KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In:	**KSC-BC-2023-12** **The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi**
Before:	**Single Trial Judge** Judge Christopher Gosnell
Registrar:	Fidelma Donlon
Date:	20 January 2026
Language:	English
Classification:	**Public**

Decision on Prosecution Motion for Admission of Prior Statement of an Accused

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THE SINGLE TRIAL JUDGE, pursuant to Articles 21, 38(3), 40(2) and 6(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 42-44 and 137-138 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues this decision.[1]

I. PROCEDURAL BACKGROUND

1. On 17 December 2025, the Specialist Prosecutor's Office ("SPO") requested the admission of an interview of Isni Kilaj ("Mr Kilaj") and its translation ("Interview"),[2] along with six exhibits ("Associated Exhibits"), conducted after a search of Mr Kilaj's residence on 2 November 2023.[3] The Associated Exhibits include a notification of rights and an attorney waiver form signed by Mr Kilaj,[4] and documents obtained during the search that were shown to him during the Interview.[5]

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[1] All references to "Article" and "Rule" shall be understood, unless otherwise indicated, as referring to the Law and Rules.

[2] Combined Transcript of SPO Interview with Isni KILAJ, dated 2 November 2023, 116809-TR-AT (Albanian) and 116809-TR-AT-ET (English translation) ("Interview Transcript") (footnotes in the present decision cite to the English translation); Audio/Video Recording of SPO Interview with Isni KILAJ, dated 2 November 2023, Parts 1-5, 116809B Part 1, 116809B Part 2, 116809B Part 3, 116809B Part 4, 116809B Part 5.

[3] KSC-BC-2023-12, F00626, Specialist Prosecutor, *Prosecution Motion for Admission of a Prior Statement of an Accused* ("SPO Motion"), 17 December 2025, public, paras 1-2, 4, 12, with Annex 1, public. *See* KSC-BC-2023-12, INV/F00036, Single Judge, *Decision Authorising Search and Seizure and Special Investigative Measures*, 17 October 2023, strictly confidential and *ex parte*; a public redacted version was filed on 31 October 2025, INV/F00036/RED.

[4] *See* Annex 1 to Official Note ("Official Note") about Isni KILAJ Suspect Interview on 2 November 2023 in Kosovo ("Rights Notification and Attorney Waiver"), 116879-116883 (Albanian) and 116883-116883-ET (English) (the SPO only tenders p. 116883 of the 116879-116883); SPO Motion, paras 4, 10.

[5] Associated Exhibits: (i) Annex 2 to Official Note about Isni KILAJ Suspect Interview on 2 November 2023: Photos Shown to Isni KILAJ, 116884-116927; (ii) Photos Received from Forensic Processing of Torn 051765-051770 RED2 and 053191-TR-AT Part 6 Revised RED2 Seized from Isni KILAJ on 2 November 2023, SPOE00343593-SPOE00343606 (Albanian) and 123402-123409 corrected (English); (iii) Photos Received from Forensic Processing of Folded Paper Scraps Seized from Isni KILAJ on 2 November 2023, SPOE00343582-SPOE00343592 (Albanian) and SPOE00343582-SPOE00343592-ET Revised (English); (iv) Black Notebook with Handwritten Notes Seized from Isni KILAJ, SPOE00346771-00346787 (Albanian) and SPOE00346771-SPOE00346787-ET (English); (v) Brown Notebook with Handwritten Notes Seized from Isni KILAJ, SPOE00346751-00346770 (Albanian) and

2. On 12 January 2026, the Defence for Mr Kilaj ("Kilaj Defence") and the Defence for Hashim Thaçi ("Thaçi Defence") submitted a joint response.[6]

3. On 16 January 2026, the SPO replied to the Defence Response.[7]

II. SUBMISSIONS

A. SPO SUBMISSIONS

4. The SPO argues that the Interview and the Associated Exhibits are admissible pursuant to Rule 138(1) as they are relevant, authentic, reliable, and will cause no undue prejudice to Mr Kilaj.[8] In particular, Mr Kilaj agreed to the Interview voluntarily "after a full recitation and waiver of his rights."[9] Additionally, the SPO contends that the Interview is "relevant to and probative of the crimes charged" in the Amended Confirmed Indictment,[10] including Mr Kilaj's role in the Kilaj Group,[11] and his possession of confidential SPO materials.[12] The SPO also states that the admission of the Interview through a written motion "will not be unduly prejudicial" to Mr Kilaj, as its content is

