



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:** 16 October 2024

**Language:** English

**Classification:** Public

---

**Public Redacted Version of Corrected Version of Decision on Prosecution Motion  
for Admission of Evidence of Witnesses W00344, W01225, W04485, and W04758  
pursuant to Rule 154 (F02593)**

---

**Specialist Prosecutor**

Kimberly P. West

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Rodney Dixon

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

**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 24 September 2024, the Specialist Prosecutor’s Office (“SPO”) filed a Rule 154 motion with regard to witnesses W00344, W01225, W04485 and W04758 (“Motion”).<sup>1</sup>

2. On 4 October 2024, the Defence for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”), jointly responded to the Motion (“Response”).<sup>2</sup>

3. On 14 October 2024, the SPO replied to the Response (“Reply”).<sup>3</sup>

## II. SUBMISSIONS

4. The SPO requests the admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, “Proposed Evidence”) of witnesses W00344, W01225, W04485 and W04758.<sup>4</sup> The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1)

---

<sup>1</sup> F02593, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W00344, W01225, W04485, and W04758 pursuant to Rule 154*, 24 September 2024, confidential, with Annexes 1-8, confidential (a public redacted version was filed on the same day, F02593/RED).

<sup>2</sup> F02612, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of Evidence of Witnesses W00344, W01225, W04485, and W04758 pursuant to Rule 154*, 4 October 2024, confidential (a public redacted version was filed on 8 October 2024, F02612/RED), with Annexes 1-4, confidential.

<sup>3</sup> F02646, Specialist Prosecutor, *Prosecution Reply Relating to Rule 154 Motion F02593*, 14 October 2024, confidential (a public redacted version was filed on the same day, F02646/RED).

<sup>4</sup> Motion, paras 1, 41.

and 154 and that its admission is not outweighed by any prejudice and is therefore in the interests of justice.<sup>5</sup>

5. The Defence does not object to the admission of the Proposed Evidence, with the exception of certain Associated Exhibits of W04485 and W04758.<sup>6</sup> The Defence further notes that one of the statements of W04758, if admitted, would require a number of corrections, due to inconsistencies between the English and Albanian versions of the document.<sup>7</sup> Accordingly, the Defence requests that the Panel: (i) deny the admission of certain Associated Exhibits of W04485 and W04758; (ii) take note of the Defence's additional objections; and (iii) order the SPO to prepare a revised English transcripts of the statement of W04758 requiring correction.<sup>8</sup>

6. The SPO replies that the Motion should be granted, as the Response ignores prior findings of the Panel and the established standard for admissibility of associated exhibits in the context of Rule 154.<sup>9</sup>

### III. APPLICABLE LAW

7. 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>10</sup>

---

<sup>5</sup> Motion, para. 2.

<sup>6</sup> Response, paras 3-5, 9-10.

<sup>7</sup> Response, para. 9.

<sup>8</sup> Response, para. 15(a)-(c).

<sup>9</sup> Reply, paras 1, 6.

<sup>10</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 11-25.

#### IV. DISCUSSION

##### A. W00344

8. The SPO submits that the proposed evidence of W00344<sup>11</sup> is: (i) relevant;<sup>12</sup> (ii) *prima facie* authentic and reliable;<sup>13</sup> and (iii) suitable for admission under Rule 154.<sup>14</sup>

9. The Defence does not object to the admission of W00344's Proposed Evidence pursuant to Rule 154, provided that the conditions of Rule 154(c) are met.<sup>15</sup>

10. *W00344's Statements*. Regarding relevance, W00344 was allegedly abducted, beaten and detained by Kosovo Liberation Army ("KLA") members in 1999.<sup>16</sup> The witness was allegedly detained and mistreated with several other detainees, in a location and time relevant to the charges in the Indictment.<sup>17</sup> The SPO relies upon W00344's Proposed Evidence in respect of, *inter alia*: (i) the circumstances and consequences of W00344's abduction, detention and mistreatment; (ii) his knowledge of the detention and mistreatment of other detainees by the KLA; (iii) W00344's interactions with a KLA commander; and (iv) W00344's release and

---

<sup>11</sup> The proposed evidence of W00344 ("W00344's Proposed Evidence") consists of the following statements and associated exhibit, including any translations thereof: (i) 001589-TR-ET Part 1 Revised RED, Parts 2-5 Revised; (ii) 001667-TR-ET Part 1 Revised RED, Parts 2-4 Revised; (iii) 001592-001595-ET; and (iv) SITF00195280-SITF00195314-ET RED (collectively, "W00344's Statements"); and 001596-001603-ET RED, p. 001602 ("W00344's Associated Exhibit"). See Annex 1 to the Motion.

