

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 Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr. Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi
Specialist Counsel for Kadri Veseli
Specialist Counsel for Rexhep Selimi
Specialist Counsel for Jakup Krasniqi

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**Further Public Redacted Version of Joint Defence Consolidated Response to
F02450, F02451, F02460 and F02465
with Confidential Annexes 1-16**

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I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby files a consolidated response to the Specialist Prosecutor’s (“SPO”) Motions for Admission of Evidence Pursuant to Rule 154 and Related Evidence filed on 16 July 2024,¹ 18 July 2024,² 22 July 2024,³ and the Prosecution Submission of List of Witnesses for 19 August to 7 November 2024.⁴
2. The present filing responds to three separate Rule 154 Motions issued by the SPO. The Annexes contain objections to documents the SPO intends to use with W01158, W01605, W02135, W04240, W04278, W04295, W04352, W04366, W04372, W04427, W04590, W04600, W04737, W04798, W04809, and W04854, as well as the Defence estimates for cross-examination.
3. This filing is submitted confidentially because it responds to documents with the same classification.⁵

II. PROCEDURAL HISTORY

4. On 11 July 2024, the Defence gave notice to the Specialist Prosecutor’s Office (“SPO”) via *inter partes* correspondence of its intention to request an extension of time

¹ KSC-BC-202-06, F02450, Specialist Prosecutor, *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*, 16 July 2024, confidential with Annexes 1-9, confidential (“F02450”).

² KSC-BC-202-06, F02460, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W01158, W01605, W04240, W04278, W04352, W04366, and W04427 Pursuant to Rule 154*, 18 July 2024, confidential, with Annexes 1-7, confidential.

³ KSC-BC-202-06, F02465, Specialist Prosecutor, *Prosecution consolidated Rule 153 motion for W04797 and W04808 and Rule 154 motion for W04798, W04809, and W04854*, 22 July 2024, confidential, with Annexes 1-7, confidential.

⁴ KSC-BC-2020-06, F02451, Specialist Prosecutor, *Prosecution Submission of List of Witnesses for 19 August to 7 November 2024 (“List of Witnesses”)*, 16 July 2024, confidential, with Annex 1, confidential.

⁵ Rule 82(4) of the Rules of Procedure and Evidence on the Kosovo Specialist Chambers (“Rules”).

until 29 July 2024 to respond to Rule 154 and witness notification requests for witnesses appearing in the August 2024 block; and until 29 August 2024 for witnesses appearing thereafter.⁶ The SPO responded that it did not oppose the Defence request.⁷

5. On 16 July 2024, the SPO filed the List of Witnesses for the period of 19 August to 7 November 2024 and a Rule 154 Motion in relation to nine (9) witnesses.⁸ On the same day, 16 July 2024, the SPO filed the List of Witnesses for the period of 19 August to 7 November 2024.

6. On 17 July 2024, the Panel granted the Defence request.⁹ The Panel extended the time limit to respond, by 29 July, to those in the List of Witnesses and to the Motion appearing in August 2024; and by 23 August, to the remaining witnesses in the List of Witnesses and the Motion.¹⁰

7. On 18 July 2024, the SPO filed a subsequent Rule 154 Motion in relation to seven (7) witnesses.¹¹

8. On 22 July 2024, the SPO filed a consolidated Rule 153 and Rule 154 Motion containing Rule 154 submissions for three (3) witnesses.¹²

9. On 29 July 2024, the Defence submitted a consolidated, partial response to the List of Witnesses and F02450, and provided notice of its cross-examination times for W03871, W04735, and W04868.¹³

⁶ Specialist Counsel e-mail from 11 July 2024 at 15:24.

⁷ SPO e-mail from 11 July 2024 at 16:37.

⁸ F02450.

⁹ KSC-BC-2020-06, In Court – Oral Order, Order Granting Extension of Time for Defence Responses, 17 July 2024, public.

¹⁰ *Ibid.*

¹¹ F02460.

¹² F02465.

¹³ KSC-BC-2020-06, F02477, Specialist Counsel, *Joint Defence Consolidated Response to F02450 and F02451*, 29 July 2024, confidential, with Annexes 1-3, confidential.

10. On 13 August 2024, the Trial Panel issued its Decision granting the Motion in full, with respect to witnesses: W03871, W04735, and W04868.¹⁴

11. On 20 August 2024, the Panel granted an extension of 4000 words to the present Response, following a request by the Defence on the same day.¹⁵

III. SUBMISSIONS

12. The Defence reiterates its prior submissions on Rule 154 witnesses.¹⁶ It reiterates that the admission of material pursuant to Rule 154 should be appropriately time-saving and devoid of repetition, to avoid “bloating the case record even more.”¹⁷ Additionally, the Defence respectfully requests the Trial Panel to limit the admission of evidence onto the case record that is not pleaded in the SPO’s Indictment and that is unsupported by any evidence beyond tangential, unidentified hearsay evidence. [REDACTED].

