



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06/IA041

Before: A Panel of the Court of Appeals Chamber
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 10 November 2025

Original language: English

Classification: Public

**Decision on Taçi Appeal Against Decision on Admission of W04752's Prior
Statements**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 21 August 2025 by Mr Hashim Thaçi (“Appeal” and “Thaçi” or “Accused”)² against the “Decision on Thaçi Defence Request for Admission of Prior Statements of W04752” (“Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 1 September 2025 that the Appeal should be rejected (“Response”).⁴ Thaçi replied on 8 September 2025 (“Reply”).⁵

I. BACKGROUND

1. On 1 May 2024, the SPO filed a request seeking to add to its exhibit list material related to, *inter alia*, Thaçi, for obstruction offences under Article 15(2) of the Law allegedly committed in the detention facilities of the Specialist Chambers (“Obstruction Material”).⁶ The SPO underlined that it requested an amendment to its exhibit list because it foresaw “the potential need to tender or use these materials to clarify, challenge, and/or contextualise the evidence” of several witnesses, including W04752,⁷ a witness the SPO intended to call to testify between June and July 2024.⁸

¹ IA041/F00001, Decision Assigning a Court of Appeals Panel, 14 August 2025.

² IA041/F00002, Thaçi Defence Appeal of the Decision on Request for Admission of Prior Statements of W04752, 21 August 2025 (confidential) (“Appeal”).

³ F03327, Decision on Thaçi Defence Request for Admission of Prior Statements of W04752, 11 July 2025 (confidential, reclassified as public on 30 October 2025) (“Impugned Decision”).

⁴ IA041/F00003, Prosecution response to ‘Thaçi Defence Appeal of the Decision on Request for Admission of Prior Statements of W04752’, 1 September 2025 (confidential) (“Response”).

⁵ IA041/F00004, Thaçi Defence Reply to SPO Response to “Thaçi Defence Appeal of the Decision on Request for Admission of Prior Statements of W04752”, 8 September 2025 (confidential) (“Reply”).

⁶ F02279/RED, Public Redacted Version of ‘Prosecution request to amend the Exhibit List with confidential Annex 1’, 6 September 2024 (confidential version filed on 1 May 2024) (“SPO Request to Amend Exhibit List”).

⁷ SPO Request to Amend Exhibit List, para. 2.

⁸ SPO Request to Amend Exhibit List, para. 1.

2. In a decision dated 22 May 2024, the Trial Panel admitted evidence from several SPO witnesses under Rule 154 of the Rules;⁹ the evidence admitted included some of the prior statements authored by W04752, together with associated exhibits.¹⁰ On 23 May 2024, the Trial Panel directed the SPO either to postpone the testimony of several witnesses including W04752 or to call these witnesses as scheduled without relying on the Obstruction Material.¹¹

3. Between 1 and 18 July 2024, W04752 testified before the Trial Panel.¹² At the hearing of 8 July 2024, the Defence for Thaçi tendered five prior statements of W04752, other than those previously admitted under Rule 154 of the Rules (“Five Statements”), averring that they were relevant in anticipation of potential allegations of witness interference by the SPO.¹³ As underlined in the Impugned Decision, at the time of the hearing of 8 July 2024, it was the position of the SPO that the Obstruction Material was

⁹ Between March 2023 and May 2024, the Trial Panel issued decisions on motions of the SPO pursuant to Rule 154 of the Rules with regard to seventy witnesses. See F02328/RED, Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154 (F02204), 22 May 2024 (confidential version filed on 22 May 2024) (“Decision on Prosecution Motion for Admission of Evidence of W04752”).

¹⁰ Regarding W04752 specifically, the prior statements that were admitted consisted of: (i) 083280-TR-ET Parts 1-14; and (ii) IT-05-87.1 P00428. Associated exhibits were also admitted under Rule 154 of the Rules for this witness. See Decision on Prosecution Motion for Admission of Evidence of W04752, paras 5, 66, 74, 80, 95. The evidence admitted through the Decision on Prosecution Motion for Admission of Evidence of Witness W04752 did not include the five prior statements of W04752 tendered by the Defence for Thaçi at the hearing of 8 July 2024 (“Five Statements”). Compare F02204/RED, Public Redacted Version of ‘Prosecution motion for admission of evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 pursuant to Rule 154 with confidential Annexes 1-8’, 28 March 2024 (confidential version filed on 27 March 2024) and F02204/A06, W04752: Annex 6 to Prosecution motion for admission of evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 pursuant to Rule 154, 27 March 2024 (confidential) with F03254/RED, Public Redacted Version of Thaçi Defence Request for Admission of Prior Statements of W04752, 18 July 2025 (confidential version filed on 12 June 2025) (“Motion for Admission of the Five Statements”), para. 1 (a-e).

¹¹ Transcript, 23 May 2024, p. 15764 (private session). The Presiding Judge instructed the SPO to “[e]ither don’t use the materials with the three witnesses, or don’t call the witnesses until it’s been decided”. See also Transcript, 23 May 2024, pp. 15762, 15765 (private session).

¹² Transcript, 1 July 2024; Transcript, 2 July 2024; Transcript, 3 July 2024; Transcript, 4 July 2024; Transcript, 8 July 2024; Transcript, 9 July 2024; Transcript, 10 July 2024; Transcript, 11 July 2024; Transcript, 15 July 2024; Transcript, 16 July 2024; Transcript, 17 July 2024; Transcript, 18 July 2024.

¹³ Transcript, 8 July 2024, p. 17774 (private session).

related to the serious climate of witness interference and intimidation in the present proceedings, and to potential interferences with multiple witnesses, including W04752.¹⁴ In response to this SPO position, Thaçi sought admission of the Five Statements.¹⁵ The SPO objected to their admission because it had not been allowed to rely on the Obstruction Material when questioning W04752,¹⁶ as per the Trial Panel's instructions provided on 23 May 2024.¹⁷

4. During the hearing, the Trial Panel denied the Defence's request for admission of the Five Statements without prejudice and invited Thaçi to tender the Five Statements "if the issue [of interference with SPO witnesses] is raised".¹⁸

5. On 22 August 2024, the Trial Panel issued a decision granting the SPO Request to Amend Exhibit List in order to add the Obstruction Material to that list.¹⁹

6. On 15 April 2025, the SPO filed a motion seeking, *inter alia*, admission of the Obstruction Material ("Obstruction Material Motion").²⁰ On the same day, the SPO filed a notice pursuant to Rule 129 of the Rules, formally closing its case.²¹

7. On 29 May 2025, the Trial Panel issued a decision ("Obstruction Material Decision") granting, in part, the Obstruction Material Motion.²² The Panel notes that

¹⁴ Impugned Decision, para. 14.

¹⁵ See Impugned Decision, para. 14, and references quoted therein.

¹⁶ Transcript, 8 July 2024, p. 17792 (private session).

¹⁷ See above, para. 2.

¹⁸ Transcript, 8 July 2024, pp. 17792-17793 (private session).

¹⁹ F02501/RED, Public Redacted Version of Decision on Prosecution Request to Amend the Exhibit List (F02279) and on Thaçi Defence Motion for Exclusion of Materials *in Limine*, 20 December 2024 (confidential version filed on 22 August 2024) ("Decision on SPO Request to Amend Exhibit List").

²⁰ F03120, Prosecution motion for admission of obstruction related materials, 15 April 2025 ("Obstruction Material Motion").

²¹ F03121, Prosecution notice pursuant to Rule 129, 15 April 2025.

²² F03216, Public Redacted Version of Decision on Prosecution Motion for Admission of Obstruction Related Materials, 26 August 2025 (confidential version filed on 29 May 2025) ("Obstruction Material Decision"), paras 65-66.

the Obstruction Material contains, *inter alia*, identifying confidential information of W04752 as well as information related to the subject matter of W04752's testimony.²³

8. On 12 June 2025, the Thaçi Defence filed a motion seeking admission of the Five Statements.²⁴ On 11 July 2025, the Trial Panel issued the Impugned Decision rejecting Thaçi's motion, without prejudice.²⁵

9. On 16 July 2025, the Defence applied for leave to appeal the Impugned Decision.²⁶ On 11 August 2025, the Trial Panel certified the following issue: "whether the Panel erred in ruling that Rules 153-155 are *leges speciales* for admissibility of prior consistent statements on cross-examination" ("Certified Issue").²⁷

II. APPLICABLE LAW

10. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.²⁸

11. The Panel recalls that decisions related to the admission of evidence are generally treated as discretionary, and that appellate intervention in that respect is

²³ See Obstruction Material Decision, para. 34, fns 94, 95.

²⁴ Motion for Admission of the Five Statements.

²⁵ Impugned Decision, paras 22, 24(a).

²⁶ F03335/RED, Public Redacted Version of "Thaçi Defence Request for Certification to Appeal the Decision on Request for Admission of Prior Statements of W04752", 25 August 2025 (confidential version filed on 16 July 2025) ("Request for Certification").

