



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi, and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 26 February 2025

Language: English

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**Public Redacted Version of Decision on Prosecution Motion for Admission of
Drenica Zone Documents**

Specialist Prosecutor

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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 and 138(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 16 April 2024, the SPO filed a motion for admission of documents related to the Drenicë/Drenica operational zone ("Motion").¹
2. On 6 May 2024, the Defence filed a joint response to the Motion ("Response").²
3. On 13 May 2024, the SPO filed a reply to the Response ("Reply").³

II. SUBMISSIONS

4. The SPO requests the admission of what it says are contemporaneous KLA records relating to the Drenicë/Drenica operational zone ("Drenica OZ" and "Proposed Exhibits").⁴ The SPO submits that the Proposed Exhibits: (i) corroborate and complement witness and documentary evidence, and adjudicated facts;⁵ (ii) are *prima facie* relevant⁶ and authentic;⁷ and (iii) have probative value that is not outweighed by any prejudice.⁸

¹ F02248, Specialist Prosecutor, *Prosecution Motion for Admission of Drenica Zone Documents*, 16 April 2024, with Annexes 1-2, confidential.

² F02291, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of Drenica Zone Documents*, 6 May 2024, confidential, with one Annex, confidential (a public redacted version was filed on 8 May 2024, F02291/RED).

³ F02306, Specialist Prosecutor, *Prosecution Reply Relating to its Motion to Admit Drenica Zone Documents* (F02248), 13 May 2024.

⁴ Motion, paras 1, 24 referring to Annex 1 to the Motion, pp. 1-89.

⁵ Motion, para. 2.

⁶ Motion, paras 1, 3-18. *See also* Annex 1 to the Motion, pp. 1-89.

⁷ Motion, paras 1, 19-21. *See also* Annex 1 to the Motion, pp. 1-89.

⁸ Motion, paras 1, 22. *See also* Annex 1 to the Motion, pp. 1-89.

5. The Defence requests the Panel to defer its ruling on the admissibility of the Proposed Exhibits until, *inter alia*, W04290, [REDACTED] ("Proposed Witnesses") have testified as several of the Proposed Exhibits are said to be materially connected to these witnesses.⁹ In this respect, the Defence raises, in particular, the uncertainty surrounding whether the SPO intends to call W04290.¹⁰

6. If the Panel decides not to defer its decision, the Defence objects to the admission of the Proposed Exhibits¹¹ as: (i) their relevance is not apparent;¹² (ii) they lack *prima facie* authenticity and need to be authenticated through witnesses;¹³ and (iii) any probative value is outweighed by their prejudicial effect.¹⁴ In particular, the Defence relies on the same categories of objections previously formulated,¹⁵ and argues that: (i) the SPO is attempting to establish the relevance of a document based on inferences;¹⁶ (ii) KLA documents should be authenticated through witnesses in order to ensure their proper contextualisation;¹⁷ (iii) several documents contain virtually no indication of authenticity and, contrary to the SPO's submissions, a collection of poorly authenticated or non-authenticated documents cannot create one authenticated document;¹⁸ (iv) the SPO is seeking to reintroduce documents that have previously been rejected by the Panel;¹⁹ (v) the generic and unverifiable chain of custody information provided by the SPO provides no support in favour of the authenticity

⁹ Response, paras 3-4, 8, 41.

¹⁰ Response, paras 4-7.

¹¹ Response, paras 1-2, 9-10, 41.

¹² Response, paras 11-16; *See also* Annex 1 to the Response, pp. 1-135.

¹³ Response, paras 17-35; *See also* Annex 1 to the Response, pp. 1-135.

¹⁴ Response, paras 36-40; *See also* Annex 1 to the Response, pp. 1-135.

¹⁵ Response, para. 9 referring to F01387/A07, Specialist Counsel, *Annex 7 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential; F02243, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of Llap Zone Documents and Related Request (F02178)*, 15 April 2024, confidential, with one Annex, confidential (a public redacted version was filed on 24 April 2024, F02243/RED).

¹⁶ Response, para. 15.

¹⁷ Response, para. 17.

¹⁸ Response, paras 18-20, 27.

¹⁹ Response, paras 28-29.

of the Proposed Exhibits;²⁰ (vi) the Defence relies on its prior objections in relation to the Proposed Exhibits seized from Mr Selimi's and Mr Krasniqi's residences;²¹ and (vii) the Defence will be prejudiced by the admission of the Proposed Exhibits as it cannot be assumed that it will be able to challenge their content until it is established that the Proposed Witnesses will indeed testify and will testify in relation to the material in question.²²

7. The SPO replies that the Response misrepresents the Motion and repeats prior objections to broad categories of evidence, which have already been considered and dismissed by the Panel.²³ The SPO argues that there is no requirement that documents be tendered through a witness or that a decision on admission should be deferred until after relevant witnesses appear,²⁴ and that the Proposed Exhibits should be considered holistically in light of all of the relevant information and evidence.²⁵ Lastly, the SPO requests that the translation of Proposed Exhibit 31 be substituted with its revised version (096039-096074-ET Revised).²⁶

III. APPLICABLE LAW

8. The applicable law regarding the present matter is set out, in particular, in Article 40(6)(h) and Rule 138(1), and has been laid out extensively in the Panel's prior decisions.²⁷ The Panel will apply these standards to the present decision.

²⁰ Response, paras 30-34.

²¹ Response, para. 30.

²² Response, paras 38-40.

²³ Reply, paras 1, 5.

²⁴ Reply, para. 2.

²⁵ Reply, para. 3.

²⁶ Reply, paras 6-7.

²⁷ See e.g. F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("Decision on Bar Table Motion"), 31 March 2023, confidential, paras 8-13.

