



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,  
Rexhep Selimi, and Jakup Krasniqi**

**Before:** Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 2 July 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Prosecution Motion for the Admission of the Evidence of Witnesses  
W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677,  
and W04732 Pursuant to Rule 153**

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**Specialist Prosecutor**

Kimberly P. West

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

**TRIAL PANEL II** (“Panel”), pursuant to Articles 21, 37 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-138, 141(1) and 153 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 8 April 2024, the Specialist Prosecutor’s Office (“SPO”) filed a motion for the admission of evidence of witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 (“Witnesses”) pursuant to Rule 153 (“Motion”).<sup>1</sup>
2. On 18 April 2024, the Defence teams for the four Accused (collectively, “Defence”) filed a joint response to the Motion (“Joint Response”).<sup>2</sup>
3. On 29 April 2024, the SPO filed a reply to the Joint Response (“Reply”).<sup>3</sup>

## II. SUBMISSIONS

4. The SPO submits that the statements, together with the associated exhibits, of the Witnesses (“Rule 153 Statements” and “Associated Exhibits”, respectively) meet the requirements of Rules 138 and 153, are relevant, authentic and reliable and have probative value, which is not outweighed by any prejudice.<sup>4</sup> The SPO

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<sup>1</sup> F02227, Specialist Prosecutor, *Prosecution Motion for the Admission of the Evidence of Witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 Pursuant to Rule 153*, 8 April 2024, confidential, with Annexes 1-10, confidential (a public redacted version was filed on the same day, F02227/RED).

<sup>2</sup> F02251, Specialist Counsel, *Joint Defence Response to Prosecution Motion for the Admission of the Evidence of Witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 Pursuant to Rule 153*, 18 April 2024, confidential (a public redacted version was filed on 14 May 2024, F02251/RED).

<sup>3</sup> F02269, Specialist Prosecutor, *Prosecution Reply Relating to Rule 153 Motion F02227*, 29 April 2024, confidential (a public redacted version was filed on the same day, F02269/RED).

<sup>4</sup> Motion, para. 1. *See also* Motion, paras 3-5.

therefore requests that the Panel admit the Rule 153 Statements and Associated Exhibits (“Proposed Evidence”) into evidence pursuant to Rule 153.<sup>5</sup>

5. The Defence does not object to the admission, pursuant to Rule 153, of the proposed evidence of W00996, W02257, W04420, W04645, and W04677.<sup>6</sup> The Defence objects to the admission of W04352, W04367 and W04569’s evidence through Rule 153 in light of their significance to the SPO’s case and the Defence’s wish to cross-examine them.<sup>7</sup> The Defence requests that the Panel dismiss the Motion in relation to W02303 and W04732’s evidence and submits that W02303 and W04732 should be dropped from the SPO witness list to streamline the proceedings.<sup>8</sup>

6. The SPO replies that the Joint Response fails to show why the Motion should not be granted in its entirety.<sup>9</sup> The SPO argues that there is no “right” to cross-examination and that no party can “elect” to cross-examine any witnesses it chooses.<sup>10</sup> In the SPO’s submission, the Defence’s arguments against Rule 153 admission of the Proposed Evidence are matters: (i) which go to the weight to be assigned to the evidence rather than to its admission; and/or (ii) which are immaterial for assessing the admissibility of evidence pursuant to Rule 153.<sup>11</sup> The SPO reiterates that the Motion should be granted in its entirety.<sup>12</sup>

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<sup>5</sup> Motion, paras 1, 7, 48.

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

<sup>7</sup> Joint Response, para. 3.

<sup>8</sup> Joint Response, para. 4.

<sup>9</sup> Reply, para. 1.

<sup>10</sup> Reply, para. 3.

<sup>11</sup> Reply, para. 3.

<sup>12</sup> Reply, para. 15.

### III. APPLICABLE LAW

7. The Panel incorporates by reference the applicable law as set out in its First Rule 153 Decision as well as in its First Rule 154 Decision and First Bar Table Decision.<sup>13</sup>

### IV. DISCUSSION

#### A. W00996

8. The SPO submits that W00996's Proposed Evidence<sup>14</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>15</sup>

9. The Defence does not object to the admission, pursuant to Rule 153, of W00996's Proposed Evidence.<sup>16</sup>

10. As regards relevance, the Panel notes that W00996 is a Serb who lived in the village of Zoçishtës/Zoçište and that the SPO intends to rely on W00996's Rule 153 Statement in relation to, *inter alia*: (i) the situation and ethnic composition in the Rahovec/Orahovac area prior to July 1998; (ii) the alleged attack by the Kosovo Liberation Army ("KLA") against Zoçishtës/Zoçište village and neighbouring villages on 17 July 1998; (iii) a group of women from nearby villages, including W00072, who reached Zoçishtës/Zoçište village and allegedly communicated a request from the KLA that the Zoçishtës/Zoçište defence surrender; (iv) the

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<sup>13</sup> F01904, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153* ("First Rule 153 Decision"), 3 November 2023, confidential, paras 8-10, 12-13 (a public redacted version was filed on 27 November 2023, F01904/RED); F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* ("First Rule 154 Decision"), 16 March 2023, confidential, paras 11-25 (a public redacted version was filed on 7 November 2023, F01380/RED); F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("First Bar Table Decision"), 31 March 2023, confidential, paras 8-13.

<sup>14</sup> W00996's Proposed Evidence consists of the following items, including any translations thereof: (i) 033109a Parts 1-2 RED; and (ii) 033109-TR-ET Parts 1-2 Revised 1 RED ("W00996's Rule 153 Statement"). See Annex 1 to the Motion. The Panel notes the replacement made by the SPO at Reply, para. 2. The Panel also notes that associated exhibit 033107-033108-ET is not tendered for admission.

<sup>15</sup> Motion, paras 8-10.

<sup>16</sup> Joint Response, para. 2.

alleged delivery by W00072 to W00996 of a letter written by her husband asking the Zoçishtës/Zoçište defence to surrender; (v) W00996's response to W00072's husband's letter; and (vi) the subsequent evacuation of villagers and the taking of the village by the KLA.<sup>17</sup> The Panel further notes that the Defence does not challenge the relevance of W00996's Rule 153 Statement.<sup>18</sup> Having reviewed W00996's Rule 153 Statement, the Panel is satisfied that it contains evidence relevant to the charges in the Indictment.<sup>19</sup>

11. As regards authenticity, the Panel notes that W00996's Rule 153 Statement is W00996's Special Investigative Task Force ("SITF") statement, which was audio-visually recorded and documented in verbatim transcripts.<sup>20</sup> The Panel further notes that the Defence does not challenge the authenticity of W00996's Rule 153 Statement.<sup>21</sup> The Panel is therefore satisfied that W00996's Rule 153 Statement is *prima facie* authentic.

12. Regarding the probative value of W00996's Rule 153 Statement and its suitability pursuant to Rule 153, the SPO submits that: (i) W00996 was also warned of his rights as a witness and confirmed that his Rule 153 Statement was true, accurate, and given voluntarily;<sup>22</sup> (ii) W00996 provides evidence which is largely cumulative of, and corroborated by, evidence of other witnesses concerning the KLA offensive in the Rahovec/Orahovac area, including Zoçishtës/Zoçište;<sup>23</sup> (iii) W00996's Rule 153 Statement is corroborated by witnesses whom the Accused were and will be able to cross-examine, and complements relevant adjudicated

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<sup>17</sup> Motion, para. 8.

<sup>18</sup> Joint Response, para. 2.

<sup>19</sup> See F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 22, 44, 65, 67, 102; see also F01594/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("SPO Pre-Trial Brief"), 9 June 2023, confidential, paras 368-370, 372, 377-379.

<sup>20</sup> Motion, para. 9. See also Annex 1 to the Motion.

