



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi, and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 19 May 2025

Language: English

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

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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 17 March 2025, the Specialist Prosecutor’s Office (“SPO”) filed a motion for the admission pursuant to Rule 155 of the evidence of five witnesses, who it says are unavailable (“Motion”).¹
2. On 4 April 2025, upon authorisation from the Panel,² the Defence for Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Messrs Thaçi, Veseli, Selimi, and Krasniqi”; collectively, “Accused”; “Defence”) filed a joint response to the Motion (“Response”).³
3. On 14 April 2025, the SPO filed a reply to the Response (“Reply”).⁴

II. SUBMISSIONS

4. The SPO seeks admission pursuant to Rule 155 of the witness statements, exhibits associated therewith, and other written records where applicable (collectively, “Proposed Evidence”) of the following witnesses: W00092, W04352,

¹ F03028, Specialist Prosecutor, *Prosecution Eighth Motion for Admission of Evidence Pursuant to Rule 155*, 17 March 2025, confidential, with Annexes 1-6, confidential (a public redacted version was filed on 18 March 2025, F03028/RED).

² Transcript of Hearing, 24 March 2025, p. 25711, line 19, to p. 25712, line 3.

³ F03087, Specialist Counsel, *Joint Defence Response to ‘Prosecution Eighth Motion for Admission of Evidence pursuant to Rule 155’ (F03028)*, 4 April 2025, confidential, with Annexes 1-2, confidential (a public redacted version was filed on 10 April 2025, F03087/RED). On 3 April 2025, upon request of the Defence, and without objection of the SPO, the Panel granted an extension of word limits to respond to the Motion, *see*, KSC-BC-2020-06/CRSPD782, 3 April 2025, confidential.

⁴ F03111, Specialist Prosecutor, *Prosecution Reply Relating to Eighth Rule 155 Motion*, 14 April 2025, confidential, with Annex 1 confidential (a public redacted version was filed on 17 April 2025, F03111/RED).

W04427, W04433, and W04577 (collectively, “Witnesses”).⁵ The SPO submits that (i) the Witnesses are unavailable;⁶ and (ii) the Proposed Evidence meets the admissibility criteria.⁷

5. The Defence reiterates: (i) that the principle of orality should remain the general rule in order to ensure the fairness of the proceedings;⁸ and (ii) its concern regarding what it characterises as untested evidence being admitted onto an already unmanageable trial record.⁹ The Defence also contends that the SPO does not establish that W04352, W04433, and W04427 are unavailable within the meaning of Rule 155(1).¹⁰ The Defence also submits that: (i) Rule 155(1) specifically relates to statements of persons who have died, or who can no longer be traced with reasonable diligence, or who are unavailable due to physical or mental impairment or other compelling reasons;¹¹ and (ii) a witness’s unwillingness to testify is not sufficient to establish that a witness is unavailable within the meaning of Rule 155(1).¹² The Defence also avers that when a witness is able but unwilling to testify, the SPO must satisfy the requirements of Rule 155(2) to seek admission of prior statements.¹³ Furthermore, the Defence submits that the Proposed Evidence does not meet the requirements for admissibility under Rules 155 and 138 (1), and provides specific submissions in respect of each of the proposed Witnesses.¹⁴

6. The SPO replies that the Response selectively challenges certain aspects of the Proposed Evidence and the SPO’s submissions on unavailability, ignoring the witness-specific, case-by-case circumstances making them objectively unavailable,

⁵ Motion, paras 1, 52.

⁶ Motion, paras 2, *referring to* Annex 6 to the Motion. *See also* Motion, paras 3, 13-17, 26-32, 37-42, 46-48.

⁷ Motion, para. 2.

⁸ Response, para. 2.

⁹ Response, para. 2.

¹⁰ Response, para. 6.

¹¹ Response, para. 7.

¹² Response, paras 8-9.

¹³ Response, paras 6, 10. *See also* Motion, paras 11-12.

¹⁴ Response, paras 13-77.

beyond their unwillingness to testify in court.¹⁵ The SPO also replies that the Defence's arguments regarding prejudice must be assessed in light of the current circumstances, and in the context of the unavailability of the relevant witnesses under Rule 155.¹⁶

III. APPLICABLE LAW

7. The Panel incorporates by reference the applicable law as set out in its first Rule 155 Decision.¹⁷

IV. DISCUSSION

1. W00092

8. The SPO submits that the Proposed Evidence of W00092¹⁸ should be admitted through Rule 155 as: (i) W00092 is unavailable;¹⁹ (ii) his evidence is relevant,²⁰ *prima facie* authentic and reliable;²¹ and (iii) its probative value is not outweighed by any prejudice.²²

9. The Defence does not dispute W00092's unavailability to testify orally. However, the Defence submits that W00092's evidence is inadmissible as it is unreliable and lacks corroboration.²³ The Defence submits that the [REDACTED]

¹⁵ Reply, para. 3.

¹⁶ Reply, para. 4.

¹⁷ F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, paras 10-19 (a public redacted version was filed on 8 September 2023, F01603/RED).

¹⁸ W00092's Proposed Evidence consists of the following items, including any translations thereof: (i) [REDACTED] (item 1); (ii) SITF00062579-SITF00062594-ET Revised RED2 (item 2); (iii) SITF00306707-00306714 RED (item 3); (iv) SPOE00193955-00193957 (item 4); and (v) 066732-066733-ET RED (item 5) ("W00092's Statements"). See Annex 1 to the Motion.

¹⁹ Motion, para. 3.

²⁰ Motion, paras 4-7.

²¹ Motion, paras 8-9.

²² Motion, paras 10-11.

²³ Response, para. 13.

Report, which consists of a written record of W00092's recollection of [REDACTED] ("Report"),²⁴ lacks indicia of authenticity, as it lacks the signature of the witness and/or of the person who recorded the statement contained therein, as well as any indication of where the latter was taken or that the witness verified it ("Purported Defects").²⁵ The Defence also submits that: (i) W00092's accounts about the circumstances of his arrest, the identification of other alleged Serbian civilian detainees in the alleged detention site in which he was kept, and his escape therefrom, are inconsistent with and uncorroborated by other witnesses cited by the SPO, such as [REDACTED];²⁶ and (ii) his recollections about the identification and role of [REDACTED] at the alleged detention site, as well as in the detention and mistreatment of W00092, lack probative value ("W00092's Inconsistencies").²⁷ The Defence asserts that admitting W00092's Proposed Evidence without giving the Defence the possibility to cross-examine the witness in relation to these inconsistencies would be highly prejudicial to the Accused.²⁸

10. The SPO replies that: (i) the Defence neglects the larger picture of the witness's consistent account over time; (ii) W00092's Inconsistencies are minor and do not affect the corroborative nature of the witness's account; and (iii) the Defence has had the opportunity to cross-examine other witnesses who were present at various moments of W00092's detention and who testified in court.²⁹

11. *W00092's Statements.* The Panel notes that the SPO has submitted, and the Defence did not dispute, a medical report finding that W00092 is [REDACTED].³⁰

²⁴ See Annex 1 to the Motion, item 4 (SPOE00193955-00193957).

²⁵ Response, para. 15.

²⁶ Response paras 16-18, 24-26.

²⁷ Response paras 19-23.

²⁸ Response, paras 14, 27.

²⁹ Reply, paras 6-7.

