



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:** 16 July 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W02135, W03871, W04295, W04372, W04590, W04600, W04735, W04737, and W04868 pursuant to Rule 154 and related requests with confidential Annexes 1-9'**

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**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,<sup>1</sup> and Rules 118(2), 137-138 and 154 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') requests (i) the addition of one prior statement and one associated exhibit to the Exhibit List,<sup>3</sup> and (ii) the admission of the statements (collectively, 'Rule 154 Statements'), together with associated exhibits,<sup>4</sup> of the following witnesses: W02135, W03871, W04295, W04372, W04590, W04600, W04735, W04737, and W04868 (collectively, 'Witnesses').<sup>5</sup> These witnesses are among the witnesses the SPO intends to call between 19 August and 7 November 2024.<sup>6</sup>

2. Consistent with Rule 154, the Witnesses are anticipated to: (i) be present in court, (ii) be available for cross-examination and any questioning by the Panel, and (iii) attest that their Rule 154 Statements accurately reflect their declaration and what they would say if examined. As detailed below and in the accompanying annexes for each of the Witnesses, the Proposed Evidence meets the requirements of the Rules, is relevant, authentic, and reliable, and has probative value, which – considering, in

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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'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

<sup>3</sup> See paras 32-33 and 72 below. See also Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F02254/A01, 19 April 2024, Strictly Confidential and *Ex Parte* ('Exhibit List').

<sup>4</sup> The Rule 154 Statements and associated exhibits are referred to herein as the 'Proposed Evidence'.

<sup>5</sup> Attached to this motion are nine annexes. Each annex contains a table identifying the Proposed Evidence for each witness. In the interest of expeditiousness and as also set out below, the SPO: (i) has reduced the examination time for W04295 from 3 to 2 hours; (ii) has reduced the examination time for W04372 from 3 to 2 hours; (iii) has decided to call W04590 to testify (W04590 was previously proposed as a Rule 153 witness); (iv) is now seeking to admit W04735's prior statements under Rule 154 (W04735 was previously fully *viva voce*) and, subject to a decision on this request, has reduced the examination estimate for W04735 from 4.5 to 1.5 hours; (v) has reduced the examination time for W04737 from 3 to 2 hours; and (vi) has reduced the examination time for W04868 from 3 to 1.5 hours.

<sup>6</sup> See Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), para.73. The information required by paragraphs 73-74 of the Conduct of Proceedings Order will be provided separately. Further Rule 154 applications for the remaining witnesses tentatively scheduled to be called between 19 August and 7 November 2024 will be filed in due course.

particular, that the witnesses will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.<sup>7</sup>

## II. SUBMISSIONS

### A. W02135

3. *Relevance.* W02135 is a retired [REDACTED], who was [REDACTED]. W02135 was then appointed as [REDACTED]. W02135 entered Kosovo on [REDACTED], following the NATO bombing, [REDACTED].

4. Upon W02135's arrival, there was a vacuum of civil administration which KFOR had to fill for at least a few months, since it took some time for UNMIK to get set up. KFOR's continued presence in Kosovo was essential to ensuring that Serb forces did not return.

5. W02135 was involved in [REDACTED]. W02135 provides evidence concerning the organisation of the KLA and PGoK, and the [REDACTED]. W02135 had regular meetings with [REDACTED].

6. W02135 received information about alleged crimes committed by members of the KLA, including detentions, killings, house burnings, the takeover of apartments, and similar issues and raised related concerns, including about detentions and detention centres, [REDACTED].

7. W02135's evidence also relates to the Kosovo Protection Corps and the Kosovo Police Service, [REDACTED].

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<sup>7</sup>The applicable law has been set out in previous submissions and decisions in this case. *See e.g.* Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, paras 26-35.

