

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 Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

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

Date: 17 April 2023

Language: English

Classification: Public

Public Redacted Version of Joint Defence Response to ‘Prosecution updated motion for admission of evidence of Witnesses [REDACTED] and [REDACTED] pursuant to Rule 154 with confidential annexes 1-9’

Specialist Prosecutor’s Office

Alex Whiting

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Victims

Simon Laws

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Defence teams for Mr Thaçi, Mr Veseli, Mr Selimi, and Mr Krasniqi (collectively, “the Defence”) hereby submit their Joint Response to the SPO’s second motion for the admission of evidence pursuant to Rule 154.¹

2. The SPO seeks admission pursuant to Rule 154 of the prior statements of nine witnesses. As it did in its First Rule 154 Motion, and despite the Trial Panel’s cautioning against such an approach, the SPO once again seeks to use Rule 154 to admit masses of unedited transcripts with variable relevance – whilst at the same time seeking significant amounts of time to carry out further examination-in-chief. This is particularly true of [REDACTED] in respect of whom the SPO seeks to have admitted 763 pages of prior statements and 4 hours of in-court examination time.

3. Much of the evidence sought to be tendered concerns matters of central importance to this case or untested hearsay which the Defence maintains must be heard live in order to protect the rights of the Accused. The Defence reiterates that whereas the purpose of Rule 154 is efficiency, the manner in which the SPO continues to invoke it is inconsistent with that purpose.

4. Finally, with respect to two of these witnesses – [REDACTED] and [REDACTED] – it does not even appear that the SPO will be able to meet the minimum requirements for admission pursuant to Rule 154, due to problems with those witnesses that are identified below.

II. PROCEDURAL HISTORY

¹ F01396, *Prosecution updated motion for admission of evidence of Witnesses [REDACTED] and [REDACTED] Pursuant to Rule 154 with confidential Annexes 1-9*, 24 March 2023, Confidential.

5. On 15 March 2023, the SPO filed its second motion for the admission of evidence pursuant to Rule 154.²

6. On 20 March 2023, the Trial Panel granted the Defence requests for (i) the SPO's motion to be refiled to accord with the instructions set out in the Trial Panel's Decision on the SPO's First 154 Motion ("Updated Motion"), and (ii) the deadline for the Defence response to be extended to 17 April 2023.³

7. On 24 March the SPO filed its Updated Motion,⁴ to which the Defence now responds.

III. APPLICABLE LAW

8. Rule 154 sets the conditions under which the Panel may admit the written statement of a witness or transcript of evidence given by a witness in proceedings before the Specialist Chambers that goes to proof of the acts and conduct of the Accused as charged in the indictment, *in lieu* of direct examination, namely:

- (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 examined.

² See, F01396. The word limit for both the SPO and Defence response was extended to 12,000 by grant of the Trial Panel – see F01366, Decision on Prosecution Request for Extension of Words to File Consolidated Motion for Admission of Evidence of Witnesses Pursuant to Rule 154, 14 March 2023, para. 9(b), public.

³ Transcript, 20 March 2023, p. 2132 (relevant submissions at p. 2121-2122).

⁴ F01396.

9. Any application for admission of material through Rule 154 must be decided on a case-by-case basis, carefully balancing the benefit of any time or resources saved against the potentially detrimental impact on the principles of orality, publicity, the need for adversarial argument, and the rights of the Accused, *inter alia*, the right of confrontation and to a fair and expeditious trial.⁵

10. Material admitted pursuant to Rule 154 should also fulfil the criteria under Rule 138(1) of the Rules.⁶ Rule 138(1) sets out four cumulative conditions for evidence to be considered admissible: it must be relevant, authentic, and probative; and its probative value must not be outweighed by its prejudicial effect. Accordingly:

- (i) Evidence is **relevant** where it bears “more than a tenuous or remote” connection to elements of crimes or modes of liability, or other material facts;⁷
- (ii) The tendering party must make a *prima facie* showing of **authenticity** in order for evidence to be admissible;⁸
- (iii) Evidence has sufficient **probative value** for admission when it is capable of influencing the Trial Panel’s determination of a particular issue in dispute, such as an asserted fact or circumstance, or the assessment of the reliability of other evidence in the case.⁹ Its influence, in this regard, must be more than “marginal.”¹⁰

⁵ See, Articles 21(2) and 37(2) of the KSC Law, and Rule 141(1) of the Rules; KSC-BC-2020-05/F00169, *Prosecutor v. Mustafa*, , Trial Panel I, Decision on the submission and the admissibility of evidence, 25 August 2021, para. 33, public. See also, F01380, *Decision on admission of evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, para. 18, confidential.

⁶ F01380, para. 27.

⁷ F01409, *Decision on Specialist Prosecutor’s Bar Table Motion*, 31 March 2023, para. 10, confidential.

⁸ F01409, para. 11.

⁹ F01409, para. 12.

¹⁰ F01380, para. 21.

- (iv) Evidence will be excluded on grounds of **prejudice** when its admission would “adversely impact the fairness of the proceedings.” The Accused’s right to confront the case against him is a particularly important consideration in this regard.¹¹

11. The Panel has discretion not to admit a statement pursuant to Rule 154 in whole or in part, which it may exercise where, for instance:

- (i) The prior statement(s) contain material contradictions;¹²
- (ii) Admission would result in only limited time savings;¹³
- (iii) The evidence is central to the Defence case;¹⁴
- (iv) Non-admission would avoid overburdening the record with evidence that is not clearly relevant, such as where a statement is rarely (or never) relied upon in the SPO’s Pre-Trial Brief;¹⁵
- (v) Non-admission would avoid overburdening the record with evidence that is largely repetitive, such as where the tendering party offers several substantively similar statements;¹⁶
- (vi) The witness’s credibility is central to the Defence’s case;¹⁷

¹¹ F01409, para. 13. See also, KSC-BC-2020-05/F00169, para. 33.

¹² F01380, para. 20.

¹³ F01380, para. 20. ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Trial Chamber II, [Decision on Prosecution Motion to Convert Seven Viva Voce Witnesses to Rule 92 ter Witnesses](#), 10 May 2011, para. 29 (benefit of one hour of time saved in court outweighed by prospect of admitting 276 pages of prior testimony).

¹⁴ ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Trial Chamber II, [Decision on Prosecution Motion to Convert Seven Viva Voce Witnesses to Rule 92 ter Witnesses](#), 10 May 2011, paras. 17, 33; *Prosecutor v. Đorđević*, IT-05-87/1-T, Trial Chamber II, [Decision on Prosecution’s Motion for Admission of Evidence Pursuant to Rule 92 ter](#) (“*Đorđević* Decision”), 10 February 2009, para. 13.

