



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: 10 October 2023

Language: English

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**Public Redacted Version of
Decision on Prosecution Motion for Admission of Evidence of W00208, W02082,
W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154 (F01788)**

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

I. PROCEDURAL BACKGROUND

1. On 16 March, 9 June, 10 July and 24 July 2023, the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 in respect of 27 witnesses.¹
2. On 14 September 2023, the SPO filed a Rule 154 motion in relation to seven additional witnesses (“Motion”).²
3. On 25 September 2023, the Defence for all four Accused (collectively, “Defence”) responded jointly to the Motion (“Response”).³
4. On 2 October 2023, the SPO replied to the Response (“Reply”).⁴

¹ F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“First Rule 154 Decision”), 16 March 2023, confidential; F01593, Panel, *Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block*, 9 June 2023, confidential; F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154* (“Second Rule 154 Decision”), 9 June 2023, confidential (a corrected version was issued on 10 August 2023, F01595/COR); F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential; F01700, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154* (“Third Rule 154 Decision”), 24 July 2023, confidential.

² F01788, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W00208, W02082, W02475, W04147, W04325, W04491, and W04753 Pursuant to Rule 154*, 14 September 2023, confidential, with Annexes 1-7, confidential.

³ F01818, Specialist Counsel, *Joint Defence Response to the Prosecution Motion for Admission of Evidence of Witnesses W00208, W02082, W02475, W04147, W04325, W04491, and W04753 pursuant to Rule 154*, 25 September 2023, confidential.

⁴ F01827, Specialist Prosecutor, *Prosecution Reply to Joint Defence Response Concerning Rule 154 Submissions (F01818)*, 2 October 2023, confidential.

II. SUBMISSIONS

5. The SPO seeks admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of witnesses W00208, W02082, W02475, W04147, W04325, W04491 and W04753.⁵ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and that admission thereof pursuant to Rule 154 is in the interests of justice.⁶

6. The Defence objects to the admission of parts of the Proposed Evidence on the basis that: (i) the SPO has failed to substantiate their relevance; (ii) some of the Associated Exhibits do not constitute an indispensable or inseparable part of the Statements to which they relate; (iii) their probative value is outweighed by their prejudicial effect; and (iv) the time-saving function of admission pursuant to Rule 154 is overshadowed by the lengthy *viva voce* testimony sought by the SPO.⁷ Furthermore, the Defence submits that some of the Proposed Evidence concerns matters of pivotal importance to the Defence case, the admission of which would be highly prejudicial to the rights of the Accused.⁸ The Defence requests that the Panel take notice of the Defence’s objections set out in the Response and deny the admission of the items listed in paragraph 55 of the Response.⁹

7. The SPO replies that the Response is based on misconceptions regarding the scope of evidence relevant to this case and the *prima facie* nature of admissibility assessments.¹⁰ The SPO reiterates that the Motion should be granted.¹¹

⁵ Motion, paras 1, 70.

⁶ Motion, paras 2, 4. *See also* Annexes 1-7 to the Motion.

⁷ Response, para. 2.

⁸ Response, para. 3.

⁹ Response, para. 55.

¹⁰ Reply, paras 1-3.

¹¹ Reply, paras 1, 15.

III. APPLICABLE LAW

8. The Panel incorporates by reference the applicable law as set out in its First Rule 154 Decision.¹²

IV. DISCUSSION

A. W00208

9. The SPO submits that the proposed evidence of W00208¹³ is: (i) relevant;¹⁴ (ii) *prima facie* authentic and reliable;¹⁵ and (iii) suitable for admission under Rule 154.¹⁶

10. The Defence submits that tendering all of W00208's Statements would bloat the trial record and does not advance the goal of trial efficiency.¹⁷ It requests that the Panel: (i) direct the SPO to generate or select a statement or statements that concisely summarise(s) the key evidence the SPO seeks to elicit from the witness; or (ii) alternatively, only admit, pursuant to Rule 154, the statement given by W00208 to the Special Investigative Task Force¹⁸ ("SITF" and "SITF Statement").¹⁹

11. *W00208's Proposed Evidence.* Regarding relevance, W00208 is the father of an alleged murder victim named in the Indictment,²⁰ and the husband of W00900.

¹² First Rule 154 Decision, paras 26-35.

¹³ The proposed evidence of W00208 ("W00208's Proposed Evidence") consists of the following three statements: (i) 007631-TR-ET Parts 1-2 RED2, Parts 3-4, Part 5 RED and Part 6 (with corresponding Serbian and Albanian versions); (ii) U000-0009-U000-0016 RED2 (with corresponding Serbian and Albanian versions); and (iii) pp. 007627-007630 of 007623-007630 RED2 (with corresponding Serbian and Albanian versions). *See, generally*, Annex 1 to the Motion.

¹⁴ Motion, paras 5-8.

¹⁵ Motion, paras 9-11.

¹⁶ Motion, paras 12-13. *See also* Reply, para. 2(a).

¹⁷ Response, paras 5-6.

¹⁸ 007631-TR-ET Parts 1-2 RED2, Parts 3-4, Part 5 RED and Part 6 (with corresponding Serbian and Albanian versions).

¹⁹ Response, para. 7.

²⁰ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, [REDACTED] (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

W00208's Proposed Evidence is being relied upon by the SPO in respect of, *inter alia*: (i) the alleged abduction of the listed victim in [REDACTED] 1999; (ii) the overall situation in the Rahovec/Orahovac region in/around [REDACTED] 1999; and (iii) W00208's alleged meetings with a commander of the Kosovo Liberation Army ("KLA") from Rahovec/Orahovac.²¹ The Panel is therefore satisfied that W00208's Proposed Evidence is relevant to the charges in the Indictment.

12. Regarding authenticity and probative value, W00208's Proposed Evidence consists of: (i) the SITF Statement of 2013; (ii) a statement given to the International Criminal Tribunal for the former Yugoslavia ("ICTY") in [REDACTED] ("ICTY Statement");²² and (iii) a statement given to the [REDACTED] Investigative Judge in [REDACTED] ("[REDACTED] Statement").²³ Each of them contains multiple indicia of authenticity, including: (i) the date (and time) of the interview; (ii) the attendees; (iii) the witness's personal details; and (iv) witness warnings, rights and/or acknowledgments. In addition, the ICTY Statement and the [REDACTED] Statement contain signatures of the witness and other attendees, and the SITF Statement, while not containing any signatures, is the verbatim transcript of an audio-video recorded interview.²⁴ In light of the above, the Panel is satisfied of the *prima facie* authenticity and probative value of W00208's Proposed Evidence.

13. Regarding the suitability of W00208's Proposed Evidence for admission pursuant to Rule 154, the Panel takes note of the Defence's contention that admitting all three statements would unnecessarily bloat the trial record and not

²¹ Motion, paras 5-8; F01594/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("Amended List of Witnesses"), 9 June 2023, strictly confidential and *ex parte*, pp. 35-36 (a confidential redacted version was filed on the same day, F01594/A02); F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte*, in particular, paras 634, 637, 642-644 (a public redacted version was filed on 3 April 2023, F01415/A01; a confidential lesser redacted version was filed on 9 June 2023, F01594/A03).

²² U000-0009-U000-0016 RED2 (with corresponding Serbian and Albanian versions).

²³ Pp. 007627-007630 of 007623-007630 RED2 (with corresponding Serbian and Albanian versions).

²⁴ See First Statement; Second Statement; Third Statement; Annex 1 to the Motion.

advance the goal of trial efficiency.²⁵ The Panel observes in this regard that W00208's Proposed Evidence amounts to approximately 120 pages (in English). While the ICTY Statement and the [REDACTED] Statement are sometimes duplicative of the SITF Statement, they are very limited in size (in English: eight and four pages, respectively) and would only very marginally increase the number of pages contained in the trial record. The consistency of successive records of interview over the course of time and across different investigative and judicial institutions could be relevant to assessing the reliability and credibility of the proposed evidence.²⁶ Moreover, the Panel observes that the SPO has reduced the estimate for additional, *viva voce*, direct examination of W00208 from 90 minutes²⁷ to 30 minutes.²⁸

14. In light of the above, the Panel is satisfied that the admission of W00208's Proposed Evidence under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence has a meaningful opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel is also satisfied that the *prima facie* probative value of W00208's Proposed Evidence is not outweighed by its prejudicial effect, and that W00208's Proposed Evidence is suitable for admission pursuant to Rule 154. Accordingly, the Defence's requests²⁹ are rejected.

15. In light of the above, the Panel finds that W00208's Proposed Evidence³⁰ is

²⁵ Response, paras 5-6.

²⁶ See e.g. Third Rule 154 Decision, paras 25, 35; F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 155*, 14 June 2023, confidential, e.g. paras 93, 108, 208 (a public redacted version was issued on 8 September 2023, F01603/RED).

²⁷ Amended List of Witnesses, pp. 1, 35.

²⁸ Motion, fn. 3 and para. 13. See also F01811/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of Reserve Witnesses* ("List of Reserve Witnesses"), 22 September 2023, confidential, p. 2.

²⁹ See above, para. 10.

³⁰ 007631-TR-ET Part 1 RED2, Part 2 RED2, Part 3, Part 4, Part 5 RED and Part 6 (English); 007631-TR Part 1 RED, Part 2 RED, Part 3, Part 4, Part 5 RED and Part 6 (Serbian); 007631-TR-AT Part 1 RED2, Part 2 RED2, Part 3, Part 4, Part 5 RED and Part 6 (Albanian); U000-0009-U000-0016 RED2, U000-0009-U000-0016-ST RED and U000-0009-U000-0016-AT RED2; pp. 007627-007630 of 007623-007630 RED2, U002-9743-U002-9746 RED2 and 007627-007630-AT RED2.

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

B. W02082

16. The SPO submits that the proposed evidence of W02082³¹ is: (i) relevant;³² (ii) *prima facie* authentic and reliable;³³ and (iii) suitable for admission under Rule 154.³⁴ It further argues that W02082's Associated Exhibits³⁵ are admissible.³⁶

17. The Defence responds that it does not object to the admission of W02082's Statement³⁷ but that it takes issue with one of the associated exhibits,³⁸ which is an extract of one of the proposed associated exhibits of W02475.³⁹

18. *W02082's Statement*. Regarding relevance, the Panel notes that in [REDACTED] 1999, W02082, [REDACTED], was allegedly stopped on the street in [REDACTED] by KLA members and ordered to follow them to see their commander. After attempting to escape, W02082 eventually surrendered and was taken to the [REDACTED] where he was allegedly interrogated, mistreated and threatened. W02082's Statement is relied upon by the SPO in respect of, in particular, the above-mentioned allegations.⁴⁰ The Panel is satisfied that W02082's Statement is

³¹ The proposed evidence of W02082 ("W02082's Proposed Evidence") consists of: (i) the statement in 069393-TR Parts 1-2 Revised-ET RED and Part 3 Revised-ET Revised-ET RED (with corresponding Albanian and Serbian versions) (collectively, "W02082's Statement"); and (ii) the items proposed and tendered as associated exhibits in Annex 2 to the Motion (collectively, "W02082's Associated Exhibits"). See, generally, Annex 2 to the Motion. The Panel notes that the SPO does not tender exhibit 3 (069396-069400), see Annex 2 to the Motion, p. 3.