8. W02135's evidence is thus relevant to crimes charged in the Indictment.<sup>8</sup>

9. *Authenticity and reliability.* W02135's Rule 154 Statement is comprised of W02135's SPO statement,<sup>9</sup> and his 2016 statement in a domestic court case.<sup>10</sup> Both statements bear sufficient indicia of authenticity and reliability.<sup>11</sup> During his SPO statement, W02135 was duly advised as a witness.<sup>12</sup> He confirmed that his statement was true and accurate, and given voluntarily.<sup>13</sup> W02135 signed the statement.<sup>14</sup> W02135 also signed his 2016 statement and confirmed its contents are true.<sup>15</sup>

10. *The associated exhibits are admissible.* The associated exhibits – including documents relating to meetings in which W02135 was present, documents issued and/or signed by W02135, excerpts from W02135's book, and other contemporaneous documents – forming part of the Proposed Evidence in Annex 1 should be admitted as they were discussed and explained in – and therefore form an inseparable and indispensable part of – W02135's Rule 154 Statement.

11. *Suitable for Rule 154 admission.* The Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission of W02135's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony from W02135 for 2 hours on essential matters that clarify or supplement certain aspects of his evidence.

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<sup>8</sup> See, *inter alia*, Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras 16-61, 96-98, 137-138, 175; Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('Pre-Trial Brief'), paras 11-21, 63-266, 584-592.

<sup>9</sup> 087342-087360.

<sup>10</sup> SPOE00000681-SPOE00000696.

<sup>11</sup> For an individualised assessment of reliability, see Annex 1.

<sup>12</sup> 087342-087360, p.087342.

<sup>13</sup> 087342-087360, p.087360.

<sup>14</sup> 087342-087360, p.087360, as well as W02135's initials on all pages.

<sup>15</sup> SPOE00000681-SPOE00000696, pp.SPOE00000682, SPOE00000696.

## B. W03871

12. *Relevance.* W03871 joined the KLA around March 1998. He served in [REDACTED], where he trained KLA soldiers and [REDACTED]. Around [REDACTED] 1998, W03871 [REDACTED], and acted as the commander of this unit, [REDACTED].

13. W03871's evidence includes information concerning the formation, structure, tasks, membership, and reporting of the KLA units he was in and of other KLA units he has knowledge of. W03871 also provides information about meetings he attended with other KLA members, and [REDACTED].

14. Finally, W03871 provides information about the detention of [REDACTED], who was accused of being a spy during his detention by KLA members in [REDACTED].

15. W03871's evidence is thus relevant to charged crimes in the Indictment.<sup>16</sup>

16. *Authenticity and reliability.* W03871's Rule 154 Statement is *prima facie* authentic and reliable.<sup>17</sup> W03871's audio-video recorded SPO interviews, as recorded in verbatim transcripts,<sup>18</sup> and his UNMIK statement,<sup>19</sup> are authentic, including details such as the date, time, and attendees.<sup>20</sup> W03871 confirmed that his SPO statements were true and accurate, and given voluntarily.<sup>21</sup> W03871 also confirmed that he answered the questions asked in his UNMIK statement truthfully.<sup>22</sup>

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<sup>16</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>17</sup> For an individualised assessment of reliability, see Annex 2.

<sup>18</sup> 077605-TR-ET Parts 1 and 5 RED2, 077605-TR-ET Parts 2-4; 087626-TR-ET Part 2 RED2.

<sup>19</sup> SITF00451709-SITF00451717 RED2.

<sup>20</sup> See, *e.g.*, 077605-TR-ET Part 1 RED2, p.1; SITF00451709-SITF00451717 RED2, pp.SITF00451709, SITF00451717.

<sup>21</sup> 077605-TR-ET Part 5 RED2, pp.4-5; 087626-TR-ET Part 2 RED2, pp.47-48.

<sup>22</sup> 077605-TR-ET Part 2, pp.6-7.

17. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 2 – consisting of a list of KLA members, a KLA General Staff clarification, and travel authorisations, [REDACTED] – should be admitted as they are an inseparable and indispensable part of W03871’s Rule 154 Statement. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.