A. W01158

13. The Defence does not object to the admission of W01158’s SPO Interview and its associated exhibit under Rule 154.

B. W01605

¹⁴ KSC-BC-2020-06, F02489, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W03871, W04735, and W04868 Pursuant to Rule 154 and Related Requests (F02450)*, 13 August 2024, confidential.

¹⁵ KSC-BC-2020-06, Transcript of Hearing – 20 August 2024, p. 18786, lines 2-8.

¹⁶ *See, for example*, KSC-BC-2020-06, F02229, Specialist Counsel, *Joint Defence Consolidated Response to F02195 and F02196*, 8 April 2024, confidential, para. 8; F01308, Specialist Counsel, *Joint Defence Response to ‘Prosecution motion for admission of evidence of Witnesses W04474, W04421, W04355, W02161, W01236, W04337, and W03165 pursuant to Rule 154’*, 20 February 2023, confidential, paras 1-8.

¹⁷ KSC-BC-2020-06, Transcript of Hearing, 26 March 2024, confidential, p. 13713, line 20.

14. The Defence does not object to the admission of W01605's SITF Interview¹⁸ pursuant to Rule 154. The Defence accepts the SITF Interview meets the basic indicia of authenticity, and contains evidence that is *prima facie* relevant to the charges in the Indictment.

C. W02135

15. The Defence does not object to the admission of the two statements of W02135¹⁹ pursuant to Rule 154, provided that the conditions for admission set out in Rule 154(c) are met.

Associated Exhibits

16. However, the Defence objects to the admission of SITF40000700-40000702, SITF00011523-00011528 and SPOE00212674-SPOE00212674 as associated exhibits pursuant to Rule 154.

(a) *SITF40000700-40000702*

17. The Defence objects to the admission of SITF40000700-40000702 described by the SPO as [REDACTED].

18. First, the document is allegedly authored by [REDACTED]. In his witness statement, W02135 merely commented on [REDACTED].²⁰

¹⁸ 010510-TR-ET Parts 1 to 3: *see* F02460/A02.

¹⁹ 087342-087360 & SPOE00000681-SPOE00000696: *see* F02450/A01.

²⁰ 087342-087360, para. 44.

19. Considering that the tendered document goes far beyond the scope of W02135's statement and the speculative nature of W02135's evidence on the issue in the tendered document, the probative value of the latter is outweighed by its prejudicial effect and thus should not be admitted into evidence under Rule 154.

(b) *SITF00011523- 00011528*

20. The Defence also objects to the admission of SITF00011523-00011528, described by the SPO as [REDACTED].

21. The document is a [REDACTED].²¹ W02135 merely provided his opinion on one very brief issue, [REDACTED].²² W02135 was [REDACTED].²³

22. The limited evidence provided by W02135 in relation to the [REDACTED] is uncorroborated and speculative. Furthermore, it refers to crucial aspects of the case, [REDACTED].²⁴ Thus, the probative value of the [REDACTED] is outweighed by its prejudicial effect, it is not an indispensable part of W02135's evidence and thus should not be admitted under Rule 154.

(c) *SPOE00212674- SPOE00212674*

23. The Defence objects to the admission of an [REDACTED].²⁵

24. W02135 has previously described in the abstract, [REDACTED]. W02135 has failed to establish any basis for his knowledge of such an incident.²⁶ W02135 has also

²¹ SITF00011523-00011528 at SITF00011524.

²² 087342-087360, para. 41.

²³ *Idem*, para. 41.

²⁴ 087342-087360, para. 41, in particular: [REDACTED].

²⁵ SPOE00212674- SPOE00212674.

²⁶ *Ibid.*

failed to identify or provide corroborating information (a report, for instance) on this incident.²⁷ As a result, it would appear that the prejudice arising from the admission of this document under Rule 154 would far outweigh its probative value.²⁸ On this basis, admission should be denied.

D. W04240

25. The Defence does not object to the admission of W04240's SPO Interview²⁹ pursuant to Rule 154, but observes that it contains mainly hearsay, which will affect the weight, if any, of such evidence. The Defence notes that the SPO requests the admission of W04240's 8-part interview while it still intends to examine the witness for two hours.³⁰ Given the length and detail of W04240's interview, the Defence submits that the SPO should be directed to limit further its direct examination, being noted that it will have the opportunity to ask the witness to clarify its statements during the preparation session.

