



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

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

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 14 June 2023

Language: English

Classification: Public

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

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TRIAL PANEL II (“Panel”), pursuant to Articles 19, 21, 37 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, 138(1), 139 and 155 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 18 January 2023, the Panel: (i) ordered the Specialist Prosecutor’s Office (“SPO”) to file its first Rule 155 motion by 1 March 2023; (ii) directed the Defence for the Accused (“Defence”) and Counsel for Victims to file any response thereto by 22 March 2023; and (iii) informed the SPO to file any reply by 29 March 2023.¹

2. On 1 March 2023, the SPO filed a Rule 155 motion in respect of 15 deceased witnesses and one incapacitated witness (“Motion”).²

3. On 22 March 2023, the Defence filed a joint response to the Motion (“Response”).³ The Counsel for Victims did not respond.

4. On 29 March, the SPO filed a reply to the Response (“Reply”).⁴

5. On 8 May 2023, the SPO filed a request concerning items related to W02618 (“Updated Motion”).⁵

6. On 24 May 2023, the Panel authorised the Registry to update the presentation queue for the Updated Motion by replacing, where relevant, the transcripts (including translations) related to ERN 086914 – which pertains to W02618 – as well as the English translation of associated exhibit SITF00189153-SITF00189178

¹ Transcript of Hearing, 18 January 2023, p. 1903, lines 14-21.

² F01329, Specialist Prosecutor, *Prosecution first motion for admission of evidence pursuant to Rule 155*, 1 March 2023, with Annexes 1-17, confidential.

³ F01391, Specialist Counsel, *Joint Defence Response to “Prosecution first motion for admission of evidence pursuant to Rule 155”*, 22 March 2023, confidential.

⁴ F01406, Specialist Prosecutor, *Prosecution reply to ‘Joint Defence Response to “Prosecution first motion for admission of evidence pursuant to Rule 155”’*, 29 March 2023, confidential.

⁵ F01508, Specialist Prosecutor, *Prosecution Request Concerning Items Related to W02618*, 8 May 2023

with the documents disclosed by the SPO in Disclosure Package 777 of 4 May 2023.⁶

II. SUBMISSIONS

7. The SPO seeks admission pursuant to Rule 155 of witness statements and written records and exhibits associated therewith (collectively, the “Proposed Evidence”) of the following witnesses: W00100; W04416; W04418; W04589; W04835; W01448; W04733; W04848; W01143; W02618; W04783; W04829; W01456; W04597; W04836; and W01984 (collectively, “Witnesses”).⁷ The SPO submits that the Proposed Evidence meets the requirements of Rules 137, 138(1) and 155⁸ and that their admission is in the interests of justice.⁹ The SPO contends that admission of the Proposed Evidence pursuant to Rule 155 is not unduly prejudicial as there are adequate counterbalancing measures in place and the Defence will have the opportunity to challenge some of the evidence.¹⁰ The SPO also submits that the associated exhibits: (i) are an integral part of the Rule 155 statements of the Witnesses (“Rule 155 Statements”) as, without them, the statements may become less complete or be of diminished probative value; and (ii) provide context to the evidence contained in the Rule 155 Statements and corroborate that evidence.¹¹ Lastly, the SPO points to the fact that Rule 155(1) does not preclude the admission of evidence which goes to the acts and conduct of an Accused.¹²

8. The Defence objects to the admission of the Proposed Evidence. It does not question that the witnesses are unavailable to testify, with the exception of

⁶ F01549/COR, Panel, *Corrected Version of Decision on SPO Requests F01435 and F01508* (“F01549/COR”), 24 May 2023, paras 12, 14(c)-(d).

⁷ Motion, para. 1.

⁸ Motion, para. 9.

⁹ Motion, para. 2.

¹⁰ Motion, para. 12.

¹¹ Motion, para. 9.

¹² Motion, para. 11.

W01984. The Defence argues that allegations against an Accused should be made by *viva voce* witnesses who are available for cross-examination, and who can attest to the reliability, relevance and probative value of the evidence being presented.¹³ The Defence expresses concern about the volume of written evidence the SPO is seeking to introduce in this case, and the risk of creating an unmanageable trial record.¹⁴ The Defence also argues that preserving the testimony of witnesses who are deceased or unavailable must be weighed against the fundamental rights of the Accused.¹⁵ Lastly, the Defence indicates that the admission of the testimony of unavailable witnesses should be an exception, requiring caution on the part of the Panel in admitting such evidence.¹⁶

9. The SPO replies that the Response contains misrepresentations of the applicable legal framework and mischaracterisations of fact. It argues that the evidence proposed in the Motion satisfies all applicable criteria and should be admitted for a proper determination of the charges in this case.¹⁷

III. APPLICABLE LAW

10. Rule 155(1) provides that the evidence in the form of a written statement, any other record written or otherwise expressed of what a person has said or transcript of a statement by a person who has died or who can no longer be traced with reasonable diligence, or who is by reason of physical or mental impairment or other compelling reason is unable to testify orally, may be admitted, whether or not the written statement is in the form prescribed by these Rules, if the Panel is satisfied:

¹³ Response, para. 1.

¹⁴ Response, para. 2.

¹⁵ Response, para. 3.

¹⁶ Response, para. 5.

¹⁷ Reply, para. 1.

- a) of the person's unavailability or inability to testify orally; and
- b) that the statement, the record or the transcript is *prima facie* reliable, having regard to the circumstances in which it was made, recorded and maintained.

11. Rule 155(5) provides that if the evidence goes to proof of the acts and conduct of the Accused as charged in the indictment, this may be a factor against the admission of such evidence, in whole or in part.

12. To be admissible, statements offered pursuant to Rule 155 must also meet the requirements of Rule 138(1).¹⁸ Pursuant to Rule 138(1), 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.

13. Regarding the first requirement of Rule 155(1), the Panel notes that the Defence concedes that fifteen (15) out of the sixteen (16) witnesses whose statements are being offered are dead and, therefore, unavailable under Rule 155(1).¹⁹ The Defence only challenges the first requirement of Rule 155(1) in respect of one witness, namely, W01984. The Panel will consider this requirement below in respect of this particular witness.

¹⁸ Articles 21(4)(c), (f) and 40(2) of the Law. *Similarly*, ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-PT, [Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92 quater](#) (Karadžić Decision), 20 August 2009, para. 6; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, [Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 quater](#), 21 April 2008 (Popović Decision), para. 30; ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84, [Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 quater and 13th Motion for Trial-Related Protective Measures](#), (Haradinaj Decision), 7 September 2007, para. 6; ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87, [Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 quater, 16 February 2007](#), (Milutinović Decision) para. 4; ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87, [Decision on Second Prosecution Motion for Admission of Evidence Pursuant to Rule 92 quater](#), 5 March 2007, para. 6; ICTY, *Prosecutor v. Šešelj*, IT-03-67, [Redacted Version of the "Decision on the Prosecution's Consolidated Motion Pursuant to Rules 89\(F\), 9 bis, 92 ter, and 92 quater of the Rules of Procedure and Evidence" filed confidentially on 7 January 2008](#), (Šešelj Decision) 21 February 2008, para. 26; and ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1325, Trial Chamber VI, [Decision on Prosecution application under Rule 68\(2\)\(c\) of the Rules for admission of prior recorded testimony of Witness P-0039](#), 19 May 2016, para. 8.

¹⁹ Response, para. 30.

14. Regarding the second requirement of Rule 155(1), when assessing the reliability of statements offered pursuant to Rule 155, the Panel will consider, *inter alia*, the following factors: (i) whether the statement was given under oath; (ii) whether the statement was signed by the witness with an accompanying acknowledgment that the statement is true to the best of his or her recollection; (iii) whether the statement was given voluntarily; (iv) whether the statement was taken with the assistance of an interpreter duly qualified; (v) whether the statement has been subject to cross-examination; (vi) whether the statement, in particular if it is an unsworn statement never subject to cross-examination, relates to events about which there is other evidence; and (vii) other factors, such as the absence of manifest or obvious inconsistencies in the statement.²⁰ These factors are non-exhaustive and none is individually determinative of the question of admissibility.²¹

15. The Panel recalls that pursuant to Rule 155(5), if the evidence goes to proof of the acts and conduct of the Accused as charged in the indictment, this may be a factor militating against the admission of such evidence, in whole or in part. The Panel considers that the purpose of this provision is to ensure a fair trial and the reliability of the evidence.²² It invites cautious scrutiny on the part of the Panel of this sort of evidence while also contemplating the possibility of the admission of statements by deceased persons containing this kind of evidence.²³

16. The Panel understands the expression “acts and conduct of the Accused as charged in the indictment” to refer to the personal actions and omissions of the

²⁰ [Karadžić Decision](#), para. 5; [Popović Decision](#), para. 31; [Haradinaj Decision](#), para. 7; [Milutinović Decision](#), para. 7; ICTY, *Prosecutor v Tolimir*, IT-05-88/2, [Decision on Prosecution’s Motion for Admission of Evidence Pursuant to Rule 92 quater](#), (Tolimir Decision) 25 November 2009, para. 29.

²¹ See e.g., ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, [Decision on Accused’s Motion for Admission of Evidence of Radislav Krstić Pursuant to Rule 92 quater](#), 26 November 2013, para. 12, citing [Karadžić Decision](#), para. 5; [Popović Decision](#), para. 41 and 52. See also [Tolimir Decision](#), para. 35.

²² See also, [Haradinaj Decision](#), para. 10. See also [Tolimir Decision](#), para. 30; See also, ICC, *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, [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, para. 13.

²³ See, again, [Tolimir Decision](#), para. 30.

Accused which are described in the charges brought against him, or which are otherwise relied upon to establish his criminal responsibility for the crimes charged.²⁴

17. When a statement is admitted pursuant to Rule 155, exhibits accompanying the statement may be admitted as well where they meet the requirements of Rule 138(1) and form an inseparable and indispensable part of the statement.²⁵

18. A decision to admit evidence pursuant to Rule 155 does not prejudice in any way the Panel's determination regarding the probative value and weight, if any, to be given to such evidence, which the Panel will determine in light of the evidence as a whole.²⁶ A lack of opportunity to cross-examine a witness does not automatically preclude the admission into evidence of a written witness statement if the Panel is satisfied that the requirements for admission as prescribed under Rule 155 and 138(1) are met.²⁷ However, the assessment of such evidence would be subject to the safeguard that un-confronted evidence shall not be relied upon to a sole or decisive extent in reaching a decision.²⁸

19. In addition, Rule 139(2) requires the Panel to "assess each piece of evidence in light of the entire body of evidence admitted before it at trial. The Panel shall carry out a holistic evaluation and weighing of all the evidence taken as a whole to establish whether or not the facts at issue have been established." In accordance with Rule 139(4), in determining the weight to be given to the testimony of a witness, a Panel shall assess the credibility of the witness and the reliability of his

²⁴ KSC-BC-2020-05, Trial Panel I, F00286, *Decision on the Prosecution application pursuant to Rule 153 of the Rules*, 17 December 2021, para. 19. Similarly, ICTR, *the Prosecutor v. Ngirabatware*, MICT-12-29-A, Judgment, 18 December 2014, para. 103; ICTY, *Prosecutor v. Galić*, IT-98-29-AR73.2, [Decision on Interlocutory Appeal concerning Rule 92bis\(C\)](#), (Galić Decision), 7 June 2002, paras 8-9; and [Tolimir Decision](#), para. 30.

²⁵ [Tolimir Decision](#), para. 31; [Karadžić Decision](#), para. 7; [Popović Decision](#), paras 30 and 33; [Milutinović et al. Decision](#), paras. 4, 6, referring, *inter alia*, [Galić Decision](#), para. 3.

²⁶ [Šešelj Decision](#), para. 26.

²⁷ [Milutinović et al. Decision](#), para. 9.

