



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: 24 July 2023

Language: English

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**Public Redacted Version of
Decision on Prosecution Motion for Admission of Evidence of W03724, W03832,
W03880, W04368, W04566, and W04769 Pursuant to Rule 154**

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TRIAL PANEL II (“Panel”), pursuant to Articles 21 and 37 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, 138, 141(1), and 154 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 16 March and 9 June 2023, the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 in respect of 18 witnesses.¹
2. On 23 June 2023, the SPO filed a Rule 154 motion in relation to ten further witnesses (“Motion”), wherein it requested, *inter alia*, an expedited ruling in respect of W02153 and W04586 as they are reserve witnesses who would be available to testify in July 2023.²
3. On 27 June 2023, the Panel ordered an expedited briefing schedule for any responses and reply to those parts of the Motion relating to W02153 and W04586.³
4. On 28 June 2023, the Specialist Prosecutor submitted its list of the next 12 witnesses, reserve witnesses and associated information.⁴
5. On 30 June 2023, the SPO informed the Panel, the Parties and participants that it had also identified W00072 as a reserve witness who would be available to

¹ F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“First Rule 154 Decision”), 16 March 2023, confidential; F01593, Panel, *Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block*, 9 June 2023, confidential; F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154* (“Second Rule Decision”), 9 June 2023, confidential.

² F01625, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W03832, W03880, W04769, W03724, W00072, W01504, W02153, W04368, W04566, and W04586 Pursuant to Rule 154*, 23 June 2023, confidential, paras 1 and 110, with Annexes 1-10, confidential.

³ CRSPD249, *Email from Trial Panel II to CMU Regarding Message to the Parties and Participants on Responses and Reply to F01625*, 27 June 2023.

⁴ F01630, Specialist Prosecutor, *Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses, and Associated Information*, 28 June 2023, with Annexes 1 (“List of Next 12 Witnesses”) and 2 (“List of Next Reserve Witnesses”), confidential, and Annex 3, strictly confidential and *ex parte*.

testify in July 2023.⁵

6. On 3 July 2023, the Defence for all four Accused (collectively, “Defence”) responded jointly to those parts of the Motion relating to W02153 and W04586 (“First Response”).⁶

7. On 5 July 2023, the Defence responded jointly to the remaining parts of the Motion (“Second Response”).⁷

8. On 7 July 2023, the SPO replied to the First Response (“First Reply”).⁸

9. On 10 July 2023, the Panel issued a decision on those parts of the Motion relating to W00072, W02153 and W04586.⁹

10. On 11 July 2023, the SPO replied to the Second Response (“Second Reply”).¹⁰

11. On 13 July 2023, the SPO disclosed updated English translations of parts of W03832’s SPO interviews.¹¹

12. On 14 July 2023, the SPO filed a request concerning items related to W03832 and the Rule 154 application for W01504 (“Additional Request”).¹²

⁵ CRSPD252, *Email from SPO to Parties Regarding Witnesses to be Called*, 30 June 2023.

⁶ F01636, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning W02153 and W04586*, 3 July 2023, confidential.

⁷ F01647, Specialist Counsel, *Joint Defence Response to the Third Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning the Remaining Eight Witnesses*, 5 July 2023, confidential.

⁸ F01653, Specialist Prosecutor, *Prosecution Reply to Joint Defence Response Concerning Rule 154 Submissions (F01636)*, 7 July 2023, confidential.

⁹ F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential.

¹⁰ F01666, Specialist Prosecutor, *Prosecution Reply to Joint Defence Response to Motion for Admission of Evidence Pursuant to Rule 154 for Eight Witnesses (F01647) and Related Matters*, 11 July 2023, confidential.

¹¹ Disclosure Package 855 (containing translations 049783-TR-AT-ET Part 2 RED; 049836-TR-AT Part 1-ET RED; 049836-TR-AT Part 2-ET RED; 049837-TR-AT Part 1-ET RED).

¹² F01673, Specialist Prosecutor, *Prosecution Request Concerning Items Related to W03832 and Rule 154 Application for W01504*, 14 July 2023, confidential. A public redacted version was filed on 17 July 2023, F01673/RED.

II. SUBMISSIONS

13. The SPO seeks admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of, *inter alia*, witnesses W01504, W03724, W03832, W03880, W04368, W04566, and W04769.¹³ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154.¹⁴ It avers that admitting the Proposed Evidence pursuant to Rule 154 is in the interests of justice as it serves the effectiveness and expeditiousness of the proceedings as well as judicial economy, and is not unduly prejudicial.¹⁵ Lastly, the SPO submits that the proposed Associated Exhibits: (i) form an integral part of the 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 Statements and corroborate that evidence.¹⁶

14. In its Second Response, the Defence objects to the admission of parts of the Proposed Evidence, on the grounds that: (i) they concern events that are not charged, irrelevant, and whose probative value is outweighed by their prejudicial effect; (ii) they are duplicative of other tendered material; (iii) their *prima facie* reliability have not been established; and (iv) with regard to some of the Associated Exhibits, the SPO has failed to establish that they are an indispensable and inseparable part of the corresponding witness’s Rule 154 statement.¹⁷ It requests that the Panel: (i) take notice of the Defence objections; (ii) deny the admission of the material it challenges; and (iii) order the SPO not to elicit any evidence regarding the involvement of Jakup Krasniqi (“Mr Krasniqi”) and

¹³ Motion, paras 1, 110.

¹⁴ Motion, paras 2, 9-10. *See also* Annexes 1-4, 6 and 8-9 to the Motion.

¹⁵ Motion, paras 2, 9, *referring to* F01396, Specialist Prosecutor, *Prosecution Updated Motion for Admission of Evidence of Witnesses W03827, W04408, W04577, W04644, W04781, W04018, W04255, W01493, and W04448 Pursuant to Rule 154*, confidential, para. 11, with Annexes 1-9, confidential (a public redacted version was filed on 23 June 2023, F01396/RED).

¹⁶ Motion, para. 10.

¹⁷ Second Response, para. 3.

Rexhep Selimi (“Mr Selimi”) in incidents discussed below during the examination in chief of W03832 and W04769.¹⁸

15. The SPO replies that the Second Response fails to identify any valid reasons to refuse the admission of the Proposed Evidence.¹⁹ It reiterates that the Motion should be granted.²⁰

16. In its Additional Request, the SPO: (i) requests authorisation to replace four documents in the pending Motion concerning W03832 with updated translations and seeks admission of these documents in place of those tendered in the Motion; and (ii) requests that the Panel defer consideration of the Motion in relation to W01504, as the SPO received information which may impact its request.²¹

III. APPLICABLE LAW

17. The Panel incorporates by reference the applicable law as set out in its First Rule 154 Decision.²²

IV. DISCUSSION

A. PRELIMINARY MATTER REGARDING W01504

18. The Panel takes note that the SPO requests the Panel to defer its decision on W01504.²³ The Panel considers the part of the Motion pertaining to W01504 as withdrawn.

¹⁸ Second Response, para. 42.

¹⁹ Second Reply, para. 1.

²⁰ Second Reply, paras 1, 14.

²¹ Additional Request, para. 1.

²² First Rule 154 Decision, paras 26-35.

²³ Additional Request, para. 3.

B. W03832

19. The SPO submits that the proposed evidence of W03832²⁴ is: (i) relevant;²⁵ (ii) *prima facie* authentic and reliable;²⁶ and (iii) suitable for admission under Rule 154.²⁷

20. The Defence does not contest the *prima facie* authenticity and reliability of W03832's Proposed Evidence.²⁸ It objects, however, to the admission of parts of W03832's Statements which allege that W03832 was told by [REDACTED] [REDACTED] ("[REDACTED]") that Mr Krasniqi requested that [REDACTED] be brought to him at the [REDACTED] ("[REDACTED] Allegation 1").²⁹ The Defence submits that: (i) [REDACTED] Allegation 1 is not pleaded in the Indictment,³⁰ and is mentioned neither in the SPO Pre-Trial Brief,³¹ nor in the SPO summary of W03832's evidence;³² (ii) the Defence did not have adequate notice of the [REDACTED] Allegation 1 and the SPO therefore cannot rely on it;³³ and (iii) it should not be admitted as it is hearsay which disproportionately interferes with

²⁴ The proposed evidence of W03832 ("W03832's Proposed Evidence") consists of the following three statements: (i) 034288-034317 RED2, record of W03832's testimony before the Special Prosecution of the Republic of Kosovo ("SPRK"), ("W03832's SPRK Record"); (ii) 049783-TR-AT-ET Parts 1-2 RED2 and 049783-TR-AT Parts 1-2 RED2; and (iii) 049836-TR-ET Parts 1-2 RED2, 049837-TR-ET Part 1 RED2 and 049836-TR-AT Parts 1-2 RED2, 049837-TR-AT Part 1 RED2 (collectively, "W03832's SPO Interviews"). *See, generally*, Annex 1 to the Motion.

²⁵ Motion, paras 11-17.

²⁶ Motion, paras 18-20.

²⁷ Motion, paras 21-22.

²⁸ Second Response, para. 31, *referring to* 041400-TR-ET Part 1 RED.

²⁹ Second Response, para. 5 and fn. 3 *referring to* 049783-TR-ET Part 2, p. 13, lines 8-16; p. 16, lines 16-18; 049836-TR-ET Part 1, p. 10, lines 13-19; p. 13, lines 5-19; 049837-TR-ET Part 1, p. 20, line 2 to p. 21, line 8.