SPOE00346751-SPOE00346770-ET (English); (vi) Official Note. With the exception of the Official Note and its Annex 1, the SPO has tendered all other Associated Exhibits as part of its bar table motion (KSC-BC-2023-12, F00632/A01, Specialist Prosecutor, *Annex 1 to Prosecution Motion for Admission of Material through the Bar Table*, 17 December 2025, confidential, items 78-82).

[6] KSC-BC-2023-12, F00658, Kilaj Defence and Thaçi Defence, *Joint Defence Response to Prosecution Motion for Admission of a Prior Statement of an Accused (F00626)* ("Defence Response"), 12 January 2026, public.

[7] KSC-BC-2023-12, F00668, Specialist Prosecutor, *Prosecution Reply to 'Joint Defence Response to Prosecution Motion for Admission of a Prior Statement of an Accused (F00626)* ("SPO Reply"), 15 January 2026, public.

[8] SPO Motion, paras 1-2, 6, 11-12.

[9] SPO Motion, paras 5, 7.

[10] KSC-BC-2023-12, F00264, Specialist Prosecutor, *Submission of Amended Confirmed Indictment* ("Amended Confirmed Indictment"), 16 April 2025, public, with Annex 1, confidential (containing the confidential version of the Amended Confirmed Indictment), and Annex 2, public (containing the public redacted version of the Amended Confirmed Indictment).

[11] Amended Confirmed Indictment, para. 23.

[12] SPO Motion, paras 2, 8.

"self-explanatory" and its authenticity is "self-evident".[13] The Associated Exhibits are said to "provide necessary context to, and form[] an integral part of, the SPO Interview.[14]

B. DEFENCE RESPONSE

5. The Kilaj Defence and the Thaçi Defence ("the Defence") jointly submit that the advice of rights provided to Mr Kilaj was defective because even though the SPO mentioned at the beginning of the Interview that it was investigating offences against the administration of justice as well as international crimes, it "fail[ed] to notify [Mr Kilaj] for which *particular* type of crimes he was being interviewed".[15] The Defence asserts that the "Prosecution should have clearly notified [Mr Kilaj] that he was being interviewed as a suspect for offences against the administration of justice" and that the failure to do so "violated Mr Kilaj's rights as a suspect to give his informed consent to waive his rights to remain silent and not to be assisted by a lawyer."[16] In the absence of such information, Mr Kilaj's "decisions in this regard were not properly informed."[17]

6. In the alternative, the Defence requests that if the Interview is admitted, particularly if Mr Kilaj does not testify at trial and is not available to be cross-examined, the Single Trial Judge should "endorse the Appeals Chamber's reasoning and rule that (i) the SPO interview (and associated exhibits) of Mr Kilaj may not be used to support a conviction against his co-accused; (ii) he should assess with caution the weight, if any, to attach to such material."[18]

[13] SPO Motion, para. 9.
[14] SPO Motion, para. 10.
[15] Defence Response, para. 4.
[16] Defence Response, para. 4.
[17] Defence Response, para. 4.
[18] Defence Response, paras 7-8.

C. SPO REPLY

7. The SPO replies that the Defence provides no legal basis for its arguments.[19] The SPO contends that it complied with its obligation to inform Mr Kilaj that there were grounds to believe that he had committed a crime within the jurisdiction of the Specialist Chambers ("SC") under Article 38(3)(a), and that Mr Kilaj nonetheless "waived his rights and agreed to be interviewed."[20]

III. APPLICABLE LAW

8. Rule 138(1) provides that "evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect." Rule 138(2) adds that "[e]vidence obtained by means of a violation of the Law or the Rules or standards of international human rights law shall be inadmissible if: (a) the violation casts substantial doubt on the reliability of the evidence; or (b) the admission of the evidence would be antithetical to or would seriously damage the integrity of the proceedings." Article 40(2) requires a Panel to "ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused".