²⁸ Rule 140(4)(a); See also, e.g., [Seton v. the United Kingdom](#), para. 58; [Sitnevskiy and Chaykovskiy v. Ukraine](#), para. 125.

or her testimony. The Panel underlines that it will fulfil its responsibilities under Rule 139(4) based exclusively on the evidence that has been admitted on the record of these proceedings. Therefore, if and where a Party or participant intends to rely upon a certain exhibit to challenge the veracity, truthfulness or credibility of a witness, it shall in principle tender that document into evidence unless the content of it has been adequately and sufficiently put to the witness during his/her testimony so as to enable the Panel to account for it in its assessment of the witness's credibility.

IV. DISCUSSION

1. W00100

20. The SPO submits that the Proposed Evidence of W00100 is: (i) relevant;²⁹ (ii) authentic and reliable;³⁰ and (iii) its admission would not cause undue prejudice.³¹

21. The Panel notes that the SPO has submitted the following Proposed Evidence of W00100: (i) transcript of SPO Interview of W00100 on 15 November 2019; (ii) ICTY Witness Statement of W00100, dated 17 October 2001; (iii) witness statement given to the Serbian police on [REDACTED] 2004; (iv) record of Witness interview of W00100 at District Court of Belgrade on [REDACTED] 2007 related to [REDACTED]; (v) transcript of audio recording of trial hearing in Serbia on [REDACTED] with testimony of W00100 in the case [REDACTED]; and (vi) SITF Investigator's report meeting with W00100 on [REDACTED] 2015, dated [REDACTED] 2015.³²

²⁹ Motion, para. 16.

³⁰ Motion, paras 17-18.

³¹ Motion, para. 19.

³² Annex 1 to the Motion.

22. The Defence argues that the admission of all six items is unnecessary and the SPO provides no justification for seeking to admit substantially similar statements.³³ The Defence submits that due to reliability issues and the cumulative nature of the statements, only the ICTY Statement should be admitted as a record of W00100's evidence.³⁴ The Defence also argues that the other statements lack relevance and their admission would unnecessarily clutter the trial record.³⁵ Lastly, the Defence submits that only three of W00100's six proposed Rule 155 statements are cited in the SPO's Pre-Trial Brief and this demonstrates the limited relevance of the witness's evidence to the SPO case.³⁶

23. The Panel notes that the SPO has submitted W00100's death certificate.³⁷ The Defence did not dispute the suggestion that the witness is dead and unavailable to testify.³⁸ The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

24. With regard to the *prima facie* reliability of W00100's prior statements, the Panel notes that: (i) items 1-6 of Annex 1 to the Motion contain, *inter alia*, the witness's personal details and/or signature, the date and time where the statements/interviews were taken and the use of official templates; (ii) items 1, 2, 4 and 5 of Annex 1 to the Motion contain witness warnings and acknowledgment; and (iii) statements in items 2 to 6 were all discussed during the SPO interview and confirmed by the witness and therefore constitute an integral part of the W00100's SPO statement. The Panel furthermore considers that the Proposed Evidence was given voluntarily and freely, and was taken by duly empowered investigators/official authorities. The witness's evidence was also subject to judicial questioning in respect of one of the offered records. There is no indication

³³ Response, para. 36.

³⁴ Response, pars 32-36.

³⁵ Response, para. 36.

³⁶ Response, para. 37.

³⁷ Annex 17 of the Motion, items no. 1-16.2.

³⁸ Response, para. 30.

of any other issue having negatively affected the reliability of these records. They are generally consistent and corroborate each other in material respects. In light of the above, the Panel finds that W00100's prior statements are *prima facie* reliable.

25. With regard to the objection of the Defence on the admission of the SITF Investigator's Report of a meeting with W00100, the Panel notes that the witness confirmed the general content of that Report during the witness's SPO interview.³⁹ In addition, the Panel observes that Rule 155 refers not only to written statements but also "any other record written or otherwise expressed of what a person has said". Therefore, even if the SITF Investigator's Report is not a verbatim transcription, it is not inadmissible for that reason alone. Regarding authenticity, the Investigator's Report on its face suggest that it originated from the SITF. The witness confirmed its content during the SPO interview. Furthermore, the content of the Investigator's Report is generally consistent with the evidence that the witness provided to the SPO. Its authenticity does not appear to be challenged by the Defence.

26. Turning to the requirement set out in Rule 155(5), the Panel notes that, upon review, the evidence contained in W00100's prior statements does not go to proof of the acts and conduct of the Accused as charged in the indictment. The Defence did not suggest otherwise.

27. Regarding the specific requirements of Rule 138(1), the Panel is satisfied based on the above that the proposed evidence is relevant (including in respect of alleged crimes committed in or around Malishevë/Mališevo in or around July 1998) and *prima facie* authentic and probative.

28. Lastly, the Panel must assess whether the probative value of any submitted evidence is not outweighed by its prejudicial effect to the Accused. As noted, W00100's evidence does not go to proof the acts and conduct of the Accused. The

³⁹ See Annex 1, item no.1: 069697-TR-ET Part 1 Revised RED, pp.4-5.

Panel also notes that the Defence has not pointed to any material aspect of the proposed evidence with which it takes issue. Furthermore, evidence going to several aspects of the witness's evidence will be offered at trial, which the Defence will have an opportunity to confront. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

29. Accordingly, the Panel finds that W00100's Proposed Evidence is admissible pursuant to Rules 138(1) and 155.

30. Regarding the multiplicity of proposed statements, the Panel accepts in general terms the SPO's submission that the admission of multiple statements might in some instances be necessary and judicious in respect of an unavailable witness. This could be desirable, for instance, where different statements touch upon slightly different aspects of a witness's evidence or where this would enable the Panel to have a fuller perspective on a witness's credibility. At the same time, the Panel is mindful of the risk raised by the Defence of the record becoming burdened with large quantities of *secondary* evidence. This calls for particular caution on the part of the SPO when deciding which statement(s) or record(s) of a witness to tender in evidence.

2. W04416

31. The SPO submits that the Proposed Evidence of W04416 is: (i) relevant;⁴⁰ (ii) authentic and reliable;⁴¹ and (iii) its admission would not cause undue prejudice.⁴²

⁴⁰ Motion, para. 21.

⁴¹ Motion, para. 22.

⁴² Motion, para. 23.

32. The Panel notes that the SPO has submitted the following Proposed Evidence of W04416: (i) UNMIK, Records of Witness Hearing of W04416, [REDACTED]; and (ii) Medical Records of W04416 [REDACTED].⁴³

33. The Defence opposes the admission of this evidence in its entirety.⁴⁴ The Defence refers to findings from other proceedings and argues that W04416 was considered “generally an unreliable witness”.⁴⁵ It also argues that inconsistencies in W04416’s testimony also diminish his overall reliability and probative value.⁴⁶ The Defence submits that W04416’s evidence is also untested.⁴⁷ Regarding the medical records, the Defence argues that neither was tendered during the hearing, nor discussed at any length.⁴⁸ Lastly, the Defence indicates that W04416’s UNMIK Statement is only cited once in the SPO Pre-Trial Brief and this demonstrates the limited relevance of this witness to the SPO’s case.⁴⁹

34. The SPO replies that the ultimate reliability, relevance, and significance of W04416’s Rule 155 statement should only be considered at the end of the proceedings based on an overall consideration of the evidence in the case, including corroborating and complementary evidence yet to be admitted.⁵⁰

35. The Panel notes that the SPO has submitted a photograph of the grave of W04416 with an official note.⁵¹ The Defence does not dispute that the witness is dead.⁵² The Panel therefore finds that the witness is dead and unavailable within the meaning of Rule 155(1)(a).

⁴³ Annex 2 to the Motion.

⁴⁴ Response, para. 38.

⁴⁵ Response, paras 39-40.

⁴⁶ Response, para. 41.

⁴⁷ Response, para. 42.

⁴⁸ Response, para. 43.

⁴⁹ Response, para. 44.

⁵⁰ Reply, para. 8.

⁵¹ Annex 17 of the Motion, item no. 2: 106544-106545 RED.

⁵² Response, para. 30.

36. With regard to the *prima facie* reliability of W04416's prior statement, the Panel notes that: (i) the statement is an official record from the *Latif Gashi et al.* case, bearing indications of date, time and place of the witness hearing, the witness's personal details and signature as well as the names and roles of persons present during the hearing; (ii) the witness was subject to questioning by the investigating judge, the public prosecutor and the defence; (iii) the evidence was given under advisement of rights and obligations; and (iv) the statement is initialled on each page and signed by other participants. The Panel further observes that while the witness appeared at times to lack the expected level of consistency, this does not render his account unreliable. This will, however, be accounted for when the Panel decides what weight, if any, to give to that statement. In light of the above, the Panel finds that W04416's prior statements are *prima facie* reliable.

37. The Defence has drawn the Panel's attention to purported inconsistencies and contradictions in W04416's testimony. The Panel finds that these do not render the proposed statement inadmissible. The Panel will consider these purported inconsistencies when deciding the probative value and weight, if any, to be given to that evidence.

38. Turning to the requirement set out in Rule 155(5), the Panel notes that, upon review, the evidence contained in witness W04416's prior statement does not go to proof of the acts and conduct of the Accused as charged in the indictment. The Defence did not suggest otherwise.

39. Regarding the requirements of Rule 138(1), the Panel is satisfied that the proposed record is relevant (in particular, in relation to crimes allegedly committed in Bajgorë/Bajgora and Llapashticë/Lapaštica in or around August 1998 and the alleged policy of the KLA towards 'collaborators') and *prima facie* authentic and probative. The Panel also notes that the Defence has not pointed to any material aspect of the proposed evidence with which it takes issue. Furthermore, evidence going to several aspects of the witness's evidence will be

offered at trial, which the Defence will be able to confront if and where it disputes it.

40. Regarding the associated exhibit (Medical Records of W04416), the Panel is satisfied that constitutes an integral part of the record, as it goes to establish the nature of injuries for which he sought treatment, which was discussed during his questioning. The document is also relevant and *prima facie* authentic and probative.

41. The Panel is satisfied that the probative value of this evidence is not outweighed by its prejudicial effect to the Accused. In particular, the Panel notes that W04416's evidence does not go to proof of the acts and conduct of the Accused. The Panel further notes that the Defence did not point to any particular aspect(s) of the proposed evidence which it disputes. The Panel also considers that evidence pertaining to many of the same facts and circumstances will be offered by witnesses which the Defence will be able to question. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

42. Accordingly, the Panel finds that W04416's tendered statement and the associated exhibit are admissible pursuant to Rules 138(1) and 155.

3. W04418

43. The SPO submits that the Proposed Evidence of W04418 is: (i) relevant;⁵³ (ii) authentic and reliable;⁵⁴ and (iii) its admission would not cause undue prejudice.⁵⁵

⁵³ Motion, para. 24.

⁵⁴ Motion, paras 25-26.

⁵⁵ Motion, para. 27.

44. The Panel notes that the SPO has submitted the following evidence of W04418: (i) [REDACTED], [REDACTED] [REDACTED]; (ii) [REDACTED] [REDACTED], [REDACTED]; and (iii) [REDACTED].⁵⁶

45. The Defence opposes the admission of this evidence in its entirety.⁵⁷ It argues that W04418's unreliable evidence cannot be admitted due to the inconsistencies and the serious, adverse credibility findings regarding his statements in other [REDACTED] proceedings.⁵⁸

46. The SPO replies that the circumstances of W04418's recantation after his initial statements are clearly explained in the [REDACTED] interview, and were the result of fear and pressure. It argues that prior consistent statements should be admitted for a full assessment of the witness's evidence.⁵⁹

47. The Panel notes that the SPO has submitted W04418's death certificate.⁶⁰ The Defence does not question the death of the witness or the witness's unavailability.⁶¹ The Panel therefore finds that the witness is dead and unavailable within the meaning of Rule 155(1)(a).

