



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The 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

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Corrected Version of Fifth Decision on Specialist Prosecutor's Bar Table Motion

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TRIAL PANEL II (“Panel”), pursuant to Articles 21, 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137 and 138(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 16 December 2022, the Panel invited the Specialist Prosecutor’s Office (“SPO”) to file a bar table motion pertaining to: (i) proposed exhibits on its list of exhibits which it intends to use for any of its first 40 witnesses; and (ii) evidentiary material that the SPO considers important to the clear and effective presentation of its case at this stage (“Fourth Oral Order”).¹

2. On 8 February 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request for admission of material through the bar table (“Bar Table Motion”).²

3. On 21 February 2023, the Panel, upon the request of the Defences for Hashim Thaçi (“Mr Thaçi”), Kadri Veseli (“Mr Veseli”), Rexhep Selimi (“Mr Selimi”) and Jakup Krasniqi (“Mr Krasniqi”) (“Accused” and “Defence”), extended the time for response to the Bar Table Motion until 21 March 2023.³

4. On 21 March 2023, the Defence responded to the Bar Table Motion (“Response”).⁴

5. On 23 March 2023, the SPO filed a notification where it corrected errors concerning two documents submitted in the Bar Table Motion (“Notification”).⁵

¹ Transcript of Hearing, Panel, 16 December 2022, p. 1775, line 6 to p. 1776, line 5.

² F01268, Specialist Prosecutor, *Prosecution Application for Admission of Material through the Bar Table*, 8 February 2023, with Annexes 1-4, 6, 7, confidential, and with Annexes 5, 8.

³ F01309, Panel, *Decision on Defence Request for a Revised Bar Table Motion and a Suspension and an Extension of Time*, 21 February 2023, paras 15, 16(c).

⁴ F01387, Specialist Counsel, *Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential, with Annexes 1-8, confidential.

⁵ F01393, Specialist Prosecutor, *Prosecution Notification Concerning Two Submitted Bar Table Items*, 23 March 2023, confidential.

6. On 31 March, 9 June, 27 July and 8 August 2023, the Panel issued decisions where it partially addressed the Bar Table Motion and admitted in evidence documents offered in that Bar Table Motion (“Decision on Bar Table Motion”, “Second Decision on Bar Table Motion”, “Third Decision on Bar Table Motion” and “Fourth Decision on Bar Table Motion” respectively).⁶
7. On 17 July 2023, following a request for certification to appeal the Second Decision on Bar Table Motion by the Veseli and Krasniqi Defence, the Panel issued a decision granting certification to appeal (“Decision on Veseli and Krasniqi Defence Request for Certification to Appeal the Second Decision on Bar Table Motion”).⁷
8. On 23 August 2023, the Court of Appeals Panel issued a decision denying the appeal of the Second Decision on Bar Table Motion agreeing with the Panel’s finding that the records of the search and seizures met the requirement of “detailed description” in Rule 39(4) and finding that the Panel’s interpretation of Rule 39 did not depart from the plain and ordinary meaning or the object and purpose of the rule (“Court of Appeals Decision”).⁸

II. SUBMISSIONS

9. The SPO requests the admission through the bar table of items falling into six categories: (i) Kosovo Liberation Army (“KLA”) General Staff communiques, political declarations and other announcements; (ii) drafts of KLA public statements, seized

⁶ 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; F01705, Panel, *Third Decision on Specialist Prosecutor’s Bar Table Motion*, 27 July 2023, confidential; F01716, Panel, *Fourth Decision on Specialist Prosecutor’s Bar Table Motion*, 8 August 2023, confidential.

⁷ F01678, Panel, *Decision on Veseli and Krasniqi Defence Request for Certification to Appeal the Second Decision on Specialist Prosecutor’s Bar Table Motion*, 17 July 2023.

⁸ IA029/F00005, Court of Appeals Panel, *Decision on Veseli and Krasniqi Appeal against Second Decision on Specialist Prosecutor’s Bar Table Motion* (“Decision on Appeal Against Second Decision on Bar Table Motion”), 23 August 2023, confidential and *ex parte*. A public redacted version was issued on the same day, IA029/F00005/RED.

from Mr Krasniqi ; (iii) published archives of KLA General Staff media agency “Radio Free Kosovo” (“RFK”); (iv) published archives of KLA General Staff media “Kosovapress”; (v) re-publications of “Kosovapress” material in other media; and (vi) other items that do not fit a specific category but fall within the scope of the Panel’s Fourth Oral Order.⁹

10. The Defence submits that the Bar Table Motion is an unreasonable and prejudicial attempt to admit a large volume of evidence while avoiding fair scrutiny and the requirements that the documents be authenticated and verified by tendering it through the relevant witness.¹⁰ The Defence further submits that the SPO has failed to adhere to the Panel’s direction to use a high threshold of evaluation so as to ensure that only evidence of high probative value is tendered.¹¹ The Defence adds that the present approach will create a bloated trial record and undermine the fairness of proceedings by departing significantly from the guiding principle of orality, publicity and adversarial argument, which will neither expediate the trial nor facilitate the fair adjudication of the case.¹² In addition, the Defence raises general objections to the admission through the bar table of 13 different categories of documentary evidence and raises further specific objections to a number of other items.¹³

III. APPLICABLE LAW

11. The applicable law regarding the present matter is set out in particular in Article 40(6)(h) and Rule 138(1), and has been laid out extensively in the Decision

⁹ Bar Table Motion, para. 2.

¹⁰ Response, para. 1.

¹¹ Response, para. 3.

¹² Response, para. 4.

¹³ Response, paras 14-105; Annexes 1-6 to the Response.

on Bar Table Motion.¹⁴ The Panel will apply these standards to the present decision.

IV. DISCUSSION

A. PRELIMINARY MATTERS

12. The Panel notes that in its previous decisions addressing the Bar Table Motion, it prioritised: (i) those items which the SPO had identified as linked to the first six witnesses; (ii) those items which the SPO had identified as linked to the following six witnesses; (iii) Annex 1 (excluding items seized from Mr Krasniqi, or Mr Selimi); and (iv) Annexes 3-5. This decision supplements these decisions by addressing all remaining items which were seized from Mr Krasniqi's or Mr Selimi's residences.

13. The Panel also notes that three items¹⁵ have already been admitted into evidence.¹⁶ The request for their admission from the bar table has therefore become moot.

14. The Panel will not consider the admission of one item at this stage as the SPO has failed to produce a correct Albanian, or English, version of the document.¹⁷ Accordingly, the Panel denies, without prejudice, the admission of SPOE00229232-SPOE00229233 at this stage.

¹⁴ See Decision on Bar Table Motion, paras 8-13.

¹⁵ The Panel notes that all references to items in the Annexes to the Bar Table Motion in this decision include their corresponding translations (if any) unless otherwise stated.

¹⁶ 1D00030, 1D00033, 1D00047; See also Annex 2 to the Bar Table Motion, item 23; Annex 6 to the Bar Table Motion, items 264, 282.

¹⁷ The Panel notes that SPOE00229232-SPOE00229233 only contains the typed questions and not the handwritten responses reflected in SPOE00229232-SPOE00229233-ET; Annex 2 to the Bar Table Motion, item 41.

B. CATEGORIES OF PROPOSED EVIDENCE

15. The SPO requests the admission of 117 documents, not previously addressed by the Panel, which were seized during the searches of Mr Krasniqi's and Mr Selimi's residences.¹⁸

¹⁸ 086872-086872, SPOE00230213-SPOE00230213, SPOE00230124-SPOE00230124, 086832-086832, 086841-086841, 086855-086855, U000-9953-U000-9953, 086863-086863, SPOE00230775-SPOE00230775, and SPOE00230797-SPOE00230797; *See* Annex 1 to the Bar Table Motion, items 29A, 31, 31A, 47, 48, 48A, 62, 63A, 66-67; SPOE00231368-SPOE00231369, SPOE00231905-00231905, SPOE00231370-SPOE00231370, SPOE00231309-SPOE00231311, SPOE00232784-00232785, SPOE00231901-00231903, SPOE00231896-00231898, SPOE00225232-SPOE00225232, SPOE00231371-SPOE00231371, SPOE00225233-SPOE00225233, SPOE00225166-SPOE00225167, SPOE00225225-SPOE00225225, SPOE00231372-SPOE00231373, SPOE00232794-00232795, SPOE00232745-00232746, SPOE00231326-SPOE00231327, SPOE00225168-SPOE00225168, SPOE00232775-00232775, SPOE00231899-00231900, SPOE00225019-SPOE00225019, SPOE00225046-SPOE00225048, SPOE00232068-00232068, SPOE00231328-SPOE00231329, 086846-086847, SPOE00232086-00232087, SPOE00231376-SPOE00231377, 086844-086845, SPOE00231374-SPOE00231375, SPOE00231378-SPOE00231379, SPOE00232783-00232783, SPOE00225069-SPOE00225070, SPOE00232612-00232614, SPOE00225218-SPOE00225219, SPOE00232813-00232814, SPOE00225215-SPOE00225217, SPOE00225227-SPOE00225228, SPOE00225230-SPOE00225231, SPOE00231332-SPOE00231335, SPOE00227888-SPOE00227890, SPOE00225208-SPOE00225208, SPOE00225234-SPOE00225235, SPOE00225220-SPOE00225220, SPOE00231904-00231904, SPOE00231380-SPOE00231381, SPOE00231831-00231832, SPOE00231390-SPOE00231390, SPOE00231330-SPOE00231331, SPOE00231922-00231923, SPOE00231833-00231834, SPOE00231391-SPOE00231392, SPOE00231340-SPOE00231343, SPOE00231982-00231982, SPOE00231921-00231921, SPOE00231382-SPOE00231383, SPOE00232868-00232868, SPOE00231946-00231946, SPOE00231346-SPOE00231347, SPOE00225162-SPOE00225162, SPOE00228826-SPOE00228826, SPOE00227854-SPOE00227856, SPOE00231384-SPOE00231385, SPOE00229228-SPOE00229229, *See* Annex 2 to the Bar Table Motion, items 1, 2A-2B, 3, 4A-4E, 5A-5F, 6, 7A-7C, 8A-8D, 9A-9C, 10A-10C, 11, 12A-12B, 13-14, 15A-15C, 16, 20-22, 24, 25A-25B, 26A-26B, 27-28, 29A-29B, 30-31, 32A-32B, 33-40; U000-0531-U000-0531, SPOE00248506-00248506, SPOE00248503-00248503, SPOE00248502-00248502, SPOE00232821-00232821, SPOE00232251-00232252, SPOE00232076-00232081, SPOE00232065-00232065, SPOE00231511-SPOE00231513, SPOE00231482-SPOE00231498, SPOE00231444-SPOE00231464, SPOE00229213-SPOE00229214, SPOE00229215-SPOE00229216, SPOE00228822-SPOE00228822, SPOE00228801-SPOE00228806, SPOE00228192-SPOE00228194, SPOE00227671-SPOE00227674, SPOE00227462-SPOE00227503, SPOE00227329-SPOE00227335, SPOE00225282-SPOE00225285, SPOE00225277-SPOE00225277, SPOE00225270-SPOE00225270, SPOE00225264-SPOE00225264, SPOE00225261-SPOE00225261, SPOE00225256-SPOE00225257, SPOE00225255-SPOE00225255, SPOE00225252-SPOE00225252, SPOE00225250-SPOE00225250, SPOE00225249-SPOE00225249, SPOE00225248-SPOE00225248, SPOE00225247-SPOE00225247, SPOE00225246-SPOE00225246, SPOE00225243-SPOE00225243, SPOE00225242-SPOE00225242, SPOE00225238-SPOE00225238, SPOE00225155-SPOE00225156, SPOE00225153-SPOE00225154, SPOE00225152-SPOE00225152, SPOE00225151-SPOE00225151, SPOE00225150-SPOE00225150, SPOE00225131-SPOE00225131, SPOE00225106-SPOE00225130, SPOE00223376-00223376, SPOE00223375-00223375, SPOE00223374-00223374, SPOE00223373-00223373; Annex 6 to the Bar Table Motion, items 187, 205, 207, 209, 213, 215, 219, 221, 223, 225, 227, 239-240, 244, 246, 248, 250, 254, 256, 272, 274, 276, 278, 280, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 321, 323, 325, 327.