²⁷ F03396, Decision on Thaçi Defence Request for Certification to Appeal the Decision on Request for Admission of Prior Statements of W04752, 11 August 2025 ("Certification Decision"), paras 11(1), 42(a). See also Certification Decision, paras 18-27. The Panel declined to certify the remainder of the issues for which certification to appeal was sought.

²⁸ KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, paras 4-14. See also KSC-BC-2020-06, IA030/F00009, Decision on Krasniqi and Selimi Appeals against "Decision on Prosecution Motion for Admission of Accused's Statements", 31 May 2024 ("Krasniqi and Selimi Appeal Decision"), para. 5; KSC-BC-2020-04, IA006/F00007, Decision on Shala's Appeal Against Decision Concerning Prior Statements, 5 May 2023 ("Shala Appeal Decision on Prior Statements"), para. 7.

warranted only in very limited circumstances.²⁹ In this regard, the Panel recalls that where the decision that is being challenged is a discretionary decision, a party must demonstrate that the lower level panel has committed a discernible error in that the decision is: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the lower level panel's discretion.³⁰ For the Appeals Panel to intervene in a discretionary decision of a Trial Panel, it must be demonstrated that the Trial Panel has committed a discernible error resulting in prejudice.³¹

12. At the Specialist Chambers, admission of evidence is governed by Rules 138 and 153-155 of the Rules.³² Rule 138(1) of the Rules sets the standard admissibility criteria according to which "[u]nless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect".³³ Rules 153-155 of

²⁹ *Krasniqi and Selimi* Appeal Decision, para. 6; *Shala* Appeal Decision on Prior Statements, para. 8. See also KSC-BC-2020-07, IA006/F00006, Decision on Nasim Haradinaj's Appeal Against Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 7 January 2022 ("*Haradinaj* Appeal Decision on Defence Witnesses"), para. 14, and jurisprudence quoted therein.

³⁰ See *Krasniqi and Selimi* Appeal Decision, para. 6; *Shala* Appeal Decision on Prior Statements, para. 8. See also *Haradinaj* Appeal Decision on Defence Witnesses, para. 14, and jurisprudence cited therein; KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, paras 35, 93; KSC-CA-2023-02, F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023 (confidential version filed on 14 December 2023) ("*Mustafa* Appeal Judgment"), para. 36; KSC-CA-2024-03, F00069/RED, Public Redacted Version of Appeal Judgment, 14 July 2025 (confidential version filed on 14 July 2025) ("*Shala* Appeal Judgment"), para. 141.

³¹ See ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR73.3, Decision on Appeals Against Decision on Impeachment of a Party's Own Witness, 1 February 2008, para. 14. See also *Mustafa* Appeal Judgment, para. 39; *Shala* Appeal Judgment, para. 48.

³² See Rules 138, and 153-155 of the Rules. See also F03340, Consolidated Decision on Victims' Counsel's Requests for Admission of Supplementary Information on Harm (F03208, F03279, and F03301), 17 July 2025 ("Decision on Victims' Counsel's Requests for Admission of Information on Harm"), para. 19.

³³ Rule 138 (1) of the Rules. This Rule further stresses that: "In exceptional circumstances, when the Panel is satisfied that an issue was not known at the time when the evidence was submitted, it shall be raised immediately after it has become known."

the Rules are tools to expedite and streamline the proceedings.³⁴ They allow the introduction of written statements or transcripts replacing or complementing the oral testimony of a witness, provided that certain preconditions or procedural requisites are met.³⁵ The Panel endorses the Trial Panel's definition of a "'written statement of a witness' as being a record, in whatever form, of what a witness had said in respect of facts and circumstances relevant to the case that was taken in the context of a criminal investigation or proceedings".³⁶

13. According to Rule 153 of the Rules, a "[p]anel may admit in lieu of oral testimony the written statement of a witness, or a transcript of evidence provided by a witness in proceedings before the Specialist Chambers, which goes to proof of a matter other than the acts and conduct of the Accused as charged in the indictment".³⁷

14. According to Rule 154 of the Rules, a panel may admit in lieu of direct examination the written statement of a witness, or a transcript of evidence provided by a witness in proceedings before the Specialist Chambers, which goes to proof of the acts and conduct of the Accused as charged in the indictment provided that: "(a) the witness is present in court; (b) the witness is available for cross-examination and any questioning by the Panel; and (c) the witness attests that the written statement or transcript accurately reflects his or her declaration and what he or she would say if

³⁴ See KSC-BC-2020-04, F00461, Decision on the submission and admissibility of non-oral evidence, 17 March 2023 ("*Shala* Decision on Non-Oral Evidence Admissibility"), para. 32, and references quoted therein.

³⁵ See *Shala* Decision on Non-Oral Evidence Admissibility, para. 32, and references quoted therein.

³⁶ Decision on Victims' Counsel's Requests for Admission of Information on Harm, para. 19. See also F01963, Decision on Admission of Documents Shown to W04769, 27 November 2023, para. 15, fn. 35; F01852, Decision on Krasniqi Defence Request to Admit Additional Document Related to W02153, 11 October 2023 ("Decision on Krasniqi Request to Admit Additional Document Related to W02153"), para. 8; F01380/RED, Public Redacted Version of Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, 7 November 2023 (confidential version filed on 16 March 2023) ("Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154"), paras 12, 26.

³⁷ See Rule 153 of the Rules.

examined”.³⁸ As indicated by the Trial Panel in prior decisions, the possibility to tender written evidence relevant to “proof of the acts and conduct of the Accused as charged in the indictment” pursuant to Rule 154 of the Rules is explained by the fact that the rule provides for three specific safeguards intended to preserve and protect the fundamental rights of the Accused and the integrity of the proceedings.³⁹

15. Rule 155 of the Rules describes the circumstances under which written statements of unavailable persons and of persons subjected to interference may be admitted by a panel.⁴⁰

16. The Panel notes that the Trial Panel stressed, in its first decision on Rule 154 of the Rules and in the context of subsequent related decisions, that Rules 153-155 of the Rules operate as *leges speciales* in relation to Rule 138 of the Rules.⁴¹ As further developed below,⁴² judges of international courts such as the International Criminal Court (“ICC”), the International Residual Mechanism for Criminal Tribunals (“IRMCT”), the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the International Criminal Tribunal for Rwanda (“ICTR”) and the Special Court for Sierra Leone (“SCSL”) have similarly ruled that where procedural rules expressly govern the admission of written statements in lieu of oral testimony, such rules are

³⁸ See Rule 154 of the Rules. See Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 8. The Trial Panel stressed that if a statement or transcript contains evidence going to “acts and conduct of the Accused as charged in the indictment”, it cannot be tendered pursuant to Rule 153 of the Rules, but must be offered pursuant to Rules 154 or 155 of the Rules and meet the specific requirements of these Rules. See also Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, para. 14.

³⁹ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, para. 13. See also Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 10.

⁴⁰ See Rule 155 of the Rules.

⁴¹ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, para. 15. See also Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 8; F01733/RED, Public Redacted Version of Decision on Veseli Defence Request Regarding Items Associated with [REDACTED]’s Testimony, 1 November 2023 (confidential version filed on 23 August 2025) (“Decision on Veseli Defence Request Regarding Items Associated with [REDACTED]’s Testimony”), para. 11; Decision on Victims’ Counsel’s Requests for Admission of Information on Harm, para. 22.

⁴² See below, paras 51-59.

leges speciales that take the admissibility of such written statements out of the scope of the *lex generalis* for admission of evidence.⁴³

17. The Panel notes that the issue giving rise to this Appeal is not, *stricto sensu*, about the existence of a general principle according to which Rules 153-155 of the Rules operate as *leges speciales* in relation to Rule 138 of the Rules. Rather, the dispute lies in the Trial Panel's interpretation of these Rules in the context of the specific circumstances of the Appeal where the documents sought for admission are prior consistent statements tendered during cross-examination. In that regard, Thiagi argues that the Trial Panel erred in denying the admission of the Five Statements outside the framework of Rules 153-155 of the Rules, in the absence of the SPO's agreement.⁴⁴ Thiagi requests the Court of Appeals Panel to find that the Trial Panel erred in

