



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**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:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 14 June 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution motion for the admission of the evidence of witnesses W00994, W02397, W02398, W02517, W02586, W02587, W03861, W04399, W04452, and W04044 pursuant to Rule 153 with confidential Annexes 1-11'**

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## I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law<sup>1</sup> and Rules 137-138, 141(1), and 153 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') seeks the admission in lieu of oral testimony of the written statements, transcripts, and associated exhibits of witnesses W00994, W02397, W02398, W02517, W02586, W02587, W03861, W04399, W04452, and W04044.<sup>3</sup> The proposed evidence is relevant, *prima facie* reliable, has probative value which is not outweighed by any prejudice, and meets all the conditions of Rule 153. Admission pursuant to Rule 153 is therefore in the interests of justice.<sup>4</sup>

2. In addition to the submissions on admissibility made herein, the annexes to this motion identify the statement(s)<sup>5</sup> tendered through each witness (collectively, 'Rule 153 Statement'), and the indicia of authenticity and reliability for each. The annexes also list the exhibits associated with the Rule 153 Statements, identifying where the exhibits are discussed, and describing in more detail how each meets the conditions for admission.

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

<sup>3</sup> See 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, KSC-BC-2020-06/F02111, 8 February 2024, Confidential ('Second Rule 153 Decision'), paras 32-33, 93(c). The Panel originally denied the admission of W04044's evidence pursuant to Rule 153 because it was unclear as to whether certain parts of the evidence went to proof of the acts and conduct of the Accused, KRASNIQI. As set out in further detail below, because it does not seek to rely on this part of the witness's evidence, the SPO now tenders a redacted version of the Rule 153 Statement.

<sup>4</sup> The applicable law has been set out previously. See Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 pursuant to Rule 153', KSC-BC-2020-06/F01658/RED, 17 November 2023, paras 6-12; Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904/RED, 27 November 2023, paras 7-12.

<sup>5</sup> As indicated in the annexes, the SPO has also tendered any audio/video records corresponding to these statements (see Disclosures 1294 and 1295).

## II. SUBMISSIONS

### A. GENERAL SUBMISSIONS ON ADMISSIBILITY

3. The evidence tendered for each witness should be admitted in lieu of oral testimony because it:

- (i) is relevant to the crimes charged in the Indictment;
- (ii) is *prima facie* reliable, containing sufficient indicia of authenticity;
- (iii) has probative value which is not outweighed by any prejudicial effect; and
- (iv) meets all of Rule 153's requirements for admission.

4. As set out in more detail below, numerous Rule 153(1)(a) factors apply to the tendered evidence, weighing heavily in favour of admission. The proposed evidence:

- (i) is of a cumulative nature, in that other witnesses have given or will give oral testimony on similar facts;
- (ii) is corroborated by evidence which the Accused has or will be able to effectively confront, including through cross-examination;
- (iii) relates to, *inter alia*, the crime-base, contextual elements, and the relevant historical, political, or military background;
- (iv) complements adjudicated facts;
- (v) concerns the impact of crimes on victims; and
- (vi) was recorded or documented in a manner enabling the Parties and Panel to assess each witness's demeanour and/or credibility.

5. Moreover, the tendered evidence meets the requirements set out in Rule 153(2) in that the witness statements and testimonies are either signed or otherwise attested to by the witnesses and/or others participating in the questioning of the witnesses. Additionally, the official records of these statements and testimonies note, where applicable, the date, time, place, and identities of those present during questioning.

6. In addition to fulfilling the letter of Rule 153, admission of the tendered evidence in lieu of oral testimony will serve the spirit of the Rule by not only avoiding repetitive testimony and saving valuable court-time, but also by sparing the witnesses the burden of testifying live, and avoiding the unnecessary stress, expense, and other disruptions to the witnesses' lives including the likelihood of retraumatisation.

7. For all of these reasons, pursuant to Rule 153(3), and as set out in more detail below, the necessities of a fair and expeditious trial warrant the admission of the tendered evidence in written form, without cross-examination.