Associated Exhibits

26. The Defence notes that while the [REDACTED] SITF00265515-00265516 was discussed during W04240's SPO interview, it concerns an uncharged incident, was issued outside of the Indictment period, and is not mentioned in the SPO Pre-Trial Brief, therefore it fails to meet even the minimal threshold of relevance and probative value for admission.

E. W04278

²⁷ W02135's SPO witness statement, para. 63.

²⁸ F02450/A01, see relevance of item 14.

²⁹ 053034-TR-ET Parts 1-8.

³⁰ F02460, para. 21.

27. The Defence opposes the admission of W04278's SPO Interview under Rule 154.³¹ The importance of W04278's evidence requires it to be heard live as it relates to the [REDACTED].³² In his SPO Interview, W04278 provides first-hand evidence on these events. The importance of the proposed evidence to a Party's case is a relevant factor³³ in the Panel exercising its discretion not to admit evidence pursuant to Rule 154 and to decide to hear such evidence *viva voce*.³⁴ Since the SPO intends to elicit *viva voce* evidence from [REDACTED], who will be testifying on the same events, there is no demonstrable reason to instead admit W04278's evidence in writing.

Associated Exhibits

28. While W04278 was shown two documents during the SPO Interview, the ensuing discussion is brief and the witness fails to authenticate the documents. W04278 commented that he had neither seen the first document, nor knew the individual that is mentioned in it.³⁵ In relation to the second document, he stated that he had never seen it before.³⁶ The purported relevance of the first document as indicating the KLA's capacity to detain³⁷ demonstrates the potential prejudicial effect of its admission in the absence of authentication. Accordingly, the proposed

³¹ 059666-TR-ET Part 1 RED; 059666-TR-ET Part 2 RED; 059666-TR-ET Part 3 RED; 059666-TR-ET Part 4 RED; 059666-TR-ET Part 5 RED; 059666-TR-ET Part 6 RED; 059666-TR-ET Part 7 RED; 059666-TR-ET Part 8 RED.

³² KSC-BC-2020-06, F01323/A01, Specialist Prosecutor, *ANNEX 1 to Prosecution further submissions pursuant to Decision F01229 with confidential Annex 1*, 27 February 2023, para. 44.

³³ F01380, para. 28.

³⁴ F01380, para. 20.

³⁵ 059666-TR-ET Part 4, p. 2.

³⁶ 059666-TR-ET Part 4, p.4.

³⁷ KSC-BC-2020-06, F02460/A04, Specialist Prosecutor, *Annex 4 to Prosecution motion for admission of evidence of Witnesses W01158, W01605, W04240, W04278, W04352, W04366, and W04427 pursuant to Rule 154*, 18 July 2024, confidential, p. 4.

associated exhibits do not constitute an indispensable or inseparable part of the statement³⁸ to which they relate. The Defence therefore objects to their admission.

F. W04295

29. With respect to W04295, the SPO offers three statements for admission pursuant to Rule 154.³⁹ Whereas the Defence does not contest their *prima facie* authenticity and reliability, it nonetheless submits that the Panel should exercise its discretion not to admit them under Rule 154.

30. W04295 is an important witness whose evidence pertains to central aspects of the SPO case, including, *inter alia*, (i) [REDACTED];⁴⁰ (ii) [REDACTED];⁴¹ and (iii) the [REDACTED].⁴²

31. The Defence further notes that portions of W04295's evidence goes to the acts and conduct of the Accused – specifically, (i) [REDACTED];⁴³ and (ii) [REDACTED].⁴⁴

32. Such considerations, taken individually or indeed cumulatively, militate against the admission of W04295's evidence via Rule 154. His evidence should be heard afresh during direct examination.

³⁸ F01380, para. 24.

³⁹ 060112-TR-ET Parts 1-9 RED; SITF00028070-SITF00028141 RED, pp. SITF00028070-SITF00028083 RED; SITF00028070-SITF00028141 RED, pp. SITF00028084-SITF00028105 RED.

⁴⁰ See for instance, 060112-TR-ET Part 2, pp. 17-18; 060112-TR-ET Part 5, pp. 22-23; 060112-TR-ET Part 7, p. 20.

⁴¹ See for instance, 060112-TR-ET Part 6.

⁴² See for instance, 060112-TR-ET Part 4, pp. 11-25.

⁴³ 060112-TR-ET Part 7, p. 10.

⁴⁴ 060112-TR-ET Part 7, p. 15.

