



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 8 February 2024

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Motion for the Admission of
the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722,
W04816, W04850, W04851, and W04852 pursuant to Rule 153**

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 Alagenda

TRIAL PANEL II (“Panel”), pursuant to Articles 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 8 December 2023, the Specialist Prosecutor’s Office (“SPO”) filed a motion for the admission of evidence of witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 (“Witnesses”) pursuant to Rule 153 (“Motion”).¹
2. On 20 December 2023, upon the Defence’s request, the Panel extended the deadline for the Defence to respond to the Motion to 15 January 2024.²
3. On 15 January 2024, 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”).³
4. On 22 January 2024, the SPO filed a reply to the Joint Response (“Reply”).⁴

¹ F01994, Specialist Prosecutor, *Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153*, 8 December 2023, confidential, with Annexes 1-10, confidential (a public redacted version was filed on the same day, F01994/RED).

² F02029, Panel, *Decision on Joint Defence Request for Extensions of the Time Limit to Respond to Certain Filings*, 20 December 2023, para. 13(b).

³ F02063, Specialist Counsel, *Joint Defence Response to ‘Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153’*, 15 January 2024, confidential (a public redacted version was filed on 17 January 2024, F02063/RED).

⁴ F02072, Specialist Prosecutor, *Prosecution Reply Relating to Rule 153 Motion F01994*, 22 January 2024, confidential (a public redacted version was filed on the same day, F02072/RED).

II. SUBMISSIONS

5. 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.⁵ The SPO therefore requests that the Trial Panel admit the Rule 153 Statements and Associated Exhibits (“Proposed Evidence”) into evidence pursuant to Rule 153.⁶

6. The Defence responds that resort to Rules 153 or 155 must remain an exceptional procedure, and asks the Panel to exercise utmost caution in the exercise of its discretion to admit material under Rule 153.⁷ All the Defence teams object to the admission of W04044, W04361, W04722, and W4816’s evidence through Rule 153.⁸ The Thaçi Defence further elects to cross-examine W04305, W04016, W04850, W04851 and W04852, and asks the Trial Panel to stay its decision on the admission of W04019’s Proposed Evidence until after the testimony of another witness.⁹

7. The SPO replies that the Defence’s claim that recourse to Rule 153 should be exceptional is baseless and ignores the applicable law.¹⁰ The SPO submits that the Motion should be granted in its entirety.¹¹

⁵ Motion, para. 3. *See also* Motion, paras 4-5.

⁶ Motion, paras 1, 50.

⁷ Joint Response, para. 2.

⁸ Joint Response, para. 3.

⁹ Joint Response, para. 3.

¹⁰ Reply, para. 2.

¹¹ Reply, para. 20.

III. APPLICABLE LAW

8. The Panel incorporates by reference the applicable law as set out in its First Rule 153 Decision as well as in its First Rule 154 Decision and First Bar Table Decision.¹²

IV. DISCUSSION

A. W04016

9. The SPO submits that W04016's Proposed Evidence¹³ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹⁴

10. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04016's Proposed Evidence pursuant to Rule 153.¹⁵ The Thaçi Defence objects to the admission of W04016's evidence via Rule 153.¹⁶ The Thaçi Defence submits that it can only explore key matters relating to the reason for the arrest and detention of a specific individual through cross-examination of W04016.¹⁷

11. The SPO replies that W04016's Proposed Evidence already addresses W04016's knowledge of the reasons why this individual may have been detained

¹² F01904, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153* ("First Rule 153 Decision"), 3 November 2023, confidential, paras 8-10, 12-13 (a public redacted version was filed on 27 November 2023, F01904/RED); F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* ("First Rule 154 Decision"), 16 March 2023, confidential, paras 11-25 (a public redacted version was filed on 7 November 2023, F01380/RED); F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("First Bar Table Decision"), 31 March 2023, confidential, paras 8-13.

¹³ W04016's Proposed Evidence consists of the following items, including any translations thereof: (i) SPOE00089596-00089615 RED, and (ii) SPOE00092299-00092324 RED ("W04016's Rule 153 Statements"). See Annex 1 to the Motion.

¹⁴ Motion, paras 6-9.

¹⁵ Joint Response, para. 3. See also Motion, para. 48.

¹⁶ Joint Response, para. 4.

¹⁷ Joint Response, para. 6. See also Joint Response, paras 7-8.

and there is no reason to believe W04016 could significantly add thereto.¹⁸

12. As regards relevance, the Panel notes that W04016 is a relative of the arrested person, who was allegedly arrested by members of the Kosovo Liberation Army (“KLA”) in early 1999, and that the SPO intends to rely on W04016’s Rule 153 Statements in relation to, *inter alia*: (i) that person’s arrest; (ii) his being handed over to a KLA member at a certain location for questioning in a house where there were other detained persons; and (iii) W04016’s unsuccessful attempts to obtain information from KLA members on the whereabouts of his relative.¹⁹ The Panel further notes that the Defence does not challenge the relevance of W04016’s Rule 153 Statements. Having reviewed the content of W04016’s Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in the Indictment.²⁰

13. As regards authenticity, the Panel notes that W04016’s Rule 153 Statements comprise the witness’s testimony in domestic proceedings and consist of verbatim and signed transcripts, and that the witness made solemn declarations before being asked questions.²¹ The Panel further notes that the Defence does not challenge the authenticity of W04016’s Rule 153 Statements. The Panel is therefore satisfied that W04016’s Rule 153 Statements are *prima facie* authentic.

14. Regarding the probative value of W04016’s Rule 153 Statements and their suitability pursuant to Rule 153, the Panel notes that the SPO submits that

¹⁸ Reply, para. 3.

¹⁹ Motion, para. 6; *see also* 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*, p. 223 (a confidential redacted version was filed on the same day, F01594/A02).

²⁰ *See* F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment (“Indictment”)*, 30 September 2022, confidential, paras 59-61, [REDACTED]; *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 [REDACTED].

²¹ SPOE00089596-00089615 RED, pp. SPOE00089596-SPOE00089597, SPOE00089610-SPOE00089615; SPOE00092299-00092324 RED, pp. SPOE00092299-SPOE00092300, SPOE00092315-SPOE00092322, SPOE00092324. *See also* Annex 1 to the Motion, pp. 1-2.

W04016's Rule 153 Statements: (i) complement each other; (ii) are largely cumulative of other witness and documentary evidence concerning the abduction, detention, and mistreatment by KLA members in locations at various relevant locations; and (iii) are corroborated by witnesses whom the Accused were and will be able to cross-examine, and complement relevant adjudicated facts.²² The Panel also notes that W04016's Rule 153 Statements are limited in length, are not unduly repetitive, and provide 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 recalls its findings regarding the *prima facie* authenticity of W04016's Rule 153 Statements,²³ and is satisfied that W04016's Rule 153 Statements meet 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 W04016's Rule 153 Statements pursuant to Rule 153.²⁴

15. Regarding the Thaçi Defence's arguments that it can only explore key matters relating to the reason for the arrest and detention of the relevant individual through cross-examination of W04016,²⁵ the Panel is of the view that W04016's Rule 153 Statements already address the witness's knowledge of the reasons why his relative may have been detained.²⁶ While the burden to establish the conditions of admissibility under Rule 153 is with the tendering party, the Panel notes that the Thaçi Defence has failed to demonstrate that its ability to cross-examine this witness or that the issue it would wish to explore is central to its case, or that its inability to cross-examine this witness would deprive it of a fair opportunity to raise relevant issues with other witnesses that it will cross-examine. The Panel is

²² See Motion, paras 8-9, referring to [REDACTED], and F01534/A01, Panel, Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts ("Adjudicated Facts"), 17 May 2023, Adjudicated Facts [REDACTED].

²³ See above para. 13. See also Annex 1 to the Motion.

²⁴ Joint Response, para. 3. See also Motion, para. 48.

²⁵ Joint Response, para. 6-8.

