



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

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

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 9 June 2023

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**Public Redacted Version of Corrected Version of
Decision on Second Prosecution Motion Pursuant to Rule 154**

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

I. PROCEDURAL BACKGROUND

1. On 18 January 2023, the Panel ordered the Specialist Prosecutor’s Office (“SPO”) to file its Rule 154 motion in relation to the second set of twelve witnesses by 15 March 2023, and decided that no reply will be entertained.¹
2. On 15 March 2023, the SPO filed its Rule 154 motion in relation to the second set of twelve witnesses (“Motion”).²
3. On 20 March 2023, the Defence for Rexhep Selimi (“Mr Selimi” and “Selimi Defence”) requested that the SPO update its Motion in accordance with the Panel’s instructions to reference the relevant paragraphs of the SPO’s Pre-Trial Brief (“SPO Pre-Trial Brief”).³ On the same day, the Panel granted the request, ordered the SPO to file the updated motion by 24 March 2023, and extended the deadline for the Defence’s response to 17 April 2023.⁴
4. On 24 March 2023, the SPO filed an updated Rule 154 motion in relation to the second set of twelve witnesses (“Updated Motion”).⁵

¹ Transcript of Hearing, 18 January 2023, p. 1902, lines 14-19.

² F01374, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W03827, W04408, W04577, W04644, W04781, W04018, W04255, W01493, and W04448 Pursuant to Rule 154*, 15 March 2023, confidential, with Annexes 1-9, confidential.

³ F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request*, 24 February 2022, strictly confidential and *ex parte* (a confidential redacted version was filed on the same day, F00709/A02; a lesser redacted confidential version was filed on 15 February 2023, F01296/A01).

⁴ Transcript of Hearing, 20 March 2023, p. 2121, lines 8-25 to p. 2122, lines 1-20; and p. 2132, lines 5-8.

⁵ F01396, Specialist Prosecutor, *Prosecution Updated Motion for Admission of Evidence of Witnesses W03827, W04408, W04577, W04644, W04781, W04018, W04255, W01493, and W04448 Pursuant to Rule 154*, 24 March 2023, confidential, with Annexes 1-9, confidential.

5. On 17 April 2023, the Defence for Hashim Thaçi (“Mr Thaçi”), the Defence for Kadri Veseli (“Mr Veseli”), the Selimi Defence, and the Defence for Jakup Krasniqi (“Mr Krasniqi”) (collectively, “Defence”) responded jointly to the Updated Motion (“Response”).⁶

6. On 24 May 2023, pursuant to a request by the SPO,⁷ the Panel authorised the Registry to update the presentation queue for the Updated Motion by replacing, where relevant, the transcripts related to ERN 106438 – which pertains to W04577 – with the documents disclosed by the SPO in Disclosure Package 745 of 5 April 2023.⁸

II. SUBMISSIONS

7. The SPO seeks admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of witnesses W03827, W04408, W04577, W04644, W04781, W04018, W04255, W01493, and W04448 (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 F01463, Specialist Counsel, *Joint Defence Response to ‘Prosecution Updated Motion for Admission of Evidence of Witnesses W03827, W04408, W04577, W04644, W04781, W04018, W04255, W01493, and W04448 Pursuant to Rule 154 with Confidential Annexes 1-9’*, 17 April 2023, confidential.

⁷ F01435, Specialist Prosecutor, *Prosecution Request Concerning Items Related to W04577 and W04474*, 6 April 2023, confidential.

⁸ F01549/COR, Panel, *Corrected Version of Decision on SPO Requests F01435 and F01508 (“F01549/COR”)*, 24 May 2023, paras 9, 14(d). The Panel notes that in F01549/COR, fn. 6 and para. 9, an incorrect title of the presentation queue was mentioned. The correct title is: 20230324_KSC-BC-2020-06-F01396_SPO (emphasis added). The Registry modified the presentation queue accordingly on 1 June 2023.

⁹ Motion, para. 1; Updated Motion, para. 1.

¹⁰ Motion, paras 2, 8, 10; Updated Motion, paras 2, 9, 11. *See also* Annexes 1-9 to the Motion; Annexes 1-9 to the Updated Motion.

¹¹ Motion, paras 2, 9; Updated Motion, paras 2, 10.

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 Statements as, without them, the statements may become less complete or be of diminished probative value; and (ii) provide context to the evidence contained in the Statements and corroborate that evidence.¹³

8. The Defence submits that the SPO seeks admission of masses of unedited transcripts with variable relevance whilst, at the same time, seeking significant time to carry out further examination-in-chief.¹⁴ It avers that much of the Proposed Evidence should be heard live to protect the rights of the Accused, insofar as it concerns matters of central importance to this case or untested hearsay.¹⁵ It further asserts that the overuse of Rule 154 risks producing an unmanageable evidential record¹⁶ and requests that the Panel take notice of its objections to the Proposed Evidence.¹⁷

III. APPLICABLE LAW

9. The Panel incorporates by reference the applicable law as set out in its first decision pursuant to Rule 154 (“First Rule 154 Decision”).¹⁸

¹² Motion, para. 9; Updated Motion, para. 10.

¹³ Motion, para. 10; Updated Motion, para. 11.

¹⁴ Response, para. 2.

¹⁵ Response, para. 3.

¹⁶ Response, para. 13.

¹⁷ Response, para. 69. The witness-specific submissions by the Defence are included in Section IV.

¹⁸ F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“First Rule 154 Decision”), 16 March 2023, confidential, paras 26-35.

IV. DISCUSSION

10. At the outset, the Panel observes that there are differences between the Motion and the Updated Motion and their respective annexes. The Panel notes that the Defence responded to the Updated Motion. The Panel therefore considers that the Updated Motion and its respective annexes is the authoritative version and replaces the initial Motion and its annexes. Hence, for the purpose of this decision, the Panel exclusively considered the Updated Motion and its annexes.

A. W03827

11. The SPO submits that the proposed evidence of W03827¹⁹ is: (i) relevant;²⁰ (ii) *prima facie* authentic and reliable;²¹ and (iii) suitable for admission under Rule 154.²²

12. The Defence responds that W03827 appears unable to testify and that, as a result, the Rule 154(1)(a) criterion will not be met.²³ Even if W03827 appears in court, the Defence avers that it will likely not be able to conduct effective cross-examination of the witness in light of W03827's memory issues.²⁴ The Defence submits that a medical examination of W03827 by Witness Protection and Support Office ("WPSO") should be conducted prior to deciding on the admissibility of W03827's Proposed Evidence to determine W03827's fitness to testify.²⁵ In the event W03827 is found fit to testify, the Defence submits that W03827's testimony should be heard *viva voce* in light of: (i) the importance of W03827's Proposed Evidence, which directly involves Mr Thaçi and Mr Selimi; and (ii) W03827's

¹⁹ The proposed evidence of W03827 consists in the pre-trial testimony of W03827 to the [REDACTED], 034442-034503 RED2 ("W03827's Proposed Evidence"). See Annex 1 to the Updated Motion.

²⁰ Updated Motion, paras 13-17.

²¹ Updated Motion, para. 18.

²² Updated Motion, paras 19-20.

²³ Response, paras 14-16. See also Response, para. 4.

²⁴ Response, para. 16.

²⁵ Response, paras 17, 69.

inconsistencies and confusion regarding the alleged incidents.²⁶

13. *W03827's Proposed Evidence.* Regarding relevance, W03827 was [REDACTED] when he was allegedly arrested by members of the Kosovo Liberation Army ("KLA"). W03827's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*, allegations pertaining to: (i) W03827's arrest and subsequent detention at [REDACTED]; (ii) W03827's identification at [REDACTED] of Sabit Geci, Mr Selimi and Mr Thaçi, the latter describing himself as political director of the KLA; (iii) the transport, detention and mistreatment of W03827 and others in [REDACTED]; and (iv) the interview of [REDACTED], and their subsequent release.²⁷ The Panel is thus satisfied that W03827's Proposed Evidence is relevant to the charges in the Indictment.

14. Regarding authenticity, W03827's Proposed Evidence is a verbatim transcript of an audio-recorded pre-trial testimony of the witness which contains: (i) the personal details of the witness; (ii) the witness's initials on each page and his signature; (iii) that of the [REDACTED] prosecutor; (iv) warnings and acknowledgment of the witness's rights; and (v) indication of the place, date, time, name and number of the case, in which W03827 gave the statement. The Panel is thus satisfied of the *prima facie* authenticity of W03827's Proposed Evidence.

15. Regarding the suitability of W03827's Proposed Evidence for admission pursuant to Rule 154, the Panel observes that the SPO initially foresaw that

²⁶ Response, paras 18-19.

²⁷ Updated Motion, paras 13-17; 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* ("Amended List of Witnesses"), 2 November 2023, strictly confidential and *ex parte*, pp. 200-201 (a lesser redacted confidential version was filed on 15 February 2023, F01296/A02); SPO Pre-Trial Brief, paras [REDACTED]; F00999, Specialist Prosecutor, *Submission of Confirmed Amended Indictment*, 30 September 2022, with Annexes 1-2, confidential, and Annex 3 ("Indictment"), paras [REDACTED] (lesser redacted public versions were issued on 15 February 2023 and 27 February 2023, F01296/A03 and F01323/A01).

W03287 would testify live and envisaged ten hours of direct examination.²⁸ Should W03287's testimony be adduced pursuant to Rule 154, the SPO contemplates two hours of direct examination.²⁹ It follows that Rule 154 admission of W03827's Proposed Evidence will significantly reduce the number of hours required for direct examination and, in turn, foster the expediency of the proceedings. The Panel is mindful that W03827's Proposed Evidence goes in part to the acts and conduct of the Accused but considers that, insofar as the Defence has a meaningful opportunity to cross-examine the witness, there is no prejudice to admit the evidence through Rule 154. The Panel therefore finds W03827's Proposed Evidence suitable for admission pursuant to Rule 154.

16. The Panel notes however that the Defence raises serious issues regarding W03287's fitness to testify and to be meaningfully cross-examined in light of the witness's alleged current condition.³⁰ The Panel directs the SPO to ascertain W03827's ability to be "present in court" and to be "available for cross-examination". In the event the witness does not fulfil one of the conditions set out in Rule 154, the Panel cautions the SPO that it will deny admission of W03827's Proposed Evidence pursuant to Rule 154. For the time being, considering that the SPO, who has been in direct contact with W03827, submits that W03827 satisfies the requirements of Rule 154,³¹ the Panel will rely upon the SPO's good faith in this regard.