³² Motion, paras 14-18.

³³ Motion, para. 19.

³⁴ Motion, para. 21.

³⁵ See Annex 2 to the Motion.

³⁶ Motion, para. 20.

³⁷ Response, para. 8.

³⁸ 024847-024849.

³⁹ 024844-024865. Response, para 8. See also Response, para. 14.

⁴⁰ Motion, paras 14-18; Amended List of Witnesses, p. 119; SPO Pre-Trial Brief, e.g. paras [REDACTED]; Indictment, paras [REDACTED].

relevant to the charges in the Indictment.

19. Regarding authenticity and probative value, W02082's Statement consists of the verbatim transcript of W02082's video-audio recorded interview with the SPO of 2019,⁴¹ which contains multiple indicia of authenticity, such as: (i) the date, time, place and attendees of the interview; (ii) personal details of the witness; and (iii) witness warnings, rights and acknowledgments. W02082 confirmed that: (i) the contents of the statement are true and accurate; (ii) the statement was given voluntarily without any threats, force, or guarantees; and (iii) he had no objections to the manner or process by which the statement was taken.⁴² The Panel is satisfied of the *prima facie* authenticity and probative value of W02082's Statement.

20. Regarding the suitability of W02082's Proposed Evidence for admission pursuant to Rule 154, the Panel observes that: (i) W02082's Statement amounts to approximately 60 pages and is thus reasonably short; and (ii) the SPO intends to elicit brief oral testimony for one hour.⁴³ The Panel is satisfied that the admission of W02082's Statement under Rule 154 would contribute to the expeditiousness of the proceedings and, insofar as the Defence has a meaningful opportunity to cross-examine the witness, would not cause prejudice to the Defence. The Panel is therefore satisfied that the *prima facie* probative value of W02082's Statement is not outweighed by its prejudicial effect, and that W02082's Statement is suitable for admission pursuant to Rule 154.

21. *W02082's Associated Exhibits*. The Panel observes that W02082's Associated Exhibits comprise: (i) an extract from an article that appeared in a 1999 newsletter of [REDACTED] containing an interview of W02082 purportedly taken by W02475 during a field mission to Kosovo in [REDACTED] 1999 ("Extract");⁴⁴ and (ii) a military police report of the [REDACTED] of [REDACTED] 1999 pertaining to

⁴¹ 069393-TR Parts 1-2 Revised-ET RED and Part 3 Revised-ET Revised-ET RED.

⁴² 069393-TR Part 3 Revised-ET Revised-ET RED, p. 2, line 21 to p. 3, line 8.

⁴³ Motion, para. 21; Amended List of Witnesses, pp. 4, 119; List of Reserve Witnesses, p. 18.

⁴⁴ 024847-024849; Annex 2 to the Motion, p. 2.

[REDACTED] and containing, *inter alia*, photographs of W02082's injuries ("Report").⁴⁵ The Panel notes that the Defence, while not objecting to the Report, opposes the admission of the Extract, which also forms part of one of the proposed associated exhibits for W02475⁴⁶ ("Larger Extract"), by challenging the authorship and methodology used to conduct the interview underlying the Extract.⁴⁷

22. The Panel observes that the Extract was discussed in some detail in W02082's Statement⁴⁸ and considers that without the Extract, the relevant parts of W02082's Statement would become incomprehensible or of lesser probative value. The Panel is also satisfied that the Extract is relevant.⁴⁹ Furthermore, the Panel observes that the Extract and/or the Larger Extract contain information on the publishing entity ([REDACTED]), the year of publication (1999), the newsletter and issue thereof in which the Extract was contained ([REDACTED]). Based on this information, read in conjunction with the relevant submissions by the SPO in relation to W02082 and W02475,⁵⁰ the Panel is satisfied of the *prima facie* authenticity and probative value of the Extract. The concerns raised by the Defence with respect to the authorship and methodology can be adequately addressed during cross-examination. Insofar as the Defence has a meaningful opportunity to cross-examine this witness as well as W02475, the Panel is therefore also satisfied that the *prima facie* probative value of the Extract is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the Extract is appropriate for admission under Rules 138(1) and 154.

23. With respect to the Report, to which the Defence does not object,⁵¹ the Panel

⁴⁵ SITF00188909-SITF00188966-ET.

⁴⁶ 024844-024865.

⁴⁷ See Response, paras 8, 14.

⁴⁸ See e.g. 069393-TR Part 1 Revised-ET RED, p. 6, line 23 to p. 7, line 4; p. 13, line 13 to p. 14, line 14; p. 25, lines 11-19; Part 2 Revised-ET RED, p. 2, lines 10-25; p. 3, line 24 to p. 4, line 21.

⁴⁹ See also above, para. 18.

⁵⁰ See, in particular, Motion, paras 20, 22, 27; Annex 2 to the Motion, p. 2 (column "relevance"); Annex 3 to the Motion, pp. 3-4 (column "relevance").

⁵¹ See Response, para. 8.

notes that it was discussed in some detail in W02082's Statement⁵² and is satisfied that it forms an indispensable and inseparable part of W02082's Statement. The Panel is also satisfied that the Report is relevant,⁵³ *prima facie* authentic, and has *prima facie* probative value which is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the Report is appropriate for admission under Rules 138(1) and 154.

24. In light of the above, the Panel finds that W02082's Proposed Evidence⁵⁴ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

C. W02475

25. The SPO submits that the proposed evidence of W02475⁵⁵ is: (i) relevant;⁵⁶ (ii) *prima facie* authentic and reliable;⁵⁷ and (iii) suitable for admission under Rule 154.⁵⁸ It further argues that W02475's Associated Exhibits⁵⁹ are admissible.⁶⁰

26. The Defence responds that it does not oppose the admission of W02475's Statement but takes issue with certain sections thereof which, in the Defence's view, constitute inadmissible opinion evidence. It requests that the first

⁵² 069393-TR Part 2 Revised-ET RED, p. 14, line 10 to p. 21, line 25.

⁵³ See also above, para. 18.

⁵⁴ Statement: 069393-TR Part 1 Revised-ET RED, Part 2 Revised-ET RED and Part 3 Revised-ET Revised-ET RED (English); Part 1 Revised-ET-AT RED, Part 2 Revised-ET-AT RED and Part 3 Revised-ET Revised-AT RED (Albanian); Part 1 Revised RED, Part 2 Revised RED and Part 3 Revised RED (Serbian). Exhibits: 024847-024849 and 024847-024849-AT; SITF00188909-SITF00188966-ET, SITF00188909-SITF00188966-AT and SITF00188909-00188966.

⁵⁵ The proposed evidence of W02475 ("W02475's Proposed Evidence") consists of: (i) the statement in 034032-034057 RED3 (with corresponding Albanian version) ("W02475's Statement"); and (ii) the items proposed as associated exhibits in Annex 3 to the Motion (collectively, "W02475's Associated Exhibits"). See, generally, Annex 3 to the Motion.

⁵⁶ Motion, paras 22-25.

⁵⁷ Motion, para. 26. See also Reply, para. 2(b).

⁵⁸ Motion, para. 28.

⁵⁹ See Annex 3 to the Motion.

⁶⁰ Motion, para. 27. See also Reply, para. 2(b), (d)-(f).

two sentences and the last sentence of paragraph 38 be redacted before the document is moved into evidence (“Redaction Request”).⁶¹ With respect to W02475’s Associated Exhibits, the Defence responds that only the two handwritten notebooks of W02475 (“Notebooks”)⁶² form an inseparable and indispensable part of W02475’s Statement.⁶³ With respect to the remainder of W02475’s Associated Exhibits, the Defence submits that they are not suitable for admission as associated exhibits pursuant to Rule 154.⁶⁴

27. *W02475’s Statement.* Regarding relevance, the Panel notes that W02475 was a researcher for the [REDACTED] in Kosovo in 1999 where he was tasked with documenting human rights abuses [REDACTED] in Kosovo. W02475’s Proposed Evidence is relied upon by the SPO in relation to, *inter alia*, allegations of crimes committed in locations in or around [REDACTED] – such as [REDACTED] – [REDACTED]. In the course of his work, W02475 interviewed among others W02082 and [REDACTED], who had allegedly been detained and mistreated by KLA members in the [REDACTED] area.⁶⁵ The Panel is satisfied that W02475’s Statement is relevant to the charges in the Indictment.

28. Regarding authenticity and probative value, the Panel notes that W02475’s Statement, which is an SITF pre-trial witness statement of W02475 from 2016,⁶⁶ contains multiple indicia of authenticity, including: (i) the date, time, place and attendees of the interview; (ii) personal details of the witness; (iii) signature of the witness and other attendees; and (iv) witness warnings, rights and acknowledgments.⁶⁷ W02475 confirmed that: (i) the contents of the statement are true and accurate; (ii) the statement was given voluntarily without any threats,

⁶¹ Response, para. 10.

⁶² SITF00265720-00265827 RED3; SITF00265828-00265846.

⁶³ Response, para. 11.

⁶⁴ Response, paras 11-20.

⁶⁵ Motion, paras 22-25; Amended List of Witnesses, pp. 147-148; SPO Pre-Trial Brief, *e.g.* paras 620, 632; Indictment, paras 16-31, 59-61, 88, 90, 96-98, 126, 128, 136-138, 175.

⁶⁶ 034032-034057 RED3.

⁶⁷ *See also* Annex 3 to the Motion, p. 1.

force, or guarantees; and (iii) he had no objections to the manner in which the statement had been composed.⁶⁸ The Panel is therefore satisfied of the *prima facie* authenticity of W02475's Statement.

29. With respect to the Defence's objection to opinion evidence, which it says is contained in the first two sentences and the last sentence of paragraph 38 of W02475's Statement,⁶⁹ the Panel notes the following. First, as the Panel has already had occasions to note, opinion evidence is not per se inadmissible, although it should in principle not be led from witnesses other than experts.⁷⁰ The Panel notes in that respect that while objecting to the SPO tendering such evidence, the Defence has repeatedly elicited just such evidence from a large number of SPO witnesses. What weight might attach to such evidence will be determined by the Panel at the end of the proceedings, in light of all relevant circumstances. For the present purposes, the Panel considers that the impressions or conclusions contained in the impugned phrases do not render the proposed evidence inadmissible. The Panel notes, in particular, that these sentences do not contain legal, but factual, propositions and that they are based on the witness's own experience of these matters. These propositions can be tested through cross-examination and their nature as opinions or conclusions drawn by the witness will be accounted for when assessing what weight and probative value to attribute to those. For the present purpose of deciding whether W02475's Statement is appropriate for admission under Rules 138(1) and 154, the Panel finds that W02475's Statement contains sufficient indicia of the basis on which W02475 formed his opinion.⁷¹ The Panel is further satisfied that the concerns raised by the

⁶⁸ 034032-034057 RED3, pp. 034056-034057.

⁶⁹ Response, para. 10. The first two sentences of paragraph 38 read: [REDACTED].

