

**In:** KSC-BC-2020-06  
**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,  
Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

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

**Date:** 18 September 2023

**Language:** English

**Classification:** Public

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**Joint Defence Response to 'Prosecution request for admission of items used  
during the examination of W04746'**

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## I. INTRODUCTION

1. W04746 testified before the Trial Panel across six hearing days, between 11 and 18 July 2023.<sup>1</sup> During the SPO's lengthy direct examination and re-examination of W04746, a large number of documents were presented to the witness, including extracts from books, documents prepared by the KLA and his own prior statements. Following the conclusion of the SPO direct examination, and in light of the large volume of items in question, the SPO proposed that it would issue a filing regarding the list of items it wished to tender as exhibits. This proposal was approved by the Presiding Judge.<sup>2</sup>

2. The SPO now seeks to admit extracts from 27 separate items,<sup>3</sup> pursuant to Rules 138(1) and 143(2) of the KSC Rules.<sup>4</sup> This includes three categories of material: (i) documents used with W04746;<sup>5</sup> (ii) prior statements used with W04746;<sup>6</sup> and (iii) items being tendered by the Defence.<sup>7</sup>

3. The Defence objects to the admission of one item used with W04746,<sup>8</sup> and to the admission of the extracts of 14 separate prior inconsistent statements that were put to W04746 during his testimony, which the SPO seeks to admit pursuant to Rule

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<sup>1</sup> See KSC-BC-2020-06, Transcript of Hearing (W04746 Testimony), 11 July 2023, pp. 5468-5507; KSC-BC-2020-06, Transcript of Hearing (W04746 Testimony), 12 July 2023 ("Transcript of 12 July 2023"), pp. 5508-5609; KSC-BC-2020-06, Transcript of Hearing (W04746 Testimony), 13 July 2023 ("Transcript of 13 July 2023"), pp. 5610-5686; KSC-BC-2020-06, Transcript of Hearing (W04746 Testimony), 14 July 2023 ("Transcript of 14 July 2023"), pp. 5687-5804; KSC-BC-2020-06, Transcript of Hearing (W04746 Testimony), 17 July 2023 ("Transcript of 17 July 2023"), pp. 5805-5928; KSC-BC-2020-06, Transcript of Hearing (W04746 Testimony), 18 July 2023, pp. 5929-5969.

<sup>2</sup> Transcript of 14 July 2023, p. 5692, lines 1-11.

<sup>3</sup> KSC-BC-2020-06/F01771, Prosecution request for admission of items used during the examination of W04746, 7 September 2023 ("SPO Request"), and its associated Annex ("Annex 1").

<sup>4</sup> KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 ("Rules").

<sup>5</sup> See Annex 1, items 1-6.

<sup>6</sup> See Annex 1, items 7-20.

<sup>7</sup> See Annex 1, items 21-27. The Thaçi and Krasniqi defence teams indicated in *inter partes* correspondence the items to be tendered, based on documents used during cross-examination.

<sup>8</sup> See *infra*, paras. 27-29.

143(2)(c). As was previously submitted by the Defence,<sup>9</sup> Rule 143(2)(c) of the KSC Rules does not provide a legal basis to admit, wholesale, prior inconsistent statements of a witness. Instead, Rule 143(2)(c) permits the calling party to put its case to a witness using a prior inconsistent statement on a question-by-question basis.<sup>10</sup> In these circumstances, the question and answer interaction regarding the statement becomes the witness' evidence, rendering admission of the underlying material superfluous. However, if admission of the underlying extracts is considered appropriate, the Panel should only admit the precise extracts from the prior statements that were read to the witness, and on which he or she specifically commented. Any further admission of evidence beyond the portions cited to the witness would lead to a violation of the fundamental rights of the accused to examine the witness and test their evidence,<sup>11</sup> and would also be overly burdensome to an already bloated evidential record.

4. Moreover, Rule 143(2)(c) applies only where a question was put to the witness by the calling party, and the witness's answer is deemed inconsistent with a prior statement. Accordingly, where an issue in a prior statement was never put to the witness at trial, the issue in the statement can never be deemed a "prior inconsistent statement," and therefore Rule 143(2)(c) does not apply.

## II. APPLICABLE LAW

5. Rule 138(1) of the KSC Rules provides the general rule for admissibility of evidence, noting that "[u]nless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect."

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<sup>9</sup> KSC-BC-2020-06, Transcript of Hearing (Procedural Matters), 13 September 2022 ("Transcript of 13 September 2023"), p. 7964.

