



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: 4 April 2025

Language: English

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Decision on Prosecution Motion for Admission of Nerodime Zone Documents

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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 31 March, 9 June, 27 July, 8 August, 3 October and 5 December 2023, as well as on 21 and 26 February, 4 March and 1 April 2025, the Panel issued a number of decisions addressing bar table motions filed by the Specialist Prosecutor's Office ("SPO") ("Decision on Bar Table Motion", "Second Decision on Bar Table Motion", "Third Decision on Bar Table Motion", "Fourth Decision on Bar Table Motion" "Fifth Decision on Bar Table Motion", "Sixth Decision on Bar Table Motion", "Decision on Llap Zone Bar Table Motion", "Decision on Drenica Zone Bar Table Motion", "Decision on Shala Zone and Karadak Zone Bar Table Motion" and "Decision on Pashtrik Zone Bar Table Motion", respectively).¹
2. On 21 October 2024, the SPO filed a motion for admission of Nerodime Operational Zone ("Nerodime OZ") documents ("Motion").²

¹ F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential; F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, confidential and *ex parte* (a confidential redacted version was issued on the same day, F01596/CONF/RED; the *ex parte* marking of the decision was lifted on 22 June 2023, F01596/CONF; the decision was reclassified as public on 15 November 2023, F01596); F01705, Panel, *Third Decision on Specialist Prosecutor's Bar Table Motion*, 27 July 2023; F01716, Panel, *Fourth Decision on Specialist Prosecutor's Bar Table Motion*, 8 August 2023, confidential; F01832, Panel, *Fifth Decision on Specialist Prosecutor's Bar Table Motion*, 3 October 2023; F01983, Panel, *Sixth Decision on Specialist Prosecutor's Bar Table Motion*, 5 December 2023; F02951, Panel, *Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request*, 21 February 2025; F02967, Panel, *Decision on Prosecution Motion for Admission of Drenica Zone Documents*, 26 February 2025, confidential (a public redacted version was issued on the same day, F02967/RED); F02980, Panel, *Decision on Prosecution Motion for Admission of Shala and Karadak Zone Documents*, 4 March 2025; F03070, Panel, *Decision on Prosecution Motion for Admission of Pashtrik Zone Documents*, 1 April 2025.

² F02667, Specialist Prosecutor, *Prosecution Motion for Admission of Nerodime Zone Documents*, 21 October 2024, confidential, with Annexes 1-2, confidential (a public redacted version was filed on 11 November 2024, F02667/RED).

3. On 22 October 2024, the Panel extended the deadline for the Defence to respond to the Motion until 15 November 2024.³
4. On 15 November 2024, the Defence teams for the four Accused (“Accused”) filed a joint response (“Response”).⁴
5. On 22 November 2024, the SPO filed a reply to the Response (“Reply”).⁵

II. SUBMISSIONS

6. The SPO requests the admission of contemporaneous Kosovo Liberation Army (“KLA”) records relating to the Nerodime OZ (“Proposed Exhibits”), which it submits are *prima facie* authentic, relevant, and have probative value that is not outweighed by any prejudice.⁶
7. The Defence responds that the SPO’s use of bar table motions to tender thousands of exhibits, particularly those of uncertain provenance and questionable reliability, is incompatible with the Panel’s instruction to use a high threshold so as to ensure that only evidence of high probative value is tendered.⁷ According to the Defence, the SPO is using the bar table procedure to avoid fair scrutiny of its proposed exhibits, and circumvent the procedure of evidence being authenticated and verified by relevant witnesses.⁸ The Defence submits that:
(i) many of the Proposed Exhibits have no discernible relevance to the charges;⁹

³ Transcript of Hearing, 22 October 2024, p. 20894, line 16 to p. 20895, line 5.

⁴ F02725, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of Nerodime Zone Documents Through the Bar Table and Related Request (F02667)*, 15 November 2024, confidential, with Annex 1, confidential (a public redacted version was filed on 22 November 2024, F02725/RED).

⁵ F02746, Specialist Prosecutor, *Prosecution Reply Relating to Motion to Admit Nerodime Zone Documents (F02667)*, 22 November 2024, confidential (a public redacted version was filed on 25 November 2024, F02746/RED).