18. *Suitable for Rule 154 admission.* W03871’s Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. W03871’s UNMIK statement, which is only 9 pages long, is extensively referred to in his SPO interview, meaning that admission of the SPO interview without the UNMIK statement would render the SPO interview unintelligible. Rule 154 admission for W03871’s Proposed Evidence will significantly reduce the time required for W03871’s direct examination. During the supplemental examination, the SPO would elicit brief oral testimony from W03871 for 3 hours on essential matters, including to clarify or explain certain aspects of W03871’s evidence. The SPO would also address relevant issues not covered in W03871’s Proposed Evidence.

C. W04295

19. *Relevance.* W04295 was a member of the [REDACTED]. W04295 will describe the [REDACTED]. W04295 provides evidence on the KLA policy of targeting opponents, including individuals deemed to be Serb collaborators, and the penalty for such affiliation.

20. W04295’s evidence includes information about [REDACTED]. W04295 will provide information about the events leading up to and throughout the night of the [REDACTED]. W04295 will also provide evidence on the [REDACTED].

21. W04295's evidence is thus relevant to charged crimes in the Indictment.<sup>23</sup>
22. *Authenticity and reliability.* W04295's Rule 154 Statement is *prima facie* authentic and reliable.<sup>24</sup> It consists of his: (i) SPO statement;<sup>25</sup> and (ii) two [REDACTED] statements.<sup>26</sup> W04295's audio-video recorded SPO interview was recorded in verbatim transcripts.<sup>27</sup> W04295 confirmed that his statement was true and accurate, and given voluntarily.<sup>28</sup>
23. During his SPO interview, W04295 had an opportunity to review his prior statements, including those tendered herein as Rule 154 Statements.<sup>29</sup> W04295 confirmed that the relevant written materials from [REDACTED] were his statements, and recognised his signature.<sup>30</sup> Further, as excerpts of these statements were discussed in the SPO interview, these statements form an integral part thereof.
24. *Suitable for Rule 154 admission.* W04295's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W04295's Proposed Evidence will significantly reduce the time required for W04295's direct examination. The SPO intends to elicit oral testimony from W04295 for 2 hours<sup>31</sup> on essential matters that clarify or supplement certain aspects of his evidence, including his knowledge of contemporaneous documents and records.

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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> For an individualised assessment of reliability, see Annex 3.

<sup>25</sup> 060112-TR-ET Parts 1-9 RED.

<sup>26</sup> SITF00028070-SITF00028083 RED and SITF00028084-SITF00028105 RED. The [REDACTED] statements come from larger ERN range SITF00028070-SITF00028141 RED, which is an enhanced version of 060232-060303 RED disclosed in Disclosure Package 1334 on 11 July 2024.

<sup>27</sup> 060112-TR-ET Part 1 RED, pp.1-2.

<sup>28</sup> 060112-TR-ET Part 9 RED, pp.2-3.

<sup>29</sup> 060112-TR-ET Part 5 RED, pp.7-10.

<sup>30</sup> 060112-TR-ET Part 5 RED, pp.7-10.

<sup>31</sup> Reduced from the 3 hours indicated in the Witness List. See Amended List of Witnesses, KSC-BC-2020-06/F01594/A01 ('Witness List'), p.253/567.

## D. W04372

25. *Relevance.* In [REDACTED] 1998, W04372 joined the KLA in his village in [REDACTED]. In [REDACTED] 1998, after meeting the KLA commander for [REDACTED], he joined the KLA at the [REDACTED]. There, he performed whatever task was needed to set up the facilities, ensured that KLA soldiers had sufficient food and uniforms, and liaised with [REDACTED] when medical care was necessary.

26. The [REDACTED] were used for logistics and supplies, including weapons and ammunition, and many KLA soldiers went through it, including [REDACTED]. In [REDACTED], W04372 worked together with other KLA soldiers, including [REDACTED].

27. W04372 saw several civilians detained in [REDACTED]. They stayed in a room separate from the KLA soldiers. W04372 recalls that [REDACTED] was in a terrible state when he arrived in [REDACTED], and that he had reported that he had been beaten up on the way there. When he informed [REDACTED] about it, he was told to keep [REDACTED]. [REDACTED].