<sup>10</sup> KSC-BC-2020-06, Transcript of Hearing (Procedural Matters), 11 September 2022, p. 7699.

<sup>11</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law"), Article 21(4)(f).

6. Rule 143(2) of the KSC Rules sets the parameters for a Party who called a witness to question the witness about various matters relevant to their credibility. The starting point is that a Party must seek the leave of the Panel prior to taking any of the measures set out in Rule 143(2). Most relevantly, Rule 143(2)(c) provides the calling Party may question a witness about:

(c) whether the witness has, at any time, made a prior inconsistent statement. Any such prior inconsistent statement may be admissible for the purpose of assessing the credibility of the witness, as well as for the truth of its contents or for other purposes within the discretion of the Panel.

7. Paragraph 107 of the Order on the Conduct of Proceedings<sup>12</sup> provides further guidance on the application of Rule 143(2)(c):

107. Consistent with Rule 143(2), where a witness gives evidence unfavourable to the calling party, is evasive or contradicts a prior statement he/she made, the calling Party can seek leave from the Panel to: (i) confront the witness with an earlier statement and, where appropriate; (ii) to have such statement admitted; and/or (iii) to ask leading questions of the witness in respect of the issues affected by one of the above circumstances.

8. On 22 May 2020, a Panel of the Constitutional Court considered proposed amendments to Rule 143(2), concerning the admission into evidence of a witness' prior (inconsistent) statement.<sup>13</sup> The Constitutional Court recalled that an accused has a right to examine witnesses against him, which is a specific right to a fair trial that must be taken into account in any assessment of the fairness of proceedings.<sup>14</sup> While noting that the use of statements obtained outside of the evidentiary phase of proceedings is not incompatible with the rights of the accused, "these rights require that the accused be given an adequate and proper opportunity to challenge and question a witness

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<sup>12</sup> KSC-BC-2020-06/F01226/A01, Annex 1 – Order on the Conduct of Proceedings, 25 January 2023 ("Order on the Conduct of Proceedings").

<sup>13</sup> KSC-CC-PR-20-09/F00006, Constitutional Court Panel: Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 22 May 2020 ("Constitutional Court Decision"), para. 77.

<sup>14</sup> Constitutional Court Decision, para. 77, citing Articles 31(2) and (4) of the Constitution, and Articles 6(1) and 6(3)(d) of the ECHR.

against him or her either when that witness is making a statement or at a later stage of the proceedings.”<sup>15</sup>

### III. SUBMISSIONS

9. The Defence does not object to the admission of the majority of the materials identified in the category ‘Documents used with W04746’, on the basis that the cited extracts were put to the witness during testimony.<sup>16</sup>

10. However, the Defence objects to the admission of:

- (i) the excerpt from Mr. Krasniqi’s book, U015-8864 and U015-8864-ET;<sup>17</sup> and
- (ii) the excerpts from 14 separate prior statements of W04746.<sup>18</sup> The SPO seeks admission of these statements both for the truth of their contents, and for the purpose of assessing the credibility of the witness.<sup>19</sup>

11. The Defence objects to the admission of these items for the following reasons.

#### A. ADMISSION OF PRIOR INCONSISTENT STATEMENTS PURSUANT TO RULE 143(2)

12. The practice of this court to date, as reinforced by the terms of Rule 143(2)(c) itself, establishes a clear procedure to be followed to put a prior inconsistent statement to a witness. The procedure is triggered when a calling party asks a question during direct examination, and the witness gives an answer which differs from the answer given in a prior statement. The calling party then seeks leave to present the witness with the excerpt of the prior statement that relates to the contradictory answer in question. The relevant portion of the prior statement is read into the record, and the

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<sup>15</sup> Constitutional Court Decision, para. 78.

<sup>16</sup> See Annex 1, pp. 1-2.

<sup>17</sup> See *infra*, paras. 27-29.

<sup>18</sup> See Annex 1, ‘Prior Statements used with W04746’, items 7-20.