9. Article 38(2) empowers the SPO to question potential suspects. However, suspects shall, pursuant to Article 38(3), "not be compelled to incriminate himself or herself or to confess guilt." More specifically, a suspect:

> [S]hall be informed prior to questioning, in a language he or she speaks and understands:

[19] SPO Reply, para. 2.
[20] SPO Reply, paras 3, 5.

a. The right to be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction for the Specialist Chambers;

b. The right to remain silent, without such silence being considered in the determination of guilt or innocence, and to be cautioned that any statement he or she makes shall be recorded and may be used in evidence;

c. The right to be assisted by Specialist Counsel of his or her own choosing and to be questioned in the presence of Specialist Counsel, including the right to have legal assistance provided by the Specialist Chambers without payment by him or her where he or she does not have sufficient means to pay for it;

d. The right to have the free assistance of an interpreter if he or she cannot understand or speak the language used for questioning.

10. Rule 43(2) reiterates that "the Specialist Prosecutor shall inform the suspect of the of the rights under Article 38(3) of the Law prior to any questioning in a manner and in a language the suspect understands and speaks." A suspect may, pursuant to Rule 43(3), waive this right "provided that the Specialist Prosecutor ensures that the suspect understands the nature of this right and the consequences of waiving it".

IV. DISCUSSION

11. Three issues arise for consideration in relation to the SPO Motion: (i) the adequacy of the advice of rights upon which Mr Kilaj's waiver was provided; (ii) whether the admission of the Interview is subject to restrictions as to how it may be relied upon; and (iii) whether the Associated Exhibits are admissible with the Interview and, if so, whether they are subject to the same restrictions that may apply to the Interview itself.

A. THE ADEQUACY OF THE ADVICE OF RIGHTS

12. The Court of Appeals Panel has ruled that the admissibility of an out-of-court statement by an accused is to be determined, in the absence of any more

specific provision, pursuant to the general admissibility standard set out in Rule 138(1).[21] The same approach has been adopted by other international tribunals, within a similar statutory framework,[22] which have determined, as characterised by Trial Panel II, "that there is no general prohibition on the admission in evidence of a record of interview or a statement of an accused if it was obtained voluntarily, in compliance with the relevant legal framework, and it is relevant and has probative value."[23] The Single Trial Judge will therefore proceed to assess: (i) whether the Interview was obtained in compliance with the relevant legal framework; and (ii) whether the Interview is "relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect" pursuant to Rule 138(1).

13. Interviews of "suspects" are specifically regulated by the Law and Rules. A suspect, "if questioned", is entitled to specific rights enumerated in Article 38(3) "of which he or she shall be informed prior to questioning." As quoted above,[24] these rights are: (i) the right to be informed "that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Specialist Chambers"; (ii) the right remain silent; (iii) the right be assisted by

[21] KSC-BC-2020-06, IA030/F00009, Court of Appeals Panel, *Decision on Krasniqi and Selimi Appeals against "Decision on Prosecution Motion for Admission of Accused's Statements"* ("*Krasniqi* and *Selimi* Appeal"), 31 May 2024, public, para. 65 ("The Appeals Panel considers that, in the absence of any specific provision in the Specialist Chambers' legal framework, the Trial Panel applied the appropriate provision which governs the admissibility of evidence generally"). *See* KSC-BC-2020-06, F01917, Trial Panel II, *Decision on Prosecution Motion for Admission of Accused's Statements* ("Case 06 Decision on Admission of Accused's Statements"), 9 November 2023, public, para. 16 ("Admission of this category of items is subject to the general rules and principles regarding the admission of evidence before this jurisdiction.")

[22] *See, for example,* International Criminal Tribunal for the Former Yugoslavia ("ICTY"), *Prosecutor v. Sefer Halilović*, IT-01-48-AR73.2, Appeals Chamber, *Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table* ("*Halilović* Admissibility Decision"), 19 August 2005, para. 14; ICTY, *Prosecutor v. Vujadin Popović et al.*, IT-05-88-T, Trial Chamber II, *Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65* ter *Exhibit List*, 25 October 2007, para. 28; ICTY, *Prosecutor v. Jadranko Prlić et al.*, IT-04-74-AR73.6, Appeals Chamber, *Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić Questioning into Evidence*, 23 November 2007, para. 55.

[23] Case 06 Decision on Admission of Accused's Statements, para. 16.

