

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

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

Registrar: Dr. Fidelma Donlon

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

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**Public Redacted Version of ‘Joint Defence Response to
‘Prosecution motion for admission of
documents (F03114)’ with Confidential Annexes 1-3’**

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I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s Office’s (“Prosecution”) motion for admission of documents (“Motion”).¹

2. The Motion, which was filed one day before the Prosecution closed its case,² tenders 195 residual documents, further increasing the already enormous number of documents tendered *after* the end of the testimony of the Prosecution’s last witness.³ Rather than seeking the targeted admission of discrete pieces of evidence, the Prosecution attempts to flood the record with documents of questionable utility. This overburdens the case dossier and emphasises the lack of strategic planning underpinning the Motion.

3. Between 31 March and 15 April 2025, the Prosecution tendered over 500 items through the Bar Table. Several thousand documents had already been tendered during the course of the trial. In this situation, a reasonable Prosecution would have applied a heightened scrutiny to its remaining exhibits, and focused its last Bar Table motion on highly relevant and probative items. Regrettably, the Prosecution has not applied the “high threshold of evaluation so as to ensure that only evidence of high probative value is tendered”, mandated by paragraph 49 of the Order on the Conduct

¹ KSC-BC-2020-06, F03114, Specialist Prosecutor, *Prosecution motion for admission of documents with confidential Annexes 1-4*, 14 April 2025, public.

² KSC-BC-2020-06, F03121, Specialist Prosecutor, *Prosecution notice pursuant to Rule 129*, 15 April 2025, public.

³ KSC-BC-2020-06, F03065, Specialist Prosecutor, *Prosecution motion for admission of General Staff and Provisional Government of Kosovo documents with confidential Annexes 1-4* (“GS/PGoK BTM”), 31 March 2025, public; F03066, Specialist Prosecutor, *Prosecution motion for admission of international reports with confidential Annexes 1-2* (“International Reports BTM”), 31 March 2025, confidential; F03120, Specialist Prosecutor, *Prosecution motion for admission of obstruction related materials with confidential Annexes 1-3*, 15 April 2025, public.

of Proceedings. On the contrary, the Motion is replete with items of questionable, and at times nil, relevance, authenticity and probative value.

4. A prime example is 098199-098199/098199-098199-ET, which the Prosecution alleges is an empty [REDACTED].⁴ The Defence cannot grasp why, after over two years of trial, hundreds of witnesses, and thousands of documents admitted, the Prosecution considers that tendering alleged [REDACTED], without any information about when they were created or by whom, will assist to prove its case against the Accused.

5. The Prosecution also tenders a large number of media articles, videos, interviews and excerpts of books. Many of these items are irrelevant, as they present the views of individuals with no proven affiliation to the KLA, or lack probative value, as they are based on hearsay from unidentified sources. Some items, however, require further scrutiny because they purport to be interviews with the Accused, or seek to relay alleged statements by them. Having failed to interview or call as witnesses their authors, or put any of the relevant passages to witnesses for verification, tendering these documents at the end of the Prosecution case, with no opportunity for the Defence to meaningfully confront their content, is highly prejudicial and should not be allowed.

6. This filing is submitted confidentially because it responds to documents with the same classification.⁵ A public redacted version will be submitted in due course.

⁴ Annex 3, item 52.

⁵ Rule 82(4) of the Rules of Procedure and Evidence on the Kosovo Specialist Chambers ("Rules").

II. PROCEDURAL HISTORY

7. On 14 April 2025, the Prosecution filed the Motion, seeking the admission of 195 ‘residual’ items.

8. On 23 April 2025, following *inter partes* discussions, the Defence requested an extension of time to respond to the Motion by 5 May 2025, which was granted by the Trial Panel.⁶

III. APPLICABLE LAW

9. The Defence relies upon its previous submissions regarding the applicable law.⁷

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 1-3 to the Motion,⁸ using the same objection codes listed in Annex 7 to F01387.

11. In addition to these individualised objections, the Defence emphasises the following submissions pertaining to the Motion as a whole or to certain groups of items tendered by the Prosecution.

⁶ KSC-BC-2020-06, *Oral Order on Defence Request for Extension of Time to Respond to F03114*, 23 April 2025.