<sup>19</sup> SPO Request, para. 9.

witness is given the opportunity to respond, again, on the record. This process is repeated **every time** the calling party wishes to confront the witness with allegedly contradictory evidence. Thus, in practice, this procedure operates on a question-by-question basis only.<sup>20</sup> This was also the procedure that the SPO attempted to follow each time it wished to refer to individual extracts of a prior statement of W04746.<sup>21</sup>

13. It follows that the correct interpretation of Rule 143(2)(c) is that an entire prior inconsistent statement, or even excerpts thereof, can only be admitted if the calling party puts every question in the statement to the witness while they are testifying.<sup>22</sup> Rule 143(2)(c) should not function as a “Trojan horse”, where only a few questions raising prior inconsistent statements are put to the witness, and then an entire statement, or large sections thereof, is admitted into evidence.<sup>23</sup>

14. Where matters contained in the statement were never put to the witness during testimony, those matters cannot be deemed “*prior*” and “*inconsistent*”, because the witness never gave any *viva voce* answer from which the prior statement could be “*inconsistent*.” Accordingly, Rule 143(2)(c) by its plain terms cannot apply to matters in prior statements that were never put to the witness during trial.

15. The material sought to be tendered by the SPO as prior inconsistent statements of W04746 comprises nearly 70 pages of material. This figure must also be considered in the context of: (i) the more than 500 pages of transcripts comprising W04746’s evidence, across his six days of testimony; (ii) the fact W04746 was presented with prior inconsistent statements on approximately 30 occasions; and (iii) the fact that the cited portions generally only amount to a few lines on each of these pages. It cannot

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<sup>20</sup> See similar submissions made orally by Counsel: Transcript of 13 September 2023, p. 7964, ll. 6-14.

<sup>21</sup> Note the examples identified in paragraph 24 below, where all elements of this procedure were either not attempted or not successfully completed (at least on the record).

<sup>22</sup> Transcript of 13 September 2023, p. 7965, ll. 13-15.

<sup>23</sup> Transcript of 13 September 2023, p. 7964, ll. 15-18. See also summary provided by Counsel at p. 7965, l. 25 to p. 7966, l. 6

be the correct interpretation of Rule 143(2)(c) that, because W04746 made a handful of inconsistent statements, contained within a few lines of prior statements, the remainder of the 500 pages of his sworn testimony are rendered redundant, because all of the prior statements have been admitted.

16. The SPO repeatedly seeks to tender an entire page of a document, in circumstances where only a few lines from the page were quoted to the witness. For example, the SPO seeks to tender two pages from SPOE00119393-00119399,<sup>24</sup> when the portions cited to W04746 during his testimony comprise only six lines.<sup>25</sup> The SPO also seeks to tender two pages of 082894-TR-ET Part 17 RED,<sup>26</sup> when only three lines were put to W04746 during his testimony.<sup>27</sup> In total, the portions quoted to W04746 during his testimony comprise less than 25% of the evidentiary material that the SPO now seeks to have admitted.<sup>28</sup> From another perspective, this means that approximately 75% of the evidence contained in the excerpts that the SPO seeks to admit was not put to the witness during his testimony.

17. Given the unread information was not put to the witness, the Defence did not cross-examine W04746 about these portions. Consistent with ICC jurisprudence,<sup>29</sup> the Defence cannot be expected to independently elicit other incriminating information that may be contained in these excerpts, when such information was not put to the witness first during direct examination. As such, admitting information that was not explicitly put to the witness would be a violation of the fundamental fair trial rights

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<sup>24</sup> See Annex 1, item 7.

<sup>25</sup> Transcript of 12 July 2023, pp. 5592 & 5594.

<sup>26</sup> See Annex 1, item 20.

<sup>27</sup> Transcript of 12 July 2023, p. 5512.

<sup>28</sup> This was calculated on the basis of the number of lines of evidentiary material per page, and the number of lines that were quoted to the witness during testimony.

<sup>29</sup> ICC, *Prosecutor v. Ruto & Sang*, ICC-01/09-01/11-2024, Appeals Chamber: Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony", 12 February 2016, para. 93.

of the accused, by admitting incriminating evidence against him without giving him an adequate and proper opportunity to cross-examine the witness on that evidence.<sup>30</sup> This is also consistent with the decision of the Constitutional Court, outlined above.<sup>31</sup>

18. In addition, the Defence submits that the admission of the extracts is superfluous, and will unnecessarily burden the record. In accordance with the terms of Rule 143(2)(c), the relevant portions of the prior inconsistent statements were read out, and therefore captured in the record, along with W04746's response. In these circumstances, it is this question and answer process which forms the basis of the witness' evidence, without the necessity to also admit the excerpt of the original document.

19. For the same reasons, the Defence also strongly objects to the SPO's alternative proposal to admit the cited statements in their entirety.<sup>32</sup> In fact, such an approach would lead to even greater violations of the rights of the accused, and cause a larger burden to the record of the proceedings.

