



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:** 19 September 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Prosecution Motion for Admission of  
Evidence of Witnesses W03885, W04422, and W04669 pursuant to Rule 154 and  
Related Request (F02530)**

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**Specialist Prosecutor**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21, 37 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, 138, 141(1) and 154 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 4 September 2024, the Specialist Prosecutor’s Office (“SPO”) filed a Rule 154 motion with regard to witnesses W03885, W04422, and W04669 (“Motion”), which included a related request for an expedited briefing schedule.<sup>1</sup>

2. On 6 September 2024, upon the SPO’s request,<sup>2</sup> the Panel altered the briefing schedule, informing the Parties and participants that: (i) should the Defence teams wish to file a response, they should do so by 11 September 2024; and (ii) should the SPO wish to file a reply, it should do so by 13 September 2024.<sup>3</sup>

3. On 12 September 2024, the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”), jointly responded to the Motion (“Response”).<sup>4</sup>

4. On 12 September 2024, the SPO replied to the Response (“Reply”).<sup>5</sup>

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<sup>1</sup> F02530, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W03885, W04422, and W04669 pursuant to Rule 154 and Related Request*, 4 September 2024, confidential, with Annexes 1-6, confidential (a public redacted version was filed on the same day, F02530/RED).

<sup>2</sup> Motion, paras 2, 31.

<sup>3</sup> CRSPD569, *Email from Trial Panel to Parties Participants re Expedited Briefing Schedule for F2530*, 6 September 2024, confidential.

<sup>4</sup> F02562, Specialist Counsel, *Joint Defence Response to Motion for Admission of Evidence of Witnesses W03885, W04422, and W04669 pursuant to Rule 154 and Related Request*, 12 September 2024, confidential (a public redacted version was filed on 19 September 2024, F02562/RED), with Annexes 1-3, confidential. While the Response was filed shortly after the stipulated deadline, the Panel, considering the joint nature of the response, the expedited briefing schedule, and the interests of justice, will exercise its discretion and consider the Response as timely.

<sup>5</sup> F02564, Specialist Prosecutor, *Prosecutor’s Reply Relating to Rule 154 Motion F02530*, 12 September 2024.

## II. SUBMISSIONS

5. The SPO requests the admission of the statements, together with the associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, “Proposed Evidence”) of witnesses W03885, W04422, and W04669.<sup>6</sup> The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and that its admission is not outweighed by any prejudice and is therefore in the interests of justice.<sup>7</sup>

6. The Defence does not object to the Motion, with the exception of the statements of W03885,<sup>8</sup> and submits additional objections to certain documents that the SPO intends to use with W03885 and W04669.<sup>9</sup> Accordingly, the Defence requests that the Panel: (i) denies admission of the proposed evidence of W03885; and (ii) takes note of the Defence’s objections.<sup>10</sup>

7. The SPO replies that the Response ignores previous findings of the Panel, as well as the established standard for admissibility of statements under Rule 154, and that the Motion should therefore be granted.<sup>11</sup>

## III. APPLICABLE LAW

8. The Panel incorporates by reference the applicable law as set out in the Panel’s first decision regarding the admission of evidence under Rule 154.<sup>12</sup>

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<sup>6</sup> Motion, paras 1, 31.

<sup>7</sup> Motion, para. 3.

<sup>8</sup> Response, para. 3.

<sup>9</sup> Response, para. 1; Annexes 1-2 to the Response.

<sup>10</sup> Response, para. 8.

<sup>11</sup> Reply, paras 1, 4.

<sup>12</sup> F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“First Rule 154 Decision”), 16 March 2023, confidential (a public redacted version was filed on 7 November 2023, F01380/RED), paras 11-35.

