



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:** 3 November 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Prosecution Motion for Admission of  
Evidence Pursuant to Rule 153**

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**Specialist Prosecutor**

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**TRIAL PANEL II** (“Panel”), pursuant to Article 21, 37 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-138, 141(1) and 153 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 7 July 2023, the Specialist Prosecutor’s Office (“SPO”) filed a motion for the admission of evidence of witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 (“Witnesses”) pursuant to Rule 153 (“Motion”).<sup>1</sup>
2. On 20 July 2023, the Defence teams for the four Accused (“Thaçi Defence”, “Veseli Defence”, “Selimi Defence”, “Krasniqi Defence”; collectively, “Defence”) filed a joint response to the Motion (“Joint Response”).<sup>2</sup>
3. On 25 July 2023, the SPO filed a reply to the Joint Response (“Reply”).<sup>3</sup>

## II. SUBMISSIONS

4. The SPO submits that the statements, together with the associated exhibits, of the Witnesses (“Rule 153 Statements” and “Associated Exhibits”, respectively) meet the requirements of Rules 138 and 153, are relevant, authentic and reliable and have probative value, which is not outweighed by any prejudice.<sup>4</sup> The SPO contends that admission of the Rule 153 Statements and Associated Exhibits

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<sup>1</sup> F01658, Specialist Prosecutor, *Prosecution Motion for the Admission of Evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 Pursuant to Rule 153*, 7 July 2023, confidential, with Annexes 1-7, confidential.

<sup>2</sup> F01688, Specialist Counsel, *Joint Defence Response to ‘Prosecution Motion for the Admission of Evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 Pursuant to Rule 153’*, 20 July 2023, confidential.

<sup>3</sup> F01702, Specialist Prosecutor, *Prosecution Reply to Joint Defence Response (F01688) Concerning Rule 153 Witnesses*, 25 July 2023, confidential.

<sup>4</sup> Motion, paras 2, 13-18.

(“Proposed Evidence”) is in the interests of justice, and requests that the Trial Panel admit the Proposed Evidence pursuant to Rule 153.<sup>5</sup>

5. The Defence responds that Rule 153 is an exceptional procedure, as evidence admitted through it is untested.<sup>6</sup> It argues that the SPO fails to consider the impact of Rule 153 admission: (i) on the orality and publicity of the proceedings, or the complete circumvention of the right of the accused to examine, or have examined, the witnesses against him or her; and (ii) on the size of the evidential record.<sup>7</sup> The Defence contends that it cannot be, as the SPO suggests, a forgone conclusion that if the evidence does not address the acts and conduct of the accused, and otherwise meets the admissibility requirements, it should be admitted under Rule 153.<sup>8</sup> The Defence therefore submits that the Proposed Evidence is not properly admissible under Rule 153, save for a limited number of statements which do not concern the acts and conduct of the accused and where, in the view of the Defence, undue prejudice would not result.<sup>9</sup>

6. The SPO replies that the requirements of Rule 153 must not be interpreted in a manner that would effectively defeat its very purpose to streamline and expedite the proceedings in circumstances where *viva voce* testimony is unnecessary.<sup>10</sup> The SPO submits that: (i) the Defence ignores that the Panel has encouraged the parties to use Rule 153, alongside Rules 154 and 155, “to the greatest extent possible, with a view to expediting proceedings”;<sup>11</sup> and (ii) the Panel has observed that the principle of orality, which underpins the SC’s regulatory regime, is not absolute, but qualified by a variety of provisions (including Rule 153) that provide for the possibility of witness evidence being elicited and tendered by means other than

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<sup>5</sup> Motion, paras 2, 88.

<sup>6</sup> Joint Response, paras 1-2.

<sup>7</sup> Joint Response, paras 4, 41.

<sup>8</sup> Joint Response, para. 5.

<sup>9</sup> Joint Response, paras 5, 42.

<sup>10</sup> Reply, para. 2.

<sup>11</sup> Reply, para. 3, referring to F01226/A01, Panel, *Annex 1 to the Order on the Conduct of Proceedings* (“Order on the Conduct of Proceedings”), 25 January 2023, para. 51.

calling a witness to testify *viva voce* in court.<sup>12</sup> The SPO therefore requests that the Panel admit the evidence of the relevant witnesses pursuant to Rule 153.<sup>13</sup>

### III. APPLICABLE LAW

7. The Panel incorporates by reference the applicable law as set out in its First Rule 154 Decision and in its First Bar Table Decision.<sup>14</sup>

8. Pursuant to Rule 153(1), subject to Rule 155, the Panel may admit in lieu of oral testimony the written statement of a witness, or a transcript of evidence provided by a witness in proceedings before the Specialist Chambers, which goes to proof of a matter other than the acts and conduct of the Accused as charged in the indictment. Rule 153(1)(a) and (b) set out non-exhaustive lists of factors militating for and against the admission of a written statement or transcript in lieu of oral testimony.

9. Pursuant to Rule 153(2), the written statement or transcript whose admission is sought in lieu of oral testimony shall: (i) be signed by the person who records and conducts the questioning and by the person who is questioned and his or her counsel, if present, as well as, where applicable, the Specialist Prosecutor or the Judge who is present; (ii) note the date, time and place of, and all persons present during the questioning; and (iii) note the reasons why, in exceptional circumstances, the person has not signed the record, if that is the case.

10. Pursuant to Rule 153(3), after hearing the Parties, the Panel shall decide whether to request the witness to appear for cross-examination. If the Panel

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<sup>12</sup> Reply, para. 4, referring to F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* ("First Rule 154 Decision"), 16 March 2023, confidential, para. 18.

<sup>13</sup> Reply, para. 14.

<sup>14</sup> First Rule 154 Decision, paras 11-25; F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("First Bar Table Decision"), 31 March 2023, confidential, paras 8-13.

decides to require the witness to appear for cross-examination, Rule 154 shall apply.

#### IV. DISCUSSION

11. At the outset, the Panel notes the Defence's general submission that it cannot be a forgone conclusion that evidence meeting the admissibility requirements under Rule 153 should be admitted, insofar as evidence admitted through Rule 153: (i) is untested; (ii) affects the orality and publicity of the proceedings; (iii) circumvent the right of the accused to examine, or have examined, the witnesses against him or her; and (iv) affects the size of the evidential record.<sup>15</sup>

12. The Panel observes that Rule 153 leaves it to the discretion of the Panel to admit in lieu of oral testimony the written statement of a witness or a transcript of evidence provided by a witness in proceedings before the Specialist Chambers, which goes to proof of a matter other than the acts and conduct of the Accused as charged in the indictment. In doing so, as mentioned above, Rule 153 identifies factors that the Panel may consider, in its discretion, that militate for or against the admission of a written statement or transcript in lieu of oral testimony. It follows that the Proposed Evidence going to proof of a matter other than the acts and conduct of the Accused as charged in the indictment or meeting one or more of the factors militating for admission under Rule 153 does not result in the Proposed Evidence's automatic admission.<sup>16</sup>

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<sup>15</sup> See Joint Response, paras 1-2, 4-5, 41.

<sup>16</sup> See ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.6, Appeals Chamber, [Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence](#) ("*Prlić et al. Decision*"), 23 November 2007, para. 43; *Prosecutor v. Galić*, IT-98-29-AR73.2, Appeals Chamber, [Decision on Interlocutory Appeal Concerning Rule 92bis\(C\)](#) ("*Galić Decision*"), 7 June 2002, paras 12-15. See also ICTR, *Prosecutor. Ngirabatware*, ICTR-99-54-T, Trial Chamber II, [Decision on Defence Motion to Declare Written Statements Admissible, for Leave for Certification by a Presiding Officer of these Written Statements and/or Reconsideration of the Trial Chamber's Decisions Rendered on 11 and 12 April 2011](#) ("*Ngirabatware Decision*"), 22 September 2011, paras 32-34.