28. W04372's evidence is thus relevant to charged crimes in the Indictment.<sup>32</sup>

29. *Authenticity and reliability.* W04372's Proposed Evidence is *prima facie* authentic and reliable.<sup>33</sup> W04372's Rule 154 Statement is comprised of W04372's SPO interview,<sup>34</sup> which was recorded in verbatim transcripts. [REDACTED].<sup>35</sup> W04372 confirmed that his statement was true and accurate, and given voluntarily.<sup>36</sup>

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<sup>32</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>33</sup> For an individualised assessment of reliability, see Annex 4.

<sup>34</sup> 059615-TR-ET Parts 1-2 RED2, 059615-TR-ET Parts 3 RED3, and 059615-TR-ET Parts 4-10 RED 2.

<sup>35</sup> 059615-TR-ET Part 1 RED2, pp.2-4.

<sup>36</sup> 059615-TR-ET Part 10 RED2, pp.15-17.

30. *The associated exhibits are admissible.* The associated exhibits forming part of W04372's Proposed Evidence in Annex 4 – consisting of photographs and a sketch drawn by the witness,<sup>37</sup> and [REDACTED]<sup>38</sup> – should be admitted as they were discussed with, marked, and/or drawn by W04372 during his interview. They form an inseparable and indispensable part of W04372's Rule 154 Statement in that they are used and explained in W04372's evidence. The associated exhibits are therefore integral to the Rule 154 Statement.

31. *Suitable for Rule 154 admission.* W04372's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W04372's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify, or explain certain aspects of W04372's evidence for 2 hours.<sup>39</sup>

32. *Request to amend the Exhibit List.* Pursuant to Article 40 and Rule 118(2), the SPO seeks addition of one of the proposed associated exhibits – which consists of [REDACTED]<sup>40</sup> discussed with W04372 during his SPO interview<sup>41</sup> – to the Exhibit List. This item was previously disclosed,<sup>42</sup> but was only identified as an associated exhibit in the course of reviewing W04372's evidence for the purposes of this submission. While this request could have been made earlier, there is good cause for the requested amendment and limited, if any, prejudice.

33. Without the ability to tender [REDACTED] – originally submitted by W04372 himself [REDACTED] – the quality, accuracy, and completeness of the witness's

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<sup>37</sup> 059602-059614.

<sup>38</sup> ERN SITF00015116-SITF00015117-ET from SITF00015095-00015119.

<sup>39</sup> Reduced from the 3 hours indicated in the Witness List. See Witness List, KSC-BC-2020-06/F01594/A01, p.284/567.

<sup>40</sup> ERN SITF00015116-SITF00015117-ET from SITF00015095-00015119.

<sup>41</sup> 059615-TR-ET Part 1 RED2, pp.17-18; 059615-TR-ET Part 10 RED2, pp.13-14.

<sup>42</sup> Disclosures 495, 503, 549, 700 (Rule 102(3)) and 1298 (Rule 102(1)(b)).

evidence would be undermined, considering [REDACTED] are an inseparable and indispensable part of his Rule 154 Statement. As to lack of prejudice, the associated exhibit: (i) was on the first Rule 102(3) list<sup>43</sup> and disclosed to most Defence teams since 2022;<sup>44</sup> (ii) is discussed in a statement on the Exhibit List; and (iii) is of very limited length and scope.

E. W04590

34. *Relevance.* On or around [REDACTED], W04590, a Kosovar Albanian and [REDACTED] were stopped by KLA soldiers [REDACTED].

35. They were [REDACTED], where KLA members [REDACTED] and put them into a room. W04590's detention lasted almost [REDACTED]. The prisoners were kept in unsanitary conditions, and W04590 could hear people shouting while they were beaten.

36. [REDACTED]. There, they questioned him [REDACTED], and severely beat him, including with [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

37. [REDACTED] visited the room where W04590 was detained [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

38. W04590's evidence is thus relevant to charged crimes in the Indictment.<sup>45</sup>

39. *Authenticity and reliability.* W04590's Rule 154 Statement – consisting of his [REDACTED]<sup>46</sup> – is *prima facie* authentic and reliable.<sup>47</sup> W04590's [REDACTED] was recorded in a verbatim transcript and the witness [REDACTED].<sup>48</sup>

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<sup>43</sup> Prosecution Rule 102(3) notice, KSC-BC-2020-06/F00421, 30 July 2021.

