



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:** 3 April 2025

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Prosecution Fifth Motion for Admission  
of Evidence pursuant to Rule 155**

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**Specialist Prosecutor**

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**TRIAL PANEL II** ("Panel"), pursuant to Articles 19, 21 and 37 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 137, 138(1) and 155 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 26 September 2024, the Specialist Prosecutor's Office ("SPO") filed a Rule 155 motion in respect of seven unavailable witnesses ("Motion").<sup>1</sup>
2. On 4 October 2024, the SPO filed a supplement to the Motion ("Supplement").<sup>2</sup>
3. On 18 October 2024, an extension of time having been granted by the Panel,<sup>3</sup> 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 28 October 2024, the SPO replied to the Response ("Reply").<sup>5</sup>

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<sup>1</sup> F02601, Specialist Prosecutor, *Prosecution Fifth Motion for Admission of Evidence pursuant to Rule 155*, 26 September 2024, confidential, with Annexes 1-8, confidential (a public redacted version was filed on 30 September 2024, F02601/RED). The Panel notes that it had previously granted an extension of the word limit to the SPO, *see* Transcript of Hearing, 17 September 2024, p. 19763, lines 6-11, confidential.

<sup>2</sup> F02611, Specialist Prosecutor, *Prosecution Supplement to Rule 155 Request F02601*, 4 October 2024, with Annex 1, confidential.

<sup>3</sup> Transcript of Hearing, 30 September 2024, p. 20480, lines 1-12.

<sup>4</sup> F02661, Specialist Counsel, *Joint Defence Response to Prosecution Fifth Motion for Admission of Evidence pursuant to Rule 155*, 18 October 2024, confidential (a public redacted version was filed on 28 October 2024, F02661/RED).

<sup>5</sup> F02678, Specialist Prosecutor, *Prosecution Reply to 'Joint Defence Response to Prosecution Fifth Motion for Admission of Evidence pursuant to Rule 155'*, 28 October 2024, confidential (a public redacted version was filed on the same day, F02678/RED).

## II. SUBMISSIONS

5. The SPO seeks admission pursuant to Rule 155 of the witness statements, written records and associated exhibits therewith (collectively, “Proposed Evidence”) of the following witnesses: W01473, W04431, W04252, W04648, W04381, W00016 and W04825.<sup>6</sup> The SPO submits that the Proposed Evidence meets the requirements of Rules 137, 138(1) and 155 and that its admission is in the interest of justice.<sup>7</sup>

6. The Defence responds that the principle of orality should remain the general rule in order to ensure the fairness of the proceedings.<sup>8</sup> In addition, the Defence reiterates its concerns regarding untested evidence being admitted onto an already unmanageable trial record.<sup>9</sup>

7. The SPO replies that the Response ignores the applicable law and the Panel’s previous findings, and that, as the Proposed Evidence satisfies the relevant criteria, its admission will assist the Panel in determining the truth in the case.<sup>10</sup>

## III. APPLICABLE LAW

8. The Panel incorporates by reference the applicable law as set out in its first Rule 155 Decision.<sup>11</sup>

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<sup>6</sup> Motion, para. 1.

<sup>7</sup> Motion, para. 2.

<sup>8</sup> Response, para. 2.

<sup>9</sup> Response, para. 2.

<sup>10</sup> Reply, para. 1.

<sup>11</sup> F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155* (“First Rule 155 Decision”), 14 June 2023, confidential, paras 10-19 (a public redacted version was filed on 8 September 2023, F01603/RED).

#### IV. DISCUSSION

##### A. W01473

9. The SPO submits that the proposed evidence of W01473<sup>12</sup>: (i) is relevant,<sup>13</sup> authentic and reliable;<sup>14</sup> and (ii) has probative value which is not outweighed by any prejudice.<sup>15</sup> The SPO further submits that W01473's Associated Exhibits form an inseparable and indispensable part of W01473's Proposed Evidence.<sup>16</sup>

10. The Defence does not dispute that W01473 is a deceased witness and does not object to the admission of W01473's Statements.<sup>17</sup> However, the Defence opposes admission of the audio-video recordings of W01473's testimony before [REDACTED] (respectively, "W01473's Recordings" and "[REDACTED]").<sup>18</sup> In particular, the Defence avers that these add no probative value to the transcripts of such testimony<sup>19</sup> and would only bloat the record, as the protective measures of face and voice distortion implemented therein make it impossible for the Panel to assess W01473's demeanour and credibility.<sup>20</sup> The Defence further disputes the admissibility of two of W01473's Associated Exhibits, which, it argues, bear no indicia of authenticity and reliability, or lack probative value.<sup>21</sup>

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<sup>12</sup> The proposed evidence of W01473 ("W01473's Proposed Evidence") consists of the following statements and associated exhibits, including any translations thereof: (i) [REDACTED]; and (ii) [REDACTED], [REDACTED] and [REDACTED] (transcripts) together with [REDACTED], [REDACTED] and [REDACTED] (audio-video recordings) (collectively, "W01473's Statements"); and (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; and (v) [REDACTED] (collectively, "W01473's Associated Exhibits"). See Annex 1 to the Motion. The Panel notes that the SPO tenders [REDACTED] in Annex 1 to the Motion. However, the only item available on Legal Workflow is [REDACTED]. The Panel has therefore assessed [REDACTED].

<sup>13</sup> Motion, paras 7-10.

<sup>14</sup> Motion, paras 11-12.

<sup>15</sup> Motion, para. 14.

<sup>16</sup> Motion, para. 13.

<sup>17</sup> Response, para. 4.

<sup>18</sup> Response, para. 5, *referring to* [REDACTED], [REDACTED] and [REDACTED].

<sup>19</sup> [REDACTED], [REDACTED] and [REDACTED].

<sup>20</sup> Response, para. 5.

<sup>21</sup> Response, paras 6-8, *referring to* [REDACTED] and [REDACTED].

11. The SPO replies that: (i) W01473's Recordings were tendered pursuant to the Panel's order; and (ii) even with distortions, W01473's Recordings provide the Panel with additional elements to assess the witness's credibility.<sup>22</sup> As to W01473's Associated Exhibits, the SPO replies that these are relevant to understanding the witness's evidence and are tendered for completeness.<sup>23</sup>

12. *W01473's Statements*. The Panel notes that the SPO has submitted W01473's death certificate.<sup>24</sup> The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a). The Panel also notes that the Defence does not dispute that the witness is dead and unavailable to testify.<sup>25</sup>

13. With regard to *prima facie* reliability, the Panel notes that W01473's Statements consist of: (i) W01473's witness statement to [REDACTED] ("W01473's Statement");<sup>26</sup> and (ii) the transcripts and audio-video recordings of W01473's testimony before [REDACTED] ("W01473's Testimony").<sup>27</sup> The statements contains multiple indicia of reliability, including, *inter alia*: (i) audio-video recordings and official verbatim transcripts of W01473's Testimony; (ii) use of official forms and templates in W01473's Statement; (iii) indication of the date or time and place of the statements; (iv) indication of the attendees present, and their signatures in W01473's Statement; (v) the witness's personal details or signature; (vi) witness warnings, rights, acknowledgments, or solemn declaration; and (vii) confirmation by the witness that W01473's Statement is true, accurate and given voluntarily.<sup>28</sup> In light of the above, the Panel is satisfied that W01473's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

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<sup>22</sup> Reply, para. 6, referring to Transcript of Hearing, 15 January 2024, p. 11022, lines 1-10.

<sup>23</sup> Reply, para. 7.

<sup>24</sup> Annex 1 to the Supplement: 123075-123075 RED. See also Annex 8 to the Motion, item 1: 122541-122541.

<sup>25</sup> Response, para. 4.

<sup>26</sup> [REDACTED]. See Annex 1 to the Motion, item 1.

<sup>27</sup> [REDACTED], [REDACTED], [REDACTED]; [REDACTED], [REDACTED], [REDACTED]. See Annex 1 to the Motion, items 2-7.

<sup>28</sup> See e.g. [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

14. Turning to the criterion set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W01473's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment.