13. The Panel retains the discretionary power to admit the Proposed Evidence pursuant to Rule 153, taking into account, *inter alia*, the impact of its admission on the principle of orality of the proceedings and on the right of the accused to examine, or have examined, the witnesses against him or her.<sup>17</sup> This being said, the Panel recalls its finding on the principle of orality underpinning the SC's regulatory regime not being absolute, but qualified by a variety of provisions providing for the possibility of witness evidence being elicited and tendered by means other than calling a witness to testify *viva voce* in court.<sup>18</sup> Similarly, the right of an accused to confront evidence presented against him is not absolute and may be subject to restrictions not inconsistent with his fundamental rights.<sup>19</sup> The Panel is of the view that Rule 153 was designed to provide for such possibility with a view to streamlining and expediting the proceedings in circumstances where *viva voce* testimony is deemed unnecessary by the Panel.<sup>20</sup> The Panel will therefore assess whether each item in the Proposed Evidence meets the admissibility requirements under Rule 153 and is suitable for admission pursuant to that provision, striking a balance between the rights of the Accused, the principle of orality of the proceedings and the expeditiousness thereof.<sup>21</sup>

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<sup>17</sup> See Article 21(4)(f); Rule 141(1).

<sup>18</sup> First Rule 154 Decision, para. 18.

<sup>19</sup> F01821, Panel, *Decision on Prosecution Request for Admission of W03827's Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration*, 28 September 2023, para. 29; F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, para. 18 (a public redacted version was filed on 8 September 2023, F01603/RED).

<sup>20</sup> Order on the Conduct of Proceedings, para. 51, encouraging the Parties to use Rules 153-155 "to the greatest extent possible, with a view to expediting proceedings". See e.g. ICTR, *Prosecutor v. Nizeyimana*, ICTR-00-55C-AR73.2, Appeals Chamber, [Decision on Prosecutor's Interlocutory Appeal of Decision Not to Admit Marcel Gatsinzi's Statement into Evidence Pursuant to Rule 92bis](#), 8 March 2011, para. 24; ICTY, [Prlić et al. Decision](#), para. 43; [Galić Decision](#), para. 16. See also ICTR, [Ngirabatware Decision](#), para. 30.

<sup>21</sup> See e.g. ICTY, [Prlić et al. Decision](#), para. 43.

## A. W01237

14. The SPO submits that W01237's Proposed Evidence<sup>22</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>23</sup> The SPO contends that: (i) multiple Rule 153(1)(a) factors weigh in favour of admitting W01237's Proposed Evidence pursuant to Rule 153; and (ii) the imperative of a fair and expeditious trial warrants the admission of W01237's Proposed Evidence in written form, without cross-examination.<sup>24</sup>

15. The Defence does not object to the admission of W01237's Proposed Evidence pursuant to Rule 153, provided that an Organization for the Security and Cooperation in Europe ("OSCE")'s "Missing Person" form ("OSCE Form") relating to the disappearance of [REDACTED], is also admitted.<sup>25</sup>

16. As regards relevance, the Panel notes that W01237 is [REDACTED], who was mistreated and detained for two months by the KLA in Jabllanicë/Jablanica, before being sent to fight, where he was injured.<sup>26</sup> W01237 stated that [REDACTED] visited [REDACTED] in Jabllanicë/Jablanica and, during [REDACTED] visits, saw that [REDACTED] had been beaten, which was later confirmed by him upon his return from fighting.<sup>27</sup> W01237 also stated that Jah Bushati was abducted a second time by the KLA in July 1999, and that [REDACTED].<sup>28</sup> [REDACTED] Faton Mehmetaj, who said that he had ordered Geg Lleshi to arrest Jah Bushati and

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<sup>22</sup> W01237's Proposed Evidence consists of the following items, including any translations and full audio recordings thereof: (i) [REDACTED]; (ii) [REDACTED]; (iii) 101326-TR-ET Part 1 RED, 101326-TR-ET Part 2 RED2, 101326-TR-ET Part 3 (collectively "W01237's Rule 153 Statements"); and (iv) [REDACTED], pp. [REDACTED] ("W01237's Associated Exhibits").

<sup>23</sup> Motion, paras 21-30, 33.

<sup>24</sup> Motion, paras 31-32.

<sup>25</sup> Joint Response, para. 16, *referring to* SPOE00298511-00298515.

<sup>26</sup> [REDACTED], paras 4-5, 14, 16; [REDACTED], pp. [REDACTED]; 101326-TR-ET Part 2 RED2, pp. 7, 22-23, Part 3, p. 6.

<sup>27</sup> [REDACTED], paras 7, 9, 16; [REDACTED], pp. [REDACTED]; 101326-TR-ET Part 2 RED2, pp. 16-17, Part 3, pp. 6-7, 11-15.

<sup>28</sup> [REDACTED], paras. 18-19; 101326-TR-ET Part 3, pp. 20-21.

[REDACTED].<sup>29</sup> W01237 stated that [REDACTED] has not seen [REDACTED] since.<sup>30</sup> The Panel further notes that the OSCE Form, which the Defence seeks to admit and which is not opposed by the SPO,<sup>31</sup> contains interviews of W01237 and [REDACTED] taken shortly after the alleged events and addresses Jah Bushati's disappearance and alleged detention in Jabllanicë/Jablanica.<sup>32</sup> Having reviewed the content of W01237's Rule 153 Statements and the OSCE Form, the Panel is satisfied that they are relevant to the crimes charged in the Indictment.<sup>33</sup>

17. As regards authenticity, the Panel notes that W01237's Rule 153 Statements are comprised of: (i) [REDACTED] 2020 SPO interview;<sup>34</sup> (ii) [REDACTED];<sup>35</sup> and (iii) [REDACTED] statement.<sup>36</sup> The Panel further notes that: (i) during the SPO interview, which was audio-video recorded and recorded in verbatim transcripts including details such as the date, time, and attendees,<sup>37</sup> W01237 was assisted by an interpreter, duly advised of [REDACTED] rights as a witness, and [REDACTED] confirmed that the contents of [REDACTED] recorded statement were true and accurate, and that [REDACTED] statement was given voluntarily;<sup>38</sup> (ii) [REDACTED], which is recorded in a verbatim transcript, was taken under oath and was subject to cross-examination;<sup>39</sup> (iii) during [REDACTED], W01237 confirmed, under oath, the contents of [REDACTED] and that, if [REDACTED]

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<sup>29</sup> [REDACTED], para. 19; 101326-TR-ET Part 3, p. 21.

<sup>30</sup> [REDACTED], para. 20; 101326-TR-ET Part 3, p. 29.

<sup>31</sup> Joint Response, para. 16; Motion, para. 29.

<sup>32</sup> SPOE00298511-00298515.

<sup>33</sup> See F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 16-31, 59-61, 63, 96-98, 100, 136-137; see also F01594/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("SPO Pre-Trial Brief"), 9 June 2023, confidential, paras 283-302.

<sup>34</sup> 101326-TR-ET Part 1 RED; 101326-TR-ET Part 2 RED2; 101326-TR-ET Part 3.

<sup>35</sup> [REDACTED].

<sup>36</sup> [REDACTED].

<sup>37</sup> 101326-TR-ET Part 1 RED, pp. 1, 2.

<sup>38</sup> 101326-TR-ET Part 1 RED, pp. 2, 4-5 ; 101326-TR-ET Part 3, pp. 29-30.

<sup>39</sup> [REDACTED], [REDACTED]. See also 101326-TR-ET Part 1 RED, pp. 8-9.



was asked the same questions, [REDACTED] would provide the same answers;<sup>40</sup> and (iv) [REDACTED] statement, which was taken by a duly empowered investigator and orally translated into a language understood by the witness by an [REDACTED] certified interpreter, was reviewed during [REDACTED] SPO interview,<sup>41</sup> contains a witness acknowledgement and interpreter certification, is signed by the witness and is initialled on all pages.<sup>42</sup> In addition, the Panel observes that the OSCE Form tendered by the Defence bears the logo of the OSCE.<sup>43</sup> The Panel is therefore satisfied that W01237's Rule 153 Statements and the OSCE Form are *prima facie* authentic.