<sup>44</sup> With the exception of the Taçi Defence Team, which received it on 1 March 2023.

<sup>45</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>46</sup> [REDACTED].

<sup>47</sup> For an individualised assessment of reliability, see Annex 5.

<sup>48</sup> [REDACTED].

40. *The associated exhibits are admissible.* The associated exhibits – namely, a booklet of pictures and a sketch – forming part of the Proposed Evidence in Annex 5 should be admitted as they are an inseparable and indispensable part of W04590's Rule 154 Statement. They are used and explained in W04950's evidence and are visual aids useful to contextualise the witness's Rule 154 statement.

41. *Suitable for Rule 154 admission.* While the witness was initially proposed under Rule 153,<sup>49</sup> the SPO has decided to call the witness to testify due to changes in circumstances over the course of the trial, including the unanticipated unavailability of [REDACTED], who also provides evidence about crimes at [REDACTED].<sup>50</sup>

42. W04590's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. When compared against the amount of time that would be required if the witness testified entirely *viva voce*, Rule 154 admission for W04590's Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of 1 hour. During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to highlight, clarify, or explain certain aspects of W04590's evidence.

#### F. W04600

43. *Relevance.* In [REDACTED] 1998, W04600 joined the KLA in the [REDACTED]. W04600 was a member of [REDACTED]. W04600 continued to serve as [REDACTED].

44. [REDACTED]. Upon arrival at the compound, W04600 stated that [REDACTED]. [REDACTED]. [REDACTED] was later found dead in a shallow grave, close to [REDACTED].

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<sup>49</sup> Witness List, KSC-BC-2020-06/F01594/A01, p.14/567.

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

45. W04600's evidence is thus relevant to charged crimes in the Indictment.<sup>51</sup>

46. *Authenticity and reliability.* W04600's Rule 154 Statement is comprised of W04600's SPO Interview<sup>52</sup> and [REDACTED].<sup>53</sup> Each statement bears sufficient indicia of authenticity and reliability.<sup>54</sup> W04600's SPO interview consists of verbatim transcripts of the audio-video recording. During this interview, W04600 confirmed that the content was true and accurate, and given voluntarily.<sup>55</sup> Similarly, W04600's [REDACTED] and consists of verbatim transcripts.

47. *The associated exhibits are admissible.* The associated exhibits forming part of W04600's Proposed Evidence in Annex 6 – namely, photographs taken of [REDACTED], a map of Kosovo including the area close to [REDACTED], a sketch made by W04600 during his SPO interview, and items marked by W04600 [REDACTED] – should be admitted as they are an inseparable and indispensable part of W04600's Rule 154 Statements. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.

48. *Suitable for Rule 154 admission.* W04600's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission will significantly reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W04600 for approximately 1 hour on essential matters that highlight, clarify, or explain aspects of his evidence.

#### G. W04735

49. *Relevance.* W04735 is a Kosovo Albanian who was abducted in [REDACTED]. He was driven to [REDACTED] and detained in [REDACTED]. There, W04735 was

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<sup>51</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>52</sup> 072914-TR-ET Parts 1-4 Revised RED3.

<sup>53</sup> [REDACTED].

<sup>54</sup> For an individualised assessment of reliability, see Annex 6.

<sup>55</sup> 072914-TR-ET Part 4 Revised RED3, pp.6-7.

beaten by KLA members, [REDACTED]. W04735 was detained with others, including [REDACTED], in poor sanitary conditions and witnessed the mistreatment of his co-detainees.

50. [REDACTED]. [REDACTED].