³⁰ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

³¹ F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte*, (a public redacted version was filed on 3 April 2023, F01415/A01; a confidential lesser redacted version was filed on 9 June 2023, F01594/A03).

³² F01594/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("Amended List of Witnesses"), 9 June 2023, strictly confidential and *ex parte*, p. 202 (a confidential redacted version was filed on the same day, F01594/A02).

³³ Second Response, para. 6.

the rights of the Accused.³⁴ As regards the allegation that W03832 was informed by [REDACTED] that Kosovo Liberation Army (“KLA”) soldiers originally wanted to take [REDACTED] to Mr Krasniqi but chose not to do so (“[REDACTED] Allegation 2”, collectively, “[REDACTED] Allegations”),³⁵ the Defence argues that it is second-hand hearsay, uncorroborated and speculative, and which cannot be authenticated from the main source.³⁶ The Defence submits that its probative value is minimal and outweighed by its prejudicial effect since Mr Krasniqi cannot cross-examine [REDACTED].³⁷ The Defence avers that the portion of W03832’s Statements alleging Mr Krasniqi’s involvement should neither be admitted into evidence, nor should the SPO be permitted to adduce it orally in direct examination.³⁸ Lastly, the Defence objects to the admission of W03832’s SPRK Record³⁹ on the basis that it would unnecessarily overburden the trial record as its content is entirely reflected in W03832’s SPO Interviews.⁴⁰

21. The SPO replies that the Defence misrepresents parts of W03832’s Proposed Evidence.⁴¹ The SPO submits, *inter alia*, that: (i) attempts to excise hearsay evidence from W03832’s SPO Interviews ignore the Panel’s previous ruling on this type of evidence; (ii) admitting W03832’s SPRK Record will not overburden the record; (iii) [REDACTED] and time in [REDACTED] is alleged in the SPO Pre-Trial Brief; (iv) W03832’s Proposed Evidence cannot constitute prejudice, such that it should be excluded; (v) reference to Mr Krasniqi participating in the common purpose in the context of [REDACTED] can be admitted; (vi) the hearsay allegations do not disproportionately interfere with the Accused’s rights as the Defence can cross-examine W03832 and can conduct its own investigations of the events; and

³⁴ Second Response, para. 7.

³⁵ Second Response, para. 7, fn. 13 referring to 049836-TR-ET Part 1, p. 10, lines 13-19.

³⁶ Second Response, para. 8.

³⁷ Second Response, para. 9.

³⁸ Second Response, para. 10.

³⁹ 034288-034317 RED2.

⁴⁰ Second Response, para. 11.

⁴¹ Second Reply, para. 2.

(vii) admitting W03832's SPRK Record furthers the interests of an expeditious trial and provides the Panel with the most authentic version of W03832's evidence.⁴²

22. *Preliminary Matter.* At the outset, the Panel notes that, following a review of W03832's Proposed Evidence, the SPO disclosed updated English translations of parts of W03832's SPO Interviews.⁴³ The Panel notes the SPO's submissions that the revisions have no impact on the merit of the Motion in relation to this witness.⁴⁴ The Panel notes that the Defence received timely disclosure of the updated English translations on 13 July 2023 and did not raise any issues in relation to those. In that light, the Panel authorises the replacement of the English versions of W03832's SPO Interviews by the updated English translations disclosed in Disclosure Package 855.⁴⁵

23. *W03832's Proposed Evidence.* Regarding relevance, W03832 [REDACTED].⁴⁶ W03832's Proposed Evidence is being relied upon by the SPO in respect of, *inter alia*, the following aspects of its case: (i) the detention by KLA members of [REDACTED]; (ii) verbal abuse and mistreatment of some of [REDACTED]; (iii) Hashim Thaçi ("Mr Thaçi") [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; and (vi) tensions and divergent views between LDK and KLA members as well as the kidnapping in 1998 of an LDK representative who was later released.⁴⁷ The Panel is satisfied that W03832's Proposed Evidence is relevant to the charges in the Indictment.

24. Regarding authenticity and probative value, W03832's Statements consist of

⁴² Second Reply, paras 2-6.

⁴³ Additional Request, para. 2; Disclosure Package 855.

⁴⁴ Additional Request, para. 2.

⁴⁵ 049783-TR-AT-ET Part 2 RED; 049836-TR-AT Part 1-ET RED; 049836-TR-AT Part 2-ET RED; 049837-TR-AT Part 1-ET RED.

⁴⁶ Second Response, para. 11.

⁴⁷ Motion, paras 11-17; Amended List of Witnesses, p. 202; List of Next 12 Witnesses, p. 6; SPO Pre-Trial Brief, paras [REDACTED]; Indictment, paras [REDACTED].

W03832's SPRK Record⁴⁸ and W03832's SPO Interviews.⁴⁹ Each of them is a transcript of an audio- (and, in the case of W03832's SPO Interviews, video-) recording from an interview in judicial proceedings and contains multiple indicia of authenticity and reliability, such as: (i) the date, time and attendees; (ii) the witness's personal details and signature, and that of the SPO and SPRK officials present; (iii) the witness warnings, rights and acknowledgments; and (iv) W03832's confirmation that W03832's Statements were given voluntarily, were truthful and accurate, and that [REDACTED] was given an opportunity to clarify or correct them.⁵⁰ The Panel is satisfied of the *prima facie* authenticity and probative value of W03832's Statements, which is not contested by the Defence.⁵¹

25. As regards the Defence's objection against the admission of W03832's SPRK Record,⁵² the Panel observes that the document is of limited size (14 pages in English, 30 pages in total). Although the content of W03832's SPRK Record may be reflected in part in W03832's SPO Interviews, the Panel considers that W03832's SPRK Record, being the verbatim written transcript of the audio recorded SPRK interview of the witness, provides an accurate record of W03832's evidence discussed during the SPRK interview. Having been given earlier than other statements, it could also provide more detailed information regarding certain events. The consistency of accounts over time (or lack thereof) might also be relevant to assessing the reliability of the proposed evidence and credibility of the witness. The Panel, therefore, rejects the submission that the admission of this record would unnecessarily overburden the record.

⁴⁸ 034288-034317 RED2.

⁴⁹ 049783-TR-AT-ET Parts 1-2 RED2 and Albanian 049783-TR-AT Parts 1-2 RED2, and 049836-TR-ET Parts 1-2 RED2, 049837-TR-ET Part 1 RED2 and Albanian 049836-TR-AT Parts 1-2 RED2, 049837-TR-AT Part 1 RED2.

⁵⁰ See e.g. 049783-TR-AT-ET Part 1 RED2, p. 43; 049783-TR-ET Part 2 RED2, pp. 20-21; 049836-TR-ET Part 2 RED2, p. 4; 049837-TR-ET Part 1 RED2, pp. 26-28 ; 049783-TR-AT-ET Part 1 RED2, pp. 5-42; 049783-TR-ET Part 2 RED2, pp. 1-7. See also 049783-TR-AT-ET Part 1 RED2, pp. 5-6.

⁵¹ Second Response, para. 4.

⁵² Second Response, para. 11.

26. As regards the Defence's objection against the admission of the [REDACTED] Allegations for lack of notice,⁵³ the Panel observes that: (i) the Indictment does not contain the [REDACTED] Allegations; (ii) the SPO Pre-Trial Brief, while describing the related incident,⁵⁴ does not mention the [REDACTED] Allegations either; (iii) nor does the summary of W03832's evidence provided by the SPO pursuant to Rule 95(c).⁵⁵

27. It is apparent from the absence of mention of this incident in the Indictment that it is not being charged as a separate incident from which an independent conviction could derive. At the same time, the Prosecution is not required to plead in the Indictment the evidence on which it seeks to rely to prove its case as opposed to the facts material to its case.⁵⁶ For this reason, the proposed incident – of which the Defence had notice since receiving the statements of the proposed witness – could constitute evidence of a fact material to the Prosecution case that is pleaded in the Indictment. In this instance, the proposed evidence of W03832 regarding the [REDACTED] Allegations could, for instance, be relevant to an inference that the Accused Mr Krasniqi shared the alleged common intent of the pleaded joint criminal enterprise, knew of that enterprise and/or contributed thereto. No prejudice will arise from the admission of this evidence as: (i) the Defence had notice of it since receiving the statements of this witness; and (ii) the Defence will be able to challenge W03832's evidence in cross-examination. On that basis, the Panel is prepared to allow the SPO to present this evidence at trial.

⁵³ Second Response, paras 5-6. The Defence specifically objects to 049783-TR-ET Part 2, p. 13, lines 8-16; p. 16, lines 16-18; 049836-TR-ET Part 1, p. 10, lines 13-19; p. 13, lines 5-19; 049837-TR-ET Part 1, p. 20, line 2 – p. 21, line 8. *See* Second Response, fn. 3. The Panel notes that these references concerns the outdated versions of the English translations. The corresponding references in the updated translations appears to be: 049783-TR-AT-ET Part 2 RED, p. 16, lines 2-11; p. 20, lines 14-18; 049836-TR-AT-ET Part 1 RED, p. 11, lines 22-25; p. 12, lines 1-3, p. 14, lines 15-25, p. 15, lines 1-5; 049837-TR-AT Part 1-ET RED, p. 22, line 14 – p. 23, line 22.

⁵⁴ SPO Pre-Trial Brief, para. [REDACTED].

