

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: Dr Fidelma Donlon

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

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**Public Redacted Version of 'Joint Defence Response to Prosecution motion for
admission of General Staff and Provisional Government of Kosovo documents
(F03065)**

With Confidential Annexes 1-3'

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I- INTRODUCTION

1. The Defence for Mr. Thaçi, Mr. Veseli, Mr. Selimi, and Mr. Krasniqi (“Defence”) submits that the motion by the Specialist Prosecutor (“SPO”) for admission of General Staff and Provisional Government of Kosovo documents¹ through the Bar Table is an unreasonable and prejudicial attempt to admit an enormous volume of written evidence relative to core issues in the case including the organisation and workings of the KLA General Staff (“GS”) and of the Provisional Government of Kosovo (“PGoK”), and the role and authority of the Accused within these entities, whilst avoiding the fair scrutiny which would come from tendering it through witnesses and allowing the Defence the opportunity to challenge it through cross-examination.
2. In line with the objections submitted in Annexes 1 to 3, the Motion should be rejected.

II- PROCEDURAL BACKGROUND

3. On 31 March 2025, the SPO filed the Motion, seeking admission into evidence of 353 items which the SPO submits pertain to the General Staff and the Provisional Government of Kosovo.
4. On 2 April 2025, the Defence requested an extension of time to respond to the Motion by 25 April 2025. The Trial Panel granted an extension of time until 22 April 2025.

¹ KSC-BC-2020-06/F03065, Prosecution motion for admission of General Staff and Provisional Government of Kosovo documents with confidential Annexes 1-4, 31 March 2025, public (“Motion”).

5. On 21 April 2025, the Defence requested a further extension of time of two days due to difficulties accessing the court system. On 22 April 2025, the Trial Panel granted an extension of time to respond to the Motion until 24 April 2025.²
6. On 15 April 2025, the SPO notified the Trial Panel and the Parties that it had closed its case pursuant to Rule 129 of the Rules.³

III- APPLICABLE LAW

7. Pursuant to Rule 138(1) of the Rules, “unless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect.”
8. The Trial Panel regularly “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.”⁴
9. The Defence relies upon its previous submissions regarding the applicable law.⁵

² CMU email of 22 April 2025, 11:14, “Re: Urgent request for extension for filings F03056, F03066 and F0365” [sic].

³ KSC-BC-2020-06/F03121, Prosecution notice pursuant to Rule 129, 15 April 2025, public, para. 1.

⁴ KSC-BC-2020-06/F02951, *Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request*, 21 February 2025, public, para. 22.

⁵ KSC-BC-2020-06/F01387, *Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table with confidential Annexes 1-8*, 21 March 2023, confidential (“F01387”), paras. 7-13.

IV- SUBMISSIONS

10. In line with previous practice, the Defence has made its specific objections to each item tendered in a modified version of Annexes 1 to 3 to the Motion, using the same objection codes listed in Annex 7 to F01387.
11. In addition to these individualised objections, the Defence considers it necessary to make the following submissions in response to the documents tendered by the SPO as a whole or to certain groups and categories of items.

A) The Proposed exhibits lack *prima facie* authenticity and reliability and sufficient probative value

12. The Defence observes that several handwritten documents, and/or unsigned, undated, unstamped or otherwise unofficial and unreliable documents, are being tendered, despite the Trial Panel's previous observation that such documents often lack the requisite indicia of reliability.⁶ The Defence's individualised objections in Annexes 1 to 3 identify those documents which contain no information as to authorship, the circumstances in which they were created, their provenance and/or chain of custody.
13. The SPO has also sought to tender diaries and notebooks which, similarly, yield little to no information capable of authenticating their contents or authorship.⁷ For instance, the SPO attributes a diary to Mr Krasniqi on the basis that it was seized from his residence,⁸ yet this document contains no information as to its authorship and the SPO has failed to put this item, or the other notebooks and

⁶ F02980, *Decision on Prosecution Motion for Admission of Shala Zone and Karadak Zone Documents*, 4 March 2025, public, para. 9.

⁷ See, e.g., Annex 2, items 7, 47, 71, 140, 184.

⁸ See, e.g., Annex 2, item 106.

diaries, to witnesses who could have contextualised them and confirmed the accuracy, or not of their content.