<sup>21</sup> Joint Response, para. 2.

<sup>22</sup> Motion, para. 9. See also Annex 1 to the Motion.

<sup>23</sup> See Motion, para. 10, fn. 8.

facts.<sup>24</sup> The Panel also notes that W00996's Rule 153 Statement is limited in length, is not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie* authenticity of W00996's Rule 153 Statement,<sup>25</sup> and is satisfied that W00996's Rule 153 Statement meets the requirements under Rule 153(2). In addition, the Panel observes that the Defence does not object to the admission of W00996's Rule 153 Statement pursuant to Rule 153.<sup>26</sup>

13. For these reasons, the Panel finds that W00996's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

#### **B. W02257**

14. The SPO submits that W02257's Proposed Evidence<sup>27</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>28</sup>

15. The Defence does not object to the admission, pursuant to Rule 153, of the W02257's Proposed Evidence.<sup>29</sup>

16. As regards relevance, the Panel notes that W02257 is a Serb individual who worked at a medical centre in the Rahovec/Orahovac area which was allegedly attacked by the KLA on 17 July 1998. The SPO intends to rely on W02257's Rule 153 Statements in relation to, *inter alia*: (i) the circumstances of the alleged detention by KLA forces of the medical and operational personnel until the morning of

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<sup>24</sup> See Motion, para. 10, fn. 9-10 and F01534/A01, Panel, *Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* ("Adjudicated Facts"), 17 May 2023, confidential, facts 457-458.

<sup>25</sup> See *above* para. 11. See also Annex 1 to the Motion.

<sup>26</sup> Joint Response, para. 2. See also Motion, para. 48.

<sup>27</sup> W02257's Proposed Evidence consists of the following items, including any translation thereof: (i) 076249b Part 1 RED; 076249b Part 2; 076249b Part 3 RED; (ii) 076249-TR-ET Parts 1-3 Revised RED; (iii) [REDACTED] ("W02257's Rule 153 Statements"). See Annex 2 to the Motion.

<sup>28</sup> Motion, paras 11-13.

<sup>29</sup> Joint Response, para. 2.

19 July 1998 and the hostilities in the area at that time; (ii) how W02257 allegedly saw a KLA member taking at gunpoint charged murder victim Aleksander STANOJEVIĆ from the medical centre; (iii) how W02257's colleagues later informed the witness that the KLA took other charged murder victims from the centre (Duško PATRNOGIĆ, Dorde DORIĆ, and Krsta STANOJEVIĆ); (iv) how the KLA allegedly interrogated W02257's colleagues through the night of 18-19 July 1998.<sup>30</sup> Having reviewed W02257's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.<sup>31</sup>

17. As regards authenticity, the Panel notes that W02257's Rule 153 Statements comprise the witness's SPO interview and prior testimony before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), which consist of verbatim, signed and/or official transcripts, and that W02257 was duly advised of her rights as a witness and confirmed that her statements were true, accurate and given voluntarily.<sup>32</sup> The Panel also notes that the SPO interview was audio-visually recorded.<sup>33</sup> The Panel observes that the Defence does not challenge the authenticity of W02257's Rule 153 Statements.<sup>34</sup> The Panel is therefore satisfied that W02257's Rule 153 Statements are *prima facie* authentic.

18. Regarding the probative value of W02257's Rule 153 Statements and their suitability for admission pursuant to Rule 153, the SPO submits that W02257's Rule 153 Statements: (i) are largely cumulative of other witness and documentary evidence concerning the events surrounding the alleged Rahovec/Orahovac attack and the fate of those detained, including at the Malishevë/Mališevo detention site;<sup>35</sup> (ii) are corroborated by witnesses whom the Accused were and will be able

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<sup>30</sup> Motion, para. 11; *see also* Amended List of Witnesses, pp. 140-141.

<sup>31</sup> *See* Indictment, paras 22, 44, 65, 67, 102; *see also* SPO Pre-Trial Brief, paras 368-370, 372, 377-379.

<sup>32</sup> *See e.g.* 076249-TR-ET Part 1 Revised RED, pp. 3-4; 076249-TR-ET Part 3 Revised RED, pp. 39-40; *See also* Annex 2 to the Motion, pp. 1-3.

<sup>33</sup> *See e.g.* 076249-TR-ET Part 1 Revised RED, p. 1

<sup>34</sup> Joint Response, para. 2.

<sup>35</sup> *See* Motion, para. 13, fn 14 *referring to* Pre-Trial Brief, fn. 1520.



to cross-examine; and (iii) complement relevant adjudicated facts.<sup>36</sup> The Panel also notes that W02257's Rule 153 Statements are limited in length, are not unduly repetitive, and provide crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel observes that the Defence does not object to the admission of W02257's Rule 153 Statements pursuant to Rule 153.<sup>37</sup> The Panel recalls its findings regarding the *prima facie* authenticity of W02257's Rule 153 Statements,<sup>38</sup> and is satisfied that W02257's Rule 153 Statements meet the requirements under Rule 153(2).

19. For these reasons, the Panel finds that W02257's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

### C. W02303

20. The SPO submits that W02303's Proposed Evidence<sup>39</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>40</sup>

21. The Defence objects to the admission of W02303's Proposed Evidence pursuant to Rule 153 in light of what it claims to be its limited value.<sup>41</sup> The Defence submits that W02303 should be dropped from the SPO's witness list as her evidence is of low relevance, mainly hearsay and would unnecessarily bloat the

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<sup>36</sup> See Motion, para. 13, fn. 15-16, and Adjudicated Facts 457-458.

<sup>37</sup> Joint Response, para. 2.

<sup>38</sup> See *above* para. 17.

<sup>39</sup> W02303's Proposed Evidence consists of three statements and ten associated exhibits, including any translations thereof: (i) 061376b Part 1 RED; 061376b Part 2; 061376b Part 3 RED; (ii) 061376-TR-ET Part 1 RED; 061376-TR-ET Part 2; 061376-TR-ET Part 3 RED; (iii) SITF00063119-SITF00063142-ET Revised RED (collectively, "W02303's Rule 153 Statements"); as well as: (i) ET U000-5031-U000-5032; and (ii) SPOE00193407-00193416, pp. SPOE00193407-SPOE00193411; (iii) 061356-061356-ET; (iv) 061357-061359-ET RED, p. 061357; (v) 061360-061360-ET; (vi) 061361-061363-ET, p. 061361; (vii) 061361-061363-ET, pp. 061362-061363; (viii) 061364-061366; (ix) 061367-061370-ET; (x) 061371-061375-ET RED ("W02303's Associated Exhibits"). See Annex 3 to the Motion.

<sup>40</sup> Motion, paras 13-17.

<sup>41</sup> Joint Response, paras 5, 10.



record.<sup>42</sup> The Defence submits that W02303's Proposed Evidence is essentially redundant and hardly cumulative in nature as it is rather a reiteration of others' evidence rather than independent evidence.<sup>43</sup>

22. The SPO replies that the Defence arguments demonstrate a misunderstanding of: (i) the nature of the evidence; (ii) the requirements for admissibility; and (iii) the factors used to assess whether admission pursuant to Rule 153 is warranted.<sup>44</sup> The SPO rejects the Defence submissions that W02303's Proposed Evidence is of low probative value, mainly hearsay, and would unnecessarily bloat the record.<sup>45</sup> To the contrary, the SPO submits that W02303's Proposed Evidence is relevant, based on first-hand observations and personal experiences, and that its admission through Rule 153 facilitates fair and expeditious proceedings.<sup>46</sup> The SPO reiterates that W02303's Proposed Evidence should be admitted in its entirety.<sup>47</sup>

23. As a preliminary matter, the Panel reiterates that a Response is not intended to serve as a vehicle to submit a fresh application.<sup>48</sup> Insofar as the Defence Response in respect of this witness goes beyond the question of the admissibility of the witness's evidence pursuant to Rule 153 and seeks alternative relief, the Panel will limit its considerations to those relevant to deciding the question of

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<sup>42</sup> Joint Response, paras 4, 6-9.