#### B. SPECIFIC SUBMISSIONS ON ADMISSIBILITY

8. Nine witnesses<sup>6</sup> who are subject of this motion provide evidence relevant to the following detention sites in Prizren: the former MUP building, [REDACTED] and/or the [REDACTED]. As set out in more detail below, their evidence corroborates and complements the evidence of several Rule 154<sup>7</sup> and Rule 155<sup>8</sup> witnesses; as well as documentary evidence<sup>9</sup> and adjudicated facts.<sup>10</sup>

9. Together, the proposed evidence and relevant facts constitute an interconnected and compelling account of the circumstances of the charged victims' abduction, detention, mistreatment, and in one case, death. In addition to corroborating the evidence listed above, certain of these witnesses provide complementary evidence of their own backgrounds, the crimes perpetrated against them, and the impact of these crimes on them and their family members.

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<sup>6</sup> W00994, W02397, W02398, W02517, W02586, W02587, W03861, W04399, and W04452.

<sup>7</sup> See e.g. [REDACTED].

<sup>8</sup> See e.g. [REDACTED].

<sup>9</sup> See e.g. P00858; P01189; P00946; P00969; P01049; P01050; P01051; P01182.

<sup>10</sup> See e.g. Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023 ('Adjudicated Facts'), Facts 611-676. While these facts do not concern Prizren, certain of the witnesses provide evidence about the structures and/or crimes in other locations relevant to the Indictment, which relate to these facts.

## 1. W00994

10. *Relevance.* In [REDACTED], W00994, a Kosovar Albanian, was abducted from his home by the KLA, [REDACTED]. The [REDACTED] men were taken [REDACTED] where they were detained for two days [REDACTED]. During their detention, they were [REDACTED] and not given any food or water. W00994, [REDACTED] were severely mistreated, including W00994's [REDACTED]. The [REDACTED] men were released [REDACTED]. W00994's evidence is thus relevant to charged crimes in the Indictment,<sup>11</sup> and to assessing related evidence.<sup>12</sup>

11. *Authenticity and Reliability.* W00994's Rule 153 Statement consists of W00994's SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>13</sup> W00994 was advised of his rights and obligations as a witness, and confirmed his statement to be truthful, accurate, and voluntary.<sup>14</sup>

12. *Suitability for Rule 153 Admission.* W00994 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W00994's evidence is also largely cumulative to other witness and documentary evidence concerning KLA detention of civilians at the [REDACTED].<sup>15</sup> His evidence is corroborated by witnesses whom the Accused have confronted or will be able to effectively confront, including through cross-examination.<sup>16</sup>

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<sup>11</sup> See, *inter alia*, Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, ('Indictment'), paras [REDACTED]; Annex 3 to Prosecution Submission of updated witness list and confidential lesser redacted version of the Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief'), paras [REDACTED].

<sup>12</sup> See *e.g.* [REDACTED].

<sup>13</sup> 058225-TR-ET Part 1 RED2, 058225-TR-ET Part 2 Revised RED, 058225-TR-ET Part 3 RED2, and 058225-TR-ET Part 4 RED2.

<sup>14</sup> 058225-TR-ET Part 1 RED2, pp.2-4.

<sup>15</sup> See *e.g.* [REDACTED].

<sup>16</sup> See *e.g.* [REDACTED].

## 2. W02397

13. *Relevance.* W02397, of [REDACTED]<sup>17</sup> was detained and mistreated at [REDACTED] together with [REDACTED], approximately two weeks to a month after KFOR troops entered Kosovo. W02397 was with [REDACTED] when a man in a KLA uniform stopped and instructed them in Albanian to follow him to [REDACTED]. W02397 and [REDACTED] were taken to a basement bathroom and beaten with various implements including a metal bat and chain, by two separate groups of KLA soldiers who took turns beating them. W02397 was beaten all over his body including his face and feet. After approximately two hours, another KLA soldier who had not been part of the beating intervened and released them. As W02397 and [REDACTED], W02397's evidence is therefore relevant to crimes charged in the Indictment,<sup>18</sup> and to assessing related evidence.

14. *Authenticity and Reliability.* W02397's Rule 153 Statement consists of his 2019 SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>19</sup> W02397 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.<sup>20</sup>

15. *Suitability for Rule 153 Admission.* W02397 provides crime-base evidence which is especially suitable for admission in lieu of oral testimony. W02397's evidence is also largely cumulative with other witness and documentary evidence concerning persons of [REDACTED] who were detained and mistreated by the KLA at [REDACTED].<sup>21</sup> W02397's evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.<sup>22</sup>

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<sup>17</sup> 059637-TR-ET Part 1 RED2, pp.10, 12.