14. Similarly, the SPO tenders a range of handwritten notes seized from Mr. Selimi's house⁹ suggesting in relation to some of them that their limited chain of custody information establishes Mr. Selimi's awareness and knowledge as a member of the General Staff of the information contained therein.¹⁰ However, the SPO fails to determine when these Items came into the alleged possession of Mr. Selimi, whether it was during or after the war, for what purpose and from whom. Nor has the SPO specified at any stage, what their case is regarding who wrote these notes. Thus, the mere fact that they were seized from Mr. Selimi's residence is not probative of him being aware of any information contained therein. Likewise, these documents bear no indicia of authorship and the SPO has failed to put them to witnesses who could have contextualised them and verified their content.
15. The Defence further takes issue with the Prosecution's recurring use of 'circular' methods of authentication.¹¹ The SPO has frequently suggested that documents of questionable authenticity can be authenticated by other equally questionable items which are often not yet in evidence and which the SPO seeks admission through the same Motion.¹² This is not a matter of weight that could be attributed to such documents, but ultimately serves to preclude their admission as the Prosecution, as the tendering party, has failed to establish even *prima facie* reliability of the documents. Over the course of two years, the SPO has had ample opportunity to put handwritten documents, notebooks, diaries and other unsigned, undated and unauthored documents to witnesses.

⁹ See, for instance, Items 7, 23, 24, 39, 41, 47, 59.

¹⁰ See, for instance, Items 23, 24, 47.

¹¹ See *contra*, Motion, para. 8.

¹² See, e.g., Annex 3, items 4, 5, 9, 12, 13, 17, 29, 33, 55, 58-103.

Its failure to do, compounded by its failure to tender these items at an earlier stage, has obstructed the Defence's ability to test the SPO's case on these documents, some of which purportedly pertain to key issues in the case.

16. For instance, to prove the authenticity of the IDs and registration forms tendered,¹³ the SPO is cross-relying on the other ID cards tendered in the Motion which also present the same indicia of reliability (or lack thereof). Yet, a collection of non-authenticated documents cannot create an authenticated document.¹⁴ The same authenticity concerns remain for each ID card tendered, and the SPO cannot cross-rely on the other tendered ID cards to prove the authenticity of one. In addition, one of the only two witnesses to whom the alleged MPO ID cards were shown was W04868¹⁵ and he could not meaningfully comment on neither the provenance nor on the authenticity and further alleged use of the cards. W04868 testified that the KFOR had not been in contact with the MPO to determine whether or not they had actually released the ID cards themselves. Thus, the SPO has failed to establish the *prima facie* authenticity of such items, whose admission should be denied.¹⁶
17. Similarly, the SPO is attempted to build a case by tendering multiple versions of the same or similar purported KLA Regulations,¹⁷ usually unsigned, unstamped and without a specific date except '1998', without establishing the *prima facie* authenticity or authorship of the ones tendered in the Motion, or that they were ever implemented, while their content may be contradicted by

¹³ See, e.g., Annex 3, items 58-103.

¹⁴ ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-T-374-ENG CT WT, Transcript of Appeal Hearing, 11 January 2018, p. 58.

¹⁵ KSC-BC-2020-06, Transcript of 20 August 2024, p. 18726.

¹⁶ The Defence reiterates its submissions in relation to prejudicial effect of the alleged MPO ID cards as set out in paras. 21-27 of the "Joint Defence Response to the Prosecution Motion for Admission of International Reports" submitted on 24 April 2025. The Defence is unable to provide a number of the referred latter as it was filed simultaneously with the present filing.

¹⁷ Annex 1, Part I, Regulations.

testimonial evidence. Some witnesses testified they learnt about the Regulations only after the KLA restructuring,¹⁸ and/or that they were never implemented in practice.¹⁹ Therefore, such significant documents, which purport to demonstrate the KLA structure during the Indictment period, should be tendered only through witnesses able to contextualise them. The tendering of duplicates does not “mutually corroborate” other versions of the same documents but served no purpose other than bloating the record.

