



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

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**Public Redacted Version of
Decision on Admission of Evidence of First Twelve SPO Witnesses 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 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 December 2022, the Panel ordered: (i) the Specialist Prosecutor’s Office (“SPO”) to provide the list of the first twelve witnesses it intends to call by 1 February 2023; and (ii) the Defence to indicate, *inter alia*, whether it objects to the admission of the witnesses’ statements pursuant to Rule 154 and the general grounds on which the objection is made by 3 February 2023 (“Third Oral Order”).¹
2. On 13 January 2023, the Defence filed a joint request for an extension of time to comply with the Third Oral Order.²
3. On 18 January 2023, the Panel granted an extension of time until 13 February 2023 for the Defence to comply with the Third Oral Order.³
4. On the same day, the Panel: (i) ordered the SPO to file its Rule 154 motion in respect of its first twelve witnesses by 7 February 2023; (ii) directed the Defence and Victims’ Counsel to file any response by 20 February 2023; and (iii) informed the Parties and participants that no reply will be entertained.⁴
5. On 1 February 2023, the SPO filed the list of its first twelve witnesses (“First 12 Witnesses List”).⁵

¹ Transcript of Hearing, 16 December 2022, pp. 1773-1774.

² F01204, Specialist Counsel, *Joint Defence Request for a Variation of the Time Limit to Provide Information About the Examination of SPO Witnesses*, 13 January 2023, confidential (a public redacted version was filed on 16 January 2023, F01204/RED).

³ Transcript of Hearing, 18 January 2023, p. 1904, lines 11-16.

⁴ Transcript of Hearing, 18 January 2023, p. 1902, lines 6-19.

⁵ F01243/A01, Specialist Prosecutor, *Annex 1 to the Prosecution Submission of List of First 12 Witnesses and Associated Information*, confidential.

6. On 7 February 2023, the SPO filed its Rule 154 motion in respect of its first twelve witnesses (“Motion”).⁶

7. On 13 February 2023, the Defence for Hashim Thaçi (“Thaçi Defence”), the Defence for Kadri Veseli (“Veseli Defence”), the Defence for Rexhep Selimi (“Selimi Defence”), and the Defence for Jakup Krasniqi (“Krasniqi Defence”) (collectively, “Defence”) responded to the SPO First 12 Witnesses List and raised preliminary objections on Rule 154 material (“Preliminary Objections”).⁷

8. On 20 February 2023, the Defence filed a joint response to the Motion (“Response”).⁸

II. SUBMISSIONS

9. The SPO seeks admission of the Rule 154 statements and associated exhibits (“Rule 154 Statements” and “Associated Exhibits”, respectively; collectively, the “Proposed Evidence”) of witnesses W04474, W04421, W04355, W02161, W01236, W04337, and W03165 (collectively, “Witnesses”).⁹ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154.¹⁰ It avers that admitting the Proposed Evidence is in the interests of justice as it serves the effectiveness and expeditiousness of the proceedings as well as judicial economy.¹¹ The SPO contends that admission of the Proposed Evidence pursuant to Rule 154

⁶ F01262, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W04474, W04421, W04355, W02161, W01236, W04337, and W03165 Pursuant to Rule 154*, 7 February 2023, confidential, with Annexes 1-7, confidential.

⁷ F01286, Specialist Counsel, *Joint Defence Response to Prosecution Submission of List of First 12 Witnesses and Associated Information (F01243) (“F01286”)*, 13 February 2023, confidential, Annexes 1-12, confidential.

⁸ F01308, Specialist Counsel, *Joint Defence Response to ‘Prosecution Motion for Admission of Evidence of Witnesses W04474, W04421, W04355, W02161, W01236, W04337, and W03165 Pursuant to Rule 154’*, 20 February 2023, confidential.

⁹ Motion, para. 1.

¹⁰ Motion, paras 2, 8, 10. *See also* Annexes 1-7 to the Motion.

¹¹ Motion, paras 2, 9.

is not unduly prejudicial as the Defence is aware of the identity of the Witnesses, may investigate them and cross-examine them on the entirety of the Proposed Evidence.¹² Lastly, the SPO submits that the proposed Associated Exhibits: (i) form an integral part of the Rule 154 Statements as, without them, the statements may become less complete or be of diminished probative value; and (ii) provide context to the evidence contained in the Rule 154 Statements and corroborate that evidence.¹³

10. The Defence responds that the manner in which the SPO seeks to use Rule 154 does not ensure an effective and expeditious trial while respecting the rights of the Accused.¹⁴ The Defence submits that, if the SPO was allowed to use Rule 154 as proposed in the Motion, the size of the evidential record would become incompatible with a fair trial.¹⁵ It submits that the SPO has inappropriately invoked Rule 154 to admit centrally important allegations concerning the acts and conduct of the Accused, testimony adduced via leading questions or testimony that is duplicative, unclear or contradictory.¹⁶ The Defence also argues that Rule 154 cannot be invoked to proffer significant volumes of prejudicial hearsay.¹⁷ The Defence requests the Panel to order the SPO to indicate the excerpts of the Proposed Evidence for which admission is being sought, and explain the relevance of them to the charges.¹⁸ The Defence also indicates that it reserves its right to raise further objections at the time of the witnesses' in-court testimony.¹⁹ Lastly, the Defence asks the Panel to take into account its Preliminary Objections.²⁰

¹² Motion, para. 9.

¹³ Motion, para. 10.

¹⁴ Response, para. 2.

¹⁵ Response, para. 3.

¹⁶ Response, para. 3.

¹⁷ Response, para. 4.

¹⁸ Response, para. 5.

¹⁹ Response, para. 18.

²⁰ Response, para. 8 *referring to* Preliminary Objections.

III. APPLICABLE LAW

A. ADMISSION OF WRITTEN STATEMENTS AND TRANSCRIPTS IN LIEU OF DIRECT EXAMINATION

11. Rule 154 provides that, subject to Rule 155, the Panel may admit the written statement of a witness or transcript of evidence given by a witness in proceedings before the Specialist Chambers (“SC”) that goes to proof of the acts and conduct of the Accused as charged in the indictment, if the three following conditions are satisfied:

- (a) the witness is present in court;
- (b) the witness is available for cross-examination and any questioning by the Panel; and
- (c) the witness attests that the written statement or transcript accurately reflects his or her declaration and what he or she would say if examined.

12. With respect to the admission of material associated with the Rule 154 witnesses, the item(s) concerned must fulfil the following requirements:

- i. They must constitute or form part of a “written statement of a witness” taken in the context of a criminal investigation or proceedings²¹ or “transcript of evidence given by a witness in proceedings before the Specialist Chambers”.²² The Panel notes that Article 37 of the Law makes it

²¹ KSC-BC-2020-07, F00334, Trial Panel II, *Decision on the Prosecution Request for Admission of Items Through the Bar Table (“Gucati and Haradinaj Decision”)*, 29 September 2021, para. 86.

²² Regarding the definition of what may constitute a “statement”, see e.g. *Gucati and Haradinaj Decision*, paras 84-86. See also F00210, Pre-Trial Judge, *Decision on Prosecution Requests and Challenges Pursuant to F00172*, 26 May 2021, para. 54; STL, *In the matter of El Sayed*, CH/AC12011/01, Appeals Chamber, [Decision on Partial Appeal by Mr. El Sayed of Pre-Trial Judge's Decision of 12 May 2011](#), 19 July 2011, paras 72-73, 85-86; *Prosecutor v. Ayyash et al.*, STL-11-01-T/TC, Trial Chamber, [Public Redacted Version of “Decision on the Prosecution Application for Non-Disclosure of Certain Statements of Witnesses Pursuant to Rule 116” Dated 20 December 2012](#), 28 May 2013, paras 8, 14; ICC, *The Prosecutor v. Ongwen*, ICC-02/04-01/15-1670, Trial Chamber IX, [Decision on the Defence Request to Submit 470 Items of](#)

clear that statements and transcripts from a variety of potential sources could be tendered in evidence before this jurisdiction;

- ii. The proposed evidence satisfies the general requirements of relevance, authenticity, probative value and its probative value is not outweighed by its prejudicial effect;²³ and
- iii. The three express conditions set out in Rule 154 are met.

13. Rule 154 foresees that the offered statements/transcripts could include evidence relevant to “proof of the acts and conduct of the Accused as charged in the indictment”. This distinguishes Rule 154 from Rule 153, which does not permit the admission of written statements/transcripts of evidence of this sort. The fact that Rule 154 allows for the tendering of written evidence of this sort is explained by the fact that the rule provides for three specific safeguards intended to preserve and protect the fundamental rights of the Accused and the integrity of the proceedings.

14. The specification in Rule 154 that evidence going to “acts and conduct of the Accused as charged in the indictment” may be tendered pursuant to that Rule does

[Evidence](#), 14 November 2019, para. 15; ICTR, *Niyitegeka v. Prosecutor*, ICTR-96-14-A, Appeals Chamber, [Judgement](#), 9 July 2004, paras 33-34; ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84bis-T, [Decision on Haradinaj Motion for Disclosure of Exculpatory Materials in Respect of Witness 81](#), 18 November 2011, para. 32; *Prosecutor v. Ayyash et al.*, STL-11-01-T/TC, Trial Chamber, [Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155](#), 30 May 2013, paras 22-23; *Prosecutor v. Lukić and Lukić*, IT-98-32/I-T, Trial Chamber III, [Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 ter](#) (“Lukić and Lukić Decision”), 9 July 2008, para. 14.

Prosecutor v. Popović et al., IT-05-88-T, Trial Chamber II, [Decision on Motion to Convert Viva Voce Witnesses to Rule 92 ter Witnesses](#) (“Popović et al. Decision”), 31 May 2007, p. 2.

²³ Rule 138. See also ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Trial Chamber II, [Decision on Prosecution Motion to Convert Seven Viva Voce Witnesses to Rule 92 ter Witnesses](#) (“Tolimir Decision”), 10 May 2011, paras 17, 20, 24, 28, 32; *Prosecutor v. Hadžić*, IT-04-75-T, Trial Chamber, [Decision on Prosecution Motion for Admission of Evidence of GH-003 Pursuant to Rule 92 ter](#) (“Hadžić Decision”), 18 October 2012, paras 4-6; *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, Trial Chamber II, [Public Redacted Decision on Prosecution’s Motions for Admission of Evidence Pursuant to Rule 92 ter \(ST012 and ST019\)](#), 2 October 2009, para. 19; [Lukić and Lukić Decision](#), para. 20; *Prosecutor v. Đorđević*, IT-05-87/1-T, Trial Chamber II, [Decision on Prosecution’s Motion for Admission of Evidence Pursuant to Rule 92 ter](#) (“Đorđević Decision”), 10 February 2009, para. 6.

not mean that only evidence pertaining to such aspects of the case can be tendered in that way.²⁴ However, if a statement or transcript of evidence contains such evidence, it cannot be tendered pursuant to Rule 153, but must be offered pursuant to Rules 154 or 155 and meet the specific requirements of these Rules.

15. These requirements must be met for *each* statement or record of interview offered pursuant to Rule 154 (“the written statement of a witness or transcript of evidence”). In particular, the requirement of Rule 154(c) (“the witness attests that the written statement or transcript accurately reflects his or her declaration and what he or she would say if examined”), will need to be verified in relation to each of the statements offered pursuant to that Rule. This is consistent with the view that Rules 153-155 operate as *lex specialis*²⁵ in relation to Rule 138 so that a record of an interview that qualifies as a written statement or as a transcript of evidence cannot be offered other than pursuant to Rules 153-155.

B. RULE 154 AND THE PRINCIPLE OF ORALITY

16. The Defence submits that the SPO’s use of Rule 154 undermines and threatens the principles of orality, publicity, adversarial argument, and respect for the rights of the Accused that underpin the SC’s regulatory regime.²⁶ “In order to guard against this”, the Defence asks that “the SPO be ordered to indicate the excerpts of proposed Rule 154 material for which admission is being sought, and explain the relevance of these excerpts to the charges in the present case”.²⁷

17. Regarding the principles of orality and publicity, Rule 154 fully complies with those requirements as the witness must be present in court and be available for

²⁴ See also ICTY, [Tolimir Decision](#), paras 24, 28, 32; [Dorđević Decision](#), para. 8.

²⁵ See ICTY, *Prosecutor v. Galić*, IT-98-29-AR73.2, Appeals Chamber, [Decision on Interlocutory Appeal Concerning Rule 92 bis\(C\)](#), 7 June 2002, para. 31. See also *Gucati and Haradinaj* Decision, para. 87; ICTY, *Prosecutor v. Milošević*, IT-02-54-AR73.2, Appeals Chamber, [Decision on Admissibility of Prosecution Investigator’s Evidence](#), 30 September 2002, para. 18.

²⁶ Response, para. 5.

²⁷ Response, para. 5.

cross-examination and questioning by the Panel, and the evidence of a witness admitted pursuant to that Rule will be public unless otherwise ordered. Such a procedure also fully complies with the principle of adversarial proceedings – as the Defence will be able to cross-examine the witness if it so chooses – and with the fundamental rights of the Accused.

18. The Panel further observes that the principle of orality, which underpins the SC's regulatory regime, is not absolute, but qualified by a variety of provisions (in particular, Rules 100, 153, 154, 155) that provide for the possibility of witness evidence being elicited and tendered by means other than calling a witness to testify *viva voce* in court.²⁸ Rule 153(1)(b) reflects this view by saying that factors militating against the admission of a written statement or transcript in lieu of oral testimony include instances whereby “there is an overriding public interest in the evidence in question being presented orally”.

19. The Defence relies upon the holding of the ICC Appeals Chamber in *Al Hassan* to suggest that admission pursuant to Rule 154 should be treated as an “exceptional procedure”.²⁹ A comparison of the relevant provisions applicable before the SC and the ICC suggest a different interpretation. Article 69(2) of the ICC Statute provides that “[t]he testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in Article 68 or in

²⁸ See F01250, Panel, *Decision on Thiçi Defence Motion Regarding the Preservation of Evidence*, 2 February 2023, paras 30-31. See also *Gucati and Haradinaj* Decision, paras 22-23. See also STL, *Prosecutor v. Al Jadeed*, STL-14-05/PT/CJ, Contempt Judge, [Decision on Amicus Curiae Prosecutor's Motion for Admission of Evidence Pursuant to Rule 154](#), 9 April 2015, para. 5; ICTY, *Prosecutor v. Halilovic*, T-01-48-AR73.2, Appeals Chamber, [Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table](#), 19 August 2005, paras 16-17 (noting that “the principle of orality, as reflected in the Rules, is not an absolute restriction, but instead simply constitutes a preference for the oral introduction of evidence”).