51. Around [REDACTED] 1999, W04735 and [REDACTED] were transferred to and detained at [REDACTED]. [REDACTED], where W04735 recognised KLA soldiers, including [REDACTED]. [REDACTED], W04735 was detained with Serb and Roma prisoners. W04735 and the other detainees were released by the KLA with a warning that they would be killed if they told anyone that they had been held.

52. W04735's evidence is thus relevant to charged crimes in the Indictment.<sup>56</sup>

53. *Authenticity and reliability.* W04735's Rule 154 Statement is comprised of:<sup>57</sup> (i) his [REDACTED] statement;<sup>58</sup> (ii) his [REDACTED];<sup>59</sup> and (iii) his [REDACTED].<sup>60</sup> Each statement bears sufficient indicia of reliability.<sup>61</sup> For all statements, W04735 was duly advised of his rights as a witness.<sup>62</sup> W04735 acknowledged the [REDACTED] statement to be his and signed the record without any objection.<sup>63</sup> [REDACTED]<sup>64</sup> and [REDACTED]<sup>65</sup> [REDACTED].

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<sup>56</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>57</sup> The SPO is not tendering the witness's SPO interview, as the relevant parts thereof are primarily repetitive of his prior statements tendered herein, and any additional, relevant information contained in the SPO interview can be addressed during supplemental examination. During his SPO interview, the witness confirmed having given the statements and testimonies comprising his Rule 154 statement. See 083218-TR-ET Part 1 RED3, pp.17-19.

<sup>58</sup> SITF00013369-00013477 RED3.

<sup>59</sup> SITF00016611-SITF00016704 RED3 and SITF00016493-00016533 RED3.

<sup>60</sup> SPOE00014585-00014639 RED3.

<sup>61</sup> For an individualised assessment of reliability, see Annex 7.

<sup>62</sup> SITF00013369-00013477 RED3, p.SITF00013369; SITF00016611-SITF00016704 RED3, pp.SITF00016619-SITF00016620; SPOE00014585-00014639 RED3, p.SPOE00014587.

<sup>63</sup> SITF00013369-00013477 RED3, pp.SITF00013403, SITF00013477.

<sup>64</sup> SITF00016611-SITF00016704 RED3, p.SITF00016620.

<sup>65</sup> SPOE00014585-00014639 RED3, p.SPOE00014587.

54. *The associated exhibits are admissible.* The associated exhibit forming part of W04735's Proposed Evidence in Annex 7 – namely, a report of a photoboard identification – should be admitted as it is an inseparable and indispensable part of W04735's Rule 154 Statement, in that it is used and explained in W04735's evidence.

55. *Suitable for Rule 154 Admission.* W04735's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. The SPO initially proposed W04735 as a fully *viva voce* witness with 4.5 hours of direct examination.<sup>66</sup> Rule 154 admission for W04735's Proposed Evidence will significantly reduce the number of hours required for direct examination from 4.5 to 1.5 hours. The SPO intends to elicit brief oral testimony from W04735 on essential matters that highlight, clarify, or explain certain aspects of his evidence.

#### H. W04737

56. *Relevance.* In [REDACTED] 1998, W04737 joined [REDACTED]. [REDACTED]. Towards the end of 1998, W04737 underwent training in [REDACTED] village. Instructors included [REDACTED].

57. [REDACTED]. The battalion consisted of three compagnies, with about 300 soldiers, including military police and an intelligence unit. [REDACTED] the intelligence and counter-intelligence service (ZKZ) to focus on collecting information about Serbian forces, as they were more interested in uncovering civilian collaborators. ZKZ also existed at the Brigade and Zone levels, under the command of [REDACTED]. Its members would report directly to the General Staff, including when they were complaining about [REDACTED].

58. [REDACTED], there was no court system within the KLA, except at the General Staff level, with Sokol DOBRUNA as a judge, [REDACTED]. [REDACTED]. W04737 provides examples of the division between the KLA and professional soldiers/FARK,

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<sup>66</sup> See Witness List, KSC-BC-2020-06/F01594/A01, p.440/567.

and between the LPK and LDK. This division ultimately resulted in [REDACTED] being removed from the command post of the [REDACTED].