¹⁵ F01380, paras 20, 29.

¹⁶ F01380, paras. 20, 29.

¹⁷ F01380, paras. 20, 28. See also *Prosecutor v. Stanišić and Župljanin*, [Decision Denying Prosecution’s Motion for Admission of Evidence of Predrag Radulović Pursuant to Rule 92ter](#), 1 April 2010, para. 9.

- (vii) The proposed exhibits associated with the statement require further explanation;¹⁸ or
- (viii) Hearsay contained in the statement has only marginal probative value, or its admission would unfairly or disproportionately interfere with the Accused's rights.¹⁹

12. As regards exhibits associated with a proposed Rule 154 statement, they should only be admitted where they accompany written statements or transcripts and form an "inseparable and indispensable" part of the evidence.²⁰ In order to satisfy this requirement, the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value. Moreover, the evidence sought to be admitted, whether a written statement or a transcript of oral testimony, must still be relevant and have probative value.²¹ The tendering party must provide individualised submissions regarding the conditions of admissibility of each associated exhibit.²² Associated documents may not be admitted where authorship or sources are unidentified, unidentifiable, or anonymous, or where methodology is unclear.²³

¹⁸ F01380, para. 20.

¹⁹ F01380, para. 21.

²⁰ F01380, para. 24.

See also ICTY, *Prosecutor v Hadzic*, IT-04-75-T, [Decision on Prosecution Motion for Admission of Evidence of GH-003 Pursuant to Rule 92 ter](#), 18 October 2012, para. 4; *Prosecutor v. Djordjevic*, IT-05-87/1-T, Trial Chamber II, Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 ter, 10 February 2009, para. 5; *Prosecutor v. Stanisic & Zupljanin*, IT-08-91-T, Trial Chamber II, [Public Redacted Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92 ter \(ST012 and ST019\)](#), 2 October 2009, para. 5.

²¹ F01380, para. 24; ICTY, *Prosecutor v Hadzic*, IT-04-75-T, [Decision on Prosecution Motion for Admission of Evidence of GH-003 Pursuant to Rule 92 ter](#), 18 October 2012, para. 4.

²² F01380, para. 30.

²³ F01380, para. 87.

13. As noted above, the purpose of Rule 154 is “to ensure an effective and expeditious trial while respecting the rights of the Accused”.²⁴ Its overuse risks producing an unmanageable evidential record, particularly when employed for a disproportionate number of witnesses, and extensively in combination with Rules 153 and 155.²⁵ As such, the Defence recalls the Trial Panel’s exhortation to make “effective” use of Rules 153-155, with a view to expediting proceedings whilst maintaining the principles of orality and publicity.²⁶

IV. SUBMISSIONS

A. [REDACTED]

14. [REDACTED] is intended to give evidence on the alleged arrest and detention of the [REDACTED] at [REDACTED]. On the face of the prior statements disclosed, the witness appears unable to testify, which gives rise to the application of Rule 155(1)(a), rather than Rule 154.

15. As early as 9 December 2020, [REDACTED] said that [REDACTED] “is losing memory and sometimes talks the way that the family doesn't understand the meaning of what he said”.²⁷ On 20 April 2022, [REDACTED] explicitly notified the SPO that he “doesn't feel physically and mentally fit”.²⁸ On 14 March 2023, [REDACTED] was, for the first time, informed by the SPO that he was on its witness list, which rendered him “nervous” and “hostile”; he thereafter told the SPO that he “simply doesn't remember

²⁴ ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber III, [Decision on the Application of Rule 92ter of the Rules](#), 25 June 2007, p. 2; *Prosecutor v. Hadžić*, IT-04-75-T, [Trial Chamber, Decision on Defence Motion for Admission of Evidence of DGH-053 pursuant to Rule 92 ter](#), 29 August 2014, para. 6.

²⁵ ICC, *Prosecutor v. Yekatom & Ngaissona*, ICC-01/14-01/18-685, Trial Chamber V, [Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules](#), 16 October 2020, para. 31.

²⁶ F01226/A01, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, para. 51, public.

²⁷ 108683-108683 RED.

²⁸ 106768-106768 RED.

details of the events which took place 25 years ago”, that he “feels deeply insulted by the SPO because he already handed over the medical documentation” demonstrating that he lacks the mental and psychological fitness to testify, his memory being “so bad”. [REDACTED] noted that while he [REDACTED], “his memory is radically worsening in the last few years. He is nervous and not able to concentrate on the subjects of conversations and forgot the things.” The SPO itself noted that several times during their conversation, [REDACTED] “came to the points when he wants to say something but forgot, what did he want to say.”²⁹

16. In these circumstances, it appears that there is a realistic possibility that [REDACTED] will not appear in Court, meaning that the Rule 154(1)(a) criterion will not be met. Even if [REDACTED] does appear in Court, the issues he identifies above seem likely to prevent the Defence from being able to conduct a thorough or meaningful cross-examination, as required by Rule 154(1)(b), particularly where the witness is unable to remember any detail of the events in question.

17. As such, the Defence submits that a medical examination of [REDACTED] by the KSC Witness Protection and Support Office should be conducted, prior to any decision on the admissibility of [REDACTED]’s prior statement and his appearance in Court, to determine whether he is fit to testify. The Panel and the Defence should not be put in the position of discovering, only upon his appearance in Court, whether [REDACTED] is indeed in a position to testify.

18. Should a medical examination conclude that [REDACTED] is fit to testify, the Panel has ruled that it “may refuse admission pursuant to Rule 154 of a statement that is central to a party’s case and order that evidence be heard viva voce.”³⁰ The alleged

²⁹ 111182-111183 RED. The Defence has requested the disclosure of the medical documentation provided by the witness by email, dated 13 April 2023.

³⁰ F01380, para. 28.

arrest and detention of [REDACTED], which is the main subject of [REDACTED]'s testimony, who was part of this [REDACTED], is a central element of the SPO case as the incident is alleged to directly involve both [REDACTED] and [REDACTED].³¹ This warrants that such a testimony be heard *viva voce*. The witness alleges, *inter alia*, that [REDACTED],³² [REDACTED]³³ [REDACTED],³⁴ [REDACTED].

19. A *viva voce* testimony is further justified by the inconsistencies and/or confusion of the witness regarding what he saw or heard³⁵ and the alleged role of [REDACTED] and [REDACTED]. Indeed, several times, he refers to both of them in the alternative, apparently unsure as to whom was present.³⁶ Given the significance of his evidence, this testimony must be given in Court to allow [REDACTED] to clarify the alleged acts of each of the Accused.