33. As regards W04295's associated exhibits,⁴⁵ the SPO has not tendered them for admission.⁴⁶ Nevertheless, the Defence has raised objections in respect of their proposed *use* with W04295.⁴⁷

G. W04352

34. The Defence takes note of the Trial Panel's prior findings that the information provided by W04352 is unique and relates to an Indictment witness.⁴⁸ It does not object to the admission of these statements pursuant to Rule 154.

H. W04366

35. The Defence does not object to the admission of W04366's prior statements under Rule 154. With respect to associated exhibit 059341-059350, the Defence notes that during his SPO Interview, W04366 could not recall and/or identify the [REDACTED].⁴⁹ During his testimony in [REDACTED]. No questions were asked by any of the parties regarding the exhibits upon which the witness had not previously been able to comment. It is therefore not established that [REDACTED] that the witness did not recognise or was not asked about form an indispensable part of his prior statements.

I. W04372

⁴⁵ P00011/P00011_ET; 060304-060457, p. 060457/P00155_ET.

⁴⁶ KSC-BC-2020-06, F02450/A03, Specialist Prosecutor, W04295: *Annex 3 to 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*, 16 July 2024, confidential, p. 4, items 1 and 2.

⁴⁷ See Annex 6.

⁴⁸ KSC-BC-2020-06, F02421, Trial Panel II, *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*, 2 July 2024, confidential, paras 35-36.

⁴⁹ 059351-TR-ET Part 2 RED2, pp. 8-10.

36. The Defence does not object to the admission of W04372's Rule 154 statement. However, it opposes the admission of the following item as an associated exhibit.

37. In relation to SITF00015095-00015119, pp. SITF00015116-SITF00015117, the Defence observes that the SPO has failed to establish the *prima facie* authenticity of these documents. The description attached by the SPO to this item is misleading. [REDACTED] as they do not contain any *indicia* of authenticity.

38. The two documents contained in this item were presented to the Panel by [REDACTED].⁵⁰ [REDACTED].⁵¹ Towards the end of the interview, the witness seems to recall the content of these [REDACTED], but it is not clear from the transcript whether the documents were shown to the witness to refresh his recollection.⁵² Taking into account the uncertainty of their provenance and minimal content, it remains uncertain whether the [REDACTED] are directed to W04372 as is the SPO's case.

39. Further, the SPO's late request to add this item to the Exhibit List is not timely or supported by good cause. The SPO submits that it was only in the course of reviewing W04372's testimony for their Rule 154 submissions that the item was identified,⁵³ and concedes that the request could have been done earlier. In fact, the requested item was discussed in the SPO's own interview with W04372 in [REDACTED], and reviewed again prior to its disclosure to the Defence in October 2022.⁵⁴ The SPO's late realisation upon further review of a witness's proposed evidence does not constitute good cause.⁵⁵

⁵⁰ See SITF00015095-00015119, p. SITF00015096.

⁵¹ 059615-TR-ET Part 1 RED2, pp. 17-18.

⁵² 059615-TR-ET Part 10 RED2, p. 14

⁵³ F02450.

⁵⁴ See Disclosure Batch 549, 01 October 2022.

⁵⁵ KSC-BC-2020-06, F01352, Trial Panel II, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters*, 8 March 2023, confidential, para. 30.

40. For the reasons above, the Defence submits that this associated exhibit should not be admitted under Rule 154 and the SPO's request to amend the Exhibit list should be rejected.

J. W04427

41. The Defence does not object, in principle, to the admission of W04427's SPO Interview⁵⁶ pursuant to Rule 154. The Defence accepts the SPO Interview meets the basic indicia of authenticity, and contains evidence that is *prima facie* relevant to the charges in the Indictment. Having said that, the Defence notes that the interview was conducted wholly in [REDACTED], while the witness' native language is [REDACTED].⁵⁷ Accordingly, there are a number of points during the interview where the witness seemed to have difficulties communicating, or issues of comprehension.⁵⁸ Beyond simply making the content difficult to understand, the language issues may have caused inaccuracies which reduce the reliability of the record. As such, the Defence invites the Panel to be mindful of these language issues when assessing W04427's evidence.

42. Further, the Defence does object to the admission of the parts of W04427's interview discussing the circumstances surrounding the [REDACTED].⁵⁹ W04427 spends a considerable portion of the interview discussing this topic, including his efforts to locate [REDACTED], the limited information provided by [REDACTED],

⁵⁶ 066895-TR-ET Parts 1-7: see Annex 7 to F02460.

⁵⁷ 066895-TR-ET Part 1 RED2, p. 2, lines 1-7.