⁵⁵ Amended List of Witnesses, p. 202.

⁵⁶ *See e.g.* ICTY, Appeals Chamber, *Prosecutor v. Martić*, IT-95-11-A, [Judgement](#), 8 October 2008, para. 162.

28. Regarding the suitability for Rule 154 of the remainder of W03832's Statements, the Panel observes that: (i) W03832's Statements amount to approximately 107 pages (in English) which, while sometimes duplicative, are manageable in size; and (ii) the SPO contemplates two hours of direct, *viva voce*, examination should W03832's testimony be adduced pursuant to Rule 154 (instead of the six hours initially contemplated if the witness was to testify live).⁵⁷ The Panel is satisfied that, the admission of W03832's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence has a meaningful opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel is therefore also satisfied that the *prima facie* probative value of W03832's Statements, is not outweighed by their prejudicial effect, and that W03832's Statements, are suitable for admission pursuant to Rule 154.

29. *Conclusion.* In light of the above, the Panel finds that W03832's Proposed Evidence, as updated in the Additional Request,⁵⁸ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

C. W03880

30. The SPO submits that the proposed evidence of W03880⁵⁹ is: (i) relevant;⁶⁰

⁵⁷ Motion, para. 22. *See also* Amended List of Witnesses, p. 202.

⁵⁸ 034288-034317 RED2; 049783-TR-AT-ET Part 1 RED2, 049783-TR-AT-ET Part 2 RED and 049783-TR-AT Parts 1-2 RED2; 049836-TR-AT Part 1-ET RED; 049836-TR-AT Part 2-ET RED, 049837-TR-AT Part 1-ET RED and 049836-TR-AT Parts 1-2 RED2, 049837-TR-AT Part 1 RED2.

⁵⁹ The proposed evidence of W03880 ("W03880's Proposed Evidence") consists of: (i) the following three statements: a) 070725-TR-ET Parts 1-3 RED and 070725-TR-AT Parts 1-3 RED; b) SPOE00078810-00078819 RED, SPOE00078810-SPOE00078819-AT RED, and SPOE00078810-SPOE00078818-ST RED; c) SITF00009201-00009206 RED and SITF00009201-SITF00009206-AT RED (collectively, "W03880's Statements"); and (ii) the items proposed and tendered as associated exhibits in Annex 2 to the Motion (collectively, "W03880's Associated Exhibits"). *See, generally*, Annex 2 to the Motion. The Panel notes that the SPO does not tender exhibit 2 (061427-12 and 061427-12-TR), which has already been admitted through W03165 (exhibit P00093), *see* Annex 2 to the Motion, p. 4.

⁶⁰ Motion, paras 23-28.

(ii) *prima facie* authentic and reliable,⁶¹ and (iii) suitable for admission under Rule 154.⁶² It further argues that W03880's Associated Exhibits⁶³ are admissible.⁶⁴

31. The Defence responds that it does not object to the admission of W03880's SPO interview.⁶⁵ With respect to W03880's statement given to the European Union Rule of Law Mission in Kosovo⁶⁶ ("EULEX" and "W03880's EULEX Statement"), the Defence points to several factors that should be considered in assessing the authenticity and reliability of that statement, such as: (i) W03880's uncertain recollection of that interview; (ii) the apparent absence of opportunity for the witness to review the statement and sign it; and (iii) the alleged inaccuracies and/or incompleteness of that statement.⁶⁷ The Defence does not oppose the admission of the material tendered as W03880's Associated Exhibits.⁶⁸

32. The SPO does not reply in this respect.

33. *W03880's Statements*. Regarding relevance, the Panel notes that W03880 was a journalist for the Tanjug news agency who was allegedly arrested, detained and mistreated, together with W04828, by the KLA at several locations, including Shalë/Sedlare and Kleçkë/Klečka. W03880's Statements are relied upon by the SPO in respect of, *inter alia*, the above-mentioned allegations and, in particular, to the question of the practice and authority to detain and release within the KLA.⁶⁹ In light of the above, the Panel is satisfied that W03880's Statements are relevant to the charges in the Indictment.

34. Regarding authenticity, W03880's Statements consist of three statements by

⁶¹ Motion, paras 29-30.

⁶² Motion, paras 31-32.

⁶³ See Annex 2 to the Motion.

⁶⁴ Motion, para. 33.

⁶⁵ Second Response, para. 12.

⁶⁶ SPOE00078810-00078819 RED and its Albanian and Serbian translations.

⁶⁷ Second Response, para. 13.

⁶⁸ Second Response, para. 14.

⁶⁹ Motion, paras 23-28; Amended List of Witnesses, p. 217; List of Next 12 Witnesses, p. 31; SPO Pre-Trial Brief, *e.g.* paras 470-471, 473, 477, 490, 492-495, 497-499; Indictment, paras 16, 59-61, 77, 112-116.

W03880 given either to the SPO, EULEX or the SPRK, each containing multiple indicia of authenticity, such as: (i) the date, time and/or place of the statement; (ii) personal details, and sometimes the signature of the witness and of other persons present; and/or (iii) witness warnings, rights and acknowledgments. While W03880's EULEX Statement does not contain any signatures,⁷⁰ the Panel is of the view that since this statement bears, in addition to most of the above-mentioned indicia (date, time, location of the interview, personal details of the witness and other persons present; witness warnings, rights and acknowledgments, although not signed), an official EULEX stamp as well as the relevant case number, the *prima facie* authenticity of W03880's EULEX Statement is nevertheless established for the purpose of its admission. In light of the above, the Panel is satisfied of the *prima facie* authenticity of W03880's Statements.

35. Regarding probative value, the Panel notes that the Defence does not challenge the probative value of the statement given by W03880 to the SPO ("W03880's SPO Statement"),⁷¹ nor W03880's SPRK statement.⁷² With respect to W03880's EULEX Statement, the Panel notes the Defence's submissions that it appears that: (i) W03880 does not remember having provided that statement, was not given the opportunity to review the information he has provided, was not asked to sign the statement and has never seen this statement in the tendered form; and (ii) the statement is partly inaccurate and incomplete, not only with respect to signatures, but also in substance. The Panel observes that, in fact, W03880 seems to recall having provided that statement.⁷³ The Panel appreciates, however, that the redactions in W03880's SPO Statement may render it difficult for the Defence to ascertain which statement(s) the witness refers to.⁷⁴ As this may affect, to some

⁷⁰ See also Second Response, para. 13.

⁷¹ 070725-TR-ET Parts 1-3 RED and its Albanian translation.

⁷² SITF00009201-00009206 RED and its Albanian translation.

⁷³ One of the locations mentioned in 070725-TR-ET Part 1, p. 9, line 2, matches the place of W03880's EULEX Statement.

⁷⁴ See also Second Response, fn. 21.

extent, the Defence's ability to cross-examine W03880, the Panel orders the SPO to re-disclose a redacted version of W03880's SPO Statement in a way that enables the Defence to ascertain to which statement(s) the witness refers to. With respect to the remaining issues raised by the Defence, the Panel considers that these can be addressed in cross-examination and would pertain to the weight, if any, to be attached to W03880's Statements. The Panel notes, furthermore, that the witness will be given an opportunity to comment upon and clarify all of his statements during proofing so that any issue arising from his EULEX statement would become apparent at that point. The Panel also takes note of the elements of consistency between the statements as being relevant to assessing their *prima facie* probative value for the purpose of deciding on their admission. In light of the above, the Panel is satisfied that W03880's Statements have *prima facie* probative value.

36. Furthermore, the Panel observes that: (i) W03880's Statements amount to approximately 90 pages and are manageable in size; and (ii) the SPO contemplates 90 minutes of direct, *viva voce*, examination should W03880's testimony be adduced pursuant to Rule 154.⁷⁵ The Panel is satisfied that the admission of W03880's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence has a meaningful opportunity to cross-examine the witness, would not cause prejudice to the Defence. The Panel is therefore also satisfied that the *prima facie* probative value of W03880's Statements is not outweighed by their prejudicial effect, and that W03880's Statements are suitable for admission pursuant to Rule 154.

37. *W03880's Associated Exhibits*. At the outset, the Panel notes that the Defence does not oppose the admission of the material tendered as W03880's Associated Exhibits.⁷⁶ With respect to the two exhibits offered for admission, the Panel

⁷⁵ Motion, para. 32; Amended List of Witnesses, p. 216; List of Next 12 Witnesses, p. 31.

⁷⁶ Second Response, para. 14.

observes that: (i) one appears to be a sketch of the building in which W03880 was detained in Kleckë/Klečka, which was drawn by W03880 during his SPO interview;⁷⁷ and (ii) the other appears to be a transcription of a KLA communiqué announcing the ‘sentence’ of W03880 and W04828.⁷⁸ The Panel observes that both exhibits were discussed in some detail in W03880’s Statements.⁷⁹ As such, the Panel is satisfied that both exhibits form an indispensable and inseparable part of W03880’s Statements. Furthermore, the Panel is also satisfied that W03880’s Associated Exhibits are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect. Accordingly, the Panel finds that W03880’s Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

38. *Conclusion.* In light of the above, the Panel finds that W03880’s Proposed Evidence⁸⁰ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

⁷⁷ 070724-070724-ET (and 070724-070724-AT).