IV. DISCUSSION

A. GENERAL CONSIDERATIONS

9. The Panel rejects the Defence's request to defer its ruling on the admissibility on the Proposed Exhibits. The Panel notes that there is no requirement under the Specialist Chambers' legal framework that Proposed Exhibits be authenticated through witnesses.²⁸ What matters is that the tendering Party satisfies the Panel of the *prima facie* relevance, authenticity, probative value of the tendered items and absence of prejudice in accordance with Rule 138(1). That being said, the Panel recalls that bar table motions should not be used as a way to render the principle of orality irrelevant. While the bar table procedure is in the interest of judicial economy, it should not become an alternative to presenting the most important evidential items through witnesses who are in a position to speak to their content or origin and to be questioned about them. Even when a proposed exhibit is admitted through the bar table, the tendering party should consider making use of it in court with a relevant witness or witnesses where the good comprehension of that document and its place in the Party's case justifies it.²⁹ Moreover, the use of proposed exhibits during testimony of witnesses might provide valuable context relevant, for instance, to the weight of an exhibit.³⁰

10. The Defence further contends that the corroboration claimed by the SPO falls short of establishing the authenticity of the *specific* documents the SPO has elected to tender.³¹ In this respect, the Panel recalls that for an item to be admitted through the bar table, it must meet the four cumulative requirements of Rule 138(1).³² Corroboration may assist to establish these criteria when not evident on the face

²⁸ F02951, Panel, *Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request*, 21 February 2025, para. 21.

²⁹ Decision on Bar Table Motion, para. 16.

³⁰ Decision on Bar Table Motion, para. 17.

³¹ Response, paras 24-28.

³² Decision on Bar Table Motion, para. 9.

of a document but is not, in and of itself, a requirement for admission.³³ In addition, and consistent with the Defence's submissions,³⁴ the Panel recalls that it will not consider documents for corroboration or as supporting provenance and authenticity, if not tendered for admission,³⁵ or already admitted into evidence. Accordingly, the Panel will assess whether the Proposed Exhibits meet the requirements of Rule 138(1) and, if not, will reject the admission of the Proposed Exhibits that fail to meet that standard.

11. Regarding the Defence's submissions that the generic and unverifiable chain of custody information provided by the SPO does not authenticate the Proposed Exhibits,³⁶ the Panel recalls its prior finding that proof or record of chain of custody is not a condition for the admission of evidence.³⁷ The requirements of Rule 138(1), including in respect of *prima facie* authenticity, may be established by means other than proof or record of chain of custody.

12. The Panel notes the Defence's argument that the SPO's request for admission of some Proposed Exhibits, which the Panel has previously rejected the admission of through a bar table motion, constitutes a request for reconsideration of the Panel's prior decision pursuant to Rule 79.³⁸ The Panel considers, however, that as it denied the admission of such items "without prejudice",³⁹ the present request for the admission of such items does not constitute a request for reconsideration. The Panel will, therefore, assess whether the SPO has established that these

³³ F01595, Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154*, 9 June 2023, confidential, para. 46 (corrected and public redacted versions were filed on 10 August 2023 and 9 November 2023 respectively).

³⁴ Response, paras 28, 31.

³⁵ See for example, F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 155*, 14 June 2023, confidential, para. 50 (a public redacted version was issued on 8 September 2023, F01603/RED).

³⁶ Response, paras 30-34.

³⁷ F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion* ("Second Decision on Bar Table Motion"), 9 June 2023, para. 109 referring to KS-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgement*, 18 May 2022, para. 28.

³⁸ Response, para. 29 referring to Proposed Exhibits 22, 38, 42, 68, 71, 82.

³⁹ Second Decision on Bar Table Motion, para. 180(d).

previously rejected items, like other tendered items, meet the *prima facie* requirements for Rule 138(1).

13. In relation to the Selimi and Krasniqi Defences' objections to the Proposed Exhibits seized from the residences of Mr Selimi and Mr Krasniqi,⁴⁰ the Panel recalls its finding in the "Second Decision on the Specialist Prosecutor's Bar Table Motion" ("Second Decision on Bar Table Motion") as to the lawfulness of the search and seizure operations, which was upheld by the Court of Appeals Panel.⁴¹ The Defence has not sought reconsideration nor established that any of the issues decided in the Second Decision on Bar Table Motion warranted reconsideration pursuant to Rule 79.

14. The Panel will now turn to the argument that the Defence would be prejudiced by the admission of the Proposed Exhibits as it would not be able to challenge the Proposed Exhibits until the Proposed Witnesses appear and because some of the Proposed Exhibits were not related to any witness proposed to testify in this case.⁴² The Panel first notes that the SPO's intention to tender the relevant material has been apparent since the beginning of these proceedings, as these items have featured in the SPO's exhibit list.⁴³ The Panel also recalls that the SPO has given notice of its intention to call the Proposed Witnesses by listing them in its Rule 95(4)(b) notice.⁴⁴ Further, since the filing of the Request, [REDACTED] and W04290 have testified and the Defence had the opportunity to put the Proposed

⁴⁰ Response, para 30.

⁴¹ Second Decision on Bar Table Motion, paras 101-120; IA029/F00005, Court of Appeals Panel, *Decision on Veseli and Krasniqi Appeal against Second Decision on Specialist Prosecutor's Bar Table Motion*, 23 August 2023, confidential and *ex parte*, paras 32, 36-38 (a public redacted version was issued on the same day, IA029/F00005/RED).

⁴² Response, para. 39

⁴³ See for example, F02928/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Amended Exhibit List*, 14 February 2025, confidential.

⁴⁴ F01594/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief ("Witness List")*, 9 June 2023, confidential, pp. 208-209, 250-251, 258-259, 303, 349-350, 380-381, 473-474.

Exhibits to these witnesses.⁴⁵ It is apparent from this example that the Defence is no less able to question a witness about a document before than after its admission.