17. *Conclusion.* In light of the above, the Panel finds that W03827's Proposed Evidence³² is relevant and *prima facie* authentic, has *prima facie* probative value

²⁸ F00631/A02, Specialist Prosecutor, *Annex 2 to Submission of Pre-Trial Brief, with witness and exhibit lists, List of Witnesses* ("Initial List of Witnesses"), 17 December 2021, strictly confidential and *ex parte*, p. 7, witness no. 114. A confidential redacted version was filed on 21 December 2021, F00631/A02/CONF/RED. A corrected version was filed on 23 May 2022, F00631/A02/COR/CONF/RED.

²⁹ F01291/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission in Advance of Specialist Prosecutor's Preparation Conference* ("Further Amended List of Witnesses"), 14 February 2023, confidential, p. 8; Updated Motion, para. 20.

³⁰ Response, paras 15-17.

³¹ Updated Motion, para. 19.

³² 034442-034503 RED2.

which is not outweighed by its prejudicial effect, and is appropriate for admission pursuant to Rules 138(1) and 154. This finding is without prejudice to the ultimate finding on admission subject to the fulfilment of Rule 154 criteria.

B. W04408

18. The SPO submits that the proposed evidence of W04408³³ is: (i) relevant;³⁴ (ii) *prima facie* authentic and reliable;³⁵ and (iii) suitable for admission under Rule 154.³⁶ It further argues that W04408's Associated Exhibits³⁷ are admissible.³⁸

19. The Defence responds that W04408's Proposed Evidence should be heard *viva voce* because it is central to the case and admitting it through Rule 154 would unfairly prejudice the Defence and would outweigh any time saving.³⁹ The Defence avers that several factors militate *against* the admission of W04408's Proposed Evidence through Rule 154: (i) the volume of relevant material; (ii) the extent of W04408's interactions with the Accused; (iii) the direct link with incidents and modes of liability charged in the Indictment; and (iv) the fact that key portions of the proposed evidence are uncorroborated.⁴⁰ The Defence contends that W04408's Statement is not admissible through Rule 154 as its prejudicial effect outweighs its probative value.⁴¹ It also objects to the Rule 154 admission of three of W04408's Associated Exhibits.⁴²

³³ The proposed evidence of W04408 ("W04408's Proposed Evidence") is constituted of: (i) W04408's SPO Statement dated 20 April 2020 (075552-075578 and 075552-075578-AT) ("W04408's Statement"); and (ii) the four items proposed as associated exhibits in Annex 2 to the Updated Motion ("W04408's Associated Exhibits"). See Annex 2 to the Updated Motion.

³⁴ Updated Motion, paras 21-26.

³⁵ Updated Motion, para. 27.

³⁶ Updated Motion, paras 28-29.

³⁷ See Annex 2 to the Updated Motion.

³⁸ Updated Motion, para. 30.

³⁹ Response, paras 20-22, 69.

⁴⁰ Response, para. 22.

⁴¹ Response, para. 21.

⁴² Response, paras 24-25.

20. *W04408's Statement*. Regarding relevance, W04408 held several positions with Human Rights Watch ("HRW"), a non-governmental organisation, for whom he contributed to eight reports about alleged human rights violations in Kosovo, where he travelled to in 1998. W04408's Proposed Evidence is relied upon by the SPO, *inter alia*, in respect of: (i) events in Kosovo during 1992-1999, the rise of the KLA and its organisational structure; (ii) alleged crimes committed by KLA members between spring 1998 and early 1999; (iii) allegations of attacks against Serbs, Roma, and other non-Albanians as well as ethnic Albanian political rivals and people accused of having collaborated with the Serbian authorities in the period after 12 June 1999; (iv) the alleged four categories of "collaborators"; and (v) W04408's meetings with Mr Thaçi, one in November 1998 in relation to the alleged abduction and detention by the KLA of two Serb journalists and another in August 1999, when W04408 allegedly gave Mr Thaçi a copy of a report entitled "*Abuses Against Serbs and Roma in the New Kosovo*".⁴³ The Panel is satisfied that W04408's Statement is relevant to the charges in the Indictment.

21. Regarding authenticity, W04408's Statement contains multiple indicia of authenticity such as the date and place of the interview, the personal details and signature of the witness, the names of the SPO staff present, and a warning regarding the rights of the witness and the witness's acknowledgement of his rights.⁴⁴ The Panel is thus satisfied that W04408's Statement is *prima facie* authentic.

22. Regarding probative value, while parts of W04408's Statement contain hearsay or derive from an unclear source of knowledge, these considerations are not an obstacle to admission, but would rather go the weight, if any, to give to the evidence. The Panel is satisfied that W04408's Statement has *prima facie* probative value.

⁴³ Amended List of Witnesses, pp. 304-305; SPO Pre-Trial Brief, paras [REDACTED]; Indictment, paras [REDACTED]. *See also* Updated Motion, paras 21-26.

⁴⁴ Annex 2 to the Updated Motion.

23. Regarding the suitability of W04408's Statement for admission pursuant to Rule 154, the Panel notes the Defence's submissions that its probative value is outweighed by its prejudicial effect.⁴⁵ The Panel notes that paragraphs 88-101 and 102-116 of W04408's Statement pertain to W04408's direct interactions with Mr Thaçi in relation to allegations of unlawful detention and violations of international humanitarian law. That said, considering that the Defence can cross-examine the witness on all the said interactions, the Panel is of the view that the prejudicial effect of the content of these paragraphs does not outweigh their probative value. The Panel is also of the view that the prejudicial effect of the remainder of W04408's Statement does not outweigh its probative value. The Panel considers that the Defence failed to provide adequate reasons that would militate in favour of the Panel exercising its discretion to refuse admission pursuant to Rule 154 of W04408's Statement. Therefore, the Panel finds that W04408's Statement is admissible pursuant to Rule 154.

24. *W04408's Associated Exhibits.* As regards the HRW letter to the KLA dated 2 December 1998 ("HRW Letter"),⁴⁶ the Panel observes that: (i) it was shown to and discussed with the witness during his interview;⁴⁷ (ii) it was authored by W04408; (iii) it concerns the alleged detention of two Serbian journalists that W04408 allegedly discussed with Mr Thaçi; and (iv) the Defence did not object to its admissibility. On the basis of the above, the Panel is satisfied that the HRW Letter forms an inseparable and indispensable part of W04408's Statement, is relevant and *prima facie* authentic, and has *prima facie* probative value, and that its probative value is not outweighed by its prejudicial effect.

25. As regards the extract from Chapter 10 of the HRW report titled "*Humanitarian Law Violations in Kosovo*" relating to "*Violations of the Rules of War by*

⁴⁵ Response, para. 21.

⁴⁶ IT-03-66 P212.8. See Annex 2 to the Updated Motion, Associated Exhibit no. 4.

⁴⁷ See 075552-075578, p. 22, para. 101 referring to ERN U008-1346.

the UCK” (“Extract”)⁴⁸ and the HRW press release condemning the detention of Serbian journalists dated October 1998 (“Press Release”),⁴⁹ the Defence argues that: (i) there is no indication that it has been shown to the witness during the interview; (ii) W04408 does not explain its relevance; (iii) the relevance to the SPO’s case is unclear; and (iv) it is not cited in the SPO Pre-Trial Brief.⁵⁰ The Defence also argues that the Extract is inappropriate for admission under Rule 154 in light of the vagueness or lack of clarity of the methodology, sources and authorship of the report.⁵¹ The Panel observes that: (i) the Extract and the Press Release are only referenced once in W04408’s Statement;⁵² (ii) W04408 provides no comment, explanation, or precision regarding either item; and (iii) there is no indication that the items were shown to the witness during the interview. For these reasons, the Panel does not consider that the Extract and the Press Release form an inseparable and indispensable part of W04408’s Statement and/or that their *prima facie* probative value has been established.

26. As regards the HRW report titled “*Abuses Against Serbs and Roma in the New Kosovo*” (“Report”),⁵³ the Defence objects on the basis that: (i) it is not clear which aspects of the report the SPO seeks to rely upon; (ii) it is only cited once in the SPO Pre-Trial Brief; and (iii) the vagueness of the authorship, sources and methodology undermines the reliability and credibility of the report.⁵⁴ The Panel notes that the Report is discussed in details in W04408’s Statement, wherein the witness: (i) states having personally reviewed and edited the Report; (ii) explains the

⁴⁸ IT-05-87.1 P00741, the SPO seeks to tender only the following pages: K0364865-K0364877. See Annex 2 to the Updated Motion, Associated Exhibit no. 1.

⁴⁹ IT-03-66 P212.7. See Annex 2 to the Updated Motion, Associated Exhibit no. 3.

⁵⁰ Response, paras 23, 26.

⁵¹ Response, para. 24.

⁵² W04408’s Statement, paras 15 (“A report in October 1998, *Humanitarian Law Violations in Kosovo*, included a chapter on violations of the laws of war by the Kosovo Liberation Army (“KLA”), and various statements reflected this theme.”), 90 (“prior to the meeting on October 23 1998 HRW issued a public statement expressing concern about the detention of RADOSEVIC and DOBRICIC who had gone missing on October 18 1998 near the village of Magura.”).

⁵³ K022-5096-K022-5119. See Annex 2 to the Updated Motion, Associated Exhibit no. 2.

⁵⁴ Response, para. 25.

methodology followed for its elaboration; and (iii) asserts having personally delivered it to Mr Thaçi in August 1999 and explains Mr Thaçi's reaction.⁵⁵ For these reasons, the Panel finds that the Report forms an indispensable and inseparable part of W04408's evidence. However, while the Report is intrinsically linked to paragraph 102 of W04408's Statement, the Panel finds that the Report is not suitable for admission pursuant to Rule 154 as an associated exhibit. Instead, the Panel orders the SPO to elicit from W04408 any aspect of the Report which the SPO considers relevant to its case and which establishes the reliability of the Report.

27. In light of the above, the Panel considers that the HRW Letter forms an indispensable and inseparable part of W04408's evidence and is therefore appropriate for admission under Rules 138(1) and 154. The Panel considers that the Extract, the Report and the Press Release do not form an indispensable and inseparable part of W04408's evidence and therefore finds them inadmissible under Rule 154.