48. With regard to the *prima facie* reliability of W04418's prior statements, the Panel notes that: (i) they contain information about dates, times and locations of the interview [REDACTED] [REDACTED], the witness's personal details, witness warning and acknowledgment; (ii) items 2 and 3 contain also the signature of the witness; (iii) the statements were given voluntarily and freely, and were before duly empowered official authorities; and (iv) during the [REDACTED] interview (item 1) the witness confirmed the accuracy of his statement in items 2 and 3.

⁵⁶ Annex 3 to the Motion.

⁵⁷ Response, para. 45.

⁵⁸ Response, paras 46-53.

⁵⁹ Reply, para. 9.

⁶⁰ Annex 17 of the Motion, item no. 3: 106521-106521.

⁶¹ Response, para. 30.

49. Regarding the Defence's reliance upon findings of credibility [REDACTED], the Panel notes the following. Findings regarding the credibility of a witness are within the discretion and responsibility of *this* Panel. While potentially relevant, the findings of other courts and Panels regarding the credibility of a witness whose statement is being offered in evidence are not binding upon this Panel and it will not delegate that responsibility to others. The Panel's determination on that point will depend, in particular, upon the existence of corroboration of a witness's account and the reliability of any such corroborating evidence.

50. The Panel also notes that the Defence is challenging the credibility of the witness and/or the reliability of his evidence by seeking to rely on statements not offered in evidence.⁶² The Panel will not base its assessment on reliability or probative value on material not offered for admission.⁶³ The Panel does not consider that the purported inconsistencies are such as to make the evidence inadmissible under Rule 155. The Panel will address any inconsistencies between statements and records offered by the SPO when it assesses that evidence in light of the entire body of evidence admitted before it at trial. At that time, the Panel will pay due regard to the seriousness of the purported inconsistencies, whether they relate to an issue of central importance to the proposed evidence of the witness, and whether the witness has provided any reasons or explanations for the inconsistencies. In the present case, the witness recanted some of his evidence and explained that he did so as he was put under a lot of pressure and forced to change his statement.⁶⁴ [REDACTED].⁶⁵ The Panel will also take into consideration that the Defence is unable to cross-examine the witness on his recantation and his reasons for doing so and weigh his evidence accordingly.

⁶² Response, paras 46ff.

⁶³ See above para. 17.

⁶⁴ 066543-TR-ET, Part 2 RED2 at p. 17-20.

⁶⁵ See, in particular, Transcript of Trial Hearing of 11 May 2023, p. 3556-3560.

51. The Defence also raises an issue of reliability in relation to the [REDACTED]. It argues that the interview was conducted in [REDACTED], [REDACTED] and which he complained about. This, the Defence submits, renders the record unreliable. The Panel does not consider that the fact that [REDACTED] had any effect on the reliability or accuracy of the record. W04418 confirmed that [REDACTED] [REDACTED] did not impact his ability to comprehend the questions. Nor did he suggest that the record did not correspond to his responses, which he confirmed by means of his signature.

52. The Defence also points to what it says are discrepancies or inconsistencies which it says exist between the offered statements/records and other statements of the witness. As noted above, the Panel is not prepared to rely upon items not offered in evidence to assess the reliability of a witness's record that is being offered in evidence. The Panel has noted the Defence's submission on purported inconsistencies in the statements of the witness that are subject to the present application, and will consider these when deciding what weight, if any, to give to the witness's evidence. The Panel does not consider that the purported inconsistencies render the evidence inadmissible.

53. In light of the above, the Panel finds that W04418's prior statements are *prima facie* reliable.

54. The Panel notes that, upon review, the evidence contained in witness W04418's prior statement/transcript does not go to proof of the acts and conduct of the Accused as charged in the indictment. The Defence did not suggest otherwise.

55. With regard to the requirements of Rule 138(1), the Panel is satisfied that the proposed evidence is relevant (including in respect of alleged crimes in Bajgorë/Bajgora and Llapashticë/Lapaštica in or around [REDACTED] 1998) and *prima facie* authentic and probative. The Panel shall assess this evidence in light of the entire body of evidence admitted before it at trial.

56. There is no indication of the probative value of this evidence being outweighed by its prejudicial effect. The Panel reiterates in this context that W04418's evidence does not go to proof of the acts and conduct of the Accused. The Panel further notes that the Defence did not identify any specific aspect(s) of the proposed evidence which it disputes. The Panel also considers that evidence pertaining to many of the same facts and circumstances will be offered by witnesses which the Defence will be able to question. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

57. Accordingly, the Panel finds that W04418's statements are admissible pursuant to Rules 138(1) and 155.

4. W04589

58. The SPO submits that the Proposed Evidence of W04589 is: (i) relevant;⁶⁶ (ii) authentic and reliable;⁶⁷ and (iii) its admission would not cause undue prejudice.⁶⁸

59. The Panel notes that the SPO has submitted the following Proposed Evidence in respect of W04589: [REDACTED].⁶⁹

60. The Defence responds that W04589's evidence should be excluded due to its very low probative value.⁷⁰

61. The Panel notes that the SPO has submitted W04589's death certificate.⁷¹ The Defence does not question the death of the witness or the witness's

⁶⁶ Motion, para. 29.

⁶⁷ Motion, paras 30-31.

⁶⁸ Motion, para. 232.

⁶⁹ Annex 4 to the Motion.

⁷⁰ Response, para. 57.

⁷¹ Annex 17 of the Motion, item no. 4: U015-8131-U015-8131.

unavailability.⁷² The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

62. With regard to the *prima facie* reliability of W04589's prior statement, the Panel notes that it contains: (i) information about the date, time and location of the interview; (ii) the witness's personal details and signature; and (iii) the name and signature of the investigator. Furthermore, it was taken in the presence of a qualified interpreter and the statement was given voluntarily and freely, and was before duly empowered official authorities. At the same time, the Panel notes that the statement was not subject to cross-examination. [REDACTED]

63. The Panel notes that the Defence emphasises the low probative value of W04589's evidence. However, the Panel recalls that reliability for the purpose of admission under Rule 155 and as an element of probative value, only requires *prima facie* reliability. Measured against that standard, the Panel is satisfied that the statement bears sufficient indicia of reliability. As such, the Panel is satisfied that the statement holds sufficient probative value to be admitted into evidence.

64. The Defence also suggests that his statement cannot be relied upon for his identification of the identity [REDACTED]. The Panel is of the view that the suggestion of the Defence is not correct. First, reliability for the purpose of admission (and as an element of probative value) only requires demonstration of *prima facie* reliability and that standard is met in this instance. Furthermore, that standard does not require proof of reliability in relation to each or every fact or circumstance in relation to which the witness gives evidence. Moreover, the point being raised is an issue of weight, not admission. The identity [REDACTED] will, therefore, be determined at the end of the case in light of all the evidence received by the Panel in relation to that matter.

⁷² Response, para. 30.

65. The Panel also notes the high degree of consistency reflected in the proposed statements.

66. In light of the above, the Panel finds that W04589's prior statement is *prima facie* reliable.

67. The Panel notes that, upon review, the evidence contained in witness W04589's prior statement does not go to proof of the acts and conduct of the Accused as charged in the indictment. The Defence did not suggest otherwise.

68. With regard to the requirements of Rule 138(1), the Panel finds that the proposed evidence is relevant (in particular, in respect of crimes allegedly committed Bajgorë/Bajgora and Llapashticë/Lapaštica in or around [REDACTED] 1998) and *prima facie* authentic and probative. The Defence claims that his evidence is secondary and of minor probative value. Even if correct, this would not warrant exclusion in the present case. First, the SPO proposes to produce corroborating evidence of much of the relevant parts of the evidence of this witness. The Panel will evaluate the proposed evidence based on all relevant evidence received by the Panel in respect of facts and circumstances that the witness testifies to. Furthermore, and contrary to the Defence submissions, the Panel finds the evidence to be relevant of material issues in the present case and notes that the Defence has not conceded or agreed to the facts proposed to be proven, *inter alia*, through this witness.

69. With regard to whether the probative value of the Proposed Evidence is outweighed by its prejudicial effect to the Accused, the Panel first notes that W04589's evidence does not go to proof the acts and conduct of the Accused. The Panel further notes that the Defence did not identify any specific aspect(s) of the proposed evidence which it disputes. The Panel also considers that evidence pertaining to many of the same facts and circumstances will be offered by witnesses which the Defence will be able to question. In light of the foregoing, the

Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

70. Accordingly, the Panel finds that W04589's tendered statement is admissible pursuant to Rules 138(1) and 155.

5. W04835

71. The SPO submits that the Proposed Evidence of W04835 is: (i) relevant;⁷³ (ii) authentic and reliable;⁷⁴ and (iii) its admission would not cause undue prejudice.⁷⁵

72. The Panel notes that the SPO has submitted the following Proposed Evidence of W04835: (i) UNMIK witness statement of W04835 dated 7 August 2002; (ii) ICTY witness statement of W04835 dated 13 August 2006; and (iii) transcript of testimony in the ICTY *Haradinaj et al.* case of W04835, dated 31 October 2007.⁷⁶

73. The Defence argues that the admission of all three statements is unnecessary. It submits that only the transcript of W04835's testimony before the ICTY should be admitted because it bears the greatest indicia of reliability.⁷⁷

74. The Panel notes that the SPO has submitted photograph of the grave of W04835 with an official note.⁷⁸ The Defence does not question the death of the witness or the witness's unavailability.⁷⁹ The Panel therefore finds that the witness is unavailable within the meaning of Rule 155(1)(a).

75. With regard to the *prima facie* reliability of W04835's prior statements and testimony, the Panel notes that the documents contain *inter alia*: (i) the witness's personal details and signature; (ii) the witness warning and acknowledgment;

⁷³ Motion, para. 33.

⁷⁴ Motion, para. 34.

⁷⁵ Motion, para. 35.

⁷⁶ Annex 5 to the Motion.

⁷⁷ Response, para. 59.

⁷⁸ Annex 17, item no. 5: 106546-106547 RED.

⁷⁹ Response, para. 30.

(iii) an indication of the date, time and place of the interview; (iv) the use of an official template; and (v) the stamp and signature of authorised officials. Moreover, the records indicate that the statements were given voluntarily and freely, and were before duly empowered official authorities. Furthermore, the witness gave evidence in the *Haradinaj* trial under oath and was subject to cross-examination. It corroborated, in material respects, aspects and elements of the other records. Thus, the Panel finds that W04835's prior statements are *prima facie* reliable.

76. With regard to the Defence's argument that all three statements are unnecessary and add nothing of apparent significance, the Panel disagrees. All are relevant, *prima facie* reliable and probative of facts pertinent to the present case. What evidentiary weight, if any, might attach to certain aspects of this evidence will be determined at the end of the case in light of all relevant evidence.

77. The Panel notes that, upon review, the evidence contained in witness W04835's prior statements does not appear to go to proof of the acts and conduct of the Accused as charged in the indictment. The Defence did not suggest otherwise.

78. With regard to the requirements of Rule 138(1), the Panel is satisfied that the evidence is relevant (including in respect of a crime charged in the indictment and associated issues) and is *prima facie* authentic and probative.

