

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** Trial Panel II  
Judge Charles L. Smith III, Presiding  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

**Filing Participant:** Counsel for Hashim Thaçi  
Counsel for Kadri Veseli  
Counsel for Rexhep Selimi  
Counsel for Jakup Krasniqi

**Date:** 8 January 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of Joint Defence Response to Prosecution motion for admission of evidence of Witnesses W01453, W03878, W04446, W04575, and W04651 pursuant to Rule 154 (F02005)**

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## I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby responds to the ‘Prosecution motion for admission of evidence of Witnesses W01453, W03878, W04446, W04575, and W04651 pursuant to Rule 154.’<sup>1</sup>

2. The SPO seeks admission pursuant to Rule 154 of the prior statements and associated exhibits of five witnesses. The Defence hereby objects to parts of the material tendered through Rule 154 on the grounds that the SPO has failed to substantiate its relevance; (ii) the documents tendered as associated exhibits do not constitute an indispensable or inseparable part of the statements to which they relate; (iii) their probative value is outweighed by their prejudicial effect; and (iv) the time-saving function of admission pursuant to Rule 154 is overshadowed by the lengthy *viva voce* testimony sought by the SPO. Finally, some of the evidence sought to be tendered concerns matters of pivotal importance to the Prosecution case the admission of which would prove highly prejudicial for the rights of the Accused.

## II. SUBMISSIONS

### A- W04446

3. W04446’s evidence pertains to the alleged detention of his brother in [REDACTED] in [REDACTED], where he claims to have seen [REDACTED]. The SPO seeks to tender, pursuant to Rule 154: his [REDACTED] SPO interview, consisting of

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<sup>1</sup> KSC-BC-2020-06, F02005, Specialist Prosecutor, Prosecution motion for admission of evidence of Witnesses W01453, W03878, W04446, W04575, and W04651 pursuant to Rule 154 with confidential Annexes 1-5, 14 December 2023 (“Motion”).

two parts<sup>2</sup> together with a sketch he made during interview<sup>3</sup>, and the record of his [REDACTED].<sup>4</sup> Additionally, it seeks one hour of in court testimony which it claims it needs in order to address “essential matters.”<sup>5</sup> Given the contained nature of this witness’s account, the Defence submits that it is entirely unnecessary to admit his prior statements pursuant to Rule 154 in addition to allowing one hour of in-court examination. To do so will not enhance the efficiency of the proceedings but will instead burden the record with unnecessary evidence.

4. Additionally, the Defence objects to the use of leading questions by the SPO on certain issues during portions of its SPO interview.<sup>6</sup> The Defence submits that such questions would not be permitted were this evidence to be adduced live in court. Considering the shortcomings of his SPO interview, as well as it being largely repetitive of the [REDACTED], the Defence submits that admission of the SPO interview should be denied.

5. Alternatively, the Defence requests that the impugned portions of W04446’s SPO interview, identified above, be redacted from the version tendered into evidence.

#### **B- W03878**

6. W03878’s evidence pertains to his alleged detention in [REDACTED] in [REDACTED] 1999, during which time he claims to have had interactions with [REDACTED] and others, and to have been interrogated by [REDACTED]. He also claims to have been transferred to a location he believed to have been [REDACTED]

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<sup>2</sup> 066750-TR-ET Part 1 and 2.

<sup>3</sup> 066674-066674.

<sup>4</sup> 011022-011029 RED2.

<sup>5</sup> F02005, para. 24.

<sup>6</sup> 066750-TR-ET Part 1, page 16, line 15 to page 17, line 17; 066750-TR-ET Part 2, page 11, line 25 to page 12, line 10.

prior to his release. The SPO seeks to tender his [REDACTED] SPO interview<sup>7</sup> and a statement he gave to EULEX in [REDACTED].<sup>8</sup>

7. The Defence has no objections to the tendering of this evidence pursuant to Rule 154.

### C- W01453

8. The Panel should exercise its discretion not to admit W01453's [REDACTED] statement<sup>9</sup> and transcript<sup>10</sup> pursuant to Rule 154, and instead order the SPO to elicit W01453's evidence *viva voce*, as initially foreshadowed by the SPO.