18. Turning to W01237's Associated Exhibits, the Panel notes that they consist of photographs of the Jabllanicë/Jablanica detention site shown to and discussed by W01237 during [REDACTED] statement.<sup>44</sup> The Panel is satisfied that W01237's Associated Exhibits form an indispensable and inseparable part of W01237's Rule 153 Statement. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

19. Regarding the probative value of W01237's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W01237's Proposed Evidence: (i) corroborates and complements the evidence of, *inter alia*, W04448, whom the Accused will be able to confront through cross-examination, and noticed adjudicated facts;<sup>45</sup> and (ii) provides additional details of Jah Bushati's detention and mistreatment at Jabllanicë/Jablanica in spring 1998,

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<sup>40</sup> [REDACTED], p. [REDACTED].

<sup>41</sup> 101326-TR-ET Part 1 RED, pp. 7-8.

<sup>42</sup> [REDACTED], pp. [REDACTED]. *See also* [REDACTED], p. [REDACTED].

<sup>43</sup> SPOE00298511-00298515.

<sup>44</sup> [REDACTED], p. [REDACTED] (para. 11).

<sup>45</sup> Motion, para. 30, *referring to* [REDACTED], pp. [REDACTED]; F01534/A01, Panel, *Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* ("SPO Adjudicated Facts"), 17 May 2023, confidential, SPO Adjudicated Facts 306-308 (a public redacted version of the SPO Adjudicated Facts was filed on the same day, F01534/A02).

accusations against him, the circumstances of his second abduction in July 1999, and the impact of the crimes [REDACTED].<sup>46</sup> The Panel further notes that W01237's Proposed Evidence is relatively limited in length, is not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the indictment. The Panel recalls its finding regarding the *prima facie* authenticity of W01237's Proposed Evidence,<sup>47</sup> and is satisfied that W01237's Proposed Evidence meets the requirements under Rule 153(2). In addition, the Panel observes that the Defence does not object to the admission of W01237's Proposed Evidence pursuant to Rule 153, and the SPO does not object to the admission of the OSCE Form.<sup>48</sup> The Panel is therefore satisfied that W01237's Proposed Evidence and the OSCE Form are: (i) probative and not unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

20. For these reasons, the Panel finds that W01237's Proposed Evidence and the OSCE Form are admissible pursuant to Rules 138(1) and 153.

#### B. W04594

21. The SPO submits that W04594's Proposed Evidence<sup>49</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>50</sup> The SPO contends that: (i) multiple Rule 153(1)(a) factors weigh in favour of admitting W04594's Proposed Evidence pursuant to Rule 153; and (ii) the imperative of a fair and expeditious trial warrants the

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<sup>46</sup> Motion, para. 30.

<sup>47</sup> See *above* paras 17-18. See also Annex 1 to the Motion.

<sup>48</sup> Joint Response, para. 16; Motion, para. 29.

<sup>49</sup> W04594's Proposed Evidence consists of the following items, including any translations, full audio recordings and public versions thereof: (i) U007-9712-U007-9717; (ii) U016-2063-U016-2063; (iii) IT-04-84bis P00051 Confidential; (iv) 091401-TRET Part 1; 091401-TR-ET Part 2; 091401-TR-ET Part 3 (collectively "W04594's Rule 153 Statements"); and (v) U007-9717-U007-9717; IT-04-84 D00089 ("W04594's Associated Exhibits").

<sup>50</sup> Motion, paras 34-42, 45.

admission of W04594's Proposed Evidence in written form, without cross-examination.<sup>51</sup>

22. The Defence does not object to the admission of W04594's Proposed Evidence pursuant to Rule 153.<sup>52</sup>

23. As regards relevance, the Panel notes that W04594 is the father of Pal Krasniqi, a murder and enforced disappearance victim identified in the Indictment who set off with a friend to join the KLA at the headquarters in Jabllanicë/Jablanica on 10 July 1998, was apprehended at a Serbian checkpoint and taken to Klinë/Klina on the following day, and was never seen again.<sup>53</sup> W04594 stated that he later learned from [REDACTED] that his son had been detained with him at the KLA headquarters in Jabllanicë/Jablanica, and had been imprisoned and beaten because he was suspected of having been sent by the Serbians to spy.<sup>54</sup> Having reviewed the content of W04594's Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in the Indictment.<sup>55</sup>

24. As regards authenticity and probative value, the Panel notes that W04594's Rule 153 Statements are comprised of: (i) his 2020 SPO interview;<sup>56</sup> (ii) his 2007 ICTY testimony;<sup>57</sup> (iii) his 2004 ICTY statement;<sup>58</sup> and (iv) an ICTY correction sheet.<sup>59</sup> The Panel further notes that: (i) during the SPO interview, which was audio-video recorded and recorded in verbatim transcripts including details such as the date, time, and attendees,<sup>60</sup> W04594 was assisted by an interpreter, duly advised of his rights as a witness, and he confirmed that the contents of his

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<sup>51</sup> Motion, paras 43-44.

<sup>52</sup> Joint Response, para. 20.

<sup>53</sup> U007-9712-U007-9717, paras 3, 5; IT-04-84bis P00051 Confidential, pp. 4768-4770, 4772-4773, 4474, 4807, 4829-4830.

<sup>54</sup> U007-9712-U007-9717, para. 18; 091401-TR-ET Part 2, pp. 11-13; 091401-TR-ET Part 3, pp. 1-2.

<sup>55</sup> Indictment, paras 57-60, 63, 96-98, 100, 136-138, 144, 175; *see also* SPO Pre-Trial Brief, paras 283-302.

<sup>56</sup> 091401-TR-ET Part 1, 091401-TR-ET Part 2, 091401-TR-ET Part 3.

<sup>57</sup> IT-04-84bis P00051 Confidential.

<sup>58</sup> U007-9712-U007-9717.

<sup>59</sup> U016-2063-U016-2063.

<sup>60</sup> 091401-TR-ET Part 1, p. 1; 091401-TR-ET Part 2, p. 1; 091401-TR-ET Part 3, pp. 1, 4.

recorded statement are true and accurate, and that his statement was given voluntarily;<sup>61</sup> (ii) his 2007 ICTY testimony, which is audio/video-recorded and provided as a verbatim transcript, was taken under oath and was subject to cross-examination;<sup>62</sup> (iii) his 2004 ICTY statement, which was taken by a duly empowered investigator and orally translated into a language understood by the witness by an ICTY Registry certified interpreter, was reviewed during his SPO interview,<sup>63</sup> contains a signed witness acknowledgement and interpreter certification, is signed by the witness and is initialled on all pages by all participants;<sup>64</sup> and (iv) the ICTY correction sheet, which relates to his 2004 statement, is dated and signed by the witness.<sup>65</sup> The Panel is therefore satisfied that W04594's Rule 153 Statements are *prima facie* authentic.

25. Turning to W04594's Associated Exhibits, the Panel notes that they consist of a victim identification form and a photo line-up with eight photographs shown to and discussed by W04594 during his 2007 ICTY testimony<sup>66</sup> and 2004 ICTY statement,<sup>67</sup> respectively. The Panel is satisfied that W04594's Associated Exhibits form an indispensable and inseparable part of W04594's Rule 153 Statements. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written records in which they are discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

26. Regarding the probative value of W04594's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04594's Proposed Evidence: (i) is largely cumulative to other witness evidence concerning charges in the Indictment related to Jabllanicë/Jablanica;<sup>68</sup> (ii) is

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<sup>61</sup> 091401-TR-ET Part 1, pp. 1-3; 091401-TR-ET Part 3, pp. 3-4.

<sup>62</sup> IT-04-84bis P00051 Confidential, T.4804-4834. *See also* 091401-TR-ET Part 2, pp. 4-5.