<sup>43</sup> Joint Response, para. 10.

<sup>44</sup> Reply, para. 4.

<sup>45</sup> Reply, paras 5-6. *See also* Motion, para. 46.

<sup>46</sup> Reply, paras 6-7. *See also* Motion, para. 46.

<sup>47</sup> Reply, para. 4. *See also* Motion, para. 46.

<sup>48</sup> F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, para. 50 (a public redacted version was filed on the same day, F01603/RED) ("First Rule 155 Decision"); F01864, Panel, *Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155*, 17 October 2023, confidential, para. 48 (a public redacted version was filed on 12 December 2023, F01864/RED) ("Second Rule 155 Decision"); F02013, Panel, *Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155*, 15 December, confidential, para. 52 ("third Rule 155"); F02283, Panel, *Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155*, 3 May 2024, confidential, para. 17 (a public redacted version was filed on the same day, F02283/RED) ("Fourth Rule 155").

admission. Should the Defence wish to seek another relief based on considerations extraneous to Rule 153, it may file a reasoned application to that effect.

24. As regards relevance, the Panel notes that W02303 is a Serb who lived in Rahovec/Orahovac in the summer of 1998, and that the SPO intends to rely on W02303's Rule 153 Proposed Evidence in relation to, *inter alia*: (i) the kidnapping of her cousin, Jugoslav KOSTIĆ on 11 July 1998; (ii) the letter her family received conditioning her cousin's release; (iii) the reaction of other Serb families to evacuate their children; (iv) the digging of trenches by the KLA on 16 July 1998 overlooking Reti/Retimlje, encircling the population; (v) the documentation of the alleged KLA attack on Reti/Retimlje and Opterusë/Opteruša on 17 and 18 July 1998; (vi) how her brothers and charged murder victims Lazar and Todor KOSTIĆ were last seen after the Reti/Retimlje attack, when they were allegedly taken by the KLA; and (vii) the identification of her brother's remains in 2005.<sup>49</sup> Having reviewed W02303's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.<sup>50</sup>

25. As regards authenticity, the Panel notes that W02303's Rule 153 Statements consist of: (i) the audio-video recorded and verbatim transcript of W02303's SPO interview, during which the witness was duly advised of her rights and obligations as a witness and confirmed that the contents of her statements are true and accurate;<sup>51</sup> and (ii) the verbatim transcript of W02303's testimony before the District Court of Belgrade, which she provided under solemn declaration.<sup>52</sup> The Panel further notes that the Defence does not challenge the authenticity of W02303's Rule 153 Statements. The Panel is therefore satisfied that W02303's Rule 153 Statements are *prima facie* authentic.

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<sup>49</sup> Motion, para. 14. *See also* Amended List of Witnesses, p. 142.

<sup>50</sup> *See* Indictment, paras 59-61, 67, 96-98, 103, 136, 138, 153-154; *see also* SPO Pre-Trial Brief, paras 368-383.

<sup>51</sup> 061376b Part 1 RED; 061376b Part 3 RED; 061376-TR-ET Part 1, p. 2; 061376-TR-ET Part 3, p. 37. *See also* Annex 3 to the Motion, pp. 2-3.

<sup>52</sup> SITF00063119-SITF00063142-ET Revised RED, p. 3.

26. Turning to W02303's Associated Exhibits, the Panel notes that they consist of: (i) a letter written by W02303's cousin, Jugoslav KOSTIC, regarding the terms of his release; (ii) a list of Serbs allegedly kidnapped from Rahovec/Orahovac and neighbouring villages in July 1998; (iii) a certificate from the International Committee of the Red Cross ("ICRC") confirming the handover of W00083; (iv) W02303's notes concerning a meeting with two former KLA members; (v) handwritten maps of Reti/Retimlje and Opertusë/Opertuša; (vi) ICRC correspondence in relation to the kidnappings in the area between 24 June and 18 July 1998; and (vii) a list of witnesses and victims of the alleged attacks in Reti/Retimlje and Opertusë/Opertuša on 18 July 1998.<sup>53</sup> The Panel is satisfied that W02303's Associated Exhibits form an indispensable and inseparable part of W02303's Rule 153 Statements. The Panel is also satisfied that they: (i) are relevant and provide relevant context to the written records in which they are discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

27. Regarding the probative value of W02303's Proposed Evidence and its suitability for admission pursuant to Rule 153, the Panel notes the Defence's submission that the evidence should not be admitted, mostly due to its low probative value and hearsay nature. First, the Panel recalls that hearsay is admissible before the Specialist Chambers and that the ultimate reliability of the proposed evidence is a factor in the Panel's determination of the weight to attach to that evidence, which is to be assessed at the end of the trial in light of all the evidence.<sup>54</sup> Further, the Panel observes that the proposed evidence is probative as it contains information gathered by W02303 that is contemporaneous with the

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<sup>53</sup> See above footnote 39 listing W02303's Associated Exhibits. See also Annex 3 to the Motion, pp. 4-11.

<sup>54</sup> See e.g. F02111, Panel, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153* ("Second Rule 153 Decision"), 8 February 2024, confidential (a public redacted version was filed on the same day, F02111/RED), paras 22, 41. See also First Rule 153 Decision, para. 56.

relevant attacks.<sup>55</sup> The Panel also observes that, as noted by the SPO, W02303's Proposed Evidence: (i) provides crime-base and contextual evidence; (ii) is largely cumulative of other witness and documentary evidence concerning the alleged attacks of Reti/Retimlje and Opterusë/Opterusă, related abductions and detentions; (iii) is corroborated by witnesses whom the Accused were and will be able to cross-examine; and (iv) complements relevant adjudicated facts.<sup>56</sup> The Panel also notes that W02303's Proposed Evidence is limited in length and is not unduly repetitive. The Panel further recalls its findings regarding the *prima facie* authenticity of W02303's Proposed Evidence,<sup>57</sup> and is satisfied that W02303's Proposed Evidence meets the requirements under Rule 153(2).

28. For these reasons, the Panel finds that W02303's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

#### D. W04352

29. The SPO submits that W04352's Proposed Evidence<sup>58</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>59</sup>

30. The Defence objects to the admission of W04352's Proposed Evidence pursuant to Rule 153.<sup>60</sup> The Defence submits that W04352's Proposed Evidence refers to key issues of the SPO's case, thus it is necessary to cross-examine him.<sup>61</sup>

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<sup>55</sup> See e.g. 061357-061359-ET RED, p. 061357; 061371-061375-ET RED; 061376-TR-ET Part 1, p. 11, lines 20-25, p. 12, lines 6-14, p. 13, lines 6-24, p. 14, lines 19-23; 061376-TR-ET Part 3 RED, p. 1, lines 15-25, p. 2, lines 1-10, p. 3, lines 2-9. See also Motion, para. 14.

<sup>56</sup> See Motion, para. 16, footnotes 23-24 (and references therein).

<sup>57</sup> See above para. 25. See also Annex 3 to the Motion.

<sup>58</sup> W04352's Proposed Evidence consists of the following items, including any translations thereof: (i) 092856b Parts 1-2 RED; (ii) 092856-TR-ET Parts 1-2 RED2; (iii) SITF00180812-00180907; (iv) SITF00181066-00181123; (v) SITF00297388-00297396; and (vi) SITF00297457-00297470 RED2 ("W04352's Rule 153 Statements"). See Annex 4 to the Motion.

<sup>59</sup> Motion, paras 18-25.

