



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 3 November 2023

Language: English

Classification: Public

**Decision on Prosecution Request for Admission of Items Used During the
Examination of W04746**

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TRIAL PANEL II (“Panel”), pursuant to Articles 21 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, 138(1) and 143(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 11-14, 17 and 18 July 2023, W04746 testified in these proceedings.
2. On 7 September 2023, as directed by the Panel,¹ the Specialist Prosecutor’s Office (“SPO”) filed a request for the admission of items used during the testimony of W04746 (“Request”).²
3. On 18 September 2023, the Defence teams for Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi (“Defence”) filed a joint response to the Request (“Response”).³
4. On 25 September 2023, the SPO replied to the Response (“Reply”).⁴

II. SUBMISSIONS

5. The SPO submits that the documents listed in Items 1-24 and 26-27 in Annex 1 to the Request⁵ are relevant, authentic, have probative value, and their admission would cause no undue prejudice for the Accused.⁶ The SPO opposes the admission of Item 25 in Annex 1 to the Request, being tendered by the Defence, on the basis

¹ Transcript of Hearing, 13, 14 July 2023, pp. 5671-5672, 5692, 5735.

² F01771, Specialist Prosecutor, *Prosecution Request for Admission of Items Used During the Examination of W04746*, 7 September 2023, with Annex 1.

³ F01798, Specialist Counsel, *Joint Defence Response to ‘Prosecution Request for Admission of Items Used During the Examination of W04746’*, 18 September 2023.

⁴ F01817, Specialist Prosecutor, *Prosecution Reply to Joint Defence Response to Prosecution Request for Admission of Items Used During the Examination of W04746*, 25 September 2023.

⁵ The Panel notes that Items 1-20 in Annex 1 to the Request are being tendered by the SPO, while Items 21-27 in Annex 1 to the Request are being tendered by the Defence. *See* Request, para. 1, footnote 3; Annex 1 to the Request. *See also below* para. 9, footnotes 14-16.

⁶ Request, para. 2.

of inadequate information.⁷ The SPO further suggests that, where portions of larger single items, such as books or other similar items, are admitted, the fact that only specific pages have been admitted into evidence be recorded in Legal Workflow metadata, rather than sub-dividing those items.⁸

6. The Defence does not object to the admission of the majority of the tendered items.⁹ However, it objects to the admission of: (i) an excerpt from Mr Krasniqi's book; and (ii) the extracts of fourteen separate prior inconsistent statements that were put to W04746 during his testimony.¹⁰

7. The SPO replies that the Defence's objections are logically incoherent, often irrelevant to the matters at issue in the Request, and inconsistent with relevant jurisprudence and the terms of the Rules.¹¹

III. APPLICABLE LAW

8. The applicable law regarding the admission of evidence pursuant to Rules 138 and 143 has been laid out extensively in previous decisions issued by the Panel.¹²

IV. DISCUSSION

9. The Panel recalls that it instructed the SPO to tender the items in bulk in the instant Request in lieu of tendering each item during W04746's examination primarily for efficiency due to the numerous individual pages of books and large

⁷ Request, para. 10.

⁸ Request, paras 11-12.

⁹ Response, para. 9.

¹⁰ Response, paras 3, 10, *referring to* Items 5, 7-20 in Annex 1 to the Request.

¹¹ Reply, para. 1.

¹² See F01821, Panel, *Decision on Prosecution Request for Admission of W03827's Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration* ("28 September 2023 Decision"), 28 September 2023, paras 17-18; F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential, paras 8-13.

documents shown to the witness.¹³ The Panel notes that the items tendered in the Request (“Documents”) comprise: (i) materials used with W04746, tendered by the SPO (“SPO Materials”);¹⁴ (ii) materials used with W04746, tendered by the Defence (“Defence Materials”);¹⁵ and (iii) extracts of prior statements used with W04746, tendered by the SPO (“Prior Statements”).¹⁶ The Panel will decide the admission of the three categories of Documents pursuant to Rule 138(1).

¹³ See Transcript of Hearing, 13, 14 July 2023, pp. 5671-5672, 5692, 5735.