<sup>18</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>19</sup> 059637-TR-ET Part 1 RED2; 059637-TR-ET Part 2 RED2; 059637-TR-ET Part 3 RED2

<sup>20</sup> 059637-TR-ET Part 1, p.2; 059637-TR-ET Part 3 RED2, pp.18-19.

<sup>21</sup> See e.g. P00946\_ET; P01051, pp.024837-024838; 007692-007699, pp.007694, 007698; [REDACTED].

<sup>22</sup> See e.g. [REDACTED].

16. *Admissibility of the Associated Exhibit.* The exhibit associated with W02397's Rule 153 Statement comprises photographs of [REDACTED]; photographs [REDACTED]; and a map showing the location W02397 identified as the [REDACTED]. These materials were shown to and discussed with the witness during his SPO interview to the extent they form an inseparable and indispensable part of his evidence and should, therefore, be admitted as associated exhibits.

### 3. W02398

17. *Relevance.* W02398, [REDACTED], was detained and mistreated at the [REDACTED]. W02398 recounts how, in the summer of 1999, a man wearing a uniform and speaking Albanian, took them to the [REDACTED]. There, W02398 [REDACTED] were beaten with broomsticks and questioned for approximately two hours about [REDACTED], whether they had contact with Serbs, or had weapons. W02398 was injured on the arm and the back, [REDACTED]. W02398's evidence is therefore relevant to crimes charged in the Indictment,<sup>23</sup> and to assessing related evidence.

18. *Authenticity and Reliability.* W02398's Rule 153 Statement consists of his 2019 SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>24</sup> During this interview, W02398 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.<sup>25</sup>

19. *Suitability for Rule 153 Admission.* W02398 provides crime-base evidence which is especially suitable for admission in lieu of oral testimony. W02398's evidence is also

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<sup>23</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>24</sup> 060119-TR-ET Part 1 RED2; 060119-TR-ET Part 2 RED3.

<sup>25</sup> 060119-TR-ET Part 1 RED2, p.2; 060119-TR-ET Part 2 RED3, pp.10-11.

largely cumulative with other witness and documentary evidence concerning persons [REDACTED] being detained and mistreated by the KLA at the [REDACTED].<sup>26</sup> W02398's evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.<sup>27</sup>

20. *Admissibility of the Associated Exhibit.* The exhibit associated with W02398's Rule 153 Statement comprises photographs of [REDACTED]; photographs of [REDACTED]; and a map showing the location W02398 identified as the [REDACTED]. These materials were shown to and discussed with the witness during his SPO interview to the extent they form an inseparable and indispensable part of his evidence and should, therefore, be admitted as an associated exhibit.

#### 4. W02517

21. *Relevance.* W02517 was a member of KFOR who served as a [REDACTED] in the [REDACTED] in Prizren and the surrounding areas. On [REDACTED], W02517 arrived at the former MUP building in Prizren and was tasked with arranging care for an injured Kosovar Albanian man who had been detained there by the KLA. W02517 describes how he drove the man to a doctor, and later to his home. W02517 was present during the man's medical examination and saw injuries including extensive bruising and hematomas on his torso. On [REDACTED], W02517 received information from other KFOR soldiers that witnesses had identified Sami KEHAPI and Nezir KREYZIU as the KLA members who had beaten them at the MUP building. Based on this information, W02517 [REDACTED] where he was handed over to the

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<sup>26</sup> See e.g. P00946\_ET; P01051, pp.024837-024838; 007692-007699, pp.007694, 007698; [REDACTED].

<sup>27</sup> See e.g. [REDACTED].



KFOR Military Police. W02517's evidence is therefore relevant to crimes charged in the Indictment,<sup>28</sup> and to assessing related evidence.<sup>29</sup>

22. *Authenticity and Reliability.* W02517's Rule 153 Statement consists of the witness's SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>30</sup> W02517 was advised of his rights and obligations as a witness, and affirmed his willingness to voluntarily provide a statement.<sup>31</sup>

23. *Suitability for Rule 153 Admission.* W02517's evidence is largely cumulative to other witness and documentary evidence concerning crimes in the Prizren area. W02517's evidence concerning the Prizren MUP building and other crimes in Prizren is also corroborated by witnesses from this crime site whom the Accused were or will be able to confront, including through cross-examination.<sup>32</sup>

24. *Admissibility of the Associated Exhibits.* The KFOR Military Police reports discussed during the witness's SPO interview, authored and signed by the witness, form an inseparable and indispensable part of W02517's evidence and should therefore be admitted as associated exhibits.