15. The SPO has also indicated, however, that it no longer intends to rely on [REDACTED], [REDACTED] and [REDACTED] and intends to offer [REDACTED]'s evidence under Rule 153.⁴⁶ The Defence submits that these four witnesses are materially connected to the Drenica OZ.⁴⁷ In this respect, the Panel observes that: (i) [REDACTED], the [REDACTED] and a [REDACTED], was scheduled to testify about, *inter alia*, his and others' mistreatment;⁴⁸ (ii) [REDACTED], the [REDACTED], was scheduled to testify about, *inter alia*, [REDACTED] being set up in the Drenica OZ and about his encounters with the Accused and other KLA members;⁴⁹ and (iii) [REDACTED], a KLA member who was arrested for being a "collaborator", was scheduled to testify about his alleged mistreatment.⁵⁰ The Panel notes that, with few exceptions, the Proposed Exhibits generally do not touch upon these subjects. Further, the Panel notes that [REDACTED], a KLA member, was due to testify about his and others' roles within the KLA.⁵¹ In this respect, the Panel observes that there are other witnesses, such as W04290, that could have been cross-examined on these matters. Therefore, the Panel is not convinced by the Defence's argument that the Defence would not have the opportunity to challenge the Proposed Exhibits by putting their content

⁴⁵ Transcript of Hearing, 25 November 2024, confidential, pp. 22541-22657; Transcript of Hearing, 26 November 2024, confidential, pp. 22660-22777; Transcript of Hearing, 27 November 2024, confidential, pp. 22791-22800, 22805-22844, 22846-22871, 22874-22891; Transcript of Hearing, 28 November 2024, confidential, pp. 22893-22992; Transcript of Hearing, 10 February 2025, confidential, pp. 24898-24998; Transcript of Hearing, 11 February 2025, pp. 25001-25116; Transcript of Hearing, 12 February 2025, pp. 25120-25215; Transcript of Hearing, 13 February 2025, pp. 25218-25304.

⁴⁶ F02693, Specialist Prosecutor, *Prosecution Notice of Further Changes to Witness List*, 1 November 2024, confidential, para. 2 (a public redacted version was filed on the same day, F02693/RED); F02808, Specialist Prosecutor, *Prosecution Notice of Further Changes to Witness List and Related Scheduling Matters*, 19 December 2024, confidential, para. 2, with one Annex, confidential.

⁴⁷ Response, para. 3.

⁴⁸ Witness List, p. 227.

⁴⁹ Witness List, pp. 349-350.

⁵⁰ Witness List, pp. 473-474.

⁵¹ Witness List, pp. 258-259.

to witnesses. Furthermore, as noted above, there is no requirement under the Specialist Chambers' legal framework that Proposed Exhibits be authenticated through witnesses,⁵² although, the absence of such a possibility might impact the weight the Panel is prepared to give to certain documents.

16. Regarding the Defence's argument that the relevance of the Proposed Exhibits is tenuous as is evidenced by the sparse references to the Proposed Exhibits in the SPO's Pre-Trial Brief,⁵³ the Panel notes that relevance is not assessed by whether or how often a Proposed Exhibit is referred to in a Party's Pre-Trial Brief. Rather, evidence is deemed to be relevant if it is connected, directly or indirectly, to elements of the offence(s) or mode(s) of liability pleaded in the indictment, and/or other facts or circumstances material to the case of the tendering Party, and/or to the establishment of the truth.⁵⁴

17. With respect to the Defence's claim that the Proposed Exhibits are replete with handwritten materials whose authors had not been identified and that the SPO had failed to provide any relevant information as to the context in which those documents were prepared,⁵⁵ the Panel recalls that documents bearing no indication of a named source might be considered to lack the requisite indicia of authenticity.⁵⁶ However, the fact that a document does not name a source or that it is handwritten does not entail that there cannot be other indications as to who authored the item, or from where it originated. For the purpose of admission, the question is whether or not the document meets the requirements of Rule 138(1).

18. Lastly, the Defence argues that, while the Panel has previously determined that the centrality of the Proposed Exhibits does not, in and of itself, render them inadmissible, items related to central issues of the SPO's case would still be subject

⁵² See *supra*, para. 9.

⁵³ Response, para. 13.

⁵⁴ Decision on Bar Table Motion, para. 10.

⁵⁵ Response, para. 18.

⁵⁶ Decision on Bar Table Motion, para. 59.

to exclusion if an unfairness results from their admission.⁵⁷ In this respect, the Panel notes that the Defence, on the one hand, argues that the Proposed Exhibits are of tenuous relevance⁵⁸ and, on the other hand, that they relate to central issues. Both cannot simultaneously be true. In any case, the Panel always examines whether the *prima facie* probative value of an item is outweighed by its prejudicial effect. In this instance, as set out above, that extends to the question of any prejudice being caused by the fact that the Defence would not be able to cross-examine [REDACTED], [REDACTED], [REDACTED] and/or [REDACTED].

19. The Panel will now turn to assess whether the Proposed Exhibits are admissible pursuant to Rule 138. In doing so, the Panel will refer to the Proposed Exhibits as numbered in Annex 1 to the Motion and Annex 1 to the Response.

B. PROPOSED EXHIBITS 1-68A: ORGANISATION

20. At the outset, the Panel notes that, since the filing of the Motion, Proposed Exhibits 20, 22 and 50A have been admitted into evidence as P01354, P02033 and P01395, respectively. The request for admission of these items is, therefore, moot.

21. The SPO also requests admission of certain Proposed Exhibits, which are already in evidence. Specifically, Proposed Exhibits 16-18 and 40 are all pages extracted from U000-7979-U000-7998, which is admitted into evidence as P00124.⁵⁹ While the evidence reference numbers for Proposed Exhibits 16-18 are different from P00124, and there is a slight difference in some of the English translations, upon comparison of the original Albanian versions, the documents seem to be the

⁵⁷ Response, paras 36-37.

⁵⁸ See *supra*, para. 16.

⁵⁹ The following Proposed Exhibits correspond to the following pages of P00124: (i) Proposed Exhibit 16 and pp. U000-7981-U000-7982, and U000-7984; (ii) Proposed Exhibit 17 and p. U000-7980; (iii) Proposed Exhibit 18 and p. U000-7983-U000-7984; and (iv) Proposed Exhibit 40 and p. U000-7986.

same. The Panel, therefore, denies, without prejudice, the request for admission of Proposed Exhibits 16-18 and 40.