20. Relatedly, the Defence understands that the reference to a 'statement' in Rule 143(2)(c) is not limited to a sworn or official statement. Instead, the language of Rule 143(2)(c) indicates that a statement may comprise any previous utterance of the witness on the relevant topic, including unofficial statements or media interviews.<sup>33</sup> Whilst the SPO submits that W04746's prior statements are relevant, reliable and probative; were made before a court or the SPO; and that the date, time and those present are recorded,<sup>34</sup> some of the prior statements the SPO seeks to admit do not reach the admissibility requirements established by Rule 138(1). For example, two of

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<sup>30</sup> Transcript of 13 September 2023, pp. 7951-7952.

<sup>31</sup> See discussion in paragraph 8 above. See also Constitutional Court Decision, para. 79.

<sup>32</sup> SPO Request, para. 8.

<sup>33</sup> Transcript of 13 September 2023, p. 7965.

<sup>34</sup> SPO Request, para. 6.



the prior inconsistent statements that the SPO seeks to tender for W04746 are excerpts of his closing speeches during the Kosovo local proceedings.<sup>35</sup> Closing speeches or closing arguments are **not** sworn testimony, and in fact occur after the evidentiary portion of proceedings have concluded.<sup>36</sup> Thus, by their very nature, and contrary to the submissions made by the SPO,<sup>37</sup> these items do not have the same indicia of reliability and probative value of statements which are taken under oath, before a court or tribunal and subject to cross-examination. Again, it cannot be correct to assert that Rule 143(2)(c) permits such unsworn statements to be admitted in their entirety (or in large part), for the truth of their contents.

21. This interpretation of Rule 143(2)(c) is also consistent with paragraph 107 of the Order on the Conduct of Proceedings. As a starting point, the paragraph clearly states in its opening line that it must be interpreted “[c]onsistent with Rule 143(2)”. As outlined above, Rule 143(2) does not provide the Panel with the power to admit, in full, prior statements for which leave was granted to put these to a witness. In these circumstances, the reference in the Order on the Conduct of Proceedings to the fact that the calling party may seek leave of the Panel to admit the prior inconsistent statements cannot be interpreted in a way that changes the clear requirements of Rule 143(2); namely, that only excerpts of statements that are put to a witness explicitly, and which are *inconsistent* with oral evidence given at trial, may be admitted. The Panel cannot endow themselves with more power than is given by the statutory documents underlying this Court. In particular, the Panel has no authority to admit entire statements into evidence pursuant to Rule 143(2)(c) where most of the matters contained in the statements were never put to the witness during his trial testimony, and therefore cannot be deemed “*inconsistent*” for purposes of Rule 143(2)(c).

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<sup>35</sup> See Annex 1, items 9 and 10.

<sup>36</sup> See, e.g., Code No. 08/L-032 Criminal Procedure Code of Kosovo, Article 323(1.5), noting the order of presentation for the main trial and listing closing statements last in the order.

<sup>37</sup> SPO Request, para. 6.

22. Finally, the Defence notes that, had the SPO wanted to tender all, or large portions of, W04746's prior statements, the correct route to do so would have been under Rule 154. While the SPO did notify the parties *inter partes* on 7 July 2023 of its intention to make a belated application to admit materials pursuant to Rule 154, this was correctly dismissed by the Trial Panel as failing to comply with the deadlines set by the Panel, being prejudicial to the Defence and not warranted in the circumstances.<sup>38</sup> Since the SPO chose not to take the Rule 154 route at the appropriate time, it should not be permitted to circumvent the requirements now. This is all the more true given the problems the Defence identified with W04746's SPO interview – specifically, the manner in which he was questioned and, oftentimes, badgered, by SPO investigators.<sup>39</sup>

23. Thus, the Defence submits that only the specific questions and answers that were put to W04746 during his examination by the SPO are covered by Rule 143(2)(c). This is the only interpretation that pays due regard to the fundamental rights of the accused, is consistent with the Rule's requirement that the witness has made a statement at trial that is "*inconsistent*" with a prior statement, and does not overly burden the record. In accordance with this interpretation, no excerpts of the prior statements of W04746 are admissible, as the relevant portions are already part of the evidential record of the proceedings. However, if the Panel considers that admission of the original extracts put to the witness is warranted, the Defence submits that the proper course is to redact from these excerpts all of the questions and answers that were not explicitly put to the witness during his examination.

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<sup>38</sup> KSC-BC-2020-06, Transcript of Hearing (Procedural Matters), 10 July 2023, Oral Order – pp. 5354-5355.

