.* The Panel observes that W04043's Associated Exhibits comprise: (i) a document memorialising a meeting between W04043's family members and the Organisation for the Security and Cooperation in Europe

[55] *See* W04043's Statement; Annex 2 to the Motion.
[56] *See e.g.* 106336-TR-ET Part 2, p. 2; 106336-TR-ET Part 4, p. 6.
[57] Response, para. 38.
[58] Motion, para. 21.

("OSCE") in relation to the witness's abduction;[59] and (ii) maps on which W04043 marked the route he travelled during his abduction and where he escaped.[60] The Panel notes that: (i) the Defence does not object to their admission;[61] and (ii) both items were discussed in some detail in W04043's Statement.[62] The Panel is satisfied that, without these items, the relevant parts of W04043's Statement would become incomprehensible or of lesser probative value. By the same token, these items form an indispensable and inseparable part of W04043's Statement. The Panel is also satisfied that the items are relevant, *prima facie* authentic and reliable. Given that the Defence will have an opportunity to cross-examine W04043, the Panel is also satisfied that the probative value of these items is not outweighed by any prejudicial effect. Accordingly, the Panel finds W04043's Associated Exhibits appropriate for admission under Rules 138(1) and 154.

30. In light of the above, the Panel finds that W04043's Proposed Evidence[63] is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

C. W04444

31. The SPO submits that the proposed evidence of W04444[64] is: (i) relevant;[65] (ii) *prima facie* authentic and reliable;[66] and (iii) suitable for admission under

[59] SPOE00341540-00341540.
[60] 106334-106335.
[61] Response, para. 22.
[62] *See* 106336-TR-ET -Part 2, pp 6-7 and 106336-TR-ET Part 4, pp 1-5.
[63] Statement: 106336-TR-ET Part 1 RED2; 106336-TR-ET Part 2; 106336-TR-ET Part 3; 106336-TR-ET Part 4 (with corresponding Serbian and Albanian versions). Exhibits: SPOE00341540-00341540 and 106334-106335.
[64] The proposed evidence of W04444 ("W04444's Proposed Evidence") consists of: (i) 066662-TR-ET Part 1 RED3; 066662-TR-ET Parts 2-4 (with corresponding Albanian version) ("W04444's Statement"); and (ii) 066661-066661 and 064890-064893-ET (with corresponding Albanian version) ("W04444's Associated Exhibits"). *See, generally,* Annex 3 to the Motion.
[65] Motion, paras 22-27.
[66] Motion, para. 29.

Rule 154.[67]

32. The Defence objects to the admission of W04444's Proposed Evidence pursuant to Rule 154 in light of its "unique nature" and the lack of any substantial time saving.[68] It submits that W04444's Statement is uncorroborated and should be heard *viva voce.*[69]

33. The SPO replies that the arguments raised by the Defence do not justify non-admission of W04444's Proposed Evidence: W04444 will be available for cross-examination and can be examined about any questions relevant to the weight of his evidence.[70]

34. *W04444's Statement.* Regarding relevance, W04444 is a civilian Kosovo-Albanian who was arrested by the KLA in January 1999 and allegedly detained with others by the KLA. The SPO relies upon W04444's Proposed Evidence in respect of, *inter alia*, W04444's arrest, detention and mistreatment by KLA members.[71] The Panel is therefore satisfied that W04444's Proposed Evidence is relevant to the charges in the Indictment.

35. Regarding authenticity, W04444's Statement is a verbatim transcript of the audio-video recorded SPO interview of the witness. As such, it contains multiple indicia of authenticity, including: (i) the date, place and time of the interview; (ii) the attendees; (iii) the witness's personal details; and (iv) witness warnings, rights and/or acknowledgments.[72] In light of the above, the Panel is satisfied of the *prima facie* authenticity of W04444's Statement – which the Defence does not contest.[73]

36. Regarding probative value, the witness confirmed that the contents of

[67] Motion, para. 30.
[68] Response, paras 23, 25.
[69] Response, para. 25.
[70] Reply, para. 3.
[71] Motion, paras 22-27; Indictment, paras [REDACTED]; Amended List of Witnesses, pp. 330-331; SPO Pre-Trial Brief, paras [REDACTED].
[72] *See* W04444's Statement; Annex 3 to the Motion.
[73] Response, para. 23.

W04444's Statement is true and accurate, was given voluntarily, and that he had no objections to the manner by which the statement was taken.[74] This observation, combined with the assessment of relevance and indicia of authenticity above, satisfies the Panel that W04444's Statement has *prima facie* probative value.

37. Regarding the suitability of W04444's Statement for admission pursuant to Rule 154, the Panel observes that W04444's Proposed Evidence amounts to 60 pages (in English). It is thus limited in size and would only marginally increase the number of pages contained in the trial record. Moreover, the Panel notes that the SPO intends to elicit one hour of additional oral testimony.[75] In light of the above, the Panel is satisfied that the admission of W04444's Statement under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel is also satisfied that the *prima facie* probative value of W04444's Statement is not outweighed by any prejudicial effect, and that W04444's Statement is suitable for admission pursuant to Rule 154.

38. *W04444's Associated Exhibits*. The Panel observes that W04444's Associated Exhibits comprise: (i) a map;[76] and (ii) an article from *Infosot* ("*Infosot* Article").[77] The Panel notes that the Defence does not object to the admission of the map but opposes that of the *Infosot* Article, challenging its probative value and reliability, and arguing that it does not form part of W04444's Statement.[78] The Panel notes that both items were discussed in some detail in W04444's Statement.[79] The Panel considers that without them, the relevant parts of W04444's Statement would be incomprehensible or of lesser probative value. The Panel is therefore satisfied that

[74] 066662-TR-ET Part 4, pp. 2-3.
[75] Motion, para. 30.
[76] 066661-066661.
[77] 064890-064893 and corresponding English translation 064890-064893-ET.
[78] Response, paras 26-28.
[79] 066662-TR-ET Part 2, pp. 14-15 (map), 21-23 (*Infosot* Article).

the map and the *Infosot* Article form an indispensable and inseparable part of W04444's Statement. The Panel is also satisfied that the map and the *Infosot* Article are relevant, *prima facie* authentic and reliable. The Panel agrees[80] that the passages of the *Infosot* Article appear unrelated to incidents involving W04444 and may be more suitably explored with witnesses other than W04444. Considering that the Defence can cross-examine W04444 on the *Infosot* Article, the Panel considers that the *prima facie* probative value of the *Infosot* Article is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the map and the *Infosot* Article are appropriate for admission under Rules 138(1) and 154.