²⁶ See e.g. SPOE00089596-00089615, pp. SPOE00089602-SPOE00089603; SPOE00092299-00092324, pp. SPOE00092306-00092307.

not persuaded that the further information which the Thaçi Defence wishes to elicit from W04016 requires his attendance for cross-examination in order to preserve Mr Thaçi's rights. The Panel notes, furthermore, that there might be more than one reason for an individual to be arrested and/or detained. The existence of various such reasons may be relevant to the Panel's conclusions as to whether a particular crime is or is not evidence of the implementation of the alleged Joint Criminal Enterprise ("JCE"). The Panel notes, however, that proof of motive is not an element of liability under this particular mode of liability and that the state of mind of alleged perpetrators of underlying crimes is not to be mistaken for evidence relevant to establishing the alleged *mens rea* of the Accused. Accordingly, the Panel is satisfied that W04016's Rule 153 Statements are: (i) probative and their admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a) without cross-examination.

16. For these reasons, the Panel finds that W04016's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

B. W04019

17. The SPO submits that W04019's Proposed Evidence²⁷ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.²⁸

18. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04019's Proposed Evidence pursuant to Rule 153.²⁹ The Thaçi Defence submits that any application by the SPO to admit the evidence of W04019

²⁷ W04019's Proposed Evidence consists of the following item, including any translation thereof: SPOE00089675-00089698 RED ("W04019's Rule 153 Statement"). See Annex 2 to the Motion.

²⁸ Motion, paras 10-12.

²⁹ Joint Response, para. 3. See also Motion, para. 48.

pursuant to Rule 153 is premature as this witness will give a hearsay account on certain abductions whose primary witness is another witness.³⁰ The Thaçi Defence therefore requests that any application to admit such evidence through Rule 153 be adjourned until after the testimony of that other witness.³¹

19. As regards relevance, the Panel notes that W04019 is a close relative of an alleged victim and of another witness, who were allegedly abducted by KLA members in early 1999, and that the SPO intends to rely on W04019's Rule 153 Statement in relation to, *inter alia*: (i) the circumstances of the arrest and detention of one of those relatives; (ii) W04019's and other persons' unsuccessful attempts to obtain information about that relative's whereabouts; and (iii) W04019's knowledge that other persons, including another close relative, were also detained by KLA members.³² The Panel further notes that the Defence does not challenge the relevance of W04019's Rule 153 Statement. Having reviewed the content of W04019's Rule 153 Statement, the Panel is satisfied that it is relevant to the crimes charged in the Indictment.³³

20. As regards authenticity, the Panel notes that W04019's Rule 153 Statement comprises the witness's testimony in domestic proceedings and consists of a verbatim and signed transcript, and that the witness was duly advised of his rights as a witness and made solemn declarations before being asked questions.³⁴ The Panel further notes that the Defence does not challenge the authenticity of W04019's Rule 153 Statement. The Panel is therefore satisfied that W04019's Rule 153 Statement is *prima facie* authentic.

21. Regarding the probative value of W04019's Rule 153 Statement and its

³⁰ Joint Response, para. 9.

³¹ Joint Response, para. 9.

³² Motion, para. 10; *see also* Amended List of Witnesses, p. 225.

³³ *See* Indictment, paras 59-61, [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

³⁴ SPOE00089675-00089698 RED, pp. SPOE00089676, SPOE00089691-SPOE00089698. *See also* Annex 2 to the Motion, p. 1.

suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04019's Rule 153 Statement: (i) is largely cumulative of other witness and documentary evidence concerning the abduction, detention, and mistreatment by KLA members in locations relevant to these proceedings; and (ii) is corroborated by witnesses whom the Accused were and will be able to cross-examine, and complements relevant adjudicated facts.³⁵ The Panel also notes that W04019's Rule 153 Statement is 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 further recalls its findings regarding the *prima facie* authenticity of W04019's Rule 153 Statement,³⁶ and is satisfied that W04019's Rule 153 Statement 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 W04019's Rule 153 Statement pursuant to Rule 153.³⁷

22. Regarding the Thaçi Defence's arguments that W04019's Rule 153 Statement contains a hearsay account on certain abductions whose primary witness is another proposed SPO witness,³⁸ the Panel is of the view that the hearsay nature of the proposed evidence is no impediment to its admission as the ultimate reliability of the evidence will be a factor in the Panel's determination of the weight and probative value to attach to that evidence, which is assessed in light of all the evidence at end of the trial.³⁹ Furthermore, the order in which witnesses are to be called are primarily the responsibility of the calling party. The Panel is satisfied that no unfairness is created by having W04019's evidence admitted before that of the other witness in question. The Thaçi Defence's request that the Panel adjourn its decision on W04019's Proposed Evidence until after the

³⁵ See Motion, para. 12, referring to [REDACTED], and Adjudicated Facts [REDACTED].

³⁶ See above para. 20. See also Annex 2 to the Motion.

³⁷ Joint Response, para. 3. See also Motion, para. 48.

³⁸ Joint Response, para. 9.

³⁹ See First Rule 153 Decision, para. 56.

testimony of that other witness is therefore rejected. The Panel is satisfied that W04019's Rule 153 Statement is: (i) probative and its admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

23. For these reasons, the Panel finds that W04019's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

C. W04044

24. The SPO submits that W04044's Proposed Evidence⁴⁰ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.⁴¹

25. The Defence objects to the admission of W04044's Proposed Evidence pursuant to Rule 153.⁴² The Defence submits that W04044's evidence is not suitable for admission through Rule 153 as: (i) it goes to proof of the acts and conduct of the Accused; (ii) it constitutes a unique source of evidence relating to discreet allegations in the SPO Pre-Trial Brief; and (iii) cross-examination of this witness would elicit evidence relevant to the Defence.⁴³

26. The SPO replies that the 'acts and conduct' clause of Rule 153 refers exclusively to acts and omissions of an accused as described in the Indictment or relied upon to establish their criminal responsibility.⁴⁴ The SPO further submits

⁴⁰ W04044's Proposed Evidence consists of the following items, including any translations thereof: 053336-TR-ET Part 1 RED2, 053336-TR-ET Part 2, 053336-TRET Part 3 ("W04044's Rule 153 Statement"); and 053378-053383-ET RED ("W04044's Associated Exhibit"). See Annex 3 to the Motion. The Panel notes that the SPO does not tender Associated Exhibits 2-3 for admission (see Annex 3 to the Motion, pp. 2-3).

⁴¹ Motion, paras 13-17.

⁴² Joint Response, paras 3, 10. See also Motion, para. 48.

⁴³ Joint Response, para. 10, referring to F01593/A03, Specialist Prosecutor, Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief ("SPO Pre-Trial Brief"), 9 June 2023, confidential. See also Joint Response, paras 11-14.

⁴⁴ Reply, para. 5.

that: (i) W04044's references to Mr Thaçi are incidental; (ii) with regard to W04044's statements being a unique source of evidence, the incident cited by the Defence, while relevant to, *inter alia*, contextual elements, is not specifically charged; and (iii) any lack of corroboration for this incident would be a matter going to the weight to be assigned to W04044's evidence in light of all the evidence at trial, and not to its admissibility.⁴⁵

27. As regards relevance, the Panel notes that W04044 co-founded a humanitarian organisation, had an executive role within that organisation and was a Democratic League of Kosovo ("LDK") member in a location relevant to these proceedings, and that the SPO intends to rely on W04044's Rule 153 Statement in relation to, *inter alia*: (i) KLA members wanting to take over his position in the organisation in question; (ii) the circumstances of the detention and beating of two particular individuals; and (iii) the circumstances of W04044's beating by masked assailants who identified themselves as being from the 'information service'.⁴⁶ The Panel further notes that the Defence does not challenge the relevance of W04044's Rule 153 Statement. Having reviewed the content of W04044's Rule 153 Statement, the Panel is satisfied that it is relevant to the crimes charged in the Indictment.⁴⁷

28. As regards authenticity, the Panel notes that W04044's Rule 153 Statement consists of the witness's SPO interview, recorded in a verbatim transcript, and that the witness was duly advised of his rights and obligations as a witness and confirmed that the contents of his statement are true and accurate.⁴⁸ The Panel further notes that the Defence does not challenge the authenticity of W04044's Rule 153 Statement. The Panel is therefore satisfied that W04044's Rule 153 Statement is *prima facie* authentic.

⁴⁵ Reply, paras 6-7.

⁴⁶ Motion, para. 13; *see also* Amended List of Witnesses, p. 227.

⁴⁷ *See* Indictment, paras 16-31, 59-61, [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

⁴⁸ 053336-TR-ET Part 1 RED2, p. 2; 053336-TR-ET Part 3, p. 49. *See also* Annex 3 to the Motion, p. 1.