## 5. W02586

25. *Relevance.* W02586 deployed with KFOR as a [REDACTED] based in Prizren. W02586 describes how on arrival at former MUP building, he encountered ten to fifteen injured people gathered outside. W02586 [REDACTED]. W02586 also determined [REDACTED]. W02586 [REDACTED]. W02586 concluded that

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<sup>28</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 59-61, [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>29</sup> See *e.g.* [REDACTED].

<sup>30</sup> 068306-TR-ET Part 1 RED2; 068306-TR-ET Part 2; 068306-TR-ET Part 3. [REDACTED].

<sup>31</sup> 068306-TR-ET Part 1 RED2, pp.1-2.

<sup>32</sup> See *e.g.* [REDACTED].

[REDACTED]. W02586's evidence is therefore relevant to the charged crimes in the Indictment,<sup>33</sup> and to assessing related evidence.<sup>34</sup>

26. *Authenticity and reliability.* W02586's Rule 153 Statement consists of his SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>35</sup> W02586 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.<sup>36</sup>

27. *Suitability for Rule 153 Admission.* W02586 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W02586's evidence is also largely cumulative to related evidence, including witness evidence which the Defence has been or will be able to confront, including through cross-examination.<sup>37</sup>

28. *Admissibility of the Associated Exhibits.* The photographs provided by the witness, and the KFOR reports including [REDACTED] by the witness,<sup>38</sup> were discussed during the course of his SPO interview to the extent they form an inseparable and indispensable part of his evidence and should, therefore, be admitted as associated exhibits.

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<sup>33</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 88, 96-98, 126, 136-138; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 627-629.

<sup>34</sup> See e.g. [REDACTED].

<sup>35</sup> 071408-TR-ET Part 1 Revised 2 RED; 071408-TR-ET Part 2 Revised 1; 071408-TR-ET Part 3 Revised.

<sup>36</sup> 058225-TR-ET Part 1 RED2, pp.2-4.

<sup>37</sup> See e.g. [REDACTED].

<sup>38</sup> While the Defence objects to certain KFOR reports tendered among the associated exhibits (*see* Section III below), they are discussed to the extent that parts of the witness's evidence would be incomprehensible or have lesser probative value without them. As set out in the annex, they also have broader relevance, including to the witness's activities at the time and provide context.

## 6. W02587

29. *Relevance.* W02587 was a [REDACTED] of KFOR based in Prizren. His main tasks were [REDACTED]. W02587 describes the general situation in Kosovo upon his arrival and his encounters with the KLA. W02587 was also one of the [REDACTED] regarding crimes committed at the [REDACTED] in Prizren. W02587's evidence is therefore relevant to the crimes charged in the Indictment,<sup>39</sup> and to assessing related evidence.<sup>40</sup>

30. *Authenticity and reliability.* W02587's Rule 153 Statement consists of his SPO interview which was audio-recorded and documented in verbatim transcripts.<sup>41</sup> W02587 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.<sup>42</sup>

31. *Suitability for Rule 153 Admission.* W02587 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W02587's evidence is also largely cumulative with other witness evidence, most notably [REDACTED], whom the Defence already had the opportunity to cross-examine.<sup>43</sup>

32. *Admissibility of the Associated Exhibit.* The KFOR report was discussed with the witness during his SPO interview to the extent it forms an inseparable and indispensable part of W02587's evidence and should therefore be admitted as an associated exhibit.

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<sup>39</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 59-61, 84-90, 96-98, 126-128, 136-138; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.632.

<sup>40</sup> See *e.g.* [REDACTED].

<sup>41</sup> 077324-TR-ET Part 1 RED2; 077324-TR-ET Part 2; 077324-TR-ET Part 3.

<sup>42</sup> 077324-TR-ET Part 1 RED2, pp. 1-2, 6.

<sup>43</sup> See also W02540; W03881.