39. In light of the above, the Panel finds that W04444's Proposed Evidence[81] is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

D. W04571

40. The SPO submits that the proposed evidence of W04571[82] is: (i) relevant;[83] (ii) *prima facie* authentic and reliable;[84] and (iii) suitable for admission under Rule 154.[85]

41. The Defence submits that the low probative value of W04571's Statement, paired with the fact that only a small part of it appears to be relevant to the case, militate against its Rule 154 admission.[86]

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[80] *See similarly* Response, para. 29.

[81] Statement: 066662-TR-ET Part 1 RED3; 066662-TR-ET Parts 2-4 (with corresponding Albanian version). Exhibits: 066661-066661 and 064890-064893 and corresponding English translation 064890-064893-ET.

[82] The proposed evidence of W04571 ("W04571's Proposed Evidence") consists of: (i) 075468-TR-ET Part 1 RED2; 075468-TR-ET Parts 2-5 (with corresponding Albanian version) ("W04571's Statement"); and (ii) two associated exhibits: 078022-078022-ET and U000-5370-U000-5370-ET (with corresponding Albanian versions) ("W04571's Associated Exhibits"). The Panel notes that the SPO does not tender U000-6170-U000-6172-ET RED2 for admission. *See, generally,* Annex 4 to the Motion.

[83] Motion, paras 31-35.

[84] Motion, para. 36.

[85] Motion, para. 38.

[86] Response, para. 32.

42. The SPO replies that, as the witness is a direct victim of crimes charged in the Indictment, W04571's Proposed Evidence is of high probative value. The SPO argues that the Defence will have the opportunity to test the evidence during cross-examination.[87]

43. *W04571's Proposed Evidence.* Regarding relevance, the SPO relies upon W04571's Proposed Evidence in respect of, *inter alia*: (i) W04571's arrest by KLA members and his subsequent detention in KLA facilities; (ii) W04571's questioning while in detention, and the treatment he received therein; and (iii) W04571's co-detainees.[88] The Panel is satisfied that W04571's Proposed Evidence is relevant to the charges in the Indictment.

44. Regarding authenticity, W04571's Statement is an SPO interview with the witness. As verbatim transcripts of the audio-video recorded interview, W04571's Statement contains multiple indicia of authenticity, including: (i) the date, place and time of the interview; (ii) the attendees; (iii) the witness's personal details; and (iv) witness warnings, rights and/or acknowledgments.[89] In light of the above, the Panel is satisfied of the *prima facie* authenticity of W04571's Statement.[90]

45. Regarding probative value, the witness confirmed that the content of W04571's Statement is true and accurate and that he gave it voluntarily.[91] This observation, combined with the findings above about relevance and authenticity, satisfies the Panel that W04571's Statement has *prima facie* probative value.

46. Regarding the suitability of W04571's Statement for admission pursuant to Rule 154, the Panel takes note of the Defence's contention that W04571's memory of those events might be impaired,[92] a fact also acknowledged by the SPO.[93] The

[87] Reply, para. 4.
[88] Motion, paras 31-34; Amended List of Witnesses, p. 376; Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED].
[89] *See* W04571's Statement; Annex 4 to the Motion.
[90] Response, para. 23.
[91] *See* 075468-TR-ET Part 5, p. 6.
[92] Response, para. 32 *referring to* 075468-TR-ET Part 1 RED2, pp. 8, 26.
[93] Motion, para. 34.

Panel observes that the Defence can explore this issue during cross-examination. Further, the Panel recalls that consistency of successive records of interview over the course of time and across different investigative and judicial institutions could be relevant to assessing the reliability and credibility of the proposed evidence.[94] Moreover, the Panel observes that the SPO reduced its estimate for additional, *viva voce*, direct examination of W04571 from two hours to approximately one hour.[95] In light of the above, the Panel is satisfied that the admission of W04571's Statement under Rule 154 would contribute to the expeditiousness of the proceedings and would not cause unfair prejudice to the Defence. The Panel is also satisfied that the *prima facie* probative value of W04571's Statement is not outweighed by any prejudicial effect, and that W04571's Statement is suitable for admission pursuant to Rule 154.

47. *W04571's Associated Exhibits.* The Panel observes that W04571's Associated Exhibits comprise: (i) a sketch drawn by W04571 of the places of his arrest and detention ("Sketch") and (ii) a signed handwritten document, related to W04571's arrest order and containing a "confession" ("Confession").[96] The Panel notes that the Defence, while not objecting to the Sketch, opposes the admission of the Confession in light of the uncertain authorship of the document.[97] The Panel observes that both items were discussed in some detail in W04571's Statement.[98] Without the Sketch and the Confession, the Panel considers that the relevant parts of W04571's Statement would become incomprehensible or of lesser probative value. The Panel is satisfied that the Sketch and the Confession form an indispensable and inseparable part of W04571's Statement. The Panel is also satisfied that both items are relevant and *prima facie* authentic. The Panel observes that the concerns raised by the Defence with respect to authorship of the

[94] *See e.g.* Fourth Rule 154 Decision, paras 25, 35; Rule 155 Decision, *e.g.* paras 93, 108, 208.
[95] Motion, para. 38, fn. 38; Amended List of Witnesses, p. 376 (2 hours).
[96] 078022-078022-ET.
[97] Response, para. 34.
[98] 075468-TR-ET Part 2, pp. 16-19 (Sketch); 075468-TR-ET Part 3, pp. 19-22 (Confession).