B. [REDACTED]

20. [REDACTED] worked for [REDACTED] at the time of the relevant events and will testify about issues going to the heart of this case, including incidents charged in the Indictment, acts and conduct of the Accused, and their knowledge of alleged crimes. The Defence submits that there would be clear advantages to hearing the evidence of a central witness such as this entirely live, and on the other hand, clear unfair prejudice to the Defence from admitting the evidence through Rule 154, which outweighs any time saving. [REDACTED]'s evidence should therefore be heard *viva voce*, in the interests of justice and in order to protect the rights of the accused.

³¹ F00999/A02, *Annex 2 to Submission of Confirmed Amended Indictment*, 30 September 2022, paras 46, 76, 110, confidential.

³² 034442-034503 RED2, p. 034451, 034450.

³³ 034442-034503 RED2, p. 034453.

³⁴ 034442-034503 RED2, p. 034461.

³⁵ For instance, at page 034456, [REDACTED] says "[REDACTED]."

³⁶ See, *inter alia*, pp. 034460, 344461, 344463.

21. The probative value of the statement of [REDACTED]³⁷ which the SPO seeks to admit through Rule 154 is outweighed by its prejudicial effect, and it is consequently not suitable for admission through Rule 154. [REDACTED] is one of only a few witnesses who provide extensive evidence about personal interactions with the Accused, particularly [REDACTED], and is intended to provide evidence of the Accused's knowledge of crimes allegedly committed by the KLA. For example, 2.5 pages (14 paragraphs) of [REDACTED]'s statement is devoted to a detailed discussion of a meeting with [REDACTED] and [REDACTED] in November 1998, which includes discussion of a specific crime charged in the Indictment, as well as the actions of various members of the KLA and their compliance with principles of international law.³⁸ There are many further examples where [REDACTED] provides evidence about issues going to the core of this case, including a further meeting with [REDACTED] about crimes allegedly committed by the KLA,³⁹ interactions with [REDACTED] and other JCE members,⁴⁰ the alleged structure and organisation of the KLA,⁴¹ other evidence of crimes allegedly committed by the KLA,⁴² and the issue of collaborators.⁴³ This evidence is therefore directly relevant to the crimes charged, and central issues in these proceedings.

22. As a result of the volume of relevant material, the extent of his personal interactions with the Accused, and the direct link with incidents and modes of liability charged in the Indictment, [REDACTED]'s statement can be distinguished from that of other potential Rule 154 witnesses. In fact, [REDACTED]'s statement provides a

³⁷ 075552-075578; 075552-075578-AT.

³⁸ 075552-075578, pp. 19-22, paras. 88-101.

³⁹ 075552-075578, paras. 102-106.

⁴⁰ See, e.g., 075552-075578, paras. 107-109.

⁴¹ See, e.g., 075552-075578, paras. 110-116.

⁴² See, e.g., 075552-075578, paras. 74-80.

⁴³ See, e.g., 075552-075578, paras. 81-87.

clear example of a situation where numerous references to the acts and conduct of the accused and to key issues in dispute must militate **against** the admission of material using Rule 154.⁴⁴ In addition, the key portions of [REDACTED]'s testimony regarding the interactions with, and knowledge of, the Accused are uncorroborated, as no other SPO witness can testify to these events. In these circumstances, admission of the material pursuant to Rule 154 would unfairly infringe on the Accused's right to confront the evidence against them. Any time saving advantages would therefore be outweighed by the unfair prejudice to the Accused.

23. The Defence also objects to the admission of three proposed associated exhibits to [REDACTED]'s statement. The first document is an extract from [REDACTED] ("[REDACTED]") report [REDACTED] '[REDACTED]'.⁴⁵ However, this extract is not an inseparable and indispensable part of [REDACTED]'s statement. Neither the full report, nor the extract sought to be admitted, are recorded in [REDACTED]'s statement as having been shown to him during his interviews. Further, beyond referring to the existence of this report generally and that [REDACTED] had some role in its preparation,⁴⁶ the relevant extract of the report is not explained by [REDACTED].⁴⁷ In addition, the aspects of this report which are relevant to the SPO case are not clear from the statement; the explanation of relevance given by the SPO in Annex 2 is generic,⁴⁸ and the document is not cited in the SPO's Pre-Trial Brief.

⁴⁴ ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2124, Trial Chamber VI, [Decision on Defence request under Rule 68\(3\) of the Rules for admission of prior recorded testimony of Witness D-0017](#), 22 November 2017, para. 8.

⁴⁵ [REDACTED] The portions sought to be admitted are at [REDACTED].

⁴⁶ 075552-075578, paras. 9 and 15.

⁴⁷ For that matter, the report as a whole is also not discussed in detail. In fact, the only part of the report quoted in [REDACTED]'s Statement comes from a different part than that sought to be admitted, see 075552-075578, para. 110.

⁴⁸ F01396/A02, [REDACTED]: *Annex 2 to Prosecution motion for admission of evidence of Witnesses [REDACTED] and [REDACTED] pursuant to Rule 154*, 24 March 2023, pp. 2-3, confidential.

24. In addition, this document raises several issues which render it inappropriate for admission through Rule 154. As this Trial Panel has already ruled, where the underlying basis on which the findings or conclusions were drawn is unclear, materials from international organisations should only be admitted through *viva voce* testimony of a witness.⁴⁹ The methodology of the [REDACTED] report at issue is vague, lacking clear details as to authorship⁵⁰ and the circumstances in which the information relied upon was collected. The report cites sources that are either unidentifiable, or otherwise unverifiable, due to the fact that they are not in the SPO's proposed exhibit list or were solely within the knowledge of the report's authors.⁵¹

25. Similar issues arise for the second document sought to be admitted as an associated exhibit of [REDACTED]'s statement: a [REDACTED] report [REDACTED] '[REDACTED]'.⁵² First, [REDACTED] already commented on various aspects of this report in his statement.⁵³ It is not clear which aspects of the report, beyond those already commented on, the SPO seeks to rely upon.⁵⁴ The limited interest of this report is also demonstrated by the fact it is cited only once in the SPO's Pre-Trial Brief.⁵⁵ Further, the specific authorship is unclear; while [REDACTED] states that he [REDACTED] this report,⁵⁶ the report only states it was researched and written by [REDACTED].⁵⁷ Similarly, the basis for a number of findings within the

⁴⁹ F01380, para. 87; F01409, , para. 48.

⁵⁰ While [REDACTED] is listed as the primary author, others are also listed as editors or authors, rendering it impossible to determine clear authorship of the relevant portions: see [REDACTED].

⁵¹ For example, one of the sources is a [REDACTED] with the International Committee of the Red Cross, see [REDACTED].

⁵² [REDACTED].

⁵³ 075552-075578, paras. 9, 14-16, 79-80, 102.

⁵⁴ See similar findings by the Trial Panel in F01380, para. 92.