Improper exclusion of Serbian Cyrillic excerpts

18. The Defence reiterates²⁰ its concerns regarding the SPO’s improper practice of excluding Serbian Cyrillic pages from their tender of KLA documents – which are part of the “original” item in LWF.²¹ The SPO has deliberately excluded these pages from the translations of the original item that it has commissioned in-house. The Defence requests that the SPO be ordered to provide a translation of the excerpts in Serbian Cyrillic and/or Serbian Latin, prior to any ruling from the Panel on the admissibility of these items.²²
19. The Prosecution’s practice of excluding these pages from the original and/or the translations shows complete disregard for the integrity of the items in question. While such pages may have been added, subsequently, by Serbian

¹⁸ W04401 testified after the restructuring of the KLA, some rules brought by Bislim Zyrapi were discussed by the GS; he could not remember whether they received any regulations before; KSC-BC-2020-06, Transcript of 2 December 2024 (W04401 testimony), p. 23153.

¹⁹ W04746 testified that regulations existed but that they were not implemented in practice, because the KLA, despite its efforts, never managed to “realise these regulations”; KSC-BC-2020-06, Transcript of 14 July 2023 (W04746 testimony), pp. 5775-5776.

²⁰ See KSC-BC-2020-01/ F03064, Joint Defence Response to ‘Prosecution Motion for Admission of Dukagjin Zone Documents (F02997)’ with Confidential Annex 1, paras. 19-20.

²¹ See, e.g., Annex 2, item 132 (U001-8330-U001-8332 / U001-8331-U001-8332-ET Revised), 155 (U001-8674-U001-8676 / U001-8674-U001-8674-ET), 189 (U000-7287-U000-7316 / U000-7287-U000-7316-ET).

²² The Defence notes that following similar observations raised by the Defence with respect to the “Prosecution motion for admission of Dukagjin Zone documents” (F02997), by email of 9 April 2025, the Trial Panel II instructed the SPO to disclose revised English translations of several proposed exhibits “that will include a translation of the excerpts in Serbian Cyrillic and/or Serbian Latin.”

intelligence, it is not for the SPO to determine what is and is not an integral part of the item. The items should, as far as is reasonably possible, be maintained in the state in which they were provided to the SPO and translated accordingly. Should any such items ultimately be admitted by the Panel, the Defence requests that the Cyrillic pages form part of the exhibits, with their accompanying translations.

Insufficient chain of custody for the materials attributed to the GS Special Unit

20. The SPO tenders around 50 items related to the GS Special Unit.²³ It is wholly unclear where most documents pertaining to this so-called Special Unit were found, who found them and in what circumstances they were found. There is no chain of custody information beyond the SPO's assertion that these items were provided to it by the ICTY/MICT. There is simply no way of knowing whether these documents were found as presented by the SPO or whether they formed part of a larger collection of documents or even a notebook. There is often nothing to distinguish a list that forms a part of a notebook from a free-standing list. This raises questions about how such lists were found and whether free-standing lists were simply taken from notebooks. The same applies to handwritten notes. The SPO provides no indication as to whether such notes were found alone or part of a larger collection of documents from which they were subsequently separated. Moreover, the volume of documents pertaining to the so-called Special Unit is far greater than what is necessary or reasonable. It constitutes a prime example of the SPO's practice of flooding the case record with items of questionable provenance and relevance at a time when there are no more SPO witnesses to contextualize the documents.

²³ See F03065/A02, items 140-189.

21. In this regard, the Defence notes that most, if not all, of the so-called Special Unit documents could have been put to [REDACTED] during his testimony and [REDACTED] during his SPO interview. The SPO's attempt to admit vast tranches to supplement the evidence of these two witnesses, absent cross-examination, is wholly unfair and should not be permitted.

SPO's failure to call W03805 [REDACTED] regarding the General Staff's alleged communication plan

22. The Defence highlights what it regards as a particularly egregious type of evidentiary cherry-picking by the SPO in respect of items pertaining to the General Staff's alleged "communication plan".²⁴ The SPO has deliberately avoided relying on W03805, who is qualified to contextualise these documents, while he was extensively interviewed by the SPO in [REDACTED].²⁵ W03805 was the [REDACTED].²⁶ In his SPO interview, W03805 was shown a number of items that the SPO seeks to tender which he had not seen before²⁷ or were not used in practice.²⁸ The Prosecution's right to put on the case that it believes is strongest must be balanced against its duty to contribute to the establishment of the truth. The Defence submits that cherry-picking to this degree falls foul of its duty under Rule 62.

Templates and drafts

²⁴ Annex 2, items 107-118.