Confession can be adequately addressed during cross-examination. Given that the Defence will have an opportunity to cross-examine this witness, the Panel is satisfied that the probative value of the items is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Sketch and the Confession are appropriate for admission under Rules 138(1) and 154.

48. In light of the above, the Panel finds that W04571's Proposed Evidence[99] is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

E. W04765

1. Request to Amend the Exhibit List

49. The SPO seeks authorisation to add W04765's second SPO interview ("Second Interview") to the exhibit list.[100] The SPO avers that this addition to the exhibit list is necessary and will cause no prejudice to the Defence.[101]

50. The Defence does not object to the addition of the Second Interview to the exhibit list but requests the Panel to acknowledge that the SPO failed to demonstrate good cause or provide timely notice in support of its request.[102]

51. As regards the timeliness of the notice, the Panel notes the SPO's admission that it did not seek addition of this item earlier as W04765 was intended to testify live.[103] The Panel notes that the notice provided by the SPO was not as prompt as it could have been. However, considering that: (i) the SPO sought to add the Second Interview to the exhibit list as soon as it filed its Rule 154 request for this witness; (ii) the SPO reserved its right to add the item to the exhibit list, if justified,

[99] Statement: 075468-TR-ET Part 1 RED2; 075468-TR-ET Parts 2-5 (with corresponding Albanian version). Exhibits: 078022-078022-ET and U000-5370-U000-5370-ET.
[100] Motion, paras 51-52 *referring to* 108643-TR-ET Parts 1-7.
[101] Motion, paras 51-52.
[102] Response, paras 39-40.
[103] Motion, para. 51.

as of 30 January 2023;[104] and (iii) W04765 is not scheduled to testify during the next block of hearings,[105] the Panel finds the notice provided by the SPO to be timely.

52. As regards good cause and the question of the relevance and importance of this material, the Panel notes that the relevance and importance of this item arose upon the SPO's decision to change the mode of W04765's testimony from live to Rule 154. The Panel further notes that, in the Second Interview, W04765 clarifies and elaborates the content of his first interview, including regarding his knowledge of charged crimes and KLA members' roles in this regard. The Panel is therefore satisfied that the Second Interview is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the exhibit list.

53. As regards prejudice, the Panel observes that: (i) the Defence does not oppose the addition of the Second Interview to the exhibit list;[106] (ii) the Second Interview has been available to the Defence since January 2023;[107] (iii) following authorisation by the Panel,[108] the Defence received formal disclosure of the Second Interview on 15 March 2023;[109] and (iv) W04765 is not scheduled to testify during next block of hearings.[110] In addition, the Panel notes that the Defence has been on notice that W04765's proposed testimony includes the topic covered in the proposed item since at least November 2022.[111] Accordingly, the Panel is satisfied

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[104] F01238, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List and Related Matters*, 30 January 2023, confidential, with Annexes 1-47 confidential. A public redacted version was filed on 3 March 2023, F01238/RED.
[105] *See* Correspondence 347. The Panel notes that, currently, at least four other witnesses are scheduled to testify before W04765.
[106] Response, paras 39-40.
[107] F01238/A20, Specialist Prosecutor, *Annex 20 to Prosecution Request to Amend the Exhibit List and Related Matters*, 30 January 2023, confidential.
[108] *See* F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters*, 8 March 2023, confidential, para. 36(b).
[109] Disclosure Package 717.
[110] *See* Correspondence 347. The Panel notes that, currently, at least four other witnesses are scheduled to testify before W04765.
[111] *See* F01078/A04, Specialist Prosecutor, *Annex 4 to Prosecution Submission of Amended Witness and Exhibit List*, 2 November 2022, confidential, p. 446.

that the Defence will have sufficient time to adequately prepare before W04765's testimony and that the effectiveness of the rights of the Accused is being preserved. In turn, the Panel is also satisfied that no prejudice is caused by the addition of the Second Interview to the exhibit list.

54. The Panel therefore grants leave to add the Second Interview to the exhibit list.

2. Rule 154 Request

55. The SPO submits that the proposed evidence of W04765[112] is: (i) relevant;[113] (ii) *prima facie* authentic and reliable;[114] and (iii) suitable for admission under Rule 154.[115]

56. The Defence does not object to the Rule 154 admission of W04765's Statements but raises reliability and probative value concerns regarding the witness's source of knowledge and speculation.[116] The Defence notes that the Response shall be read in conjunction with the objections it previously raised ("Initial Objections").[117]

57. *W04765's Proposed Evidence.* Regarding relevance, W04765 is a former KLA member who held various positions within the KLA, including at locations relevant to these proceedings.[118] The SPO relies upon W04765's Proposed Evidence in respect of, *inter alia*: (i) the structure and reporting lines within his Operational Zone; (ii) W04765's knowledge regarding charged crimes in relation to his area of responsibility in 1998 and 1999; (iii) the roles of the Accused within the General Staff and the information and/or orders received from the General Staff;

[112] The proposed evidence of W04765 ("W04765's Proposed Evidence") consists of: (i) two statements ("W04765's Statements") and 25 items listed as associated exhibits in Annex 5 to the Motion ("W04765's Associated Exhibits). "W04765's Statements consists of: (i) 083721-TR-ET Parts 1-6 RED (with corresponding Albanian version); and (ii) 108643-TR-ET Parts 1-7 (with corresponding Albanian version). *See, generally,* Annex 5 to the Motion.
[113] Motion, paras 39-45.
[114] Motion, para. 46.
[115] Motion, paras 48-50.
[116] Response, paras 40-42.
[117] *See* F01849/A05, Specialist Counsel, *Annex 5 to Joint Defence Response to 'Prosecution Submission of List of Witnesses for 30 October to 13 December 2023' (F01828)*, 10 October 2023, confidential.
[118] Motion, para. 39.