²⁹ Response, paras 2, 13, referring to ICC, *The Prosecutor v. Al Hassan*, ICC-01/12-01/18-2222, Appeals Chamber, [Judgment on the Appeal of the Prosecution Against Trial Chamber X's "Decision on Second Prosecution Request for the introduction of P-0113's evidence pursuant to Rule 68\(2\)\(b\) of the Rules"](#), 13 May 2022, para. 80. See also ICC, *The Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-2024, Appeals Chamber, [Judgment on the Appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang Against the Decision of Trial Chamber V\(A\) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony"](#), 12 February 2016, para. 84.

the Rules of Procedure and Evidence”. Rule 68 of the ICC Rules of Procedure and Evidence in turn regulates the admission of “prior recorded testimony”. The way the SC regulates this matter is different. Rule 141(1) provides that “[t]he testimony of a witness at trial shall be given in person, except to the extent provided under Rule 100. The Panel may also permit the testimony of a witness by means of video-conference pursuant to Rule 144 as well as the introduction of the witness’s evidence in written or other form in accordance with the Law and the Rules and in a way not prejudicial to or inconsistent with the rights of the Accused”. Rule 100 regulates the giving of evidence by means of deposition. In other words, as far as the SC is concerned, the regulatory preference for *viva voce* evidence is limited to the situation where evidence can be given either live in court or by means of a deposition. Rules 153-154 accordingly regulate the admission of statements and transcripts of witness interviews without excluding the possibility of the evidence being called *viva voce*. In other words, unlike Article 69(2) of the ICC Statute, Rule 141(1) does not subject the admission of written statements or records of interviews to a requirement of subsidiarity vis-à-vis *viva voce* evidence. Instead, Rule 154 very much operates like Rule 92 *ter* of the ICTY Rules of Procedure and Evidence, by which it is largely inspired.³⁰

20. The Panel, however, has discretion not to admit a statement offered pursuant to Rule 154 and decide to hear the evidence of a witness *viva voce*. It could do so, for instance, where the nature of the evidence or other circumstances pertaining to the proposed written evidence (*e.g.* contradictions between offered statements or the limited amount of time that would be saved) warrant such a course of action.³¹ The Panel could also opt to hear evidence *viva voce* in order to avoid

³⁰ See *e.g.* ICTY, [Dorđević Decision](#), paras 9, 12, 14.

³¹ See *e.g.* ICTY, [Dorđević Decision](#), paras 10, 13, 15-16. See also *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, Trial Chamber II, [Decision Denying Prosecution’s Motion for Admission of Evidence of Pedrag Radulović Pursuant to Rule 92 *ter*](#), 1 April 2010, paras 8, 10 (pointing to the scope of the facts on which the witness will testify and the fact that he has not previously testified before the Tribunal); [Tolimir Decision](#), paras 17, 28-29, 32-33.

overburdening the record with items of uncertain relevance,³² where the credibility of a witness constitutes a central element of the Defence case,³³ where the length and nature of the proposed written evidence militates against it,³⁴ or where there is a need for further explaining of proposed exhibits.³⁵ The Panel is also empowered to admit only parts of a witness' evidence pursuant to Rule 154 and order the rest of the evidence of the witness to be presented *viva voce*.³⁶

21. The Defence contends that the hearsay nature of some of the proposed evidence militates against its use through Rule 154.³⁷ The Panel notes that Rule 154 also does not exclude the possibility for the tendering party to offer hearsay evidence by means of Rule 154.³⁸ Hearsay evidence is admissible before this jurisdiction, whether offered *viva voce* or by means of a written statement.³⁹ While

³² See e.g. ICTY, [Tolimir Decision](#), paras 11-12.

³³ See e.g. ICTY, [Stanišić and Župljanin Decision](#), para. 9.

³⁴ ICTY, [Popović et al. Decision](#), p. 3 (the Trial Chamber exercised its discretion not to "convert" a *viva voce* into a Rule 92 *ter* witness based on "the length and nature of the proposed Rule 92 *ter* statement, and the potential impact on the length of cross examination").

³⁵ ICTY, [Dorđević Decision](#), para. 17.

³⁶ ICTY, [Dorđević Decision](#), para. 11.

³⁷ Response, para. 4.

³⁸ See e.g. ICTY, [Lukić and Lukić Decision](#), para. 17 (noting that "the fact that a certain amount of the witness evidence [offered pursuant to Rule 92 *ter* of the ICTY RPE] consists of hearsay evidence is not a factor barring admission of such evidence" though it could "affect the weight to be accorded to such evidence").

³⁹ See e.g. KSC-BC-2020-07, F00611, *Trial Judgment* ("Gucati and Haradinaj Trial Judgment"), 18 May 2022, confidential (a public redacted version was filed on the same day, F00611/RED), paras 24-26, 43 (and references cited therein); *Gucati and Haradinaj Decision*, para. 90. See also ICTY, [Lukić and Lukić Decision](#), para. 17; ICTY, *Prosecutor v. Tadić*, IT-94-1-T, [Decision on the Defence Motion on Hearsay](#), 5 August 1996, paras 14-19; ICTY, *Prosecutor v. Blaškić*, IT-95-14-T, Trial Chamber, [Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability](#), 21 January 1998, paras 6-10; ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1, Appeals Chamber, [Decision on the Prosecutors Appeal on Admissibility of Evidence](#), 16 February 1999, para. 15; *Prosecutor v. Karadžić*, IT-95-5/18, Trial Chamber, [Judgement](#), 24 March 2016, para. 13; ICTY, *Prosecutor v. Martić*, IT-95-11-T, Trial Chamber I, [Decision Adopting Guidelines on the Standards Governing The Admission Of Evidence, 19 February 2006](#), Annex A, para. 8; ICC, *Prosecutor v. Ngudjolo Chui*, Appeals Chamber, [Judgment on the Prosecutor's Appeal against the Decision of Trial Chamber II entitled "Judgment pursuant to Article 74 of the Statute"](#), ICC-01/04-02/12-271-Corr, 7 April 2015, para. 226; *Prosecutor v. Bemba et al.*, Appeals Chamber, [Judgment on the Appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala and Mr Narcisse Arido against the Decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"](#), ICC-01/05-01/13-2275-Red, 8 March 2018, para. 874.

the Panel will approach hearsay evidence with necessary caution,⁴⁰ it will only deny its admission where its probative value is marginal or where its admission would unfairly or disproportionately interfere with the Accused's rights, in particular, their right to confrontation.⁴¹

C. ASSOCIATED EXHIBITS

22. In addition to the actual record of interviews and testimony conducted with relevant witnesses, the SPO is seeking to tender a number of Associated Exhibits, which it says form an integral part of the Rule 154 Statements.

23. In respect of those, the Defence acknowledges the practice of other jurisdictions that permit the use of this sort of exhibits but submits that, to be admissible under Rule 154, such a document "must be one without which the witness's testimony would become incomprehensible or of lesser probative value [and] must still be relevant and have probative value".⁴² The Defence also makes specific objections to particular proposed exhibits, which will be addressed below.

24. The Panel is satisfied that the notion of "associated exhibits" comes within the scope of Rule 154 where the exhibits form an "inseparable and indispensable" part of the statement or record of interview tendered pursuant to that Rule.⁴³ In

⁴⁰ See *Gucati and Haradinaj* Trial Judgment, para. 43 (and references cited therein).

⁴¹ See *Gucati and Haradinaj* Decision, para. 90. See also ECtHR, *Cutean v. Romania*, no. 53150/12, [Judgment](#), 2 December 2012, para. 60.

⁴² Response, para. 15.

⁴³ See similarly ICTY, [Hadžić Decision](#), para. 4; [Stanišić and Župljanin Decision](#), para. 18; [Lukić and Lukić Decision](#), para. 15; *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Decision on Prosecution's Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits Pursuant to Rule 92 quater](#), 30 November 2009, para. 17; [Dorđević Decision](#), para. 5; *Prosecutor v. Gotovina et al.*, IT-06-90-T, Trial Chamber I, [Reasons for the Admission into Evidence of the Interviews of the Accused Ivan Cermak and Mladen Markac and Associated Exhibits](#), 17 April 2009, paras 12-13; *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits Pursuant to Rule 92 quater](#), 20 August 2009, para. 17; *Prosecutor v. Hadžić*, IT-04-75-T, Trial Chamber, [Decision on Prosecution's Motion to Admit Witness GH-164's Evidence Pursuant to Rule 92 bis](#), 22 April 2013, para. 12; ICC, *The Prosecutor v. Ongwen*, ICC-02/04-01/15-596-Red, Trial Chamber IX, [Decision on the Prosecution's Applications for Introduction of Prior Recorded](#)

order to qualify, the document in question must be one without which the witness's testimony would become incomprehensible or of lesser probative value.⁴⁴ Particularly relevant in this context is whether the proposed exhibit was discussed with the witness in the record which is being tendered in evidence.⁴⁵ Exhibits that do not fall within this category will have to be tendered either orally through a witness or by means of a bar table application.

25. The admission of Associated Exhibits is subject to the general requirements of Rule 138.⁴⁶

IV. DISCUSSION

A. GENERAL OBSERVATIONS

1. Types of Statements Admissible Under Rule 154

26. As noted above, to be admissible under Rule 154, the offered material must constitute a written statement or a transcript of an interview given by a witness in proceedings before the SC. This is clearly the case in respect of each item identified by the SPO as "Rule 154 Witness Statement" in each of its Motion's Annexes.

[testimony under Rule 68\(2\)\(b\) of the Rules](#), 18 November 2016, para. 10; *The Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-1938-Red-Corr, Trial Chamber V(A), [Decision on Prosecution Request for Admission of Prior Recorded Testimony](#) ("*Ruto and Sang Decision*"), 19 August 2015, para. 33. See also KSC-BC-2020-05, F00169, Trial Panel I, *Decision on the Submission and the Admissibility of Evidence* ("*Mustafa Decision*"), 25 August 2021, para. 29.

⁴⁴ ICTY, [Stanišić and Župljanin Decision](#), para. 18; [Lukić and Lukić Decision](#), para. 15; *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Trial Chamber III, [Decision on Prosecution's Motion for the Admission of Written Evidence of Witness Slobodan Lazarević Pursuant to Rule 92 ter with Confidential Annex](#), 16 May 2008, para. 19; [Đorđević Decision](#), para. 5; [Hadžić Decision](#), para. 4; *Prosecutor v. Naletilić and Martinović*, IT-98-34-PT, Trial Chamber, [Decision Regarding Prosecutor's Notice of Intent to Offer Transcripts Under Rule 92 bis \(D\)](#), 9 July 2001, para. 8; [Tolimir Decision](#), para. 4.

⁴⁵ See e.g. ICC, [Ruto and Sang Decision](#), para. 33.

⁴⁶ See ICTY, [Đorđević Decision](#), para. 6; *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, Trial Chamber II, [Public Redacted Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92 ter \(ST012 and ST019\)](#), 2 October 2009, para. 19. See also [Lukić and Lukić Decision](#), para.20; [Hadžić Decision](#), para. 4; [Tolimir Decision](#), para. 3.

27. The Defence's preference for written statements that are, in effect, summaries prepared by a prosecuting staff member of a verbatim account is no ground to refuse to admit the latter.

28. The Defence contends that the nature of evidence, in particular its importance to the case, militates against its admission through Rule 154.⁴⁷ The Panel notes that Rule 154 does not set any limitation of substance or nature in respect of the sort of evidence that could be tendered pursuant to that Rule. As noted, and contrary to Rule 153, evidence of the Accused's acts and conduct as charged in the indictment can be admitted pursuant to that Rule.⁴⁸ However, the importance of the proposed evidence to a Party's case is a factor that the Panel may take into consideration. The Panel may refuse admission pursuant to Rule 154 of a statement that is central to a party's case and order that evidence be heard *viva voce*.

2. The Amount of Evidence Tendered in Written Form Through Rule 154

29. The Panel shares the Defence's concern that, unless reasonable limitations are placed on the amount of evidence admitted, the risk exists that the combined effect of multiple witness statements/transcripts and extensive oral evidence for individual witnesses could result in creating an unmanageable trial record. The Panel is particularly concerned by the SPO's practice of tendering, pursuant to Rule 154, multiple largely repetitive statements by the same witness. This practice is not conducive to the expeditious conduct of the proceedings. Furthermore, the SPO has tendered lengthy transcripts of some witnesses, where only part of the evidence presented appears to be relevant to its case. The Panel as well as the Parties and participants should be clear what part(s) of a witness's statements/transcripts of evidence the SPO is relying upon for its case. The Panel

⁴⁷ Response, para. 4.

⁴⁸ ICTY, IT-09-92-T, Trial Chamber I, *Prosecutor v. Mladic*, [Decision with Regard to Prosecutor Rule 92 ter Motion with Regard to Joseph Kingori, Eelco Koster, and Christine Schmitz](#), 9 July 2012, para. 6. See also, ICC, *Prosecutor v. Al Hassan*, [Decision on Prosecution's requests to introduce prior recorded testimonies under Rule 68\(3\) of the Rules](#), ICC-01/12-01/18-987-Red, 21 October 2020, para. 24.

will not look through the record in search of evidence that the SPO has not clearly pointed to as relevant to its case. The burden is on the SPO to clearly outline those parts of a statement/record of evidence on which it relies. The Defence should know what parts of a witness's testimony are potentially relevant to the case which it must meet, so that it can prepare to address them. The Panel notes in this regard that the SPO Pre-Trial Brief⁴⁹ provides some guidance as to what evidence of a witness the SPO might be relying upon. The Panel further notes that the SPO has produced several summaries of the proposed evidence of Rule 154 witnesses, that help identify the evidence of these witnesses which the SPO seems intent on relying upon, in its amended list of witnesses ("Amended List of Witnesses"),⁵⁰ its List of First 12 Witnesses, and its Motion. In respect of certain witnesses, the SPO has also helpfully limited the offered records to those parts on which it seeks to rely rather than the entire record of testimony.⁵¹ Where the SPO intends to rely upon aspects of a witness's evidence contained in the offered statements/transcripts which is not specifically flagged either in the SPO Pre-Trial Brief and/or in any of the above summaries, the SPO is expected to discuss with the witness in court the aspects of his/her statement/transcript that pertain to the issue in question.

30. If admitted, the size and magnitude of the evidence offered in writing, combined with the number of proposed statements/transcripts for some of the witnesses could also clog the record with a great deal of evidential debris and make final submissions for the Parties and participants and the writing of the

⁴⁹ F00709, Specialist Prosecutor, *Prosecution Submission of Corrected Pre-Trial Brief and Related Requests*, 24 February 2022, with Annexes 1 ("SPO Pre-Trial Brief") and 3, strictly confidential and *ex parte*, and Annex 2, confidential. A lesser redacted confidential version of the SPO Pre-Trial Brief was filed on 15 February 2023, F01296/A01.

⁵⁰ F01078, Specialist Prosecutor, *Submission of Amended Witness and Exhibit Lists*, 2 November 2022, confidential, with Annexes 1 and 3, strictly confidential and *ex parte*, and Annexes 2 and 4, confidential, and in particular F01078/A03, *Annex 3 to Submission of Amended witness and exhibit lists*, 2 November 2023, strictly confidential and *ex parte*.

⁵¹ See *e.g. infra* paras 74, 81.