⁵⁵ F01296/A01, *Annex 1 to Prosecution submissions pursuant to Decision F01229 with confidential Annexes 1-2 and public Annex 3 Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief'*, 15 February 2023, para. 13, fn. 26, confidential.

⁵⁶ 075552-075578, para. 9.

⁵⁷ [REDACTED].

report is not clearly specified, and sources cited within the report are anonymous⁵⁸ or otherwise unverifiable.⁵⁹ Finally, the methodology of the report is brief and general, failing to clearly specify the circumstances of the collection of the evidence, or the standard of proof.⁶⁰ These issues undermine the reliability and probative value of this document, such that it should not be admitted as an associated exhibit through Rule 154.

26. Finally, the third document sought to be admitted is a press release issued by [REDACTED].⁶¹ There is nothing in [REDACTED]'s statement to indicate that it was actually shown to [REDACTED] during his interview, or that he otherwise commented on this item. There is only one relevant reference within the statement, which confirms the existence of this press release but provides no further explanation or clarification.⁶² The document is not one without which the statement becomes incomprehensible. The link between this document and [REDACTED] is also not clear, as [REDACTED] does not indicate in his statement that [REDACTED], and only [REDACTED] ([REDACTED]) are provided at the end of the document, without explicitly stating [REDACTED].⁶³ In these circumstances, it cannot reasonably be argued that this document forms an inseparable and indispensable part of [REDACTED]'s statement, and it should therefore not be admitted through Rule 154.

C. [REDACTED]

⁵⁸ See, e.g., [REDACTED], referencing interviews conducted by [REDACTED] where the specific source is not identified. See also the discussions relating to witnesses referred to only by their initials at pp. 6, 10-14.

⁵⁹ See, e.g., [REDACTED], referencing an email received by [REDACTED] directly.

⁶⁰ K022-5096-K022-5119, p. 3, extracted in 075552-075578, para. 14.

⁶¹ [REDACTED].

⁶² 075552-075578, para. 90.

⁶³ Notably, these contact details do not appear in the version of the press release which [REDACTED].

27. [REDACTED] is a former KLA member who previously testified in the case against [REDACTED]. The Defence submits that [REDACTED] is a key witness whose evidence should be heard *viva voce* in light of his allegations against all four Accused.⁶⁴ The evidence the SPO seeks to tender covers allegations concerning the acts and conduct of the Accused in various locations in 1998 and 1999 which are pivotal to the Defence case. Furthermore, the statements proposed for admission raise serious credibility and reliability concerns,⁶⁵ which also constitute a central element of the Defence case.⁶⁶ By hearing the witness's testimony first-hand, the Trial Panel will be in a better position to assess the motives that prompted him to testify and the impact of his evident hostility to one or more of the Accused⁶⁷ on the credibility and reliability of his statements.

28. The nature and number of contradictions in [REDACTED]'s statements and the limited amount of time that would be saved are also factors militating against the admission of the proposed evidence pursuant to Rule 154.⁶⁸ [REDACTED]'s evidence is often adduced via leading questions,⁶⁹ unclear, and contradictory which renders it wholly inappropriate for Rule 154 admission. Similarly, the SPO contends that the admission of [REDACTED]'s proposed evidence will "significantly reduce" the number of hours required for direct examination,⁷⁰ yet it intends to present **no less than four hours of direct examination**, defeating the primary purpose of Rule 154,

⁶⁴ F01380, para. 28.

⁶⁵ See for instance, [REDACTED] admitted that he may have lied in his [REDACTED] statement in relation to whether he spoke to [REDACTED] because he "was quite upset with him", 088347-TR-ET Part 3, p. 28, lines 15-20.

⁶⁶ F01380, para. 20.

⁶⁷ [REDACTED] stated that [REDACTED] had disagreement with some high profile KLA members, SITF00010564-00010615 RED, p. SITF00010565; and that [REDACTED], "[REDACTED]", 106438-TR-ET Part 1, p. 9, line 16.

⁶⁸ F01380, para. 20.

⁶⁹ See e.g., 106438 - TR- ET Part 10 Revised, pp. 5-6, 088347-TR-ET Part 3, p. 21, line 3.

⁷⁰ F01396, para. 39.

which is to “save time and resources”.⁷¹ It should be recalled that the SPO has previously been criticised for seeking excessive additional time for supplementary direct examination which the Trial Panel regarded as being “on the high end of what appears reasonable”.⁷² The admission of the proposed evidence in addition to the allocated time for supplementary examination would cause prejudice to the Accused and should not be permitted.

Associated Exhibits

29. The Defence further objects to some of the proposed associated exhibits. The SPO seeks to tender a number of documents related to [REDACTED]’s membership and activities with the KLA.⁷³ Whilst these documents were discussed during the SPO interview with [REDACTED], their probative value is, at most, marginal. Therefore, the admission of these documents should be denied. The Defence also objects to the use of what appears to be an article published in ‘[REDACTED]’ provided to the SPO by [REDACTED].⁷⁴ The article has no indication of authorship and contains references to an “anonymous source”. It is neither possible to trace back or verify this information nor is [REDACTED] in a position to authenticate this document. Lastly, the Defence objects to the admission of a [REDACTED] report from November 1999.⁷⁵ The report merely contains a paragraph related to an incident which allegedly took place outside of the Indictment period. It does not meet the relevance requirements and it should not be admitted.

D. [REDACTED]

⁷¹ F01380, para. 32.

⁷² F01380, para. 33.

⁷³ 106423-106431-ET.

⁷⁴ 088352-088357-ET, p. 088357.

⁷⁵ 7004203-7004207.

30. [REDACTED] is intended to give evidence regarding his detention at KLA HQ in [REDACTED] in [REDACTED], and a separate alleged incident involving Rexhep Selimi in [REDACTED]. The Defence objects to the admission of this witness's evidence pursuant to Rule 154 because it relates to key evidence that it is contradictory, and contains hearsay that would unfairly and disproportionately interfere with Mr. Selimi's right to confrontation.⁷⁶ If, however, the Trial Panel decides to allow evidence of this witness to be admitted pursuant to Rule 154, two portions of the statement should in any event be excluded from the Rule 154 statement and adduced live in court.⁷⁷

31. The first portion which the Defence submits must, in any event, be adduced live is [REDACTED]'s purported identification of Mr. Selimi in relation to an alleged incident [REDACTED].⁷⁸ This alleged incident is referred to in the SPO Pre-Trial Brief, with [REDACTED]'s statement being cited as the sole piece of supporting evidence.⁷⁹

32. In his statement, [REDACTED] provides unclear and contradictory evidence as to [REDACTED] Mr. Selimi prior to this alleged incident. [REDACTED] states once that he never knew, spoke to or personally saw Mr. Selimi before [REDACTED].⁸⁰ then is asked clarification as to whether he saw Mr. Selimi "before the [REDACTED], [...] with a mask before [REDACTED]?", to which he replies "no, I haven't seen him".⁸¹

⁷⁶ F01380, para. 21.

