

**In:** KSC-BC-2020-06

**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Kadri Veseli

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**Public Redacted Version of Final Trial Brief on Behalf of Kadri Veseli with Confidential Annexes 1 and 2**

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## I. INTRODUCTION: SUMMARY OF THE DEFENCE CASE<sup>1</sup>

1. Kosovo has been the subject of extensive litigation over more than two decades by courts before the establishment of the Kosovo Specialist Chambers (“KSC”). The KSC is, in fact, the fourth internationally backed jurisdiction to prosecute persons for crimes committed during the Kosovo conflict. That commitment to ending impunity is to be welcomed, particularly when it is too often flouted in many conflicts. These international and judicial institutions have over the last twenty-five years recorded the history of the Kosovo conflict. It cannot be wholly rewritten in this case despite the Specialist Prosecutor’s Office (“SPO”) persistent attempts to do so.
2. Certain fundamental truths must remain at the heart of these proceedings. These truths, which are and always have been supported by the entirety of the evidence, should not only be reinforced in the Panel’s judgment, but should act as the lens through which the Panel analyses all evidence in this case. These truths are, in particular, that the KLA was not a criminal organisation but had a lawful and legitimate purpose in resisting the concerted Serbian onslaughts against Kosovar civilians; that the vast majority of those who joined it did so for the right and decent reasons to further that lawful purpose and defend their villages, not to commit crimes; and that the General Staff of the KLA (“GS”) was not a criminal entity, coming together to plan, oversee and commit crimes.
3. The integrity of the KSC depends on the recognition of these facts. The Panel must reaffirm that resistance to occupation and defence of civilians is not criminal, to have joined the Kosovo Liberation Army (“KLA”) and pursued its goals was not criminal, and to have served on the GS or the Provisional Government of Kosovo (“PGoK”) was not a crime. The necessary and

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<sup>1</sup> This Final Trial Brief is filed pursuant to Rule 134(b) of the Rules.

inevitable acquittal of **Mr KADRI VESELI** (“**VESELI**”), who is the embodiment of those truths, reaffirms that reality.

4. While the KSC must serve as a beacon in the fight against impunity, that should not happen at the expense of the rule of law; where there is no evidence to support any criminal allegations – as is the case for **VESELI** – there can be no conviction.

**A. Reality Cannot be Reframed**

5. The SPO by way of this Indictment attempts to rewrite and distort that history, reframe reality, and recast **VESELI** in a *de facto* role he did not occupy, in an organisation that was not criminal. It has done so because the evidence does not support the case they have chosen to bring. **VESELI** appears to have been indicted because of his assumed proximity to others and post-war rumour and speculation emanating from those who did not know him and had no first-hand knowledge of the role he played in the KLA.
6. The Indictment against **VESELI** was clearly never based on sufficient evidence demonstrating he ever committed, intended or encouraged crimes. In the absence of such evidence against **VESELI**, the SPO instead has persistently attempted to cover up this gaping hole by seeking to improperly impute onto him the intentions and actions of others. The Panel must not err in the same respect; this is not a sound or lawful basis for conviction. There can be no guilt by association. It would diminish the KSC, and the rule of law more broadly, to find otherwise. Despite the admission of more than five thousand exhibits and twenty-five thousand pages of transcript, the SPO has failed to prove that the Joint Criminal Enterprise (“JCE”) as alleged ever existed, that **VESELI** was party to it, or that **VESELI** ever had *de facto* command over anyone within the KLA. The role into which **VESELI** has been wrongly cast by the SPO has been shown to be a fiction.

7. Critically, the only evidence that begins to suggest **VESELI** was in any way involved personally in criminality is purely untested hearsay, buried deep in the massive troughs of hearsay tendered by the SPO in the background of trial proceedings. Not one allegation that he was involved in criminality personally has ever been brought to the fore to be tested in the course of trial; they have instead remained submerged in the untested, uncorroborated hearsay accounts from the most egregiously unreliable witnesses, or the statements of the co-Accused, that **VESELI** has never been afforded the opportunity to challenge. **VESELI** has been denied his most fundamental right to challenge the few direct allegations that exist against him – whether that be those emanating from W04747, W04839, or his co-Accused. The quality of this evidence, and the manner in which it is sought to be relied on, is no less than appalling. Such evidence cannot lawfully or fairly form the basis of any adverse finding of fact against **VESELI**. The very purpose of a criminal trial is to allow the allegations to be challenged by the Accused. It is essential in his case that the Panel diligently considers the limitations that the law places upon the use of such uncorroborated and unchallenged hearsay; a conviction cannot be based solely or decisively on hearsay evidence.
8. In sharp contrast, the evidence that has been tested and that can properly be relied upon displays no criminality on **VESELI**'s part. It proves that which is common ground between the parties; that **VESELI** was a member of the KLA; head of intelligence on the GS; operated primarily abroad and he went on to become head of SHIK on 2 April 1999. There is no reliable evidence that in these roles **VESELI** ever did anything other than further the lawful purpose of the KLA and work to improve the KLA's ability to fight Serb oppression and secure peace and safety for Kosovo.

**B. Absence of Evidence**

9. The most striking aspect of the SPO's case against **VESELI** is his absence. **VESELI** is absent, not only from Kosovo and the crime base, but from the GS meetings, statements, orders and actions. **VESELI** simply does not feature in this case. The SPO has failed to demonstrate what **VESELI** did for most of the conflict and we almost never hear his voice or see his presence in the evidence. The preponderance of the evidence establishes that **VESELI** committed no crime; gave no orders; received no reports; made no phone calls; shared no information and was absent from most GS meetings and decisions. Despite the SPO's grandiose claims, they have failed to demonstrate **VESELI** ever participated in or encouraged the "*intimidation, interrogation, mistreatment, and/or detention of Opponents on the ground.*"<sup>2</sup> There is no evidence that **VESELI** ever personally committed an act of violence or inflicted any mistreatment. There is no evidence that he was present when violence or mistreatment occurred. There is no evidence that he knew of any crime, endorsed or encouraged any crime or aided and abetted the commission of a crime.
10. There is not one proven link between **VESELI** and the crime base, and he was never in a position of *de facto* authority that would have enabled him to prevent the crimes or punish crimes by those associated with the KLA. Three years into the trial phase, no evidence has been adduced as to anything **VESELI** ever thought or said throughout his time on the KLA that could begin to be construed as probative of an intent to further the alleged JCE or exercise any superior responsibility. **VESELI** does no more than appear briefly and sporadically in the narrative, mostly whilst abroad when the KLA are engaged in negotiations to achieve peace. When **VESELI** is encountered in the evidence in Kosovo, it is primarily at the very start of the conflict when the KLA was first

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<sup>2</sup> F00709/A01, Prosecution Pre-Trial Brief, 24 February 2022, para.7.

emerging, or at a handful of meetings of the GS where nothing criminal was discussed. Indeed, across the multitude of investigations and judicial proceedings relating to the Kosovo conflict, **VESELI** was never personally accused of any wrongdoing.

11. Considering the magnitude of the wide-ranging accusations, the absence of supporting evidence against him is glaring and astounding. A prosecution cannot succeed based on mere speculation and assumption; nothing less than proof beyond reasonable doubt will do. A conviction for the most egregious crimes against humanity cannot be based on faulty, wavering inferences derived from an absence of evidence and unsubstantiated circumstantial evidence as to the actions of others. The golden thread that in fact runs through the entire case against **VESELI** is that there is no evidence or at most very poor evidence in support of the SPO's far-fetched claims.

**C. False Pillars of SPO's Case**

12. While the SPO has pursued a case against the Accused jointly, they must be judged individually. The roles and actions of each Accused vary substantially. The evidence as to the Accused's state of knowledge and intent varies significantly. This case requires a meticulous, individualised examination of the evidence and a thorough assessment of competing available inferences that can be derived from **VESELI**'s conduct. The Panel must pay careful attention to separate out acts and conduct that are in furtherance of lawfully supporting the KLA as an organisation, versus conduct in furtherance of the alleged criminal purpose. This is crucial in **VESELI**'s case as, in the absence of any evidence of criminal intent or purpose on his part, it must be concluded that his acts were solely in furtherance of the KLA's legitimate goals.
13. To compensate for the lack of evidence against **VESELI** individually, the SPO resorts to two improper and misguided tactics to frame a case against him.

Firstly, the SPO treats the KLA, and particularly the GS, as criminal entities, and casts all actions in support of the KLA as an organisation, as inherently criminal. Secondly, it treats the intentions and actions of all those on the GS as interchangeable and imputable to each other. Once one deconstructs these two false pillars of the SPO's case, the case against **VESELI** falls.

14. With respect to the first pillar, the SPO's case consistently points to actions aimed at improving KLA organisation and functioning as acts in furtherance of the JCE, or indicative of criminal intent; this is plainly wrong in fact and law. Steps taken to support, coordinate, promote, amplify or advocate for the efforts of the KLA as an organisation were not criminal. The Panel must be cautious not to conflate intent to assist the development and coordination of the KLA with acts in furtherance of a JCE. Many of the acts in furtherance of the JCE alleged against **VESELI** in the Indictment are equally compatible with an intention of supporting the KLA's development. Where there are two competing reasonable inferences available, the Accused is entitled to the not guilty inference. Affording **VESELI** the benefit of this alternative available inference, any evidence that **VESELI** assisted the development, organisation and coordination of the KLA is no longer probative of any criminality.
15. With respect to the second pillar, neither the KLA nor the GS were homogenous entities. While neither entity is on trial, it is necessary in this brief to delve somewhat into what the KLA was and was not, to dispel the myths the SPO seeks to perpetuate about the nature of these organisations. This cannot be dismissed as mere "background" or "context." It is pivotal to understanding the reality of how the KLA and GS functioned and **VESELI**'s role within those structures. Once examined properly, the evidence demonstrates that the SPO theories and submissions are false, and a conviction against **VESELI** cannot be sustained.

16. The KLA emerged in the early 1990's and had overlapping membership with the political party, the People's Movement for Kosovo ("LPK"). Up until 1998, the KLA had what was known as a "Central Staff". It has not been proved that **VESELI** was a member of either the LPK or the Central Staff. This is significant as the SPO relies heavily on communiqués published by the "Central Staff," before the Indictment Period, to seek to evidence his knowledge and intent. The actions or intent of these early groupings are not relevant to the case against **VESELI**; he cannot properly be found to have shared in their alleged intent or to have adopted any such purported intent by joining the GS in 1998. The KLA that emerged as an armed force in 1998, of which **VESELI** was a GS member, sought to protect and liberate Kosovo from Serbian oppression of the MILOŠEVIĆ regime in the wake of the Jashari massacre in March 1998. Joining the KLA with that intent was not criminal. In the absence of any compelling evidence to the contrary, **VESELI** is entitled to the inference that this was the reason he joined, remained part of, and supported the KLA and the GS throughout.
17. The KLA sought to present itself as a functioning and powerful army to both Western allies and its adversary during the conflict. However, the reality that shines in technicolour through all the evidence is that, to the end, the KLA remained a collection of disparate, unwieldy, untrained, under-resourced fighters and supporters who came and went as they pleased and who followed orders of locally elected "commanders" only when it suited them. It never resembled anything like a true army structure. The KLA in the Operative Zones ("OZ") were never under the superior responsibility of the GS, or **VESELI**. Any power or influence, to the extent it existed at all, was in the hands of locally elected OZ commanders who could overthrow the GS on a whim. There was no effective command and control.