<sup>12</sup> Motion, paras 3-5.

<sup>13</sup> Motion, paras 6-9.

<sup>14</sup> Motion, paras 10-12.

<sup>15</sup> Response, para. 3.

<sup>16</sup> Motion, para. 3.

<sup>17</sup> See 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].

departure from Kosovo.<sup>18</sup> The Panel is satisfied that W00344's Statements are relevant to the charges in the Indictment.<sup>19</sup>

11. Regarding *prima facie* authenticity and reliability, the Panel notes that W00344's Statements consist of: (i) W00344's interview with the Special Investigative Task Force ("W00344's SITF Interview");<sup>20</sup> (ii) two interviews of W00344 with other local authorities (respectively, "W00344's First Interview"<sup>21</sup> and "W00344's Second Interview").<sup>22</sup> Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcript of the audio-video recorded W00344's SITF Interview and W00344's Second Interview; (ii) indication of the date and/or time and place of the statements; (iii) indication of the case number; (iv) the attendees present and their signatures; (v) the witness's personal details; (vi) the requisite witness warnings, rights and/or acknowledgments; and (vii) confirmation by W00344 that the statements are true and accurate.<sup>23</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W00344's Statements.

12. Having found W00344's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W00344's Statements have *prima facie* probative value.

13. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W00344's Statements are relatively limited in size, with a total of 212 pages in length (in English). The Panel is satisfied that admission of W00344's Statements

---

<sup>18</sup> Motion, paras 3-4. *See also* Annex 5 to the Motion.

<sup>19</sup> Indictment, paras [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

<sup>20</sup> 001589-TR-ET Part 1 Revised RED, Parts 2-5 Revised; 001667-TR-ET Part 1 Revised RED, Parts 2-4 Revised.

<sup>21</sup> 001592-001595-ET.

<sup>22</sup> SITF00195280-SITF00195314-ET RED.

<sup>23</sup> *See* 001589-TR-ET Part 1 Revised RED, pp. 1-4; 001589-TR-ET Part 4 Revised, pp. 2-3, 7-8, 13-15; 001589-TR-ET Part 5 Revised, p. 3; 001667-TR-ET Part 1 Revised RED, pp. 1-3; 001667-TR-ET Part 2 Revised, p. 3; 001667-TR-ET Part 3 Revised, p. 20; 001667-TR-ET Part 4 Revised, pp. 21-22; 001592-001595-ET, pp. 1, 4; SITF00195280-SITF00195314-ET RED, pp. SITF00195280-SITF00195281.

under Rule 154: (i) would contribute to the expeditiousness of the proceedings, as it would reduce the time required for direct examination to one hour;<sup>24</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 W00344's Statements under Rule 154.<sup>25</sup> The Panel therefore finds that the *prima facie* probative value of W00344's Statements is not outweighed by any prejudicial effect, and that W00344's Statements are suitable for admission pursuant to Rule 154.

14. *W00344's Associated Exhibit*. The Panel observes that W00344's Associated Exhibit is a map handwritten by the witness depicting his village<sup>26</sup> and was discussed during W00344's SITF Interview.<sup>27</sup> The Panel considers that the map constitutes an indispensable and inseparable part of W00344's SITF Interview, as, without it, the relevant portions of the statement would become incomprehensible or of lesser probative value. The Panel further observes that the map was dated and signed by the witness.<sup>28</sup> The Panel is thus satisfied that W00344'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 W00344'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 W00344's Associated Exhibit.<sup>29</sup> Accordingly, the Panel finds that W00344's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

15. In light of the above, the Panel finds that W00344's Proposed Evidence is relevant, *prima facie* authentic, and has *prima facie* probative value which is not

---

<sup>24</sup> Motion, para. 12.

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

<sup>26</sup> 001596-001603-ET RED, p. 001602.

<sup>27</sup> 001667-TR-ET Part 1 Revised RED, pp. 26-27.

<sup>28</sup> 001596-001603-ET RED, p. 001602.