<sup>60</sup> Joint Response, paras 3, 16, 30.

<sup>61</sup> Joint Response, paras 17-19.

Lastly, the Defence submits that one statement (SITF00297388-00297396) is not suitable for admission through Rule 153.<sup>62</sup>

31. The SPO replies that W04352's Proposed Evidence should be admitted in its entirety. It argues that the Joint Response is misleading regarding the centrality of W04352's account. It also replies that the Defence understates its opportunities to confront other evidence concerning crimes at Drenoc/Drenovac and overstates its ability and need to explore with W04352 the motives behind the arrest of the individual. Lastly, the SPO argues that any discrepancy in W04352's understanding of the motives behind the said arrest would be matters going to the weight to be assigned to W04352's evidence in light of all evidence at trial, and not to the issue of admissibility at this stage pursuant to Rule 153.<sup>63</sup>

32. As regards relevance, the Panel notes that the SPO intends to rely on W04352's Rule 153 Statements in relation to, *inter alia*: (i) the arrival of the KLA in Drenoc/Drenovac in 1998, and the establishment of facilities at certain locations; and (ii) the circumstances of the arrest of a named individual by KLA members and the witness's attempts to locate that individual.<sup>64</sup> The Panel further notes that the Defence does not challenge the relevance of W04352's Rule 153 Statements. Having reviewed W04352's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to establishing facts and circumstances relevant to the charges.<sup>65</sup>

33. As regards authenticity, the Panel notes that (i) W04352's Rule 153 Statements consist of the witness's SPO interview as well as testimony and statements from other jurisdictions;<sup>66</sup> (ii) W04352's SPO interview and testimony in the other

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<sup>62</sup> Joint Response, para. 20.

<sup>63</sup> Reply, paras 8-9.

<sup>64</sup> Motion, para. 19.

<sup>65</sup> See Indictment, paras [REDACTED]; See Pre-Trial Brief, paras [REDACTED].

<sup>66</sup> 092856-TR-ET Parts 1 and 2 RED2; SITF00180812-00180907; SITF00181066-00181123; SITF00297388-00297396; SITF00297457-00297470 RED2.

jurisdictions were recorded in a verbatim transcript;<sup>67</sup> (iii) during the SPO interview, W04352 was duly advised of his rights as a witness and confirmed that the contents of his statements, including his prior testimony and statements from other jurisdictions, are true and accurate;<sup>68</sup> (iv) use of official templates, which include the witness's personal details and the identities of those in attendance.<sup>69</sup> With regard to the Defence argument that one of the statements is not suitable for admission, the Panel does not agree. The Panel is of the view that this statement contains sufficient indicia of reliability and authenticity as it contains the official logo of the jurisdiction where the statement was taken, and a handwritten version attested to by the witness. The Panel is therefore satisfied that W04352's Rule 153 Statements are *prima facie* authentic.

34. Regarding probative value and suitability for admission pursuant to Rule 153, the SPO submits that W04352's Proposed Evidence: (i) is largely cumulative of other witness evidence concerning the abduction, detention, and mistreatment by KLA members in an area of relevance to the charges in the Indictment; (ii) is corroborated by witnesses whom the Accused had the opportunity to cross-examine; (iii) complements relevant adjudicated facts;<sup>70</sup> and (iv) has been tested through cross-examination by accused in prior proceedings.<sup>71</sup> The Panel also notes that W04352's Proposed Evidence is not unduly repetitive and provides crime-base evidence which, although relevant to the acts and conduct of an alleged member or tool of the joint criminal enterprise,<sup>72</sup> goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie*

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<sup>67</sup> SITF00180812-00180907, p. 4; SITF00181066-00181123, p. 2.

<sup>68</sup> 092856-TR-ET Part 1 RED2, pp. 2-11, 16-21, 30-32, 49-50; 092856-TR-ET Part 2 RED2, p. 14-15.

<sup>69</sup> SITF00297388-00297396, p. 3; SITF00297457-00297470 RED2, p. 2.

<sup>70</sup> See e.g. Adjudicated Facts, Facts [REDACTED].

<sup>71</sup> SITF00180812-00180907, pp. 14-23; SITF00181066-00181123, pp. 9-10.

<sup>72</sup> SPO Pre-Trial Brief, para. [REDACTED].

authenticity of W04352's Proposed Evidence,<sup>73</sup> and is satisfied that W04352's Proposed Evidence meets the requirements under Rule 153(2).

35. The Defence argues that cross-examination is required in relation to the circumstances of the alleged detention and arrest of an alleged victim and the military police structure in Drenoc.<sup>74</sup> The Panel notes that the issue regarding the detention and arrest of the individual concerned relates to an alleged victim included in the Indictment. The Panel also notes that the proposed evidence does not appear to be capable of corroboration through any other live or Rule 154 witness which the Defence would be in a position to cross-examine. The Panel also takes note of evidence already given in relation to this incident that pertains to the reasons and circumstances that led to the victim's death, which might require further exploration on the part of the Parties and by the Panel. The Panel is therefore of the view that the prejudicial effect of the admission of such evidence under Rule 153 without cross-examination outweighs its probative value at this stage due to its incriminatory character.<sup>75</sup> Accordingly, the Panel will exercise its discretion not to admit W04352's Proposed Evidence pursuant to Rule 153. This is without prejudice to any Rule 154 application in relation to W04352 or the SPO's calling the witness to testify live.

36. For these reasons, the Panel finds that W04352's Proposed Evidence is not admissible pursuant to Rules 138(1) and 153, without prejudice to any Rule 154 application in relation to W04352 or the SPO's calling the witness to testify live.

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<sup>73</sup> See above para. 33. See also Annex 4 to the Motion.

<sup>74</sup> Joint Response, para. 17.

<sup>75</sup> See Rule 153(1)(b)(ii).



### E. W04367

37. The SPO submits that W04367's Proposed Evidence<sup>76</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>77</sup>

38. The Defence objects to the admission of W04367's Proposed Evidence pursuant to Rule 153.<sup>78</sup> The Defence submits that it is premature at this stage to consider the admissibility of W04367's evidence, which should await the Panel's determination on the admissibility of the evidence of another witness pursuant to Rule 155.<sup>79</sup> Lastly, the Defence observes that there are indications that the witness's condition raises doubts over whether the Defence would be able to effectively cross-examine the witness, even if the witness were to be made available.<sup>80</sup>

39. The SPO replies that the Defence's arguments concerning another witness are contradictory and unpersuasive. It submits that there is also no merit to the Defence's assertion that the Rule 153 Motion for W04367 is premature.<sup>81</sup>

40. Regarding the Defence's argument that the Motion is premature, the Panel disagrees. The Panel will consider the admissibility of evidence at the time when it is offered in light of the circumstances as they exist at the time. While considerations pertaining to the admissibility of the evidence of other future witnesses might impact the Panel's decision regarding admissibility, it does not render the Motion premature. The Panel also takes notice of the fact that the Panel has now admitted pursuant to Rule 155 the statement of the witness concerned so

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<sup>76</sup> W04367's Proposed Evidence consists of the following items, including any translations thereof: (i) 059673b Part 1 RED, (ii) 059673-TR-ET Part 1 RED2; (iii) SPOE00125574-00125584 RED; (iv) SITF00181429-00181479; (v) SITF00305953-00305978 RED ("W04367's Rule 153 Statements"); and 060603-060605-ET ("W04367's Associated Exhibit").

<sup>77</sup> Motion, paras 22-25.

<sup>78</sup> Joint Response, para. 21.

<sup>79</sup> Joint Response, para. 22.

<sup>80</sup> Joint Response, para. 25.

<sup>81</sup> Reply, paras 10-11.

as to invalidate any residual claim that the Motion is premature.<sup>82</sup> The effect of this Decision upon the admissibility of W04367's evidence is addressed below.