79. With regard to whether the probative value of the Proposed Evidence is outweighed by its prejudicial effect, the Panel first reiterates that W04835's evidence does not appear to go to proof of the acts and conduct of the Accused. The Panel further notes that the Defence did not identify any specific aspect(s) of the proposed evidence which it disputes. The Panel also considers that evidence pertaining to many of the same facts and circumstances will be offered by witnesses which the Defence will be able to question. In light of the foregoing, the

Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

80. Accordingly, the Panel finds that W04835's tendered statements are admissible pursuant to Rules 138(1) and 155.

6. W01448

81. The SPO submits that the Proposed Evidence of W01448 is: (i) relevant;⁸⁰ (ii) authentic and reliable;⁸¹ and (iii) its admission would not cause undue prejudice.⁸²

82. The Panel notes that the SPO has submitted the following Proposed Evidence in respect of W01448: (i) ICTY Witness Statement of W01448; (ii) EULEX Report on Interrogation Statement of W01448 dated on 10 August 2009; (iii) Additional Questions to W01448 signed by Police Investigator, dated on 24 August 2009; (iv) EULEX WCIU Photo board Identification Procedure Report performed by W01448; (v) EULEX Note on Interview with W01448; (vi) EULEX Photo board Identification Report with W01448; (vii) UNMIK District Public Prosecutor Pristina Transcript of Testimony of W01448 in the case against *Sebit GECI*; (viii) Transcript of Testimony of W01448 in the case against *Sabit GECI et al.*; and (ix) District Court of Mitrovica, Record of the Main Trial in the case against *Sabit GECI*, Witness Hearing of W01448.⁸³

83. The Defence objects to the admission of any identification evidence provided by W01448, the parts of the testimony relating to the acts and conduct of the Accused and the uncorroborated allegation identified by the Defence.⁸⁴ It argues that the admission of the identification evidence without cross-examination is

⁸⁰ Motion, para. 37.

⁸¹ Motion, paras 38-39.

⁸² Motion, para. 40.

⁸³ Annex 6 to the Motion.

⁸⁴ Response, para. 60.

prejudicial to the Defence.⁸⁵ The Defence submits that the number of erroneous or unreliable identifications in W01448's evidence casts doubt on the reliability of any of his assertions that an individual was present at or participated in the events in Kukës in May and June 1999.⁸⁶ The Defence opposes the admission of segments of W01448's evidence which are not corroborated.⁸⁷

84. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W01448's death certificate.⁸⁸ The Defence does not question the death of the witness or the witness's unavailability.⁸⁹ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

85. With regard to the *prima facie* reliability of W01448 the Panel notes that: (i) statements given by W01448 in the period 2003-2011 were taken by duly empowered law enforcement authorities, namely the ICTY and EULEX, in the course of their investigations, or are transcripts of the witness's testimony in the case against *Sabit GECI et al*; (ii) W01448 was duly advised of his rights and obligations; (iii) the statements were signed by the interviewers and/or the witness and interpreters, and were all given voluntarily and freely; and (iv) W01448 confirmed and re-signed his statement given to the ICTY in 2003 in his two statements given to EULEX in August and December 2009. Two of the records were given under oath and under judicial control.⁹⁰ The evidence that resulted from it, is generally consistent with evidence not given under oath. Thus, the Panel finds that W01448's prior statement is *prima facie* reliable.

⁸⁵ Response, para. 63.

⁸⁶ Response, para. 67.

⁸⁷ Response, para. 68.

⁸⁸ Annex 17, item no. 6: 108902-108902-ET.

⁸⁹ Response, para. 30.

⁹⁰ SITF00013833-00013847 RED2; SITF00013852-00013885

86. The Defence's suggestion that certain parts of the proposed evidence should be rejected on the ground that it lacks corroboration has not merit. The Panel will conduct this assessment at the end of the trial, in light of the entire body of evidence admitted before it at trial. The Panel recalls that it may rely on uncorroborated and circumstantial evidence. However, a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine.

87. The Defence objects to the admission of certain parts of the witness's evidence which they say go to acts and conduct of the Accused. In particular, the Defence challenges the evidence of this witness regarding the alleged presence of Mr Veseli and Mr Krasniqi in Kukës between May and June 1999.⁹¹ The SPO submits that it does not intend to rely on W01448's evidence concerning Mr Veseli at Kukës due to a misidentification, as the witness himself explained in his testimony in the case against *Sabit GECI et al.* in 2011.⁹² The Panel notes that the misidentification of Mr Veseli does not render all evidence of identification of this witness unreliable.

88. Regarding the alleged identification of Mr Krasniqi in Kukës, the Panel is prepared to admit this evidence. First, the Panel notes that there is no indication on the record of this proposed evidence being unreliable. As already noted, the fact that the witness might have mistaken Mr Veseli for another person does not render its identification of Mr Krasniqi unreliable. Secondly, the Panel notes that the SPO is intent on calling other evidence purportedly corroborating the alleged presence of Mr Krasniqi at that location and, thus potentially, the witness's identification of Mr Krasniqi at that location.⁹³ An evaluation of the reliability of this witness's evidence in relation to this matter will therefore be conducted at the end of the case in light of all evidence relevant to this matter. The Panel notes,

⁹¹ Response, paras 61-64.

⁹² Motion, para. 39.

⁹³ See [REDACTED].

furthermore, that it will approach evidence of identification, including identification of Mr Krasniqi, with the necessary caution.⁹⁴

89. Regarding the identification of [REDACTED] and [REDACTED], the Panel notes that the Defence's objection is primarily an issue of weight which, again, should be assessed once all relevant evidence of this matter is before the Panel. The presence or otherwise of corroboration will, in that regard, be of significant importance to the Panel's readiness to give this evidence any weight.

90. The Panel notes that, upon review, some portions of the evidence contained in W01448's prior statements might go, albeit in a very limited way, to proof of the acts and conduct of the Accused. The Panel recalls that Rule 155(5) does not prevent the introduction of this type of evidence. Furthermore, this evidence pertains only or mostly to the presence of one of the Accused at a given location. As noted, Rule 140(4)(a) provides that conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine. Furthermore, as already noted, the Prosecution is intent on presenting other evidence in support of that fact. If it does so, the Defence will be in a position to test and challenge that evidence.

91. The Panel will admit the photo boards as integral parts of the offered records, but it will approach these documents with great caution. The Panel will assess the weight, if any, it can give to the photo boards in light of all relevant circumstances, and in light of the fact that the process by which the photo boards were prepared and the identification conducted is for the most part unknown.

92. With regard to the requirements of Rule 138(1), the Panel is satisfied that this evidence is relevant (in particular, in respect of alleged crimes committed in Kukës

⁹⁴ See, generally, ICTY, *Prosecutor v Limaj et al*, IT-03-66T, [Judgment](#), 20 November 2005, para 17; ICTY, *Prosecutor v Delalić et al*, IT-96-21-A, [Appeal Judgment](#), 20 February 2001, paras 491 and 506; ICTY, *Prosecutor v Kunarac et al*, IT-96-23 & 23/1-T, Decision on Motion for Acquittal, 3 July 2000 ("Kunarac Decision"); ICTY, *Prosecutor v Vasiljević*, IT-98-32-T, [Trial Judgment](#), 29 November 2002, para. 16; and ICTY, *Prosecutor v Kupreškić et al*, IT-95-16-A, [Appeal Judgement](#), 23 October 2001, paras 34 and 40.

in or around May/June 1999) and *prima facie* authentic and probative. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

93. The Panel accepts that some of the records offered by SPO are duplicative and/or repetitious. However, the Panel is prepared in this case to admit all offered records as their consistency (or otherwise) might be relevant to assessing the reliability of the proposed evidence and might ensure that all relevant aspects of the proposed evidence is before the Panel.

94. Accordingly, the Panel finds that W01448's tendered statements are admissible pursuant to Rules 138(1) and 155.

7. W04733

95. The SPO submits that the Proposed Evidence of W04733 is: (i) relevant;⁹⁵ (ii) authentic and reliable;⁹⁶ and (iii) its admission would not cause undue prejudice.⁹⁷

96. The Panel notes that the SPO has submitted the following Proposed Evidence of W04733: (i) [REDACTED]; (ii) [REDACTED] [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED]; and (x) [REDACTED]⁹⁸

97. The Defence objects to the admission of W04733's Proposed Evidence. In particular it objects to the allegation that Mr Krasniqi [REDACTED]. The Defence argues that the identification of Mr Krasniqi lacks probative value and it is prejudicial to admit it without possibility of cross-examination.⁹⁹ The Defence also objects to the identification of Mr Krasniqi and Mr Thaçi in Kukës. The Defence

⁹⁵ Motion, paras 41-42.

⁹⁶ Motion, para. 43.

⁹⁷ Motion, para. 44.

⁹⁸ Annex 7 to the Motion.

⁹⁹ Response, para. 72.

alleges that the limited probative value of this evidence is outweighed by its prejudicial effect.¹⁰⁰ Lastly, the Defence raises other credibility issues. In particular, the Defence argues that the witness' identification in one statement of [REDACTED] is not credible because elsewhere he notes being mistreated by [REDACTED].¹⁰¹ In this regard, the Defence argues that much of W04733's identification evidence appears to be hearsay and he refused to reveal the source of his information, thus preventing the Defence from confronting it.¹⁰²

98. The Panel notes that the SPO has submitted W04733's death certificate.¹⁰³ The Defence does not question the death of the witness or his unavailability.¹⁰⁴ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

99. With regard to the *prima facie* reliability of W04733's Proposed Evidence, the Panel notes that: (i) statements [REDACTED] were taken by duly empowered law enforcement authorities or are transcripts of the witness's testimony in trial proceedings; (ii) W04733 was duly advised of his rights and obligations as a witness; (iii) the statements were all signed by the witness, the interpreters and/or the officials conducting the hearing; and (iv) were all given voluntarily and freely. Two of these records were made under oath and with the possibility of Defence and judicial questioning.¹⁰⁵ The Panel also notes the general consistency of the accounts given in relation to relevant substantive issues.

100. The Panel notes, however, that the evidence of the witness is not entirely reliable in relation to two instances of purported identification: one pertaining to

¹⁰⁰ Response, para. 74.

¹⁰¹ Response, para. 76.

¹⁰² Response, para. 76.

¹⁰³ Annex 17, item no.7: 106419-106419.

¹⁰⁴ Response, para. 30.

¹⁰⁵ 107258-107300; SPOE00013793-00013900 RED.

Mr Jakup Krasniqi and another in relation to [REDACTED] These are addressed further below.

101. Other challenges raised by the Defence to the reliability of the proposed evidence are matters of weight. None would render the proposed evidence so unreliable as to bring it below the *prima facie* threshold relevant to admission. The Panel will consider the Defence's submissions pertaining to the witness's injuries and eyesight when evaluating the weight to be given to this witness's evidence.

102. Thus, with the above qualifications, the Panel finds that W04733's prior statements are *prima facie* reliable.

103. The Panel notes that limited sections of the statements refer to facts or circumstances that might go to the acts and conduct of the Accused. In particular, part of witness's statements refers to the identification of Mr Thaçi and Mr Krasniqi in Kukës. The Panel is mindful that Rule 155(5) does not prevent the introduction of this type of evidence, providing instead that this element "may be a factor against the admission of such evidence, in whole or in part". In the instant case, the Panel finds that the probative value of the evidence is not outweighed by undue prejudice. In particular, the Panel notes that the SPO is intent on bringing other witnesses to testify to the same fact, which the Defence will be able to challenge. Furthermore, the Panel notes that there is no indication of internal inconsistencies in the account of the witness on that point that would raise questions of *prima facie* reliability. Furthermore, as noted above already, a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine.

104. As already noted, the witness also gave evidence of one instance of a person whom he believed to be Jakup Krasniqi [REDACTED] and one where he believes he saw [REDACTED] in a particular context. If accepted, these would be instances of evidence relevant to acts and conduct of the Accused insofar as it could be

relevant to establishing knowledge of relevant facts if not relevant actions by two of the Accused. These two instances are discussed further below.

105. With regard to the requirements of Rule 138(1), the Panel is satisfied that this evidence is relevant (in particular, in respect of alleged crimes committed in Kukës in or around [REDACTED] [REDACTED]) and *prima facie* authentic and probative.

106. With two qualifications addressed below, the Panel is satisfied that the probative value of the evidence of this witness is not outweighed by its prejudicial effect. As already noted, much of the proposed evidence does not go to issues of acts and conduct of the Accused. The Defence will be able to question a number of SPO witnesses who will be called to give evidence on many of the same general circumstances and facts. The Panel will conduct its assessment of the evidence of this witness at the end of the trial, in light of the entire body of evidence admitted before it at trial.