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

⁸ See Annexes 1-3 to this Response.

The Proposed exhibits are not prima facie authentic, relevant and probative, or their probative value is outweighed by their prejudicial effect

12. Contrary to Prosecution submissions, several items tendered in the Motion fall short of the Rule 138 requirements for admission. The Defence stresses once again that the fact that the Motion was filed after the testimony of the last Prosecution witness requires a stricter approach to admissibility. The Defence is deprived of the possibility to test the authenticity or probative value of admitted documents through cross-examination. Therefore, the prejudice caused by the admission of documents of questionable authenticity and/or reliability is necessarily accentuated; this is a relevant factor which the Panel should consider when balancing the prejudice with the purported probative value of each item.

Interviews, video and other materials originating from the media

13. In Annex 1 to the Motion, the Prosecution tenders media articles, videos and interviews with numerous individuals, including the Accused. These materials include several documents, ranging from largely irrelevant articles to interviews attributing statements to the Accused which go to the core of live issues in this case. The Prosecution's submissions about these documents are characterised by the same fundamental flaws: the Prosecution failed to call the alleged authors to testify and is unable to provide information about the circumstances surrounding these interviews and the accuracy thereof. The Prosecution's decision to tender these items at the conclusion of its case is not merely procedurally unfair—it strikes at the heart of the Accused's right to a fair trial. By withholding these documents from use until this stage, the Defence has been deprived of any meaningful opportunity to test their accuracy and reliability through cross-examination. The late admission of these

documents would be prejudicial to the Accused, and would irreparably compromise the fairness of the trial.

14. Interviews with the Accused or other central figures do not have the same probative value as statements prepared for legal proceedings. The Prosecution does not possess contemporaneous notes, recordings, or any information about the circumstances in which the alleged interviews were given and recorded. There is no information that the attributed statements were verified in any way. It is incumbent on the Prosecution to establish who was present and whether words attributed to the Accused were spoken by them and recorded accurately. Ultimately, the only way to do so would be to put the published document to the interviewer or the interviewee for confirmation. The Prosecution did not take this step. Moreover, the Accused can be compelled to testify in these proceedings, rendering the use of these unsworn statements against their co-Accused more unfairly prejudicial than they are probative. To tender such interviews as if they were a formal and reliable record is misleading, procedurally improper and highly prejudicial to the Accused.

15. The issue of inaccurate reporting is not hypothetical. The Panel has heard evidence of potential tampering with interviews, which calls for extreme caution when assessing their authenticity and probative value. In particular, W01453, a member of Zeri i Kosoves' editorial board in 1997 and 1998,⁹ testified that it used to "publish inaccurate words because we were conducting propaganda", and therefore it is possible that before publishing, statements were exaggerated by one of the editorial board members.¹⁰ In fact, when shown a passage from an alleged interview with him, W01453 did not recall giving such information to Zeri i Kosoves at the time.¹¹

⁹ Transcript of 4 November 2024, p. 21815.

¹⁰ *Idem*, p. 21940.

¹¹ *Idem*, p. 21943.

16. Further, W04403 exposed the media's practice of publishing "interviews" during the Indictment period which actually never happened. W04403 was shown an alleged interview with him published by the newspaper "Fakt". W04403 stated clearly that he had never given any interviews to "Fakt" and explained that this newspaper took parts of a previous interview given by W04403 to another media outlet and published it without his consent.¹² W04403 could not exclude the possibility that the publisher "might have changed or redrafted certain things".¹³

17. In addition, public interviews during or after the conflict were used as a tool of propaganda,¹⁴ including by the publications which published them: they served to glorify the KLA, raise the morale of the civilian population, gain international support, or self-promote, often for political purposes. This impacts their purported probative value: they contain distortions, embellishments and inaccuracies. Absent testimonial verification, their probative value is minimal, and outweighed by the prejudice of not being able to confront these statements through cross-examination.