⁴³ See ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-2024, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony", 12 February 2016 ("*Ruto and Sang* Judgment on the Appeals Against Decision on Admission of Prior Recorded Testimony"), para. 86; ICC, *The Prosecutor v. Ntaganda*, ICC-01/04-02/06-1029, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103, 20 November 2015 ("*Ntaganda* Decision on Admission of Prior Recorded Testimony of P-0022, P-0041 and P-0103"), para. 46; ICC, *The Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-1938-Corr-Red2, Public Redacted Version of Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015 ("*Ruto and Sang* Decision on Admission of Prior Recorded Testimony"), para. 149. See also ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016 ("*Karadžić* Trial Judgement"), para. 21; *Prosecutor v. Milošević*, IT-02-54-AR73.4, Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements, 30 September 2003 ("*Milošević* 2003 Decision"), p. 2; ICTY, *Prosecutor v. Milošević*, IT-02-54-AR73.2, Decision on the Admissibility of Prosecution Investigator's Evidence, 30 September 2002 ("*Milošević* 2002 Decision"), para. 18; ICTY, *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002 ("*Galić* Decision on Rule 92bis(C)"), paras 28-30; ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84bis-T, Oral Decision, Transcript, 24 August 2011 ("*Haradinaj et al.* Oral Decision"), pp. 453-457; ICTR, *The Prosecutor v. Muhimana*, ICTR-95-1B-T, Decision on the Prosecution's Motion for Admission of Witness Statements (Rules 89(C) and 92 bis), 20 May 2004 ("*Muhimana* 2004 Decision"), para. 27. The Panel notes that Rules 92 bis and 89(C) of the SCSL Rules of Procedure and Evidence are identical to Rules 92 bis and 89(C) of the ICTY REP and to Rules 153 and 138(1) of the Specialist Chambers Rules. See SCSL, *Prosecutor v. Taylor*, SCSL-2003-01-AR73, Decision on "Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents", 6 February 2009 ("*Taylor* Decision on Tender of Documents"), paras 30-34. See also SCSL, *Prosecutor v. Taylor*, SCSL-03-01-T, Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 20 February 2009 ("*Taylor* Decision on Admission of UN Documents"), para. 20.

⁴⁴ Appeal, paras 3, 5. See also Reply, para. 13.

concluding that Rules 153-155 of the Rules are *leges speciales* for admissibility of prior consistent statements on cross-examination, and to reverse the Impugned Decision.⁴⁵

III. PRELIMINARY MATTERS

A. PUBLIC FILINGS

18. The Appeals Panel notes that the Impugned Decision was initially filed confidentially. As a result, all submissions on appeal were also filed confidentially pursuant to Rule 82(4) of the Rules.⁴⁶ However, the Panel notes that the Impugned Decision was subsequently reclassified as public.⁴⁷ The Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel.⁴⁸ The Panel therefore orders the Accused and the SPO to file public redacted versions of the Appeal, the Response and the Reply, or to indicate, through a filing, whether they can be reclassified as public within ten days of receiving notification of the present Decision.

B. SCOPE OF THE CERTIFIED ISSUE

19. The Court of Appeals Panel recalls that the scope of its review lies strictly within the confines of the issues certified by the lower panel and that it may thus decline to consider arguments of an appellant that go beyond the issues in relation to

⁴⁵ Appeal, para. 45. See also Reply, para. 13.

⁴⁶ Thaçi indicates that his appeal was filed as confidential pursuant to Rule 82(4) of the Rules as it refers to confidential material and that a public redacted version will be filed in due course. See Appeal, para. 43. The SPO indicates that its response was filed as confidential pursuant to Rule 82(4) of the Rules. See Response, para. 38. Thaçi also indicates that his reply was filed as confidential pursuant to Rule 82(4) of the Rules as the Response and the Impugned Decision are confidential. See Reply, para. 14.

⁴⁷ The Panel recalls that the Impugned Decision was reclassified as public by the Trial Panel on 30 October 2025. See above, fn. 3.

⁴⁸ See e.g. IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

which certification has been granted.⁴⁹ The Panel emphasises that the scope of the Certified Issue is very limited in the present instance as it merely raises a question of statutory interpretation.⁵⁰

20. The Panel first notes that Thaçi advances some arguments based on language contained not in the Impugned Decision, but in the Certification Decision.⁵¹ As such, the Panel considers that these arguments fall outside the scope of the Certified Issue, warranting their summary dismissal.⁵² However, the Panel considers that they are nonetheless closely connected to the Certified Issue. Therefore, the Panel will take the Defence's arguments into account in that context.⁵³

21. The SPO generally argues that the Appeal is "replete with submissions that are irrelevant to, and distract from" the Certified Issue.⁵⁴ In particular, the SPO argues that Thaçi's arguments relating to a "recent fabrication" exception for admission of statements is not within the scope of the Certified Issue.⁵⁵

22. The Panel acknowledges that the question whether prior consistent statements can be admitted into evidence to rebut an allegation of recent fabrication of

⁴⁹ See KSC-BC-2018-01, IA006/F00010/RED, Public Redacted Version of Decision on Thaçi and Selimi Appeals Against Decisions on Special Investigative Measures, 15 April 2025 (confidential version filed on 4 July 2024), para. 20; IA025/F00007/RED, Public Redacted Version of Decision on Thaçi's and Selimi's Appeals against Decisions F01057 and F01058, 18 April 2023 (confidential version filed on 18 April 2023), para. 12. See also KSC-BC-2020-07, IA004/F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021, para. 20; KSC-BC-2020-04, IA004/F00008/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal against Decision on Motion Challenging the Form of the Indictment, 22 February 2022 (confidential version filed on 22 February 2022), para. 10.

⁵⁰ See above, para. 9.

⁵¹ In particular, Thaçi argues that in the Certification Decision, the Trial Panel went beyond addressing whether the Defence's request met the criteria for certification as it provided several pages of substantive reasoning in support of the Impugned Decision. See Appeal, para. 19, referring to Certification Decision, paras 21-23. See also Appeal, paras 26, 29-30.

⁵² See IA036, IA037, IA038, IA040, F00011, Decision on Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211 and F03213, 8 October 2025, para. 17.

⁵³ See below, paras 32, 36, 41.

⁵⁴ Response, para. 4.

⁵⁵ Response, para. 13, referring to Appeal, paras 1, 3, 31, 34-36, 44.

testimony,⁵⁶ was not certified by the Trial Panel. Nonetheless, the Panel considers that this question is related to the issue that was certified insofar as it relates to the question of admissibility of prior consistent statements on cross-examination,⁵⁷ and to the circumstances under which the present matter arose. The Panel recalls that the Defence request for the admission of the Five Statements arose in the context of the Defence anticipating allegations of witness interference by the SPO.⁵⁸ The Panel will therefore consider these arguments, albeit briefly.⁵⁹

23. In the Certification Decision, the Trial Panel refused to certify for appeal Thaçi's "Third Issue" in which he was alleging that the Trial Panel erred in finding that the Defence can seek admission of the Five Statements pursuant to the applicable Rule as part of its case, as: (i) the Trial Panel failed to identify the applicable Rule; (ii) the requirements of Rules 153-155 of the Rules cannot be met, considering that the Defence cannot recall a SPO witness; and (iii) such a finding impermissibly shifts the burden of proof.⁶⁰ The Panel will not address the related arguments presented by Thaçi in both the Appeal and the Reply.⁶¹ It will nonetheless refer to these arguments to a limited extent where relevant to its determinations on the Certified Issue.⁶²

⁵⁶ Appeal, paras 34-38. The Panel notes that Thaçi relies on the jurisprudence of the IRMCT, the ICTR, the ICC as well as on United States Rules of Evidence, the United Kingdom Criminal Justice Act and the New Zealand Evidence Act. See also Appeal, paras 1, 3, 31, 44.

⁵⁷ The Panel understands that the SPO is referring to Thaçi's argument that international courts and tribunals have admitted prior statements of testifying witnesses at the request of the cross-examining party where, for example, these statements were considered probative of an allegation of recent fabrication of evidence. See Appeal, para. 1. See also Appeal, paras 34-36, 44. Thaçi also argues that Rule 143(3) of the Rules must be interpreted as including the right of the cross-examining party to tender that very witness's own statements if "relevant to the cross-examining party's case", in particular to address allegations of recent fabrication. See Appeal, para. 31. The Panel notes that Thaçi had raised a similar argument in the Request for Certification. See Request for Certification, para. 13.

⁵⁸ See e.g. Impugned Decision, para. 2; Certification Decision, para. 2.

⁵⁹ See below para. 59.

⁶⁰ Certification Decision, paras 34, 36, 39.

⁶¹ Appeal, paras 41, 44; Reply, paras 4-6.

⁶² See below, paras 62-68.

IV. DISCUSSION

24. The Panel will address the Appeal as follows: (i) whether the Trial Panel's ruling conforms to the statutory framework of the Specialist Chambers;⁶³ and (ii) whether the Trial Panel's ruling conforms to international and national jurisprudence.⁶⁴

A. WHETHER THE TRIAL PANEL'S RULING CONFORMS TO THE STATUTORY FRAMEWORK OF THE SPECIALIST CHAMBERS

1. Submissions of the Parties

25. Taçi recalls that the Trial Panel held that where proposed evidence qualifies as a statement, it must be offered pursuant to Rules 153-155 of the Rules and that admitting a witness statement pursuant to Rule 138(1) of the Rules is only possible as an exception when the opposing party does not object.⁶⁵ Taçi further recalls that the Trial Panel found that in the absence of an agreement to admission by the SPO, the Five Statements could not be admitted pursuant to Rule 138 of the Rules.⁶⁶ Taçi argues that this ruling contradicts prior decisions of the Trial Panel.⁶⁷

26. Taçi argues that, contrary to the impugned finding recalled above, the Trial Panel has previously granted Defence requests for admission of witness statements

⁶³ The Panel refers to Taçi's arguments that the Impugned Decision's ruling is based on erroneous reasoning. See Appeal, paras 20-28. The Panel also refers to Taçi's argument that the Impugned Decision's ruling has no basis in the Specialist Chambers' statutory framework. See Appeal, paras 29-33. The Panel further refers to the submission that the Impugned Decision's ruling clashes with the fundamental rights of the Accused. See Appeal, paras 39-42.