18. In true SPO style, faced with another gaping hole in its evidence in terms of the lack of KLA organisation, it adopted a novel approach and one that had been rejected as improper repeatedly in the past – it seeks to rely on KLA-authored books and unauthenticated “KLA documents” received in bulk from Serbia, admitted unchallenged and *en masse*. In post-war Kosovo, the KLA’s achievements have unsurprisingly been glorified and exaggerated in storybooks written after the war supposedly in the name of the KLA. The Panel cannot rely on such unreliable hearsay evidence – and should base their judgment instead on authentic, credible, corroborated evidence from reliable sources. In sharp contrast to the post-war KLA narratives, in Belgrade, the KLA continues to falsely be portrayed as a drug smuggling, organ trafficking terror group. Such allegations are demonstrably false, in spite of Serbian best efforts to prop them up with self-confessed false evidence. Serbia has a clear agenda with respect to the Accused, which impacts the reliability of documentary evidence it has provided to this Court. The Panel should therefore in this particular context exercise extreme caution before relying on any material emanating from the Serbian authorities. There is no burden on the Defence to prove that any document is falsified; the SPO must prove that documents obtained from the Serbian authorities can safely be relied on, which it has made no effort to do. Authenticity cannot be presumed; it must be proved.
19. While **VESELI** was a member of the GS, it is imperative for the Panel to carefully examine what it meant and did not mean to be a member of this grouping. The GS was, like the KLA as a whole, not inherently criminal in its purpose or formation. To join the GS was not a criminal act; to join was not to join a JCE. The SPO’s case is that GS was created in order to plan, organise, and coordinate KLA actions in Kosovo; that is a lawful purpose. In addition, what emerged from the evidence is that its purpose was somewhat broader than this,

in that the GS also acted as the public or political face of the KLA and negotiated on its behalf on the international stage; again both lawful and legitimate goals.

20. Not all members of the GS are alleged by the SPO to be criminal, nor are they part of the alleged JCE; nor could they possibly be. The GS was not criminal from inception, nor criminal by design or function; it was not, as the SPO appears to suggest, 'rotten to its core.' Members of the GS joined and worked on the staff with lawful intent and through lawful actions. **VESELI** again is the embodiment of that reality. Members of the GS are not, and cannot be, liable for the crimes of others simply by virtue of their GS membership; membership of the GS is not synonymous with guilt. It is not correct that membership of the GS alone is sufficient to render someone a party to the alleged JCE, or to impute upon them superior responsibility. This is particularly true in **VESELI**'s case considering his absence from the daily functioning of the GS. The law is clear that what is required is a hyper-individualised assessment of an individual's guilt, based on evidence as against them personally. The Panel must closely examine whether there is any evidence of **VESELI**'s intention or actions as an individual – not of the GS as a collective – which is said to be probative of his alleged guilt. This exercise is all the more critical in his case given the true lack of any direct evidence against him. Once this analysis is done correctly, consistent with both reality and the presumption of innocence, the only reasonable available conclusion is that there is no evidence capable of proving the SPO's case against him.
21. The evidence shows that **VESELI** played no part in the functioning or operation of the GS; was present for no more than a handful of meetings throughout the conflict and was not present for or did not participate in most GS decisions. Decision-making at the GS did not require unanimity, or even a majority. Decisions were made by those present and available. There is no reliable evidence that **VESELI** was ever consulted before or informed after the fact

about decisions or actions taken by the GS. Many GS members could, and frequently did, act independently without broader GS approval. Many GS members did not know what other GS members were doing or the ambit of their roles. There is no evidence **VESELI** was ever aware what other GS members were doing in his absence. GS members did not know who was responsible for the communiqués, or play any part in their formulation, nor is there evidence they supported or consented to their content. There is no evidence **VESELI** had any involvement or knowledge whatsoever of the contents of communiqués. **VESELI**'s role was autonomous, externally facing and did not involve cooperation or collaboration with other members from the staff. He was, in reality, an absentee member of the GS. As a result, no decision, action, communication or public statement made by the any other GS members or others can be properly or fairly be imputed onto him; it would be contrary to justice to do so.

**D. No Criminal Intelligence Role**

22. The SPO's case against **VESELI** hinges in large part on, at best its misunderstanding, at worst its misrepresentation, of the ambit of **VESELI**'s role as head of intelligence and the true nature of the KLA's 'intelligence service' at the material time. Firstly, there is little to no evidence as to what **VESELI**'s role within the GS actually involved; this is a fatal omission in the SPO's case. Reasonable inferences cannot be drawn from an absence of evidence. More importantly, the evidence that has been adduced proves that **VESELI** had no dealings with any intelligence officers or persons on the ground in Kosovo. There is no evidence that **VESELI** ever gave orders to any intelligence personnel in the OZs or ever received reports from them. There is no evidence he ever even met or spoke to the vast majority of them during the war – with the exception of QADRAKU and ÇOÇAJ who **VESELI** chatted to about unrelated innocuous matters upon meeting them by chance in the spring

of 1999 in the Pashtrik OZ when he was in Kosovo seeking support for the signing of Rambouillet to achieve peace. Instead, the evidence that has been adduced shows that **VESELI** was primarily abroad engaging with international representatives, receiving training and advocating for a peaceful resolution of the conflict.

23. Intelligence was limited and local, right up to the end of the conflict. There was no consistency anywhere in the OZs as to what the handful of purported intelligence officers understood their functions to be or how they carried them out. They were unregulated. They did not and could not provide orders or instructions to the military police. They reported to the OZ command; there was no parallel or other reporting to **VESELI**. To find that **VESELI** had superior authority over these soldiers, or any others, would be perverse. To suggest that he entered into a criminal agreement with such persons or ever used them as 'tools' would be equally perverse. It would be wrong to proceed from any highly prejudicial, generalised preconception that 'intelligence work' somehow by its nature is suspect and criminal, or pivotal to any criminal conspiracy in war time, particularly as there is no evidence to support such a proposition.
24. In what presents as another disingenuous attempt by the SPO to cover the holes in its case against **VESELI** and tie him closer to the alleged JCE, it has curiously named two alleged intelligence officers as the only named non-ranking members of the JCE – Sabit GECI and Latif GASHI. This is not a coincidence. This is another misguided effort to try and put **VESELI** in proximity to the criminality alleged on this Indictment; but it has completely failed. There is no evidence **VESELI** ever knew of, let alone met or spoke to GASHI during the conflict. GECI was not intelligence. The suggestion that GECI was intelligence, based on his own self-aggrandisement, has not been proven and the suggestion he had any link to **VESELI** is no more than unreliable and untested hearsay. **VESELI** was never their commander. There is no evidence **VESELI** ever even

knew of the crimes these men were alleged to have committed during the war. There is nothing in anything VESELI has ever said or done that would begin to indicate agreement with or support of the alleged crimes of these men, or that he even knew of their existence during the war.

25. While crimes may have been committed by members, or purported members of the KLA during the war, such is the nature of war. They were not committed pursuant to the alleged JCE. The crimes on the Indictment do not evidence an overarching pattern or implementation of a KLA policy – the crimes are isolated, random and often personal. The perpetrators are unconnected to one another both personally and geographically. The Panel must exercise particular caution and not follow the patently erroneous approach of the SPO, which is to simply scoop up a wide array of crimes from across Kosovo, with no evidential connection to each other, or to the Accused, dump them into this Indictment and try to create artificial links that do not exist. There is no proven link between VESELI and the disparate alleged crime base. The Indictment and the JCE are so widely drawn in this case that the SPO appears in reality to be arguing that every KLA perpetrator was a ‘tool’ and any crime committed by purported KLA members was committed as part of the alleged JCE – such an approach is obviously wholly inappropriate and manifestly untenable.

**E. No Policy to Target any ‘Opponents’**

26. The SPO, in another effort to hide the severe weaknesses in their case theory as to the alleged criminal purpose, rounds up all alleged victims into one bucket and calls them ‘Opponents’ to seek to disguise the unrelatedness of the crimes. When one breaks down the constituent elements of this category of persons it becomes clear that no overarching KLA policy existed to target such persons. There was no common KLA policy or plan to target Serb and Roma (or any) civilians, LDK members, or perceived collaborators – *i.e.*, the ‘Opponents’ to

the KLA. The existence of individual personal animosities or hostilities is not policy, and cannot be imputed to the GS and especially not to **VESELI**. There is no evidence **VESELI** ever shared in any intent to target such groups – or any civilians. There is nothing in the extremely limited evidence adduced against him that could correctly or fairly be interpreted as evidence that **VESELI** entered into such a plan or ever supported a policy. The fact that these crimes occurred in Kosovo involving these groups at the hands of individual KLA members is not sufficient to demonstrate that **VESELI** in his individual capacity shared in the intent to commit them, supported them, foresaw or ever knew of their commission.

27. As will be demonstrated below in detail, the SPO's case against **VESELI** is fundamentally flawed, devoid of reality, based on incorrect assumptions, relies at its core on uncorroborated, untested unreliable hearsay and does not begin to meet the criminal burden of proof required to secure a conviction against him, for any crime.
28. The Defence submissions are structured as follows: at the outset the quality of the evidence relied on by the SPO is assessed; thereafter the evidence is analysed beginning with the background of the KLA, followed by OZ and GS structures, including intelligence; and then drawn together to address the allegations of criminal responsibility through direct participation, JCE, superior responsibility, and aiding and abetting.

## II. **QUALITY OF EVIDENCE**

29. The evidential matrix of this case is unwieldy, unmanageable and, most importantly, often of little to no probative value. Much of the evidence is of exceptionally poor quality. Its unreliability cannot be overstated. The SPO has adduced over 5,000 exhibits; profound reliability issues apply to thousands of these, including those relied upon to prove key facts.

