



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 July 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Prosecution Motion for Admission of  
Evidence of W00072, W02153 and W04586 Pursuant to Rule 154**

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**Acting Specialist Prosecutor**

Alex Whiting

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

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

## I. PROCEDURAL BACKGROUND

1. On 16 March and 9 June 2023, the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 in respect of 18 witnesses in total.<sup>1</sup>

2. On 23 June 2023, the SPO filed a Rule 154 motion in relation to ten further witnesses (“Motion”), wherein it requested, *inter alia*, an expedited ruling in respect of W02153 and W04586 as they are reserve witnesses who would be available to testify in July 2023.<sup>2</sup>

3. On 27 June 2023, the Panel ordered an expedited briefing schedule for any responses and reply to those parts of the Motion relating to W02153 and W04586, with responses being due at 4 pm on 3 July 2023 and a reply at noon on 7 July 2023.<sup>3</sup>

4. On 30 June 2023, the SPO informed the Panel, the Parties and participants that it had also identified W00072 as a reserve witness who would be available to testify in July 2023.<sup>4</sup>

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<sup>1</sup> 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*, 9 June 2023, confidential.

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

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

<sup>4</sup> CRSPD252, *Email from SPO to Parties Regarding Witnesses to be Called*, 30 June 2023.

5. On 3 July 2023, the Defence for all four Accused (collectively, “Defence”) responded jointly to those parts of the Motion relating to W02153 and W04586 (“First Response”).<sup>5</sup>

6. On 5 July 2023, the Defence responded jointly to the remaining parts of the Motion, including those related to W00072 (“Second Response”).<sup>6</sup>

7. On 7 July 2023, the SPO replied to the First Response (“Reply”).<sup>7</sup>

## II. SUBMISSIONS

8. The SPO seeks admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of, *inter alia*, witnesses W00072, W02153 and W04586, and requests expedited consideration of the parts of the Motion relating to W02153 and W04586, as they are among the reserve witnesses identified by the SPO for the July 2023 evidentiary block.<sup>8</sup> The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154.<sup>9</sup> It avers that admitting the Proposed Evidence pursuant to Rule 154 is in the interests of justice as it serves the effectiveness and expeditiousness of the proceedings as well as judicial economy, and is not unduly prejudicial.<sup>10</sup> Lastly, the SPO submits that the proposed Associated Exhibits: (i) form an integral part of the Statements as, without them, the Statements may become less complete or be of diminished probative value;

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<sup>5</sup> F01636, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning W02153 and W04586*, 3 July 2023, confidential.

<sup>6</sup> F01647, Specialist Counsel, *Joint Defence Response to the Third Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning the Remaining Eight Witnesses*, 5 July 2023, confidential.

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

<sup>8</sup> Motion, paras 1, 110.

<sup>9</sup> Motion, paras 2, 9-10. *See also* Annexes 5, 7 and 10 to the Motion.

<sup>10</sup> Motion, paras 2, 9, *referring to* F01396, Specialist Prosecutor, *Prosecution Updated Motion for Admission of Evidence of Witnesses W03827, W04408, W04577, W04644, W04781, W04018, W04255, W01493, and W04448 Pursuant to Rule 154*, confidential, para. 11, with Annexes 1-9, confidential (a public redacted version was filed on 23 June 2023, F01396/RED).

and (ii) provide context to the evidence contained in the Statements and corroborate that evidence.<sup>11</sup>

9. The Defence objects to the parts of the Motion identified in its First Response, arguing that: (i) the SPO has failed to substantiate the relevance of parts of the tendered material; (ii) the proposed associated exhibits do not constitute an indispensable part of the statements to which they relate; (iii) the time-saving function of admission pursuant to Rule 154 is rendered moot by the SPO seeking lengthy *viva voce* testimony for the respective witnesses; and (iv) parts of the tendered material contain testimony of witnesses other than those for whom Rule 154 admission is sought.<sup>12</sup> The Defence requests that the Panel: (i) take notice of the Defence's objections to the tendered Rule 154 material; and (ii) reject the SPO's request for the admission of those proposed associated exhibits of W02153 to which the Defence objects, and the section of W04586's Rule 154 statement corresponding to the testimony of another witness.<sup>13</sup>

10. In its Second Response, the Defence objects to the admission of parts of the material that is the subject of the Motion, on the grounds that: (i) they concern events that are uncharged, irrelevant, and whose probative value is outweighed by their prejudicial effect; (ii) they are duplicative of other tendered material; (iii) their *prima facie* reliability has not been established; and (iv) with regard to associated exhibits, the SPO has failed to establish that the material in question is an indispensable and inseparable part of the corresponding witness's Rule 154 statement.<sup>14</sup> It requests that the Panel: (i) take notice of the Defence's objections; and (ii) deny admission of W00072's statement given to the United Nations Mission in Kosovo ("UNMIK") and of W00072's associated exhibits to which the

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<sup>11</sup> Motion, para. 10.

<sup>12</sup> First Response, para. 3.

<sup>13</sup> First Response, para. 19.

<sup>14</sup> Second Response, para. 3.