(iv) W04765's understanding of the concepts of special warfare and collaboration; and (v) W04765's contacts with another SPO witness in relation to an alleged victim relevant to these proceedings.[119] The Panel is satisfied that W04765's Proposed Evidence is relevant to the charges in the Indictment.

58. Regarding authenticity, W04765's Statements consist of two SPO interviews of the witness.[120] As verbatim transcripts of the audio-video recorded interviews, W04765's Statements contain multiple indicia of authenticity, including: (i) the date, place and time of the interviews; (ii) the names and functions of attendees; (iii) the witness's personal details; and (iv) suspect/witness warnings, rights and/or acknowledgments.[121] In light of the above, the Panel is satisfied of the *prima facie* authenticity of W04765's Statements.

59. Regarding probative value, the witness confirmed that the contents of W04765's Statements are true and accurate and that he gave them voluntarily.[122] This observation, combined with the findings above about relevance and authenticity, satisfies the Panel of the *prima facie* authenticity of W04765's Statements.

60. Regarding the suitability of W04765's Statements for admission pursuant to Rule 154, the Panel takes note of the Defence's contention that admitting W04765's evidence will require careful cross-examination.[123] The Panel observes that the SPO, who initially intended to call W04765 live with eight hours of direct examination, now seeks to admit W04765's Proposed Evidence via Rule 154, thereby reducing the estimate for additional, *viva voce*, direct examination to two hours of additional, *viva voce*, evidence in chief.[124] The Panel is also satisfied that the *prima facie* probative value of W04765's Statements is not outweighed by any

[119] Motion, paras 39-44; Amended List of Witnesses, pp. 490-491; SPO Pre-Trial Brief, paras [REDACTED]; Indictment, [REDACTED].
[120] 083721-TR-ET Parts 1-6 RED and 108643-TR-ET Part 1-7.
[121] *See* W04765's Statement; Annex 5 to the Motion. *See also* Response, para. 46
[122] *See* 083721-TR-ET Part 6 RED, pp. 7-9; 108643-TR-ET Part 2, pp. 2-3, Part 7, pp. 24-27.
[123] Response, para. 40.
[124] Motion, fn. 42 and para. 5. *See also* Amended List of Witnesses, p. 490.

prejudicial effect, and that W04765's Statements are suitable for admission pursuant to Rule 154. The Panel notes, in particular, that the Defence will have an opportunity to challenge any aspect of this witness's evidence with which issue is taken. In light of the above, the Panel is satisfied that the admission of the above items of W04765's Statements under Rule 154 would: (i) 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.

61. *W04765's Associated Exhibits.* The Panel observes that W04765's Associated Exhibits comprise 17 items:[125] (i) a photograph identifying individuals ("Exhibit 1")[126] and a transcript of a TV interview ("TV Interview")[127]; (ii) various KLA documents which W04765 authored, contributed to and/or recognised ("KLA Documents");[128] (iii) a book authored by W04765 ("Book");[129] (iv) Facebook posts ("Facebook Posts") authored by W04765;[130] (v) a video depicting a group of injured victims allegedly in Prizren in June 1999 ("Video");[131] and (vi) an image of a house behind barbed wire ("Image").[132]

62. With respect to the TV Interview, the Panel notes that the Defence opposes admission on the basis of what it says is the inadequate authentication and

[125] The Panel notes that the SPO does not seek to tender for admission items 18 to 25 of Annex 5 to the Motion.
[126] 073356-073365 RED, pp. 073356-073357.
[127] 073358-073365-ET.
[128] The KLA Documents are: (i) [REDACTED] and corresponding Albanian version; (ii) [REDACTED] and corresponding Albanian version; (iii) [REDACTED] and corresponding Albanian version; (iv) [REDACTED] and corresponding Albanian version; (v) SITF00021875-SITF00021876-ET and corresponding Albanian version; (vi) [REDACTED] and corresponding Albanian version [REDACTED]; (vii) SPOE00225157-SPOE00225159-ET Revised and corresponding Albanian version; (viii) [REDACTED] and corresponding Albanian version; (ix) [REDACTED] and corresponding Albanian version; (x) [REDACTED] and corresponding Albanian version; (xi) [REDACTED] and corresponding Albanian version; (xii) [REDACTED] and corresponding Albanian version. *See also* Annex 5 to the Motion.
[129] SPOE00209321-SPOE00209428-ET Revised 1 and corresponding Albanian version.
[130] 108011-108040-ET, pp. 108011-108022 and corresponding Albanian version SPOE00328676-00328733, pp. SPOE00328676-SPOE00328696.
[131] 106389-01, minutes 01:13-01:26.
[132] SITF00032697-SITF00032697.

contextualisation by W04765 and minimal probative value.[133] As acknowledged by the SPO itself,[134] there is no reference to the ERN of the TV Interview in W04765's Statements. However, the Panel is satisfied that the TV Interview was discussed therein,[135] and that, without the TV Interview, the relevant parts of W04765's Statements would become incomprehensible or of lesser probative value. As such, the Panel is satisfied that the TV Interview forms an inseparable and indispensable part of W04765's Statements. Insofar as the interview is a first-hand account of W04765 and it relates to his role in a political party and within the KLA as well as the relationship between the two entities, the Panel is further satisfied that the TV Interview is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect. The Panel is of the view that the same is true for Exhibit 1,[136] which the Defence does not appear to challenge. The Panel also notes that the Defence will be able to address any aspects of the documents with which it takes issue through cross-examination of W04765. Accordingly, the Panel finds that Exhibit 1 and the TV Interview are appropriate for admission under Rules 138(1) and 154.