¹⁴ The SPO Materials consist of the following, including any translations thereof: (i) SPOE00228827-SPOE00228827-ET (“19 November 1998 General Staff Instruction”); (ii) U002-2849-U002-2851-ET (“19 November 1998 General Staff Document”); (iii) SPOE00053263-00053359, pp. SPOE00053280, SPOE00053289, SPOE00053299, SPOE00053300, SPOE00053302, SPOE00053301, SPOE00053306, SPOE00053338, SPOE00053339 (extracts from the book *“War for Kosova (Commander Remi Speaks)”*); (iv) SPOE00055705-SPOE00055708-ET Revised, pp. SPOE00055705 ET Revised, SPOE00055706 ET Revised, SPOE00055707 ET Revised; SPOE00055799-SPOE00055868-ET Revised 1, pp. SPOE00055799 ET Revised 1, SPOE00055819 ET Revised 1, SPOE00055821 ET Revised 1, SPOE00055838 ET Revised 1, SPOE00055851 ET Revised 1 (extracts from the book *“Ushtria Clirimtare e Kosoves – Zona Operative e Llapit”*, by Skender Zhitia); (v) U015-8859-U015-8864-ET, p. U015-8864-ET (extract from the book *“Kthesa e Mahde – Ushtria Clirimtare e Kosoves”*, by Jakup Krasniqi); and (vi) SITF00243091-00243150-ET, pp. SITF00243130-SITF00243141, SITF00243130-SITF00243141-ET (“List of Detained Persons”). See Annex 1 to the Request, Items 1-6.

¹⁵ The Defence Materials consist of the following, including any translations thereof: (i) SPOE00055736-SPOE00055742-ET Revised, pp. SPOE00055741, SPOE00055742 (extracts from the book *“Ushtria Clirimtare e Kosoves – Zona Operative e Llapit”*, by Skender Zhitia); (ii) SPOE00229217-SPOE00229217-ET Revised (“Handwritten Document”); (iii) SPOE00054541-SPOE00054541-ET (“2 April 1999 PGoK Communiqué”); (iv) SPOE00224611-SPOE00224612-ET (“4 June 1999 Krasniqi Statement”); (v) DJK00205-DJK00205 (“Nuredin Ibishi Photograph”); (vi) SPOE00053263-00053359, p. SPOE00053307 (extract from the book *“War for Kosova (Commander Remi Speaks)”*); and (vii) SPOE00055799-SPOE00055868-ET Revised 1, p. SPOE00055837 (extract from the book *“Ushtria Clirimtare e Kosoves – Zona Operative e Llapit”*, by Skender Zhitia). See Annex 1 to the Request, Items 21-27.

¹⁶ The Prior Statements consist of the following, including any translations thereof: (i) SPOE00119323-00119333, p. SPOE00119331; (ii) SPOE00119393-00119399, pp. SPOE00119396; SPOE00119397; (iii) SPOE00119028-00119032, p. SPOE00119030; (iv) SPOE00087289-SPOE00087291, p. SPOE00087290; (v) 082894-TR-ET Part 2 RED, pp. 6, 24-25; (vi) 082894-TR-ET Part 3, pp. 2, 5, 19-21, 25, 29; (vii) 082894-TR-ET Part 4, pp. 2-3, 7-9, 13; (viii) 082894-TR-ET Part 5, pp. 10, 12-13, 15, 17; (ix) 082894-TR-ET Part 7 RED, pp. 6, 9-10; (x) 082894-TR-ET Part 8, pp. 3, 5; (xi) 082894-TR-ET Part 9, p. 7; (xii) 082894-TR-ET Part 11, p. 6; (xiii) 082894-TR-ET Part 12, p. 13; and (xiv) 082894-TR-ET Part 17 RED, pp. 1-2. See Annex 1 to the Request, Items 7-20.

A. SPO MATERIALS

10. As regards the relevance of W04746's SPO Materials, the Panel notes that all of the SPO Materials were shown to and discussed in some detail by W04746 during his testimony.¹⁷ The Panel further notes that the Defence does not challenge the relevance of the majority of the SPO Materials.¹⁸ With respect specifically to the extract from Mr Krasniqi's book, the Panel is not persuaded by the Defence's argument in its Response that its admission should be denied as no explanation as to its relevance was provided by the SPO other than indicating that it was "used with W04746".¹⁹ The Panel is satisfied that, although the SPO provides no explanation as to its relevance, the extract was discussed by W04746²⁰ and it pertains to the temporal and geographic scope of the Indictment. The Panel therefore finds that each and all of the items forming part of the submitted SPO Materials are relevant to these proceedings.