18. This is crucial regarding newspaper articles or interviews attributing statements to the Accused. The bar table is not the right avenue to tender such documents, let alone at the end of the Prosecution case, when they: (i) will not be authenticated by the relevant journalist or author; (ii) their content will not be put to any Prosecution witnesses for verification; and (iii) the Defence will not have an opportunity to confront this evidence through cross-examination. The Prosecution's case lasted two years: there was ample opportunity to discuss alleged interviews or statements of the

¹² Transcript of 25 March 2025, pp. 25808-25809.

¹³ *Idem*, pp. 25809.

¹⁴ E.g., Transcript of 5 November 2024, pp. 21939, 21973-21974; Transcript of 3 July 2024, p. 17570; Transcript of 10 July 2024, p. 18002; Transcript of 16 July 2024, pp. 18341-18342; Transcript of 17 July 2024, p. 18458; Transcript of 10 February 2025, pp. 24909-24910; 24913; 24914; Transcript of 6 June 2024, pp. 16881-16882.

Accused with relevant witnesses. The Prosecution failed to do so. Tendering this material through the bar table at the end of the case cannot be a cure to this failure.

19. Nor can this prejudice be cured by any suggestion that the Defence may address the issues in its own case. The burden of proof lies with the Prosecution and the Defence is under no obligation to present any case at all. The requirements of Rule 138 are an important safeguard for the Accused; to admit unreliable documents on the basis that the Defence can confront them by calling Defence evidence, would impermissibly reverse the burden of proof and undermine the presumption of innocence.

20. Even outside of publications attributing statements to the Accused, attentive scrutiny is necessary. The Prosecution tenders newspaper articles attributing acts to the KLA which either cite no underlying source, or refer to hearsay information from anonymous sources or unidentified sources.¹⁵ These documents have no probative value.

21. The Prosecution also tenders newspaper articles presenting the author's own views on various topics, which the Prosecution seeks to rely on as reflecting the views of the Accused. However, the Prosecution adduces no evidence that the authors were affiliated with the KLA, or that views expressed in those articles are attributable to the KLA or the Accused.¹⁶ These documents are not relevant or probative.

22. Further, the Prosecution often tenders newspaper articles about the KLA on the basis that they are relevant to "the KLA's use of media to disseminate its ideology and propaganda", without, however, presenting any evidence of KLA influence over

¹⁵ *E.g.*, Annex 1, items 11, 16, 17, 34, 36, 39, 45, 50, 62.

¹⁶ *Idem*, items 16, 24, 22, 33, 62.

media outlets beyond the mere existence of the articles themselves.¹⁷ Any such assertion is unsubstantiated and should be disregarded.

23. Of particular concern is the Prosecution tender of a video titled [REDACTED].¹⁸ The video contains excerpts of interviews with various individuals. Some the Prosecution interviewed and then decided not to call as witnesses; others were included in the witness list and then dropped; and others were never included in the Prosecution's witness list. This 'documentary' is replete with hearsay, speculation, irrelevant information and unverifiable allegations about Mr. Thaci's role during the war. As elaborated in Annex 1 to this Response,¹⁹ these issues go beyond the charges confirmed against Mr. Thaci and the Prosecution case, and yet constitute highly prejudicial allegations which vastly outweigh any probative value that may be assigned to them. The video also covers issues which go to the core of the case against Mr. Thaci, which is another factor against admission through the bar table.

24. The excerpts of interviews contained in the 'documentary' cannot be introduced through the bar table: there is no evidence on the record establishing the basis of knowledge of the individuals interviewed, such that their probative value is impossible to determine. Having no chance to test the content of this 'documentary' through cross-examination, any probative value it may hold is outweighed by its prejudicial effect. Such prejudice is particularly high with respect to allegations made by [REDACTED] and [REDACTED] in the video:²⁰ Having made the choice not to call either to testify, the Prosecution cannot be allowed to introduce new allegations originating from them through the bar table. The same applies to other individuals appearing in this video which the Prosecution failed to call as witnesses in this case.

¹⁷ *Idem*, items 6, 8, 9, 16, 10, 14, 21, 24.

¹⁸ Annex 1, item 82.