Judgment for the Panel very complicated. Before offering evidence, whether orally or in writing, the Party concerned should conduct a careful assessment of whether each item – in whole or in part – is truly necessary and important to its case to reduce the overall size of the record and avoid unnecessary duplications. To that effect, the Panel invites the SPO to provide individualised submissions regarding the conditions of admissibility of each proposed associated exhibit for any future Rule 154 applications.

31. The Panel accepts that, where a transcript of evidence includes cross-examination, it is appropriate to admit the entire transcript of evidence, even if the offering party does not intend to rely on those parts of the transcript which include cross-examination. This is because the inclusion of cross-examination enables the Panel to assess the credibility of the witness, and may reduce the amount of courtroom time necessary for cross-examination of the witness in the present trial. Finally, the presence of non-evidential material within a witness statement, such as questions of the interviewer(s) or discussions of procedural matters, does not render a statement inadmissible. Instead, the Panel will focus on the evidential parts of the relevant records and give it the appropriate weight.⁵²

3. Length of Direct Examination for Rule 154 Witnesses

32. The Defence also submits that the SPO abuses Rule 154 by seeking to lead oral evidence far exceeding in length what the Defence regards as acceptable under that Rule. The Panel notes that the title of Rule 154 makes reference to written evidence being offered “in lieu of” oral evidence – *i.e.* instead of, or in place of, *viva voce* evidence. Consistent with the practice of other tribunals, the possibility for a Party to elicit oral evidence in addition to written statements and records of interview admitted in writing is not being disputed by the Parties. The Panel

⁵² See also ICTY, [Popović et al. Decision](#), p. 3.

further notes that Rule 154 does not limit the number of hours that a calling party could seek to examine orally *in addition to* the evidence tendered in writing pursuant to that Rule. At the same time, the Panel considers that the primary purpose of Rule 154 is to save time and resources.⁵³ In this context, Rule 154 requires that oral evidence shall not be unnecessarily duplicative of evidence already tendered and admitted in writing.

33. The Panel regards the additional time sought by the SPO for supplementary *viva voce* examination as being on the high end of what appears reasonable. The SPO is therefore invited to ensure that the Witnesses' *viva voce* evidence is as short as possible, to avoid repetition of their written evidence and to focus on issues central to this case. Thus, when questioning Rule 154 witnesses, the SPO shall ensure that it does not elicit evidence already contained in the witness's statement, although the Panel will make limited allowance for the need to refresh a witness's memory, to contextualise questions or to elicit further specific information in respect of particularly important aspects of a witness's evidence.

34. Nevertheless, the Panel has some sympathy for the concern expressed by the Defence that the combination of voluminous written transcripts and statements being added to lengthy supplementary oral evidence complicates the process of preparation for cross-examination and could unnecessarily bloat the record of proceedings. Therefore, and to enable effective Defence preparation, the Panel will order the SPO to indicate the areas of additional oral questioning which it plans to conduct with each of the Rule 154 witnesses. Such an indication shall be (i) provided no later than 24 hours before the commencement of testimony; and (ii) sufficiently detailed so as to enable fair and effective preparation for cross-examination by the Defence.

⁵³ *Mustafa* Decision, para. 29; ICTY, [Hadžić Decision](#), para. 4; ICTY, [Lukić and Lukić Decision](#) para. 13; [Popović et al. Decision](#), p. 3.

35. The Panel has relied, for the present decision, upon the good judgment and diligence of the SPO. Should the Panel form the view that the approach taken by the SPO risks creating unfairness to the Defence and/or bloating the record of these proceedings with duplicative evidence or evidence of very limited probative value, the Panel might consider adopting necessary measures to address such problems. The Panel may, where justified, reduce the time permitted for additional oral evidence; refuse to admit some or all of the proposed statements; order that proposed Rule 154 witnesses be heard entirely or partly *viva voce*; or order the production of consolidated statements.

4. Defence's Further Objections

36. In its Response, the Defence seeks to reserve its right to raise "further objections" to the admissibility of the statements/transcripts now offered under Rule 154.⁵⁴ The process of objecting to the admission of witness statements or records of evidence is regulated by the Rules. When a Party seeks to tender statements or records of interview pursuant to Rule 154, the opposing Party must, if it objects to admission, raise its objections at that point. A conscious failure on its part to object or to raise a particular objection at that point in time means that the objection is waived.⁵⁵

37. When the Panel is seized of an application pursuant to Rule 154, it verifies that the conditions for admission are met. Where those conditions are met, the offered statements are declared admissible subject to the conditions set out in Rule 154 (a)-(c) being satisfied in court with the witness. Any (further) attempt to raise an objection to admission unrelated to any of these three requirements will

⁵⁴ See Response, paras 17-18.

⁵⁵ See e.g. ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, [Judgment](#), 30 January 2015, paras 176, 1314; *Prosecutor v. Stakić*, IT-97-24-A, Appeals Chamber, [Judgment](#), 22 March 2006, para. 199. See also *Prosecutor v. Natelić & Martinović*, IT-98-34-A, Appeals Chamber, [Judgment](#), 3 May 2006, para. 21.

be rejected by the Panel, unless the basis for the objection was not known to the Defence at the time of its Response and could not reasonably be known in the exercise of due diligence.

38. The Panel does not understand the holding of the *Mustafa* Panel cited by the Defence to provide an exception to this principle.⁵⁶ This decision merely makes the point that, consistent with Rule 154 and the practice of other jurisdictions with a similar provision (*e.g.* Rule 92 *ter* of the ICTY Rules of Procedure and Evidence), requirements of admissibility are first verified upon an application for the admission of written records coming within its terms *and then* admission is formalised once the three requirements of Rule 154 are met (*i.e.* presence of the witness; witness's availability for cross-examination; and attestation of the content of the statement).⁵⁷

B. W04474

39. The SPO submits that the proposed evidence of W04474⁵⁸ is: (i) relevant;⁵⁹ (ii) authentic and reliable;⁶⁰ and (iii) suitable for admission under Rule 154.⁶¹ It further argues that W04474's Associated Exhibits⁶² are admissible.⁶³

40. The Defence responds that W04474 should be heard *viva voce* as, it submits, W04474 is: (i) a key witness; (ii) who makes direct allegations of direct

⁵⁶ See F00169 *Mustafa*, para. 31.

⁵⁷ See *e.g.* *Lukić and Lukić* Decision, para. 20.

⁵⁸ The proposed evidence of W04474 ("W04474's Proposed Evidence") is constituted of: (i) the transcripts of W04474's SPO interviews dated [REDACTED] (collectively, "W04474's Rule 154 Statements") and the 40 items set out in Annex 1 to the Motion proposed associated exhibits ("W04474's Associated Exhibits"). The Associated Exhibits can be grouped as follow: (i) [REDACTED] ("Meetings Notes"); (ii) [REDACTED] ("Selimi Note"); (iii) [REDACTED] ("[REDACTED] Letters"); (iv) [REDACTED] ("Emails to Thaçi"); (v) [REDACTED] ("Certificates, Honors and Requests"); (vi) [REDACTED] ("[REDACTED]"); (vii) [REDACTED] ("Press Articles"); (viii) [REDACTED] ("Facebook Posts"). See Annex 1 to the Motion.

⁵⁹ Motion, paras 11-14.

⁶⁰ Motion, para. 15.

⁶¹ Motion, paras 16-17.

⁶² See Annex 1 to the Motion.

⁶³ Motion, para. 18.

perpetration against three of the Accused; and (iii) hearing the witness's evidence live outweighs the time saving benefits of admitting the evidence via Rule 154.⁶⁴ The Defence challenges the alleged time saving advantages of Rule 154, noting that: (i) the SPO indicates that it needs four and half hours to conduct its direct examination in addition to the tendered witness statements/transcripts; (ii) the SPO interviewed the witness during approximately 13 hours; (iii) W04474's Rule 154 Statements total 267 pages; and (iv) the cross-examination necessary to address both W04474's Proposed Evidence and live testimony will be considerable.⁶⁵ Further, the Defence objects to the admission of some of W04474's Associated Exhibits.⁶⁶

41. Regarding relevance, W04474 is [REDACTED].⁶⁷ W04474's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*: (i) the alleged arbitrary detention and disappearance of [REDACTED] and that of [REDACTED]; (ii) the enquiries about [REDACTED]; (iii) [REDACTED] meetings and interactions with relevant individuals in respect of this issue (including [REDACTED]); (iv) with a meeting with Rexhep Selimi who, [REDACTED] said, [REDACTED]; and (v) the alleged targeting, arbitrary detention and killing of perceived collaborators and spies; (vi) the alleged existence of a widespread or systematic attack against a civilian population; and (vii) the alleged failure of competent authorities and individuals to establish the [REDACTED].⁶⁸ The Panel is thus satisfied that W04474's Rule 154 Statements are relevant to the charges in the Indictment.

⁶⁴ Response, para. 19.

⁶⁵ Response, para. 19.

⁶⁶ Response, para. 21 referring to F01286/01, Specialist Counsel, *Annex 1 to Confidential Response to the Prosecution Submission of List of First 12 Witnesses and Associated Information*, 13 February 2023, confidential. See also Preliminary Objections, paras 28-30.

⁶⁷ See e.g. Indictment, paras [REDACTED].

⁶⁸ See First 12 Witnesses List, p. 2. See also Amended List of Witnesses, pp. 347-348; F00709/A01, Specialist Prosecutor, *Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte*, paras [REDACTED]. F00709, Specialist Prosecutor, *Prosecution Submission of Corrected Pre-Trial Brief and Related Requests*, 24 February 2022, with Annexes 1 and 3, strictly confidential and *ex parte*, and Annex 2, confidential, Annex 2 (a lesser redacted confidential version of the SPO Pre-Trial Brief was filed on 15 February 2023, F01296/A01).

42. The Panel is also satisfied that W04474's Rule 154 Statements, which are verbatim transcripts of audio-video recorded SPO interviews, are authentic and have probative value. There is no indication of the probative value of W04474's Rule 154 Statements being outweighed by their prejudicial effect.

43. Regarding the suitability of W04474's Proposed Evidence for admission pursuant to Rule 154, the Panel notes that [REDACTED] evidence goes to a number of issues important to both the SPO and Defence cases. In particular, the witness gives evidence regarding a number of meetings that [REDACTED] says [REDACTED] had with some of [REDACTED] and/or with other individuals relevant to this case. W04474's Rule 154 Statements contains evidence going to the "acts and conduct" of some of the Accused. There is no indication that the admission of [REDACTED] evidence in chief for the most part in writing would cause prejudice to the Defence. Instead, it should give the Defence a clear understanding ahead of time of what that evidence is. Furthermore, the witness will be available for cross-examination, which the Defence has already indicated would be quite significant in length. The Panel also notes that the admission of the bulk of W04474's evidence in chief by means of Rule 154 – amounting to a total time of approximately 13 hours of interview – will reduce the time required for direct examination significantly, thereby promoting the efficiency of the proceedings. The Panel is therefore satisfied that W04474's Rule 154 Statements are suitable for admission pursuant to Rule 154.

44. Regarding associated exhibits, the Panel observes that all W04474's Associated Exhibits were discussed in some detail in W04474's Rule 154 Statements.⁶⁹ As such, they form an inseparable part of those Statements. The Panel notes the Defence's objections to the reliability and probative value of

⁶⁹ See Annex 1 to the Motion and references cited in the column "reference".

certain of W04474's Associated Exhibits,⁷⁰ and will examine them in turn while assessing the different categories of exhibits.

45. The Meeting Notes⁷¹ are copies of handwritten notes by [REDACTED] documenting meetings [REDACTED] says [REDACTED] had with several individuals in relation to [REDACTED]. The Meeting Notes are all handwritten, dated, and signed by [REDACTED], who explained on various occasions in [REDACTED] Statements the circumstances in which [REDACTED] produced them. These records contain information [REDACTED] said [REDACTED] received from those [REDACTED] met regarding [REDACTED] and the circumstances in which [REDACTED]. The Panel is therefore satisfied that these Meeting Notes are relevant and authentic and have probative value. There is no indication of their probative value being outweighed by their prejudicial effect. Furthermore, the Defence will be able, through cross-examination, to question the witness in respect of those.

46. The Panel notes that the Defence objects to the admission of three of the Meeting Notes:⁷² (i) ERN 067224, a note which appears to bear [REDACTED] and purports to reflect what the latter told [REDACTED] (“[REDACTED] Note”);⁷³ (ii) ERN 067225,⁷⁴ which appears to be a note of a meeting between [REDACTED] and [REDACTED] (“[REDACTED] Note”); and (iii) ERN 067227,⁷⁵ which purports to be a note of a meeting between [REDACTED] and [REDACTED] (“[REDACTED] Note”). The Defence contends that the [REDACTED] Note contains hearsay, which have been denied by [REDACTED],⁷⁶ and the [REDACTED] Note contains hearsay from [REDACTED] and [REDACTED], who

⁷⁰ Response, para. 21; Preliminary Objections, paras 28-30.

⁷¹ [REDACTED]. *See also* Annex 1 to the Motion, Items 1-9, 18-20.

⁷² Response, para. 21 (i)-(iii).

⁷³ Annex 1 to the Motion, Item 5.

⁷⁴ Annex 1 to the Motion, Item 6.

⁷⁵ Annex 1 to the Motion, Item 8.

⁷⁶ [REDACTED].

denied making such statements in their SPO interviews.⁷⁷ The Defence also objects to the admission of the [REDACTED] Note on the basis that: (i) [REDACTED] has disavowed the accuracy of that note during his SPO interview and is not an SPO witness; and (ii) although it relates to the acts and conduct of the Accused, the note does not meet the criteria for Rule 154 statements.⁷⁸

47. The Panel reiterates that hearsay is admissible as long as it does not interfere disproportionately with the rights of the Accused or where its probative value is considered insufficient for admission.⁷⁹ The Panel does not find that the admission of the impugned notes would disproportionately affect the rights of the Accused, insofar as the Defence will have the opportunity to cross-examine W04474 on this point and the issue will go to the weight given to the evidence. The Panel further observes that the information on which the Defence seeks to rely to oppose admission is not admitted in evidence. Should the Defence elect to present a case, it could decide to call these individuals as witnesses to challenge the authenticity and/or reliability of those records.

48. Regarding the [REDACTED], the Panel considers in addition that neither the fact that [REDACTED] is not an SPO witness, nor the fact that he has disavowed the accuracy of the note during his SPO interview⁸⁰ renders the note irrelevant or *prima facie* unreliable. Lastly, the Defence fails to explain how this handwritten note by [REDACTED] tendered by the SPO as an associated exhibit to [REDACTED] statements – and not as a statement of [REDACTED] – should fulfil the criteria for admission of a statement. Therefore, the Panel rejects the objections of the Defence.

⁷⁷ Response, para. 21 referring to [REDACTED].

⁷⁸ Response, para. 21(i).

⁷⁹ See *supra* para. 21.

⁸⁰ [REDACTED].