29. Turning to W04044's Associated Exhibit, the Panel notes that it consists of medical documents relating the injuries sustained by W04044 when he was beaten and was referenced by the witness during his SPO interview.⁴⁹ The Panel is satisfied that W04044's Associated Exhibit form an indispensable and inseparable part of W04044'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.

30. Regarding the probative value of W04044's Proposed Evidence and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04044's Proposed Evidence: (i) is largely cumulative of other witness evidence concerning crimes at a location of relevance to this witness; and (ii) is corroborated by witnesses whom the Accused were and will be able to cross-examine, and complements relevant adjudicated facts.⁵⁰ The Panel also notes that W04044's Proposed Evidence is limited in length and is not unduly repetitive. The Panel further recalls its findings regarding the *prima facie* authenticity of W04044's Proposed Evidence,⁵¹ and is satisfied that W04044's Proposed Evidence meets the requirements under Rule 153(2).

31. Regarding the Defence's arguments that W04044's Proposed Evidence is not suitable for admission pursuant to Rule 153,⁵² the Panel is of the view that W04044's references to Mr Thaçi are general in nature.⁵³ The Panel therefore finds that W04044's Proposed Evidence does not go to proof of the acts and conduct of the Accused in relation to the crimes charged. In addition, the Panel is satisfied that any lack of corroboration for this incident would be a matter going to the weight to be assigned to W04044's evidence in light of all the evidence at trial, and

⁴⁹ 053336-TR-ET Part 3, p. 25. See also Annex 3 to the Motion, p. 2.

⁵⁰ See Motion, para. 16, referring to [REDACTED], and Adjudicated Facts [REDACTED].

⁵¹ See above para. 28. See also Annex 3 to the Motion.

⁵² Joint Response, paras 10-11, 13.

⁵³ See 053336-TR-ET Part 2, pp. 3-4; 053336-TR-ET Part 3, pp. 19, 46-47.

not to its admissibility.⁵⁴ The Panel also notes the Defence's argument that Associated Exhibit 3, which is not tendered for admission by the SPO, covers topics which allegedly tend to disprove the SPO's allegation that the KLA targeted supporters of the LDK as opponents.⁵⁵ The Panel observes that the Defence can seek to tender this book if it considers it to be relevant to its case and can raise any of its content with witnesses capable of providing evidence in relation to the issues outlined therein. The Panel is therefore not persuaded that the further information which the Defence wishes to elicit from W04044 warrants his attendance for cross-examination.

32. This being said, the Panel notes the Defence's request to exercise its right to cross-examine W04044 on a potential misidentification of Mr Krasniqi.⁵⁶ The Panel is of the view that the issue cannot be said to be peripheral to the case insofar as it goes to the identification of one of the Accused by the witness and it is not entirely clear whether the proposed evidence goes to 'acts and conduct' of the Accused, Mr Krasniqi. The Panel therefore finds that the prejudicial effect of the admission of W04044's Proposed Evidence under Rule 153 outweighs its probative value at this stage. Accordingly, the Panel will exercise its discretion not to admit W04044's Proposed Evidence pursuant to Rule 153. This is without prejudice to any Rule 154 application in relation to W04044 or the SPO's calling the witness to testify live.

33. For these reasons, the Panel finds that W04044's Proposed Evidence is not admissible pursuant to Rules 138(1) and 153, without prejudice to any Rule 154 application in relation to W04044 or the SPO's calling the witness to testify live.

⁵⁴ First Rule 153 Motion, para. 56.

⁵⁵ Joint Response, para. 14.

⁵⁶ Joint Response, para. 12.

D. W04305

34. The SPO submits that W04305's Proposed Evidence⁵⁷ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.⁵⁸

35. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04305's Proposed Evidence pursuant to Rule 153.⁵⁹ The Thaçi Defence submits that W04305's evidence is not suitable for admission pursuant to Rule 153 as the prejudicial effect of the admission of such evidence without being tested on the alternative motivations for W04305's arrest and detention as well as on the credibility and reliability of his account would outweigh any probative value.⁶⁰

36. The SPO replies that the Thaçi Defence fails to provide adequate reasons why the evidence of W04305 is not suitable for admission pursuant to Rule 153.⁶¹

37. As regards relevance, the Panel notes that the SPO intends to rely on W04305's Rule 153 Statements in relation to, *inter alia*: (i) W04305's encounter in May 1998 with a named JCE member and another individual relevant to these proceedings, who allegedly called villagers withdrawing from a particular location traitors and instructed people from surrounding villages not to offer them hospitality; (ii) the circumstances of W04305's detention, questioning and beating by KLA members at two locations relevant to these proceedings; and (iii) the detention and beating

⁵⁷ W04305's Proposed Evidence consists of the following items, including any translations thereof: (i) 076920-TR-ET Part 1 RED2, 076920-TR-ET Part 2 RED2, 076920-TR-ET Part 3 RED2, (ii) [REDACTED], (iii) [REDACTED], (iv) [REDACTED], (v) [REDACTED], (vi) [REDACTED], (vii) [REDACTED], and (viii) [REDACTED] ("W04305's Rule 153 Statements"); and (i) [REDACTED], (ii) [REDACTED], and (iii) [REDACTED] ("W04305's Associated Exhibits"). See Annex 4 to the Motion. The Panel notes that the SPO does not tender Associated Exhibit 4 for admission (see Annex 4 to the Motion, p. 8).

⁵⁸ Motion, paras 18-22.

⁵⁹ Joint Response, para. 3. See also Motion, para. 48.

⁶⁰ Joint Response, paras 15-16, 19. See also Joint Response, paras 17-18, 20-22.

⁶¹ Reply, para. 9. See also Reply, para. 10.

of others by the KLA.⁶² The Panel further notes that the Defence does not challenge the relevance of W04305's Rule 153 Statements. Having reviewed the content of W04305's Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in the Indictment.⁶³

38. As regards authenticity, the Panel notes that (i) W04305's Rule 153 Statements consist of the witness's SPO interview as well as testimony and statement from another jurisdiction; (ii) W04305's SPO interview and testimony in the other jurisdiction were recorded in a verbatim transcript;⁶⁴ (iii) during the SPO interview, W04305 was duly advised of his rights as a witness and confirmed that the contents of his statements, including his prior testimony and statement, are true and accurate;⁶⁵ (iv) the witness's statement contains a witness acknowledgment and interpreter certification, is signed by the witness and initialled on all pages by all participants;⁶⁶ and (v) in the context of his testimony before another jurisdiction, the witness took a solemn declaration and was cross-examined.⁶⁷ The Panel further notes that the Defence does not challenge the authenticity of W04305's Rule 153 Statements. The Panel is therefore satisfied that W04305's Rule 153 Statements are *prima facie* authentic.

39. Turning to W04305's Associated Exhibits, the Panel notes that they consist of a map and two photos that were marked and discussed by the witness during his testimony before another jurisdiction.⁶⁸ The Panel is satisfied that W04305's Associated Exhibits form an indispensable and inseparable part of W04305's Rule 153 Statements. As such, the Panel is satisfied that they: (i) are relevant and

⁶² Motion, paras 18-19; *see also* Amended List of Witnesses, pp. 253-254.

⁶³ *See* Indictment, paras 16-31, 59-61, [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

⁶⁴ 076920-TR-ET Part 1 RED2, p. 1; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. *See also* Annex 4 to the Motion, pp. 1-4.

⁶⁵ 076920-TR-ET Part 1 RED2, pp. 6-8, 12. *See also* Annex 4 to the Motion, p. 1.

⁶⁶ [REDACTED]. *See also* Annex 4 to the Motion, pp. 5-6.

⁶⁷ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. *See also* Annex 4 to the Motion, pp. 2-4.