#### IV. DISCUSSION

##### A. W03885

9. The SPO submits that the proposed evidence of W03885<sup>13</sup> is: (i) relevant;<sup>14</sup> (ii) *prima facie* authentic and reliable;<sup>15</sup> and (iii) suitable for admission under Rule 154.<sup>16</sup>

10. The Defence responds that it would be in the interests of justice to hear W03885's evidence *viva voce*, considering: (i) its central importance to the charges; and that (ii) admission via Rule 154 would not materially contribute to the efficiency of the proceedings. Therefore, the Defence, while not contesting their relevance and *prima facie* authenticity, objects to the admission of W03885's Statements pursuant to Rule 154. The Defence does not, however, object to the admission of W03885's Associated Exhibit, should W03885's Statements be found appropriate for admission under Rule 154.<sup>17</sup>

11. The SPO replies that evidence central to the SPO's case can be admitted under Rule 154, and such admission would not cause undue prejudice to the Defence.<sup>18</sup>

12. *W03885's Statements*. Regarding relevance, W03885 is alleged to have joined the Kosovo Liberation Army ("KLA") in May 1998 and, later on, the KLA Military Police.<sup>19</sup> The SPO relies upon W03885's Proposed Evidence in respect of, *inter alia*: (i) his role within the KLA, and that of other members; (ii) the membership, structure, activities, authorities, areas of responsibility and reporting lines of KLA

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<sup>13</sup> The proposed evidence of W03885 ("W03885's Proposed Evidence") consists of the following statements and one associated exhibit, including any translations thereof: (i) 051757-051760-ET RED2; and (ii) 070966-TR-ET Part 1 RED, 070966-TR-ET Part 2 RED2 and 070966-TR-ET Part 3 RED (collectively, "W03885's Statements"); and 070964-070965 ("W03885's Associated Exhibit"). See Annex 1 to the Motion.

<sup>14</sup> Motion, paras 4-7.

<sup>15</sup> Motion, para. 8.

<sup>16</sup> Motion, paras 9-10.

<sup>17</sup> Response, para. 3.

<sup>18</sup> Reply, para. 2.

<sup>19</sup> Motion, para. 4.

units and KLA Military Police units; and (iii) alleged arrests and detentions by KLA members.<sup>20</sup> The Panel is satisfied that W03885's Statements are relevant to the charges in the Indictment.<sup>21</sup>

13. Regarding *prima facie* authenticity and reliability, the Panel notes that W03885's Statements consist of: (i) transcripts of the witness's interview with the SPO ("W03885's SPO Interview");<sup>22</sup> and (ii) records of his interview before a national authority.<sup>23</sup> Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcript of the audio-video recorded W03885's SPO Interview; (ii) indication of the date, time and/or place of the statements; (iii) the attendees present; (iv) the witness's personal details; (v) the requisite witness warnings, rights and/or acknowledgments; (vi) confirmation by W03885 that the statements are true and accurate; (vii) W03885's signature; and (viii) use of official templates.<sup>24</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W03885's Statements.

14. Having found W03885's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W03885's Statements have *prima facie* probative value.

15. Regarding suitability for admission pursuant to Rule 154, the Panel takes note of the Defence's submission that admission under Rule 154 of W3885's Statements would not result in substantial time gains as they mainly refer to one single event.<sup>25</sup>

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<sup>20</sup> Motion, paras 5-6. *See also* Annex 4 to the Motion.

<sup>21</sup> F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential (a public lesser redacted version was filed on 27 February 2023, F01323/A01), paras [REDACTED]; *see also* F01594/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of the Pre-Trial Brief* ("SPO Pre-Trial Brief"), 9 June 2023, confidential (a public redacted version was filed on 3 April 2023, F01415/A01), paras [REDACTED].

<sup>22</sup> 070966-TR-ET Part 1 RED, 070966-TR-ET Part 2 RED2 and 070966-TR-ET Part 3 RED.

<sup>23</sup> 051757-051760-ET RED2.

<sup>24</sup> *See* 070966-TR-ET Part 1 RED, pp. 1-3, 6-7; 070966-TR-ET Part 2 RED2, p. 1; 070966-TR-ET Part 3 RED, pp. 1, 7-8; 051757-051760-ET RED2, pp. 051757-051758, 051760.

<sup>25</sup> Response, para. 3.

The Panel notes that W03885's Statements are 60 pages in length (in English) and that the SPO reduced its estimate for W03885's direct examination from two hours to one hour.<sup>26</sup> In addition, contrary to the Defence's submission, the Panel observes that W03885's Statements also substantially discuss other topics, such as the membership and structure of the KLA and of the KLA Military Police.<sup>27</sup> Thus, the Panel is satisfied that admission of W03885's Statements under Rule 154, which are limited in length, would contribute, albeit modestly, to the expeditiousness of the proceedings, as it would reduce the time required for direct examination.