⁷⁰ See e.g. Transcript of Hearing, 18 July 2023 ("18 July 2023 Transcript"), p. 5984, line 19 to p. 5985, line 5 Transcript of Hearing, 5 September 2023 ("5 September 2023 Transcript"), p. 7280, lines 4-15.

⁷¹ 034032-034057 RED3, in particular, paras 34-38. See also, in this regard, 18 July 2023 Transcript, in particular, p. 5984, line 25 to p. 5985, line 2 and p. 5986, lines 12-16; 5 September 2023 Transcript, in particular, p. 7280, lines 11-15, and p. 7281, lines 1-4.

Defence can be adequately explored during cross-examination and would pertain to the weight, if any, and probative value to be attached to W02475's Statement.⁷² In light of the above, the Panel is also satisfied of the *prima facie* probative value of W02475's Statement and rejects the Defence's Redaction Request.

30. Regarding the suitability of W02475's Proposed Evidence for admission pursuant to Rule 154, the Panel observes that: (i) W02475's Statement amounts to 26 pages (in English) and is thus limited in size; and (ii) the SPO intends to elicit brief oral testimony from W02475 for ninety (90) minutes.⁷³ The Panel is satisfied that the admission of W02475's Statement under Rule 154 would contribute to the expeditiousness of the proceedings and, insofar as the Defence has a meaningful opportunity to cross-examine the witness, would not cause prejudice to the Defence. The Panel is therefore also satisfied that the *prima facie* probative value of W02475's Statement is not outweighed by its prejudicial effect, and that W02475's Statement is suitable for admission pursuant to Rule 154.

31. *W02475's Associated Exhibits.* The Panel notes that W02475's Associated Exhibits consist of: (i) the Notebooks, which contain W02475's notes of interviews he conducted with [REDACTED] in and around [REDACTED] in [REDACTED] 1999 and which relate, *inter alia*, to the allegations mentioned in paragraph 27 above; (ii) publications allegedly (co-)authored by W02475 and pertaining, *inter alia*, to the above-mentioned allegations ("Publications");⁷⁴ and (iii) the Larger Extract,⁷⁵ which is also related to the above-mentioned allegations.

32. With respect to the Notebooks, whose admissibility the Defence does not contest,⁷⁶ the Panel observes that they were discussed in some detail in W02475's

⁷² See also 18 July 2023 Transcript, p. 5985, lines 8-11; 5 September 2023 Transcript, p. 7280, lines 23-25.

⁷³ Motion, para. 28; Amended List of Witnesses, pp. 5, 147; List of Reserve Witnesses, p. 21.

⁷⁴ 024835-024843; 023815-023820; 023821-023822; 023795-023808.

⁷⁵ 024844-024865. See *already* above, para. 21.

⁷⁶ Response, para. 11.

Statement.⁷⁷ The Panel is satisfied that they form an indispensable and inseparable part of W02475's Statement. The Panel is also satisfied that they are relevant,⁷⁸ *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect. Accordingly, the Panel finds that the Notebooks are appropriate for admission under Rules 138(1) and 154.

33. With respect to the Publications, the Panel notes that the Defence objects to their admission pursuant to Rule 154, arguing in particular that they do not form an indispensable or inseparable part of W02475's Statement and/or that they are duplicative of W02475's Statement and/or the Notebooks.⁷⁹ The Panel observes that the Publications were all discussed in some detail in W02475's Statement.⁸⁰ While they may comprise, or refer to, information that is also contained in the Notebooks, the Panel considers that without the Publications, the respective parts of W02475's Statement would become incomprehensible or of lesser probative value. The Panel notes, furthermore, that the consistency between the Publications and the Notebooks might be relevant to evaluating their reliability. The Panel is therefore satisfied that the Publications form an indispensable and inseparable part of W02475's Statement. The Panel is also satisfied that they are relevant⁸¹ and *prima facie* authentic. With respect to the Defence's claims regarding the overly generalised nature of the information contained in the Publications, the Panel is of the view that such concerns can be adequately addressed during cross-examination and would be a matter to account for when deciding on the weight and probative value to be attached to the Publications. Furthermore, the Panel is not persuaded by the Defence's argument that admission of the Publications

⁷⁷ See Annex 3 to the Motion, pp. 1-2, and references cited in the column "reference".

⁷⁸ See also above, para. 27.

⁷⁹ Response, paras 11-12, 18-20.

⁸⁰ 024835-024843: 034032-034057 RED3, paras. 25-26, 37, 63, 84. 023815-023820: 034032-034057 RED3, para. 29. 023821-023822: 034032-034057 RED3, paras. 29, 73. 023795-023808: 034032-034057 RED3, para. 29.

⁸¹ See also above, para. 27.

would overwhelm the trial record,⁸² considering that the Publications are limited in size (approximately 30 pages). In light of the above, the Panel is satisfied that: (i) the Publications have *prima facie* probative value; and (ii) insofar as the Defence has a meaningful opportunity to cross-examine the witness, the *prima facie* probative value of the Publications is not outweighed by their prejudicial effect. Accordingly, the Panel finds that the Publications are appropriate for admission under Rules 138(1) and 154.

34. With respect to the Larger Extract, the Panel notes that the Defence objects to the admission thereof pursuant to Rule 154, arguing, in particular, that the Larger Extract does not form an indispensable or inseparable part of W02475's Statement, that the (individual) authorship of the articles contained in the Larger Extract is unclear, and/or that the Larger Extract is duplicative of W02475's Statement and/or the Notebooks.⁸³

35. The Panel notes that, with the exception of pages 024855-024859, the articles contained in the Larger Extract were discussed in some detail in W02475's Statement.⁸⁴ While those articles that were discussed in W02475's Statement may comprise or refer to information that is also contained in the Notebooks, the Panel considers that without these articles, the respective parts of W02475's Statement could become incomprehensible or of lesser probative value. The Panel is satisfied that the articles discussed in W02475's Statement⁸⁵ as well as the cover page⁸⁶ (collectively, "Discussed Articles") form an indispensable and inseparable part of W02475's Statement. However, the Panel agrees with the Defence that pages 024855-024859 do not form an indispensable and inseparable part of W02475's Statement and therefore finds that these pages are not appropriate for

⁸² Response, para. 19.

⁸³ Response, paras 11, 13-17.

⁸⁴ Pp. 024845-024854: 034032-034057 RED3, paras 25-26, 63. Pp. 024860-024862: 034032-034057 RED3, paras 28, 62. Pp. 024863-024865: 034032-034057 RED3, para. 27.

⁸⁵ Pp. 024845-024854, 024860-024862, and 024863-024865.

⁸⁶ P. 024844. *See in this regard* 034032-034057 RED3, para. 25 and "list of exhibits" on p. 034056, para. 4.

admission at this stage under Rules 138(1) and 154. This is without prejudice to the SPO offering these items separately and/or eliciting additional evidence in respect of those through relevant witnesses.

36. Furthermore, the Panel is satisfied that the Discussed Articles are relevant.⁸⁷

37. Regarding authenticity and probative value, the Panel recalls with respect to pages 024845-024854 that it has: (i) already assessed portions thereof in the context of its assessment of the Extract that is part of W02082's Associated Exhibits; and (ii) found that the Extract is *prima facie* authentic and probative, and that its *prima facie* probative value is not outweighed by its prejudicial effect.⁸⁸ The Panel is of the view that the above-made findings in relation to the Extract also apply to pages 024845-024854 of the Discussed Articles and finds that these pages are *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect.

38. With respect to pages 024860-024862, the Defence claims that the letter contained therein bears no indicia of individual authorship.⁸⁹ The Panel refers to the above findings in relation to the Extract,⁹⁰ which it considers to also apply to pages 024860-024862 of the Discussed Articles. The Panel finds that these pages are *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect.

39. With respect to pages 024863-024865 and the Defence's submission that they lack connection to W02475's evidence and contain opinion-based evaluations or observations made remotely,⁹¹ the Panel: (i) recalls its above-made findings that the Discussed Articles form an indispensable and inseparable part of W02475's

⁸⁷ See also above, para. 27.

⁸⁸ See above, para. 22.

⁸⁹ Response, para. 16.

⁹⁰ See above, para. 22.

⁹¹ Response, para. 17.

Statement and that they are relevant;⁹² and (ii) refers to the above findings in relation to the Extract,⁹³ which it considers to also apply to pages 024863-024865 of the Discussed Articles. The Panel is satisfied that these pages are *prima facie* authentic and probative and considers that the concerns raised by the Defence can be adequately explored during cross-examination and would pertain to the weight, if any, to be attached to these pages. The Panel is therefore also satisfied that the *prima facie* probative value of pages 024863-024865 is not outweighed by their prejudicial effect.

40. Accordingly, the Panel finds that the Discussed Articles are appropriate for admission under Rules 138(1) and 154.

41. In light of the above, the Panel finds that W02475's Statement,⁹⁴ the Notebooks,⁹⁵ the Publications⁹⁶ and the Discussed Articles⁹⁷ are relevant, *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154. The Panel finds, without prejudice, that pages 024855-024859 of the Larger Extract are not appropriate for admission pursuant to Rules 138(1) and 154.

D. W04147

42. The SPO submits that the proposed evidence of W04147⁹⁸ is: (i) relevant;⁹⁹

⁹² See above, paras 34-36.

⁹³ See above, para. 22.

⁹⁴ 034032-034057 RED3 and 034032-034057-AT RED3.

⁹⁵ SITF00265720-00265827 RED3; SITF00265828-00265846.

⁹⁶ 024835-024843; 023815-023820; 023821-023822; 023795-023808.

⁹⁷ Pp. 024844-024854, 024860-024862 and 024863-024865 of 024844-024865.

⁹⁸ The proposed evidence of W04147 ("W04147's Proposed Evidence") consists of: (i) the statement in 075522-075551 (with corresponding Albanian version) ("W04147's Statement"); and (ii) the associated exhibits proposed and tendered in Annex 4 to the Motion ("W04147's Associated Exhibits"). See, generally, Annex 4 to the Motion. The Panel notes that exhibit 20 (IT-03-66 P35, IT-03-66 P35.1a and IT-03-66 P35.1), exhibit 22 (061427-12 and 061427-12-TR; already admitted as exhibit P00093) and exhibit 24 (074396-074435) are not tendered for admission, see Annex 4 to the Motion, pp. 12-13.

⁹⁹ Motion, paras 29-34.