11. As regards authenticity, the Panel notes that: (i) the 19 November 1998 General Staff Instruction and the 19 November 1998 General Staff Document bear indicia of authenticity on their face, including signatures, dates, and stamps, and W04746 recognised a signature on both documents;²¹ (ii) the List of Detained Persons is a contemporaneous record which is consistent with and corroborated by other contemporaneous admitted documents, including those authenticated by W04746;²² and (iii) W04746 confirmed his familiarity with the books "*War for*

¹⁷ Transcript of Hearing, 11 July 2023, pp. 5474-5475 (19 November 1998 General Staff Instruction); Transcript of Hearing, 11 July 2023, pp. 5476-5477 (19 November 1998 General Staff Document); Transcript of Hearing, 11, 12, 13, and 17 July 2023, pp. 5483, 5490, 5528, 5598-5599, 5614, and 5828-5830 (extracts from the book "*War for Kosova (Commander Remi Speaks)*"); Transcript of Hearing, 12 July 2023, pp. 5520-5521, 5532-5533, 5603 (extracts from the book "*Ushtria Clirimtare e Kosoves – Zona Operative e Llapit*", by Skender Zhitia); Transcript of Hearing, 12 July 2023, pp. 5526-5527 (one-page extract from the book "*Kthesa e Mahde – Ushtria Clirimtare e Kosoves*", by Jakup Krasniqi); Transcript of Hearing, 12 and 13 July 2023, pp. 5586 and 5616 (List of Detained Persons).

¹⁸ Response, para. 9.

¹⁹ Response, para. 27.

²⁰ See above footnote 17.

²¹ Transcript of Hearing, 11 July 2023, pp. 5474, 5476.

²² See e.g. P00025, P00150, P00010; Transcript of Hearing, 12 July 2023, pp. 5586-5588.

*Kosova (Commander Remi Speaks)” and “Ushtria Clirimtare e Kosoves – Zona Operative e Llapit”.*²³

12. In relation to the Defence’s argument that admission of the extract from Mr Krasniqi’s book should be denied as W04746 did not verify its content,²⁴ the Panel recalls its finding that the extract from Mr Krasniqi’s book relates to the Indictment period and is generally relevant to the charges.²⁵ The existence, origin and authorship of the book is not disputed. The Defence further submits that the reference to “daily communications by phone” between W04746 and the General Staff, included in the extract from Mr Krasniqi’s book and discussed with W04746,²⁶ cannot be reduced to the Llap zone, to which W04746 is in a position to testify, as the extract belongs to a section of the book describing visits to the Shala and Llap zones and contains no mention of W04746.²⁷ The Panel is of the view that this does not militate against the admission of the extract into evidence, as the Panel will take into account the scope of W04746’s knowledge when assessing the weight to be given to the extract from Mr Krasniqi’s book in light of the totality of the evidence.

13. The Panel is therefore satisfied that the SPO Materials bear *prima facie* indicia of authenticity.

14. For these reasons, and noting that the Defence does not challenge the admission of the SPO Materials with the exception of the extract from Mr Krasniqi’s book addressed above, the Panel finds that the SPO Materials bear *prima facie* probative value not outweighed by any prejudicial effect. Thus, they are admissible pursuant to Rule 138(1).

²³ Transcript of Hearing, 11 July 2023, pp. 5482-5483; Transcript of Hearing, 12 July 2023, p. 5519.

²⁴ Response, para. 28.

²⁵ See above para. 10.

²⁶ Transcript of Hearing, 12 July 2023, p. 5526.

²⁷ Response, para. 29.

B. DEFENCE MATERIALS

15. As regards the relevance of the Defence Materials, the Panel notes all of the Defence Materials were shown to and discussed in some detail by W04746 during his testimony.²⁸ The Panel further notes that the SPO does not challenge the relevance of the majority of the Defence Materials.²⁹ With respect to the Nuredin Ibishi Photograph, the Panel is not persuaded by the SPO's argument that its admission should be denied on the basis of inadequate information.³⁰ In this regard, the Panel notes that the Nuredin Ibishi Photograph was shown to W04746, who was able to: (i) identify Mr Ibishi; (ii) state his nickname during the war; and (iii) suggest that Mr Ibishi had joined the LDK.³¹ The Panel is satisfied that the Nuredin Ibishi Photograph is *prima facie* relevant. The Panel therefore finds that each and all of the Defence Materials are relevant to these proceedings.