³⁰ See Annex 6 to the Motion, item 4 (126121-126125-ET RED).

The Panel therefore finds that the witness is unavailable to testify within the meaning of Rule 155(1)(a).³¹

12. Regarding *prima facie* reliability, the Panel notes that items 1-3 and 5 of Annex 1 to the Motion,³² consisting of the witness's statements and interviews with the [REDACTED], [REDACTED], and [REDACTED], contain several indicia of reliability, such as: (i) indications of record details on official templates; (ii) the witness's personal details; (iii) the signature of the witness and/or an authorised official; (iv) indications of the attendees, date, time and/or place of the interviews; and (v) witness warnings and/or acknowledgements.³³ The Panel also notes that the Report is recorded on an official template and the date and place of the interview, the witness's details and the source of the Report are indicated.³⁴

13. As to the Defence's arguments regarding the Purported Defects, the Panel recalls that *prima facie* reliability for the purposes of admission through Rule 155 does not require proof of reliability regarding each or every fact or circumstance in relation to which the witness gives evidence.³⁵ Similarly, as to the Defence's arguments regarding W00092's Inconsistencies, the Panel recalls that inconsistencies do not *per se* render evidence inadmissible. Assessment for the purposes of admissibility is *prima facie*, and without prejudice to any final assessment of reliability made in light of the entire body of evidence admitted at the end of the trial.³⁶ The Panel is persuaded by the SPO's argument that W00092's Statements reflect the witness's account over time and that any inconsistencies, if established, are limited in nature and would not warrant exclusion.³⁷ Any such

³¹ The Panel takes note also of the SPO's attempts to engage W00092 and relevant third state authorities before and during the trial, *see Motion*, para. 3.

³² *See above*, footnote 18.

³³ *See Annex 1 to the Motion*.

³⁴ *See Annex 1 to the Motion*, item 4, *also cited above in footnote 18*.

³⁵ F03075, Panel, *Decision on Prosecution Fifth Motion for Admission of Evidence pursuant to Rule 155* ("Decision on Fifth Rule 155 Motion"), 3 April 2025, confidential, para. 51 (a public redacted version was issued on the same day, F03075/RED).

³⁶ *Decision on Fifth Rule 155 Motion*, para. 51.

³⁷ *See, Reply*, para. 6.

inconsistency would be accounted for when assessing the weight and probative value of this witness's evidence. For these reasons, the Panel finds that W00092's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

14. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that the evidence contained in W00092's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

15. Regarding the specific requirements of Rule 138(1), the Panel is satisfied that W00092's Proposed Evidence is relevant in respect of alleged crimes committed in or around [REDACTED] in or around [REDACTED] and associated issues relevant to the charges.³⁸ In light of its findings above,³⁹ the Panel is also satisfied that W00092's Statements are *prima facie* authentic and probative. Moreover, the Panel notes the SPO's submission that the evidence in W00092's Statements overlaps with, *inter alia*, certain judicially-noticed adjudicated facts,⁴⁰ and the evidence of other witnesses in the case,⁴¹ including witnesses whom the Defence had the opportunity to cross-examine.⁴² Additionally, the Panel takes into consideration 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.⁴³ For these reasons, the Panel also finds that the probative value of W00092's Statements is not outweighed by any prejudicial effect.⁴⁴

³⁸ See Motion, paras 4-7, referring to F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 59-61, 67, 96-98, 103, 136-138, 153-154.

³⁹ See, in particular, above para. 12.

⁴⁰ See Motion, para. 10, referring to F01534, Panel, *Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex 1 (Confidential) ("List of Adjudicated Facts") and Annex 2 (Public)*, 17 May 2023, confidential, Adjudicated Facts [REDACTED].

⁴¹ See Motion, para. 11, referring to [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and related items referred to in footnotes 22-28 of the Motion.

⁴² See Motion, para. 10, referring to [REDACTED]; Reply, para. 7, footnote 9, referring to [REDACTED], [REDACTED], [REDACTED].

⁴³ Rule 140(4)(a). See Decision on Fifth Rule 155 Motion, para. 85.

⁴⁴ *Contra* Response, paras 14, 27; see above, para. 9.

16. In light of the above, the Panel finds that W00092's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

2. W04577

17. The SPO submits that the Proposed Evidence of W04577⁴⁵ should be admitted as: (i) W04577 is unavailable by reason of mental impairment;⁴⁶ (ii) his evidence is relevant, *prima facie* authentic and reliable;⁴⁷ and (iii) its probative value is not outweighed by any prejudice.⁴⁸

18. The Defence objects to the admission of W04577's Proposed Evidence pursuant to Rule 155.⁴⁹ It submits that the SPO has not established that W04577's is unavailable within the meaning of Rule 155(1).⁵⁰ The Defence also submits that W04577's Proposed Evidence does not meet the requirements for admission set forth by Rules 155 and 138 as: (i) it is unreliable and has very little to no probative value;⁵¹ (ii) it goes to the acts and conduct of the Accused;⁵² and (iii) it is not

⁴⁵ W04577's Proposed Evidence consists of the following items, including any translations thereof: (i) SITF00305130-00305135 RED (item 1); (ii) SITF00010564-00010615 RED (item 2); (iii) 107131-107133 (item 3); (iv) 088346-TR-ET Parts 1-4 RED2 (item 4); (v) 088346b Parts 1-4 RED (item 5); (vi) 088347-TR-ET Parts 1-9 RED2 (item 6); (vii) 088347b Parts 1-9 RED (item 7); (viii) 106438-TR-ET Parts 1-2_Corr Interp RED, 106438-TR-ET Parts 3, 13 Revised_Corr Interp RED, 106438-TR-ET Parts 4, 7, 11, 12, 14 Revised RED2, 106438-TR-ET Parts 5, 8-9 Revised 1_Corr Interp RED, and 106438-TR-ET Parts 6, 10 Revised 1 RED (item 8, as tendered in Annex 1 to the Reply in lieu of item 8 tendered in Annex 2 to the Motion, *see* Reply, para. 2; *see also* Disclosure Package 1668); (ix) 106438b Parts 1-14 RED (item 9); and (x) 116039-116048 (item 10) ("W04577's Statements"); and (i) SPOE00072752-00072752 (item 11); (ii) SPOE00072753-00072753 (item 12); (iii) 088352-088357-ET, p. 088352 (item 13); (iv) 088352-088357-ET, p.088353 (item 14); (v) 088352-088357-ET, pp. 088354-088356 (item 15); (vi) [REDACTED] (item 16); and (vii) SITF00180469-SITF00180502, pp. SITF00180474-SITF00180488 (item 17) (the Panel notes that Some of these pages and other pages from this item have been admitted as P00001 and P00334, *see* Annex 2 to the Motion, footnote 3) ("W04577's Associated Exhibits"). *See* Annex 2 to the Motion.

⁴⁶ Motion, para. 13, 17. *See also* Motion, paras 14-16.

⁴⁷ Motion, paras 18-20.

⁴⁸ Motion, paras 21-24.

⁴⁹ Response, paras 28-57.

⁵⁰ Response, para. 29.

⁵¹ Response, para. 33-44.