16. The Panel also notes the Defence's submissions as to the centrality of W03885's evidence to the SPO's case.<sup>28</sup> The Panel recalls that the centrality of a witness's proposed evidence is not, in and of itself, a ground which compels the Panel to refuse its admission.<sup>29</sup> Instead, the nature of the evidence is merely one of the factors that the Panel takes into consideration when deciding whether to exercise its discretion to admit evidence under Rule 154.<sup>30</sup> The Panel is of the view that, in the present circumstances and considering that another witness connected to the relevant incident has already testified in these proceedings,<sup>31</sup> the alleged importance of the proposed evidence is not such as to warrant hearing W03885's evidence *viva voce* and barring admission pursuant to Rule 154. Furthermore, the Panel is satisfied that admission of W03885's Statements would not cause unfair prejudice to the Defence, as the Defence will also have an opportunity to cross-examine the witness.

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<sup>26</sup> Motion, para. 10.

<sup>27</sup> See, e.g., the entirety of 070966-TR-ET Part 1 RED.

<sup>28</sup> Response, para. 3.

<sup>29</sup> See, *inter alia*, F02117, Panel, *Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154*, 12 February 2024, confidential, para. 17 (a public redacted version was filed the same day, F02117/RED); First Rule 154 Decision, para. 28.

<sup>30</sup> First Rule 154 Decision, para. 20.

<sup>31</sup> [REDACTED]. See also [REDACTED], where the Panel found the proposed evidence of [REDACTED] to be appropriate for admission under Rule 154.

17. The Panel therefore finds that the *prima facie* probative value of W03885's Statements is not outweighed by any prejudicial effect, and that W03885's Statements are suitable for admission pursuant to Rule 154.

18. *W03885's Associated Exhibit*. The Panel observes that W03885's Associated Exhibit is a map<sup>32</sup> drawn by W03885 during his SPO Interview and therein discussed.<sup>33</sup> The Panel considers that the map constitutes an indispensable and inseparable part of W03885's SPO Interview, as, without it, the relevant portions of that statement would become incomprehensible or of lesser probative value. The Panel further notes that the map was dated and signed by W03885.<sup>34</sup> The Panel is also satisfied that W03885's Associated Exhibit is relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine W03885, the *prima facie* probative value of W03885's Associated Exhibit is not outweighed by any prejudicial effect. In addition, the Panel notes that the Defence does not object to the admission of W03885's Associated Exhibit.<sup>35</sup> Accordingly, the Panel finds that W03885's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

19. In light of the above, the Panel finds that W03885's Proposed Evidence is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

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<sup>32</sup> 070964-070965.

<sup>33</sup> 070966-TR-ET Part 1 RED, pp. 10-12; 070966-TR-ET Part 3 RED, pp. 1-2.

<sup>34</sup> See 070964-070965, p. 070964 and 070966-TR-ET Part 3 RED, pp. 1-2.

<sup>35</sup> Response, para. 3. See also Annex 1 to the Response, item 1.

**B. W04422**

20. The SPO submits that the proposed evidence of W04422<sup>36</sup> is: (i) relevant;<sup>37</sup> (ii) *prima facie* authentic and reliable;<sup>38</sup> and (iii) suitable for admission under Rule 154.<sup>39</sup>

21. The Defence does not object to the admission of W04422's Statements and W04422's Associated Exhibits pursuant to Rule 154.<sup>40</sup> The Defence, however, notes that certain pages of one of W04422's Statements ("Pages")<sup>41</sup> include the statement of another witness and should, therefore, be removed from W04422's Proposed Evidence.<sup>42</sup>

22. The SPO replies that it is not seeking admission of the Pages and tenders only the pages containing W04422's statement.<sup>43</sup>

23. *W04422's Statements*. Regarding the Pages, the Panel preliminarily notes that these are not being offered for admission by the SPO,<sup>44</sup> and will therefore not be considered to form part of W04422's Proposed Evidence.

24. Regarding relevance, W04422's relative was allegedly detained, mistreated, and killed by KLA members.<sup>45</sup> The incident is alleged to have occurred during the

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<sup>36</sup> The proposed evidence of W04422 ("W04422's Proposed Evidence") consists of the following statements and associated exhibits, including any translations thereof: (i) 066547-TR-ET Part 1 RED2 and 066547-TR-ET Part 2 RED; (ii) SPOE00038114-SPOE00038127 RED2; and (iii) SPOE00119681-00119713 RED2, pp. SPOE00119681-SPOE00119689 (collectively, "W04422's Statements"); and (i) SPOE00209292-00209296 RED; and (ii) SPOE00209289-00209291 RED (collectively, "W04422's Associated Exhibits"). See Annex 2 to the Motion.