30. The SPO elected to chase bad evidence with bad evidence, bloating the evidential record with material that is simply not probative. This practice was facilitated by the application of a uniquely low evidential standard for admission. The test for admissibility was held to be one of *prima facie* authenticity and relevance – with these criteria being drawn very widely. Not requiring *proof* of authenticity at the admission stage, and the broad interpretation of relevance, have resulted in what was in essence an open-door policy. The vast evidential record now consists – despite repeated strenuous objections from the Defence – of *prima facie* authentic material, never *proved* to be authentic, reliable or probative.
31. The questions that remain are actual authenticity and weight. Evidence of such poor quality cannot prove any fact in issue, let alone to the criminal standard. This is the natural consequence of a prosecution case constructed on unauthenticated and untested material, batch-tendered in bar table motions in the absence of any chain of custody or supporting evidence.
32. The Panel must take great care not to normalise the poor quality of evidence, simply because it has become the default position in this case. It is not normal to: (1) fail to produce any chain of custody evidence; (2) fail to identify authors of documents, or call them as witnesses; (3) rely on unauthenticated scraps of paper provided by a hostile actor, in the absence of original documents; (4) rely on books riddled with exaggeration and inaccuracies by non-historians; (5) refuse to state whether a witness is considered reliable; (6) rely heavily on the untested evidence of co-Accused against each other, contrary to basic legal principles; (7) fail to produce the experts who carried out the analysis sought to be relied on; (8) admit via hearsay alone the evidence of only direct allegations of wrongdoing against an Accused, denying them the right to challenge the core allegations against them; and (9) evade scrutiny of your evidence by adducing more than one third of the witnesses on paper, more than

half the exhibits via the bar table, and more than one third of those after the evidential phase has closed. This approach is corrosive of truth and poses a genuine risk to the fairness of these proceedings which cannot be simply swept aside.

33. The Panel must scrutinise the evidence rigorously. Particularly given the circumstantial and hearsay-based case against **VESELI**, this is critical. The Panel is obligated to explain clearly, and to the requisite standard, its findings on the accuracy and authenticity of all exhibits relied upon in its final judgment.<sup>3</sup> **VESELI** cannot lawfully be convicted based on poor quality, untested and uncorroborated hearsay.

**A. Circumstantial Evidence**

34. As the case against **VESELI** is circumstantial, the Panel must exercise real caution when approaching the standard of proof to ensure only lawful inferences are drawn from the evidence:

Circumstantial evidence shall be assessed with caution and reasoned findings shall be provided, in particular regarding the consistency and intrinsic coherence of such evidence, where the Panel bases a conviction solely or to a decisive extent on such evidence.<sup>4</sup>

35. In *Haradinaj*, the Chamber acknowledged “*how deceptive a first impression based on an incomplete story can be,*” emphasising the importance of exercising “*a most cautious approach*” when drawing an inference of guilt beyond reasonable doubt upon seemingly persuasive circumstantial evidence.<sup>5</sup>
36. Each fact in the circumstantial evidence analysis relied upon by the SPO must be proven beyond reasonable doubt so as not to violate the principle *in dubio*

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<sup>3</sup> IA032/F00005, Decision on Veseli, Selimi and Krasniqi Joint Appeal Against Decision on Prosecution Motion for Admission of Intercepts, 22 October 2025, para.34.

<sup>4</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, Rule 139(5) (“KSC RPE”).

<sup>5</sup> IT-04-84-T, [TJ](#), para.161. The Trial Chamber’s comments highlight the risk of incorrect inferences when the trier of fact strays from the requirement to prove all predicate facts beyond a reasonable doubt.

*pro reo*, which requires that any ambiguity or doubt arising from the evidence must be resolved in favour of the Accused.<sup>6</sup> Where more than one inference can be reasonably drawn from the evidence, the Panel must draw the one favourable to the Accused. It must consider whether any such inference reasonably open under the facts is inconsistent with the guilt of the accused.<sup>7</sup> If the answer is yes, the inference favourable to the Accused must be adopted. Further, if there is a conclusion reasonably open from the evidence that is consistent with the non-existence of the fact sought to be inferred, the standard of proof beyond reasonable doubt is not satisfied.<sup>8</sup> This fundamental principle is enshrined in Rule 140(3).

## B. Hearsay Evidence

37. A conviction cannot be based solely or decisively on hearsay evidence. Therefore, it is fatal to the SPO's case that the only evidence implicating **VESELI** personally in any criminality is (often multiple) hearsay. No allegations concerning **VESELI**'s alleged direct criminal acts and conduct have ever been the subject of scrutiny or challenge. **VESELI** has been denied the opportunity to face his accusers – his has been a trial of hearsay and rumour. The quality of this hearsay admitted against **VESELI** is exceptionally low.
38. Hearsay evidence is inherently unreliable and prejudicial, given the inability of the Accused to challenge its veracity. Any decision on the weight to be afforded to hearsay must be made with caution, in accordance with the jurisprudence.<sup>9</sup> Relatively little weight can be given to hearsay evidence and it should only be relied upon where it is corroborated.<sup>10</sup> Hearsay should be accorded less weight,

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<sup>6</sup> IT-01-48-A, [AJ](#), fn 282.

<sup>7</sup> IT-96-21-A, [AJ](#), para. 458.

<sup>8</sup> IT-96-21-A, [AJ](#), para.458; IT-95-5/18-T, [TJ](#), paras.10, 14; ICTR-99-46-A, [AJ](#), para.306; KSC-BC-2020-07/F00611, para.37.

<sup>9</sup> IT-99-36-T, [TJ](#), para.28; ICTR-01-74-A, [AJ](#), para.39; ICTR-96-3-A, [AJ](#), para.207.

<sup>10</sup> Gideon Boas *et al.*, "[Evidence](#)," in *International Criminal Law Practitioner Library: International Criminal Procedure* (CUP 2011), p.348.

depending on the origin and specific characteristics of that particular piece of information,<sup>11</sup> whether the opposing party had the opportunity to cross-examine the declarant,<sup>12</sup> and whether it is ‘first-hand’ or further removed.<sup>13</sup> Challenging the purported recipient of a hearsay statement is no substitute to challenging the maker of the statement.

39. The Panel is bound by the ECtHR’s *Al-Khawaja* decision,<sup>14</sup> which provides that a conviction cannot be based solely or decisively on hearsay evidence.<sup>15</sup> This principle is enshrined in Rule 104(4), which the Appeals Panel has interpreted as precluding it from upholding a conviction based solely or decisively on untested evidence, *irrespective* of whether the trial proceedings evaluated as a whole were fair.<sup>16</sup> The KSC thus affords additional protection than ECtHR.
40. *Shala* reinforced that cross-examination prevents the admission of evidence that appears “cogent and convincing” without giving the Accused a genuine opportunity to defend himself by challenging the case against him. An accused must be afforded the opportunity to cross-examine witnesses whose testimony constitutes the only evidence against him, or “*evidence of such significance or importance as is likely to be determinative of the outcome of the case.*”<sup>17</sup> Where such evidence forms the basis of a conviction without cross-examination or sufficient corroboration, the accused’s right to a fair trial is violated.<sup>18</sup> *Shala* also set out

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<sup>11</sup> IT-94-1-T, [TC Decision](#), 5 August 1996, para.16; IT-95-14/1, [AC Decision](#), 16 February 1999, para.28; IT-95-14-T, [TC Decision](#), 21 January 1998, para.9.

<sup>12</sup> IT-95-14/1, [AC Decision](#), 16 February 1999, para.15; ICTR-96-4-A, [AI](#), para.287.

<sup>13</sup> See Gideon (n 10), p.349.

<sup>14</sup> Law on the Specialist Chambers and Specialist Prosecutor’s Office, No. 05/L-053, 3 August 2015, Article 3(2)(e).

<sup>15</sup> [Al-Khawaja and Tahery](#), para.147.

<sup>16</sup> KSC-CA-2024-03/F00069, Appeal Judgment, 14 July 2025, para.486.

<sup>17</sup> KSC-CA-2024-03/F00069, paras.474-475 citing [Al-Khawaja and Tahery](#), paras.139, 142; [Schatschaschwili v Germany](#), para.123.

<sup>18</sup> IT-04-84-R77.4, [TI](#), para.23; [Luca v. Italy](#), para.41.

the following principle relating to corroboration which is of particular relevance to this case:

[...] the central question is whether a conviction rests decisively on untested evidence, the extent to which an accused has been afforded the opportunity to examine the evidence relied on in corroboration, including any “corroborative pattern” evidence, will also necessarily fall within the scope of this assessment. Where one piece of untested evidence is being used to corroborate another piece of untested evidence, a trial panel must exercise caution to ensure that findings which are indispensable for a conviction do not rest solely or decisively on untested evidence.<sup>19</sup>

41. Prior recorded testimony cannot form the sole or decisive basis for the conviction for a particular crime as such.<sup>20</sup> The Appeals Chamber in *Haraqija and Morina* overturned a conviction upon concluding that the Trial Chamber “erred in placing decisive weight [...] on the untested [hearsay] evidence emanating from” a co-accused, and had given insufficient consideration to flaws in that hearsay evidence, including its vagueness and lack of corroboration.<sup>21</sup> These legal principles are of critical importance to the case against **VESELI**.
42. This Panel cannot lawfully rely on multiple documents admitted through the bar table, untested witness evidence, or a combination of the two to make findings indispensable for a conviction. As the evidence against **VESELI** on the key issues in this case only take these forms, therefore no lawful conviction can be entered against him.

### C. Witness Evidence

#### *i. Rules 153 and 155*

43. One hundred and thirty-two witnesses were admitted via Rules 153 and 155. Where the admission of ‘untested’ evidence is at issue, the fairness of the proceedings is evaluated based on the weight attributed to the evidence and whether sufficient counterbalancing factors are present to permit a fair and

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<sup>19</sup> KSC-CA-2024-03/F00069, para.480, fn.1111-1112 *citing* IT-05-88-A, [AJ](#), para.1226.

<sup>20</sup> ICC-01/04-02/06AA2, [AJ](#), para.630; ICC-01/09-01/20, [IJ](#), para.30.

<sup>21</sup> IT-04-84-R77.4-A, [AJ](#) para.69; Boas et al (n 10), p.349.

proper assessment of the reliability of that evidence.<sup>22</sup> No counter-balancing measures were put in place during trial.

44. Late in the trial, several critical witnesses who were expected to be made available for cross-examination were unexpectedly tendered pursuant to Rules 153/155.<sup>23</sup> Any suggestion that the Defence could have, or failed to, challenge other witnesses on similar contested issues is improper. Firstly, the Defence, acting upon reasonable expectations, could not have anticipated the SPO's failure to make these witnesses available. Secondly, there is no obligation on the Defence, nor could there reasonably or practically be, to ask questions of witness A, that it otherwise had planned to ask witness B purely on the hypothetical or speculative basis that witness B might be dispensed with by the SPO. The ability to ask another witness questions on similar topics does not amount to 'testing' hearsay evidence under the law. It does not rectify or counterbalance the prejudice caused by being unable to cross-examine the absent witness. The inability to test the evidence of these critical witnesses<sup>24</sup> renders any reliance on their evidence hyper-prejudicial.
45. Certain statements admitted via Rule 153/155 were elicited via highly leading questions, on key issues such as an alleged KLA policy against collaborators<sup>25</sup> and the role of the Accused.<sup>26</sup> Many questions were so inappropriately suggestive and improper that, had they been asked in chief, a fair-minded Panel would undoubtedly have prohibited them as leading. For instance, W04754's interviewers badgered him about collaborators,<sup>27</sup> leading him to

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<sup>22</sup> IA039/F00005, Decision on Defence Appeal Against Admission of W04747's Evidence, 10 November 2025, para.60.

<sup>23</sup> DOBRUNA; JACKSON; W04754; W04747.