²⁵ 089911-TR-ET Parts 1 to 16.

²⁶ 089911-TR-ET Part 1, p. 12, lines 2-3.

²⁷ Item 107.

²⁸ Item 110.

23. The SPO tenders an inordinate amount of templates²⁹ and draft reports,³⁰ declarations or decrees.³¹ For almost all intents and purposes, blank templates or unsigned drafts are not probative of any issues in the case, especially where the SPO has failed to establish whether their contents were endorsed or implemented by anyone. Moreover, the volume in which they have been tendered is wholly unjustified.
24. The Defence objects to the admission of such templates or drafts in the absence of having been put to a witness who could have authenticated them and offered evidence as to whether they were ever implemented and if so, by who and when. These drafts in and of themselves do not possess the required *indicia* of relevance and authenticity. Previous cases at the ICTY have found that drafts for which authorship could not be proven and which were lacking in stamps, signatures, or other formalised *indicia*, should not be admitted.³² Such documents are by no means equivalent to published or public documents that can be authenticated.³³ In this regard, the Defence notes that the draft decrees lack consistency in format and style, using for instance different fonts and headers, which put in question their authenticity or contemporaneity.³⁴
25. In addition, the Defence stresses that authorship cannot be presumed because of the location at which the documents were seized, without any further substantiation by the SPO. On several occasions, the SPO seeks to draw

²⁹ See, e.g., Annex 1, items 10, 16-20, 24, 29; Annex 2, items 119-139.

³⁰ See, e.g., Annex 2, items 26, 27, 46.

³¹ See, e.g., Annex 3, items 15, 17, 18, 29, 30.

³² ICTY, *Prosecutor v. Delić*, IT-04-83-T, Trial Chamber I, *Decision on SPO Submission on the Admission of Documentary Evidence*, 16 January 2008, para. 18; *Prosecutor v. Šainović et al.*, IT-05-87-T, Trial Chamber, *Decision on Lazarević Motion for Admission of Documents from Bar Table*, 16 January 2008, para. 6.

³³ ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-2635, Trial Chamber II, *Decision on the Prosecutor's Bar Table Motions ("Katanga and Ngudjolo Decision")*, 17 December 2010, para. 25.

³⁴ Compare, for instance, item 29 (SPOE00227435-SPOE00227441) and item 30 (SPOE00227453-SPOE00227461).

unsupported inferences about authorship and attribution from the mere fact that one or more documents were purportedly seized from the residence of Jakup Krasniqi. The Defence is bound to reiterate its previous objections to this unfounded assertion.³⁵ Jakup Krasniqi is a writer and a historian, who published several books after the war about the KLA and the conflict in general. He received documents, books, manuscripts and other materials relevant to his studies from a variety of sources and individuals. It is wrong to use this fact *against* Jakup Krasniqi in an attempt to attribute to him documents which, on their face, contain no indication of authorship and clearly lack the required *indicia* of authenticity.

26. Further, the Defence takes issue with the SPO's submission that a number of items tendered in the Motion were [REDACTED].³⁶ This is the first time the Defence is put on notice of this purported circumstance, which is not recorded in any documents pertaining to the search and seizure and as such is nothing more than an SPO's unsupported and unverifiable assertion by the SPO. In particular, the SPO refers to three filed documents pertaining to the search and seizure: the SPO's report,³⁷ the SPO's review of seized items³⁸ and the inventory.³⁹ None of these documents ever refers to the alleged circumstance that the [REDACTED]. On the contrary, both the SPO's review of seized items

³⁵ F01387, para. 50.

³⁶ E.g., Annex 1, Items 3(A), 32, 35, 38, 41, 43, 56, 61; Annex 2, items 20, 26, 40, 46, 50 (emphasis added).

³⁷ KSC-BC-2020-06, F00095, Specialist Prosecutor, *Prosecution report on search and seizure pursuant to KSC-BC-2020-06-F00031-COR with strictly confidential and ex parte Annexes 1-4*, 19 November 2020, confidential.

³⁸ KSC-BC-2020-06/F00214/A04, ANNEX 4 to *Prosecution report on review of seized items pursuant to Decisions KSC-BC-2020-06-F00028, KSC-BC-2020-06-F00029, KSC-BC-2020-06-F00030 and KSC-BC-2020-06-F00031COR* ("SPO Review of Seized Items"), 11 March 2021, strictly confidential and *ex parte*.