63. With respect to the KLA Documents, the Panel notes that the Defence opposes the admission of the KLA regulations ("Regulations") – contained within the bundle of KLA Documents – for the same reasons that it objects to the admission of the TV Interview.[137] The Panel observes that W04765 discussed the KLA Documents, including the Regulations, in his Statements.[138] Insofar as W07465 recognises the Regulations and confirms having received, disseminated and

[133] Response, para. 43.
[134] *See* Annex 5 to the Motion *indicating that*: "*While no reference to the ERN is made, the title and content thereof reflects that mentioned in the SPO interview*."
[135] *See e.g.* 083721-TR-ET Part 1 RED, p. 12, Part 2 RED, pp. 2-3.
[136] 073356-073365 RED, pp. 073356-073357.
[137] Response, para. 43 *referring to* U009-1596-U009-1662, pp. U009-1596 to U009-1614/U009-1596-U009-1662-ET, pp. U009- 1596 to U009-1614. *See also* Annex 5 to the Motion, Associated Exhibits, item no. 2.
[138] *See e.g.* 083721-TR-ET Part 1 RED, p. 22; 083721-TR-ET Part 2 RED, p. 17 (Regulations); 083721-TR-ET Part 2 RED, pp. 16, 21-22; 083721-TR-ET Part 3, pp. 8-9, 14-25; 108643-TR-ET Part 3, pp. 2-5, 9-21 (KLA Documents).

discussed their content,[139] the Panel is satisfied that the Regulations form an inseparable and indispensable part of W04765's Statements. The Defence will be able to address with W04765 any aspects of the Regulation with which it takes issue through cross-examination. Similarly, to the extent that W04765 recognised, acknowledged, clarified or commented upon the other KLA Documents, the Panel is also satisfied that they form an inseparable and indispensable part of W04765's Statements. Insofar as they relate to W04765's role and authority and to the KLA's organisation, the Panel is further satisfied that the KLA Documents are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the KLA Documents are appropriate for admission under Rules 138(1) and 154.

64. With respect to the Book, the Panel notes that the Defence objects to its admission. The Panel observes that W04765 refers to his Book several times in W04765's Statements,[140] and particularly to four specific pages of that Book ("Pages").[141] The Panel observes that the Book is 108 pages (in English). While the SPO seeks admission of the Book in its entirety,[142] the Panel is of the view that this would unnecessarily bloat the record. However, the Panel is satisfied that the Pages: (i) form an indispensable and inseparable part of W04765's Statements; and (ii) are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by any prejudicial effect. Should additional pages of the Book be considered relevant to these proceedings, the SPO can present those pages to the witness during his additional, *viva voce*, examination in chief and seek their admission at that point. Accordingly, and without prejudice, the Panel finds that only the Pages are appropriate at this stage for admission under Rules 138(1) and

[139] 083721-TR-ET Part 1 RED, p. 22; 083721-TR-ET Part 2 RED, p. 17.
[140] 083721-TR-ET Part 1 RED, pp. 7, 13, 18-20; 083721-TR-ET Part 2 RED, p. 15; 083721-TR-ET Part 3 RED, pp. 20-21; 083721-TR-ET Part 4 RED, pp. 1-2; 083721-TR-ET Part 6RED, pp. 9-10; 108643-TR-ET Part 7, pp. 16-22.
[141] *See* SPOE00209329-SPOE00209332, as acknowledged by the SPO in Annex 5 to the Motion, item no. 8.
[142] The Panel notes that the SPO seeks admission of the Book in its entirety. *See* SPO's comments in SPO in Annex 5 to the Motion, item no. 8.

154, not the remainder of the Book.

65. With respect to the Facebook Posts, the Panel notes that the Defence objects to their admission on the grounds that they are repetitious and not discussed in sufficient detail by the witness.[143] The Panel observes that the witness discussed the Facebook Posts in relative detail in his Statements, wherein he recognised, confirmed and/or expanded upon them.[144] For this reason, the Panel is satisfied that the Facebook Posts form an inseparable and indispensable part of W04765's Statements. Further, as the Facebook Posts are dated, authenticated by W04765, and relate generally to the organisation and activities of the KLA and to the authority of the General Staff, the Panel is satisfied that they are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by any prejudicial effect. Any issue which the Defence takes with the contents of these Posts can be addressed through cross-examination of W04765. Accordingly, the Panel finds that the Facebook Posts are appropriate for admission under Rules 138(1) and 154.

66. With respect to the Video, the Panel notes that the Defence does not object to its admission. The Panel further notes that, in W04765's Statements, the witness recognises himself in the Video and identifies members of the military police at a relevant location.[145] The Panel is therefore satisfied that the Video: (i) forms an inseparable and indispensable part of W04675's Statements; and (ii) is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Video is appropriate for admission under Rules 138(1) and 154. The Panel directs the Registry to ensure that the metadata of the Video in Legal Workflow reflects the portion of the video that has been found admissible.

67. With respect to the Image, the Panel notes the Defence submissions that its

[143] Response, para. 45.
[144] 108643-TR-ET Part 2, pp. 3-10.
[145] 108643-TR-ET Part 3, pp. 24-29.

admission should be rejected as speculative and not indispensable to W04765's Statements.[146] The Panel observes that, although W04765 was shown the Image, the witness merely said that the Image did not cause him to recollect anything.[147] In addition, as acknowledged by the SPO itself,[148] the Panel notes that the Image is not of great quality.[149] Since W04765 provides no additional information of relevance to the Image, the Panel does not consider that the Image forms an inseparable and indispensable part of W04765's Statements. Nor is the Panel satisfied that its relevance and probative value has been sufficiently demonstrated for admission. Accordingly, the Panel finds that the Image is not appropriate for admission under Rules 138(1) and 154.