<sup>24</sup> W04839; W04747.

<sup>25</sup> F03143, Joint Defence Response to Rule 153 and 155 Motion, 24 April 2025, para.10 P03620\_ET, T.20.8-21.10).

<sup>26</sup> F01391, Joint Defence Response to Rule 155 motion, 22 March 2023, para.77 P00449.1\_ET, T.63-66).

<sup>27</sup> P03620.6\_ET, T.8.4-21.10.

eventually offer certain explanations. These are not remotely probative as he had no first-hand knowledge of collaborators<sup>28</sup> and never received notice of any KLA policy on this issue.<sup>29</sup> The Panel has refused to edit or remove such prejudicial aspects of the transcripts.<sup>30</sup> While this evidence was admitted, the question now is one of weight. The reliability of such evidence is obviously in serious doubt and should not be relied upon.

46. Other statements contain obvious lies,<sup>31</sup> are incoherent,<sup>32</sup> or exhibit a high degree of evasiveness.<sup>33</sup> Inconsistencies and contradictions are primarily matters that relate to weight.<sup>34</sup> The Defence anticipates therefore, that previously raised concerns<sup>35</sup> regarding such deficiencies will be weighed carefully.
47. The principle of orality is meant to ensure the adversarial nature of criminal proceedings, and the right of the accused to a public trial and to confront evidence against him, subject only to narrow exceptions.<sup>36</sup> The decision to admit witnesses on paper undermines this right and public confidence in open justice. The Defence calls upon the Panel to be especially mindful of the risks

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<sup>28</sup> P03620.6\_ET, T.8.4-14.

<sup>29</sup> P03620.6\_ET, T.20.8-16.

<sup>30</sup> F02720, Decision on Rule 154 Motion, 14 November 2024, paras.30, 96(c); F02464, Decision on Rule 153 Motion, 22 July 2024, paras.80, 84.

<sup>31</sup> See W04839: P00984, pp.SITF00010019, SITF00010023; P00980, p.SITF00009585.

<sup>32</sup> See F03147/A01, Veseli Response to motion for admission of W04747's evidence, 25 April 2025, pp.7-21; P03580.1\_ET, T.13.5-T.14.8 and 4D00234/4D00234\_ET regarding W04747.

<sup>33</sup> F01391, para.39 regarding W04416: P00422\_AT/P00422, pp.SPOE00123778-SPOE00123782; P01487\_AT/P01487.

<sup>34</sup> F03215, Decision on Veseli Motion to Exclude W04747's evidence and SPO Motion for W04747's Evidence, 29 May 2025, para.69.

<sup>35</sup> F03239, Joint Defence LTA regarding Admission of W04747's Evidence, 5 June 2025; F03087, Joint Defence Response to 'Prosecution Rule 155 Motion', 4 April 2025; F03143, Joint Defence Response to Prosecution Rule 153 and Rule 155 Motion, 24 April 2025.

<sup>36</sup> KSC Law, Articles 21(2), 37(2); KSC RPE, Rule 141(1).

and legal limits<sup>37</sup> attendant in relying on this evidence, to ensure that the outcome of this trial is fair.

ii. *Statements of co-Accused*

48. The Panel has admitted numerous prior statements of the co-Accused given in both formal and informal settings.
49. No Accused has given evidence. Therefore, **VESELI** has been deprived of the opportunity to challenge these statements. Uniquely, considering the sheer lack of evidence against **VESELI**, these statements have been assigned disproportionate and inappropriate weight by the SPO, which is hyper-prejudicial to **VESELI**, considering they concern key issues, including his role within the GS. This information was unique to the co-Accused and could not be tested through the questioning of other witnesses.<sup>38</sup> Where a co-Accused chooses not to give evidence, that necessitates *“particular caution on the part of the Panel to decide what weight, if any, to attach to [their] statements.”*<sup>39</sup>
50. There are many key aspects of the case where the only evidence against **VESELI** emanates from his co-Accused. Recalling that, while the Appeals Panel has found the Panel did not err in admitting this evidence, it reiterated that findings on the Accused’s guilt *“cannot be based solely, or to a decisive extent, upon such statements.”*<sup>40</sup>

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<sup>37</sup> See [Ch.II.B.](#)

<sup>38</sup> See, e.g., (i) that the GS existed as early as 1993, and that **VESELI** was a member of the General Staff by 1994 (P04200/P04200\_ET, p.3); (ii) that an Intelligence Directorate at the General Staff existed before November 1998 with **VESELI** as its chief (P00189/P00189\_ET.1/P01227/P01227, p.U0105-8833; P01881/P01881\_ET, p.SPOE00226857); (iii) that **VESELI** was consulted about decisions made in his absence or informed of decisions after the fact (P00763.5\_ET, T.8.25-9.12).

<sup>39</sup> See IA030/F00009, Appeals Decision on Admission of Accused’s Statements, 31 May 2024, para.71; F01917, para.218.

<sup>40</sup> IA030/F00009, paras.65, 67, 72.

51. Regardless, these statements are inherently unreliable, as a co-Accused may be incentivised to shift responsibility to others, or to attempt to minimise their own role in events, thereby presenting a distorted version of reality. Specific reliability concerns also arise where statements were provided in the context of self-promotional interviews for political purposes, as the remarks therein tend to be reductive, unnuanced, overblown and exaggerated, or edited for various purposes.

*iii. Profound credibility issues*

52. All witnesses upon whom the SPO seeks to rely, to prove key facts against **VESELI**, suffer from profound credibility and reliability issues. Key allegations of criminality made against **VESELI** personally were admitted as hearsay, denying **VESELI** the opportunity to confront the evidence. While this evidence was found to meet the admissibility bar, the Panel must now consider whether reliance on such evidence is fair or lawful.<sup>41</sup> The evidence of these witnesses should be disregarded in totality.<sup>42</sup>

1. W04747

53. The evidence of W04747 was admitted via Rule 155 against a backdrop of lengthy and highly contested litigation as to its admissibility. W04747 lacks any credibility, is wholly unreliable and is largely uncorroborated. W04747 is a demonstrable liar.

54. The Panel is referred to the lengthy submissions already made in relation to W04747,<sup>43</sup> and invited to reconsider them carefully. W04747 lied repeatedly throughout his SPO interview, as well as in other contacts with the SPO and the Third State Authorities. For example, he falsely claimed that:

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<sup>41</sup> See [Ch.II.B](#).

<sup>42</sup> See [Ch.IX.A.v](#), paras.601-610.

<sup>43</sup> F03147.

- a. He fought for [REDACTED].<sup>44</sup>
  - b. He entered Kosovo at the beginning of [REDACTED].<sup>45</sup>
  - c. He received materials from [REDACTED] following his interrogation.<sup>46</sup>
55. W04747's evidence is also largely uncorroborated – including his sensationalist claims regarding KLA intelligence, SHIK and **VESELI**. Any reliance on such claims, absent any opportunity to challenge them, would be utterly incompatible with fair trial rights. For example, the following non-exhaustive list of claims are uncorroborated:
- a. [REDACTED].<sup>47</sup>
  - b. [REDACTED].<sup>48</sup>
  - c. [REDACTED]<sup>49</sup> [REDACTED].<sup>50</sup>
  - d. [REDACTED].<sup>51</sup>
  - e. [REDACTED].<sup>52</sup>
  - f. [REDACTED].<sup>53</sup>
  - g. [REDACTED].<sup>54</sup>

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<sup>44</sup> *C.f.*, [REDACTED].

<sup>45</sup> *C.f.*, [REDACTED].

<sup>46</sup> *C.f.*, [REDACTED].

<sup>47</sup> [REDACTED].

<sup>48</sup> [REDACTED].

<sup>49</sup> [REDACTED].

<sup>50</sup> [REDACTED].

<sup>51</sup> [REDACTED].

<sup>52</sup> [REDACTED].

<sup>53</sup> [REDACTED].

<sup>54</sup> [REDACTED].

- h. [REDACTED].<sup>55</sup>
  - i. [REDACTED].<sup>56</sup>
56. Further, W04747 repeatedly contradicts himself, further undermining his credibility. For example:
- a. [REDACTED].<sup>57</sup>
  - b. [REDACTED].<sup>58</sup>
  - c. [REDACTED].<sup>59</sup>
57. There is serious doubt that W04747 was ever a [REDACTED] member. His purported [REDACTED] does not contain a photo or name,<sup>60</sup> has grammar errors and appears self-created as the handwriting on the card matches his [REDACTED].<sup>61</sup> The Defence was precluded from challenging W04747 on these matters and thus evidence that he was never part of [REDACTED] from KLA soldiers in the [REDACTED] could not be put to him.<sup>62</sup> For reasons outlined below, similar doubts arise as to his alleged membership at [REDACTED].<sup>63</sup>
58. The Panel must proceed with serious caution and thoroughly interrogate the footnotes provided by the SPO to support any contention that this witness is corroborated, as the evidence relied upon fails to do so. The allegations made by W04747<sup>64</sup> are not made out. Hearsay evidence cannot be corroborated or

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<sup>55</sup> [REDACTED].

<sup>56</sup> [REDACTED].

<sup>57</sup> *C.f.*, [REDACTED].

<sup>58</sup> *C.f.*, [REDACTED].

<sup>59</sup> *C.f.*, [REDACTED].

<sup>60</sup> [REDACTED].

<sup>61</sup> *C.f.*, [REDACTED].

<sup>62</sup> *See* [REDACTED].

<sup>63</sup> *See* [REDACTED].

<sup>64</sup> F00709/A01, para.17.

supported by more hearsay evidence.<sup>65</sup> It is particularly striking that the SPO called no other witness from the [REDACTED] OZ when they had every opportunity to do so.

59. To rely on W04747 would not only be hyper-prejudicial, unreasonable and undermine the integrity of these proceedings, it would also be simply unlawful under the ECHR.

2. W04748

60. W04748 is a demonstrably untruthful and unreliable witness whose evidence should be disregarded in its entirety.
61. Firstly, W04748 has no direct knowledge of the GS's involvement in crimes. Many of his allegations are hearsay originating from [REDACTED],<sup>66</sup> who is highly unreliable. [REDACTED] was indicted for crimes at [REDACTED],<sup>67</sup> [REDACTED] trial,<sup>68</sup> in which he was found to have been complicit in the very same crimes<sup>69</sup> about which he provided an account to W04748, incriminating the GS. [REDACTED] has an obvious motive to lie about the KLA hierarchy to deflect responsibility from himself for crimes in [REDACTED].
62. Secondly, W04748 has a proven history of lying in court proceedings. He admitted to providing a false alibi for W04753 in the [REDACTED] case,<sup>70</sup> and was found to be unreliable by the court.<sup>71</sup> Before the KSC, W04748 claimed for the first time that he was forced to lie on behalf of W04753,<sup>72</sup> contradicting his

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<sup>65</sup> KSC-CA-2024-03/F00069, para.480, fn.1111-1112 *citing* IT-05-88-A, [AJ](#), para.1226.