⁷⁸ Page U003-8645-U003-8645 of U003-8552-U003-8690 (and U003-8645-U003-8645-AT). The Panel notes that this page is part of U003-8552-U003-8690, which the SPO tendered as a whole for admission through the Bar Table (*see* F01268, Specialist Prosecutor, *Prosecution Application for Admission of Material Through the Bar Table*, 8 February 2023, with Annexes 5 and 8, public, and Annexes 1-4, 6-7, confidential. *See* in particular Annexes 1 and 2).

⁷⁹ *See* Annex 2 to the Motion and reference cited in the column “reference”.

⁸⁰ 070725-TR-ET Parts 1-3 RED and 070725-TR-AT Parts 1-3 RED; SPOE00078810-00078819 RED, SPOE00078810-SPOE00078819-AT RED, and SPOE00078810-SPOE00078818-ST RED; SITF00009201-00009206 RED and SITF00009201-SITF00009206-AT RED; 070724-070724-ET and 070724-070724-AT; p. U003-8645-U003-8645 of U003-8552-U003-8690, and U003-8645-U003-8645-AT.

D. W04769

39. The SPO submits that the proposed evidence of W04769⁸¹ is: (i) relevant;⁸² (ii) *prima facie* authentic and reliable;⁸³ and (iii) suitable for admission under Rule 154.⁸⁴ It further argues that W04769's Associated Exhibits⁸⁵ are admissible.⁸⁶

40. The Defence does generally not contest the *prima facie* authenticity and reliability of W04769's Statement.⁸⁷ However, it objects to the admission of those portions of the statement that refer to the 'uncharged incident concerning the alleged murder of [REDACTED]' ("[REDACTED]") and the alleged involvement of Mr Selimi in said incident, as, in the Defence's view, those portions are not relevant to the case and devoid of any reliability or probative value.⁸⁸ The Defence also requests that the SPO not be permitted to adduce such evidence during the course of W04769's examination-in-chief.⁸⁹ It further objects to most of W04769's Associated Exhibits, arguing, in particular, that the SPO has failed to substantiate that the non-admission of these exhibits would render W04769's Statement incomprehensible or of lesser probative value.⁹⁰

41. In its Second Reply, the SPO: (i) argues that in challenging the relevance of W04769's Proposed Evidence, the Defence has erroneously combined two separate

⁸¹ The proposed evidence of W04769 ("W04769's Proposed Evidence") consists of: (i) a statement given by W04769 to the SPO: 074788-TR-ET Parts 1-3 RED2, Part 4 Revised RED, Part 5 RED2; 074788-TR-AT Parts 1-2 Revised RED2, Part 3 RED2, Parts 4-5 Revised RED2 ("W04769's Statement"); and (ii) the items proposed and tendered as associated exhibits in Annex 3 to the Motion (collectively, "W04769's Associated Exhibits"). The Panel notes that the sixth exhibit (050084-01 and 050084-01-TR) is not tendered for admission and has already been admitted through W04748 (exhibits P00088 and P00088_ET, *see* Annex 3 to the Motion, pp. 6-7). *See, generally*, Annex 3 to the Motion.

⁸² Motion, paras 34-43.

⁸³ Motion, para. 44.

⁸⁴ Motion, paras 45-46.

⁸⁵ *See* Annex 3 to the Motion.

⁸⁶ Motion, para. 47.

⁸⁷ Second Response, para. 15.

⁸⁸ Second Response, paras 16-21, *referring, in particular, to* 074788-TR-ET Part 1 RED2, pp. 19, 24-26; Part 3 RED2, p. 18; Part 4 Revised RED, pp. 35-40.

⁸⁹ Second Response, para. 21.

⁹⁰ Second Response, paras 22-26, *referring to* U002-3339-U002-3340-ET, U000-5851-U000-5851-ET, SITF00021875-SITF00021876-ET, 054010-03, 011795-06, 068357-01.

incidents; (ii) requests that the Panel reject the Defence's attempt to exclude relevant evidence by misstating it; (iii) maintains that the portions challenged by the Defence are relevant; and (iv) submits that excluding such aspects at this stage would be an artificial attempt to remove part of the foundation of W04769's account.⁹¹ With respect to W04769's Associated Exhibits, the SPO: (i) argues that none of the Defence's arguments render the exhibits inadmissible; and (ii) with respect to the video footage tendered, avers that it is linked to KLA members, facilities and detention sites mentioned in the Indictment.⁹²

42. *W04769's Statement*. Regarding relevance, the Panel notes that W04769 was a KLA member who served, *inter alia*, as [REDACTED] Mr Rexha, who was also known as Commander 'Drini'. W04769's Statement is relied upon by the SPO in order to establish, *inter alia*: (i) the organisational and command structure of the KLA, particularly in the Pashtrik OZ, including in Prizren; (ii) reporting lines between Mr Rexha and the General Staff, including the Accused; (iii) the alleged presence of the Accused at crime locations listed in the Indictment; (iv) allegations relating to Ymer Xhafiqi, who is a victim named in the Indictment; and (v) allegations relating to crimes committed in the building of the Ministry of Internal Affairs ("MUP") in Prizren.⁹³

43. The Panel is not persuaded by the Defence's challenge regarding the relevance of certain portions of W04769's Statement,⁹⁴ particularly as the portions mentioned by the Defence: (i) either directly pertain to incidents related to Ymer Xhafiqi,⁹⁵ who is a victim named in the Indictment;⁹⁶ or (ii) provide relevant evidence of facts

⁹¹ Second Reply, paras 7-8.

⁹² Second Reply, para. 9.

⁹³ Motion, paras 34-43; Amended List of Witnesses, p. 491; List of Next 12 Witnesses, p. 36; SPO Pre-Trial Brief, *e.g.* paras [REDACTED]; Indictment, paras [REDACTED].

⁹⁴ Second Response, paras 16-21, *referring, in particular, to* 074788-TR-ET Part 1 RED2, pp. 19, 24-26; Part 3 RED2, p. 18; Part 4 Revised RED, pp. 35-40.

⁹⁵ 074788-TR-ET Part 1 RED2, p. 19; Part 3 RED2, p. 18 (which is even referenced in the SPO Pre-Trial Brief, [REDACTED]).

⁹⁶ Indictment, para. [REDACTED].

and circumstances material to the Prosecution case.⁹⁷ The fact that some of the events described occurred outside the Indictment period does not render evidence relevant to those inadmissible insofar as they constitute relevant evidence of a fact occurring during the Indictment period which is relevant to the case. The Panel notes, in this regard, that the relationship and tensions between members of the KLA leadership (including one of the Accused) and Mr Rexha is an issue relevant to the case.⁹⁸ Therefore, while the killing of Mr Rexha does not form part of the charges and is not alleged to be linked to any of the Accused, evidence pertaining to the relationship between Mr Rexha and members of the KLA leadership could be relevant to establishing material facts pleaded in the Indictment (including as regards the power and authority of the KLA General Staff and some of its members). Insofar as the murder of Mr Rexha does not form part of the charges and has not otherwise been shown to be relevant to the charges, the Panel will disregard this part of W04769's statement. The Panel is therefore satisfied that W04769's Statement is relevant to the charges in the Indictment.

44. Regarding authenticity, the Panel notes that W04769's Statement, which is a transcript of an audio/video-recorded SPO interview with W04769, contains multiple indicia of authenticity such as: (i) the date and time of the interview; (ii) personal details of the witness and names of SPO officials present; and (iii) witness warnings, rights and acknowledgments.⁹⁹ The Panel is thus satisfied that W04769's Statement is *prima facie* authentic.

45. Regarding probative value, the Panel notes the Defence's challenge to the reliability and probative value of certain portions of W04769's Statement.¹⁰⁰ While these portions contain hearsay and while W04769 may, at times, not be able to recall with precision the substance of certain conversations, this does not negate

⁹⁷ 074788-TR-ET Part 1 RED2, pp. 24-26; Part 4 Revised RED, pp. 35-40.

⁹⁸ See, e.g., SPO Pre-Trial Brief, paras [REDACTED].

⁹⁹ Annex 3 to the Motion, p. 1.

¹⁰⁰ Second Response, paras 19-21.

the *prima facie* probative value of these parts of W04769's Statement nor render these parts inadmissible as such. Rather, such matters can be addressed by the Defence during cross-examination of the witness and would pertain to the weight, if any, to be attached to W04769's Statement. Accordingly, the Panel is satisfied that W04769's Statement has *prima facie* probative value.

46. With respect to prejudice, the Panel notes the Defence's contention that it is not in a position to effectively test the hearsay contained in W04769's Statement, as the person who presumably overheard the relevant conversation is not a witness in this case.¹⁰¹ First, as the Panel has made clear repeatedly, the hearsay nature of evidence does not render it inadmissible, though it might affect its weight and probative value. Furthermore, the Panel notes that the Defence: (i) will be able to cross-examine the witness on this matter; and (ii) is free to call the person thought to have provided the primary evidence.

47. Furthermore, the Panel observes that: (i) W04769's Statement amounts to approximately 150 pages and is manageable in size; and (ii) the SPO appears to have reduced its estimate for additional, *viva voce*, direct examination of W04769 from four hours¹⁰² to two hours.¹⁰³ The Panel is satisfied that the admission of W04769's Statement pursuant to Rule 154 would, therefore, reduce the time for direct examination of the witness, which in turn fosters the expediency of the proceedings.

48. Insofar as the Defence will have a meaningful opportunity to cross-examine the witness, the Panel is of the view that the probative value of W04769's Statement would not be outweighed by its prejudicial effect.