⁵² Response, paras 32, 45-55, *further referring* to Annex 1 to the Response.

corroborated.⁵³ The Defence further avers that, whereas the Panel has previously found W04577's Proposed Evidence suitable for admission under Rule 154 assuming that it could be adequately explored by the Defence in the course of cross-examination ("Rule 154 Decision on W04577"),⁵⁴ these safeguards no longer apply, rendering the admission of W04577's Proposed Evidence without cross-examination prejudicial beyond any probative value.⁵⁵

19. The SPO replies that the Defence ignores the [REDACTED] findings in respect of the witness's fitness to testify.⁵⁶ The SPO also replies that the Defence ignores the Panel's findings on relevance, *prima facie* authenticity and probative value of W04577's Statements in the Rule 154 Decision on W04577, as well as the Panel's findings on discrepancies and inconsistencies in prior Rule 155 decisions.⁵⁷ The SPO submits that the issues raised by the Defence in relation to W04577's Statements are selective and do not render such evidence inadmissible under Rule 155,⁵⁸ as: (i) inconsistencies and lack of corroboration do not bar admission of evidence;⁵⁹ and (ii) with one exception, W04577's evidence does not go to the acts and conduct of the Accused as charged in the Indictment.⁶⁰ The SPO further submits that there is no undue prejudice for the Defence in admitting W04577's Proposed Evidence, as the Defence has had the opportunity to question other witnesses on multiple issues addressed therein, and/or about W04577 himself, and can further test the witness by calling other witnesses or by seeking to admit evidence to the contrary and making final submissions in relation thereto.⁶¹

⁵³ Response, para. 56.

⁵⁴ See F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154*, 9 June 2023, confidential, para. 33 (a corrected version and a public redacted version thereof were issued on 10 August 2023 and 9 November 2023, respectively, F01595/COR and F01595/COR/RED).

⁵⁵ Response, para. 57.

⁵⁶ Reply, para. 8.

⁵⁷ Reply, para. 9.

⁵⁸ Reply, paras 10-11.

⁵⁹ Reply, paras 11-13, 17.

⁶⁰ Reply, paras 14-17.

⁶¹ Reply, para 18.

20. *W04577's Statements.* The Panel recalls that, in October 2023, it adjourned W04577's testimony until further notice due to [REDACTED],⁶² and [REDACTED].⁶³ [REDACTED] ("[REDACTED]")⁶⁴ [REDACTED] ("[REDACTED]"),⁶⁵ concluding that [REDACTED].⁶⁶

21. The Defence contests these findings, arguing that: (i) [REDACTED] ("[REDACTED]"),⁶⁷ it appears that W04577 told [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED] did not sufficiently engage [REDACTED].⁶⁸

22. The Panel notes that, [REDACTED], [REDACTED], [REDACTED], and [REDACTED].⁶⁹ The Panel also notes, however, that [REDACTED], [REDACTED].⁷⁰ The Panel further notes that [REDACTED], [REDACTED].⁷¹

23. The Panel further notes that, [REDACTED], [REDACTED].⁷² [REDACTED], [REDACTED], [REDACTED], [REDACTED]: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED], [REDACTED].⁷³

24. The Panel disagrees with the Defence's assertion that [REDACTED].⁷⁴ [REDACTED], [REDACTED], [REDACTED]. [REDACTED], [REDACTED], [REDACTED], [REDACTED].⁷⁵ In the present circumstances, the Panel considers that the SPO has failed to satisfy the Panel that W04577 is unable to testify or

⁶² [REDACTED]. See also F01896, Panel, *Decision on Duty Counsel's Request for Adjournment of W04577's Testimony* ("F01896 Decision"), 31 October 2023, strictly confidential, paras 18, 21, 28(f) (a public redacted version was issued on 22 November 2023).

⁶³ See F01896 Decision, paras 16-21. See also, Transcript of Hearing, 18 October 2023, p. 9103 lines 7-18, p. 9104 lines 1-11, confidential.

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ Response, para. 29.

⁶⁹ See [REDACTED].

⁷⁰ See [REDACTED].

⁷¹ See [REDACTED].

⁷² See [REDACTED].

⁷³ See [REDACTED].

⁷⁴ *Contra* Response, para. 29.

⁷⁵ *Contra* Response, para. 29. [REDACTED].

otherwise unavailable pursuant to Rule 155(1). In particular, the Panel considers that: (i) [REDACTED]; and (ii) [REDACTED], [REDACTED].⁷⁶ [REDACTED], [REDACTED]. The Panel notes in this respect that the SPO had been on notice of difficulties associated with the witness's readiness and preparedness to testify and associated demands he made in respect of it. The SPO, therefore, had had ample notice and time to either secure the witness's testimony or seek appropriate relief from the Panel. For these reasons, the Panel does not find merits in the SPO's assertion that it has taken all reasonable efforts to secure W04577's appearance before the Panel and that the witness is unable to testify [REDACTED].

25. Therefore, having carefully considered the available information, the Panel finds that W04577 is not unable and/or unavailable to testify within the meaning of Rule 155(1)(a).

26. [REDACTED], [REDACTED], [REDACTED]. [REDACTED], [REDACTED]. [REDACTED], [REDACTED], [REDACTED].⁷⁷

27. *Conclusion.* In light of the above, the Panel finds that W04577's Proposed Evidence is inadmissible pursuant to Rules 138(1) and 155. The WPSO is accordingly discharged from its obligation to [REDACTED].

3. W04352

28. The SPO submits that the Proposed Evidence of W04352⁷⁸ should be admitted as: (i) W04352 is unavailable within the meaning of Rule 155(1) and/or

⁷⁶ While the [REDACTED], [REDACTED], [REDACTED].

⁷⁷ See above, footnotes 62-63.

⁷⁸ W04352's Proposed Evidence consists of the following statements and transcripts oh hearing, including any translations thereof: (i) 092856b Parts 1-2 RED (item 1); (ii) 092856-TR-ET Parts 1-2 RED2 (item 2); (iii) SITF00180812-00180907(item 3); (iv) SITF00181066-00181123 (item 4); (v) SITF00297388-00297396 (item 5); and (vi) SITF00297457-00297470 RED2 (item 6) ("W04352's Statements"). See Annex 3 to the Motion.

Rule 155(2);⁷⁹ (ii) his evidence is relevant, *prima facie* authentic and reliable;⁸⁰ and (iii) the probative value of his evidence is not outweighed by any prejudice.⁸¹

29. The Defence submits that W04352's unwillingness to testify is not sufficient to establish that he is unavailable and/or unable to provide his testimony in the meaning of Rule 155(1) and/or Rule 155(2).⁸² The Defence also recalls that the Panel has previously rejected admission of W04352's Proposed Evidence, as tendered in the Motion, under Rule 153, finding that the prejudice of admitting W04352's Statements without cross-examination, due to their incriminatory nature, would outweigh its probative value ("Rule 153 Decision on W04352").⁸³ According to the Defence, this prejudice would remain if W04352's Proposed Evidence were admitted through Rule 155 without the possibility for the Defence to cross-examine the witness in relation to the circumstances of the alleged detention of [REDACTED].⁸⁴ In particular, the Defence stresses that: (i) the evidence of W04352 is in contradiction with, and/or not corroborated by evidence of other witnesses ("Corroboration Argument");⁸⁵ and (ii) the SPO's reliance on Adjudicated Facts [REDACTED], [REDACTED]stemming from [REDACTED] to support its corroboration claims is circular and thus improper, since W04352 [REDACTED], [REDACTED] ("Adjudicated Facts Argument").⁸⁶

30. The SPO replies that in the Rule 153 Decision on W04352, the Panel rejected the admission of W04352's Proposed Evidence for reasons related to prejudice, based on the understanding that W04352 would be available to testify.⁸⁷ The SPO

⁷⁹ Motion, paras 26-32.