Defence objects.<sup>15</sup>

11. The SPO replies that the First Response ignores the scope of evidence that is relevant to this case and the *prima facie* nature of admissibility assessments, particularly in the context of Rule 154, where the witnesses will be available for cross-examination.<sup>16</sup> It reiterates that the Motion should be granted.<sup>17</sup>

### III. APPLICABLE LAW

12. The Panel incorporates by reference the applicable law as set out in its first decision pursuant to Rule 154.<sup>18</sup>

### IV. DISCUSSION

13. At the outset, the Panel considers that the expedited consideration of those parts of the Motion relating to W00072, W02153 and W04586 is appropriate in the present circumstances as these three witnesses are among the reserve witnesses identified by the SPO for the July 2023 evidentiary block. Prompt consideration of these should enable the SPO to call any of them in the event of an unexpected disruption to the scheduled witness order and thus contribute to the overall expeditiousness of the proceedings. The present decision will thus only address those parts of the Motion relating to W00072, W02153 and W04586. While the present decision is issued before the end of the deadline for the SPO to reply to those parts of the Motion pertaining to W00072, the Panel considers that an expedited consideration of the part of the Motion pertaining to W00072 is in the SPO's interest,<sup>19</sup> and that no prejudice is caused to the SPO.

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<sup>15</sup> Second Response, para. 42.

<sup>16</sup> Reply, para. 1.

<sup>17</sup> Reply, paras 1, 11.

<sup>18</sup> First Rule 154 Decision, paras 26-35.

<sup>19</sup> See also above, para. 4.

## A. W00072

14. The SPO submits that the proposed evidence of W00072<sup>20</sup> is: (i) relevant;<sup>21</sup> (ii) *prima facie* authentic and reliable;<sup>22</sup> and (iii) suitable for admission under Rule 154.<sup>23</sup> It further argues that W00072's Associated Exhibits<sup>24</sup> are admissible.<sup>25</sup>

15. The Defence responds that it does not oppose the admission of W00072's SPO interview.<sup>26</sup> It objects, however, to the admission of the witness's UNMIK statement on the basis of concerns related to that statement's reliability and authenticity, and as, it argues, the SPO failed to establish the added value of that statement, which appears to be already incorporated in the witness's statement given to the Special Investigative Task Force ("SITF").<sup>27</sup> The Defence further objects to the admission of most of W00072's Associated Exhibits.<sup>28</sup>

16. *W00072's Statements.* Regarding relevance, W00072's Statements are being relied upon by the SPO in respect of, *inter alia*, allegations pertaining to: (i) attacks by the Kosovo Liberation Army ("KLA") on Serbian houses in Optrusë/Opterusă, including W00072's own house; and (ii) abductions, detention, mistreatment and/or interrogation by the KLA of Serbs in Optrusë/Opterusă, Suharekë/Suva Reka and/or Zoçishtës/Zoçište, including W00072, her husband and her son.<sup>29</sup> The

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<sup>20</sup> The proposed evidence of W00072 ("W00072's Proposed Evidence") consists of: (i) the following four statements: a) 041400-TR-ET Part 1 RED, 041400-TR-ST Part 1 RED and 041400-TR-AT Part 1 RED; b) 005300-TR-ET RED, 005300-TR RED and 005300-TR-AT Part 1 RED; c) SITF00026363-SITF00026393 RED and SITF00026363-SITF00026393-AT RED; d) SPOE00193498-00193547 RED (collectively, "W00072's Statements"); and (ii) the items proposed as associated exhibits in Annex 5 to the Motion (collectively, "W00072's Associated Exhibits"). *See, generally*, Annex 5 to the Motion.

<sup>21</sup> Motion, paras 58-59.

<sup>22</sup> Motion, para. 60.

<sup>23</sup> Motion, paras 61-62.

<sup>24</sup> *See* Annex 5 to the Motion.

<sup>25</sup> Motion, para. 63.

<sup>26</sup> Second Response, para. 31, *referring to* 041400-TR-ET Part 1 RED.

<sup>27</sup> Second Response, paras 31-32.

<sup>28</sup> Second Response, para. 33.

<sup>29</sup> Motion, paras 58-59; 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. 24-25 (a confidential redacted version was filed on the same day, F01594/A02); F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected*

Panel is therefore satisfied that W00072's proposed evidence is relevant to the charges in the Indictment.

17. Regarding authenticity, W00072's Statements consist of four statements given by W00072 to the SPO, SITF or UNMIK, each containing multiple indicia of authenticity, such as: (i) the date and time of the statement; (ii) personal details and the signature of the witness and of SPO/SITF/UNMIK officials present; (iii) witness warnings, rights and acknowledgments; and/or (iv) stamps and numbering. Therefore, and notwithstanding the Defence's arguments with respect to the UNMIK statement,<sup>30</sup> the Panel is satisfied of the *prima facie* authenticity of W00072's Statements.

18. With respect to probative value, the Panel notes the Defence's challenge to the reliability of, in particular, the UNMIK statement, on the grounds that: (i) W00072 was seemingly not given an opportunity to make corrections to that statement; and (ii) said statement appears to be inaccurate in light of corrections and additions subsequently provided by the witness.<sup>31</sup> The Panel considers that such concerns can be addressed in cross-examination and would primarily pertain to the weight, if any, to be attached to W00072's Statements. The Panel is satisfied that W00072's Statements have *prima facie* probative value.