(ii) *prima facie* authentic and reliable;¹⁰⁰ and (iii) suitable for admission under Rule 154.¹⁰¹ It further argues that W04147's Associated Exhibits¹⁰² are admissible.¹⁰³

43. The Defence responds that in light of W04147's insider knowledge and his expected testimony on issues that go to the heart of the SPO's case, there is an overriding public interest in W04147's evidence being presented orally and, accordingly, W04147 should be heard *viva voce*.¹⁰⁴ The Defence objects in particular to the admission pursuant to Rule 154 of those excerpts of W04174's Statement that go to proof of the acts and conduct of the Accused and/or relate to the alleged organisation of the KLA and crimes allegedly committed by the KLA.¹⁰⁵ The Defence also objects to most of W04147's Associated Exhibits on various grounds.¹⁰⁶ Lastly, the Defence objects to W04147 being called as a reserve witness.¹⁰⁷

44. The SPO replies, in particular, that: (i) W04147's Proposed Evidence is admissible pursuant to Rule 154 even if it goes to proof of acts and conduct of the Accused and/or other important issues in this case; and (ii) it has reduced the initially estimated eight hours of live examination for W04147 to three hours, should his testimony be adduced pursuant to Rule 154.¹⁰⁸ Furthermore, it takes issue with the Defence's submissions in relation to: (i) some of W04147's Associated Exhibits;¹⁰⁹ and (ii) W04147's status as a reserve witness, which it considers to be irrelevant, unfounded and premature.¹¹⁰

45. *W04147's Statement*. Regarding relevance, W04147 was the head of the Kosovo

¹⁰⁰ Motion, para. 35.

¹⁰¹ Motion, para. 37.

¹⁰² See Annex 4 to the Motion.

¹⁰³ Motion, para. 36. See also Reply, para. 2(d)-(e).

¹⁰⁴ Response, paras 21-22.

¹⁰⁵ Response, para. 22.

¹⁰⁶ Response, paras 24-35.

¹⁰⁷ Response, para. 36.

¹⁰⁸ Reply, paras 2(c), 4.

¹⁰⁹ Reply, paras 5-7.

¹¹⁰ Reply, para. 8.

Diplomatic Observer Mission of the United States of America (“US KDOM” and “US”) from August 1998 to late July 1999. According to the SPO, he interacted with and received information from KLA leadership figures (including General Staff members), Serbian military and political leaders, and members of the Democratic League of Kosovo (“LDK”) and other Kosovo/Albanian political parties. W04147’s Statement is being relied upon by the SPO in respect of, *inter alia*, the structure of the KLA, contextual elements of charged crimes, as well as allegations in relation to the abduction and/or detention of: (i) members of a humanitarian delegation in Qirez/Ćirez and Baicë/Banjica; (ii) two Tanjug journalists (W03880 and W04828) and two LDK officials (Cen Desku and Jakup Kastrati) in Shalë/Sedlare; and (iii) several Serb individuals.¹¹¹ In light of the above, the Panel is satisfied that W04147’s Statement is relevant to the charges in the Indictment.

46. Regarding authenticity and probative value, the Panel observes that W04147’s Statement is the record of statements given by W04147 to the SPO in 2018, 2019 and 2020¹¹² and contains several indicia of authenticity, including: (i) the date, place and names of attendees of the interviews; (ii) the witness’s personal details; and (iii) a signed witness declaration by which W04147 confirmed the truthfulness and accuracy of the statement.¹¹³ The Panel is satisfied of the *prima facie* authenticity and probative value of W04147’s Statement.

47. Regarding the suitability of W04147’s Statement for admission pursuant to Rule 154, the Panel notes the Defence’s submission that W04147 is a key witness who it says should be heard *viva voce*, and that particularly paragraphs 19-24, 42-87 and 104-144 of W04147’s Statement (“Identified Paragraphs”) go to the heart of the SPO’s case and should be heard live.¹¹⁴ The Panel also takes note of the

¹¹¹ Motion, paras 29-34; Amended List of Witnesses, pp. 229-230; SPO Pre-Trial Brief, *e.g.* paras 13, 18, 92, 104, 111, 132-133, 181, 263, 270, 459, 463, 476, 478, 504; Indictment, paras 13-40, 46-62, 76-77, 110-114.

¹¹² 075522-075551.

¹¹³ 075522-075551, in particular, pp. 075522, 075550-075551.

¹¹⁴ Response, paras 21-22. *See also* above, para. 43.

Defence's contention that the Rule 154 admission of W04147's Proposed Evidence would not result in significant time savings, as the SPO still foresees three hours for W04147's direct examination.¹¹⁵

48. While W04147's Statement amounts to only 30 pages (in English), it succinctly covers various topics of relevance and refers to a substantial number of issues. Although the SPO's time estimate of (a maximum of) three hours of additional, *viva voce*, direct examination of W04147¹¹⁶ is relatively high, the Panel notes the SPO's statement that it is mindful of the Panel's earlier direction to avoid mere repetition of admitted Rule 154 statements.¹¹⁷ The Panel is satisfied that if the information contained in W04147's Statement were to be elicited *viva voce*, the SPO would require much more than the (maximum of) three hours contemplated by the SPO for additional *viva voce* evidence in chief.¹¹⁸ Therefore, despite the Defence's submission to the contrary, the Panel is satisfied that the admission of W04147's Statement under Rule 154 would contribute to the expeditiousness of the proceedings.

49. Regarding the Defence's concerns with respect to, in particular, the Identified Paragraphs, the Panel recalls that while it has previously held that the importance of the proposed evidence to a Party's case is a factor that may be taken into consideration when assessing whether a statement is appropriate for admission pursuant to Rule 154,¹¹⁹ it has also made it clear that the fact that a statement pertains to alleged acts and conduct of the Accused and other matters of importance to the case, does not, as such, constitute an impediment to its admission under Rule 154.¹²⁰ The Panel recalls in this regard that Rule 154 expressly provides for the admission of evidence that goes to proof of acts and

¹¹⁵ Response, para. 23.

¹¹⁶ Motion, para. 37; Amended List of Witnesses, pp. 8, 229; List of Reserve Witnesses, p. 33.

¹¹⁷ Motion, para. 37.

¹¹⁸ See also Reply, para. 4, with further reference.

¹¹⁹ First Rule 154 Decision, para. 28.

¹²⁰ See e.g. Second Rule 154 Decision, para. 70.

conduct of the Accused as long as the relevant prerequisites of the provision have been met.¹²¹ In the present context, while the Identified Paragraphs include information of some importance to the Parties' cases, the Panel considers that – particularly in light of the relatively succinct nature of W04147's Statement (30 pages in total) and the issues discussed therein – any prejudice caused to the Defence by the Rule 154 admission of W04147's Statement would be relatively limited in nature. The Defence has failed to explain how any prejudice as would arise from the admission of this statement pursuant to Rule 154 would be reduced by having the SPO lead the same evidence orally from the witness. The Panel is further satisfied that the concerns raised by the Defence can be adequately addressed during cross-examination. In light of the above, and insofar as the Defence has a meaningful opportunity to cross-examine the witness, the Panel is satisfied that the *prima facie* probative value of W04147's Statement is not outweighed by its prejudicial effect. Accordingly, the Panel finds that W04147's Statement is suitable for admission pursuant to Rule 154.

50. Regarding the Defence's opposition to W04147 being called as a reserve witness,¹²² the Panel notes that such matters are not relevant to its decision whether to admit the proposed evidence pursuant to Rule 154. The Panel directs the Parties to discuss this matter *inter partes*. Should they be unable to find an agreeable solution, the Defence should raise this matter by means of a motion with the Panel.

51. *W04147's Associated Exhibits*. The Panel observes that W04147's Associated Exhibits consist of (cleared versions of): (i) [REDACTED];¹²³ (ii) [REDACTED];¹²⁴

¹²¹ See also Second Rule 154 Decision, para. 70.

¹²² Response, para. 36. See also F01829, Specialist Counsel, *Joint Defence Response to Prosecution Submission of List of Reserve Witnesses (F01811)*, 2 October 2023, confidential, paras 20-27, with Annexes 1-8, confidential.

¹²³ 075300-075308; 075382-075387; 075316-075335; 075378-075381; 075309-075315; 075349-075360; 075392-075394; 075336-075348; 075413-075414; 075409-075412; 075361-075368; 075369-075377; 075388-075391; 075395-075402; 075403-075408.

¹²⁴ 074581-074581; 074583-074584; 074582-074582. The Panel notes that the dates of the [REDACTED] indicated in the description of 074582-074582 and 074583-074584 on pp. 10 and 12 of Annex 4 to the

(iii) [REDACTED];¹²⁵ (iv) video footage purportedly showing a meeting attended by, *inter alia*, W04147, Hashim Thaçi and Jakup Krasniqi, as well as televised speeches by Hashim Thaçi and Adem Demaçi (“First Video”);¹²⁶ and (v) video footage purportedly showing the release of a Serbian police officer to W04147 (“Second Video”).¹²⁷

52. With respect to the [REDACTED], the Panel notes that the Defence objects to their admission as associated exhibits of W04147 on the basis that: (i) they do not form an inseparable part of W04147’s Statement;¹²⁸ (ii) their prejudicial effect outweighs their probative value, if any, particularly in light of the unclear authorship and source of information;¹²⁹ and (iii) some of them do not refer to any incident charged in the Indictment and, thus, their relevance is unclear.¹³⁰ The Panel also notes the SPO’s reply that the [REDACTED]: (i) are sufficiently reliable for admission; (ii) form an indispensable part of W04147’s Statement; (iii) are admissible despite containing redactions and despite not always identifying all persons involved; and (iv) are relevant for the reasons set out in Annex 4 to the Motion.¹³¹

53. The Panel observes that the [REDACTED] were discussed in W04147’s Statement.¹³² While W04147 did not comment in detail on all of them, the Panel is nevertheless satisfied that without the [REDACTED], the relevant parts of W04147’s Statement would become less comprehensible and of lesser probative value. Their content and preparation are issues that are closely tied to the

Motion and in Legal Workflow appear to be incorrect. The SPO is directed to correct the description, if necessary by liaising with the Court Management Unit (“CMU”).

¹²⁵ 075415-075466.

¹²⁶ 061427-03 (with transcripts 061427-03-TR-ET and 061427-03-TR).

¹²⁷ 061427-10 (with transcripts 061427-10-TR-ET and 061427-10-TR).

¹²⁸ Response, para. 25.

¹²⁹ Response, para. 26-29.

¹³⁰ Response, para. 30.

¹³¹ Reply, paras 5-6.

¹³² 075522-075551, paras 18, 59, 137. With respect to corresponding electronic record numbers (“ERNs”), see the SPO’s explanations in Annex 4 to the Motion (column “comments”).

proposed evidence of this witness. As such, the Panel is satisfied that the [REDACTED] form an indispensable and inseparable part of W04147's Statement.

54. Regarding relevance, the Panel refers to the above findings regarding the relevance of W04147's Statement and considers that while some of the [REDACTED] may not relate to specific incidents charged in the Indictment, they nevertheless pertain to material aspects of the SPO's case.¹³³ The Panel is satisfied that the [REDACTED] are relevant.

55. Regarding authenticity, the Panel observes that the [REDACTED] contain labels referring to the issuing authority, an assigned case number, and classification. They also contain the date upon which these documents were declassified. The Panel is therefore satisfied that they are *prima facie* authentic. Furthermore, as the [REDACTED] provide details on the issues identified with regard to relevance,¹³⁴ the Panel finds that, *prima facie*, they have probative value.