9. The importance and centrality of W01453's evidence requires it being heard live. W01453 was [REDACTED]. He is [REDACTED], and only [REDACTED] are called to testify by the SPO.<sup>11</sup> W01453's evidence is central to numerous key aspects of the SPO's case, including the creation of the KLA, its alleged level of organisation, chain of command and lines of reporting throughout the Indictment period, the role, functioning and authority of the General Staff, the alleged detentions in the indicted locations of [REDACTED], and the establishment, functioning and organisation of the Nerodime Zone.<sup>12</sup>

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<sup>7</sup> 064732-TR-ET Part 1 RED2 – Part 5 RED2.

<sup>8</sup> SITF00011014-00011027 RED2.

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED]. See KSC-BC-2020-06, F00999/A01, Specialist Prosecutor, *Amended Indictment*, para. [REDACTED]; KSC-BC-2020-06, F01594/A03, Specialist Prosecutor, *Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief, ("SPO PTB")*, para. [REDACTED].

<sup>12</sup> Motion, paras 3-5. See also KSC-BC-2020-06/A01, F02007, Specialist Prosecutor, *Annex 1 to Prosecution submission of list of witnesses for 15 January to 4 April 2024 ("January-April List of Witnesses")*, 14 December 2023, confidential, pp. 52-53.

10. In particular, [REDACTED], W01453 is one of [REDACTED] on the SPO's List of Witnesses. The role, powers and authority [REDACTED] is a critical issue in this case, since [REDACTED] in the chain that the SPO must construct to connect the Accused with the alleged crime base.

11. In addition to his inherent importance [REDACTED], W01453's evidence also concerns the acts and conduct of the Accused. The SPO intends to rely upon W01453's evidence concerning "his interactions with members of the General Staff, including Hashim Thaci, Rexhep Selimi and Jakup Krasniqi, and receiving information, instructions and orders from the General Staff members."<sup>13</sup> Furthermore, the SPO relies upon W01453's evidence to allege that Mr. Krasniqi was a key contact point for KLA [REDACTED]<sup>14</sup> and had knowledge of detentions,<sup>15</sup> and that all General Staff orders and instructions were communicated through him.<sup>16</sup> Similarly, W01453's evidence was used by the SPO in support of its allegation that Mr. Thaci issued General Staff instructions to commanders,<sup>17</sup> and to describe the circumstances of Mr. Thaci and Mr. Veseli's [REDACTED].<sup>18</sup>

12. The Panel has the discretion not to admit evidence pursuant to Rule 154 and to decide to hear such evidence *viva voce*.<sup>19</sup> In the exercise of that discretion, the importance of the proposed evidence to a Party's case is a relevant factor and the Panel may refuse admission pursuant to Rule 154 of a statement that is central to a Party's case.<sup>20</sup> Similarly, Trial Chambers at the ICTY have previously found that "the

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<sup>13</sup> January-April List of Witnesses, p. 53, para. 8

<sup>14</sup> KSC-BC-2020-06, F00647/A02, Specialist Prosecutor, ANNEX 2 to Prosecution submission of lesser redacted versions of Indictment and Rule 86(3)(b) outline ("SPO Outline"), 17 January 2022, confidential, p. 26.

<sup>15</sup> SPO Outline, p. 26.

<sup>16</sup> SPO Outline, p. 50.

<sup>17</sup> SPO Outline, p. 44. See also SPO PTB, para. [REDACTED].

<sup>18</sup> SPO PTB, para. [REDACTED].

<sup>19</sup> KSC-BC-2020-06, F01380, Trial Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, para. 20.

<sup>20</sup> *Idem*, para. 28.

significance of [the] proposed evidence to the issue of individual criminal responsibility is a factor militating against the admission of this evidence pursuant to Rule 92ter", which is the ICTY equivalent of Rule 154.<sup>21</sup>

13. The Panel has already refused to admit in writing the evidence of W04746, [REDACTED], in part because of the particular importance of his evidence.<sup>22</sup> Whilst part of that decision concerned the late notice provided by the SPO of its intention to tender the evidence pursuant to Rule 154, the Panel also clearly held that in light of the centrality of W04746's evidence, "reasons would have to be particularly compelling to justify this witness's evidence in chief to be admitted in writing".<sup>23</sup> By way of comparison, no such compelling reason exists to admit W01453's evidence in writing.