41. As regards relevance, the Panel notes that the SPO intends to rely on W04367's Rule 153 Statements in relation to the alleged arrest of an individual by the KLA in June 1998 and the description of how this individual appeared to have been beaten. The Panel further notes that the Defence does not challenge the relevance of W04367's proposed evidence. Having reviewed W04367's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.

42. As regards authenticity, the Panel notes that W04367's Rule 153 Statements comprise the record of the witness's interview by the SPO as well as the witness's testimony in other jurisdictions. The Panel also notes that during the SPO interview, which is recorded in verbatim transcripts, the witness was duly advised of the rights as a witness and confirmed the contents of the prior statements.<sup>83</sup> The Panel observes that the first statement was documented in verbatim transcripts and, in each instance, W04367 made a solemn declaration and was questioned by a judge, public prosecutor, and/or defence counsel.<sup>84</sup> Lastly, the other statements were taken using official templates which include the witness's personal details and the identities of those in attendance and she was also advised of and acknowledged her obligations and rights as a witness.<sup>85</sup> The Panel is therefore satisfied that W04367's Rule 153 Statements are *prima facie* authentic.

43. W04367's Associated Exhibit consists of a handwritten summary, written three months after the war, of events which the witness later described in W04367's Proposed Evidence.<sup>86</sup> The Panel is satisfied that this item forms an indispensable and inseparable part of W04367's Rule 153 Statements. The Panel is

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<sup>82</sup> [REDACTED]

<sup>83</sup> 059673-TR-ET Part 1 RED2, pp. 2-3, 4, 24.

<sup>84</sup> SPOE00125574-00125584 RED, p. 11; SITF00181429-00181479, p. 5.

<sup>85</sup> SITF00305953-00305978 RED, pp. 4, 10, 13.

<sup>86</sup> [REDACTED]. See Motion, para. 25. See also Annex 5 to the Motion, p. 6.

also satisfied that W04367's Associated Exhibit: (i) is relevant and will provide relevant context to the written record in which it is discussed; and (ii) bears sufficient indicia of *prima facie* authenticity.

44. Regarding probative value and suitability for admission pursuant to Rule 153, the SPO submits that W04367's Rule 153 Statements: (i) are largely cumulative of other witness' evidence concerning the abduction, detention, and mistreatment by KLA members in an area of relevance to the charges in the Indictment; (ii) are corroborated by witnesses whom the Accused were and will be able to cross-examine; and (iii) complement relevant adjudicated facts.<sup>87</sup> The Panel also notes that W04367's Rule 153 Statements are relatively limited in length, are not unduly repetitive, and provide crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie* authenticity of W04367's Rule 153 Statements,<sup>88</sup> and is satisfied that W04367's Rule 153 Statements meet the requirements under Rule 153(2).

45. The Defence submits that the admission of the prior statements of another, related, witness pursuant to Rule 155 would compound the prejudice to the Defence that would result from the admission of this witness's evidence pursuant to Rule 153. The Defence suggests that this would in effect eliminate the only opportunity for the Defence to probe this evidence through cross-examination. The Panel finds these submissions to be without merit. First, as already noted, the possibility for a Party to cross-examine a witness is not an absolute right.<sup>89</sup> Furthermore, the Panel observes that the Defence was able to put questions to several witnesses about their knowledge of the same events discussed by both

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<sup>87</sup> See Motion, para. 24 and relevant Adjudicated Facts.

<sup>88</sup> See *above* para. 42. See also Annex 5 to the Motion.

<sup>89</sup> First Rule 155 Decision, para. 18; F01821, Panel, *Decision on Prosecution Request for Admission of W03827's Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration*, 28 September 2023, paras 29-30; Second Rule 155 Decision, para. 10.

W04367 and the Rule 155 witness.<sup>90</sup> Accordingly, the Panel is satisfied that W04367's Rule 153 Statements are: (i) probative and their admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

46. For these reasons, the Panel finds that W04367's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

#### F. W04420

47. The SPO submits that W04420's Proposed Evidence<sup>91</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>92</sup>

48. The Defence does not object to the admission, pursuant to Rule 153, of W04420's Proposed Evidence.<sup>93</sup>

49. As regards relevance, the Panel notes that W04420's Proposed Evidence concerns an individual who was allegedly detained by the KLA in 1998 and 1999 under allegations of being a Serb collaborator. The SPO intends to rely on W04420's Rule 153 Statements in relation to, *inter alia*: (i) W04420's failed attempts to visit this individual; (ii) the circumstances of the alleged detention and beating of this individual; and (iii) W04420's identification of the dead body of that individual at a certain location.<sup>94</sup> The Panel further notes that the Defence does not

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<sup>90</sup> See in particular [REDACTED].

<sup>91</sup> W04420's Proposed Evidence consists of the following items, including any translations thereof: (i) 066548b Parts 1-3 RED, (ii) 066548-TR-ET Parts 1-2 RED2 and 066548-TR-ET Part 3 RED3, (iii) SPOE00122435-00122450 RED, (iv) SPOE00120650-00120661 RED, and (v) SPOE00120676-00120685 RED2 ("W04420's Rule 153 Statements"); and SPOE00122435-00122450 RED, pp. SPOE00122449-SPOE00122450 ("W04420's Associated Exhibit"). See Annex 6 to the Motion. The Panel notes that the SPO does not tender SPOE00027886-00027930 RED and SPOE00027865-SPOE00027867 for admission (see Annex 6 to the Motion, pp. 5-6).

<sup>92</sup> Motion, paras 26-29.

<sup>93</sup> Joint Response, para. 2.

<sup>94</sup> Motion, para. 26; see also Amended List of Witnesses, pp. [REDACTED].

challenge the relevance of W04420's Rule 153 Statements. Having reviewed the content of W04420's Rule 153 Statements, the Panel is satisfied that they contain evidence relevant to the charges in the Indictment.<sup>95</sup>

50. As regards authenticity, the Panel notes that W04420's Rule 153 Statements comprise: (i) the verbatim transcripts of the witness's audio-visually recorded SPO interview, during which he was duly advised of his rights as a witness and confirmed that the contents of his statement are true and accurate;<sup>96</sup> (ii) his statement and testimony before another jurisdiction which were similarly audio-recorded and documented in verbatim transcripts;<sup>97</sup> and (iii) a record that was dated and signed by the relevant official and which reflects that the witness testified under oath and was cross-examined.<sup>98</sup> The Panel further notes that the Defence does not challenge the authenticity of W04420's Rule 153 Statements. The Panel is therefore satisfied that W04420's Rule 153 Statements are *prima facie* authentic.

51. Turning to W04420's Associated Exhibit, the Panel notes that it consists of a hand-drawn sketch by W04420 which the witness discussed during his testimony.<sup>99</sup> The Panel is satisfied that W04420's Associated Exhibit forms an indispensable and inseparable part of the offered Rule 153 Statements. The Panel is also satisfied that W04420's Associated Exhibit: (i) is relevant and will provide relevant context to the written record in which it is discussed; and (ii) bears sufficient indicia of *prima facie* authenticity.

52. Regarding probative value and suitability for admission, the SPO submits that W04420's Rule 153 Statements: (i) are cumulative of, and corroborated by, the

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<sup>95</sup> See Indictment, paras 59-61, [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

<sup>96</sup> See 066548-TR-ET Part 1 RED2, p. 11-15; 066548-TR-ET Part 3 RED3, pp. 14-16.

<sup>97</sup> See SPOE00122435-00122450 RED, pp. 1, 14.

<sup>98</sup> See SPOE00120650-00120661 RED, pp. 3, 10-12; SPOE00120676-00120685 RED2, pp. 3-10.