49. The Panel is therefore satisfied that W04769's Statement has *prima facie* probative value which is not outweighed by its prejudicial effect, and that it is

¹⁰¹ Second Response, para. 20.

¹⁰² Amended List of Witnesses, p. 491.

¹⁰³ Motion, para. 46; List of Next 12 Witnesses, p. 36.

suitable for admission pursuant to Rule 154.

50. *W04769's Associated Exhibits*. The Panel notes that exhibit 6 has already been admitted and is not offered for admission.¹⁰⁴ It further notes that the Defence does not appear to object to the admissibility of: (i) exhibit 4, which contains four photographs shown to and marked by the witness during his SPO interview ("Photographs");¹⁰⁵ and (ii) exhibit 9, which contains a list of KLA soldiers in Brigade 125 shown to the witness during his SPO interview, whereupon he identified his former name as being listed in the table ("Soldiers List").¹⁰⁶ The Photographs and the Soldiers List were discussed in some detail in *W04769's Statement*.¹⁰⁷ As such, they form an indispensable and inseparable part of *W04769's Statement*. Furthermore, the Panel is satisfied: (i) of the relevance, *prima facie* authenticity and probative value of the Photographs and the Soldiers List; and (ii) that their probative value is not outweighed by their prejudicial effect. Accordingly, the Panel finds that the Photographs and the Soldiers List are appropriate for admission under Rules 138(1) and 154.

51. With respect to exhibits 1-3, the Panel observes that they appear to be: (i) a letter addressed to [REDACTED] Commander 'Drini' ("Letter");¹⁰⁸ (ii) a list of distribution of duties of the intelligence and counter-intelligence unit ("Duties List");¹⁰⁹ and (iii) a KLA joint statement of Sadik Halitjaha and Halil Qadraku, dated 14 March 1999 ("Joint Statement").¹¹⁰ The Panel observes that they have been discussed in some detail in *W04769's Interview*.¹¹¹ While the witness did not comment extensively on each of these documents, the Panel is nevertheless of the view that without them, the respective parts of *W04769's Statement* would become

¹⁰⁴ 050084-01 and 050084-01-TR (exhibits P00088 and P00088_ET), *see above*, fn. 81.

¹⁰⁵ 074784-074787. *See Annex 3 to the Motion*, pp. 4-5.

¹⁰⁶ U000-6497-U000-6504-ET and U000-6497-U000-6504. *See Annex 3 to the Motion*, p. 9.

¹⁰⁷ *See Annex 3 to the Motion* and reference cited in the column "reference".

¹⁰⁸ U002-3339-U002-3340-ET and U002-3339-U002-3340.

¹⁰⁹ U000-5851-U000-5851-ET and U000-5851-U000-5851.

¹¹⁰ SITF00021875-SITF00021876-ET and SITF00021875-SITF00021876.

¹¹¹ 074788-TR-ET Part 2 RED2, pp. 5-7, 13, 28-30.

incomprehensible or of lesser probative value. As such, the Panel is satisfied that the Letter, the Duties List and the Joint Statement form an indispensable and inseparable part of W04769's Statement.

52. With respect to authenticity, the Panel notes that while the Letter and the Duties List are undated, they contain signatures. The Joint Statement is dated and contains a signature. The fact that the witness is unable to testify to the authorship of these three documents or comment about the truth of their content¹¹² may impact the weight, if any, to be given to these documents. However, this can be addressed by the Defence during cross-examination and does not as such negate the *prima facie* authenticity of these documents. Furthermore, while the Joint Statement appears to be missing the signature of one of its purported authors,¹¹³ the Panel recalls that while the presence or absence of a signature on a document might be relevant to assessing its reliability, it is not determinative of its admission.¹¹⁴ The Panel is satisfied that the Letter, the Duties List and the Joint Statement are *prima facie* authentic.

53. Furthermore, the Panel considers that the Letter, the Duties List and the Joint Statement may support W04769's account of, in particular: (i) his tasks within the KLA; (ii) the activities of the intelligence sector; and (iii) his evidence about KLA structures and chain of command, particularly in the Pashtrik OZ, including with respect to Commander 'Drini'.¹¹⁵ Therefore, the Panel considers that these three documents are *prima facie* probative of facts and circumstances material to the case. Insofar as the Defence has a meaningful opportunity to cross-examine the witness, the Panel also considers that the probative value of these three documents would not be outweighed by their prejudicial effect. Accordingly, the Panel finds that the Letter, the Duties List and the Joint Statement

¹¹² See Second Response, paras 22-24.

¹¹³ See also Second Response, para. 24.

¹¹⁴ First Rule 154 Decision, para. 85.

¹¹⁵ See also Annex 3 to the Motion, pp. 2-4 (column "relevance").

are appropriate for admission under Rules 138(1) and 154.

54. Turning to exhibits 5, 7 and 8, which contain three videos (“Videos”)¹¹⁶ and a transcript of the second video (“Transcript”),¹¹⁷ the Panel observes that limited portions of the Videos were shown to W04769 during his SPO interview.¹¹⁸ The Panel notes the Defence’s submissions that: (i) W04769 is unable to provide any substantive comment on the Videos; (ii) the SPO is tendering the entire Videos even though W04769 was only shown certain extracts; and (iii) the SPO failed to provide any information as to the production of the Videos.¹¹⁹ While W04769 did not comment extensively on all video portions shown to him, the Panel is nevertheless of the view that without these, the respective portions of W04769’s Statement would become incomprehensible or of lesser probative value. Thus, the Panel is satisfied that the video portions that were shown to W04769 (collectively “Video Portions”),¹²⁰ form an indispensable and inseparable part of W04769’s Statement. To provide adequate context, the SPO is directed, however, to show the relevant parts of the video to the witness during his supplementary, *viva voce*, examination in chief. The Panel finds that the remaining portions of the Videos do not form an indispensable and inseparable part of W04769’s Statement and are therefore not appropriate for admission pursuant to Rules 138(1) and 154. Should the SPO consider any other part to be relevant and material to its case, it shall present those parts of the Video(s) to the witness and elicit from him evidence in

¹¹⁶ 054010-03 (“First Video”); 011795-06 (“Second Video”); 068357-01 (“Third Video”).

¹¹⁷ 011795-06-TR-ET and 011795-06-TR. The SPO does not offer for admission a transcript of the First Video or the Third Video. With respect to the First Video, the SPO indicates that: (i) there exists no transcription or translation of the relevant portion of that video; and (ii) the background noises and parts of conversations contained in the relevant portion of that video are not being offered as part of the witness’s evidence. See Annex 3 to the Motion, p. 6 (fn. 1).

¹¹⁸ First Video: see 074788-TR-ET Part 4 Revised RED, pp. 9-10; the witness was shown the sequence 00:00:00-00:05:07. Second Video: see 074788-TR-ET Part 4 Revised RED, pp. 12-14; the witness was shown the sequence 00:04:55-00:05:07. Third Video: see 074788-TR-ET Part 4 Revised RED, pp. 14-18; the witness was shown the sequence 00:00:10-00:00:54. See Annex 3 to the Motion, pp. 6-8 (column “comments”).

¹¹⁹ Second Response, para. 25.

¹²⁰ See above, fn. 118.

relation to those excerpts.

55. With respect to the Transcript, the Panel notes that the SPO appears to be offering the whole Transcript.¹²¹ However, the Panel finds that only the portion of the Transcript relating to the relevant portion of the Second Video (“Transcript Portion”)¹²² forms an indispensable and inseparable part of W04769’s Statement. The Panel finds that the remaining portions of the Transcript do not form an indispensable and inseparable part of W04769’s Statement and are therefore not appropriate for admission pursuant to Rules 138(1) and 154. The SPO is directed to produce an abridged version of the transcript containing only those parts of the transcript that are being admitted and to offer this edited version at the time of the witness’s appearance in court.

56. Regarding relevance, in light of the above finding on the relevance of W04769’s Statement,¹²³ the Panel is satisfied that the Video Portions and the Transcript Portion are relevant.

57. Regarding authenticity, the Panel notes the Defence’s submission that the SPO has failed to provide any information as to the production of the Videos.¹²⁴ The Panel observes that the First Video¹²⁵ appears to be a video by ‘Spiegel TV GmbH’.¹²⁶ While there is no further information on the production of this video, the Panel finds that there is no indication that it would be a fake. With respect to the Second Video,¹²⁷ the Panel observes that it: (i) bears a ‘Spiegel TV’ stamp and a date stamp; and (ii) appears to have been downloaded from YouTube.¹²⁸ With

¹²¹ 011795-06-TR-ET and 011795-06-TR.

¹²² “0:04:50 - SPEAKER: The situation remains tense even after the withdrawal of Serbian military forces. KLA fighters have occupied a police headquarters. The Germans want to clear it out. 0:05:00 - MAN: Get out of here! Get out of here! Put the camera down, you have no business here.” See 011795-06-TR-ET, p. 2 and 011795-06-TR, pp. 2-3.

¹²³ See above, paras 42-43.

¹²⁴ Second Response, para. 25.

¹²⁵ 054010-03.

¹²⁶ See Annex 3, p. 6 (column “description”).

¹²⁷ 011795-06.

¹²⁸ See Annex 3, p. 7 (column “description”).

respect to the Third Video,¹²⁹ the Panel observes that it bears an 'AP' stamp. The Panel is satisfied that the Video Portions, as well as the Transcript Portion, are *prima facie* authentic.