107. However, the Panel notes that the sections of the statements that refer to the identification of Mr Krasniqi [REDACTED] [REDACTED] [REDACTED] are unreliable and are highly prejudicial to the Accused. Furthermore, the Panel notes that the incident recounted by the witness is not expressly mentioned in the Indictment (or in the SPO Pre-Trial Brief). This witness is the only one to give evidence of such an incident. If admitted, the Defence would have no fair opportunity to confront this account. In light of the foregoing, the Panel finds that the probative value of the submitted evidence outweighs any prejudice to the rights of the Accused with the exception of the sections [REDACTED] with W04733 that alleges that Mr Krasniqi [REDACTED]. The same is true of the witness's identification of [REDACTED] being present during his mistreatment at the detention site [REDACTED]. The Panel notes that there is the real possibility that the witness was confused about the identity of the individual concerned. The Panel notes that this incident is not mentioned in the Indictment or in the SPO Pre-Trial Brief and finds that the Defence would have no fair opportunity to challenge

that evidence should it be admitted. On that basis, the Panel excludes these two discrete aspects of the witness's evidence and will not admit the relevant parts of the witness's statements that pertain to these matters.

108. The Panel shares the Defence's concern regarding the number and size of the proposed statements. The multiplication of statements is unlikely in general to contribute to the quality of the record. In this particular instance, however, the Panel is prepared to admit these statements as the consistency of accounts might be relevant to establishing the reliability of the witness's evidence in the absence of cross-examination and judicial questions. The Panel notes, however, that it will be the responsibility of the SPO to ensure that those parts of the records on which it seeks to rely are clearly identified at the relevant stages of the proceedings and that each of those is properly contextualised.

109. Accordingly, the Panel finds that W04733's tendered statements, with the exception of the occurrences mentioned above, are admissible pursuant to Rules 138(1) and 155. The Panel orders the SPO to re-file versions of the relevant witness's statements expurgated from any references to the two incidents of purported identification which the Panel has refused to admit.

8. W04848

110. The SPO submits that the Proposed Evidence of W04848 is: (i) relevant;¹⁰⁶ (ii) authentic and reliable;¹⁰⁷ and (iii) its admission would not cause undue prejudice.¹⁰⁸

111. The Panel notes that the SPO has submitted the following Proposed Evidence of W04848: (i) SPRK Record of Witness Hearing of Witness W04848, [REDACTED] in the investigation against Sabit Geci and Xhemshit Krasniqi; and (ii) District

¹⁰⁶ Motion, para. 45.

¹⁰⁷ Motion, para. 46.

¹⁰⁸ Motion, para. 47.

Court of Mitrovica Record of the Main Trial in *Sabit Geci and Riza Alija*, Witness Hearing of W04848.¹⁰⁹

112. The Defence argues that without the ability to cross-examine the witness on the details of his statement, the probative value of W04848's evidence is outweighed by its prejudice.¹¹⁰ It submits that W04848's testimony contains an allegation involving the Accused [REDACTED] that cannot be corroborated or challenged and therefore that portion of W04848's testimony should not be admitted.¹¹¹

113. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W04848's death certificate.¹¹² The Defence does not question the death of the witness or the witness's unavailability.¹¹³ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

114. With regard to the *prima facie* reliability of W04848's prior statements, the Panel notes that the witness's hearing transcripts contain: (i) an indication of the people present, case number, date, time and place of the hearings; (ii) the statement given to the Public Prosecutor has the signature of the witness, the Public Prosecutor, the interpreter and two court reporters; (iii) the witness personal details, warning and acknowledgment. Moreover, the witness was subject to cross-examination in the Main Trial in *Sabit Geci and Riza Alija*. The witness made the statements voluntarily and freely, before duly empowered official authorities. One of these was given under oath and the witness was subject to questioning in respect of it.¹¹⁴ The account given on that occasion did not differ,

¹⁰⁹ Annex 8 to the Motion.

¹¹⁰ Response, para. 79.

¹¹¹ Response, para. 80, *referring to* [REDACTED].

¹¹² Annex 17, item no.8: 108716-108716.

¹¹³ Response, para. 30.

¹¹⁴ SITF00013123- SITF00013153 RED.

materially, from the other tendered record. The Panel also notes the general consistency of the evidence given.

115. Thus, the Panel finds that W04848's prior statements are *prima facie* reliable.

116. With regard to the objection of the Defence that W04848's testimony contains an allegation pertaining to [REDACTED]. First, the Panel reiterates that Rule 155 does not prohibit the admission of evidence, *even when* it pertains to the acts and conduct of the Accused. Secondly, the Panel does not regard this evidence as pertaining to the acts and conduct of the Accused *as charged in the Indictment*. The SPO has not alleged that the events and circumstances described by the witness in this case goes to prove an element of any of the charged offences or modes of liability alleged against [REDACTED]. In addition, Rule 155 exclusively concerns witnesses who are not available for cross-examination. The Panel may admit such a witness statement if the Panel is satisfied that the requirements for admission as prescribed under Rule 155 are met.¹¹⁵

117. With regard to the requirements of Rule 138(1), the Panel finds the proposed evidence to be relevant (in particular, in respect of charged events in Kukës in spring 1999 and in relation to the KLA's investigative capabilities and efforts) and *prima facie* authentic and probative.

118. With regard to whether the probative value of the Proposed Evidence is outweighed by its prejudicial effect, the Panel notes that W04848's evidence does not go to proof of the acts and conduct of the Accused. The Panel notes, furthermore, that the Defence did not identify any specific aspect(s) of the proposed evidence which it disputes (other than the incident involving [REDACTED]). The Panel also considers that evidence pertaining to some of the same facts and circumstances will be offered by witnesses which the Defence will

¹¹⁵ ICTY, *Prosecutor v. Milutinovic et al*, IT-05-87-T, [Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 quater](#), 16 February 2007, para. 9.

be able to question. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

119. Accordingly, the Panel finds that W04848's tendered statements are admissible pursuant to Rules 138(1) and 155.

9. W01984

120. The SPO submits that the Proposed Evidence of W01984 is: (i) relevant;¹¹⁶ (ii) authentic and reliable;¹¹⁷ and (iii) its admission would not cause undue prejudice.¹¹⁸

121. The Panel notes that the SPO has submitted the following Proposed Evidence of W01984: (i) [REDACTED]; and (ii) [REDACTED].¹¹⁹

122. The Defence argues that the SPO has not established that W01984 is unable to testify and that in any event the two statements are not sufficiently reliable to be admitted, given the prejudicial effect of admitting the evidence without cross-examination.¹²⁰ The Defence also alleges that W01984's evidence is also inconsistent with other witnesses.¹²¹

123. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W01984's [REDACTED].¹²² The Panel is satisfied, on the evidence before it, that this [REDACTED] would prevent the witness to testify effectively should he be required to appear before the Panel. The Panel is further satisfied that cross-examination of the witness would not provide an effective means of testing the witness's evidence due to [REDACTED].

¹¹⁶ Motion, para. 48.

¹¹⁷ Motion, para. 49.

¹¹⁸ Motion, para. 50.

¹¹⁹ Annex 9 to the Motion.

¹²⁰ Response, paras 82 and 86.

¹²¹ Response, para. 87.

¹²² Annex 17, item 9: 106514-106519-ET RED.

In those circumstances, the Panel finds that the witness is unable to testify within the meaning of Rule 155(1)(a).

124. With regard to the *prima facie* reliability of W01984's prior statements, the Panel notes that the statements contain: (i) the signature of the witness, the interpreter and the interviewer; (ii) the case number, date, time and place of the interview; (iii) the name and roles of the persons present during interview; and (iv) the witness personal details. Moreover, they were taken by duly empowered enforcement authorities and the statements were given voluntarily and freely. The account given by the witness is generally consistent over the course of time and interviews. The Panel notes that [REDACTED]. Instead, the consistency of his account and the specificity of the information he provided suggests that he was able at the time to give voluntary and informed accounts of relevant facts and circumstances.

125. The inability of the Defence to cross-examine the witness will impact the weight that the Panel might be prepared to give to that evidence. It does not, however, call for its exclusion. Furthermore, and consistent with the above, such evidence will need corroboration to be relied upon by the Panel.

126. Other objections raised by the Defence are matters for the Panel to consider when weighing this evidence in light of all relevant evidence. The Defence's reliance upon information provided by the [REDACTED] is misplaced. As noted above, the Panel is not prepared to rely upon information that is not offered for admission as a basis to decide issues of admissibility of evidence. Should the Defence wish to rely upon the statement of another witness to challenge the weight, if any, to be given to W01984, it would have to produce that statement evidence at trial.

127. The Panel, therefore, finds that W01984's prior statements are *prima facie* reliable.

128. The Panel notes that, upon review, the evidence contained in witness W01984's prior statements does not go to proof of the acts and conduct of the Accused as charged in the indictment. The Defence did not suggest otherwise.

129. With regard to the requirements of Rule 138(1), the Panel is satisfied that the proposed evidence is relevant (in particular, in respect of events at and crimes allegedly committed in Kukës [REDACTED] [REDACTED]), *prima facie* authentic and probative.

130. The Panel notes that W01984's evidence does not go to proof of the acts and conduct of the Accused. The Panel further notes that the Defence did not identify any specific aspect(s) of the proposed evidence which it disputes in the evidence of this witness. The Panel also considers that evidence pertaining to many of the same facts and circumstances will be offered by witnesses which the Defence will be able to question. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

131. Accordingly, the Panel finds that W01984's tendered statements are admissible pursuant to Rules 138(1) and 155.

10. W01143

132. The SPO submits that the Proposed Evidence of W01143 is: (i) relevant;¹²³ (ii) authentic and reliable;¹²⁴ and (iii) its admission would not cause undue prejudice.¹²⁵

133. The Panel notes that the SPO has submitted the following Proposed Evidence of W01143: (i) [REDACTED] [REDACTED]; (ii) [REDACTED] [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; and (v) [REDACTED].¹²⁶

¹²³ Motion, paras 53-54.

¹²⁴ Motion, para. 55.

¹²⁵ Motion, para. 56.

¹²⁶ Annex 10 to the Motion.

134. The Defence opposes the admission of W01143's evidence in its entirety,¹²⁷ in particular: (i) it questions the authenticity and/or reliability of the record from the [REDACTED];¹²⁸ (ii) in relation to [REDACTED] [REDACTED], it raises the point that neither document includes a version in Serbian (W01143's native language);¹²⁹ (iii) regarding the other [REDACTED] records ([REDACTED]) the Defence objects to the admission of a hand-drawn map annexed to item 2, as it is not mentioned in the corresponding statement and it is not signed by W01143;¹³⁰ (iv) it suggests that the first [REDACTED] statement of [REDACTED], is irrelevant and deals with issues outside the scope of the case;¹³¹ (v) it suggests that the statement is "inconsistent and contradictory on significant details";¹³² and (vi) it raises issues with the SPO's submissions about the corroboration of W01143's evidence by other witnesses.¹³³

135. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].¹³⁴ The Defence does not question the death of the witness or the witness's unavailability.¹³⁵ The Panel thus considers that the witness is unavailable within the meaning of Rule 155(1)(a).

136. With regard to the *prima facie* reliability of W01143's prior statements, the Panel notes that they: (i) contain indication of time, date and place; and (ii) the witness's personal details. Moreover, most of the statements contain the signature of the witness and all were given voluntarily and freely, before duly empowered official authorities. At the same time, the Panel notes that none of the statements

¹²⁷ Response, para. 88-99.

¹²⁸ Response, para. 89.

¹²⁹ Response, para. 90.

¹³⁰ Response, para. 92.

¹³¹ Response, para. 93.

¹³² Response, para. 94.

¹³³ Response, paras 95-99.

¹³⁴ Annex 17, items no.10.1-10.3.