⁶⁴ The Panel refers to Taçi's argument that the Impugned Decision ruling contradicts national and international criminal procedure on the admission of prior consistent statements. See Appeal, paras 34-38.

⁶⁵ Appeal, para. 22, referring to Impugned Decision, para. 21.

⁶⁶ Appeal, para. 22, referring to Impugned Decision, para. 21.

⁶⁷ Appeal, paras 2, 20-21. See also Appeal, para. 45; Reply, para. 9.

under Rule 138 of the Rules which would not otherwise have met the requirements under Rules 153-155 of the Rules.⁶⁸

27. In addition, according to Thaçi, the Impugned Decision has no basis in the Specialist Chambers' statutory framework.⁶⁹ In his view, nothing in the Rules provides support for the finding that a cross-examining party is prohibited from seeking to admit prior consistent statements absent consent from the opposing party.⁷⁰ Thaçi submits that the Trial Panel's finding defeats the purpose of Rule 143(3) of the Rules, that is, to avoid "forcing witnesses to appear multiple times in The Hague".⁷¹ Further, although Rule 137(2) of the Rules places the onus on the Trial Panel to assess all evidence submitted, the Impugned Decision transfers this power to the calling party in allowing it to provide or withhold the consent for evidence to be admitted.⁷²

28. Thaçi argues that the Impugned Decision clashes with the fundamental rights of the Accused as guaranteed under Article 21(4)(f) of the Law, which ensures the right of an accused to examine witnesses against him or her including the ability to introduce evidence relevant to the credibility of these witnesses.⁷³

29. The SPO responds that the Impugned Decision is a discretionary decision, issued without prejudice and that the substance of the evidence contained in the Five Statements is cumulative of W04752's in-person testimony.⁷⁴ In addition, the SPO submits that no unfairness results for Thaçi, as he had the opportunity to fully explore the Five Statements with the witness and can still seek admission of these statements

⁶⁸ Appeal, paras 2, 20-21. See also Appeal, para. 45; Reply, para. 9.

⁶⁹ Appeal, paras 20, 29-33. See also Appeal, paras 4, 44.

⁷⁰ Appeal, para. 30.

⁷¹ Appeal, para. 31. See also Appeal, para. 44; Reply, para. 10.

⁷² Appeal, para. 32. See also Reply, para. 13.

⁷³ Appeal, paras 32, 33, 39-42.

⁷⁴ Response, para. 2. See also Response, para. 37.

through the “applicable legal framework”.⁷⁵ The SPO argues that it is not for the Trial Panel, the Appeals Panel or the SPO to give Thaçi legal advice in that regard.⁷⁶

30. As for the interpretation of the Rules, the SPO responds that the Trial Panel’s approach has been consistent throughout the proceedings.⁷⁷ The SPO adds that it was correct to hold that Rules 153-155 of the Rules are *leges speciales* within the procedural framework of the Specialist Chambers.⁷⁸ According to the SPO, these are the only applicable rules that govern the admission of witness statements, absent exceptional recourse to Rule 138 of the Rules, through *inter partes* agreement.⁷⁹ The SPO points to the wording of Rule 138(1) of the Rules, which allows for admission of evidence “unless challenged or *proprio motu* excluded [...]”.⁸⁰ The SPO further submits that, contrary to Thaçi’s assertion, any witness statement that has entered the trial record through Rule 138(1) of the Rules has occurred only through *inter partes* agreement.⁸¹

31. The SPO argues that the only other provision that expressly addresses the admission of written statements is Rule 143(2)(c) of the Rules, which provides for admission of prior *inconsistent* statements.⁸² As for Thaçi’s reliance on Rule 143(3) of the Rules, the SPO underlines that this rule is not applicable as it pertains to the substantive scope of cross-examination, and not the admissibility of witness statements.⁸³ The SPO further asserts that, consistent with Rule 143(3) of the Rules, Thaçi was free to put his case to the witness, and did so, including by examining

⁷⁵ Response, paras 3, 6. The SPO submits that: “For example, if the Five Statements were *not* being offered to prove the acts and conduct of the Accused, but to prove *another* matter (such as W04752’s consistency over time), then Thaçi could make the relevant request pursuant to Rule 153 and the SPO would respond accordingly.” See Response, fn. 9 (emphasis in original).

⁷⁶ Response, para. 37.

⁷⁷ Response, paras 14-15.

⁷⁸ Response, paras 1, 6, 36.

⁷⁹ Response, paras 1, 6, 8. See also Response, paras 11, 36.

⁸⁰ Response, para. 10. See also Response, para. 11.

⁸¹ Response, para. 12.

⁸² Response, para. 9.

⁸³ Response, para. 16.

W04752 on aspects of the Five Statements.⁸⁴ In the SPO's view, Thaçi failed to point to any portion of the Five Statements that is not already covered in cross-examination, and seeks "an indiscriminate, blanket admission" of the Five Statements.⁸⁵

2. Assessment of the Court of Appeals Panel

32. As indicated above, some of W04752's prior written statements were admitted under Rule 154 of the Rules.⁸⁶ The Panel notes that the Trial Panel stressed, in its first decision on Rule 154 of the Rules and in the context of subsequent related decisions, that Rules 153-155 of the Rules operate as *leges speciales* in relation to Rule 138 of the Rules "so that a record of an interview that qualifies as a written statement or as a transcript of evidence cannot be offered other than pursuant to Rules 153-155" of the Rules.⁸⁷ The Trial Panel emphasised that since Rules 153-155 of the Rules are *leges speciales* to Rule 138 of the Rules, "the latter cannot serve to circumvent the strictures of the former".⁸⁸ To the extent, however, that the opposing party did not object to the admission of a witness statement without the formalities of Rules 153-155 of the Rules and the Trial Panel saw no cogent reason to refuse the admission of this evidence, the Trial Panel exceptionally admitted witness statements as exhibits pursuant to Rule 138(1) of the Rules.⁸⁹ In the Impugned Decision and in the Certification Decision,

⁸⁴ Response, para. 16.

⁸⁵ Response, para. 16.

⁸⁶ See above, para. 2.

⁸⁷ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, para. 15. See also Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 8; Decision on Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony, para. 11; Decision on Victims' Counsel's Requests for Admission of Information on Harm, para. 22.

⁸⁸ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, para. 15. See also F01631, Public Redacted Version of Decision on Veseli Defence Request for Admission of Evidence Associated with W04748's Testimony, 30 June 2023 (confidential version filed on 30 June 2023) ("Decision on Veseli Request for Admission of Evidence Associated with W04748"), para. 12; Decision on Krasniqi Request to Admit Additional Document Related to W02153, paras 8-10; Decision on Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony, para. 11; Decision on Victims' Counsel's Requests for Admission of Information on Harm, para. 23.

⁸⁹ Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 10. In this decision, the Trial Panel found that the official note for which admission was sought constituted a witness statement within the meaning of Rules 153-155 of the Rules. However, the Trial Panel observed

this interpretation of Rules 138(1), 153-155 of the Rules is described as a well-established interpretation of the Rules by the Trial Panel.⁹⁰

33. Thaçi argues that the Trial Panel, in prior decisions, has interpreted the Rules differently.⁹¹ The SPO responds that any witness statement that has entered the trial record through Rule 138(1) of the Rules has occurred through *inter partes* agreement.⁹² Both Parties are specifically referring to two decisions issued by the Trial Panel: the Decision on Krasniqi Request to Admit Additional Document Related to W02153 and an oral ruling issued in March 2024 on admission of material related to W04147.⁹³

34. Starting with the Decision on Krasniqi Request to Admit Additional Document Related to W02153, the Panel observes that the Trial Panel granted the Defence requests for the admission of witness statements under Rule 138 of the Rules.⁹⁴ The Trial Panel's approach was nonetheless fully consistent with the disputed ruling of the Impugned Decision, as shown by the following finding:

The *lex specialis* nature of Rules 153-155 is intended to ensure that a Party cannot circumvent the particular safeguards provided for the admission of witness evidence by offering such evidence as an

that the official note was created after the witness concluded his testimony and that, therefore, the criteria for admission under Rule 154 of the Rules could not be fulfilled unless the witness was recalled to attest to the content of the note. Given that this Rule was not applicable and that the Parties agreed to the admission of the official note pursuant to Rule 138 of the Rules, the Trial Panel admitted the proposed evidence pursuant to Rule 138(1) of the Rules. See Decision on Krasniqi Request to Admit Additional Document Related to W02153, paras 8-10.