⁸⁰ Motion, para. 33.

⁸¹ Motion, paras 34-35.

⁸² Response, para. 6. *See above* para. 5.

⁸³ Response, para. 59, *referring to* F02421, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses*, 2 July 2024, confidential, paras 35-36 (a public redacted version was issued on 3 July 2024, F02421/RED).

⁸⁴ Response, para. 59.

⁸⁵ Response, para. 61, *referring to* [REDACTED]and [REDACTED].

⁸⁶ Response, para. 62.

⁸⁷ Reply, para. 4.

asserts that the subsequent witness's inability to testify for reasons falling under Rule 155(1)-(2) fundamentally changes that Panel's assessment.⁸⁸ The SPO further notes that the Defence does not make specific submissions objecting that the criteria of Rule 155(2) are met.⁸⁹

31. *W04352's Statements.* The Panel notes that the SPO has submitted a document showing W04352's refusal to testify due to certain security concerns.⁹⁰ The Panel accepts the Defence's argument that a witness's unwillingness to testify does not *per se* amount to inability and/or unavailability to testify within the meaning of Rule 155(1).⁹¹ However, in the situation at hand, the Panel takes into consideration the following circumstances as relevant to establishing the objective nature of the fears underlying W04352's situation: (i) [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED];⁹² (ii) the SPO has repeatedly attempted to secure his *viva voce* testimony,⁹³ including by engaging with a third state's authorities for the purpose of compelling the witness to appear;⁹⁴ and (iii) the witness has nevertheless reiterated his refusal to testify, including after receiving a summons to testify from the third state authorities, the mandatory nature of which was explained to the witness.⁹⁵

32. The Panel takes also into consideration: (i) the fact that any coercive measures to compel the witness to appear to testify are at the discretion of the third state and that this Panel has no legal authority to compel his attendance for the purpose of testifying;⁹⁶ and (ii) that the SC is mandated to ensure, to the maximum extent

⁸⁸ Reply, para. 4.

⁸⁹ Reply, para. 4.

⁹⁰ See Annex 6 to the Motion, item 3 (126603-126603 RED).

⁹¹ See *above* para. 29.

⁹² Motion, para. 29.

⁹³ See Motion, paras 28-29.

⁹⁴ See Motion, paras 28-29.

⁹⁵ Motion, para. 29, referring to Annex 6 to the Motion, item 3.

⁹⁶ Motion, para. 30.

possible, the protection of witnesses, victims and others at risk, albeit in a manner consistent with fundamental rights of the Accused.⁹⁷

33. In view of the above, the Panel is satisfied that: (i) reasonable efforts have been exhausted to secure W04352's testimony before the SC; (ii) there are no or only hypothetical prospects of securing further the witness's cooperation; and (iii) exposing the witness to coercive measures to secure his appearance, if any, may engender inappropriate and disproportionate hardship on him and his family. In these circumstances, the Panel is of the view that W04352 can be considered unavailable within the meaning of Rule 155(1)(a).

34. Regarding *prima facie* reliability, the Panel notes that W04352's Statements⁹⁸ consist of the witness's statements and transcripts of interviews and evidence before the SPO,⁹⁹ [REDACTED],¹⁰⁰ and [REDACTED].¹⁰¹ All containing indicia of reliability such as: (i) the witness's details; (ii) indications of the attendees, date, time and/or place of the statements; (iii) the signature of authorised officials and/or the witness; (iv) witness warnings and acknowledgements; and (v) verbatim transcripts of interviews or the use of official templates.¹⁰²

35. The Panel also recalls that it previously found that W04352's Statements were suitable for admission under Rule 154 ("Rule 154 Decision on W04352")¹⁰³ and

⁹⁷ See F00582, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi*, 26 November 2021, para. 80 (a public redacted version was issued on 8 December 2021, F00582/RED). See also Motion, para. 27, referring to ICC, *Prosecutor v. Bemba et al.*, ICC-01/05/13-1481-Red-Corr, [Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68\(2\)\(c\) of the Rules of Procedure and Evidence'](#), 12 November 2015, paras. 17-18.

⁹⁸ See above footnote 78.

⁹⁹ Annex 3 to the Motion, items 1-2.

¹⁰⁰ Annex 3 to the Motion, items 5-6.

¹⁰¹ Annex 3 to the Motion, items 3-4.

¹⁰² See Annex 3 to the Motion.

¹⁰³ F02571, Panel, *Decision on the Remainder of Prosecution Motion for Admission of Evidence of Witnesses W02135, W04295, W04372, W04590, W04600, W04737, W01158, W01605, W04240, W04278, W04352, W04366, and W04427 Pursuant to Rule 154 (F02450 and F02460)*, 13 September 2024, confidential, para. 112 (a public redacted version was issued on the same day, F02571/RED).

accepted the *prima facie* authenticity of those statements.¹⁰⁴ Consistent with those findings, the Panel finds that W04352's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

36. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that W04352's Proposed Evidence does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

37. Regarding the specific requirements of Rule 138(1), the Panel maintains its previous findings that W04352's Statements are relevant, *prima facie* authentic, and have probative value.¹⁰⁵

38. In its Rule 153 Decision on W04352, the Panel found that the prejudicial effect of admitting W04352's Statements without cross-examination would outweigh their probative value.¹⁰⁶ In particular, the Panel recalls that it considered that: (i) the evidence in W04352's Statements is incriminatory within the meaning of Rule 153(1)(b);¹⁰⁷ and (ii) that evidence did not appear to be capable of being corroborated through any other live or Rule 154 witness which the Defence would be in a position to cross-examine.¹⁰⁸ These findings were made on the assumption that W04352 was available to testify and prejudice was measured against that assumption.

39. For present purposes, the Panel takes into consideration that the evidence in W04352's Statements: (i) does not go to proof of the acts and conduct of the Accused as charged in the Indictment;¹⁰⁹ and (ii) the witness has been found to be unavailable within the meaning of Rule 155(1).¹¹⁰ Moreover, the Panel notes the SPO's submissions that the tendered evidence appears to be generally consistent

¹⁰⁴ Rule 154 Decision on W04352, para. 108, referring to Rule 153 Decision on W04352, para. 33.

¹⁰⁵ W04352 Rule 154 Statements, 107-109, referring to Rule 153 Decision on W04352, paras 32-34.

¹⁰⁶ Rule 153 Decision on W04352, para. 35.

¹⁰⁷ Rule 153 Decision on W04352, para. 35. See also Rule 154 Decision on W04352, para. 111.

¹⁰⁸ Rule 153 Decision on W04352, para. 35.

¹⁰⁹ See above, para. 36.