19. Furthermore, the Panel observes that: (i) W00072's Statements amount to approximately 115 pages (in English) which, while sometimes duplicative, are manageable in size; and (ii) the SPO contemplates two hours of direct examination

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*Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte*, e.g. paras 373-374, 380 (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); F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 65, 136-138, 175, and Schedule B/9. (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

<sup>30</sup> Second Response, para. 31.

<sup>31</sup> Second Response, paras 31-32.



should W00072's testimony be adduced pursuant to Rule 154.<sup>32</sup> The Panel is satisfied that the admission of W00072's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence has a meaningful opportunity to cross-examine the witness, would not cause prejudice to the Defence. The Panel is therefore also satisfied that the *prima facie* probative value of W00072's Statements is not outweighed by their prejudicial effect, and that W00072's Statements are suitable for admission pursuant to Rule 154.

20. *W00072's Associated Exhibits.* W00072's Associated Exhibits consist of: (i) a letter apparently given to W00072 by her husband ("Letter");<sup>33</sup> (ii) a photo line-up apparently shown to W00072 ("Photos")<sup>34</sup> and a related memorandum ("First Memorandum");<sup>35</sup> and (iii) a memorandum including photographs which appear to correspond to locations identified by W00072 during a site visit ("Second Memorandum").<sup>36</sup>

21. The Panel observes that the Letter and the Photos were discussed in some detail in W00072's Statements.<sup>37</sup> The First Memorandum and the Second Memorandum (collectively, "Memoranda") were not discussed as such in W00072's Statements. However, they are closely connected to the third statement ("Statement 3"),<sup>38</sup> insofar as they contain further information on the Photos (which are themselves intrinsically linked to Statement 3), a description of the

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<sup>32</sup> Motion, para. 62; Amended List of Witnesses, p. 24; F01630/A02, *Annex 2 to Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses and Associated Information* ("List of Reserve Witnesses"), 28 June 2023, confidential, p. 16.

<sup>33</sup> 033103-033109, pp. 033107-033108 (only these two pages are tendered, together with the English and Albanian translations 041398-041399-ET and 041398-041399-AT; see Annex 5 to the Motion, p. 4).

<sup>34</sup> SPOE00200658-00200679, SPOE00200658-SPOE00200679-AT and SPOE00200658-SPOE00200679-ST. The Panel notes that this is a clearer colour version of the photo line-up contained in Statement 3, see pp. SITF00026372-SITF00026393 of SITF00026363-SITF00026393 RED and of its Albanian translation.

<sup>35</sup> SPOE00191479-00191484 RED and SPOE00191479-SPOE00191484-AT RED.

<sup>36</sup> SPOE00191289-00191299 RED and SPOE00191289-SPOE00191299-AT RED.

<sup>37</sup> See Annex 5 to the Motion and reference cited in the column "reference". With respect to the Photos, see also above, fn. 34.

<sup>38</sup> SITF00026363-SITF00026393 RED and SITF00026363-SITF00026393-AT RED.



identification process followed by W00072 and reflected in Statement 3, as well as the identities and further details (such as places of residence) on the persons identified by W00072 in Statement 3.<sup>39</sup> The Panel, therefore, considers that without the Memoranda, Statement 3 would become less comprehensible and of lesser probative value. In light of the above, the Panel dismisses the Defence's arguments pertaining to the Photos and the Memoranda<sup>40</sup> and finds that all of W00072's Associated Exhibits form an indispensable and inseparable part of W00072's Statements. Furthermore, the Panel is satisfied: (i) of the relevance, *prima facie* authenticity and probative value of W00072's Associated Exhibits; and (ii) that their probative value is not outweighed by their prejudicial effect. Accordingly, the Panel finds that W00072's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

22. The Panel notes that while the content of the Photos is identical to that of the second part of Statement 3,<sup>41</sup> the former is a clearer colour version of the latter. Therefore, both are found to be appropriate for admission under Rules 138(1) and 154.

23. *Conclusion.* In light of the above, the Panel finds that W00072's Proposed Evidence<sup>42</sup> is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is appropriate for admission pursuant to Rules 138(1) and 154.

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<sup>39</sup> Memoranda. *See also* Annex 5 to the Motion, pp. 6-7 (columns "description", "reference", "comments" and "relevance").

<sup>40</sup> Second Response, para. 33.

<sup>41</sup> Pages SITF00026372-SITF00026393 of SITF00026363-SITF00026393 RED.

<sup>42</sup> 041400-TR-ET Part 1 RED, 041400-TR-ST Part 1 RED and 041400-TR-AT Part 1 RED; 005300-TR-ET RED, 005300-TR RED and 005300-TR-AT Part 1 RED; SITF00026363-SITF00026393 RED and SITF00026363-SITF00026393-AT RED; SPOE00193498-00193547 RED; pp. 033107-033108 of 033103-033109, 041398-041399-ET and 041398-041399-AT; SPOE00200658-00200679, SPOE00200658-SPOE00200679-AT and SPOE00200658-SPOE00200679-ST; SPOE00191479-00191484 RED and SPOE00191479-SPOE00191484-AT RED; SPOE00191289-00191299 RED and SPOE00191289-SPOE00191299-AT RED.