49. The Panel finds that all Meeting Notes form an indispensable part of W04474's Rule 154 Statements and are therefore suitable for admission under Rule 154 as associated exhibits to these Statements.

50. The Selimi Note⁸¹ is composed of: (i) a copy of a typewritten note dated [REDACTED] allegedly containing the statement of Rexhep Selimi regarding the [REDACTED] and signed by Mr Selimi;⁸² and (ii) the copy of the [REDACTED] regarding two meetings that [REDACTED] allegedly had with Rexhep Selimi on [REDACTED] and [REDACTED].⁸³ The Defence objects to the admission of the Selimi Note pending the decision of the relevant co-accused to testify as, it argues: (i) the items do not meet the criteria for witness statements under Rule 154; (ii) Kosovar law prohibits the use of such statements against a co-accused; and (iii) it would be fundamentally unfair to use them against any of the Accused.⁸⁴ The Panel observes that the items are not tendered as a statement of one of the co-accused, but as associated exhibits to W04474's Rule 154 Statements. They were not taken by national or international authorities for the purpose of a criminal investigation or prosecution, but by a private actor from an individual who wilfully met with [REDACTED] and who accepted to give [REDACTED] a statement. It follows that the criteria that the Panel should assess are not those relevant to the admission of statements pursuant to Rule 154, but rather those relevant for the admission of associated exhibits under Rules 138(1) and 154 as set out above.⁸⁵ In this regard, the Panel observes that: (i) the handwritten note is dated and signed by [REDACTED] and bears [REDACTED] handwriting; (ii) the typewritten note is dated, bears the signature of both [REDACTED] and Rexhep Selimi, as well as a handwritten annotation from Rexhep Selimi; and (iii) in

⁸¹ 067229-067230 and 067231-067231 and corresponding English translation (067221-067231-ET, see 067229-067231-ET). *See also* Annex 1 to the Motion, Items 10-11 and footnote 58 above.

⁸² 067231-067231. *See also* Annex 1 to the Motion, Item 11.

⁸³ 067229-067230. *See also* Annex 1 to the Motion, Item 10.

⁸⁴ Response, para. 21(ii). *See also* Preliminary Objections, paras 28-30.

⁸⁵ *See supra* paras 24-25.

W04474's Rule 154 Statements, the witness provided detailed explanations and context in relation to both items.⁸⁶ The Panel notes, furthermore, that the Defence does not appear to be questioning the fact that this interview took place and that the record accurately reflects its content. The Panel is satisfied that the Selimi Note is relevant and authentic and has probative value. The Panel considers that whether or not the co-accused decide to testify on this matter does not alter the above. The Accused have the right to remain silent and can waive it if they feel it is in their interest to do so. The admission of a record or statement made by an accused does not, without more, infringe upon the fundamental rights of his co-defendants.⁸⁷ Further, the Defence fails to demonstrate that the invoked provision from Kosovar law, Article 123 of the Kosovo Criminal Procedure Code,⁸⁸ is applicable in these proceedings, let alone prevail over the specific provisions set out in the Law and in the Rules regarding admission of evidence before this jurisdiction. Indeed, pursuant to Article 3(2)(c) and (4) of the Law, no Kosovo law provisions, other than those expressly incorporated and applied in the Law, shall apply to the SC. As a result, the Panel rejects the Defence's objection and finds that the Selimi Note is suitable for admission as an associated exhibit of W04474's Rule 154 Statements.

51. The [REDACTED] Letters⁸⁹ are copies of three typewritten letters signed by [REDACTED] addressed to Hashim Thaçi respectively dated [REDACTED] and [REDACTED]. The Defence objects to the admission of 067232-067234 on the basis that W04474 is not in a position to authenticate the items.⁹⁰ The Panel observes that: (i) each letter is dated and appears to be signed by [REDACTED]; and (ii) W04474 explains that [REDACTED] gave [REDACTED] these letters

⁸⁶ See [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ 067232-067232; 067233-067233; 067234-067235 and corresponding English translation (067232-067238-ET, see 067232-067235-ET). See also Annex 1 to the Motion, Items 12-14.

⁹⁰ Response, para. 21(v).

[REDACTED] on the occasion of a meeting.⁹¹ Thus, while the Panel accepts that W04474 cannot authenticate the letters to the same extent that their author could, it is satisfied that the [REDACTED] Letters bear sufficient indicia of authenticity and reliability. Accordingly, the Panel rejects the objection of the Defence. On the basis of the above, the Panel is satisfied that [REDACTED] Letters are relevant and authentic and have probative value. There is no indication that the fact that the author of the letters is not due to testify would cause undue prejudice to the Accused. The Defence will have a full and fair opportunity to question W04474 on those letters and to make submissions, in due course, regarding the weight, if any, that this Panel should give to the letters.

52. The proposed collection of Press Articles⁹² consist of 489 pages of press articles concerning [REDACTED], written by various parties after the conflict. The Defence objects to their admission on the basis that it lacks relevance, is of dubious provenance, low probative value and because W04474 is not in a position to authenticate them.⁹³ The Panel observes that W04474 explains that the Press Articles contain: (i) statements, articles and a biography written about [REDACTED]; and (ii) suspicions and accusations in relation to his disappearance; all obtained from public sources.⁹⁴ The Panel is of the view that the Press Articles form neither an “indispensable” nor an inseparable part of W04474’s evidence as the witness gave only the most generic of information regarding the content of those. The Panel is further not satisfied that the witness would be in a position to authenticate such a collection or affirm the probative value of each article. In light of the foregoing, the Panel denies the admission of the Press Articles as an associated exhibit of W04474’s Rule 154 Statements. Should the SPO wish to ask questions to the witness about particular articles contained in this collection, it

⁹¹ See [REDACTED].

⁹² 067269-067710 and corresponding English translation (067269-067710-ET). See also Annex 1 to the Motion, Item 39.

⁹³ Response, para. 21(vi).

⁹⁴ [REDACTED].

shall do so during the time allocated by this Panel for further *viva voce* testimony of this witness.

53. Regarding the remaining proposed associated exhibits,⁹⁵ the Defence submits that they should be put to W04474 live by the SPO, given the importance of [REDACTED] evidence; and that the four-and-a-half hours which the SPO estimates it will take to elicit [REDACTED] evidence-in-chief will provide ample opportunity for this.⁹⁶

54. As regards the Certificates and Honors, the Panel observes that they are documents delivered by different authorities recognising [REDACTED] and honors issued to [REDACTED] or their family. The Panel is not convinced that these Certificates and Honors are relevant. As regards the Facebook Posts and Related Items, the Panel observes that the Defence did not specifically object to their admission and they contain references to whether the case of [REDACTED] will be dealt with by the SC.⁹⁷ However, the Panel is not satisfied by the relevance and probative value of these documents. Further, the Panel observes that the Facebook Posts and Related Items are only briefly mentioned in W04474's Rule 154 Statements and is not convinced that they form an inseparable part of W04474's evidence. The Panel is therefore not satisfied that Certificates and Honors, and the Facebook Posts and Related Items should be admitted as associated exhibits.

⁹⁵ Emails to Thiçi: 067236-067236; 067237-067237; 067238-067238 and corresponding English translation (067232-067238-ET, *see* 067236-067238-ET). Certificates and Honors: 067243-067243; 067244-067244; 067245-067245; 067246-067246; 067247-067247; 067248-067248; 067249-067249 and corresponding English translation (067243-067249-ET Revised RED). Requests: 067250-067251; 067252-067252; 067253-067255; 067256-067257; 067258-067259; 067260-067260; 067261-067261; 067262-067262; 067263-067263; 067264-067264; 067265-067265 and corresponding English translation (067250-067252-ET Revised RED; 067253-067255-ET Revised; 067256-067265-ET RED). [REDACTED]: 067266-067266 and corresponding English translation (067266-067266 ET). Facebook Posts and Related Items: 068716-068733 and corresponding English translation (068716-068734-ET).

⁹⁶ Response, para. 22.

⁹⁷ *See e.g.* [REDACTED].

55. As regards the emails which the witness says [REDACTED] sent to Mr Thaçi, the Panel observes that they are copies of emails that [REDACTED] appears to have sent to Hashim Thaçi on [REDACTED].⁹⁸ While the Thaçi Defence objects to the admission of these on grounds of unfair prejudice, it does not appear to question the authenticity of those items. As regards the Requests, the Panel observes that these documents contain [REDACTED] in relation to [REDACTED] to various authorities, including former high-ranking members of the Kosovo Liberation Army (“KLA”), and occasional responses thereof; which the witness provided during [REDACTED] SPO interview.⁹⁹ As regards [REDACTED], the Panel observes that it is a copy of the [REDACTED] which makes reference to [REDACTED] and in respect of which the witness has commented.¹⁰⁰ The Panel is therefore satisfied that the provenance of the information contained therein and that such information can be tested through [REDACTED] testimony. The Panel is of the view that the proposed associated exhibits (Emails to Thaçi, Requests, [REDACTED]) are relevant, authentic and have probative value. The witness is able to give or has given evidence regarding the content and origin of each of those. The Panel is further of the view that they form an indispensable and inseparable part of W04474’s evidence, insofar as they complete, illustrate and/or corroborate W04474’s Rule 154 Statements. Any questions relevant to the weight of any of these documents can be raised by the Defence in cross-examination.

56. For these reasons, the Panel finds that the Meeting Notes, the Selimi Note, the [REDACTED] Letters, the Emails to Thaçi, Requests, and the [REDACTED] (“W04474’s Admitted Associated Exhibits”) form an indispensable and inseparable part of W04474’s evidence and are therefore appropriate for admission under Rule 154. With regard to the Press Articles, the Certificates and Honors, and the Facebook Posts and Related Items (“W04474’s Denied Associated Exhibits”)

⁹⁸ See [REDACTED].

⁹⁹ See e.g. [REDACTED].

¹⁰⁰ See e.g. [REDACTED].

the Panel considers that they do not form an indispensable and inseparable part of W04474's evidence and therefore finds them inadmissible under Rule 154.

57. In light of the above, the Panel finds that W04474's Rule 154 Statements and W04474's Admitted Associated Exhibits are relevant, authentic and have probative value, and are therefore appropriate for admission pursuant to Rule 138(1) and Rule 154. The Panel finds that W04474's Denied Associated Exhibits are not appropriate for admission pursuant to Rules 138(1) and 154.

C. W04421

58. The SPO submits that the proposed evidence of W04421¹⁰¹ is: (i) relevant;¹⁰² (ii) authentic and reliable;¹⁰³ and (iii) suitable for admission under Rule 154.¹⁰⁴ It argues that W04421's associate exhibits¹⁰⁵ are admissible.¹⁰⁶

59. The Defence responds that W04421's Proposed Evidence is *prima facie* reliable and authentic.¹⁰⁷ The Defence argues that: (i) the request of two hours of direct examination generates a risk of prejudice against the Accused, as the length of the time allocated for supplementary direct examination cannot reasonably be considered "brief and oral testimony";¹⁰⁸ (ii) it will be required to perform additional cross-examination time to probing inconsistencies and instances of

¹⁰¹ The proposed evidence of W04421 ("W04421's Proposed Evidence") is constituted of: (i) 6 statements or transcripts of interview as set out in Annex 2 to the Motion, Rule 154 Witness Statements 1-6 (collectively, "W04421's Rule 154 Statements"); and (ii) 1 proposed associated exhibit set out in Annex 2 to the Motion, Associated Exhibit 1 ("W04421's Associated Exhibit"). W04421's Associated Exhibit is constituted of the redacted version of [REDACTED]. W04421's Rule 154 Statements are constituted of: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; and (vi) [REDACTED].

¹⁰² Motion, paras 19-23.

¹⁰³ Motion, paras 24-25.

¹⁰⁴ Motion, paras 26-28.

¹⁰⁵ See Annex 2 of the Motion.

¹⁰⁶ Motion, para. 28.

¹⁰⁷ Response, para. 23.

¹⁰⁸ Response, para. 24.

hearsay in W04421's various statements;¹⁰⁹ (iii) the hearsay evidence should not be rendered admissible through the use of Rule 154;¹¹⁰ and (iv) it has no objections to the admission of W04421's Associated Exhibit.¹¹¹

60. W04421's Rule 154 Statements concern the following issues: (i) the alleged summons of [REDACTED] to the KLA Headquarters in Llapashtice/Lapaštica on [REDACTED]; (ii) the alleged arbitrary detention, mistreatment and killing of [REDACTED]; (iii) the alleged role and involvement of senior KLA figures and military police in these actions; (iv) the alleged targeting, detention, mistreatment and killing of suspected collaborators/spies by the KLA; (v) the alleged existence of a widespread or systematic attack against a civilian population; (vi) W04421's alleged meeting with [REDACTED]; (vii) the alleged threat that W04421 received from [REDACTED]; (viii) the alleged motives of [REDACTED]'s detention; (ix) W04421's alleged statement to [REDACTED]; and (x) the alleged location and date of the discovery of [REDACTED].¹¹² The Panel notes that the Defence does not dispute the relevance of this proposed witness. The Panel is therefore satisfied that W04421's Rule 154 Statements are all relevant.

61. The Panel notes that W04421's Rule 154 Statements come from a reliable source, which provide for a variety of safeguards and guarantees. In particular, the SPO record of interview was conducted by officials of the SPO, was audio- and video-recorded, the interview was done with the assistance of an interpreter, the witness was informed of all relevant rights, and [REDACTED] confirmed not just the truth and accuracy of that account but adopted [REDACTED] prior statements as true and accurate to the best of [REDACTED] knowledge. Therefore, the Panel is satisfied that the W04421's Rule 154 Statements is authentic and has probative

¹⁰⁹ Response, para. 25.

¹¹⁰ Response, para. 25.

¹¹¹ Response, para. 26.

¹¹² See Motion, paras 19-23; Amended List of Witnesses, pp. 314-315; SPO Pre-Trial Brief, paras [REDACTED].

value. There is no indication that the probative value of the proposed evidence being outweighed by its prejudicial effect.

62. Regarding the suitability of admission of W04421's Rule 154 Statements, the Panel notes the following: (i) the proposed record is made of six (6) prior statements/records of interview; (ii) each contains information of relevance to the case; (iii) the Defence does not appear to question their relevance and there is no indication that it would be prejudiced by the admission of this evidence in writing rather than *viva voce* and (iv) the admission of W04421's Rule 154 Statements will undoubtedly and significantly limit the time necessary for the examination in chief of this witness. The Panel further observes that the SPO only seeks to clarify in the course of the direct examination certain issues, facts and circumstances in relation to the W04421's Rule 154 Statements. This will allow the Defence to focus its attention upon those parts of the written statements that the SPO seeks to tender. For these reasons, the Panel finds W04421's Proposed Evidence appropriate for admission pursuant to Rule 154.