58. Turning to the probative value, the Panel: (i) is satisfied that the Video Portions and the Transcript Portion have *prima facie* probative value; and (ii) considers that any concerns raised by the Defence regarding W04769's purported inability to provide any substantive comment on these items can be addressed during cross-examination of the witness. Insofar as the Defence has a meaningful opportunity to cross-examine the witness, the Panel considers that the probative value of the Video Portions and the Transcript Portion would not be outweighed by their prejudicial effect.

59. Accordingly, the Panel finds that the Video Portions and the Transcript Portion are appropriate for admission under Rules 138(1) and 154. The Panel orders the SPO to refile a version of the Transcript¹³⁰ from which all portions other than the Transcript Portion¹³¹ are removed. While not ordering the SPO to refile a version of the Videos, the Panel directs the Registry, upon the Panel's ultimate finding on the admission of the Video Portions (subject to the fulfilment of the Rule 154 criteria), to ensure that the respective metadata of the Videos in Legal Workflow reflects which portions of the Videos have been admitted.

60. *Conclusion.* In light of the above, the Panel finds that: (i) W04769's Statement;¹³² (ii) the Photographs, the Soldiers List, the Letter, the Duties List, the Joint

¹²⁹ 068357-01.

¹³⁰ 011795-06-TR-ET and 011795-06-TR.

¹³¹ See above, fn. 122.

¹³² 074788-TR-ET Parts 1-3 RED2, Part 4 Revised RED, Part 5 RED2; 074788-TR-AT Parts 1-2 Revised RED2, Part 3 RED2, Parts 4-5 Revised RED2.

Statement, the Video Portions;¹³³ and (iii) the Transcript Portion,¹³⁴ which is to be refiled by the SPO, are relevant, *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

E. W03724

61. The SPO submits that the proposed evidence of W03724¹³⁵ is: (i) relevant;¹³⁶ (ii) *prima facie* authentic and reliable;¹³⁷ and (iii) suitable for admission under Rule 154.¹³⁸

62. The Defence does not oppose the admission of W03724's Statement but objects to the redactions applied therein, on the basis that they are unjustified.¹³⁹ The Defence also submits that the limited size of W03724's Statement does not justify the two hours of examination-in-chief sought by the SPO.¹⁴⁰

63. The SPO replies that the redactions in W03724's Statement were applied by the Rule 107 provider and were deemed necessary and proportionate.¹⁴¹

64. *W03724's Statement*. Regarding relevance, W03724 is a former Lieutenant Colonel in the British Army Reserve who was deployed in Malishevë/Mališevo as

¹³³ 074784-074787; U000-6497-U000-6504-ET and U000-6497-U000-6504; U002-3339-U002-3340-ET and U002-3339-U002-3340; U000-5851-U000-5851-ET and U000-5851-U000-5851; SITF00021875-SITF00021876-ET and SITF00021875-SITF00021876; 054010-03 (only sequence 00:00:00-00:05:07); 011795-06 (only sequence 00:04:55-00:05:07); 068357-01 (only sequence 00:00:10-00:00:54). The Panel recalls that items 050084-01 and 050084-01-TR are not offered for admission, *see* above, para. 50 and fn. 104.

¹³⁴ The portion of 011795-06-TR-ET and 011795-06-TR indicated in fn. 122 above.

¹³⁵ The proposed evidence of W03724 ("W03724's Proposed Evidence") consists of: (i) 085942-085979 and 076162-076199-AT Revised RED2 ("W03724's Statement"); and (ii) 18 associated exhibits listed in Annex 4 to the Motion ("W03724's Associated Exhibits"). *See, generally*, Annex 4 to the Motion.

¹³⁶ Motion, paras 48-53.

¹³⁷ Motion, para. 54.

¹³⁸ Motion, paras 55-57.

¹³⁹ Second Response, para. 27.

¹⁴⁰ Second Response, para. 28.

¹⁴¹ Second Reply, para. 10.

a member of the United Kingdom Kosovo Diplomatic Observer Mission and then served as Deputy Director of the Organisation for the Security and Cooperation in Europe's Kosovo Verification Mission ("OSCE" and "KVM") in Rahovec/Orahovac in 1998-1999.¹⁴² W03724's Statement is relied upon by the SPO in respect of, *inter alia*: (i) the KLA's structure, command and control system; (ii) W03724's observations of commanders' communications; (iii) W03724's interactions with KLA commanders such as Commanders 'Skender' and 'Drini' and Fatmir Limaj in relation to the abduction of Ymer Xhafiqi, named in the Indictment¹⁴³; and (iv) W03724's observations of intimidation, by the KLA, to prevent Malishevë/Mališevo from revitalising after Serbian occupation so that its condition would attract international sympathy and support.¹⁴⁴ The Panel is satisfied that W03724's Statement is relevant to the charges in the Indictment.

65. Regarding authenticity and probative value, the Panel observes that W03724's Statement is a statement of the witness to the SPO which indicates: (i) the date and place of the interview; (ii) the witness's personal details; (iii) the participants' names; (iv) witness warnings, rights and acknowledgments; (v) signatures of the participating prosecutor and analyst, as well as that of the witness on each page; and (vi) W03724's confirmation that the content of his Statement is true, accurate and was given voluntarily.¹⁴⁵ The Panel is therefore satisfied of the *prima facie* authenticity and probative value of W03724's Statement.

66. Regarding the suitability of W03724's Statement for admission pursuant to Rule 154, the Panel observes that the Defence does not object to its admission. The Panel shares the concerns of the Defence that the proposed two additional hours of direct examination seem somewhat excessive. The Panel will not, however,

¹⁴² Motion, para. 48; Amended List of Witnesses, p. 181.

¹⁴³ Indictment, para. 162 and Schedule B/14.1 (p. 65).

¹⁴⁴ Motion, paras 48-53; Indictment, paras 16-55, 57-59, 75-76, 94-96, 143-136, 159, 171; SPO Pre-Trial Brief, paras 485, 504, 506-508. *See also* List of Next 12 Witnesses, p. 54.

¹⁴⁵ 085942-085979, p. 38.

reduce the proposed amount of time but directs the SPO to make efficient use of this opportunity and to focus on important aspects of this witness's evidence which require further elucidation on his part.¹⁴⁶ That said, the Panel is satisfied that, even with the two hours estimated of *viva voce* evidence, the admission of W03724's Statement under Rule 154 would contribute to the expeditiousness of the proceedings. Further, no prejudice appears to arise from the admission of W03724's Statement, which the Defence does not oppose.

67. The Panel is further satisfied that the redactions applied to W03724's Statement emanate from the Rule 107 provider and have been authorised after having been assessed necessary and proportionate.¹⁴⁷ They do not impede the ability of the Defence to fairly and effectively confront this witness's evidence. The Panel is therefore also satisfied that the *prima facie* probative value of W03724's Statement is not outweighed by its prejudicial effect, and that W03724's Statement is suitable for admission pursuant to Rule 154.

68. *W03724's Associated Exhibits*. As regards [REDACTED]'s statement ("W04395's Statement") contained in U007-9610-U007-9621 RED2,¹⁴⁸ the Panel takes notes of the Defence's objection that, if the SPO intends to rely on it for the truth of its content, W04395's Statement should be part of a Rule 154 application in respect of W04395.¹⁴⁹ As a preliminary matter, the Panel notes that W04395's Statement is being offered, not as a statement, but as an exhibit. Secondly, the Panel notes that the item concerned does not appear to constitute a 'statement' within the meaning of Rules 153-155 insofar as it was not taken in the context of, or in connection with,

¹⁴⁶ See *similarly* First Rule 154 Decision, para. 33.

¹⁴⁷ F00559, Pre-Trial Judge, *Eleventh Decision on Specialist Prosecutor's Request for Protective Measures*, 5 November 2021, strictly confidential and *ex parte*, paras 468-472. A confidential redacted version was filed on 17 December 2021, F00559/CONF/RED.

¹⁴⁸ U007-9610-U007-9621 RED2, pp. U0089618-U0089620. See corresponding English version U007-9618-U007-9620-ET RED2.

¹⁴⁹ Second Response, para. 29.

legal proceedings.¹⁵⁰ Records of what other people have said to a witness in such a context unrelated to legal proceedings are therefore admissible in principle.¹⁵¹ The Panel further recalls that hearsay is admissible in principle under Rule 138(1) and/or Rule 154 unless it is of marginal probative value or interferes disproportionately with the rights of the Accused.¹⁵² The Panel does not consider that the admission of W04395's Statement would disproportionately affect the rights of the Accused, insofar as the Defence will have the opportunity to cross-examine W03724 on this point and any residual issue will go to the question of weight, if any, given to the evidence. Further, the Panel observes that W04395's Statement is part of a KVM incident report¹⁵³ regarding the abduction of Ymer Xhafiqi which is extensively discussed in W03724's Statement.¹⁵⁴ Insofar as W04395's Statement is part of this report, the Panel considers that it forms an inseparable and indispensable part of W03724's Statement.