¹³⁵ Response, para. 30.

was given under oath and none was subject to cross-examination. The proposed records are, however, generally consistent in respect of material issues over time and across information-gathering entities. The Panel does not accept the Defence's suggestion that the origin of one of the proposed items ([REDACTED]) renders it unreliable and/or inadmissible. The claim to the contrary is unsubstantiated. Furthermore, legibility issues raised by the Defence do not render the document incomprehensible in any material way, nor does it affect the Panel's ability to evaluate the proposed evidence.

137. With regard to the Defence's suggestion of inconsistencies, contradictions¹³⁶ and lack of corroboration,¹³⁷ the Panel notes the following. First, regarding corroboration, the Panel reiterates that corroboration is not a pre-condition to admission and the absence thereof is not ground for refusal to admit evidence. Secondly, and contrary to the Defence's suggestion, the substance of this witness's account will be subject to further evidence by witnesses whom the SPO proposes to call to give evidence at trial. The Defence will be able to question and challenge those witnesses. Thirdly, as already noted, a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine. The Panel will assess alleged inconsistencies and contradiction, when it considers the probative value and weight to be given to the witness's evidence. In particular, the Panel will assess alleged inconsistencies regarding the witness's interaction with [REDACTED] (or failures to mention this interaction on certain occasions) when assessing the probative value and weight to be given to that witness's evidence. The purported inconsistencies do not constitute grounds to refuse the admission of this witness's proposed evidence.

138. In relation to [REDACTED] statements of [REDACTED], the Defence raises the point that neither document includes a version in Serbian (i.e., W01143's native

¹³⁶ Response, paras 93-95.

¹³⁷ Response, paras 95-99.

language) which it claims 'poses a particular issue' in respect of the second statement which is also said to contain spelling, grammatical and syntax errors. First, the Panel notes that the absence of a Serbian version of the statement does not render it inadmissible. The Panel agrees, however, that this consideration when added to the absence of signature in respect of the [REDACTED] statement raises questions about whether the record of that interview constitutes a reliable and complete record of the account given by the witness. The Panel further notes that this is a record of information received from W01143 and of another individual [REDACTED]. There is only one sentence that is directly attributed to the witness and which pertains to his recollection of one victim ([REDACTED]). It is unclear whether that pertains to [REDACTED].

139. In contrast, the statement of [REDACTED] is signed by the witness, who may be taken to have adopted its content.

140. The Defence also objects to the admission of a map annexed to the statement of [REDACTED], on the ground that (a) is not signed by the witness but only the recording officer as having been drawn by the witness and (b) the handwritten is in English thereby suggesting that this was 'co-authored' by the recording officer. The Panel finds that whether the map was drawn up by the witness alone or with the assistance of the recording officer, its content was adopted by the witness as is apparent from the annotation. The fact that this was done on the English version does not demonstrably affect the reliability of this particular element of the offered record.

141. Based on the above, the Panel finds that, but for the [REDACTED] statement of [REDACTED], W01143's prior statements are *prima facie* reliable. [REDACTED] statement of [REDACTED] will not be admitted.

142. The Panel notes that, upon review, the evidence contained in witness W01143's prior statements does not go to proof of the acts and conduct of the Accused as charged in the indictment. The Defence did not suggest otherwise.

143. Regarding the requirements of Rule 138(1), the Panel is satisfied that the proposed evidence is relevant. In particular, it pertains, *inter alia*, to charged crimes, to the role of the military police in the arrest, detention and mistreatment of alleged victims, and the logistics involved in the detention, transport and mistreatment of detainees. The fact that certain aspects or elements of the witness's evidence might be irrelevant or secondary does not render the offered evidence inadmissible. The Panel will simply disregard those aspects that it considers not relevant to the case. The Panel is also satisfied, with the caveat stated above, that the proposed evidence is *prima facie* authentic and probative.

144. With regard to whether the Proposed Evidence is not outweighed by its prejudicial effect to the Accused, the Panel notes that W01143's evidence does not go to acts and conduct of the Accused. The Panel further notes that, by the Defence's own account, some aspects of the proposed evidence are not central to the case. Furthermore, the Panel observes that the SPO made it clear in its submissions that various aspects of this witness's evidence will be subject to evidence by other witnesses, whom the Defence will be able to question and challenge. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

145. Accordingly, the Panel finds that, but for [REDACTED] statement of [REDACTED], W01143's tendered statements and one associated map are admissible pursuant to Rules 138(1) and 155. The [REDACTED] statement of [REDACTED] is not admitted.

11. W02618

146. The SPO submits that the Proposed Evidence of W02618 is: (i) relevant;¹³⁸ (ii) authentic and reliable;¹³⁹ and (iii) its admission would not cause undue prejudice.¹⁴⁰

147. The Panel notes that the SPO has submitted the following Proposed Evidence of W02618: (i) redacted version of SPO, Transcript of Witness Interview of W02618; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; and (vi) [REDACTED].¹⁴¹

148. The Defence opposes the admission of: (i) witness interviews of individuals other than W02618, and evidence of W02618 which appears to be based on these inadmissible interviews; and (ii) evidence outside the temporal scope of the Indictment or which does not relate to crimes alleged therein.¹⁴²

149. The SPO replies that the Defence wrongly claims that the SPO has redacted significant information about the witness advisories given to W02618 and erred in failing to explain the content and provisions of [REDACTED] as compared to warnings under the Rules.¹⁴³ Lastly, the SPO argues that the arguments by the Defence are contradictory attempts to exclude relevant and probative evidence.¹⁴⁴

150. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W02618's death certificate.¹⁴⁵ The Defence does not question the death of the witness or the witness's

¹³⁸ Motion, para. 57.

¹³⁹ Motion, paras 58-59.

¹⁴⁰ Motion, para. 60.

¹⁴¹ Annex 11 to the Motion.

¹⁴² Response, para. 100.

¹⁴³ Reply, para. 10.

¹⁴⁴ Reply, para. 11.

¹⁴⁵ Annex 17, item no.11: 108132-108132-ET.

unavailability.¹⁴⁶ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

151. With regard to the *prima facie* reliability of W02618's prior SPO statement, the Panel notes that: (i) it was recorded in a transcript; (ii) the interview was conducted by duly authorised public officials, including by SPO representatives and the Chief of the Police from W02618's local jurisdiction; (iii) the witness was duly advised of his rights and obligation as a witness; (iv) it contains details of the date, time and all persons present during the interview; (v) it contains W02618's confirmation that the contents of his statement are true and accurate; (vi) it was given voluntarily and freely; and (vii) during the SPO interview, W02618 discussed and authenticated multiple [REDACTED] reports that were all signed by the witness.

152. Thus, the Panel finds that W02618's prior statements and associate exhibits are *prima facie* reliable.

153. With regard to the issues of authenticity and reliability raised by the Defence,¹⁴⁷ the Panel will decide this claim not based on [REDACTED], but on the law that regulates these proceedings. A failure to comply with [REDACTED] would only be relevant insofar as it would be indicative of a failure to comply with the fundamental rights of the individual concerned. There is no such indication in this case. The advisement received by the witness contains no indication of unfairness or inadequacy.

154. In addition, regarding the Defence's complaint that the interview of W02618 contains various redactions to the information relied upon by the SPO, the Panel notes that those were made at the request of [REDACTED] and do not affect the

¹⁴⁶ Response, para. 30.

¹⁴⁷ Response, paras 101-103.

comprehensibility of the statement. It does not affect the reliability of the record, nor does it cause unfairness to the Defence.

155. The Panel notes that, upon review, the evidence contained in witness W02618's prior statements does not go to proof of the acts and conduct of the accused as charged in the indictment.

156. Regarding the requirements of Rule 138(1), the Panel is satisfied that the proposed evidence is relevant, (in particular in respect of events at and crimes allegedly committed in Prizren between July and August 1999), *prima facie* authentic and probative.

157. With regard to the Defence's allegation that some parts of W02618's interview and associated exhibits refer to the investigation of incidents that have no connection to the Indictment, the Panel finds that, in general, the evidence is relevant to a variety of other issues, including: (i) the alleged role of the military police; (ii) the presence/absence of an effective system of accountability; (iii) the suggested failure of certain individuals to take reasonable steps to prevent/punish those; and (iv) the alleged widespread or systematic attack on a civilian population. Should the Panel determine that any aspect of the witness's evidence is not relevant to the determination of the charges, it will disregard that evidence.

158. The Defence also submits that the record of an exchange between the witness and Nexhmedin Krasniqi should not be admitted as it would circumvent the rules on admission of statements/records of interview.¹⁴⁸ That is incorrect. Rule 155 does not carve out an exception to the admission of this sort of evidence. The evidence being offered here is the hearsay evidence of W02618 about an exchange which he said he had with Nexhmedin Krasniqi. What weight, if any, will be given to this evidence is a matter to be determined by the Panel at the end of the case.

¹⁴⁸ Response, paras 102-103.

159. The Defence also objects to the admission of evidence that the military police continued to operate after June 1999 under the authority of Rexhep Selimi as this is a most important issue in the case.¹⁴⁹ First, the Panel notes that Rule 155 does not exclude evidence going to acts and conduct of the Accused. Assuming, therefore, that this evidence is relevant thereto, it would not be rendered inadmissible for that reason alone. Secondly, it is questionable whether the evidence in fact pertains to the acts and conduct of the Accused as it pertains not to anything done or said by Mr Selimi, but to the actions of individuals alleged to have been subordinated to him for a time. As noted above, acts of subordinates do not fall within the scope of the notion of 'acts and conduct of the accused'.¹⁵⁰ Thirdly, if it is a part of the SPO case to establish the continued existence and functioning of the military police during the period from June 1999 and September 1999 and its involvement in the commission of crimes, it will have to meet the applicable standard of proof. As noted above, evidence of a dead and unavailable witness could not serve as sole or decisive basis for such a finding. It is therefore to be expected that, if the SPO pursues such a case, it will call evidence that the Defence will be able to challenge on that point. For these reasons, the Panel refuses to exercise its discretion in rejecting admission of that part of the witness's evidence.

160. The Panel is also satisfied that the proposed evidence is *prima facie* authentic and probative.

161. With regard to whether the probative value of the Proposed Evidence is outweighed by its prejudicial effect, the Panel reiterates that W02618's evidence does not go to proof the acts and conduct of the Accused. The Panel further notes that the Defence did not identify any specific aspect(s) of the proposed evidence which it disputes. The Panel also considers that evidence pertaining to many of

¹⁴⁹ Response, para. 105.

¹⁵⁰ See above, para. 14.

the same facts and circumstances will be offered by witnesses which the SPO will call and which the Defence will be able to question. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

162. The Panel is satisfied that W02618's Associated Exhibits ([REDACTED]) were discussed in the W02618's statement and form an indispensable and inseparable part of the evidence. The Panel is further satisfied that they fulfil the requirements for admission as an associated exhibit under Rules 138(1) and 155.

163. Accordingly, the Panel finds that W02618's tendered statement and associate exhibits are admissible pursuant to Rules 138(1) and 155.

12. W04783

164. The SPO submits that the Proposed Evidence of W04783 is: (i) relevant;¹⁵¹ (ii) authentic and reliable;¹⁵² and (iii) its admission would not cause undue prejudice.¹⁵³

165. The Panel notes that the SPO has submitted the following Proposed Evidence of W04783: (i) redacted version of UNMIK witness statement of W04783 [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED].¹⁵⁴

166. The Defence argues that W04783's is unreliable pointing to what it claims are inconsistencies in his statements and testimony, rendering his evidence inadmissible.¹⁵⁵

167. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W04783's death certificate.¹⁵⁶ The Defence does not question the death of the witness or the witness's

¹⁵¹ Motion, para. 62.

¹⁵² Motion, para. 63.

¹⁵³ Motion, para. 64.

¹⁵⁴ Annex 12 to the Motion.

¹⁵⁵ Response, paras 106-108.

