



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Specialist 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: 1 December 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Motion for Admission of
Evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154**

Specialist Prosecutor

Kimberly P. West

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, 37 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-138, 141(1), and 154 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 16 March, 9 June, 10 July, 24 July, 10 October and 2 November 2023, the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 in respect of 41 witnesses.¹
2. On 16 November 2023, the SPO filed a Rule 154 motion in relation to three additional witnesses (“Motion”).²
3. On 27 November 2023, the Defence for all four Accused (collectively, “Defence”) responded jointly to the Motion (“Response”).³

¹ F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“First Rule 154 Decision”), 16 March 2023, confidential (a public redacted version was filed on 7 November 2023, F01380/RED); F01593, Panel, *Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block*, 9 June 2023, confidential (a public redacted version was filed on 31 October 2023, F01593/RED); F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154*, 9 June 2023, confidential (a corrected version was issued on 10 August 2023, F01595/COR) (a public redacted version was filed on 9 November 2023, F01595/COR/RED); F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential (a public redacted version was filed on 27 November 2023, F01664/RED); F01700, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154*, 24 July 2023, confidential (a public redacted version was filed on 7 November 2023, F01700/RED); F01848, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491, and W04753 Pursuant to Rule 154 (F01788)* (“Fifth Rule 154 Decision”), 10 October 2023, confidential (a public redacted version was filed on 14 November 2023, F01848/RED); F01901, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830)*, 2 November 2023, confidential (a public redacted version was filed on the same day, F01901/RED).

² F01931, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W00498, W01140, and W01763 Pursuant to Rule 154*, 16 November 2023, confidential, with Annexes 1-3, confidential (a public redacted version was filed on the same day, F01931/RED).

³ F01965, Specialist Counsel, *Joint Defence Response to the Prosecution Motion for Admission of Evidence of Witnesses W00498, W01140, and W01763 Pursuant to Rule 154 (F01931)*, 27 November 2023, confidential (a public redacted version was filed on the same day, F01965/RED).

4. On 1 December 2023, the SPO replied to the Response (“Reply”).⁴

II. SUBMISSIONS

5. The SPO seeks admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of three witnesses: W00498, W01140, and W01763 (“Witnesses”).⁵ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and that admission thereof pursuant to Rule 154 is in the interests of justice.⁶

6. The Defence objects to the admission of parts of the Proposed Evidence on the grounds that: (i) the SPO has failed to substantiate its relevance; (ii) its probative value is outweighed by their prejudicial effect; (iii) certain Associated Exhibits do not constitute an indispensable or inseparable part of the statements to which they relate; (iv) the time-saving function of Rule 154 is undermined by the lengthy *viva voce* testimony sought by the SPO; and (v) some of the Proposed Evidence concerns matters of pivotal importance to the Defence case.⁷ The Defence requests the Panel to take notice of the Defence objections, and to deny the admission of W00498’s and W01140’s Proposed Evidence.⁸

7. The SPO replies that the Response is based on misconceptions regarding the scope of evidence relevant to this case and the *prima facie* nature of admissibility assessments.⁹ The SPO reiterates that the Motion should be granted.¹⁰

⁴ F01973, Specialist Prosecutor, *Prosecution Reply Relating to Rule 154 Motion F01931*, 1 December 2023, confidential (a public redacted version was filed on the same day, F01973/RED). *See also* CRSPD 378.

⁵ Motion, paras 1, 31.

⁶ Motion, paras 2, 4. *See also* Annexes 1-3 to the Motion.

⁷ Response, paras 2-3.

⁸ Response, para. 20.

⁹ Reply, para. 1.

¹⁰ Reply, paras 1, 10.