## 7. W03861

33. *Relevance.* W03861 is a man of [REDACTED] who lived in [REDACTED] in 1999. In [REDACTED], he was arrested by the KLA and taken to [REDACTED] in Prizren where he was detained. During his detention, W03861 was beaten, told to confess that he had been stealing during the war, and ordered to [REDACTED]. W03861 was released after two or three hours but told to return on the following day.<sup>44</sup> W03861's evidence is therefore relevant to crimes charged in the Indictment,<sup>45</sup> and to assessing related evidence.<sup>46</sup>

34. *Authenticity and Reliability.* W03861's Rule 153 Statement consists of his SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>47</sup> W03861 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.<sup>48</sup>

35. *Suitability for Rule 153 Admission.* W03861 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W03861's evidence is also largely cumulative to other witness and documentary evidence concerning detentions and mistreatment in [REDACTED] in Prizren.<sup>49</sup> His evidence is also corroborated by witnesses whom the Accused have confronted or will be able to effectively confront, including through cross-examination.<sup>50</sup>

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<sup>44</sup> 055925-TR-ET Part 1 RED2, pp.12-13.

<sup>45</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01296/A01, paras [REDACTED].

<sup>46</sup> E.g. [REDACTED].

<sup>47</sup> 055925-TR-ET Part 1 RED2; 055925-TR-ET Part 2 RED2.

<sup>48</sup> 055925-TR-ET Part 1 RED2, pp.2-3, 5.

<sup>49</sup> See e.g. [REDACTED].

<sup>50</sup> See e.g. [REDACTED].

## 8. W04399

36. *Relevance.* W04399 is a [REDACTED] journalist who covered the war in the former Yugoslavia. In 1999, he worked in Albanian refugee camps where he gathered information about the situation in Kosovo at the time. On [REDACTED], W04399 followed the [REDACTED] of KFOR to Kosovo. W04399 reported on the daily life of the [REDACTED] KFOR soldiers and the conflicts between Serbian forces and the KLA.<sup>51</sup> On [REDACTED], W04399 documented the release by [REDACTED] KFOR of [REDACTED] prisoners who had been considered collaborators in [REDACTED].<sup>52</sup> His [REDACTED] includes an interview with a KLA commander, [REDACTED], who was referred to him as the person in charge. W04399's evidence is therefore relevant to charged crimes in the Indictment,<sup>53</sup> and to assessing related evidence.

37. *Authenticity and reliability.* W04399's Rule 153 Statement consists of his SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>54</sup> W04399 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.<sup>55</sup>

38. *Suitability for Rule 153 Admission.* W04399's evidence is largely cumulative to other witness and documentary evidence concerning detention and mistreatment in [REDACTED].<sup>56</sup> The evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.<sup>57</sup>

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<sup>51</sup> 068595-TR-ET Part 1 RED3, pp.10-11, 16-17.

<sup>52</sup> 068595-TR-ET Part 1 RED3, pp.18-21.

<sup>53</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>54</sup> 068595-TR-ET Part 1 RED3; 068595-TR-ET Part 2 RED2; 068595-TR-ET Part 1 RED3.

<sup>55</sup> 068595-TR-ET Part 1 RED3, pp.1-2; 068595-TR-ET Part 3 RED2, p.12.

<sup>56</sup> See *e.g.* [REDACTED].

<sup>57</sup> See *e.g.* [REDACTED].

39. *Admissibility of the Associated Exhibits.* The videos and reports shown to and commented on by W04399 during his interview, as well as his handwritten diary, form an inseparable and indispensable part of the witness's evidence and should therefore be admitted as associated exhibits.

#### 9. W04452

40. *Relevance.* W04452 is a Kosovar Albanian from Prizren, who belonged to the [REDACTED] commanded by [REDACTED]. W04452 was there for approximately one or two months,<sup>58</sup> assisting in the [REDACTED]. W04452 entered Kosovo together with other soldiers including [REDACTED]. In Kosovo, [REDACTED]. While in [REDACTED], W04452 was told that [REDACTED] and another person had been brought there. W04452 saw [REDACTED]. [REDACTED], who was considered a traitor because he had continued working for the police, looked like he had been beaten. W04452 brought some [REDACTED]. W04452 was present the next day when [REDACTED], and he saw [REDACTED] there. W04452's evidence is therefore relevant to crimes charged in the Indictment,<sup>59</sup> and to assessing related evidence.