63. The Panel observes that the SPO seeks two additional hours to elicit additional evidence from the proposed witness. This estimate does, however, seem to be high considering the number of written statements the SPO seeks to tender into evidence and the fact that those statements appear to cover much if not all of the relevant evidence. The Panel will, therefore, closely monitor how the SPO makes use of the allotted time with a view to ensuring that it is put to effective use. The Panel notes, furthermore, that there is some overlap between some of the W04421's Rule 154 Statements. The Panel observes that only four¹¹³ of these are referred to in the SPO Pre-Trial Brief. The Panel invites the SPO to carefully consider the need to tender all of the statements and/or to refrain from tendering parts of some of them in order to avoid unnecessary duplication and to reduce the

¹¹³ [REDACTED].

overall size of the record, in particular, the second¹¹⁴ and third¹¹⁵ offered statement if the SPO has no informed intention to rely upon one or both of these statements. In regards to the Defence opposition to the admission of hearsay evidence, the Panel has set out above its approach.¹¹⁶

64. The Panel notes that W04421's Associated Exhibit (a handwritten note written by the witness) is discussed in the W04421's statement and forms an indispensable and inseparable part of the evidence. Its admission is not disputed by the Defence and it fulfils all of the requirements for admission as an associated exhibit under Rules 138(1) and 154.

65. In light of the above, the Panel finds that W04421's Rule 154 Statements and W04421's Associated Exhibit are appropriate for admission pursuant to Rules 138(1) and 154.

D. W04355

66. The SPO submits that the proposed evidence of W04355¹¹⁷ is: (i) relevant;¹¹⁸ (ii) authentic and reliable;¹¹⁹ and (iii) suitable for admission under Rule 154 and therefore admissible.¹²⁰

67. The Defence responds that it has no objection to the admission of W04355's Proposed Evidence and gives notice that it may need additional time to cross-examine the witness.¹²¹

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ See *supra* para. 21.

¹¹⁷ The proposed evidence of W04355 ("W04355's Proposed Evidence") is constituted of: (i) the redacted version of transcript of [REDACTED] ("W04355's Rule 154 Statement"); and (ii) [REDACTED] ("W04355's Associated Exhibit").

¹¹⁸ Motion, paras 29-32.

¹¹⁹ Motion, para. 33.

¹²⁰ Motion, paras 34-36.

¹²¹ Response, para. 27.

68. In terms of relevance and probative value, W04355's Rule 154 Statement contains information about, *inter alia*: (i) the alleged abduction, mistreatment and eventual killing of [REDACTED], and his alleged detention at [REDACTED]; (ii) the alleged detention and mistreatment of [REDACTED] at [REDACTED]; (iii) [REDACTED]'s visit to [REDACTED] and how he was allegedly beaten there; (iv) [REDACTED]'s alleged subsequent visit to [REDACTED] [REDACTED] and [REDACTED] meeting with [REDACTED]; (v) [REDACTED]' inquiries with the KLA concerning [REDACTED]'s disappearance and alleged failure to provide relevant information; (vi) the alleged targeting and arrest of (perceived) collaborators); (vii) circumstances, treatment and conditions of detention by KLA of such individuals; and (viii) power and authority to detain and release detainees under KLA custody.¹²²

69. Regarding authenticity and probative value, the Panel notes that the Defence does not appear to take issue with these requirements in respect of W04355's Rule 154 Statement. The Panel further notes that, as pointed out by the SPO, the offered record bears multiple indicia of authenticity and reliability (*e.g.* origin, existence of audio- and video-records of it, presence at the interview of SPO officials and an interpreter, indications to the witness of his rights and purpose of the interview, and confirmation by the witness of the accuracy and truthfulness of the record).¹²³

70. Based on the above, the Panel is satisfied that W04355's Rule 154 Statement is relevant, authentic, and has probative value. There is no indication that the probative value of the proposed evidence being outweighed by its prejudicial effect.

¹²² See Motion, paras 29-32; Amended List of Witnesses, pp. 268-269; First 12 Witnesses List, pp. 10-11; SPO Pre-Trial Brief, paras [REDACTED].

¹²³ Motion, para. 33.

71. While important, in particular as he is one of few witnesses who will testify about the charged events in [REDACTED], W04355's Proposed Evidence is not such as would require the Panel to exercise its discretion to order this witness's evidence to be heard *viva voce*. The fact that the SPO is only requiring an additional hour to supplement the witness's written evidence further militates in favour of the Motion being granted in respect of this witness.

72. The Panel is satisfied that W04355's Associated Exhibit is discussed and explained in W04355's Statement and therefore forms an indispensable and inseparable part of the evidence.¹²⁴ The Panel is satisfied that it meets the requirements of Rules 138(1) and 154 and can be admitted on that basis.

73. In light of the above, the Panel finds that W04355's Rule 154 Statement and W04355's Associated Exhibit are relevant, have probative value, and are appropriate for admission pursuant to Rules 138(1) and 154.

¹²⁴ Annex 3 to the Motion ([REDACTED]) shown to the witness in [REDACTED].

E. W02161

74. The SPO submits that the Proposed Evidence of W02161¹²⁵ is: (i) relevant;¹²⁶ (ii) authentic and reliable;¹²⁷ and (iii) suitable for admission under Rule 154.¹²⁸ It argues that W02161's associated exhibits¹²⁹ are admissible.¹³⁰

75. The Defence responds that W02161 is a key witness whose evidence should be heard *viva voce*.¹³¹ In particular, the Defence points to the fact that W02161 had personal interactions with Mr Thaçi and other alleged joint criminal enterprise ("JCE") members and parts of her evidence goes to: (i) alleged "acts and conduct" of the Accused and/or relate to the alleged organisation of the KLA; (ii) alleged crimes attributed to the KLA; (iii) alleged notification of such crimes to the KLA;

¹²⁵ The Proposed Evidence of W02161 ("W02161's Proposed Evidence") is constituted of: (i) 7 statements or transcripts of interview as set out in Annex 4 to the Motion, Rule 154 Witness Statements 1-7 (collectively, "W02161's Rule 154 Statements"); and (ii) 19 proposed associated exhibits set out in Annex 4 to the Motion, ("W02161's Associated Exhibits"). W02161's Associated Exhibits are constituted of: (i) 2 OSCE Interview Reports ("OSCE Interview Reports"); (iii) 7 [REDACTED] exhibits ("*Milutinović* Exhibits") [REDACTED]; (iv) Volume Two of the Organization for Security and Cooperation in Europe report entitled *As Seen, As Told* (SITF00001529-00001871); (v) Organization for Security and Cooperation in Europe Memo regarding situation in Rahovec, Orahovac: Rahovec/Orahovac by Sandra MITCHELL (SITF40008324-40008327); (v) OSCE Memorandum from W02161, Organization for Security regarding the establishment of the inter-agency Ad Hoc Task Force on Minorities, dated 11 July 1999 (SITF40008467-40008467); (vi) Organization for Security and Cooperation in Europe Memorandum Entitled "Human Rights Points for your Meeting with COMKFOR" (SPOE00060118-00060123); (vii) Organization for Security and Cooperation in Europe Kosovo Verification Mission Human Rights Division, Record of Meeting on 18 February 1999 with the Zone Commander and Military Police Chief of the KLA in Llapashtica (Podujevo) Regarding Detention Visits, dated 26 February 1999 (SPOE00060637-00060638); (viii) Part I to IV of 5 Part Organization for Security and Cooperation in Europe, Kosovo/Kosova As Seen, As Told (SPOE00198098-00198366); (ix) Part V of a 5 Part Organization for Security and Cooperation in Europe, Kosovo/Kosova As Seen, As Told (SPOE00198367-00198834); (x) Minutes of meeting of the Ad Hoc Task Force on Minorities held on 27 July 1999 (SPOE00304085-00304086); (xi) Minutes of meeting of the Ad Hoc Task Force on Minorities held on 03 August 1999 (SPOE00304092-00304093); and (xii) OSCE, KVM record of interviews of persons detained in KLA facilities in Llapashtica on 18 February 1999 including W04419, dated 25 February 2016 (SPOE00330390-00330391). W04421's Rule 154 Statements are constituted of: (i) 013312-013334 RED; (ii) 076826-076840; (iii) [REDACTED]; and (vii) [REDACTED].

¹²⁶ Motion, paras 37-39.

¹²⁷ Motion, paras 39-41.

¹²⁸ Motion, paras 42-44.

¹²⁹ See Annex 4 of the Motion.

¹³⁰ Motion, para. 44.

¹³¹ Response, para. 28.

(iv) the issue of political opponents; and (v) the alleged targeting of ethnic minorities.¹³² The Defence further argues that the admission in writing of W02161's Rule 154 Statements would not result in any significant saving of time.¹³³ The Defence further submits that the SPO fails to justify the necessity to admit W02161's ICTY statements and testimonies since they are particularly repetitive and that the item [REDACTED] is not on the SPO's exhibit list and is therefore inadmissible.¹³⁴ Lastly, the Defence argues that the W02161's Associated Exhibits are duplicates of items that the SPO proposed to be tendered through the witness in its Submission on its First 12 Witnesses and it reiterates the objections set out in its response.¹³⁵

76. In terms of relevance, W02161's Proposed Evidence is being relied upon by the SPO in respect of, *inter alia*, the following allegations: (i) KLA's evictions and intimidation of Serbs and other ethnic minorities and attempts by the KLA to gain control in Kosovo; (ii) meetings of the witness with senior KLA members, including Hashim Thaçi and alleged JCE members, as well as international officials; (iii) visits to KLA-controlled villages and detention centers; (iv) the freeing of KLA detainees as well as the power and authority to release KLA detainees; (v) attacks on and mistreatment of (alleged) collaborators, political opponents and members of ethnic minorities by the KLA; (vi) attacks occurring in Kosovo in 1998-1999; (vii) role/contribution of alleged JCE members; (viii) crimes of the KLA; (ix) knowledge/awareness of crimes within the KLA; and (x) military structure of the KLA.¹³⁶ The evidence also relates to certain reports and documents, which the witness authored.¹³⁷ The Defence does not dispute the relevance of this

¹³² Response, para. 28.

¹³³ Response, para. 29.

¹³⁴ Response, para. 30.

¹³⁵ Response, para. 31.

¹³⁶ Motion, paras 37-38; Amended List of Witnesses, pp. 134-135; First 12 Witnesses List, pp. 12-14; SPO Pre-Trial Brief, paras 338-356.

¹³⁷ Motion, paras 37-38; Amended List of Witnesses, pp. 134-135; First 12 Witnesses List, pp. 12-14; SPO Pre-Trial Brief, paras 338-356.

proposed witness. The Panel is satisfied that the proposed evidence of the witness is relevant.

77. Regarding authenticity and reliability of W02161's Rule 154 Statements, the SPO points to the origin of the statements/records (SITF, SPO and/or ICTY) as well as the existence of audio- and/or video-recordings for all of them, the signatures and acknowledgment of the witness, the presence of a translator, and other relevant formalities to suggest that the requisite indicia are met.¹³⁸ The Defence does not appear to dispute their authenticity or reliability (in the sense of being an accurate reflection of what they purport to be) although the Defence suggests that they are repetitious in some respects.¹³⁹ The Panel is satisfied that W02161's Rule 154 Statements appear to be authentic and sufficiently reliable for the purpose of their admission. There is no indication of their probative value being outweighed by their prejudicial effect

78. Based on the above, the Panel is satisfied that W02161's Rule 154 Statements are relevant, authentic, and has probative value. There is no indication that the probative value of the proposed evidence is outweighed by its prejudicial effect.

79. Regarding the suitability of W02161's Rule 154 Statements, the Defence points to the importance of this witness to critical aspects of the case.¹⁴⁰ The Defence also points to the fact that the SPO is offering seven (7) separate statements/records of evidence from this witness, nineteen (19) exhibits and requests an additional three (3) hours of oral evidence.¹⁴¹ The Defence also points to the 'repetitive' nature of the witness's evidence (in particular, in respect of the OSCE's methodology) which it says renders the admission of multiple statements going to the same issue(s)

¹³⁸ Motion, paras 40-41.

¹³⁹ Response, para. 30.

¹⁴⁰ Response, para. 28.

¹⁴¹ Response, para. 29.

unnecessary.¹⁴² The Defence also notes that [REDACTED] is not on the SPO's exhibit list and is therefore inadmissible.¹⁴³

80. The fact that evidence offered pursuant to Rule 154 goes, in part, to the "acts and conduct of the Accused as charged in the indictment" does not render that evidence inadmissible under that Rule.¹⁴⁴ Instead, as noted above, this feature is the one that distinguishes Rule 154 from Rule 153.¹⁴⁵ Accordingly, the fact that the evidence is important to the SPO (and Defence) case(s) does not, on its own, constitute grounds for refusing admission pursuant to Rule 154, though it is a factor which the Panel will take into consideration when deciding whether to receive the proposed evidence in writing or *viva voce*.¹⁴⁶ Similarly, the overall size of the offered written record is not decisive though it will factor in the Panel's decision to admit that record under Rule 154.

81. The Panel agrees that certain aspects of the witness's evidence might be important both to the SPO and Defence cases. At the same time, those areas of her evidence that appear to be in dispute between the Parties are quite limited in scope. The Panel also notes that the Defence did not clearly explain why having the witness's evidence on those issues tendered in writing would cause it prejudice. Furthermore, the Panel notes that the SPO has proposed significant reduction of time for the witness's evidence in chief.¹⁴⁷ The saving of court time is, therefore, not inconsequential. The Panel also notes that the SPO only seeks to

¹⁴² Response, para. 30.

¹⁴³ Ibid.

¹⁴⁴ See *Lukić and Lukić* Decision, para. 16.

¹⁴⁵ See *supra*, para. 13.

¹⁴⁶ See *supra*, para. 20, in particular, references in footnote 33.

¹⁴⁷ F00631/RED/A02/COR/CONF/RED, Specialist Prosecutor, *Annex 2 to Public Redacted Version of Submission of Pre-Trial Brief with Witness and Exhibit Lists*, KSC-BC-2020-06/F000631, dated 17 December 2021, 21 December 2021, confidential, 6 of 568 (item 71). The Panel notes that the witness was initially identified by the SPO as a "live" witness and scheduled to testify for 20 hours in examination-in-chief. The current estimate for her additional oral evidence in chief, if the Rule 154 is granted, is 3.5 hrs, *i.e.* a difference of 16.5 hours or 3.5 court days.

tender certain parts of the witness's much larger record. This will go some way towards ensuring that the size of the case record is not bloated with irrelevant material and that the Defence can focus its attention upon those parts of the witness's written records that the SPO seeks to tender. As regards the Defence's objection to [REDACTED], the Panel notes that this objection is now moot in light of the fact that the SPO has recently been granted leave to add this document to its exhibit list.¹⁴⁸

82. Based on the above, the Panel will exercise its discretion to admit the offered records pursuant to Rule 154 and to afford the SPO the additional time it seeks to elicit additional relevant evidence from the witness.