16. As regards authenticity, the Panel notes that: (i) the Handwritten Document was seized from Mr Krasniqi's home;³² (ii) the 2 April 1999 PGoK Communiqué is dated and appears to have been published by *Kosovapress*;³³ and (iii) the 4 June 1999 Krasniqi Statement is dated and appears to be attributable to Mr Krasniqi in his capacity of PGoK spokesperson.³⁴ The Panel further recalls that W04746 confirmed his familiarity with the books "*War for Kosova (Commander Remi*

²⁸ Transcript of Hearing, 14 July 2023, pp. 5733-5735; Transcript of Hearing, 17 July 2023, p. 5817 (extracts from the book "*Ushtria Clirimtare e Kosoves – Zona Operative e Llapit*", by Skender Zhitia); Transcript of Hearing, 17 July 2023, pp. 5818-5819 (Handwritten Document); Transcript of Hearing, 17 July 2023, pp. 5820-5821 (2 April 1999 PGoK Communiqué); Transcript of Hearing, 17 July 2023, p. 5821 (4 June 1999 Krasniqi Statement); Transcript of Hearing, 17 July 2023, p. 5823 (Nuredin Ibishi Photograph); Transcript of Hearing, 14 July 2023, pp. 5699-5701 (extracts from the book "*War for Kosova (Commander Remi Speaks)*").

²⁹ See Request, paras 2, 10.

³⁰ Request, para. 10.

³¹ Transcript of Hearing, 17 July 2023, pp. 5823, lines 13-20.

³² SPOE00229217-SPOE00229217-ET Revised. See Annex 1 to the Request, Item 22.

³³ SPOE00054541-SPOE00054541-ET.

³⁴ SPOE00224611-SPOE00224612-ET.

Speaks)” and “*Ushtria Clirimtare e Kosoves – Zona Operative e Llapit*”,³⁵ and was able to identify Mr Ibishi in the Nuredin Ibishi Photograph.³⁶

17. For these reasons, and given that the SPO does not oppose the admission of the majority of the Defence Materials with the exception of the Nuredin Ibishi Photograph discussed above, the Panel is satisfied that the Defence Materials are *prima facie* relevant and authentic, and bear probative value which is not outweighed by their prejudicial effect.

18. The Panel finds that the Defence Materials are admissible pursuant to Rule 138(1).

C. PRIOR STATEMENTS

19. As regards W04746’s Prior Statements, the SPO submits that they are relevant, reliable and probative as: (i) they were made either before a court in the context of judicial proceedings in Kosovo, or directly before the SPO, in which case they were audio-video recorded and are presented in the form of verbatim transcripts; (ii) their date and time are recorded, and so are the participants thereto; and (iii) W04746 was advised of his rights, and was represented by counsel on each occasion.³⁷ The SPO also submits that, while it is tendering only the portions of the statements put to W04746 during his examination with, where relevant, an appropriate page range to provide subject-matter context, it has no objection to the admission of all of W04746’s SPO interview), should that be considered more appropriate.³⁸ The SPO further argues that the Prior Statements should be

³⁵ See above para. 11.

³⁶ See above para. 15.

³⁷ Request, para. 6.

³⁸ Request, para. 8.

admitted both for the truth of their contents and for the purposes of assessing the credibility of the witness.³⁹

20. The Defence opposes the admission of the Prior Statements. It submits that: (i) 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;⁴⁰ (ii) the admission of the Prior Statements is superfluous, and will unnecessarily burden the record;⁴¹ and (iii) only the specific questions and answers that were put to W04746 during his examination by the SPO are covered by Rule 143(2)(c).⁴² The Defence also raises a number of procedural issues with the citations given by the SPO and with the SPO's referring to a prior inconsistent statement of W04746, without leave being explicitly granted to do so.⁴³

21. The SPO replies that the plain words of Rule 143(2) do not require a calling party to read every part of the prior inconsistent statement to the witness, and doing so would serve no legitimate purpose.⁴⁴ The SPO further submits that the Defence's interpretation would deprive the Panel of the opportunity to assess the prior inconsistent statements in their context.⁴⁵ With regard to the procedural issues alleged by the Defence, the SPO: (i) acknowledges the typos and provides amendments thereto; and (ii) contends that the examination took place under the control of the Panel, and the Presiding Judge authorised the presentation of prior inconsistent statements with the witness.⁴⁶

22. The Panel recalls that, under Rule 143(2)(c), a calling party may question a witness about whether the witness has, at any time, made a prior inconsistent

³⁹ Request, para. 9.

⁴⁰ Response, paras 16-17.

⁴¹ Response, para. 18.

⁴² Response, para. 23.

⁴³ Response, paras 24-26.