⁷⁷ F01380, para. 20.

⁷⁸ 073684-TR-ET Part 4 RED, pp.13–23.

⁷⁹ F01296/A01, para. 280. See also, F00999, paras. 42, 139.

⁸⁰ 073684-TR-ET Part 4, p. 16.

⁸¹ 073684-TR-ET Part 4, p. 16.

33. When speaking of the alleged incident in [REDACTED], he goes on to state that he “recognised [Mr. Selimi, because] he was without a mask”.⁸² Confusing matters further, [REDACTED] provides that, apart from this alleged incident, he only ever saw Mr. Selimi “driving around during the war”,⁸³ leaving the matter further unclarified as to whether he could indeed recognise Mr. Selimi from having seen him before the war, or if he is claiming to have “recognised” Mr. Selimi upon receipt of the information allegedly received [REDACTED].

34. [REDACTED] states that [REDACTED], did not know what Mr. Selimi looked like at this point in time,⁸⁴ but that unidentified “soldiers” at the scene told him it was Mr. Selimi, and he then told [REDACTED] that it was Mr. Selimi.⁸⁵ Neither the unidentified soldiers, nor [REDACTED] are available to testify. Without clarity as to whether [REDACTED] recognised this person from his own recollection, and with [REDACTED] being several degrees removed from the only alleged explicit identification of this man as Mr. Selimi, it is crucial that this evidence is heard live so that it can be subjected to appropriate scrutiny.

35. It is not apparent from the statement, as recorded, what the witness’ evidence is on this matter. While it may purely be a point of contradiction in the evidence, as provided by the witness, it is apparent from the interview that the discrepancies may also be due to an issue with the translation at the time, or indeed, the questions posed by the interviewers. In the Defence’s view, it is not appropriate for this point of evidence to simply be left to cross-examination as it raises serious issues of notice which should be resolved before that point.

⁸² 073684-TR-ET Part 4, pp. 18, 19.

⁸³ 073684-TR-ET Part 4, p. 23.

⁸⁴ 073684-TR-ET Part 4, p. 16.

⁸⁵ 073684-TR-ET Part 4, p. 21.

36. In addition, the evidence as it relates to [REDACTED]'s alleged identification [REDACTED] during the alleged incident in [REDACTED]⁸⁶ [REDACTED] on [REDACTED]⁸⁷ should be heard orally. [REDACTED] is [REDACTED], something he did not witness personally.⁸⁸ Furthermore, [REDACTED] gives no clear information as to how he identified [REDACTED] the man he claims to have been Mr. Selimi in [REDACTED]⁸⁹ [REDACTED] in [REDACTED], [REDACTED]. While the witness states that [REDACTED],⁹⁰ he provides no evidence in the statement as to how this could have been apparent from [REDACTED].⁹¹ [REDACTED] is the only witness to this alleged incident in [REDACTED] and as such, matter should be resolved *viva voce* prior to cross-examination.

Associated Exhibits

37. The Defence objects to a portion of the associated exhibits from pages ERN 074676-074681-ET, which comprise a bundle of newspaper clippings provided by the witness at the end of his interview.⁹² These articles go far beyond the evidence capable of being provided by [REDACTED] and do not, contrary to the assertion of the SPO, form an “inseparable and indispensable part of [REDACTED]'s Rule 154 Statement”. The witness mentions in his interview that he had in his possession some articles written in newspapers from the time and offers them in a bundle at the very end of the interview, having not discussed their contents in any great detail.⁹³ These articles are rife with speculation, editorial and/or biased comment, unidentified sources of information and hearsay from witnesses who cannot be cross-examined by the

⁸⁶ 073684-TR-ET Part 4, pp. 14, 16, 18, 19.

⁸⁷ 073684-TR-ET Part 1, p. 28.

⁸⁸ 073684-TR-ET Part 1, p. 28.

⁸⁹ 073684-TR-ET Part 1, p. 28; 073684-TR-ET Part 4, pp. 19.

⁹⁰ 073684-TR-ET Part 4, pp. 19.

⁹¹ 073684-TR-ET Part 1, p. 28.

⁹² 073684-TR-ET Part 5, pp. 2, 5. *See also*, 074635-074665-ET at 074662, 074664, 074665.

⁹³ 073684-TR-ET Part 4, pp. 47, 48.

Defence. As such, their prejudice far outweighs their probative value. Furthermore, the SPO fails to substantiate how a handful of newspapers articles would “demonstrate that the KLA, including members of the General Staff, were put on notice about the commission of these crimes in [REDACTED]”.⁹⁴

E. [REDACTED]

38. Like the previous witness, [REDACTED] is intended to testify about his alleged detention at [REDACTED] in [REDACTED]. The Defence objects to the admission of [REDACTED] statement of [REDACTED] as being unreliable by the witness’ own testimony. The witness told the SPO in their interview that [REDACTED] investigators conducting the interviews in [REDACTED] and [REDACTED] had not accurately recorded his statement.⁹⁵ In such a case, the Defence submits that the witness’ own views that the statement is unreliable should be taken into account and the statement be unsuitable for admission pursuant to Rule 154.

F. [REDACTED]

39. [REDACTED] is intended to testify about his alleged detention and mistreatment in [REDACTED]. The Defence does not contest that [REDACTED]’s Proposed Evidence meets the minimum standards of being *prima facie* reliable and authentic.⁹⁶ However, the Defence continues to highlight the ongoing contradiction between the SPO’s tendering of prior statements for the purposes of expedition and

⁹⁴ See, F01396/A04, [REDACTED]: Annex 4 to Prosecution motion for admission of evidence of Witnesses [REDACTED] and [REDACTED] Pursuant to Rule 154, 24 March 2023, confidential.

⁹⁵ 091702-TR-ET Part 2, p. 23. See also, 091702-TR-ET Part 2, pp. 9, 16, 32.