⁶⁸ In relation to [REDACTED], *see* [REDACTED]; in relation to [REDACTED], *see* [REDACTED]; in relation to [REDACTED], *see* [REDACTED]. *See also* Annex 4 to the Motion, pp. 6-7.

will provide relevant context to the written record in which they are discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

40. Regarding the probative value of W04305's Proposed Evidence and its suitability for admission pursuant to Rule 153, the Panel notes that the SPO submits that W04305's Proposed Evidence: (i) is largely cumulative of other witness evidence concerning the abduction, detention, and mistreatment by KLA members in an area of relevance to these proceedings; and (ii) is corroborated by witnesses whom the Accused were and will be able to cross-examine, and complements relevant adjudicated facts.⁶⁹ The Panel also notes that W04305's Proposed Evidence is not unduly repetitive and provides crime-base evidence which, although relevant to the acts and conduct of an alleged contributor,⁷⁰ goes to proof of matters other than the acts and conduct of the Accused as charged in the Indictment. The Panel further recalls its findings regarding the *prima facie* authenticity of W04305's Proposed Evidence,⁷¹ and is satisfied that W04305'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 W04305's Proposed Evidence pursuant to Rule 153.⁷²

41. The Panel notes that the Thaçi Defence argues that cross-examination is required in relation to alternative motivations for W04305's arrest and detention as well as W04305's credibility and reliability.⁷³ The Panel agrees with the SPO that the proposed lines of cross-examination have already been addressed in W04305's Rule 153 Statements.⁷⁴ Also, evidence in support of those alternative motivations could be tendered by the Defence, either from the bar table or through other witnesses, without causing unfair prejudice to the Defence. The Panel recalls that

⁶⁹ See Motion, para. 21, referring to [REDACTED], and Adjudicated Facts [REDACTED].

⁷⁰ See below para. 42.

⁷¹ See above para. 38. See also Annex 4 to the Motion.

⁷² Joint Response, para. 3. See also Motion, para. 48.

⁷³ Joint Response, paras 16-21.

⁷⁴ See e.g. [REDACTED]; [REDACTED]; [REDACTED].

the state of mind of alleged perpetrators of underlying crimes is not to be mistaken for evidence relevant to establishing the alleged *mens rea* of the Accused.⁷⁵ The Panel further recalls its finding that, generally speaking, the hearsay nature of proposed evidence is not an impediment to its admission,⁷⁶ and expresses the view that alleged inaccuracies in the witness's Rule 153 Statements are no ground for requiring cross-examination when the Rule 153 requirements are otherwise met, as this would be a matter going to the weight to be assigned to W04305's evidence in light of all the evidence at trial, and not to its admissibility.⁷⁷ Regarding the volume and alleged repetitiveness nature of the materials tendered,⁷⁸ the Panel is satisfied that: (i) the length of W04305's Rule 153 Statements is not *per se* an impediment to its admission pursuant to Rule 153; (ii) W04305's Rule 153 Statements, given at different times and to different authorities, are not unduly repetitive; and (iii) their admission would not be overly burdensome to the record.

42. This being said, the Panel notes that W04305's Rule 153 Statements extensively refers to the roles and actions of an alleged member of the JCE charged in the Indictment.⁷⁹ The Panel is therefore of the view that the prejudicial effect of the admission of such evidence under Rule 153 outweighs its probative value at this stage due to its incriminatory character.⁸⁰ Accordingly, the Panel exercises its discretion not to admit W04305's Proposed Evidence pursuant to Rule 153. This is without prejudice to any Rule 154 application in relation to W04305 or the SPO's calling the witness to testify live.

43. For these reasons, the Panel finds that W04305's Proposed Evidence is not admissible pursuant to Rules 138(1) and 153, without prejudice to any Rule 154

⁷⁵ See above para. 15.

⁷⁶ See above para. 22.

⁷⁷ First Rule 153 Decision, para. 56.

⁷⁸ Joint Response, para. 22.

⁷⁹ See e.g. 076920-TR-ET Part 1, p. 30; 076920-TR-ET Part 2 RED2, pp. 19-20; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁸⁰ See Rule 153(1)(b)(ii).

application in relation to W04305 or the SPO's calling the witness to testify live.

E. W04361

44. The SPO submits that W04361's Proposed Evidence⁸¹ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.⁸²

45. The Defence objects to the admission of W04361's Proposed Evidence pursuant to Rule 153.⁸³ The Defence submits that W04361 has given five statements/testimonies to various investigative authorities or courts, and in each case, contradicts and adds new information to previous statements/testimonies.⁸⁴ The Defence therefore contends that W04361 must appear for cross-examination in order to test the reliability of his account and his credibility as a witness.⁸⁵

46. The SPO replies that the Defence fails to provide adequate reasons why the evidence of W04361 is not suitable for admission pursuant to Rule 153.⁸⁶

47. As regards relevance, the Panel notes that the SPO intends to rely on W04361's Rule 153 Statements in relation to, *inter alia*: (i) the circumstances of W04361's arrest, detention, questioning and beating by KLA soldiers in summer 1998; and (ii) the detention and beating of other detainees.⁸⁷ The Panel further notes that the Defence does not challenge the relevance of W04361's Rule 153 Statements. Having reviewed the content of W04361's Rule 153 Statements, the Panel is

⁸¹ W04361's Proposed Evidence consists of the following items, including any translations thereof: (i) 061038-TRET Part 1 RED2, 061038-TR-ET Part 2 RED2, (ii) SITF00180660-00180697 RED, (iii) SITF00179880-00179907 RED, (iv) SITF00297579-00297585 RED, and (v) SITF00297568-00297572 RED ("W04361's Rule 153 Statements"). See Annex 5 to the Motion.

⁸² Motion, paras 23-27.

⁸³ Joint Response, paras 3, 23, 32. See also Motion, para. 48.

⁸⁴ Joint Response, para. 25. See also Joint Response, paras 26-31.

⁸⁵ Joint Response, para. 25.

⁸⁶ Reply, paras 11-12.

⁸⁷ Motion, para. 23; see also Amended List of Witnesses, p. 272.

satisfied that they are relevant to the crimes charged in the Indictment.⁸⁸

48. As regards authenticity, the Panel notes that W04361's Rule 153 Statements comprise the witness's SPO interview, his testimony in domestic proceedings and statements given to authorities. The Panel also notes that during the SPO's interview, which is recorded in verbatim transcripts, the witness was duly advised of his rights as a witness, confirmed that the contents of his statements, including his prior statements, are true and accurate, and provided explanations for certain inconsistencies.⁸⁹ The Panel further notes that the Defence does not challenge the authenticity of W04361's Rule 153 Statements. The Panel is therefore satisfied that W04361's Rule 153 Statements are *prima facie* authentic.

49. Regarding the probative value of W04361's Rule 153 Statements and their suitability for admission pursuant to Rule 153, the Panel notes that the SPO submits that W04361's Rule 153 Statements: (i) are largely cumulative of other witness evidence concerning the abduction, detention, and mistreatment by KLA members in an area of relevance to these proceedings; and (ii) are corroborated by witnesses whom the Accused were and will be able to cross-examine, and complement relevant adjudicated facts.⁹⁰ The Panel also notes that W04361's Rule 153 Statements are relatively limited in length, are not unduly repetitive, and provide 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 recalls its findings regarding the *prima facie* authenticity of W04361's Rule 153 Statements,⁹¹ and is satisfied that W04361's Rule 153 Statements meet the requirements under Rule 153(2).

50. Regarding the Defence's challenge to W04361's credibility and reliability,⁹²

⁸⁸ See Indictment, paras 16-31, 59-61, [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

⁸⁹ 061038-TR-ET Part 1 RED2, pp. 2-7, 28-29, 45-46, 58-59. See also Annex 5 to the Motion, pp. 1-4.

⁹⁰ See Motion, para. 27, referring to [REDACTED], and Adjudicated Facts [REDACTED].

⁹¹ See above para. 48. See also Annex 5 to the Motion.

⁹² Joint response, paras 25-32.

the Panel is of the view that the fact that W04361's Rule 153 Statements are said to be contradictory is not, without more, sufficient ground normally for requiring cross-examination if the Rule 153 requirements are otherwise met. The Panel has considered in particular the facts and circumstances to which these alleged discrepancies pertain, the importance and/or material relevance of those to the case, and whether the various statements do in fact contain indications of differences of account. To the extent that such discrepancies have been shown to exist, the Panel has further considered whether the Panel could address them effectively in its assessment of the witness's evidence without the benefit of further questioning in respect of those. Finally, the Panel has repeatedly stated that it 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.⁹³ In these particular circumstances, the Panel is not persuaded that the further information which the Defence wishes to elicit from W04361 warrants his attendance for cross-examination. Accordingly, the Panel is satisfied that W04361's Rule 153 Statements are: (i) probative and their admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

51. For these reasons, the Panel finds that W04361's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

F. W04722

52. The SPO submits that W04722's Proposed Evidence⁹⁴ is relevant, authentic,

⁹³ First Rule 153 Decision, para. 56.