83. Regarding W02161's Associated Exhibits, the Panel notes the Defence's submissions that several of the proposed items are duplicative of those mentioned in the List of First 12 Witnesses, to which the Defence has objected in a previous filing.¹⁴⁹ The Defence adds the following observations in respect of:

- (i) [REDACTED], W02161 states that these are printouts from an OSCE database but she does not know who prepared them; therefore she cannot confirm the truth of their content;
- (ii) SPOE0033039000330391, while W02161 states that she drafted this report with [REDACTED], the Defence submits that this document, given its significance, should be first de-redacted and second put to the witness live. The redactions of the names of five alleged detainees should be lifted prior to any ruling on the admissibility and the witness should explain in court the circumstances surrounding the interviews.¹⁵⁰

¹⁴⁸ F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters*, 8 March 2023, confidential, para. [REDACTED].

¹⁴⁹ Response, para. 31 *referring to* F01286.

¹⁵⁰ Response, para. 31 (footnotes omitted).

84. The Panel notes that the SPO is seeking the admission of nineteen (19) documents as associated exhibits. All of them were used and discussed during the witness's earlier statements or testimony.¹⁵¹ Some of these are publicly available.¹⁵² All but three are relatively short documents. Several of them pertain to the mandate, methodology and procedures used by the OSCE in Kosovo during the relevant period.¹⁵³ A number of them are records of meetings to which the witness is able to give direct and personal evidence.¹⁵⁴

85. Regarding the OSCE Interview Reports, the Panel notes the Defence's objection that these documents are printouts from OSCE database the authorship of which is unknown to the witness.¹⁵⁵ Absence of indication of a document's author could, but need not, constitute grounds to refuse admission.¹⁵⁶ The nature of the document, in particular if there is other indications of its origin and authenticity, as well as the evidential importance of the document will be relevant to admitting it. 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. Furthermore, the witness was able to give general evidence about the nature of these documents, the process by which they would be prepared and the sort of information they are recording.¹⁵⁷ The fact that the witness is unable to testify to authorship or comment about the truth of the content of the document might impact the weight, if any, to be given to these documents, but does not require

¹⁵¹ See Annex 4 to the Motion pp. 7-13 (and references contained therein).

¹⁵² See e.g. Annex 4 to the Motion, p. 8 (associated exhibits 3 and 4).

¹⁵³ See e.g. Annex 4 to the Motion, pp. 9-10 (associated exhibits 6, 7, 8, 9, and 12).

¹⁵⁴ See e.g. Annex 4 to the Motion, pp. 11-13 (associated exhibits 14, 17, 18 and 19). See also Motion, Annex 4 (and reference to related sections of the proposed Rule 154 statements/transcripts).

¹⁵⁵ Response, para. 31, referring (footnote 66) to: IT-05-87, Transcript, 555-638, pp. 573, 577.

¹⁵⁶ See, e.g., *Prosecutor v. Milutinovic et al*, Trial Chamber "Decision on Lukic Defence Motions for Admission of Documents from Bar Table", 11 June 2008, paras 35, 37-38. See *contra*, *Prosecutor v. Boškoski*, "Decision on Boškoski Defence Motion to Amend Its Rule 65ter List and Admit Exhibits from the Bar Table", 20 March 2008, para 23; and *Prosecutor v. Boškoski*, "Decision on Boškoski Defence Second Motion for Admission of Exhibits from the Bar Table", 12 March 2008, paras 13-14.

¹⁵⁷ See IT-05-87 T. 555-638, pp. 572-576.

their exclusion. The Panel is further satisfied that these documents are authentic, have probative value and their probative value is not outweighed by any prejudicial effect.

86. The *Milutinović* Exhibits do not appear to raise any particular concern on the part of the Defence.¹⁵⁸ While some of these documents are of limited relevance and probative value on their own, they were all put to the witness during her interviews and she was able, in relation to each of them, to give evidence on the process, methodology and framework within which the OSCE was conducting its operations.¹⁵⁹ The Panel is satisfied that each of these is relevant, authentic, has probative value and their probative value is not outweighed by any prejudicial effect.

87. SITF00001529-00001871 is a 343-page report prepared by the OSCE regarding human rights patterns, trends and violation recorded by this organization during the time and at various locations relevant to this case. The report provides some general information about the methodology used to prepare it and terminology used. Authorship is generally unknown. While some of the sources used in the report are expressly identified, most of the report's findings do not clearly identify the basis on which they were reached. Sources are also unidentifiable or anonymous.¹⁶⁰ Also, many of the documents relied upon in the Report do not appear on the SPO's proposed exhibit list so that the Panel would not be in a position to verify the basis on which certain findings are made in the report. Nor

¹⁵⁸ IT-05-87 P00432; IT-05-87 P00456; IT-05-87 P00615; IT-05-87 P00761; IT-05-87 P00763; IT-05-87 P00765; IT-05-87 P00766.

¹⁵⁹ IT-05-87 P02225, p. 2, para. 3; IT-05-87 T.495-T.548, pp. 498-499; IT-05-87 P02225, p. 2, para. 4; IT-05-87 P02225, p. 2, para. 6; mentioned in IT-05-87 T.495-T.548, p. 518; discussed in IT-05-87 P02226, p. K0227449, para. 2; discussed in IT-05-87 T.495-T.548, pp. 518, 524-529, 538-540; discussed in IT-05-87 P02226, p. K0227449, para. 3; discussed in IT-05-87 P02226, p. K0227449, para. 7; discussed in IT-05-87 T.555-T.638, pp. 569-572, 574; discussed in IT-05-87 P02226, p. K0227449, para. 6.

¹⁶⁰ See e.g. footnotes 31 (referring to "The Priest of the Catholic Church in Bistrazin") or 32 (referring to "KFOR 21st September").

is it apparent when,¹⁶¹ by whom and in what circumstances the information relied upon in the report were collected.¹⁶² This calls for particular caution when deciding the admission of such information.¹⁶³ Furthermore, insofar as the witness was able to comment upon the tenor of this Report, her evidence on that point is already contained in the proposed statements/transcripts.¹⁶⁴ It is not apparent what other aspects or sections of this large Report: (i) are relevant to the SPO case and (ii) what evidence the witness would be able to give in respect of those (in addition to what is already reflected in her tendered statements). For these reasons, the Panel will not admit, at this point, the proposed Report. If the SPO intends to rely on other parts or aspects of the Report than those on which the witness already comments in her tendered statements, the SPO is directed to raise those with the witness during her *viva voce* examination.¹⁶⁵

88. SITF40008324-40008327 is a 4-page memorandum of 13 September 1999 prepared by the witness and others regarding certain human rights violations said to have occurred in [REDACTED]. The witness commented upon this memorandum during her SPO interview of [REDACTED].¹⁶⁶ It is not clear what evidence the SPO intends to rely upon that is in that memorandum which is not already reflected in the witness's SPO statement. Furthermore, considering that the memorandum was written by several persons, that the source(s) of the

¹⁶¹ On the relevance of this factor, see e.g. ICTY, *Prosecutor v. Boškoski*, IT-04-82, Trial Chamber, [Decision on Boškoski Defence Motion to Amend Its Rule 65ter List and Admit Exhibits from the Bar Table](#), 20 March 2008, para. 21.

¹⁶² ICTY, *Prosecutor v. Djordjević*, IT-05-81/1-T, Trial Chamber II, [Decision on Prosecution's Motion to Admit Exhibits from the Bar Table](#), 28 April 2009, para. 34.

¹⁶³ See also ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T [Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams](#), 1 September 2006, para. 21; *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, [Decision on Lukic Defence Motions for Admission of Documents from Bar Table](#), 11 June 2008, para. 120.

¹⁶⁴ See 013312-013334, paras 61-66; IT-05-87 T. 495-548, pp. 501, 516, 523, 528-535; IT-05-87 P02226, pp. K0227444-K027448; IT-02-54 T. 7524-7565, pp. 7543, 7560.

¹⁶⁵ The Panel notes, in particular, the reference to this document contained in footnotes 989, 1080 and 2845 of the SPO Pre-Trial Brief.

¹⁶⁶ ERN 076826, para. 49.

information on which it is based is mostly unknown, and that it is unclear what aspects of that document the witness is able to testify to, the Panel will not admit this document at this point. The Panel invites the SPO, if it so wishes, to raise with the witness any aspect of this memorandum that is not already reflected in the witness's offered statements during her *viva voce* evidence.

89. SITF40008467-40008467 is a one-page OSCE note of 11 July 1999 prepared by the witness. She was shown this document and commented upon it during her SPO interview of 18-20 July 2018 and 13 May 2019.¹⁶⁷ It is unclear to the Panel what relevance and probative value the proposed document has in addition to what the witness has already said about it in the paragraph noted above. The Panel will not admit this document at this point. If it wishes to elicit any additional evidence from the witness in relation to this document, the SPO is invited to do so during the witness's *viva voce* evidence.

90. SPOE00060118-00060123 is a 24 July 1999 OSCE memorandum entitled "Human Rights Points for your Meeting with COMKFOR" (with a personal note by the witness attached to it). This document was discussed by the witness during her SPO interview of 18-20 July 2018 and 13 May 2019.¹⁶⁸ It is not clear to the Panel what other aspect(s) of the memorandum, if any, the SPO is seeking to rely upon and for what purpose. The Panel will not therefore admit this document at this point. If the SPO feels that the witness is able to provide additional evidence in respect of the content of this document, it should question the witness on these during her *viva voce* testimony.

91. SPOE00060637-00060638 is 2-page "Record of a Meeting on 18 FEB 99 with the Zone Commander and the Military Police Chief of the KLA in Llapashtica (Podujevo) Regarding Detention Visits". This document was discussed extensively by the witness during her SPO interview of 18-20 July 2018 and 13 May

¹⁶⁷ ERN 076826-076840, para. 19.

¹⁶⁸ ERN 076826-076840, paras 28-29.

2019 (ERN 076826, paras 3-6, and 9). To the extent that this Record corroborates and adds details to the witness's account of meetings which she had and which might be relevant to this case, the Panel is prepared to admit it as it fulfills the requirements of Rules 138(1) and 154 and it can be admitted as an associated exhibit.

92. SPOE00198098-00198366 is a section of an OSCE Report entitled "As Seen, As Told" regarding "The human rights findings of the OSCE Kosovo Verification Mission". It is 269 pages long. Like Document 10 above, it covers events and locations generally relevant to the present case. It provides only very general information regarding the methodology used to prepare this Report. Its authorship is unclear. Many of the sources on which findings are based are unknown, unidentified or anonymous. The standard and methods of proof used for the Report are left mostly undetermined. It is therefore very difficult for the Panel to evaluate the reliability and probative value of this document. Furthermore, the Panel notes that the witness commented upon various aspects of this Report.¹⁶⁹ What other aspects of the Report are considered relevant to the SPO's case is unclear. The Panel notes that the SPO relies upon this Report only for limited purposes in two places in footnotes 40 and 466 of the SPO Pre-Trial Brief. If the SPO proposes to rely upon other aspects of the Report than those on which the witness has already opined, the Panel invites the SPO to do so during the witness's *viva voce* testimony. At this point, the Panel will not admit the Report.

93. SPOE00198367-00198834 is another section of the Report just discussed (SPOE00198098-00198366). It is 468-pages long. The Panel could not find any reference to this document in the SPO Pre-Trial Brief. The witness was already asked, during her interviews, to opine upon certain aspects of this Report and the reasoning adopted in relation to Document 15 applies equally here. If the SPO proposes to rely upon aspects of the Report other than those on which the witness

¹⁶⁹ See [REDACTED].

has already opined, the Panel invites the SPO to do so during the witness's *viva voce* testimony. At this point, the Panel will not admit the Report.

94. SPOE00304085-00304086 is a 2-page record of a meeting of the Ad Hoc Task Force on Minorities held on 27 July 1999 to which the witness participated. Document 18 (SPOE00304092-00304093) is a 2-page record of a meeting of the Ad Hoc Task Force on Minorities held on 3 August 1999 to which the witness participated again. These documents were shown to the witness during her SPO interview of 18-20 July 2018 and 13 May 2019.¹⁷⁰ The basis for some of the findings and claims contained in these documents is not entirely clear. Nor is it clear what aspects not already discussed with the witness during the 18-20 July 2018 and 13 May 2019 interview the witness is able to opine upon. The Panel will therefore not admit the documents at this point. If the SPO wishes to lead additional evidence from the witness in relation to either or both of these documents, it is invited to do so during the witness's *viva voce* testimony.

95. Regarding SPOE00330390-00330391, the Defence submits that, given its significance, this document should be first de-redacted and then put to the witness live so that admissibility should be conditioned to the identity of the five alleged detainees being disclosed. The Panel notes that the redacted version is the version cleared by the information-provider. There is no indication that the redacted information is material to the Defence and/or exculpatory in nature. Should the SPO seek to rely on information provided by an individual who is not identifiable, due to those redactions, such matter would be taken into consideration by the Panel when deciding what weight, if any, to give to that evidence. SPOE00330390-00330391 otherwise satisfies the requirements of Rules 138(1) and 154 and it can be admitted as an associated exhibit.

¹⁷⁰ ERN 076826-076840, para. 33.

96. Based on the above, the Panel finds that the OSCE Interview Reports, the *Milutinović* Exhibits, SPOE00060637-00060638, and SPOE0033039-00330391 are admissible.

97. In light of the above, the Panel finds that W02161's Rule 154 Statements and W02161's Associated Exhibits are relevant, have probative value, and are appropriate for admission pursuant to Rule 138(1) and Rule 154.

F. W01236

98. The SPO submits that the proposed evidence of W01236¹⁷¹ is: (i) relevant;¹⁷² (ii) authentic and reliable;¹⁷³ and (iii) suitable for admission under Rule 154.¹⁷⁴ It argues that W01236's associate exhibits¹⁷⁵ are admissible.¹⁷⁶

99. The Defence responds that W01236's Proposed Evidence and its Associated Exhibits are *prima facie* authentic and capable of reliance.¹⁷⁷ The Defence argues that: (i) the examination in chief of this witness would not be significantly longer than the time proposed by the SPO for the examination under Rule 154 and this militates against the admission of W01236's Proposed Evidence through Rule 154;¹⁷⁸ (ii) the admission of hearsay evidence is prejudicial to the Defence and thus should not be rendered admissible through the use of Rule 154;¹⁷⁹ (iii) the ICTY transcripts of W01236's evidence contain lengthy and irrelevant procedural

¹⁷¹ The proposed evidence of W01236 ("W01236's Proposed Evidence") is constituted of: (i) 2 statements or transcripts of interview as set out in Annex 5 to the Motion, Rule 154 Witness Statements 1-2 (collectively, "W01236's Rule 154 Statements"); and (ii) 12 proposed associated exhibits set out in Annex 5 to the Motion, Associated Exhibits ("W01236's Associated Exhibits"). W01236's Associated Exhibits are constituted of: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED]; (x) [REDACTED]; (xi) [REDACTED]; and (xii) [REDACTED].

¹⁷² Motion, paras 45-49.

¹⁷³ Motion, paras 50-51.

¹⁷⁴ Motion, paras 52-55.

¹⁷⁵ See Annex 5 to the Motion.

¹⁷⁶ Motion, para. 55.

¹⁷⁷ Response, para. 32.