<sup>63</sup> 091401-TR-ET Part 2, pp. 5-6.

<sup>64</sup> U007-9712-U007-9717, pp. 1, 4-5.

<sup>65</sup> U016-2063-U016-2063.

<sup>66</sup> IT-04-84bis P00051 Confidential, pp. 4813-4818.

<sup>67</sup> U007-9712-U007-9717, para. 19.

<sup>68</sup> Motion, para. 43, *referring to* W04448; [REDACTED]; [REDACTED]; W04589; W04835.

corroborated by the evidence of witnesses whom the Accused were or will be able to confront through cross-examination;<sup>69</sup> and (iii) corroborates noticed adjudicated facts.<sup>70</sup> The Panel further notes that W04594's Proposed Evidence is relatively limited in length, is not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the indictment. The Panel recalls its finding regarding the *prima facie* authenticity of W04594's Proposed Evidence,<sup>71</sup> and is satisfied that W04594's Proposed Evidence meets the requirements under Rule 153(2). In addition, the Panel observes that the Defence does not object to the admission of W04594's Proposed Evidence pursuant to Rule 153.<sup>72</sup> The Panel is therefore satisfied that W04594's Proposed Evidence is: (i) probative and not unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153.

27. For these reasons, the Panel finds that W04594's Proposed Evidence is admissible pursuant to Rules 138(1) and 153.

### C. W04592

28. The SPO submits that W04592's Proposed Evidence<sup>73</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>74</sup> The SPO contends that: (i) multiple Rule 153(1)(a) factors weigh in favour of admitting W04592's Proposed Evidence pursuant to Rule 153; and (ii) the imperative of a fair and expeditious trial warrants the admission of W04592's Proposed Evidence in written form, without cross-

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<sup>69</sup> Motion, para. 43, referring to W04448; [REDACTED]; [REDACTED].

<sup>70</sup> Motion, para. 42, referring to SPO Adjudicated Facts 330-332, 358-360.

<sup>71</sup> See above paras 24-25. See also Annex 2 to the Motion.

<sup>72</sup> Joint Response, para. 20.

<sup>73</sup> W04592's Proposed Evidence consists of the following statements, including any translations thereof: (i) 091693-TR-ET Part 1 RED; 091693-TR-ET Part 2; (ii) SITF00070403-SITF00070407; (iii) U009-0932-U009-0937.

<sup>74</sup> Motion, paras 46-53.

examination.<sup>75</sup>

29. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04592's Proposed Evidence pursuant to Rule 153, while the Thaçi Defence seeks to cross-examine W04592 to explore unique aspects of his testimony regarding the practice for treatment of injured persons/alleged collaborators, supported by zone commanders such as Ramush Haradinaj and Tahir Zmaj.<sup>76</sup> The Thaçi Defence points to ICTY jurisprudence to submit that Rule 153 should not be interpreted as placing a specific burden on the party seeking cross-examination to make any particular showing of the necessity of such cross-examination.<sup>77</sup> The Thaçi Defence further challenges the SPO's submission that W04592's Proposed Evidence is suitable for admission through Rule 153 on the basis of purported corroboration by other witnesses whom the Accused will be able to confront through cross-examination.<sup>78</sup>

30. The SPO replies that: (i) the Thaçi Defence's ability to elicit further information from W04592 on the practice for treatment of injured persons and the involvement of Ramush Haradinaj and Tahir Zmaj, which are topics of limited relevance, is speculative at best; (ii) a number of other witnesses, who are able – and better placed – to testify about “the practices of the KLA” and the related “attitudes” of Dukagjini Zone commanders are anticipated to be available for cross-examination; and (iii) W04592's Proposed Evidence should be admitted pursuant to Rule 153 and there is no need to require his attendance for cross-

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<sup>75</sup> Motion, paras 54-55.

<sup>76</sup> Joint Response, paras 21-24, 27.

<sup>77</sup> Joint Response, para. 25, referring to ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Trial Chamber III, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 bis (“[Lukić and Lukić Decision](#)”), 22 August 2008, para. 24; *Prosecutor v. Milutinović et al.*, IT-05-87-PT, Trial Chamber III, Decision on Prosecution's Rule 92 bis Motion (“[Milutinović et al. Decision](#)”) 4 July 2006, para. 11; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Chamber I(A), First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92 bis (“[Blagojević and Jokić Decision](#)”) 12 June 2003, para. 14.

<sup>78</sup> Joint Motion, para. 26.

examination.<sup>79</sup>

31. As regards relevance, the Panel notes that W04592 is a retired surgeon who worked in a field hospital under the authority of the KLA Dukagjini Operational Zone in Irznić/Irznjqi from June until August 1998.<sup>80</sup> In particular, W04592 stated that: (i) on occasion, KLA members came to the hospital and requested that certain alleged collaborators not be treated;<sup>81</sup> and (ii) in summer 1998, a patient whose body was deformed and bruised as result of violent injuries died at the hospital, and W04592 later deduced that it was Skender Kuqi.<sup>82</sup> Having reviewed the content of W04592's Proposed Evidence, the Panel is satisfied that it is relevant to crimes charged in the Indictment.<sup>83</sup>

32. As regards authenticity, the Panel notes that W04592's Proposed Evidence is comprised of: (i) his SPO interview;<sup>84</sup> (ii) his UNMIK statement;<sup>85</sup> and (iii) his ICTY statement.<sup>86</sup> The Panel further notes that: (i) during the SPO interview, which was audio-video recorded and recorded in verbatim transcripts including details such as the date, time, place and attendees,<sup>87</sup> W04592 was assisted by an interpreter, duly advised of his rights as a witness, and he confirmed that the contents of his recorded statement are true and accurate, and that his statement was given voluntarily;<sup>88</sup> and (ii) his UNMIK and ICTY statements, which were reviewed and confirmed by him during his SPO interview,<sup>89</sup> were taken by a duly empowered investigator, in a language understood by the witness, and contain a witness

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<sup>79</sup> Reply, paras 9-11.

<sup>80</sup> U009-0932-U009-0937, paras 9-10; SITF00070403-SITF00070407, p. 1.

<sup>81</sup> U009-0932-U009-0937, para. 10.

<sup>82</sup> U009-0932-U009-0937, para. 11; SITF00070403-SITF00070407, pp. 1-2; 091693-TR-ET Part 2, p. 25.

<sup>83</sup> Indictment, paras 32, 36, 59-61, 63, 96-98, 100, 136-138, 142; SPO Pre-Trial Brief, paras 2, 5-6, 10, 191, 290-293, 297-299.

<sup>84</sup> 091693-TR-ET Part 1 RED and 091693-TR-ET Part 2.

<sup>85</sup> SITF00070403-SITF00070407.

<sup>86</sup> U009-0932-U009-0937.

<sup>87</sup> 091693-TR-ET Part 1 RED, p. 1.

<sup>88</sup> 091693-TR-ET Part 1 RED, pp. 1-3; 091693-TR-ET Part 2, pp. 27-28.

<sup>89</sup> 091693-TR-ET Part 1 RED, pp. 6-9; 091693-TR-ET Part 2, pp. 25-27; 091693-TR-ET Part 1 RED, pp. 9-10; 091693-TR-ET Part 2, pp. 1-25.

acknowledgement with the witness having signed or initialled all pages.<sup>90</sup> The Panel is therefore satisfied that W04592's Proposed Evidence is *prima facie* authentic.