⁹⁶ The Defence notes with interest that [REDACTED] appears to be initially unable to identify his own signature on his [REDACTED] statement, referenced in his SPO interview as SITF00429430-00429493. See 071922-TR-ET Part 1, p. 10, line 23 – p. 12, line 2.

streamlining of this trial,⁹⁷ and their requests for numerous hours of oral testimony to clarify those same statements. The time allotted to the supplementary direct examination of [REDACTED] amounts to **three hours**, meaning that any time savings asserted by the SPO remain tenuous at best.⁹⁸ The Defence reiterates that Trial Chambers at other institutions have rejected significantly shorter requests for supplementary direct examination for clarification of prior recorded testimony, on the ground that this was insufficient time saving in the scope of the overall trial length.⁹⁹

40. The Defence acknowledges that the use of Rule 154 may, to a certain extent, reduce the length of time the SPO allocates to direct examination when compared with *viva voce* witnesses.¹⁰⁰ However, the corresponding time required by the Defence to probe inconsistencies¹⁰¹ in witness' statements, or mistakes in recollection,¹⁰² may render cross-examination times longer than projected.¹⁰³ In the aftermath of the testimony of this trial's first Rule 154 witness,¹⁰⁴ which will have required over three full days of testimony by the time of filing, it is no longer safe to assume that the use of Rule 154 witnesses will *automatically* facilitate a reduction in the overall length of this trial. The Defence further notes that the SPO has itself identified inconsistencies in [REDACTED]'s statements and attempted to make clarifications, resorting at point to the use of leading questions to do so,¹⁰⁵ indicating that further time will be required

⁹⁷ F01396, para. 10.

⁹⁸ Rule 154 Request, para. 27.

⁹⁹ ICC, *Prosecutor v Laurent Gbagbo and Charles Blé Goudé*, ICC-02/11-01-15, Trial Chamber I, Decision on the Prosecution's Application to Conditionally Admit the Prior Recorded Statement and Related Documents in relation to Witness P0045, 2 February 2017, para. 9.

¹⁰⁰ F01380, para. 43.

¹⁰¹ Transcript, 11 April 2023, p. 2550, line 8 – p. 2551, line 1.

¹⁰² Draft Transcript, 13 April 2023, p. 51, line 11 – p. 52, line 4.

¹⁰³ Draft Transcript, 13 April 2023, p. 104, lines 15-20.

¹⁰⁴ The examination-in-chief of W04474 and subsequent cross-examinations by three Defence teams, has thus far taken 15 hours – three full days of court time. Allowing for cross-examination by one further Defence team and leaving room for the possibility of a re-direct examination, it is possible that 17 or more hours of in-court time may be used for a single Rule 154 witness.

¹⁰⁵ 071922-TR-ET Part 2, p. 10, line 23 – p. 11, line 3; 071922-TR-ET Part 3, p. 2, lines 8 – 18.

by the Defence to probe the remainder. The prospect of meaningful time savings resulting from the use of Rule 154 is not likely.

41. Additionally, the Defence questions the relevance of [REDACTED]'s testimony, noting that, although his evidence is quoted extensively in the SPO's Pre-Trial Brief,¹⁰⁶ the relevance of his evidence to the specific case against the Accused remains somewhat tenuous. The Accused are not placed in [REDACTED] in either the PTB or the Indictment.¹⁰⁷ When questioned, [REDACTED] appeared not to know whether Mr. Thaçi – the sole Accused named in his statements (likely as a product of seeing Mr. Thaçi on television¹⁰⁸) – was involved in his detention [REDACTED].¹⁰⁹ Following further questioning, the witness is also unable to provide details of anyone who might know who was responsible for his detention.¹¹⁰ To admit these statements into evidence, recognising the limitations of the evidence particularly as it pertains to the Accused, would be unduly prejudicial.

42. Finally, the Defence objects to the proposed associated exhibits the SPO seeks to tender with [REDACTED]'s statements. The Defence acknowledges that photographs of [REDACTED], himself,¹¹¹ and of the place where he was allegedly detained,¹¹² were discussed during his SPO interview. The relevance these photographs offer is comparatively limited, given the tenuous connection of his detention to any acts or conduct of the Accused (as noted in the aforementioned paragraph). Finally, the Defence objects to the admission of a newspaper article entitled "[REDACTED]." Firstly, [REDACTED] notes that he had never seen this

¹⁰⁶ F01296/A01, paras 532-534.

¹⁰⁷ F00999, paras. 80, 117 and 166; F01296/A01, paras 519-535.

¹⁰⁸ 071922-TR-ET Part 4, p. 16, lines 23-25.

¹⁰⁹ 071922-TR-ET Part 4, p. 17, lines 17-25.

¹¹⁰ 071922-TR-ET Part 4, p. 19, line 15 – p. 20, line 12.

¹¹¹ 071918-071920, *see* 071922-TR-ET Part 3, p. 21, line 23 – p. 22, line 6.

¹¹² SPOE00091385-00091408, *see* 071922-TR-ET Part 3, p. 21, line 16 – p. 22, line 6.

document until it was shown to him by the SPO, meaning its admission is highly unlikely to form an “indispensable” part of the evidence he provides.¹¹³ Additionally, the SPO themselves appear to use this evidence for the witness to merely identify that his name appears on a list therein, stopping him from providing any further commentary on the evidence itself.¹¹⁴ The relevance of the exhibit to the witness’ evidence, therefore appears to be extremely limited. The witness is unable to attribute authorship of the document, and the SPO does not provide any additional evidence of authorship.¹¹⁵ It therefore does not meet the requirements for admission under Rule 154 and should not be admitted.

G. [REDACTED]

43. [REDACTED] is intended to provide evidence about the development of the KLA in his village and the relationship between the KLA and LDK from his perspective as a [REDACTED]. The Defence objects to the admission of [REDACTED]’s evidence pursuant to Rule 154 as it relates to matters that are of central importance to the SPO case, and should therefore be heard *viva voce* in order to protect the rights of the accused.

44. [REDACTED] testifies about acts and conducts of the accused and key aspects of the SPO case. He states that he attended a series of meetings during which Mr Thaçi introduced himself as being from the General Staff, and demanded that [REDACTED].¹¹⁶ [REDACTED] alleges that at one of these meetings, in [REDACTED], attended by Mr Thaçi and Rexhep Selimi among others, Mr Thaçi

¹¹³ ICTY, *Prosecutor v Hadzic*, IT-04-75-T, [Decision on Prosecution Motion for Admission of Evidence of GH-003 Pursuant to Rule 92 ter](#), 18 October 2012, para. 4.

¹¹⁴ 071922-TR-ET Part 4, p. 11, lines 8-23.

¹¹⁵ 071922-TR-ET Part 4, p. 12, lines 2-6.

¹¹⁶ F01396, para. 71.