22. The Panel further orders that Proposed Exhibits 10, 41, and 46, which are better quality or more legible versions of P00136, P00141 and P00146 (p. 096320), be added to P00136, P00141 and P00146, respectively.

23. The Panel also authorises the SPO to substitute the translations tendered in the Motion for Proposed Exhibit 31 with the revised translation disclosed in Disclosure Package 1244.⁶⁰

(a) Relevance

24. The SPO submits that Proposed Exhibits 1-9, 10A, 11-15, 19, 21, 23-34, 34A-C, 35-39, 42-45, and 47-68A are all relevant to the organisation of the Drenica OZ.⁶¹ In this regard, the Panel notes that: (i) Proposed Exhibits 1-3, 6-9, 11, 13-14, 19, 26-28, 34B-34C, 58-59, and 62 consist of various lists of individuals and soldiers, registration of members, allocation of weapons, equipment, and fuel usage, as well as allocation to certain zones or units; (ii) Proposed Exhibit 4 consists of a handwritten cover page titled “Kosovo Liberation Army Women’s Military Unit – Work Regulations”; (iii) Proposed Exhibit 5 consists of a handwritten “work report” headed “Drenica Local Operational Subzone Staff – Training for the Female Unit”; (iv) Proposed Exhibit 10A consists of a document titled “the Organisational Structure of Formation – Light Brigade”; (v) Proposed Exhibits 12, 29-31, 33-35, and 44 consist of various handwritten notebooks and diaries;⁶² (vi) Proposed Exhibit 15 consists of a document titled “Register of Kitchen Employees (cooks, their assistants) and Technical Personnel of ‘Guri’ Military

⁶⁰ 096039-096074-ET Revised.

⁶¹ Request, paras 6-12; Annex 1 to the Request, Proposed Exhibits 1-9, 10A, 11-15, 19, 21-34, 34A-34C, 35-39, 42-45, 47-68A.

⁶² The Panel notes that five pages of Proposed Exhibit 30 (098634, 098642-098644, and 098655) have already been admitted as P01746.

Barracks” and their work schedule; (vii) Proposed Exhibits 21 consists of a daily timetable for the Drenica OZ Staff; (viii) Proposed Exhibit 23 consists of a permit to travel and carry a weapon; (ix) Proposed Exhibit 24 consists of a note signed by “Commander Sandokan Abedin Rexha” appointing Musë Dervishi as responsible for Kastriot village, dated 20 July 1998; (x) Proposed Exhibit 25 consists of a handwritten notebook containing the composition of the 1st to 4th squadrons of the second platoon of an unknown brigade; (xi) Proposed Exhibit 32 consists of a collection of handwritten documents, including receipts for purchase of food and petrol, and a list of KLA soldiers; (xii) Proposed Exhibit 34A consists of handwritten notes referring to a meeting dated 29 November 1998 with the 111th, 112th, 113th and 114th Brigades; (xiii) Proposed Exhibit 36 consists of a diploma for “Fejzulla Geci” from the “Kosovo Liberation Army Command Staff Drenica Operational Zone Military School” signed by “Commander Sami Lushtaku”; (xiv) Proposed Exhibit 37 consists of a collection of clarifications, authorisations, and announcements, leaves to pass and orders, some of which are signed by “Commander Jahir Demaku”; (xv) Proposed Exhibits 38-39, 42, 52, and 64-65 consist of various orders, communiques and requests, some of which are signed;⁶³ (xvi) Proposed Exhibit 43 consists of a testimony signed by “Commander Sami Lushtaku”; (xvii) Proposed Exhibits 45, 47-48, 54-57, 60-61, and 63 consist of various receipts, certificates and handwritten notes for funds, food, fuel, cigarettes, and clothing, some of which are signed; (xviii) Proposed Exhibits 49-50 consist of handwritten lists of incomes and expenses; (xix) Proposed Exhibit 51 consists of a document containing a page with the text “Homeland Calling Fund” and a blank “proof of payment” for the fund; (xx) Proposed Exhibit 53 consists of a document titled “Programme for Wheat Harvesting and Threshing for Summer 1998”; (xxi) Proposed Exhibit 66 consists of an official Motorola technical feature

⁶³ The Panel notes that duplicates of pp. 097050-097051, 097053, and 097055-097056 of Proposed Exhibit 38 have been admitted as P00125, P00126, and P00138.

description; (xxii) Proposed Exhibit 67 consists of a handwritten list of names and telephone and fax numbers; and (xxiii) Proposed Exhibits 68 and 68A consist of documents containing communication code ciphers and communication codes and diplomas of completion of training courses.

25. The Panel finds that all these items are relevant to allegations in the Indictment, including: (i) the KLA's structure and level of organisation, in particular, in relation to the existence of a registration system of members, training of members, and logistical supplies in the Drenica OZ; (ii) the structure and organisation of the Drenica OZ; (iii) the KLA General Staff's command and control of the Drenica OZ; (iv) the coordination and cooperation between operational zones; (v) the roles and authority of, *inter alia*, Jahir Demaku, Sylejman Selimi, and Sami Lushtaku; and (vi) the alleged existence of an armed conflict at the time.⁶⁴

26. The Panel notes that the Defence specifically objects to Proposed Exhibits 51, 54, 57, 60-61, and 66-67, arguing that these items are of marginal relevance as they are: (i) documents with nothing of substance but titles and/or inscriptions; (ii) records detailing facts and circumstances whose exact purpose and context cannot be determined in the absence of contextualizing testimony; and (iii) documents that relate to individuals and units whose affiliation with the KLA and connection to the SPO's case as pled remain unexplained.⁶⁵ The Panel considers, however, that these items are sufficiently connected, directly or indirectly, to elements of the offence(s) or mode(s) of liability pleaded in the indictment or other facts or circumstances material to the case. The items address,

⁶⁴ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 18-19, 32, 35, 37, 55-57 (a public lesser redacted version was filed on 27 February 2023, F01323/A01); F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte*, paras 101, 128, 131-132, 135-139, 178-186, 697 (a public redacted version was filed on 3 April 2023, F01415/A01; a confidential lesser redacted version was filed on 9 June 2023, F01594/A03).