<sup>37</sup> Motion, paras 11-17.

<sup>38</sup> Motion, paras 18-20.

<sup>39</sup> Motion, paras 21-23.

<sup>40</sup> Response, para. 4; Annex 2 to the Response, items 1-2.

<sup>41</sup> SPOE00119681-00119713 RED2, pp. SPOE00119690-SPOE00119696 and SPOE00119707-SPOE00119713.

<sup>42</sup> Response, para. 5.

<sup>43</sup> Reply, para. 3, referring to Annex 2 to the Motion, p. 2, "Comments" column, where the SPO tenders only SPOE00119681-00119713 RED2, pp. SPOE00119681-SPOE00119689 and the corresponding translation at pp. SPOE00119697-SPOE00119706.

<sup>44</sup> Annex 2 to the Motion.

<sup>45</sup> Motion, paras 11-16.



Indictment period, in locations relevant to the charges.<sup>46</sup> The SPO relies upon W04422's Proposed Evidence in respect of, *inter alia*, the circumstances of that relative's arrest, detention, mistreatment and fate, and related attempts to visit him and find out about his fate.<sup>47</sup> The Panel is satisfied that W04422's Statements are relevant to the charges in the Indictment.<sup>48</sup>

25. Regarding *prima facie* authenticity and reliability, the Panel notes that W04422's Statements consist of: (i) transcripts of the witness's interview with the SPO ("W04422's SPO Interview");<sup>49</sup> and (ii) records of his statements before another jurisdiction ("W04422's Witness Statements").<sup>50</sup> Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcript W04422's SPO Interview; (ii) indication of the date and/or time and place of the statements; (iii) the attendees present; (iv) the witness's personal details; (v) the requisite witness warnings, rights and/or acknowledgments; and (vi) confirmation by W04422 that the statements are true and accurate.<sup>51</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04422's Statements.

26. Having found W04422's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04422's Statements have *prima facie* probative value.

27. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W04422's Statements are 88 pages in length (in English). The Panel is satisfied that admission of W04422's Statements under Rule 154: (i) would contribute to the

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<sup>46</sup> See Indictment, para. [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

<sup>47</sup> Motion, paras 11-16. See also Annex 5 to the Motion.

<sup>48</sup> Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

<sup>49</sup> 066547-TR-ET Part 1 RED2 and 066547-TR-ET Part 2 RED.

<sup>50</sup> SPOE00038114-SPOE00038127 RED2 and SPOE00119681-00119713 RED2, pp. SPOE00119681-SPOE00119689.

<sup>51</sup> See 066547-TR-ET Part 1 RED2, pp. 1-4, 10-12; 066547-TR-ET Part 2 RED, pp. 1, 19-21; SPOE00038114-SPOE00038127 RED2, pp. SPOE00038114-SPOE00038115; SPOE00119681-00119713 RED2, pp. SPOE00119681-SPOE00119682.

expeditiousness of the proceedings, as it would significantly reduce the number of hours required for direct examination, which currently stands at one hour;<sup>52</sup> and (ii) would not cause unfair prejudice to the Defence, as the Defence will have an opportunity to cross-examine the witness. In addition, the Panel notes that the Defence does not object to the admission of W04422's Statements under Rule 154.<sup>53</sup> The Panel therefore finds that the *prima facie* probative value of W04422's Statements is not outweighed by any prejudicial effect, and that W04422's Statements are suitable for admission pursuant to Rule 154.

28. *W04422's Associated Exhibits.* The Panel observes that W04422's Associated Exhibits consist of: (i) a letter addressed to W04422 in the format of a Red Cross Message ("ICRC Letter");<sup>54</sup> and (ii) handwritten notes allegedly prepared at the International Committee of the Red Cross ("ICRC Notes")<sup>55</sup>. The Panel notes that both documents were discussed in W04422's Witness Statements.<sup>56</sup> The Panel considers that the ICRC Letter and the ICRC Notes constitute an indispensable and inseparable part of W04422's Witness Statements, as, without them, the relevant portions of the statements would become incomprehensible or of lesser probative value. In addition, the Panel is satisfied that W04422's Associated Exhibits are relevant, as they concern events surrounding the fate of the witness's relative.<sup>57</sup> The Panel is also satisfied of the *prima facie* authenticity and probative value of the ICRC Letter, considering that it is dated and signed, and uses the ICRC template. As regards the ICRC Notes, the Panel is of the view that, while unsigned and undated, they are sufficiently contextualised by W04422 in one of

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<sup>52</sup> Motion, para. 23.