<sup>99</sup> SPOE00122435-00122450 RED, at SPOE00122438; 066548-TR-ET Part 1, p. 12. See also Annex 6 to the Motion, p. 5.

evidence of other witnesses about the same or similar events whom the Accused were and will be able to cross-examine; and (ii) complement relevant adjudicated facts.<sup>100</sup> The Panel also notes that W04420's Proposed Evidence is relatively limited in length and, insofar as W04420's Rule 153 Statements confirm or clarify one another, is not unduly repetitive. The Panel further recalls its findings regarding the *prima facie* authenticity of W04420's Rule 153 Statements,<sup>101</sup> and is satisfied that W04420's Proposed Evidence meets the requirements under Rule 153(2).

53. For these reasons, the Panel finds that W04420's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

#### G. W04569

54. The SPO submits that W04569's Proposed Evidence<sup>102</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>103</sup>

55. The Defence objects to the admission of W04569's Proposed Evidence pursuant to Rule 153.<sup>104</sup> The Defence submits that, due to the centrality of the issues discussed by W04569, W04569's Proposed Evidence should be subject to Defence cross-examination.<sup>105</sup> The Defence submits that cross-examination of W04569's Proposed Evidence is warranted, notwithstanding the fact that it has

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<sup>100</sup> See Motion, para. 28 and relevant Adjudicated Facts.

<sup>101</sup> See *above* para. 50. See also Annex 6 to the Motion.

<sup>102</sup> W04569's Proposed Evidence consists of the following items, including any translations thereof: (i) [REDACTED], (ii) [REDACTED], (iii) [REDACTED], and (iv) [REDACTED] ("W04569's Rule 153 Statements"); and (i) [REDACTED], (ii) [REDACTED] ("W04569's Associated Exhibits"). The Panel notes that [REDACTED] is not tendered for admission. See Annex 7 to the Motion.

<sup>103</sup> Motion, paras 2-7, 34-36, 48.

<sup>104</sup> Joint Response, paras 3, 26-28, 30.

<sup>105</sup> Joint Response, paras 26-28.

been previously tested in prior proceedings or is corroborated by other witnesses.<sup>106</sup>

56. The SPO replies that the Defence fails to provide convincing reasons why W04569's Proposed Evidence is unsuitable for Rule 153 admission.<sup>107</sup> The SPO reiterates that W04569's Proposed Evidence is entirely suitable for admission in lieu of oral testimony pursuant to Rule 153 because, *inter alia*: (i) it has already been thoroughly explored during his earlier testimony;<sup>108</sup> (ii) it provides primarily contextual and background evidence; (iii) W04569 had left Kosovo early in the conflict; (iv) other witnesses have testified or will testify to the same matters, and the Defence has had or will have the opportunity to cross-examine them.<sup>109</sup>

57. As regards relevance, the Panel notes that W04569 was a Democratic League of Kosovo ("LDK") supporter and that the SPO intends to rely on W04569's evidence in relation to, *inter alia*: (i) KLA's threats, mistreatment and execution orders against members of the LDK and FARK; (ii) W04569's arrest by the KLA in 1998; and (iii) W04569's subsequent experience at one of the KLA headquarters, including threats and beatings from KLA members.<sup>110</sup> The Panel further notes that the Defence does not challenge the relevance of W04569's Rule 153 Statements. Having reviewed the content of W04569's Rule 153 Statements, the Panel is satisfied that they are relevant to the charges in the Indictment.<sup>111</sup>

58. As regards authenticity, the Panel notes that W04569's Rule 153 Statements comprise W04569's testimony and statements before another jurisdiction. The Panel observes that W04569's Rule 153 Statements: (i) are recorded in a verbatim transcript; (ii) are signed by the witness; (iii) contain witness acknowledgments; and/or (iv) contain interpreter certifications.<sup>112</sup> The Panel further notes that the

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<sup>106</sup> Joint Response, para. 28.

<sup>107</sup> Reply, para. 12.

<sup>108</sup> Reply, para. 12.

<sup>109</sup> Reply, para. 13.

<sup>110</sup> Motion, para. 30; *see also* Amended List of Witnesses, pp. [REDACTED].

<sup>111</sup> *See* Indictment, paras [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

<sup>112</sup> *See e.g.* [REDACTED].



Defence does not challenge the authenticity of W04569's Rule 153 Statements. The Panel is therefore satisfied that W04569's Rule 153 Statements are *prima facie* authentic.

59. Turning to W04569's Associated Exhibits, the Panel notes that they consist of photographs showing W04569's wounds and a KLA order, both discussed in one of W04569's Rule 153 Statements.<sup>113</sup> The Panel is satisfied that W04569's Associated Exhibits form an indispensable and inseparable part of W04569's Rule 153 Statements, which the Defence does not challenge. The Panel is also satisfied that W04569's Associated Exhibits: (i) are relevant and provide relevant context to the written records in which they are discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

60. Regarding the probative value of W04569's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes the Defence's submissions that the central nature of the issues discussed in W04569's Proposed Evidence to the SPO's case and their "fundamental importance" to the charges in the Indictment warrant cross-examination by the Defence.<sup>114</sup> The Panel is not convinced. The Panel is of the view that, as pointed out by the SPO, W04569's Proposed Evidence is largely cumulative of, and corroborated by, other witness evidence,<sup>115</sup> and witnesses who were present and have first-hand knowledge of certain of the

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<sup>113</sup> In relation to 092958-092966, pp. 092958-092959, *see* 092967-TR-E Part 1 RED, pp. 15-16; in relation to 092958-092966, pp. 092960-092961, *see* 092967-TR-E Part 1 RED, pp. 15-16; in relation to 092958-092966, p. 092962, *see* 092967-TR-E Part 2 RED, pp. 7-8; in relation to 092958-092966, pp. 092963-092964, *see* 092967-TR-E Part 2 RED, p. 15, 092967-TR-E Part 3 RED, pp. 1-4; in relation to SITF00009440-SITF00009459 RED2, pp. SITF0009448-SITF00009449, *see* 092967-TR-E Part 1 RED, pp. 10-11. *See also* Annex 7 to the Motion, pp. 4-6.

<sup>114</sup> Joint Response, para. 13.

<sup>115</sup> *See* [REDACTED]. In particular, the Panel notes that these witnesses will notably testify about the structure of and the relation between the KLA and FARK forces during the relevant period in the area of W04569. *See also* 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, confidential. Regarding the direct accusations made against one named KLA commander and his subordinates, the Panel observes that none of these individuals are named members of the joint criminal enterprise in this case. The Panel is therefore not convinced that the issues raised by the Defence (Joint Response, para. 28) are central to the Prosecution's case.

events contained in W04569's Proposed Evidence.<sup>116</sup> The Panel also notes that W04569's Proposed Evidence complements relevant adjudicated facts.<sup>117</sup> The Panel is therefore not persuaded that the further information which the Defence wishes to elicit from W04569 warrants his attendance for cross-examination.

61. The Panel also notes that W04569's Proposed Evidence is limited in length, is not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie* authenticity of W04569's Proposed Evidence,<sup>118</sup> and is satisfied that W04569's Proposed Evidence meets the requirements under Rule 153(2). Accordingly, the Panel is satisfied that W04569's Proposed Evidence is: (i) probative and its admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

62. For these reasons, the Panel finds that W04569's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

#### H. W04645

63. The SPO submits that W04645's Proposed Evidence<sup>119</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>120</sup>

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<sup>116</sup> See Reply, para. 13. See also Motion, para. 32.

<sup>117</sup> See Motion, para. 13, and related Adjudicated Facts.

<sup>118</sup> See above para. 58. See also Annex 7 to the Motion.