33. Regarding the probative value of W04592's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04592's Proposed Evidence: (i) is largely cumulative of other witness and documentary evidence;<sup>91</sup> (ii) is corroborated by the evidence of witnesses whom the Accused were or will be able to confront through cross-examination;<sup>92</sup> and (iii) corroborates SPO Adjudicated Fact 356.<sup>93</sup> The Panel further notes that W04592's Proposed Evidence is relatively limited in length and is not unduly repetitive. The Panel recalls its finding regarding the *prima facie* authenticity of W04592's Proposed Evidence,<sup>94</sup> and is satisfied that W04592's Proposed Evidence meets the requirements under Rule 153(2). In addition, the Panel observes that the Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04592's Proposed Evidence pursuant to Rule 153.<sup>95</sup>

34. Regarding the Thaçi Defence's argument that cross-examination of W04592 is required to explore unique aspects of his testimony regarding the issue of KLA's attitude towards and treatment of injured persons/alleged collaborators,<sup>96</sup> the Panel agrees that Rule 153 should not be interpreted as placing a specific burden on the party seeking cross-examination to make any particular showing of the necessity of such cross-examination.<sup>97</sup> Rather, the Panel recalls that it retains the discretionary power to decide whether cross-examination is appropriate under the

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<sup>90</sup> SITF00070403-SITF00070407, pp. 3-4; U009-0932-U009-0937, para.14; p. 6.

<sup>91</sup> Motion, para. 54, referring to [REDACTED], [REDACTED], W04835, W04448, [REDACTED], IT-04-84bis P00488, 103108-103132.

<sup>92</sup> Motion, para. 54, referring to [REDACTED], [REDACTED], W04448, [REDACTED].

<sup>93</sup> Motion, para. 53.

<sup>94</sup> See above para. 32. See also Annex 3 to the Motion.

<sup>95</sup> Joint Response, para. 21.

<sup>96</sup> Joint Response, paras 22-27.

<sup>97</sup> See e.g. [Lukić and Lukić Decision](#), para. 24; [Milutinović et al. Decision](#), para. 11; [Blagojević and Jokić Decision](#), para. 14.



circumstances regardless of any particular showing from the Party seeking to cross-examine.<sup>98</sup> The Panel's ability to exercise that discretion in an informed manner depends in part on the Parties' demonstration of the relevance of the issue for which cross-examination is sought and the witness's ability to provide relevant evidence in relation to it. In this regard, the Panel finds that W04592's Proposed Evidence provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further notes that: (i) the SPO submits that other witnesses will be available for cross-examination on the treatment of injured persons by KLA Dukagjini Zone commanders,<sup>99</sup> and (ii) should the Thaçi Defence considers further exploration of such matters through W04592 to be important, it may seek to interview him and, as part of its case, seek to elicit any evidence it obtains. Furthermore, the Panel notes that it is not alleged that Ramush Haradinaj or Tahir Zemaj were involved in mistreating injured detainees. The fact, therefore, that they might have sought to ensure the good treatment of injured detainees under their control or custody has little or no bearing on the case as alleged by the Prosecution. Furthermore, as submitted by the SPO, the suggestion that this witness would be able to provide the evidence which the Defence wishes to elicit from him is, on the material before the Panel, purely hypothetical. The Panel is therefore not persuaded that the further information which the Thaçi Defence wishes to elicit from W04592 warrants his attendance for cross-examination. The Panel is satisfied that W04592's Proposed Evidence is: (i) probative and not unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153. The Panel is further satisfied that the admission of this material pursuant to Rule 153 does not infringe upon the rights of the Accused.

35. For these reasons, the Panel finds that W04592's Proposed Evidence is

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<sup>98</sup> See above paras 12-13. See also [Lukić and Lukić Decision](#), para. 24; [Milutinović et al. Decision](#), para. 11; [Blagojević and Jokić Decision](#), para. 14.

<sup>99</sup> Reply, para. 10.

admissible pursuant to Rules 138(1) and 153.

D. W04872

36. The SPO submits that W04872's Proposed Evidence<sup>100</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>101</sup> The SPO contends that: (i) multiple Rule 153(1)(a) factors weigh in favour of admitting W04872's Proposed Evidence pursuant to Rule 153; and (ii) the imperative of a fair and expeditious trial warrants the admission of W04872's Proposed Evidence in written form, without cross-examination.<sup>102</sup>

37. The Defence submits that W04872's Proposed Evidence adds nothing of value to the trial record, and will unnecessarily add to its volume, insofar as it does not advance the SPO's case beyond that which has already been accepted by the Trial Panel by way of adjudicated facts.<sup>103</sup> The Defence therefore submits that the SPO's request for admission of W04872's Proposed Evidence through Rule 153 should be denied.<sup>104</sup>

38. As regards relevance, the Panel notes that W04872 is [REDACTED] who left his home to go to work on 13 June 1998 and was kidnapped and imprisoned in Jabllanicë/Jablanica.<sup>105</sup> W04872 stated that [REDACTED] never received conclusive information concerning [REDACTED]'s fate.<sup>106</sup> Having reviewed the content of W04872's Proposed Evidence, the Panel is satisfied that it is relevant to the crimes

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<sup>100</sup> W04872's Proposed Evidence consists of the following statement, including any translation thereof: [REDACTED] ("W04872's Rule 153 Statement").

<sup>101</sup> Motion, paras 56-59.

<sup>102</sup> Motion, para. 60.

<sup>103</sup> Joint Motion, para. 28.

<sup>104</sup> Joint Motion, para. 28.

<sup>105</sup> [REDACTED], paras 1, 4-5, 10.

<sup>106</sup> [REDACTED], paras 10-11, 13.

charged in the Indictment.<sup>107</sup>

39. As regards authenticity, the Panel notes that: (i) W04872's Proposed Evidence consists of [REDACTED] witness statement, which was translated into a language understood by the witness with the assistance of a certified interpreter and [REDACTED], and contains signatures by the witness and authorised officials as well as details such as the date, place and attendees;<sup>108</sup> and (ii) W04872 declared that the contents of [REDACTED] written statement were true and correct to the best of [REDACTED] knowledge and belief and [REDACTED] voluntarily signed a witness declaration.<sup>109</sup> The Panel is therefore satisfied that W04592's Proposed Evidence is *prima facie* authentic.

40. Regarding the probative value of W04872's Proposed Evidence and its suitability pursuant to Rule 153, the Panel is not persuaded by the Defence's argument that W04872's Proposed Evidence will unnecessarily add to the trial record's volume insofar as the SPO submits that such evidence: (i) corroborates and complements other testimonial or documentary evidence<sup>110</sup> and noticed adjudicated facts;<sup>111</sup> and (ii) provides additional details concerning Nenad Remištar's abduction and disappearance, and the family's efforts to locate him.<sup>112</sup> The Panel further notes that W04872's Proposed Evidence is relatively limited in length, is not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the indictment. The Panel recalls its finding regarding the *prima facie* authenticity of W04872's Proposed Evidence,<sup>113</sup> and is satisfied that W04872's Proposed Evidence meets the requirements under Rule 153(2). The Panel is therefore satisfied that

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<sup>107</sup> Indictment, paras 59-61, 63, 96-98, 100, 136-138, 143; SPO Pre-Trial Brief, paras 283-296.

<sup>108</sup> [REDACTED], pp. 1-8.

<sup>109</sup> [REDACTED], p. 7; [REDACTED], pp. 2-3.

<sup>110</sup> Motion, paras 59-60, referring to [REDACTED], W04448, [REDACTED]; W04871; [REDACTED], pp.12-16, 23-30; 101835-101849, p. 6.

<sup>111</sup> Motion, para. 59, referring to SPO Adjudicated Facts 323-329.

<sup>112</sup> Motion, para. 59.

<sup>113</sup> See above para. 39. See also Annex 4 to the Motion.

W04872's Proposed Evidence is: (i) probative and not unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153.