## B. W02153

24. The SPO submits that the proposed evidence of W02153<sup>43</sup> is: (i) relevant;<sup>44</sup> (ii) *prima facie* authentic and reliable;<sup>45</sup> and (iii) suitable for admission under Rule 154.<sup>46</sup> It further argues that W02153's Associated Exhibits<sup>47</sup> are admissible.<sup>48</sup>

25. The Defence responds that W02153's Statements contain recollections of uncharged events, and of events which occurred outside the Indictment period, and that the SPO failed to substantiate any connection to any material issue in the present case.<sup>49</sup> Furthermore, the Defence avers that, given the limited size of W02153's Statements, the two hours requested by the SPO for its direct examination of W02153 suggest that the SPO is intending to have W02153 restate the contents of his Rule 154 Statements, which would be inconsistent with the purpose of Rule 154 and the Panel's oral order on that matter.<sup>50</sup> As regards W02153's Associated Exhibits, the Defence takes particular issue with the purported origin and authenticity of the documents referred to as 'FAL 1' to 'FAL 13', *i.e.* exhibits 4-9 and 11-16.<sup>51</sup> Moreover, the Defence challenges the relevance and/or probative value of most of W02153's Associated Exhibits and contends that the SPO is overburdening the trial record with material which is of marginal relevance.<sup>52</sup> The Defence also argues that the SPO failed to establish that

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<sup>43</sup> The proposed evidence of W02153 ("W02153's Proposed Evidence") consists of: (i) the following three statements: a) 076841-076856 and 076841-076856-AT; b) U008-7623-U008-7629 and U008-7623-U008-7629-AT; c) 0106-8151-0106-8166 and 0106-8151-0106-8166-AT (collectively, "W02153's Statements"); and (ii) the items proposed and tendered as associated exhibits in Annex 7 to the Motion (collectively, "W02153's Associated Exhibits"). *See, generally*, Annex 7 to the Motion. The Panel notes that the SPO does not tender exhibit 1 (SPOE00130803-00130867), *see* Annex 7 to the Motion, p. 3, and Motion, fn. 107. The Panel also notes that there is no exhibit 10, *see* Annex 7 to the Motion, p. 9.

<sup>44</sup> Motion, paras 72-77.

<sup>45</sup> Motion, paras 78-80.

<sup>46</sup> Motion, paras 81-82.

<sup>47</sup> *See* Annex 7 to the Motion.

<sup>48</sup> Motion, para. 83.

<sup>49</sup> First Response, para. 4.

<sup>50</sup> First Response, para. 5, *referring to* Transcript of Hearing, 19 June 2023, p. 4983, line 17 to p. 4985, line 8.

<sup>51</sup> First Response, paras 6-9.

<sup>52</sup> First Response, paras 10-12.

some of the witness's Associated Exhibits form an inseparable and indispensable part of W02153's Statements.<sup>53</sup>

26. In its Reply, the SPO takes issue with the Defence's submissions which contest the relevance of W02153's Proposed Evidence<sup>54</sup> and the admissibility of W02153's Associated Exhibits, particularly with respect to authenticity and reliability.<sup>55</sup>

27. *W02153's Statements*. Regarding relevance, the Panel notes that W02153 was a British Army officer: (i) who served in Kosovo from November 1998 to March 1999, and again from July 1999, with the Kosovo Diplomatic Observer Mission of the United Kingdom and the Kosovo Verification Mission of the Organisation for Security and Co-operation in Europe ("OSCE"); and (ii) who was, based, *inter alia*, in Rahovec/Orahovac. W02153's Statements are relied upon by the SPO in respect of, *inter alia*: (i) allegations pertaining to cases of abduction, detention, and missing persons, in Rahovec/Orahovac and surrounding areas, including those (allegedly) abducted on or about 17 July 1998; (ii) the attitude of KLA members towards Serbs and Roma, in particular in Prizren and Rahovec/Orahovac; and (iii) alleged actions of Mr Thaçi and Mr Krasniqi.<sup>56</sup>

28. With respect to the Defence's challenges to relevance,<sup>57</sup> the Panel is of the view that the fact that evidence pertains in part to uncharged incidents of violence attributed to KLA members does not render such evidence irrelevant *per se*. W02153's Statements may be relevant to a number of issues in the present case, which form a valid part of the SPO's case, including: (i) the allegation of a widespread or systematic campaign by certain members of the KLA, including the Accused, to target those perceived as collaborators or opponents; (ii) patterns of

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<sup>53</sup> First Response, para. 13.

<sup>54</sup> Reply, para. 2.

<sup>55</sup> Reply, paras 3-5.

<sup>56</sup> Motion, paras 72-77; Amended List of Witnesses, pp. 130-131; SPO Pre-Trial Brief, *e.g.* paras 69, 368-369, 371, 504, 506-507; Indictment, paras 44, 61, 65, 67, 78, 102-103, 115, 153-154, 161-165, 169-171.