16. The Defence challenges the lawfulness of the seizures conducted at Mr Krasniqi's and Mr Selimi's residences based on: (i) alleged inadequacies of the inventory; (ii) failure to provide a copy of the inventory in the Albanian language; (iii) absence of counsel during (part of) the search operation at Mr Krasniqi's home; and (iv) alleged violations of the rights of the Accused.¹⁹

17. 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.²⁰ The Panel also recalls its findings and the Court of Appeals Panel's finding in respect of the inventory that were made following those search and seizure operations.²¹ The Panel further notes that at least four documents seized from Mr Krasniqi's or Mr Selimi's residences have now been tendered by the Thaçi Defence as Defence exhibits.²² The Panel will consider the admissibility of the remaining items seized from Mr Krasniqi's and Mr Selimi's residences.

18. The Panel has assessed all items seized from Mr Krasniqi's or Mr Selimi's residences based on the following categories: (i) Annex 1 – KLA General Staff Communiques, Political Declarations and other Public Statements on behalf of the KLA General Staff; (ii) Annex 2 – Draft KLA Public Statements Seized from Mr Krasniqi; and (iii) Annex 6 – Other Items Pursuant to the 16 December 2022 Fourth Oral Order.

¹⁹ Response, paras 31-51.

²⁰ Second Bar Table Decision, paras 101-120; *See also* Decision on Appeal Against Second Decision on Bar Table Motion, paras 32, 36.

²¹ *See* Court of Appeals Decision, paras 32, 36-38.

²² *See* 1D00030, 1D00033, 1D00047, 1D00048.

1. Annex 1 – KLA General Staff Communiques, Political Declarations and other Public Statements on behalf of the KLA General Staff

19. The SPO seeks admission of 10 communiques, political declarations or other public statements of the KLA General Staff originally published in “Zëri i Kosovës”, “Rilindja”, “Bujku”, and “Koha Ditore”, which were seized from either Mr Krasniqi’s or Mr Selimi’s residences.²³ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.²⁴

20. The Defence objects to the admission through the bar table of the communiques set out in Annex 1 to the Bar Table Motion. Specifically, the Defence avers that many of the same communiques were tendered through witnesses before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) where the trial chambers accepted that: (i) these documents were written by different individuals, including zone commanders without the knowledge of the General Staff; (ii) were used as means of propaganda; and (iii) for the purpose of this campaign, their content was often exaggerated or altered.²⁵ The Defence argues that these findings cast significant doubt on the reliability and authenticity of these documents, which *prima facie* do not meet the test of Rule 138.²⁶ In addition, the Defence submits that as some are unsigned, unstamped and sometimes undated, their authorships is unknown, it is unclear on what information these documents were written and the “original” versions are not available, these documents falls short of the requirements for admissibility

²³ 086872-086872, SPOE00230213-SPOE00230213, SPOE00230124-SPOE00230124, 086832-086832, 086841-086841, 086855-086855, U000-9953-U000-9953, 086863-086863, SPOE00230775-SPOE00230775, and SPOE00230797-SPOE00230797; See Annex 1 to the Bar Table Motion, items 29A, 31, 31A, 47, 48, 48A, 62, 63A, 66-67.

²⁴ Bar Table Motion, para. 3.

²⁵ Response, para. 16.

²⁶ Response, para. 17.

without a witness providing context.²⁷ In addition, the Defence provides specific objections to many of the abovementioned items.²⁸

21. The Panel notes that these documents encompass: (i) a re-publication in “Koha Ditore” of an interview with Mr Krasniqi given to the British Broadcasting Corporation (“BBC”) and public declaration 6;²⁹ (ii) two versions of a publication titled “message to the Albanian people from the KLA General Staff” published in “Koha Ditore” and “Zëri i Kosovës”;³⁰ (iii) a KLA memorandum to the international community titled “Kosovo had Historically its own Political Status, and the KLA is Fighting for its Independence” published in “Rijinda” with a handwritten annotation “17.10.1998”;³¹ (iv) communiques 60 and 73³² published in “Bujku” and “Zëri i Kosovës” and an unnumbered communique titled “Enemy’s Dangerous Tendency to Spread the Conflict” published in “Koha Ditore”, which the SPO avers is also communique 60;³³ (v) political declarations 3, 20 and 31 published in “Koha Ditore” or “Zëri i Kosovës”;³⁴ and (vi) a document containing an interview said to have been given to the Albanian Television by Mr Thaçi, and political declaration 33.³⁵

22. At the outset, the Panel notes that, while the SPO has characterised the documents in Annex 1 to the Bar Table Motion as KLA General Staff communiques, political declarations and other public statements on behalf of the

²⁷ Response, para. 17.

²⁸ Annex 1 to the Response, items 29A, 31, 31A, 47, 48, 48A, 62, 63A, 66-67.

²⁹ 086872-086872; Annex 1 to the Bar Table Motion, item 29A.

³⁰ SPOE00230213-SPOE00230213, SPOE00230124-SPOE00230124; Annex 1 to the Bar Table Motion, items 31, 31A.

³¹ 086832-086832; Annex 1 to the Bar Table Motion, item 47.

³² The Panel notes that communique 73 (SPOE00230775-SPOE00230775) also contains a statement by the People’s Movement of Kosovo titled “KLA was not founded in Kosovo in order to capitulate in Rambouillet”; Annex 1 to the Bar Table Motion, item 66.

³³ 086841-086841, 086855-086855, SPOE00230775-SPOE00230775; Annex 1 to the Bar Table Motion, items 48, 48A, 66.

³⁴ U000-9953-U000-9953, 086863-086863, and SPOE00230775-SPOE00230775; Annex 1 to the Bar Table Motion, items 62, 63A, 66.

³⁵ SPOE00230797-SPOE00230797; Annex 1 to the Bar Table Motion, item 67.

KLA General Staff, two items also contain media interviews attributable to Mr Krasniqi and Mr Thaçi respectively,³⁶ which are addressed separately below.

(a) KLA General Staff Communiques, Political Declarations and Other Public Statements on behalf of the KLA General Staff

23. The Panel finds all of these items relevant to allegations in the Amended Indictment in that they relate to, *inter alia*, the following matters: (i) the role and authority of the KLA General Staff; (ii) attempts to position the KLA as the only legitimate voice of the Albanian people of Kosovo; (iii) the use of communiques, political declarations, and other means to communicate the KLA General Staff's position on matters relevant to this case; (iv) the KLA General Staff's role, oversight and knowledge of military activities in certain operational zones; (v) attendance at the Rambouillet Conference; and (vi) implementation of United Nations Security Council Resolution 1160.³⁷

24. The Panel notes that the Defence disputes the authorship of communiques, political declarations and public statements on behalf of the KLA General Staff but recalls its finding from the Second Decision on Bar Table Motion that the question of authorship of communiques, political declarations and other public statements of the KLA General Staff is to be resolved at trial.³⁸ This finding applies to all such documents addressed in the present decision. Similarly, the purpose(s) of those communiques is a matter that will be determined at the end of trial in light of all relevant evidence.

25. Turning to the question of authenticity, the Panel considers that these items are *prima facie* authentic as all but one are dated, attributed and they were

³⁶ Annex 1 to the Bar Table Motion, items 29A, 67.

³⁷ F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Amended Indictment"), 30 September 2022, strictly confidential and *ex parte* (reclassified as confidential on 26 January 2023), paras 15, 19, 21, 24, 26.

³⁸ Second Decision on Bar Table Motion, para. 71.

published in “Zëri i Kosovës”, “Rilindja”, “Bujku”, and “Koha Ditore”. In addition, the Panel notes that the substance of four of these documents is consistent, albeit sometimes with minor differences, with other versions admitted into evidence.³⁹ The Panel notes that 086832-086832 is not dated but considers, nevertheless, that it is *prima facie* authentic and observes that there is a handwritten date of “17.10.1998” that it is consistent with a version published in “Bujku” which is also dated 17 October 1998.⁴⁰ The content of this document is also consistent with this date. The Panel also notes that 086855-086855 does not have a communique number but is still satisfied that it is communique 60 as its content is consistent with 086841-086841, which is numbered as communique 60.⁴¹

26. The Panel is satisfied that all communiqués and political declarations contained in 086872-086872, 086841-086841, 086855-086855, U000-9953-U000-9953, 086863-086863, SPOE00230775-SPOE00230775, and SPOE00230797-SPOE00230797 have *prima facie* probative value. The Panel notes that these were published on behalf of the KLA and could be relevant to some of the facts and circumstances outlined above. Many of these were published widely in several different newspapers.⁴² In addition, the Panel observes that many of them corroborate each other, both in terms of substance and format. Drafts versions of four of the above-mentioned communiqués and political declarations were also found at Mr Krasniqi’s residence as further discussed below.⁴³

³⁹ The Panel notes, *inter alia*, that: (i) items 48 and 48A in Annex 1 to the Bar Table Motion and P00159 are communique 60; (ii) item 62 in Annex 1 to the Bar Table Motion and P00311 are political declaration 20; (iii) item 63A in Annex 1 to the Bar Table Motion, P00270_ET.15 and P00312 are political declaration 3; and (iv) item 29A in Annex 1 and P00291 are political declaration no. 6.

⁴⁰ Annex 1 to the Bar Table Motion, item 47.

⁴¹ Annex 1 to the Bar Table Motion, items 48, 48A.

⁴² *See supra*, fn 39.

⁴³ The Panel notes that: (i) item 63A in Annex 1 and items 2A-2B in Annex 2 to the Bar Table Motion are political declaration 3; (ii) items 48 and 48A in Annex 1 and item 20 in Annex 2 to the Bar Table Motion are communique 60; (iii) item 62 in Annex 1 and items 25A-25B in Annex 2 to the Bar Table Motion are political declaration 20; and (iv) item 66 in Annex 1 and item 36 in Annex 2 to the Bar Table Motion are communique 73.

27. As already noted, the fact that one of the purposes of the KLA communiques might have been to serve as propaganda and that the content of some of these might contain exaggerated claims does not render them inadmissible. The Panel will determine, on the basis of all of the evidence, what purpose or purposes these items were intended to serve. The Panel will also consider the substance of the claims made therein in light of all of the evidence.

28. Lastly, the Panel also considers that SPOE00230213-SPOE00230213 and SPOE00230124-SPOE00230124 ('message to the Albanian people' published in "Koha Ditore" and "Zëri i Kosovës") and 086832-086832 have *prima facie* probative value. The message to the Albanian people was published in two different newspapers, and four drafts of this publication were found at Mr Krasniqi's residence.⁴⁴ 086832-086832 was published in "Rilindja" and a draft was found at Mr Krasniqi's residence. They are of potential relevance and probative value not just in respect of their content, but in relation to the issue of authorship of such document and as corroboration of other documents attributed to the KLA General Staff.