[REDACTED].¹¹⁷ [REDACTED]'s described the alleged hostile atmosphere of the meeting, [REDACTED], and claims the meeting concluded [REDACTED].¹¹⁸ [REDACTED] also appears to suggest that Mr. Thaçi had control over these soldiers.¹¹⁹

45. [REDACTED] further testifies that, [REDACTED], referring to [REDACTED] as [REDACTED]. [REDACTED] states that he later discussed this [REDACTED], who would have taken responsibility for it and admitted it was a mistake.¹²⁰

46. This testimony plainly goes to acts and conduct of the accused, related to key aspects of the Prosecution case. The importance of the proposed evidence in this specific case is a factor militating against its admission through Rule 154.¹²¹

47. Furthermore, [REDACTED] touches upon other areas and topics that should be explored and clarified by the SPO in live testimony rather than simply be admitted as they appear from the SPO interview. This includes, for example, other evidence concerning the KLA presence in [REDACTED] before and after the mentioned meetings; [REDACTED] having heard – and believing – [REDACTED]; and [REDACTED]'s comments in reference to a '[REDACTED]' published online, that he associates with the KLA. These comments were only made by [REDACTED] after persistent leading questions by the SPO, clearly aimed at connecting [REDACTED].¹²² To admit these allegations without adequate in-court questioning of the witness risks prejudice to the accused that is much greater than any probative value that could be attributed to such evidence.

¹¹⁷ 071776-TR-ET Part 1, p.24.

¹¹⁸ 071776-TR-ET Part 1, p.27.

¹¹⁹ 071776-TR-ET Part 2, p. 18.

¹²⁰ 071776-TR-ET Part 3, p. 10.

¹²¹ F01380, para. 28.

¹²² 071776-TR-ET Part 3, p. 42.

48. [REDACTED] testimony is also partly inconsistent with his previous [REDACTED] statement, where he declared that [REDACTED] until the end of the war, and that [REDACTED] was commander for one month and then discharged by [REDACTED].¹²³ By contrast, he stated in his SPO interview that at the [REDACTED] he [REDACTED] to [REDACTED] and became [REDACTED],¹²⁴ which is also reflected in the fourth Associated Exhibit.¹²⁵ Inconsistencies such as this one, and the number of occasions on which [REDACTED] is unable to recall the details of events he discusses in the SPO interview,¹²⁶ constitute further factors militating against admission under Rule 154 of [REDACTED]'s evidence.

Associated exhibits

49. The Defence objects to the admission of the first associated exhibit,¹²⁷ the [REDACTED], on the basis that the document should be put to a witness that can testify to it. [REDACTED] cannot, as he states that he did not even read it at the time, having only heard about it from a friend.¹²⁸ As for his alleged subsequent meeting [REDACTED],¹²⁹ this is a matter that should more appropriately be addressed by [REDACTED] in live testimony.

50. The fourth associated exhibit¹³⁰ is a report of the [REDACTED] meeting discussed above, which [REDACTED] states he [REDACTED]. This exhibit constitutes the only evidence cited in the SPO Pre-Trial Brief in relation to this

¹²³ Compare 071776-TR-ET Part 1, p. 25 with SITF00327216-00327233 RED, p. 3.

¹²⁴ 071776-TR-ET Part 1, pp. 25-26, 071776-TR-ET Part 2 p. 29.

¹²⁵ SITF00008196-SITF00008197-ET Revised.

¹²⁶ As illustrated below by his comments on the fourth associated exhibit.

¹²⁷ 071775-071775-ET; Alb: 071775-071775.

¹²⁸ 071776-TR-ET Part 3, p. 10.

¹²⁹ 071776-TR-ET Part 3, pp. 10-12.

¹³⁰ SITF00008196-SITF00008197-ET Revised.

meeting;¹³¹ while [REDACTED] generally [REDACTED] the report, at various times he admits to not recalling whether things happened as stated therein; for example, he does not recall whether Mr Thaçi said that “[REDACTED]”, as stated in the document;¹³² similarly, he does not remember whether Mr. Selimi said that “[REDACTED]”.¹³³ In these circumstances, the Defence submits that it is more appropriate to put this document to the witness rather than admitting it per Rule 154.

H. [REDACTED]

51. [REDACTED] is a [REDACTED] witness who has previously testified before the [REDACTED] in the [REDACTED] case. The volume of material sought to be tendered pursuant to Rule 154 is overwhelming, and the advantages of admission are not adequately explained. Moreover, the SPO has indicated that it will additionally require **4 hours** for his examination-in-chief which it describes as “brief.”¹³⁴ Noting that the SPO has not even attempted to organise this morass of information in any meaningful way¹³⁵, the Defence submits that the admission of this amount of material will not result in any time savings.

52. The SPO seeks to admit:

- (i) His SPO interview of **393 pages**¹³⁶
- (ii) His [REDACTED] transcript of [REDACTED] **pages**¹³⁷

¹³¹ F01296/A01, para. 197.

¹³² 071776-TR-ET Part 2, p. 35.

¹³³ 071776-TR-ET Part 2, p. 33.

¹³⁴ F01396, para. 87.

¹³⁵ The Defence notes that, while the explanation provided at fn. 128 of F01396 attempts to draw distinctions between the statements and omits the extent of overlap between each one.

¹³⁶ 105527- TR-ET

¹³⁷ [REDACTED].

- (iii) [REDACTED] statement of [REDACTED] pages¹³⁸
- (iv) [REDACTED] statement from [REDACTED] of [REDACTED] pages¹³⁹
- (v) [REDACTED] statement from [REDACTED] of [REDACTED] pages.¹⁴⁰

This amounts to **763 pages** of prior statements, which is accompanied by a further **73** associated exhibits. The SPO has fails to justify the need to tender all of these items, or to identify duplication or irrelevancies contained with the statements.

53. In this regard, it is worth recalling the Trial Panel's words from its first Rule 154 decision in this case:

The Panel shares the Defence's concern that, unless reasonable limitations are placed on the amount of evidence admitted, the risk exists that the combined effect of multiple witness statements/transcripts and extensive oral evidence for individual witnesses could result in creating an unmanageable trial record. The Panel is particularly concerned by the SPO's practice of tendering, pursuant to Rule 154, multiple largely repetitive statements by the same witness. This practice is not conducive to the expeditious conduct of the proceedings.¹⁴¹

54. The Defence would not oppose the admission pursuant to Rule 154 of this witness's [REDACTED] statement, transcript and the associated exhibits from the [REDACTED] that the SPO has tendered, with limited redactions to exclude passages that concern the Accused in this case.¹⁴²

55. The Defence submits that the remainder of his prior statements and associated exhibits should not be admitted pursuant to Rule 154. The [REDACTED] statement is a composite statement, which renders his [REDACTED] and [REDACTED] statements redundant to the extent that they are relevant. While the [REDACTED]

¹³⁸ [REDACTED].

¹³⁹ [REDACTED].

¹⁴⁰ [REDACTED].

¹⁴¹ F01380, para. 29.