<sup>119</sup> W04645's Proposed Evidence consists of the following items, including any translations thereof: (i) 073683b Part 1 RED and 073683b Parts 2-3; and (ii) 073683-TR-ET Parts 1-3 Revised RED ("W04645's Rule 153 Statement"). See Annex 8 to the Motion.

<sup>120</sup> Motion, paras 3-7, 34-36, 48.

64. The Defence does not object to the admission, pursuant to Rule 153, of the W04645's Proposed Evidence.<sup>121</sup>

65. As regards relevance, the Panel notes that W04645 was, along with others, allegedly arrested, detained and mistreated by KLA members in 1998, and that the SPO intends to rely on W04645's Rule 153 Statement in relation to, *inter alia*, the circumstances of the alleged arrest, detention, mistreatment and subsequent release of the witness and other individuals by the KLA in various locations.<sup>122</sup> The Panel further notes that the Defence does not challenge the relevance of W04645's Rule 153 Statement. The Panel is satisfied that the proposed evidence is relevant to the charges in the Indictment.<sup>123</sup>

66. As regards authenticity, the Panel notes that W04645's Rule 153 Statement comprises W04645's SPO interview, which was audio-visually recorded and documented in verbatim transcripts, and during which W04645 was advised of his rights as a witness and confirmed that his statement was true, accurate, and given voluntarily.<sup>124</sup> The Panel further notes that the Defence does not challenge the authenticity of W04645's Rule 153 Statement. The Panel is therefore satisfied that W04645's Rule 153 Statement is *prima facie* authentic.

67. Regarding probative value and suitability for admission, the Panel notes that the SPO submits that W04645's Rule 153 Statement: (i) is cumulative of, and corroborated by, evidence of witnesses concerning the same or similar events which the Accused were and will be able to cross-examine; (ii) complements relevant adjudicated facts;<sup>125</sup> and that (iii) its admission in lieu of oral testimony would prevent the significant stress and trauma likely to be caused by appearing

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<sup>121</sup> Joint Response, para. 2.

<sup>122</sup> Motion, para. 34. *See also* Amended List of Witnesses, p. [REDACTED].

<sup>123</sup> *See* Indictment, paras [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

<sup>124</sup> 073683-TR-ET Part 1 Revised RED, pp. 14-16; 073683-TR-ET Part 3 Revised RED, pp. 38-40. *See also* Annex 8 to the Motion, pp. 1-2.

<sup>125</sup> *See* Motion, para. 36, and related Adjudicated Facts.

to testify.<sup>126</sup> The Panel also notes that W04645's Rule 153 Statement is limited in length, is not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie* authenticity of W04645's Rule 153 Statement,<sup>127</sup> and is satisfied that W04645's Rule 153 Statement meets the requirements under Rule 153(2). In addition, the Panel observes that the Defence does not object to the admission of W04645's Proposed Evidence pursuant to Rule 153.<sup>128</sup>

68. For these reasons, the Panel finds that W04645's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

#### I. W04677

69. The SPO submits that W04677's Proposed Evidence<sup>129</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>130</sup>

70. The Defence does not object to the admission, pursuant to Rule 153, of the W04677's Proposed Evidence.<sup>131</sup>

71. As regards relevance, the Panel notes that W04677 was allegedly abducted by KLA members in 1999, along with another individual, and taken at gunpoint to another village and then to the KLA headquarters in the area.<sup>132</sup> The SPO intends

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<sup>126</sup> See Motion, para. 36, fn. 80 referring to 073683-TR-ET Part 1 Revised RED, p. 60, 073683-TR-ET Part 2 Revised RED, pp. 43-44, and 073683-TR-ET Part 2 Revised RED, pp. 1-2, 11, 19, 42, 45-46.

<sup>127</sup> See above para. 66.

<sup>128</sup> Joint Response, para. 2.

<sup>129</sup> W04677's Proposed Evidence consists of the following items, including any translations thereof: (i) SITF00427991-00428011 RED2, and (ii) SPOE00038128-SPOE00038137 RED2 ("W04677's Rule 153 Statements"); and (i) SITF00240284-00240305 RED2, pp. SITF00240293-00240305 RED2 ("W04677's Associated Exhibit). See Annex 9 to the Motion.

<sup>130</sup> Motion, paras 37-40.

<sup>131</sup> Joint Response, para. 2.

<sup>132</sup> See Motion, para. 37.

to rely on W04677's Rule 153 Statements in relation to, *inter alia*: (i) the circumstances of the arrest in 1999 of W04677 and the other individual, and their subsequent detention and interrogation; (ii) the KLA's suspicion that the individual was spying on the KLA in favour of the Serbs; (iii) W04677's release; (iv) W04677's knowledge regarding the fate of the individual who was detained with him and who is listed as a victim in the Indictment.<sup>133</sup> The Panel further notes that the Defence does not challenge the relevance of W04677's proposed evidence. The Panel is satisfied that the proposed evidence is relevant to the charges in the Indictment.<sup>134</sup>

72. As regards authenticity, the Panel notes that W04677's Rule 153 Statements comprise W04677's record of testimony before another court, which documents the date, time, and identity of participants.<sup>135</sup> The Panel also notes that the witness was advised of relevant rights and obligations, and confirmed that the Statements were given voluntarily.<sup>136</sup> The Panel further notes that the Defence does not challenge the authenticity of W04677's Rule 153 Statements. The Panel is therefore satisfied that W04677's Rule 153 Statements are *prima facie* authentic.

73. Regarding probative value and suitability for admission, the SPO submits that W04677's Rule 153 Statements: (i) are cumulative with, and corroborated by, other witnesses whom the Accused were and will be able to cross-examine; and (ii) complement relevant adjudicated facts.<sup>137</sup> The Panel also notes that W04677's Rule 153 Statements are limited in length, are not unduly repetitive, and provide largely crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its

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<sup>133</sup> *Ibid idem*.

<sup>134</sup> See Indictment, paras 59-61, [REDACTED]. See also SPO Pre-Trial Brief, paras [REDACTED].

<sup>135</sup> SITF00427991-00428011 RED2, pp. 1, 19; SPOE00038128-SPOE00038137 RED2, pp. 1, 3, 10. See also Annex 9 to the Motion, p. 1.

<sup>136</sup> SPOE00038128-SPOE00038137 RED2, pp. 3, 10. See also Annex 9 to the Motion, p. 1.

<sup>137</sup> See Motion, para. 39, footnotes 85-86 and related Adjudicated Facts.

findings regarding the *prima facie* authenticity of W04677's Rule 153 Statements,<sup>138</sup> and is satisfied that W04677's Rule 153 Statements meet the requirements under Rule 153(2). In addition, the Panel observes that the Defence does not object to the admission of W04677's Proposed Evidence pursuant to Rule 153.<sup>139</sup>

74. Turning to W04677's Associated Exhibit, the Panel notes that it consists of a photo board relevant to the identification by W04677 of the KLA members involved in the detention of the individual with whom W04677 was detained.<sup>140</sup> The Panel is satisfied that W04677's Associated Exhibit forms an indispensable and inseparable part of W04677's Rule 153 Statements. The Panel is also satisfied that it: (i) is relevant and will provide relevant context to the written record in which it is discussed; and (ii) bears sufficient indicia of *prima facie* authenticity.

75. For these reasons, the Panel finds that W04677's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

## J. W04732

76. The SPO submits that W04732's Proposed Evidence<sup>141</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>142</sup>

77. The Defence objects to the admission of W04732's Proposed Evidence pursuant to Rule 153.<sup>143</sup> The Defence submits that W04732 should be dropped from

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<sup>138</sup> See above para. 72. See also Annex 9 to the Motion.

<sup>139</sup> Joint Response, para. 2.

<sup>140</sup> SITF00240284-00240305 RED2, pp. SITF00240293-00240305 RED2. See also Annex 9 to the Motion, p. 3.