III. APPLICABLE LAW

8. The Panel incorporates by reference the applicable law set out in its First Rule 154 Decision.¹¹

IV. DISCUSSION

1. W00498

9. The SPO submits that the proposed evidence of W00498¹² is: (i) relevant;¹³ (ii) *prima facie* authentic and reliable;¹⁴ and (iii) suitable for admission under Rule 154.¹⁵

10. The Defence submits that: (i) the probative value of W00498's Statement does not outweigh the prejudicial effect of its admission;¹⁶ (ii) the only relevant evidence that W00498 can give is hearsay;¹⁷ (iii) W00498's Statement does not provide corroboration to the evidence of a deceased witness;¹⁸ and (iv) the inconsistencies which permeate this deceased witness's evidence have already been addressed on the trial record.¹⁹ The Defence therefore requests the Panel to deny the admission of W00498's Statement.²⁰

¹¹ First Rule 154 Decision, paras 26-35.

¹² The proposed evidence of W00498 ("W00498's Proposed Evidence") consists of the following statement ("W00498's Statement"): [REDACTED] (with corresponding Albanian version). See Annex 1 to the Motion. The Panel notes that the SPO does not tender Associated Exhibit 1 for admission.

¹³ Motion, paras 5-10.

¹⁴ Motion, para. 11.

¹⁵ Motion, para. 12.

¹⁶ Response, paras 4, 7, 9.

¹⁷ Response, para. 5.

¹⁸ Response, para. 6.

¹⁹ Response, para. 8 referring to Transcript of Hearing, 19 July 2023, pp. 6158-6159, 6166-6167; 4D00008.

²⁰ Response, para. 20.

11. The SPO replies that the Defence's primary objections to the admission of W00498's Statement – that W00498's account is hearsay and the account of the deceased witness is inconsistent – do not affect the admission of such statement.²¹

12. Regarding relevance, W00498 is a close relative of a deceased witness. The SPO submits that he will provide corroboration to this witness's statements.²² The Panel notes that W00498's Statement is being relied upon by the SPO in respect of, *inter alia*: (i) the kidnapping of the deceased witness and others by KLA members; (ii) the detention of the deceased witness and others; (iii) the detention of the relatives of another witness in the same room; (iv) the detention of two individuals in the same building; (v) the identity of the warden of the prison; (vi) the transfer of the deceased witness, along with others; (vii) two individuals not being transferred and never being seen again; (viii) the subsequent detention of individuals in the basement of a house for one night before being moved to a barn for four further days of detention; and (ix) the process and circumstances of their eventual release.²³ The Panel takes note of the Defence's argument that: (i) the only relevant evidence that W00498 can give is hearsay;²⁴ and (ii) W00498's Statement does not provide corroboration to the deceased witness's evidence.²⁵ In this regard, the Panel is of the view that the fact that W00498's Statement contains elements of hearsay does not constitute an impediment to admission under Rule 154.²⁶ As to whether W00498's Statement provides corroboration to other

²¹ Reply, paras 2-5.

²² Motion, para. 5.

²³ Motion, paras 6-9; 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. 41-42 (a confidential redacted version was filed on the same day, F01594/A02); F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte* paras [REDACTED] (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).

²⁴ Response, para. 5.

²⁵ Response, para. 6.

²⁶ On hearsay, *see e.g.* First Rule 154 Decision, para. 21; 18 July 2023 Transcript, p. 5985, line 21 to p. 5986, line 4. *See also* Fifth Rule 154 Decision, para. 56.

evidence, the (corroborative) weight that the Panel might attach to such evidence will be determined by the Panel at the end of the proceedings, in light of all relevant evidence and circumstances.²⁷ For these reasons, the Panel is satisfied that W00498's Statement is relevant to the charges in the Indictment.²⁸

13. Regarding authenticity, the Panel notes that W00498's Statement is comprised of an SITF interview, which consists of verbatim transcripts of the audio-video recording.²⁹ The Panel further notes that W00498's Statement contains multiple indicia of authenticity,³⁰ including: (i) the date, time and place of the interview;³¹ (ii) the witness's personal details;³² (iii) SITF staff names;³³ (iv) witness warnings;³⁴ and (v) W00498's confirmation that his answers during this interview are true and accurate, that his participation in the interview was voluntary, and that he had no objections to the manner or process by which the statement was taken.³⁵ In addition, the Panel notes that the Defence does not contest the *prima facie* authenticity of W00498's Statement.³⁶ In light of the above, the Panel is satisfied of the *prima facie* authenticity of W00498's Statement.