15. With regard to the Rule 138(1) requirements, the Panel notes that W01473 was allegedly arrested by Kosovo Liberation Army ("KLA") members in 1998, and subsequently detained and mistreated in Llapushnik/Lapušnik alongside other detainees.<sup>29</sup> The Panel is therefore satisfied that W01473's Statements are relevant to the charges in the Indictment.<sup>30</sup>

16. In light of the above findings on the *prima facie* reliability<sup>31</sup> and relevance<sup>32</sup> of W01473's Statements, the Panel is also satisfied that W01473's Statements are *prima facie* authentic and have probative value. The Panel further recalls that W01473's Statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment.<sup>33</sup> In addition, the Panel considers the SPO's submissions that W01473's Statements appear to be consistent with, or corroborated by, *inter alia*: (i) adjudicated facts of which the Panel has taken judicial notice;<sup>34</sup> and (ii) the admitted statements, documentary evidence and testimony of other witnesses in the case,<sup>35</sup> including witnesses that were available for cross-examination.<sup>36</sup> The

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<sup>29</sup> Motion, paras 7-10.

<sup>30</sup> F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 59-61, 64, 96-98, 101, 136-138, 145-146 (a public lesser redacted version was filed on 27 February 2023, F01323/A01); *see also* F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, confidential, paras 303-337 (a public redacted version was filed on 3 April 2023, F01415/A01).

<sup>31</sup> *See above* para 13.

<sup>32</sup> *See above* para 15.

<sup>33</sup> *See above*, para. 14.

<sup>34</sup> *See* Motion, para. 14, *referring to* F01534/A01, *Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* ("F01534/A01"), 17 May 2023, confidential, Adjudicated Facts 393-404, 410-414, 419-421, 432-433, 437-438, 447-452 (a public redacted version was filed on the same day, F01534/A02).

<sup>35</sup> *See* Motion, para. 14, *referring to* the admitted evidence of [REDACTED], [REDACTED], and [REDACTED].

<sup>36</sup> *See* Motion, para. 14, *referring to* [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Panel therefore finds that the probative value of W01473's Statements is not outweighed by any prejudicial effect.

17. With regard to the Defence's argument that W01473's Recordings add no probative value to his statements and would only bloat the record,<sup>37</sup> the Panel notes that these recordings were submitted pursuant the Panel's order.<sup>38</sup> The Panel further notes that a tendered portion of W01473's Recordings<sup>39</sup> is already admitted as [REDACTED] and the request for the admission of that portion is therefore moot.<sup>40</sup> The Panel is of the view that, while W01473's Recordings may be of limited additional probative value considering the applied protective measures, they can assist the Panel in its assessment of the credibility of the witness and in respect of the weight to be assigned to W01473's Testimony and to W01473's Associated Exhibits discussed therein.<sup>41</sup> For these reasons, the Defence's objection is rejected.

18. In light of the above, the Panel finds that W01473's Statements, with the exception of the already admitted recording,<sup>42</sup> meet the requirements of Rules 138(1) and 155.

19. *W01473's Associated Exhibits.* The Panel notes that W01473's Associated Exhibits consist of: (i) a virtual presentation of the Llapushnik/Lapušnik prison camp ("Virtual Presentation");<sup>43</sup> (ii) a booklet of locations in and around the Llapushnik/Lapušnik prison camp ("Booklet");<sup>44</sup> (iii) a photograph depicting several individuals in uniform ("Photograph");<sup>45</sup> (iv) a pseudonym sheet for W01473, with official stamp, date, and authorised officer's signature;<sup>46</sup> and (v) a

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<sup>37</sup> Response, para. 5.

<sup>38</sup> Transcript of Hearing, 15 January 2024, p. 11022, lines 1-10.

<sup>39</sup> [REDACTED].

<sup>40</sup> See [REDACTED]. See also [REDACTED]; [REDACTED].

<sup>41</sup> See below para. 22 and references therein.

<sup>42</sup> [REDACTED].

<sup>43</sup> [REDACTED]. See Annex 1 to the Motion, item 8.

<sup>44</sup> [REDACTED]. See Annex 1 to the Motion, item 9.

<sup>45</sup> [REDACTED]. See Annex 1 to the Motion, item 10.

<sup>46</sup> [REDACTED]. See Annex 1 to the Motion, item 11.



list of names handwritten by W01473, with official stamp, date, and authorised officer's signature.<sup>47</sup>

20. The Panel preliminarily notes that the Virtual Presentation and the Booklet have already been admitted into evidence as [REDACTED]<sup>48</sup> and [REDACTED],<sup>49</sup> respectively. The Panel therefore considers the request for the admission of the Virtual Presentation to be moot.

21. The Panel takes note of the Defence's argument that admission of the Photograph would only bloat the record, as W01473 was unable to meaningfully comment on it and it lacks any indicia of authenticity or reliability, as well as probative value.<sup>50</sup> The Panel first notes that the Photograph was discussed during W01473's Testimony.<sup>51</sup> While W01473 was unable to recognise the individuals depicted in the Photograph or the masks they were wearing, the Panel considers that the Photograph constitutes an indispensable and inseparable part of W01473's Testimony, as, without it, the relevant portions of the statement would become incomprehensible or of lesser probative value. Moreover, the Panel is of the view that admission of one photograph would not unnecessarily burden the trial record.

22. As regards the remaining W01473's Associated Exhibits,<sup>52</sup> the Panel observes that these were also discussed and used in W01473's Statements.<sup>53</sup> Therefore, the Panel is of the view that they form an indispensable and inseparable part of

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<sup>47</sup> [REDACTED]. See Annex 1 to the Motion, item 12.

<sup>48</sup> F02779, Panel, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W01679, W03593, W04391, W04394, W04432, W04433, W04591, and W04858 Pursuant to Rule 153 (F02599) and Related Defence Motion to Exclude Evidence (F02663)* ("Rule 153 Decision F02779"), 13 December 2024, confidential, paras [REDACTED], 83(c) (a public redacted version was filed on the same day, F02779/RED).

<sup>49</sup> [REDACTED]. See also [REDACTED].

<sup>50</sup> Response, para. 7.

<sup>51</sup> [REDACTED].

<sup>52</sup> [REDACTED]; [REDACTED].

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



W01473's Statements, as, without them, their relevant portions would become incomprehensible or of lesser probative value.

23. In light of the above,<sup>54</sup> the Panel is also satisfied that W01473's Associated Exhibits are relevant and *prima facie* authentic, and have probative value which is not outweighed by any prejudicial effect. The Panel therefore finds that, with the exception of the already admitted items,<sup>55</sup> W01473's Associated Exhibits meet the requirements under Rules 138(1) and 155.

24. Accordingly, the Panel finds that W01473's Proposed Evidence, with the exception of the already admitted items,<sup>56</sup> is admissible pursuant to Rules 138(1) and 155.

#### B. W04431

25. The SPO submits that the proposed evidence of W04431<sup>57</sup>: (i) is relevant,<sup>58</sup> authentic and reliable;<sup>59</sup> and (ii) has probative value which is not outweighed by any prejudice.<sup>60</sup> The SPO further submits that W04431's Associated Exhibit forms an inseparable and indispensable part of W04431's Proposed Evidence.<sup>61</sup>

26. The Defence does not dispute that W04431 is a deceased witness and does not object to the admission of W04431's Statements and Associated Exhibit.<sup>62</sup>

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<sup>54</sup> See, in particular, above paras 13, 15-16, 19, 21-22.

<sup>55</sup> [REDACTED]; [REDACTED].

<sup>56</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>57</sup> The proposed evidence of W04431 ("W04431's Proposed Evidence") consists of the following statements and associated exhibit, including any translations thereof: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED] (transcript) together with [REDACTED] (audio-video recordings) (collectively, "W04431's Statements"); and [REDACTED] ("W04431's Associated Exhibit"). See Annex 2 to the Motion. The Panel notes that pages [REDACTED] of [REDACTED] contain a clarification to a witness statement given by [REDACTED] and shall be excluded from that document, insofar as the main statement was not tendered by the SPO.

<sup>58</sup> Motion, paras 7, 15-17.

<sup>59</sup> Motion, para. 18.

<sup>60</sup> Motion, para. 20.

<sup>61</sup> Motion, para. 19.

<sup>62</sup> Response, paras 4, 6.