[24] *See supra* para. 9.

Specialist Counsel, without payment if so required; and (iv) the right to the free assistance of an interpreter.

14. Rule 43(3), which appears in the provision governing the "Rights of Suspects During Investigation", permits the waiver of the right to Specialist Counsel but only where "the Specialist Prosecutor ensures that the suspect understands the nature of this right and the consequences of waiving it." Ensuring that the waiver of this important right is properly informed is buttressed by certain formal and substantive requirements set out in Rule 43(3): "[w]hen providing such information, the Specialist Prosecutor shall take into account the personal circumstances of the suspect, including his or her age, mental and physical condition. A waiver and the circumstances in which it was given shall be recorded in writing by the Specialist Prosecutor and shall be signed by the suspect." Rule 44, governing the "Recording of Questioning of Suspects," specifies that "[d]uring the questioning of a suspect by the Specialist Prosecutor, the procedure envisaged in Rule 43 shall apply." This implies that, in the absence of an objection by the suspect, any information concerning the nature of the rights of the suspect and their waiver, pursuant to Article 38(3) and Rule 43(2), is to be video-recorded.

15. The Interview complied with these requirements. Each of the rights enumerated in Article 38(3) were communicated orally, to the letter, to Mr Kilaj at the beginning of the interview.[25] They were also provided in writing in Albanian.[26] Mr Kilaj then signed the form below the words: "I hereby confirm by signing below that I have understood the rights and obligations set out above."[27] The record of the Interview provides no indication that he was confused or misled as to the meaning of these rights.

[25] Interview Transcript, p. 3, line 13-p. 5, line 21.
[26] Interview Transcript, p. 5, line 23-p. 6, line 13; Rights Notification and Attorney Waiver.
[27] Interview Transcript, p. 6, lines 17-18.

16. Mr Kilaj was also informed, in substance, that he could withdraw this waiver of rights at any time: "if during the interview, at any point during the interview, you change your mind and want to have an attorney present, it is sufficient to tell us. So, you can – how can we say this, you can withdraw from what you signed earlier on."[28] This understates the scope of Mr Kilaj's rights: a suspect is entitled to revoke not only the waiver of the right to counsel, but also any of the other waived rights, including the right to remain silent. Having embarked on an explanation of the possibility of a revocation, the SPO should have made clear that the revocation applied to any of the waived rights, and not just the right to counsel. However, given the interviewer's immediate clarification that "you can withdraw from what you signed earlier on", the essence of the information provided remained adequate to validate Mr Kilaj's waiver of rights.

17. The Defence complains that "the SPO violated Mr Kilaj's rights as a suspect by failing to notify him for which particular type of crimes he was being interviewed, while the SPO clearly had in mind obstruction offences since it filed an indictment for such charges only a month later".[29] The Defence argues that, in the absence of this information, Mr Kilaj's waiver was "not properly informed."[30] However, the Defence cites to no caselaw or other authority for the proposition that a suspect must be informed of the "particular type of crimes" of which a person is suspected.[31]

18. Neither the SC legal framework nor international human rights instruments provide that a suspect has a right to be informed of the particular

[28] Interview Transcript, p. 6, lines 18-22.
[29] Defence Response, para. 4.
[30] Defence Response, para. 4.
[31] Defence Response, para. 4. *See also,* SPO Reply, para. 2.

crime or offence that they are suspected of having committed.[32] Article 38(3)(a)says that the information that must be conveyed to a suspect is that there are "grounds to believe that he or she has committed a crime within the jurisdiction of the Specialist Chamber." Accordingly, what matters is not the precise nature of the crimes of which the person is suspected but rather the content of the rights to which they are entitled, which arise regardless of the nature of the crimes suspected.