<sup>141</sup> W04732's Proposed Evidence consists of the following items, including any translation thereof: (i) 082120b Part 1, (ii) SPOE00301763-00301777, (iii) SPOE00123717-00123719 RED, (iv) SPOE00120869-00120883 RED, pp. SPOE00120869-00120875 ("W04732's Rule 153 Statements"); and (i) SITF00240446-SITF00240446, (ii) SPOE00121708-00121711, (iii) SITF00428236-00428236 RED2, (iv) SITF00428237-00428237 RED2 ("W04732's Associated Exhibits"). See Annex 10 to the Motion.

<sup>142</sup> Motion, paras 41-44.

<sup>143</sup> Joint Response, paras 4, 11-15, 30.

the SPO's witness list as W04732's Proposed Evidence is of low relevance, limited added value, mainly repetitive, and would unnecessarily burden the record.<sup>144</sup>

78. The SPO replies that W04732's Proposed Evidence should be admitted in its entirety.<sup>145</sup> The SPO submits that the Defence misunderstands not only the nature of W04732's Proposed Evidence, but also the requirements for admissibility and factors relevant to deciding admission pursuant to Rule 153.<sup>146</sup> The SPO reiterates that W04732's Proposed Evidence is relevant to and probative of charges in the Indictment, and corroborates other evidence in the record.<sup>147</sup> The SPO argues that admission of W04732's Proposed Evidence pursuant to Rule 153 would not unnecessarily burden the record but facilitate fair and expeditious proceedings.<sup>148</sup>

79. As regards relevance, the Panel notes that W04732 worked as an investigator for the United Nations ("UN") and provides evidence about the alleged murder, torture and inhuman treatment of civilians detained in a KLA-run detention site at a specific location in 1998. The Panel also notes that the SPO intends to rely on W04732's Rule 153 Statements in relation to, *inter alia*: (i) the alleged detention and mistreatment of W04416; (ii) how W04732 explored the possibility of W04416 giving evidence as a witness and W04416's initial reluctance to testify; (iii) W04732's visit to a site where the body of an individual was recovered, and the subsequent reporting about the exhumation and autopsy of that individual. The Panel also recalls that evidence is deemed to be relevant if it is connected, directly or indirectly, to elements of the offence(s) or mode(s) of liability pleaded in the Indictment, or other facts or circumstances material to the case of the Parties.<sup>149</sup> Having reviewed the content of W04732's Rule 153 Statements, the Panel is satisfied that they are relevant to the charges in the Indictment.<sup>150</sup>

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<sup>144</sup> Joint Response, paras 4, 12-15.

<sup>145</sup> Reply, para. 4.

<sup>146</sup> Reply, para. 4.

<sup>147</sup> Reply, para. 5. *See also* Motion, para. 43.

<sup>148</sup> Reply, para. 7.

<sup>149</sup> First Bar Table Decision, para. 10.

<sup>150</sup> *See* Indictment, paras 32-57, 59-61, 70, 96-98, 106, 156; *see also* SPO Pre-Trial Brief, paras 418-424.



80. As regards authenticity, the Panel notes that W04732's Rule 153 Statements consist of: (i) his SPO interview, which was audio-visually recorded and documented in verbatim transcripts, and during which the witness was advised of his rights and confirmed that his statement was true, accurate and given voluntarily;<sup>151</sup> and (ii) his testimony before a domestic court in 2002 and 2003, which is documented in an official judicial record which includes, *inter alia*, the place, date, time, and identification of participants, and during which he took a solemn declaration.<sup>152</sup> The Panel further notes that the Defence does not challenge the authenticity of W04732's Rule 153 Statements. The Panel is therefore satisfied that W04732's Rule 153 Statements are *prima facie* authentic.

81. Turning to W04732's Associated Exhibits, the Panel notes that they consist of UN reports prepared by the witness during his investigation.<sup>153</sup> The Panel is satisfied that the Associated Exhibits form an indispensable and inseparable part of W04732's Rule 153 Statements. The Panel is also satisfied that they: (i) are relevant and will provide relevant context to the written record in which it is discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

82. Regarding probative value and suitability for admission, the SPO submits that W04732's Rule 153 Statements: (i) are cumulative of other witness evidence and corroborated by witnesses whom the Accused were and will be able to cross-examine; and (ii) complement relevant adjudicated facts.<sup>154</sup> The Panel does not agree that W04732's Rule 153 Statements are mostly repetitive or would unnecessarily burden the record. The Panel also notes that W04732's Rule 153 Statements are limited in length, not unduly repetitive, and provide crime-base evidence which goes to proof of matters other than the acts and conduct of the

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<sup>151</sup> 082120b Part 1; SPOE00301763-00301777, pp. 1-4. *See also* Annex 10 to the Motion, pp. 1-2.

<sup>152</sup> SPOE00123717-00123719 RED, p. 1; SPOE00120869-00120883 RED, pp. 2-7. *See also* Annex 10 to the Motion, pp. 2-3.

<sup>153</sup> SITF00240446-SITF00240446; SPOE00121708-00121711; SITF00428236-00428236 RED2; SITF00428237-00428237 RED2. *See also* Annex 10 to the Motion, pp. 3-5.

<sup>154</sup> *See* Motion, para. 43, referring to [REDACTED], and Adjudicated Facts [REDACTED].

Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie* authenticity of W04732's Rule 153 Statements,<sup>155</sup> and is satisfied that W04732's Rule 153 Statements meet the requirements under Rule 153(2).

83. For these reasons, the Panel finds that W04732's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

## V. DISPOSITION

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

- (i) **GRANTS** the Motion, in part;
- (ii) **ADMITS** into evidence without cross-examination the following items, including any translations thereof: (i) W00996's Proposed Evidence;<sup>156</sup> (ii) W02257's Proposed Evidence;<sup>157</sup> (iii) W02303's Proposed Evidence;<sup>158</sup> (iv) W04367's Proposed Evidence;<sup>159</sup> (v) W04420's Proposed Evidence;<sup>160</sup> (vi) W04569's Proposed Evidence;<sup>161</sup> (vii) W04645's Proposed Evidence;<sup>162</sup> (viii) W04677's Proposed Evidence;<sup>163</sup> and (ix) W04732's Proposed Evidence;<sup>164</sup> and
- (iii) **DENIES** the admission of W04352's Proposed Evidence,<sup>165</sup> without prejudice to any Rule 154 application in relation to this witness or the SPO's calling W04352 to testify live;

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<sup>155</sup> See above para. 80.

<sup>156</sup> See above footnote 14.

<sup>157</sup> See above footnote 27.

<sup>158</sup> See above footnote 39.

<sup>159</sup> See above footnote 76.

<sup>160</sup> See above footnote 91.

<sup>161</sup> See above footnote 102.

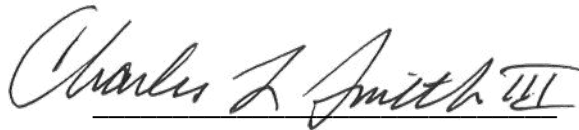
<sup>162</sup> See above footnote 119.

<sup>163</sup> See above footnote 129.

<sup>164</sup> See above footnote 141.

<sup>165</sup> See above footnote 58.

- (iv) **ORDERS** the SPO to tender the video- and/or audio-recording of admitted statements where available;
- (v) **DIRECTS** the Registrar to assign exhibit numbers to the items referred to in paragraph 84(ii), linking the Associated Exhibits with the relevant Rule 153 Statements as indicated in footnotes 14, 27, 39, 76, 91, 102, 119, 129, 141.

A handwritten signature in black ink, reading "Charles L. Smith, III", written over a horizontal line.

**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Tuesday, 2 July 2024

At The Hague, the Netherlands.