⁹⁰ Impugned Decision, para. 20; Certification Decision, paras 21, 23.

⁹¹ Appeal, paras 2, 20-21. See also Appeal, para. 45; Reply, para. 9.

⁹² Response, para. 12.

⁹³ See Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 10; Transcript, 26 March 2024, pp. 13712, 13713-13714 (private session). The Panel acknowledges that Thaçi is also referring in a footnote to Transcript, 11 September 2023, p. 7700 (private session) ("And this Court has also in this trial admitted statements for their substance on the offer of the Defence outside of 153 through 155, under 138, under its general power."). See Appeal, para. 2, fn. 3. The Panel however notes that Thaçi omitted to quote the first part of the statement that reads as follows: "It is true that for those rules, as the Court has found in this case, 153 through 155 are *lex specialis*, but we are not within those." See Transcript, 11 September 2023, p. 7700 (private session). The Panel finds that, in any event, the above-mentioned portions of the transcript are not illustrative of the Trial Panel's approach in matters related to admission of evidence as the related statements were made by the SPO and not by the Trial Panel. See Transcript, 11 September 2023, p. 7700 (private session).

⁹⁴ Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 10.

exhibit. To the extent, however, that the opposing Party does not object to the admission of a witness statement without the formalities of Rules 153-155 and that the Panel sees no cogent reason to refuse admission of this evidence, it may be exceptionally admitted as an exhibit pursuant to Rule 138(1). While Parties should generally refrain from circumventing the more stringent requirements of Rules 153-155, in the present circumstances, given that these Rules are not applicable and the Parties agree to the admission of the Official Note pursuant to Rule 138, the Panel will decide the admission of the proposed evidence pursuant to Rule 138(1).⁹⁵

35. As for the oral ruling issued in March 2024 on the admission of material related to W04147, the Panel notes that the SPO had no objection to specific pages of a witness statement being admitted under Rule 138(1) of the Rules but was objecting to the admission of the whole document.⁹⁶ Although not clearly stated in the transcript, the Panel understands that the Trial Panel admitted the whole statement only because it was relatively short (10 pages) and because the SPO had already accepted that part of it be admitted.⁹⁷ In the Panel's view, it was within the Trial Panel's discretion to admit the whole document given the SPO's agreement to admit part of it. This in itself does not show a departure from the Trial Panel's established interpretation.

36. The Panel finds that the above examples confirm what has been described in the Certification Decision as a well-established interpretation of the Rules by the Trial Panel,⁹⁸ namely that Rules 153-155 of the Rules apply to the admission of written statements but that, to the extent that the opposing party would not object to the admission of a witness statement without the requirements of these Rules, the Trial Panel may exceptionally admit witness statements as exhibits pursuant to Rule 138(1) of the Rules.⁹⁹ Accordingly, the Panel finds that Thaçi failed to demonstrate that the Trial Panel's interpretation of the rules governing the procedure for admission of a

⁹⁵ Decision on Krasniqi Request to Admit Additional Document Related to W02153, para. 10.

⁹⁶ Transcript, 26 March 2024, p. 13714 (private session).

⁹⁷ Transcript, 26 March 2024, pp. 13712, 13713-13714 (private session).

⁹⁸ Certification Decision, para. 23, referring to Impugned Decision, paras 20-21.

⁹⁹ See above, para. 32.

witness statement lacks consistency. The Panel finds that the Trial Panel's interpretation of these rules conforms to the statutory framework of the Specialist Chambers.¹⁰⁰

37. Finally, the Panel notes that these rules have been interpreted in the same way in other cases,¹⁰¹ including by panels differently constituted.¹⁰² More generally, the Panel is satisfied that the Trial Panel's interpretation of the Rules according to which Rules 153-155 of the Rules are *leges speciales* in relation to the general Rule 138 of the Rules conforms to the general principle of *lex specialis derogat legi generali* that dictates that where a specific law and a general law apply to the same subject matter, the specific law takes precedence over the general law.¹⁰³

38. Having found that the Trial Panel's interpretation of the rules governing the procedure for admission of a witness statement conforms to the statutory framework of the Specialist Chambers, the Panel now turns to whether the Trial Panel's interpretation of the rules remains valid when the evidence in question is a prior consistent witness statement tendered during cross-examination.¹⁰⁴

39. The Panel considers that the fact that the Five Statements are consistent and tendered during cross-examination does not alter their nature. Recalling that where the evidence proposed for admission qualifies as a witness statement, it must be, in principle, offered pursuant to Rules 153-155 of the Rules, the Panel finds that the Trial

¹⁰⁰ See above, paras 12-16.

¹⁰¹ See e.g. KSC-BC-2020-07, F00334, Decision on the Prosecution Request for Admission of Items Through the Bar Table, 29 September 2021, para. 87.

¹⁰² See e.g. *Shala* Decision on Non-Oral Evidence Admissibility, paras 10, 32.

¹⁰³ See *Ruto and Sang* Decision on Admission of Prior Recorded Testimony, para. 149; ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Judgement, 14 January 2000, paras 683-684. See also Ambos, K., *Treatise on International Criminal Law: Volume II: The Crimes and Sentencing* (Second Edition), Oxford University Press 2022, Chapter VI, A.(2)(a) (Merger or apparent concurrence), p. 294.

¹⁰⁴ See above, para. 9.

Panel did not err in finding that these Rules therefore apply to the admission of the Five Statements.¹⁰⁵

40. The Panel further notes that Thaçi does not appear to challenge that the Five Statements qualify as witness statements nor that Rules 153-155 of the Rules are *leges speciales* in relation to the general Rule 138 of the Rules, *per se*.¹⁰⁶ His argument is rather the following: in refusing his request to admit the Five Statements outside the framework of Rules 153-155 of the Rules, the Trial Panel prevented him from seeking to tender prior statements of a SPO witness on cross-examination for any purpose, including to impeach the witness or to respond to an allegation of recent fabrication, unless the SPO agreed.¹⁰⁷ The Panel finds that Thaçi's interpretation of the Impugned Decision is misleading as the message the Trial Panel actually conveyed through this decision is merely that the Five Statements are statements of a witness and, as such, absent an agreement to admission by the SPO, they could not be admitted pursuant to Rule 138 of the Rules.¹⁰⁸

41. The Panel understands that according to Thaçi, the Trial Panel should have admitted the Five Statements through the general Rule 138(1) of the Rules, despite the absence of consent from the SPO.¹⁰⁹ The Panel recalls that under Rule 138(1) of the Rules, evidence submitted to the Trial Panel shall be admitted if the applicable criteria are met (relevance, authenticity and probative value relative to prejudicial effect), unless the evidence is "challenged" or *proprio motu* excluded.¹¹⁰ The impugned ruling is based on the Trial Panel's finding that the admission of the Five Statements was not

¹⁰⁵ See Impugned Decision, paras 20-21.

¹⁰⁶ The Panel notes that in the course of this case, Thaçi himself requested the admission of witness statements specifically under Rule 154 of the Rules. See e.g. F03410, Thaçi Defence Motion for Admission of Evidence of Witnesses 1DW-003, 1DW-004, 1DW-005 and 1DW-009 pursuant to Rule 154 and Related Request, 22 August 2025 (confidential).

¹⁰⁷ Appeal, para. 3.

¹⁰⁸ Impugned Decision, para. 21.

¹⁰⁹ See Appeal, para. 2. See also Appeal, para. 30.

¹¹⁰ Rule 138(1) of the Rules.

agreed to by the SPO and therefore “challenged”, preventing its admission under Rule 138(1) of the Rules.¹¹¹ The Panel emphasises that while trial panels enjoy broad discretion in the admission of evidence, such discretion has to be exercised in compliance with the legal framework of the Specialist Chambers. In the present case, the Panel finds that it was within the Trial Panel’s discretion to strictly adhere to the wording of the rules on admission of evidence.

42. Thaçi submits that the narrow interpretation of the Rules adopted by the Trial Panel is incompatible with other provisions of the statutory framework of the Specialist Chambers.¹¹² Thaçi specifically refers to Rule 143(3) of the Rules,¹¹³ Rule 137(2) of the Rules,¹¹⁴ and to Article 21(4)(f) of the Law.¹¹⁵ For the reasons discussed below, the Panel disagrees with these submissions.

43. Rule 143(3) of the Rules provides that “[c]ross-examination shall be limited to the subject-matter of the direct examination and matters affecting the credibility of the witness”.¹¹⁶ As underlined by Thaçi, this Rule further allows the cross-examining party to examine a witness on matters relevant to the cross-examining party’s case, even where those matters fall outside the scope of the examination in chief, provided that the cross-examining party puts to that witness the nature of the case.¹¹⁷ As recalled above, Rule 154 of the Rules applies to admission of written statements and transcripts in lieu of direct examination.¹¹⁸ The two rules clearly regulate different factual scenarios.¹¹⁹ The Panel agrees with the SPO’s assertion that Rule 143(3) of the Rules

¹¹¹ Impugned Decision, paras 20-21.