<sup>29</sup> Response, para. 3.

outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

#### B. W01225

16. The SPO submits that the proposed evidence of W01225<sup>30</sup> is: (i) relevant;<sup>31</sup> (ii) *prima facie* authentic and reliable;<sup>32</sup> and (iii) suitable for admission under Rule 154.<sup>33</sup>

17. The Defence does not object to the admission of W01225's Proposed Evidence pursuant to Rule 154, provided that the conditions of Rule 154(c) are met.<sup>34</sup>

18. *W01225's Statements*. Regarding relevance, W01225 was allegedly abducted and detained by KLA members in 1999.<sup>35</sup> While in detention, W01225 was allegedly beaten and interrogated;<sup>36</sup> the incident is alleged to have occurred in a location and at a time relevant to the charges in the Indictment.<sup>37</sup> The SPO relies upon W01225's Proposed Evidence in respect of, *inter alia*: (i) the circumstances and consequences of W01225's abduction, detention, questioning, mistreatment and release; and (ii) his knowledge of the detention location and KLA presence in the area.<sup>38</sup> The Panel is satisfied that W01225's Statements are relevant to the charges in the Indictment.<sup>39</sup>

---

<sup>30</sup> The proposed evidence of W01225 ("W01225's Proposed Evidence") consists of the following statements and associated exhibit, including any translations thereof: (i) 009242-TR-ET Parts 1-5 Revised RED2; (ii) SITF00081390-SITF00081410-ET; and (iii) SITF00160372-SITF00160452-ET (collectively, "W01225's Statements"); and 009221-009241-ET RED ("W01225's Associated Exhibit"). See Annex 2 to the Motion.

<sup>31</sup> Motion, paras 13-15.

<sup>32</sup> Motion, para. 16.

<sup>33</sup> Motion, paras 17-18.

<sup>34</sup> Response, para. 4.

<sup>35</sup> Motion, para. 13.

<sup>36</sup> Motion, para. 14.

<sup>37</sup> See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

<sup>38</sup> Motion, paras 13-14. See also Annex 6 to the Motion.

<sup>39</sup> Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

19. Regarding *prima facie* authenticity and reliability, the Panel notes that W01225's Statements consist of: (i) W01225's interview with the Special Investigative Task Force ("W01225's SITF Interview");<sup>40</sup> and (ii) his statement before another jurisdiction ("W01225's Statement").<sup>41</sup> Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcripts of W01225's audio and/or video recorded statements; (ii) indication of the date and/or time and place of the statements; (iii) indication of the case number; (iv) the attendees present; (v) the witness's personal details; (vi) the requisite witness warnings, rights and/or acknowledgments; and (vii) confirmation by W01225 that his SITF Interview is true and accurate.<sup>42</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W01225's Statements.

20. Having found W01225's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W01225's Statements have *prima facie* probative value.

21. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W01225's Statements are relatively limited in size, with a total of 199 pages in length (in English). The Panel is satisfied that admission of W01225's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings, as it would reduce the time required for direct examination, which currently stands at one hour;<sup>43</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 W01225's

---

<sup>40</sup> 009242-TR-ET Parts 1-5 Revised RED2.

<sup>41</sup> SITF00081390-SITF00081410-ET and SITF00160372-SITF00160452-ET.

<sup>42</sup> See 009242-TR-ET Part 1 Revised RED2, pp. 1-3; 009242-TR-ET Part 5 Revised RED2, pp. 25-26; SITF00081390-SITF00081410-ET, pp. SITF00081390, SITF00081393; SITF00160372-SITF00160452-ET, pp. SITF00160372-SITF00160373.

<sup>43</sup> Motion, para. 18.



Statements under Rule 154.<sup>44</sup> The Panel therefore finds that the *prima facie* probative value of W01225's Statements is not outweighed by any prejudicial effect, and that W01225's Statements are suitable for admission pursuant to Rule 154.

22. *W01225's Associated Exhibit*. The Panel observes that W01225's Associated Exhibit is a collection of documents,<sup>45</sup> encompassing: (i) a summons;<sup>46</sup> (ii) a ruling on protective measures;<sup>47</sup> (iii) a map;<sup>48</sup> and (iv) several photographs, including of other maps.<sup>49</sup> The Panel notes that W01225's Associated Exhibit was discussed and the maps marked by W01225 during his SITF Interview.<sup>50</sup> The Panel considers that W01225's Associated Exhibit constitutes an indispensable and inseparable part of W01225's SITF Interview, as, without it, the relevant portions of the statement would become incomprehensible or of lesser probative value. The Panel further observes that each page of W01225's Associated Exhibit was dated and signed by the officer present and signed by the witness.<sup>51</sup> While the relevance of the first two items is marginal at best, the Panel notes that there is no objection to their admission on those grounds. The Panel is thus satisfied that W01225'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 W01225'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 W01225's Associated Exhibit.<sup>52</sup> Accordingly, the Panel finds

---

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

<sup>45</sup> 009221-009241-ET RED.