59. After 14 June 1999, [REDACTED], while other parts of the Brigades were stationed in [REDACTED]. Part of the command of the [REDACTED] was based at [REDACTED], while some soldiers stayed in [REDACTED].

60. [REDACTED]. [REDACTED].

61. W04737's evidence is thus relevant to charged crimes in the Indictment.<sup>67</sup>

62. *Authenticity and reliability.* W04737's Proposed Evidence is *prima facie* authentic and reliable.<sup>68</sup> The W04737 Rule 154 Statement is comprised of W04737's SPO interview.<sup>69</sup> W04737's audio-video recorded SPO interview is recorded in verbatim transcripts. W04737 was duly advised of his rights as a witness,<sup>70</sup> and confirmed that the contents of his recorded statement are true and accurate, and were given voluntarily.<sup>71</sup>

63. *The associated exhibits are admissible.* The associated exhibits forming part of W04737's Proposed Evidence in Annex 8 – namely, pictures, maps, notebooks, and other materials – should be admitted as they are an inseparable and indispensable part of W04737's Rule 154 Statement. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.

64. *Suitable for Rule 154 Admission.* W04737's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W04737's Proposed Evidence will significantly reduce the number of hours required for direct

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<sup>67</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>68</sup> For an individualised assessment of reliability, see Annex 8.

<sup>69</sup> 083519-TR-ET Parts 1, 5, 7 RED2 and 083519-TR-ET Parts 2-4, 6, 8.

<sup>70</sup> 083519-TR-ET Part 1 RED2, p.2.

<sup>71</sup> 083519-TR-ET Part 8, p.11.

examination. The SPO intends to elicit brief oral testimony from W04737 for approximately 2 hours<sup>72</sup> on essential matters that highlight, clarify, or explain certain aspects of his evidence.

I. W04868

65. *Relevance.* W04868 was [REDACTED] from June 1999. He provides evidence on the situation and crimes committed in [REDACTED] and the surrounding areas, including [REDACTED] during summer 1999.

66. W04868 describes various [REDACTED], in buildings under the control of the KLA in and around [REDACTED]. In particular, he describes the [REDACTED] detention site.

67. W04868 also describes the KLA organisation and structure, in particular in the [REDACTED] Operational Zone, and his interactions with and knowledge and observations of KLA members – including [REDACTED] – during and in the weeks after the Indictment period. [REDACTED].

68. W04868's evidence is thus relevant to charged crimes in the Indictment.<sup>73</sup>

69. *Authenticity and reliability.* W04868's Proposed Evidence is *prima facie* authentic and reliable. The W04868 Rule 154 Statement is comprised of (i) W04868's 2021 SPO interview;<sup>74</sup> and (ii) W04868's 2022 SPO interview.<sup>75</sup> Each statement bears sufficient indicia of reliability.<sup>76</sup> W04868's audio-video recorded SPO interviews are verbatim transcripts. W04868 was duly advised of his rights as a witness.<sup>77</sup> W04868 confirmed

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<sup>72</sup> Reduced from the 3 hours indicated in the Witness List. See Witness List, KSC-BC-2020-06/F01594/A01, p.444/567.

<sup>73</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>74</sup> 103757-TR-ET Parts 1-3 RED.

<sup>75</sup> 106349-TR-ET Parts 1-2.

<sup>76</sup> For an individualised assessment of reliability, see Annex 9.

<sup>77</sup> 103757-TR-ET Part 1 RED, p.3; 106349-TR-ET Part 1, pp.3-4.

that the contents of his recorded statement were true and accurate, and given voluntarily.<sup>78</sup>

70. *The associated exhibits are admissible.* The associated exhibits forming part of W04868's Proposed Evidence in Annex 9 – namely, [REDACTED], media reports, pictures, and excerpts from [REDACTED] – should be admitted as they are an inseparable and indispensable part of W04868's Rule 154 Statement. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.