29. The Panel is satisfied that the *prima facie* probative value of the documents in paragraphs 26-28 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses.

(b) Media Interviews and Statements by the Accused

30. Documents in two of the offered items raise particular issues of admissibility, namely: (i) 086872-086872 which contain the re-publication in "Kosovë Botë" of an interview with Mr Krasniqi given to the BBC; and (ii) SPOE00230797-SPOE00230797 which contain the record of an interview with Mr Thaçi. The Defence raises three associated objections: (i) the accuracy and completeness of the record of these

⁴⁴ Annex 1 to the Bar Table Motion, items 31, 31A.

interviews has not been clearly established; (ii) the probative value of these, if any, cannot be fully evaluated without additional context and/or corroboration; and (iii) the admission of items purportedly reflecting the views and statements of an Accused raises issues of fairness and confrontation.⁴⁵

31. The Panel has already noted that it will approach media reports and records of interviews in the media offered by the SPO with caution.⁴⁶ This is to account for the fact that person(s) responsible for preparing such documents (journalists; editors) are not to be called to testify by the SPO. The Panel has considered the fact that statements attributed to a particular individual might have been subject to editorial comment or re-formulation.⁴⁷ The Panel has taken these facts into account in determining whether to admit these documents, and will again do so when deciding what weight and/or probative value to attach, if any, to such documents.

32. The Panel is satisfied that both items are relevant, which does not appear to be disputed by the Defence. In particular, they provide indications of Mr Thiçi's and Mr Krasniqi's respective roles, powers and positions. The Panel notes that these were given freely and in the exercise of Mr Thiçi's and Mr Krasniqi's respective roles and positions within the KLA General Staff. These items are *prima facie* authentic, as is apparent from both being published and copies thereof having been found at Mr Krasniqi's home. They are both *prima facie* probative of the issues outlined above. The statement by Mr Thiçi's is a written record of an interview originally given on Albanian television. No issue was taken regarding the

⁴⁵ Annex 1 to the Bar Table Motion, items 29A, 67.

⁴⁶ Second Decision on Specialist Prosecutor's Bar Table Motion, para. 30; *See also* ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, [Decision on Accused's Bar Table Motion \(Karadžić Statements\)](#) ("Karadžić Decision"), 2 April 2014; *Prosecutor v. Karadžić*, IT-95-5/18-T, [Decision on Prosecution's Motion for the Admission of Documents From the Bar Table \(Municipalities\)](#) ("Karadžić Decision (Municipalities)"), 25 May 2012, paras 30-32; *Prosecutor v. Karadžić*, IT-95-5/18-T, [Decision on Prosecution's Motion for the Admission of Evidence From the Bar Table \(Srebrenica\)](#) ("Karadžić Decision (Srebrenica)"), 22 May 2012, paras 15-17.

⁴⁷ *See Karadžić Decision*, para. 10; [Karadžić Decision \(Municipalities\)](#), para. 31; [Karadžić Decision \(Srebrenica\)](#), para. 16.

accuracy or completeness of the record of the statement attributed to him. It reflects a number of facts and circumstances that are either not in dispute between the parties or corroborated by evidence already on the record. Mr Krasniqi's interview with the BBC (086872-086872) appears to be a set of questions and answers. Furthermore, the Panel notes that political declaration no. 6, a copy of which forms part of 086872-086872, has already been admitted as P00291. There is also no indication of any prejudicial effect outweighing the *prima facie* probative value of these.

33. In light of the foregoing, the Panel admits SPOE00230213-SPOE00230213, SPOE00230124-SPOE00230124, 086841-086841, 086855-086855, U000-9953-U000-9953, 086863-086863, SPOE00230775-SPOE00230775, 086832-086832, 086872-086872 and SPOE00230797-SPOE00230797. This is without prejudice to the weight and/or probative value, which the Panel might be prepared to attach to the interview, or statements, in 086872-086872 and SPOE00230797-SPOE00230797.

2. Annex 2 - Draft KLA Public Statements Seized from Mr Krasniqi

34. The SPO seeks admission of 61 documents which are drafts of public statements of the KLA seized from Mr Krasniqi's residence.⁴⁸ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁴⁹

35. The Defence objects to the admission of the alleged drafts of political declarations and communiques in the absence of a witness to establish their

⁴⁸ Annex 2 to the Bar Table Motion.

⁴⁹ Bar Table Motion, para. 3.

relevance, probative value and reliability.⁵⁰ In addition, the Defence submits that these documents do not possess the required indicia of relevance and authenticity and that the ICTY has found that drafts for which authorship cannot be proven and which are lacking stamps, signatures or other formalised indicia, should not be accepted on the record.⁵¹ The Defence adds that authorship cannot be presumed because of where the items were seized, that the SPO has not proved that the draft documents were written before the published versions and that they lack the requisite probative value absent authentication and proof of authorship by Mr Krasniqi.⁵² Lastly, the Defence submits that the probative value is outweighed by the prejudicial effect on the Accused as admission from the bar table prevents the Defence from confronting a witness in respect of their authenticity and authorship.⁵³

36. The Panel finds that the documents encompasses drafts of the following public statements: (i) political declarations 2, 3 (two versions), 4 (five versions), 5 (six versions),⁵⁴ 6 (three versions), 8 (three versions), 9 (three versions), 17, 20 (two versions), 21, 22 (two versions), 34, 35 (handwritten document); 36 (handwritten document);⁵⁵ (ii) communiqués 48, 49 (two versions; one which is

⁵⁰ Response, para. 25; *See also* Annex 2 to the Response, pp. 69-79.

⁵¹ Response, para. 26.

⁵² Response, paras 27-29.

⁵³ Response, para. 30.

⁵⁴ The Panel notes that SPOE00232794-00232795 and SPOE00232745-00232746 are titled “communiqué 50” but that their content is consistent with SPOE00225233-SPOE00225233, SPOE00225166-SPOE00225167, SPOE00225225-SPOE00225225, and SPOE00231372-SPOE00231373, which are political declaration 5; Annex 2 to the Bar Table Motion, items 5A-5F.

⁵⁵ SPOE00231368-SPOE00231369, SPOE00231905-00231905, SPOE00231370-SPOE00231370, SPOE00232784-00232785, SPOE00231901-00231903, SPOE00231896-00231898, SPOE00225232-SPOE00225232, SPOE00231371-SPOE00231371, SPOE00225233-SPOE00225233, SPOE00225166-SPOE00225167, SPOE00225225-SPOE00225225, SPOE00231372-SPOE00231373, SPOE00232794-00232795, SPOE00232745-00232746, SPOE00225168-SPOE00225168, SPOE00232775-00232775, SPOE00231899-00231900, 086846-086847, SPOE00232086-00232087, SPOE00231376-SPOE00231377, 086844-086845, SPOE00231374-SPOE00231375, SPOE00231378-SPOE00231379, SPOE00225234-SPOE00225235, SPOE00231904-00231904, SPOE00231380-SPOE00231381, SPOE00231922-00231923, SPOE00231921-00231921, SPOE00231382-SPOE00231383, SPOE00227854-SPOE00227856, SPOE00231384-SPOE00231385, and SPOE00229228-SPOE00229229; Annex 2 to the Bar Table Motion, items 1, 2A-2B, 4A-4E, 5A-5F, 7A-7C, 9A-9C, 10A-10C, 22, 25A-25B, 28, 32A-32B, 38-40.

handwritten), 50, 51 (two versions), 52 (three versions), , 60, 64. 65 (two versions), 66 (two versions), 67, 68, 73 and 75 (communiqués 53-54 were admitted in the Second Decision on Bar Table Motion);⁵⁶ (iii) a document titled “a public statement” from a 17 June 1998 BBC interview with Mr Krasniqi;⁵⁷ (iv) a document titled “a public statement” dated 29 July 1998;⁵⁸ (v) four versions of a document titled “KLA General Staff Message to the Albanian People”;⁵⁹ (vi) an interview with Mr Krasniqi dated 2 September 1998 titled “Adem Demaci – a personality nationally affirmed”;⁶⁰ (vii) Military Police Directorate communiqué no. 2;⁶¹ (viii) a document self-described as Deutsche Welle “exclusive interview” with Mr Krasniqi;⁶² (ix) KLA General Staff Memorandum dated 24 December 1998;⁶³ (x) a document titled “Speech on the occasion of the inauguration of RFK”;⁶⁴ and (xi) a telegram by Mr Krasniqi sent to “the Commemorative Gathering ‘the Gunfire of January’ outside the Fatherland.”⁶⁵

37. At the outset, the Panel notes that while the SPO has characterised the documents in Annex 2 as draft KLA public statements seized from Mr Krasniqi, five items also contain media interviews, or statements, by Mr Krasniqi,⁶⁶ which are addressed separately below.

⁵⁶ SPOE00232783-00232783, SPOE00225069-SPOE00225070, SPOE00232612-00232614, SPOE00225218-SPOE00225219, SPOE00232813-00232814, SPOE00225215-SPOE00225217, SPOE00225227-SPOE00225228, SPOE00225230-SPOE00225231, SPOE00227888-SPOE00227890, SPOE00225220-SPOE00225220, SPOE00231831-00231832, SPOE00231390-SPOE00231390, SPOE00231833-00231834, SPOE00231391-SPOE00231392, SPOE00231982-00231982, SPOE00232868-00232868, SPOE00225162-SPOE00225162, SPOE00228826-SPOE00228826; Annex 2 to the Bar Table Motion, items 11, 12A-12B, 13-14, 15A-15C, 20, 24, 26A-26B, 29A-29B, 31, 33, 36-37.

⁵⁷ SPOE00231309-SPOE00231311; Annex 2 to the Bar Table Motion, item 3.

⁵⁸ SPOE00231326-SPOE00231327; Annex 2 to the Bar Table Motion, item 6.

⁵⁹ SPOE00225019-SPOE00225019, SPOE00225046-SPOE00225048, SPOE00232068-00232068, SPOE00231328-SPOE00231329; Annex 2 to the Bar Table Motion, items 8A-8D.

⁶⁰ SPOE00231332-SPOE00231335; Annex 2 to the Bar Table Motion, item 16.

⁶¹ SPOE00225208-SPOE00225208; Annex 2 to the Bar Table Motion, item 21.

⁶² SPOE00231330-SPOE00231331; Annex 2 to the Bar Table Motion, item 27.

⁶³ SPOE00231340-SPOE00231343; Annex 2 to the Bar Table Motion, item 30.

⁶⁴ SPOE00231946-00231946; Annex 2 to the Bar Table Motion, item 34.

⁶⁵ SPOE00231346-SPOE00231347; Annex 2 to the Bar Table Motion, item 35.

⁶⁶ Annex 1 to the Bar Table Motion, items 3, 6, 16, 27, 34.

(a) *Draft KLA Public Statements Seized from Mr Krasniqi*

38. The Panel finds that all items are relevant to, *inter alia*, the following issues: (i) the existence, nature and elements of an armed conflict; (ii) the KLA General Staff's general awareness and oversight of military activities; (iii) the establishment of the KLA General Staff; (iv) KLA General Staff's attempts to establish itself as the only legitimate voice in Kosovo; (v) the level of KLA organisation and structure and the KLA General Staff's relationship to the operational zones and brigades; and (vi) the functioning, structure and hierarchy of operational zones; and (vii) the existence and role of the KLA Military Police Directorate.⁶⁷

39. The Panel notes that the Defence disputes the authorship of these documents but recalls its finding above in paragraph 24. Furthermore, the Panel notes that the combination of the fact that Mr Krasniqi is said to have acted as spokesperson of the KLA during the relevant time and the fact that drafts of statements attributed to the KLA General Staff were found at his residence provide relevant indications of their authenticity. So is the fact that some of the drafts found at Mr Krasniqi's home come in several versions. Such evidence would also be relevant and probative of the question of authorship of communiqués and political declarations when the Panel will determine this matter at the end of the case.