³⁹ KSC-BC-2020-06, F00366/A01, Specialist Prosecutor, ANNEX 1 to *Prosecution submission of seized item indexes*, 23 June 2021 ("Inventory"), Confidential and *ex parte*.

and the SPO's inventory indicate that [REDACTED] and as such was deemed "not relevant" and returned to Mr. Krasniqi.⁴⁰

27. Moreover, the Defence recalls that when shown some similar draft items, SPO witnesses were unable to confirm their authenticity precisely because they were in draft. This underscores the danger of admitting such documents untested through the Bar.
28. For instance, during his cross-examination by the Thaçi Defence, W04752 testified that "[f]or an order to come into force, a written ordinance needs to have the signature, the stamp, and the protocol number. [...] If there is no signature or stamp, it cannot come into effect because the administrative steps have not been completed for that order to come into effect".⁴¹ Thus, W04752 confirmed that documents unsigned did not come into effect and that it was necessary to ask the purported authors of such documents whether they eventually signed them/implemented them.⁴² In particular, when shown the (draft) decree 1D00169 / 1D00169_ET, W04752 said that while, on its face, it looked like a document proposed by the General Staff, the fact that there was no protocol number, no signature, no date, meant that *it was not valid, not effectuated*.⁴³
29. Similarly, W04290 was shown some purported records or decrees of the PGoK dated 28 April 1999, referring to his appointment as Commander of the National Guard of Kosovo, or to the appointment of Agim Ceku as chief of the General Staff of the KLA.⁴⁴ While these decrees contained the signature block

⁴⁰ SPO Review of Seized Items, Item 2; Inventory, Item 2.

⁴¹ KSC-BC-2020-06, Transcript of 3 July 2024 (W04752 Testimony), p. 17542.

⁴² *Ibid.*, p. 17543.

⁴³ KSC-BC-2020-06, Transcript of 8 July 2024 (W04752 Testimony), p.17771 (emphasis added)

⁴⁴ P00113 / P00113_ET ; P00813 / P00112-ET.

“Prime Minister, Hashim Thaçi”,⁴⁵ W04290 acknowledged that they did not contain any handwritten signature.⁴⁶ Further, he did not dispute the fact that these decrees came from a book published by KosovaPress in 2016, and that there is no contemporaneous evidence that any such decrees were announced or published in 1999.⁴⁷

30. W04290 further testified that he did not know whether he was appointed by the Chief of Staff Agim Ceku or the Minister of Defence, stressing that the PGoK was in the process of being formed at the time,⁴⁸ and that he had never seen the decree appointing him as the head of the National Guard before his testimony;⁴⁹ he added that until the transformation of the KLA into KPC, the National Guard did not perform any tasks or functions.⁵⁰ With regard to Agim Ceku, he confirmed that he was the chief of staff from at least April 1999, meaning that he was appointed to this position before the alleged decree of 28 April 1999,⁵¹ which was corroborated by the existence of another, earlier document issued in the name of the KLA General Staff in April 1999, appointing Agim Ceku as Chief of the General Staff of the KLA and W04290 as Commander of the National Guard of the KLA.⁵² This further illustrates the need to tender such items through witnesses who can contextualise them and confirm whether the proposed structure described in these documents had any substance in reality and whether their purported author(s) were creating a new structure or taking

⁴⁵ P00813 / P00112-ET.

⁴⁶ KSC-BC-2020-06, Transcript of 13 February 2025 (W04290 testimony), page 25266.

⁴⁷ *Ibid.*, page 25266.

⁴⁸ KSC-BC-2020-06, Transcript of 10 February 2025 (W04290 testimony), page 24916.

⁴⁹ KSC-BC-2020-06, Transcript of 13 February 2025 (W04290 testimony), pp. 25237-25238.

⁵⁰ *Ibid.*, pp. 25238-25239.

⁵¹ *Ibid.*, pp. 25266-25267.

⁵² 1D00249 / 1D00249_ET, discussed in KSC-BC-2020-06, Transcript of 13 February 2025 (W04290 testimony), pp. 25268-25269.

notes of a prior organisation, *etc.* In the instant case, the decrees did not create any new structure and ultimately, the National Guard was never operational.