<sup>39</sup> KSC-BC-2020-06, Transcript of Hearing, 10 July 2023, pp. 5268-5269.

## B. PROCEDURAL ISSUES

24. The Defence also notes that there are a number of issues with the citations given by the SPO, and the corresponding information provided in Annex 1. The following list is not exhaustive, but a representative sample of the types of issues encountered by the Defence while reviewing the materials:

- (i) The Defence was unable to locate the reference to 082894-TR-ET Part 4, which was said to be on page T-5559 of the transcript of 13 July 2023.<sup>40</sup>
- (ii) The pages from the Albanian version of 082894-TR-AT Part 3 Revised which the SPO has proposed to tender do not include all of the citations given in the corresponding English version. While the SPO referred to 082894-TR-ET Part 3, pages 2 and 25,<sup>41</sup> the corresponding pages in the Albanian versions are not included in Annex 1.<sup>42</sup>
- (iii) There is at least one example where the Prosecutor gave an incorrect citation for a portion of the witness' SPO transcript during the examination, and this error has been carried into the Annex. While the Prosecution cited to "Part 5, page 10 in English",<sup>43</sup> the cited portion is contained on 082894-TR-ET Part 5, page 11.<sup>44</sup> Most problematically, the correct page is not sought to be admitted, while the incorrect page (containing no cited material) is.<sup>45</sup>

25. Should the Panel deem it appropriate to admit the excerpts sought by the SPO, the Defence requests that the SPO be ordered to undertake a thorough review and

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<sup>40</sup> See Annex 1, item 13.

<sup>41</sup> Transcript of 17 July 2023, p. 5836, ll. 7-17; p. 5846 l. 20 to p. 5847 l. 7.

<sup>42</sup> The corresponding pages in the Albanian version, 082894-TR-AT Part 3, are: pages 2-3 and page 33 (respectively).

<sup>43</sup> Transcript of 13 July 2023, p. 5619, l. 13.

<sup>44</sup> See 082894-TR-ET Part 5, p. 11, ll. 9-14.

<sup>45</sup> See Annex 1, item 14.

analysis of the excerpts cited during the witness' testimony, to ensure the correct portions (in all languages) are admitted.

26. Further, following a review of the transcript extracts cited by the SPO in Annex 1, the Defence has identified approximately 15 occasions<sup>46</sup> where the SPO referred to a prior inconsistent statement of W04746, without leave being explicitly granted to do so. This includes examples where no clear request was even made.<sup>47</sup> This is in contravention of the terms of Rule 143(2)(c) of the KSC Rules and paragraph 107 of the Order on the Conduct of Proceedings, which allow for the admission of a prior inconsistent statement only where leave has been granted by the Trial Panel to put the matter to the witness. Given that the Prosecution has failed to satisfy the procedural requirements provided in the KSC Rules and the Order, the excerpts of these items should not be considered for admission.

#### C. OBJECTION TO U015-8864 AND U015-8864-ET

27. In particular, the Defence oppose the SPO request to admit one page of Mr. Krasniqi's book.<sup>48</sup> At the outset, the Defence recalls that in the Second Bar Table Motion Decision, the Trial Panel limited the admission of the book to the specific pages

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<sup>46</sup> This includes examples where a request may have been made, but no approval is reflected in the record. *See*: Transcript of 12 July 2023, p. 5512 [referring to 082894-TR-ET Part 17 RED, p.2], p. 5513 [referring to 082894-TR-ET Part 2 RED, p.24], p. 5567 [referring to 082894-TR-ET Part 3, p.29], p. 5592 [referring to SPOE00119393-00119399, p.119396]; Transcript of 13 July 2023, p. 5653 [082894-TR-ET Part 4, pp.2-3], pp. 5664-5665 [referring to SPOE00087289-SPOE00087291, p.87290 & 082894-TR-ET Part 11, p.6]; Transcript of 17 July 2023, pp. 5830-5831 [referring to 082894-TR-ET Part 2 RED, pp.24-25]; p. 5832 [referring to 082894-TR-ET Part 5, p.13], pp. 5835 [referring to SPOE00119393-00119399, p.119331], pp. 5836-5838 [referring to 082894-TR-ET Part 3, p.2, SPOE00119028-00119032, p.9030 & 082894-TR-ET Part 7 RED, p.9], pp. 5846-5848 [referring to 082894-TR-ET Part 3, pp.25 & 29]

<sup>47</sup> *See, e.g.*, Transcript of 12 July 2023, p. 5567 [referring to 082894-TR-ET Part 3, p.29]; Transcript of 17 July 2023, pp. 5830-5831 [referring to 082894-TR-ET Part 2 RED, pp.24-25], p. 5832 [referring to 082894-TR-ET Part 5, p.13], pp. 5836-5838 [referring to 082894-TR-ET Part 3, p.2, SPOE00119028-00119032, p.9030 & 082894-TR-ET Part 7 RED, p.9].