¹¹⁰ See above, para. 31.

with, *inter alia*, adjudicated facts,¹¹¹ as well as with the admitted statements, documentary evidence and testimony of other witnesses in the case,¹¹² including witnesses which the Defence had the possibility to cross-examine on matters touched upon by W04352's Statements.¹¹³

40. As to the Defence's objections in this regard,¹¹⁴ the Panel considers that: (i) the Adjudicated Facts Argument is without merit insofar as the Panel has taken judicial notice of facts adjudicated by [REDACTED], [REDACTED], and not of W04352's account on its own in that context; and (ii) the Corroboration Argument is inapposite, as corroboration is not a pre-condition to admission pursuant to Rule 155, and the absence thereof is no ground for refusal to admit evidence, but may form part of the Panel's assessment of the weight to be assigned to the evidence at the end of the trial.¹¹⁵ Additionally, the Panel is mindful that a conviction could not be based to a sole or decisive extent on the statement of a witness which the Defence was unable to cross-examine.¹¹⁶ Lastly, the Panel takes into account the above findings regarding W04352's Statements relevance, *prima facie* authenticity, and probative value.¹¹⁷ For these reasons, the Panel finds that the probative value of W04577's Statements is not outweighed by any prejudicial effect.

41. In light of the above, the Panel finds that W04577's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

¹¹¹ See Motion, para. 35, referring to List of Adjudicated Facts, Adjudicated Facts [REDACTED], [REDACTED].

¹¹² See Motion, para. 35, footnotes 76-81, referring to the statements and other evidentiary material provided by [REDACTED], [REDACTED], [REDACTED]; (ii) other evidence provided by [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

¹¹³ See Motion, para. 35, footnote 77, referring specifically to [REDACTED], [REDACTED], [REDACTED].

¹¹⁴ See above para. 29.

¹¹⁵ See Decision on Fifth Rule 155 Motion, para. 85. See also above para. 40, 54.

¹¹⁶ Rule 140(4)(a). See Decision on Fifth Rule 155 Motion, para. 85. See also above para. 15.

¹¹⁷ See above para. 37.

4. W04433

42. The SPO submits that the Proposed Evidence of W04433¹¹⁸ should be admitted as: (i) W04433 is unavailable within the meaning of Rule 155(1);¹¹⁹ (ii) his evidence is relevant, *prima facie* authentic and reliable;¹²⁰ and (iii) the probative value of his evidence is not outweighed by the prejudicial impact of its admission.¹²¹

43. The Defence recalls that the Panel has previously denied the admission of W04433's Proposed Evidence, as tendered in the Motion, through Rule 153 ("Rule 153 Decision on W04433"),¹²² finding that admitting that evidence without cross-examination would be unduly prejudicial to the Accused in view of certain inconsistencies between the witness's alleged identification of [REDACTED] ("[REDACTED]") [REDACTED] on the day of the execution of prisoners there, and other witnesses' evidence in that regard.¹²³ According to the Defence, this prejudice remains insurmountable, since: (i) W04433 remains the only witness providing said evidence; and (ii) contrary to the SPO's submission, and as already

¹¹⁸ W04433's Proposed Evidence consists of the following items, including any translations thereof: (i) [REDACTED] (item 1); (ii) [REDACTED] (item 2); (iii) [REDACTED] (item 3); (iv) [REDACTED] (item 4); (v) [REDACTED] (item 5); (vi) [REDACTED] (item 6); (vii) [REDACTED] (item 7); (viii) [REDACTED] (item 8); (ix) [REDACTED] (item 9); and (x) [REDACTED] (item 10) ("W04433's Statements"); and (i) [REDACTED] (item 13); (ii) [REDACTED] (item 14); (iii) [REDACTED] (item 15); (iv) [REDACTED] (item 16); (v) [REDACTED] (item 17); (vi) [REDACTED] (item 18); (vii) [REDACTED] (item 19); (viii) [REDACTED] (item 20); (ix) [REDACTED] (item 21); (x) [REDACTED] (item 22); (xi) [REDACTED] (item 25); (xii) [REDACTED] (item 26); (xiii) [REDACTED] (item 27); and (xiv) [REDACTED] (item 28) ("W04433's Associated Exhibits"). See Annex 4 to the Motion. The Panel notes that the SPO does not tender for admission items 11-12, 23-24, 29-30.

¹¹⁹ Motion, paras 26-27, 37-42.

¹²⁰ Motion, para. 43.

¹²¹ Motion, paras 44-45.

¹²² 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)*, 13 December 2024, confidential (a public redacted version was issued on the same day, F02779/RED).

¹²³ Response, paras 69-70, *referring to Rule 153 Decision on W04433*, paras 63-64.

found by the Panel, the witnesses referred to by the SPO do not corroborate W04433's accounts of the relevant events.¹²⁴

44. The Defence also submits that W04433 is simply a reluctant witness, and not an unavailable one, within the meaning of Rule 155 (1).¹²⁵ Furthermore, the Defence adds that: (i) the choice not to execute the summons on W04433 is simply based on the exercise of the SPO's own discretion; (ii) there is no independent medical or other evidence which would support the SPO's assertion that summoning the witness would be inappropriate or disproportionate; and (iii) the SPO cannot simply choose not to execute the additional and final reasonable step to secure the witness's appearance, and then claim it has taken all reasonable steps required.¹²⁶ Additionally, the Defence submits that the Motion falls short of a showing that W04433 has been materially influenced by improper interference in the course of these proceedings within the meaning of Rule 155(2).¹²⁷

45. The SPO replies that in the Rule 153 Decision on W04433, the Panel rejected admission of W04433's Proposed Evidence for reasons related to prejudice, based on the understanding that W04433 would be available to testify.¹²⁸ The SPO asserts that the subsequent witness's inability to testify for reasons falling under Rule 155(1)-(2) fundamentally changes that Panel's assessment.¹²⁹

46. *W04433's Statements.* Preliminarily, the Panel notes that the SPO has submitted a document showing the witness's unwillingness to testify, whether in The Hague or by video-conference.¹³⁰ The Panel notes the Defence's arguments that: (i) W04433's unwillingness to testify does not *per se* amount to inability and/or unavailability to testify within the meaning of Rule 155(1); and (ii) the

¹²⁴ Response, para. 70.

¹²⁵ Response, paras 71-72

¹²⁶ Response, para. 73.

¹²⁷ Response, para. 74.

¹²⁸ Reply, para. 4.

¹²⁹ Reply, para. 4.

¹³⁰ See Annex 6 to the Motion, item 1 (126155-126155 RED).

choice not to execute a summons to appear on W04433 is based on the exercise of the SPO's own discretion, and is not supported by any documented medical finding.¹³¹

47. That being said, the Panel takes into consideration the following circumstances: (i) before and after the Panel rendered its Rule 153 Decision on W04433, the SPO made several attempts to secure the witness's *viva voce* testimony, including by requesting relevant authorities from the witness's country of residence to summons him to testify;¹³² (ii) even upon receipt of the summons, the mandatory nature of which was explained to the witness, W04433 remained unwilling to testify before the SC, whether in The Hague or by video-conference;¹³³ (iii) the witness's reluctance appears to be related with [REDACTED],¹³⁴ [REDACTED], [REDACTED], [REDACTED] Berishë/Beriša mountains.¹³⁵

48. The Panel takes also into consideration: (i) that any coercive measure to compel the witness to testify is at the discretion of a third state;¹³⁶ and (ii) that the SC is mandated to ensure, to the maximum extent possible, the protection of witnesses, victims and others at risk, albeit in a manner consistent with the fundamental rights of the Accused.

49. In view of the above, the Panel is satisfied that: (i) the SPO has reasonably and diligently attempted to secure W04433's *viva voce* testimony;¹³⁷ (ii) there are no or only hypothetical prospects of securing further cooperation from him;¹³⁸ and (iii) exposing the witness to coercive measures to secure his appearance may

¹³¹ See above, para. 43.