⁵⁸ See e.g.: 066895-TR-ET Part 1 RED2, pp. 15-16; 066895-TR-ET Part 2, pp. 3-4, 18-21; 066895-TR-ET Part 3 RED2, p. 12 lines 12-16, pp. 24-28, p. 57 lines 6-20; 066895-TR-ET Part 4 RED2 pp. 9-10, p. 23 lines 14-22, p. 39 lines 9-12; 066895-TR-ET Part 5 RED2 pp. 7-8; 066895-TR-ET Part 6 RED2, p. 15; 066895-TR-ET Part 7 RED2, pp. 10-11.

⁵⁹ 066895-TR-ET Part 1 RED2, p. 19 line 14 to p. 28, line 23; 066895-TR-ET Part 2, p. 1 line to p. 5 line 23; 066895-TR-ET Part 3 RED2, p. 5 lines 15-20.

and his unsubstantiated beliefs or assumptions about what may have happened to [REDACTED].⁶⁰ However, discussion of both [REDACTED], and W04427's efforts to find out what happened, is not listed in the witness' Rule 95 summary,⁶¹ or in the list of "issues, facts, and circumstances relation to which the witness will be examined."⁶² This incident is also not identified by the SPO as part of the relevance assessment for W04427's Rule 154 materials,⁶³ and W04427's evidence is not relied upon by the SPO for this issue in the Pre-Trial Brief. The Defence was therefore not on notice that this witness would be testifying about this incident, nor that W04427's materials would be relied upon for this purpose.

43. In any event, W04427's evidence regarding [REDACTED] itself is hearsay: W04427 has no personal knowledge, and is only reporting what was told to him by [REDACTED].⁶⁴ In fact, W04427 reports that [REDACTED] refused to provide details of what exactly happened to him, and W04427 did not ask.⁶⁵ Instead, W04427 inferred or assumed certain information.⁶⁶ As such, the evidence given by W04427 about the circumstances of [REDACTED] is speculative, and its limited probative value is outweighed by its prejudicial effect.

44. [REDACTED] should instead be called to testify about the circumstances of [REDACTED]. While the SPO recently indicated that his evidence may be admitted pursuant to Rule 153,⁶⁷ as previously communicated in *inter partes* correspondence, the Defence will object to the admission of [REDACTED] evidence pursuant that rule.

⁶⁰ 066895-TR-ET Part 1 RED2, pp. 19–27.

⁶¹ KSC-BC-2020-06, F01594/A02, Specialist Prosecutor, *Annex 2 - Confidential Redacted Version of 'Amended List of Witnesses'* ("F01594"), 9 June 2023, confidential, pp. 320-321.

⁶² See KSC-BC-2020-06/F02459/A01, Specialist Prosecutor, *Annex 1 - Prosecution submission of list of witnesses for 19 August to 7 November 2024*, 18 July 2024, confidential, p. 125.

⁶³ F02460, paras. 39-42.

⁶⁴ 066895-TR-ET Part 1 RED2, pp. 27-28.

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ See F01594/A02, p. 293.

It is self-evident that evidence from [REDACTED] directly is of greater relevance, reliability and probative value on the issue of his detention, and would therefore be of greater utility for the Panel in its final assessment.

45. Thus, the portions of the SPO interview that discuss the circumstances surrounding [REDACTED] alleged detention have limited, if any, probative value. In circumstances where the Defence was not on notice that W04427's evidence would be relied on in relation to this incident, the admission of this material would be prejudicial to the Defence. Further, admitting W04427's evidence of [REDACTED] would only bloat the record with speculative, hearsay allegations, when a first-hand witness could provide direct evidence instead.

K. W04590

46. The Defence does not object to the admission of W04590's SPO Interview and its associated exhibit under Rule 154.

L. W04600

47. W04600's Rule 154 Statement is comprised of W04600's SPO Interview and his testimony in [REDACTED].⁶⁸ The Defence does not object to the admission of W04600's evidence via Rule 154.

48. The Defence notes however that the totality of the Rule 154 Statement, combined, amounts to 260 pages. Considering the limited relevance of this witness' evidence to the case as a whole, and the fact that the Trial Panel took judicial notice of a number

⁶⁸ See F02450/A06.

of facts related to the issues on which the witness will be examined,⁶⁹ the Defence invites the Panel to consider ordering the SPO to reduce the estimated time for direct examination of this witness.

Associated Exhibits

49. The Defence objects to the admission of associated exhibits 1, 2 and 3⁷⁰ on the basis of lack of probative value. W04600 did not recognise the locations depicted with any certainty (or not at all, with regard to [REDACTED]). For this reason, the exhibits do not constitute an “inseparable and indispensable” part of the statement.