<sup>66</sup> *See, e.g.*, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>67</sup> [REDACTED].

<sup>68</sup> [REDACTED].

<sup>69</sup> [REDACTED].

<sup>70</sup> [REDACTED].

<sup>71</sup> [REDACTED].

<sup>72</sup> [REDACTED].

SPO interview, in which he stated that he testified honestly and voluntarily because W04753 had asked him to.<sup>73</sup>

63. Thirdly, W04748's evidence is without foundation. W04748 did not and could not plausibly have had the knowledge he claims about the GS's structure, reporting and alleged involvement in crimes. W04748 was a "simple soldier" based in [REDACTED]<sup>74</sup> throughout the conflict,<sup>75</sup> with no interaction with the GS.<sup>76</sup> He demonstrated his lack of knowledge of the GS by repeatedly misidentifying the positions of senior KLA members<sup>77</sup> and composition of the GS.<sup>78</sup>
64. Fourthly, aspects of W04748's evidence are demonstrably untrue, for example his claim that [REDACTED] visited [REDACTED] in [REDACTED].<sup>79</sup> [REDACTED] had undergone a major [REDACTED] on [REDACTED], was unable to [REDACTED],<sup>80</sup> and [REDACTED].<sup>81</sup> His claim that [REDACTED] was the GS member responsible for [REDACTED] has been otherwise disproved.<sup>82</sup>
65. Fifthly, W04748's evidence is internally inconsistent; for example, in relation to the arrest of [REDACTED],<sup>83</sup> the responsibility for crimes in [REDACTED],<sup>84</sup>

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<sup>73</sup> [REDACTED].

<sup>74</sup> [REDACTED].

<sup>75</sup> T.3481.2-3; T.3581.13-14; T.3892.9-11; T.3795.13-14; T.4103.5-7; T.4134.5-9; T.4188.9.

<sup>76</sup> T3892.21-22; T.4179.7-11.

<sup>77</sup> T.3671.17-3674.1.

<sup>78</sup> T.3674.2-14; T.3675.2-3676.13; T.3677.4-3679.9; T.3786.20-3787.1; T.3788.3-9; T.4034.6-13; T.3787.13-20.

<sup>79</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>80</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>81</sup> [REDACTED].

<sup>82</sup> [REDACTED].

<sup>83</sup> *C.f.*, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>84</sup> [REDACTED].

and KLA personnel assigned to lead Operation Arrow.<sup>85</sup> Sixthly, W04748's claims about the GS and their role in [REDACTED] are uncorroborated.<sup>86</sup>

66. Finally, W04748's account is contradicted by other evidence. ZYRAPI testified that "[REDACTED]."<sup>87</sup> W04753 stated that he did not know of anyone else who could order an arrest other than [REDACTED],<sup>88</sup> and did not know or hear of the GS issuing orders authorising [REDACTED].<sup>89</sup> The [REDACTED] case judgment held local actors alone responsible for crimes committed at [REDACTED] between [REDACTED].<sup>90</sup> There was no suggestion or finding in the judgment that the [REDACTED] were involved in any way.

*iv. SPO failure to state its case*

67. The SPO repeatedly refused to state its case on the credibility of its own witnesses, presenting them as reliable witnesses of truth when their evidence advances the SPO's case, while reserving the right to reject unspecified portions of their evidence at the end of the proceedings, if convenient. This disingenuous, self-serving approach deprived the Accused of fair notice of the case they are required to meet. Any doubt or uncertainty resulting from competing versions of the SPO's own case must be resolved in favour of the Accused, in line with the burden of proof.<sup>91</sup>
68. Throughout the case, the SPO tendered witness statements both "*for the truth of [their] contents and for other matters including reliability.*"<sup>92</sup> While these are not inherently contradictory, issues arise when, for instance, two fundamentally

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<sup>85</sup> T.4152.2-4153.1.

<sup>86</sup> See [Ch.IX.A.ii](#).

<sup>87</sup> [REDACTED].

<sup>88</sup> [REDACTED].

<sup>89</sup> [REDACTED].

<sup>90</sup> 1D00001, pp.095035-095037.

<sup>91</sup> IT-95-14/2-A, [AL](#), para.289.

<sup>92</sup> T.27780.2-4.

inconsistent statements from the same witness are admitted without the SPO specifying its case.<sup>93</sup> This happened repeatedly. The SPO failed to clarify whether alleged changes or inconsistencies in its witnesses' evidence are, on their case, due to untruthfulness, unreliability, or merely the passage of time.<sup>94</sup> The SPO has, inexplicably, been at pains to avoid stating in terms that it is impeaching its own witness, however, has done so repeatedly.<sup>95</sup>

69. For example, the SPO relied on BASHOTA's evidence extensively in its Pre-Trial Brief ("PTB") and called him as a witness of truth, yet later submitted that he demonstrated a "*pronounced bias in favour of the accused,*" and suggested his entire testimony should be understood through that lens.<sup>96</sup> The SPO failed to specify whether it still relied upon BASHOTA in whole or part, including portions relied on in its PTB. Absent such specificity, the Defence is effectively hamstrung. With BUJA, the SPO tendered two fundamentally inconsistent statements under Rule 143(2)(c) without distinguishing which parts it submitted were true,<sup>97</sup> or whether it was suggested none of it could be relied upon. Similar issues arose in relation to the evidence of Naser KRASNIQI,<sup>98</sup> ZYRAPI,<sup>99</sup> MUSTAFA,<sup>100</sup> Sylejman SELIMI<sup>101</sup> and BYTYQI.<sup>102</sup> As outlined below, the SPO's case on its experts remains wholly illusive.<sup>103</sup>

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<sup>93</sup> F02708, Prosecution request for the admission of W01453's prior statements, 11 November 2024, para.1; T.22056.1-22058.19.

<sup>94</sup> See, e.g., T.15882.1-15883.22.

<sup>95</sup> T.15879.1-15883.5; T.25794.19-T.25795.25; T.22973.16-T.22974.9; T.17398; T.16566.7-22.

<sup>96</sup> T.23272.16-20.

<sup>97</sup> F02708, para.1; T.22056.4-22057.19.

<sup>98</sup> T.24696.4-12.

<sup>99</sup> T.17344.17-17345.14, T.17398.7-18; F02279, paras.1-2.

<sup>100</sup> F01798, Joint Defence Response to Prosecution request regarding W04746, 18 September 2023, para.12; T.5512.14-5515.16, T.5525.1-25, and T.5537.8-24.

<sup>101</sup> T.25013.15-22.

<sup>102</sup> F02355, Prosecution request, 3 June 2024, para.4.

<sup>103</sup> See [Ch.II.F.](#)

70. The ambiguity of the SPO's position, and failure to put its case, is perhaps most conspicuous when it comes to alleged JCE members who the SPO remarkably called as witnesses of truth, while simultaneously accusing them of crimes, and without justification or explanation, failed to put the accusations to them to afford an opportunity to respond.<sup>104</sup>
71. It can only be assumed that the SPO has not articulated its case because it has not settled on one. It simply 'dumped' this vast, contradictory evidentiary record before the Panel, hedging its bets and shifting the burden to decipher its case to the Panel and the Defence.<sup>105</sup> This is a fundamental breach of its obligations and manifestly unfair. One of the core functions of the Prosecution is to "*enable the Defence to understand the case it has to meet.*"<sup>106</sup> While the Panel declined to require the SPO to state its case,<sup>107</sup> the Defence remains prejudiced.<sup>108</sup> Namely, the Defence is expected in this brief to respond to multiple, and inconsistent versions of the SPO's case; this is an impossible task.

#### **D. KLA Documents**

72. Thousands of exhibits are said to have originated from the KLA. Many of these documents lack dates, stamps, headers, or signatures; they frequently comprise of multiple unrelated items and appear to be written by several unidentified authors. Some are handwritten, some typed, some a combination of both. Some are incomplete documents, torn scraps of paper, or extracts from documents. Not a single original document was produced; all are copies, frequently copies of copies.<sup>109</sup> Many are exceptionally poor quality. P03008/P03008\_ET, for

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<sup>104</sup> T.5271.20-25; T.25013.15-19; T.22057.1-19; T.22062.1-6.

<sup>105</sup> T.699.4-9.

<sup>106</sup> T.272.15-16.

<sup>107</sup> T.22065.16-22066.12.

<sup>108</sup> F02716, Joint Defence Response to Prosecution request regarding W01453's prior statements, 13 November 2024, paras.25-26.

<sup>109</sup> See, e.g., F02291/A01, no.5, 10, 13-18, 24; F02521/COR/A01, no.7-8; F02725/A01, no.3; F02991/A01, no.4, 6, 9, 12, 17-23, 170, 180, 185-186, 189-194, 197, 199-200, 207-208.

instance, has no fewer than eleven portions which have been described as “unintelligible.”<sup>110</sup> Similar issue arises across more than five hundred other exhibits.

73. No chain of custody evidence was ever adduced. The SPO failed to call any witness to deal with exhibits or answer any questions regarding origin or authenticity. Pages indicating that such items were once in the hands of Serbian authorities have been excised from the evidence for no legitimate purpose other than, apparently, to erase their questionable source from the record. The authors of most documents were not called, nor efforts made to identify them. Most items were tendered from the bar table. The SPO repeatedly suggested that one hearsay document admitted through the bar table can corroborate another; this is wrong in law.<sup>111</sup> The SPO also put purported KLA documents inappropriately to civilians to confirm the presence of their family members’ names within them – but who could not in any way authenticate them. These documents are not ‘self-authenticating.’ The SPO failed wholesale in its duty to *prove* their authenticity and reliability.
74. The jurisprudence, from which there is no reasonable justification to depart, demands extreme caution when relying on such evidence. This evidence has not somehow become more reliable or authentic with the passage of time or by its collation from the reservoirs of other tribunals and unloading into this case.
75. In *Šešlj*, the Chamber refused admission of notebooks allegedly written by MLADIĆ due to doubts “*as to the exact date and the chain of custody and handover,*”<sup>112</sup> finding that this undermined their reliability and probative value. In *Haradinaj*, the Chamber stressed that while unsigned, undated, or unstamped documents were not automatically excluded, the “*less the Trial*

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<sup>110</sup> See P00904/P00904\_ET.1; P01150/P01150\_ET.

<sup>111</sup> KSC-CA-2024-03/F00069, para.480, fn.1111-1112 *citing* IT-05-88-A, [AJ](#), para.1226.

<sup>112</sup> IT-03-67-T, [TC Decision](#), 22 October 2010, paras.37, 39-40.

*Chamber knew about a document, the circumstances of its creation and usage, the less weight it gave to it.*"<sup>113</sup> It denied admission of an alleged KLA diary, noting that uncertainty existed in relation to chain of custody, authorship, the hand in which it was written, and the source of the information contained therein.<sup>114</sup> There is no reasonable justification to depart from this jurisprudence: it is sound, persuasive and applicable.