<sup>48</sup> SPO Request, para. 5(a). *See also* Annex 1, item 5.

that the SPO had identified as relevant to its case in its Pre-Trial Brief.<sup>49</sup> The Trial Panel further directed the SPO, should it seek to tender any other page(s) of Mr. Krasniqi's book, to: (i) make a new application to that effect in respect of the relevant page(s) or section(s) and (ii) explain their relevance to its case.<sup>50</sup> The SPO seeks admission of U015-8864 and its English translation "as used with W04746".<sup>51</sup> No further explanation is provided as to the relevance of the specific page to the SPO's case.

28. Moreover, W04746 did not verify the content of the requested item. During the witness' testimony, the SPO read a passage of the said page to W04746 referring to "daily communications by phone" and asked him whether they had regular or daily contact with the General Staff.<sup>52</sup> W04746's response was that whilst they had contact continuously, it depended on the definition of the word 'regular'.<sup>53</sup> The SPO did not offer any further clarification. In addition, W04746 had denied having daily contact with the General Staff in his interview with the SPO.<sup>54</sup>

29. Lastly, the reference to "daily communications" cannot be reduced to the Llap zone, to which W04746 is in a position to testify. The specific page belongs to a section of the book describing visits to the Shala and Llap zones and contains no mention of W04746. For all these reasons, the Trial Panel should deny admission into evidence of the requested item through W04746.

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<sup>49</sup> KSC-BC-2020-06/F01596, Trial Panel II: Second Decision on Specialist Prosecutor's Bar Table Motion, 9 June 2023, para. 24.

<sup>50</sup> *Ibid.*

<sup>51</sup> SPO Request, para. 5(a).

<sup>52</sup> Transcript of 12 July 2023, p. 5526, ll. 8-16.

<sup>53</sup> *Ibid.*, p. 5526, ll. 17-18.

<sup>54</sup> See 082894-TR-ET Part 3, p. 5.

D. RESPONSE TO SPO OBJECTION TO DJK00205-DJK00205

30. The SPO opposes the admission of DJK00205-DJK00205 on the basis of inadequate information.<sup>55</sup> First, the photograph the Defence seeks to tender was obtained from Mr. Nuredin Ibishi's Facebook page.<sup>56</sup> Second, it was published in 2021 and constitutes a contemporary record of Mr. Ibishi's membership to the LDK party. Third, the SPO mischaracterises W04746's testimony in relation to the requested item. The witness was shown the photograph in the context of a series of questions relating to the LDK, and W04746 was able to: (i) identify Mr. Ibishi; (ii) confirm that Mr. Ibishi had joined the LDK; and (iii) used the same nickname that he had during the war.<sup>57</sup> W04746 was thus able to verify the requested item and it should be admitted into evidence.

#### IV. CONCLUSION

31. For the above reasons, the Defence respectfully requests the Trial Panel to:

**REJECT** the SPO Request as it relates to the admission of excerpts of prior inconsistent statements of W04746;

**REJECT** the SPO Request as it relates to the admission of U015-8864 and U015-8864-ET; and

**ADMIT** DJK00205-DJK00205, as tendered by the Krasniqi Defence;

**OR**, in the alternative,

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<sup>55</sup> SPO Request, para. 10. *See also* Annex 1, item 25.

<sup>56</sup> *See*, <https://www.facebook.com/photo.php?fbid=2800998110152425&set=pb.100007267903649.-2207520000&type=3>

<sup>57</sup> Transcript of 12 July 2023, p. 5823, ll. 13-20.

**REJECT** the SPO Request for those excerpts where the SPO was not granted leave to refer to the prior inconsistent statement in question;

**ORDER** the SPO to redact from the excerpts all information that was not explicitly put to W04746 while testifying; and

**ORDER** the SPO to undertake a review to ensure that all excerpts in all languages correctly represent the portions that were cited to W04746 during his testimony.

[Word count: 4,330 words]

Respectfully submitted on 18 September 2023,



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