71. *Suitable for Rule 154 Admission.* W04868's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Each interview comprising the Rule 154 Statement had a different focus or purpose.<sup>79</sup> In turn, they are not unduly repetitive. Further, Rule 154 admission will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony from W04868 for approximately 1.5 hours<sup>80</sup> on essential matters that highlight, clarify, or explain certain aspects of his evidence.

72. *Request to amend the Exhibit List.* Pursuant to Article 40 and Rule 118(2), the SPO seeks authorisation to add W04868's 2022 SPO interview ('Second Interview')<sup>81</sup> – which forms part of the proposed Rule 154 Statement – to the Exhibit List. There is good cause for amendment at this stage and limited, if any, prejudice would be caused to the Defence.<sup>82</sup> The Second Interview was not previously added to the Exhibit List

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<sup>78</sup> 103757-TR-ET Part 3 RED, p.3; 106349-TR-ET Part 2, p.55.

<sup>79</sup> The [REDACTED] 2022 SPO Interview (106347-TR-ET Parts 1-2) was conducted as a follow up to the [REDACTED] 2021 SPO Interview (103757-TR-ET Parts 1-3 RED), focusing on discrete areas (*see* 106347-TR-ET Part 1, p.4) and presenting to the witness a number of documents [REDACTED].

<sup>80</sup> Reduced from the 3 hours indicated in the Witness List. *See* Witness List, KSC-BC-2020-06/F01594/A01, p.560/567.

<sup>81</sup> 106349-TR-ET Parts 1-2.

<sup>82</sup> *See, similarly*, Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830), KSC-BC-2020-06/F01901, 2 November 2023, Confidential, paras 49-54. *See also* Decision on Prosecution

because W04868 was initially expected to testify fully live. However, the SPO reserved its right seek Exhibit List amendment if justified by, *inter alia*, a change in the mode of testimony.<sup>83</sup> Adding the Second Interview to Exhibit List and thereby permitting its tender and, as appropriate, admission under Rule 154 would significantly streamline W04868's evidence, as it clarifies and elaborates on the content of the first interview and Exhibit List materials (in particular, associated exhibit 105816-106095, which has been on the Exhibit List since 2022). The Second Interview has also been in the Defence's possession since January 2023<sup>84</sup> and concerns a witness known to the Defence since 2021. In the circumstances, the requested Exhibit List amendment is justified.

### III. CLASSIFICATION

73. This submission and its Annexes are confidential pursuant to Rule 82(4) and to give effect to existing protective measures. In the public redacted version of this filing, specific ERNs have been redacted for the protection of upcoming witnesses. To give effect to the witness' in-court protective measures, the ERN of W04600's [REDACTED] must remain redacted, including after his testimony.<sup>85</sup> Additionally, to give effect to W04590's in-court protective measures, the ERNs of his [REDACTED] must remain redacted, including after his testimony.<sup>86</sup>

### IV. RELIEF REQUESTED

74. For the foregoing reasons, the Trial Panel should: (i) authorise the addition of one prior statement and one associated exhibit identified above to the Exhibit List; and

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Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023, Confidential ('Amendment Decision'), para.20.

<sup>83</sup> See Prosecution request to amend the exhibit list and related matters, KSC-BC-2020-06/F01238, 30 January 2023, Confidential, paras 4-5, fn.13.

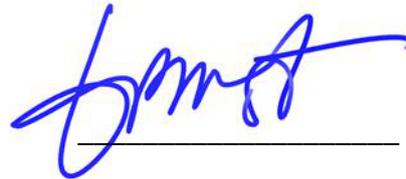
<sup>84</sup> See KSC-BC-2020-06/F01238/A19. The items were disclosed under Rule 102(1)(b) on 15 March 2023 (Disclosure Package 717), following authorisation by the Panel. See Amendment Decision, KSC-BC-2020-06/F01352, para.36(b).

<sup>85</sup> See footnote 53.

<sup>86</sup> See footnotes 46, 48.

(ii) admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by the relevant witnesses during their appearances in court.

**Word Count: 5,808**



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**Kimberly P. West**

**Specialist Prosecutor**

Tuesday, 16 July 2024

At The Hague, the Netherlands.