19. The interviewers made clear from the outset of the Interview that there were such grounds, and that these grounds related to crimes falling within the SC jurisdiction. Mr Kilaj was told that the SPO was investigating not only "international and transboundary crimes", but also "the obstruction of the administration of the crimes which are related to justice and these crimes, so, which fall under the mandate of the Specialist Prosecutor's Office."[33] The interviewer then stated that "[t]his is a criminal investigation and any statement that you make may be used in proceedings before the Kosovo Specialist Chamber."[34] Finally, the interviewer specifically identified Mr Kilaj as a suspect by stating that: "[t]here are grounds for us to believe that you have been involved in the commission of a crime within the jurisdiction of the Kosovo Specialist Chambers. As such, you have some other rights."[35]

20. Mr Kilaj could have been in no doubt on the basis of this information that there were "grounds to believe that he or she has committed a crime within the jurisdiction of the Specialist Chambers."[36] As stated by the Court of Appeals Panel, what matters is whether the suspect "was clearly put on notice promptly

[32] *See* KSC-BC-2020-04, IA006/F00007, Court of Appeals, *Decision on Shala's Appeal against Decision Concerning Prior Statements* ("*Shala* Prior Statements Appeal"), 5 May 2023, public, para. 42; Case 06 Decision on Admission of Accused's Statements, paras 26, 35.
[33] Interview Transcript, p. 2, lines 9-13.
[34] Interview Transcript, p. 3, lines 2-4.
[35] Interview Transcript, p. 4, line 25-p. 5, line 3.
[36] Article 38(3)(a).

that he was considered as a suspect and that his statements could be used as evidence against him in criminal proceedings."[37] The ICTY has likewise specified that an advice of rights does not require an interviewer "to advise [a suspect] of the particular crimes for which he was a suspect at the time."[38]

21. None of this contravenes Article 6(3)(a) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") concerning the right of "[e]veryone charged with a criminal offence […] to be informed promptly […] of the nature and cause of the accusation". This right arises only once a person is "charged". In both form and substance, a person being interviewed as a "suspect" within the KSC legal framework is not "charged". In analogous contexts, the European Court of Human Rights ("ECtHR") has indicated that the "right to be informed promptly […] of the nature and cause of the accusation", is triggered only once there is an actual charge against a person,[39] not merely when they are "suspected" of a criminal offence.[40]

22. As stated by the Court of Appeals Panel, the "object of questioning a suspect is to further the criminal investigation by way of confirming or

[37] *See Shala* Prior Statements Appeal, para. 44.
[38] *Popović et al* Admissibility Decision, para. 35.
[39] *See* ECtHR, *Eckle v. Germany*, Application no. 8130/78, Judgment, 15 July 1982, para. 73 ("In criminal matters, the 'reasonable time' referred to in Article 6 par. 1 (art. 6-1) begins to run as soon as a person is 'charged'; this may occur on a date prior to the case coming before the trial court (…), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened (…). 'Charge', for the purposes of Article 6 par. 1 (art. 6-1), may be defined as 'the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence', a definition that also corresponds to the test whether 'the situation of the [suspect] has been substantially affected'"). *See also, for example,* ECtHR, *Kamasinski v. Austria*, Application no. 9783/82, Judgment, 19 December 1989, para. 79; ECtHR, *Pélissier and Sassi v. France*, Application no. 25444/94, Judgment, 25 March 1999, para. 51.
[40] *See Eckle v. Germany*, para. 74, where the ECtHR agreed with the European Commission of Human Rights ("ECommHR") that the first questioning of Mr Eckle by the police did not constitute the first official notification of the charge nor the moment where he began being affected by the investigation (*see* ECommHR, *Eckle v. Germany*, Application no. 8130/78, Report of the Commission, 11 December 1980, paras 148-149).

dispelling the concrete suspicion grounding the arrest or […] in the interview."[41] Injecting a requirement to provide detailed information concerning the "nature and cause" of a suspicion as part of an initial advice of rights could lead to unwieldy and conditional explanations at the beginning of a suspect interview that would not only be unduly complex for the investigating authority, but might actually impede, rather than facilitate, a suspect's understanding and exercise of their vital rights.

23. Although circumstances could conceivably arise where a refusal to provide information about the nature of the "grounds to believe" that a person had committed a crime might become confused with the person's understanding of whether they were a suspect,[42] there is no indication of any such confusion during the interview of Mr Kilaj.[43] On the contrary, the investigators forthrightly revealed early in the interview their "grounds to believe" that Mr Kilaj may have participated in a crime within the SC's jurisdiction.[44] The documents presented to Mr Kilaj revealed not only the type of crimes of which Mr Kilaj was suspected, but the nature of the information involved. Nothing in these subsequent exchanges suggest that the waiver of rights given at the beginning of the Interview was anything less than fully informed, or reveals any other oppressive or improper conduct in violation of the rights of the suspect.