76. While the Panel found that close to 100% of these alleged KLA documents met the *prima facie* standard for the Panel's definition of authenticity, this does not mean that any of these items are in fact authentic to the criminal standard (*i.e.*, they are what they purport to be), reliable, probative, or worthy of any weight. The deficiencies identified above are insurmountable when applying the criminal burden of proof.

*i. Items obtained from Serbia*

77. Serbia ignored the Defence's request for originals in its possession. The Defence tried again to obtain the documents with the assistance of the Panel, but was again ignored.<sup>115</sup> Serbia has a longstanding cooperative relationship with the KSC and SPO, yet on the one and only occasion when the authority of the Court was invoked on behalf of the Defence, Serbia showed a flagrant disregard, which to the reasonable observer could easily be perceived as biased. This contemptuous attitude towards the Accused should be shocking, but is wholly unsurprising.

78. While the SPO presented most alleged KLA documents in an evidential vacuum, circumstantial evidence indicates that many were in the possession of

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<sup>113</sup> IT-04-84-T, [TJ](#), para.18.

<sup>114</sup> IT-04-84bis-T, [TC Decision](#), 27 February 2012, paras.14-17.

<sup>115</sup> F03330, Veseli Request for Assistance from Serbia, 11 July 2024, paras.4-11. *See* F01911/A03, Joint Defence Response to Prosecution Submissions on Admissibility of Items Following W04769's Testimony, 8 November 2023.

Serbian authorities.<sup>116</sup> Due to Serbia's widely-known record of misinformation, such evidence must be treated with great caution.<sup>117</sup> The Panel heard a substantial amount of evidence about the extent to which the Serbian Intelligence Services had infiltrated the KLA and were conducting extensive and sophisticated intelligence monitoring and surveillance activities in Kosovo, including from within the KLA itself.<sup>118</sup> According to STIJOVIĆ the RDB had about "200 live sources" in the KLA.<sup>119</sup> In *Dorđević*, the court found beyond reasonable doubt that the Serbian State Security services were engaged in the manipulation of evidence and crime scenes in order to implicate the KLA in wrong-doing.<sup>120</sup>

ii. *Over-reliance on bar table*

79. The SPO relied heavily on the bar table to try fill material evidential gaps in its case with profoundly poor-quality evidence. This is indefensible in a trial of this gravity. The Panel repeatedly admitted vast amounts of this material, finding that the probative value of this evidence was not outweighed by its prejudicial impact, noting that the Defence had the ability to make written

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<sup>116</sup> See F01911, para.20 *regarding* P00651/P00651\_ET; F03330/A02, fn.1; F02178, para.21, fn.98; F02944, para.29, fn.110; F02667, para.17, fn.80. See 4D00090, p.5010362; P01698/P01698\_ET, p.1; P00074/P00074\_ET.1, p.U000-4844; P02616, p.U001-9405 (original version); P02252/P02252\_ET, p.U017-2616; P03280/P03280\_ET, p.U002-1888; P02597/P02597\_ET, p.U001-9589; P00011/P00011\_ET, p.U001-8967; P02716/P02716\_ET, p.U001-8191; P03245/P03245\_ET, p.U001-7278; P02928/P02928, p.U001-2524; P02792/P02792\_ET, p.SITF00438953. See further T.9125.25-9126.1, *regarding* P00011/P00011\_ET; T.13418.14-16 *regarding* P01064/P01064\_ET; T.15390.5-6 *regarding* P01166/P01166\_ET; T.17009.17-20 *regarding* P01350/P01350\_ET; T.15305.20-15306.1 *regarding* P01065/P01065\_ET.

<sup>117</sup> See 4D00092/4D00092\_ET; 4D00091\_ET, pp.105714, 105717; T.28166.13-19; T.21547.21-21550.1; T.21203.25-21205.17; T.7438.16-7441.25; T.7460.1-T.7461.15. See 4D00016; 4D00067/4D00067\_ET; 1D00074/1D00074\_ET; 1D00075; 1D00034.

<sup>118</sup> 1D00221\_ET/1D00221\_AT; T.13866.6-13867.25; T.19695.1-8; T.21203.25-21205.17; T.12253.1-12259.25; T.20619.11-20625.11, T.20627.5-20630.12.

<sup>119</sup> 1D00221\_ET/1D00221\_AT; 1D00451.

<sup>120</sup> IT-05-87/1-T, [II](#), paras.143, 1262-1380.

submissions regarding the weight to be attributed to such evidence, or to call its own case.<sup>121</sup>

80. The Defence bears no burden to demonstrate that these documents are inauthentic or unreliable. They are not presumed to be authentic; the SPO bears an immovable burden to prove they are, beyond reasonable doubt, authentic. It is the obligation of the Panel, if it finds the Prosecution has met its burden, to explain why, with reference to the specific circumstances identified in this case.<sup>122</sup>
81. The SPO, to date, has made essentially no effort to prove these documents to be authentic. It has simply unloaded thousands of documents into the record via the bar table, asserting in a vacuum, and without sound basis, that they are authentic, yet never returning to prove them to be so. They must now be scrutinised individually and with care to determine whether such evidence is in fact authentic beyond doubt or can be given *any* weight.
82. The Defence cannot reasonably be expected to make submissions on each item of evidence; what the Panel expects of the Defence is impossible. Approximately two thousand of the over five thousand exhibits were admitted via the bar table after the close of prosecution evidence, precluding any scrutiny. It is not possible to make submissions on each document, or even a fraction of these documents, in the limited words of this brief. The prejudice of this approach, identified by the Defence repeatedly throughout trial, remains profound and outweighed by the minimal, if any, evidential value this evidence holds. The only available option for the Defence at this stage is to incorporate by reference all arguments previously made in respect of the admissibility of these items and invites the Panel to consider these submissions

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<sup>121</sup> F03082, Nerodime BTM Decision, 4 April 2025, para.31; F02980, Shala&Karadak BTM Decision, 4 March 2025, para.24; F03178, Dukagin BTM Decision, 13 May 2025, para.45

<sup>122</sup> IA032/F00005, paras.21, 33.

with care and in full in relation to their weight.<sup>123</sup> It does so noting that this is insufficient to cure the prejudice caused by the admission of this volume of untested material. Where the Defence cannot meaningfully challenge this evidence, it should be given no weight.

*iii. Lists, diaries, and notebooks*

83. The SPO relies heavily on purported KLA lists, diaries and notebooks to attempt to establish the duties and conduct of intelligence and other officers.<sup>124</sup>
84. In most instances, the Prosecution did not even attempt to identify the authors of the items it tendered. In the limited instances where it did,<sup>125</sup> it made no attempt to produce them as a witness. In respect of one list, the Panel tried but failed to elicit evidence to establish its authorship.<sup>126</sup> In respect of another item, the Panel referred to it as a “SHIK list”, despite there being no evidence of any connection to SHIK.<sup>127</sup> Certain entries in this document, such as “cooperator of [REDACTED]” or “my cooperator”, alongside the signature “[REDACTED]” give rise to the obvious inference that this was a piece of paper that belonged to [REDACTED].<sup>128</sup> The inference that this list was [REDACTED]’s cannot be excluded and it is in fact more plausible than it being a SHIK list.
85. In other instances, items contain spelling and linguistic features that are inconsistent with Albanian usage, including the blatant misuse of letter “ë”;<sup>129</sup> the presence of Serbian Cyrillic letters and terminology;<sup>130</sup> or language which

<sup>123</sup> See F01911; F02064; F01982; F02252; F02594; F02216; F02198; F02104; F02243; F02991; F03064; F03190; F02725; F02521/COR; F03144; F03237; F03210; F03226.

<sup>124</sup> See [Ch.V.B.](#)

<sup>125</sup> See, e.g., P03190/P03190\_ET; P02098/P02098\_ET; P00895/P00895\_ET, P02840/P02840\_ET, P01804/P01804\_ET; P02252/P02252\_ET; P02856/P02856\_ET.

<sup>126</sup> T.10436.1-10437.13 regarding P00711.

<sup>127</sup> T.5933.1-5538.5 regarding P00104.

<sup>128</sup> T.13212.-13218.23 regarding P00104/P00104\_AT, no.4, 20, 22.

<sup>129</sup> See, e.g., P00651/P00651\_ET, p.U000-6557; P02638/P02638\_ET, p.U000-3647.

<sup>130</sup> See, e.g., P00075/P00075\_ET, pp.3, 5-7, 10-11, 17-18, 20, 22, 25, 27, 29-31, 40, 42, 44, 46-48, 49, 52.

demonstrates that they almost certainly were not authored by Albanians. Items also use terminology inconsistent with KLA authorship, such as referring to individuals as “KLA collaborators.”<sup>131</sup> One contains a note that the *author* was meeting with, and reporting surveillance information directly to, Serb police officers about the KLA.<sup>132</sup> The SPO’s failure to bring to the Panel’s attention these striking inconsistencies, whilst relying on the same documents for incriminating purposes, reveals once again the SPO’s selective and misleading presentation of evidence.

86. As found in *Milošević*, a document may express sentiments that would reasonably be attributed to the KLA, but this does not provide a basis to conclude that a KLA member authored it.<sup>133</sup> This reasoning must apply equally in this case. Where there is a reasonably available inference that the document could have been authored by someone outside the KLA, the Accused are entitled to that inference.
87. A careful review of the body of evidence reveals unexplained irregularities across numerous documents undermining the proposition they are authentic KLA documents. Several documents share near-identical content and/or handwriting,<sup>134</sup> including some documents that appear to have been produced by individuals for whom there is no evidence of KLA membership.<sup>135</sup> Oftentimes, in the most incriminating sections, the handwriting differs completely from the rest of the document, yet matches entries in unrelated

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<sup>131</sup> P01064/P01064\_ET, p.42.

<sup>132</sup> P01064/P01064\_ET, pp.29-32; T.13478.12-13479.7.

<sup>133</sup> IT-02-54-T, [Trial Transcript, 18 May 2005](#), T.3952-3953 regarding P02641/P02641\_ET.

<sup>134</sup> *C.f.*, P01065/P01065\_ET with P00011/P00011\_ET, p.U000-9119; P02638/P02638\_ET, p.U000-3463 with P00711/P00711\_ET and P00651/P00651\_ET, p.U000-6584 and P00074/P00074\_ET.1-4; P00651/P00651\_ET, p.U000-6557 with P02638/P02638\_ET, p.U000-3467; P00651/P00651\_ET, p.U000-6585 with P00498/P00498\_ET, p.U002-3340.

<sup>135</sup> *C.f.*, [REDACTED] P00711/P00711\_ET, p.U001-7858 [REDACTED] P02627/P02627\_ET. Similar handwriting and stylistic embellishments in both P02627/P02627\_ET, p.U001-9160 [REDACTED] and P00711/P00711\_ET, p.U001-7858.

documents, suggesting these pages had different authors and these pages were inserted independently.<sup>136</sup> This indicates that materials were copied, edited, or produced by external actors. Absent the originals, the Panel cannot be satisfied they are authentic. Once the Defence raises the issue of authenticity, which it has done repeatedly, and with good reason, the SPO bears the burden of proving beyond reasonable doubt the documents are in fact authentic.