<sup>46</sup> 009221-009241-ET RED, p. 009221.

<sup>47</sup> 009221-009241-ET RED, pp. 009222-009224.

<sup>48</sup> 009221-009241-ET RED, p. 009225.

<sup>49</sup> 009221-009241-ET RED, pp. 009226-009241.

<sup>50</sup> 009242-TR-ET Part 1 Revised RED2, p. 5; 009242-TR-ET Part 2 Revised RED2, pp. 3-5; 009242-TR-ET Part 3 Revised RED2, pp. 3-10.

<sup>51</sup> 009221-009241-ET RED.

<sup>52</sup> Response, para. 4.

that W01225's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

23. In light of the above, the Panel finds that W01225'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. W04485

24. The SPO submits that the proposed evidence of W04485<sup>53</sup> is: (i) relevant;<sup>54</sup> (ii) *prima facie* authentic and reliable;<sup>55</sup> and (iii) suitable for admission under Rule 154.<sup>56</sup>

25. While the Defence does not object to the admission of W04485's Statements pursuant to Rule 154, it objects to the tendering of two of W04485's Associated Exhibits.<sup>57</sup> The Defence submits that these documents or their contents were not: (i) authenticated by W04485; (ii) substantiated by the witness in his statements; and (iii) cannot be said to be an inseparable and indispensable part of W04485's Statements.<sup>58</sup> For these reasons, the Defence requests that the Panel denies their admission.<sup>59</sup>

26. The SPO replies that the Response mischaracterises W04485's familiarity with

---

<sup>53</sup> The proposed evidence of W04485 ("W04485's Proposed Evidence") consists of the following statements and associated exhibits, including any translations thereof: (i) 069474-TR-ET Part 1 RED, Parts 2-4; and (ii) [REDACTED], [REDACTED] (collectively, "W04485's Statements"); and (i) SPOE00128386-00128420, pp. SPOE00128393, SPO00128414, SPO00128415, SPO00128418; (ii) SPOE00055678-SPOE00056018-ET, pp. SPOE00055901-SPOE00055902, SPOE00055911; and (iii) U000-4319-U000-4321-ET (collectively, "W04485's Associated Exhibit"). See Annex 3 to the Motion.

<sup>54</sup> Motion, paras 19-22.

<sup>55</sup> Motion, para. 23.

<sup>56</sup> Motion, paras 24-25.

<sup>57</sup> Response, para. 5, referring to U000-4319-U000-4321-ET and SPOE00038241-SPOE00038251 RED, p. SPOE00038247.

<sup>58</sup> Response, paras 6-8.

<sup>59</sup> Response, paras 8, 15(a),

the content and authenticity of U000-4319-U000-4321-ET and that the way this was used and discussed in W04485's Statements is such that the statements would be of lesser probative value without it.<sup>60</sup> In addition, the SPO clarifies that, contrary to its initial submissions, it does not intend to tender p. SPOE00038247 of SPOE00038241-SPOE00038251 RED.<sup>61</sup>

27. *W04485's Statements*. Regarding relevance, W04485 is alleged to have been a KLA member in the Llap Operational Zone, where he held multiple positions between 1998 and 1999.<sup>62</sup> The SPO relies upon W04485's Proposed Evidence in respect of, *inter alia*, his knowledge of the formation, structure and reporting lines of the Llap Operational Zone and of KLA units in the area.<sup>63</sup> The Panel is satisfied that W04485's Statements are relevant to the charges in the Indictment.<sup>64</sup>

28. Regarding *prima facie* authenticity and reliability, the Panel notes that W04485's Statements consist of: (i) W04485's interview with the SPO ("W04485's SPO Interview");<sup>65</sup> and (ii) his statement before another authority.<sup>66</sup> Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcripts of W04485's audio-video recorded statements; (ii) indication of the date, 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 W04485 that his SPO Interview is true and accurate.<sup>67</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04485's Statements.

---

<sup>60</sup> Reply, paras 2, 4.

<sup>61</sup> Reply, para. 2.

<sup>62</sup> Motion, para. 19.

<sup>63</sup> Motion, paras 19-21. *See also* Annex 7 to the Motion.

<sup>64</sup> Indictment, paras [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

<sup>65</sup> 069474-TR-ET Part 1 RED, Parts 2-4.

<sup>66</sup> [REDACTED] and [REDACTED].