¹⁵⁶ Annex 17, item no.12: 106523-106524.

unavailability.¹⁵⁷ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

168. With regard to the *prima facie* reliability of W04783's prior statements, the Panel notes that: (i) the evidence provided [REDACTED] were professionally recorded and done with an interpreter understood by the witness; (ii) the witness was duly advised of his rights and obligations; (iii) the date, time and place of the proceedings, as well as, all persons present, are reflected in the records; (iv) W04783 confirmed that the contents of his previous testimony were accurate; and (v) the statements were given voluntarily and freely. The Panel also notes that three of the four items being tendered were given under oath and subject to questioning. The Panel does not accept that the timing of the oath on one occasion had any material effect on the content or reliability of the record. The Panel also notes that none of the inconsistencies pointed to by the Defence affect the substance and consistency of the witness's evidence in respect of facts material to this case. Insofar as such inconsistencies have been established, they would be relevant to the question of weight to be given to his evidence, if any. Furthermore, the suggestion that the presence of one page in French renders the evidence unreliable is again without merit. There is no indication that the record was in any way affected by the language or languages used during the interviews. The Panel notes in that regard that the witness also confirmed the substance of his earlier accounts when he gave evidence in court.

169. Thus, the Panel finds that W04783's prior statements are *prima facie* reliable.

170. The Panel finds that, upon review, the evidence contained in witness W04783's prior statements does not go to proof of the acts and conduct of the accused as charged in the indictment. The Defence did not suggest otherwise.

¹⁵⁷ Response, para. 30.

171. The Panel also finds that the requirements of Rule 138(1) are met in respect of the proposed evidence. The evidence is relevant, inter alia, to a crime charged in the indictment. The evidence is also *prima facie* authentic and probative.

172. With regard to whether the probative value of the Proposed Evidence is outweighed by its prejudicial effect, the Panel reiterates that W04783's evidence does not go to proof the acts and conduct of the Accused. Furthermore, the Defence has already questioned a witness who gave evidence regarding certain aspects of this witness's account. Based on the SPO's submissions and witness list, the Defence will have an opportunity to cross-examine several more witnesses in respect of the same incident. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

173. Accordingly, the Panel finds that W04783's tendered statements are admissible pursuant to Rules 138(1) and 155.

13. W04829

174. The SPO submits that the Proposed Evidence of W04829 is: (i) relevant;¹⁵⁸ (ii) authentic and reliable;¹⁵⁹ and (iii) its admission would not cause undue prejudice.¹⁶⁰

175. The Panel notes that the SPO has submitted the following Proposed Evidence of W04829: redacted version of UNMIK Statement of W04829.¹⁶¹

176. The Defence submits that the statement of W04829 is inaccurate¹⁶² and has insufficient indicia of *prima facie* reliability.¹⁶³ It argues that the cross-examination of other witnesses does not sufficiently compensate for the inability to cross-

¹⁵⁸ Motion, paras 65-67.

¹⁵⁹ Motion, para. 68.

¹⁶⁰ Motion, para. 69.

¹⁶¹ Annex 13 to the Motion.

¹⁶² Response, para. 112.

¹⁶³ Response, para. 116.

examine W04829.¹⁶⁴ Lastly, it submits that the evidence of W04829 directly relates to the acts and conduct of the JCE members and, indirectly, the Accused themselves.¹⁶⁵

177. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted: (i) [REDACTED]; and (ii) [REDACTED].¹⁶⁶ The Defence does not question the death of the witness or the witness's unavailability.¹⁶⁷ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

178. With regard to the *prima facie* reliability of W04829's prior statement, the Panel notes that the interviews were officially recorded and bear the case number, date, time and place, name and roles of the persons present, witness details and relevant signatures. The Panel notes, however, that the statements were not given under oath and were not subject to cross-examination. This would be relevant to deciding what probative value and weight to attach to that evidence.

179. The Panel also takes note of the Defence's submissions regarding the role/position of this witness and alleged motives. The Panel agrees with the Defence to the extent only that the evidence offered by this witness is primarily of a hearsay nature and, in some instances, is unsourced. This consideration will impact the weight which the Panel might be prepared to give to that evidence, if any. This does not render the proposed evidence inadmissible. Ultimately, this matter will be decided based on the entirety of the evidence led in relation to facts and circumstances in relation to which he provides evidence.

180. Furthermore, the Panel does not agree that the absence of an express reference to the legal basis relied upon by UNMIK to collect this information renders it

¹⁶⁴ Response, para. 121.

¹⁶⁵ Response, para. 113.

¹⁶⁶ Annex 17, item no.13.1: SITF00297366-00297368.

¹⁶⁷ Response, para 30.

inadmissible. As already noted, admission is decided by the Panel based on its own Rules, interpreted in light of the Law and relevant human rights safeguards. None of these require an express indication of the legal basis relied upon by a third party to collect information. And the absence of such an indication has not been shown to raise an issue of fairness.

181. The Defence also appears to question the attributability of these statements to the witness. The Panel notes that the statements are signed and thus adopted by the witness. There is no indication that the record is incomplete, inadequate or suffers from any other shortcomings.

182. Thus, the Panel finds that W04829's prior statements are *prima facie* reliable.

183. Contrary to the Defence's suggestions, the Panel notes that, upon review, the evidence contained in witness W04829's prior statement does not go to proof of the acts and conduct of the accused as charged in the indictment.

184. The Panel is satisfied that the requirements of Rule 138(1) are met. The evidence is relevant, in particular in respect of crimes charged in the indictment. The statements are also *prima facie* authentic as there is no indication that they are anything than what they claim to be. They contain various markings and indications of their origin, source and nature. The content of the information is also probative of facts relevant to this case.

185. With regard to whether the probative value of the Proposed Evidence is not outweighed by its prejudicial effect to the accused, the Panel notes that W04829's evidence does not go to proof the acts and conduct of the Accused. The Panel further notes that the Defence did not identify any specific aspect(s) of the proposed evidence which it disputes. The Panel also considers that evidence pertaining to many of the same facts and circumstances will be offered by witnesses which the Defence will be able to question. The Panel also notes that the Defence has already been able to put questions to one witness ([REDACTED])

regarding the arrest, detention and disappearance of several of the victims relevant to the evidence of this witness. The SPO has indicated that it is intent on calling additional witnesses to testify about some of these incidents, which the Defence will again be able to question and confront. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

186. Accordingly, the Panel finds that W04829's tendered statement is admissible pursuant to Rules 138(1) and 155.

14. W01456

187. The SPO submits that the Proposed Evidence of W01456 is: (i) relevant;¹⁶⁸ (ii) authentic and reliable;¹⁶⁹ and (iii) its admission would not cause undue prejudice.¹⁷⁰

188. The Panel notes that SPO has submitted the following Proposed Evidence of W01456: (i) ICTY Witness Statement of W01456; (ii) [REDACTED]; (iii) letter to Adem DEMACI from [REDACTED]; (iv) letter from [REDACTED] to Adem DEMACI; (v) copy of Blacklist including W01456's name; (vi) letter from [REDACTED] addressed to Adem DEMACI; (vii) letter addressed to Adem DEMACI signed by [REDACTED]; and (viii) [REDACTED].¹⁷¹

189. The Defence objects to the admission of any portion of the W01456's ICTY statement U008-2500-U008-2535 RED2 relating to acts and conduct of the Accused, the uncorroborated allegations of W01456 and the excerpt of 119 pages from [REDACTED] book [REDACTED].¹⁷²

¹⁶⁸ Motion, paras 71-72.

¹⁶⁹ Motion, paras 73-75.

¹⁷⁰ Motion, para. 76.

¹⁷¹ Annex 14 to the Motion.

¹⁷² Response, para. 124.

190. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W01456's online obituary "in memoriam: [REDACTED] passes away".¹⁷³ The Defence does not question the death of the witness or the witness's unavailability.¹⁷⁴ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

191. With regard to the *prima facie* reliability of W01456's prior statement and associated exhibits, the Panel notes that: (i) the record of W01456's interview conducted by the ICTY in July 2004 reflects the date, time and place of the interview, the persons present, and the fact that the interpreter was understood by the witness; and (ii) W01456 confirmed in writing that the statement's contents were accurate to the best of his knowledge and recollection. The Panel notes that items 2-9 consist of records provided by W01456 during the ICTY Interview and/or discussed during that interview and are an integral part of it.¹⁷⁵ The Panel also notes that the witness did not provide information under oath and his account was not subject to judicial evaluation or cross-examination. Thus, the Panel finds that W01456's prior statement and associated exhibits are *prima facie* reliable.

192. Regarding the requirements of Rules 138(1), the Defence does not dispute the general relevance of the proposed evidence of this witness and the Panel is satisfied that the evidence is indeed relevant to a variety of issues in the case (including the existence and nature of the alleged armed conflict; the structure and functioning of the KLA, and its origin; the role and position of the Accused therein; the treatment of 'collaborators'). The Panel is also satisfied that the proposed evidence is authentic and probative.

193. Regarding the question of prejudicial effect, the Panel notes the following. While most aspects of the evidence of the proposed witness have no demonstrably

¹⁷³ Annex 17, item no.14: 110526-110529-ET.

¹⁷⁴ Response, para. 30.

¹⁷⁵ Annex 14 to the Motion, item 2-9.

prejudicial effect upon the Accused, two elements of the proposed evidence could have that effect. First, the proposed evidence contains a suggestion that the Accused Rexhep Selimi threatened the witness on one occasion and allegedly planned to kill him. In light of the context of those allegations, this could constitute evidence relevant to the acts and conduct of the Accused or at least provide prejudicial evidence relevant to certain inferences sought by the SPO from the Panel. The evidence is uncorroborated and the SPO does not suggest that it will call evidence capable of corroborating that account. It is, furthermore, given by a witness whom the Accused Mr Selimi would not be able to cross-examine and challenge in respect of these assertions. Furthermore, as noted above, this evidence was not given under oath and was not tested in any way. On that basis, the Panel finds that the admission of this part of the proposed evidence would cause undue prejudice that outweighs the probative value of that part of the witness's evidence.

194. The Panel also notes that the SPO is offering to tender a number of letters and a 'blacklist' of people allegedly to be killed by the KLA. Very little context is provided for these documents, other than the evidence of this witness. Considering that the proposed witness is not to be called to testify and that no other witness has been identified who could provide context and corroboration for these documents, the Panel finds that admission of those for the truth of their content would cause prejudice to the Defence. Therefore, the Panel refuses to admit these as associated exhibits.

195. The Panel has fully considered the Defence submissions in relation to the alleged prejudice that the admission of other aspects of the evidence would cause to the Defence. While the Panel acknowledges that certain aspects of the witness's evidence might be incriminating and might go to the acts and conduct of the Accused (or at least come close to it), the prejudicial effect of such evidence would not outweigh its probative value. In particular, the witness's account of the creation, structure and membership of the KLA is, to some extent, hearsay

evidence. The nature of that evidence will be accounted for when assessing the probative value and weight of that evidence. Furthermore, the SPO has indicated that these issues, and the Accused's positions and roles within the KLA, would be subject to a great many more witnesses. The Defence will get to cross-examine those witnesses.

196. The SPO has also proposed admission of excerpts of a book. The SPO has failed to identify with any specificity the part or parts in these excerpts on which it seeks to rely. The SPO has also failed to establish, in respect of them, the basis of its claim that they are probative within the meaning of Rule 138(1). Until that is done, the Panel is not prepared to admit that evidence.

197. Accordingly, the Panel finds that the ICTY statement of the witness is admissible pursuant to Rules 138(1) and 155 and will be admitted aside from the parts containing the allegations against Mr Selimi. The Prosecution is directed to prepare and tender a version of that document from which the impugned section is redacted. The Panel will not admit at this stage the offered excerpts from the book [REDACTED]. Should the SPO seek to tender parts or sections of this book, it shall clearly identify the parts or sections on which it seeks to rely and establish their relevance and probative value. Regarding the letters 'associated' to the statement, the Panel refuses to admit them.