¹⁹ *Ibid.*

²⁰ *Ibid.*

25. Similarly, the Prosecution tenders newspaper interviews of Mr. Selimi, which have previously been denied admission by the Trial Panel.²¹ The Trial Panel found that such items lacked probative value without further contextualisation and that in light of the absence thereof, their reliability and probative value remained unclear. Further context was required for their admission so as not to cause unfair prejudice to the Accused.²² The Prosecution has had almost two years to contextualise these media interviews. However, it chose not to put these items to its witnesses but rather to wait until the closure of its case and to tender them through the bar table. The only contextualisation that the SPO has provided is non-corroborative testimonies of [REDACTED] and W04290, relating to a single incident described in one part of many of these interviews. Thus, the Prosecution has failed to further contextualise and enhance the probative value of the newspaper interviews of Mr. Selimi. Admission should therefore be denied.

Book excerpts

26. In Annex 2 to the Motion, the Prosecution tenders excerpts from 18 different books. Extreme caution is required in assessing whether they are suitable for admission. The Panel has heard evidence from several authors to books on the Kosovo conflict, and especially those written after the war, are replete with exaggerations, inaccuracies, embellishments, and are often entirely based on unsourced material, and/or hearsay from unidentifiable sources.²³ Books were written to pursue the author's political agenda, and therefore sought to distort reality to enhance the image

²¹ Annex 1, items 65-69. The Defence notes that even though item 67 has not been previously tendered it still falls within the exact same category of objections as items 65-66, 68-69.

²² KSC-BC-2020-06, F01596, Trial Panel II, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, public, para.36.

²³ E.g. Transcript of 22 February 2024, pp. 12856-12857; Transcript of 5 November 2024, pp. 21966, 21973; Transcript of 17 July 2024, pp. 18400, 18497-18498.

of the author and those involved with the KLA. Books were also used as post-war propaganda, amplifying and exaggerating reality to glorify the KLA and the sacrifice of the martyrs.²⁴

27. Against this background, verification provided by a witness, in particular the book's author, is crucial to assess whether book excerpts carry probative value. In previous decisions, the Panel has highlighted the importance of hearing the evidence of the author, in order for the "Defence to test the evidence and for the Panel to assess its reliability".²⁵ The importance of such verification has also emerged during the trial: for instance, W04576, who testified about several passages of his book, explained that it was written after the war, when he was running for a political post,²⁶ and therefore the book contains embellishments and exaggerations.²⁷ W04756 stressed that his book does not reflect reality; it presents the KLA as they wanted it to be, not as it actually was, which is a common feature of every liberation army writing its own history to inspire future generations.²⁸ W04756 could not confirm the authenticity of the documents he relied upon in his books, as he only obtained them after the war.²⁹ In W04576's words: "my kind request would be that considering these embellishments, these exaggerations, please do not consider the writings in the book as real facts because they are not real facts".³⁰

²⁴ E.g, Transcript of 20 February 2024, pp.12599-12601; Transcript of 22 February 2024, pp. 12856-12857; Transcript of 6 June 2024, pp. 16863-16864; Transcript of 17 July 2024, pp. 18400, 18405, 18497-18498; Transcript of 26 August 2024, p. 18939; Transcript of 5 November 2024, pp. 21939, 21966, 21973-21974.

²⁵ KSC-BC-2020-06, F01596, Trial Panel II, *Second Decision on Specialist Prosecutor's Bar Table Motion* ("Second BTM Decision"), 9 June 2023, public, para. 22. See also F01983COR, Trial Panel II, *Corrected Version of Sixth Decision on Specialist Prosecutor's Bar Table Motion* ("Sixth BTM Decision"), 5 December 2023, public, paras 27-28.

²⁶ Transcript of 21 February 2024, pp. 12754-12756.

²⁷ Transcript of 20 February 2024, p.12599-12601; Transcript of 22 February 2024, p. 12907.

²⁸ Transcript of 20 February 2024, p.12599-12601.

²⁹ Transcript of 21 February 2024, pp. 12742-12743.

³⁰ Transcript of 20 February 2024, p.12601.

28. The 18 books tendered were written by at least 11 purported authors, only one of whom has testified before the Panel.³¹ For the remaining books, the Defence and the Panel are deprived of any chance to discuss the author's methodology, explore the reliability of the sources used, test the accuracy of any events reported or conclusion proposed, and ultimately assess the reliability of the book. This is not merely an issue of weight: it is an issue of admissibility because the limited probative value of unverified book excerpts, is far outweighed by the prejudice caused to the Accused, who cannot confront them through cross-examination, especially when these passages refer to their acts and conduct.