⁶⁵ Response, paras 11-15, fns 10-12, 17-20.

inter alia, the “Homeland Calling” fund,⁶⁶ the organisation of logistical supplies,⁶⁷ the Emergency Council,⁶⁸ and means of communication,⁶⁹ which are all facts sufficiently connected to the case to be *prima facie* relevant.⁷⁰

27. The Panel, therefore, finds that Proposed Exhibits 1-9, 10A, 11-15, 19, 21, 22-34, 34A-34C, 35-39, 42-45, and 47-68A are *prima facie* relevant.

(b) Authenticity

28. The Panel is not satisfied with the *prima facie* authenticity of Proposed Exhibits 4 and 67. The Panel considers that: (i) Proposed Exhibit 4, a handwritten cover-page of the “Kosovo Liberation Army Women’s Military Unit – Work Regulations”, lacks sufficient indicia of authenticity as there is no date or underlying regulation; and (ii) Proposed Exhibits 67, a list of telephone numbers for various aliases/individuals, lacks sufficient indicia of authenticity as some numbers appear to be partial and as the SPO seeks to attribute numbers/aliases to certain individuals without such information being in the document and without providing any explanation for its assertion.

29. The Panel is satisfied with the *prima facie* authenticity of Proposed Exhibits 1-3, 5-9, 10A, 11-15, 19, 21, 23-34, 34A-34C, 35-39, 42-45, 47-66, 68 and 68A. The Panel notes, in particular that: (i) Proposed Exhibits 36-38, 43, 48, 52, and 63, and the diplomas in Proposed Exhibit 68, are dated or numbered, signed and have KLA headers or emblems; (ii) Proposed Exhibits 10A and 68A have KLA headers; (iii) Proposed Exhibits 15, 24, 26-27, 47, 55-57 and 61-62, and some of the entries in Proposed Exhibit 45, are signed and dated; (iv) Proposed Exhibits 19, 39, 49, and 64-65 have a KLA header and are dated, or numbered; (v) Proposed Exhibits 21

⁶⁶ Proposed Exhibit 51.

⁶⁷ Proposed Exhibits 54, 57, 60-61

⁶⁸ Proposed Exhibit 57.

⁶⁹ Proposed Exhibits 66-67.

⁷⁰ Pre-Trial Brief, paras 128, 131-132, 136-137, and 139.

and 23 have a KLA header and are signed; and (vi) Proposed Exhibit 42 is signed. The Panel further considers that: (i) Proposed Exhibits 1-3, 6-9, 11, 13-14, 19, 25-28, 34B-34C, and 58-59, which are lists of soldiers, list of soldiers and their equipment and lists of aliases and their fuel usage; and (ii) Proposed Exhibits 12, 29-35, 44, and 60 which are all handwritten notebooks, on the face of the documents are what they purport to be, namely diaries of soldiers describing combat activities performed by various battalions or brigades and tasks and responsibilities performed by soldiers, most of the entries are dated, and, in respect of the notebooks, some entries are signed.

30. In addition, the Panel agrees with the SPO that several of the Proposed Exhibits overlap in substance. Specifically, the Panel is of the view that (i) Proposed Exhibits 2 and 24; (ii) Proposed Exhibits 5-6; (iii) Proposed Exhibits 6-8; (iv) Proposed Exhibits 11-12; (v) Proposed Exhibits 13-14, and 19; (vi) Proposed Exhibits 26-27; (vii) Proposed Exhibits 36 and 68; (viii) Proposed Exhibits 52-53; and (ix) Proposed Exhibits 54-57, overlap, in part, in substance. Furthermore, the Panel considers that Proposed Exhibits 2, 9, 21, 30-31, 34A-34B, 38, 50-53, 63, and 66 are consistent with facts which are referred to in other admitted exhibits and/or were discussed by relevant witnesses during their testimony.⁷¹ Lastly, the Panel also considered that Proposed Exhibits 10A, 34B-C, and 68A were seized from the residences of Mr Krasniqi or Mr Selimi.

31. The Panel notes that the Defence specifically objects to the authenticity of Proposed Exhibits 15, 30, 48, 54-56, 58, 61, and 63 arguing that: (i) orders are not

⁷¹ See for example, the following exhibits and/or transcripts: (i) Proposed Exhibit 2 by P02027.1, p. 43; (ii) Proposed Exhibit 9 by Transcript of Hearing, 10 February 2025, p. 24947, lines 5-6 and P01745; (iii) Proposed Exhibit 21 by P00146 (p. 096335) and P02033; (iv) Proposed Exhibit 30 by Transcript of Hearing, 21 October 2024, p. 20738, line 16 to p. 20742, line 21; (v) Proposed Exhibit 31 by P00133; (vi) Proposed Exhibit 34A by P00180, 4D00011, P01016, 1D00029, P00884, P00181; (vii) Proposed Exhibit 34B by P00124; (viii) Proposed Exhibit 38 by P00125, P00126, and P00138; (ix) Proposed Exhibit 50 by P00172; (x) Proposed Exhibit 51 by P00166 and P00546; (xi) Proposed Exhibit 52 by P00131; (xii) Proposed Exhibits 52-53 by P00133; (xiii) Proposed Exhibit 63 by P00172; and (xiv) Proposed Exhibit 66 by Transcript of Hearing, 16 July 2024, p. 18351, line 20 to p. 18352, line 17; Transcript of Hearing, 17 July 2024, p. 18440, line 16 to p. 18442, line 1.

signed or signatures not attributed;⁷² (ii) materials purportedly issued by individuals or bodies whose functions and relationship to the KLA remain unexplained;⁷³ and (iii) the SPO's corroboration of these items falls short of establishing the authenticity of the *specific* documents.⁷⁴ In respect of Proposed Exhibits 30, 48, and 63, the Panel notes that entries in Proposed Exhibit 30 are signed by "Llausha combat zone commander", and Proposed Exhibits 48 and 63 are signed. In respect of Proposed Exhibits 54-56 and 61, the Panel notes that all items relate to the "Emergency Council in Likoc", two of which are signed by the same person. In respect of Proposed Exhibits 15 and 58, the Panel agrees with the Defence in so far that relevant pages of U015-8743-U015-9047 are not in evidence, or being offered for admission, and, as such, the Panel will not use them to corroborate facts or circumstances in the Proposed Exhibits. Nonetheless, other Proposed Exhibits and witness testimony outline Jahir Demaku's and Ferat Shala's roles within the KLA, the existence of a "Pëllumbi/Pllumbi" unit, as well as the roles of other persons mentioned in Proposed Exhibit 58⁷⁵ and, as set out above, Proposed Exhibit 15 is signed by Jahir Demaku. The Panel considers that this is sufficient to show that Proposed Exhibits 15, 30, 48, 54-56, 58, 61, and 63 are *prima facie* authentic.