14. Moreover, the SPO currently intends to elicit *viva voce* the evidence of [REDACTED], [REDACTED].<sup>24</sup> [REDACTED]. [REDACTED], and the evidence of each goes to central issues in the SPO case and to the acts and conduct of the Accused. Consistent with its earlier position, and with the SPO's own position regarding [REDACTED], the Panel should therefore hear W01453's evidence *viva voce*.

15. Furthermore, the contents of W01453's [REDACTED] statement and [REDACTED] transcript are fundamentally inconsistent, which weighs against the admission of his evidence in writing. Notably, these inconsistencies – some of which are set out below by way of example - cannot be described as minor differences on

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<sup>21</sup> ICTY, *Prosecutor v. Djordjević*, IT-05-87/1-T, Trial Chamber II, *Decision on Prosecution's Motions for Admission of Evidence pursuant to Rule 92ter*, 10 February 2009, para. 10; *Prosecutor v. Šešelj*, IT-03-67/1-T, Trial Chamber III, *Decision on Prosecution Motion to Apply Rule 92 ter of the Rules of Procedure and Evidence to Witness Sulejman Tihic*, 20 November 2008, p. 3.

<sup>22</sup> Transcript of 10 July 2023, p. 5355, l. 8-11.

<sup>23</sup> Transcript of 10 July 2023, p. 5355, l. 9-11.

<sup>24</sup> KSC-BC-2020-06, F01594/A02, Specialist Prosecutor, *ANNEX 2 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief ("June 2023 Witness List")*, 6 June 2023, confidential, pp. 9, 249.

discrete issues, which are inherent to in-court testimony and could be dismissed as a matter of weight, but instead amount to fundamental contradictions going to the heart of W01453's evidence on key contested issues in this case. The SPO is attempting to tender into evidence two incompatible and irreconcilable accounts of the same relevant events.

16. For instance, in his [REDACTED] interview, W01453 variously described detentions<sup>25</sup> in [REDACTED] or "compound"<sup>26</sup> in the indicted location of [REDACTED]. During his [REDACTED] testimony, however, W01453 gave a substantially different account, stating that [REDACTED].<sup>27</sup> W01453 explained that in his previous statement, he had just repeated words that he heard from different people and soldiers, who had mistakenly used the word "arrest" to describe individuals being stopped for identification.<sup>28</sup>

17. Similarly, in his [REDACTED] statement dated [REDACTED],<sup>29</sup> W01453 had stated that Fatmir Limaj acted as a coordinator with the General Staff,<sup>30</sup> and transmitted instructions from the General Staff [REDACTED].<sup>31</sup> Yet again, in his [REDACTED] testimony W01453 gave a different version of the same events. In particular, he asserted that [REDACTED],<sup>32</sup> that Fatmir Limaj had never been [REDACTED],<sup>33</sup> referring to what was written in his previous statement as a [REDACTED],<sup>34</sup> and clarified that the hierarchy and coordination with the General Staff as described in the statement was [REDACTED].<sup>35</sup>

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<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> [REDACTED].

<sup>29</sup> [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> [REDACTED].

<sup>32</sup> [REDACTED].

<sup>33</sup> [REDACTED].

<sup>34</sup> [REDACTED].

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

18. Notably, according to the [REDACTED], the manner of questioning of W01453 during his [REDACTED] witness interview contributed to the lack of clarity in the witness' answers, [REDACTED]:

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

19. These are just few examples among the many fundamental inconsistencies which permeate W01453's [REDACTED] evidence. In this context, [REDACTED] exposed the extent of these inconsistencies and described their consequences in the following terms:

[REDACTED].<sup>37</sup>

20. In highlighting the conclusions of the [REDACTED] which the SPO now seeks to tender pursuant to Rule 154, the Defence is not, of course, asserting that this Panel is bound by those conclusions. Their importance is that they acknowledge the fundamental inconsistency between the two pieces of W01453's evidence, which had been the substantive basis of the Prosecution case, and highlight that the Prosecution in that case [REDACTED].

21. It is important to recall that the SPO, just like Defence counsel, has an ethical obligation not to tender for the truth of its content evidence which it knows or suspects to be false, and shall not knowingly permit the giving of false evidence and rely upon it.<sup>38</sup> This obligation is echoed by the Order on the Conduct of Proceedings, according to which the tendering Party must take reasonable steps to ensure that the evidence placed before the Trial Panel is capable of reasonable belief for the purpose for which it is being offered.<sup>39</sup>

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

<sup>37</sup> [REDACTED]. *See also*, [REDACTED].