50. The Defence does not have specific objections to the rest of the associated exhibits but questions whether admission of all of them is necessary.

M. W04737

51. The Defence does not object to the admission of W04737’s SPO Interview⁷¹ pursuant to Rule 154. However, the SPO’s stated intention to examine the witness for two hours in addition to admitting his SPO interview appears to be excessive, and contrary to considerations of expediency. W04737’s SPO interview is approximately 175 pages, and addresses many, if not all, of the topics identified by the SPO as the “issues, facts, and circumstances relation to which the witness will be examined.”⁷²

Associated Exhibits

⁶⁹ See KSC-BC-2020-06, F02498, Trial Panel II, *Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts*, 21 August 2024, public, para. 25.

⁷⁰ [REDACTED].

⁷¹ 083519-TR-ET Parts 1 to 8: see Annex 8 to F02450.

⁷² See Annex 1 to F02459, pp. 25-26.

(a) 066767-066797⁷³

52. The Defence does not object to the admission of the documents in this bundle as associated exhibits, but observes that no details are volunteered by the witness, nor requested by the SPO, as to the provenance of this material. W04737 states that these were the documents [REDACTED].⁷⁴ However, he does not identify the original source of the documents he did 'find', or where he would go to get more. This impacts the authenticity and reliability of the documents, and ultimately the weight that they should be assigned. In addition, some of the items were poorly scanned, resulting in parts of the documents being cut off or illegible.⁷⁵ If these items are deemed admissible, the Defence requests that either the original material or fully legible copies be provided.

(b) U000-4854-U000-4854-ET:⁷⁶

53. The Defence objects to the admission of this page as an associated exhibit, on the basis that it cannot be considered an indispensable part of the interview. The Defence was unable to locate any substantive discussion of this specific page within W04737's SPO interview, either at the portions identified by the SPO⁷⁷ or more generally throughout the interview. While the transcript records that the SPO provided W04737 with a bundle of documents comprising the range U000-4846-U000-4854, the only page from this bundle that is actually discussed with the witness is U000-4853.⁷⁸ In addition, the specific page tendered lacks probative value, as it has no independent

⁷³ This bundle comprises items 1, 2, 8, 11, 12, 16-36 under 'Associated Exhibits' in Annex 8 to F02450.

⁷⁴ 083519-TR-ET Part 1, p. 9, lines 15-22. *See also* 083519-TR-ET Part 8, p. 10, lines 21-24.

⁷⁵ *See*, in particular, pp. 066770-066771, 066774-066776, 066778, 066780, 066782.

⁷⁶ The Defence notes that this is the only page tendered from the broader range of U000-4844-U000-4859: *see* item 5 in F02450/A08.

⁷⁷ The Defence also notes that the page references given by the SPO in F02450/A08, item 5, are incomplete, but the Defence checked the totality of Part 4 out of an abundance of caution.

⁷⁸ *See* 083519-TR-ET Part 4, pp. 1-4.

indicia of authenticity, and has not been authenticated or contextualised by this witness.

(c) SPOE00124879-SPOE00124882 RED

54. The Defence objects to the admission of this item as an associated exhibit. When asked about this document by the SPO, W04737 initially said [REDACTED].⁷⁹ He could not say with certainty whose statements [REDACTED]. Further, he was only able to confirm limited content of the material, and he expressly disclaimed knowledge of other parts of these materials.⁸⁰ The witness' own comments cannot be circumvented by [REDACTED].⁸¹ Notably, the parts W04737 disclaimed and which he expressly stated were not his own statement, include references to [REDACTED].

55. In addition to not being authenticated or contextualised by W04737, the document lacks independent *indicia* of authenticity and reliability, including issues regarding the origin and content which have been raised previously.⁸² Consequently, the document has only limited probative value, which is outweighed by its prejudicial effect. Admission of this document in these circumstances would only bloat the record with unauthenticated and unreliable evidence.⁸³ If the Panel deems this item appropriate for admission as an associated exhibit, the Defence submits that only the portion [REDACTED],⁸⁴ as this was the only portion where W04737 suggested it could be linked to his evidence. The remainder of the document should be either redacted or removed.

N. W04798

⁷⁹ 083519-TR-ET Part 6, p. 19, lines 1-4.

⁸⁰ [REDACTED].

⁸¹ SPOE00227323-SPOE00227328.

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ *See* [REDACTED].

56. The Defence does not object to W04798's statements⁸⁵ being admitted pursuant to Rule 154, provided that the conditions for admission set out in Rule 154(c) are met.