<sup>67</sup> *See, e.g.*, 069474-TR-ET Part 1 RED; pp. 1-4, 069474-TR-ET Part 4, pp. 1-2; [REDACTED]; [REDACTED].

29. Having found W04485's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04485's Statements have *prima facie* probative value.

30. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W04485's Statements are relatively limited in size, with a total of 197 pages in length (in English). The Panel is satisfied that admission of W04485's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings, as it would reduce the time required for direct examination, which currently stands at one hour and a half;<sup>68</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 W04485's Statements under Rule 154.<sup>69</sup> The Panel therefore finds that the *prima facie* probative value of W04485's Statements is not outweighed by any prejudicial effect, and that W04485's Statements are suitable for admission pursuant to Rule 154.

31. *W04485's Associated Exhibits*. The Panel observes that W04485's Associated Exhibits consist of: (i) photographs of an alleged KLA location ("Photographs");<sup>70</sup> (ii) certain pages of a book ("W04485's Book Pages");<sup>71</sup> and (iii) a written memorandum allegedly signed by a KLA commander ("Memorandum").<sup>72</sup> Considering the SPO's submission that it did not intend to tender p. SPOE00038247 of SPOE00038241-SPOE00038251 RED,<sup>73</sup> the Panel will consider this item as not forming part of W04485's Proposed Evidence.

---

<sup>68</sup> Motion, para. 25.

<sup>69</sup> Response, para. 5.

<sup>70</sup> SPOE00128386-00128420, pp. SPOE00128393, SPO00128414, SPO00128415, SPO00128418.

<sup>71</sup> SPOE00055678-SPOE00056018-ET, pp. SPOE00055901-SPOE00055902, SPOE00055911.

<sup>72</sup> U000-4319-U000-4321-ET.

<sup>73</sup> Reply, para. 2.

32. Regarding the Memorandum, the Panel notes that it was discussed in some detail with W04485 during his SPO Interview.<sup>74</sup> The Panel considers that the Memorandum constitutes an indispensable and inseparable part of W04485's SPO Interview, as, without it, the relevant portions of the statement would become incomprehensible or of lesser probative value. The Panel notes the Defence's objection that W04485 was unable to authenticate the Memorandum or substantiate its contents.<sup>75</sup> The Panel, however, notes that, while W04485 did not recognise this document specifically,<sup>76</sup> he was able to recognise the signature and confirmed that the document looked authentic.<sup>77</sup> The witness was also able to comment on its content.<sup>78</sup> The Panel recalls that, whether the witness is able to testify to authorship or comment about the truth of the content of the document might impact the weight, if any, to be given to these documents, but does not require their exclusion if the document can otherwise be sufficiently authenticated to the relevant standard.<sup>79</sup> Therefore, the Panel is satisfied that the Memorandum 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 and put the Memorandum to him, the *prima facie* probative value of the Memorandum is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Memorandum is appropriate for admission under Rules 138(1) and 154.

33. Regarding the Photographs and W04485's Book Pages, the Panel notes that these were discussed and explained by W04485 during his SPO Interview.<sup>80</sup> The Panel considers that the Photographs and W04485's Book Pages constitute an indispensable and inseparable part of W04485's SPO Interview, as, without them,

---

<sup>74</sup> 069474-TR-ET Part 2, pp. 2-4.

<sup>75</sup> Response, paras 6, 8.

<sup>76</sup> 069474-TR-ET Part 2, p. 2, lines 24-25.

<sup>77</sup> 069474-TR-ET Part 2, p. 3, line 24 to p. 4, line 4.

<sup>78</sup> See, e.g., 069474-TR-ET Part 2, p. 3, lines 1-23.

<sup>79</sup> First Rule 154 Decision, para. 85.

<sup>80</sup> 069474-TR-ET Part 2, pp. 21-22, 24 (Photographs); 069474-TR-ET Part 1 RED, pp. 27-28; 069474-TR-ET Part 3, pp. 9-10 (W04485's Book Pages).

the relevant portions of the statement would become incomprehensible or of lesser probative value. The Panel is thus satisfied that the Photographs and W04485's Book Pages are 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 the Photographs and W04485's Book Pages is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Photographs and W04485's Book Pages are appropriate for admission under Rules 138(1) and 154. While the Photographs meet the requirements for admission of Rules 138(1) and 154, the Panel notes that the SPO does not seek to tender all pages therein. Therefore, at the time of tender, the Panel directs the SPO to specify which pages it seeks to have admitted.