29. Further, the Prosecution tenders 79 pages of a book titled "'Geriljareportereren' ('The Guerrilla Reporter')", authored by Pal Refsdal.³² The Defence strongly opposes the admission of these portions as the tender constitutes an impermissible request for reconsideration of the Panel's prior decision, concerns issues of central importance to the Prosecution case and is highly prejudicial to the rights of the Accused.

30. The Prosecution request seeks to reconsider the Second Bar Table Motion Decision, where the Panel denied admission of Mr Refsdal's book as it was not satisfied that it was *prima facie* reliable. According to the Panel:

The origin of the information contained in that book is unclear and the author will not be called as a witness, making it difficult for the Defence to test that evidence and for the Panel to assess its reliability. The Panel will therefore not admit this item from the bar table.³³

31. Despite the Panel's Decision, the Prosecution has not sought relief pursuant to Rule 79. No error of reasoning has been identified, nor has it shown that the item

³¹ W04651.

³² Annex 2, item XII.

³³ Second BTM Decision, para. 22 (*emphasis added*).

should be admitted to avoid injustice. The Prosecution failed to provide any compelling reason as to why the Panel should depart from its previous decision. Nothing during the course of these proceedings has increased the reliability of Mr. Refsdal's book. The Prosecution has not amended its witness list to include Pal Refsdal, nor has it evidenced the origin of the information relied upon by the author in his book, beyond inconsequential documents about the author's presence in Kosovo.³⁴ Three pages of the book were admitted following W04410 and W04752' evidence in court,³⁵ the Defence was given an opportunity to cross-examine on the contents of those three pages only. The same cannot be said of the many pages the Prosecution now seeks to admit at the end of its case. Additionally, the pages tendered concern the acts and conduct of Messrs. Thaci, Veseli and Selimi, and touch upon certain key allegations forwarded by the Prosecution.

32. Ultimately, the origin of the information contained in the book is still unclear, the author did not testify, and the Defence and the Panel were not able to test the evidence and assess its reliability. Its admission should be denied for the same reasons that it was previously denied.

33. Further, the Prosecution tenders a number of excerpts from three books authored by Jakup Krasniqi and two unpublished manuscripts which the Prosecution attributes to him. Admission of these excerpts through the Bar Table is prejudicial and should be rejected.

34. The Prosecution should have tendered the passages from Jakup Krasniqi's books through witnesses who could confirm or dispute the accuracy of their content. Indeed, the Prosecution had ample opportunity to do so with insider KLA witnesses, including Zone Commanders and members of the General Staff. The necessity of

³⁴ See Annex 2, p. 38.

³⁵ See P01449_ET/P01449_AT.

witnesses contextualising or responding to excerpts from these books is demonstrated by those passages which were discussed with witnesses during the trial.

35. For instance, excerpts from Jakup Krasniqi's 'the Big Turn', one of the books included in the Motion, were put to W04752 during Judges questioning. At the outset, W04752 clarified that "[n]ow, what Mr. Krasniqi said is his opinion. I do not read books because most of them exaggerate what actually happened."³⁶ W04752 then proceeded to confirm some passages of the book³⁷ and dispute others, especially those pertaining to the organisation of the KLA and the General Staff, which W04752 was well-placed to discuss. W04752 disputed the structure of the General Staff in summer 1998 as presented in the book, which he considered a mistake by Mr. Krasniqi.³⁸ He clarified that many of the General Staff's directorates and positions included in the book did not in fact exist in the summer 1998, stressing that had they existed at the relevant time, he would have been aware and would have coordinated with them.³⁹ He finally remarked that he could not base his answers on the content of Jakup Krasniqi's book because the book is an exaggeration.⁴⁰

36. Similarly, the same passages were put to W04401 during his direct examination. W04401 considered "highly likely" that Jakup Krasniqi was mistaken when he described KLA GS directorates in his book, "given that we are talking about a book that came out of the war".⁴¹ He also added that none of the individuals mentioned in the passage he was shown was able to complete any of the tasks outlined in the book, and disputed that there was any functioning directorate established in June 1998.⁴²

³⁶ Transcript of 17 July 2025, p. 18400, lines 10-11.