56. Regarding prejudice, the Panel considers that, while the individual authorship may not be clear and while the [REDACTED] contain elements of hearsay as well as redactions, this does not constitute an impediment to their admission under Rule 154.¹³⁵ The concerns raised by the Defence can be adequately explored during cross-examination and would pertain to the weight, if any, to be attached to the [REDACTED]. In particular, the redactions do not render the content of the [REDACTED] incomprehensible, nor would they render admission thereof unfair to the Defence. The Panel is satisfied that insofar as the Defence has a meaningful opportunity to cross-examine the witness, the *prima facie* probative value of the [REDACTED] is not outweighed by their prejudicial effect. Accordingly, the Panel finds that the [REDACTED] are appropriate for admission under Rules 138(1) and

¹³³ See above, para. 45.

¹³⁴ See above, para. 45.

¹³⁵ On hearsay, see e.g. First Rule 154 Decision, para. 21; 18 July 2023 Transcript, p. 5985, line 21 to p. 5986, line 4.

154.

57. With respect to the [REDACTED], the Panel observes that they were discussed in some detail in W04147's Statement.¹³⁶ The Panel considers that without the [REDACTED], the relevant portions of W04147's Statement would become incomprehensible and of lesser probative value. The Panel is therefore satisfied that the [REDACTED] form an indispensable and inseparable part of W04147's Statement. With respect to their relevance, the Panel refers to the above-made findings on the relevance of W04147's Statement¹³⁷ and is satisfied that the [REDACTED] are relevant. The Panel is furthermore satisfied of the *prima facie* authenticity of the [REDACTED], which is not challenged by the Defence.¹³⁸

58. With respect to probative value, the Panel notes that the Defence questions the probative value of the [REDACTED], as W04147 disagreed with (parts of) their content.¹³⁹ The Panel is of the view that the opinions expressed by W04147 with respect to the (accuracy or reliability of the) contents of the [REDACTED] do not, as such, negate their *prima facie* probative value. The concerns raised by the Defence can be adequately addressed through questioning of the witness. The Panel is satisfied of the *prima facie* probative value of the [REDACTED] and, insofar as the Defence has a meaningful opportunity to cross-examine the witness, is satisfied that the *prima facie* probative value of the [REDACTED] is not outweighed by their prejudicial effect. Accordingly, the Panel finds that the [REDACTED] are appropriate for admission under Rules 138(1) and 154.

59. With respect to the [REDACTED], the Panel notes that the Defence: (i) claims that the [REDACTED] is for the most part illegible and contains numerous redactions; and (ii) requests that the Panel admit, pursuant to Rule 154, only the few pages discussed in W04147's Statement whose meaning was clarified by the

¹³⁶ 075522-075551, paras 43, 87.

¹³⁷ See above, para. 45.

¹³⁸ See Response, paras 31-33.

¹³⁹ Response, paras 31-33.

witness.¹⁴⁰ The Panel also notes the SPO's reply that admitting only selected pages of the [REDACTED] would lead to a fractured evidential record and needless loss of courtroom time.¹⁴¹

60. The Panel observes that the [REDACTED] was discussed in some detail in W04147's Statement.¹⁴² While the witness may not have specifically commented on every single entry, the Panel is nevertheless of the view that without the [REDACTED], the relevant portions of W04147's Statement would become less comprehensible and of lesser probative value. The Panel is satisfied that the [REDACTED], in its entirety, forms an indispensable and inseparable part of W04147's Statement.

61. Regarding relevance, the Panel refers to the above findings regarding the relevance of W04147's Statement¹⁴³ and is satisfied that the [REDACTED] is also relevant, in particular as substantiation of W04147's recollection of meetings and his whereabouts at certain times. The Panel is furthermore satisfied of the *prima facie* authenticity of the [REDACTED], which does not seem to be contested by the Defence. Although the [REDACTED] contains certain redactions and some entries that are not easily legible, the Panel is satisfied that, *prima facie*, the [REDACTED] has probative value. The concerns raised by the Defence in this regard can be adequately addressed during cross-examination, and insofar as the Defence has a meaningful opportunity to cross-examine the witness, the Panel is satisfied that the *prima facie* probative value of the [REDACTED] is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the [REDACTED] is appropriate for admission under Rules 138(1) and 154.

62. With respect to the First Video, the Panel notes the Defence's objection on the basis that: (i) this video includes three different extracts filmed in three different

¹⁴⁰ Response, para. 34.

¹⁴¹ Reply, para. 7.

¹⁴² 075522-075551, paras 50, 52, 69-75, 86, 106, 118, 122, 126, 128, 138.

¹⁴³ See above, para. 45.

environments (a meeting involving W04147; a speech by Hashim Thaçi; and a speech by Adem Demaçi); (ii) it is unclear how this video was compiled; and (iii) while the extract relating to the meeting involving W04147 is commented upon in W04147's Statement and is admissible pursuant to Rule 154, the subsequent speeches of Hashim Thaçi and Adem Demaçi are not commented upon by W04147, do not form an inseparable part of W04147's Statement and are thus not admissible under Rule 154.¹⁴⁴

63. At the outset, the Panel observes that the First Video contains three parts – (i) footage concerning a meeting among several individuals¹⁴⁵ ("First Part"); (ii) a speech by Hashim Thaçi¹⁴⁶ ("Second Part"); and (iii) a speech by Adem Demaçi¹⁴⁷ ("Third Part") – and that it is not readily apparent from the recording itself whether or how they are linked to each other. While reference is made to the First Video in W04147's Statement,¹⁴⁸ the Panel agrees with the Defence that W04147 only commented upon the First Part. While the Panel is satisfied that the First Part forms an indispensable and inseparable part of W04147's Statement, it finds that the Second Part and the Third Part do not form an indispensable and inseparable part of W04147's Statement and that they are therefore not appropriate for admission under Rules 138(1) and 154. This is without prejudice to the possibility for the SPO to show the other excerpts to this or other witnesses if they are able to comment meaningfully upon them, or to seek the admission of these excerpts from the bar table.

64. Regarding relevance, the Panel refers to the above findings regarding the relevance of W04147's Statement¹⁴⁹ and is satisfied that the First Part of the First Video is relevant. The Panel is also satisfied of the *prima facie* authenticity and

¹⁴⁴ Response, para. 35.

¹⁴⁵ Sequence 00:00-01:29.

¹⁴⁶ Sequence 01:30-02:16.

¹⁴⁷ Sequence 02:17-03:19.

¹⁴⁸ 075522-075551, para. 70.

¹⁴⁹ See above, para. 45.

probative value of the First Part, which is not contested by the Defence.¹⁵⁰ Insofar as the Defence has a meaningful opportunity to cross-examine the witness, the Panel finds that the *prima facie* probative value of the First Part is not outweighed by its prejudicial effect. Accordingly, the Panel concludes that the First Part of the First Video is appropriate for admission under Rules 138(1) and 154.

65. The Panel directs CMU to ensure, consistent with the Panel's above finding on the admission of the First Part of the First Video (subject to the fulfilment of the Rule 154 criteria), that the metadata of the First Video in Legal Workflow reflects which portion of the video has been admitted.

66. With respect to the Second Video, to which the Defence does not object,¹⁵¹ the Panel observes that it was discussed in W04147's Statement¹⁵² and is satisfied that it forms an indispensable and inseparable part of W04147's Statement. The Panel is also satisfied that the Second Video is relevant,¹⁵³ *prima facie* authentic and probative, and that, insofar as the Defence has a meaningful opportunity to cross-examine the witness, the *prima facie* probative value of the Second Video is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the Second Video is appropriate for admission under Rules 138(1) and 154.

67. In light of the above, the Panel finds that W04147's Statement,¹⁵⁴ the [REDACTED],¹⁵⁵ the [REDACTED],¹⁵⁶ the [REDACTED],¹⁵⁷ the First Part of the First Video,¹⁵⁸ and the Second Video¹⁵⁹ are relevant, *prima facie* authentic, have *prima facie*

¹⁵⁰ See Response, para. 35.

¹⁵¹ Response, para. 35.

¹⁵² 075522-075551, para. 125.

¹⁵³ See above, para. 45.

¹⁵⁴ 075522-075551 and 075522-075551-AT.

¹⁵⁵ 075300-075308; 075382-075387; 075316-075335; 075378-075381; 075309-075315; 075349-075360; 075392-075394; 075336-075348; 075413-075414; 075409-075412; 075361-075368; 075369-075377; 075388-075391; 075395-075402; 075403-075408.

¹⁵⁶ 074581-074581; 074583-074584; 074582-074582.

¹⁵⁷ 075415-075466.

¹⁵⁸ 061427-03 (only the sequence 00:00-01:29) with transcripts 061427-03-TR-ET and 061427-03-TR.

¹⁵⁹ 061427-10 with transcripts 061427-10-TR-ET and 061427-10-TR.

probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154. The Panel finds, without prejudice, that the Second Part and the Third Part of the First Video are not appropriate for admission pursuant to Rules 138(1) and 154.

E. W04325

68. The SPO submits that the proposed evidence of W04325¹⁶⁰ is: (i) relevant;¹⁶¹ (ii) *prima facie* authentic and reliable;¹⁶² and (iii) suitable for admission under Rule 154.¹⁶³ It further argues that W04325's Associated Exhibits¹⁶⁴ are admissible.¹⁶⁵

69. The Defence contests the admissibility, pursuant to Rule 154, of: (i) parts of W04325's SPO witness statement¹⁶⁶ ("SPO Statement") on the basis of their purported prejudicial effect;¹⁶⁷ and (ii) two notes of the [REDACTED] recording statements given by W04325 in [REDACTED] 2016 ("[REDACTED] 2016 Statement")¹⁶⁸ and [REDACTED] 2016 ("[REDACTED] 2016 Statement")¹⁶⁹ (collectively, "[REDACTED] Statements"), arguing that they are of low probative value and reliability.¹⁷⁰ The Defence indicates that it has no objection to the

¹⁶⁰ The proposed evidence of W04325 ("W04325's Proposed Evidence") consists of: (i) the following three statements: 043761-043781-ET RED2 (with corresponding Albanian and Serbian versions); pp. 043783-043791 of 043783-043793-ET RED2 (with corresponding Albanian and Serbian versions); 043792-043793 of 043783-043793-ET RED2 (with corresponding Albanian and Serbian versions) (collectively, "W04325's Statements"); and (ii) the associated exhibits proposed and tendered in Annex 5 to the Motion ("W04325's Associated Exhibits"). *See, generally*, Annex 5 to the Motion. The Panel notes that exhibit 4 (043796-043796 RED) is not tendered for admission, *see* Annex 5 to the Motion, p. 4.

¹⁶¹ Motion, paras 38-43.

¹⁶² Motion, paras 44-46. *See also* Reply, para. 2(d).

¹⁶³ Motion, paras 48-49.

¹⁶⁴ *See* Annex 5 to the Motion.

¹⁶⁵ Motion, para. 47.

¹⁶⁶ 043761-043781-ET RED2.

¹⁶⁷ Response, paras 38-41.

¹⁶⁸ Pp. 043792-043793 of 043783-043793-ET RED2.

¹⁶⁹ Pp. 043783-043791 of 043783-043793-ET RED2.