28. *Conclusion.* In light of the above, the Panel finds that W04408's Statement⁵⁶ and the HRW Letter⁵⁷ are relevant and *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

⁵⁵ W04408's Statement, paras 15-16, 79-80, 102.

⁵⁶ 075552-075578 and 075552-075578-AT.

⁵⁷ IT-03-66 P212.8.

C. W04577

29. The SPO submits that the proposed evidence of W04577⁵⁸ is: (i) relevant;⁵⁹ (ii) *prima facie* authentic and reliable;⁶⁰ and (iii) suitable for admission under Rule 154.⁶¹ It further argues that W04577's Associated Exhibits⁶² are admissible.⁶³

30. The Defence responds that W04577 should be heard *viva voce* as W04577's allegations concern the acts and conducts of the Accused, are pivotal to the case, and raise serious credibility and reliability concerns.⁶⁴ It submits that the contradictions in W04577's Statements and the limited amount of time that would be saved further militate against the admission of the proposed evidence pursuant to Rule 154.⁶⁵ Further, the Defence objects to the admission of three of W04577's Associated Exhibits, namely to: (i) the KLA Membership Exhibits on the basis of its marginal probative value; (ii) the *Telegrafi* article (which is contained in the Sketches) on the basis of authenticity issues; and (iii) the [REDACTED] Report on

⁵⁸ The proposed evidence of W04577 ("W04577's Proposed Evidence") is constituted of: (i) the six statements of W04577 set out in Annex 3 to the Updated Motion proposed as Rule 154 witness statements (collectively, "W04577's Statements"); and (ii) the 10 items set out in Annex 3 to the Updated Motion proposed as associated exhibits (collectively, "W04577's Associated Exhibits"). W04577's Statements comprises: (i) the transcripts of W04577's SPO interviews dated [REDACTED] (the Panel notes that pursuant to F01549/COR, paras 9, 14(c), certain parts of the transcripts related to ERN 106438 have been replaced with revised versions, and that these revised versions have been considered for the purpose of the present decision); (ii) the [REDACTED] Record of Hearing of W04577 dated [REDACTED]; (iii) the W04577's [REDACTED] Statement and photo line-ups in investigation against [REDACTED]; and (iv) W04577's [REDACTED] Statement in [REDACTED] dated [REDACTED]. W04577's Associated Exhibits can be grouped as follows: (i) 061427-25-TR (and corresponding English translation 061427-25-TR-ET ("Video Footage")); (ii) SPOE00072752-SPOE00072752, SPOE00072753-00072753, SPOE00072818-SPOE00072818, 088353-088353 (and corresponding English translation 088352-088357-ET, p.2), SITF00180469-SITF00180502 (pp. SITF00180474-SITF00180488) (collectively, "Pictures"); (iii) 088352-088352 (and corresponding English translation 088352-088357-ET, p.1), 088354-088356 (and corresponding English translation 088352-088357-ET, pp. 3-5 (collectively, "Sketches")); (iv) 7004203-7004207 ("[REDACTED] Report"); and (v) 106423-106437 (and corresponding English translation 106423-106431-ET ("KLA Membership Exhibits"). See Annex 3 to the Updated Motion.

⁵⁹ Updated Motion, paras 31-34.

⁶⁰ Updated Motion, paras 35-37.

⁶¹ Updated Motion, paras 38-39.

⁶² See Annex 3 to the Updated Motion.

⁶³ Updated Motion, para. 40.

⁶⁴ Response, paras 27, 69.

⁶⁵ Response, para. 28.

the basis that it does not meet the relevance requirement.⁶⁶

31. *W04577's Statements.* Regarding relevance, W04577 is a former KLA soldier who served from April to October 1998. W04577's Statements are relied upon by the SPO in respect of, *inter alia*, the witness's alleged observations of: (i) [REDACTED], detention, [REDACTED] of civilian prisoners, including of [REDACTED]; (ii) approximately 30 [REDACTED] prisoners [REDACTED]; (iii) the KLA's use in April 1999 of a house on the road between [REDACTED] he saw approximately 30 detainees, [REDACTED]; (iv) the presence at or near this house of various KLA personnel and leaders, including that of Mr Veseli and Mr Thaçi; (v) general observations regarding the KLA, including regarding command structure, troop movements and communication methods; and (vi) personal and familial abuses suffered at the hands of the KLA.⁶⁷ The Panel is satisfied that W04577's Statements are relevant to the charges in the Indictment.

32. Regarding authenticity and probative value, the Panel observes that W04577's Statements consist of the witness's statements and record of testimony before [REDACTED], SPO, and [REDACTED], each of which contains several indicia of authenticity such as verbatim transcript of hearing or of audio/video recorded interview, indication of date, time and place of the statement, identification of the participants, and the witness personal details.⁶⁸ The Panel observes that the Defence does not challenge the authenticity of W04577's Statements. The Panel is satisfied that W04577's Statements are *prima facie* authentic and, taken as a whole, have *prima facie* probative value which is not outweighed by their prejudicial effect.

33. Regarding the suitability of W04577's Statements for admission pursuant to

⁶⁶ Response, para. 29.

⁶⁷ Amended List of Witnesses, pp. 380-381; Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED]. *See also* Updated Motion, paras 31-34, fn. 51.

⁶⁸ *See* Annex 3 to the Updated Motion and references cited in the column "Indicia of Reliability and Authenticity".

Rule 154, the Panel is not convinced by the Defence's argument⁶⁹ that W04577's evidence-in-chief would be so critical to the case that it should be heard *viva voce*. While the SPO relies on W04577's evidence to place some of the Accused at certain locations, the Panel notes that the contacts and sightings of three of the Accused alleged by W04577 are relatively limited in scope and only remotely connected to their acts and conduct. In that sense, the Panel does not consider the evidence to be as "pivotal" as the Defence asserts it is. Regarding the Defence's credibility and reliability concerns,⁷⁰ the Panel considers that they: (i) focus on a very limited part of W04577's Statements; and (ii) can be adequately explored in the course of cross-examination. Lastly, the Panel notes that, in addition to the Rule 154 admission of the proposed evidence, the SPO requests four hours of direct examination.

34. While this is a substantial supplementary *viva voce* examination, the Panel considers that W04577's evidence does cover extensive ground which, if it were to be elicited live, would require further examination time. Thus, the Panel considers that Rule 154 admission of W04577's Proposed Evidence will reduce the number of hours required for direct examination.

35. The Panel is therefore satisfied that W04577's Statements are suitable for admission pursuant to Rule 154. That said, the Panel reminds the SPO to ensure that the *viva voce* evidence is as short as possible, does not repeat the written evidence, and focuses on issues central to this case.⁷¹

⁶⁹ Response, paras 27, 69.

⁷⁰ Response, para. 27, fn. 65.

⁷¹ First Rule 154 Decision, para. 33.

36. *W04577's Associated Exhibits.* The Panel observes that all of W04577's Associated Exhibits were discussed in some detail in W04577's Statements.⁷² As such, they form an indispensable and inseparable part of W04577's Statements.

37. As regards the Video Footage and the Pictures, these items respectively show some KLA members resting in an unidentified place and some buildings in the [REDACTED] and [REDACTED] areas. All these items were shown to W04577 in the course of his SPO interview during which W04577 identifies certain KLA individuals or certain locations.⁷³ Accordingly, the Video Footage and the Pictures are exhibits without which W04577's Statements would become partly incomprehensible and is therefore admissible pursuant to Rule 154.

38. As regards the KLA Membership Exhibits, the Defence objects on the basis of the marginal probative value of the items.⁷⁴ The Panel observes that the KLA Membership Exhibits contains: (i) an identification card from the KLA War Veterans' Association ("WVA") with a photograph of the witness; (ii) certificates attesting that the witness served as a KLA soldier which are dated, stamped and signed; and (iii) a medical report indicating that the witness was wounded in military operations during the Kosovo war, dated, signed and stamped by a doctor.⁷⁵ In light of the above, the Panel is satisfied that the KLA Membership Exhibits are relevant, *prima facie* authentic and have *prima facie* probative value, and, accordingly, rejects the Defence's submission regarding the alleged "marginal" probative value. The Panel is further satisfied that the probative value of the KLA Memberships Exhibits is not outweighed by their prejudicial effect.

⁷² See Annex 3 to the Updated Motion and references cited in the column "reference".

⁷³ See 088347-TR-ET Part 7 RED2, pp. 8-19; 088347-TR-ET Part 2 RED2, pp. 7-8.

⁷⁴ Response, para. 29.

⁷⁵ 106423-106437 and English translation 106423-106431-ET.

39. As regards the Sketches,⁷⁶ the Panel observes that they are drawings made by the witness during the course of his SPO interview. They are dated and signed by the witness. The Defence does not object to their admission. The Panel is satisfied that the Sketches are relevant and *prima facie* authentic and that they have *prima facie* probative value which is not outweighed by their prejudicial effect. The Panel notes that the last page of the Sketches contains an article from the *Telegrafi*.⁷⁷ The Defence takes issue with the admission of such article.⁷⁸ However, the Panel observes that the SPO does not seek to tender the *Telegrafi* article (page 088357) into evidence.⁷⁹ The Panel thus does not need to render a decision on the admission of this page (088357). The Panel finds the Sketches to be appropriate for admission pursuant to Rules 138(1) and 154.

40. As regards the [REDACTED] Report,⁸⁰ the Defence objects on the basis that it does not meet the relevance requirement.⁸¹ The [REDACTED] Report dated [REDACTED] November 1999 concerns the [REDACTED]. It is unclear to the Panel what the purported relevance of the [REDACTED] Report is to the present case. It follows that the SPO has failed to establish the relevance of the proposed [REDACTED] Report and the Panel declines to admit it at this stage.

41. *Conclusion.* In light of the above, the Panel finds that W04577's Statements⁸² as well as the Video Footage, the Pictures, the KLA Membership Exhibits, and the Sketches,⁸³ are relevant and *prima facie* authentic, have *prima facie* probative value

⁷⁶ 088352-088352 (and English translation 088352-088357-ET, p.1); 088354-088356 (088352-088357-ET, pp. 3-5).

⁷⁷ 088352-088357-ET, p. 6 (088357).

⁷⁸ Response, para. 29.

⁷⁹ See Annex 3 to the Updated Motion, Associated Exhibits no. 5 and 7 where the SPO seeks to tender 088352-088357-ET, pp. 1, 3-5.

⁸⁰ 7004203-7004207.

⁸¹ Response, para. 29.