<sup>57</sup> First Response, para. 4.

conduct attributable to KLA members and associated inferences sought by the SPO (including in respect of the existence of the alleged joint criminal enterprise); (iii) the question of the level of compliance with the laws of war and discipline within the KLA; and (iv) the functioning of its system of accountability. If the Defence takes issue with any aspect of the accounts contained in W02153's Statements, it can raise these in the course of cross-examination of the witness.

29. However, the Panel considers that paragraphs 53-54 of statement 1,<sup>58</sup> which relate to political violence and allegations of organ trafficking, do not appear to be *prima facie* relevant to this case. The Panel will not admit these paragraphs of statement 1 and orders the SPO to refile a version of that statement wherein the impugned paragraphs are edited out or redacted. In light of the above, the Panel is satisfied that, with the exception of paragraphs 53-54 of statement 1, W02153's Statements are relevant to the charges in the Indictment.

30. Regarding authenticity, W02153's Statements consist of three statements by W02153 given either to the SPO or the International Criminal Tribunal for the former Yugoslavia ("ICTY"), each containing multiple indicia of authenticity, such as: (i) the date of the statement; (ii) personal details and the signature of the witness and of SPO or ICTY officials present; (iii) SPO or ICTY stamps; and/or (iv) witness warnings, rights and acknowledgments. The Panel is thus satisfied of the *prima facie* authenticity of W02153's Statements.

31. With respect to probative value, the Panel is satisfied that W02153's Statements have *prima facie* probative value. Furthermore, the Panel observes that the size of W02153's Statements is limited (roughly 40 pages, which overlap to some extent) and that the SPO contemplates two hours of direct examination should W02153's testimony be adduced pursuant to Rule 154.<sup>59</sup> While parts of

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<sup>58</sup> 076841-076856, p. 076855, and 076841-076856-AT, p. 076855.

<sup>59</sup> Motion, para. 83; Amended List of Witnesses, p. 130; List of Reserve Witnesses, p. 6.

W02153's Statements pertain to alleged actions of some of the Accused,<sup>60</sup> the Panel considers that, insofar as the Defence will have a meaningful opportunity to cross-examine the witness, admitting W02153's Statements pursuant to Rule 154 does not cause any prejudice to the Defence.

32. In light of the above, the Panel is satisfied that W02153's Statements have *prima facie* probative value which is not outweighed by their prejudicial effect, and that they are suitable for admission pursuant to Rule 154. This said, in the interest of the expeditiousness of the proceedings and given that it remains unclear to the Panel on which matters it would be necessary to elicit further *viva voce* testimony from W02153 during two hours, the Panel urges the SPO to consider reducing the time needed for the direct examination of W02153 and reiterates that it will closely monitor how the SPO makes use of the allotted time, with a view to ensuring that it is put to good use.

33. *W02153's Associated Exhibits.* At the outset, the Panel notes that the SPO does not offer 'exhibit 1' for admission.<sup>61</sup> The Panel observes that all of W02153's Associated Exhibits – which essentially consist of lists and reports relating to alleged arrests, kidnappings, and/or missing persons – were discussed in some detail in W02153's Statements.<sup>62</sup> While W02153 did not comment extensively on each of these, the Panel is nevertheless of the view that without W02153's Associated Exhibits, the respective parts of W02153's Statements would become incomprehensible or of lesser probative value. As such, the Panel is satisfied that W02153's Associated Exhibits form an indispensable and inseparable part of W02153's Statements. Furthermore, in light of the above finding regarding the relevance of W02153's Statements,<sup>63</sup> the Panel is also satisfied that W02153's

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<sup>60</sup> See, in particular, 076841-076856, pp. 076845, 076847, 076854; 0106-8151-0106-8166, pp. 0106-8159, 0106-8164.

<sup>61</sup> SPOE00130803-00130867. See Annex 7 to the Motion, p. 3, and Motion, fn. 107. See also above, fn. 43.

<sup>62</sup> See Annex 7 to the Motion and reference cited in the column "reference".

<sup>63</sup> See above, paras 27-29.

Associated Exhibits are relevant. Contrary to the Defence's submission,<sup>64</sup> this applies also to exhibit 16.<sup>65</sup> While not directly related to any victims listed in the Indictment, it is relevant to the contextual elements of the crimes charged and to patterns of conduct relevant to inferences sought from the Panel.

34. The Panel further observes that exhibits 2 and 14<sup>66</sup> contain several indicia of authenticity, such as information on the authoring authority (*i.e.* the OSCE) and/or authoring person as well as certain contact details. Exhibit 3 appears to have been authored by W02153, as indicated in one of W02153's Statements.<sup>67</sup>

35. With respect to exhibits 4-9, 11-13 and 15-16,<sup>68</sup> the Panel observes that the author(s) or maker(s) of these documents is/are unknown. The fact that W02153 appears unable to recall who handed these documents to him<sup>69</sup> does not render them inadmissible *per se*. In this regard, the Panel notes that W02153 provided a general indication that the documents had been handed to him by 'Serbian authorities'<sup>70</sup> or, with respect to one document, by a Serb woman.<sup>71</sup> The Panel is of the view that the *prima facie* authenticity of these documents is established albeit only insofar as they came through the witness (who added his signature to the documents), which is sufficient for the purpose of their admission. The Panel emphasises, however, that their authenticity is established to that extent only. The fact that these documents came from a Serb or from Serbian authorities does not, on its own, raise doubt regarding their authenticity and/or reliability so as to render them inadmissible. The Defence's submissions to the contrary are unsubstantiated. The weight and probative value to be attributed to these documents, if any, will depend on their content being corroborated so that their

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<sup>64</sup> First Response, para. 11.