40. Turning to the authenticity of the documents, the Panel considers that the draft communiqués and political statements on behalf of the KLA General Staff and on behalf of the KLA Military Police Directorate are *prima facie* authentic. As noted above, their origin, their content and duplication in some cases are all factors supporting a finding of *prima facie* authenticity. They are dated and are generally consistent with the published versions in "Zëri i Kosovës", "Koha

⁶⁷ Amended Indictment, paras 15, 18-19, 31, 36.

Ditore” and/or “Bujku”.⁶⁸ In addition, all documents were found at Mr Krasniqi’s residence and 13 of the documents were found on a computer at Mr Krasniqi’s residence.⁶⁹ The Panel is also satisfied of the *prima facie* authenticity of: (i) SPOE00225019-SPOE00225019, SPOE00225046-SPOE00225048, SPOE00232068-00232068, and SPOE00231328-SPOE00231329, drafts of a publication titled with “Message to the Albanian people” as it is consistent with the published versions (SPOE00230213-SPOE00230213 and SPOE00230124-SPOE00230124) addressed above; (ii) SPOE00231340-SPOE00231343 as it is consistent with the published version (086832-086832) addressed above; and (iii) SPOE00231346-SPOE00231347 as it has a KLA header, is signed by Mr Krasniqi and was found in his residence.

41. The Panel is satisfied that SPOE00231368-SPOE00231369, SPOE00231905-00231905, SPOE00231370-SPOE00231370, SPOE00232784-00232785, SPOE00231901-00231903, SPOE00231896-00231898, SPOE00225232-SPOE00225232, SPOE00231371-SPOE00231371, SPOE00225233-SPOE00225233, SPOE00225166-SPOE00225167, SPOE00225225-SPOE00225225, SPOE00231372-SPOE00231373, SPOE00232794-00232795, SPOE00232745-00232746,

⁶⁸ The Panel notes, *inter alia*, that: (i) item 24A in Annex 1 and item 1 in Annex 2 are political declaration 2; (ii) items 2Y and 63 in Annex 1 and items 2A-2B in Annex 2 are political declaration 3; (iii) item 2Z in Annex 1 and items 4A-4E in Annex 2 are political declaration 4; (iv) items 28 and 28A in Annex 1 and items 5A-5F in Annex 2 are political declaration 5; (v) item 29 in Annex 1 and items 7A-7C in Annex 2 are political declaration 6; (vi) item 2B2 in Annex 1, P00384 and items 9A-9C in Annex 2 are political declaration 8; (vii) item 2A2 in Annex 1 and items 10A-10C in Annex 2 are political declaration 9; (viii) item 25 in Annex 1 and item 11 in Annex 2 are communique 48; (ix) items 2K and 26 in Annex 1 and items 12A-12B in Annex 2 are communique 49; (x) item 34 in Annex 1 and items 12B and 13 in Annex 2 are communique 51; (xi) item 34 in Annex 1 and items 15A-15C in Annex 2 are communique 52; (xii) items 48 and 48A in Annex 1 and item 20 in Annex 2 are communique 60; (xiii) items 2S and 54 in Annex 1 and item 22 in Annex 2 are political declaration 17; (xiv) item 2W in Annex 1 and item 24 in Annex 2 are communique 64; (xv) item 61 in Annex 1 and items 25A-25B in Annex 2 are political declaration 20; (xvi) item 57 in Annex 1 and items 26A-26B in Annex 2 are communique 65; (xvii) item 57 in Annex 1 and item 28 in Annex 2 are political declaration 21; (xviii) items 58 and 58A in Annex 1 and items 29A-29B are communique 66; (xix) item 58A in Annex 1 and item 31 in Annex 2 are communique 67; (xx) item 64 in Annex 1 and items 32A-32B in Annex 2 are political declaration 22; (xxi) item 64 in Annex 1 and 33 in Annex 2 are communique 68; and (xxii) items 2R and 49 in Annex 1 and item 21 in Annex 2 are statement no. 3 of the KLA Military Police Directorate.

⁶⁹ Annex 2 to the Bar Table Motion, items 2A, 4A-4B, 5E-5F, 7B-7C, 9B, 11, 19, 25A, 31, 32A.

SPOE00225168-SPOE00225168, SPOE00232775-00232775, SPOE00231899-00231900, 086846-086847, SPOE00232086-00232087, SPOE00231376-SPOE00231377, 086844-086845, SPOE00231374-SPOE00231375, SPOE00231378-SPOE00231379, SPOE00225234-SPOE00225235, SPOE00231904-00231904, SPOE00231380-SPOE00231381, SPOE00231922-00231923, SPOE00231921-00231921, SPOE00231382-SPOE00231383, SPOE00227854-SPOE00227856, SPOE00231384-SPOE00231385, SPOE00229228-SPOE00229229, SPOE00232783-00232783, SPOE00225069-SPOE00225070, SPOE00232612-00232614, SPOE00225218-SPOE00225219, SPOE00232813-00232814, SPOE00225215-SPOE00225217, SPOE00225227-SPOE00225228, SPOE00225230-SPOE00225231, SPOE00232680-00232685, SPOE00227888-SPOE00227890, SPOE00225208-SPOE00225208, SPOE00225220-SPOE00225220, SPOE00231831-00231832, SPOE00231390-SPOE00231390, SPOE00231833-00231834, SPOE00231391-SPOE00231392, SPOE00231982-00231982, SPOE00232868-00232868, SPOE00225162-SPOE00225162, and SPOE00228826-SPOE00228826 have *prima facie* probative value in respect, *inter alia*, of the issues outlined above. All of these documents are draft political statements, or communiques, of versions which were published in news outlets and are consistent with those versions.⁷⁰ The fact that one of the purposes of the communiques was of a propagandist, or exaggerated, nature does not render them inadmissible. The Panel will determine, on the basis of all of the evidence, what purpose or purposes these items were intended to serve. The Panel is also satisfied with the *prima facie* probative value of SPOE00225019-SPOE00225019, SPOE00225046-SPOE00225048, SPOE00232068-00232068, SPOE00231328-SPOE00231329, and SPOE00231340-SPOE00231343 as they are drafts of identical statements published on behalf of the KLA General Staff in “Koha Ditore”, “Zëri i Kosovës” or “Rilindja”, which are admitted into

⁷⁰ See *supra*, fn. 68.

evidence above,⁷¹ and SPOE00231346-SPOE00231347 as it is a telegram with a KLA header, it is signed by Mr Krasniqi, it was found in Mr Krasniqi's residence and it is otherwise probative of matters set out above.

42. The Panel is satisfied that the *prima facie* probative value of the documents in paragraph 41 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses.

(b) Media Interviews or Public Statements by Mr Krasniqi

43. The Panel considers that five items require further consideration by the Panel, namely SPOE00231309-SPOE00231311, SPOE00231326-SPOE00231327, SPOE00231332-SPOE00231335, SPOE00231330-SPOE00231331, and SPOE00231946-00231946.⁷²

44. The Panel recalls its statement above, and the reasons given, that it will approach press articles and records of interviews in the media offered by the SPO with caution.⁷³ In deciding admission of these items, the Panel also accounted for the fact that the interviews and press articles addressed below were all given by Mr Krasniqi in his capacity as spokesperson and member of the KLA General Staff and that copies of those interviews were found at his home.

45. First, SPOE00231309-SPOE00231311⁷⁴ is the record of an interview given by Mr Krasniqi to the BBC.⁷⁵ It is dated 17 June 1998 and is entitled "Kosovo is ours". It is said to constitute Mr Krasniqi's first public appearance as spokesman of the KLA. The article's introductory notes read: "As is stated, this public and fully

⁷¹ See *supra*, para. 28.

⁷² Annex 2 to the Bar Table Motion, items 3, 6, 16, 27, 34.

⁷³ See *supra*, para. 31.

⁷⁴ The Panel notes that the evidence reference number (SPOE00231309-SPOE00231311-ET) stamped on the first page of the English version appears to be incorrect.

⁷⁵ Annex 2 to the Bar Table Motion, item 3.

acknowledged appearance is the start of the presentation of a Political Wing belonging to this organisation, which currently has under its control a considerable percentage of the territory of Kosovo." It discusses in general terms the possibility of North Atlantic Treaty Organisation's ("NATO") intervention and preconditions set by the KLA for peace talks with Serbia. Asked about the suggestion that Mr Ibrahim Rugova is an interference to independence, Mr Krasniqi is recorded as saying:

Ibrahim RUGOVA and those around him have obstructed the independence of Kosovo by deceiving the people into believing that someone would, without anyone in Kosovo doing anything, give it independence. The population is being persuaded every day that the policy carried out for several years by Ibrahim RUGOVA is a policy of constant failures.

[...]

We would wish to see Kosovo gain its independence with Ibrahim RUGOVA's peaceful policy, but everything that has happened shows that such a policy was mistaken and that politics must be and will be guided by new forces.

46. Mr Krasniqi is then recorded as calling for "a good, democratic and pluralist Kosovo". The proposed evidence is relevant, *inter alia*, to: (i) Mr Krasniqi's mindset; and (ii) insofar as he expressed such a view in his capacity as a representative of the KLA General Staff, of the position of the KLA General Staff at that point in time. It is authentic insofar as it was published and a copy of the interview was found at Mr Krasniqi's home. Its *prima facie* probative value is limited but sufficient for admission. Mr Krasniqi gave this interview freely and in the exercise of his function as spokesperson of the KLA. The interview appears to be a verbatim question-and-answer interview. The Panel finds that any prejudice would not outweigh the *prima facie* probative value of this item.

47. Second, SPOE00231332-SPOE00231335⁷⁶ is the record of an interview of 2 September 1998 given by Mr Krasniqi.⁷⁷ It focuses primarily on Mr Adem Demaci having joined the KLA. In this context, Mr Krasniqi is recorded as suggesting that “Adem DEMAÇI has put his trust in the General Staff of the Kosovo Liberation Army, relying on its confirmed national and political qualities, in order to work with the failed political parties and other failed individuals, concerning the forming of institutional life in Kosovo.” It proceeds to say:

The General Staff is in the course of restructuring the army, for it to be as well prepared as possible in the new circumstances of the war. On the political level we will try and secure the uniting of the entire political body and of other Albanian associations for the formation of the legislative and executive machinery essential for this present time. For this we have taken on Adem DEMAÇI, but he needs the help of all those who wish for the formation and functioning of all proper and independent institutions of Kosovo.

48. Mr Krasniqi is further recorded as suggesting that: “[t]he most suitable legislative organisation would be the National Assembly (composed of validated persons of influence) from which would emerge the Government of Kosovo with the broadest political spectrum.” He also states: “Every government which will not include the entire mosaic of Kosovo’s Albanian political parties and which is not approved by the Kosovo Liberation Army is condemned to fail.” Mr Krasniqi is also recorded as making criticism of the Bukoshi Government and the Armed Forces of Kosovo Republic (“FARK”), suggesting that the FARK had been stopped from operating and that “by means of some officer it is being insisted that the devil’s game should be played again.” This article does not appear to have been published. It was found and seized in Mr Krasniqi’s home. The SPO suggests, however, that the article is authenticated by and authenticates another document (SPOE00224459-SPOE00224460) that was published in “Koha Ditore”. However,

⁷⁶ The Panel notes that the evidence reference number (SPOE00231332-SPOE00231435-ET) stamped on the first page of the English version appears to be incorrect.