⁸² All items related to ERNs 088346, 088347, and 106438; SITF00009469-00009476; SITF00010564-00010615 RED; SITF00305130-00305135 RED, SITF00305130-SITF00305132-ET, and SITF00305133-SITF00305135-AT RED.

⁸³ All items related to ERN 061427-25; SPOE00072752-SPOE00072752; SPOE00072753-00072753; SPOE00072818-SPOE00072818; 088352-088352 and 088352-088357-ET, p. 1; 088353-088353 and 088352-

which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

D. W04644

42. The SPO submits that the proposed evidence of W04644⁸⁴ is: (i) relevant;⁸⁵ (ii) *prima facie* authentic and reliable;⁸⁶ and (iii) suitable for admission under Rule 154.⁸⁷ It further argues that W04644's Associated Exhibit⁸⁸ is admissible.⁸⁹

43. The Defence objects to the admission of W04644's Proposed Evidence because it relates to key evidence that is contradictory, contains hearsay, and would unfairly and disproportionately interfere with Mr Selimi's right to confrontation.⁹⁰ Should the Panel allow admission of W04644's Statement pursuant to Rule 154, the Defence submits that two portions should in any event be excluded from Rule 154 admission and be adduced live in court instead.⁹¹ First, regarding the portion allegedly identifying Mr Selimi in relation to an incident involving [REDACTED] ("First Impugned Portion"),⁹² the Defence argues that it is crucial that this portion be heard *viva voce* as: (i) W04644's Statement is the sole piece of evidence cited by the SPO in support of this allegation;⁹³ (ii) [REDACTED], is unable to testify; and (iii) W04644's evidence as to whether he ever saw Mr Selimi

088357-ET, p. 2; 088354-088356 and 088352-088357-ET, pp. 3-5; 106423-106437 and 106423-106431-ET; SITF00180469-SITF00180502, pp. SITF00180474-SITF00180488.

⁸⁴ The proposed evidence of W04644 ("W04644's Proposed Evidence") is composed of: (i) 073684-TR-ET Parts 1-5 RED 2 and 073684-TR-AT Parts 1-5 RED 2 ("W04644's Statement"); and (ii) 074666-074681 (and corresponding English translation 074670-074681-ET Revised 1) ("W04644's Associated Exhibits"). See Annex 4 to the Updated Motion.

⁸⁵ Updated Motion, paras 41-45.

⁸⁶ Updated Motion, paras 46-47.

⁸⁷ Updated Motion, paras 48-49.

⁸⁸ 074666-074681 with English translation 074670-074681-ET Revised 1.

⁸⁹ Updated Motion, para. 50.

⁹⁰ Response, paras 30, 69.

⁹¹ Response, paras 30, 69.

⁹² Response, paras 31 referring to 073684-TR-ET Part 4 RED, pp. 13-23.

⁹³ Response, para. 31 referring to SPO PTB, para. [REDACTED]; Indictment, paras [REDACTED].

prior to this incident is inconsistent and unclear.⁹⁴ The Defence further submits that the lack of clarity on this crucial point should not be left to cross-examination as it raises issues of notice which should be resolved before that point.⁹⁵ Second, regarding the portion relating to W04644's alleged identification of a black SUV present during the alleged [REDACTED] incident, and the allegation that this is the same vehicle that was allegedly stolen from his cousin on 2 April 1998 ("Second Impugned Portion"),⁹⁶ the Defence submits that this evidence should be heard *viva voce* as W04644 is the only witness in relation to this alleged incident.⁹⁷ As regards W04644's Associated Exhibit, the Defence objects to the portion comprising the newspaper clippings provided by W04644 at the end of his interview ("Newspaper Clippings") insofar as they: (i) go further than the evidence that W04644 can provide; and (ii) do not form an inseparable and indispensable part of W0644's Statement.⁹⁸

44. *W04644's Statement.* Regarding relevance, W04644's Statement and/or Proposed Evidence is relied upon by the SPO in respect of, *inter alia*, allegations of: (i) abduction in [REDACTED] 1998 by KLA members of W04644 and some of his relatives and their subsequent detention and mistreatment in [REDACTED] on accusations of being "traitors" and "spies"; (ii) W04644's difficulties in obtaining information from identified KLA members about his missing relatives; (iii) [REDACTED] bodies being found near [REDACTED]; and (iv) [REDACTED].⁹⁹ The Panel is satisfied that W04644's Statement is relevant to the charges in the Indictment.

45. Regarding authenticity, the Panel is also satisfied that W04644's Statement is

⁹⁴ Response, paras 32-34.

⁹⁵ Response, para. 35.

⁹⁶ Response, para. 36 *referring to* 073684-TR-ET Part 4, pp. 14, 16, 18-19 and 073684-TR-ET Part 1, p. 28.

⁹⁷ Response, para. 36.

⁹⁸ Response, para. 37 *referring to* 074676-074681-ET.

⁹⁹ Amended List of Witnesses, pp. 404-405; Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED]. *See also* Updated Motion, paras 41-45.

prima facie authentic insofar as it is a verbatim transcript of an audio-video recorded SPO interview which contains, *inter alia*, W04644's personal details, a warning to the witness regarding his rights, a date, a time and a location.

46. With respect to probative value and suitability for admission pursuant to Rule 154, the Panel considers that the facts that W04644's Statement is said to contain hearsay, contradictions and uncorroborated assertions, would be matters for cross-examination and weight, if any, to be given to the evidence. They are not such as to justify non-admission pursuant to Rule 154.

47. Regarding the two portions of W04644's Statement objected to by the Defence, the Panel does not consider this evidence as directly incriminating against Mr Selimi as it does not pertain directly to a crime charged in the Indictment. While these portions could be relevant, for instance, to the issue of knowledge of the Accused, the Defence can appropriately confront this evidence by means of cross-examination. Whether the impugned evidence is led *viva voce* or admitted pursuant to Rule 154, the Defence's ability to cross-examine the witness in court is undiminished. This applies equally to the evidence relating to the [REDACTED] incident, the black SUV and the witness's purported knowledge of Mr Selimi prior to the incident. The Panel therefore rejects the Defence's submission that admission of W04644's Statement pursuant to Rule 154 would disproportionately interfere with Mr Selimi's right to confrontation. Lastly, the Panel observes that the SPO has reduced the examination time for W04644 from three to two hours.¹⁰⁰ In light of all of the above, the Panel is satisfied that W04644's Statement has *prima facie* probative value which is not outweighed by its prejudicial effect and that it is suitable for admission pursuant to Rule 154.

48. *W04644's Associated Exhibit*. The Panel observes that W04644's Associated Exhibit consists in a bundle of documents provided by the witness during the

¹⁰⁰ Further Amended List of Witnesses, p. 15, no. 232 (two hours) *compare to* Amended List of Witnesses, p. 405 (three hours).

interview including death certificates, photographs, and the Newspaper Clippings.¹⁰¹ Except for the Newspaper Clippings, W04644's Associated Exhibit was discussed in some detail in W04644's Statement.¹⁰² As such, it forms an indispensable and inseparable part of W04644's Statement. Further, the photographs of the bodies and the death certificates appear authentic, are dated and/or stamped. The Panel is satisfied that the photographs and death certificates are *prima facie* authentic, have *prima facie* probative value and their probative value is not outweighed by their prejudicial effect. Therefore, the Panel finds that, save for the Newspaper Clippings, W04644's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

49. As regards the Newspaper Clippings,¹⁰³ the Panel observes that W04644 does not discuss each of these articles in W04644's Statement.¹⁰⁴ As a result, they do not form an inseparable and indispensable part of W04644's Statement. Further, in addition to the limited probative value of the Newspaper Clippings, it is not clear to the Panel the extent to which W04644 can testify to them and the portions which the SPO seek to rely upon. The Panel therefore finds the Newspaper Clippings inappropriate for admission under Rule 154. Instead, the SPO may, in the course of direct examination, direct W04644 to the parts of the Newspaper Clippings which the SPO considers relevant to its case and ask W04644 to comment upon them.

¹⁰¹ 074666-074681 and English translation 074670-074681-ET Revised 1.

¹⁰² See Annex 4 to the Updated Motion and references cited in the column "reference".

¹⁰³ 074676-074681-ET.

¹⁰⁴ 073684-TR-ET Part 4, pp. 47-48.

50. *Conclusion.* In light of the above, the Panel finds that W04644's Statement¹⁰⁵ and W04644's Associated Exhibit, save for the Newspaper Clippings,¹⁰⁶ are relevant and *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

E. W04781

51. The SPO submits that the proposed evidence of W04781¹⁰⁷ is: (i) relevant;¹⁰⁸ (ii) *prima facie* authentic and reliable;¹⁰⁹ and (iii) suitable for admission under Rule 154.¹¹⁰

52. The Defence responds that it objects to the admission of W04781's [REDACTED] statement of [REDACTED] as being unreliable by the witness's own admission and that it is thus unsuitable for admission pursuant to Rule 154.¹¹¹

53. *W04781's Proposed Evidence.* Regarding relevance, W04781's Proposed Evidence is relied upon by the SPO in respect of allegations of, *inter alia*: (i) the abduction of W04781 and some of his relatives from their home by the KLA in [REDACTED] 1998; (ii) the detention and mistreatment of W04781's relatives by the KLA in [REDACTED]; and (iii) the fact that three days later bodies were found in [REDACTED].¹¹² The Panel is satisfied that W04781's Proposed Evidence is

¹⁰⁵ All items related to ERN 073684.

¹⁰⁶ *i.e.* only 074666-074675 and corresponding English translations 074670-074675.

¹⁰⁷ The proposed evidence of W04781 consists of two statements: (i) W04781's SPO Interview (Parts 1-2) dated [REDACTED] (091702-TR-ET Part 1 RED2; 091702-TR-ET Part 2 RED2); and (ii) [REDACTED] Report of W04781's Interrogation Statement dated [REDACTED] (SITF00370725-00370734 RED2) (collectively, "W04781's Proposed Evidence"). *See* Annex 5 to the Updated Motion.

¹⁰⁸ Updated Motion, paras 51-53.

¹⁰⁹ Updated Motion, paras 54-55.

¹¹⁰ Updated Motion, paras 56-57.

¹¹¹ Response, paras 38, 69.

¹¹² Amended List of Witnesses, pp. 493-494; Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED].

relevant to the charges in the Indictment.