³⁷ *Idem*, p. 18400-18401.

³⁸ *Idem*, p. 18402.

³⁹ *Idem*, p. 18402-18406.

⁴⁰ *Idem*, p. 18405-18406.

⁴¹ Transcript of 2 December 2024, pp. 23030-23031.

⁴² Transcript of 2 December 2024, pp. 23031-23032.

37. The importance of this kind of context and commentary should not be disregarded or belittled. Jakup Krasniqi's books, just like any other book about the KLA written after the war, are inherently susceptible to exaggerations, inaccuracies or selective recollection, and often the basis or sources upon which they rely is not stated or not clear: in the absence of testimonial verification, their probative value is minimal and must be treated with considerable caution. When balanced with the prejudice caused to the Accused, the requirements of Rule 138 are not met. As the Prosecution has closed its case, the Defence cannot cross-examine any KLA witnesses to test the accuracy of these additional passages. The Panel too is deprived of the opportunity to put the passages to witnesses to assess their probative value, as the Panel did with W04752. The Prosecution should have identified the passages it intended to rely upon, put them to witnesses for comment and contextualisation, and then tendered them. The Prosecution's failure to do so cannot be cured by the prejudicial step of admitting such items through the bar table.

38. Unpublished manuscripts and drafts deserve additional caution. For example, the Prosecution tenders some passages of SPOE00231037-SPOE00231128, an unpublished "manuscript in preparation" which the Prosecution attributes to Mr. Krasniqi.⁴³ This item had already been tendered through the bar table during the trial. At the time, the Panel rejected the request for admission, holding that it was not satisfied of the probative value and reliability because "this document is an unpublished draft manuscript and, therefore, **without further contextualisation by a witness, the truth of the content therein remains uncertain**".⁴⁴ Almost two years since this decision, nothing has changed. The threshold for reconsideration is therefore not met, the Prosecution cannot simply resubmit items which the Panel has previously

⁴³ Annex 2, item VIII.

⁴⁴ Second BTM Decision, para. 130 (*Emphasis added*).

rejected. The Prosecution is unable to point at any contextualisation provided by any witness to the pages tendered in the motion. It follows that the truth of the content of this unpublished manuscript remains uncertain and the request for admission should be rejected.

39. The Panel's previous reasoning, namely that in the absence of contextualisation by a witness of the pages and passages tendered, unpublished and draft manuscripts do not hold any probative value,⁴⁵ applies to all unpublished manuscripts and drafts tendered in the Motion.

40. Similar considerations apply to item SPOE00052989-00053037, which is a book published by Baton Haxhiu with an alleged interview with Kadri Veseli. At the outset, the Prosecution's request to admit this item in full should be denied, in accordance with para. 50 of the Order on the Conduct of Proceedings and the Panel's previous findings in this regard.⁴⁶

41. Further, for the vast majority of the pages tendered, the Prosecution failed to point at any witness who verified or contextualised the relevant parts. In fact, the Prosecution points at three witnesses who were shown other pages of this book,⁴⁷ but conveniently omits the testimony of W04401, who openly disputed certain passages as incorrect.⁴⁸ Excerpts of books allegedly authored by the Accused or purportedly reporting on the Accused's statements should not be tendered in a vacuum: they should be put to relevant witnesses to allow the Defence to test their reliability and accuracy. There are a number of reasons for this that underscore the potential for acute and unfair prejudice being suffered by the Accused. To begin within, the book is

⁴⁵ See fn 44.

⁴⁶ KSC-BC-2020-06, F01409, Trial Panel II, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential, para. 39; Second BTM Decision, para. 24; Sixth BTM Decision, para. 26.

⁴⁷ W03879, W04752 and W04743. See Annex 2, p. 42.

⁴⁸ Transcript of 2 December 2024, pp. 23031-23032.

directed at a very specific audience - primarily, the voting public. The questions were posed and the answers were provided with very different criteria in mind to those of a trial judge. It is also the product of at least three parties – namely, interviewer, interviewee and editor. These circumstances give rise to content which requires discursive clarification through in-court testimony and cross-examination. Anything short of this standard is prejudicial to the Accused's right to confront the evidence against them, and should not be condoned by the Panel.