41. For these reasons, the Panel finds that W04872's Proposed Evidence is admissible pursuant to Rules 138(1) and 153.

#### E. W04871

42. The SPO submits that W04871's Proposed Evidence<sup>114</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>115</sup> The SPO contends that: (i) multiple Rule 153(1)(a) factors weigh in favour of admitting W04871's Proposed Evidence pursuant to Rule 153; and (ii) the imperative of a fair and expeditious trial warrants the admission of W04871's Proposed Evidence in written form, without cross-examination.<sup>116</sup>

43. The Defence does not object to the admission of W04871's Proposed Evidence pursuant to Rule 153.<sup>117</sup>

44. As regards relevance, the Panel notes that W04871 is [REDACTED] and stated that [REDACTED], after [REDACTED] was stopped and held in KLA custody for several hours, [REDACTED] was taken away and brought to Jabllanicë/Jablanica, where he was regularly beaten while in custody.<sup>118</sup> Having reviewed the content of W04871's Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in the Indictment.<sup>119</sup>

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<sup>114</sup> W04871's Proposed Evidence consists of the following items, including any translations and full audio recordings thereof: (i) [REDACTED], pp. [REDACTED]; (ii) [REDACTED] (collectively "W04871's Rule 153 Statements"); and (iii) [REDACTED]; [REDACTED] ("W04871's Associated Exhibits").

<sup>115</sup> Motion, paras 61-64, 67.

<sup>116</sup> Motion, paras 65-66.

<sup>117</sup> Joint Response, para. 29.

<sup>118</sup> [REDACTED], pp. 2-4; [REDACTED], pp. [REDACTED].

<sup>119</sup> Indictment, paras 59-61, 63, 96-98, 100, 136-137; SPO Pre-Trial Brief, paras 290-295.

45. As regards authenticity, the Panel notes that W04871's Rule 153 Statements are comprised of: (i) [REDACTED];<sup>120</sup> and (ii) [REDACTED] statement.<sup>121</sup> The Panel further notes that: (i) W04871's [REDACTED], which was audio-video recorded and transcribed, was taken under oath and was subject to cross-examination;<sup>122</sup> (ii) W04871's [REDACTED] statement was taken by a duly empowered investigator, and orally translated, by an [REDACTED] certified interpreter, into a language understood by the witness, contains a witness acknowledgement and interpreter certification, and the witness has affixed [REDACTED] signature/initials to all pages;<sup>123</sup> and (iii) W04871 affirmed that [REDACTED] made [REDACTED] statement voluntarily,<sup>124</sup> and testified to its truthfulness and accuracy under oath.<sup>125</sup> The Panel is therefore satisfied that W04871's Rule 153 Statements are *prima facie* authentic.

46. Turning to W04871's Associated Exhibits, the Panel notes that they consist of a pseudonym sheet and a photograph of the Jabllanicë/Jablanica detention site shown to and discussed by W04871 during [REDACTED].<sup>126</sup> The Panel is satisfied that W04871's Associated Exhibits form an indispensable and inseparable part of W04871's Rule 153 Statement. As such, the Panel is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

47. Regarding the probative value of W04871's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04871's Proposed Evidence: (i) corroborates and complements the evidence of [REDACTED], whom the Accused were able to confront through cross-

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<sup>120</sup> [REDACTED], pp. [REDACTED].

<sup>121</sup> [REDACTED].

<sup>122</sup> [REDACTED], pp. [REDACTED].

<sup>123</sup> [REDACTED], pp. 5-6.

<sup>124</sup> [REDACTED], p. 2.

<sup>125</sup> [REDACTED], p. [REDACTED].

<sup>126</sup> [REDACTED], pp. [REDACTED].

examination,<sup>127</sup> and noticed adjudicated facts,<sup>128</sup> and (ii) provides additional details concerning [REDACTED]'s detention and mistreatment, W04871's visit to the Jabllanice/Jablanica detention facility, and the impact of the crimes.<sup>129</sup> The Panel further notes that W04871's Proposed Evidence is relatively limited in length, is not unduly repetitive, and provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the indictment. The Panel recalls its finding regarding the *prima facie* authenticity of W04871's Proposed Evidence,<sup>130</sup> and is satisfied that W04871's Proposed Evidence meets the requirements under Rule 153(2). In addition, the Panel observes that the Defence does not object to the admission of W04871's Proposed Evidence pursuant to Rule 153.<sup>131</sup> The Panel is therefore satisfied that W04871's Proposed Evidence is: (i) probative and not unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153.

48. For these reasons, the Panel finds that W04871's Proposed Evidence is admissible pursuant to Rules 138(1) and 153.

#### F. W04673

49. The SPO submits that W04673's Proposed Evidence<sup>132</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>133</sup> The SPO contends that: (i) multiple Rule 153(1)(a) factors weigh in favour of admitting W04673's Proposed Evidence pursuant to Rule 153, (ii) admission of the complete W04673's Rule 153 Statement is not

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<sup>127</sup> Motion, paras 64-65, referring to [REDACTED]; [REDACTED].

<sup>128</sup> Motion, para. 64, referring to SPO Adjudicated Facts [REDACTED].

<sup>129</sup> Motion, para. 64.

<sup>130</sup> See above paras 45-46. See also Annex 5 to the Motion.

<sup>131</sup> Joint Response, para. 29.

<sup>132</sup> W04673's Proposed Evidence consists of the following statements, including any translations thereof: (i) 082118-TR-ET Part 1 RED; 082118-TR-ET Part 2 RED; (ii) SPOE00122496-00122509 RED; (iii) SPOE00038138-SPOE00038146 RED (collectively "W04673's Rule 153 Statements").

<sup>133</sup> Motion, paras 68-76, 78.

unduly repetitive or unnecessary; and (iii) the imperative of a fair and expeditious trial warrants the admission of W04673's Proposed Evidence in written form, without cross-examination.<sup>134</sup>

50. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04673's Proposed Evidence pursuant to Rule 153. The Thaçi Defence seeks to cross-examine W04673, insofar as the substance and interpretation of W04673's Proposed Evidence is the subject of a dispute between the SPO and the Thaçi Defence, which: (i) relates to live issues directly relevant to the charges in the case and to the credibility of other evidence which has now been heard by the Trial Panel; (ii) cannot be resolved through its admission under Rule 153; and (iii) should be clarified through the examination of W04673.<sup>135</sup> The Thaçi Defence contends that Rule 153 does not place an explicit burden on the party seeking cross-examination to make any particular showing of the necessity of such cross-examination, but that in the case of W04673 this burden is manifestly met.<sup>136</sup>

51. The SPO replies that: (i) the fact that a statement is contradictory to other evidence on the record is no ground for denying admission if the requirements of the Rule are otherwise met; and (ii) admission of W04673's Proposed Evidence, limited in scope and cumulative to that which the Thaçi Defence has already had an opportunity to confront, will fairly place all relevant evidence before the Panel, to assign weight to the evidence, taken as whole, and make determinations as to the relevant facts and issues at the end of the case and based on the totality of the evidence.<sup>137</sup>

52. As regards relevance, the Panel notes that W04673 is a relative of deceased [REDACTED] and was present at the family home when he received a summons

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<sup>134</sup> Motion, paras 76-77, 79.

<sup>135</sup> Joint Response, paras 30-35. *See also* Motion, para. 78.

<sup>136</sup> Joint Response, para. 35.

<sup>137</sup> Reply, para. 12.

to a KLA base and left accordingly.<sup>138</sup> W04673 stated that after two days [REDACTED] went to Llapashtice/Lapaštica with [REDACTED] to find out what had happened to him but was denied visitation on that occasion as well as during 3 or 4 subsequent attempts.<sup>139</sup> W04673 also stated that [REDACTED] then heard that [REDACTED] had been moved to a KLA location in [REDACTED], that he was killed immediately after he was released, and that [REDACTED].<sup>140</sup> [REDACTED] was present when the family exhumed the body, which [REDACTED] recognised as that of [REDACTED].<sup>141</sup> The Panel further notes that the SPO submits that other witnesses will testify on the same events.<sup>142</sup> Having reviewed the content of W04673's Proposed Evidence, the Panel is satisfied that it is relevant to crimes charged in the Indictment and as corroboration of other witnesses.<sup>143</sup>

53. As regards authenticity, the Panel notes that W04673's Proposed Evidence is comprised of: (i) [REDACTED] SPO interview;<sup>144</sup> (ii) [REDACTED] statement [REDACTED];<sup>145</sup> and (iii) [REDACTED] statement [REDACTED].<sup>146</sup> The Panel further notes that: (i) during the SPO interview, which was audio-video recorded and recorded in verbatim transcripts including details such as the date, time, and attendees,<sup>147</sup> W04673 was assisted by an interpreter, duly advised of [REDACTED] rights as a witness, and [REDACTED] confirmed that the contents of [REDACTED] recorded statement are true and accurate, and that [REDACTED] statement was

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<sup>138</sup> SPOE00038138-SPOE00038146 RED, pp. 7-8; SPOE00122496-00122509 RED, p. 2.