88. One example of the SPO's extremely weak evidence is that of P03123, a purported diary kept by an individual named [REDACTED], who the SPO asserts without basis, was the Commander in [REDACTED].<sup>137</sup> There is no evidence of who [REDACTED] was, or that he was even a KLA member. No chain of custody information is provided but noting the fifteen Cyrillic pages that it contains, it was likely in possession of Serbian authorities. The SPO misguidedly submits that the document demonstrates the implementation of 'a common purpose' because the purported diary contains a list of "undesirable persons"<sup>138</sup> and the summoning and questioning of individuals.<sup>139</sup> The meaning of 'undesirable' in this context is entirely unknown. There is no suggestion or evidence that anyone "summoned" was intended to, nor actually, suffered any mistreatment; or that they were even arrested. There is no link whatsoever between the purported author of this document and any alleged JCE member or charged crimes. The exhibit is wholly irrelevant and not probative of any issue in this case.
89. Lists of alleged collaborators constitute one of the weakest components of the evidence in this case. The SPO called no expert evidence and made no other effort to identify the handwriting, authorship or origin for any of these

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<sup>136</sup> *C.f.*, P00651/P00651\_ET, pp.U000-6583-U000-6584 with P00074/P00074\_ET.1-4; P00498/P00498\_ET.

<sup>137</sup> F02997/A01, no.123.

<sup>138</sup> P03123/P03123\_ET, p.100026.

<sup>139</sup> P03123/P03123\_ET, pp.100033, 100035, 100037.

purported lists through witness evidence. There is simply no evidence these lists were authored by KLA intelligence or at their instigation. No such inference can reasonably be drawn from the mere existence of these photocopies in isolation.<sup>140</sup>

90. The fact that names of persons who disappeared or were detained appear on these lists is incapable of supporting their authentication. The question of authentication here is whether these are *KLA-authored* lists, not whether these are lists of persons some of whom were detained or disappeared. The inclusion of names of those detained or disappeared is evidence of the latter, not the former. Information contained in these lists was not in the exclusive possession of the KLA.<sup>141</sup>
91. The SPO inappropriately used civilian witnesses to identify names on lists or diary entries as a means by which to seek their admission.<sup>142</sup> Civilians cannot authenticate purported KLA documents. The mere fact that they can read the contents of a document, or confirm aspects as factually accurate,<sup>143</sup> adds nothing whatsoever to the *authenticity* of that exhibit; the accuracy of the personal information contained in these documents makes them no more likely to have been authored by the KLA.

#### **E. Books and Interviews**

92. Books adduced by the SPO are not reliable. Such publications were produced in the aftermath of the conflict, and were often shaped by political, national, and ideological motivations rather than the recording of historical truths. These were written for commercial or political reasons and, often prioritise

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<sup>140</sup> KSC-CA-2024-03/F00069, para.480.

<sup>141</sup> T.13453.18-13455.14.

<sup>142</sup> See, e.g., P00959/P00959\_ET; T.12017.14-12022.25; T.12057.5-23; P00960/P00960\_ET; T.20223.11-20224.19; P01046/P01046\_ET; T.13173.1-13181.14; P00104/P00104\_ET; T.12009.16-12012.15.

<sup>143</sup> T.13404.9-13411.16; T.20215.20-20224.1; T.12009.16-T.12014.18; T.13161.1-T.131781.13.

mythicisation over accuracy. Additionally, the time between the events and publication raises concerns over selective memory, and the influence of popular discourse.

93. The evidence confirmed that these books are saturated with inaccuracies and embellishments and often entirely based on hearsay.<sup>144</sup> Books were mainly used as post-war propaganda to glorify the KLA's war efforts.<sup>145</sup> The Panel itself emphasised the importance of hearing from the authors directly, in order for the *"Defence to test the evidence and for the Panel to assess its reliability."*<sup>146</sup> However, despite this, most books were adduced without the opportunity to challenge the author, while other evidence undermined them.
94. For instance, when excerpts from **KRASNIQI**'s book were put to ZYRAPI, he responded: *"[n]ow, what Mr. Krasniqi said is his opinion. I do not read books because most of them exaggerate what actually happened."*<sup>147</sup> Similarly, BASHOTA considered it "highly likely" that **KRASNIQI** was mistaken in his description of the formation of GS directorates, stressing that the individuals cited could not perform the tasks described.<sup>148</sup> Several KLA witnesses warned of the unreliability of such books.<sup>149</sup> KURTAJ repeatedly stressed that his book did not reflect reality but presented the KLA as its members wished it to be remembered.<sup>150</sup> He requested, *"that considering these embellishments, these exaggerations, please do not consider the writings in the book as real facts because they are not real facts."*<sup>151</sup>

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<sup>144</sup> See, e.g., T.12856.2-12857.17; T.21966.11-15; T.21972.7-21973.21; T.18400.8-11; T.18497.12-18498.10.

<sup>145</sup> See, e.g., T.12599.4-12601.20; T.12856.2-12857.17; T.16863.2-16864.7; T.18400.8-11; T.18405.25-18406.3; T.18497.12-18498.10; T.18939.3-8; T.21939.3-11; T.21966.11-15; T.21973.2-21974.15.

<sup>146</sup> F01596, para.22. See also F01983/COR, paras.27-28.

<sup>147</sup> T.18400.10-11; T.18405.25-18406.3.

<sup>148</sup> T.23030.6-23031.6.

<sup>149</sup> T.23453.15-23; P01857/P01857\_ET; T.22762.2-22763.20; T.21966.11-15.

<sup>150</sup> T.12599.18-12601.20.

<sup>151</sup> T.12601.17-20.

95. International witnesses assessed such material as unreliable. General CLARK explained that conflict-related literature contains bold narratives or analytical constructions that do not necessarily correspond to the operational realities.<sup>152</sup> HILL rejected the accuracy of an interview by MUSTAFA<sup>153</sup> describing the account as “self-serving” and “not accurate,” and as something that “*just doesn’t ring true.*”<sup>154</sup> Presented with SELIMI’s interview,<sup>155</sup> RUBIN stated that the author was “just wrong” on multiple points and “not very credible.”<sup>156</sup>
96. These publications were never intended for use in legal proceedings. When declining to admit HARADINAJ’s memoir, the ICTY made the following observations:

[It is] not clear for what purpose the information was provided by Haradinaj during the dialogue, and for what purpose the book was written, whether to tell the truth or to boast, and whether or not the accounts are tainted for political purposes. Furthermore, the book contains multiple levels of hearsay which cannot be tested during the trial, and the information provided by Haradinaj was not given under oath or intended to be used in legal proceedings.<sup>157</sup>

This logic and reasoning applies equally to many exhibits in this case and cannot reasonably or justifiably be departed from.

97. The Panel has admitted several similar items to this ‘memoir,’ including interviews with the Accused.<sup>158</sup> There are no recordings or notes to help identify accuracy, omissions, embellishments or other editorialising. Genuine concerns arise about the faithfulness of these “records” to the words spoken. BUJA, a member of *Zëri i Kosovës*’ editorial board, testified that it “*publish[ed]*

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<sup>152</sup> T.28176.15-22.

<sup>153</sup> P00188/P00188\_AT.

<sup>154</sup> T.27885.2-T.27888.4.

<sup>155</sup> P01883/P01883\_ET.

<sup>156</sup> T.26768.19-T.26772.19.

<sup>157</sup> IT-04-84bis-T, [TC Decision](#), 26 January 2012, paras.29, 31.

<sup>158</sup> See, e.g., P01859/P01859\_ET.2; P04200/P04200\_ET; P04201/P04201\_ET; P04202/P0402\_ET; P04203/P04203\_ET; P01749/P01749\_ET.

*inaccurate words also because we were conducting propaganda.*"<sup>159</sup> When presented with an interview attributed to him, MALOKU clarified that he had never provided an interview to the publication in question; it had been recycled from another publication, and while the "majority is similar," he was not sure whether they "*might have changed or redrafted certain things.*"<sup>160</sup> Given these deficiencies, such accounts cannot be relied upon for critical issues where the standard is beyond reasonable doubt.

#### **F. Forensic Evidence**

98. The expert evidence adduced by the SPO was the subject of protracted litigation throughout trial due to the many flaws in the incorrect and unorthodox approach the SPO took to this evidence.<sup>161</sup> The SPO relied upon DNA and pathology experts CLARK and GOODWIN – neither of whom conducted the underlying analysis upon which they commented – and used them as trojan horses through which to tender numerous reports authored by third parties, whom the SPO declined to call. It also relies on large swathes of forensic evidence admitted via the bar table, that was never subjected to scrutiny. Due to insurmountable issues surrounding its unreliability, the SPO's expert evidence should be afforded no weight. The inevitable consequence of being unable to place any reliance on this body of evidence is that the SPO has failed to prove beyond a reasonable doubt that (a) the remains recovered were those of the Victims and (b) that several of the Victims died by homicide.
99. The SPO's case on the forensics remains wholly unclear; it adduced evidence from witnesses who fundamentally undermined the reports that it used them to tender and upon which – it appears – the SPO still wishes to rely (albeit they are prohibited from relying on them for truth). The Defence therefore does not

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<sup>159</sup> T.21940.9-20.

<sup>160</sup> T.25809.16-20. *See* T.21940.9-20.

<sup>161</sup> IA040/F00011, Decision on Defence Consolidated Appeal, 8 October 2023.

know what case they are expected to respond to in this regard. Due to this lack of clarity, submissions are made in broad terms below.

*i. The limitations of source material*

100. A fatal oversight lay at the heart of the SPO's forensic case; the SPO clearly – and – mistakenly believed that it was entitled to adduce, for the truth of their contents, the forensic reports it had collated from various sources and adduce them into evidence without calling the authors of those reports. While this evidence was admitted, the law governing the limits to which source material can be put is clear and insurmountable. The applicable, unequivocal and indisputable legal position is that *“documents and other items that are source material are not admitted for their substantive content.”*<sup>162</sup> The interests of fairness and justice dictate that the Panel abide by this precedent; there is no justifiable basis to depart from it. While the matter of the admissibility of the forensic evidence was litigated before the Appeals Panel, no observations were made to the effect that this legal principle, which was referred to by both Parties in submissions, was not binding or applicable. It remains good law. The Panel can make no factual findings based on the source material.

*ii. DNA*

101. The SPO used GOODWIN as a vehicle through which to admit twenty-two 'DNA reports.'<sup>163</sup> GOODWIN played no role in the creation of these reports. GOODWIN's evidence fundamentally undermined the SPO's DNA case. GOODWIN could not carry out any independent analysis of the DNA profiles underpinning the conclusions in the underlying reports. Consequently, he did not, and could not, verify the accuracy of the results and conclusions in any of

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<sup>162</sup> IT-95-5/18, [TC Decision](#), 9 July 2010, para.10.