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[41] *Shala* Prior Statements Appeal, para. 43.
[42] International Criminal Tribunal for Rwanda, *Prosecutor v. Théoneste Bagosora et al*., ICTR-98-41-T, Trial Chamber I, *Decision on the Prosecutor's Motion for the Admission of Certain Materials under Rule 89(C)*, 14 October 2004, para. 19 ("Rather than correcting the Accused's misperception that his right to counsel was conditional upon being informed of the case against him, the investigators responded that 'standard procedure' is that disclosure would happen later. The Accused then attempted to reserve the right to request the assistance of counsel 'as soon as I find out the case against me, because I don't know what it is at this time'. This again should have demonstrated to the investigators that the Accused was still confused, and probably did not understand that he had the right to assistance of counsel immediately. Nothing in the remainder of the interview indicates that the Accused's misunderstanding was ever corrected, and at no time did the investigators advise the accused that he had the immediate right to the assistance of counsel during questioning.")
[43] *See supra* para. 15.
[44] Interview Transcript, p. 11, lines 12-20.

24. Accordingly, the Single Trial Judge finds that Mr Kilaj's waiver of rights at the outset of the Interview was fully-informed, valid and complied with the requirements of Article 38(3), Rule 43 and international human rights standards.

25. Aside from the purportedly defective advice of rights, the Defence has not otherwise challenged the admissibility of the Interview as such, including its relevance, authenticity or probative value. Indeed, the Interview appears to be manifestly relevant and was recorded in accordance with the formal recording requirements of Rule 44 which ensures its authenticity and probative value. Accordingly, the Interview is relevant and *prima facie* authentic and reliable. Whether or not the probative value of the Interview is outweighed by its prejudicial effect in respect of Mr Kilaj's co-accused is discussed in the next section.

B. WHETHER THE INTERVIEW IS UNDULY PREJUDICIAL, OR SHOULD BE ADMITTED SUBJECT TO RESTRICTIONS

26. An out-of-court statement by an accused is widely understood as admissible as against himself or herself notwithstanding the requirements of Rules 141, 153 and 155 because these Rules (and their counterparts at the ICTY) are "intended to ensure the accused's right to confront the witnesses against him, and in this respect its logic is not applicable to an accused's own statements."[45] In a multi-accused case, the question arises whether a statement that is admissible as against one of the accused can likewise be admitted as evidence against another, even though that other accused did not make the statement, did not waive the applicable rights, and may have no opportunity to cross-examine the person who made the statement. Whereas a suspect who makes a statement is unlikely to falsely incriminate himself or herself, he or she may have a "powerful incentive to shift blame away to

[45] *Halilović* Admissibility Decision, para. 17.

others",[46] which may raise further questions about the reliability of such statements in relation to their co-accused.

27. These concerns are addressed by Rule 140(4)(a) which provides that "[a] conviction may not be based solely or to a decisive extent on: the statement of a witness whom the Defence had no opportunity to examine."[47] This provision reflects the jurisprudence of the ECtHR, recalled by the Court of Appeals Panel, which has held that, while there is no categorical prohibition on the admission and use of prior statements of a co-accused, they must not be accorded decisive weight.[48] The Court of Appeals Panel has also held "statements of a co-accused (or witness) whom the Defence was not able to examine may not be used to support a conviction against the accused."[49] Thus, there are sufficient safeguards in place under international human rights law and SC's legal framework to protect the rights of the Accused with respect to the use of co-accused's statements.[50] Upon admission "ultimately it is an issue of how much, if any, weight to give" the prior statement, and that "this determination can only be made by the Trial Panel at the end of the proceedings, in light of all the relevant evidence before it."[51]

28. Whether Mr Kilaj will testify in these proceedings – and, accordingly, whether any other accused will have an opportunity to cross-examine him – is not yet known. Even assuming that he will not testify, the Single Trial Judge