34. In light of the above, the Panel finds that W04485'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. W04758

35. At the outset, as regards the translation issues raised by the Defence,<sup>81</sup> the Panel notes the SPO's submission that partial revised versions of the concerned statement were disclosed on 9 October 2024 and that it seeks their admission along with the versions tendered in the Motion.<sup>82</sup> The Panel will therefore consider these as forming part of the proposed evidence of W04758. In addition, the Panel notes that the newly disclosed versions do not address two further issues raised by the

---

<sup>81</sup> Response, paras 9, 15(c), referring to 083639-TR-ET Parts 1-5 RED, Parts 6-7 RED2, Parts 8-10 RED.

<sup>82</sup> Reply, para. 5, referring to Disclosure Package 1441, containing 083639-TR-AT Part 1 Revised-ET Partial; 083639-TR-AT Part 1 Revised 1 RED; 083639-TR-AT Part 2 Revised-ET Partial; 083639-TR-AT Part 2 Revised 1 RED; 083639-TR-AT Part 3 Revised-ET p16 lines 8-12; 083639-TR-AT Part 3 Revised RED; 083639-TR-AT Part 5 Revised RED; 083639-TR-ET Part 5 Revised RED; 083639-TR-AT Part 7-ET p29 lines 7-8; 083639-TR-AT Part 8-ET p12 line 29-p13 line 1.

Defence.<sup>83</sup> To avoid unnecessarily bloating the record, the Panel directs the SPO to verify the two outstanding matters raised by the Defence and, should it so warrant, to prepare consolidated redacted versions of the concerned documents, addressing the two issues by **Monday, 21 October 2024**.

36. The SPO submits that the proposed evidence of W04758<sup>84</sup> is: (i) relevant;<sup>85</sup> (ii) *prima facie* authentic and reliable;<sup>86</sup> and (iii) suitable for admission under Rule 154.<sup>87</sup>

37. The Defence does not object to the admission of W04758's Statements pursuant to Rule 154, provided that the conditions of Rule 154(c) are met.<sup>88</sup> However, the Defence objects to the admission of all W04758's Associated Exhibits, except one,<sup>89</sup> as they are said to lack probative value, authenticity and/or relevance.<sup>90</sup> For these reasons, the Defence requests that the Panel deny their admission.<sup>91</sup>

38. The SPO replies that the Response mischaracterises the discussion of W04758's Associated Exhibits in his statements and the way these were used therein, which is such that W04758's Statements would be of lesser probative value

---

<sup>83</sup> See, in particular, Response, para. 9, footnote 20 (two references to "chk" in 083639-TR-ET Part 7 RED2, p. 18, line 19; 083639-TR-ET Part 8 RED, page 13, line 19).

<sup>84</sup> The proposed evidence of W004758 ("W04758's Proposed Evidence") consists of the following statements and associated exhibits, including any translations thereof: (i) 083639-TR-ET Parts 1-5 RED, Parts 6-7 RED2, Parts 8-10 RED; 083639-TR-AT Part 1 Revised-ET Partial; 083639-TR-AT Part 1 Revised 1 RED; 083639-TR-AT Part 2 Revised-ET Partial; 083639-TR-AT Part 2 Revised 1 RED; 083639-TR-AT Part 3 Revised-ET p16 lines 8-12; 083639-TR-AT Part 3 Revised RED; 083639-TR-AT Part 5 Revised RED; 083639-TR-ET Part 5 Revised RED; 083639-TR-AT Part 7-ET p29 lines 7-8; 083639-TR-AT Part 8-ET p12 line 29-p13 line 1; and (ii) SPOE00088341-00088352 RED (collectively, "W04758's Statements"); and (i) SPOE00055678-00056018, pp. SPOE00055807, SPOE00055811, SPOE00055901, SPOE00055902, SPOE00055918, SPOE00055956, SPOE00055971; (ii) SITF00244172-SITF00244172-ET; (iii) SITF40001593-40001595; (iv) SPOE00055626-SPOE00055627-ET; (v) [REDACTED]; and (vi) [REDACTED] ("W04758's Associated Exhibits"). See Annex 4 to the Motion.

<sup>85</sup> Motion, paras 26-36.

<sup>86</sup> Motion, para. 37.

<sup>87</sup> Motion, paras 38-39.

<sup>88</sup> Response, para. 9.

<sup>89</sup> Response, para. 10, referring to SITF40001593-40001595.

<sup>90</sup> Response, paras 11-14.