54. Regarding authenticity, the Panel is satisfied that W04781's Proposed Evidence is *prima facie* authentic insofar as: (i) one is a verbatim transcript of an audio-video recorded SPO interview; and (ii) the other is a [REDACTED] report of W04781's interrogation statement which contains, *inter alia*, W04781's personal details, his initials on each page, a warning to the witness regarding his rights, a date, a time and a location.

55. Regarding probative value and suitability of W04781's Proposed Evidence for admission pursuant to Rule 154, the Panel notes the Defence's submission that W04781's [REDACTED] statement of [REDACTED] is unreliable by the witness's own admission.¹¹³ The Panel observes that, in the course of his interview with the SPO, W04781 provided clarifications and/or corrections to his previous [REDACTED] statement.¹¹⁴ The Panel considers that these may be adequately addressed by the Defence in the course of cross-examination. Accordingly, the Panel is satisfied that the W04781's Proposed Evidence has *prima facie* probative value which is not outweighed by its prejudicial effect. Further, the Panel notes that the SPO has reduced the examination time for W04781 from three hours to 90 minutes.¹¹⁵ The Panel notes the SPO's intent to elicit brief oral testimony on essential matters to highlight or clarify certain aspects of W04781's Proposed Evidence.¹¹⁶ The Panel is therefore satisfied that the admission of W04781's Proposed Evidence by means of Rule 154 will significantly reduce the time required for direct examination, thereby promoting the efficiency of the proceedings. Thus, the Panel finds that W04781's Proposed Evidence is suitable for admission pursuant to Rule 154.

¹¹³ Response, paras 38, 69.

¹¹⁴ See *e.g.* 091702-TR-ET Part 2, pp. 9, 16, 23, 32.

¹¹⁵ Further Amended List of Witnesses, p. 17, no. 129 (three hours); Updated Motion, para. 57 (90 minutes).

¹¹⁶ Updated Motion, para. 57.

56. *Conclusion.* In light of the above, the Panel finds that W04781's Proposed Evidence¹¹⁷ is relevant and *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

F. W04018

57. The SPO submits that the proposed evidence of W04018¹¹⁸ is: (i) relevant;¹¹⁹ (ii) *prima facie* authentic and reliable;¹²⁰ and (iii) suitable for admission under Rule 154.¹²¹ It further argues that W04018's Associated Exhibits¹²² are admissible.¹²³

58. The Defence accepts that W04018's Proposed Evidence is *prima facie* reliable and authentic.¹²⁴ However, it opposes admission pursuant to Rule 154,¹²⁵ submitting that: (i) the use of Rule 154 with W04018 is unlikely to result in meaningful time savings;¹²⁶ and (ii) W04018's Proposed Evidence is of limited relevance.¹²⁷ The Defence objects to the admission of W04018's Associated Exhibits.¹²⁸

59. *W04018's Statements.* Regarding relevance, W04018's Statements are relied

¹¹⁷ Items related to ERN 091702; SITF00370725-00370734 RED2.

¹¹⁸ The proposed evidence of W04018 ("W04018's Proposed Evidence") is constituted of: (i) the 25 items proposed as Rule 154 statements of W04018, which consist of W04018's statements [REDACTED], as well as W04018's SPO interview (Statement 25) (collectively, "W04018's Statements"); and (ii) the three items proposed as associated exhibits (collectively, "W04018's Associated Exhibits"), set out in Annex 6 to the Updated Motion.

¹¹⁹ Updated Motion, paras 58-63.

¹²⁰ Updated Motion, paras 64-66.

¹²¹ Updated Motion, paras 67-68.

¹²² 071918-071920; SPOE00091385-00091408; SPOE00093174-00093175. See Annex 6 to the Updated Motion.

¹²³ Updated Motion, para. 69.

¹²⁴ Response, para. 39.

¹²⁵ Response, para. 69.

¹²⁶ Response, para. 40.

¹²⁷ Response, para. 41.

¹²⁸ Response, para. 42.

upon by the SPO in respect of, *inter alia*, allegations pertaining to: (i) W04018's arrest in 1999 by KLA members; (ii) W04018's subsequent detention and mistreatment in multiple locations including in Bob, Ivajë/Ivaja, and Varosh/Varoš Selo, and the consequences thereof; (iii) the conditions of detention in these places; (iv) the treatment of W04018's co-detainees; and (v) the lack of information on the reasons underpinning W04018's arrest and detention.¹²⁹ As such, W04018's Statements are relevant to various allegations and issues contained in the Indictment. In light of the above, the Panel is satisfied that W04018's Statements are relevant to the charges in the Indictment.

60. Regarding authenticity, the Panel observes that the Defence accepts the *prima facie* reliability and authenticity of the proposed evidence.¹³⁰ W04018's Statements, which are either official records of judicial hearings before the District Court of Prishtinë/Priština or the transcript of an audio-video recorded SPO interview, all contain multiple indicia of authenticity, and there is no indication to the contrary. The Panel is satisfied of the *prima facie* authenticity of W04018's Statements.

61. With respect to probative value and suitability of W04018's Statements for admission pursuant to Rule 154, the Panel notes the Defence's argument that the admission of W04018's Statements would be unduly prejudicial on the basis of the limitations of W04018's evidence particularly as it pertains to the Accused.¹³¹ The Panel refers to the above-made conclusions regarding relevance¹³² and considers that the considerations raised by the Defence are no obstacle to admission but matters for cross-examination and weight, if any, of the evidence. In light of the above, the Panel is satisfied that W04018's Statements have *prima facie* probative value which is not outweighed by their prejudicial effect.

¹²⁹ Amended List of Witnesses, p. 224; Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED]. *See also* Updated Motion, paras 58-63.

¹³⁰ Response, para. 39.

¹³¹ Response, para. 41.

¹³² *See* para. 59 above.

62. Further, the Panel observes that the overall size of the offered record is very large and that the SPO additionally requests three hours of direct examination should W04018's testimony be adduced pursuant to Rule 154.¹³³ Thus, and contrary to the Defence's submissions,¹³⁴ the Panel considers that time savings are likely to be considerable compared to hearing this witness's evidence *viva voce*, notwithstanding the fact that the Defence may need substantial time for cross-examination, for instance with respect to alleged inconsistencies. While the large size of an offered record may militate against admission pursuant to Rule 154, the Panel finds that in the present case, given that W04018's Statements do not appear to pertain to acts or conduct of the Accused, W04018's Statements are suitable for admission pursuant to Rule 154.

63. *W04018's Associated Exhibits.* The Panel observes that all of W04018's Associated Exhibits were discussed in W04018's Statements.¹³⁵ The first two exhibits contain photographs of W04018's injuries allegedly inflicted during his detention, and of locations where W04018 was allegedly detained in Bob, respectively ("Photographs").¹³⁶ In light of their content and the fact that they have been discussed in some detail in W04018's Statements,¹³⁷ the Panel considers that the Photographs form an indispensable and inseparable part of W04018's Statements. Furthermore, the Panel is satisfied of the relevance, *prima facie* authenticity and probative value of W04018's Statements. The Panel is also satisfied that the probative value of the Photographs is not outweighed by any prejudicial effect. Accordingly, the Photographs are appropriate for admission under Rules 138(1) and 154.

¹³³ Further Amended List of Witnesses, p. 9; Updated Motion, para. 68.

¹³⁴ Response, paras 39-40.

¹³⁵ See Annex 6 to the Updated Motion and references cited in the column "reference".

¹³⁶ 071918-071920; SPOE00091385-00091408.

¹³⁷ See Annex 6 to the Updated Motion and references cited in the column "reference".

64. With respect to the third exhibit, which consists of a newspaper article regarding crimes allegedly committed in Kačanik/Kaçanik, wherein W04018 is listed as a collaborator (“Article”),¹³⁸ the Panel considers that while the Article appears to be relevant and while it was discussed in one of W04018’s Statements (“Respective Statement”),¹³⁹ there is, at this stage, insufficient information in the Updated Motion, the Respective Statement or the Article as to the authenticity and probative value of this exhibit. The Panel notes, in particular, that there is no information as to the author/publisher or the date of the Article. In light of the foregoing, the Panel defers its decision on the Article’s admission.

65. *Conclusion.* In light of the above, the Panel finds that W04018’s Statements,¹⁴⁰ as well as the Photographs,¹⁴¹ are relevant and *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are thus appropriate for admission pursuant to Rules 138(1) and 154. The Panel defers its decision on the Article.¹⁴²

¹³⁸ SPOE00093174-00093175.

¹³⁹ 071922-TR-ET Part 4 RED, pp. 10-13.

¹⁴⁰ SPOE00089915-00089925 and SPOE00089926-00089937; SPOE00089887-00089900 and SPOE00089901-00089914; SPOE00089876-00089880 and SPOE00089881-00089886; SPOE00089848-00089861 and SPOE00089862-00089875; SPOE00089815-00089830 and SPOE00089831-00089847; SPOE00089723-00089766 and SPOE00089767-00089814; SPOE00090933-00090973 and SPOE00090974-00091005; SPOE00091006-00091040 and SPOE00091041-00091078; SPOE00091079-00091096 and SPOE00091097-00091112; SPOE00091113-00091130 and SPOE00091131-00091148; SPOE00091149-00091173 and SPOE00091174-00091200; SPOE00091201-00091214 and SPOE00091215-00091229; SPOE00091230-00091255 and SPOE00091256-00091281; SPOE00091282-00091308 and SPOE00091309-00091336; SPOE00091337-00091359 and SPOE00091360-00091383; SPOE00090811-00090870; SPOE00091417-00091447 and SPOE00091448-00091478; SPOE00091479-00091505 and SPOE00091506-00091533; SPOE00091534-00091553 and SPOE00091554-00091576; SPOE00091577-00091598 and SPOE00091599-00091620; SPOE00091621-00091645 and SPOE00091646-00091671; SPOE00091672-00091694 and SPOE00091695-00091719; SPOE00091720-00091747 and SPOE00091748-00091776; SPOE00091777-00091805 and SPOE00091806-00091836; all items related to ERN 071922.

¹⁴¹ 071918-071920; SPOE00091385-00091408.

¹⁴² SPOE00093174-00093175.