⁶ Motion, paras 1, 23, *referring to* Annex 1 to the Motion, Proposed Exhibits 1-97. *See also* Motion, paras 4-18.

⁷ Response, para. 1, *referring to* F01226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, para. 49.

⁸ Response, para. 2. *See also* Response, paras 4-8.

⁹ Response, para. 3. *See also* Response, para. 9.

(ii) the SPO has not established *prima facie* authenticity and reliability of the Proposed Exhibits;¹⁰ and (iii) admission of the Proposed Exhibits would cause prejudice.¹¹ The Defence also reiterates its previously stated position concerning the admissibility of two Proposed Exhibits, which were seized from the houses of Rexhep Selimi (“Mr Selimi”) and Jakup Krasniqi (“Mr Krasniqi”).¹² The Defence submits that the Panel should reject the admission of the Proposed Exhibits for the reasons set out in the Response and Annex 1 thereto.¹³

8. The SPO replies that the Response repeats prior objections to broad categories of evidence, which have already been considered and dismissed by the Panel, and mischaracterises and ignores submissions in the Motion.¹⁴ The SPO therefore requests that the Panel grant the Motion.¹⁵

III. APPLICABLE LAW

9. The applicable law regarding the present matter is set out, in particular, in Article 40(6)(h) and Rules 138(1), and has been laid out extensively in the Panel’s prior decisions.¹⁶ The Panel will apply these standards to the present decision.

¹⁰ Response, paras 11-22.

¹¹ Response, paras 24-29.

¹² Response, para. 23, *referring to* Proposed Exhibits 6, 18.

¹³ Response, paras 10, 33. *See also* Annex 1 to the Response.

¹⁴ Reply, para. 1. *See also* Reply, paras 2-6.

¹⁵ Reply, para. 9.

¹⁶ *See e.g.* Decision on Bar Table Motion, paras 8-13.

IV. DISCUSSION

A. GENERAL CONSIDERATIONS

10. At the outset, the Panel notes that the Parties' arguments regarding P01687 MFI¹⁷ have been addressed by the Panel in the Decision on Llap Zone Bar Table Motion.¹⁸

11. The Panel will first address the Defence's submissions on particular characteristics of the Proposed Exhibits set out in the Response and Annex 1 thereto. The Panel recalls that there is no requirement under the SC's legal framework that Proposed Exhibits be authenticated through witnesses.¹⁹ Similarly, there is no bar to the admission through the bar table of proposed exhibits on account of their alleged central importance to the Prosecution case.²⁰ The same conditions and requirements for admission, as set out in Rule 138(1), apply to all categories of proposed exhibits, regardless of their (perceived) importance to a Party's case.²¹ What matters is that the tendering Party satisfies the Panel of the relevance, *prima facie* authenticity, and probative value of the tendered items pursuant to Rule 138(1).

12. This being said, the Panel recalls that bar table motions should not be used as a way to render the principle of orality irrelevant to these proceedings. While the bar table procedure is in the interest of judicial economy and helps expedite the process of admission of evidence, it should not become an alternative to presenting the most important exhibits through witnesses who are in a position to speak to them and to be cross-examined about them. Even when a proposed

¹⁷ Motion, para. 20; Response, paras 30-31; Reply, para. 7.

¹⁸ See Decision on Llap Zone Bar Table Motion, para. 49, footnote 113.

¹⁹ Decision on Llap Zone Bar Table Motion, para. 21; First Decision on Bar Table Motion, para. 12. See also Rule 138(1). *Contra* Response, paras 1-2, 4-8, 14-18; Annex 1 to the Response, C.1, C.1.3, C.3 and C.13 Objections.

²⁰ Decision on Llap Zone Bar Table Motion, para. 21; Second Decision on Bar Table Motion, para. 84. *Contra* Annex 1 to the Response, R.3 Objections.