⁹⁴ W04722's Proposed Evidence consists of the following items, including any translations thereof: (i) 078568-TR-ET Part 1 RED, 078568-TR-ET Part 2 RED, (ii) SPOE00092059-00092086, pp. SPOE00092077-00092086, (iii) SPOE00092116-00092145, and (iv) SPOE00092178-00092203 ("W04722's Rule 153 Statements"); and 036622-036837, p. 036805 ("W04722's Associated Exhibit"). See Annex 6 to the Motion. The Panel notes that the SPO does not tender p. 036807 of W04722's Associated Exhibit for admission (*see* Annex 6 to the Motion, p. 5).

reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.⁹⁵

53. The Defence objects to the admission of W04722's Proposed Evidence pursuant to Rule 153.⁹⁶ The Defence submits that W04722 is a key witness to the alleged detention sites at two relevant locations and the structure of a KLA Brigade, such that the Defence should be afforded the right to test his evidence.⁹⁷ The Defence also contends that it seeks to cross-examine W04722 on additional topics relevant to the Defence case, including the reliability of W04722's specific recollections, and that W04576 is better placed to authenticate W04722's Associated Exhibit, which should therefore be marked for identification until such time as W04576's testimony has been completed.⁹⁸

54. The SPO replies that the Defence fails to provide adequate reasons why the evidence of W04722 is not suitable for admission pursuant to Rule 153.⁹⁹

55. As regards relevance, the Panel notes that W04722 joined the KLA in early 1999, reporting to a KLA Brigade commander and his deputy, and that the SPO intends to rely on W04722's Rule 153 Statements in relation to, *inter alia*: (i) W04722's role in the KLA, and the leadership, structure, and area of responsibility of the KLA Brigade in question; (ii) the composition of the relevant operational zone and organization of the relevant KLA Brigades; and (iii) the detention and questioning of detainees by the KLA at a certain location.¹⁰⁰ The Panel further notes that the Defence does not challenge the relevance of W04722's Rule 153 Statements. Having reviewed the content of W04722's Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in

⁹⁵ Motion, paras 28-33.

⁹⁶ Joint Response, paras 3, 33. *See also* Motion, para. 48.

⁹⁷ Joint Response, para. 33. *See also* Joint Response, paras 34-37.

⁹⁸ Joint Response, paras 38-40.

⁹⁹ Reply, para. 13.

¹⁰⁰ Motion, para. 28; *see also* Amended List of Witnesses, p. 433.

the Indictment.¹⁰¹

56. As regards authenticity, the Panel notes that W04722's Rule 153 Statements comprise: (i) the verbatim transcripts of the witness's SPO interview, during which he was duly advised of his rights as a witness and confirmed that the contents of his statement are true and accurate;¹⁰² and (ii) the verbatim transcript, signed by the Presiding Judge, of the witness's trial testimony in a domestic proceedings, before which he made a solemn declaration.¹⁰³ The Panel further notes that the Defence does not challenge the authenticity of W04722's Rule 153 Statements. The Panel is therefore satisfied that W04722's Rule 153 Statements are *prima facie* authentic.

57. Turning to W04722's Associated Exhibit, the Panel notes that it consists of photographs of Brigade headquarters which were discussed by the witness during his SPO interview.¹⁰⁴ The Panel is satisfied that W04722's Associated Exhibit forms an indispensable and inseparable part of W04722's Rule 153 Statements. The Panel is also satisfied that the fact that another witness is capable of providing evidence in relation to this document is no ground, in principle, to delay its admission. The Defence's request that W04722's Associated Exhibit be marked for identification until such time as W04576's testimony has been completed is accordingly rejected.¹⁰⁵ For these reasons, the Panel is satisfied that W04722's Associated Exhibit: (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.

58. Regarding the probative value of W04722's Proposed Evidence and its

¹⁰¹ See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

¹⁰² 078658-TR-ET Part 1 RED, pp. 2-6; 078658-TR-ET Part 2 RED, pp. 33-35. See also Annex 6 to the Motion, p. 1.

¹⁰³ SPOE00092059-00092086, pp. SPOE00092077-SPOE00092078, SPOE00092086; SPOE00092116-00092145, pp. SPOE00092116, SPOE00092145; SPOE00092178-00092203, pp. SPOE00092178, SPOE00092203. See also Annex 6 to the Motion, pp. 2-4.

¹⁰⁴ 078658-TR-ET Part 2 RED, pp. 18-20, 23-24. See also Annex 6 to the Motion, p. 5.

¹⁰⁵ See Joint Response, para. 40.

suitability pursuant to Rule 153, the Panel notes that the SPO submits that: (i) W04722's Rule 153 Statements complement each other; (ii) W04722's Proposed Evidence is largely cumulative of other witness and documentary evidence concerning the abduction, detention, and mistreatment by KLA members in locations at four locations of relevance; and (iii) W04722's Proposed Evidence is corroborated by witnesses whom the Accused were and will be able to cross-examine, and complements relevant adjudicated facts.¹⁰⁶ The Panel also notes that W04722's Proposed Evidence is relatively limited in length and is not unduly repetitive. The Panel further recalls its findings regarding the *prima facie* authenticity of W04722's Proposed Evidence,¹⁰⁷ and is satisfied that W04722's Proposed Evidence meets the requirements under Rule 153(2).

59. Regarding the Defence's arguments that it should be afforded the right to test W04722's evidence in light of its centrality to the case,¹⁰⁸ the Panel is satisfied that, as acknowledged by the Defence,¹⁰⁹ W04722's Proposed Evidence does not go to proof of the acts and conduct of the Accused in relation to the crimes charged. In this regard, the Panel notes that W04722's references to Mr Thaçi and Mr Krasniqi are general in nature and only relate to the witness's overall knowledge of the two Accused.¹¹⁰ The Panel is also of the view that, contrary to the Defence's submissions,¹¹¹ W04722's Proposed Evidence addresses the basis for his knowledge and understanding of the term 'collaborator' as well as his knowledge of the KLA in the area of relevance to his evidence.¹¹² The Panel further takes note of the Defence's wish to cross-examine W04722 on additional topics said to be relevant to the Defence case.¹¹³ While the onus of establishing the conditions of

¹⁰⁶ See Motion, paras 30, 32, referring to [REDACTED], and Adjudicated Facts [REDACTED].

¹⁰⁷ See above para. 56. See also Annex 6 to the Motion.

¹⁰⁸ Joint Response, paras 33-34.

¹⁰⁹ Joint Response, para. 33.

¹¹⁰ See 078568-TR_ET Part 2, pp. 23-24.

¹¹¹ Joint Response, paras 35-36.

¹¹² See 078568-TR-ET Part 1, pp. 18-19; 078568-TR-ET Part 2, pp. 5-10.

¹¹³ Joint Response, paras. 37-39.

admission under Rule 153 is with the SPO, the Panel notes that the Defence has failed to establish that these issues are important to its case, that they cannot effectively be explored with other witnesses and that prejudice would arise from its inability to raise those issues with this particular witness. In this regard, the Panel recalls its finding that alleged inaccuracies in the witness's Rule 153 Statements are not in principle sufficient ground for requiring cross-examination when the Rule 153 requirements are otherwise met, as this would be a matter going to the weight to be assigned to W04722's evidence in light of all the evidence at trial, and not to its admissibility.¹¹⁴ The Panel is therefore not persuaded that the further information which the Defence wishes to elicit from W04722 warrants his attendance for cross-examination. Accordingly, the Panel is satisfied that W04722's Proposed Evidence is: (i) probative and its admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

60. For these reasons, the Panel finds that W04722's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

G. W04816

61. The SPO submits that W04816's Proposed Evidence¹¹⁵ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹¹⁶

¹¹⁴ First Rule 153 Decision, para. 56.