32. In light of the above, the Panel finds that Proposed Exhibits 1-3, 5-9, 10A, 11-15, 19, 21, 23-34, 34A-34C, 35-39, 42-45, 47-66, 68, and 68A are *prima facie* authentic.

⁷² Response, para. 18, fns 25-26 referring to Proposed Exhibits 30, 48, and 63.

⁷³ Response, para. 18, fn. 27 referring to Proposed Exhibits 54-56, 58, and 61.

⁷⁴ Response, paras 24-26, fns 37-42 referring to Proposed Exhibits 15 and 58.

⁷⁵ See for example, Proposed Exhibits 21, 37, 47, and 62; Transcript of Hearing, 17 July 2024, p. 18426, lines 8-16; Transcript of Hearing, 16 July 2024, p. 18307, lines 4-14.

(c) Probative value not outweighed by prejudicial effect

33. Having found Proposed Exhibits 1-3, 5-9, 10A, 11-15, 19, 21, 23-34, 34A-34C, 35-39, 42-45, 47-66, 68, and 68A to be *prima facie* relevant and authentic, the Panel is further satisfied that these items also bear *prima facie* probative value regarding facts and circumstances relevant to this case as outlined above at paragraphs 25-27.

34. The Panel is satisfied that the *prima facie* probative value of Proposed Exhibits 1-3, 5-9, 10A, 11-15, 19, 21, 23-34, 34A-34C, 35-39, 42-45, 47-66, 68, and 68A is not outweighed by any prejudice to the Accused, considering that the Defence could challenge the content of these items via cross-examination of the relevant witnesses as well as through the presentation of evidence, if it chooses to do so.

(d) Conclusion

35. In light of the foregoing, the Panel admits into evidence Proposed Exhibits 1-3, 5-9, 10A, 11-15, 19, 21, 23-34, 34A-34C, 35-39, 42-45, 47-66, 68, and 68A and denies, without prejudice, admission of Proposed Exhibits 4 and 67.

C. PROPOSED EXHIBITS 69-76: KLA MILITARY POLICE

(a) Relevance

36. The SPO submits that Proposed Exhibits 69-76 are relevant to the KLA Military Police and its organisation within the Drenica OZ.⁷⁶ In this regard, the Panel notes that: (i) Proposed Exhibit 69 consists of handwritten notes confirming the receipt of donations to the KLA by a named individual; (ii) Proposed Exhibits 70-75 consist of a request and a response and records/details in relation to people proposed to join the Military Police as part of the 112th, 113th and 114th

⁷⁶ Request, paras 14-16; Annex 1 to the Request, pp. 52-63.

Brigades in the Drenica OZ; and (iii) Proposed Exhibit 76 consists of a handwritten diary allegedly written by a member of the KLA Military Police in Obiliq/Obilic, covering the time period from July to August 1999.

37. The Panel finds that all items are relevant to allegations in the Indictment, in particular, the organisation and funding of the Drenica OZ, and the organisation of the Military Police.⁷⁷

38. The Panel, therefore, finds that Proposed Exhibits 69-76 are *prima facie* relevant.

(b) Authenticity

39. The Panel is satisfied with the *prima facie* authenticity of Proposed Exhibits 69-76. Specifically, the Panel notes that these proposed exhibits: (i) are dated;⁷⁸ (ii) except for two, are numbered;⁷⁹ (iii) are signed or contain a signature block of the "Commander";⁸⁰ and (iv) except for one, have a KLA header.⁸¹ Proposed Exhibits 70-75, are interrelated documents, with the same reference number, relating to the identification of candidates for the Military Police and therefore overlap in substance. While the Defence objects to Proposed Exhibit 72, arguing that the signature is not attributed, and Proposed Exhibit 73, as it is unsigned,⁸² the Panel is not convinced by these arguments in light of the mentioned indicia of authenticity. Lastly, while the Defence specifically objects to Proposed Exhibit 76, arguing that it is handwritten material whose authors have not been identified,⁸³ the Panel is, nonetheless, satisfied with the authenticity of

⁷⁷ Indictment, para. 19; Pre-Trial Brief, paras 178-186.

⁷⁸ Proposed Exhibits 69-76.

⁷⁹ Proposed Exhibits 70-75.

⁸⁰ Proposed Exhibits 69- 76.

⁸¹ Proposed Exhibits 70-76.

⁸² Response, para. 18, fns. 25-26.

⁸³ Response, para. 18, fn. 24.

this item. Specifically, the Panel considers that Proposed Exhibit 76 is, on the face of the document and in consideration of its content, a diary noting contemporaneous events from the area of Obiliq/Obilic relevant to the KLA, as shown by the fact that several entries are headed, or reference, Obiliq/Obilic, most of the entries are dated, and some are signed. The content of this item is further contextualised by Proposed Exhibit 43, as Proposed Exhibit 76 indicates the implementation of the order in Proposed Exhibit 43.⁸⁴

40. In light of the above, the Panel finds that Proposed Exhibits 69-76 are *prima facie* authentic.

(c) Probative value not outweighed by prejudicial effect

41. Having found Proposed Exhibits 69-76 to be *prima facie* relevant and authentic, the Panel is further satisfied that these items also bear *prima facie* probative value regarding facts and circumstances relevant to this case as outlined above at paragraph 37.