G. W04255

66. The SPO submits that the proposed evidence of W04255¹⁴³ is: (i) relevant;¹⁴⁴ (ii) *prima facie* authentic and reliable;¹⁴⁵ and (iii) suitable for admission under Rule 154.¹⁴⁶ It further argues that W04255's Associated Exhibits¹⁴⁷ are admissible.¹⁴⁸

67. The Defence responds that it objects to the admission of W04255's Proposed Evidence pursuant to Rule 154 as it relates to acts and conducts of the Accused, which are matters of central importance to the SPO case, and should therefore be heard *viva voce* to protect the rights of the Accused.¹⁴⁹ The Defence submits that W04255's evidence contains allegations on other topics which should be explored and clarified by the SPO in live testimony. It submits that the risk of prejudice to the Defence would outweigh the probative value of the proposed evidence.¹⁵⁰ The Defence also avers that W04255's Proposed Evidence contains inconsistencies which, combined with W04255's memory gaps, further militates against its admission pursuant to Rule 154.¹⁵¹ Lastly, the Defence objects to the admission of two of W04255's Associated Exhibits.¹⁵²

68. *W04255's Statement*. Regarding relevance, W04255's Statement is relied upon by the SPO in respect of, *inter alia*, the alleged: (i) relationship between the Democratic League of Kosovo ("LDK") and the KLA; (ii) interactions W04255 had with the KLA General Staff, including meetings with Mr Thaçi in [REDACTED];

¹⁴³ The proposed evidence of W04255 ("W04255's Proposed Evidence") is constituted of: (i) W04255's SPO Interview dated [REDACTED], related to ERN 071776 ("W04255's Statement"); and (ii) the four items set out in Annex 7 to the Updated Motion proposed as associated exhibits (collectively, "W04255's Associated Exhibits"). See Annex 7 to the Updated Motion.

¹⁴⁴ Updated Motion, paras 70-72.

¹⁴⁵ Updated Motion, para. 73.

¹⁴⁶ Updated Motion, paras 74-75.

¹⁴⁷ See Annex 7 to the Updated Motion.

¹⁴⁸ Updated Motion, para. 76.

¹⁴⁹ Response, paras 43-46, 69.

¹⁵⁰ Response, para. 47.

¹⁵¹ Response, para. 48.

¹⁵² Response, paras 49-50 referring to 071775-071775-ET (and its Albanian translation 071775-071775) and SITF00008196-SITF00008197-ET Revised.

(iii) structure of the KLA and appointment of individuals in the [REDACTED]; (iv) meeting W04255 had with Mr Selimi [REDACTED]; and (v) meeting W04255 had with Mr Krasniqi [REDACTED].¹⁵³ The Panel is satisfied that W04255's Statement is relevant to the charges in the Indictment.

69. Regarding authenticity, the Panel observes that W04255's Statement consists of an official SPO transcript of the audio-video recorded witness interview, containing multiple indicia of authenticity. Thus, the Panel is satisfied that W04255's Statement is *prima facie* authentic.

70. Regarding probative value and suitability of W04255's Statement for admission pursuant to Rule 154, the Panel is satisfied that W04255's Statement, which is the transcript of the SPO's interview with this witness, has *prima facie* probative value. The Panel observes that W04255's Statement substantially pertains to alleged acts and conduct of [REDACTED] Accused and other matters of importance to the present case (for instance, with respect to [REDACTED], who is an alleged member of the Joint Criminal Enterprise).¹⁵⁴ However, this does not, as such, constitute an impediment to its admission under Rule 154, as this provision expressly provides for the admission of evidence that goes to acts and conduct of the Accused as long as the relevant prerequisites of the rule have been met. Provided that the Defence has a meaningful opportunity to cross-examine the witness, such statements may be admitted under Rule 154. The Panel notes that the SPO requests two hours for direct examination should W04255's testimony be adduced pursuant to Rule 154,¹⁵⁵ as opposed to the six hours initially foreseen when W04255 was proposed as a live witness.¹⁵⁶ It follows that Rule 154 admission

¹⁵³ SPO Pre-Trial Brief, paras [REDACTED]; Amended List of Witnesses, pp. 240-241; Indictment, paras [REDACTED]. *See also* Updated Motion, paras 70-72. The Panel notes, however, that there is only one identifiable reference to W04255's Statement in the SPO Pre-Trial Brief, *see* SPO Pre-Trial Brief, [REDACTED].

¹⁵⁴ Indictment, para. [REDACTED].

¹⁵⁵ Further Amended List of Witnesses, p. 9, no. 140; Updated Motion, para. 75.

¹⁵⁶ Initial List of Witnesses, p. 9, no. 143.

of W04255's Proposed Evidence would substantially reduce the number of hours required for direct examination and, in turn, foster the expediency of the proceedings. Moreover, the offered record is relatively small in size (one interview transcript consisting of 150 pages), and thus, the Panel is of the view that the Defence may adequately explore any concerns with respect to W04255's Statement in a reasonable amount of cross-examination time. In light of the above, the Panel finds W04255's Statement to be suitable for admission pursuant to Rule 154.

71. *W04255's Associated Exhibits.* With respect to the first exhibit, to which the Defence objects,¹⁵⁷ the Panel observes that it consists of a newspaper article reproducing KLA Political Declaration [REDACTED] ("Declaration").¹⁵⁸ The Panel notes the witness's belief that the "collaborationist" in "[REDACTED]" was intended to refer to [REDACTED] ("Collaboration Issue").¹⁵⁹ The Panel also notes that, contrary to the Defence's submissions, the witness can, and in fact did, speak about the Declaration and commented on its content.¹⁶⁰ As such, the Declaration forms an indispensable and inseparable part of W04255's Statement. What exactly W04255 can say about the Declaration is a matter of weight and corroboration. Any concerns raised by the Defence in this regard – including with respect to W04255's subsequent meeting with [REDACTED] and what the latter allegedly stated or implied regarding the content and authorship of the Declaration – can be adequately explored during cross-examination. This said, the Panel would expect the SPO to raise the Collaboration Issue to W04255 in the course of its direct examination. Noting that the Defence does not challenge, as such, the relevance, authenticity and probative value of the Declaration, the Panel is satisfied that the Declaration is relevant and *prima facie* authentic and has *prima facie* probative value

¹⁵⁷ Response, para. 49.

¹⁵⁸ 071775-071775 and 071775-071775-ET.

¹⁵⁹ See Annex 7 to the Updated Motion, exhibit no. 1 (p. 2), column "relevance"; see e.g. 071776-TR-ET Part 4, p. 9, lines 8-20.

¹⁶⁰ 071776-TR-ET Part 4, pp. 7-15.

which is not outweighed by any prejudicial effect.

72. The Defence does not object to the second exhibit, which contains a request for support to the KLA General Staff ("Request")¹⁶¹ that was shown to the witness.¹⁶² The Panel is satisfied that the Request: (i) forms an indispensable and inseparable part of W04255's statement; and (ii) is relevant, *prima facie* authentic and has *prima facie* probative value which is not outweighed by its prejudicial effect.

73. With respect to the third exhibit, which contains parts of a book by [REDACTED] ("Book"),¹⁶³ the SPO submits that only page U008-5569 is relevant and that it concerns the relationship between the KLA and the FARK [REDACTED].¹⁶⁴ The Defence does not object to the Book's admission. The Panel is satisfied that page U008-5569 of the Book, which was shown to the W04255:¹⁶⁵ (i) forms an indispensable and inseparable part of W04255's Statement; and (ii) is relevant, *prima facie* authentic and has *prima facie* probative value which is not outweighed by any prejudicial effect. With respect to the remaining pages of the Book, the Panel considers that the SPO failed to demonstrate that they form an indispensable and inseparable part of W04255's Statement as they do not appear to have been shown to the witness. Nor has the SPO established the relevance of many parts of this Book. Accordingly, only page U008-5569 of the Book is considered appropriate for admission under Rules 138(1) and 154.

74. With respect to the Defence's objection to the fourth exhibit,¹⁶⁶ the Panel notes that this appears to be a report from [REDACTED] ("Report").¹⁶⁷ It was, *inter alia*,

¹⁶¹ U002-2777-U002-2777 and U002-2777-U002-2777-ET.

¹⁶² 071776-TR-ET Part 4, pp. 16-17.

¹⁶³ U008-5541-U008-5572-ET and U008-5541-U008-5572.

¹⁶⁴ Annex 7 to the Updated Motion, p. 2.

¹⁶⁵ 071776-TR-ET Part 4, pp. 18-20.

¹⁶⁶ Response, para. 50.

¹⁶⁷ SPOE00005059-SPOE00005060 and SITF00008196-SITF00008197-ET Revised.

[REDACTED] discussed with W04255.¹⁶⁸ As such, it forms an indispensable and inseparable part of W04255's Statement. The Report mentions, *inter alia*, two of the Accused, their conduct and statements made by them. As such, the Panel is satisfied of the Report's relevance. Noting that the authenticity of the Report and W04255's account in relation to it is not challenged by the Defence, the Panel is also satisfied that the Report is *prima facie* authentic. Moreover, the Panel is satisfied that the Report has *prima facie* probative value and that its probative value is not outweighed by any prejudicial effect. While the truth and accuracy of this Report and its content appear to largely depend on W04255's evidence, the Panel is satisfied that any concerns raised by the Defence, including with respect to W04255's alleged memory gaps regarding the contents of the Report, can be addressed during cross-examination and would be matters of weight, if any, to be attached to that document. Accordingly, the Panel is satisfied that the Report is relevant, *prima facie* authentic and has *prima facie* probative value, and that its probative value is not outweighed by any prejudicial effect.

75. The Panel is therefore satisfied that the Declaration, the Request, page U008-5569 of the Book, and the Report are appropriate for admission under Rules 138(1) and 154.

76. *Conclusion.* In light of the above, the Panel finds that W04255's Statement,¹⁶⁹ as well as the Declaration,¹⁷⁰ the Request,¹⁷¹ page U008-5569 of the Book,¹⁷² and the Report¹⁷³ are relevant and *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

¹⁶⁸ See 071776-TR-ET Part 2, pp. 3-9, 28, 32-33, 35-37, and Part 3 RED2, pp. 1-3.

¹⁶⁹ All items related to ERN 071776.

¹⁷⁰ 071775-071775-ET and 071775-071775.

¹⁷¹ U002-2777-U002-2777-ET and U002-2777-U002-2777.

¹⁷² *i.e.* p. U008-5569 of ERNs U008-5541-U008-5572-ET and U008-5541-U008-5572.

¹⁷³ SITF00008196-SITF00008197-ET Revised and SPOE00005059-SPOE00005060.