14. Regarding the probative value of W00498's Statement and its suitability for admission pursuant to Rule 154, the Panel takes note of the Defence's contention that the prejudicial effect of the admission of W00498's Statement outweighs its probative value.³⁷ However, the Panel observes that W00498's Statement is relatively limited in size and the Defence will have an opportunity to cross-

²⁷ See e.g. Fifth Rule 154 Decision, para. 29.

²⁸ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras [REDACTED] (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

²⁹ [REDACTED].

³⁰ See Annex 1 to the Motion, "Indicia of reliability and Authenticity" column.

³¹ [REDACTED], p. 1.

³² [REDACTED], pp. 2-3.

³³ [REDACTED], p. 1.

³⁴ [REDACTED], pp. 1-2.

³⁵ [REDACTED], pp. 31-32.

³⁶ Response, para. 9.

³⁷ Response, paras 4, 7, 9.

examine the witness, including in respect of his knowledge and ability to verify the account of the deceased witness and the alleged whereabouts of Mr Krasniqi on a given occasion. The Panel is therefore satisfied that the admission of W00498's Statement under Rule 154 would not cause unfair prejudice to the Defence. The Panel is also satisfied that the admission of W00498's Statement under Rule 154 would contribute to the expeditiousness of the proceedings. For these reasons, the Panel finds that W00498's Statement bears *prima facie* probative value, which is not outweighed by any prejudicial effect, and is suitable for admission pursuant to Rule 154.

15. In light of the above, the Panel finds that W00498's Statement³⁸ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

2. W01140

16. The SPO submits that the proposed evidence of W01140³⁹ is: (i) relevant;⁴⁰ (ii) *prima facie* authentic and reliable;⁴¹ and (iii) suitable for admission under Rule 154.⁴²

³⁸ See above footnote 12.

³⁹ The proposed evidence of W01140 ("W01140's Proposed Evidence") consists of the following four statements (collectively, "W01140's Statements") and four associated exhibits (collectively, "W01140's Associated Exhibits"). W01140's Statements contain; (i) [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (with corresponding Albanian and Serbian versions); (ii) [REDACTED] (with corresponding Albanian and Serbian versions); (iii) [REDACTED] (with corresponding Albanian and Serbian versions); and (iv) [REDACTED] (with corresponding Albanian and Serbian versions). W01140's Associated Exhibits contain: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED] (with corresponding English and Albanian versions); and (iv) [REDACTED] (with corresponding English version). See Annex 2 to the Motion. The Panel notes that the SPO does not tender Associated Exhibits 5-7 for admission.

⁴⁰ Motion, paras 13-16.

⁴¹ Motion, para. 17-19.

⁴² Motion, para. 21.

17. The Defence does not contest the *prima facie* authenticity and reliability of W01140's Statements and takes no issue with W01140's Associated Exhibits.⁴³ However, it submits that W01140's Statements in their totality are relatively short and, given the nature and the scope of W01140's expected testimony and the inconsistencies said to be permeating W01140's Statements, leading the witness *viva voce* would not add significantly to the expected trial time and would further provide necessary clarity for the evidentiary record.⁴⁴ The Defence further submits that, if W01140's Statements are admitted pursuant to Rule 154, it will contest the elucidation of repetitive evidence by the SPO in court which is already contained in the admitted statements.⁴⁵ The Defence therefore requests the Panel to deny the admission of W01140's Proposed Evidence.⁴⁶

18. The SPO replies that the claims made by the Defence attacking the suitability of W01140's Proposed Evidence for Rule 154 should be dismissed in their entirety.⁴⁷

19. *W01140's Statements.* Regarding relevance, W01140 was allegedly stopped by armed and uniformed KLA soldiers near his home.⁴⁸ The Panel notes that W01140's Statements are being relied upon by the SPO in respect of, *inter alia*, the following allegations: (i) his abduction by armed KLA members; (ii) his experience being taken away, detained, and beaten by KLA members; (iii) his observation of KLA members; (iv) his release from detention; and (v) his experience arranging to leave his home with his family.⁴⁹ The Panel is satisfied that W01140's Statements are relevant to the charges in the Indictment.⁵⁰

⁴³ Response, paras 12, 18.