¹³² See Motion, paras 37-39.

¹³³ See Motion, para. 40. See also Annex 6 to the Motion, item 1.

¹³⁴ See Motion, paras 38-39.

¹³⁵ Rule 153 Decision on W04433, paras 59, 62.

¹³⁶ See Motion, para. 41.

¹³⁷ See Motion, paras 26-27, 37-40. See also above para. 31, with references. *Contra* Response, para. 73.

¹³⁸ See Motion, paras 37, 40; Annex 6 to the Motion, item 1. See above para. 31, with references.

engender inappropriate and disproportionate hardship on him [REDACTED], considering the witness's stated concerns regarding the impact of his potential testimony [REDACTED].¹³⁹ In these circumstances, the Panel is satisfied that, at this juncture, W04433 can be considered unavailable within the meaning of Rule 155(1)(a).

50. Regarding the *prima facie* reliability of W04433's Statements, the Panel notes that they consist of audio-visual and written records of the witness's evidence before [REDACTED], and contain indicia of reliability, such as: (i) the witness's details; (ii) indications of the attendees, date and place of the statements; (iii) witness warnings and acknowledgements; (iv) the use of official templates; and (v) verbatim transcripts and related audio-video recordings depicting the witness testifying under oath.¹⁴⁰ Furthermore, the Panel takes into consideration its previous findings that W04433's Statements are *prima facie* authentic.¹⁴¹ For these reasons, and noting that the Defence does not suggest otherwise, the Panel finds that W04433's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

51. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that the evidence contained in W04433's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

52. Regarding the specific requirements of Rule 138(1), the Panel maintains its previous findings that W04433's Statements are relevant, *prima facie* authentic, and have probative value.¹⁴²

¹³⁹ See Motion, paras 37-41. See above para. 31, with references. *Contra* Response, para. 73. The Panel also recalls its findings in para. 24, footnote 75.

¹⁴⁰ See Annex 4 to the Motion.

¹⁴¹ Rule 153 Decision on W04433, para. 60.

¹⁴² Rule 153 Decision on W04433, paras 59-60, 62.

53. In its Rule 153 Decision on W04433, the Panel found that the prejudicial effect of the admission of W04433's Statements without cross-examination would outweigh their probative value.¹⁴³ Particularly, the Panel took into consideration that, while W04433's recollections of [REDACTED], I[REDACTED],¹⁴⁴ none of those witness corroborated W04433's [REDACTED] ("Contended Evidence").¹⁴⁵ These findings were made on the assumption that W04433 was available to testify and prejudice was measured against that assumption.

54. For present purposes, the Panel is mindful that inconsistencies and/or lack of corroboration do not, *per se*, render evidence inadmissible under Rule 155.¹⁴⁶ Second, the Panel observes that the Contended Evidence appears to be generally similar to or consistent with the evidence of other witnesses referred to by the SPO in its Motion.¹⁴⁷ Furthermore, the Panel notes that the remainder of W04433's evidence is consistent with, *inter alia*, adjudicated facts,¹⁴⁸ as well as with the admitted statements, documentary evidence and testimony of other witnesses,¹⁴⁹ including witnesses whom the Defence had the possibility to cross-examine on matters touched upon by W04433 in his evidence.¹⁵⁰ Moreover, the Panel takes into consideration that: (i) the witness is unavailable;¹⁵¹ and (ii) his evidence does not go to proof of the acts and conduct of the Accused as charged in the Indictment,¹⁵² and (iii) is relevant, *prima facie* authentic and probative.¹⁵³ Additionally, the Panel

¹⁴³ Rule 153 Decision on W04433, para. 63.

¹⁴⁴ Rule 153 Decision on W04433, para. 63, referring to [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁴⁵ Rule 153 Decision on W04433, para. 63.

¹⁴⁶ See Decision on Fifth Rule 155 Motion para. 51. See also above paras 13, 39.

¹⁴⁷ See Motion, para. 44, referring to [REDACTED], [REDACTED], [REDACTED].

¹⁴⁸ See Motion, para. 44, footnote 86, referring to List of Adjudicated Facts, Adjudicated Facts [REDACTED], [REDACTED], [REDACTED].

¹⁴⁹ See Motion, para. 44, footnotes 87-90, referring to [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

¹⁵⁰ See Motion, para. 44, footnote 87, referring to [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

¹⁵¹ See above para. 46.

¹⁵² See above para. 51.

¹⁵³ See above para. 52.

is mindful that a conviction could not be based for the sole or decisive extent upon the evidence of a witness which the Defence was unable to cross-examine.¹⁵⁴ For these reasons, the Panel finds that the probative value of W04433's Statements is not outweighed by any prejudicial effect.

55. Accordingly, the Panel finds that W04433's Statements are admissible pursuant to Rules 138(1) and 155.

56. *W04433's Associated Exhibits.* The Panel recalls its previous findings that W04433's Associated Exhibits, as tendered in the Motion:¹⁵⁵ (i) form an inseparable and indispensable part of W04433's Statements; (ii) are relevant and provide relevant context to the W04433's written records; and (iii) bear sufficient indicia of *prima facie* authenticity.¹⁵⁶ The Defence does not make any submissions which would militate against these findings. Accordingly, and in light of its findings in paragraphs 52-53 of the present decision, the Panel is also satisfied that W04433's Associated Exhibits are *prima facie* reliable, have probative value, and their probative value is not outweighed by any prejudicial effect.

57. The Panel therefore finds that W04433's Associated Exhibits meet the requirements of Rules 138(1) and 155.

58. *Conclusion.* In light of the above, the Panel finds that W04433's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

¹⁵⁴ Rule 140(4)(a). See Decision on Fifth Rule 155 Motion, para. 85. See also above paras 15, 40.

¹⁵⁵ Cf. Annex 4 to the Motion, items 13-22, 25-28 (*cited in footnote 118*), and Rule 153 Decision on W04433, para. 61, footnote 162.

¹⁵⁶ Rule 153 Decision on W04433, para. 61.

5. W04427

59. The SPO submits that the Proposed Evidence of W04427¹⁵⁷ should be admitted as: (i) W04427 is unavailable within the meaning of Rule 155(1);¹⁵⁸ (ii) his evidence is relevant, *prima facie* authentic and reliable;¹⁵⁹ and (iii) the probative value of his evidence is not outweighed by any prejudice.¹⁶⁰

60. The Defence submits that the SPO has not established that W04427 is deceased or untraceable and thus unavailable within the meaning of Rule 155(1).¹⁶¹ It also submits that: (i) the Motion falls short of proving the alleged health conditions of W04427 and how they would prevent him from testifying orally; (ii) the SPO's references to W04427 refusal to testify, citing concerns [REDACTED], are unsubstantiated; and (iii) the witness's simple refusal to testify in circumstances where his testimony cannot be compelled cannot amount to a "compelling reason" rendering the witness unable to testify orally within the meaning of Rule 155(1).¹⁶²

61. The Defence further submits that W04427's Proposed Evidence has limited probative value and is unreliable since it: (i) is vitiated by language impairments; (ii) was not given under oath; (iii) is hearsay; and (iv) contrary to the SPO submissions, is largely uncorroborated by other witnesses.¹⁶³ Moreover, the Defence objects, in the event the Panel finds that W04427's Statements fulfil the requirements of Rule 155, to the admission of the parts where the witness discusses a list of persons [REDACTED], [REDACTED] ("List").¹⁶⁴ The Defence submits that, in light of the witness's limited and unreliable information about the

¹⁵⁷ W04427's Proposed Evidence consists of the following items, including any translations thereof: (i) 066895-TR-ET Parts 1, 3-7 RED2 and 066895-TR-ET Part 2 (item 1); and (ii) 066895b Parts 1, 3-7 RED and 066895b Part 2 (item 2) ("W04427's Statements"). See Annex 5 to the Motion.