31. Thus, the Defence submits that when a document does not contain a handwritten signature, the question of its authenticity needs to be addressed through a live witness. However, the SPO has chosen to tender these documents at the close of the SPO's case, thus preventing such authentication. It cannot be presumed that because a document contains an empty signature block, for instance in the name of Mr Hashim Thaçi,⁵³ that this document was endorsed by its purported author and/or implemented. Indeed, he may not have even seen it.

32. Further, template and draft documents lack the required probative value. When considering the probative value of evidence, the Chamber must consider whether the evidence is authenticated. The admission of unauthenticated evidence would "burden the record of the trial with non-probative material and serve no purpose in the determination of the truth."⁵⁴ In the absence of an authenticating witness to explain and contextualise the drafting process and absent any evidence as to when these documents were created and by whom,

⁵³ See, e.g., Annex 3: item 15 (SPOE00232109-SPOE00232115-ET), Decision of the Prime Minister to improve, establish and organise the KLA, with a signature block 'Prime Minister Hashim THAÇI', [REDACTED]; item 17 (SPOE00227644-SPOE00227644-ET), Declaration of Prime Minister of Provisional Government Hashim THAÇI on 07 June 1999, with a signature block for THAÇI Hashim in his capacity as prime minister; item 18 (SPOE00229060-SPOE00229060-ET), Provisional Government Declaration from 07 June 1999, with a signature block for THAÇI Hashim in his capacity as prime minister; item 29 (SPOE00227435-SPOE00227441-ET), Proposal [Decree], prepared on 07.08.1999, Pristina., with Hashim THAÇI's signature block, in his capacity as prime minister, [REDACTED]; item 30 (SPOE00227453-SPOE00227461-ET), two notes purportedly signed by Muhamet MEHMETI as Minister of Justice, attaching official PGoK/MOJ draft decrees concerning personal numbers and names, including signature blocks for "Prime Minister Hashim THAÇI".

⁵⁴ *Katanga and Ngudjolo* Decision, para. 22.

no conclusions can be drawn as to their purpose and implementation. Their admission should be denied.

B) The probative value of the Proposed Exhibits which go to central issues in the SPO's case is outweighed by their prejudicial effect

33. The SPO has tendered numerous items which are purportedly relevant to, and probative of, central issues in the Prosecution's case,⁵⁵ *i.e.* the KLA general structure,⁵⁶ the composition, role and authority of the General Staff⁵⁷ and of the Provisional Government of Kosovo;⁵⁸ the relationship between the two bodies;⁵⁹ the role, responsibilities and authority of the Accused within the two;⁶⁰ and the KLA "Special War".⁶¹
34. The probative value of such items is outweighed by their prejudicial effect, because they relate to central matters in issue, including the acts and conduct of the Accused, as well as their alleged common criminal purpose, and since they are tendered through the Bar, the Defence is denied an opportunity to test the evidence.
35. The Rules provide that evidence relevant to the acts and conduct of an accused cannot be tendered through Rule 153 and it is a factor against admission under Rule 155 because of the inability of the Defence to cross-examine the witnesses about them. Submitting documents that purport to go to the role and authority of an accused through the Bar is no different to acts and conduct and must be

⁵⁵ Motion, paras 2-4.

⁵⁶ *See, e.g.*, Annex 1, part I, 'Regulations'.

⁵⁷ *See, e.g.*, Annex 1, part II, 'GS orders and decisions'; Annex 2, part I, 'General Staff structure, operations, policy'; part II, 'Logistics, finance and communications'; part III, 'Special Unit'.

⁵⁸ *See, e.g.*, Annex 3, part I, 'PGoK'.

⁵⁹ *See, e.g.*, Annex 3, item 6.

⁶⁰ *See, e.g.*, Annex 3, items 5, 9, 11, 12, 13.

⁶¹ *See, e.g.*, Annex 1, part III, 'Special War'.

treated in the same manner. Given the late stage at which this evidence has been tendered, the Defence is prevented from testing it through SPO witnesses as the SPO's case has now closed.