⁷⁷ Annex 2 to the Bar Table Motion, item 16.

this document has not yet been offered for admission. The Panel will, therefore, defer its decision on admission up until the point when that other document (SPOE00224459-SPOE00224460) is offered so that the requirements for admission can be fully verified in respect of both items.

49. Third, SPOE00231330-SPOE00231331⁷⁸ is the record of an interview with Mr Krasniqi with the German broadcaster *Deutsche Welle*.⁷⁹ It is dated 23 December 1998. It discusses the current situation of the war. When asked what Kosovo political parties should do in this context, Mr Krasniqi is recorded as saying: “They should stop their political activity and form a legislative and executive body to aid the Kosovo Liberation Army in achieving the long-awaited freedom and independence.” It also directs a call to the diaspora: “Let the Albanian diaspora cease all party activity in order to unite all means and capabilities in the service of the fight for freedom, independence and democracy....” This document is relevant to these proceedings insofar as it might show, *inter alia*: (i) Mr Krasniqi’s view of political parties at the time; and (ii) insofar as he expressed such a view in his capacity as a representative of the KLA General Staff, the position of the KLA General Staff at that point in time in respect to this matter. The document’s *prima facie* authenticity is apparent from the fact that it was published by a reputable broadcaster and a copy of it was found at Mr Krasniqi’s home. The Panel notes that it was given freely by Mr Krasniqi in the exercise of his functions as a KLA General Staff spokesperson and representative. It is *prima facie* probative of the above matters, though its probative value is likely to be limited unless corroborated. There is no indication of its *prima facie* probative value being outweighed by its prejudicial effect.

⁷⁸ The Panel notes that the evidence reference number (SPOE00231330-SPOE00231431-ET) stamped on the first page of the English version appears to be incorrect.

⁷⁹ Annex 2 to the Bar Table Motion, item 27.

50. Fourth, SPOE00231326-SPOE00231327⁸⁰ is a “public statement” attributed to Mr Krasniqi, the record of which was found at his residence.⁸¹ It is dated 29 July 1998 and was part of a book manuscript by Mr Krasniqi. It contains statements against those who pretend to speak on behalf of the KLA and who seek to take undue credit for the actions of the KLA. It also contains the following: “The General Staff of the Kosovo Liberation Army entrusts Bardhyl MAHMUTI, Magister in Political Sciences, to act as an intermediary in dealing with the outside world in specific cases.” It is relevant, albeit to a limited extent, in relation to, *inter alia*: (i) the attitude of the KLA towards those seeking to take credit for the actions of the KLA and/or pretending to belong to it or to speak on its behalf; (ii) the role and position of Bardhyl Mahmuti (“Mr Mahmuti”); and (iii) the appointing authority of the KLA General Staff. It is authenticated by the fact that it was found at Mr Krasniqi’s residence. Regarding *prima facie* probative value, the Panel notes that several documents have already been admitted that corroborate the appointment of Mr Mahmuti to such a role and function.⁸² There is no indication that the *prima facie* probative value of this document would be outweighed by any prejudice to the Accused.

51. Fifth, SPOE00231946-SPOE00231946 is the record of a speech given by Mr Krasniqi on the occasion of the launch of Radio Free Kosovo (“RFK”), a radio station created and supported by the KLA to serve its outreach purposes.⁸³ The speech does not contain any important substantive elements. Its relevance and probative value are related to the fact that the RFK was in effect a part of the KLA structure and that its broadcasts can be taken to reflect this connection. The Panel

⁸⁰ The Panel notes that the evidence reference number (SPOE00231326-SPOE00231427-ET) stamped on the first page of the English version appears to be incorrect.

⁸¹ Annex 2 to the Bar Table Motion, item 6.

⁸² See P00292_ET (containing the record of an interview by Mr Mahmuti on behalf of the KLA), P00270_ET.12 (communiqué no 62, referring to various meetings between Mr Mahmuti and foreign political representatives), and 1D0050_ET.

⁸³ Annex 2 to the Bar Table Motion, item 34.

has already discussed the circumstances that led to the creation of RFK by the KLA and the relationship between the two and will not repeat that discussion here.⁸⁴ The present document is relevant insofar as it provides further insight into the involvement of the KLA General Staff and, in this case, of Mr Krasniqi personally, in the creation of RFK, and demonstrates the depth of the connection between RFK and the KLA. Regarding authenticity, a copy of the speech was found at Mr Krasniqi's residence. Furthermore, references to this speech by Mr Krasniqi are found in at least one other admitted exhibit.⁸⁵ The fact that Mr Krasniqi gave that speech does not appear to be disputed by the Defence. There is no indication of any prejudice outweighing the *prima facie* probative value of this document.

52. In light of the foregoing, the Panel admits into evidence SPOE00231368-SPOE00231369, SPOE00231905-00231905, SPOE00231370-SPOE00231370, SPOE00232784-00232785, SPOE00231901-00231903, SPOE00231896-00231898, SPOE00225232-SPOE00225232, SPOE00231371-SPOE00231371, SPOE00225233-SPOE00225233, SPOE00225166-SPOE00225167, SPOE00225225-SPOE00225225, SPOE00231372-SPOE00231373, SPOE00232794-00232795, SPOE00232745-00232746, SPOE00225168-SPOE00225168, SPOE00232775-00232775, SPOE00231899-00231900, 086846-086847, SPOE00232086-00232087, SPOE00231376-SPOE00231377, 086844-086845, SPOE00231374-SPOE00231375, SPOE00231378-SPOE00231379, SPOE00225234-SPOE00225235, SPOE00231904-00231904, SPOE00231380-SPOE00231381, SPOE00231922-00231923, SPOE00231921-00231921, SPOE00231382-SPOE00231383, SPOE00227854-SPOE00227856, SPOE00231384-SPOE00231385, SPOE00229228-SPOE00229229, SPOE00232783-00232783, SPOE00225069-SPOE00225070, SPOE00232612-00232614, SPOE00225218-SPOE00225219, SPOE00232813-00232814, SPOE00225215-SPOE00225217, SPOE00225227-SPOE00225228, SPOE00225230-

⁸⁴ Fourth Decision on Bar Table Motion, paras 26-29.

⁸⁵ See, for example, 007790-007799-ET, at 007797-007798 (admitted through the Fourth Decision on Bar Table Motion).

SPOE00225231, SPOE00227888-SPOE00227890, SPOE00225208-SPOE00225208, SPOE00225220-SPOE00225220, SPOE00231831-00231832, SPOE00231390-SPOE00231390, SPOE00231833-00231834, SPOE00231391-SPOE00231392, SPOE00231982-00231982, SPOE00232868-00232868, SPOE00225162-SPOE00225162, SPOE00228826-SPOE00228826, SPOE00225019-SPOE00225019, SPOE00225046-SPOE00225048, SPOE00232068-00232068, SPOE00231346-SPOE00231347, SPOE00231328-SPOE00231329, SPOE00231340-SPOE00231343, SPOE00231309-SPOE00231311, SPOE00231330-SPOE00231431, SPOE00231326-SPOE00231427, SPOE00231946-SPOE00231946, and defers the admission of SPOE00231332-SPOE00231435.

3. Annex 6 – Other Items Pursuant to the 16 December 2022 Fourth Oral Order

53. The Panel will now address the SPO's request in respect of 46 documents in Annex 6 to the Bar Table Motion seized from Mr Krasniqi's or Mr Selimi's residences.⁸⁶ The Panel has assessed these items based on the following categories:

⁸⁶ U000-0531-U000-0531, SPOE00248506-00248506, SPOE00248503-00248503, SPOE00248502-00248502, SPOE00232821-00232821, SPOE00232251-00232252, SPOE00232076-00232081, SPOE00232065-00232065, SPOE00231511-SPOE00231513, SPOE00231482-SPOE00231498, SPOE00231444-SPOE00231464, SPOE00229213-SPOE00229214, SPOE00229215-SPOE00229216, SPOE00228822-SPOE00228822, SPOE00228801-SPOE00228806, SPOE00228192-SPOE00228194, SPOE00227671-SPOE00227674, SPOE00227462-SPOE00227503, SPOE00227329-SPOE00227335, SPOE00225282-SPOE00225285, SPOE00225277-SPOE00225277, SPOE00225270-SPOE00225270, SPOE00225264-SPOE00225264, SPOE00225261-SPOE00225261, SPOE00225256-SPOE00225257, SPOE00225255-SPOE00225255, SPOE00225252-SPOE00225252, SPOE00225250-SPOE00225250, SPOE00225249-SPOE00225249, SPOE00225248-SPOE00225248, SPOE00225247-SPOE00225247, SPOE00225246-SPOE00225246, SPOE00225243-SPOE00225243, SPOE00225242-SPOE00225242, SPOE00225238-SPOE00225238, SPOE00225155-SPOE00225156, SPOE00225153-SPOE00225154, SPOE00225152-SPOE00225152, SPOE00225151-SPOE00225151, SPOE00225150-SPOE00225150, SPOE00225131-SPOE00225131, SPOE00225106-SPOE00225130, SPOE00223376-00223376, SPOE00223375-00223375, SPOE00223374-00223374, SPOE00223373-00223373; *See* Annex 6 to the Bar Table Motion, items 187, 205, 207, 209, 213, 215, 219, 221, 223, 225, 227, 239-240, 244, 246, 248, 250, 254, 256, 272, 274, 276, 278, 280, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 321, 323, 325, 327. The Panel notes that the SPO requests the admission of 60 items that were seized from Mr Krasniqi's or Mr Selimi's residences in Annex 6 to the Bar Table Motion but notes that 12 items were admitted, or rejected, in the Second Decision on Bar Table Motion and 2 items were admitted in court; *See* Annex 6 to the Bar Table Motion, items 217, 229, 231-232, 234, 236, 238, 242, 252, 258, 260, 262, 266, 268; *See also* Second Decision on Bar Table Motion, paras 122-144, 163-177; *See supra*, para. 13.

(i) press reports, newspaper articles and interviews; (ii) KLA General Staff orders, requests, appointments and verdicts; (iii) KLA regulations and guidance documents; (iv) KLA reports from W04752; (v) handwritten documents; and (vi) other KLA documents.

(a) Category 1: Press Reports, Newspaper Articles and Interviews

54. The SPO seeks admission of five items constituting press reports, newspaper articles or interviews, which were seized from Mr Krasniqi's or Mr Selimi's residences.⁸⁷ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁸⁸

55. The Defence objects to the admission of interviews between SPO witnesses and third parties from the bar table. The Defence submits that the risk that such items have been subject to journalistic analysis or interpretation, or may have been manipulated in another way, require that the Accused has the opportunity to verify the truth of their content.⁸⁹ The Defence adds that the SPO had the opportunity to put these interviews to witnesses during SPO interviews and any failure to do so by the SPO should result in these interviews being attributed low evidentiary weight.⁹⁰ The Defence also objects to media articles that attribute statements to the KLA or the Accused being tendered from the bar table because the Defence is unable to confront such out-of-court statements and the circumstances in which such statements were made. The Defence adds that the admission of such hearsay statements from the bar table is especially likely to cause unfair prejudice because they are attributed to centrally important figures

⁸⁷ SPOE00227462-SPOE00227503, SPOE00223376-00223376, SPOE00223375-00223375, SPOE00223374-00223374, SPOE00223373-00223373; Annex to the Bar Table Motion, items 254, 321, 323, 325, 327.