42. The Panel is satisfied that the *prima facie* probative value of Proposed Exhibits 69-76 is not outweighed by any prejudice to the Accused, considering that the Defence could challenge the content of these items via cross-examination of the relevant witnesses as well as through the presentation of evidence, if it chooses to do so.

(d) Conclusion

43. In light of the foregoing, the Panel admits into evidence Proposed Exhibits 69-76.

⁸⁴ Annex 1 to the Motion, pp. 34-35.

D. PROPOSED EXHIBITS 77-85: ALLEGED COMMON CRIMINAL PURPOSE

44. At the outset, the Panel notes that Proposed Exhibits 82 and 85 have already been admitted into evidence as P01644, P00709 and P01445. The request for admission of these items is, therefore, moot.

(a) Relevance

45. The SPO submits that Proposed Exhibits 77-81 and 83-84 are relevant to the establishing the existence and organisation of the alleged common criminal purpose.⁸⁵ In this regard, the Panel notes that: (i) Proposed Exhibits 77-78 comprise of orders from the Information Directorate and Information Sector; (ii) Proposed Exhibit 79 consists of various lists of persons, including persons interested in joining the KLA, KLA members from the Drenica OZ and persons from Drenicë/Drenica that needed to be arrested; (iii) Proposed Exhibit 80 consists of a document containing a handwritten request by “Jetullah Dibrani”, a handwritten statement by an unknown individual and a typed statement by an unknown individual; (iv) Proposed Exhibit 81 consists of a handwritten notebook; (v) Proposed Exhibit 83 consists of a collection of documents containing, *inter alia*, loan agreements, invoices, professional cards and firearm licenses; and (vi) Proposed Exhibit 84 consists of a collection of handwritten and typed documents, including notes from checkpoints and various lists of wanted people.

46. The Panel finds that Proposed Exhibits 77-81 and 83-84 are relevant to allegations in the Indictment, including: (i) the organisation and functioning of the Drenica OZ; (ii) the organisation, authority and operational capabilities of the KLA General Staff; (iii) the functioning of the Information Directorate; (iv) the

⁸⁵ Request, paras 2-13, and 16; Annex 1 to the Request, pp. 63-78.

roles and authority of, *inter alia*, Jahir Demaku, Fehmi Lladrovci, Sabit Lladrovci, and Abedin Sogojeva; and (v) the arrest and detention of individuals.⁸⁶

47. The Panel, therefore, finds that Proposed Exhibits 77-81 and 83-84 are *prima facie* relevant.

(b) Authenticity

48. The Panel is satisfied with the *prima facie* authenticity of Proposed Exhibits 77-81 and 83-84. Proposed Exhibit 78 has a KLA header and is dated, numbered, and signed. Proposed Exhibit 79-81 and 84 are, on the face of the documents and in consideration of their contents, diaries, or notebooks, noting contemporaneous events, most of the entries are dated, and some are signed. In addition, entries within Proposed Exhibits 82 and 84 overlap in substance. Proposed Exhibit 83 is a collation of documents, which are all signed, dated and stamped. In addition, the Panel agrees with the SPO that several of the Proposed Exhibits overlap in substance, thereby providing further indications of the origin and source of these documents. Specifically, the Panel is of the view that: (i) Proposed Exhibits 39⁸⁷ and 77-78; and (ii) Proposed Exhibits 79 (p. U002-3622) and 84 (pp. 096529 and 096533), overlap, in part, in substance. Furthermore, the Panel considers that Proposed Exhibits 77-78 and 83-84 are consistent with facts which are referred to in other admitted exhibits and/or were discussed by relevant witnesses during their testimony.⁸⁸

49. In light of the above, the Panel finds that Proposed Exhibits 77-81 and 83-84 are *prima facie* authentic.

⁸⁶ Indictment, paras 19, 32; 35, and 37-38; Pre-Trial Brief, paras 182, 184, 273, and 583.

⁸⁷ See *supra*, paras 24-35.

⁸⁸ See, for example, the following exhibits, and/or testimonies: (i) Proposed Exhibits 77-78 by P00270.17; (ii) Proposed Exhibits 83-84 by P01644; (iii) Proposed Exhibit 83 by P01499; and (iv) Proposed Exhibit 84 (pp. 096530-096531) by Transcript of Hearing, 10 July 2024, p. 5327, line 18 to p. 5331, line 25, p. 5333, line 10 to p. 5336, line 5; P00221; P01445.

(c) Probative value not outweighed by prejudicial effect

50. Having found Proposed Exhibits 77-81 and 83-84 to be *prima facie* relevant and authentic, the Panel is further satisfied that these items also bear *prima facie* probative value regarding facts and circumstances relevant to this case as outlined above at paragraph 46.

51. The Panel is satisfied that the *prima facie* probative value of Proposed Exhibits 77-81 and 83-84 is not outweighed by any prejudice to the Accused, considering that the Defence could challenge the content of these items via cross-examination of the relevant witnesses as well as through the presentation of evidence, if it chooses to do so.

(d) Conclusion

52. In light of the foregoing, the Panel admits into evidence Proposed Exhibits 77-81 and 83-84.

E. PROPOSED EXHIBITS 86-96: PËLLUMBI/PLLUMBI UNIT

53. At the outset, the Panel notes that Proposed Exhibit 89 has already been admitted into evidence as P02013. The request for admission of this item is, therefore, moot.

(a) Relevance

54. The SPO submits that Proposed Exhibits 86-88 and 90-96 are relevant to the organisation of the Drenica OZ and, in particular, the Pëllumbi/Plumbi unit.⁸⁹ In this regard, the Panel notes that: (i) Proposed Exhibit 86 is a signed certificate

⁸⁹ Request, paras 2, 9-10; Annex 1 to the Request, pp. 78-89.

for receipt of funds; (ii) Proposed Exhibits 87-88 are lists of various items dedicated to the Pëllumbi/Pllumbi unit; (iii) Proposed Exhibits 90-94 are various blank templates for register of travel, travel permits, and receipt of financial means for the Pëllumbi/Pllumbi unit; and (iv) Proposed Exhibits 95-96 are signed travel permits of the Pëllumbi/Pllumbi unit.