¹⁷⁸ Response, para. 34.

¹⁷⁹ Response, para. 35.

debates between that bench and the parties, for which there can be no justification for admission in these proceedings,¹⁸⁰ and (iv) it does not object the admission of the Associated Exhibits.¹⁸¹

100. W01236's Rule 154 Statements are relevant, *inter alia*, to the following issues: (i) the KLA's alleged arrest and detention of W01236 [REDACTED] 1998; (ii) the KLA's alleged transportation of W01236 to the KLA barracks compound in Jabllanicë/Jablanica, and the KLA's alleged detention of W01236 until his release on [REDACTED] 1998; (iii) the alleged arbitrary detention and mistreatment of W01236 and inadequate conditions of detention; (iv) the alleged involvement of senior KLA figures, in particular, Lahi BRAHIMAJ's and Nazmi BRAHIMAJ, in the detention and mistreatment of the witness; (v) the alleged mistreatment, arbitrary detention and killing of other detainees; (vi) the alleged policy of the KLA to target, detain, mistreat and kill suspected collaborators, spies and members of certain ethnic groups; and (vii) the alleged structure and command and control system in respect of KLA detention facilities and who had the authority to release detainees.¹⁸² The Defence does not question the relevance of W01236's Proposed Evidence and the Panel is satisfied that W01236's Rule 154 Statements are indeed relevant.

101. Regarding the authenticity and probative value of those records, the Panel notes that the Defence does not take issue with these requirements. The Panel observes that W01236's Rule 154 Statements are comprised of a transcript of W01236's SPO interview and a transcript of W01236's ICTY testimony. The Panel further notes that, as pointed out by the SPO, the offered statements bear multiple indicia of authenticity and reliability, in particular: (i) the existence of audio-video recordings of the SPO interview; (ii) the details of the date, time and attendees of

¹⁸⁰ Response, para. 35.

¹⁸¹ Response, para. 36.

¹⁸² See Motion, paras 45-49; Amended List of Witnesses, pp. 78-79; SPO Pre-Trial Brief, in particular, paras [REDACTED].

the interview in the SPO's transcripts; (iii) the presence and assistance of an interpreter; (iv) the indications given to the witness of his rights and purpose of the interview; and (v) the confirmation by the witness of the accuracy and truthfulness of the record. The ICTY records offer generally similar safeguards, as it was taken during proceedings before that tribunal in compliance with its Rules and high standard of due process. Therefore, the Panel is satisfied that the proposed evidence is authentic and has probative value. Lastly, there is no indication that the probative value of the proposed evidence being outweighed by its prejudicial effect.

102. Regarding the hearsay nature of some of the evidence contained in the witness statements, the Defence submits that such evidence would not be admissible orally and should not therefore be made admissible because it is in writing.¹⁸³ The argument that hearsay evidence is not admissible if elicited orally is incorrect. So is the further argument that such evidence would not be admissible if contained in a witness statement. As set out above, it is within the Panel's discretion to admit hearsay evidence and to account for its hearsay nature when it decides the weight to be given to it.¹⁸⁴ Finally, as noted above, the presence in the record of an interview relating non-evidential matters, such as lengthy procedural debates, does not affect its admissibility. Such material will simply be disregarded by the Panel.

103. Regarding the suitability of admission of the W01236's Rule 154 Statements the Panel observes that the offered written record is over 500 pages, which would take longer than two hours of examination in chief if this evidence was given *viva voce*. There is no indication that the Defence will be prejudiced by the admission of this evidence in writing and admission will contribute to shortening the overall length of proceedings. Furthermore, the Panel notes that the SPO intends to elicit

¹⁸³ Response, paras 33, 35.

¹⁸⁴ See *supra* para. 21.

brief oral testimony only on certain limited aspects of W01236's Proposed Evidence.¹⁸⁵ Any issue that it has with the veracity or reliability of the witness's evidence can be addressed during cross-examination.

104. The Panel is satisfied that the W01236's Rule 154 Statements are appropriate for admission pursuant to Rule 154. The Panel notes, however, that only the first statement appears to be referenced and relied upon in the SPO Pre-Trial Brief. Unless the SPO is intent on making use of the witness's ICTY testimony, it should not seek to tender it. Therefore, the Panel invites the SPO to carefully consider the need and justification for tendering that transcript into the record of these proceedings. If it decides to do so, the Panel orders the SPO to clearly indicate, when the witness attest to the content of this record, what parts or aspects of it the SPO is seeking to rely upon. Also, considering the size of the written record that is being tendered, the Panel questions the need for an additional 2 hours of *viva voce* examination in chief. The Panel, therefore, invites the SPO to reduce as much as possible the time needed to elicit further *viva voce* evidence from this witness.

105. The Panel notes that W01236's Associated Exhibits are discussed in W01236's Rule 154 Statements and form an indispensable and inseparable part of the evidence. Their admission is not disputed by the Defence and they fulfil each of the requirements for admission as associated exhibits under Rules 138(1) and 154.

106. In light of the above, the Panel finds that W01236's Rule 154 Statements and W01236's Associated Exhibits are appropriate for admission pursuant to Rules 138(1) and 154.

¹⁸⁵ Motion, para. 53.

G. W04337

107. The SPO submits that the proposed evidence of W04337¹⁸⁶ is: (i) relevant;¹⁸⁷ (ii) authentic and reliable;¹⁸⁸ and (iii) suitable for admission under Rule 154.¹⁸⁹ It further argues that W04337's Associated Exhibits are admissible.¹⁹⁰

108. The Defence responds that W04337's Proposed Evidence is *prima facie* authentic and capable of reliance.¹⁹¹ Observing that the SPO seeks admission of over 583 pages, but still intends to present three hours of direct examination, the Defence refutes the suggestion that the admission of W04337's Rule 154 Statements would significantly reduce the number of hours required for examination-in-chief.¹⁹² The Defence submits that W04337's Rule 154 Statements are populated by issues irrelevant to the case, including procedural matters and directions from judges.¹⁹³ The Defence generally objects to the SPO practice to seek admission of numerous items pursuant to Rule 154 without any clarification as to which pages the SPO deems relevant to the goal of reducing the hours for direct examination. This, it submits, is prejudicial to fair and expeditious proceedings.¹⁹⁴ The Defence raises three additional objections. First, the Defence objects to the admission of: (i) the allegation, based on hearsay, that the Accused allegedly took

¹⁸⁶ The proposed evidence of W04337 ("W04337's Proposed Evidence") is constituted of: (i) 19 statements or transcripts of interview as set out in Annex 6 to the Motion, Rule 154 Witness Statements 1-19 (collectively, "W04337's Rule 154 Statements"); and (ii) 2 proposed associated exhibits set out in Annex 6 to the Motion, Associated Exhibits 1-2 ("W04337's Associated Exhibits"). W04337's Rule 154 Statements are constituted of: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED]; (x) [REDACTED]; (xi) [REDACTED]; (xii) [REDACTED]; (xiii) [REDACTED]; (xvi) [REDACTED]; (xvii) [REDACTED]; (xix) [REDACTED]. W04337's Associated Exhibits are constituted of: (i) [REDACTED] ("SPRK Transcript") and (ii) [REDACTED] ("EULEX Report").

¹⁸⁷ Motion, paras 56-59.

¹⁸⁸ Motion, paras 60-61.

¹⁸⁹ Motion, paras 62-63.

¹⁹⁰ Motion, para. 64.

¹⁹¹ Response, para. 37.

¹⁹² Response, para. 38.

¹⁹³ Response, paras 38-39.

¹⁹⁴ Response, para. 39.

part in a vote to decide the fate of an individual; (ii) the unfounded allegation regarding the role of an Accused within the KLA and his direction of certain crimes; and (iii) the purported identification of an Accused during W04337's interrogation.¹⁹⁵ The Defence avers that these aspects of W04337's Proposed Evidence – which relate to what the Defence says are “acts and conduct” of the Accused – are not suitable for admission under Rule 154 but must be reserved for *viva voce* examination because they are highly prejudicial to the Accused and lack *prima facie* reliability.¹⁹⁶ Second, the Defence objects to the inclusion of a killing allegation which, it submits: (i) W04337 has not testified about previously; and (ii) is neither charged in the Indictment, nor described in the SPO Pre-Trial Brief.¹⁹⁷ The Defence argues that not only the allegation should not be admitted through Rule 154, but it should also be excluded in its entirety from *viva voce* testimony.¹⁹⁸ Third, the Defence objects to the inclusion of W04337's statement to European Union Rule of Law Mission in Kosovo (“EULEX”) Police on the basis that it is almost entirely speculative allegations devoid of relevance or probative value.¹⁹⁹ The Defence does not object to the admission of the Associated Exhibits should the underlying statements and testimony be admitted.²⁰⁰

109. The Panel observes that the SPO seeks to rely upon W04337's Proposed Evidence in relation to, *inter alia*, the following allegations: (i) W04337's arrest in August 1998 by KLA members; (ii) W04337's transfer, detention, questioning, and mistreatment in [REDACTED] and consequences thereof; (iii) the arrest, detention and mistreatment of other detainees in [REDACTED]; (iv) the conditions of detention in [REDACTED]; (v) Rexhep Selimi and Hashim Thaçi's knowledge and/or involvement therein; (vi) W04337's knowledge of a meeting of KLA

¹⁹⁵ Response, para. 40 referring to (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].

¹⁹⁶ Response, para. 40.

¹⁹⁷ Response, para. 41 referring to [REDACTED]. See also Annex 6 to the Motion, Item 18.

¹⁹⁸ Response, para. 41.

¹⁹⁹ Response, para. 42 referring to [REDACTED]. See Annex 6 to the Motion, Item 3.

²⁰⁰ Response, para. 43.

members during which plans to execute him were allegedly discussed; (vii) W04337's release; (viii) W04337's injuries as a result of his mistreatment in [REDACTED] and lasting negative impact of his detention and mistreatment on his health and wellbeing; and (ix) W04337's knowledge of other crimes committed by the KLA.²⁰¹ The Panel notes that the Defence does not appear to challenge the relevance of this evidence. The Panel is satisfied of the relevance of W04337's Proposed Evidence.

110. As noted above, the Defence does not dispute that W04337's Proposed Evidence is *prima facie* authentic and reliable. W04337's Rule 154 Statements are composed of transcripts of Special Prosecution of the Republic of Kosovo ("SPRK"), EULEX and SPO interviews, as well as of trial records of W04337's testimonies [REDACTED].²⁰² As accepted by the Defence,²⁰³ the Panel observes that W04337's Rule 154 Statements bear indicia of reliability and authenticity such as, *inter alia*: (i) indications as to the date, time, place and participants of the interviews or hearings and case number, where applicable; (ii) signatures of the witness and, where applicable, prosecutors, police officers, and interpreters; and (iii) warnings to the witness in relation to his rights and obligations. The Panel is therefore satisfied that W04337's Rule 154 Statements are authentic and have probative value. The Panel is also satisfied that the probative value of the statements is not outweighed by their prejudicial effect. In particular, the Panel notes that the Defence will be able to question the witness in respect of any aspect of those statements.

111. Regarding the question of suitability of admission of the offered evidence under Rule 154, the Panel will first note that the evidence of this witness is important to the Parties' cases and contain evidence relevant to the "acts and

²⁰¹ See Indictment, paras 16-57, [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED]; F0178/A03, pp. 236-264; First 12 Witnesses List, pp. 29-31.

²⁰² See W04337's Rule 154 Statements. See also Annex 6 to the Motion.

²⁰³ Response, para. 37.

conduct” of the Accused as charged in the indictment. The Panel also notes the size of the written record which the SPO seeks to offer and several of the proposed statements are repetitious and include matters of remote relevance to these proceedings. At the same time, it is quite apparent that the admission of some parts of this record in writing would save a great deal of time compared to a purely *viva voce* testimony. The Panel notes, in particular, that many of the matters discussed in this witness’s statements do not appear or are unlikely to be disputed by the Defence. The Defence will be have the opportunity to cross-examine this witness on matters that it disputes. The admission of the proposed written statements gives the Defence a clear understanding of what the witness’s evidence is on each of the matters which it seeks to dispute.

112. Turning to the Defence objections, the Panel notes the following. With regard to W04337’s allegations pertaining to the acts and conduct of the Accused, namely: (i) that the Accused took part in a vote to decide his fate;²⁰⁴ (ii) the role of one of the Accused within the KLA and his direction of certain crimes;²⁰⁵ and (iii) the purported identification of an Accused during W04337’s interrogation,²⁰⁶ the Panel recalls that the fact that the proposed evidence is hearsay does not exclude its admissibility, though it is likely to affect its weight.²⁰⁷ Secondly, Rule 154 enables the admission in writing of evidence going to “acts and conduct” of the Accused as charged in the indictment, on the basis that the Defence can then challenge such evidence by means of cross-examination. As a result, the proposed evidence has probative value and there is no basis to exclude it on grounds of undue prejudice. This is without prejudice to the weight, if any, that could be given to this evidence. Accordingly, the Panel rejects the Defence’s objection to the admissibility, pursuant to Rule 154, of the part of the witness’s evidence pertaining to the acts

²⁰⁴ Response, para. 40 referring to [REDACTED]. See also Annex 6 to the Motion, Item 12.

²⁰⁵ Response, para. 40 referring to [REDACTED].

²⁰⁶ Response, para. 40 referring to [REDACTED].

²⁰⁷ See *supra* para. 21.

and conduct of the Accused. The same reasoning and conclusion applies to W04337's statement to EULEX Police.²⁰⁸ Any assertion contained in that statement which the Defence disputes and which, in its view, lacks credibility or reliability can be tested by means of cross-examination.

113. The Panel now turns to the objection (both for Rule 154 admission and *viva voce* testimony) of the statement containing an allegation pertaining to a killing incident.²⁰⁹ The Panel accepts that the alleged incident is not charged in the Indictment and does not seem to be cited in the SPO Pre-Trial Brief. As such, it cannot result in a finding of guilt in respect of any of the Accused. The proposed evidence can, however, be admitted in respect of other issues. In particular, the Panel observes that in the impugned statement, W04337: (i) confirms the truthfulness and accuracy of his prior testimonies in relation to his detention in [REDACTED]; and (ii) describes a murder allegedly committed by the same individuals who allegedly mistreated him in detention. The Panel is therefore satisfied that the impugned statement is relevant. Further, the Panel is satisfied that the proposed evidence is authentic and has probative value. Considering that the Defence will have ample opportunity to cross-examine W04337, including on this matter if it chooses to, the Panel is also satisfied that the probative value of the impugned statement is not outweighed by any prejudice. Accordingly, the Panel rejects the Defence's objection with regard to the admission of this statement.

114. Turning now to the remainder of W04337's Rule 154 Statements to which the Defence did not specifically object and which the Panel has individually reviewed, the Panel is also satisfied that these meet all requirements for admission under Rules 138(1) and 154 and that they are suitable for admission pursuant to Rule 154. The Panel is further satisfied that the admission of W04337's Rule 154 Statements

²⁰⁸ Response, para. 42 *referring to* [REDACTED]. *See* Annex 6 to the Motion, Item 3.