⁸⁸ Bar Table Motion, para. 3.

⁸⁹ Response, para. 56; *See also* Annex 6.3 to Response, pp. 7-11.

⁹⁰ Response, para. 57.

in the case.⁹¹ The Defence avers that such statements were, in many instances, intended to serve other purposes, such as boosting KLA morale, garnering international support, reassuring a scared and vulnerable civilian population, or self-promotion. The Defence submits that without a witness speaking to whether such statements are accurate, they cannot be regarded as reliable and should not be tended from the bar table.⁹²

56. The Panel finds that the documents encompass: (i) an “article” in Albanian titled “What was the strategy of closing the Gorge of Carralev? And Llapushnik”;⁹³ and (ii) four photographs of an interview with W04752 in “Zëri i Kosovës” dated 20 November 1999.⁹⁴

57. The Panel finds these items relevant to allegations in the Amended Indictment in that they, *inter alia*, relate to: (i) the organisation of the KLA; (ii) the role of the KLA General Staff; and (iii) W04752’s role in the KLA General Staff.⁹⁵

58. Turning to authenticity of the documents, the Panel considers that SPOE00223376-00223376, SPOE00223375-00223375, SPOE00223374-00223374, and SPOE00223373-00223373 are *prima facie* authentic as they are dated and were published in “Zëri i Kosovës”.

59. The Panel notes that SPOE00227462-SPOE00227503 which is attributed by the SPO to W01453 appears to be an unpublished manuscript of an article regarding the strategy of closing the Gorge of Carralevë and Llapushnik.⁹⁶ The Panel is not satisfied that the SPO has established the *prima facie* authenticity or probative value of SPOE00227462-SPOE00227503.

⁹¹ Response, para. 59.

⁹² Response, para. 60.

⁹³ SPOE00227462-SPOE00227503; Annex 6 to the Bar Table Motion, item 254.

⁹⁴ SPOE00223376-00223376, SPOE00223375-00223375, SPOE00223374-00223374, SPOE00223373-00223373; Annex 6 to the Bar Table Motion, items 321, 323, 325, 327.

⁹⁵ Amended Indictment, paras 15, 19.

⁹⁶ Annex 6 to the Bar Table Motion, item 254.

60. The Panel considers that SPOE00223373-00223373, SPOE00223374-00223374, SPOE00223375-00223375 and SPOE00223376-00223376 have *prima facie* probative value. The items are four parts of the same interview of W04752, published in “Zëri i Kosovës” on 20 November 1999. While the article was published outside the indictment period of this case, it pertains to events and circumstances that fall within that period.⁹⁷ It appears to be a verbatim transcript of the questions and answers. It reflects the personal views of the interviewee so that the truth or otherwise of any claims contained therein would have to be verified through corroboration. The document is, however, *prima facie* probative of issues relevant to this case, in particular the organisational efforts of the KLA General Staff during the later part of the conflict and its internal functioning. The Panel is satisfied that the *prima facie* probative value of these items are not outweighed by any prejudice to the Accused.

61. In light of the foregoing, the Panel admits SPOE00223376-00223376, SPOE00223375-00223375, SPOE00223374-00223374, and SPOE00223373-00223373 and denies, without prejudice, the admission of SPOE00227462-SPOE00227503.

(b) Category 2: KLA General Staff Orders, Requests, Appointments, Reports and Verdicts

62. The SPO requests admission of 30 items constituting orders, requests, appointments of staff and verdicts issued by the KLA General Staff, which were seized from Mr Krasniqi’s or Mr Selimi’s residences.⁹⁸ The SPO submits that these

⁹⁷ Amended Indictment, para 16.

⁹⁸ U000-0531-U000-0531, SPOE00248506-00248506, SPOE00248503-00248503, SPOE00248502-00248502, SPOE00232821-00232821, SPOE00232251-00232252, SPOE00228822-SPOE00228822, SPOE00228801-SPOE00228806, SPOE00228192-SPOE00228194, SPOE00225270-SPOE00225270, SPOE00225277-SPOE00225277, SPOE00225264-SPOE00225264, SPOE00225261-SPOE00225261, SPOE00225256-SPOE00225257, SPOE00225255-SPOE00225255, SPOE00225252-SPOE00225252, SPOE00225250-SPOE00225250, SPOE00225249-SPOE00225249, SPOE00225248-SPOE00225248, SPOE00225247-SPOE00225247, SPOE00225246-SPOE00225246, SPOE00225243-SPOE00225243, SPOE00225242-SPOE00225242, SPOE00225238-SPOE00225238, SPOE00225155-SPOE00225156, SPOE00225153-SPOE00225154, SPOE00225152-SPOE00225152, SPOE00225151-SPOE00225151, SPOE00225150-

documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.⁹⁹

63. The Defence responds that documents which are related to SPO witnesses should be tendered through the relevant witness in accordance with the principle of orality.¹⁰⁰ The Defence avers that Trial Chambers before the ICTY have repeatedly held that introduction of documents through a witness is the preferred method, whilst a bar table motion is a supplementary method which should be used sparingly.¹⁰¹ Lastly, the Defence submits that, while the SPO was on notice of the importance of explaining why items could not be tendered through a witness, it offers no such explanation. Rather, it lists potentially important items which appear directly relevant to witnesses and therefore such items should be rejected.¹⁰²

64. The Panel finds that the documents encompass: (i) a KLA order dated 1 July 1998 addressed to the Local Staff of Dukagjini operational zone;¹⁰³ (ii) an appointment of officers to operational zones, a request for financial means (also signed by W04752) and three orders signed by, or with the unsigned signature block of, Mr Krasniqi;¹⁰⁴ (iii) a request to the 121 Brigade Commander and two versions of a response (one with, and one without, a KLA stamp) to a request from the command of Dukagjin operational zone about journalists and security measures from, and with the unsigned signature block of, W04752¹⁰⁵ (iv) the

SPOE00225150, SPOE00225131-SPOE00225131; Annex 6 to the Bar Table Motion, items 187, 205, 207, 209, 213, 215, 244, 246, 248, 274, 276, 278, 280, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316.

⁹⁹ Bar Table Motion, para. 3.

¹⁰⁰ Response, para. 52; *See also* Annex 6.1 to the Response, pp. 16-19, 21-31, 40-44, 53-80.

¹⁰¹ Response, para. 53.

¹⁰² Response, para. 54.

¹⁰³ U000-0531-U000-0531; Annex 6 to the Bar Table Motion, item 187.

¹⁰⁴ SPOE00248506-00248506, SPOE00228822-SPOE00228822, SPOE00225277-SPOE00225277, SPOE00225250-SPOE00225250, SPOE00225249-SPOE00225249; Annex 6 to the Bar Table Motion, items 205, 244, 274, 290, 292.

¹⁰⁵ SPOE00248503-00248503, SPOE00225270-SPOE00225270, SPOE00225131-SPOE00225131; Annex 6 to the Bar Table Motion, item 207, 276, 316.

verdict of a disciplinary matter signed by W04752;¹⁰⁶ (v) seven appointments of officers, based on the internal regulations of the KLA, signed by W04752;¹⁰⁷ (vi) eleven orders, or ordinances, from the KLA General Staff signed by W04752;¹⁰⁸ (vii) KLA General Staff Report from 20 January 1999 regarding reports submitted by the commanders of Drenice, Dukagjin, Shale, Llap, Pashtrik, and Karadak operational zones signed by W04752;¹⁰⁹ and (viii) report to the Ministry of Defence of the Provisional government of Kosovo regarding a visit to the “FEKEN Training Centre” signed by W04752.¹¹⁰

65. The Panel finds these items relevant as they concern, *inter alia*: (i) the operation of the KLA operational zones; (ii) the KLA General Staff organisation, authority and command structure; (iii) the KLA General Staff’s ability to apply regulations, including in relation to disciplinary matters, and to appointment of individuals to positions within the KLA; (iv) W04752’s role within the KLA General Staff; (v) the KLA General Staff’s relationship and authority over organisational zones; (vi) functioning of the KLA’s disciplinary system; (vii) the ordering and reporting system within the KLA at that point in time in relation to operational matters; and (viii) the position and role of W04752 in that context.¹¹¹

66. Turning to authenticity, the Panel is satisfied that all items are *prima facie* authentic. Specifically, the Panel notes that: (i) all items, except one, are dated; (ii) 24 items are also numbered; (iii) all items, except one, are signed by, or have

¹⁰⁶ SPOE00248502-00248502; Annex 6 to the Bar Table Motion, item 209.

¹⁰⁷ SPOE00232821-00232821, SPOE00225255-SPOE00225255, SPOE00225155-SPOE00225156, SPOE00225153-SPOE00225154, SPOE00225152-SPOE00225152, SPOE00225151-SPOE00225151, SPOE00225150-SPOE00225150; Annex 6 to the Bar Table Motion, items 213, 286, 306, 308, 310, 312, 314.

¹⁰⁸ SPOE00232251-00232252, SPOE00225264-SPOE00225264, SPOE00225261-SPOE00225261, SPOE00225256-SPOE00225257, SPOE00225252-SPOE00225252, SPOE00225248-SPOE00225248, SPOE00225247-SPOE00225247, SPOE00225246-SPOE00225246, SPOE00225243-SPOE00225243, SPOE00225242-SPOE00225242, SPOE00225238-SPOE00225238; Annex 6 to the Bar Table Motion, items 215, 278, 280, 284, 288, 294, 296, 298, 300, 302, 304.

¹⁰⁹ SPOE00228801-SPOE00228806; Annex 6 to the Bar Table Motion, item 246.

¹¹⁰ SPOE00228192-SPOE00228194; Annex 6 to the Bar Table Motion, item 248.

¹¹¹ Amended Indictment, paras 15, 19, 35, 39.

the unsigned signature block of, Mr Krasniqi, W04752 or both; (iv) all items bear the KLA heading; and (v) 25 items bear the KLA logo, KLA seal, or both. In addition, many of these items make reference to the KLA General Staff Disciplinary Regulations (SPOE00231482-SPOE00231498), the Internal Regulation of the KLA General Staff (SPOE00225106-SPOE00225130), or the KLA General Staff Provisional Regulation of the Internal Organisation of the Army (SPOE00231444-SPOE00231464) addressed below at paragraphs 70-78.¹¹² All items were seized from Mr Krasniqi's or Mr Selimi's residences.

67. The Panel is satisfied of the *prima facie* probative value of U000-0531-U000-0531, SPOE00248506-00248506, SPOE00248503-00248503, SPOE00225270-SPOE00225270, SPOE00248502-00248502, SPOE00232821-00232821, SPOE00232251-00232252, SPOE00228822-SPOE00228822, SPOE00228801-SPOE00228806, SPOE00228192-SPOE00228194, SPOE00225277-SPOE00225277, SPOE00225264-SPOE00225264, SPOE00225261-SPOE00225261, SPOE00225256-SPOE00225257, SPOE00225255-SPOE00225255, SPOE00225252-SPOE00225252, SPOE00225250-SPOE00225250, SPOE00225249-SPOE00225249, SPOE00225248-SPOE00225248, SPOE00225247-SPOE00225247, SPOE00225246-SPOE00225246, SPOE00225243-SPOE00225243, SPOE00225242-SPOE00225242, SPOE00225238-SPOE00225238, SPOE00225155-SPOE00225156, SPOE00225153-SPOE00225154, SPOE00225152-SPOE00225152, SPOE00225151-SPOE00225151, SPOE00225150-SPOE00225150, and SPOE00225131-SPOE00225131. They relate, *inter alia*, to W04752's role and responsibilities as the Chief of the General Staff of the KLA, the functioning and responsibilities of the KLA General Staff in relation to other parts of the KLA, and/or the role of other members of the KLA General Staff. These documents include orders, requests, appointments of staff and verdicts, signed by

¹¹² The Panel notes that items 205, 209, 213, 215, 280, 282, 286, 288, 290, 292, 296, 300, 302, 304, 306, 308, 310, 312, 314 in Annex 6 to the Bar Table Motion refer to one of these regulations.