H. W01493

77. The SPO submits that the proposed evidence of W01493¹⁷⁴ is: (i) relevant;¹⁷⁵ (ii) *prima facie* authentic and reliable;¹⁷⁶ and (iii) suitable for admission under Rule 154.¹⁷⁷ It further argues that W01493's Associated Exhibits¹⁷⁸ are admissible.¹⁷⁹

78. The Defence responds that the volume of W01493's Proposed Evidence – 763 pages and 73 associated exhibits – is overwhelming and that its admission through Rule 154 will not result in any time savings – especially in light of the four hours of direct examination requested.¹⁸⁰ The Defence further submits that the SPO failed to justify the need to tender all of these items or to identify duplicative or irrelevant portions therein.¹⁸¹ The Defence does not oppose the admission of W01493's [REDACTED] as such, but requests that redactions be applied to certain passages concerning the Accused in this case.¹⁸² The Defence objects to the admission pursuant to Rule 154 of the remainder of W01493's Proposed Evidence.¹⁸³

79. *W01493's Statements.* Regarding relevance, W01493's Statements are relied upon by the SPO in respect of, *inter alia*, the alleged: (i) structure of and relationship between the KLA and the Armed Forces of the Republic of Kosovo

¹⁷⁴ The proposed evidence of W01493 ("W01493's Proposed Evidence") is constituted of: (i) the transcript of W01493's SPO interview ("Statement 1"), W01493's [REDACTED] before [REDACTED] ("Statement 5"), and three further statements by W01493 before [REDACTED] ("Statements 2-4"), all proposed as Rule 154 statements (collectively, "W01493's Statements"); and (ii) the 79 items proposed as associated exhibits (collectively, "W01493's Associated Exhibits"), set out in Annex 8 to the Updated Motion.

¹⁷⁵ Updated Motion, paras 77-82.

¹⁷⁶ Updated Motion, paras 83-85.

¹⁷⁷ Updated Motion, paras 86-88.

¹⁷⁸ See Annex 8 to the Updated Motion.

¹⁷⁹ Updated Motion, para. 89.

¹⁸⁰ Response, para. 51.

¹⁸¹ Response, paras 52-53.

¹⁸² Response, para. 54 with fn. 142, and para. 69.

¹⁸³ Response, paras 55, 69.

("FARK"); (ii) meetings held between FARK and KLA officials and public statements made on their relationship and the relevant chain of command; (iii) meetings in [REDACTED] 1998, where KLA General Staff members, including Mr Thaçi and Mr Selimi, asserted their authority over forces in [REDACTED]; (iv) structure and organisation of certain KLA units in Albania in late 1998 and 1999; and (v) treatment of some perceived opponents, including FARK members and alleged collaborators, in [REDACTED] locations in Albania.¹⁸⁴ The Panel is satisfied that W01493's Statements are relevant to the charges in the Indictment.

80. Regarding authenticity, the Panel observes that the Defence does not as such contest the authenticity of the proposed evidence. W01493's Statements, which consist of the transcript of the SPO's audio-video recorded interview with W01493 from [REDACTED]¹⁸⁵ ("Statement 1") and [REDACTED]¹⁸⁶ ("Statements 2-5"), all contain multiple indicia of authenticity, and there is no indication to the contrary. The Panel is therefore satisfied of the *prima facie* authenticity of W01493's Statements.

81. Regarding probative value and suitability of W01493's Statements for admission pursuant to Rule 154, the Panel observes that Statement 1 is the transcript of W01493's SPO interview of [REDACTED].¹⁸⁷ The Panel considers that while this statement is lengthy (roughly 400 pages), it is in the interest of the expeditiousness of the proceedings to admit it pursuant to Rule 154, rather than eliciting all the evidence contained therein through *viva voce* testimony. In this regard, the Panel observes that the SPO requests four hours for direct examination.¹⁸⁸ While this is a substantial supplementary *viva voce* examination,

¹⁸⁴ Amended List of Witnesses, p. 93; Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED].

¹⁸⁵ Items related to ERN [REDACTED], see Annex 8 to Updated Motion, pp. 1-4, statement no. 1.

¹⁸⁶ [REDACTED]; U008-4941-U008-4988 and U008-4941-U008-4988-AT; U009-3209-U009-3226 RED, U009-3220-U009-3223-ET RED, and U009-3209-U009-3219-AT; U016-9779-U016-9864.

¹⁸⁷ Items related to ERN 105527.

¹⁸⁸ Further Amended List of Witnesses, p. 4, no. 43; Updated Motion, para. 87.

the Panel considers that W01493's evidence covers extensive ground which, if it were to be elicited live, would take much longer. Thus, the Panel considers that Rule 154 admission would reduce the number of hours required for direct examination of W01493.

82. With respect to Statement 5, the Panel notes that the Defence does, in principle, not oppose the admission of Statement 5, which is W01493's [REDACTED] Statement, dated [REDACTED].¹⁸⁹ The Panel observes that this is a statement of roughly 40 pages and considers that there is no compelling reason that would militate against its admission pursuant to Rule 154. As regards the Defence's request for redaction of paragraphs [REDACTED] of Statement 5 on the basis that they concern the Accused in this case,¹⁹⁰ the Panel finds that the Defence has failed to substantiate its request. The fact that these paragraphs mention, *inter alia*, actions attributed to any of the Accused is not, as such, an obstacle to admission pursuant to Rule 154 or justification for redaction of such evidence.

83. The Panel is also satisfied that the *prima facie* probative value of Statement 1 and Statement 5 is not outweighed by any prejudicial effect, insofar as the Defence has a meaningful opportunity to cross-examine the witness, including with respect to certain "key issues".¹⁹¹

84. With respect to Statements 2-4, however, the Panel sees merit in the Defence's contention that these statements are largely duplicative of, in particular, Statement 5. The Panel considers that admitting the roughly 330 pages from Statements 2-4, in addition to Statements 1 and 5, would lead to an unnecessary bloating of the record and would not be conducive to the expeditious conduct of the proceedings.

85. In light of the above, the Panel is satisfied that Statement 1 and Statement 5

¹⁸⁹ U016-9779-U016-9864.

¹⁹⁰ Response, para. 54 and fn. 142.

¹⁹¹ See Response, para. 55.

are suitable for admission pursuant to Rule 154 and that Statements 2-4 are not suitable for admission pursuant to Rule 154 at this point in time.¹⁹² This is without prejudice to the SPO's ability to explore any aspects of these statements with the witness *viva voce*. The Panel reminds the SPO to ensure that the *viva voce* evidence is as short as possible, does not repeat the written evidence, and focuses on issues central to this case.¹⁹³ The Panel encourages the SPO to limit its direct examination to two hours.

86. *W01493's Associated Exhibits*. Regarding W01493's Associated Exhibits, the Panel observes that the following exhibits have not been discussed in Statements 1 and/or 5: Exhibits 8-9, 11-17, 19-24, 26-27, 29, 38-39, 42, 46-47, 54, and 56-73.¹⁹⁴ As such, they do not form an indispensable and inseparable part of Statements 1 or 5 and, accordingly, the Panel finds them inadmissible under Rule 154.

87. With respect to Exhibits 50-53, the Panel observes that the SPO links these exhibits to Statements 3 and 5.¹⁹⁵ Recalling that Statement 3 is not being admitted and considering that the link between Exhibits 50-53 and paragraphs 32-34 of Statement 5 is generic at best, the Panel is not persuaded that Exhibits 50-53 form an indispensable and inseparable part of Statement 5. Accordingly, the Panel finds Exhibits 50-53 inadmissible under Rule 154.

88. With respect to Exhibit 7, which consists of 82 pages, the Panel observes that in addition to being discussed in Statement 2 (which is not being admitted),

¹⁹² The Defence's request for redactions to Statement 2 is therefore moot. *See* Response, para. 54 and fn. 142.

¹⁹³ First Rule 154 Decision, para. 33.

¹⁹⁴ Exhibits 9, 11-17, 19, 29, and 38 have only been discussed in Statement 2 (*see* Annex 8 to the Updated Motion, pp. 16-20, 25, 28; column "reference"); Exhibits 20-24, 26-27, 46-47, 54, and 56-73 have only been discussed in Statement 3 (*see* Annex 8 to the Updated Motion, pp. 20-24, 33, 35-43; column "reference"); Exhibits 8 and 42 have only been discussed in Statements 2-3 (*see* Annex 8 to the Updated Motion, pp. 15-16, 30; column "reference"); Exhibit 39 has only been discussed in Statement 4 (*see* Annex 8 to the Updated Motion, p. 28, column "reference").

¹⁹⁵ *See* Annex 8 to the Updated Motion, pp. 34-35, column "reference". With respect to Statement 5, the SPO refers to paragraphs 32-34 thereof (pp. 55-56 in the English version of Statement 5).

Exhibit 7 was also discussed in Statement 5.¹⁹⁶ However, W01493 only made reference to an entry of 2 July 1998, which appears to relate to pages 6-7 of (the English version of) Exhibit 7.¹⁹⁷ The Panel is of the view that while pages 6-7 of Exhibit 7 form an indispensable and inseparable part of Statement 5, the remaining 80 pages do not, and that admitting them would unnecessarily overburden the record. The Panel is further satisfied that pages 6-7 of Exhibit 7 are relevant and *prima facie* authentic, and have *prima facie* probative value which is not outweighed by any prejudicial effect. Accordingly, pages 6-7 of Exhibit 7 are considered appropriate for admission under Rules 138(1) and 154. Should the SPO wish to have further pages of Exhibit 7 admitted into evidence, it shall clarify their relevance in the course of its direct examination of W01493.

89. With respect to Exhibit 4,¹⁹⁸ the Panel understands that only the Albanian version was shown to the witness¹⁹⁹ and that said version consists of one page only, as opposed to the English version,²⁰⁰ which consists of three pages with only the last page (page 3) corresponding to the Albanian version.²⁰¹ The SPO has not substantiated the need for admission of the remaining two pages of the English version and the Panel considers that they do not form an indispensable and inseparable part of Statement 1. With respect to the Albanian version and page 3 of the English version, the Panel is satisfied that they are relevant, *prima facie* authentic and have *prima facie* probative value which is not outweighed by any prejudicial effect. Accordingly, the Albanian version and page 3 of the English version are considered appropriate for admission under Rules 138(1) and 154.

¹⁹⁶ U016-9779-U016-9864, para. 22.