69. As regards 050549-050549, the Panel notes that the Defence objects to its admission on the basis that W03724: (i) did not author the document; (ii) does not know the manner in which it was disseminated; and (iii) seems uncertain about the identity of the individuals referred therein.¹⁵⁵ 050549-050549 appears to be a press release issued by the KVM on 1 March 1999 in relation to the situation and abductions in Rahovec/Orahovac ("Press Release"). The Panel observes that this Press Release is discussed in some detail in W03724's Statement.¹⁵⁶ The Panel is therefore satisfied that the Press Release forms an indispensable and inseparable

¹⁵⁰ F1226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, para. 74 and footnote 14. See also KSC-BC-2020-07, Transcript of Hearing, 19 October 2021, pp. 937-939; F00334, Trial Panel II, *Decision on the Prosecution Request for Admission of Items Through the Bar Table*, 29 September 2021, paras 85-87.

¹⁵¹ See also Transcript of Hearing, 19 July 2023, p. 6207, lines 16-25, p. 6208, line 1.

¹⁵² First Rule 154 Decision, paras 21, 47.

¹⁵³ U007-9610-U007-9621 RED2, pp. U0089618-U0089620. See corresponding English version U007-9618-U007-9620-ET RED2.

¹⁵⁴ See e.g. W03724's Statement, paras 56, 59, 77, 87, 89.

¹⁵⁵ Second Response, para. 30.

¹⁵⁶ W03724's Statement, paras 42-43.

part of W03724's Statement. The Panel is also satisfied that the Press Release meets the requirements of Rule 138(1).

70. Turning to the remainder of W03724's Associated Exhibits, the Panel observes that they include: (i) a hand-drawn map by the witness showing the relative MUP and KLA positions along the Llapushnik/Lapušnik to Malishevë/Mališevo road in March 1999; (ii) a KVM report in the context of Ymer Xhafiqi's abduction; (iii) a photograph of Ambassador William Walker; (iv) an extract from W03724's diary; (v) OSCE log sheets covering the period between 28 February and 1 March 1999; (vi) OSCE situation reports; (vii) W03724's notebook; and (viii) the statement submitted by W03724 to the International Criminal Tribunal for the former Yugoslavia ("ICTY").¹⁵⁷ The Panel observes that the Defence does not object to their admission. It further observes that all items were discussed in some detail in W03724's Statement.¹⁵⁸ As such, the Panel is satisfied that the remainder of W03724's Associated Exhibits form an indispensable and inseparable part of W03724's Statement. The Panel is also satisfied that the remainder of W03724's Associated Exhibits are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect. Accordingly, the Panel finds that the remainder of W03724's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

¹⁵⁷ 067049-067049; 067053-067055; 050557-050557; 067870-067896; 067057-067066; SPOE00059409-00059410; SPOE00233976-00233979; SPOE00059421-00059423; SPOE00116964-00116973; SPOE00233678-00233681; SPOE00116952-00116963; SPOE00233674-00233677; 067045-067048 RED2 and 067045-067048-AT RED2.

¹⁵⁸ See W03724's Statement, pp. 5, 8, 12, 14-21, 23-26, 29-37.

71. *Conclusion.* In light of the above, the Panel finds that W03724's Proposed Evidence¹⁵⁹ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

F. W04368

72. The SPO submits that the proposed evidence of W04368¹⁶⁰ is: (i) relevant;¹⁶¹ (ii) *prima facie* authentic and reliable;¹⁶² and (iii) suitable for admission under Rule 154.¹⁶³

73. The Defence does not oppose the admission of W04368's SPO Interview, but objects to the admission of W04368's UNMIK Statement.¹⁶⁴ The Defence argues that the SPO failed to establish the added value of admitting W04368's UNMIK Statement, whose Albanian translation is unsigned by the witness, given that its content is incorporated in W04368's SPO Interview.¹⁶⁵ The Defence opposes the admission of W04368's Associated Exhibits.¹⁶⁶

74. The SPO replies that, since the witness provides clarifications to W04368's UNMIK Statement in W04368's SPO Interview, the former is an integral part of the

¹⁵⁹ 085942-085979 and 076162-076199-AT Revised RED2; 067049-067049; 050549-050549; 067053-067055; 050557-050557; 067870-067896; 067057-067066; SPOE00059409-00059410; SPOE00233976-00233979; SPOE00059421-00059423; SPOE00116964-00116973; SPOE00233678-00233681; SPOE00116952-00116963; SPOE00233674-00233677; U007-9610-U007-9621 RED2 and U007-9616-U007-9616-ET as well as U007-9618-U007-9620-ET RED2; 067045-067048 RED2 and 067045-067048-AT RED2.

¹⁶⁰ The proposed evidence of W04368 ("W04368's Proposed Evidence") consists of: (i) two statements from W04368 to the SPO ("W04368's Statements"); and (ii) two associated exhibits ("W04368's Associated Exhibits"). W04368's Statements are: (i) 065280-TR-ET Parts 1-3 RED2 and 065280-TR-AT Parts 1-3 RED2 ("W04368's SPO Interview"); and (ii) SITF00297509-00297517 RED2 ("W04368's UNMIK Statement"). W04368's Associated Exhibits are: (i) 065278-065279; and (ii) SITF00180469-00180502 ("[REDACTED] Photographs"). *See, generally*, Annex 8 to the Motion.

¹⁶¹ Motion, paras 84-85.

¹⁶² Motion, paras 86-88.

¹⁶³ Motion, paras 89-90.

¹⁶⁴ Second Response, para. 35.

¹⁶⁵ Second Response, para. 35.

¹⁶⁶ Second Response, paras 36-37.

latter.¹⁶⁷ The SPO argues that W04368's UNMIK Statement indicates that it has been read back in Albanian to the witness.¹⁶⁸

75. *W04368's Statements.* Regarding relevance, W04368's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*, allegations of: (i) the abduction of [REDACTED]; (ii) W04368's enquiries [REDACTED]; and (iii) W04368's knowledge of other detainees at [REDACTED].¹⁶⁹ The Panel is satisfied that W04368's Statements are relevant to the charges in the Indictment.

76. Regarding authenticity and probative value, the Panel observes that W04368's SPO Statement: (i) is a verbatim transcript of an audio-video recorded interview; (ii) conducted with the assistance of an interpreter in a language fully understood by the witness; (iii) contains the date, time, and attendees to the interview; and (iv) mentions W04368's rights as a witness.¹⁷⁰ Turning to W04368's UNMIK Statement, the Panel observes that it contains, *inter alia*: (i) the official seals and headers of UNMIK; (ii) the time, place and attendees of the interview; (iii) the witness's personal details; (iv) the witness warning, rights and acknowledgment; and (v) the signatures of the witness and interviewer on each page.¹⁷¹ In addition, the witness: (i) confirmed the truth and accuracy of the content of W04368's SPO Statement; (ii) recognised W04368's UNMIK Statement and verified that each page held his signature; (iii) confirmed that he gave both of these statements voluntarily, and (iv) confirmed, clarified or corrected W04368's UNMIK Statement.¹⁷² The Panel is satisfied of the *prima facie* authenticity and probative

¹⁶⁷ Second Reply, para. 12.

¹⁶⁸ Second Reply, para. 12.

¹⁶⁹ Motion, paras 84-85, and fn. 108; Amended List of Witnesses, p. 280; List of Next Reserve Witnesses, p. 27; SPO Pre-Trial Brief, paras [REDACTED]; Indictment, paras [REDACTED].

¹⁷⁰ 065280-TR-ET Part 1 RED2, pp. 1-3; 065280-TR-ET Part 3 RED2, p. 46.

¹⁷¹ See generally SITF00297509-00297517 RED2.

¹⁷² See e.g. 065280-TR-ET Part 1 RED2, pp. 8-10 referring to SITF00297513-00297517 which corresponds to W04368's UNMIK Statement (SITF00297509-00297517 RED2). See SPO's precision in Motion, fn. 118. 065280-TR-ET Part 1 RED2, pp. 39, 59-65; 065280-TR-ET Part 2 RED2, pp. 1-3, 7-8, 19, 25-27; 065280-TR-ET Part 3 RED2 pp. 5-6, 21-23, 25-27, 29, 32, 35-37.

value of W04368's Statements.

77. Regarding the suitability of W04368's Proposed Evidence for admission pursuant to Rule 154, the Panel is satisfied that the admission of W04368's Statements under Rule 154 would contribute to the expeditiousness of the proceedings as it will significantly reduce the number of hours required for direct examination.¹⁷³ The Panel is further satisfied that such admission would not cause prejudice to the Defence, insofar as the Defence has a meaningful opportunity to cross-examine the witness. The Panel is therefore also satisfied that the *prima facie* probative value of W04368's Statements is not outweighed by their prejudicial effect, and that W04368's Statements are suitable for admission pursuant to Rule 154.

78. *W04368's Associated Exhibits*. The Panel notes that the Defence opposes the admission of W04368's Associated Exhibits.

79. As regards the [REDACTED] Photographs, the Defence objects on the basis that W04368 was shown only 4 of the 33 photographs constituting the proposed exhibit and was unable to recognise the building depicted on page SITF00180474.¹⁷⁴ The [REDACTED] Photographs appears to depict buildings in the school compound alleged to be the KLA headquarters in the area. The Panel notes that the SPO has indicated that the witness was indeed only shown the following pages: SITF00180474-SITF00180476 and SITF00180484.¹⁷⁵ The Panel considers that only these four pages form an inseparable and indispensable part of W04368's Statements, as they were shown to and discussed with the witness during his interview with the SPO.¹⁷⁶ The Panel therefore finds that only those pages are

¹⁷³ The SPO intends to elicit *viva voce* evidence for one hour. See Motion, para. 90. See also Amended List of Witnesses, p. 280.

¹⁷⁴ Second Response, para. 36.