Associated Exhibits

57. The Defence objects to the admission of some of W04798's associated exhibits, namely [REDACTED]⁸⁶ and [REDACTED].⁸⁷ The Defence does not object to the admission of the remaining associated exhibits.⁸⁸

58. The Defence incorporates by reference its previous submissions concerning the authenticity and reliability issues which constitute a fundamental bar to the admission of [REDACTED].⁸⁹ Notably, the SPO intends to call W04798, as well as other witnesses involved to various degrees in the [REDACTED], to give [REDACTED].⁹⁰ This evidence will be tested and challenged during cross-examination, and thus the admission of [REDACTED] before the Trial Panel has had a chance to assess in full all the issues associated with the [REDACTED], would be premature.

59. In particular, the Prosecution seeks the admission of [REDACTED]. In relation to [REDACTED], W04798 stated that:

a. [REDACTED];⁹¹

b. [REDACTED];⁹²

⁸⁵ 088739-TR-ET Parts 1-2; 101598-TR-ET Parts 1-2; [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ [REDACTED].

⁹⁰ F02465, para. 7.

⁹¹ 088739-TR-ET Part 1, p. 12, lines 2-3.

⁹² 088739-TR-ET Part 1, p. 13, line 13.

- c. [REDACTED];⁹³
- d. [REDACTED];⁹⁴
- e. [REDACTED];⁹⁵
- f. [REDACTED];⁹⁶ and
- g. [REDACTED].⁹⁷

60. In relation to [REDACTED],⁹⁸ before admitting that he [REDACTED]."⁹⁹ Any other information provided by W04798 is [REDACTED]"¹⁰⁰ or [REDACTED]."¹⁰¹ [REDACTED],¹⁰² and admitted [REDACTED].¹⁰³

61. Far from authenticating these two documents, W04798's statements are a testament to his limited knowledge of the background of these [REDACTED], as well as of the [REDACTED]in general. He was unable to meaningfully comment on the content, context or technical background of [REDACTED]. Thus, the [REDACTED] do not form an inseparable and indispensable part of the statement, and do not possess the necessary requirements for admission pursuant to Rule 138(1).

62. Concerning the documents allegedly [REDACTED], it is noteworthy that by W04798's own admission, he did not participate in the [REDACTED].¹⁰⁴ He simply received [REDACTED].¹⁰⁵ Notably, [REDACTED].¹⁰⁶ As such, the documents

⁹³ 088739-TR-ET Part 1, p. 15, lines 1-4.

⁹⁴ 088739-TR-ET Part 1, p. 14, lines 7-12.

⁹⁵ 088739-TR-ET Part 1, p. 15, lines 7-10 and pp. 15-16, lines 25-1.

⁹⁶ 088739-TR-ET Part 1, p. 11, lines 13-16.

⁹⁷ 088739-TR-ET Part 1, p. 12, lines 17-22.

⁹⁸ 088739-TR-ET Part 1, pp. 16-17.

⁹⁹ 088739-TR-ET Part 1, pp. 18-19, lines 25-4.

¹⁰⁰ 088739-TR-ET Part 1, p. 19, line 8.

¹⁰¹ 088739-TR-ET Part 1, p. 19, lines 14-16.

¹⁰² 088739-TR-ET Part 1, p. 19, lines 21-24.

¹⁰³ 088739-TR-ET Part 1, p. 20, lines 9-18.

¹⁰⁴ [REDACTED].

¹⁰⁵ *Idem*, paras 16-18.

¹⁰⁶ *Idem*, para. 16.

purportedly retrieved in [REDACTED] and tendered as associated exhibits do not satisfy the requirement of relevance envisioned by Rule 138(1), since there is no information about the location in which they were allegedly found, and no demonstrable link to the KLA has been shown.

63. Further, many of these documents present inherent issues of authenticity, which are discussed in more detail in Annex 14 to this Response.¹⁰⁷ In particular, some of these documents are handwritten, unsigned, illegible, and their alleged author is unknown.¹⁰⁸ Others contain headers or titles in the English translation which do not feature in the Albanian original.¹⁰⁹ In the absence of additional information on these documents, or a witness who can authenticate them, the requirements for admission of Rule 138(1) are not met.

O. W04809

64. The Prosecution seeks to rely on W04809 to establish the provenance, authenticity, and reliability of [REDACTED] during the Indictment period.¹¹⁰ While the Defence does not object to the admission of W04809's one-part SPO Interview¹¹¹ pursuant to Rule 154, it notes that this statement has low probative value. In particular, the only relevant statement by the witness was that [REDACTED]¹¹² The rest of the interview simply revolves around this statement and uncovers W04809's limited knowledge of [REDACTED], with the witness confirming that he has no

¹⁰⁷ Annex 14, documents n. 47-63.