<sup>139</sup> 082118-TR-ET Part 1 RED, p. 14; SPOE00038138-SPOE00038146 RED, pp. 6-7; SPOE00122496-00122509 RED, pp. 2-3.

<sup>140</sup> SPOE00038138-SPOE00038146 RED, pp. 2-3, 6-9; SPOE00122496-00122509 RED, pp. 4-5, 11.

<sup>141</sup> SPOE00122496-00122509 RED, pp. 5-7; SPOE00122496-00122509 RED, pp.5-7.

<sup>142</sup> Motion, para. 71, footnote 221.

<sup>143</sup> Indictment, paras 59-61, 71, [REDACTED], 96-98, 107, 136-138, [REDACTED]; SPO Pre-Trial Brief, paras 425-432, [REDACTED].

<sup>144</sup> 082118-TR-ET Part 1 RED; 082118-TR-ET Part 2 RED.

<sup>145</sup> SPOE00122496-00122509 RED.

<sup>146</sup> SPOE00038138-SPOE00038146 RED.

<sup>147</sup> 082118-TR-ET Part 1 RED, pp. 1-2.



given voluntarily;<sup>148</sup> (ii) during [REDACTED] statement [REDACTED], which was audio-recorded and transcribed verbatim and includes details such as the date, time, case number and participants, W04673 took a solemn declaration and [REDACTED];<sup>149</sup> (iii) during [REDACTED] statement [REDACTED], which is [REDACTED] and includes details such as the date, time, case number and participants, W04673 took a solemn declaration and was cross-examined;<sup>150</sup> (iv) [REDACTED] statement [REDACTED] contains the signature of the witness (on each page), prosecutor, defence counsel, and the investigating judge;<sup>151</sup> (v) [REDACTED] statement [REDACTED] contains the typed signature of [REDACTED];<sup>152</sup> and (vi) during [REDACTED] SPO interview, W04673 confirmed the accuracy and truthfulness of [REDACTED] statements [REDACTED] and [REDACTED].<sup>153</sup> The Panel is therefore satisfied that W04673's Proposed Evidence is *prima facie* authentic.

54. Regarding the probative value of W04673's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04673's Proposed Evidence: (i) is largely cumulative to other witness and documentary evidence concerning civilians detained at KLA-run detention sites in Llapashtice/Lapaštica and [REDACTED];<sup>154</sup> and (ii) is corroborated by the evidence of witnesses whom the Accused will be able to confront through cross-examination.<sup>155</sup> The Panel further notes that W04673's Proposed Evidence is relatively limited in length and is not unduly repetitive. The Panel recalls its finding regarding the *prima facie* authenticity of W04673's Proposed Evidence,<sup>156</sup>

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<sup>148</sup> 082118-TR-ET Part 1 RED, pp. 1-3; 082118-TR-ET Part 2 RED, pp. 9-11.

<sup>149</sup> SPOE00123717-00123719 RED, pp. 1-14.

<sup>150</sup> SPOE00038138-SPOE00038146 RED, pp. 1-2, 8-9.

<sup>151</sup> SPOE00123717-00123719 RED, p. 14.

<sup>152</sup> SPOE00038138-SPOE00038146 RED, p. 9.

<sup>153</sup> 082118-TR-ET Part 1 RED, pp. 6-13; 082118-TR-ET Part 1 RED, pp. 13-14.

<sup>154</sup> Motion, para. 76, referring to [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>155</sup> Motion, para. 76, referring to [REDACTED], [REDACTED], [REDACTED], [REDACTED].

<sup>156</sup> See above para. 53. See also Annex 6 to the Motion.

and is satisfied that W04673's Proposed Evidence meets the requirements under Rule 153(2). In addition, the Panel observes that the Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04673's Proposed Evidence pursuant to Rule 153.<sup>157</sup>

55. The Panel notes the Thaçi Defence's argument that W04673's cross-examination is warranted insofar as the substance and interpretation of W04673's Proposed Evidence relates to live issues directly relevant to the charges in the case and to the credibility of other evidence which has now been heard by the Trial Panel.<sup>158</sup> The Panel recalls that it retains the discretionary power to decide whether cross-examination is appropriate under the circumstances and given the requirements of a fair and expeditious trial under Rule 153(3).<sup>159</sup> In this regard, the Panel finds that W04673's Proposed Evidence provides crime-base evidence which goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment.

56. The Panel is of the view that the fact that W04673's Rule 153 Statements are said to be contradictory to other evidence on the record is no ground for requiring cross-examination if the Rule 153 requirements are otherwise met. Indeed, the Panel will assign weight to the evidence, taken as whole, and make determinations as to the relevant facts and issues at the end of the case and based on the totality of the evidence. The presence of corroboration and/or contradictions between the evidence of witnesses will be a matter of relevance to the Panel's determination of weight and probative value to attach to the evidence of respective witnesses. The Panel also notes that the Defence will be able to cross-examine other witnesses called to testify regarding the crime(s) in relation to which W04673 gives evidence.<sup>160</sup> The Panel notes, furthermore, that what the Thaçi Defence describes

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<sup>157</sup> Joint Response, para. 30.

<sup>158</sup> Joint Response, paras 30-35; Motion, para. 78.

<sup>159</sup> See above paras 12-13, 34.

<sup>160</sup> See above footnotes 154-155.

as a ‘contradiction’ between the witness’s statements in respect of [REDACTED] rather indicates the fact that the witness had little or no concrete evidence regarding the nature of [REDACTED]’s relationship to a Serb-affiliated entity. The witness’s absence of personal or direct knowledge of this matter is unlikely to be elucidated by further questioning. The Panel is therefore not persuaded that W04673’s attendance for cross-examination is warranted. The Panel is satisfied that W04673’s Proposed Evidence is: (i) probative and not unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153. The Panel is further satisfied that the admission of this material pursuant to Rule 153 does not infringe upon the rights of the Accused.

57. For these reasons, the Panel finds that W04673’s Proposed Evidence is admissible pursuant to Rules 138(1) and 153.

#### G. W04362

58. The SPO submits that W04362’s Proposed Evidence<sup>161</sup> is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.<sup>162</sup> The SPO contends that the imperative of a fair and expeditious trial warrants the admission of W04362’s Proposed Evidence in written form, without cross-examination.<sup>163</sup>

59. The Defence objects to the admission of W04362’s Proposed Evidence pursuant to Rule 153 and elects to exercise its right to cross-examine W04362,<sup>164</sup> insofar as it alleges that: (i) W04362’s Proposed Evidence is a unique source of information concerning charged murder victim [REDACTED] and should

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<sup>161</sup> W04362’s Proposed Evidence consists of the following items, including any translations thereof: (i) [REDACTED]; [REDACTED]; [REDACTED] (“W04362’s Rule 153 Statement”); and (ii) [REDACTED] (“W04362’s Associated Exhibit”).

<sup>162</sup> Motion, paras 80-84, 86.

<sup>163</sup> Motion, para. 85.