²¹ Decision on Llap Zone Bar Table Motion, para. 21; Sixth Decision on Bar Table Motion, para. 92.

exhibit is admitted through the bar table, the tendering party should consider making use of it in court with relevant witness(es) where the good comprehension of that document and its place in the Party's case justifies it.²² Moreover, the use of proposed exhibits during testimony of witnesses might provide valuable context relevant, for instance, to the weight or reliability of that exhibit.²³

13. With respect to the Defence's argument that the Proposed Exhibits are replete with handwritten materials whose authors have not been identified and that the SPO has failed to provide relevant information as to the context in which those documents were prepared,²⁴ the Panel recalls that documents bearing no indication of a named source or author might be considered to lack the requisite indicia of authenticity.²⁵ 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. Proof of provenance or authorship of the tendered items is not strictly required when assessing *prima facie* authenticity and reliability under Rule 138(1).²⁶ Similarly, the fact that Serbian authorities may have been involved in the chain of custody of the majority of the Proposed Exhibits does not *per se* bar the admission of such evidence.²⁷ What matters is whether or not the document meets the requirements of Rule 138(1).

14. 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.²⁸ 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).²⁹ Corroboration may assist to establish these criteria when not evident on the face

²² Decision on Llap Zone Bar Table Motion, para. 22; Decision on Bar Table Motion, para. 16.

²³ Decision on Llap Zone Bar Table Motion, para. 22; Decision on Bar Table Motion, para. 17.

²⁴ Response, paras 19, 22; Annex 1 to the Response, C.12 and A.1.4 Objections.

²⁵ Decision on Llap Zone Bar Table Motion, para. 23; Decision on Bar Table Motion, para. 59.

²⁶ Decision on Llap Zone Bar Table Motion, para. 23; Second Decision on Bar Table Motion, para. 82.

²⁷ *Contra* Response, paras 11-13.

²⁸ Response, paras 20-21.

²⁹ Decision on Drenica Zone Bar Table Motion, para. 10; Decision on Bar Table Motion, para. 9.

of a document but is not, in and of itself, a requirement for admission.³⁰ In addition, and consistent with the Defence's submissions,³¹ the Panel recalls that it will only consider documents for corroboration, or as supporting provenance and authenticity, if tendered for admission, or already admitted into evidence.³² 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.

15. Similarly, the fact that tendered items are offered as part of lengthy compilations, including photos and videos, and sometimes bear no discernible link to one another is not a bar to their admission, provided that each of the tendered items is found to be relevant, *prima facie* authentic, probative and not unduly prejudicial to the Defence.³³

16. Lastly, in relation to the Defence's objections to the Proposed Exhibits seized from the houses of Mr Selimi and Mr Krasniqi,³⁴ the Panel recalls its finding in the 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.³⁵ The Defence has not sought reconsideration nor established that any of the issues decided in the Second Decision on Bar Table Motion warrant reconsideration pursuant to Rule 79.³⁶

³⁰ Decision on Drenica Zone Bar Table Motion, para. 10.

³¹ Response, para. 20.

³² Decision on Drenica Zone Bar Table Motion, para. 10. *See also* 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).

³³ Decision on Llap Zone Bar Table Motion, para. 23. *Contra* Annex 1 to the Response, C.1, C.1.3, C.8, C.12 and C.13 Objections.

³⁴ Response, para. 23; Annex 1 to the Response, C.2 Objections. *See in particular* Proposed Exhibits 6, 18.

³⁵ 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).

³⁶ Decision on Llap Zone Bar Table Motion, para. 26.

17. The Panel will 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. ASSESSMENT OF PROPOSED EXHIBITS

1. Relevance

18. Regarding the relevance of the Proposed Exhibits, the Panel notes that they consist of contemporaneous KLA documents and videos relating to the KLA's organisation and activities in the Nerodime OZ between 1998 and 1999. The SPO relies on the Proposed Exhibits to demonstrate, *inter alia*: (i) the high level of organisation of the KLA, including in the Nerodime OZ during the Indictment period; (ii) that KLA members in the Nerodime OZ acted under the authority, and pursuant to, the instructions of the Accused and General Staff; and (iii) that the members of the charged joint criminal enterprise ("JCE"), including the Accused and certain KLA members in the Nerodime OZ, shared the alleged common criminal purpose, which they implemented personally and through the structures in place.³⁷ Regarding the Defence's objection to the relevance of Proposed Exhibits 35 and 37,³⁸ the Panel is satisfied that, as submitted by the SPO,³⁹ such items are relevant to demonstrate: (i) the KLA's alleged practice of identifying and monitoring people suspected of collaborating with Serbs; and (ii) the KLA's alleged control over the supply of goods.