¹⁰⁸ [REDACTED].

¹⁰⁹ [REDACTED].

¹¹⁰ F02465, para. 3.

¹¹¹ 091206-TR-ET Part 1.

¹¹² 091206-TR-ET Part 1, p.22.

knowledge or expertise [REDACTED],¹¹³ [REDACTED],¹¹⁴ [REDACTED],¹¹⁵ or [REDACTED].¹¹⁶

Associated Exhibits

65. For [REDACTED], the Defence objects to the admission of [REDACTED].

66. In particular, W04809 did not recognise [REDACTED]¹¹⁷ When shown [REDACTED].¹¹⁸

67. An exhibit being shown to the witness during an interview does not automatically render it an “inseparable and indispensable” part of the statement under Rule 154.¹¹⁹ The witness is not in a position to authenticate or meaningfully contextualise any of these [REDACTED].

68. Concerning [REDACTED] and [REDACTED], the Defence did not object to the admission of these documents as associated exhibits to [REDACTED].¹²⁰ However, the Defence notes that these documents are not appropriate to be tendered as associated exhibits to W04809. When shown [REDACTED], W04890 clearly indicated that [REDACTED].¹²¹ Similarly, in relation to [REDACTED], the witness once again indicated that [REDACTED].¹²²

¹¹³ 091206-TR-ET Part 1, p.6.

¹¹⁴ 091206-TR-ET Part 1, p.8.

¹¹⁵ 091206-TR-ET Part 1, p.12.

¹¹⁶ 091206-TR-ET Part 1, p.12.

¹¹⁷ 091206-TR-ET Part 1, pp.12-13.

¹¹⁸ 091206-TR-ET Part 1, p.19.

¹¹⁹ F01380, para. 24.

¹²⁰ *Supra*, para. 65 and fn. 111.

¹²¹ 091206-TR-ET Part 1, pp. 26-27.

¹²² 091206-TR-ET Part 1, p. 27.

P. W04854

69. The Defence does not object to W04854's SPO interview¹²³ being admitted pursuant to Rule 154, provided that the conditions for admission set out in Rule 154(c) are met.

Associated Exhibits

70. The Defence objects, however, to the admission of associated exhibit [REDACTED].¹²⁴

71. Specifically, W04854 did not provide any meaningful comment on [REDACTED]. Notably, [REDACTED].¹²⁵ However, [REDACTED].¹²⁶

72. Both these statements cannot be true. Clearly, one or both of these witnesses do not have correct or sufficient information on the nature of these documents. Any assessment on the admissibility of [REDACTED] should be postponed until after these issues have been explored in cross-examination.

IV. CONCLUSION AND RELIEF REQUESTED

73. For the reasons set out above, the Defence respectfully requests the Trial Panel to take notice of the Defence objections, and to:

- **DENY** the admission of W04278 and W04295's evidence through Rule 154 and **ORDER** the SPO to elicit their evidence *viva voce*.

¹²³ 101505-TR-ET Parts 1-2.

¹²⁴ *Supra*, para. 66.

¹²⁵ 101505-TR-ET Part 1, p. 21, lines 21-22.

¹²⁶ 088739-TR-ET Part 1, p. 26, lines 1-14.

- **DENY** the admission of SITF40000700-40000702; SITF00011523-00011528; SPOE00212674-SPOE00212674; SITF00265515-00265516; U000-6733-U000-6733; U000-7192-U000-7192; 059341-059350; SPOE00128386-00128420, pp. SPOE00128388, SPOE00128389 and SPOE00128390; U000-4854-U000-4854-ET; SPOE00124879-SPOE00124882 RED; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and SITF00015095-00015119 as associated exhibits;

- **TAKE NOTE** of the additional Defence objections outlined in Annexes 1-16;

- **ORDER** the SPO to provide the original materials for 066767-066797;

- **ORDER** the SPO to redact the sections of W04427's SPO interview pertaining to [REDACTED];

- **FIND** that the SPO has not provided timely notice, nor shown good cause for the addition of SITF00015095-00015119 to the SPO Exhibit List.

Word count: 6,779

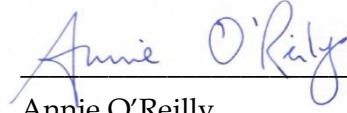
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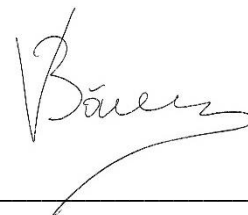
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