41. *Authenticity and Reliability.* W04452's Rule 153 Statement consists of his SPO interview which was audio-visually recorded and documented in verbatim transcripts.<sup>60</sup> W04452 was advised of his rights and obligations as a witness and confirmed his statement to be truthful, accurate, and voluntary.<sup>61</sup>

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<sup>58</sup> 065230-TR-ET Part 1 RED2, p. 17, lines 15-19

<sup>59</sup> See *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 89, [REDACTED], [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>60</sup> 065230-TR-ET Part 1 RED2; 065230-TR-ET Part 2 RED2; 065230-TR-ET Part 3 RED2; 065230-TR-ET Part 4 RED2; 065230-TR-ET Part 5 RED2.

<sup>61</sup> 065230-TR-ET Part 1 RED2, pp.2, 12.

42. *Suitability for Rule 153 Admission.* W04452 provides evidence which is largely cumulative with other witness and documentary evidence concerning the KLA centre [REDACTED];<sup>62</sup> and the [REDACTED].<sup>63</sup> W04452's evidence is also corroborated by other witnesses whom the Defence has confronted or will be able to confront, including through cross-examination;<sup>64</sup> and complements certain adjudicated facts.<sup>65</sup>

43. Although THAÇI and KRASNIQI are mentioned during the SPO interview,<sup>66</sup> the references are incidental and general in nature and do not go to proof of the acts and conduct of the Accused in relation to the crimes charged. However, noting the position of the THAÇI and KRASNIQI Defence,<sup>67</sup> and if the Panel considers it to be necessary for admission of this evidence under Rule 153, the SPO proposes that any redactions should be limited to the parts of the evidence concerning THAÇI and KRASNIQI.<sup>68</sup>

44. *Admissibility of the Associated Exhibit.* The photos showed to and commented on by W04452 during his interview, as well as his hand-drawn sketch, form an inseparable and indispensable part of the witness's evidence and should therefore be admitted as an associated exhibit.

## 10. W04044

45. *Relevance, Authenticity, and Reliability.* The Panel previously found W04044's Rule 153 Statement to be relevant and *prima facie* authentic; the associated exhibit to be an

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<sup>62</sup> See e.g. [REDACTED].

<sup>63</sup> See e.g. [REDACTED].

<sup>64</sup> See e.g. [REDACTED].

<sup>65</sup> See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 611-676.

<sup>66</sup> 065230-TR-ET Part 2 RED2, p. 13.

<sup>67</sup> See Section III below.

<sup>68</sup> The Defence proposes redactions to the excerpt at 065230-TR-ET Part 2 RED2, pp.12-13. However, the information concerning the Accused is only on p.13, lines 2-4. If considered necessary by the Panel, only the following excerpts should be redacted: 'Hashim Thaci [sic] was the commander' (lines 2-3), and 'Jakup Krasniqi' (line 4).

indispensable and inseparable part of the witness's evidence; and W04044's proposed evidence as a whole to have met the requirements of Rule 153(2).<sup>69</sup>

46. *Suitability for Rule 153 Admission.* The Panel found, however, that W04044's potential misidentification of Jakup KRASNIQI<sup>70</sup> meant that it was not entirely clear whether this part of his evidence went to proof of the acts and conduct of the Accused.<sup>71</sup> For this reason, the Panel held that the prejudicial effect of admitting the evidence outweighed its probative value, and denied admission of W04044's evidence pursuant to Rule 153.<sup>72</sup>

47. The SPO has carefully considered the objections of the Defence and the Panel's holding in this regard, together with the limited nature and scope of W04044's evidence, which is primarily relevant to crime-base and contextual elements, and is largely complementary to and corroborative of adjudicated facts and witness evidence, which the Accused had the opportunity to confront.<sup>73</sup> In these circumstances and considering the evidence has been found to be otherwise admissible under Rule 153, the SPO now tenders the transcript with redactions to the parts related to KRASNIQI,<sup>74</sup> thereby removing any uncertainty as to whether the proposed evidence goes to proof of the acts and conduct of the Accused.<sup>75</sup> For these reasons, the probative

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<sup>69</sup> Second Rule 153 Decision, KSC-BC-2020-06/F02111, paras 27-31.

<sup>70</sup> See 053336-TR-ET Part 3, pp. 4-5 (W04044 stated it was [REDACTED]).