55. The Panel finds that Proposed Exhibits 86-88 and 90-96 are relevant to allegations and facts in the Indictment, including: (i) the organisation, authority and operational capabilities of the KLA General Staff, in particular, in respect of collection of funds and provision of food and other necessities for members in the Drenica OZ; and (ii) the structure and organisation of the Drenica OZ and of the Pëllumbi/Pllumbi unit.⁹⁰

56. The Defence specifically objects to the admission of Proposed Exhibits 90-91, arguing that they are of marginal relevance as they are: (i) documents with nothing of substance but titles and/or inscriptions; and (ii) documents that relate to individuals and units whose affiliation with the KLA and connection to the SPO's case remain unexplained.⁹¹ In this respect, the Panel notes that the items, as set out above, address the organisation of the Pëllumbi/Pllumbi unit and considers that both items are sufficiently connected to the case to be *prima facie* relevant.⁹²

57. The Panel, therefore, finds that Proposed Exhibits 86-88 and 90-96 are *prima facie* relevant.

(b) Authenticity

58. The Panel is satisfied with the *prima facie* authenticity of Proposed Exhibits 86-88 and 90-96. Specifically, the Panel notes that: (i) Proposed

⁹⁰ Indictment, para. 19; Pre-Trial Brief, paras 135-139 and 178-186.

⁹¹ Response, para. 11, fns 10 and 12.

⁹² Pre-Trial Brief, paras 179, 182-183, and 186

Exhibits 86 and 90-96 have KLA headers; and (ii) Proposed Exhibits 86-88 and 95-96 are dated and signed. In addition, the Panel is of the view that: (i) Proposed Exhibits 86 and 91 are a template of a certificate for receipt of funds and an issued version of the same; and (ii) Proposed Exhibits 90 and 92-96, which are templates of registers of travel permits, or travel permits and issued versions of the same, overlap in substance. Lastly, the Panel has also considered that Proposed Exhibits 86-88 and 90-94 were seized from the residence of Mr Krasniqi.

59. The Panel notes that the Defence objects to the authenticity of Proposed Exhibits 86-88 and 90-96, on the basis that the items do not bear sufficient indicia of authenticity and reliability. According to the Defence, these items, even taken at their highest, cannot be probative of any degree of organisation of the Pëllumbi/Pllumbi unit as: (i) the majority of the items contain illegible signatures, are blank templates and/or have varying formats and the SPO offers no evidence as to how, if at all, these documents were consistently used in practice; (ii) a “holistic” view of several non-authenticated items cannot establish authenticity of the collection as a whole; and (iii) the SPO should call Ferat Shala as a witness, who would be in a position to authenticate the documents.⁹³ In this respect, the Panel considers that the degree of organisation of the Pëllumbi/Pllumbi unit is a matter to be assessed at the end of the trial in light of the entire body of evidence admitted,⁹⁴ and not in respect of individual items at the time of their admission. Further, the Panel notes that Ferat Shala is not on the Witness List. The fact that there are people, such as Ferat Shala, that could be called as witnesses, and provide further contextualisation of documents, is not a relevant factor to assessing whether documents meet the *prima facie* requirements of Rule 138(1).

60. In light of the above, the Panel finds that Proposed Exhibits 86-88 and 90-96 are *prima facie* authentic.

⁹³ Response, para. 27.

⁹⁴ Rule 139(2).

(c) Probative value not outweighed by prejudicial effect

61. Having found Proposed Exhibits 86-88 and 90-96 to be *prima facie* relevant and authentic, the Panel is further satisfied that these items also bear *prima facie* probative value regarding facts and circumstances relevant to this case as outlined above at paragraphs 55-57.

62. The Panel is satisfied that the *prima facie* probative value of Proposed Exhibits 86-88 and 90-96 is not outweighed by any prejudice to the Accused, considering that the Defence could challenge the content of these items via cross-examination of the relevant witnesses as well as through the presentation of evidence, if it chooses to do so.

(d) Conclusion

63. In light of the foregoing, the Panel admits into evidence Proposed Exhibits 86-88 and 90-96.

F. PARTIALLY ADMITTED EXHIBITS

64. The Panel notes that some pages of Proposed Exhibit 30 have already been admitted into evidence as P01746. Therefore, the Panel directs the Registrar to add Proposed Exhibit 30 to P01746.

V. CLASSIFICATION

65. The Panel directs the Registry to assign the admitted items the classification indicated in Annex 1 to the Motion.

VI. DISPOSITION

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

- a) **GRANTS**, in part, the Motion;
- b) **REJECTS** the Defence's request to defer the Panel's consideration of the Motion until after the SPO's Drenica OZ witnesses have testified;
- c) **ORDERS** that Proposed Exhibits 10, 41, and 46 be added to P00136, P00141 and P00146, respectively;
- d) **AUTHORISES** the SPO to substitute the translation tendered in the Motion for Proposed Exhibit 31 with 096039-096074-ET Revised;
- e) **ADMITS** into evidence Proposed Exhibits 1-3, 5-9, 10A, 11-15, 19, 21, 23-34, 34A-34C, 35-39, 42-45, 47-66, 68, 68A, 69-81, 83-84, 86-88, and 90-96 and any translations thereof;
- f) **DENIES**, without prejudice, admission of Proposed Exhibits 4, 16-18, 40 and 67;
- g) **DECLARES** the request to admit Proposed Exhibits 20, 22, 50A, 82, 85 and 89 moot;
- h) **DIRECTS** the Registry: (i) to add Proposed Exhibit 30 to P01746; and (ii) the classification indicated in Annex 1 to the Motion; and
- i) **DIRECTS** the Registry: to assign the remaining admitted items: (i) exhibit numbers; and (ii) the classification indicated in Annex 1 to the

Motion.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line at the end.

Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 26 February 2025

At The Hague, the Netherlands.