¹¹² Appeal, para. 33.

¹¹³ Appeal, para. 31. See also Appeal, para. 44; Reply, para. 10.

¹¹⁴ Appeal, para. 32. See also Reply, para. 13.

¹¹⁵ Appeal, paras 32, 33, 39-42.

¹¹⁶ See Rule 143(3) of the Rules.

¹¹⁷ Appeal, para. 31; Reply, para. 10. See also Rule 143(3) of the Rules.

¹¹⁸ See Rule 154 of the Rules. See also above, para. 14.

¹¹⁹ See e.g. F01821, Decision on Prosecution Request for Admission of W03827’s Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration, 28 September 2023, para. 26. The

addresses the substantive scope of cross-examination, and not the admissibility of witness statements.¹²⁰

44. Moreover, the Panel notes that Thaçi did put his case to the witness as permitted under Rule 143(3) of the Rules. In support of this observation, the Panel refers to Thaçi's submission that, during his cross-examination, W04752 was interrogated about the Five Prior Statements.¹²¹ The Panel also notes that the SPO asserted more generally that Thaçi's counsel quoted and discussed at length with W04752 the content of his prior statements.¹²² For these reasons, the Panel also dismisses Thaçi's argument that the Impugned Decision deprived him of his right to examine witnesses against him and to introduce evidence relevant to the credibility of these witnesses as provided for by Article 21(4)(f) of the Law.¹²³

45. Turning to Rule 137(2) of the Rules, this rule underlines a panel's prerogative to "assess freely all evidence submitted in order to determine its admissibility and weight".¹²⁴ Thaçi argues that the Impugned Decision transferred the power to decide on the admissibility of prior consistent statements on cross-examination to the calling party in allowing it to provide or withhold the consent for the statements to be admitted.¹²⁵ In the Panel's view, in stressing a panel's power to freely assess all evidence submitted, this Rule merely reflects the discretionary power of the Trial Panel in matters related to admission of evidence.¹²⁶ The Panel fails to see how the

Panel notes that, in this decision, the Trial Panel compared Rule 155 of the Rules to Rule 143(2)(c) of the Rules.

¹²⁰ Response, para. 16.

¹²¹ Appeal, para. 13.

¹²² Response, para. 21. See also Response, para. 2, wherein the SPO argues that the substance of the evidence contained in the Five Statements is cumulative of W04752's in-person testimony.

¹²³ Appeal, para. 40. See also Appeal, para. 39.

¹²⁴ See Rule 137(2) of the Rules.

¹²⁵ Appeal, para. 32. See also Reply, para. 13.

¹²⁶ See e.g. *Shala* Appeal Judgement, paras 46, 141. The Panel notes that the wording of Rule 137(2) of the Rules is identical to that of Rule 63(2) of the ICC Rules of Procedure and Evidence ("ICC Rules") which directly refers to Trial Chambers' discretionary power to rule on admissibility of evidence. See ICC Rules, Rule 63(2) (stating that "[a] Chamber shall have the authority, in accordance with the

Trial Panel's power would be taken over by a party simply because, exceptionally, written evidence can be admitted upon agreement by the other party.

46. Accordingly, Thiçi fails to demonstrate that the Trial Panel's ruling that Rules 153-155 are *leges speciales* for admissibility of prior consistent statements on cross-examination does not conform to the statutory framework of the Specialist Chambers.

B. WHETHER THE TRIAL PANEL'S RULING CONFORMS TO INTERNATIONAL AND NATIONAL JURISPRUDENCE

1. Submissions of the Parties

47. Thiçi argues that the consequence of the Impugned Decision is that it prevents an accused from tendering for admission a witness's statements on cross-examination for any purpose, including to respond to an allegation of recent fabrication.¹²⁷ Thiçi submits that this practice is contrary to international criminal procedure as applied before international courts. In support of his allegation, Thiçi refers to the jurisprudence of the ICTY, the ICTR, the IRMCT and the ICC.¹²⁸ Thiçi further refers to the domestic criminal practice in the United States, the United Kingdom, New Zealand,¹²⁹ as well as the jurisprudence from the "highest courts of Australia and Canada".¹³⁰

discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69"). Commenting on the statutory and regulatory framework of the ICC on admissibility of evidence, the Trial Chamber in the *Lubanga* case underlined the "unfettered authority of the Trial Chamber to rule on procedural matters and the admissibility and relevance of evidence". See ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1084, Decision on the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber and the decisions of the Pre-Trial Chamber in trial proceedings, and the manner in which evidence shall be submitted, 13 December 2007, paras 4-5. See also Bitti, G., in Ambos, K. (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (Fourth Edition), C. H. Beck, Hart, Nomos 2022, Article 64, mn. 65.

¹²⁷ Appeal, para. 34.

¹²⁸ Appeal, paras 23-27, 35-36. See also Reply, paras 7, 8, 12.

¹²⁹ Appeal, para. 37, referring to American Federal Rules of Evidence, Rule 801(d)(1)(B)(i); UK Criminal Justice Act, Section 120(2); New Zealand Evidence Act, Section 34(2)(a).

¹³⁰ Appeal, para. 37.

48. According to Taçi, none of the courts referred to above consider that admission of evidence depends on the agreement of the opposing party.¹³¹ Applied to this case, he submits that Rules 153-155 of the Rules do not act as a *lex specialis* prohibiting the admission of written statements in other contexts, “including the admission of prior consistent statements on cross-examination”.¹³²

49. The SPO responds that the Trial Panel’s approach is consistent with the practice of international courts which is, in any event, not binding on the Specialist Chambers.¹³³ The SPO further responds that Taçi misrepresents the jurisprudence from international tribunals, which generally concern the admission of prior inconsistent statements on cross-examination – which is a very different procedural course.¹³⁴ In support of the argument that the Impugned Decision is consistent with international criminal practice, the SPO refers to the jurisprudence of the ICC, the ICTY and the ICTR.¹³⁵

2. Assessment of the Court of Appeals Panel

50. At the outset, the Panel recalls its finding above that Taçi fails to demonstrate that the Trial Panel’s ruling that Rules 153-155 are *leges speciales* for admissibility of prior consistent statements on cross-examination is not in conformity with the statutory framework of the Specialist Chambers.¹³⁶ The Panel further recalls that the Specialist Chambers are not bound to follow the jurisprudence of other international criminal tribunals.¹³⁷ Nonetheless, the Panel has often considered such jurisprudence

¹³¹ Appeal, para. 38. See also Reply, para. 7.

¹³² Appeal, para. 38.

¹³³ Response, paras 2, 7, 17.

¹³⁴ Response, paras 7, 17.

¹³⁵ Response, paras 18-35.

¹³⁶ See above, para. 46.

¹³⁷ See e.g. *Shala* Appeal Judgment, para. 142.

to be of guidance.¹³⁸ Mindful of the fact that the Parties devoted lengthy submissions to this matter, the Panel finds it instructive to consider whether the impugned finding is contrary to international criminal procedure as applied before international courts.

51. As a preliminary observation, the Panel recalls that Rule 89(C) of the ICTY and ICTR Rules of Procedure and Evidence (“ICTY RPE” and “ICTR RPE”, respectively) was the general rule on admission of evidence at those tribunals.¹³⁹ This rule stated that a “Chamber may admit any relevant evidence which it deems to have probative value”.¹⁴⁰ Contrary to Rule 138(1) of the Rules of the Specialist Chambers, Rule 89(C) of the *ad hoc* tribunals does not explicitly contain a reference to the fact that the evidence submitted may be “challenged or *proprio motu* excluded”.¹⁴¹

52. Rule 92 *bis* of the ICTY RPE and ICTR RPE governed the admission of written statements and transcripts in lieu of oral testimony for evidence provided by a witness, “which [went] to proof of a matter other than the acts and conduct of the accused as charged in the indictment”,¹⁴² a matter regulated by Rule 153 of the Rules of the Specialist Chambers. As underlined by the Trial Panel, Rule 154 of the Rules very much operates like Rule 92 *ter* of the ICTY RPE, by which it is largely inspired.¹⁴³ The Panel further recalls that Rule 92 *ter* was only incorporated into the ICTY RPE on 13 September 2006,¹⁴⁴ in order to “increase the ability of the Trial Chambers to consider

¹³⁸ See *Shala* Appeal Judgment, para. 37, recalling that the Law clearly states that Judges may be assisted by sources of international law, including subsidiary sources such as the jurisprudence from the international *ad hoc* tribunals, the ICC and other criminal courts.

¹³⁹ See above, para. 16.

¹⁴⁰ ICTY RPE, Rule 89(C); ICTR RPE, Rule 89(C).

¹⁴¹ Rule 138(1) of the Rules.

¹⁴² ICTY RPE, Rule 92 *bis*; ICTR RPE, Rule 92 *bis*.