However, the Defence opposes admission of the audio-video recordings of W04431's testimony before [REDACTED] ("W04431's Recordings").<sup>63</sup> In particular, the Defence avers that these add no probative value to the transcript of such testimony<sup>64</sup> and would only bloat the record, as the protective measures of face and voice distortion implemented in W04431's Recordings make it impossible for the Panel to assess W04431's demeanour and credibility.<sup>65</sup>

27. The SPO replies that: (i) W04431's Recordings were tendered pursuant to the Panel's order to do so; and (ii) even with distortions, W04431's Recordings provide the Panel with additional elements to assess the witness's credibility.<sup>66</sup>

28. *W04431's Statements.* The Panel notes that the SPO has submitted W04431's death certificate.<sup>67</sup> The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a). The Panel also notes that the Defence does not dispute that the witness is dead and unavailable to testify.<sup>68</sup>

29. With regard to *prima facie* reliability, the Panel notes that W04431's Statements consist of: (i) W04431's witness statement to the United Nation Mission in Kosovo ("W04431's UNMIK Statement");<sup>69</sup> (ii) W04431's witness statement before [REDACTED] ("W04431's [REDACTED] Statement");<sup>70</sup> and (iii) the transcripts and audio-video recordings of W04431's testimony before [REDACTED] ("W04431's Testimony").<sup>71</sup> Each statement contains multiple indicia of reliability, including, *inter alia*: (i) audio-video recordings and official verbatim transcripts of W04431's Testimony; (ii) use of official forms and templates in W04431's UNMIK and [REDACTED] Statements; (iii) indication of the date or time and place of the

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<sup>63</sup> Response, para. 5, *referring to* [REDACTED].

<sup>64</sup> [REDACTED].

<sup>65</sup> Response, para. 5.

<sup>66</sup> Reply, para. 6, *referring to* Transcript of Hearing, 15 January 2024, p. 11022, lines 1-10.

<sup>67</sup> Annex 8 to the Motion, item 2: 106406-106406-ET.

<sup>68</sup> Response, para. 4.

<sup>69</sup> [REDACTED]. *See* Annex 2 to the Motion, item 1.

<sup>70</sup> [REDACTED]. *See* Annex 2 to the Motion, item 2.

<sup>71</sup> [REDACTED]; [REDACTED]. *See* Annex 2 to the Motion, items 3-4.

statements; (iv) indication of the attendees present, and their signatures in W04431's UNMIK and [REDACTED] Statements; (v) the witness's personal details or signature; (vi) witness warnings, rights, acknowledgments, or solemn declaration; and (vii) confirmation by the witness that W04431's UNMIK and [REDACTED] Statements were given voluntarily.<sup>72</sup> In light of the above, the Panel is satisfied that W04431's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

30. Turning to the criterion set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W04431's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment.

31. With regard to the Rule 138(1) requirements, the Panel notes that W04431 was allegedly arrested by KLA members in 1998, and subsequently detained and mistreated in Llapushnik/Lapušnik alongside other co-detainees.<sup>73</sup> The Panel is therefore satisfied that W04431's Statements are relevant to the charges in the Indictment.<sup>74</sup>

32. In light of the above findings on the *prima facie* reliability<sup>75</sup> and relevance<sup>76</sup> of W04431's Statements, the Panel is also satisfied that W04431's Statements are *prima facie* authentic and have probative value. The Panel further recalls that W04431's Statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment.<sup>77</sup> In addition, the Panel considers the SPO's submissions that W04431's Statements appear to be consistent with, or corroborated by, *inter alia*: (i) adjudicated facts of which the Panel has taken judicial notice;<sup>78</sup> and (ii) the

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<sup>72</sup> See e.g. [REDACTED]; [REDACTED]; [REDACTED].

<sup>73</sup> Motion, paras 7, 15-17.

<sup>74</sup> Indictment, paras 59-61, 64, 96-98, 101, 136-138, 145-146; see also SPO Pre-Trial Brief, paras 303-337.

<sup>75</sup> See above para 29.

<sup>76</sup> See above para 31.

<sup>77</sup> See above para. 30.

<sup>78</sup> See Motion, para. 20, referring to F01534/A01, Adjudicated Facts 393-404, 410-414, 419-421, 432-433, 437-438, 447-452.

admitted statements, documentary evidence and testimony of other witnesses in the case,<sup>79</sup> including witnesses that were available for cross-examination.<sup>80</sup> The Panel therefore finds that the probative value of W04431's Statements is not outweighed by any prejudicial effect.

33. With regard to the Defence's argument that W04431's Recordings add no probative value to his statements and would only bloat the record,<sup>81</sup> the Panel recalls its above findings as to W01473's Recordings.<sup>82</sup> The Panel is of the view that such considerations equally apply to W04431's Recordings, and the Defence's objection is accordingly rejected.

34. In light of the above, the Panel finds that W04431's Statements meet the requirements of Rules 138(1) and 155.

35. *W04431's Associated Exhibit.* The Panel recalls that W04431's Associated Exhibit,<sup>83</sup> which is also tendered as part of W01473's Associated Exhibits,<sup>84</sup> is already in evidence as [REDACTED].<sup>85</sup>

36. Accordingly, the Panel finds that W04431's Proposed Evidence, with the exception of the already admitted item,<sup>86</sup> is admissible pursuant to Rules 138(1) and 155.

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<sup>79</sup> See Motion, para.20, referring to the admitted evidence of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

<sup>80</sup> See e.g. [REDACTED], [REDACTED], and [REDACTED].

<sup>81</sup> Response, para. 5.

<sup>82</sup> See above, para. 17.

<sup>83</sup> [REDACTED]. See Annex 2 to the Motion, item 4.

<sup>84</sup> See above paras 9, 20. See also Annex 1 to the Motion, item 9.

<sup>85</sup> [REDACTED]. See also [REDACTED].

<sup>86</sup> [REDACTED].

## C. W04252

37. The SPO submits that the proposed evidence of W04252<sup>87</sup>: (i) is relevant,<sup>88</sup> authentic and reliable;<sup>89</sup> and (ii) has probative value which is not outweighed by any prejudice.<sup>90</sup>

38. The Defence does not oppose the admission of W04252's Proposed Evidence.<sup>91</sup> The Defence, however, notes that W04252 did not sign one of his proposed statements, but confirmed it as his during his tendered interview with the SPO.<sup>92</sup>

39. *W04252's Statements*. The Panel notes that the SPO has submitted W04252's death certificate.<sup>93</sup> The Defence has not expressly contested the death certificate, and the Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

40. With regard to *prima facie* reliability, the Panel notes that W04252's Statements consist of: (i) W04252's statement before the Pristina SUP ("W04252's SUP Statement");<sup>94</sup> and (ii) the transcripts and audio-video recordings of W04252's interview with the SPO ("W04252's SPO Interview").<sup>95</sup> Each statement contains multiple indicia of reliability, including, *inter alia*: (i) audio-video recordings and official verbatim transcripts of W04252's SPO Interview; (ii) use of official templates in W04252's SUP Statement; (iii) indication of the date or time and place of the statements; (iv) indication of the attendees present, and their signatures in

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<sup>87</sup> The proposed evidence of W04252 ("W04252's Proposed Evidence") consists of the following statements, including any translations thereof: (i) SITF00348368-SITF00348369-ET RED2; and (ii) 069667-TR-ET Part 1 RED2 (transcript) together with 069667b Part 1 RED (audio-video recording) (collectively, "W04252's Statements"). See Annex 3 to the Motion.

<sup>88</sup> Motion, paras 21-23.

<sup>89</sup> Motion, para. 24.

<sup>90</sup> Motion, para. 25.

<sup>91</sup> Response, para. 10.

<sup>92</sup> Response, para. 10, referring to SITF00348368-SITF00348369-ET RED2, discussed at 069667-TR-ET Part 1 RED2, p. 8.

<sup>93</sup> Annex 8 to the Motion, item 3: 120848-120849-ET.

<sup>94</sup> SITF00348368-SITF00348369-ET RED2. See Annex 3 to the Motion, item 1.

<sup>95</sup> 069667-TR-ET Part 1 RED2; 069667b Part 1 RED. See Annex 3 to the Motion, items 2-3.

W04252's SUP Statement; (v) the witness's personal details; (vi) witness warnings, rights and acknowledgments; and (vii) confirmation by W04252 that his SPO Interview is true, accurate and given voluntarily.<sup>96</sup> In light of the above, the Panel is satisfied that W04252's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

41. Turning to the criterion set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W04252's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment.