<sup>65</sup> 0106-8184-0106-8185.

<sup>66</sup> See U007-9607-U007-9661, p. U007-9617; SPOE00196138-00196142.

<sup>67</sup> 0206-2089-0206-2095 and 0206-2089-0206-2095-AT. See 076841-076856, para. 48.

<sup>68</sup> The Panel recalls that there is no exhibit 10, *see* above, fn. 43.

<sup>69</sup> 0106-8151-0106-8166, p. 0106-8154.

<sup>70</sup> 076841-076856, p. 076843 (para. 8).

<sup>71</sup> 0106-8151-0106-8166, p. 0106-8154.

reliability and the truth and accuracy of their content can be verified.

36. Based on the above, the Panel is satisfied that W02153's Associated Exhibits are *prima facie* authentic and probative.

37. Furthermore, as the individual exhibits are very limited in size,<sup>72</sup> the Panel is satisfied that admitting W02153's Associated Exhibits pursuant to Rule 154 would not unduly overburden the record. Insofar as the Defence will have a meaningful opportunity to cross-examine the witness, the Panel is also satisfied that Rule 154 admission of W02153's Associated Exhibits does not cause any prejudice to the Defence. In light of the above, the Panel is satisfied that the probative value of W02153's Associated Exhibits is not outweighed by their prejudicial effect. Accordingly, the Panel finds that W02153's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

38. *Conclusion.* In light of the above, the Panel finds that W02153's Proposed Evidence<sup>73</sup> is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is appropriate for admission pursuant to Rules 138(1) and 154.

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<sup>72</sup> One or two pages each, with the exception of exhibit 3 (seven pages) and exhibit 14 (five pages).

<sup>73</sup> 076841-076856 (without paragraphs 53-54 on p. 076855) and 076841-076856-AT (without paragraphs 53-54 on p. 076855); U008-7623-U008-7629 and U008-7623-U008-7629-AT; 0106-8151-0106-8166 and 0106-8151-0106-8166-AT; p. U007-9617 of U007-9607-U007-9661; 0206-2089-0206-2095 and 0206-2089-0206-2095-AT; 0106-8167-0106-8167; SPOE00196030-00196030; SPOE00196031-00196031; SPOE00196032-00196032; SPOE00196033-00196033; SPOE00196034-00196034; SPOE00196035-00196035; SPOE00196037-00196037; SPOE00196137-00196137; SPOE00196138-00196142; 0106-8182-0106-8183; 0106-8184-0106-8185. The Panel recalls that SPOE00130803-00130867 is not tendered, *see* above, para. 33.



### C. W04586

39. The SPO submits that the proposed evidence of W04586<sup>74</sup> is: (i) relevant;<sup>75</sup> (ii) *prima facie* authentic and reliable;<sup>76</sup> and (iii) suitable for admission under Rule 154.<sup>77</sup> It further argues that W04586's Associated Exhibits<sup>78</sup> are admissible.<sup>79</sup>

40. The Defence responds that it does not oppose the admission of W04586's Statements.<sup>80</sup> However, as the third statement tendered contains not only W04586's testimony but also that of another witness, the Defence objects to the admission of this document in its entirety.<sup>81</sup> Furthermore, the Defence submits that W04586's Statements are largely duplicative and that, at times, W04586 fails to recall having provided certain statements or having participated in any way in the respective proceedings.<sup>82</sup> With respect to W04586's Associated Exhibits, the Defence indicates that it does not object to their admission, but nevertheless makes certain submissions in this regard.<sup>83</sup>

41. In its Reply, the SPO clarifies that it does not seek admission of the portion of the third statement relating to another witness.<sup>84</sup> Furthermore, it disputes the Defence's arguments concerning: (i) W04586's recollection of his prior evidence;<sup>85</sup> and (ii) W04586's Associated Exhibits, for which the Defence alleges that the SPO

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<sup>74</sup> The proposed evidence of W04586 ("W04586's Proposed Evidence") consists of: (i) the following three statements: a) 074780-TR-ET Parts 1-4 RED2 and 074780-TR-AT Parts 1-4 RED2; b) SITF00180616-00180659 RED; c) SPOE00208912-00208929 RED and SPOE00208912-SPOE00208929-AT RED (collectively, "W04586's Statements"); and (ii) the following two proposed associated exhibits: a) 074773-074779 RED2 and 074778-074778-ET; b) SITF00299055-00299087 (collectively, "W04586's Associated Exhibits"). *See, generally*, Annex 10 to the Motion.

<sup>75</sup> Motion, paras 100-103.