⁴⁴ Response, paras 13-17.

⁴⁵ Response, para. 13.

⁴⁶ Response, paras 2, 20.

⁴⁷ Reply, paras 6-8.

⁴⁸ Motion, para. 13.

⁴⁹ Motion, paras 13-15; Amended List of Witnesses, p. 65; SPO Pre-Trial Brief, paras [REDACTED].

⁵⁰ Indictment, paras [REDACTED].

20. Regarding authenticity, the Panel notes that W01140's Statements are comprised of: (i) his SPO interview, which consists of verbatim transcripts of the audio-video recordings;⁵¹ and (ii) three statements to national authorities,⁵² one of which consists of a transcription of an audio recorded interview.⁵³ The Panel further notes that, during his SPO interview, W01140: (i) confirmed that the contents of his statements made in the interview are true, accurate, and given voluntarily, and affirmed that he had no objections to the manner or process by which the statements were taken;⁵⁴ (ii) had an opportunity to review his prior statements;⁵⁵ and (iii) recognised his signature on each of his statements to national authorities, confirmed the contents of each statement to have been made truthfully, and was given the opportunity to make clarifications and corrections.⁵⁶ In addition, each of W01140's Statements contain multiple indicia of authenticity,⁵⁷ including: (i) the date and time of the interview;⁵⁸ (ii) the witness's personal details;⁵⁹ (iii) identification of the participants;⁶⁰ and (iv) witness warnings.⁶¹ In addition, the Panel notes that the Defence does not contest the *prima facie* authenticity and reliability of W01140's Statements.⁶² In light of the above, the Panel is satisfied of the *prima facie* authenticity of W01140's Statements.

21. Regarding probative value and suitability for admission pursuant to Rule 154, the Panel takes note of the Defence's contention that leading the witness

⁵¹ [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

⁵² [REDACTED]; [REDACTED]; [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED], pp. 11-12.

⁵⁵ [REDACTED], pp. 5-9.

⁵⁶ In respect of [REDACTED], *see* [REDACTED], pp. 5-12; in respect of [REDACTED], *see* [REDACTED], pp. 1-8; in respect of [REDACTED], *see* [REDACTED], pp. 8-10, 12-13, 16-20, and [REDACTED], pp. 1-2.

⁵⁷ *See* Annex 2 to the Motion, "Indicia of reliability and Authenticity" column.

⁵⁸ [REDACTED], pp. 1, 19, [REDACTED], pp. 1, 17, [REDACTED], pp. 1, 21, and [REDACTED], pp. 1, 12; [REDACTED], pp. 1, 5; [REDACTED], pp. 1, 3; [REDACTED], pp. 1, 16.

⁵⁹ [REDACTED], p. 1; [REDACTED], p. 1; [REDACTED], p. 1; [REDACTED], p. 1.

⁶⁰ [REDACTED], pp. 1, 3-4; [REDACTED], pp. 1, 5; [REDACTED], pp. 1, 3; [REDACTED], pp. 1-3, 16.

⁶¹ [REDACTED], p. 2; [REDACTED], pp. 1-2; [REDACTED], p. 2; [REDACTED], p. 3.