¹¹⁵ W04816's Proposed Evidence consists of the following items, including any translations thereof: (i) 092967-TR-ET Part 1 RED, 092967-TR-ET Part 2 RED, 092967-TR-ET Part 3 RED, (ii) SITF00009440-SITF00009459 RED2, pp. SITF00009440-00009443, and (iii) SITF00009440-SITF00009459 RED2, pp. SITF00009444-SITF00009447, SITF00009454-SITF00009456 ("W04816's Rule 153 Statements"); and (i) 092958-092966, pp. 092958-092959, (ii) 092958-092966, pp. 092960-092961, (iii) 092958-092966, p. 092962, (iv) 092958-092966, pp. 092963-092964, and (v) SITF00009440-SITF00009459 RED2, pp. SITF00009448-SITF00009449 ("W04816's Associated Exhibits"). See Annex 7 to the Motion.

¹¹⁶ Motion, paras 34-37.

62. The Defence objects to the admission of W04816's Proposed Evidence pursuant to Rule 153.¹¹⁷ The Defence challenges the SPO's assertions that the Accused will be able to effectively confront W04816's evidence by cross-examining other witnesses on its list and that W04816's evidence is largely cumulative.¹¹⁸ The Defence objects in particular to the submission of the intercepts discussed by W04816 pursuant to Rule 153.¹¹⁹ The Defence further submits that W04816 is the sole high-ranking military officer from a particular armed force, who is relied upon by the SPO and can provide unique evidence due to his (former) role and position.¹²⁰

63. The SPO replies that W04816's Proposed Evidence is largely cumulative to and corroborated by other witness and documentary evidence concerning the abduction, detention, and mistreatment by KLA members in a particular location of relevance to this case.¹²¹ The SPO further submits that: (i) the topics on which the Defence claims it wants to cross-examine W04816 are largely tangential and of limited relevance to the core purpose of W04816's testimony; and (ii) the intercepts discussed by W04816 meet the admissibility requirements for associated exhibits.¹²²

64. As regards relevance, the Panel notes that W04816 was a high-ranking officer in a force of relevance to this case at the relevant time, and that the SPO intends to rely on W04816's Rule 153 Statements in relation to, *inter alia*: (i) W04816's command of a particular military entity; and (ii) the kidnapping and killing of certain individuals by the KLA.¹²³ The Panel further notes that the Defence does not challenge the relevance of W04816's Rule 153 Statements. Having reviewed

¹¹⁷ Joint Response, paras 3, 41. *See also* Motion, para. 48.

¹¹⁸ Joint Response, paras 42-44.

¹¹⁹ Joint Response, para. 45.

¹²⁰ Joint Response, para. 46.

¹²¹ Reply, para. 14.

¹²² Reply, paras 15-16.

¹²³ Motion, para. 34; *see also* Amended List of Witnesses, pp. 515-516.

the content of W04816's Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in the Indictment.¹²⁴

65. As regards authenticity, the Panel notes that W04816's Rule 153 Statements comprise the witness's SPO interview as well as his statements to the Serbian Ministry of Internal Affairs ("MUP") and to UNMIK. The Panel further notes that W04816's SPO interview was recorded in verbatim transcripts and that, during the interview, W04816 was duly advised of his rights as a witness and confirmed that the contents of his statements, including his statements to the Serbian MUP and to UNMIK, are true and accurate.¹²⁵ Turning to the MUP and UNMIK statements, both contain the witness's acknowledgement with the witness's signature or initials on all pages.¹²⁶ The Panel further notes that the Defence does not challenge the authenticity of W04816's Rule 153 Statements. The Panel is therefore satisfied that W04816's Rule 153 Statements are *prima facie* authentic.

66. Turning to W04816's Associated Exhibits, the Panel notes that they consist of notes taken by the witness, a photo and an intercept, which were discussed by the witness during his SPO interview.¹²⁷ The Panel is satisfied that W04816's Associated Exhibits form an indispensable and inseparable part of W04816's Rule 153 Statement. Accordingly, the Defence's objection to the admission of the intercepts discussed by W04816 pursuant to Rule 153 is dismissed.¹²⁸ For these reasons, the Panel is satisfied that W04816's Associated Exhibits: (i) are relevant

¹²⁴ See Indictment, paras 16-31, 59-61, [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

¹²⁵ 092967-TR-E Part 1 RED, pp. 2-3, 5-9; 092967-TR-E Part 2 RED, pp. 3-6; 092967-TR-E Part 3 RED, pp. 8-9. See also Annex 7 to the Motion, p. 2.

¹²⁶ See Annex 7 to the Motion, pp. 3-4.

¹²⁷ In relation to 092958-092966, pp. 092958-092959, see 092967-TR-E Part 1 RED, pp. 15-16; in relation to 092958-092966, pp. 092960-092961, see 092967-TR-E Part 1 RED, pp. 15-16; in relation to 092958-092966, p. 092962, see 092967-TR-E Part 2 RED, pp. 7-8; in relation to 092958-092966, pp. 092963-092964, see 092967-TR-E Part 2 RED, p. 15, 092967-TR-E Part 3 RED, pp. 1-4; in relation to SITF00009440-SITF00009459 RED2, pp. SITF00009448-SITF00009449, see 092967-TR-E Part 1 RED, pp. 10-11. See also Annex 7 to the Motion, pp. 4-6.

¹²⁸ See Joint Response, para. 45.

and will provide relevant context to the written record in which they are discussed; and (ii) bear sufficient indicia of *prima facie* authenticity.

67. Regarding the probative value of W04816's Proposed Evidence and its suitability pursuant to Rule 153, the Panel takes note of the Defence's challenges to the SPO's assertions that the Accused will be able to effectively confront W04816's evidence and that W04816's evidence is largely cumulative.¹²⁹ In this regard, the Panel notes that the SPO submits that W04816's Proposed Evidence: (i) is largely cumulative of other witness evidence concerning the abduction, detention, and mistreatment by KLA members in locations of relevance; and (ii) is corroborated by other witness evidence and complements relevant adjudicated facts.¹³⁰ The Panel is therefore not persuaded that the further information which the Defence wishes to elicit from W04816 warrants his attendance for cross-examination. The Panel also notes that W04816's Proposed Evidence is 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 further recalls its findings regarding the *prima facie* authenticity of W04816's Proposed Evidence,¹³¹ and is satisfied that W04816's Proposed Evidence meets the requirements under Rule 153(2). Accordingly, the Panel is satisfied that W04816's Proposed Evidence is: (i) probative and its admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

68. For these reasons, the Panel finds that W04816's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

¹²⁹ Joint Response, paras 42-44. *See also* Joint Response, para. 46.

¹³⁰ *See* Motion, para. 36, referring to [REDACTED], and Adjudicated Facts [REDACTED]. *See also* Reply, para. 14.

¹³¹ *See above* para. 65. *See also* Annex 7 to the Motion.

H. W04850

69. The SPO submits that W04850's Proposed Evidence¹³² is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹³³

70. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04850's Proposed Evidence pursuant to Rule 153.¹³⁴ The Thaçi Defence submits that it should be allowed to cross-examine W04850 on the same matters and for the same reason already highlighted with regard to another witness.¹³⁵

71. The SPO replies that the Thaçi Defence fails to provide adequate reason why the evidence of W04850 is not suitable for admission pursuant to Rule 153.¹³⁶

72. As regards relevance, the Panel notes that W04850 is a close relative of an alleged murder victim, who was allegedly arrested by KLA members in early 1999, and that the SPO intends to rely on W04850's Rule 153 Statements in relation to, *inter alia*: (i) the circumstances of the arrest of that alleged victim and another witness; (ii) W04850 seeing his close relative for the last time around March 1999 when he was being taken by a KLA member; (iii) W04850's unsuccessful attempts to obtain information concerning his whereabouts; and (iv) the circumstances of the detention and mistreatment of various individuals at locations of relevance.¹³⁷ The Panel further notes that the Defence does not challenge the relevance of W04850's Rule 153 Statements. Having reviewed the content of W04850's Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in

¹³² W04850's Proposed Evidence consists of the following items, including any translations thereof: (i) SPOE00089545-00089570 RED, and (ii) SPOE00092352-00092379 RED, pp. SPOE00092355-0092379 RED ("W04850's Rule 153 Statements"). See Annex 8 to the Motion.

¹³³ Motion, paras 38-41.

¹³⁴ Joint Response, para. 3. See also Motion, para. 48.

¹³⁵ Joint Response, paras 49-51. See [REDACTED].

¹³⁶ Reply, para. 17.