<sup>76</sup> Motion, paras 104-105.

<sup>77</sup> Motion, paras 106-107.

<sup>78</sup> *See* Annex 10 to the Motion.

<sup>79</sup> Motion, para. 108.

<sup>80</sup> First Response, para. 14.

<sup>81</sup> First Response, para. 14.

<sup>82</sup> First Response, para. 15.

<sup>83</sup> First Response, paras 16-17.

<sup>84</sup> Reply, para. 6.

<sup>85</sup> Reply, para. 7.

failed to demonstrate that they form an inseparable and indispensable part of W04586's Statements or that they are reliable.<sup>86</sup>

42. *W04586's Statements.* At the outset, the Panel observes that the third statement,<sup>87</sup> which consists of minutes of witness hearings in [REDACTED] investigation, indeed appears to contain not only a statement of W04586 [REDACTED],<sup>88</sup> but also a statement of another witness [REDACTED].<sup>89</sup> As clarified by the SPO,<sup>90</sup> only the part relating to W04586 [REDACTED] is being tendered, and therefore, the Panel will only address that part of the statement. The Panel orders the SPO to refile a version of the third statement from which the part pertaining to [REDACTED] is removed.

43. Regarding relevance, W04586 [REDACTED], who is an alleged victim named in the Indictment.<sup>91</sup> W04586's Statements are relied upon by the SPO in respect of, *inter alia*: (i) allegations pertaining to [REDACTED] abduction by KLA soldiers and subsequent detention as well as related incidents; and (ii) the KLA's alleged attitude towards persons who were considered to be spies or collaborators.<sup>92</sup> The Panel is therefore satisfied that W04586's Proposed Evidence is relevant to the charges in the Indictment.

44. Regarding authenticity, the Panel notes that W04586's Statements, which consist of statements given by W04586 to [REDACTED] or the SPO, contain multiple indicia of authenticity such as: (i) the date and time of the interview; (ii) personal details and the signature of the witness and of [REDACTED] or SPO officials present; and/or (iii) witness warnings, rights and acknowledgments.<sup>93</sup> The

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<sup>86</sup> Reply, paras 8-9.

<sup>87</sup> SPOE00208912-00208929 RED and SPOE00208912-SPOE00208929-AT RED.

<sup>88</sup> Pages SPOE00208912-SPOE00208917.

<sup>89</sup> Pages SPOE00208918-SPOE00208929.

<sup>90</sup> Reply, para. 6.

<sup>91</sup> Indictment, [REDACTED].

<sup>92</sup> Motion, paras 100-103; Amended List of Witnesses, pp. 386-387; SPO Pre-Trial Brief, *e.g.* paras [REDACTED]; Indictment, paras [REDACTED].

<sup>93</sup> Annex 10 to the Motion.

Panel is thus satisfied that W04586's Statements are *prima facie* authentic.

45. Regarding probative value and the Defence's argument that, at times, W04586 fails to recall having provided certain statements or having participated in any way in the respective proceedings,<sup>94</sup> the Panel considers that such matters can be addressed in the course of cross-examination and would pertain to the weight, if any, to be attached to W04586's Statements. The Panel is satisfied that W04586's Statements have *prima facie* probative value.

46. Furthermore, the Panel observes that: (i) W04586's Statements amount to approximately 150 pages (in English) and, while sometimes duplicative, are manageable in size; and (ii) the SPO contemplates one hour for additional, *viva voce*, direct examination.<sup>95</sup> The Panel is satisfied that the admission of W04586's Statements pursuant to Rule 154 would significantly reduce the time for direct examination of the witness, which in turn fosters the expediency of the proceedings. Insofar as the Defence will have a meaningful opportunity to cross-examine the witness, the Panel is of the view that the Rule 154 admission of W04586's Statements does not cause any prejudice to the Defence.

47. The Panel is therefore satisfied that W04586's Statements have *prima facie* probative value which is not outweighed by their prejudicial effect, and that they are suitable for admission pursuant to Rule 154.

48. *W04586's Associated Exhibits.* The Panel observes that W04586's Associated Exhibits consist of: (i) a death certificate, an identification certificate and one further certificate related to the first two, all pertaining to [REDACTED] ("Certificates"), as well as [REDACTED] (collectively, "First Exhibit");<sup>96</sup> and (ii) a photo line-up ("Second Exhibit").<sup>97</sup> The Panel notes that the SPO does not tender

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<sup>94</sup> First Response, para. 15.

<sup>95</sup> Motion, para. 107; Amended List of Witnesses, p. 386; List of Reserve Witnesses, p. 2.

<sup>96</sup> 074773-074779 RED2 and 074778-074778-ET.

<sup>97</sup> SITF00299055-00299087.

page 074779 of the First Exhibit.<sup>98</sup>

49. W04586's Associated Exhibits were discussed in some detail in W04586's Statements.<sup>99</sup> The Panel notes the Defence's contention that most of the documents contained in the First Exhibit were not commented upon by W04586 and that the SPO failed to specify why they would form an inseparable and indispensable part of W04586's Statements.<sup>100</sup> However, it appears that W04586 brought these documents to his SPO interview, whereupon they were registered by the SPO, as is evident from the respective interview transcript.<sup>101</sup> While W04586 did not comment extensively on the Certificates, the Panel is nevertheless of the view that without the First Exhibit, the above-mentioned part of the interview transcript would become incomprehensible or of lesser probative value. If the Defence disputes the content of any of these documents, it can address those issues in cross-examination of the witness. In light of the above, the Panel is satisfied that W04586's Associated Exhibits form an indispensable and inseparable part of W04586's Statements.