⁶² Response, para. 12.

viva voce would not add significantly to the expected trial time and would further provide necessary clarity for the evidentiary record.⁶³ However, the Panel is of the view that alleged inconsistencies in W01140's Statements can be adequately addressed during cross-examination and would be a matter for the Panel to account for when deciding on the weight and probative value to be attached to those statements. The Panel further observes that W01140's Statements are relatively limited in size. The Panel is therefore satisfied that, given that the Defence will have an opportunity to cross-examine the witness, the admission of W01140's Statements under Rule 154 would not cause unfair prejudice to the Defence. The Panel is also satisfied that the admission of W01140's Statements under Rule 154 would contribute to the expeditiousness of the proceedings. To that effect, the Panel reminds the SPO that it will closely scrutinise the use made 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 the witness. For these reasons, the Panel finds that W01140's Statements bear *prima facie* probative value, which is not outweighed by any prejudicial effect, and are suitable for admission pursuant to Rule 154.

22. *W01140's Associated Exhibits*. The Panel observes that W01140's Associated Exhibits consist of photos showing W01140's injuries,⁶⁴ photo line-ups shown to the witness,⁶⁵ and a sketch drawn by W01140 in relation to his detention.⁶⁶ The Panel notes that each of W01140's Associated Exhibits is used and explained in

⁶³ Response, paras 13-17.

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

W01140's Statements.⁶⁷ Contrary to the Defence's submission,⁶⁸ W01140's Associated Exhibits constitute an indispensable and inseparable part of the statements to which they relate. The Panel is therefore satisfied that W01140's Associated Exhibits are relevant, *prima facie* authentic and probative. In this regard, the Panel notes that the Defence takes no issue with W01140's Associated Exhibits.⁶⁹ The Panel also finds that, given that the Defence will have an opportunity to cross-examine this witness, the *prima facie* probative value of W01140's Associated Exhibits is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W01140's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

23. In light of the above, the Panel finds that W01140's Proposed Evidence⁷⁰ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

3. W01763

24. The SPO submits that the proposed evidence of W01763⁷¹ is: (i) relevant;⁷² (ii) *prima facie* authentic and reliable;⁷³ and (iii) suitable for admission under Rule 154.⁷⁴

⁶⁷ In respect of [REDACTED], see [REDACTED], pp. 12-16, and [REDACTED], p. 16; in respect of [REDACTED], see [REDACTED], pp. 6-7, and [REDACTED], p. 5; in respect of [REDACTED], see [REDACTED], p. 8, [REDACTED], pp. 8, 12; and [REDACTED], p. 11; in respect of [REDACTED], see [REDACTED], p. 8, [REDACTED], pp. 8, 12, [REDACTED], pp 2-6, 8-12, 18-20, [REDACTED], pp. 2-3, and [REDACTED], pp. 3-4, 11-14.

⁶⁸ See Response, paras 2, 20.

⁶⁹ Response, para. 18.

⁷⁰ See above footnote 39.

⁷¹ The proposed evidence of W01763 ("W01763's Proposed Evidence") consists of the following statement ("W01763's Statement"): [REDACTED], [REDACTED], and [REDACTED] (with corresponding Albanian and Serbian versions). See Annex 3 to the Motion.

⁷² Motion, paras 22-26.

⁷³ Motion, para. 27.

⁷⁴ Motion, paras 28-29.

25. The Defence has no objection to the admission of W01763's Statement under Rule 154.⁷⁵

26. Regarding relevance, W01763 was arrested with some relatives by armed KLA members in July 1998.⁷⁶ The Panel notes that W01763's Statement is being relied upon by the SPO in respect of, *inter alia*: (i) his arrest by KLA members with two other individuals; (ii) their transfer to a house where they were detained, beaten and questioned; (iii) their transfer to another house and their subsequent detention in the basement where they were beaten; (iv) the conditions of their detention; (v) the detention of two Albanians in the basement, reason for their detention, and signs of mistreatment; (vi) the transfer of W01763 and the other two individuals, and their release; and (vii) the lasting negative impact of their detention and mistreatment on their health and well-being.⁷⁷ The Panel is therefore satisfied that W01763's Statement is relevant to the charges in the Indictment.⁷⁸

27. Regarding authenticity, the Panel notes that W01763's Statement is comprised of a three-part transcript of his SPO interview, which consists of verbatim transcripts of the audio-video recordings.⁷⁹ The Panel further notes that W01763's Statement contains multiple indicia of authenticity,⁸⁰ including: (i) the date, time and place of the interview;⁸¹ (ii) the witness's personal details;⁸² (iii) SPO staff names;⁸³ (iv) witness warnings;⁸⁴ and (v) W01763's confirmation that his answers during this interview are true and accurate, his participation in the interview was voluntary, and he had no objections to the manner or process by which the

⁷⁵ Response, para. 11.