19. The SPO submits that the Proposed Exhibits also corroborate and complement other evidence and adjudicated facts, including concerning: (i) charged crimes; (ii) the alleged existence and elements of a non-international armed conflict and the alleged existence of a widespread and/or systematic attack against the civilian

³⁷ Motion, para. 3. *See also* Motion, paras 4-14.

³⁸ Response, para. 3, footnote 4.

³⁹ Annex 1 to the Motion, pp. 29-30.

population; (iii) the Accused's alleged effective control, including both directly and through the Nerodime OZ structures; (iv) the practical assistance, encouragement, and/or moral support the Accused provided to the perpetrators of the charged crimes; and (v) the Accused's and other JCE members' knowledge and intent.⁴⁰

20. Having carefully reviewed the Proposed Exhibits, the Panel is satisfied that all of them are relevant to allegations and charges in the Indictment⁴¹ as well as certain witness testimony, documentary evidence and adjudicated facts of which the Panel has taken judicial notice.⁴²

2. Authenticity

21. Regarding authenticity, the Panel notes that most Proposed Exhibits consist of contemporaneous typewritten or handwritten documents containing signatures, which appear to belong to KLA members,⁴³ including to Commander 'Ferri',⁴⁴ Commander 'Meti',⁴⁵ Commander 'Profesori',⁴⁶ Commander 'Haxhhiu',⁴⁷ Commander Ahmet Kaçiku,⁴⁸ Mr Selimi,⁴⁹ Commander 'Graniti',⁵⁰ Commander

⁴⁰ Motion, para. 3.

⁴¹ See e.g. F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 18-55, 80, 117, 166. *Contra* Response, paras 3, 9; Annex 1 to the Response, R.1 and R.2 Objections.

⁴² Motion, para. 3. See also Motion, paras 4-14, and references cited therein; Annex 1 to the Motion, pp. 2-76.

⁴³ Proposed Exhibits 1, 3, 5, 9-14, 16-18, 21-22, 24-27, 29-33, 35-40, 42-46, 48-50, 52-61, 63-67, 69-79, 83-85, 87-88; Proposed Exhibit 2, pp. 30-35.

⁴⁴ Proposed Exhibit 1.

⁴⁵ Proposed Exhibits 3, 5, 21, 43, 45.

⁴⁶ Proposed Exhibits 9-10, 12.

⁴⁷ Proposed Exhibits 11, 14, 16-17.

⁴⁸ Proposed Exhibit 13.

⁴⁹ Proposed Exhibit 18.

⁵⁰ Proposed Exhibits 22, 29, 87. The Panel notes that the English translation of Proposed Exhibit 87 does not contain any signature (see U000-4398-U000-4398-ET Revised). The Panel has therefore assessed the original Albanian version of Proposed Exhibit 87, and directs the SPO to submit a revised English translation thereof.

‘Dulla’,⁵¹ Commander ‘Agimi’,⁵² Commander Ramadan Rexhepi,⁵³ and Commander ‘Topi’.⁵⁴ The majority of those documents also bear a Nerodime OZ header and/or reference numbers.⁵⁵ The Panel further notes that five Proposed Exhibits consist of publicly available videos featuring KLA members during the Indictment period, including members of the General Staff and of Brigade 162.⁵⁶ The Panel takes note of the Defence’s arguments that certain Proposed Exhibits: (i) were not shown by the SPO to a relevant witness;⁵⁷ or (ii) were put to relevant witnesses but not tendered, including in light of their purported lack of importance or indicia of authenticity at that particular stage of the proceedings.⁵⁸ The Panel is of the view that this does not constitute a bar to the admission of those documents through the bar table, provided that the Panel is satisfied, as it is now for the reasons outlined above and below, that the admissibility requirements under Rule 138(1) have been met and the items should be admitted for holistic assessment in light of all evidence at the end of trial.⁵⁹ In particular, the fact that certain documents were not authenticated by witnesses to whom they were shown does not render them inadmissible. This may be relevant to assessing both the weight of the document in question and/or the credibility of the witness concerned. Similarly, the suggestion that a document could have been shown to a particular witness, but was not, is merely hypothetical and does not bear on the

⁵¹ Proposed Exhibits 24, 40, 42, 44, 53, 55-56, 58-59, 65-67, 71-72.