42. With regard to the Rule 138(1) requirements, the Panel notes that W04252 was allegedly arrested by KLA members in December 1998, and thereafter detained and mistreated in Llapashticë/Lapaštica alongside other co-detainees.<sup>97</sup> The Panel is therefore satisfied that W04252's Statements are relevant to the charges in the Indictment.<sup>98</sup>

43. In light of the above findings on the *prima facie* reliability<sup>99</sup> and relevance<sup>100</sup> of W04252's Statements, the Panel is also satisfied that W04252's Statements are *prima facie* authentic and have probative value. The Panel further recalls that W04252's Statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment.<sup>101</sup> In addition, the Panel considers the SPO's submissions that W04252's Statements appear to be consistent with, or corroborated by, *inter alia*: (i) adjudicated facts of which the Panel has taken judicial notice;<sup>102</sup> and (ii) the admitted statements and documentary evidence of other witnesses in the case,<sup>103</sup>

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<sup>96</sup> See e.g. SITF00348368-SITF00348369-ET RED2, pp. 1-2; 069667-TR-ET Part 1 RED2, pp. 1-10, 34-35.

<sup>97</sup> Motion, paras 21-23.

<sup>98</sup> Indictment, paras 59-61, 71, 96-98, 107, 136-137; see also SPO Pre-Trial Brief, paras 428-432.

<sup>99</sup> See above para 40.

<sup>100</sup> See above para 42.

<sup>101</sup> See above para. 41.

<sup>102</sup> See Motion, para. 25, referring to F01534/A01, Adjudicated Fact 488.

<sup>103</sup> See Motion, para. 25, referring to P00738, P00225; [REDACTED], [REDACTED], [REDACTED]; [REDACTED].

including witnesses that testified and were available for cross-examination.<sup>104</sup> The Panel therefore finds that the probative value of W04252's Statements is not outweighed by any prejudicial effect.

44. Accordingly, the Panel finds that W04252's Statements meet the requirements of Rules 138(1) and 155.

45. In light of the above, the Panel finds that W04252's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

#### D. W04648

46. The SPO submits that the proposed evidence of W04648<sup>105</sup>: (i) is relevant,<sup>106</sup> authentic and reliable;<sup>107</sup> and (ii) has probative value which is not outweighed by any prejudice.<sup>108</sup>

47. The Defence objects to the admission of one of W04648's Statements, arguing that: (i) it lacks sufficient indicia of reliability;<sup>109</sup> and, regardless, (ii) it does not qualify as a statement under the definition applied by the Panel, and cannot therefore be admitted under Rule 155.<sup>110</sup> Moreover, the Defence generally objects to the admission of W04648's evidence regarding the kidnapping and murder of

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<sup>104</sup> See Motion, para. 25, referring to [REDACTED].

<sup>105</sup> The proposed evidence of W04648 ("W04648's Proposed Evidence") consists of the following statements, including any translations thereof: (i) SPOE00128333-00128343 RED3, pp. SPOE0012833-SPOE00128338; (ii) SPOE00128061-00128068 RED3; (iii) SPOE00128069-00128086 RED3, pp. SPOE00128069-SPOE00128075; and (iv) SPOE00130685-00130687 RED3, p. SPOE00130685 (collectively, "W04648's Statements"). See Annex 4 to the Motion.

<sup>106</sup> Motion, paras 21, 26-28.

<sup>107</sup> Motion, paras 29-30.

<sup>108</sup> Motion, para. 31.

<sup>109</sup> Response, para. 12, referring to SPOE00130685-00130687 RED3, p. SPOE00130685.

<sup>110</sup> Response, para. 13, referring to F02130, Panel, *Decision on the Thaçi Defence's Submissions Concerning Use of Prior Inconsistent Statements Pursuant to Rule 143(2)*, 15 February 2024, para. 15; F02580, Panel, *Reasons for Admission of W03780's Statements and Related Order*, 17 September 2024, confidential, para. 10 (a public redacted version was filed on the same day, F02580/RED); F02639, Panel, *Decision on Joint Defence Request for Certification to Appeal the Reasons for Admission of W03780's Statements and Related Order* (F02580), 11 October 2024, para. 13.



an individual, as: (i) it primarily constitutes hearsay evidence;<sup>111</sup> (ii) Trial Panel I of the Specialist Chambers has previously highlighted several discrepancies in such evidence in Case 05;<sup>112</sup> and (iii) the Panel already took judicial notice of several facts related to such evidence, so that admitting statements of limited relevance and probative value would unnecessarily burden the record.<sup>113</sup>

48. The SPO replies that, contrary to the Defence's objections to one statement of W04648, this: (i) bears sufficient indicia of reliability; and (ii) satisfies the criteria under Rule 155, whose plain language the Defence's submissions ignore.<sup>114</sup>

49. *W04648's Statements.* The Panel notes that the SPO has submitted W04648's death certificate.<sup>115</sup> The Defence has not expressly contested the death certificate, and the Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

50. The Panel observes that W04648's Statements consist of: (i) W04648's three statements to [REDACTED] ("W04648's UNMIK Statements");<sup>116</sup> and (ii) W04648's typewritten letter ("W04648's Typewritten Letter").<sup>117</sup> The Panel preliminarily notes the Defence's argument that W04648's Typewritten Letter does not qualify as a statement for the purpose of Rule 155.<sup>118</sup> First, the Panel recalls the text of Rule 155(1), which states:

Evidence in the form of a written statement, any other record written or otherwise expressed of what a person has said or transcript of a statement by a person who has died or who can no longer be traced with reasonable diligence, or who is by reason of physical or mental

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<sup>111</sup> Response, para. 14.

<sup>112</sup> Response, para. 15, *referring to* KSC-BC-2020-05, [REDACTED].

<sup>113</sup> Response, para. 16.

<sup>114</sup> Reply, para. 8.

<sup>115</sup> Annex 8 to the Motion, item 4: 077825-077825 RED3.

<sup>116</sup> SPOE00128333-00128343 RED3, pp. SPOE0012833-SPOE00128338; SPOE00128061-00128068 RED3; SPOE00128069-00128086 RED3, pp. SPOE00128069-SPOE00128075. *See* Annex 4 to the Motion, items 1-2.

<sup>117</sup> SPOE00130685-00130687 RED3, p. SPOE00130685. *See* Annex 4 to the Motion, item 3.

<sup>118</sup> Response, para. 13.

impairment or other compelling reason unable to testify orally, may be admitted [...].

The Panel considers that, while W04648's Typewritten Letter may not be a statement taken in the context of a criminal investigations or proceedings, Rule 155, as opposed to Rules 153 and 154, explicitly allows the Panel to admit not only "[e]vidence in the form of a written statement [...] or transcript of a statement", but also "any other record written or otherwise expressed of what a person has said". Therefore, the Panel is of the view that W04648's Typewritten Letter comes within the scope of Rule 155 and may be admitted pursuant to that Rule, provided that the other requirements for admission are met.

51. With regard to *prima facie* reliability, the Panel notes that each of W04648's [REDACTED] Statements contains multiple indicia of reliability, including, *inter alia*: (i) use of official templates; (ii) indication of the date, time or place of the statements; (iii) indication of the attendees present, and their signatures in two statements; (iv) the witness's personal details; and (v) witness warnings, rights and acknowledgments.<sup>119</sup> As regards W04648's Typewritten Letter, the Panel notes that the original was signed by the witness on both pages.<sup>120</sup> The Panel further observes that, while some details may differ, the letter seems to be generally consistent with W04648's [REDACTED] Statements.<sup>121</sup> Moreover, the Panel recalls that: (i) this is a *prima facie* assessment, without prejudice for any final assessment of reliability that shall be made in light of the entire body of evidence admitted at

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<sup>119</sup> See e.g. SPOE00128333-00128343 RED3, p. SPOE00128335; SPOE00128061-00128068 RED3, p. SPOE00128061; SPOE00128069-00128086 RED3, pp. SPOE00128069, SPOE00128075.

<sup>120</sup> SPOE00128344-00128345.