¹⁷⁰ Response, paras 38, 42-43.

admission of W04325's Associated Exhibits.¹⁷¹

70. The SPO replies that: (i) the Defence overstates W04325's significance in relation to the issue of Rexhep Selimi's authority in Likoc/Likovac; and (ii) W04325's Proposed Evidence is admissible pursuant to Rule 154 even if it goes to proof of acts and conduct of the Accused and/or other important issues in this case.¹⁷² The SPO further replies that the concerns raised by the Defence with respect to the [REDACTED] Statements do not impact the *prima facie* admissibility of these statements.¹⁷³

71. *W04325's Statements*. Regarding relevance, the Panel notes that W04325 appears to have worked for an aid organisation active in and around Prizren during the conflict in Kosovo. In the course of his work, W04325 purportedly visited multiple KLA headquarters and locations, including in Likoc/Likovac, Malishevë/Mališevo, Jeshkovë/Ješkovo and Llapushnik/Lapušnik. W04325's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*: (i) detention matters at the above-mentioned locations; (ii) KLA commanders in charge of these locations; (iii) crimes allegedly committed in Drenoc/Drenovac, including against alleged victims named in the Indictment; (iv) the situation in Prizren in June 1999; and (v) certain aspects of the acts and conduct of the Accused.¹⁷⁴ The Panel is therefore satisfied that W04325's Statements are relevant to the charges in the Indictment.

72. Regarding the authenticity and probative value, the Panel notes that W04325's SPO Statement contains multiple indicia of authenticity, including: (i) the date and place of the statement and the underlying interviews; (ii) personal details of the witness; (iii) signatures of the witness and/or other persons present; (iv) witness

¹⁷¹ Response, para. 44.

¹⁷² Reply, paras 2(c), 9.

¹⁷³ Reply, para. 10.

¹⁷⁴ Motion, paras 38-43; Amended List of Witnesses, paras 260-261; SPO Pre-Trial Brief, paras 239, 272, 352, 363, 406; Indictment, paras 62, 65-67, 69, 99, 102-103, 105, 147-154.

warnings, rights and acknowledgement; and (v) a confirmation by W04325 of the truthfulness, accuracy and voluntariness of that statement, and that he had no objections to the manner or process employed.¹⁷⁵ The Panel is satisfied of the *prima facie* authenticity and probative value of the SPO Statement.

73. With respect to the [REDACTED] Statements, the Panel notes that both contain multiple indicia of authenticity, including: (i) the date and place of the statement; (ii) personal details of the witness; and (iii) signatures of the witness and/or other persons present. Furthermore, the [REDACTED] 2016 Statement, while not containing a stamp, contact details or case number, contains a witness acknowledgement¹⁷⁶ and W04325 confirmed the truthfulness and accuracy of that statement in his interview with the SPO in 2017.¹⁷⁷ With respect to the [REDACTED] 2016 Statement, the Panel notes that while it does not contain witness warnings, rights or acknowledgments, it bears a stamp, contact details and case number, as well as W04325's signature seemingly added during W04325's interview with the SPO. Furthermore, the [REDACTED] 2016 Statement appears to have been read back to W04325 during his 2017 SPO interview, whereupon he confirmed the date but wished to make certain clarifications and corrections.¹⁷⁸

74. The Panel notes the Defence's submissions regarding the reliability and probative value of the proposed evidence.¹⁷⁹ In this regard, the Panel observes, first, that while W04325 made clarifications to his [REDACTED] Statements, as recorded in his SPO Statement,¹⁸⁰ he generally confirmed the truth and accuracy of the [REDACTED] 2016 Statement in his SPO Statement.¹⁸¹ Second, with respect to the [REDACTED] 2016 Statement, while indicating in his SPO Statement that

¹⁷⁵ 043761-043781-ET, pp. 2, 29. *See also* the original version on pp. 043761-043781 of 043761-043796 RED2 containing the signatures.

¹⁷⁶ P. 043791 of 043783-043793-ET RED2.

¹⁷⁷ 043761-043781-ET, pp. 4-5.

¹⁷⁸ 043761-043781-ET, p. 5.

¹⁷⁹ Response, paras 42-43.

¹⁸⁰ 043761-043781-ET RED2, in particular, pp. 4-5, paras 5-14.

¹⁸¹ *See* 043761-043781-ET, p. 4, para. 4.

the [REDACTED] 2016 Statement contains a number of errors,¹⁸² it appears from other parts of the SPO Statement that W04325 confirmed several material aspects of the account he gave in the [REDACTED] 2016 Statement.¹⁸³ Therefore, the Panel is of the view that potential inaccuracies and errors contained in the [REDACTED] Statements do not negate the *prima facie* probative value of the relevant parts of the [REDACTED] Statements, nor render these parts inadmissible. Rather, such matters can be addressed by the Defence during cross-examination of the witness and would pertain to the weight, if any, to be attached to the [REDACTED] Statements. Furthermore, particularly in light of its considerations regarding authenticity and reliability in paragraph 73 above, the Panel is not persuaded by the Defence's claim that the [REDACTED] 2016 Statement lacks *prima facie* indicia of reliability.¹⁸⁴ In light of the above, the Panel is satisfied of the *prima facie* authenticity and probative value of the [REDACTED] Statements.

75. Regarding the suitability of W04325's Proposed Evidence for admission pursuant to Rule 154, the Panel observes that W04325's Statements amount to 40 pages (in English) and are thus manageable in size. Furthermore, the Panel is not persuaded by the Defence's argument that admission of the [REDACTED] 2016 Statement would overburden the trial record.¹⁸⁵ With respect to the Defence's submission that the anticipated length of the SPO's direct examination of W04325 (three hours) militates against the admission of the [REDACTED] Statements as the SPO would have enough time to elicit during direct examination any issues not covered by the SPO Statement,¹⁸⁶ the Panel observes that the SPO has reduced its time estimate for the direct examination of

¹⁸² 043761-043781-ET, p. 5, para. 14.

¹⁸³ Compare e.g. 043761-043781-ET, pp. 22-23, paras 73-79, with the [REDACTED] 2016 Statement.

¹⁸⁴ Response, para. 42.

¹⁸⁵ Response, para. 43.

¹⁸⁶ Response, para. 43.

W04325 from three hours¹⁸⁷ to two hours.¹⁸⁸ In light of the above, and considering the scope of W04325's evidence,¹⁸⁹ the Panel is satisfied that the admission of W04325's Statements under Rule 154 would contribute, albeit in limited fashion, to the expeditiousness of the proceedings.

76. With respect to prejudice, the Panel notes the Defence's submission that those parts of W04325's SPO Statement that relate to Rexhep Selimi's alleged presence in Likoc/Likovac and ability to give orders should be heard live, as they go to proof of the acts and conduct of the Accused and are pivotal to the Defence case.¹⁹⁰ The Panel understands that, in essence, the Defence refers to paragraphs 33-35 of the SPO Statement, and thus a limited part of that statement. In this regard, the Panel recalls the findings made above in relation to W04147, in particular, that the fact that a statement pertains to alleged acts and conduct of the Accused and other matters of importance to the case, does not, as such, constitute an impediment to admission pursuant to Rule 154.¹⁹¹ In the present circumstances, considering in particular that the portions challenged by the Defence only constitute a limited part of W04325's SPO Statement, the Panel is satisfied that, insofar as the Defence has a meaningful opportunity to cross-examine the witness, including on the above-mentioned parts of the SPO Statement, the *prima facie* probative value of W04325's Statements is not outweighed by their prejudicial effect. Furthermore, the Defence has failed to explain why leading that evidence *viva voce* would, in its view, result in a lesser prejudice than in case of admission pursuant to Rule 154. Therefore, the Panel finds that W04325's Statements are suitable for admission pursuant to Rule 154.

77. *W04325's Associated Exhibits.* The Panel notes that W04325's Associated

¹⁸⁷ Motion, para. 49; Amended List of Witnesses, pp. 9, 259.

¹⁸⁸ List of Reserve Witnesses, p. 28; Reply, para. 11.

¹⁸⁹ See also Motion, para. 49.

¹⁹⁰ Response, paras 38-41, 55.

¹⁹¹ See above, para. 49 (with further references).

Exhibits consist of: (i) a map showing locations in Prizren, marked and signed by W04325;¹⁹² (ii) a shipment list from Prizren, provided by W04325 to the SPO, pertaining to food and other necessities;¹⁹³ and (iii) a handwritten list containing locations in Prizren, provided by W04325 to the SPO.¹⁹⁴ The Defence does not contest the admissibility of W04325's Associated Exhibits,¹⁹⁵ all of which were discussed in some detail in W04325's Statements.¹⁹⁶ The Panel is satisfied that W04325's Associated Exhibits form an indispensable and inseparable part of W04325's Statements. The Panel is also satisfied that W04325's Associated Exhibits are relevant, *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect. Accordingly, the Panel finds that W04325's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

78. In light of the above, the Panel finds that W04325's Proposed Evidence¹⁹⁷ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

¹⁹² 043782-043782 RED (with legend in English in 043782-043782-ET RED).

¹⁹³ 043794-043794-ET RED (version signed by W04325 during his SPO interview: 043794-043794 RED).

¹⁹⁴ 043795-043795-ET RED (handwritten version signed by W04325 during his SPO interview: 043795-043795 RED).

¹⁹⁵ Response, para. 44.

¹⁹⁶ See Annex 5 to the Motion and references cited in the column "reference".

¹⁹⁷ Statements: 043761-043781-ET RED2, 043761-043781-AT RED2, and pp. 043761-043781 of 043761-043796 RED2; 043783-043793-ET RED2, pp. 043783-043793 of 043782-043796-AT RED2, and pp. 043783-043793 of 043761-043796 RED2. Exhibits: 043782-043782-ET RED, 043782-043782 RED, and p. 043782 of 043782-043796-AT RED2; 043794-043794-ET RED, 043794-043794 RED, and p. 043794 of 043782-043796-AT RED2; 043795-043795-ET RED, 043795-043795 RED, and p. 043795 of 043782-043796-AT RED2.

F. W04491

79. The SPO submits that the proposed evidence of W04491¹⁹⁸ is: (i) relevant;¹⁹⁹ (ii) *prima facie* authentic and reliable;²⁰⁰ and (iii) suitable for admission under Rule 154.²⁰¹ It further argues that W04491's Associated Exhibits²⁰² are admissible.²⁰³

80. The Defence has no objections to the admission of W04491's Statement.²⁰⁴ However, it opposes the admission of two of W04491's Associated Exhibits.²⁰⁵

81. *W04491's Statement*. Regarding relevance, W04491 was an LDK activist who, together with a close relative, was allegedly arrested, detained, beaten and mistreated by KLA members in [REDACTED] 1998 in [REDACTED] and subsequently taken to [REDACTED]. W04491 and his close relative were accused of being spies. W04491's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*: (i) the alleged arrest, detention, beating and mistreatment of W04491 and his close relative in [REDACTED] and [REDACTED]; (ii) the alleged detention and mistreatment of another individual in [REDACTED]; and (iii) the alleged roles of various named KLA members in [REDACTED] and/or [REDACTED].²⁰⁶ The Panel is therefore satisfied that W04491's Statement is relevant to the charges in the Indictment.