⁵² Proposed Exhibit 26.

⁵³ Proposed Exhibits 30, 48.

⁵⁴ Proposed Exhibits 50, 54, 57, 61.

⁵⁵ Proposed Exhibits 1, 3, 9-13, 15-18, 22, 24, 26, 29-30, 32, 40, 42, 44-46, 48-50, 52-61, 63-67, 70-76, 78-79, 83-85, 87; Proposed Exhibit 2, pp. 30-35; Proposed Exhibit 43, p. 14, Proposed Exhibit 77, p. 5. The Panel notes that, as raised by the Defence (*see* Annex 1 to the Response, pp. 2-3), it appears that not all of the pages in the original Albanian version of Proposed Exhibit 2 have been translated into English (*compare* IT-03-66 P22 *with* IT-03-66 P22a). The Panel has therefore assessed the original Albanian version of Proposed Exhibit 2, and directs the SPO to submit a revised English translation thereof.

⁵⁶ Proposed Exhibits 93-97.

⁵⁷ Proposed Exhibits 21, 51, 70, 95. *See* Response, paras 4, 6, 9, 16; Annex 1 to the Response, pp. 29, 61, 79-80, 107.

⁵⁸ Proposed Exhibits 53, 93. *See* Response, paras 5-6, 9, 17; Annex 1 to the Response, pp. 63, 105-106.

⁵⁹ *See* F01983/COR, Panel, *Corrected Version of Sixth Decision on Specialist Prosecutor’s Bar Table Motion*, 29 November 2024 (date original: 5 December 2023), para. 129.

question of its admissibility. As with other admitted exhibits, those that were not contextualised by a witness will be assessed in that light.

22. In addition, the Panel considers the SPO's submissions that Proposed Exhibits 1, 3, 5, 9-14, 16-18, 21, 22, 24, 25, 27, 29-33, 35-40, 42-45, 50, 53-59, 61, 63, 65-67, 70-72, 76-79, 83-85, and 87-88 contain overlapping information and/or information of a similar nature to that included in relevant parts of admitted exhibits, other Proposed Exhibits, adjudicated facts, or other witnesses' testimony.⁶⁰ The Panel is of the view that these overlaps, which will be assessed when weighing the evidence at the end of trial, may assist in providing further indication of the origin and source of the material in question.

23. For these reasons, the Panel is of the view that Proposed Exhibits 1, 3, 5, 9-14, 16-18, 21, 22, 24-27, 29-33, 35-40, 42-46, 48-50, 52-61, 63-67, 69-79, 83-85, and 87-88 as well as pages 30-35 of the original version of Proposed Exhibit 2 appear to originate from the KLA Nerodime OZ and to relate to its structure, organisation or activities during the Indictment period.

24. The Panel observes that the remaining Proposed Exhibits, most of which are handwritten, do not appear to be signed or to immediately identify their authors or origin.⁶¹ The Panel recalls that the fact that a document does not name a source or is handwritten does not entail that there cannot be other relevant indications of its authorship and/or origin.⁶² In this regard, the Panel notes that: (i) pages 1-29 of the original version of Proposed Exhibit 2 consist of a handwritten diary and handwritten sketches of an identified KLA member in the Nerodime OZ and provide detailed information about activities of KLA members between 1998 and 1999; (ii) Proposed Exhibit 4 is a handwritten protocol notebook containing a log

⁶⁰ Motion, para. 3, *referring to* Annex 1 to the Motion. *See in particular* Annex 1 to the Motion, pp. 2-6, 9-16, 19-37, 39-56, 58-61, 65-69.

⁶¹ Proposed Exhibit 2, pp. 1-29; Proposed Exhibits 4, 6-8, 15, 19-20, 23, 28, 34, 41, 47, 51, 62, 68, 80-82, 86, 89-92.