¹³⁷ Motion, para. 38; see also Amended List of Witnesses, p. 540.

the Indictment.¹³⁸

73. As regards authenticity, the Panel notes that W04850's Rule 153 Statements comprise the witness's testimony in domestic proceedings, recorded in signed verbatim transcripts and preceded by solemn declarations.¹³⁹ The Panel further notes that the Defence does not challenge the authenticity of W04850's Rule 153 Statements. The Panel is therefore satisfied that W04850's Rule 153 Statements are *prima facie* authentic.

74. Regarding the probative value of W04850's Rule 153 Statements and their suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04850's Rule 153 Statements: (i) complement each other; (ii) are largely cumulative of other witness and documentary evidence concerning the abduction, detention, and mistreatment by KLA members at various locations; and (iii) are corroborated by witnesses whom the Accused were and will be able to cross-examine, and complement relevant adjudicated facts.¹⁴⁰ The Panel also notes that W04850's Rule 153 Statements are limited in length, are not unduly repetitive, and provide 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 recalls its findings regarding the *prima facie* authenticity of W04850's Rule 153 Statements,¹⁴¹ and is satisfied that W04850's Rule 153 Statements meet 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 W04850's Proposed Evidence pursuant to Rule 153.¹⁴²

¹³⁸ See Indictment, paras 59-61, [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

¹³⁹ SPOE00089545-00089570 RED, pp. SPOE00089545-00089546, SPOE00089570; SPOE00092352-00092379 RED, pp. SPOE00092352, SPOE00092356, SPOE00092379. See also Annex 8 to the Motion, pp. 1-2.

¹⁴⁰ See Motion, paras 40-41, referring to [REDACTED], and Adjudicated Facts [REDACTED].

¹⁴¹ See above para. 73. See also Annex 8 to the Motion.

¹⁴² Joint Response, para. 3. See also Motion, para. 48.

75. Regarding the Thaçi Defence's argument that it should be allowed to cross-examine W04850 on the reason for the arrest and detention of his close relative,¹⁴³ the Panel is of the view that W04850's Rule 153 Statements already address the witness's knowledge of those reasons.¹⁴⁴ The Panel recalls that the state of mind of alleged perpetrators of underlying crimes is not to be mistaken for evidence relevant to establishing the alleged *mens rea* of the Accused.¹⁴⁵ This being said, the Panel notes that the SPO intends to rely on W04850's Rule 153 Statements in relation to, *inter alia*, the circumstances of the arrest and detention of this and another alleged victim.¹⁴⁶ The Panel observes that those aspects of W04850's evidence overlap with relevant aspects of the Proposed Evidence of other Rule 153 witnesses.¹⁴⁷ Considering that the Panel is satisfied that the Proposed Evidence of those other Rule 153 witnesses is admissible,¹⁴⁸ the Panel is of the view that the prejudicial effect of the admission of W04850's Proposed Evidence under Rule 153 outweighs its probative value at this stage. Accordingly, the Panel will exercise its discretion not to admit W04850's Proposed Evidence pursuant to Rule 153. This is without prejudice to any Rule 154 application in relation to W04850 or the SPO's calling the witness to testify live. The Panel notes that, following this ruling, should the SPO not seek the admission of W04850's Proposed Evidence pursuant to Rule 154 nor call the witness to testify *viva voce*, the Panel may take this into account when evaluating the evidence of the other relevant witnesses in the final judgment.

76. For these reasons, the Panel finds that W04850's Proposed Evidence is not admissible pursuant to Rules 138(1) and 153, without prejudice to any Rule 154

¹⁴³ Joint Response, paras 49-51.

¹⁴⁴ See *e.g.* SPOE00089545-00089570 RED, pp. SPOE00089549; SPOE00092352-00092379 RED, p. SPOE00092374.

¹⁴⁵ See *above* para. 15.

¹⁴⁶ Motion, para. 38; see also Amended List of Witnesses, p. 540.

¹⁴⁷ See [REDACTED]. See also [REDACTED].

¹⁴⁸ See [REDACTED].

application in relation to W04850 or the SPO's calling the witness to testify live.

I. W04851

77. The SPO submits that W04851's Proposed Evidence¹⁴⁹ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹⁵⁰

78. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04851's Proposed Evidence pursuant to Rule 153.¹⁵¹ The Thaçi Defence submits that W04851's understanding about why his close relative was abducted needs to be explored with him orally in cross-examination, as he posits two different reasons in his Rule 153 Statements.¹⁵² The Thaçi Defence further contends that neither the other two witnesses who give evidence on this matter nor the adjudicated facts cited by the SPO deal with the reason for the abduction of W04851's relative and therefore do not corroborate the key matter in issue.¹⁵³

79. The SPO replies that W04851's evidence about his knowledge of why his relative may have been arrested and detained is not equivocal.¹⁵⁴

80. As regards relevance, the Panel notes that W04851 is a close relative of an alleged murder victim, who was allegedly arrested by the KLA in early 1999 and has been missing since, and that the SPO intends to rely on W04851's Rule 153 Statements in relation to, *inter alia*: (i) the circumstances of the arrest of that alleged victim in 1999; and (ii) W04851's attempts to establish that alleged victim's

¹⁴⁹ W04851's Proposed Evidence consists of the following items, including any translations thereof: (i) SPOE00089487-00089515 RED, and (ii) SPOE00092000-00092028 RED, SPOE00092059-00092086, pp. SPOE00092059-00092077 ("W04851's Rule 153 Statements"). See Annex 9 to the Motion.

¹⁵⁰ Motion, paras 42-44.

¹⁵¹ Joint Response, para. 3. See also Motion, para. 48.

¹⁵² Joint Response, para. 55. See also Joint Response, paras 53-54.

¹⁵³ Joint Response, para. 56.

¹⁵⁴ Reply, para. 18.

whereabouts from KLA members.¹⁵⁵ The Panel further notes that the Defence does not challenge the relevance of W04851's Rule 153 Statements. Having reviewed the content of W04851's Rule 153 Statements, the Panel is satisfied that they are relevant to the crimes charged in the Indictment.¹⁵⁶

81. As regards authenticity, the Panel notes that W04851's Rule 153 Statements comprise UNMIK official judicial records which include the date, time, case number, and identification of participants.¹⁵⁷ The Panel also notes that the witness was advised of and acknowledged his obligations and rights as a witness, and attested to the statements.¹⁵⁸ The Panel further notes that the Defence does not challenge the authenticity of W04851's Rule 153 Statements. The Panel is therefore satisfied that W04851's Rule 153 Statements are *prima facie* authentic.

82. Regarding the probative value of W04851's Rule 153 Statements and their suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04851's Rule 153 Statements: (i) are largely cumulative of other witness evidence concerning the detention by KLA members in relevant locations; and (iii) are corroborated by witnesses whom the Accused were and will be able to cross-examine, and complement relevant adjudicated facts.¹⁵⁹ The Panel also notes that W04851's Rule 153 Statements are limited in length, are not unduly repetitive, and provide 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 recalls its findings regarding the *prima facie* authenticity of W04851's Rule 153 Statements,¹⁶⁰ and is satisfied that W04851's Rule 153 Statements meet the

¹⁵⁵ Motion, para. 42; *see also* Amended List of Witnesses, p. 541.

¹⁵⁶ *See* Indictment, paras 59-61, [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

¹⁵⁷ SPOE00089487-00089515 RED, pp. SPOE00089487-SPOE00089488; SPOE00092000-00092028 RED, p. SPOE00092000; SPOE00092059-00092086, pp. SPOE00092059-SPOE00092060. *See also* Annex 9 to the Motion, pp. 1-2.

¹⁵⁸ SPOE00089487-00089515 RED, pp. SPOE00089488, SPOE00089515; SPOE00092000-00092028 RED, p. SPOE00092001. *See also* Annex 9 to the Motion, pp. 1-2.

¹⁵⁹ *See* Motion, para. 44, *referring to* [REDACTED], and Adjudicated Facts [REDACTED].

¹⁶⁰ *See above* para. 81. *See also* Annex 9 to the Motion.