82. Regarding authenticity and probative value, W04491's Statement consists of

¹⁹⁸ The proposed evidence of W04491 ("W04491's Proposed Evidence") consists of: (i) the statement in 071102-TR-ET Parts 1-2 RED2 (with corresponding Albanian version) ("W04491's Statement"); and (ii) the associated exhibits proposed and tendered in Annex 6 to the Motion ("W04491's Associated Exhibits"). *See, generally*, Annex 6 to the Motion. The Panel notes that exhibit 3 (p. 071101 of 071099-071101 RED2) and exhibit 5 (085004-085004 RED2 and 085004-085004-AT RED2) are not tendered for admission, *see* Annex 6 to the Motion, pp. 3-4.

¹⁹⁹ Motion, paras 50-55.

²⁰⁰ Motion, para. 56.

²⁰¹ Motion, para. 58.

²⁰² *See* Annex 6 to the Motion.

²⁰³ Motion, para. 57. *See also* Reply, para. 2(d), (f).

²⁰⁴ Response, para. 46.

²⁰⁵ Response, paras 46-48.

²⁰⁶ Motion, paras 50-55; Amended List of Witnesses, pp. 359-360; SPO Pre-Trial Brief, *e.g.* paras [REDACTED]; Indictment, paras [REDACTED].

the verbatim transcript of W04491's audio-video recorded interview with the SPO of 2019.²⁰⁷ It bears multiple indicia of authenticity, including: (i) the date, time, place and attendees of the interview; (ii) personal details of the witness; and (iii) witness warnings, rights and acknowledgments.²⁰⁸ W04491 confirmed that: (i) the contents of the statement are true and accurate; (ii) the statement was given voluntarily without any threats, force, or guarantees; and (iii) he had no objections to the manner or process by which the statement was taken.²⁰⁹ The Panel is satisfied of the *prima facie* authenticity and probative value of W04491's Statement.

83. Regarding the suitability of W04491's Proposed Evidence for admission pursuant to Rule 154, the Panel observes that W04491's Statement consists of 120 pages (in English) and that the SPO intends to elicit brief additional oral testimony from the witness for a maximum of ninety (90) minutes.²¹⁰ The Panel is satisfied that the admission of W04491's Statements under Rule 154 would contribute to the expeditiousness of the proceedings and, insofar as the Defence has a meaningful opportunity to cross-examine the witness, would not cause prejudice to the Defence. The Panel is also satisfied that the *prima facie* probative value of W04491's Statement is not outweighed by its prejudicial effect. Accordingly, the Panel finds that W04491's Statement is suitable for admission pursuant to Rule 154.

84. *W04491's Associated Exhibits*. The Panel observes that W04491's Associated Exhibits consist of: (i) a photograph²¹¹ provided by W04491 during his interview with the SPO purportedly showing an individual identified by the witness ("Photograph"); (ii) a handwritten report²¹² from a criminal file from Kosovo

²⁰⁷ 071102-TR-ET Parts 1-2 RED2.

²⁰⁸ See W04491's Statement; Annex 6 to the Motion, p. 2.

²⁰⁹ 071102-TR-ET Part 2 RED2, p. 46, line 18 to p. 47, line 17.

²¹⁰ Motion, para. 58; Amended List of Witnesses, pp. 12, 359; List of Reserve Witnesses, p. 13.

²¹¹ 081908-081908.

²¹² 081912-081912 RED2 (typewritten English translation) and 081910-081910 RED2 (handwritten original in Albanian).

containing W04491's account in relation to two incidents pertaining to two close relatives ("Report"); and (iii) a handwritten letter,²¹³ which W04491 wrote to [REDACTED] in respect of facts relevant to this case ("Letter").²¹⁴

85. With respect to the Photograph, the Panel notes the Defence's contention that it does not constitute an inseparable and indispensable part of W04491's statement.²¹⁵ The Panel observes that there is no indication on the Photograph or in W04491's Statement that would clearly establish that W04491 was indeed commenting upon the said Photograph (bearing 081908-081908) on those pages of W04491's Statement referenced in Annex 4 to the Motion.²¹⁶ In particular, the Photograph does not contain any markings or signature of W04491 nor does W04491's Statement appear to contain any references to the ERN of the Photograph. In light of the above, without prejudice to the possibility of its admission during the testimony of W04491, the Panel is not satisfied that the Photograph forms an indispensable and inseparable part of W04491's Statement and therefore finds that the Photograph is not appropriate for admission at this stage under Rules 138(1) and 154.

86. With respect to the Report, the Panel notes the Defence's submission that it should not be admitted pursuant to Rule 154 as it does not form an inseparable or indispensable part of W04491's Statement and has low probative value and reliability.²¹⁷ While the Report is only briefly discussed in W04491's Statement,²¹⁸ the Panel is nevertheless of the view that without the Report, the relevant part of W04491's Statement would become less comprehensible and of potential lesser probative value. In light of the above, the Panel is satisfied that the Report forms

²¹³ 081911-081911 RED2 (typewritten English translation) and 081909-081909 RED2 (handwritten Albanian original).

²¹⁴ See, generally, Motion, para. 57; Annex 6 to the Motion.

²¹⁵ Response, para. 48.

²¹⁶ See Annex 6 to the Motion, p. 3 (referring to 071102-TR-ET Part 1 RED2, pp. 56-57).

²¹⁷ Response, para. 47.

²¹⁸ 071102-TR-ET Part 1 RED2, p. 57, lines 2-4.

an indispensable and inseparable part of W04491's Statement. The Panel is also satisfied that the Report is relevant.²¹⁹ Regarding authenticity and probative value, the Panel observes that the Report contains several indicia of authenticity, including: (i) a stamp; (ii) the date of the Report; (iii) the name and affiliation of the person who took the Report; and (iv) personal details of W04491. Furthermore, the Report appears to contain information that W04491 provided (presumably to the person indicated as having taken the Report) during a phone call. Regarding probative value, the Panel considers that W04491's indication that the Report is part of a larger document²²⁰ does not negate its *prima facie* probative value. The Panel is satisfied that, *prima facie*, the Report is authentic and has probative value. The remaining concerns raised by the Defence can be adequately addressed during cross-examination of W04491. Insofar as the Defence has a meaningful opportunity to cross-examine the witness, the Panel is thus also satisfied that the *prima facie* probative value of the Report is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the Report is appropriate for admission under Rules 138(1) and 154.

87. With respect to the Letter, the Panel notes that the Defence does not object to its admission²²¹ and that it was discussed in some detail in W04491's Statement.²²² As such, the Panel is satisfied that the Letter forms an indispensable and inseparable part of W04491's Statement. The Panel is also satisfied that the Letter is relevant,²²³ *prima facie* authentic, and has *prima facie* probative value which is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the Letter is appropriate for admission under Rules 138(1) and 154.

²¹⁹ See also above, para. 81.

²²⁰ 071102-TR-ET Part 1 RED2, p. 57, lines 2-4. See also Response, para. 47.

²²¹ Response, para. 46.

²²² See Annex 6 to the Motion, p. 4, and references cited in the column "reference".

²²³ See also above, para. 81.

88. In light of the above, the Panel finds that W04491's Statement,²²⁴ the Report,²²⁵ and the Letter²²⁶ are relevant, *prima facie* authentic, have *prima facie* probative value which is not outweighed by their prejudicial effect, and are therefore appropriate for admission pursuant to Rules 138(1) and 154. The Panel finds that the Photograph is not appropriate for admission pursuant to Rules 138(1) and 154.

G. W04753

89. The SPO submits that the proposed evidence of W04753²²⁷ is: (i) relevant;²²⁸ (ii) *prima facie* authentic and reliable;²²⁹ and (iii) suitable for admission under Rule 154.²³⁰ It further argues that W04753's Associated Exhibits²³¹ are admissible.²³²

90. The Defence responds that it does not have any objections to the admission of W04753's Statement, recognising that it meets the requisite standards for admissibility.²³³ With respect to W04753's Associated Exhibits, the Defence: (i) objects to the admission of two proposed exhibits;²³⁴ and (ii) does not contest the remaining exhibits, recognising that they have been annotated and discussed in detail in W04753's Statement and constitute an inseparable and indispensable part thereof.²³⁵

²²⁴ 071102-TR-ET Part 1 RED2 and Part 2 RED2; 071102-TR-AT Part 1 RED2 and Part 2 RED2.

²²⁵ 081912-081912 RED2 and 081910-081910 RED2.

²²⁶ 081911-081911 RED2 and 081909-081909 RED2.

²²⁷ The proposed evidence of W04753 ("W04753's Proposed Evidence") consists of: (i) the statement in 083285-TR-ET Parts 1-8 RED2 (with corresponding Albanian version) ("W04753's Statement"); and (ii) the associated exhibits proposed and tendered in Annex 7 to the Motion ("W04753's Associated Exhibits"). *See, generally*, Annex 7 to the Motion. The Panel notes that exhibit 3 (U001-8967-U001-9121-ET Revised 1 and U001-8967-U001-9121; already admitted as P00011 and P00011_ET) is not tendered for admission, *see* Annex 7 to the Motion, pp. 3-4.

²²⁸ Motion, paras 59-65.

²²⁹ Motion, para. 66.

²³⁰ Motion, para. 68.

²³¹ *See* Annex 7 to the Motion.

²³² Motion, para. 67. *See also* Reply, para. 2(d), (f).

²³³ Response, para. 50.

²³⁴ Response, paras 51-52.

²³⁵ Response, para. 53.

91. The SPO replies, with respect to the Defence's objection to two proposed exhibits, that the relevant parts of W04753's Statement would be incomprehensible and have lesser probative value if these items were not admitted as associated exhibits, and that both items have sufficient indicia of reliability on their face.²³⁶

92. *W04753's Statement*. Regarding relevance, W04753 joined the KLA in [REDACTED] and was appointed as [REDACTED]. W04753's Proposed Evidence is relied upon by the SPO in respect of, *inter alia*: (i) the establishment, organisation and activities of the KLA in Drenoc/Drenovac in the spring and summer of 1998; and (ii) allegations relating to [REDACTED], as well as the detention of other individuals in Drenoc/Drenovac.²³⁷ The Panel is therefore satisfied that W04753's Statement is relevant to the charges in the Indictment.

93. Regarding authenticity and probative value, W04753's Statement consists of the verbatim transcript of W04753's audio-video recorded interview with the SPO in 2019.²³⁸ It bears multiple indicia of authenticity, including: (i) the date, time, place and attendees of the interview; (ii) personal details of the witness; and (iii) witness warnings, rights and acknowledgments.²³⁹ W04753 confirmed that: (i) the contents of the statement are true and accurate; (ii) the statement was given voluntarily without any threats, force, or guarantees; and (iii) he had no objections to the manner or process by which the statement was taken.²⁴⁰ The Panel is satisfied of the *prima facie* authenticity and probative value of W04753's Statement.

94. Regarding the suitability of W04753's Proposed Evidence for admission pursuant to Rule 154, the Panel observes that W04753's Statement amounts to approximately 230 pages (in English) and the SPO contemplates two hours of

²³⁶ Reply, paras 12-13.