<sup>91</sup> Response, paras 11-14, 15(a),

without them.<sup>92</sup>

39. *W04758's Statements*. Regarding relevance, W04758 is alleged to have joined the KLA in June 1998.<sup>93</sup> The SPO relies upon W04758's Proposed Evidence in respect of, *inter alia*: (i) his knowledge of the formation, structure and reporting lines in the Llap Operational Zone; and (ii) his knowledge of arrests in the area.<sup>94</sup> The Panel is satisfied that W04758's Statements are relevant to the charges in the Indictment.<sup>95</sup>

40. Regarding *prima facie* authenticity and reliability, the Panel notes that W04758's Statements consist of: (i) W04758's interview with the SPO ("W04758's SPO Interview");<sup>96</sup> and (ii) his statement before another jurisdiction ("W04758's Statement").<sup>97</sup> Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcripts of W04758's Statement and SPO Interview, which is also audio-video recorded; (ii) indication of the date, 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 W04758 that his statements are true and accurate.<sup>98</sup> In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04758's Statements.

---

<sup>92</sup> Reply, paras 3-4.

<sup>93</sup> Motion, para. 19.

<sup>94</sup> Motion, paras 26-35. *See also* Annex 8 to the Motion.

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

<sup>96</sup> 083639-TR-ET Parts 1-5 RED, Parts 6-7 RED2, Parts 8-10 RED; 083639-TR-AT Part 1 Revised-ET Partial; 083639-TR-AT Part 1 Revised 1 RED; 083639-TR-AT Part 2 Revised-ET Partial; 083639-TR-AT Part 2 Revised 1 RED; 083639-TR-AT Part 3 Revised-ET p16 lines 8-12; 083639-TR-AT Part 3 Revised RED; 083639-TR-AT Part 5 Revised RED; 083639-TR-ET Part 5 Revised RED; 083639-TR-AT Part 7-ET p. 29 lines 7-8; 083639-TR-AT Part 8-ET p. 12 line 29-p. 13 line 1.

<sup>97</sup> SPOE00088341-00088352 RED.

<sup>98</sup> *See, e.g.*, 083639-TR-ET Part 1 RED, pp. 1-3; 7; 083639-TR-ET Part 10 RED, pp. 13-14; SPOE00088341-00088352 RED, pp. SPOE00088341-SPOE00088342.



41. Having found W04758's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04758's Statements have *prima facie* probative value.

42. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W04758's Statements are relatively limited in size, with a total of 244 pages in length (in English). The Panel is satisfied that admission of W04758's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings, as it would reduce the time required for direct examination, which currently stands at two hours;<sup>99</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 W04758's Statements under Rule 154.<sup>100</sup> The Panel therefore finds that the *prima facie* probative value of W04758's Statements is not outweighed by any prejudicial effect, and that W04758's Statements are suitable for admission pursuant to Rule 154.

43. *W04758's Associated Exhibits*. The Panel observes that W04758's Associated Exhibits consist of: (i) certain pages of a book ("W04758's Book Pages");<sup>101</sup> (ii) an official note from the KLA ("KLA Official Note");<sup>102</sup> (iii) a letter allegedly signed by a KLA Member ("Letter");<sup>103</sup> (iv) a communiqué from the government of Kosovo ("Communiqué");<sup>104</sup> (v) a KLA registration sheet ("Registration Sheet");<sup>105</sup> and (vi) a KLA document containing a work plan ("Work Plan").<sup>106</sup>

---

<sup>99</sup> Motion, para. 39.

<sup>100</sup> Response, para. 9.

<sup>101</sup> SPOE00055678-SPOE00056018-ET, pp. SPOE00055807, SPOE00055811, SPOE00055901-SPOE00055902, SPOE00055918, SPOE00055956, SPOE00055971.

<sup>102</sup> SITF00244172-SITF00244172-ET.

<sup>103</sup> SITF40001593-40001595.

<sup>104</sup> SPOE00055626-SPOE00055627-ET.

<sup>105</sup> [REDACTED].

<sup>106</sup> [REDACTED].

44. The Panel notes that the Communiqué has already been admitted in both its Albanian and English versions.<sup>107</sup> The Panel, therefore, considers that the Motion, is, for this part, moot.

45. Regarding the remaining W04758's Associated Exhibits, the Panel notes that that certain of W04758's Book Pages were also tendered as part of W04485's Associated Exhibits and therein assessed and deemed suitable for admission pursuant to Rule 154.<sup>108</sup> Regarding the Defence's objection as to the fact that the SPO has already tendered the Registration Sheet in another filing and only one version should be admitted,<sup>109</sup> the Panel observes that, while this may be true, the Registration Sheet has not been admitted yet. Therefore, the Panel is of the view that such considerations are premature and will be considered after one of the versions of the Registration Sheet is admitted.