<sup>121</sup> See e.g. details about the alleged perpetrators and detention location, compare SPOE00130685-00130687 RED3, p. SPOE00130685, with SPOE00128333-00128343 RED3, p. SPOE00128333; the alleged victim's [REDACTED], compare SPOE00130685-00130687 RED3, p. SPOE00130685 with SPOE00128061-00128068 RED3, p. SPOE00128062; attempts to contact the alleged victim in relation to [REDACTED], compare SPOE00130685-00130687 RED3, p. SPOE00130685 with SPOE00128061-00128068 RED3, p. SPOE00128063.

the end of the trial;<sup>122</sup> and (ii) *prima facie* reliability for the purposes of admission of Rule 155 material does not require proof of reliability regarding each or every fact or circumstance in relation to which the witness gives evidence,<sup>123</sup> and inconsistencies contained in the offered records do not *per se* render evidence inadmissible in its entirety.<sup>124</sup> The Defence's objection is accordingly dismissed. In light of the above, the Panel is satisfied that W04648's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

52. Turning to the criterion set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W04648's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment.

53. With regard to the Rule 138(1) requirements, the Panel notes that W04648's Proposed Evidence relates, *inter alia*, to the alleged detention and mistreatment of a victim named in the Indictment.<sup>125</sup> The Panel is therefore satisfied that W04648's Statements are relevant to the charges in the Indictment.<sup>126</sup>

54. In light of the above findings on the *prima facie* reliability<sup>127</sup> and relevance<sup>128</sup> of W04648's Statements, the Panel is also satisfied that W04648's Statements are *prima facie* authentic and of probative value. The Panel further recalls that W04648's Statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment.<sup>129</sup> In addition, the Panel considers the SPO's submissions that W04648's Statements appear to be consistent with, or corroborated by, *inter alia*: (i) adjudicated facts of which the Panel has taken

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<sup>122</sup> F02013, Panel, *Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155* ("Third Rule 155 Decision"), 15 December 2023, para. 51; *see also* First Rule 155 Decision, para. 50.

<sup>123</sup> Third Rule 155 Decision, para. 51; First Rule 155 Decision, para. 64.

<sup>124</sup> Third Rule 155 Decision, para. 51; First Rule 155 Decision, para. 50.

<sup>125</sup> Motion, paras 21, 26-28.

<sup>126</sup> Indictment, paras 59-61, 75, 96-98, 109, 136; *see also* SPO Pre-Trial Brief, paras 438-457.

<sup>127</sup> *See above* para 51.

<sup>128</sup> *See above* para 53.

<sup>129</sup> *See above* para 52.

judicial notice;<sup>130</sup> and (ii) the admitted statements and documentary evidence of other witnesses in the case,<sup>131</sup> including witnesses that testified and were available for cross-examination.<sup>132</sup> The Panel therefore finds that the probative value of W04648's Statements is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W04648's Statements meet the requirements of Rules 138(1) and 155.

55. The Panel notes the Defence's submission that W04648's Proposed Evidence should not be admitted as it is of limited relevance and probative value, and constitutes hearsay of events that the Panel already took judicial notice of.<sup>133</sup> First, the Panel recalls that the hearsay nature of W04648's Proposed Evidence does not, *per se*, render it inadmissible.<sup>134</sup> This would, rather, be relevant to assessing its weight at the end of the case and in light of the totality of the evidence.<sup>135</sup> Moreover, the Panel recalls its findings that it has discretion to admit evidence that supplements or corroborates judicially noted facts,<sup>136</sup> and that adjudicated facts will also be assessed at the end of the case in light of any corroborating and/or

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<sup>130</sup> See Motion, para. 31, referring to F02498/A01, Panel, *Annex 1 to Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts*, 21 August 2024, confidential, Adjudicated Facts 804-805, 812, 814, 895-896, 898-900, 910-923, 927, 932 (a public redacted version was filed on the same day, F02489/A02).

<sup>131</sup> See Motion, para. 31, referring to the admitted evidence of [REDACTED].

<sup>132</sup> See Motion, para. 31, referring to [REDACTED] and [REDACTED].

<sup>133</sup> Response, paras 14-16.

<sup>134</sup> F02283, Panel, *Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155* ("Fourth Rule 155 Decision"), 3 May 2024, confidential, para. 67 (a public redacted version was filed on the same day, F02283/RED); First Rule 155 Decision, paras 179, 195. See also, *inter alia*, ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, [Decision on Prosecutor's Appeal on Admissibility of Evidence](#), 16 February 1999, para. 15; *Prosecutor v. Tadić*, [Decision on the Defence Motion of Hearsay](#), IT-94-1-T, 5 August 1996, paras 15-19. See similarly F02421, Panel, *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* ("Rule 153 Decision F02421"), 2 July 2024, confidential, para. 27 (with further references) (a public redacted version was filed on 3 July 2024, F02421/RED).

<sup>135</sup> Fourth Rule 155 Decision, para. 52; First Rule 155 Decision, paras 158, 179, 195. See similarly Rule 153 Decision F02421, para. 27 (with further references).

<sup>136</sup> F01534, Panel, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts*, 17 May 2023, with Annex 1, confidential, and Annex 2, para. 13, referring to ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Appeals Chamber, [Judgement](#), 8 April 2015, paras 25-26. See also Rule 153 Decision F02779, paras 25, 54.

contradictory evidence.<sup>137</sup> While the Panel is mindful of the voluminous evidential record of this trial, it also notes the very limited length of W04648's Proposed Evidence, totalling 22 pages in English. In light of the above, the Panel is of the view that admission of W04648's Proposed Evidence would not unnecessarily burden the record. Finally, the Panel considers that another panel's assessment of the weight to be assigned to the evidence of W04648 in another case<sup>138</sup> is not a compelling reason to deny admission at this stage. The Panel recalls that deciding upon the admissibility of evidence in this case is its sole and exclusive responsibility and, while potentially relevant, the findings of other courts and Panels regarding the credibility of a witness are not binding upon this Panel.<sup>139</sup> Moreover, the Panel considers that a finding of relevance, probative value and authenticity, together with fulfilment of the requirements under Rule 155,<sup>140</sup> is sufficient for admission at this stage, while the weight to be assigned to W04648's Proposed Evidence will ultimately be assessed by this Panel in light of all the evidence before it at the end of this case.<sup>141</sup> The Defence's objections are therefore dismissed.

56. In light of the above, the Panel finds that W04648's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

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<sup>137</sup> Rule 153 Decision F02779, paras 25, 54 (with further references).

<sup>138</sup> See Response, para. 15, *referring to* [REDACTED].

<sup>139</sup> Third Rule 155 Decision, para. 50; First Rule 155 Decision, para. 49.

<sup>140</sup> See *above* paras 50-54.

<sup>141</sup> Third Rule 155 Decision, paras 50-51. See also First Rule 155 Decision, para. 76.

## E. W04381

57. The SPO submits that the proposed evidence of W04381<sup>142</sup>: (i) is relevant,<sup>143</sup> authentic and reliable;<sup>144</sup> and (ii) has probative value which is not outweighed by any prejudice.<sup>145</sup> The SPO further submits that W04381's Associated Exhibit forms an inseparable and indispensable part of W04381's Proposed Evidence.<sup>146</sup> Finally, the SPO argues that W04381 is unavailable as his health condition effectively prevents him from testifying orally, even with the application of special measures.<sup>147</sup>

58. The Defence does not contest the assessment of W04381's availability and does not object to the *prima facie* admissibility of W04381's Proposed Evidence.<sup>148</sup> However, the Defence argues that such evidence is of very low probative value and no weight can be attached, in particular, to W04381's identification of certain alleged perpetrators in his statements.<sup>149</sup>

59. *W04381's Statements.* The Panel preliminarily notes [REDACTED], he is unlikely to be able to testify even with the application of special measures.<sup>150</sup> The Panel is satisfied that, based on the information before it: (i) W04381's condition would prevent him from testifying effectively, should he be required to appear before the Panel; and (ii) cross-examination of the witness would not provide an

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<sup>142</sup> The proposed evidence of W04381 ("W04381's Proposed Evidence") consists of the following statements and associated exhibit, including any translations thereof: (i) SITF00013515-00013550 RED2, pp. SITF00013515-SITF00013532; (ii) SITF00013587-00013592 RED2, pp. SITF00013587-SITF00013588, SITF00013591-SITF00013592; and (iii) SITF00015744-00015815 RED2, pp. SITF00015744-SITF00015776; and SITF00015777-SITF00015779-ET RED (collectively, "W04381's Statements"); and SITF00013570-00013584 ("W04381's Associated Exhibit"). See Annex 5 to the Motion.