⁶² *See above* para. 13.

of daily reports, ordinances and other documents issued between December 1998 and May 1999⁶³ in the Nerodime OZ, and bears a Nerodime OZ header; (iii) Proposed Exhibit 6 is a typewritten document addressed to the Nerodime OZ command regarding certain appointments made by the General Staff; (iv) Proposed Exhibit 8 consists of a compilation of documents including an exchange of letters between the Military Police in the Nerodime OZ and the Military Police Directorate of the General Staff as well as photos and registration forms of Military Police soldiers in the Nerodime OZ; (v) Proposed Exhibit 15 is a typewritten template bearing a Nerodime OZ header, a KLA emblem, and a reference to Brigade 161; (vi) Proposed Exhibit 19 consists of a handwritten notebook with entries referring to KLA activities and meetings in February, March and June 1999, and it appears to be authored by the commander of the Military Police in the Nerodime OZ; (vii) Proposed Exhibits 20 and 23 consist of handwritten documents containing entries dated between October 1998 and April 1999 and names of KLA soldiers which also appear in Proposed Exhibits 14, 28, and 34, respectively; (viii) Proposed Exhibits 28, 51, 62 and 68 consist of handwritten documents containing reports on the situation and movements on the ground in the Nerodime OZ in April and May 1999, with Proposed Exhibits 28 and 51 including the names of KLA high-ranking officials, including Hashim Thaçi,⁶⁴ and Proposed Exhibits 51 and 62 bearing a Nerodime OZ header, while Proposed Exhibit 28 also refers to the names of two KLA soldiers mentioned in Proposed Exhibits 5 and 20;⁶⁵ (ix) Proposed Exhibit 41 and page 3 of Proposed Exhibit 47 contain the names of two KLA soldiers which are also listed as such in Proposed Exhibits 20, 43, 48 and 49, respectively; (x) Proposed Exhibits 80, 81 and

⁶³ The Panel notes the SPO's submission that Proposed Exhibit 4 is missing a page for documents dated between 27 March and 13 April 1999. *See* Motion, para. 15, footnote 77.

⁶⁴ *See also, in this regard*, P00769, p. 3; P01554.4, p. 14; P01558, para. 30; P01015, p. 036807; Transcript of Hearing, 27 August 2024, p. 19030; Transcript of Hearing, 5 November 2024, pp. 21996-21998. *See also* Proposed Exhibit 94.

⁶⁵ In relation to Proposed Exhibit 51, *see also above* para. 21.

86 contain overlapping radio-communication codes for the military structures of the Nerodime OZ, with Proposed Exhibit 80 also bearing a KLA stamp; (xi) Proposed Exhibit 82 bears a Nerodime OZ header and refers to the signed communication documents contained in Proposed Exhibits 83-85; (xii) Proposed Exhibit 89 contains an intercommunication scheme for Brigade 161 and bears a KLA stamp; and (xiii) Proposed Exhibits 90-92 consist of handwritten notebooks containing notes from trainings held on the KLA communications system. Regarding pages 3-29 of the original version of Proposed Exhibit 2 allegedly containing a testimonial document,⁶⁶ the Panel is of the view that such document does not constitute, or contain, statements or records of interviews prepared for the purposes of legal proceedings. As such, the Panel finds that pages 3-29 of the original version of Proposed Exhibit 2 are not subject to Rules 153-155.⁶⁷

25. In addition, the Panel considers the SPO's submissions that pages 1-29 of the original version of Proposed Exhibit 2 as well as Proposed Exhibits 4, 6, 8, 15, 19, 51, 80, 81, 86, and 89-92 contain overlapping information and/or information of a similar nature to that included in relevant parts of admitted exhibits, other Proposed Exhibits, adjudicated facts, and other witnesses' testimony.⁶⁸ The Panel recalls that these overlaps, which will be assessed when weighing the evidence at the end of trial, may assist in providing further indication of the origin and source of the material in question.

26. For these reasons, the Panel is satisfied that pages 1-29 of the original version of Proposed Exhibit 2 as well as Proposed Exhibits 4, 6, 8, 15, 19, 20, 23, 28, 34, 41, 51, 62, 68, 80-82, 86, and 89-92 as well as page 3 of Proposed Exhibit 47 appear to originate from the KLA Nerodime OZ and to relate to its structure, organisation or activities during the Indictment period.