¹⁴² As regards his testimony, [REDACTED], the Defence requests redactions at p. 7568, lines 10-12; p. 7570, lines 3-10. As regards his [REDACTED] statement, [REDACTED], the Defence requests redactions at paras 113-120.

statement does not address all matters to which he speaks in his SPO interview, the Defence submits that these additional matters are more appropriately addressed through live in-court examination as they focus to a greater extent on key issues in this case. Moreover, such an approach would avoid significant duplication of material and prevent unnecessary bloating of the case file.

I. [REDACTED]

56. The Defence submits that the evidence of [REDACTED], a former KLA member, should not be admitted pursuant to Rule 154, as the witness has disavowed portions of the testimony put to him in an SPO interview which it has **not** tendered via Rule 154. Moreover, the witness's previous conduct before the [REDACTED] renders it doubtful that he will indeed make himself available for cross-examination, which is necessary pre-condition for his evidence to be admitted pursuant to Rule 154. Under the circumstances, the Defence submits that the Trial Panel should reserve any decision on the admissibility of his evidence until such time as the witness is present in court and available for cross-examination.

57. The witness is intended to provide evidence via Rule 154 relating to the KLA in two Operational Zones (Dukagjin and Llapushnik), alleged execution orders, several detainees he claims to have seen in Jabllanicë, as well as the acts and conduct of named JCE members.¹⁴³ He is also intended to provide live evidence on the acts and conduct of the Accused.¹⁴⁴ He has previously provided evidence [REDACTED]. Given the potential significance of this evidence, the discrepancies between his various accounts, and concerns about his credibility and reliability, the Defence submits that the witness should be heard *viva voce*.

¹⁴³ F01396, paras. 90-92, 94.

¹⁴⁴ F01396, para. 93.

58. The witness's ultimate position regarding the truth of his proposed Rule 154 testimony from [REDACTED] is difficult to discern. Whereas he has confirmed to the SPO that he "told the truth" during his [REDACTED] testimony,¹⁴⁵ he has also told them that, "[a]ll that testimony and everything, it's so messed up, it's, like, unbelievable from the prosecutors before."¹⁴⁶ The Defence submits that the witness's ambivalence about his testimony in [REDACTED] is such that it is not possible to establish without further careful in-court examination by which portions he now stands. As such, it is not appropriate for it to be tendered through Rule 154 and it is further unlikely that it would result in any significant time savings.

59. For instance, his accounts regarding [REDACTED] differ as regards what he actually bore witness to, whether he could identify them as being [REDACTED], whether they related to one another and what ultimately happened to them. In his [REDACTED] testimony, the witness testified about [REDACTED] which he says he saw detained at [REDACTED]:

[REDACTED].¹⁴⁷

60. However, in the unsigned statement of his evidence prepared by the SPO based on his prior evidence and their conversations with him (not proposed for admission), it is written that:

[REDACTED].

[REDACTED].

61. Yet, in 2020, when asked to confirm this in a subsequent interview with the SPO, the following exchange occurred:

¹⁴⁵ 068178-068179, para. 7.

¹⁴⁶ 078188-TR-ET-Part 1, p. 5.

¹⁴⁷ [REDACTED].

[REDACTED].¹⁴⁸

62. The Defence submits that, given the discrepancies between his accounts as illustrated above, the ambiguity of parts of his responses, and the potential significance of his evidence, it is necessary to hear this witness live.

63. Moreover, the Defence submits that [REDACTED] history as a witness calls into question his reliability, which provides an additional imperative for his evidence to be heard fully in person. [REDACTED] was supposed to testify [REDACTED] but, as the original Trial Chamber summarised:

[REDACTED].¹⁴⁹

64. Ultimately, the trial ended [REDACTED] evidence having been heard. In [REDACTED] ordered a [REDACTED] in order to hear the testimony of [REDACTED], and another witness [REDACTED].¹⁵⁰

65. In [REDACTED], [REDACTED] appeared in court during the [REDACTED], but once again [REDACTED].¹⁵¹ Ultimately, his [REDACTED] testimony – which he now claims was both truthful and “[REDACTED]” [REDACTED].¹⁵²

66. His interactions with the SPO also raise concerns about whether he will make himself available for in-court examination. When the SPO initially interviewed him [REDACTED] (i) [REDACTED]; and (ii) [REDACTED] “[REDACTED].”¹⁵³

¹⁴⁸ 078188- TR- ET- Parts 1 , pp. 22-25.

¹⁴⁹ [REDACTED].

¹⁵⁰ [REDACTED].

¹⁵¹ [REDACTED].

¹⁵² [REDACTED].

¹⁵³ 068178-068179 RED, 068178.

Although he consented to the recording of a subsequent interview, in which the SPO sought to have him clarify and confirm the contents of the draft statement they had prepared,¹⁵⁴ it appears that the SPO was unsuccessful in securing a finalised, signed version of that statement from the witness.

67. Most recently, the witness has sought and obtained [REDACTED].¹⁵⁵ The Defence is not aware of the outcome of this request.

68. Under the circumstances, the Defence submits that the Trial Panel should deny admission of his prior statement and associated exhibits pursuant to Rule 154.

V. RELIEF SOUGHT

69. Accordingly, the Defence respectfully requests that the Trial Panel take notice of the Defence objections to the proposed Rule 154 material and:

ORDER a medical examination of [REDACTED] by the KSC Witness Protection and Support Office, prior to any decision on admissibility;

REJECT the SPO's request for the admission of prior statements and associated exhibits of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] pursuant to Rule 154;

REJECT the SPO's request for the admission of prior statements of [REDACTED] pursuant to Rule 154, or in the alternative, exclude the portions identified above; and

¹⁵⁴ 078188- TR- ET- Parts 1 and 2.

¹⁵⁵ 110768-110771 RED, 110770-71.

REJECT the SPO's request for the admission of **[REDACTED]** SPO interview, his **[REDACTED]** statements, and the exhibits associated with these statements.

[Word count: 9,700]

Respectfully submitted on 17 April 2023



Gregory W. Kehoe

Counsel for Hashim Thaçi



GEOFFREY ROBERTS

Co-counsel for Rexhep Selimi



ERIC TULLY

Co-counsel for Rexhep Selimi



RUDINA JASINI

Co-counsel for Rexhep Selimi



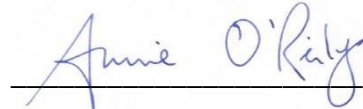
Ben Emmerson, CBE KC

Counsel for Kadri Veseli



Andrew Strong

Co-Counsel for Kadri Veseli



Annie O'Reilly

Co-Counsel for Kadri Veseli



Venkateswari Alagendra

Lead Counsel for Jakup Krasniqi



Aidan Ellis

Co-Counsel for Jakup Krasniqi



Victor Băieșu

Co-Counsel for Jakup Krasniqi