50. Furthermore, the Panel is satisfied: (i) of the relevance, *prima facie* authenticity and probative value of W04586's Associated Exhibits; and (ii) that their probative value is not outweighed by their prejudicial effect. The Panel notes the Defence's submission that the photo line-up is of "very poor quality" and that the SPO failed to explain whether this is an exact copy of the photo line-up used in the course of the respective proceedings.<sup>102</sup> However, the Panel considers that, *prima facie*, this photo line-up appears to have indeed been used in the course of the respective proceedings and is sufficiently clear to be comprehensible.<sup>103</sup> Questions regarding

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<sup>98</sup> See Annex 10 to the Motion, p. 4 (column "comments").

<sup>99</sup> See Annex 10 to the Motion and reference cited in the column "reference".

<sup>100</sup> First Response, para. 16.

<sup>101</sup> 074780-TR-ET Part 1, p. 9, line 21 to p. 11, line 25.

<sup>102</sup> First Response, para. 17.

<sup>103</sup> See also SPOE00208912-00208929 RED, p. SPOE00208915: for instance, the number of pictures shown corresponds to the number of pictures and names appearing in the Second Exhibit.

the photo line-up and process associated therewith may be raised during cross-examination of W04586. Accordingly, the Panel finds that W004586's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

51. *Conclusion.* In light of the above, the Panel finds that W04586's Proposed Evidence<sup>104</sup> is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by its prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

## V. ADDITIONAL VIVA VOCE EVIDENCE

52. The Panel reiterates: (i) its concern about the current pace of the in-court testimony, particularly of Rule 154 witnesses; and (ii) that it is not necessary to question witnesses extensively on issues that do not appear to be in dispute or that are already contained in the admitted Rule 154 material of the relevant witness.<sup>105</sup>

53. To ensure that these indications are respected and with a view to fostering greater expeditiousness of the proceedings, the Panel orders 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. Such notice is without prejudice to the liberty of the SPO to put questions to the witness on new issues or relevant factual matters that may develop from the preparation session with the witness.

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<sup>104</sup> 074780-TR-ET Part 1 RED2, 074780-TR-ET Part 2 RED2, 074780-TR-ET Part 3 RED2, 074780-TR-ET Part 4 RED2, and 074780-TR-AT Part 1 RED2, 074780-TR-AT Part 2 RED2, 074780-TR-AT Part 3 RED2, 074780-TR-AT Part 4 RED2; SITF00180616-00180659 RED; pp. SPOE00208912-SPOE00208917 of SPOE00208912-00208929 RED and pp. SPOE00208912-SPOE00208917 of SPOE00208912-SPOE00208929-AT RED; 074773-074779 RED2 (without p. 074779) and 074778-074778-ET; SITF00299055-00299087.

<sup>105</sup> See Transcript of Hearing, 19 June 2023, p. 4983, line 17 to p. 4985, line 8.

## VI. CLASSIFICATION

54. The Panel notes that the Motion, the First Response, the Second Response and the Reply were filed confidentially, and that the Defence indicated that it would file a public redacted version of the First Response and the Second Response in due course.<sup>106</sup> The Panel orders the SPO and the Defence to submit public redacted versions of the above-mentioned submissions by no later than **Friday, 21 July 2023**.

## VII. DISPOSITION

55. Based on the above, the Panel hereby:

- a) **GRANTS** the Motion with respect to W00072, W02153 and W04586, in part;
- b) **FINDS** the (parts of) the Statements and Associated Exhibits of W00072, W02153 and W04586, set out in paragraphs 23, 38 and 51 and the respective footnotes, to be appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of each of these witnesses and each of their statements and associated exhibits;
- c) **FINDS** the remaining parts of the Statements and Associated Exhibits proposed by the SPO not to be appropriate for admission, for the reasons set out above;
- d) **ORDERS** the SPO to refile the following documents in accordance with paragraphs 29 and 42: (i) 076841-076856, p. 076855, and 076841-076856-AT, p. 076855; and (ii) SPOE00208912-00208929 RED and SPOE00208912-SPOE00208929-AT RED;
- e) **ORDERS** 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

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<sup>106</sup> First Response, para. 18; Second Response, para. 41.

of general topics and areas of questioning that will be covered during the *viva voce* examination of the witness;

- f) **URGES** the SPO to consider reducing the time needed to elicit further *viva voce* evidence from W02153;
- g) **INFORMS** the SPO that the Panel will closely scrutinize 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
- h) **ORDERS** the SPO and the Defence to submit public redacted versions of the Motion, the First Response, the Second Response and the Reply by no later than **Friday, 21 July 2023**.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Monday, 10 July 2023

At The Hague, the Netherlands.