15. W04597

198. The SPO submits that the Proposed Evidence of W04597 is: (i) relevant;¹⁷⁶ (ii) authentic and reliable;¹⁷⁷ and (iii) its admission would not cause undue prejudice.¹⁷⁸

199. The Panel notes that the SPO has submitted the following Proposed Evidence of W04597: (i) five ICTY transcripts of interview with W04597 dated 24 March

¹⁷⁶ Motion, paras 77-79.

¹⁷⁷ Motion, paras 80-82.

¹⁷⁸ Motion, para. 83.

2006; (ii) ICTY witness statement of W04597, dated 24 September 2010; (iii) ICTY witness supplementary statement of W04597 dated 30 August 2011; (iv) two transcripts from the ICTY trial IT-04-84bis *Prosecutor v. Hardinaj*, witness W04597;¹⁷⁹ and (v) six Associated Exhibits.¹⁸⁰

200. The Defence argues that the admission of all W04597's statements and in-court testimony is unnecessary and no justification for seeking to admit substantially similar statements is provided. It objects to the admission of W04597's evidence that relates to the acts and conduct of the Accused.¹⁸¹ The Defence observes that the Panel should admit only W04597's ICTY testimony and associated exhibits.¹⁸²

201. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W04597's death certificate.¹⁸³ The Defence does not question the death of the witness or the witness's unavailability.¹⁸⁴ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

202. With regard to the *prima facie* reliability of W04597's prior statements and associated exhibits, the Panel notes that: (i) W04597's ICTY statements (24 March 2006 and 24 September 2010) were taken by a duly empowered investigator, and orally translated into a language understood by the witness by an interpreter; (ii) both statements contain a witness acknowledgement and an interpreter certification, are signed by the witness and initialled on all pages; (iii) in the supplementary statement dated 30 August 2011, W04597 confirmed his signature on and discussed the content of his ICTY statements of 24 March 2006 and

¹⁷⁹ Annex 15 to the Motion, item 1-9.

¹⁸⁰ Annex 15 to the Motion, item 10-15.

¹⁸¹ Response, para. 134.

¹⁸² Response, para. 137.

¹⁸³ Annex 17 to the Motion, item no. 15: 108719-10719.

¹⁸⁴ Response, para. 30.

24 September 2010; (iv) the audio-video recorded examination conducted before ICTY contains the date, time and place of the testimony which was under oath; and (v) the associated exhibits were discussed and/or authenticated or confirmed by the witness. The Panel notes that this witness gave evidence under oath before the ICTY and was subject to cross-examination. His account generally remained consistent with the version he had earlier given to the Office of the Prosecutor of the ICTY. Thus, the Panel finds that W04597's prior statement and associated exhibits are *prima facie* reliable.

203. The Panel notes that, upon review, some portions of the evidence contained in witness W04597's prior statements go to proof of the acts and conduct of the Accused. The Panel recalls that Rule 155(5) does not prevent the introduction of this type of evidence, providing instead that this element "may be a factor against the admission of such evidence, in whole or in part". The Panel finds that the probative value of this part of the evidence is not outweighed by undue prejudice to the Defence. First, the scope and effect of his evidence pertaining to the acts and conduct of the Accused is limited, both in substance and scope. Secondly, it pertains to events that the SPO proposes to visit with several other witnesses. The Defence will get to cross-examine those among them that the SPO in fact calls at trial.

204. Regarding specific aspects of his evidence which the Defence is objecting to, the Panel finds as follows.¹⁸⁵ First, these aspects of the witness's evidence appears to be corroborated, to some extent, by the evidence of another unavailable witness.¹⁸⁶ While this might further the SPO's demonstration of the evidence's reliability and probative value, it does little to render the right of the Defence to confrontation more effective. In relation to the first meeting recounted by the witness, the SPO also points as corroboration to proposed exhibit SPOE00225756-

¹⁸⁵ Response, paras 135-136.

¹⁸⁶ See, *infra*, [REDACTED].

SPOE00225759-ET. This document is, however, yet to be offered and the Panel will not pre-judge its admissibility. Furthermore, the SPO has indicated its intention to call at least two witnesses ([REDACTED] and W04752) who might be able to provide evidence regarding this meeting, and which the Defence will get to question about it. Furthermore, the Panel reiterates that it will not base any material finding prejudicial to the Defence on evidence which the Defence was unable to challenge, which provides an important additional safeguard to ensure the fairness of proceedings.

205. Regarding the requirements of Rule 138(1), the Defence does not dispute the relevance of the evidence of this witness and the Panel is satisfied that the evidence is indeed relevant to a variety of issues in the case. The Panel is also satisfied that the evidence is *prima facie* authentic and probative. As noted above, the account of this witness was repeated over a long period of time and remained generally consistent. His evidence was tested through cross-examination and was given under oath before the ICTY.

206. With regard to whether the probative value of the Proposed Evidence is not outweighed by its prejudicial effect to the Accused, the Panel notes that W04597's evidence is complemented and corroborated by statements of other witnesses in the case. In light of the foregoing, the Panel finds that the probative value of the submitted evidence is not outweighed by its prejudicial effect.

207. The Panel notes that the exhibits associated with W04597's testimony and statements were discussed therein and/or were authenticated and/or confirmed by the witness. There is no indication that these documents are unreliable. Unless they are subject to other corroborating evidence, the Panel will however approach them with caution when assessing what weight, if any, to give to them. Therefore, the Panel is satisfied that they form an integral part of his evidence and meet the requirements for admissibility pursuant to Rule 138(1).

208. The Defence questions the need to tender not just the record of the witness's testimony before the ICTY but also the records of his earlier interviews and statements. The Panel shares the Defence's concern that the admission of those records of interviews and statements are necessary, at least in their entirety. The Panel accepts the SPO's general proposition that the tendering of successive records might enable the Panel to conduct a more thorough and effective assessment of a dead witness's credibility by evaluating the consistency of his or her evidence over time and across institutions. At the same time, such an approach might result in large quantities of duplicative evidence making their way onto the records without significant forensic benefits. For these reasons, the Panel is prepared to admit the records of interviews and statement of the witness, in addition to his court testimony for the purpose of enabling a fair and thorough assessment of the witness's credibility. However, as far as relying upon the substance of his accounts to establish facts and circumstances relevant to the case, the Panel will order the SPO to specifically identify those parts or aspects of the witness's records of interview and statement upon which it seeks to rely and which are not also provided for in the transcript of the witness's testimony before the ICTY.

209. Accordingly, the Panel finds that W04597's tendered statements and associated exhibits are admissible pursuant to Rules 138(1) and 155. However, and for reasons outlined above, the Panel orders the SPO to identify in the transcript of interview of March 2005 and statement of 24 September 2010 which part(s) or paragraph(s) it seeks to rely upon which is not also reflected in the transcript of the witness's record of testimony before the ICTY.

16. W04836

210. The SPO submits that the Proposed Evidence of W04836 is: (i) relevant;¹⁸⁷ (ii) authentic and reliable;¹⁸⁸ and (iii) its admission would not cause undue prejudice.¹⁸⁹

211. The Panel notes that the SPO has submitted the following Proposed Evidence of W04836: (i) UNMIK witness statement of W04836, dated 26 November 2002; (ii) District Court Peja witness statement of W04836, dated 2 July 2002; and (iii) book entitled *Keshtu foli Tahir Zemaj* parts 1 and 2.¹⁹⁰

212. The Defence argues that W04836's evidence does not relate to any crimes alleged in the indictment and it adds little if anything beyond what will be provided by other SPO witnesses whose evidence was, or will be, adduced under circumstances more conducive to assessing their reliability. It also submits that the evidence of W04836 that includes allegations on the acts and conduct of the Accused should be excluded, as it would be unfairly prejudicial for such hearsay evidence to be admitted in the absence of any meaningful opportunity for the Defence to challenge it.¹⁹¹

213. With regard to the requirement of unavailability of the witness to testify orally, the Panel notes that the SPO has submitted W04836's Kosovo Police Service Final Report.¹⁹² The Defence does not question the death of the witness or the witness's unavailability.¹⁹³ The Panel therefore considers that the witness is unavailable within the meaning of Rule 155(1)(a).

¹⁸⁷ Motion, paras 84-86.

¹⁸⁸ Motion, paras 87-89.

¹⁸⁹ Motion, para. 90.

¹⁹⁰ Annex 16 to the Motion.

¹⁹¹ Response, para. 139.

¹⁹² Annex 17 to the Motion, item no 16.1: U016-6858-U016-6861, and item no 16.2: U016-6910-U016-6911.

¹⁹³ Response, para. 30.

214. With regard to the *prima facie* reliability of W04836's prior statements and associated exhibits, the Panel notes that: (i) the statement given by W04836 on 26 November 2002 was taken by a duly authorised panel of judges, in the framework of the case against *Idriz BALAJ et al.*, in a session open to the public, in the presence of the Defence counsels, and was duly recorded; (ii) W04836 was advised of his rights and obligations as a witness; (iii) the testimony was given voluntarily and freely; (iv) the prior statement dated 2 July 2002 was taken in the framework of criminal investigations by duly empowered officials, in the presence of the defence counsels and duly recorded; and (v) W04836 was advised of his rights and obligations and gave his statement freely and voluntarily. The Panel also notes that the UNMIK statement of 26 November 2002 was given under oath and was subject to cross-examination, while the W04836's statement before the district Court Peja on 2 July 2002 was not. In addition, the Panel finds that the evidence is generally consistent across the offered records in relation to issues generally relevant to this case.

215. On the basis of the above, the Panel finds that the proposed witness statements are *prima facie* reliable. The Panel also finds that the tendering of both records added context and substance to the proposed evidence and contributes to the Panel's ability to assess the credibility of this witness and the reliability of W04836's evidence.

216. Regarding the proposed 'associated exhibit', the Panel notes that the book has already been admitted in the second Rule 154 Decision.¹⁹⁴ Therefore the request about this exhibit is moot.

217. The Panel notes that, upon review, some portions of the evidence contained in witness W04836's prior statements might go to proof of the acts and conduct of the Accused. The Panel reiterates that Rule 155(5) does not prevent the

¹⁹⁴ F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154*, 9 June 2023, para. 91.

introduction of this type of evidence, providing instead that this element “may be a factor against the admission of such evidence, in whole or in part”. The SPO has indicated that the substance of the witness’s evidence will also be elicited from other, purportedly corroborating, witnesses.¹⁹⁵ The Defence will get the opportunity to question these witnesses and challenge those aspects of their evidence they take issue with. Furthermore, any aspect of this witness’s evidence that cannot otherwise be tested by the Defence will be treated with the caution that it warrants. And no material finding prejudicial to the Accused will be based solely or in a decisive manner on evidence which the Defence could not challenge. On that basis, the Panel finds that the probative value of the proposed evidence is not outweighed by its prejudicial effect and will exercise its discretion to admit that evidence.

218. The Panel is also satisfied that the proposed evidence is *prima facie* authentic and probative. With regard to relevance, the Panel finds that the proposed statement and exhibit are relevant to issues in the case (in particular, in respect of the alleged contextual elements, an alleged campaign of persecution, the alleged common purpose and implementation, the alleged contribution of some of the Accused to that purpose and the general organisation and structure of the KLA and the power and authority of the General Staff). As noted above, the Panel has determined that the probative value of the proposed evidence is not outweighed by its prejudicial effect.

219. Accordingly, the Panel finds that W04836’s tendered statements are admissible pursuant to Rules 138(1) and 155.

¹⁹⁵ Request, para. 90.

VI. DISPOSITION

220. In light of the above, the Panel **GRANTS** the SPO Rule 155 Motion, in part, and **ADMITS** in evidence the offered statements and records of the following witnesses with the caveats outlined above: W00100; W04416; W04418; W04589; W04835; W01448; W04848; W02618; W04783; W04829; W01984; W04733 (under the conditions set out in paragraph 109), W01143 (under the conditions set out in paragraph 145), W01456 (under the conditions set out in paragraph 197), and W04597 (under the conditions set out in paragraph 209).



Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 14 June 2023

At The Hague, the Netherlands.