<sup>71</sup> Second Rule 153 Decision, KSC-BC-2020-06/F02111, paras 32-33.

<sup>72</sup> Second Rule 153 Decision, KSC-BC-2020-06/F02111, paras 32-33.

<sup>73</sup> Second Rule 153 Decision, KSC-BC-2020-06/F02111, paras 27, 30.

<sup>74</sup> See Annex 11 (the proposed redactions are marked in red on pp.4-5). Notably, the Defence has had and will have opportunities to cross-examine other witnesses concerning the announcement of the [REDACTED]. See e.g. Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para. [REDACTED], fn. [REDACTED] (and sources cited therein).

<sup>75</sup> Compare Second Rule 153 Decision, KSC-BC-2020-06/F02111, para.32.



value of the evidence is no longer outweighed by any prejudicial effect, and should be admitted pursuant to Rule 153.<sup>76</sup>

### III. *INTER PARTES* CORRESPONDENCE

48. As instructed by the Panel, the SPO, Defence, and Victims' Counsel have engaged in *inter partes* correspondence in an effort to agree on the evidence to be admitted pursuant to the present motion.<sup>77</sup>

49. Victims' Counsel does not object to any of the tendered evidence being admitted pursuant to Rule 153.

50. The four Defence teams:

- a. agree to the admission of the evidence of witnesses W00994, W02398, W02587, W03861, and W04399 pursuant to Rule 153; and
- b. agree to the admission of W02586's evidence pursuant to Rule 153 with the exception of certain KFOR reports<sup>78</sup> which, the Defence submits, lack sufficient relevance because they relate neither to the [REDACTED] nor to any deceased victim named in the Indictment, and are not quoted in the SPO Pre-Trial Brief.<sup>79</sup>

51. Additionally, the SELIMI Defence wishes to cross-examine W02517 or W02549, preferably the latter. The SELIMI Defence submits that if the SPO will call W02549 pursuant to Rule 154, it will not object to W02517's evidence being admitted pursuant

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<sup>76</sup> If this motion is granted, the audio-visual records relating to W04044's evidence will be appropriately redacted, disclosed, and tendered in due course.

<sup>77</sup> Order on the Conduct of the Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 39, 51, 73. Considering that W04044 was part of previous *inter partes* correspondence and litigation, the renewed request for Rule 153 admission of his evidence was not part of these consultations relating to the nine other witnesses concerned by this motion.

<sup>78</sup> SITF00189342-SITF00189362, SITF00189402-00189426, SITF00189427-00189437, SITF00189465-00189484.

<sup>79</sup> See fn.38 above.

to Rule 153. If not, or if W02549 will be dropped as a witness, the SELIMI Defence wishes to cross-examine W02517.

52. The THAÇI and KRASNIQI Defence also object to the admission of the evidence of W04452 pursuant to Rule 153 because, the Defence submits, he places the Accused in a position of command, and the Defence therefore wishes to cross-examine him on this issue. The THAÇI and KRASNIQI Defence would not object to admission, however, if this portion of his testimony (065230-TR-ET Part 2, pp. 12-13) was redacted.<sup>80</sup>

53. Lastly, the THAÇI and KRASNIQI Defence object to the admission of W02397's evidence through Rule 153 and wishes to cross-examine him.

54. As set out above, however, the evidence of each witness is relevant, *prima facie* reliable, and of probative value which is not outweighed by any prejudice. The evidence of each witness is also entirely suitable for admission in lieu of oral testimony and should, therefore, be admitted pursuant to Rule 153.

#### IV. CLASSIFICATION

55. This submission and its annexes are confidential as they contain information concerning witnesses with protective measures, and witnesses whose identities are not public at this time.

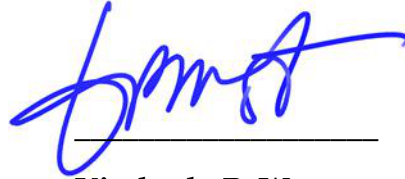
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<sup>80</sup> See para.423 above.

V. RELIEF REQUESTED

56. For the foregoing reasons, the Trial Panel should admit the tendered Rule 153 Statements and associated exhibits pursuant to Rule 153.

**Word count:** 5167



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**Kimberly P. West**

**Specialist Prosecutor**

Friday, 14 June 2024

At The Hague, the Netherlands.