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 W04851's Proposed Evidence pursuant to Rule 153.¹⁶¹

83. Regarding the Thaçi Defence's wish to explore in cross-examination W04851's understanding about why his relative might have been arrested and detained,¹⁶² the Panel is of the view that W04851's Rule 153 Statements already address this matter.¹⁶³ While the onus of establishing the requirements of Rule 153 is with the moving Party, the Panel notes that the Defence has failed to establish that evidence thought to be relevant to this matter cannot be tendered from the bar table or elicited from other witnesses, and that prejudice would arise from its inability to raise those issues with this particular witness. The Panel further recalls that the state of mind of alleged perpetrators of underlying crimes is not to be mistaken for evidence relevant to establishing the alleged *mens rea* of the Accused.¹⁶⁴ The Panel is therefore not persuaded that the further information which the Thaçi Defence wishes to elicit from W04851 warrants his attendance for cross-examination. Accordingly, the Panel is satisfied that W04851's Rule 153 Statements are: (i) probative and their admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

84. For these reasons, the Panel finds that W04851's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

¹⁶¹ Joint Response, para. 3. *See also* Motion, para. 48.

¹⁶² Joint Response, para. 55. *See also* Joint Response, paras 53-54, 56.

¹⁶³ *See e.g.* SPOE00089487-00089515 RED, pp. SPOE00089489, SPOE00089491, SPOE00089497; SPOE00092000-00092028 RED, pp. SPOE00092025-SPOE00092026; SPOE00092059-00092086, p. SPOE00092073.

¹⁶⁴ *See above* para. 15.

J. W04852

85. The SPO submits that W04852's Proposed Evidence¹⁶⁵ is relevant, authentic, reliable, and suitable for Rule 153 admission and that its probative value is not outweighed by any prejudice.¹⁶⁶

86. The Veseli Defence, Selimi Defence and Krasniqi Defence do not object to the admission of W04852's Proposed Evidence pursuant to Rule 153.¹⁶⁷ The Thaçi Defence submits that W04852 does not proffer any reason why his close relative was abducted. For the same reasons as stated in respect of another witness,¹⁶⁸ the Thaçi Defence would like the opportunity to explore with this witness the reasons why this relative was abducted.¹⁶⁹

87. The SPO replies that W04852 clearly states that he does not know the reason why his relative was taken away.¹⁷⁰

88. As regards relevance, the Panel notes that W04852 is a close relative of an alleged murder victim, who was allegedly arrested by the KLA in early 1999 and has been missing since, and that the SPO intends to rely on W04852's Rule 153 Statements in relation to, *inter alia*: (i) W04852 last seeing this alleged victim when he was arrested by KLA members; and (ii) W04852 obtaining information from certain individuals regarding the alleged victim's whereabouts.¹⁷¹ The Panel further notes that the Defence does not challenge the relevance of W04852's Rule 153 Statement. Having reviewed the content of W04852's Rule 153 Statement, the Panel is satisfied that it is relevant to the crimes charged in the Indictment.¹⁷²

¹⁶⁵ W04852's Proposed Evidence consists of the following item, including any translation thereof: SPOE00089446-00089466 RED ("W04852's Rule 153 Statement"). See Annex 10 to the Motion.

¹⁶⁶ Motion, paras 45-47.

¹⁶⁷ Joint Response, para. 3. See also Motion, para. 48.

¹⁶⁸ See [REDACTED].

¹⁶⁹ Joint Response, para. 61. See also Joint Response, para. 60.

¹⁷⁰ Reply, para. 18.

¹⁷¹ Motion, para. 45; see also Amended List of Witnesses, p. 542.

¹⁷² See Indictment, paras 59-61, [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

89. As regards authenticity, the Panel notes that W04852's Rule 153 Statement consists of a UNMIK official judicial record which includes the date, time, case number, and identification of participants.¹⁷³ The Panel also notes that the witness was advised of and acknowledged his obligations and rights as a witness, and attested to the statement.¹⁷⁴ The Panel further notes that the Defence does not challenge the authenticity of W04852's Rule 153 Statement. The Panel is therefore satisfied that W04852's Rule 153 Statement is *prima facie* authentic.

90. Regarding the probative value of W04852's Rule 153 Statement and its suitability pursuant to Rule 153, the Panel notes that the SPO submits that W04852's Rule 153 Statement: (i) is largely cumulative of other witness evidence concerning the detention by KLA members in relevant locations; and (ii) is corroborated by witnesses whom the Accused were and will be able to cross-examine, and complements relevant adjudicated facts.¹⁷⁵ The Panel also notes that W04852's Rule 153 Statement is 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 further recalls its findings regarding the *prima facie* authenticity of W04852's Rule 153 Statement,¹⁷⁶ and is satisfied that W04852's Rule 153 Statement 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 W04852's Proposed Evidence pursuant to Rule 153.¹⁷⁷

91. Regarding the Thaçi Defence's wish to explore with this witness the reasons why his close relative might have been abducted,¹⁷⁸ the Panel notes that W04852's

¹⁷³ SPOE00089446-00089466 RED, p. SPOE00089446. *See also* Annex 10 to the Motion, pp. 1-2.

¹⁷⁴ SPOE00089446-00089466 RED, p. SPOE00089446. *See also* Annex 10 to the Motion, pp. 1-2.

¹⁷⁵ *See* Motion, para. 47, referring to [REDACTED], and Adjudicated Facts [REDACTED].

¹⁷⁶ *See above* para. 89. *See also* Annex 10 to the Motion.

¹⁷⁷ Joint Response, para. 3. *See also* Motion, para. 48.

¹⁷⁸ Joint Response, paras 60-61.

Rule 153 Statement already addresses this matter.¹⁷⁹ The Panel further notes that the Thaçi Defence has not submitted or demonstrated that the evidence which it believes to be relevant to establishing the possible reason(s) for the arrest and detention of the alleged victim cannot be placed before this Panel other than through cross-examination of this witness. The Panel further recalls that the state of mind of alleged perpetrators of underlying crimes is not to be mistaken for evidence relevant to establishing the alleged *mens rea* of the Accused.¹⁸⁰ The Panel is therefore not persuaded that the further information which the Thaçi Defence wishes to elicit from W04852 warrants his attendance for cross-examination. Accordingly, the Panel is satisfied that W04852's Rule 153 Statement is: (i) probative and its admission *in lieu* of oral testimony would not be unduly prejudicial within the meaning of Rule 138(1); and (ii) suitable for admission pursuant to Rule 153(1)(a).

92. For these reasons, the Panel finds that W04852's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

V. DISPOSITION

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

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence without cross-examination the following items, including any translations thereof: (i) W04016's Proposed Evidence;¹⁸¹ (ii) W04019's Proposed Evidence;¹⁸² (iii) W04361's Proposed Evidence;¹⁸³

¹⁷⁹ See SPOE00089446-0089466 RED, pp. SPOE00089452, SPOE00089463.

¹⁸⁰ See *above* para. 15.

¹⁸¹ See *above* footnote 13.

¹⁸² See *above* footnote 27.

¹⁸³ See *above* footnote 81.

- (iv) W04722's Proposed Evidence;¹⁸⁴ (v) W04816's Proposed Evidence;¹⁸⁵
(vi) W04851's Proposed Evidence;¹⁸⁶ and (vii) W04852's Proposed Evidence;¹⁸⁷
- c) **DENIES** the admission of W04044's Proposed Evidence,¹⁸⁸ W04305's Proposed Evidence,¹⁸⁹ and W04850's Proposed Evidence,¹⁹⁰ without prejudice to any Rule 154 application in relation to these witnesses or the SPO's calling the respective witness to testify live;
- d) **DIRECTS** the Registrar to assign exhibit numbers to the items referred to in paragraph 93(b), linking the Associated Exhibits with the relevant Rule 153 Statements as indicated in footnotes 94 and 115;
- e) **DIRECTS** the Registrar to reclassify W04722's Associated Exhibit,¹⁹¹ currently classified as confidential, as public; and
- f) **DIRECTS** the Registrar to reclassify the remaining items referred to in paragraph 93(b) as confidential, if such items are currently classified as public.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 8 February 2024

At The Hague, the Netherlands.

¹⁸⁴ See above footnote 94.

¹⁸⁵ See above footnote 115.

¹⁸⁶ See above footnote 149.

¹⁸⁷ See above footnote 165.

¹⁸⁸ See above footnote 40.

¹⁸⁹ See above footnote 57.

¹⁹⁰ See above footnote 132.

¹⁹¹ See above footnote 94.