¹⁹⁷ Any references to pages 6-7 of Exhibit 7 are understood to refer to pages 6-7 of the English version of Exhibit 7 as well as the corresponding pages in the Albanian version, which appear to be pages 12-15 of the pdf document, stamped as U0085661-U0085664.

¹⁹⁸ SPOE00081913-SPOE00081915-ET and SPOE00081915-SPOE00081915.

¹⁹⁹ P. SPOE00081915. *See also* Annex 8 to the Updated Motion, p. 10, columns “comments” and “reference”.

²⁰⁰ SPOE00081913-SPOE00081915-ET.

²⁰¹ SPOE00081913-SPOE00081915-ET, p. SPOE00081915.

90. With respect to Exhibits 1-3, 5-6, 10, 18, 25, 28, 30-37, 40-41, 43-45, 48-49, and 55 the Panel observes that they were all discussed in some detail in Statements 1 and/or 5.²⁰² As such, they form an indispensable and inseparable part of these statements. The Panel is further satisfied that they are relevant, *prima facie* authentic and have *prima facie* probative value which is not outweighed by any prejudicial effect. Therefore, Exhibits 1-3, 5-6, 10, 18, 25, 28, 30-37, 40-41, 43-45, 48-49, and 55 are appropriate for admission under Rules 138(1) and 154.

91. *Conclusion.* In light of the above, the Panel finds that Statements 1 and 5,²⁰³ as well as Exhibits 1-3,²⁰⁴ 4 (Albanian version and page 3 of the English version),²⁰⁵ 5-6,²⁰⁶ 7 (pages 6-7),²⁰⁷ 10, 18, 25, 28, 30-37, 40-41, 43-45, 48-49, and 55,²⁰⁸ are relevant and *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154.

²⁰² See Annex 8 to the Updated Motion and references cited in the column "reference".

²⁰³ All items related to ERN 105527; U016-9779-U016-9864.

²⁰⁴ U002-3153-U002-3228-ET and U002-3153-U002-3228 (Exhibit 1); 0189-2635-0189-2652-ET, 0189-2653-0189-2664-ET, 0189-2665-0189-2668-ET, 0189-2669-0189-2670-ET, 0189-2671-0189-2709-ET, 0189-2725-0189-2738-ET, 0189-2748-0189-2759-ET, 0189-2761-0189-2778-ET, and 0189-2599-0189-2785 (Exhibit 2); SPOE00232555-SPOE00232556-ET and SPOE00232555-00232556 (Exhibit 3).

²⁰⁵ SPOE00081915-SPOE00081915 and p. SPOE00081915 of ERN SPOE00081913-SPOE00081915-ET.

²⁰⁶ 094852-094884 RED and 094857-094884-ET (Exhibit 5); 105449-105484-ET RED and 105448-105526 RED (Exhibit 6).

²⁰⁷ [REDACTED] (*i.e.* the pages stamped U0085661-U0085664).

²⁰⁸ [REDACTED] (Exhibit 18); [REDACTED] (Exhibit 25); [REDACTED] (Exhibit 28); [REDACTED] (Exhibit 30); [REDACTED] (Exhibit 33); [REDACTED] (Exhibit 34); [REDACTED] (Exhibit 35) [REDACTED] (Exhibit 36); [REDACTED] (Exhibit 37); ET U000-1873-U000-1873 and U000-1873-U000-1873 (Exhibit 40); ET U000-1875-U000-1876 and U000-1875-U000-1876 (Exhibit 41); U001-5034-U001-5034-ET and U001-5034-U001-5034 (Exhibit 43); U001-5988-U001-5990-EDT and U001-5988-U001-5990 (Exhibit 44); U003-8893-U003-8897-ET, U003-8824-U003-8826-ET, U003-8928-U003-8930-ET, U003-8912-U003-8914-ET, U008-5541-U008-5572-ET, and U003-8815-U003-9043 (Exhibit 45); U008-4992-U008-4992-ET and U008-4992-U008-4992 (Exhibit 48); U008-5506-U008-5512-ET and U008-5506-U008-5512 (Exhibit 49); U008-5580-U008-5580-ET and U008-5580-U008-5580 (Exhibit 55).

I. W04448

92. The SPO submits that the proposed evidence of W04448²⁰⁹ is: (i) relevant;²¹⁰ (ii) *prima facie* authentic and reliable;²¹¹ and (iii) suitable for admission under Rule 154.²¹² It further argues that W04448's Associated Exhibits²¹³ are admissible.²¹⁴

93. The Defence responds that W04448's Proposed Evidence should not be admitted pursuant to Rule 154 because the witness has disavowed portions of the testimony put to him by the SPO, which the SPO has not tendered for admission, and is unlikely to result in any significant time savings.²¹⁵ The Defence avers that W04448 should be heard *viva voce* as: (i) the witness's past conduct indicates that he may likely not make himself available for cross-examination; and (ii) the proposed evidence contains discrepancies and ambiguity which gives rise to credibility, reliability and consistency concerns.²¹⁶

94. *W04448's Statement.* Regarding relevance, W04448's Statement is relied upon by the SPO in relation, *inter alia*, to allegations of: (i) W04448 joining the KLA around [REDACTED] 1998 and then the [REDACTED]; (ii) the structure of the KLA in [REDACTED]; (iii) W04448's observations in [REDACTED] barracks, including regarding detention, conditions of detention, and mistreatment of individuals; (iv) W04448's deployment to [REDACTED] 1998; (v) incidents with [REDACTED]; and (vi) [REDACTED].²¹⁷ The Panel is satisfied that W04448's Statement is relevant to the charges in the Indictment.

²⁰⁹ The proposed evidence of W04448 ("W04448's Proposed Evidence") is constituted of: (i) [REDACTED] ("W04448's Statement"); and (ii) [REDACTED] (collectively, "W04448's Associated Exhibits") set out in Annex 9 to the Updated Motion.

²¹⁰ Updated Motion, paras 90-95.

²¹¹ Updated Motion, para. 96.

²¹² Updated Motion, paras 97-98.

²¹³ See Annex 9 to the Updated Motion.

²¹⁴ Updated Motion, para. 99.

²¹⁵ Response, paras 56-58, 66, 62, 68-69.

²¹⁶ Response, paras 56-67. See also Response, paras 4, 68-69.

²¹⁷ Amended List of Witnesses, pp. 337-339; Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED]. See also Updated Motion, paras 90-95.

95. Regarding authenticity the Panel is satisfied that W04448's Statement is *prima facie* authentic insofar as: (i) it is a verbatim [REDACTED] official transcript of his audio-video recorded [REDACTED]; (ii) it contains the date, time, case number, identity of the participants as well as the witness personal details; and (iii) W04448 [REDACTED].

96. As regards probative value and suitability of W04448's Statement for admission pursuant to Rule 154, the Panel acknowledges that, as argued by the Defence,²¹⁸ the witness's history and inconsistencies in the evidence may give rise to issues of credibility. However, the Panel does not consider that this would warrant non-admission of the W04448's Statement pursuant to Rule 154, considering that such inconsistencies can be further and effectively addressed in court through questioning. Regarding the Defence's argument as to the doubtful presence of W04448 in court or availability for cross-examination,²¹⁹ the Panel recalls that these criteria are pre-conditions for admission pursuant to Rule 154. Should W04448 not be present in court and/or unavailable for cross-examination, W04448's Proposed Evidence would simply not be admitted. At present, the concern is purely speculative and therefore without merit. Lastly, regarding all the remaining concerns raised by the Defence – *i.e.* on the parts of W04448's evidence that the Defence submits he disavowed or on the parts that the Defence submits are unclear, inconsistent or contain discrepancies²²⁰ – the Panel considers that they can be adequately explored in the course of cross-examination. Further, the Panel notes that the SPO intends to elicit oral testimony on essential matters to clarify certain aspects of W04448's evidence for three hours.²²¹ For these reasons, the Panel is satisfied that W04448's Statement has *prima facie* probative value which is not outweighed by its prejudicial effect, and that Rule 154 admission of

²¹⁸ See Response, paras 56-66.

²¹⁹ See Response, in particular, paras 56, 63-66.

²²⁰ See Response, paras 56-62.

²²¹ Further Amended Witness List, p. 12, no. 195.

W04448's Proposed Evidence is conducive to time-saving and, thus, suitable for admission pursuant to Rule 154.

97. *W04448's Associated Exhibits.* The Panel observes that both annotated maps were shown to the witness during his interview and discussed in some detail in W04448's Statements.²²² As such, they form an indispensable and inseparable part of W04448's Statements. The Panel is further satisfied that they are relevant, *prima facie* authentic and have *prima facie* probative value which is not outweighed by their prejudicial effect. As such, they are therefore appropriate for admission under Rules 138(1) and 154.

98. *Conclusion.* In light of the above, the Panel finds that W04448's Proposed Evidence²²³ is relevant and *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

V. CLASSIFICATION

99. The Panel notes that the Updated Motion and the Response were filed confidentially. The Panel therefore orders the SPO and the Defence to submit public redacted versions of the Updated Motion and the Response by no later than **Friday, 23 June 2023.**

²²² See Annex 9 to the Updated Motion and references cited in the column "reference".

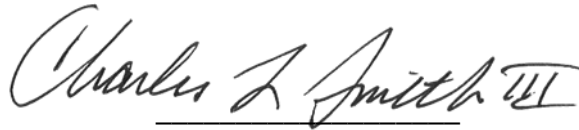
²²³ [REDACTED].

VI. DISPOSITION

100. Based on the above, the Panel hereby:

- a) **GRANTS** the Motion in part;
- b) **FINDS** the statements and associated exhibits of the Witnesses, set out in paragraphs 17, 28, 41, 50, 56, 65, 76, 91, 98 and the respective footnotes, to be appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of each of these Witnesses and each of their statements and associated exhibits;
- c) **FINDS** the remaining statements and exhibits proposed by the SPO not to be appropriate for admission, for the reasons set out above;
- d) **DEFERS** its decision on the Article for the reasons set out in paragraphs 64-65;
- 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) **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

- g) **ORDERS** the SPO and the Defence to submit public redacted versions of the Updated Motion and the Response by no later than **Friday, 23 June 2023**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 9 June 2023

At The Hague, the Netherlands.

Explanatory Note:

In paragraph 26, “insofar as” was deleted and replaced by “while”. In the same sentence, “which is not admitted” was deleted.

In paragraph 39, the two references to page 0883853 have been deleted and the relevant sentence has been adapted accordingly.