¹⁷⁵ See Annex 8 to the Motion noting that SITF00180484 is referred to as SITL00180484 in W04368's SPO Interview.

¹⁷⁶ 065280-TR-ET Part 2 RED2, pp. 41-42; 065280-TR-ET Part 3 RED2, pp. 15-17.

suitable for admission pursuant to Rules 138(1) and 154. If the SPO wishes to tender other pictures from this set, it will have to tender those through the witness during his *viva voce* examination.

80. As regards 065278-065279, the Defence opposes the admission of the item on the basis that: (i) the witness was unable to recognise the individual in the photograph; (ii) the witness provided no comment upon it; and (iii) the SPO failed to justify how the non-admission of this exhibit would render W04368's Proposed Evidence incomprehensible or of lesser probative value.¹⁷⁷ 065278-065279 contains two photographs, one which appears to depict a building alleged to be part of the KLA headquarters [REDACTED], and one of an individual. The Panel notes that both pages of this item were discussed in W04368's SPO Interview as the witness marked the first photograph and commented upon the second photograph.¹⁷⁸ The Panel is therefore satisfied that 065278 forms an indispensable and inseparable part of W04368's Statements.

81. However, the Panel notes that in relation to 065279, the witness indicated that he does not know the individual pictured on this page. The Panel considers that 065279 therefore lacks the relevance and probative value required by Rule 138(1). The Panel thus rejects admission of 065279 without prejudice. For the remaining proposed exhibits, the Panel is satisfied that they are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect. Accordingly, the Panel finds that: (i) SITF00180474-SITF00180476 and SITF00180484; and (ii) 065278 are appropriate for admission under Rules 138(1) and 154.

82. *Conclusion.* In light of the above, the Panel finds that W04368's Statements¹⁷⁹ and associated exhibits SITF00180474-SITF00180476, SITF00180484 and 065278 are

¹⁷⁷ Second Response, para. 37.

¹⁷⁸ 065280-TR-ET Part 3 RED2, pp. 15-17. The Panel notes that 065278 is referred to as SITF00180475.

¹⁷⁹ 065280-TR-ET Parts 1-3 RED2 and 065280-TR-AT Parts 1-3 RED2; SITF00297509-00297517 RED2.

relevant, *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

G. W04566

83. The SPO submits that the proposed evidence of W04566¹⁸⁰ is: (i) relevant;¹⁸¹ (ii) *prima facie* authentic and reliable;¹⁸² and (iii) suitable for admission under Rule 154.¹⁸³

84. The Defence does not oppose admission of W04566's Statements.¹⁸⁴ The Defence objects to the admission of W04566's Associated Exhibits, on the basis that the SPO failed to demonstrate their relevance to this case and their suitability for admission.¹⁸⁵

85. The SPO did not reply on this point.

86. *W04566's Statements*. Regarding relevance, W04566 is [REDACTED]. W04566's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*, allegations relating to the [REDACTED].¹⁸⁶ The Panel is thus satisfied that W04566's Statements are relevant to the charges in the Indictment.

¹⁸⁰ The proposed evidence of W04566 ("W04566's Proposed Evidence") consists of: (i) two statements ("W04566's Statements"); and (ii) two associated exhibits ("W04566's Associated Exhibits"). W04566's Statements comprise: (i) 073437-TR-ET Parts 1-3 RED2 and 073437-TR-AT Parts 1-3 RED2 ("W04566's SPO Interview"); and (ii) SITF00180503-00180541 RED ("W04566's Testimony"). W04566's Associated Exhibits comprise: (i) SITF00299712-00299713 and SITF00299712-00299713-ET ("[REDACTED]Letter") and (ii) 073790-073804 RED and 073790-073804-ET RED ("W04566's Documents"). *See, generally*, Annex 9 to the Motion.

¹⁸¹ Motion, paras 92-95.

¹⁸² Motion, para. 96.

¹⁸³ Motion, paras 97-98.

¹⁸⁴ Second Response, para. 38.

¹⁸⁵ Second Response, paras 39-40.

¹⁸⁶ Motion, paras 92-95; Amended List of Witnesses, pp. 370-371; List of Next Reserve Witnesses, p. 22; SPO Pre-Trial Brief, paras [REDACTED]; Indictment, paras [REDACTED].

87. Regarding authenticity and probative value, W04566's SPO Interview is a transcript of an audio-video recorded interview and W04566's Testimony is the transcription of a trial hearing. The Panel considers that both bear sufficient indicia of authenticity insofar as they indicate *inter alia*, the date, time and attendees/participants as well as the witness's rights, warnings and acknowledgment thereof. Further, W04566's Statements were given with the assistance of an interpreter in a language understood by the witness,¹⁸⁷ and W04566 took a solemn declaration before giving W04566's Testimony.¹⁸⁸ The Panel is therefore satisfied of the *prima facie* authenticity and probative value of W04566's Statements.

88. Regarding the suitability of W04566's Proposed Evidence for admission pursuant to Rule 154, the Panel observes that the Defence does not object to the admission of W04566's Statements and the SPO intends to elicit brief oral testimony from the witness for approximately 1 hour.¹⁸⁹ The Panel is satisfied that the admission of W04566's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) would not cause prejudice to the Defence insofar as the Defence will have a meaningful opportunity to cross-examine the witness. The Panel is also satisfied that the *prima facie* probative value of W04566's Statements is not outweighed by their prejudicial effect, and that W04566's Statements are suitable for admission pursuant to Rule 154.

89. *W04566's Associated Exhibits*. The Panel observes that W04566's Associated Exhibits consist of: (i) [REDACTED] Letter, written in [REDACTED]; and (ii) W04566's Documents, [REDACTED]. The Panel notes that the Defence objects to their admission on the basis of relevance.¹⁹⁰ While their relevance to the case appears to be relatively secondary, the Panel considers that W04566's Associated

¹⁸⁷ 073437-TR-ET Part 1 RED2, p. 1.

¹⁸⁸ See SITF00180503-00180541 RED, pp. 3, 11-20.

¹⁸⁹ Motion, para. 98.

¹⁹⁰ Second Response, para. 39.

Exhibits provide useful context. In particular, they provide relevant information regarding [REDACTED]. In addition, the Panel observes that both [REDACTED] Letter and W04566's Documents were discussed in some details in W04566's Statements.¹⁹¹ As such, the Panel is satisfied that W04566's Associated Exhibits form an indispensable and inseparable part of W04566's Statements. The Panel is also satisfied that W04566's Associated Exhibits are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect. Accordingly, the Panel finds that W04566's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

90. *Conclusion.* In light of the above, the Panel finds that W04566's Proposed Evidence¹⁹² is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

V. CLASSIFICATION

91. Noting that the Second Reply was filed confidentially, the Panel orders the SPO to submit a public redacted version of the Second Reply by no later than **18 August 2023**.

¹⁹¹ SITF00180503-00180541 RED, pp. 9-10, 13, 19; 073437-TR-ET Part 2 RED2, pp. 4, 14-16.

¹⁹² 073437-TR-ET Parts 1-3 RED2 and 073437-TR-AT Parts 1-3 RED2; SITF00180503-00180541 RED; SITF00299712-00299713 and SITF00299712-00299713-ET; 073790-073804 RED and 073790-073804-ET RED.

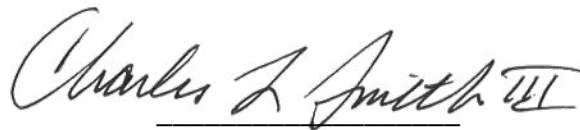
VI. DISPOSITION

92. Based on the above, the Panel hereby:

- a. **GRANTS** the Motion with respect to W03724, W03832, W03880, W04368, W04566, and W04769, in part;
- b. **FINDS** the (parts of) the Statements and Associated Exhibits of W03724, W03832, W03880, W04368, W04566, and W04769, set out in paragraphs 29, 38, 60, 70, 82 and 90 and the respective footnotes, to be appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of each of these witnesses and each of their statements and associated exhibits;
- c. **FINDS** the remaining parts of the Statements and Associated Exhibits proposed by the SPO not to be appropriate for admission, for the reasons set out above;
- d. **CONSIDERS** the part of the Motion pertaining to W01504 as withdrawn;
- e. **ORDERS** the SPO to:
 - i. refile 011795-06-TR-ET and 011795-06-TR in accordance with paragraphs 55 and 59;
 - ii. re-disclose a redacted version of W03880's SPO Statement in accordance with paragraph 35;
- f. **DIRECTS** the Registry, upon admission into evidence of the Videos, to reflect in Legal Workflow the information set out in paragraph 59;
- g. **REITERATES** its order to the SPO to provide to the Panel, the Defence and Victims' Counsel, three days prior to the start of the testimony of any Rule 154 witness, a list of general topics and areas of questioning that will be covered during the *viva voce* examination of the witness;
- h. **INFORMS** the SPO that the Panel will closely scrutinise the use made by the SPO of additional oral evidence in respect of any Rule 154 witness with a view to ensuring that evidence led orally is: (i) not unduly repetitious of the witness's written evidence; and (ii) that the Panel and the Defence had

adequate notice of any supplementary evidence elicited orally from such a witness; and

- i. **ORDERS** the SPO to submit a public redacted version of the Second Reply by no later than **18 August 2023**.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath the name.

Judge Charles L. Smith, III

Presiding Judge

Dated this Monday, 24 July 2023

At The Hague, the Netherlands.