<sup>38</sup> Code of Professional Conduct for Counsel, Article 14(3)(a) and 14(4).

<sup>39</sup> Order on Conduct of Proceedings, para. 46.



22. As [REDACTED], W01453's [REDACTED] statement and his subsequent [REDACTED] testimony cannot both be true. In these circumstances, the SPO cannot ethically tender both pieces of evidence because it must know or suspect one of the two to be false. Rather than attempting to tender W01453's evidence in writing, the only proper course is for the SPO to call W01453 to testify *viva voce*, so that he can provide a clear and coherent version of the relevant events, and the Trial Panel can observe his demeanour during testimony and properly assess his credibility.

23. Finally, the Defence disputes that the admission of W01453's evidence through Rule 154 would materially enhance the efficiency of proceedings. The SPO submits that admitting this evidence pursuant to Rule 154 would reduce its direct examination time estimate from nine to four hours. Yet, this remains a very lengthy *viva voce* examination, unjustified in the framework of Rule 154. In addition, the benefit of any time saving during direct examination would be neutralised by the additional time which would be required for cross-examination. The significant contradictions between the two pieces of W01453's evidence tendered for admission will inevitably have to be explored with the witness during cross-examination, in order to test his credibility and set a coherent record of events. In addition, it must be considered that the [REDACTED] transcript and testimony tendered for admission are not reflective of W01453's whole body of evidence. W01453 also gave a statement<sup>40</sup> and later testified<sup>41</sup> [REDACTED], gave an undated statement [REDACTED],<sup>42</sup> and gave evidence [REDACTED].<sup>43</sup> The subject matter of these statements and transcripts falls within the indictment period and significantly overlaps with that of W01453's proposed Rule 154 statements, meaning that this additional evidence would have to

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

<sup>41</sup> [REDACTED].

<sup>42</sup> [REDACTED].

<sup>43</sup> [REDACTED].

be brought up to test the witness account [REDACTED], thus increasing the time required for cross-examination.

24. Further, admitting W01453's evidence in writing would translate in the admission of more than 400 pages of material onto the record. Throughout the duration of this case, the review, analysis and use of this material by the Parties and the Panel would take significantly longer than the five hours anticipated by the SPO to be saved by its admission pursuant to Rule 154. Hearing W01453's testimony live will afford the Trial Panel a more expeditious analysis of his evidence, including any issue of credibility, which would be better assessed in the moment rather than through a wholesome evaluation of all his associated statements at the end of the case.

25. It is also noteworthy that the tendered evidence of W01453 only covers a discrete time-period, namely the events of 1998, representing only a portion of the time-period that the SPO intends to cover with the witness. In particular, the alleged role and authority of W01453 [REDACTED],<sup>44</sup> its structure and functioning,<sup>45</sup> the relevant events in 1999 and the alleged detentions in [REDACTED]<sup>46</sup> are topics which were not covered [REDACTED]. Accordingly, approximately half of W01453's anticipated evidence would have to be elicited for the first time through live testimony in any event. Rather than splitting W01453's evidence in two, half of which is admitted in writing and half of which is elicited orally, the factual and chronological coherence of the record is likely to be enhanced if the totality of his evidence is heard live, through a well-structured direct examination.

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<sup>44</sup> January-April List of Witnesses, p. 52, para. 4.

<sup>45</sup> January-April List of Witnesses, p. 52, para. 5.

<sup>46</sup> January-April List of Witnesses, p. 53, para. 12.

26. Finally, the Defence notes that the SPO informed the Defence as long ago as 22 October 2021 that this witness would be heard *viva voce*.<sup>47</sup> In all subsequent amendments of the witness list, W01453 was always listed as a live witness.<sup>48</sup> On 18 November 2022, the SPO informed the Defence that W01453 would be amongst the first 40 witnesses to be called at trial.<sup>49</sup> Accordingly, the Defence has been preparing for over a year on the basis that his testimony would be heard live. The Prosecution has offered no explanation at all to account for its *volte face* in now seeking to admit the evidence pursuant to Rule 154.

27. Turning to the associated exhibits, the Defence does not object to [REDACTED] and notes that [REDACTED], are not tendered for admission.