Documents originating from the Serbian State

42. The Prosecution tenders numerous proposed exhibits consisting of reports, orders and other documents originating from the Serbian [REDACTED] during the Indictment period. Documents originating from the direct opponent of the Accused in an armed conflict require a heightened critical assessment to determine their authenticity and reliability. This becomes especially crucial as they originate from a partisan and hostile actor, whose documented history of manipulating or fabricating evidence further exacerbates concerns regarding the authenticity and reliability of the material. The Defence recalls the evidence that Serbia has carried out false flag operations, tampered with crime scenes, and procured false testimony through torture and duress, raising well-founded concerns about the credibility and reliability of any information emanating from its State actors.⁴⁹

43. Against this background, the Prosecution did not undertake any reasonable effort to authenticate and corroborate the material tendered. None of the orders or reports tendered were put to relevant witnesses for authentication or

⁴⁹ KSC-BC-2020-06, F00877, Specialist Counsel, *Joint Defence Motion for Disclosure Pursuant to Rule 103*, 12 July 2022, confidential, with Annexes 1-3, public and Annex 4, confidential, paras 2, 29-65; F01100, Veseli Defence, *Veseli Defence Supplemental Submissions to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877COR)*, 14 November 2022, confidential, with Annexes 1-2, confidential, paras 40-41.

contextualisation. Instead, the Prosecution bases its submissions on authenticity solely on the fact that reports have “a format consistent with other contemporaneous Decisions or Reports” - whereby the documents used for comparison are often themselves non-authenticated documents tendered in the same motion.⁵⁰ This is circular reasoning and cannot suffice to meet the standard of admissibility. Instead, it is indicative of the Prosecution’s unduly laidback approach to the authentication of its proposed evidence and the need for extreme caution which the Panel is required to exercise in assessing whether these documents are suitable for admission.

44. The tendered “Serbian Reports” are all connected to the [REDACTED]. In its initial list of witnesses,⁵¹ the Prosecution included several witnesses who were members of the [REDACTED]. Despite having ample opportunity to put these documents to its own witnesses for authentication and contextualisation, the Prosecution eventually dropped most of these witnesses,⁵² or tendered their evidence in writing pursuant to Rules 153 and 155.⁵³ An emblematic example is [REDACTED], the [REDACTED], including in 1998 and 1999.⁵⁴ [REDACTED] evidence covered [REDACTED].⁵⁵

45. Another relevant witness is [REDACTED], a [REDACTED], whose evidence was admitted under Rule 153 over Defence objections.⁵⁶ The Defence objected to the admission of [REDACTED] evidence under Rule 153 because [REDACTED] was the sole [REDACTED] relied upon by the Prosecution who could have provided unique evidence about [REDACTED], especially regarding [REDACTED].⁵⁷ Similarly,

⁵⁰ E.g., F03114/A03, Items no. 19, 20, 21, 25.

⁵¹ KSC-BC-2020-06, F01296/A02, Specialist Prosecutor, *Annex 2 to Prosecution submissions pursuant to Decision F01229* (“Annex 2 to F01269”), 15 February 2023, confidential.

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ 078004-TR-ET Part 3, p. 1; 078004-TR-ET Part 1, p. 17 ; U009-4925-U009-4954, para. 4.

⁵⁵ 105725-TR-ET Part 4, p. 4.

⁵⁶ P01003.1_ET, p. 1; P01003.2_ET, p. 2.

⁵⁷ [REDACTED].

[REDACTED], as the [REDACTED],⁵⁸ was the [REDACTED] on the SPO's list before being dropped by the Prosecution.⁵⁹

46. Documents purportedly originating from the [REDACTED] are tendered in Annex 3 of the motion. Many of these documents are connected to the [REDACTED] region, deal with intelligence information or relate to purported attacks on the Serbian police. These documents could have been tested and tendered in court through [REDACTED].⁶⁰ Instead of authenticating these documents and reports through witnesses who were well-placed to discuss them by virtue of their rank and positions, the Prosecution prevented the Defence from challenging them by tendering these documents through the bar table at the end of the case. This is an illegitimate workaround which deprives the Panel and the Parties of the opportunity to properly assess authenticity of the tendered evidence.