36. In this regard, the Defence notes that in the *Gucati & Haradinaj* case, the Trial Panel echoed concerns that bar table evidence must not deprive the Defence of the opportunity to challenge pivotal allegations via cross-examination.⁶²
37. Similarly, at the ICTY, it was ruled that admission through the Bar may be denied when it concerns material that bears on the accused's own actions or mental state in relation to the alleged crimes, in order to preserve the fairness of the proceedings. Thus, in the *Karadžić* case, confronted with a large number of proposed exhibits tendered through the Bar and pertaining directly to the accused's individual criminal responsibility for crimes charged in the indictment – including orders and reports signed by the accused or which were sent to the accused, and orders and reports signed by high-level members of their group, the Trial Chamber recalled that it “has a duty to assess whether it should exercise its discretion and deny their admission because the probative value of the documents is outweighed by the need to ensure a fair trial. This may be the case where the Accused would be overly-burdened as the result of the admission of large numbers of items which go directly to his responsibility as charged in the Indictment.”⁶³ This same Chamber further decided to deny the admission of some items through the Bar, considering that the SPO had had ample opportunity to put them to its witnesses and took “a conscious decision not to put a specific category of documents to a witness who could have

⁶² KSC-BC-2020-07/F00309/RED, Publicly Redacted Defence Response to SPO Bar Table Motion Submissions, 10 September 2021, para. 21.

⁶³ ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on the Prosecution's First Bar Table Motion, 13 April 2010, para. 14. See also ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on the Prosecution's First Bar Table Motion for the Admission of Intercepts, 14 May 2012, para. 23.

contextualized” them; the Chamber considered that their probative value would be substantially outweighed by the need to ensure a fair trial if tendered through the bar table.⁶⁴

38. In the instant case, the Defence stresses that its prejudice is particularly exacerbated, *inter alia*, in the case of ‘templates’ and ‘drafts’, being noted that some include a signature block of Hashim Thaçi and others were seized at Mr Krasniqi or Mr Selimi’s residence. Admitting such ‘drafts’ through the Bar table, prevents the Defence from confronting any witness as to their authorship or authenticity. Given the low relevance, authenticity and probative value of these documents, as developed above, this prejudicial effect outweighs any benefit to admitting the documents.
39. Further, the SPO seeks to tender documents that were sent to or by individuals that it decided not to call, for example, W04762 [REDACTED].⁶⁵ The SPO interviewed [REDACTED] and then relied on his evidence as material supporting the indictment but chose ultimately not to call him.⁶⁶ Having made this choice, it cannot now seek to introduce documents purportedly sent to him that it argues go to matters of central importance to its case, *i.e.* organisation, relationship between the PGoK and GS, command and control and reporting lines from the OZ to the GS through the Bar. This is because the Defence cannot cross examine [REDACTED] about their authenticity, content or meaning and thus any probative value the documents may have is outweighed by their prejudicial effect.
40. It causes material, inexcusable and irrevocable prejudice to the Defence, if, at the end of the SPO case, the SPO is allowed to tender a multitude of documents

⁶⁴ ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on the Prosecution’s First Bar Table Motion for the Admission of Intercepts, 14 May 2012, para. 17.

⁶⁵ See, *e.g.*, Annex 3, items 5, 9, 11, 12, 13.

⁶⁶ See SPO email of 6 August 2021.

purportedly going to the heart of its case through the Bar. These documents could and should have been tendered by the SPO through witnesses in the KLA General Staff or PGoK who could speak to their contents, reliability, relevance and authenticity, such as: W04403, member of the Operational Directorate of the KLA General Staff; W04752, Chief of Staff or Chief of the KLA General Staff, then Deputy Minister of Defence in the PGoK, then assistant to the Minister of Defence responsible for the Operation Arrow; W04401, Deputy Commander of Operations within the General Staff; W04290, KLA General Staff commander. The SPO actively chose not to do so. The SPO is entitled to exercise its discretion as it sees fit but should not be rewarded with admission of those very same items through the Motion; the SPO practice robs the Defence of the opportunity to provide a robust challenge to the Prosecution's case and it interferes with the truth-seeking function of the Panel by denying the Panel the opportunity to hear relevant live evidence on this material.