⁴⁴ Reply, para. 3.

⁴⁵ Reply, para. 5.

⁴⁶ Reply, para. 11.

statement. The Rule goes on to provide: “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”.⁴⁷ There is nothing in Rule 143 that requires the calling party to read the entire prior statement to the witness. The Panel is not persuaded by the Defence’s argument that the admission of the Prior Statements is superfluous and 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).⁴⁸ The Panel is satisfied that the extracts from W04746’s prior statements which the witness has been confronted with during his examination, as well as those further portions which are necessary to understand their context, may be admitted provided that the Rule 138(1) requirements are met. The Panel agrees with the SPO that such interpretation is appropriate as it allows for the Panel to assess the prior inconsistent statements in their proper context.⁴⁹ The Panel will therefore turn to assess whether the prior statements of W04746 tendered by the SPO are admissible pursuant to Rule 138(1).

23. As regards relevance, the Panel notes that, during his testimony, W04746 was repeatedly confronted with the Prior Statements.⁵⁰ In this regard, the Panel recalls

⁴⁷ See 28 September 2023 Decision, para. 28. See also ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, [Judgement](#) (“*Popović et al.* Judgment”), 30 January 2015, para. 136; *Prosecutor v. Popović et al.*, IT-05-88-AR73.3, Appeals Chamber, [Decision on Appeals Against Decision on Impeachment of a Party’s Own Witness](#), 1 February 2008, paras 31-32; *Prosecutor v. Limaj et al.*, IT-03-66-T, Trial Chamber II, [Decision on the Prosecution’s Motions to Admit Prior Statements as Substantive Evidence](#), 25 April 2005, paras 30-34.

⁴⁸ Response, paras 13, 18, 23.

⁴⁹ See Reply, para. 5.

⁵⁰ See: **(i)** for SPOE00119323-00119333, p. SPOE00119331, Transcript of Hearing, 13 July 2023, p. 5617; Transcript of Hearing, 17 July 2023, p. 5835; **(ii)** for SPOE00119393-00119399, pp. SPOE00119396; SPOE00119397, Transcript of Hearing, 12 July 2023, pp. 5592, 5594; **(iii)** for SPOE00119028-00119032, p. SPOE00119030, Transcript of Hearing, 17 July 2023, p. 5838; **(iv)** for SPOE00087289-SPOE00087291, p. SPOE00087290, Transcript of Hearing, 13 July 2023, pp. 5664-5665; **(v)** for 082894-TR-ET Part 2 RED, pp. 6, 24-25, Transcript of Hearing, 12 July 2023, pp. 5537, 5513; Transcript of Hearing, 17 July 2023, pp. 5830-5831; **(vi)** for 082894-TR-ET Part 3, pp. 2, 5, 19-21, 25, 29, Transcript of Hearing, 12 July 2023, pp. 5525, 5559-5560, 5562, 5567; Transcript of Hearing, 17 July 2023, pp. 5836, 5846-5847; **(vii)** for 082894-TR-ET Part 4, pp. 2-3, 7-9, 13, Transcript of Hearing, 11 July 2023, pp. 5481-5482; Transcript of

its finding regarding the admissibility of those extracts from prior statements which were not put to the witness but are nonetheless necessary to provide context to the portions which were put to the witness.⁵¹ Contrary to the Defence's submission,⁵² the Panel is satisfied that the portions of W04746's prior statements tendered by the SPO in addition to those explicitly put to the witness are necessary to provide subject-matter context and are therefore relevant. For these reasons, the Panel finds that the Prior Statements are relevant.

24. As regards authenticity, the Panel notes that the portions of statements tendered by the SPO originate from prior statements made by W04746 either before a court in the context of judicial proceedings in Kosovo,⁵³ or directly before the SPO,⁵⁴ in which case they were audio-video recorded and are presented in the form of verbatim transcripts. The Panel further notes that the date and time of, as well as the participants to, each of the prior statements are duly recorded,⁵⁵ and W04746 was advised of his rights and represented by counsel on each occasion.⁵⁶

25. Regarding probative value and prejudicial effect, the Panel observes that: (i) during his testimony, W04746 repeatedly stood behind his prior statements and