28. The Defence does object, however, to the admission of [REDACTED]. The document appears to be a decision appointing [REDACTED] dated [REDACTED] 1998. The document was only briefly showed to W01453, who confirmed that he has no direct knowledge of this event, and that he heard about it during the war.<sup>50</sup> Furthermore, the Defence observes that [REDACTED] is an SPO witnesses scheduled to testify in the upcoming batch.<sup>51</sup> Considering that [REDACTED] is better placed to authenticate the provenance of the document and the accuracy of its content, the

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<sup>47</sup> KSC-BC-2020-06, F00542/A02/COR, Specialist Prosecutor, *Corrected Version of ANNEX 2 to Prosecution submission of preliminary witness list*, 22 October 2021, confidential, p. 53.

<sup>48</sup> KSC-BC-2020-06, F00885/A02, Specialist Prosecutor, *Annex 2 to Submission of corrected and lesser redacted versions of witness list*, 18 July 2022, confidential, pp. 4, 89; F00948/A02, Specialist Prosecutor, *ANNEX 2 to Prosecution submission of revised witness list*, 2 September 2022, confidential, n. 41; F01078/A04, Specialist Prosecutor, *Annex 4 to Submission of amended witness and exhibit lists Amended Exhibit List*, 2 November 2022, confidential, pp. 4, 87; F01291/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission in advance of Specialist Prosecutor's preparation conference*, 14 February 2023, confidential, n. 40; F01296/A02, Specialist Prosecutor, *Annex 2 to Prosecution submissions pursuant to Decision F01229*, 15 February 2023, confidential, pp. 4, 88; June 2023 Witness List.

<sup>49</sup> KSC-BC-2020-06, F01117, Specialist Prosecutor, *Annex 2 to Prosecution submission of provisional list of first 40 witnesses to be called at trial*, 18 November 2022, confidential, n. 2.

<sup>50</sup> [REDACTED].

<sup>51</sup> KSC-BC-2020-06, F02007/A01, Specialist Prosecutor, *Annex 1 to Prosecution submission of list of witnesses for 15 January to 4 April 2024*, 14 December 2023, confidential, p. 33.

Defence submits that the document should be marked for identification at this stage, and any decision on admission postponed until after the testimony of [REDACTED].

#### **D- W04575**

29. W04575 is intended to provide evidence on the alleged kidnapping of [REDACTED] in [REDACTED], and his own arrest that took place the following day.<sup>52</sup> The Defence does not object to the statements provided by the witness, recognising that they meet the basic indicia for authenticity. The Defence also notes that the SPO has requested one hour for direct examination, which falls within the scope of a Rule 154 application. The Defence will address outstanding inconsistencies within the documents during cross-examination.

#### **E- W04651**

30. W04651 is a former KLA member who was active in the Llap zone between May 1998 and June 1999. He is [REDACTED],<sup>53</sup> [REDACTED], that the SPO seeks to admit in its entirety. The Defence objects to the admission of W04651's SPO interview<sup>54</sup> and associated exhibits through Rule 154 and disputes that such admission would materially enhance the efficiency of proceeding.

31. The time-saving function of admission of W04651's SPO interview in writing would be extremely limited. The SPO still intends to examine the witness for one hour, while his interview is short, counting only 63 pages, and is focussed on the exact topics that the SPO intends to cover in direct examination,<sup>55</sup> *i.e.* his experience within the KLA and [REDACTED] (part 1), [REDACTED] (part 2), and the documents he

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<sup>52</sup> Motion, para. 25.

<sup>53</sup> [REDACTED].

<sup>54</sup> 077803-TR-ET Part 1 RED, 077803-TR-ET Part 2, 077803-TR-ET Part 3.

<sup>55</sup> KSC-BC-2020-06/F02007/A02, p. 22.

brought, [REDACTED] (part 3). Thus, the SPO direct examination is likely to be repetitive. In addition, the Defence stresses the limited relevance of W04651's interview, which is not quoted in the SPO PTB.

32. Turning to the associated exhibits, the Defence objects to the admission of [REDACTED] in its entirety, in light of its limited relevance and probative value.