W04752 or Mr Krasniqi, which are relevant to facts in this case, as set out in paragraph 65 above.

68. The Panel is satisfied that the *prima facie* probative value of the documents in paragraph 67 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses and present evidence during their Defence case challenging the content of this material. The fact that five of these documents are signed by Mr Krasniqi does not alter this finding.

69. In light of the foregoing, the Panel admits into evidence U000-0531-U000-0531, SPOE00248506-00248506, SPOE00248503-00248503, SPOE00225270-SPOE00225270, SPOE00248502-00248502, SPOE00232821-00232821, SPOE00232251-00232252, SPOE00228822-SPOE00228822, SPOE00228801-SPOE00228806, SPOE00228192-SPOE00228194, SPOE00225277-SPOE00225277, SPOE00225264-SPOE00225264, SPOE00225261-SPOE00225261, SPOE00225256-SPOE00225257, SPOE00225255-SPOE00225255, SPOE00225252-SPOE00225252, SPOE00225250-SPOE00225250, SPOE00225249-SPOE00225249, SPOE00225248-SPOE00225248, SPOE00225247-SPOE00225247, SPOE00225246-SPOE00225246, SPOE00225243-SPOE00225243, SPOE00225242-SPOE00225242, SPOE00225238-SPOE00225238, SPOE00225155-SPOE00225156, SPOE00225153-SPOE00225154, SPOE00225152-SPOE00225152, SPOE00225151-SPOE00225151, SPOE00225150-SPOE00225150 and SPOE00225131-SPOE00225131.

(c) Category 3: KLA Regulations and Guidance

70. The SPO requests admission of five items constituting KLA regulations, or guidance, which were seized from Mr Krasniqi's residence.¹¹³ The SPO submits

¹¹³ SPOE00232076-00232081, SPOE00231511-SPOE00231513, SPOE00231482-SPOE00231498, SPOE00231444-SPOE00231464, and SPOE00225106-SPOE00225130, Annex 6 to the Bar Table Motion, items 219, 223, 225, 227, 318; Notification, para. 4.

that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹¹⁴

71. The Defence responds that manuals, rules and regulations should not be admitted from the bar table absent information on where, when and how they were promulgated and to whom they apply.¹¹⁵ The Defence submits that these items contain almost no indicia of authenticity, as they often contain virtually no information as to the authorship, beyond the KLA logo, the date of the document, and the manner in which they were obtained beyond generic formulations, such as the fact that they were provided by the ICTY, or seized from the Accused, and that the SPO has failed to sufficiently indicate the relevance of each item.¹¹⁶ Lastly, the Defence argues that, as the SPO intends to tender these items to prove elements central to its case, namely the level of organisation of the KLA and the authority of the KLA General Staff, admission from the bar table would be prejudicial to the Accused who would be unable to challenge the admissibility of this material through a witness. The Defence argues that this prejudice is amplified by the fact that the SPO intends to call witnesses who held leadership positions within the KLA.¹¹⁷

72. The Panel finds that the documents encompass: (i) KLA General Staff guidance for drafting an operational plan signed by W04752;¹¹⁸ (ii) KLA General Staff Operational Directorate plan for the Operation Arrow in Pashtrik operational zone, which formed part of Mr Krasniqi's book manuscript;¹¹⁹ (iii) KLA General Staff Disciplinary Regulation for the KLA from 1998, which formed part of Mr Krasniqi's book manuscript;¹²⁰ (iv) KLA General Staff Provisional Regulation

¹¹⁴ Bar Table Motion, para. 3.

¹¹⁵ Response, para. 102; *See also* Annex 6.1 to the Response, pp. 33-36; Annex 6.5 to the Response, pp. 11-13.

¹¹⁶ Response, para. 103.

¹¹⁷ Response, para. 105.

¹¹⁸ SPOE00232076-00232081; Annex 6 to the Bar Table Motion, item 219.

¹¹⁹ SPOE00231511-SPOE00231513; Annex 6 to the Bar Table Motion, item 223.

¹²⁰ SPOE00231482-SPOE00231498; Annex 6 to the Bar Table Motion, item 225.

of the Internal Organisation of the Army from 1998, which formed part of Mr Krasniqi's book manuscript;¹²¹ and (v) Internal Regulations of General Staff of the KLA.¹²²

73. The Panel is satisfied that the items are relevant as they concern *inter alia*: (i) the authority of the KLA General Staff to adopt such regulations, and associated issues of powers and responsibilities of the KLA General Staff and its members; (ii) KLA and the KLA General Staff structure, organisation and authority, in particular in regards to disciplinary matters; (iii) the operation of the KLA operational zones; and (iv) the level of organisation and sophistication of the KLA as a party to an alleged non-international armed conflict.¹²³

74. Turning to authenticity of the documents, the Panel considers that SPOE00232076-00232081, SPOE00231511-SPOE00231513, SPOE00231482-SPOE00231498, SPOE00231444-SPOE00231464, and SPOE00225106-SPOE00225130 to be *prima facie* authentic as all items, except one, are dated in "1998" or "1999", all have a KLA header and one of the items has both a KLA header and stamp. SPOE00232076-00232081 is also signed by W04752. The Panel notes that several of these are in turn referred to in other KLA documents.¹²⁴ The Panel also recalls that it need not determine the identity of the person who, on behalf of the KLA, wrote these documents for the purpose of their admission, rather, such issues will be assessed, if necessary, at the end of the case in light of all relevant evidence before the Panel.

75. The Panel is satisfied that SPOE00232076-00232081, SPOE00231482-SPOE00231498, SPOE00231444-SPOE00231464, and SPOE00225106-SPOE00225130

¹²¹ SPOE00231444-SPOE00231464; Annex 6 to the Bar Table Motion, item 227.

¹²² SPOE00225106-SPOE00225130; Annex 6 to the Bar Table Motion, item 318. The Panel notes that three pages of this item have been admitted into evidence but has, nonetheless, considered this item for admission as it has a larger page range; *See* P00083.

¹²³ Amended Indictment, paras 15, 19, 39.

¹²⁴ *See supra*, fn. 112.

have *prima facie* probative value. There are sufficient indicia of reliability for the reasons set out in the preceding paragraph and they provide relevant evidence of facts and circumstances, in particular, in respect of issues of powers and competencies regarding disciplinary matters. The Panel recalls that it held in the Second Decision on Bar Table Motion that the unpublished manuscript, which refers to Mr Krasniqi as its author, was inadmissible due to lack of *prima facie* probative value.¹²⁵ The Panel notes that SPOE00231482-SPOE00231498 and SPOE00231444-SPOE00231464 have been extracted from this manuscript, but considers that these items are admissible as they are formal documents from the KLA, which have merely been inserted into the unpublished manuscript. Their authenticity and probative value are further supported by the fact that it was found in Mr Krasniqi's residence.

76. SPOE00231511-SPOE00231513 was part of a manuscript attributed to Mr Krasniqi that was found at his residence. The document in question was part of a section of that manuscript entitled "The Documents and Materials of the General Staff of the KLA". The origin of this document, as a KLA General Staff document, is also apparent from its header, other marking appearing on it and its content. It is probative of the involvement of the KLA General Staff in operational matters at the zone level, in this case in the Pashtrik zone. It also contains information regarding the KLA's efforts to align its military efforts along those of NATO. It suggests that the operational map of "Operation Shigjeta" was drawn up by the KLA General Staff. The document is undated and there is no indication if it was in fact issued by the KLA General Staff. However, its content makes it clear that it was prepared after NATO's intervention and pertains to the Albanian-Kosovo border. The document is, therefore, probative of the KLA General Staff's efforts to contribute operationally to the KLA's war effort, in particular, in respect

¹²⁵ Second Decision on Bar Table Motion, paras 126-131.

of a large scale and logistically complex operation involving a degree of coordination with an international force.

77. The Panel is satisfied that the probative value of the documents in paragraphs 75-76 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses

78. In light of the foregoing, the Panel admits into evidence SPOE00232076-00232081, SPOE00231482-SPOE00231498, SPOE00231444-SPOE00231464, SPOE00225106-SPOE00225130, and SPOE00231511-SPOE00231513.

(d) Category 4: Handwritten Documents

79. The SPO requests to admit four handwritten documents containing KLA-related contents that were seized from Mr Krasniqi's or Mr Selimi's residences.¹²⁶ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from its admission.¹²⁷

80. The Defence responds that these documents should only be tendered through their respective authors,¹²⁸ that the original source of documents is unknown, that they are inauthentic, that they are not sufficiently connected to the offenses or modes of liability in the indictment, and that their probative value is substantially outweighed by their prejudicial effect.¹²⁹

81. The Panel finds that the documents encompass handwritten: (i) minutes from KLA and KLA General Staff meetings held on 9 and 23 July 1998 and

¹²⁶ SPOE00229213-SPOE00229214, SPOE00229215-SPOE00229216, SPOE00227671-SPOE00227674, SPOE00227329-SPOE00227335; Annex 6 to the Bar Table Motion, items 239-240, 250, 256.

¹²⁷ Bar Table Motion, para. 3.

¹²⁸ Response, paras 52-55; *See also* Annex 6.1 to the Response, pp. 38-40, 44-47.

¹²⁹ Response, paras 97-101.

16 August 1998;¹³⁰ (ii) notes from KLA meetings on 11 November 1998;¹³¹ (iii) notes from a meeting of the KLA General Staff in Divjakë on 26 February 1999;¹³² and (iv) a report titled “Regional Prosecution Unit – Special Investigation – Prizren 21.04.2001” regarding the investigation into the murder of “Drini”.¹³³

82. The Panel notes that SPOE00227329-SPOE00227335 concerns events in 2001 which are outside the temporal jurisdiction of the Specialist Chamber and which are not part of the charged crimes in the Amended Indictment. The SPO has not otherwise established *the prima facie* relevance and probative value of this document at this stage.

83. First, SPOE00229213-SPOE00229214 provides contemporaneous indications of the KLA General Staff’s position regarding the Bukoshi government, the Democratic League of Kosovo (“LDK”) and FARK forces, the structuring of the KLA in Brigades, the role and position of W04752 and “Celiku” at this particular point in time, and the KLA General Staff’s awareness of the operational situation on the ground. The Panel notes that some parts of the Albanian (original) version of SPOE00229213-SPOE00229214 appear to be illegible or torn. This does not appear to have affected any material part of the document on which the SPO appears to rely. The item contains the records of minutes of meetings of the KLA General Staff of 9 July 1998 and 16 August 1998. These demonstrate, *inter alia*, the level of operational awareness of the KLA General Staff, and various aspects of its powers, including in respect of investigations, and position towards FARK/LDK. The document was found at Mr Krasniqi’s home and its content is consistent with the nature of what it claims to be. It has *prima facie* probative value of the issues which it addresses, although weight and probative value of this and any other document will be decided in light of all relevant evidence. The Panel will take into

¹³⁰ SPOE00229213-SPOE00229214; Annex 6 to the Bar Table Motion, item 239.

¹³¹ SPOE00229215-SPOE00229216; Annex 6 to the Bar Table Motion, item 240.