41. This issue is particularly relevant to the substantial number of tendered documents which the SPO submits are signed by - or otherwise originate from – one of the Accused.⁶⁷ Documents said to be signed by the Accused are by nature central to the case and as such it would be extremely prejudicial to admit them through the Bar Table, in the absence of any context or authentication provided by a relevant witness. The importance of context was recently illustrated during the in-court evidence of W04403, a member of the Operational Directorate of the KLA General Staff. When shown an order purportedly signed by Jakup Krasniqi concerning W04403's transfer from the General Staff to the Dukagjini Zone, W04403 accepted that the order was just a formalization of what had been agreed the day before between Ramush

⁶⁷ E.g., Annex 1, Items 11, 14, 15, 27; Annex 2, Items 61, 87, 99.

Haradinaj and himself.⁶⁸ W04403 added that Mr. Krasniqi could not have moved him without his consent and that, had W04403 not agreed to the transfer, he would have remained where he was.⁶⁹ This is the type of relevant context and information which the Panel needs in order to establish the truth and which would necessarily emerge, had the documents now tendered through the Bar Table been put to relevant witnesses for comment. Instead, and despite having called General Staff witnesses who were well-placed to provide relevant context or authentication, the SPO chose not to show them any of these documents and instead tender them through the Bar Table *after* the closure of its case. The prejudice caused by their admission in these circumstances far outweighs their probative value.

42. Thus, while the items tendered are on the SPO exhibit list, the SPO chose not to use them with its witnesses. Any suggestion that the Defence could have done so must be rejected. It is not the Defence's responsibility to authenticate documents tendered by the SPO.
43. Nor should the Defence have been required to sift through the more than 20,900 documents on the SPO exhibit list when the Defence was not on notice of which would actually be tendered and the purpose for which the SPO would seek to rely on them. The Defence cannot be required nor expected to challenge during its limited cross-examination each and every item included in the SPO Exhibit List. It is trite, but worth recalling, that it is the SPO who bring the case and the SPO that must prove it.
44. Further, any suggestion that such matters can be dealt with during a Defence case, presupposes that the Defence will call one and if they do, misunderstands the burden of proof in a criminal trial which is on the SPO. The SPO argument

⁶⁸ Transcript of 26 March 2025, p. 25947.

⁶⁹ *Ibid.*, p. 25946.

that the Defence can call evidence to rebut any documents admitted through the Bar⁷⁰ impermissibly shifts the burden to the Defence to disprove authenticity, relevance and probative value and should not be allowed.

45. Finally, while in some of its latest bar table decisions, the Trial Panel concluded that "the Defence will be able to challenge the content of these items via cross-examination of relevant witnesses as well as through the presentation of evidence, if it chooses to do so. The Panel therefore finds that the probative value of Proposed Exhibits [...] is not outweighed by their prejudicial effect,"⁷¹ this reasoning is not applicable anymore. Now that the SPO case is over, the Defence is not able to challenge the content of the proposed exhibits via cross-examination of SPO witnesses. In addition, as submitted by the Veseli Defence,⁷² the prejudicial effect of the tendered items cannot be cured by the eventual presentation of Defence evidence. As the Panel itself acknowledges, the Defence has no burden of production, or of persuasion. This would be an impermissible burden shifting.

46. For these reasons, the Panel should dismiss the Motion in its entirety.

V- CLASSIFICATION

47. The present submissions are filed as confidential since they refer to confidential documents tendered by the SPO. A public redacted version will be filed in due course.

⁷⁰ Motion, para. 22.

⁷¹ KSC-BC-2020-06/F02951, Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request, 21 February 2025, para. 75; KSC-BC-2020-06/F02967, Decision on Prosecution Motion for Admission of Drenica Zone Documents, 26 February 2025, para. 57.

⁷² KSC-BC-2020-06/F03096, Veseli Defence Request for Certification to Appeal Decisions F03070 and F03071, 8 April 2025, para. 15.

VI- CONCLUSION

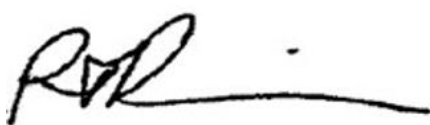
48. Accordingly, the Defence respectfully requests the Trial Panel to consider these objections, and the detailed application of these objections by category to each document in the attached Annexes, and to reject the admissibility through the bar table of the documents (as set out in the attached Annexes).

Word count: 5971

Respectfully submitted on 24 April 2025,



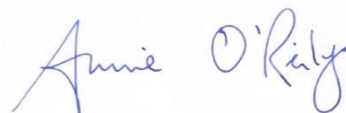
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