68. In light of the above, the Panel finds that, save for the Image and the remainder of the Book, W04765's Proposed Evidence[150] is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

[146] Response, para. 46.
[147] 108643-TR-ET Part 4, pp. 2-5.
[148] *See* Annex 5 to the Motion, item no. 17.
[149] 108643-TR-ET Part 4, p. 2.
[150] Statement: 083721-TR-ET Parts 1-6 RED and 108643-TR-ET Part 1-7. Exhibits: (i) 073356-073365 RED, pp. 073356-073357 and 073358-073365-ET (Exhibit 1 and TV Interview); (ii) [REDACTED] and corresponding Albanian version, [REDACTED]and corresponding Albanian version, [REDACTED] and corresponding Albanian version, [REDACTED]and corresponding Albanian version[REDACTED] and corresponding Albanian version, [REDACTED] and corresponding Albanian version [REDACTED], SPOE00225157-SPOE00225159-ET Revised and corresponding Albanian version; (iii) [REDACTED] and corresponding Albanian version, [REDACTED]and corresponding Albanian version, [REDACTED] and corresponding Albanian version, [REDACTED] and corresponding Albanian version, 058048-058112-ET, p. 058057 and corresponding Albanian version (KLA Documents); (iv) SPOE00209329-SPOE00209332 (Pages); (v) 108011-108040-ET, pp. 108011-108022 and corresponding Albanian version SPOE00328676-00328733, pp. SPOE00328676-SPOE00328696 (Facebook Posts); (vi) 106389-01, minutes 01:13-01:26 (Video).

F. W04811

69. The SPO submits that the proposed evidence of W04811[151] is: (i) relevant;[152] (ii) *prima facie* authentic and reliable;[153] and (iii) suitable for admission under Rule 154.[154]

70. The Defence responds that W04811's SPO Interview only tangentially relates to the allegations the witness is expected to testify about. The Defence further submits that W04811's SPO Interview merely serves the purpose of confirming that the witness' evidence in a case before a Kosovo court was given voluntarily and that it accurately reflects the witness' recollection. As a consequence, the Defence submits, the admission of W04811's First and Second Testimony in those proceedings that directly relate to the events in question would be more sensible.[155] The Defence does not object to the admission of W04811's Associated Exhibits provided that such admission relates to the W04811's First Testimony rather than to W04811's SPO Interview.[156]

71. *W04811's Statements.* Regarding relevance, the Panel notes that W04811's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*: (i) events that occurred in [REDACTED] in relation to a close relative; (ii) W04811 and her family's numerous attempts to see and get that relative released after his arrest and detention by the KLA; (iii) the two occasions that W04811 subsequently saw

[151] The proposed evidence of W04811 ("W04811's Proposed Evidence") consists of three statements ("W04811's Statements") and two associated exhibits ("W04811's Associated Exhibits"). W04811's Statements consist of: (i) 092712-TR-ET Part 1 RED2 (with corresponding Albanian) ("W04811's SPO Interview"); (ii) SPOE00122527-SPOE00122543 RED2, pp. SPOE00122527-SPOE00122542 RED2 (with corresponding Albanian version SPOE00122544-SPOE00122562 RED2) ("W04811's First Testimony"); and (iii) SPOE00119512-SPOE00119533 RED2, pp. SPOE00119512, SPOE00119524-SPOE00119533 RED2 (with corresponding Albanian version SPOE00119534, SPOE00119546-00119557 RED2) ("W04811's Second Testimony"). W04811's Associated Exhibits consist of: (i) SPOE00122527-SPOE00122543 RED2, p. SPOE00122543 (with corresponding English version, SPOE00122543-SPOE00122543-ET, and Albanian version, SPOE00122543-SPOE00122543-AT); and (ii) SITF00240114-SITF00240120 (with corresponding English version). *See* Annex 6 to the Motion. *See also* Reply, para. 5.
[152] Motion, paras 53-57.
[153] Motion, para. 58.
[154] Motion, para. 60.
[155] Response, para. 48.
[156] Response, para. 49.

him; and (iv) how W04811 and her family members learned that he had been killed and where his remains were located.[157] The Panel is therefore satisfied that W04811's Statements are relevant to the charges in the Indictment.[158]

72. Regarding authenticity, W04811's Statements consist of: (i) her SPO Interview; and (ii) the two records of her testimony in proceedings before a Kosovo court.[159] Each of W04811's Statements contains multiple indicia of authenticity, including: (i) the date and time of each interview; (ii) the witness's personal details; (iii) witness warnings, rights and/or acknowledgments; and (iv) the witness's confirmation that the contents of all three statements were true and accurate.[160] In light of the above, the Panel is satisfied of the *prima facie* authenticity of W04811's Statements.

73. Regarding the probative value of W04811's Statements and their suitability for admission pursuant to Rule 154, the Panel takes note of the Defence's contention that W04811's SPO Interview: (i) tangentially relates to the allegations the witness is expected to testify; and (ii) serves the purpose of confirming that the witness's evidence in the case in question was given voluntarily and that it accurately reflects the witness' recollection.[161] The Panel is not persuaded that this means that W04811's SPO Interview is entirely lacking in probative value or unsuitable for Rule 154 admission. The Panel observes that, while sometimes duplicative, W04811's Statements amount to approximately 80 pages (in English) and would only marginally increase the number of pages contained in the trial record. The Panel also observes that the consistency of the answers given by a witness in successive records of interviews over the course of time and across different investigative and judicial institutions could be relevant to assessing the reliability

[157] Motion, paras 53-56; Amended List of Witnesses, pp. 507-509; SPO Pre-Trial Brief, paras [REDACTED].
[158] *See* Indictment, paras [REDACTED].
[159] *See above* footnote 151.
[160] *See* W04811's Statements; Annex 6 to the Motion.
[161] Response, para. 48.

and credibility of the proposed evidence.[162] Finally, the Panel observes that the SPO has reduced its estimate for additional, *viva voce*, direct examination of W04811 from one and a half hours to one hour.[163]

74. In light of the above, the Panel is satisfied that the admission of W04811'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 and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel is therefore satisfied that W04811's Statements bear *prima facie* probative value, which is not outweighed by any prejudicial effect, and are suitable for admission pursuant to Rule 154.