⁷⁶ Motion, para. 22.

⁷⁷ Motion, paras 22-25; Amended List of Witnesses, p. 109; SPO Pre-Trial Brief, paras [REDACTED].

⁷⁸ Indictment, paras [REDACTED].

⁷⁹ [REDACTED], [REDACTED], and [REDACTED].

⁸⁰ See Annex 3 to the Motion, "Indicia of reliability and Authenticity" column.

⁸¹ [REDACTED], pp. 1, 39, [REDACTED], pp. 1, 26, and [REDACTED], pp. 1, 6.

⁸² [REDACTED], pp. 3-4.

⁸³ [REDACTED], p. 1.

⁸⁴ [REDACTED], p. 2.

statement was taken.⁸⁵ In light of the above, the Panel is satisfied of the *prima facie* authenticity of W01763's Statement.

28. Regarding probative value and suitability for admission pursuant to Rule 154, the Panel observes that W01763's Statement is relatively limited in size. The Panel is therefore satisfied that, given that the Defence will have an opportunity to cross-examine the witness, the admission of W01763's Statement under Rule 154 would not cause unfair prejudice to the Defence. The Panel is also satisfied that the admission of W01763's Statement under Rule 154 would contribute to the expeditiousness of the proceedings. In addition, the Panel notes that the Defence did not object to the admission of W01763's Statement pursuant to Rule 154.⁸⁶ For these reasons, the Panel finds that W01763's Statement bears *prima facie* probative value, which is not outweighed by any prejudicial effect, and is suitable for admission pursuant to Rule 154.

29. In light of the above, the Panel finds that W01763's Statement⁸⁷ is relevant, *prima facie* authentic, has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

V. CLASSIFICATION

30. The Panel notes that the SPO has redacted the ERNs of the Proposed Evidence in the public redacted version of its Motion. The Panel has accordingly redacted those ERNs in the present decision. However, the Panel is of the view that the ERNs of the Proposed Evidence may become public after the Witnesses testify at trial, unless the SPO demonstrates otherwise. The Panel therefore orders that, after the Witnesses' testimony, the SPO: (i) reassess whether the redactions applied to

⁸⁵ [REDACTED], pp. 5-6.

⁸⁶ Response, para. 11.

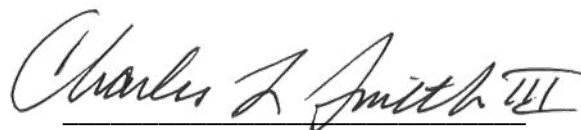
⁸⁷ See above footnote 71.

the ERNs of the Proposed Evidence remain justified; and (ii) make submissions accordingly, within seven days of the end of the Witnesses' testimony.

VI. DISPOSITION

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

- a) **GRANTS** the Motion;
- b) **FINDS** the Proposed Evidence of W00498, W01140, and W01763, set out in footnotes 12, 39, and 71, 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) **REMINDS** the SPO that the Panel will closely scrutinise the use made by the SPO of additional oral evidence in respect of any Rule 154 witness with a view to ensuring that evidence led orally is: (i) not unduly repetitious of the witness's written evidence; and (ii) that the Panel and the Defence had adequate notice of any supplementary evidence elicited orally from the witness; and
- d) **ORDERS** the SPO to: (i) reassess whether the redactions applied to the ERNs of the Proposed Evidence remain justified after the Witnesses' testimony; and (ii) make submissions accordingly, within seven days of the end of the Witnesses' testimony.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 1 December 2023

At The Hague, the Netherlands.