¹⁵⁸ Motion, paras 26-27, 46-48.

¹⁵⁹ Motion, para. 49.

¹⁶⁰ Motion, para. 50.

¹⁶¹ Response, para. 64.

¹⁶² Response, paras 64-65.

¹⁶³ Response, para. 67.

¹⁶⁴ Response, para. 68.

List, and in absence of further information enabling the Defence to investigate such central matter to the case, admitting these portions of W04427's Proposed Evidence would be prejudicial beyond its probative value.¹⁶⁵

62. The SPO replies that the Defence fails to address all the reasons provided by the SPO regarding W04427's unavailability.¹⁶⁶ It also replies that the matters raised in the Response regarding relevance, *prima facie* authenticity and probative value were already adjudicated by the Panel ("W04427's Rule 154 Decision"),¹⁶⁷ and, in any event, do not bar admission under Rule 155.¹⁶⁸

63. *W04427's Statements*. Preliminarily, the Panel notes that the SPO has submitted a letter sent to the SPO by third state authorities in response to a SPO request for cooperation regarding W04427's testimony and related prospect of compelling the witness to testify under threat of legal sanctions by the said third state authorities.¹⁶⁹ As noted above, the Panel accepts the Defence's arguments that W04427's unwillingness to testify does not *per se* amount to inability and/or to unavailability to testify within the meaning of Rule 155(1).¹⁷⁰

64. That being said, the Panel takes into consideration the following circumstances: (i) the SPO made multiple attempts to secure the witness's testimony, including by seeking cooperation with the relevant domestic authorities for the purpose of exploring the possibility of compelling him to testify;¹⁷¹ (ii) those authorities do not foresee any change in the witness's refusal to testify;¹⁷² and (iii) even if those authorities served the witness with a subpoena,

¹⁶⁵ Response, para. 68.

¹⁶⁶ Reply, para. 19.

¹⁶⁷ See above footnote 103, referring to Decision F02571, hereinafter referred to also as W04427's Rule 154 Decision.

¹⁶⁸ Reply, paras 20-21.

¹⁶⁹ See Annex 6 to the Motion, item 2 (126310-126310 RED). See also Motion, paras 47-48.

¹⁷⁰ See above paras 31, 46.

¹⁷¹ See Motion, paras 47-48.

¹⁷² See Motion, para. 48; Annex 6 to the Motion, item 2.

they lack authority to force him to give evidence.¹⁷³ As noted above in respect of other witnesses, this Panel does not have legal authority to compel this witness to testify.

65. The Panel also takes into consideration the fact that the SC is mandated to ensure, to the maximum extent possible, the protection of witnesses, victims and others at risk, albeit in a manner consistent with the fundamental rights of the Accused.¹⁷⁴

66. In view of the above, the Panel is satisfied that: (i) the SPO has reasonably and diligently attempted to secure W04427 *viva voce* testimony;¹⁷⁵ (ii) there are no or only hypothetical prospects of securing further his cooperation;¹⁷⁶ and (iii) exposing the witness to coercive measures to secure his appearance, if any, may engender inappropriate and disproportionate hardship on him and his family.¹⁷⁷ In these circumstances, the Panel is satisfied that, at this juncture, W04427 can be considered unavailable within the meaning of Rule 155(1)(a).

67. With regard to the *prima facie* reliability of W04427's Statements, the Panel notes that they consist of: (i) the written transcript of the witness's interview with the SPO,¹⁷⁸ which the Panel already found admissible under Rule 154,¹⁷⁹ and (ii) its audio video recording.¹⁸⁰ The Panel observes that W04427's Statements contain indicia of reliability, such as: (i) the witness's details; (ii) indication of the attendees, date, time and place of the statements; (iii) witness warnings and acknowledgements; (iv) the use of official templates; and (v) verbatim transcripts of interviews and related audio-video recordings depicting the witness's

¹⁷³ See Motion, para. 48; Annex 6 to the Motion, item 2.

¹⁷⁴ See *above* paras 31, 46.

¹⁷⁵ See Motion, paras 26, 47-48; see also *above* paras 31, 46, with references.

¹⁷⁶ See Motion, para. 48; Annex 6 to the Motion, item 2. See also *above* paras 31, 46 with references.

¹⁷⁷ See Motion, para. 48. See *above* para. 31, with references.

¹⁷⁸ Cf. Annex 5 to Motion, item 1 (*cited above in footnote 157*), and W04427's Rule 154 Decision, para. 123, footnote 250.

¹⁷⁹ W04427's Rule 154 Decision, para. 134.

¹⁸⁰ Annex 5 to Motion, item 2, as *cited above in footnote 157*.

interview by the SPO.¹⁸¹ The Panel notes the Defence's argument that the statements were not given under oath.¹⁸² However, the Panel observes that, in his interview, W04427 was duly informed about his rights and responsibilities as a witness before the SC, including his potential criminal liability for any untruthful information provided by him in that context, and, upon completion, he confirmed that the content of his interview was true and given voluntarily.¹⁸³ Moreover, as already stressed above, this is a *prima facie* assessment, and is without prejudice to any final assessment of reliability that shall be made by the Panel in light of the entire body of evidence admitted at the end of the trial.¹⁸⁴

68. The Panel also takes note of the Defence's arguments regarding the purported language issues in W04427's Statements.¹⁸⁵ The Panel acknowledges that the Defence previously raised these objections, and the Panel found that these matters could be addressed by the Defence during cross-examination.¹⁸⁶ That being said, the Panel takes into consideration that: (i) the witness is unavailable within the meaning of Rule 155(1);¹⁸⁷ (ii) the witness was duly informed about his right to an Albanian interpreter for the purpose of his interview, which he acknowledged and declined to exercise;¹⁸⁸ and (iii) the purported language issues relate to a very limited part of the 182 pages of transcript of W04427's interview with the SPO, and it appears from the transcript that the witness had the opportunity to clarify the number of persons contained in the List and to confirm those clarifications.¹⁸⁹ Any such issues would be accounted for when assessing the weight and probative value of the evidence affected by those considerations.

¹⁸¹ See Annex 5 to the Motion.

¹⁸² See *above* para. 60.

¹⁸³ See 066895-TR-ET Part 1 RED2, p. 2, lines 10-21. See also W04427's Rule 154 Decision, para 127, referring to 066895-TR-ET Part 7 RED2, pp. 13-14.

¹⁸⁴ See *above* paras 13, 41, with references.

¹⁸⁵ See Response, para. 67.

¹⁸⁶ W04427's Rule 154 Decision, para. 131.

¹⁸⁷ See *above* para. 63.

¹⁸⁸ See 066895-TR-ET Part 1 RED2, p. 2, lines 5-7.

¹⁸⁹ 066895-TR-ET Part 3 RED2, p. 57, lines 6-20.