75. *W04811's Associated Exhibits.* The Panel observes that W04811's Associated Exhibits comprise: (i) a document showing that the witness's disappeared relative was medically unfit for military service ("Medical Certificate");[164] and (ii) the result of a photo identification procedure in which W04811 identified one of the alleged KLA members who participated in the arrest of her relative ("W04811's Photo Identification Record").[165] The Panel notes that the Defence does not oppose the admission of W04811's Associated Exhibits, provided that such admission relates to the W04811's First Testimony rather than to W04811's SPO Interview.[166]

76. The Panel observes that the Medical Certificate was discussed in some detail in W04811's Statements[167] and considers that without it, the relevant parts of W04811's Statements would become incomprehensible or of lesser probative value. The Panel is therefore satisfied that the Medical Certificate is relevant. The Panel is also satisfied of the *prima facie* authenticity and probative value of the

[162] *See e.g.* Fourth Rule 154 Decision, paras 25, 35; Rule 155 Decision, *e.g.* paras 93, 108, 208.
[163] Motion, para. 60, footnote 57. *See also* Amended List of Witnesses, p. 507; F01828/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of List of Witnesses for 30 October to 13 December 2023 – Reserve Witnesses*, 2 October 2023, confidential, p. 11.
[164] SPOE00122527-SPOE00122543 RED2, p. SPOE00122543.
[165] SITF00240114-SITF00240120.
[166] Response, para. 49.
[167] W04811's First Testimony, p. 10. *See also* W04811's SPO Interview, pp. 9-10.

Medical Certificate. Given that the Defence will have an opportunity to cross-examine this witness, the Panel finds that the *prima facie* probative value of the Medical Certificate is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Medical Certificate is appropriate for admission under Rules 138(1) and 154.

77. With respect to W04811's Photo Identification Record, the Panel notes that it was discussed in some detail in W04811's Statements[168] and the Panel is satisfied that it forms an indispensable and inseparable part of W04811's Statements. The Panel is therefore satisfied that W04811's Photo Identification Record is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04811's Photo Identification Record is appropriate for admission under Rules 138(1) and 154.

78. In light of the above, the Panel finds that W04811's Proposed Evidence[169] is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

G. W04870

79. The SPO submits that the proposed evidence of W04870[170] is: (i) relevant;[171] (ii) *prima facie* authentic and reliable;[172] and (iii) suitable for admission under

[168] W04811's First Testimony, p. 4. *See also* W04811's SPO Interview, p. 7.
[169] *See above* footnote 151.
[170] The proposed evidence of W04870 ("W04870's Proposed Evidence") consists of two statements ("W04870's Statements") and three associated exhibits ("W04870's Associated Exhibits"). W04870's Statements consist of: (i) 103774-TR-ET Parts 1-4 RED (with corresponding Albanian version) ("W04870's SPO Interview"); and (ii) SPOE00122466-00122479 RED (with corresponding Albanian version) ("W04870's Testimony"). W04870's Associated Exhibits consist of: (i) SITF00240184-SITF00240192-ET RED (with corresponding Albanian version SITF00240173-00240192 RED2); (ii) 103775-103785-ET Revised (with corresponding Albanian version) ("Excerpts from [REDACTED]"); and (iii) SPOE00122345-SPOE00122345-ET (with corresponding Albanian version). *See* Annex 7 to the Motion. *See also* Reply, para. 6.
[171] Motion, paras 61-68.
[172] Motion, paras 69-71.

Rule 154.[173]

80. The Defence does not contest the *prima facie* authenticity and reliability of the W04870's Statements.[174] The Defence objects, however, to the admission of W04870's evidence concerning Mr Thaçi's alleged position in the KLA hierarchy, arguing that: (i) W04870's evidence on Mr Thaçi's alleged role is hearsay; (ii) W04870 gives no basis for her knowledge thereof; and (iii) W04870's evidence on Mr Thaçi's alleged role was prompted by leading questions from the SPO.[175] The Defence further opposes the admission as an Associated Exhibit of the Excerpts from [REDACTED] on account of the lack of indicia as to the date, reliability and provenance of the newly-sequenced pages.[176]

81. *W04870's Proposed Evidence.* Regarding relevance, W04870 is a close relative of an alleged murder victim.[177] The Panel notes that W04870's Proposed Evidence is being relied upon by the SPO in respect of, *inter alia*: (i) her knowledge and [REDACTED]; (ii) her suggestion that, in September 1998, Hashim Thaçi was at the helm of the KLA; (iii) her knowledge of civilians detained by the KLA who were perceived as collaborators; (iv) her relative's arrest, detention and mistreatment by the KLA; (v) her relative's [REDACTED] by KLA members; (vi) W04870's search for the body of her relative and eventual recovery of his remains; and (vii) her evidence regarding the [REDACTED] in the killing of her relative and other detainees.[178] The Panel is therefore satisfied that W04870's Proposed Evidence is relevant to the charges in the Indictment.[179]

82. Regarding authenticity, W04870's Statements consists of: (i) her SPO

[173] Motion, paras 73-74.
[174] Response, para. 50.
[175] Response, paras 51-52, *referring to* 103774-TR-ET Part 3 RED, p. 40, line 22 – p. 44, line 17.
[176] Response, paras 53-54.
[177] Motion, para. 61; Indictment, [REDACTED].
[178] Motion, paras 61-68; Amended List of Witnesses, pp. 560-561; SPO Pre-Trial Brief, paras [REDACTED].
[179] Indictment, paras [REDACTED].

Interview; and (ii) her [REDACTED] testimony in domestic proceedings.[180] Both of W04870's Statements contains multiple indicia of authenticity, including: (i) the date and time of each interview; (ii) the witness's personal details; and (iii) witness warnings, rights and/or acknowledgments.[181] The Panel further notes that the Defence does not contest the *prima facie* authenticity and reliability of W04870's Statements.[182] In light of the above, the Panel is satisfied of the *prima facie* authenticity of W04870's Statements.