¹⁴³ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, para. 19.

¹⁴⁴ See ICTY RPE, Rule 92 *ter*, providing that: (A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions: (i) the witness is present in court; (ii) the witness is available for cross-examination and any questioning by the Judges; and (iii) the witness attests that the written statement or transcript accurately reflects that witness’ declaration and what the witness would say if examined. (B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment. Further,

written statements and transcripts of witnesses in lieu of oral testimony where that evidence goes to the acts and conducts of an accused” and enhance the efficiency of trial proceedings.¹⁴⁵

53. In support of his assertion that the records of international courts’ cases are “replete with statements admitted other than through the Rules 153-155 equivalents”,¹⁴⁶ *Thaçi* refers specifically to an ICTY decision in the *Prosecutor v. Milošević* case.¹⁴⁷ He interprets this decision as meaning that nothing prohibits a witness statement from being received into evidence despite its non-compliance with Rule 92 *bis* of the ICTY RPE.¹⁴⁸ However, a review of this decision rather shows that the ICTY judges limited the possibility for a written statement to be received into evidence – notwithstanding its non-compliance with Rule 92 *bis* of the ICTY RPE – to exceptional circumstances, namely when there was no objection taken to the admission, or when the witness statement had “otherwise become admissible”.¹⁴⁹ The Panel notes that the first limb of the exception corresponds to the approach of the Trial Panel in the Impugned Decision, while the second limb addresses a practice that arose

the Panel notes that Rule 111 of the IRMCT Rules of Procedure and Evidence is identical to Rule 92 *ter* of the ICTY RPE. By contrast, the ICTR RPE do not contain a similar provision.

¹⁴⁵ ICTY, *Prosecutor v. Boškoski et al.*, IT-04-82-PT, Decision on Prosecution’s First Revised Motion Pursuant to Rule 92 *bis* and on Prosecution’s Motion Pursuant to Rule 92 *ter*, 30 March 2007, para. 44; ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter*, 9 July 2018, para. 13. Further, the ICTY regularly emphasised that the main objective of Rule 92 *ter* of the ICTY RPE was to ensure an effective and expeditious trial in accordance with the rights of the accused. See e.g. ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Defence Motion for Admission of Evidence of DGH-005 Pursuant to Rule 92 *ter*, 11 September 2014, para. 5. See also Ambos, K., *Treatise on International Criminal Law: Volume III: International Criminal Procedure* (Second Edition), Oxford University Press 2025, Chapter V, A.(4)(c) (*Ad hoc tribunals: The move to written evidence*), pp. 517-520.

¹⁴⁶ Appeal, para. 23.

¹⁴⁷ Appeal, para. 24, referring to *Milošević* 2002 Decision.

¹⁴⁸ Appeal, para. 24.

¹⁴⁹ *Milošević* 2002 Decision, para. 18.

specifically in the context of ICTY proceedings to deal with allegedly inconsistent statements.¹⁵⁰

54. The Panel notes that *Thaçi* relies largely on ICTY jurisprudence issued prior to the 2006 amendment of the ICTY RPE,¹⁵¹ and attempts to draw a parallel with the present proceedings. The Panel recalls that the evidence of W04752 was admitted under Rule 154 of the Rules,¹⁵² and that as pointed out above, its ICTY equivalent, that is, Rule 92 *ter*, was only incorporated into the ICTY RPE on 13 September 2006.¹⁵³ The Panel therefore finds that ICTY jurisprudence issued prior to the 2006 amendment of the ICTY RPE is of limited relevance to discuss the Trial Panel's approach regarding the applicable Rules to the admission of the Five Statements.

55. In his Reply, *Thaçi* acknowledges that Rule 92 *ter* was only incorporated in the ICTY RPE in 2006 but, referring to the *Milošević* 2002 Decision, he argues that this "does not disturb the original ICTY finding that nothing prohibits the admission of a witness statement notwithstanding its non-compliance with Rule 92 *bis*".¹⁵⁴ For the reasons provided above, the Panel finds that this jurisprudence does not support *Thaçi*'s suggested approach.¹⁵⁵ As for the post-2006 ICTY jurisprudence quoted by *Thaçi*,¹⁵⁶ the Panel observes that in the ICTY Trial Judgement of the *Prosecutor v.*

¹⁵⁰ The ICTY Appeals Chamber explained that a "witness statement has otherwise become admissible [...] where, for example, the written statement is asserted to contain a prior statement inconsistent with the witness's evidence". See *Milošević* 2002 Decision, para. 18, where the ICTY Appeals Chamber emphasised that:

In order to avoid overloading the exhibits, it has become common practice for the prosecution to concede orally that the witness statement includes the passage which the Defence asserts is inconsistent. The transcript of that concession is a sufficient record of that statement, and the issue as to whether there is in fact an inconsistency is left to the Trial Chamber.

¹⁵¹ Appeal, para. 24, referring to *Milošević* 2002 Decision, para. 18; Appeal, para. 25, referring to *Milošević* 2003 Decision, para. 19. See also Appeal, para. 25, referring to *Galić* Decision on Rule 92*bis*(C), para. 31.

¹⁵² Decision on Prosecution Motion for Admission of Evidence of W04752, paras 80, 95.

¹⁵³ See above, para. 52.

¹⁵⁴ Reply, para. 8.

¹⁵⁵ See above, para. 52.

¹⁵⁶ Appeal, para. 27, referring to ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Judgement: Volume I of II, 15 April 2011, para. 19, fn. 18, citing ICTY, *Prosecutor v. Gotovina*, IT-06-90-T, Guidance on the

Gotovina case, the Trial Chamber was in fact discussing the admission of a prior inconsistent statement outside the framework of Rule 92 *ter* of the ICTY RPE.¹⁵⁷

56. Further, and recalling that the ICTR never incorporated a Rule 92 *ter* into its RPE, the ICTR cases relied upon by *Thaçi* pertain to different factual circumstances, *i.e.*, the use of written statements that would not have satisfied the requirements for admission pursuant to Rule 92 *bis* of the ICTR RPE or written statements of a non-testifying witness when questioning a testifying witness.¹⁵⁸ These cases are therefore of limited assistance in relation to the Certified Issue. The Panel finds other ICTR decisions of greater assistance. In the *Prosecutor v. Muhimana* case, for example, commenting on the Prosecutor's argument that Rule 92 *bis*(A) was inconsistent with the letter and spirit of Rule 89(C) of the ICTR RPE, a Trial Chamber stressed that:

The Chamber is unable to accept this interpretation. The principle *lex specialis derogat legi generali*, or the principle of "speciality" reflects "[...] a principle laid down in general international law and in many national criminal systems," and is equally applicable in the interpretation of the ICTR Rules of Procedure and Evidence.[...]"¹⁵⁹

57. In applying this principle, the ICTR Trial Chamber then adopted the ICTY jurisprudence holding that Rule 92 *bis* of the ICTR RPE is the *lex specialis*, which takes the admissibility of written witness statements out of the scope of the *lex generalis* of Rule 89(C) of the ICTR RPE.¹⁶⁰

58. Overall, and contrary to *Thaçi*'s assertions,¹⁶¹ the Panel finds that the ICTY Appeals Chamber has rather consistently stressed that Rule 92 *bis* of the ICTY RPE is the *lex specialis* which takes the admissibility of such written statements of prospective

Admissibility into Evidence of Unattested Parts of Rule 92 *ter* Statements as Previous Inconsistent Statements, 30 March 2010 ("*Gotovina* Guidance Decision"), paras 7-8, 10.

¹⁵⁷ *Gotovina* Guidance Decision, paras 7-10.

¹⁵⁸ See Appeal, para. 27, referring to ICTR, *Prosecutor v. Gatete*, ICTR-2000-61-T, Judgement and Sentence, 31 March 2011, para. 80, fn. 57; ICTR, *Prosecutor v. Simba*, ICTR-01-76-T, Decision on the Admission of Certain Exhibits Corrigendum, 7 July 2005, para. 7.

¹⁵⁹ *Muhimana* 2004 Decision, para. 27.

¹⁶⁰ *Muhimana* 2004 Decision, para. 28.