69. Furthermore, the Panel reiterates its previous findings that the Defence's objections relating to the admission of the List are related to the weight, if any, to be attached to W04427's Statements.¹⁹⁰ The Panel will carefully assess W04427's evidence relating to the List and do so in light of all relevant evidence on this matter. Additionally, the Panel recalls its previous finding that W04427's Statements are *prima facie* authentic.¹⁹¹ For these reasons, the Panel finds that W04427's Statements are *prima facie* reliable within the meaning of Rule 155(1)(b).

70. Turning to the requirement set out in Rule 155(5), the Panel is satisfied that the evidence contained in W04427's Statements does not go to proof of the acts and conduct of the Accused as charged in the Indictment. The Defence did not suggest otherwise.

71. Regarding the specific requirements of Rule 138(1), the Panel recalls its previous findings that W04427's Statements are relevant, *prima facie* authentic, and have probative value.¹⁹²

72. The Panel notes that the Defence challenges the probative value of W04427's Statements.¹⁹³ The Panel considers that the Defence's arguments regarding the hearsay nature of W04427's Statements are repetitive¹⁹⁴ and overlap in general with the issues already raised by the Defence in its previous submissions underpinning W04427's Rule 154 Decision.¹⁹⁵ In this respect, the Panel reiterates

¹⁹⁰ W04427's Rule 154 Decision, para. 131.

¹⁹¹ W04427's Rule 154 Decision, para. 127.

¹⁹² W04427's Rule 154 Decision, paras 126-132.

¹⁹³ See *above* para. 60.

¹⁹⁴ See Response, para. 67, footnote 185, referring to "other incidents charged in the Indictment", citing F02507, Specialist Counsel, *Joint Defence Consolidated Response to F02450, F02451, F02460 and F02465*, 23 August 2024, confidential, with Annexes 1-9, confidential, paras. 42-43, footnote 62 (a public redacted version and a further public redacted version were issued on 19 September 2024 and 27 September 2024, respectively, F02507/RED and F02507/RED2). See also W04427's Rule 154 Decision, para. 128, footnote 263, referring to "Disputed Part", citing 066895-TR-ET Part 1 RED2, p. 19 line 14 to p. 28, line 23; 066895-TR-ET Part 2, p. 1 to p. 5 line 23; 066895-TR-ET Part 3 RED2, p. 5 lines 15-20.

¹⁹⁵ In particular, regarding the Defence's arguments regarding the hearsay nature of W04427's evidence in respect of (i) W04427's knowledge of the KLA, (ii) [REDACTED], and (iii) efforts taken by others to locate W04427, cf. Response, para. 67, and F02507, Specialist Counsel, *Joint Defence Consolidated Response*

that the evidence's hearsay nature may impact on the weight attributed to it at the end of the trial, but does not prevent admissibility.¹⁹⁶

73. As for the Defence's contention that key aspects of W04427's evidence is not corroborated by witnesses referred to by the SPO in the Motion,¹⁹⁷ the Panel reiterates that lack of corroboration is no ground for refusing to admit evidence, but will form part of the Panel's final assessment of the weight to be assigned to the evidence.¹⁹⁸ Furthermore, the Panel notes that W04427's evidence about the circumstances of his arrest and detention at [REDACTED] appears to be generally consistent with that of other witnesses who were cross-examined by the Defence on similar matters,¹⁹⁹ as well as other witnesses' testimony and related evidentiary material.²⁰⁰ As such, the Panel remains satisfied that W04427's Statements have *prima facie* probative value.²⁰¹

74. Regarding prejudice, the Panel notes the Defence's objection to the admission of the specific portions of W04427's Statements regarding the List.²⁰² The Panel has dismissed the Defence's arguments regarding the hearsay nature of W04427's accounts about the List, and the lack of corroboration thereof,²⁰³ for the reasons above.²⁰⁴ Regarding the Defence's argument that W04427 is the only witness providing evidence on the List, the Panel notes that there is other evidence of the

to F02450, F02451, F02460 and F02465 (a public redacted version was issued on 19 September 2024 and subsequently reclassified as confidential pursuant to the Panel's order CRSPD609 of 27 September 2024. Subsequently the Defence filed a further public redacted version on 27 September 2024), 23 August 2024, paras 42-43, confidential, with Annexes 1-9 confidential.

¹⁹⁶ See similarly W04427's Rule 154 Decision, para. 130. See also above paras 13, 40, 54.

¹⁹⁷ See Response, para. 67.

¹⁹⁸ See also Decision on Fifth Rule 155 Motion, para. 85. See above paras 13, 41, 68.

¹⁹⁹ See Motion, para. 50, footnotes 97-98, referring to, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

²⁰⁰ See Motion, para. 50, footnote 96, referring to [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; List of Adjudicated Facts, Adjudicated Facts [REDACTED].

²⁰¹ See W04427's Rule 154 Decision, para. 132.

²⁰² See above para. 60.

²⁰³ See above para. 60, referring to Response, para. 68.

²⁰⁴ See above para. 71, referring *inter alia* to paras 13, 41, 68.

existence of such lists which the Panel will take into consideration when assessing the weight and probative value of the witness's evidence on that point.²⁰⁵ Second, while the Panel takes note that the Defence takes issue with a matter it considers central to the case,²⁰⁶ it also recalls that this evidence does not go to proof of the acts and conduct of the Accused as charged in the Indictment, and the Defence does not suggest otherwise.²⁰⁷ For these reasons, the Panel finds that the probative value of W04427's Statements is not outweighed by any prejudicial effect.

75. In light of the above, the Panel finds that W04427's Proposed Evidence is admissible in its entirety pursuant to Rules 138(1) and 155.

V. DISPOSITION

76. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence, without cross-examination, the following items, including any translations thereof: (i) W00092's Proposed Evidence;²⁰⁸ (ii) W04352's Proposed Evidence;²⁰⁹ (iii) W04433's Proposed Evidence;²¹⁰ and (iv) W04427's Proposed Evidence;²¹¹
- c) **INSTRUCTS** the Registry to assign exhibit numbers to the items referred to in paragraph 76 b)-c), linking any admitted Associated Exhibits with the relevant admitted Statements, as identified in footnotes 45²¹² and 118 of the present decision;

²⁰⁵ See Reply, para. 21, *referring to* Motion, fn. 96.

²⁰⁶ See Response, para. 68.

²⁰⁷ See *above* para. 70.

²⁰⁸ See *above* footnote 18.

²⁰⁹ See *above* footnote 78.

²¹⁰ See *above* footnote 118.

²¹¹ See *above* footnote 157.

²¹² Regarding item 17 to Annex 2 to the Motion, SITF00180469-SITF00180502, pp. SITF00180474-SITF00180488, the Registrar is instructed to assign a new exhibit number and indicate in the metadata

- d) **DENIES** admission of W04577's Proposed Evidence;²¹³ and
- e) **INSTRUCTS** the [REDACTED], in accordance with paragraphs 26-27 of the present decision.



Judge Charles L. Smith, III

Presiding Judge

Dated this Monday, 19 May 2025

At The Hague, the Netherlands.

of the document that: (i) it is an exhibit associated to W04577's Statements; and (ii) portions thereof are also admitted as P00001 and P00334, as indicated in footnote 45 and specified by the SPO in Annex 2 to the Motion, footnote 3.

²¹³ See above, paras 25-27, and footnote 47.