<sup>143</sup> Motion, paras 32-33.

<sup>144</sup> Motion, para. 34.

<sup>145</sup> Motion, para. 36.

<sup>146</sup> Motion, para. 35.

<sup>147</sup> Motion, para. 37, referring to [REDACTED].

<sup>148</sup> Response, para. 18.

<sup>149</sup> Response, para. 19, referring to SITF00013515-00013550 RED2, pp. SITF00013518, SITF00013531, SITF00013550; SITF00013570-00013584, pp. SITF00013570, SITF00013573.

<sup>150</sup> [REDACTED].



effective method of testing his evidence.<sup>151</sup> The Panel therefore finds that the witness is unable to testify orally within the meaning of Rule 155(1)(a). The Panel also notes that the Defence does not dispute the witness's unavailability to testify.<sup>152</sup>

60. With regard to *prima facie* reliability, the Panel notes that W04381's Statements consist of: (i) the transcript of W04381's witness hearing before the [REDACTED] ("W04381's Statement");<sup>153</sup> (ii) the report of a photoboard identification procedure performed with W04381 by [REDACTED] ("W04381's Report");<sup>154</sup> and (iii) the transcript of W04381's testimony before [REDACTED],<sup>155</sup> with attached handwritten notes confiscated from W04381 on that occasion<sup>156</sup> (collectively, "W04381's Testimony"). Each statement and record contains multiple indicia of reliability, including, *inter alia*: (i) audio-video recordings and official verbatim transcripts of W04381's Statement and W04381's Testimony; (ii) indication of the date, time or place of the statements; (iii) indication of the attendees present, and their signatures in W04381's Statement and W04381's Report; (iv) the witness's personal details in W04381's Statement and W04381's Testimony; (v) witness warnings, rights and acknowledgments.<sup>157</sup> The Panel further notes that the origin and authorship of the handwritten notes in W04381's Testimony were ascertained and recorded in the transcript of that same testimony.<sup>158</sup> In light of the above, the

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<sup>151</sup> See *similarly* First Rule 155 Decision, para. 123. See also Motion, para. 37, footnote 155, with further references.

<sup>152</sup> Response, para. 18.

<sup>153</sup> SITF00013515-00013550 RED2, pp. SITF00013515-SITF00013532. See Annex 5 to the Motion, item 1.

<sup>154</sup> SITF00013587-00013592 RED2, pp. SITF00013587-SITF00013588, SITF00013591-SITF00013592. See Annex 5 to the Motion, item 2.

<sup>155</sup> SITF00015744-00015815 RED2, pp. SITF00015744-SITF00015776. See Annex 5 to the Motion, item 3.

<sup>156</sup> SITF00015777-SITF00015779-ET RED. See Annex 5 to the Motion, item 3.

<sup>157</sup> See e.g. SITF00013515-00013550 RED2, pp. SITF00013515, SITF00013532; SITF00013587-00013592 RED2, pp. SITF00013587-SITF00013588; SITF00015744-00015815 RED2, pp. SITF00015744-SITF00015746, SITF00026776.

<sup>158</sup> SITF00015744-00015815 RED2, pp. SITF00015753-SITF00015754, SITF00015775.



Panel is satisfied that W04381's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

61. Turning to the criterion set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W04381's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment.

62. With regard to the Rule 138(1) requirements, the Panel notes that W04381 was allegedly arrested, detained and mistreated by KLA members, at a time and location mentioned in the Indictment.<sup>159</sup> The Panel is therefore satisfied that W04381's Statements are relevant to the charges in the Indictment.<sup>160</sup>

63. In light of the above findings on the *prima facie* reliability<sup>161</sup> and relevance<sup>162</sup> of W04381's Statements, the Panel is also satisfied that W04381's Statements are *prima facie* authentic and have probative value. The Panel takes note of the Defence's submission as to the low probative value and weight that should be assigned to W04381's identification of alleged perpetrators in his statements. In this regard, the Panel, however, recalls that the weight to be assigned to W04381's Proposed Evidence will be assessed at the end of the case in light of all the evidence.<sup>163</sup> The Panel further notes that W04381's Statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment.<sup>164</sup> In addition, the Panel considers the SPO's submissions that W04381's Statements appear to be consistent with, or corroborated by, *inter alia*: (i) adjudicated facts of which the Panel has taken judicial notice;<sup>165</sup> and (ii) the admitted statements, documentary

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<sup>159</sup> Motion, paras 32-33.

<sup>160</sup> Indictment, paras 59-61, 81, 96-98, 118; *see also* SPO Pre-Trial Brief, paras 536, 539-542, 548.

<sup>161</sup> *See above* para 60.

<sup>162</sup> *See above* para 62.

<sup>163</sup> Fourth Rule 155 Decision, para. 52; First Rule 155 Decision, paras 158, 179. *See similarly* Rule 153 Decision F02421, para. 27 (with further references).

<sup>164</sup> *See above* para 61.

<sup>165</sup> *See* Motion, para. 36, *referring to* F01534/A01, Adjudicated Facts [REDACTED].

evidence and testimony of other witnesses in the case,<sup>166</sup> including witnesses that were available for cross-examination.<sup>167</sup> The Panel therefore finds that the probative value of W04381's Statements is not outweighed by any prejudicial effect.

64. Accordingly, the Panel finds that W04381's Statements meet the requirements of Rules 138(1) and 155.

65. *W04381's Associated Exhibit.* The Panel notes that W04381's Associated Exhibit consist of a list of names and photo line-up,<sup>168</sup> which was used and discussed in W04381's Statement.<sup>169</sup> However, the Panel observes that: (i) only photographs numbered 41-48 were shown to W04381; and (ii) the witness, upon being shown the photographs, merely said he could not recognise anyone. Therefore, the Panel is of the view that only those pages of W04381's Associated Exhibit referring to photographs 41-48 ("Pages")<sup>170</sup> form an indispensable and inseparable part of W04381's Statement, as, without them, its relevant portions would become incomprehensible or of lesser probative value. Admission of the remaining pages of W04381's Associated Exhibit is denied without prejudice.

66. In light of the above,<sup>171</sup> the Panel is also satisfied that the Pages are relevant, *prima facie* authentic and have probative value which is not outweighed by any prejudicial effect. The Panel therefore finds that W04381's Associated Exhibit meets the requirements under Rules 138(1) and 155. However, the Panel notes that, in W04381's Statement, the witness merely said that he did not recognise anyone from the pictures in the Pages.<sup>172</sup> For this reason, the Panel is of the view

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<sup>166</sup> See Motion, para. 36, referring to the admitted evidence of [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

<sup>167</sup> See e.g. [REDACTED], [REDACTED], and [REDACTED].

<sup>168</sup> SITF00013570-00013584. See Annex 5 to the Motion, item 4.

<sup>169</sup> See SITF00013515-00013550 RED2, pp. SITF00013530-SITF00013531.

<sup>170</sup> SITF00013570-00013584, pp. SITF00013570, SITF00013573.

<sup>171</sup> See, in particular, above paras 60, 62-63, 65.

<sup>172</sup> SITF00013515-00013550 RED2, p. SITF00013531.

that the Pages should only be admitted for the limited purpose of clarifying W04381's Statement and the witness's failure to identify the individuals depicted therein.

67. Accordingly, the Panel finds that: (i) W04381's Statements are admissible pursuant to Rules 138(1) and 155; and (ii) the Pages are admissible pursuant to Rules 138(1) and 155 for the limited purpose set out above.<sup>173</sup> Admission of the remaining pages of W04381's Associated Exhibit is denied without prejudice.

F. W00016

68. The SPO submits that the proposed evidence of W00016<sup>174</sup>: (i) is relevant,<sup>175</sup> authentic and reliable;<sup>176</sup> and (ii) has probative value which is not outweighed by any prejudice.<sup>177</sup>

69. The Defence objects to the admission of one of W00016's Statements due to insufficient indicia of reliability, considering that: (i) it originates from Serbian institutions; and (ii) W00016 did not authenticate it in her other tendered statement.<sup>178</sup> The Defence does not oppose the admission of the remaining W00016's Statements pursuant to Rule 155.<sup>179</sup>

70. The SPO replies by recalling the Panel's findings on the threshold of *prima facie* reliability in the context of Rule 155 admission.<sup>180</sup>

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<sup>173</sup> See above para. 66.