33. The SPO already applied to tender [REDACTED] through the bar and the Trial Panel admitted only the relevant parts quoted in the SPO PTB, noting that it was [REDACTED].<sup>56</sup> The Defence submits that the SPO has failed again to justify the necessity to admit this item in its entirety.

34. [REDACTED], many of them being irrelevant to the charges – [REDACTED]. It thus falls partly outside the Indictment period. Its whole admission would unnecessarily bloat the record.<sup>57</sup>

35. Furthermore, [REDACTED]. [REDACTED],<sup>58</sup> W04651 indicates that [REDACTED].<sup>59</sup> He further notes that [REDACTED], but [REDACTED].<sup>60</sup>

36. Thus, W04651 did not witness himself many events described, in particular those related to the Accused or the General Staff. For instance, [REDACTED],<sup>61</sup> but he concedes that he was not present.<sup>62</sup> [REDACTED],<sup>63</sup> but admits that he was not

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<sup>56</sup> KSC-BC-2020-06/F01596/CONF/RED, Second Decision on Specialist Prosecutor's Bar Table Motion, para. [REDACTED].

<sup>57</sup> See KSC-BC-2020-06/F01901, Public Redacted Version of 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, para. 64.

<sup>58</sup> [REDACTED].

<sup>59</sup> 077803-TR-ET Part 2, pp. 16-19.

<sup>60</sup> 077803-TR-ET Part 2, p. 20.

<sup>61</sup> [REDACTED].

<sup>62</sup> 077803-TR-ET Part 2, p. 22.

<sup>63</sup> [REDACTED].

present.<sup>64</sup> Similarly, [REDACTED],<sup>65</sup> while he did not attend it. During his SPO interview, W04651 confirmed that during the conflict, he never came into contact with members of the KLA General Staff.<sup>66</sup> Thus, his analysis of the role of the Accused or the General Staff is of low probative value.

37. In consequence, the limited probative value of [REDACTED] is outweighed by its prejudicial effect, which cannot be remedied by requiring the Defence to challenge [REDACTED] through cross-examination.

38. With regards to five documents provided by W04651 to the SPO,<sup>67</sup> the Defence notes that the witness confirmed that he had not seen four of them during the war – Exhibits 1, 2 (signed by W04757), 3 (signed by W04757) and 5 (signed by W04758 and W04757).<sup>68</sup> Given that W04757 and W04758 are on the SPO witness list and are better placed to clarify the content and purpose of Exhibits 2, 3 and 5, the Defence submits that they should be marked for identification at this stage, and any decision on admission postponed until after the testimony of W04757 or W04758.

39. The Defence further questions the relevance of the [REDACTED] List of members,<sup>69</sup> which is dated [REDACTED] and falls outside the temporal scope of the Indictment.

40. Last, the Defence has notified the SPO that it objects to W04651 being called as a reserve witness<sup>70</sup> and instead requests that he be called as a scheduled witness. Given that his evidence covers the history of the KLA in general and [REDACTED], the

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<sup>64</sup> 077803-TR-ET Part 2, p. 22-23.

<sup>65</sup> [REDACTED].

<sup>66</sup> 077803-TR-ET Part 1 RED, p. 22.

<sup>67</sup> 077779-077803-ET.

<sup>68</sup> 077803-TR-ET Part 3, pp. 1-13.

<sup>69</sup> SITF00244687-SITF00244700-ET.

<sup>70</sup> KSC-BC-2020-06, F02007/A01, Specialist Prosecutor, *Annex 2 to Prosecution submission of list of witnesses for 15 January to 4 April 2024*, 14 December 2023, confidential, p. 21.

Defence requires advanced notice in order to have adequate time to prepare his cross-examination.

### III. CONFIDENTIALITY

41. These submissions are filed confidentially pursuant to Rule 82(4) as they respond to confidential submissions filed by the SPO. The Defence will submit a public redacted version of the present submissions in due course.

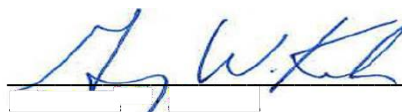
### IV. CONCLUSION

42. For the reasons set out above, the Defence respectfully requests the Trial Panel to take notice of the Defence objections, and to:

- DENY the admission of W04446, W01453 and W04651's evidence through Rule 154;
- ORDER the SPO to elicit their evidence *viva voce*.

**Word count: 4.796**

Respectfully submitted on 8 January 2024,



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