<sup>53</sup> Response, para. 4.

<sup>54</sup> SPOE00209292-00209296 RED.

<sup>55</sup> SPOE00209289-00209291 RED.

<sup>56</sup> See SPOE00119681-00119713 RED2, pp. SPOE00119682-SPOE00119687; see also SPOE00038114-SPOE00038127 RED2, p. SPOE00038121-SPOE00038122.

<sup>57</sup> SPOE00209292-00209296 RED, p. SPOE00209296; SPOE00209289-00209291 RED, p. SPOE00209291. See also Annex 2 to the Motion, p. 3.

his witness statements.<sup>58</sup> Therefore, the Panel is also satisfied of the *prima facie* authenticity and probative value of the ICRC Notes. The Panel also finds that, given that the Defence will have an opportunity to cross-examine W04422, the *prima facie* probative value of W04422's Associated Exhibits is not outweighed by any prejudicial effect. In addition, the Panel notes that the Defence does not object to the admission of W04422's Associated Exhibits.<sup>59</sup> Accordingly, the Panel finds that W04422's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

29. In light of the above, the Panel finds that W04422's Proposed Evidence is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

### C. W04669

30. The SPO submits that the proposed evidence of W04669<sup>60</sup> is: (i) relevant;<sup>61</sup> (ii) *prima facie* authentic and reliable;<sup>62</sup> and (iii) suitable for admission under Rule 154.<sup>63</sup>

31. The Defence submits that admission of both of W04669's Statements would be redundant and unnecessarily burden the record.<sup>64</sup>

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<sup>58</sup> See, in particular, SPOE00119681-00119713 RED2, pp. SPOE00119684-SPOE00119687.

<sup>59</sup> Annex 2 to the Response, items 1-2.

<sup>60</sup> The proposed evidence of W04669 ("W04669's Proposed Evidence") consists of the following statements and one associated exhibit, including any translations thereof: (i) 082023-TR-ET Parts 1-4 RED4; and (ii) KSC-BC-2020-05 20211110 ENG and KSC-BC-2020-05 20211111 ENG (collectively, "W04669's Statements"); and 082020-082022 RED3, p. 082022 ("W04669's Associated Exhibit"). See Annex 3 to the Motion.

<sup>61</sup> Motion, paras 24-26.

<sup>62</sup> Motion, para. 27.

<sup>63</sup> Motion, paras 28-29.

<sup>64</sup> Response, paras 6-7; see also Annex 3 to the Response, item 1.

32. *W04669's Statements*. Regarding relevance, W04669 was allegedly detained and mistreated by KLA members in 1999,<sup>65</sup> in a location relevant to the charges.<sup>66</sup> The SPO relies upon W04669's Proposed Evidence in respect of, *inter alia*, the circumstances of his and his co-detainees' abduction, detention and mistreatment.<sup>67</sup> The Panel is satisfied that W04669's Statements are relevant to the charges in the Indictment.<sup>68</sup>

33. Regarding *prima facie* authenticity and reliability, the Panel notes that W04669's Statements consist of: (i) transcripts of the witness's interview with the SPO ("W04669's SPO Interview");<sup>69</sup> and (ii) records of his testimony in the case of *the Specialist Prosecutor v. Mustafa*<sup>70</sup> before the Specialist Chambers ("W04669's Testimony").<sup>71</sup> Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcript of both W04669's Testimony and his audio-video recorded SPO Interview; (ii) indication of the date and time of the statements; (iii) the attendees present; (iv) the witness's personal details; (v) the requisite witness warnings, rights and acknowledgments; (vi) a witness oath; (vii) the number of the case in which W04669's Testimony was given; and (viii) confirmation by W04669 that the statements are true and accurate.<sup>72</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04669's Statements.

34. Having found W04669's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04669's Statements have *prima facie* probative value.