<sup>174</sup> The proposed evidence of W00016 ("W00016's Proposed Evidence") consists of the following statements, including any translations thereof: (i) SITF00269109-SITF00269112-ET; and (ii) 082037-TR-ET Parts 1-2 RED (transcript) together with 082037a Parts 1-2 RED (audio recording) (collectively, "W00016's Statements"). See Annex 6 to the Motion.

<sup>175</sup> Motion, paras 38-39.

<sup>176</sup> Motion, para. 40.

<sup>177</sup> Motion, para. 41.

<sup>178</sup> Response, para. 20, referring to SITF00269109-SITF00269112-ET.

<sup>179</sup> Response, para. 20, referring to 082037-TR-ET Parts 1-2 RED; 082037a Parts 1-2 RED.

<sup>180</sup> Reply, para. 2, referring to First Rule 155 Decision, para. 64; F01864, Panel, *Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155*, 17 October 2023, confidential, para. 58 (a public redacted version was filed on 12 December 2023, F01864/RED).

71. *W00016's Statements*. The Panel preliminarily notes that the SPO has submitted W00016's death certificate.<sup>181</sup> The Defence has not expressly contested the death certificate, and the Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

72. With regard to *prima facie* reliability, the Panel notes that W00016's Statements consist of: (i) a handwritten statement given by W00016 in 2002 ("W00016's Handwritten Statement");<sup>182</sup> and (ii) the transcript and audio recordings of W00016's interview with the SPO ("W00016's SPO Interview").<sup>183</sup> The Panel observes that W00016's SPO Interview contains multiple indicia of reliability, including, *inter alia*: (i) audio recordings and official verbatim transcripts; (ii) indication of the date, time and place of the interview; (iii) the attendees present, including a qualified interpreter; (iv) the witness's personal details; (v) witness warnings, rights and acknowledgments; and (vi) confirmation by W00016 that the statement is true, accurate and given voluntarily.<sup>184</sup> In light of the above, the Panel is satisfied that W00016's SPO Interview is *prima facie* reliable within the meaning of Rule 155(1)(b).

73. With regard to W00016's Handwritten Statement and the Defence's argument regarding its diminished reliability as it emanates from Serbian institutions,<sup>185</sup> the Panel observes that the statement on its face does not indicate that it was taken by or before the Serbian authorities. Even assuming that it was, the Panel recalls its previous finding that the fact that a document originated from a Serbian authority does not render it unreliable or inadmissible.<sup>186</sup> The Panel also observes that

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<sup>181</sup> Annex 8 to the Motion, item 5: 123009-123010-ET RED.

<sup>182</sup> SITF00269109-SITF00269112-ET. See Annex 6 to the Motion, item 1.

<sup>183</sup> 082037-TR-ET Parts 1-2 RED; 082037a Parts 1-2 RED. See Annex 6 to the Motion, items 2-3.

<sup>184</sup> See e.g. 082037-TR-ET Part 1 RED, pp 1-5; 082037-TR-ET Part 2 RED, pp. 33-34; 082037a Parts 1-2 RED.

<sup>185</sup> Response, para. 20.

<sup>186</sup> First Rule 155 Decision, para. 136. See also F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential, para. 35 (a public redacted version was filed on 27 November 2023, F01664/RED); F02044, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01163, W02144, W02749, W04230, W04445,*

W00016's Handwritten Statement contains some indicia of reliability, namely: (i) W00016's signature and personal details; and (ii) indication of the date of the statement.<sup>187</sup> However, the Panel also notes that, during her SPO's Interview, W00016 confirmed giving a statement in a particular city but did not confirm that the record in question was her statement.<sup>188</sup> The Panel recalls that Rule 155(1)(b) provides that, in order for evidentiary items to be admissible under this Rule, the Panel should be satisfied that "the statement, the record or the transcript is *prima facie* reliable, having regard to the circumstances in which it was made, recorded and maintained." The Panel is of the view that W00016's Handwritten Statement lacks any clear indication, other than its date, as to the circumstances in which it was made, recorded and maintained. In addition, the Panel is mindful of the fact that the witness will not be available to confirm such circumstances and for cross-examination. In light of the above, the Panel is of the view that W00016's Handwritten Statement does not satisfy the requirement of *prima facie* reliability for admission pursuant to Rules 155 and 138(1). Admission of W00016's Handwritten Statement is therefore denied without prejudice.

74. Turning to the criterion set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W00016's SPO Interview does not go to proof of the acts and conduct of the Accused as charged in the Indictment.

75. With regard to the Rule 138(1) requirements, the Panel notes that W00016 was present when a victim named in the Indictment was allegedly kidnapped by KLA members.<sup>189</sup> The Panel is therefore satisfied that W00016's SPO Interview is relevant to the charges in the Indictment.<sup>190</sup>

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W04489, W04576, W04739, W04741, and W04820 Pursuant to Rule 154 and Related Request, 8 January 2024, confidential, para. 34 (a public redacted version was filed on the same day, F02044/RED).

<sup>187</sup> SITF00269109-SITF00269112-ET, pp. SITF00269109, SITF00269112.

<sup>188</sup> 082037-TR-ET Part 2 RED, p. 28.

<sup>189</sup> Motion, paras 38-39.

<sup>190</sup> Indictment, paras 59-61, 92, 96-98, 133, 172; *see also* SPO Pre-Trial Brief, paras 665-670, 674-677.

76. In light of the above findings on the *prima facie* reliability<sup>191</sup> and relevance<sup>192</sup> of W00016's SPO Interview, the Panel is also satisfied that W00016's SPO Interview is *prima facie* authentic and of probative value. The Panel further recalls that W00016's SPO Interview does not go to proof of the acts and conduct of the Accused as charged in the Indictment.<sup>193</sup> In addition, the Panel considers the SPO's submissions that W00016's SPO Interview appears to be consistent with, or corroborated by, *inter alia*, the admitted statements and testimony of other witnesses in the case,<sup>194</sup> including witnesses that were available for cross-examination.<sup>195</sup> The Panel therefore finds that the probative value of W00016's SPO Interview is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W00016's SPO Interview meets the requirements of Rules 138(1) and 155.

77. In light of the above, the Panel finds that, except for W00016's Handwritten Note, W00016's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

#### G. W04825

78. The SPO submits that the proposed evidence of W04825<sup>196</sup>: (i) is relevant,<sup>197</sup> authentic and reliable;<sup>198</sup> and (ii) has probative value which is not outweighed by any prejudice.<sup>199</sup> The SPO further submits that W04825's Associated Exhibit forms an inseparable and indispensable part of W04825's Proposed Evidence.<sup>200</sup>

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<sup>191</sup> See above para 72.

<sup>192</sup> See above para 75.

<sup>193</sup> See above para 74.

<sup>194</sup> See Motion, para. 41, referring to the admitted evidence of W02486, W04824, and W04868.

<sup>195</sup> See Motion, para. 41, referring to W04824 and W04868.

<sup>196</sup> The proposed evidence of W04825 ("W04825's Proposed Evidence") consists of the following statements and associated exhibit, including any translations thereof: (i) SITF00161883-SITF00161892-ET; and (ii) 092974-TR-ET Part 1 RED2, Part 2 Revised RED (transcript) together with 092974b Part 1 RED, Part 2, Part 3 RED; (audio-video recording) (collectively, "W04825's Statements"); and 092970-092973 ("W04825's Associated Exhibit"). See Annex 7 to the Motion.

<sup>197</sup> Motion, paras 38, 42.

<sup>198</sup> Motion, paras 43-44.

<sup>199</sup> Motion, para. 46.

<sup>200</sup> Motion, para. 45.