¹³² SPOE00227671-SPOE00227674; Annex 6 to the Bar Table Motion, item 250.

¹³³ SPOE00227329-SPOE00227335; Annex 6 to the Bar Table Motion, item 256.

account that a part of the document is illegible. The same analysis applies to SPOE00229215-SPOE00229216, which was seized at Mr Krasniqi's home.

84. Second, SPOE00227671-SPOE00227674 is a handwritten record of a meeting of the KLA General Staff of 26 February 1999. It was found at Mr Selimi's residence. It addresses, *inter alia*, the Rambouillet conference, the evaluation of organisational, political and military situation of the KLA and the formation of the Provisional Government of Kosovo – all issues relevant to this case. It also provides (further) evidence of the frequency of KLA General Staff meetings and the range of issues of relevance to their work. It also provides some evidence of the process of selecting a leader for the KLA, and the differences of views on this matter. The SPO also seeks to rely on this category of records to show what it claims is the temporal coincidence between KLA General Staff meetings and the issuance of communiques pertaining to matters discussed during those.¹³⁴ The Panel is satisfied that the item is *prima facie* probative of the issues outlined above.

85. The Panel is further satisfied that the probative value of these items is not outweighed by any prejudicial effect attaching to those. As noted above, the illegibility of certain parts of SPOE00229213-SPOE00229214 will be accounted for when assessing the weight and probative value of this document.

86. In light of the foregoing, the Panel therefore admits SPOE00229213-SPOE00229214, SPOE00229215-SPOE00229216, and SPOE00227671-SPOE00227674 and denies, without prejudice, the admission of SPOE00227329-SPOE00227335.

¹³⁴ F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecutor Submission of Corrected Pre-Trial Brief and Related Request*, 24 February 2022, strictly confidential and *ex parte*, para. 19. Confidential redacted and public redacted versions were filed on the same day, F00709/A02 and F00709/A03.

(e) Category 5: Other KLA Documents

87. The SPO request to admit two further documents.¹³⁵ The SPO submits that these documents are relevant, authentic and probative and that no undue prejudice to the Defence arises from their admission.¹³⁶

88. The Defence responds that SPOE00232065-00232065 are templates, which the SPO has failed to show the relevance of and which can have no probative value without the contextual evidence on who created these templates, and whether they were ever used.¹³⁷ The SPO also submits that SPOE00225282-SPOE00225285 includes the signatures of several SPO witnesses who should authenticate the document through their testimonies before its admission.¹³⁸

89. First, SPOE00232065-00232065 is a set of templates of permanent travel permits issued by the KLA General Staff.¹³⁹ The Panel considers that, while the temporary travel permits are not completed, there is evidence that KLA travel permits were used¹⁴⁰ and that the item show that the KLA had the competence to issue such travel permits, which in turn is relevant to the KLA's powers over, and relationship with, its operational zones.¹⁴¹ This item is also *prima facie* authentic and probative, the item has the KLA logo and header, is to be signed by W04752, and was found at Mr Krasniqi's residence.

90. Second, SPOE00225282-SPOE00225285 is a KLA General Staff register of issued orders and decisions.¹⁴² It lists orders, directions, ordinances and other categories of documents attributed to the KLA General Staff – numbered and

¹³⁵ SPOE00232065-00232065, SPOE00225282-SPOE00225285; Annex 6 to the Bar Table Motions, items 221, 272.

¹³⁶ Bar Table Motion, para. 3.

¹³⁷ Annex 6 to the Response, item 221.

¹³⁸ Annex 6 to the Response, item 272.

¹³⁹ SPOE00232065-00232065; Annex 6 to the Bar Table Motion, item 221.

¹⁴⁰ Transcript of Hearing, 14 August 2023, p. 6362, lines 2 to 24, 15 August 2023, p. 6400, lines 1 to 19; 6 September 2023, p. 7350, lines 14 to 23; *See also* P00257.

¹⁴¹ Amended Indictment, para. 19.

¹⁴² SPOE00225282-SPOE00225285; Annex 6 to the Bar Table Motion, item 272.

organised in chronological order for the period 2 July 1998 until 17 February 1999. While some of the entries in the register are translated as partially, or entirely, “illegible”, many of the others are perfectly legible. This document provides insight into the range and nature of operational matters in which the KLA General Staff would involve itself. For this reason, the document is both relevant and *prima facie* probative. It also contains various indications of its authenticity (including, dates, references to orders and other decisions or measures adopted by the KLA General Staff, and markings of a KLA official documents). This, added to the fact that it was found at Mr Krasniqi’s home, provides sufficient indications of the *prima facie* authenticity and probative value of this document. While the document satisfies the requirements of Rule 138(1), the Panel notes that the probative value and weight that it will attach to this document will depend, in part, on the SPO’s ability to link this document to other items tendered on the record and/or to provide additional context through a witness capable of bringing some light to this document. The Panel notes in that regard that W01453 is a listed SPO witness, who might be able to provide such context.

91. The Panel is satisfied that the *prima facie* probative value of the documents in paragraphs 89-90 is not outweighed by any prejudice to the Accused. The Defence will be able to challenge the content of these items via cross-examination of relevant witnesses

92. In light of the foregoing, the Panel admits SPOE00232065-00232065 and SPOE00225282-SPOE00225285.

C. ASSESSMENT OF WEIGHT OF ADMITTED DOCUMENTS

93. The Panel notes that all proposed items that it has found to be admissible in the present decision meet the requirements for admission under Rule 138(1). Admission is not the same, however, as deciding what weight, if any, the Panel

will give to that evidence. Nor is a *prima facie* determination of probative value by the Panel the same as the assessment of the probative value of the evidence that the Panel will perform at the end of the trial. In accordance with Rule 139(2), the Panel is required to assess each piece of evidence in light of the entire body of evidence admitted before it at trial, and to carry out a holistic evaluation and weighing of all the evidence taken as a whole to establish whether or not the facts at issue have been established. Accordingly, while the Panel has found items admissible in the present decision, it will ultimately assess what weight to be attributed to these items in light of the entire body of evidence before it at trial. The presence at that point of corroboration and/or the contextualisation by a witness of admitted exhibits will constitute a factor of some importance in the Panel's assessment of the weight and probative value to attach to the admitted evidence.

VI. DISPOSITION

94. For the foregoing reasons, the Panel hereby:

- a) **GRANTS** in part the Bar Table Motion in respect of items in Annexes 1-2 and 6 seized from Mr Krasniqi's or Mr Selimi's residences;
- b) **ADMITS** into evidence the following items SPOE00230213-SPOE00230213, SPOE00230124-SPOE00230124, 086841-086841, 086855-086855, U000-9953-U000-9953, 086863-086863, SPOE00230775-SPOE00230775, 086832-086832, 086872-086872, SPOE00230797-SPOE00230797, SPOE00231368-SPOE00231369, SPOE00231905-00231905, SPOE00231370-SPOE00231370, SPOE00232784-00232785, SPOE00231901-00231903, SPOE00231896-00231898, SPOE00225232-SPOE00225232, SPOE00231371-SPOE00231371, SPOE00225233-SPOE00225233, SPOE00225166-SPOE00225167, SPOE00225225-SPOE00225225,

SPOE00231372-SPOE00231373, SPOE00232794-00232795, SPOE00232745-00232746, SPOE00225168-SPOE00225168, SPOE00232775-00232775, SPOE00231899-00231900, 086846-086847, SPOE00232086-00232087, SPOE00231376-SPOE00231377, 086844-086845, SPOE00231374-SPOE00231375, SPOE00231378-SPOE00231379, SPOE00225234-SPOE00225235, SPOE00231904-00231904, SPOE00231380-SPOE00231381, SPOE00231922-00231923, SPOE00231921-00231921, SPOE00231382-SPOE00231383, SPOE00227854-SPOE00227856, SPOE00231384-SPOE00231385, SPOE00229228-SPOE00229229, SPOE00232783-00232783, SPOE00225069-SPOE00225070, SPOE00232612-00232614, SPOE00225218-SPOE00225219, SPOE00232813-00232814, SPOE00225215-SPOE00225217, SPOE00225227-SPOE00225228, SPOE00225230-SPOE00225231, SPOE00227888-SPOE00227890, SPOE00225208-SPOE00225208, SPOE00225220-SPOE00225220, SPOE00231831-00231832, SPOE00231390-SPOE00231390, SPOE00231833-00231834, SPOE00231391-SPOE00231392, SPOE00231982-00231982, SPOE00232868-00232868, SPOE00225162-SPOE00225162, SPOE00228826-SPOE00228826, SPOE00225019-SPOE00225019, SPOE00225046-SPOE00225048, SPOE00232068-00232068, SPOE00231346-SPOE00231347, SPOE00231328-SPOE00231329, SPOE00231340-SPOE00231343, SPOE00231309-SPOE00231311, SPOE00231330-SPOE00231431, SPOE00231326-SPOE00231427, SPOE00231946-SPOE00231946, SPOE00223376-00223376, SPOE00223375-00223375, SPOE00223374-00223374, SPOE00223373-00223373, U000-0531-U000-0531, SPOE00248506-00248506, SPOE00248503-00248503, SPOE00225270-SPOE00225270, SPOE00248502-00248502, SPOE00232821-00232821, SPOE00232251-00232252, SPOE00228822-SPOE00228822, SPOE00228801-SPOE00228806, SPOE00228192-SPOE00228194, SPOE00225277-SPOE00225277, SPOE00225264-SPOE00225264, SPOE00225261-SPOE00225261, SPOE00225256-SPOE00225257,

SPOE00225255-SPOE00225255, SPOE00225252-SPOE00225252,
 SPOE00225250-SPOE00225250, SPOE00225249-SPOE00225249,
 SPOE00225248-SPOE00225248, SPOE00225247-SPOE00225247,
 SPOE00225246-SPOE00225246, SPOE00225243-SPOE00225243,
 SPOE00225242-SPOE00225242, SPOE00225238-SPOE00225238,
 SPOE00225155-SPOE00225156, SPOE00225153-SPOE00225154,
 SPOE00225152-SPOE00225152, SPOE00225151-SPOE00225151,
 SPOE00225150-SPOE00225150, SPOE00225131-SPOE00225131,
 SPOE00232076-00232081, SPOE00231482-SPOE00231498, SPOE00231444-
 SPOE00231464, SPOE00225106-SPOE00225130, SPOE00231511-
 SPOE00231513, SPOE00229213-SPOE00229214, SPOE00229215-
 SPOE00229216, SPOE00227671-SPOE00227674, SPOE00232065-00232065
 and SPOE00225282-SPOE00225285;

- c) **DIRECTS** the Registrar to assign exhibit numbers to the aforementioned items, including to any translations;
- d) **DEFERS** the assessment of SPOE00231332-SPOE00231435;
- e) **DENIES** without prejudice the admission into evidence from the bar table of the following items: SPOE00229232-SPOE00229233, SPOE00227462-SPOE00227503, and SPOE00227329-SPOE00227335; and
- f) **ORDERS** the SPO to file any application seeking to maintain the confidential nature of any of the admitted material no later than **10 October 2023, 4:00 p.m.** Any response thereto shall be filed no later

than **17 October 2023, 4:00 p.m.** No reply will be entertained

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

Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 3 October 2023

At The Hague, the Netherlands.

Explanatory Note

In paragraphs 52 and 94(b) missing references to "SPOE00231340-SPOE00231343" were added.

In paragraphs 52 and 94(b) and footnote 74 references to "SPOE00231309-SPOE00231411-ET" were corrected to "SPOE00231309-SPOE00231311-ET".