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<sup>65</sup> Motion, paras 24-25.

<sup>66</sup> See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

<sup>67</sup> Motion, paras 24-25. See also Annex 6 to the Motion.

<sup>68</sup> Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

<sup>69</sup> 082023-TR-ET Parts 1-4 RED4.

<sup>70</sup> KSC-BC-2020-05.

<sup>71</sup> KSC-BC-2020-05 20211110 ENG and KSC-BC-2020-05 20211111 ENG.

<sup>72</sup> See, e.g., 082023-TR-ET Part 1 RED4, pp. 1-4; 082023-TR-ET Part 4 RED4, pp. 1, 8-9; KSC-BC-2020-05 20211110 ENG, pp. 1379-1380, 1388-1389; KSC-BC-2020-05 20211111 ENG, pp. 1500-1501.

35. Regarding suitability for admission pursuant to Rule 154, the Panel notes the Defence's submissions as to the repetitiveness of W04669's Statements.<sup>73</sup> First, the Panel observes that both statements are relatively limited in size, with a total of 323 pages (in English). Moreover, the Panel is of the view that, while W04669's Statements may be partially repetitive, they were given in the different contexts of investigative and judicial proceedings, and thus complement each other. In addition, the Panel considers that consistency between different statements of a witness could be relevant for assessing the credibility of the witness and the reliability of their evidence.<sup>74</sup> Therefore, the Panel is satisfied that admission of W04669's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings, as it would significantly reduce the number of hours required for direct examination, which currently stands at one hour;<sup>75</sup> and (ii) would not cause unfair prejudice to the Defence, as the Defence will have an opportunity to cross-examine the witness. The Panel therefore finds that the *prima facie* probative value of W04669's Statements is not outweighed by any prejudicial effect, and that W04669's Statements are suitable for admission pursuant to Rule 154.

36. *W04669's Associated Exhibit*. The Panel observes that W04669's Associated Exhibit is a photograph depicting a detention site<sup>76</sup> that was marked by W04669 during his SPO Interview.<sup>77</sup> The photograph was also discussed in W04669's Testimony.<sup>78</sup> The Panel considers that the photograph constitutes an indispensable and inseparable part of W04669's Statements, as, without it, the relevant portions of the statements would become incomprehensible or of lesser probative value.

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<sup>73</sup> Response, para. 6.

<sup>74</sup> See F01901, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830)*, 2 November 2023, confidential (a further public redacted version was filed on 30 May 2024, F01901/RED2), para. 14, and references therein.

<sup>75</sup> Motion, para. 29.

<sup>76</sup> 082020-082022 RED3, p. 082022.

<sup>77</sup> 082023-TR-ET Part 2 RED4, pp. 28-31.

<sup>78</sup> See KSC-BC-2020-05 20211110 ENG, pp. 1470-1472.

The Panel further observes that the photograph was dated and signed by the witness.<sup>79</sup> The Panel is thus satisfied that W04669's Associated Exhibit is relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine the witness, the *prima facie* probative value of W04669's Associated Exhibit is not outweighed by any prejudicial effect. In addition, the Panel notes that the Defence does not object to the admission of W04669's Associated Exhibit.<sup>80</sup> Accordingly, the Panel finds that W04669's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

37. In light of the above, the Panel finds that W04669's Proposed Evidence is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

#### D. DEFENCE'S ADDITIONAL OBJECTIONS

38. Finally, the Panel notes the Defence's additional objections to items that the SPO intends to use with W03885, W04422 and W04669. The Panel, however, observes that these items have not yet been offered for admission by the SPO, and will therefore not entertain such objections at this time. The Defence will have an opportunity to raise relevant objections if and when such items are tendered during the witnesses' testimonies.

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<sup>79</sup> See 082020-082022 RED3, p. 082022 and 082023-TR-ET Part 2 RED4, pp. 30-31.

<sup>80</sup> Response, para. 7. See also Annex 3 to the Response, item 1.

V. DISPOSITION

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

- a) **GRANTS** the Motion; and
- b) **FINDS** the Statements and Associated Exhibits of W03885, W04422 and W04669 as set out in paras 9, 20 and 30, and respective footnotes appropriate for admission once the requirements of Rule 154(a)-(c) are met.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Thursday, 19 September 2024

At The Hague, the Netherlands.