46. The Panel also takes note of the Defence's objections that W04758 was unable to comment on the content or authenticate W04758's Book Pages, the KLA Official Note, the Letter, the Registration Sheet and the Work Plan, and that, therefore, they lack relevance, probative value, and cannot be said to form an indispensable and inseparable part of W04758's Statements.<sup>110</sup> First, the Panel recalls that, for associated exhibits to form an indispensable and inseparable part of a statement under Rule 154, the documents in question must be one without which the statement would become incomprehensible or of lesser probative value, and that particularly relevant in this context is whether the proposed exhibit was discussed with the witness in the record which is being tendered into evidence.<sup>111</sup> The Panel observes that W04758's Book Pages, the KLA Official Note, the Letter, the Registration Sheet and the Work Plan were all used and discussed in some detail

---

<sup>107</sup> P00814, pp. SPOE00055626-SPOE00055627, and P00814\_ET.35, respectively.

<sup>108</sup> See *above*, para. 33.

<sup>109</sup> Response, para. 13, footnote 32.

<sup>110</sup> Response, paras 11-14.

<sup>111</sup> First Rule 154 Decision, para. 24.

in W04758's SPO Interview.<sup>112</sup> Therefore, the Panel is satisfied that they constitute indispensable and inseparable parts of W04758's SPO Interview, as, without them the relevant portions of the statement would become incomprehensible or of lesser probative value. Moreover, the Panel reiterates that whether the witness is able to testify to authorship or comment about the truth of the content of the document might impact the weight, if any, to be given to these documents, but does not require their exclusion.<sup>113</sup> The Panel is satisfied that the W04758's Book Pages, the KLA Official Note, the Letter, the Registration Sheet and the Work Plan are 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 the W04758's Book Pages, the KLA Official Note, the Letter, the Registration Sheet and the Work Plan is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the W04758's Book Pages, the KLA Official Note, the Letter, the Registration Sheet and the Work Plan are appropriate for admission under Rules 138(1) and 154.

47. In light of the above, the Panel finds that W04758's Proposed Evidence, except the Communiqué, 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.

#### E. DEFENCE'S ADDITIONAL OBJECTIONS

48. Finally, the Panel notes the Defence's additional objections to items that the SPO intends to use with W04485 and W04758. The Panel, however, observes that these items have not yet been offered for admission by the SPO, and will therefore

---

<sup>112</sup> See, e.g., 083639-TR-ET Part 1 RED, pp. 10-11, 19; 083639-TR-ET Part 9 RED, pp. 18, 21-22, 24-25, 27-28 (W04758's Book Pages); 083639-TR-ET Part 9 RED, pp. 35-39 (KLA Official Note); 083639-TR-ET Part 10 RED, p. 5 (Letter); 083639-TR-ET Part 2 RED, pp. 32-34 (Registration Sheet); 083639-TR-ET Part 2 RED, pp. 31-32 (Work Plan).

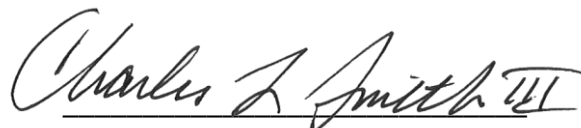
<sup>113</sup> First Rule 154 Decision, para. 85

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.

## V. DISPOSITION

49. Based on the above, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **FINDS** the Statements and Associated Exhibits of W00344, W01225 and W04485 as set out in paragraphs 15, 23 and 34 and in footnotes 11, 30 and 53, to be appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of each witness and their statements and associated exhibits;
- c) **FINDS** the Motion to be moot with respect to the Communiqué, as set out in paragraph 44 and footnote 107;
- d) **FINDS** W04758's Statements and the remainder of W04758's Associated Exhibits as set out in paragraph 47 and footnote 84 to be appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of the witness and his statements and associated exhibits; and
- e) **DIRECTS** the SPO to prepare a revised consolidated version of W04758's SPO Interview as set out in paragraph 35 by **Monday, 21 October 2024**.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Wednesday, 16 October 2024

At The Hague, the Netherlands.

Explanatory note:

In paragraphs 1 and 4, references to the witness code "W01125" have been replaced with "W01225".

In paragraphs 39 and 47, references to the witness code "W04485" have been replaced with "W04758".