Hearing, 12 July 2023, pp. 5514-5515, 5525; Transcript of Hearing, 13 July 2023, p. 5653; (viii) for 082894-TR-ET Part 5, pp. 11, 12-13, 15, 17, Transcript of Hearing, 13 July 2023, pp. 5619-5620, 5627, 5624; Transcript of Hearing, 17 July 2023, p. 5832; (ix) for 082894-TR-ET Part 7 RED, pp. 6, 9-10, Transcript of Hearing, 12 July 2023, p. 5606; Transcript of Hearing, 17 July 2023, pp. 5836-5837, 5850; (x) for 082894-TR-ET Part 8, pp. 3, 5, Transcript of Hearing, 12 July 2023, p. 5607; Transcript of Hearing, 17 July 2023, p. 5850; (xi) for 082894-TR-ET Part 9, p. 7, Transcript of Hearing, 11 July 2023, p. 5504; (xii) for 082894-TR-ET Part 11, p. 6, Transcript of Hearing, 13 July 2023, p. 5665; (xiii) for 082894-TR-ET Part 12, p. 13, Transcript of Hearing, 11 July 2023, pp. 5497-5498; and (xiv) for 082894-TR-ET Part 17 RED, pp. 1-2, Transcript of Hearing, 12 July 2023, p. 5512). For the references to the Albanian translations, *see* Annex 1 to the Request. *See also* Reply, para. 11, footnote 26.

⁵¹ *See above* para. 22.

⁵² Response, paras 16-17.

⁵³ SPOE00119323-00119333; SPOE00119393-00119399; SPOE00119028-00119032; SPOE00087289-SPOE00087291.

⁵⁴ 082894-TR-ET Parts 1-19.

⁵⁵ SPOE00119323-00119333, pp. 1, 11; SPOE00119393-00119399, pp. 1, 7; SPOE00087289-SPOE00087291, pp. 1, 3 (referring also to SPOE00119028-00119032); 082894-TR-ET Part 1, p. 1; 082894-TR-ET Part 19, p. 4.

⁵⁶ SPOE00119323-00119333, pp. 1, 3; SPOE00119393-00119399, p. 1; SPOE00087289-SPOE00087291, p. 3 (referring also to SPOE00119028-00119032); 082894-TR-ET Part 1, pp. 1-3.

noted that he would in fact prefer to rely on them as they were more proximate in time;⁵⁷ and (ii) no prejudicial effect arises for the Accused as the Defence was provided ample time to cross-examine W04746, including on the portions of prior statements put to him by the SPO.⁵⁸ The Panel is therefore satisfied that the Prior Statements bear *prima facie* indicia of authenticity and have probative value, which is not outweighed by their prejudicial effect.

26. For these reasons, the Panel finds that the Prior Statements are admissible pursuant to Rules 138(1).

D. EXHIBIT NUMBERS

27. The Panel notes that some of the Documents originate from larger single items, such as books or other similar items, which have already been partially admitted into evidence by the Panel.⁵⁹ In this particular instance, the Panel is not persuaded by the SPO's suggestion that it is sufficient for the Legal Workflow metadata to identify those parts of (larger) documents that have been admitted.⁶⁰ It is more appropriate in this instance to ensure the accuracy of the trial record that only the admitted pages of those larger items are assigned an exhibit number. The Panel therefore directs the Registry, where portions of the same larger single item are admitted, to compile the admitted portions into a single item and assign an exhibit number thereto, including to any translations thereof. The Panel further directs the Registry to assign admitted portions originating from larger single items the same exhibit number which has been assigned to other portions of the same larger items, if already admitted into evidence.

⁵⁷ See e.g. Transcript of Hearing, 12 July 2023, pp. 5548, 5558, 5592; Transcript of Hearing, 13 July 2023, p. 5620.

⁵⁸ See Transcript of Hearing, 14 July 2023, pp. 5693-5800; Transcript of Hearing, 17 July 2023, pp. 5806-5828, 5853-5880; Transcript of Hearing, 18 July 2023, pp. 5930-5968.

⁵⁹ Annex 1 to the Request, Items 3-5, 26-27.

⁶⁰ Request, paras 11-12.

V. DISPOSITION

28. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;
- b) **ADMITS** the Documents into evidence pursuant to Rules 138(1);
- c) **DIRECTS** the Registry to assign exhibit numbers to admitted items, including to any translations thereof, in compliance with the Panel's instructions in paragraph 27; and
- d) **ORDERS** the Parties to file any application seeking to maintain the confidential nature of any of the admitted material by no later than **Friday, 17 November 2023**. Any response thereto shall be filed no later than **Friday, 24 November 2023**. No reply will be entertained.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 3 November 2023

At The Hague, the Netherlands.