⁶⁶ Annex 1 to the Response, C.8 Objection.

⁶⁷ Compare with Sixth Decision on Bar Table Motion, para. 126.

⁶⁸ See Motion, para. 3, referring to Annex 1 to the Motion. See in particular Annex 1 to the Motion, pp. 2-9, 12-13, 16-18, 40-41, 62-64, 66-67, 69-72.

27. Turning to Proposed Exhibit 7, the Panel notes that it consists of a typewritten manual for morning exercises for KLA soldiers. In the absence of any header, stamp or substantive details providing further indication of its source or origin, the Panel is of the view that such document lacks sufficient indicia of authenticity.

28. In relation to pages 1-2 and 4-11 of Proposed Exhibit 47, the Panel notes that they consist of a collection of handwritten documents including lists of supplies for various units. In the absence of any signature, header, stamp or substantive details providing further indication of its source or origin, the Panel is of the view that such pages lack sufficient indicia of authenticity.

29. In light of the above, the Panel is satisfied that Proposed Exhibits 1-6, 8-46, and 48-97 as well as page 3 of Proposed Exhibit 47 bear sufficient indicia of authenticity,⁶⁹ and finds that they are *prima facie* authentic. The Panel is not satisfied that Proposed Exhibit 7 and pages 1-2 and 4-11 of Proposed Exhibit 47 are *prima facie* authentic. Admission of those items is therefore denied.

3. Probative value not outweighed by prejudicial effect

30. Having found Proposed Exhibits 1-6, 8-46, and 48-97 as well as page 3 of Proposed Exhibit 47 to be relevant and *prima facie* authentic, the Panel is also satisfied that these items bear probative value regarding facts and circumstances relevant to this case as outlined above at paragraph 18.⁷⁰

31. The Panel finds that the probative value of Proposed Exhibits 1-6, 8-46, and 48-97 as well as of page 3 of Proposed Exhibit 47 is not outweighed by any prejudicial effect. The Panel notes, furthermore, that the Defence will be able to make submissions in respect of the weight and probative value of these items and

⁶⁹ *Contra* Response, paras 11-22; Annex 1 to the Response, A.1, A.1.1, A.1.2, A.1.3, A.1.4, A.1.5, A.2, A.3, A.3.1, A.3.2, A.3.3 and A.3.3.1 Objections. *See also above* paras 10-16.

⁷⁰ *Contra* Annex 1 to the Response, PV.1 Objections.

could, if it so chooses, challenge the content of any of these items through the presentation of evidence, although it bears no onus to do so.⁷¹

4. Conclusion

32. In light of the above, the Panel is satisfied that Proposed Exhibits 1-6, 8-46, and 48-97 as well as page 3 of Proposed Exhibit 47 are admissible pursuant to Rule 138(1).⁷² The Panel denies admission of Proposed Exhibit 7 and pages 1-2 and 4-11 of Proposed Exhibit 47.

V. CLASSIFICATION

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

VI. DISPOSITION

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

- (a) **GRANTS**, in part, the Motion;
- (b) **ADMITS** into evidence Proposed Exhibits 1-6, 8-46, and 48-97 as well as page 3 of Proposed Exhibit 47, including any translations thereof;⁷³
- (c) **DENIES** the admission of Proposed Exhibit 7 and pages 1-2 and 4-11 of Proposed Exhibit 47;
- (d) **DIRECTS** the SPO to submit a revised English translation of


⁷¹ *Contra* Response, paras 24-29; Annex 1 to the Response, PV.2 Objections.

⁷² The Panel notes that the SPO: (i) only tenders page 1 of the original version of Proposed Exhibit 30 (see Annex 1 to the Motion, pp. 26-27); and (ii) does not tender pages 1-2 of the original version of Proposed Exhibit 34 (see Annex 1 to the Motion, p. 29). The Panel has only assessed and admitted the tendered pages of the relevant documents.

⁷³ See above footnote 72.

Proposed Exhibits 2 and 87;⁷⁴ and

- (e) **DIRECTS** the Registry to assign the 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 underneath.

Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 4 April 2025

At The Hague, the Netherlands.

⁷⁴ See above footnotes 50, 55.