¹⁶¹ Appeal, paras 23-27, 35-36. See also Reply, paras 7, 8, 12.

witnesses and transcripts of evidence out of the scope of the *lex generalis* of Rule 89(C) of the ICTY RPE.¹⁶² A similar approach was adopted by the Appeals Chamber of the SCSL.¹⁶³ At the ICC, judges also stressed that where procedural rules expressly govern the admission of written statements in lieu of oral testimony, such rules are *leges speciales*, and to seek admission by other means would amount to circumvention of the applicable legal framework.¹⁶⁴

59. The Panel notes that Thači relies on the jurisprudence of international courts as well as on domestic criminal practice to submit that prior consistent statements can be admitted into evidence to rebut an allegation of recent fabrication of testimony.¹⁶⁵ While the Panel agrees with Thači's submission on this point, the Panel finds that the jurisprudence relied upon by Thači does not support the error he alleges in relation to the Certified Issue. This is because, as previously stressed, this Appeal as certified raises a question of statutory interpretation.¹⁶⁶ Accordingly, although the jurisprudence relied upon by Thači supports his allegation that prior consistent statements can, under very specific circumstances, be admitted into evidence, this in itself does not provide guidance as to which procedural rules of the Specialist Chambers govern the admission of such evidence. In any event, the Impugned Decision is not in contradiction with the jurisprudence quoted by Thači as the Trial

¹⁶² *Karadžić* Trial Judgement, para. 21; *Milošević* 2002 Decision, para. 18; *Galić* Decision on Rule 92bis(C), paras 28-30; *Milošević* 2003 Decision, p. 2. See also *Haradinaj et al.* Oral Decision, pp. 453-457; ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, para. 20.

¹⁶³ The Panel notes that Rules 92 bis and 89(C) of the SCSL Rules of Procedure and Evidence are identical to Rules 92 bis and 89(C) of the ICTY REP and to Rules 153 and 138(1) of the Rules of the Specialist Chambers. See *Taylor* Decision on Tender of Documents, paras 30-34. See also *Taylor* Decision on Admission of UN Documents, para. 20.

¹⁶⁴ See *Ruto and Sang* Judgment on the Appeals Against Decision on Admission of Prior Recorded Testimony, para. 86; *Ntaganda* Decision on Admission of Prior Recorded Testimony of P-0022, P-0041 and P-0103, para. 46; *Ruto and Sang* Decision on Admission of Prior Recorded Testimony, para. 149. See also Response, paras 18-20.

¹⁶⁵ See above, para. 47.

¹⁶⁶ See above, para. 19.

Panel considered that the Five Statements satisfied the admissibility requirement of relevance to the case.¹⁶⁷

60. Accordingly, Thaçi fails to demonstrate that the Trial Panel's finding that Rules 153-155 of the Rules are *leges speciales* for the admissibility of prior consistent statements on cross-examination contradicts international and national jurisprudence.

C. CONCLUSIONS

61. Having found no error in the Trial Panel's ruling that Rules 153-155 of the Rules are *leges speciales* for the admissibility of prior consistent statements on cross-examination, the Appeal is rejected.

62. The Panel is mindful that the question whether the Trial Panel erred in finding that Thaçi could seek the admission of the Five Statements "as part of its case" was not certified by the Trial Panel.¹⁶⁸ However, for the reasons discussed below, the Panel is of the view that this non-certified finding requires some observations as it affects the "without prejudice" aspect of the impugned finding.¹⁶⁹

63. As noted above, the Trial Panel's interpretation of Rule 138(1) and 153-155 of the Rules is a well-established interpretation of the Rules by the Trial Panel.¹⁷⁰ The Panel has no doubt that Thaçi is familiar with the way procedural requirements apply before the Specialist Chambers, including when related to admission of evidence. However, the Panel finds that the factual circumstances of this matter are so specific that they would have deserved clearer guidance from the Trial Panel.

64. The impugned finding shows that the Trial Panel chose not to follow the approach to provide clearer guidance as it merely suggested that Thaçi could seek the

¹⁶⁷ See Impugned Decision, para. 18. See also Impugned Decision, paras 14-17.

¹⁶⁸ Certification Decision, paras 34-40. See also Impugned Decision, paras 21, 24(a).

¹⁶⁹ Impugned Decision, paras 21-22, 24(a).

¹⁷⁰ See above, para. 36.

admission of the Five Statements “as part of its case”.¹⁷¹ The Panel accepts that it was open for the Trial Panel to reach this finding in light of the Trial Panel’s discretion in matters related to admission of evidence,¹⁷² and more generally in matters pertaining to the conduct of proceedings.¹⁷³

65. Regarding the meaning of the Trial Panel’s finding informing Thaçi that he could seek the admission of the Five Statements “as part of its case”, a review of prior related decisions issued by the Trial Panel shows that the Trial Panel appears to have conveyed the following procedural avenues: that the Defence will have the opportunity to either “call relevant witnesses” with whom it can explore the Obstruction Material, or “request that an SPO witness who has already testified be recalled in order to cross-examine the witness where the conditions for it are satisfied”.¹⁷⁴ Having first assessed the admissibility of W04752’s other statements under Rule 154 of the Rules,¹⁷⁵ then heard W04752’s evidence in court and having stressed the relevance of the Five Statements to the case, the Panel is of the view that the Trial Panel’s finding and the procedural avenues suggested in the Impugned Decision do not reflect the most efficient use of Rule 153-155 of the Rules, the main purpose of which is precisely to expedite proceedings.¹⁷⁶

66. Having said that, the Panel observes that Thaçi was allowed by the Trial Panel to discuss with W04752 the consistency of his prior statements with the view of

¹⁷¹ Impugned Decision, paras 21, 24(a).

¹⁷² See above, para. 11.

¹⁷³ IA024/F00019, Decision on Defence Appeals against “Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant”, 27 December 2022, para. 26.

¹⁷⁴ See Decision on SPO Request to Amend Exhibit List, para. 38; Obstruction Material Decision, para. 46.

¹⁷⁵ See Decision on Prosecution Motion for Admission of Evidence of W04752. In this decision, the Trial Panel notes that W04752 expressed his intention to cooperate fully because he had nothing to hide and he affirmed that his statements were truthful. See Decision on Prosecution Motion for Admission of Evidence of W04752, para. 66.

¹⁷⁶ F01226/A01, Annex 1 to Order on the Conduct of the Proceedings, 25 January 2023, para. 51.

challenging SPO's allegations made in the Obstruction Material. As per Thaçi's own words, W04752 confirmed the accuracy of the Five Statements,¹⁷⁷ which appears to be the exact reason for which Thaçi questioned W04752 on these statements.¹⁷⁸ On the other hand, the SPO was prevented from relying on this material for W04752's examination-in-chief.¹⁷⁹

67. In addition, parts of the Five Statements have already been placed on the record and commented upon by W04752 during Thaçi's cross-examination.¹⁸⁰ The Trial Panel also underlined that Thaçi had a fair and full opportunity to put to the witness any part or parts of the impugned statements that were relevant to his case.¹⁸¹ In light of this, the Panel is not convinced of the benefit of adding hundreds of pages of statements into the record.¹⁸²

68. Finally, as indicated by the Trial Panel, the Obstruction Material was only admitted for the limited purposes of assessing the existence of a general climate of witness intimidation and witness credibility.¹⁸³ Accordingly, the Panel finds that the Trial Panel has not committed a discernible error resulting in prejudice.

¹⁷⁷ Appeal, para. 13.

¹⁷⁸ See above, para. 3.

¹⁷⁹ See above, para. 3.

¹⁸⁰ Response, para. 16. See also F03282, Prosecution response to 'Thaçi Defence Request for Admission of Prior Statements of W04752' (F03254), 23 June 2025 (confidential, reclassified as public on 11 July 2025), para. 10, fn. 22.

¹⁸¹ Certification Decision, para. 22. The Trial Panel further emphasised that whether or not to do so and what part(s) to present was Thaçi's own decision in the diligent discharge of his responsibilities. See Certification Decision, para. 22.

¹⁸² See Decision on Veseli Request for Admission of Evidence Associated with W04748, para. 11. See also STL, *Prosecutor v. Ayyash*, STL-11-01/T/TC, Decision on Prosecution motion for the admission of statements by witness PRH707 and on Ayyash Defence motion to strike the Prosecution reply, 15 April 2016, para. 38. Regarding the reference to the fact that the material is voluminous, see Motion for Admission of the Five Statements, para. 1 (a-e). The Panel notes that the Five Statements are composed of three ICTY transcripts, two ICTY witness statements of W04752 and two maps. See also Response, para. 35.

¹⁸³ Obstruction Material Decision, paras 36-38. The Trial Panel specifically stressed that it would refrain from making any assessment or inference on whether this material is demonstrative of Thaçi's criminal conduct under the Specialist Chambers' legal framework, and also made clear that any further inference as to Thaçi's criminal responsibility arising from the material would not be the Trial Panel's prerogative.

V. DISPOSITION

69. For these reasons, the Court of Appeals Panel:

DISMISSES the Appeal;

ORDERS the Defence and the SPO to submit public redacted versions of the Appeal, Response and Reply or to indicate, through a filing, whether they can be reclassified as public, within ten days of receiving notification of the present Decision; and

INSTRUCTS the Registry to execute the reclassification as public of the Appeal, Response and Reply upon indication by the Defence and SPO, if any, that they can be reclassified.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 10 November 2025

At The Hague, the Netherlands

See Obstruction Material Decision, para. 35. The Appeals Panel moreover observes that the Trial Panel declined to admit the Obstruction Material for the purposes of any potential sentencing assessment, finding that it would be inappropriate. See Obstruction Material Decision, para. 40.