²⁰⁹ Response, para. 41 *referring to* [REDACTED]. *See also* Annex 6 to the Motion, Item 18.

will reduce the time required to present and produce the witness's evidence in chief.

115. That said, the Panel notes that some of W04337's Rule 154 Statements are repetitive and overlap with one another. The Panel appreciates that the SPO: (i) reduced its intended direct examination from 9 to 3 hours;²¹⁰ and (ii) sought to tender for admission under Rule 154, 19 statements out of the 25 prior statements of the witness.²¹¹ The Panel directs the SPO to consider whether it can further reduce the number of prior statements it will ask the witness to attest to in accordance with Rule 154, and whether some of them may be replaced by short *viva voce* questioning.

116. The Panel notes that the Defence does not object to the admission of W04337's Associated Exhibits, should the underlying statements and testimony be admitted.²¹² The Panel observes that W04337's Associated Exhibits are: (i) the SPRK Photoboard, which is a three page photo line-up marked as a signed attachment to the transcript of W04337's interview dated [REDACTED];²¹³ and (ii) the EULEX Photoboard, which is a two page photo line-up marked as a signed attachment to the transcript of W04337's interview dated [REDACTED], wherein W04337 identifies one of the individuals who, he alleges, is responsible for his mistreatment in [REDACTED].²¹⁴ W04337's Associated Exhibits were discussed in W04337's Rule 154 Statements and attached to interviews forming parts of W04337's Rule 154 Statements.²¹⁵ Accordingly, the Panel considers that the SPRK Photoboard and the EULEX Photoboard form an indispensable and inseparable

²¹⁰ See Amended List of Witnesses, p. 263 (9 hours) v. First 12 Witnesses List, p. 29 (3 hours).

²¹¹ See First 12 Witnesses List, pp. 29-30.

²¹² Response, para. 43.

²¹³ [REDACTED]. See Annex 6 to the Motion, Associated Exhibit 1.

²¹⁴ [REDACTED]. See Annex 6 to the Motion, Associated Exhibit 2.

²¹⁵ See Annex 6 to the Motion and references cited in the column "reference": (i) SPRK Photoboard is discussed in [REDACTED]; and (ii) EULEX Photoboard is discussed in [REDACTED].

part of W04337's evidence and can be tested through his testimony. They satisfy the requirements of admission pursuant to Rules 138(1) and 154.

117. In light of the above, the Panel finds that W04337's Rule 154 Statements and W04337's Associated Exhibits are relevant, authentic, and have probative value, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

H. W03165

118. The SPO submits that the proposed evidence of W03165²¹⁶ is: (i) relevant;²¹⁷ (ii) authentic and reliable;²¹⁸ and (iii) suitable for admission under Rule 154.²¹⁹ It further argues that W03165's Associated Exhibits are admissible as they are used and explained in W03165's Statement.²²⁰

119. The Defence responds that W03165's Rule 154 Statement is *prima facie* authentic and reliable.²²¹ The Defence objects to the admissibility through Rule 154 of the Newspaper Articles presented as W03165's Associated Exhibits as: (i) the provenance of the information contained therein has not been investigated, is untested, and contains hearsay information; and (ii) the *Bota Sot* Article, in particular, does not merit inclusion as an associated exhibit, since it contains information provided by a third party and is only briefly mentioned by the witness in his statement.²²² The Defence also notes that the Letter appears to be torn and

²¹⁶ The proposed evidence of W03165 ("W03165's Proposed Evidence") is contained in [REDACTED]. It consists of: (i) [REDACTED] ("W03165's Rule 154 Statement"); (ii) U008-7583 ("Letter"); and (iii) [REDACTED] ("*Zeri i Kosoves* and *Kosova Sot* Articles") and [REDACTED] ("*Bota Sot* Article") (collectively "Newspaper Articles"). The Letter and the Newspaper Articles [REDACTED] are collectively referred to as "W03165's Associated Exhibits". See also Annex 7 to the Motion.

²¹⁷ Motion, paras 65-68.

²¹⁸ Motion, para. 69.

²¹⁹ Motion, para 70-71.

²²⁰ Motion, para. 72.

²²¹ Response, para. 44.

²²² Response, para. 45.

partially illegible, is unsigned and bears no stamp or other indicia of authenticity, and therefore bears minimal probative value.²²³

120. W03165 is [REDACTED] of a victim of an alleged murder not expressly identified in the Indictment. The Panel notes that W03165's Rule 154 Statement: (i) relates to the events he witnessed in 1998 in relation to [REDACTED]; (ii) implicates KLA members who are named members of the joint criminal enterprise, including Fatmir Limaj; (iii) provides evidence said to be relevant to the KLA's alleged policy of targeting those perceived as collaborators and/or spies; (iv) provides evidence of an alleged widespread or systematic attack against a civilian population; (v) provides evidence on the role of the military police, in particular in respect of the arrest and mistreatment of alleged collaborators/spies; and (vi) provides evidence on the use and significance of the KLA's communiqués.²²⁴ The Defence did not dispute the relevance of the proposed evidence. The Panel is satisfied that W03165's Rule 154 Statement is relevant and has probative value. The Panel is also satisfied that the probative value of that evidence is not outweighed by its prejudicial effect.

121. The Panel observes that W03165's Rule 154 Statement is comprised of W03165's ICTY Rule 92 *bis* witness statement of [REDACTED].²²⁵ This bears sufficient indicia of reliability not only because of its origin, but because it was conducted in the presence of a certified interpreter, and were read back to and signed by the witness who confirmed the accuracy of the record.²²⁶ The Panel is

²²³ Response, para. 46.

²²⁴ See e.g. [REDACTED]. See also F00999, Specialist Prosecutor, *Submission of Confirmed Amended Indictment*, 30 September 2022, with Annexes 1-2, confidential, and Annex 3, public, Annex 1 ("Indictment"), paras 16-31, 59-60 (lesser redacted public versions were issued on 15 February 2023 and 27 February 2023, F01296/A03 and F01323/A01); SPO Pre-Trial Brief, paras [REDACTED]; Amended List of Witnesses, pp. 172-173; First 12 Witnesses List, pp. 32-33; Motion, paras 65-68.

²²⁵ See [REDACTED].

²²⁶ [REDACTED].

therefore satisfied that W03165's Rule 154 Statement is authentic and bears the necessary indications of reliability.

122. Based on the above, the Panel is satisfied that the proposed evidence is relevant, authentic, and has probative value. There is no indication that the probative value of the proposed evidence being outweighed by its prejudicial effect.

123. The Defence does not suggest that this witness should give his evidence in chief *viva voce*. The Panel notes that the proposed evidence is relatively short and contained. Receiving the witness's evidence pursuant to Rule 154 will also reduce the time required for direct examination to two hours. The Panel is therefore satisfied that W03165's Rule 154 Statement is suitable for admission pursuant to Rule 154.

124. Based on the above, the Panel will exercise its discretion to admit the offered records pursuant to Rule 154 and to grant the SPO two hours of additional *viva voce* testimony time to elicit additional evidence from the proposed witness.

125. Regarding W03165's Associated Exhibits, the Panel observes that the Letter and the Newspaper Articles to which the Defence objects were discussed in W03165's Rule 154 Statement.²²⁷ Regarding the Letter, the Panel notes that it is a copy of a document that W03165 found [REDACTED].²²⁸ The fact that it is a copy rather than the original of the document does not constitute a basis to refuse admission. Nor is the fact that a part of it is torn, illegible in part or lacking a stamp. The Panel is satisfied that its authenticity has been established insofar as it was found by the witness at the location and in the circumstances which he describes in his statement. The question of its attributability to a given organisation or individual and what weight, if any, can be given to this document is a matter to be decided at trial based on an evaluation of all relevant evidence.

²²⁷ [REDACTED].

²²⁸ [REDACTED].

This document satisfies all requirements of Rules 138(1) and 154 and can be admitted as an Associated Exhibit.

126. Turning to the Newspaper Articles, the Panel notes that they are both dated [REDACTED]. Both appear to reproduce the same KLA communiqué from the Military Police Directorate without journalistic commentaries. Newspaper articles are admissible in principle if they satisfy the requirements of Rule 138(1).²²⁹ The fact that such information contains hearsay evidence is no basis to refuse its admission, although its nature and the inability of the Defence to challenge the underlying basis of the information would be relevant to assessing what weight, if any, to give to such evidence.²³⁰ The purpose for which such evidence is being offered will be particularly important to the question of its admission, in particular, whether it is being tendered for the truth of its content, to establish knowledge of a fact, or to corroborate other elements. Evidence of this sort must be approached with caution where reliance is placed on the truth of its content and where the source of the information is unknown or cannot be effectively

²²⁹ See e.g. *Gucati and Haradinaj* Decision, paras 36-41. See also ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Defence's Fifth Motion for the Admission of Documents from the Bar Table](#), 30 May 2016, paras 13-15, 36; *Prosecutor v. Mladic*, IT-09-92-T, Trial Chamber I, [Decision on Prosecution Motion for Admission of Documents from the Bar Table \(Military and Residual Documents\)](#), 13 February 2014, para. 16; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber II, [Decision on Tarčulovski Second Motion for the Admission of Exhibits from the Bar Table with Annex A](#), 7 April 2008, paras 14-15, 17-18; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber II, [Decision on Boškoski Defence Second Motion for Admission of Exhibits from the Bar Table](#), 12 March 2008, paras 11, 22, 29; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Trial Chamber II, [Judgement](#), 10 July 2008, paras 3, 208, 209, 283, 434, 446, 450, 526, 527; ICC, *The Prosecutor v. Bemba*, ICC-01/05-01/08-2721, Trial Chamber III, [Decision on the Admission into Evidence of Items Deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64\(9\) of the Rome Statute" \(ICC-01/05-01/08-2299\)](#), 27 June 2013, para. 25; *The Prosecutor v. Bemba*, ICC-01/05-01/08-2299-Red, Trial Chamber III, [Public Redacted Version of "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64\(9\) of the Rome Statute" of 6 September 2012](#), 8 October 2012, para. 95; *The Prosecutor v. Lubanga*, ICC-01/04-01/06-803, Pre-Trial Chamber I, [Decision on the Confirmation of Charges](#), 29 January 2007, para. 106.

²³⁰ See *supra* para. 21. See also ICTY, *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Appeals Chamber, [Decision on Prosecutor's Appeal on Admissibility of Evidence](#), 16 February 1999, para. 15:

verified.²³¹ The *Zeri i Kosoves* and *Kosova Sot* Articles appear to reproduce a KLA communiqué that contains an indication that the KLA took responsibility for [REDACTED]. The Panel notes that the SPO Pre-Trial Brief suggests that the information contained in these articles is corroborated by other evidence yet to be offered.²³² The Panel further notes that the use of communiqués by the KLA as a means of communicating its views and actions does not appear to be disputed by the Defence. Regardless of the attributability of the communiqué to the KLA, the Panel notes that the content of this document is at least consistent with the fact that, as recounted by the witness, [REDACTED] was last seen in the hands of KLA members. On that basis, the Panel finds that the requirements of Rule 138(1) are met in respect of these exhibits. What weight, if any, will be given to those will ultimately be decided on the basis of the corroboration which the SPO is able to produce to establish the origin and attributability of the communiqué to the KLA.

127. As for the *Bota Sot* Article, it discusses [REDACTED].²³³ The account is generally corroborated and supplemented by the witness's own statement. In that statement, the witness also made it clear that he stood by the content of the report.²³⁴ If the Defence wishes to challenge any aspect of the account contained in this article, it will be able to do so directly with the witness. Finally, if the witness is unable to confirm parts of what is said in the article, the absence of corroboration would be relevant in due course to the weight, if any, which the Panel might be prepared to give to this exhibit.

²³¹ See ICC, *The Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-2635, Trial Chamber II, [Decision on the Prosecutor's Bar Table Motions](#), 17 December 2010, paras 31-33; *The Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/11-432, Pre-Trial Chamber I, [Decision Adjourning the Hearing on the Confirmation of Charges Pursuant to Article 61\(7\)\(c\)\(i\) of the Rome Statute](#), 3 June 2013, paras 28-35.

²³² See SPO Pre-Trial Brief, paras [REDACTED].

²³³ [REDACTED].

²³⁴ [REDACTED].

128. For these reasons, the Panel finds that W03165's Associated Exhibits fulfil the requirements of Rule 138(1) and are appropriate for admission pursuant to Rule 154.

129. In light of the above, the Panel finds that W03165's Rule 154 Statement and W03165's Associated Exhibits are relevant, authentic, and have probative value, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

V. CLASSIFICATION

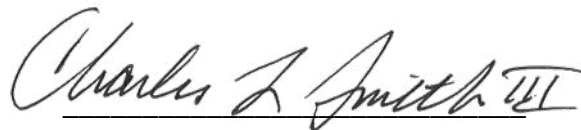
130. The Panel notes that the Motion and the Response were filed confidentially. The Panel therefore orders the SPO and the Defence to submit public redacted versions of the Motion and the Response by no later than Friday, 31 March 2023.

VI. DISPOSITION

131. Based on the above, the Panel hereby:

- a) **GRANTS** the Motion in part;
- b) **FINDS** the Proposed Evidence of W04421, W04355, W02161, W01236, W04337, W03615 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 Proposed Evidence;
- c) **FINDS** W04474's Rule 154 Statements and Admitted Associated Exhibits, set out in paragraph 56, to be appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of W04474 and her Rule 154 Statements and Admitted Associated Exhibits;
- d) **FINDS** W04474's Denied Associated Exhibits, set out in paragraph 56, not to be appropriate for admission for the reasons set out in paragraphs 52 and 54;
- e) **ORDERS** the SPO, no later than 24 hours before the start of testimony of a Rule 154 witness, to provide the Panel, the Defence and Victims' Counsel

- with a sufficiently specific indication of the areas of additional oral questioning that it plans to conduct with each such witness, in particular in respect of any aspect of his/her evidence on which the SPO seeks to rely but which is not identified in the summaries of the witness's evidence;
- f) **DIRECTS** the SPO to provide, for any future motion pursuant to Rule 154, in addition to a summary of the proposed evidence, the relevance of the proposed evidence to the SPO's case, including, where possible, references to relevant paragraph(s) of the SPO Pre-Trial Brief;
- g) **DIRECTS** the SPO, in respect of witnesses W04337 and W04421, to consider reducing the number of statements that it will tender for admission pursuant to Rule 154;
- h) **INFORMS** the SPO that the Panel will closely scrutinize the use made by the SPO of additional oral evidence in respect of these Witnesses with a view to ensure that evidence led orally is: (i) not unduly repetitious of the Witnesses' 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 and the Defence to submit public redacted versions of the Motion and the Response by no later than **Friday, 31 March 2023**.



Judge Charles L. Smith, III
Presiding Judge

Dated Thursday, 16 March 2023
At The Hague, The Netherlands.