79. The Defence questions the interest and suitability of admitting W04825's Proposed Evidence through Rule 155, considering: (i) its limited probative value, which is outweighed by its prejudicial effect; and (ii) that it is uncorroborated.<sup>201</sup>

80. The SPO replies that, contrary to the Defence's objection, the probative value of W04825's Proposed Evidence is not outweighed by any prejudice.<sup>202</sup> The SPO further argues that, even if such evidence was indeed of limited probative value, this would not warrant its exclusion.<sup>203</sup> Finally, the SPO replies that, while corroboration is not a pre-condition to admission pursuant to Rule 155, W04825's Proposed Evidence is, contrary to the Defence's submissions, corroborated by other documentary and witness evidence.<sup>204</sup>

81. *W04825's Statements.* The Panel notes that the SPO has submitted W04825's death certificate.<sup>205</sup> The Defence has not expressly contested the death certificate, and the Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

82. With regard to *prima facie* reliability, the Panel notes that W04825's Statements consist of: (i) W04825's testimony before the District Court in Belgrade ("W04825's Testimony");<sup>206</sup> and (ii) the transcripts and audio-video recordings of W04825's interview with the SPO ("W04825's SPO Interview").<sup>207</sup> Each statement contains multiple indicia of reliability, including, *inter alia*: (i) audio-video recordings and official verbatim transcripts of W04825's SPO Interview; (ii) indication of the date or time and place of the statements; (iii) indication of the case number in W04825's Testimony; (iv) indication of the attendees present; (v) the witness's personal

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<sup>201</sup> Response, para. 21.

<sup>202</sup> Reply, para. 9. *See also* Reply, paras 10-11.

<sup>203</sup> Reply, para. 9.

<sup>204</sup> Reply, paras 12-13.

<sup>205</sup> Annex 8 to the Motion, item 6: 120852-120853-ET.

<sup>206</sup> SITF00161883-SITF00161892-ET. *See* Annex 7 to the Motion, item 1.

<sup>207</sup> 092974-TR-ET Part 1 RED2; 092974-TR-ET Part 2 Revised RED; 092974b Part 1 RED; 092974b Part 2; 092974b Part 3 RED. *See* Annex 7 to the Motion, items 2-3.



details or signature; (vi) witness warnings, rights, acknowledgments, or solemn declaration; and (vii) confirmation by W04825 that his statements are true, accurate and given voluntarily.<sup>208</sup> In light of the above, the Panel is satisfied that W04825's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

83. Turning to the criterion set out in Rule 155(5), the Panel is satisfied that, upon review, the evidence contained in W04825's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment.

84. With regard to the Rule 138(1) requirements, the Panel notes that W04825 was allegedly abducted, detained and mistreated in 1999 by KLA members, at a location mentioned in the Indictment.<sup>209</sup> The Panel is therefore satisfied that W04825's Statements are relevant to the charges in the Indictment.<sup>210</sup>

85. The Panel notes the Defence's arguments as to the limited probative value and lack of corroboration of W04825's Proposed Evidence.<sup>211</sup> The Panel is of the view that the fact that W04825 did not recognise the buildings depicted in a photograph shown to him during his interview with the SPO does not, *per se*, diminish the probative value of W04825's Proposed Evidence so as to make it inadmissible. Moreover, the Panel notes that: (i) the facts stated in W04825's Statements are generally consistent;<sup>212</sup> and (ii) one of such statements is a testimony given under oath, in the presence of a judge and prosecution and defence counsel.<sup>213</sup> As to the alleged lack of corroboration, the Panel recalls that corroboration is not a pre-condition to admission and absence thereof is no ground for refusal to admit evidence, but will rather form part of the Panel's assessment

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<sup>208</sup> See e.g. SITF00161883-SITF00161892-ET, p. SITF00161883; 092974-TR-ET Part 1 RED2, pp. 1-4, 7-8; 092974-TR-ET Part 2 Revised RED, pp. 26-27.

<sup>209</sup> Motion, paras 38, 42.

<sup>210</sup> Indictment, paras 59-61, 92, 96-98, 133; see also SPO Pre-Trial Brief, paras 665-667, 670, 672, 674.

<sup>211</sup> Response, para. 21.

<sup>212</sup> Compare e.g. SITF00161883-SITF00161892-ET, pp. SITF00161884-SITF00161885 with 092974-TR-ET Part 1 RED2, pp. 8-12; and SITF00161883-SITF00161892-ET, pp. SITF00161889 with 092974-TR-ET Part 2 Revised RED, pp. 5, 7-8.

<sup>213</sup> SITF00161883-SITF00161892-ET, p. SITF00161883.

of the weight to be assigned to such evidence at the end of the trial in light of all the evidence.<sup>214</sup> Moreover, the Panel considers the SPO's submissions that W04825's Statements are corroborated or complemented by documentary evidence and the admitted statements and testimony of other witnesses in the case,<sup>215</sup> including witnesses that were available for cross-examination.<sup>216</sup> The Panel further recalls that W04825's Statements do not go to proof of the acts and conduct of the Accused as charged in the Indictment<sup>217</sup> and that a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine.<sup>218</sup> In light of the above, and of the Panel's findings on the *prima facie* reliability<sup>219</sup> and relevance<sup>220</sup> of W04825's Statements, the Panel is also satisfied that W04825's Statements are *prima facie* authentic and have probative value, which is not outweighed by any prejudice.

86. Accordingly, the Panel finds that W04825's Statements meet the requirements of Rules 138(1) and 155.

87. *W04825's Associated Exhibit.* The Panel notes that W04825's Associated Exhibit consists of a series of photographs,<sup>221</sup> which were shown to and discussed with the witness in W04825's SPO Interview.<sup>222</sup> The Panel considers that W04825's Associated Exhibit forms an indispensable and inseparable part of such interview, as, without it, its relevant portions would become incomprehensible or of lesser probative value.

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<sup>214</sup> First Rule 155 Decision, paras 86, 137.

<sup>215</sup> See Motion, para. 46, referring to [REDACTED], [REDACTED], [REDACTED], and [REDACTED], and to the admitted evidence of W04824, W04696 and W04238. See also Reply, paras 12-13, and references therein.

<sup>216</sup> See Motion, para. 46, referring to W04868 and W04824. See also Reply, paras 12-13, and references therein.

<sup>217</sup> See above, para. 83.

<sup>218</sup> Rule 140(4)(a). See also First Rule 155 Decision, para. 18 (with further references).

<sup>219</sup> See above para 82.

<sup>220</sup> See above para 84.

<sup>221</sup> 092970-092973. See Annex 7 to the Motion, item 4.

<sup>222</sup> See 092974-TR-ET Part 2 Revised RED, pp. 22-25.

88. In light of the above,<sup>223</sup> the Panel is also satisfied that W04825's Associated Exhibit is relevant and *prima facie* authentic, and has probative value which is not outweighed by any prejudicial effect. The Panel therefore finds that W04825's Associated Exhibit meets the requirements under Rules 138(1) and 155.

89. Accordingly, the Panel finds that W04825's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

## V. DISPOSITION

90. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence the following items, including any translations and audio-video recordings thereof: (i) W01473's Proposed Evidence,<sup>224</sup> except the items already admitted as identified in paragraph 24 above; (ii) W04431's Proposed Evidence,<sup>225</sup> except the item already admitted as identified in paragraph 36 above; (iii) W04252's Proposed Evidence;<sup>226</sup> (iv) W04648's Proposed Evidence;<sup>227</sup> (v) W04381's Statements<sup>228</sup> and the

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<sup>223</sup> See, in particular, above paras 82, 84-85, 87.

<sup>224</sup> See above footnote 12.

<sup>225</sup> See above footnote 57.

<sup>226</sup> See above footnote 87.

<sup>227</sup> See above footnote 105.

<sup>228</sup> See above footnotes 153-156.

- Pages,<sup>229</sup> for the limited purpose set out in paragraphs 66-67 above;  
(vi) W00016's SPO Interview;<sup>230</sup> and (vii) W04825's Proposed Evidence;<sup>231</sup>
- c) **REJECTS** the admission of the remaining evidence, without prejudice;
  - d) **DECLARES** the request to admit the items identified in paragraphs 17 and 20 above moot;
  - e) **INSTRUCTS** the Registry to assign exhibit numbers to the items referred to in paragraph 90.b), linking the admitted Associated Exhibits with the relevant admitted Statements as identified in footnotes 12, 57, 142 and 196; and
  - f) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material by no later than **Wednesday, 9 April 2025**. Any response thereto shall be filed no later than **Wednesday, 16 April 2025**. No reply will be entertained



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Thursday, 3 April 2025

At The Hague, the Netherlands.

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<sup>229</sup> See above footnote 170.

<sup>230</sup> See above footnote 183.

<sup>231</sup> See above footnote 196.