²³⁷ Motion, paras 59-65; Amended List of Witnesses, pp. 477-478; SPO Pre-Trial Brief, *e.g.* paras [REDACTED]; Indictment, paras [REDACTED].

²³⁸ 083285-TR-ET Parts 1-8 RED2.

²³⁹ See W04753's Statement; Annex 7 to the Motion, p. 1.

²⁴⁰ 083285-TR-ET Part 8 RED2, p. 33, lines 1-25.

direct, *viva voce*, examination should W04753's testimony be adduced pursuant to Rule 154 (instead of the initially estimated six hours²⁴¹).²⁴² The Panel is satisfied that the admission of W04753's Statement pursuant to Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence has a meaningful opportunity to cross-examine the witness, would not cause unfair prejudice to the Defence. The Panel is therefore also satisfied that the *prima facie* probative value of W04753's Statement is not outweighed by its prejudicial effect, and that W04753's Statement is suitable for admission pursuant to Rule 154.

95. *W04753's Associated Exhibits*. The Panel observes that W04753's Associated Exhibits consist of: (i) a map marked and signed by W04753 during his SPO interview;²⁴³ (ii) a KLA fuel log ("Fuel Log");²⁴⁴ (iii) a purported decision of the KLA local staff in Drenoc, Rahovec/Orahovac, regarding Afrim Popaj ("*Popaj Decision*");²⁴⁵ (iv) a series of entry permits for Malësi e Vogël;²⁴⁶ (v) photos of the school in Drenoc/Drenovac;²⁴⁷ (vi) a photo of KLA members in Drenoc/Drenovac annotated by the witness;²⁴⁸ (vii) screenshots of footage showing different KLA soldiers in Drenoc/Drenovac, annotated by the witness;²⁴⁹ and (viii) a handwritten statement dated 26 June 1998 regarding the confiscation of a vehicle, signed by Gani Paqarizi and Selim Krasniqi ("*Confiscation Statement*").²⁵⁰ The Panel further notes that while the Defence objects to the admission of the *Popaj Decision* and the *Confiscation Statement*, it does not contest the admissibility of the remainder of

²⁴¹ See Amended List of Witnesses, pp. 15, 477.

²⁴² Motion, fn. 3 and para. 68. See also List of Reserve Witnesses, p. 6.

²⁴³ P. 083286 of 083286-083518 RED3.

²⁴⁴ 083287-083349-ET RED2 (English) and pp. 083287-083349 of 083286-083518 RED3 with duplicate U017-2627-U017-2689 (Albanian). See Annex 7 to the Motion, pp. 2-3.

²⁴⁵ U001-8666-U001-8666-ET and U001-8666-U001-8666.

²⁴⁶ U001-7995-U001-7995-ET and p. 083505 of 083286-083518 RED3.

²⁴⁷ Pp. 083506-083507 and 083512 of 083286-083518 RED3.

²⁴⁸ P. 083513 of 083286-083518 RED3.

²⁴⁹ Pp. 083514-083517 of 083286-083518 RED3.

²⁵⁰ U000-6159-U000-6159-ET Revised and U000-6159-U000-6159.

W04753's Associated Exhibits.²⁵¹

96. Regarding the *Popaj* Decision, the Panel notes the Defence's submission that W04753 is unable to authenticate or comment upon the nature of the document and that it does not form an inseparable or indispensable part of W04753's Statement and should therefore not be admitted pursuant to Rule 154.²⁵² The Panel observes, however, that the *Popaj* Decision was discussed in some detail in W04753's Statement,²⁵³ wherein W04753, while not being able to authenticate the document with certainty, nevertheless provided comments on the document and its contents. The Panel is of the view that without the *Popaj* Decision, the relevant parts of W04753's Statement would become incomprehensible and of lesser probative value and is therefore satisfied that the *Popaj* Decision forms an indispensable and inseparable part of W04753's Statement.

97. The Panel is also satisfied that the *Popaj* Decision – which contains the date and place of the decision as well as a commander's signature – is relevant,²⁵⁴ *prima facie* authentic, and has *prima facie* probative value. The concerns raised by the Defence in relation to the witness's purported inability to authenticate or comment on the nature of the document²⁵⁵ can be adequately addressed during cross-examination. Insofar as the Defence has a meaningful opportunity to cross-examine W04753, the Panel is also satisfied that the *prima facie* probative value of the *Popaj* Decision is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the *Popaj* Decision is appropriate for admission under Rules 138(1) and 154.

98. Regarding the Confiscation Statement, the Panel notes the Defence's

²⁵¹ Response, paras 51-53.

²⁵² Response, para. 51.

²⁵³ 083285-TR-ET Part 5 RED2, p. 25, line 5 to p. 27, line 10 (referred to as U001-8666 and W04753-EX-4; see Annex 7 to the Motion, p. 4, column "comments").

²⁵⁴ See above, para. 92.

²⁵⁵ See Response, para. 51.

suggestion that this document, which W04753 did not author and had seemingly not seen before his interview with the SPO, should not be admitted pursuant to Rule 154 as it does not form an inseparable or indispensable part of W04753's Statement.²⁵⁶ The Panel observes, however, that the Confiscation Statement was discussed in some detail in W04753's Statement,²⁵⁷ wherein W04753 provided comments on the contents of the Confiscation Statement and identified the undersigned as individuals he knew from Drenoc/Drenovac. The Panel is of the view that without the Confiscation Statement, the relevant parts of W04753's Statement would become incomprehensible and of lesser probative value. The Panel is therefore satisfied that the Confiscation Statement forms an indispensable and inseparable part of W04753's Statement.

99. The Panel is also satisfied that the Confiscation Statement – which is dated, and appears to be signed by Gani Paqarizi and Selim Krasniqi – is relevant,²⁵⁸ *prima facie* authentic, and has *prima facie* probative value. The concerns raised by the Defence in relation to the witness's purported speculations and his inability to provide any relevant information on this document²⁵⁹ can be adequately addressed during cross-examination. Insofar as the Defence has a meaningful opportunity to cross-examine W04753, the Panel is also satisfied that the *prima facie* probative value of the Confiscation Statement is not outweighed by its prejudicial effect. Accordingly, the Panel finds that the Confiscation Statement is appropriate for admission under Rules 138(1) and 154.

100. With respect to the remainder of W04753's Associated Exhibits²⁶⁰ ("Remaining Exhibits"), the Panel notes that they were all discussed in some detail in W04753's

²⁵⁶ Response, para. 52.

²⁵⁷ 083285-TR-ET Part 8 RED2, p. 30, line 1 to p. 32, line 1 (referred to as U000-6159 and W04753-EX-15; see Annex 7 to the Motion, p. 9, column "comments").

²⁵⁸ See above, para. 92.

²⁵⁹ See Response, para. 52.

²⁶⁰ See above, para. 95 and fns 243-244, 246-249.

Statement.²⁶¹ As such, the Panel is satisfied that they form an indispensable and inseparable part of W04753's Statement. The Panel is also satisfied that the Remaining Exhibits are relevant,²⁶² *prima facie* authentic, and have *prima facie* probative value which is not outweighed by their prejudicial effect. Accordingly, the Panel finds that the Remaining Exhibits are appropriate for admission under Rules 138(1) and 154.

101. This said, with respect to the Albanian version of the Fuel Log, the Panel considers that the SPO has failed to demonstrate why both versions mentioned in Annex 7 to the Motion need to be admitted.²⁶³ Therefore, the Panel is, at this stage, only prepared to admit one of the Albanian versions of the Fuel Log.²⁶⁴ Should the SPO wish to have both Albanian versions admitted, it would have to clearly explain the need for this.

102. In light of the above, the Panel finds that W04753's Proposed Evidence²⁶⁵ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

²⁶¹ See Annex 7 to the Motion and references cited in the column "reference".

²⁶² See above, para. 92.

²⁶³ Pp. 083287-083349 of 083286-083518 RED3 and U017-2627-U017-2689. See Annex 7 to the Motion, pp. 2-3.

²⁶⁴ The Panel notes that pp. 083287-083349 of 083286-083518 RED3 contain all the relevant information (signature by the witness and others, date of the witness's SPO interview, marking 'ex. 2', old page numbers [e.g. 'U017-2627']) and that it is not apparent why, in addition thereto, U017-2627-U017-2689 would also have to be admitted.

²⁶⁵ **Statement:** 083285-TR-ET Parts 1-8 RED2 and 083285-TR-AT Parts 1-8 RED2. **Exhibits:** p. 083286 of 083286-083518 RED3; 083287-083349-ET RED2 (English), and pp. 083287-083349 of 083286-083518 RED3 or U017-2627-U017-2689 (Albanian) (see above, para. 101); U001-8666-U001-8666-ET and U001-8666-U001-8666; U001-7995-U001-7995-ET (English) and p. 083505 of 083286-083518 RED3 (Albanian); pp. 083506-083507 and 083512 of 083286-083518 RED3; p. 083513 of 083286-083518 RED3; pp. 083514-083517 of 083286-083518 RED3; U000-6159-U000-6159-ET Revised and U000-6159-U000-6159. CMU is directed to ensure that the metadata of the respective items in Legal Workflow reflects which portions have been admitted.

V. CLASSIFICATION

103. Noting that the Motion, the Response and the Reply were filed confidentially, the Panel orders the SPO and the Defence to submit public redacted version of their respective filings by no later than **Wednesday, 18 October 2023**.

VI. DISPOSITION

104. Based on the above, the Panel hereby:

- a. **GRANTS** the Motion with respect to W00208, W02082, W02475, W04147, W04325, W04491 and W04753, in part;
- b. **FINDS** the (parts of) the Statements and Associated Exhibits of W00208, W02082, W02475, W04147, W04325, W04491 and W04753, set out in paragraphs 15, 24, 41, 67, 78, 88 and 102, 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 following Associated Exhibits proposed by the SPO not to be appropriate for admission, for the reasons set out in paragraphs 35, 63 and 85:
 - (i) pages 024855-024859 of 024844-024865; (ii) sequences 01:30-02:16 and 02:17-03:19 of 061427-03 and the corresponding portions of transcripts 061427-03-TR-ET and 061427-03-TR; and (iii) 081908-081908;
- d. **DIRECTS** the Registry, upon admission into evidence of the First Part of the First Video (sequence 00:00-01:29 of 061427-03), to ensure that the metadata of the First Video in Legal Workflow reflects which portion of the video has been admitted;
- e. **REITERATES** its order to the SPO to provide to the Panel, the Defence and Victims' Counsel, three days prior to the start of the testimony of any Rule 154 witness, a list of general topics and areas of questioning that will be covered during the *viva voce* examination of the witness;

- f. **INFORMS** the SPO that the Panel will closely scrutinise the use made by the SPO of additional oral evidence in respect of any Rule 154 witness with a view to ensuring that evidence led orally is: (i) not unduly repetitious of the witness's written evidence; and (ii) that the Panel and the Defence had adequate notice of any supplementary evidence elicited orally from such a witness; and
- g. **ORDERS** the SPO and the Defence to submit public redacted versions of the Motion, the Response and the Reply by no later than **Wednesday, 18 October 2023**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 10 October 2023

At The Hague, the Netherlands.