<sup>164</sup> Joint Response, para. 36.

therefore be heard live;<sup>165</sup> (ii) the SPO seeks to tender through Rule 153 only one of two inconsistent statements given by W04362 and the Defence intends to cross-examine on the inconsistencies;<sup>166</sup> (iii) W04362's Proposed Evidence is not largely corroborative of evidence of other witnesses, regarding the [REDACTED] detention site;<sup>167</sup> and (iv) the relatively limited scope of W04362's Proposed Evidence does not support the SPO's request for admission of W04362's Proposed Evidence through Rule 153.

60. The SPO replies that: (i) the Defence understates its confrontation opportunity with other witnesses who have already testified; (ii) no utility would be gained by calling W04362 to testify; (iii) the Defence's actions betray their words about the necessity to cross-examine W04362; and (iv) it is more appropriate to introduce W04362's Proposed Evidence in writing pursuant to Rule 153.<sup>168</sup>

61. As regards relevance, the Panel notes that W04362 is a Kosovar-Albanian who lived with his family in [REDACTED] in 1998 and, while travelling to the area of [REDACTED] with alleged murder victim [REDACTED], was stopped and interrogated by uniformed KLA soldiers, who then moved him and [REDACTED] to another location.<sup>169</sup> W04362 stated that, over the next few days, they were detained together with other people, interrogated again, and that he was slapped, kicked, and asked if he had any connection with the Serbs.<sup>170</sup> On the third day, W04362 was taken to a third house, where he was interrogated by another soldier, beaten up, and then released.<sup>171</sup> When W04362 left, [REDACTED] was still in detention, and W04362 learned later on that he was detained in [REDACTED].<sup>172</sup>

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<sup>165</sup> Joint Response, para. 37.

<sup>166</sup> Joint Response, para. 38.

<sup>167</sup> Joint Response, para. 39.

<sup>168</sup> Reply, paras 6-8.

<sup>169</sup> [REDACTED], pp. 8-9, 15-29.

<sup>170</sup> [REDACTED], pp. 31-33, 36, 41-42.

<sup>171</sup> [REDACTED], pp. 48-50, 53-55.

<sup>172</sup> [REDACTED], pp. 56, 58.

Two or three months later, W04362 joined the KLA in [REDACTED].<sup>173</sup> The Panel further notes that the SPO submits that other witnesses will testify as to alleged crimes which were allegedly committed at the [REDACTED] detention site.<sup>174</sup> Having reviewed the content of W04362's Rule 153 Statement, the Panel is therefore satisfied that it is relevant to the crimes charged in the Indictment and to the credibility of other witnesses.<sup>175</sup> The Panel is further satisfied that the admission of this material pursuant to Rule 153 does not infringe upon the rights of the Accused.

62. As regards authenticity, the Panel notes that: (i) W04362's Rule 153 Statement consists of his SPO interview, which was audio-recorded and recorded in a verbatim transcript and was conducted with the assistance of an interpreter in a language understood by the witness, and contains details such as the date, time, place and attendees;<sup>176</sup> and (ii) W04362 was duly advised of his rights as a witness, and confirmed that the contents of his statement are true and accurate and that his statement was given voluntarily.<sup>177</sup> The Panel is therefore satisfied that W04362's Rule 153 Statement is *prima facie* authentic.

63. Turning to W04362's Associated Exhibit, the Panel notes that it includes a map and two hand-drawn sketches by the witness which were used, marked and discussed by W04362 during his SPO interview.<sup>178</sup> The Panel is satisfied that W04362's Associated Exhibit forms an indispensable and inseparable part of W04362's Rule 153 Statement. As such, the Panel is satisfied that it: (i) is relevant and will provide relevant context to the written record in which it is discussed; and (ii) bears sufficient indicia of *prima facie* authenticity.

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<sup>173</sup> [REDACTED], pp. 3, 10.

<sup>174</sup> Motion, para. 82, footnote 271.

<sup>175</sup> Indictment, paras [REDACTED]; SPO Pre-Trial Brief, paras [REDACTED].

<sup>176</sup> [REDACTED], pp. 1-2.

<sup>177</sup> [REDACTED], p. 2-3, 13-14.

<sup>178</sup>. [REDACTED], pp. 18-20, 37-39; [REDACTED], pp. 1-3.

64. Regarding the probative value of W04362's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04362's Proposed Evidence: (i) is largely cumulative to other documentary evidence concerning the [REDACTED] detention site, and the fate of those detained;<sup>179</sup> and (ii) is cumulative to and corroborated by the evidence of witnesses whom the Accused were or will be able to confront through cross-examination.<sup>180</sup> The Panel also notes that the Defence objects to the admission of W04362's Proposed Evidence without cross-examination insofar as W04362's Proposed Evidence is said by the Defence to be the unique source of information concerning charged murder victim [REDACTED] and only one of W04362's two prior inconsistent statements is being tendered under Rule 153.<sup>181</sup> The Panel recalls that it retains the discretion to decide whether cross-examination is appropriate under the circumstances and given the requirements of a fair and expeditious trial under Rule 153(3).<sup>182</sup> The Panel observes that W04362's Proposed Evidence is alleged to be central to the events concerning charged murder victim [REDACTED], yet only one of W04362's two prior statements is being tendered under Rule 153. The Panel is of the view that the prejudicial effect of the admission of only one of W04362's prior statements under Rule 153 outweighs its probative value at this stage, regardless of the largely cumulative nature of W04362's evidence and of the alleged existence of corroborative evidence. The Panel is therefore not satisfied that W04362's Proposed Evidence is suitable for admission pursuant to Rule 153. This is without prejudice to the SPO's calling the witness to testify live or pursuant to Rule 154.

65. For these reasons, the Panel finds that W04362's Proposed Evidence is not

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<sup>179</sup> Motion, para. 84, *referring to* [REDACTED], p. [REDACTED]; [REDACTED], p. [REDACTED].

<sup>180</sup> Motion, para. 84, *referring to* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>181</sup> Joint Response, paras 37-38.

<sup>182</sup> *See above* paras 12-13, 34.

admissible pursuant to Rules 138(1) and 153 and directs the SPO to call W04362 to testify live or under Rule 154.

## V. CLASSIFICATION

66. The Panel notes that the Motion, the Joint Response and the Reply have been submitted confidentially. The Panel therefore orders the Parties to request the reclassification or submit public redacted versions of the Motion, the Joint Response and the Reply by Friday, 17 November 2023.

## VI. DISPOSITION

67. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence the following items, including any translations, full audio recordings and public versions thereof: W01237's Proposed Evidence<sup>183</sup> and the OSCE Form (SPOE00298511-00298515); W04594's Proposed Evidence;<sup>184</sup> W04592's Proposed Evidence;<sup>185</sup> W04872's Proposed Evidence;<sup>186</sup> W04871's Proposed Evidence;<sup>187</sup> and W04673's Proposed Evidence;<sup>188</sup>
- c) **DENIES** the admission of W04362's Proposed Evidence;<sup>189</sup>
- d) **DIRECTS** the Registrar to assign exhibit numbers to the items referred to in paragraph 67(b), linking the Associated Exhibits with the relevant

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<sup>183</sup> See above footnote 22.

<sup>184</sup> See above footnote 49.

<sup>185</sup> See above footnote 73.

<sup>186</sup> See above footnote 100.

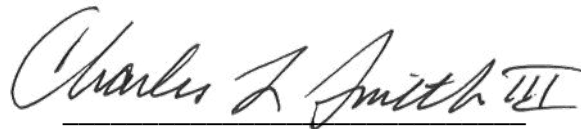
<sup>187</sup> See above footnote 114.

<sup>188</sup> See above footnote 132.

<sup>189</sup> See above footnote 161.

Rule 153 Statements as indicated in footnotes 22, 49, 114;

- e) **ORDERS** the Parties to request the reclassification or submit public redacted versions of the Motion, the Joint Response and the Reply by **Friday, 17 November 2023**; and
- f) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material by no later than **Friday, 17 November 2023**. Any response thereto shall be filed no later than **Friday, 24 November 2023**. No reply will be entertained.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 3 November 2023

At The Hague, the Netherlands.