83. Regarding the probative value of W04870's Statements and their suitability for admission pursuant to Rule 154, the Panel takes note of the Defence's objection to the admission of W04870's evidence concerning Mr Thaçi's alleged position in the KLA hierarchy. In this regard, the Panel observes that W04870's Statements are relatively limited in size and that the portion challenged by the Defence amounts to less than 4 pages. The Panel further reiterates that the hearsay nature of evidence would not, without more, justify the exclusion of the proposed evidence. The basis of her belief on this point can be fully and adequately explored by the Defence in cross-examination. The Panel is therefore satisfied that, given that the Defence will have an opportunity to cross-examine the witness, including on the challenged aspects of her testimony relating to Mr Thaçi's alleged role, and conduct further investigations into this matter, the admission of W04870's Statements under Rule 154 would not cause unfair prejudice to the Defence. The Panel is also satisfied that the admission of W04870's Statements under Rule 154 would contribute to the expeditiousness of the proceedings. For these reasons, the Panel finds that W04870's Statements bear *prima facie* probative value, which is not outweighed by any prejudicial effect, and are suitable for admission pursuant to Rule 154.

84. *W04870's Associated Exhibits.* The Panel observes that W04870's Associated

[180] *See above* footnote 170.
[181] *See* W04870's Statements; Annex 7 to the Motion.
[182] Response, paras 50-52.

Exhibits comprise: (i) a photo-board identification, in which W04870 identifies the person who she believed ordered the arrest of her relative ("W04870's Photo Identification Record");[183] (ii) the Excerpts from [REDACTED];[184] and (iii) a signed handwritten note about a name given by W04870 during her domestic proceedings testimony ("Handwritten Note").[185] The Panel notes that the Defence, while not objecting to the W04870's Photo Identification Record and the Handwritten Note, opposes the admission as an Associated Exhibit of the Excerpts from [REDACTED].[186]

85. The Panel observes that W04870's Photo Identification Record was shown to W04870 and discussed in some detail in W04870's SPO Interview,[187] and considers that, without it, the relevant parts of that statement would become incomprehensible or of lesser probative value. The Panel is therefore satisfied that W04870's Photo Identification Record is relevant. The Panel is further satisfied of the *prima facie* authenticity and probative value of W04870's Photo Identification Record. Given that the Defence will have an opportunity to cross-examine this witness, the Panel also finds that the *prima facie* probative value of W04870's Photo Identification Record is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04870's Photo Identification Record is appropriate for admission under Rules 138(1) and 154.

86. With respect to the Excerpts from [REDACTED], the Panel notes that they were discussed in some detail in W04870's SPO Interview,[188] and is satisfied that they form an indispensable and inseparable part of that statement. The Panel further notes that the Excerpts from [REDACTED] were provided to the SPO by W04870 and corroborate certain aspects of the witness' evidence. The Panel is of

[183] SITF00240184-SITF00240192-ET RED.
[184] 103775-103785-ET.
[185] SPOE00122345-SPOE00122345-ET.
[186] Response, paras 53-54.
[187] W04870's SPO Interview, Part 1 RED, pp. 22-24.
[188] W04870's SPO Interview, Part 2 RED, pp. 2-7, 18-20, 24-27, Part 3 RED, pp. 1-5, 9-15.

the view that the concerns raised by the Defence with respect to the date, reliability and provenance of the Excerpts from [REDACTED] can be adequately addressed during cross-examination. The Panel is therefore satisfied that the Excerpts from [REDACTED] are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Excerpts from [REDACTED] are appropriate for admission under Rules 138(1) and 154.

87. Turning to the Handwritten Note, the Panel notes that it contains a name given by W04870 during her domestic proceedings testimony,[189] and finds that it forms an indispensable and inseparable part of that statement. The Panel is therefore satisfied that the Handwritten Note is relevant. The Panel is further satisfied of the *prima facie* authenticity and probative value of the Handwritten Note as it is signed by the witness. Given that the Defence will have an opportunity to cross-examine W04870, the Panel is also of the view that the *prima facie* probative value of the Handwritten Note is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Handwritten Note is appropriate for admission under Rules 138(1) and 154.

88. In light of the above, the Panel finds that W04870's Proposed Evidence[190] is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

V. CLASSIFICATION

89. Noting that the Motion (F01830), the Response (F01857) and the Reply (F01876) were filed confidentially, the Panel orders the SPO and the Defence to submit public redacted versions of their respective filings, or request reclassification

[189] W04870's Testimony, p. 13.
[190] *See above* footnote 170.

thereof, by no later than **Friday, 10 November 2023**.

VI. DISPOSITION

90. Based on the above, the Panel hereby:

a. **GRANTS** the SPO leave to add the Second Interview to its exhibit list;

b. **ORDERS** the SPO to file its amended exhibit list by no later than **Friday, 10 November 2023**;

c. **GRANTS** the Motion with respect to W03170, W04043, W04444, W04571, W04811, and W04870 in full, and with respect to W04765, in part;

d. **FINDS** the (parts of) the Statements and Associated Exhibits of W03170, W04043, W04444, W04811, W04765, W04870 set out in paragraphs 22, 30, 39, 48, 68, 78, 88 and the respective footnotes, to be appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of each of these witnesses and each of their statements and associated exhibits;

e. **FINDS** the following Associated Exhibits proposed by the SPO not to be appropriate for admission, for the reasons set out in paragraphs 64 and 67: (i) the Image; and (ii) the Book (save for the Pages);

f. **REITERATES** its order to the SPO to provide to the Panel, the Defence and Victims' Counsel, three days prior to the start of the testimony of any Rule 154 witness, a list of general topics and areas of questioning that will be covered during the *viva voce* examination of the witness;

g. **INFORMS** the SPO that the Panel will closely scrutinise the use made by the SPO of additional oral evidence in respect of any Rule 154 witness with a view to ensuring that evidence led orally is: (i) not unduly repetitious of the witness's written evidence; and (ii) that the Panel and the Defence had adequate notice of any supplementary evidence elicited orally from the witness;

h. **DIRECTS** the Registry to ensure that, upon admission, the metadata of the Video in Legal Workflow reflects the portion of the video that has been found admissible as set out in paragraph 66 and footnote 150; and

i. **ORDERS** the SPO and the Defence to submit public redacted versions of the Motion, the Response, and the Reply by no later than **Friday, 10 November 2023**.

Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 2 November 2023

At The Hague, the Netherlands.