47. In addition, many of the documents tendered under the title 'Serbian Reports' bear little to no relevance or probative value to the charges in this case. The Prosecution mainly argues that those reports show the existence of an armed conflict between the KLA and FRY forces throughout the Indictment period.⁶¹ Some of the documents, however, relate to events that happened outside the Indictment period⁶² and as such are irrelevant. Moreover, the majority of the documents do not mention the KLA and do not contain evidence that any of the individuals mentioned were in any way affiliated with the KLA or were acting pursuant to any alleged policy.⁶³ The occasional reference to actions taken by unnamed armed persons, "terrorists" or

⁵⁸ IT-04-84 P01231_E Confidential, para. 1; IT-04-84 T9830-T9919 RED Unredacted, p. 9833.

⁵⁹ Annex 2 to F01269.

⁶⁰ E.g., F03114/A03, Items no. 27, 33, 40, 41, 42.

⁶¹ F03114, para. 6(ii).

⁶² F03114/A03, Items no. 18, 20.

⁶³ F03114/A03, Items no. 18- 22, 25-29,31-44, 46, 48, 49.

“separatist groups” cannot be sufficient to conclude that the KLA was involved in the described events.

48. The purported corroboration proposed by the Prosecution is of no avail. For example, the Prosecution relies several times on the evidence of W02144 to claim that the unnamed armed individuals described in the tendered exhibits as controlling roads in May and June 1998 were members of the KLA.⁶⁴ However, the Prosecution ignores W02144’s evidence that, at the relevant time, he encountered checkpoints controlled by farmers and “rag-tag armed people”, not the KLA.⁶⁵

49. As a result, no conclusions can be drawn from the reports as to whether it was the KLA engaging in actions which potentially show the existence of an armed conflict. Contrary to Prosecution submission, no information about the KLA’s organisation, structure or logistics, can be taken from those reports. Had the Prosecution intended to establish a connection between the armed individuals described in the reports and the KLA, it should have attempted to do so through witnesses able to provide relevant context.

The Prosecution request to Amend its Exhibit List should be rejected

50. Pursuant to Rule 118(2), the Panel may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to Rule 95(4)(b) and (c). As proceedings advance, any further requests to amend the Exhibit List will be subject to greater scrutiny.⁶⁶ The Prosecution request to add 065554-01 should be rejected as the Prosecution has failed to meet the requisite test.

⁶⁴ E.g. F03114/A03, Items no. 38-40, referring to W02144’s testimony.

⁶⁵ Transcript of 28 May 2024, p. 16120.

⁶⁶ KSC-BC-2020-06, F02167, Trial Panel II, *Decision on Prosecution Request to Amend the Exhibit List (F02099)*, 7 March 2024, confidential, para 10.

51. The Prosecution request is untimely and lacks good cause. The Prosecution has possessed 065554-01 since at least 24 August 2022, when it was disclosed to the Defence via Rule 102(3). The Prosecution re-disclosed the item pursuant to Rule 103 on 22 March 2023. The Prosecution had ample time over the past two years of trial to request the item's admission to its exhibit list, yet failed to do so. The request is inexplicably late and should be rejected on this ground alone.

52. Additionally, the Defence notes that the Prosecution provides no good cause to amend the exhibit list at this late stage. No effort is made by the Prosecution to argue this limb of the test is met. Amendment of the exhibit list at this stage, once the Prosecution has formally closed its case, precludes the Defence from confronting witnesses with the item in question with a view to challenging the veracity of its contents. The prejudice this causes militates strongly against its admission. The request should be denied.

V. CONCLUSION

53. In light of the foregoing, the Defence respectfully requests the Trial Panel:

REJECT the Prosecution request to amend its Exhibit List; and
REJECT admission of the Items tendered in the Motion for the reasons set out in the present response and in Annexes 1-3.

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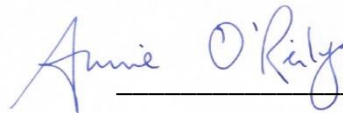
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