[46] *Popović et al* Admissibility Decision, para. 65.
[47] *Krasniqi* and *Selimi* Appeal, para. 72.
[48] *Krasniqi* and *Selimi* Appeal, para. 72 "([T]he Panel recalls that statements of a co-accused (or witness) whom the Defence was not able to examine may not be used to support a conviction against the accused. As also noted by the Trial Panel, the ECtHR has held that a conviction based solely or in decisive part on the evidence of an accused or co-accused that the accused was not able to examine is incompatible with Article 6 of the ECHR. This safeguard is similarly included in the Specialists Chambers' framework in Rule 140(4)(a) of the Rules, which provides that a conviction may not be based solely or to a decisive extent on a statement of a witness whom the Defence had no opportunity to examine.")
[49] *Krasniqi* and *Selimi* Appeal, para. 72.
[50] *Krasniqi* and *Selimi* Appeal, para. 72.
[51] *Krasniqi* and *Selimi* Appeal, para. 70.

finds that the probative value of Mr Kilaj's statement is not outweighed by its prejudicial effect in respect of his co-accused, so as to require exclusion pursuant to Rule 138(1). Indeed, if the statement is not ultimately subject to cross-examination, it will be treated with the appropriate caution vis-à-vis Mr Kilaj's co-accused.[52] The Parties will also be expected to make submissions on the appropriate weight to be attached to the Interview on the basis of the evidence viewed as a whole and the applicable law concerning the weight that can appropriately be placed on uncross-examined witness statements.

29. In these circumstances, the Interview is admitted without any specific restriction on its use.

C. ADMISSIBILITY OF ASSOCIATED EXHIBITS UNDER RULE 138

29. The Defence did not challenge the relevance, authenticity or probative value of any of the Associated Exhibits nor that they are admissible along with the Interview. However, the Defence does assert, as with respect to the Interview, that the Associated Exhibits "may not be used to support a conviction against his co-accused."[53]

30. The Associated Exhibits fall into two categories: (i) an "Official Note" by an investigator explaining the circumstances of the interview, to which Mr Kilaj's notification of rights and attorney waiver form is annexed;[54] and (ii) a documents seized from Mr Kilaj's residence ("Seized Documents") and on which he commented during the Interview, in some cases extensively.

31. The Seized Documents were shown to Mr Kilaj and discussed in some detail and, therefore, form an indispensable and inseparable part of the Interview. As such, the Single Trial Judge is satisfied that they: (i) are relevant and will provide relevant context to the written record in which they are discussed; (ii) bear sufficient

[52] Rule 139(2).
[53] Defence Response, para. 8.
[54] *See supra* footnote 5.

indicia of authenticity; and (iii) have probative value, which is not outweighed by their prejudicial effect. They are, accordingly, admissible pursuant to Rule 138(1).[55]

32. The Seized Documents are also documentary, rather than testimonial in character. Accordingly, the weight of these documents is not affected by the absence of cross-examination of the interviewee.[56] This is not to say that the SPO's or Mr Kilaj's characterisation of the Associated Exhibits is necessarily accepted, or that these documents are entitled to any particular weight, but merely that they are not subject to any specific restriction on weight arising from the absence of cross-examination.

33. The "Official Note" is arguably testimonial in character. Nevertheless, in the absence of objection to its admission and given its very limited purpose, this document is admitted as relevant, authentic and sufficiently probative relative to any prejudicial effect.

[55] *See also, for example,* Case 06 Decision on Admission of Accused's Statements, paras 66, 77, 89, 162, 197, 201, 205; KSC-BC-2020-06, F03451, Trial Panel II, *Decision on the Admission of Expert Reports Submitted by Victims' Counsel*, 9 September 2025, paras 53-54; F02720, Trial Panel II, *Public Redacted Version of Decision on Prosecution Motion of Admission of Evidence of Witnesses W02586, W03873, W04264, W04393, W04401, W04679, and W04747 pursuant to Rule 154*, 14 November 2024, paras 18, 39, 47, 72, 93.
[56] *See supra* para. 28.

V. DISPOSITION

34. For the above reasons, the Single Trial Judge hereby:

a. **GRANTS** the SPO Motion; and

b. **ADMITS** into evidence the Interview and the Associated Exhibits, as listed in F00626/A01.

Judge Christopher Gosnell
Single Trial Judge

Dated this Tuesday, 20 January 2026

At The Hague, the Netherlands.