<sup>163</sup> P03624; P03625; P03626; P03627; P03628; P03629; P03630; P03631; P03632; P03633; P03634; P03635; P03636; P03637; P03638\_ET; P03639; P03640; P03641; P03642; P03643.

the reports, or adopt them as his own.<sup>164</sup> Crucially, he identified a number of anomalies, commenting that there were “highly unusual” aspects of the reports. GOODWIN described the allelic designations contained in the documents as inexplicable, “not typical” and “highly unusual.”<sup>165</sup> Fourteen DNA report<sup>166</sup> summaries do not include information about the loci which were analysed from the relevant DNA. Nothing is known about the specific methods used in the DNA extraction process.<sup>167</sup> GOODWIN was not even able to confirm that the DNA which was tested met the standard that he himself said should apply.<sup>168</sup>

102. These reports cannot be considered to be accurate or reliable, due to the inexplicable obscurities and anomalies in the reports GOODWIN identified. The Panel cannot rely on the evidence of GOODWIN to support any conclusions as to identity, as GOODWIN has provided no independent conclusions or opinion in respect of the likelihood of the purported matches set out in the reports. Fatally, GOODWIN did not and could not adopt any of the conclusions in the reports as his own.<sup>169</sup>

103. As the Panel cannot rely on the source material itself for the truth of its content, there is therefore no evidence upon which the Panel can find to the criminal standard that the identity of any of these remains is proven.

*iii. Pathology*

104. Like with its approach to the evidence of GOODWIN, the SPO sought to use CLARK to adduce the reports of other pathologists. CLARK was not involved

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<sup>164</sup> T.23609.25-23610.13.

<sup>165</sup> T.23622.8-23625.9; T.23627.11-23628.24; T.23620.9-23621.13.

<sup>166</sup> P03624; P03627; P03628; P03629; P03630; P03631; P03632; P03633; P03634; P03635; P03636; P03637; P03638\_ET; P03639.

<sup>167</sup> T.23583.12-18.

<sup>168</sup> T.23625.22-23628.24.

<sup>169</sup> F03222, para.4; T.23618.3-18; T.23620.14-17; T.23622.14-17.

in these autopsies and did not carry out secondary autopsies to verify their conclusions. CLARK's evidence undermined the reliability, accuracy, and probative value of the underlying reports. CLARK was not provided with sufficient information to verify the findings or conclusions within those autopsies,<sup>170</sup> and raised serious concerns about the impartiality of at least one Serbian pathologist,<sup>171</sup> and the veracity of a significant number of findings contained within the autopsies.<sup>172</sup>

105. In relation to the [REDACTED] Autopsies,<sup>173</sup> CLARK raised significant doubts about whether some of the findings in these reports were genuine.<sup>174</sup> In CLARK's opinion "*doubt has to be raised about the alleged bruising and its interpretation.*"<sup>175</sup> CLARK questioned: (a) whether the finding that all five bodies had bruising was genuine; and (b) whether, even if such bruising did exist, it was reasonable to attribute the bruising to blunt force trauma.<sup>176</sup> CLARK also noted that it was "very surprising" that no bullets were found.<sup>177</sup> In respect of two autopsies, CLARK found the analysis which related to the tracking of the bullet wounds was illogical,<sup>178</sup> and in one autopsy its reliability and accuracy was "extremely doubtful."<sup>179</sup>
106. CLARK was unfamiliar with the methodology deployed by some of the pathologists and therefore could not explain why six of the autopsies included findings improperly related to the circumstances of death, *i.e.*, conclusions that

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<sup>170</sup> T23646.16-21.

<sup>171</sup> T.24429.25-24431.5

<sup>172</sup> T24278.23-25; T.24288.7-18.

<sup>173</sup> P03370/P03370\_ET, pp.SITF00414172-SITF00414201.

<sup>174</sup> P01991/P01991\_AT, pp.14-15; T.24288.7-18.

<sup>175</sup> P01991/P01991\_AT, p.15.

<sup>176</sup> T.24288.7-18; P01991/P01991\_AT, p.15.

<sup>177</sup> T.24282.12-24283.19.

<sup>178</sup> T.24276.3-15 referring to P01991/P01991\_AT, p.14. See T.24314.15-25.

<sup>179</sup> P01991/P01991\_AT, p.7; T.24324.23-24325.3; T24326.16-24327.17.

individuals had been “murdered.”<sup>180</sup> Such findings that are outside a forensic pathologists’ field of expertise.<sup>181</sup>

107. In several instances, CLARK came to different views from the underlying pathologies. Concerning [REDACTED] autopsy, CLARK stated that he would have reached a different conclusion in respect of the cause of death.<sup>182</sup> Further, the severe nature of some of the bone fractures in his view meant it was possible that these fractures were caused postmortem, a conclusion not contained in DUNJIC’s source report.<sup>183</sup>
108. Again, fatal to the SPO’s case, CLARK did not adopt the conclusions of the underlying reports as his own. CLARK could not verify the accuracy and reliability of the autopsies.<sup>184</sup> The Panel cannot rely on the source material for the truth of its content. There is therefore no evidence upon which the Panel can find to the criminal standard the cause of death of these remains proven.
109. Finally, GASIOR was the only expert called who had any actual dealings with the remains in this case. For approximately twenty-six of the autopsies performed by GASIOR, the cause of death was undetermined.<sup>185</sup> Therefore, these autopsies have little to no probative value. GASIOR’s live evidence undermined the reliability, accuracy, and probative value of autopsies not carried out by himself but upon which he was asked to comment.<sup>186</sup>

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<sup>180</sup> See, e.g., P03370/P03370\_ET, p.SITF00414176.

<sup>181</sup> T.24320.23-24231.1; T.24261.4-13; T.24319.1-24320.5.

<sup>182</sup> P03373/P03373\_AT/P03373\_ET; T.24379.3-9.

<sup>183</sup> T.24384.3-5.

<sup>184</sup> See T.24322.17-24323.6; T.24373.6-12; T.24363.20-24364.3; T.24366.20-24367.2; T.24371.10-17; T.24373.6-12; T.24378.25-24379.2; T.24399.9-18.

<sup>185</sup> T.24543.21-24544.23.

<sup>186</sup> T.24555.18-24557.10.

## G. Adjudicated facts

110. Judicial notice of adjudicated facts establishes a rebuttable presumption of the accuracy of those facts. While judicially noticed facts need not to be proven again, their accuracy may be challenged.<sup>187</sup> The Defence has identified several adjudicated facts whose accuracy is clearly challenged in that they are based on weak, unreliable or prejudicial evidence, or are contradicted by other evidence. While these adjudicated facts have now been admitted into evidence, the Panel should decline to rely upon them, due to the myriad issues that underlie them rendering any presumptions unsafe and highly prejudicial.
111. For instance, the adjudicated fact that the BIA reported to members of the Llap OZ Command, including GASHI,<sup>188</sup> is supported only by the account of a defendant in separate proceedings, and is uncorroborated in the present case.<sup>189</sup> Testimony originating solely from a convicted person in separate proceedings, especially in relation to alleged reporting relationships, carries an inherent risk of being self-serving. Therefore, reliance on selective aspects of his evidence in the absence of any corroboration is unreliable and prejudicial. Likewise, the adjudicated fact that GASHI exercised authority over the military police<sup>190</sup> rests primarily on the inconsistent and equally self-serving testimony of his co-accused in the originating case<sup>191</sup> and is directly contradicted by the evidence before this Panel.<sup>192</sup> Similarly, an adjudicated fact regarding an obligation of OZ commanders to inform the GS of crimes,<sup>193</sup> is based solely on the testimony of **Jakup KRASNIQI** and again is uncorroborated.<sup>194</sup> It is wholly inappropriate

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<sup>187</sup> See F01536, Decision on Judicial Notice of Adjudicated Facts, 18 May 2023, para.16; F03526, para.17.

<sup>188</sup> F02498/A01, Decision on Judicial Notice of Adjudicated Facts, 21 August 2024, no.783.

<sup>189</sup> 069404-TR-ET Part 6, T.13.18-21.

<sup>190</sup> F01534/A01, Decision on Judicial Notice of Adjudicated Facts, 17 May 2023, no.473

<sup>191</sup> SITF00366996-00367061, para.31(B).

<sup>192</sup> See [Ch.V.E.](#), para.253.

<sup>193</sup> F01534/A01, no.237.

<sup>194</sup> P00795, T.3412.15-3413.7. See also [Ch.II.C.ii.](#)

and hyper-prejudicial to elevate the uncorroborated and untested statements of co-accused or convicted defendants to the status of an adjudicated fact.

112. Concerns arise also with adjudicated facts concerning the dissemination of KLA rules and regulations by the GS,<sup>195</sup> the GS's appointment of OZ commanders<sup>196</sup> and that, on the orders of the GS, the Llap OZ took measures to recruit, train, deploy, and organise its forces.<sup>197</sup> These are all undermined by the evidence. This last finding was based on ZHITIA's book,<sup>198</sup> which was later contradicted by his testimony that the OZ self-organised without orders from above.<sup>199</sup> He further acknowledged that he could not give a definitive account of the events.<sup>200</sup> In light of this evidence, the presumption of accuracy has clearly been rebutted. This also demonstrates the dangers in relying on KLA authored publications as many claims within them are not facts but exaggerations<sup>201</sup> and drawing adjudicated facts from commentary or statements that have never been tested.
113. The Defence cannot address all adjudicated facts in the above manner in the confines of this brief. The examples outlined above should alert the Panel to the fact that the adjudicated facts are seriously flawed and if relied upon uncritically could result in erroneous findings. They are often founded on incorrect, speculative, contradictory, or untested evidence, drawn from sources or proceedings which were limited in their temporal scope, or where the relevant issues were not contested. Evidence adduced at trial has also directly contradicted or undermined these adjudicated facts and therefore displaced the presumption of accuracy. They must be treated with serious caution.

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<sup>195</sup> F01534/A01, no.236. See P01114.1\_ET, T.3406.12-14; T.14749.5-10. See also [Ch.VII.I](#).

<sup>196</sup> See [Ch.IV.F.i](#).

<sup>197</sup> F02498/A01, no.775.

<sup>198</sup> P00187/P00187\_ET, p.SPOE00055705.

<sup>199</sup> T.18943.24-18944.13.

<sup>200</sup> T.18937.21-25.

<sup>201</sup> See [Ch.II.E](#).

Continued reliance on adjudicated facts whose presumption of accuracy has been rebutted would undermine the integrity of the fact-finding process and contribute to unfairness in these proceedings.

### III. BACKGROUND OF THE KLA

114. The SPO's case is based on incorrect assumptions and false assertions. The LPK and the KLA were not synonymous; neither were the Central Staff and the GS. **VESELI** has not been proven to be a member of either the LPK or the Central Staff. Considering that the SPO makes its case principally through institutional membership, understanding these distinctions is critical. The actions, publications, intent or knowledge of organisations to which he did not even belong cannot be imputed to **VESELI**. The SPO's case on JCE and superior responsibility depends on the KLA as a united, organised and functional army, which it was not. The evidence properly analysed, demonstrates that the KLA was disparate, disorganised, untrained, undisciplined, under-resourced, structurally inconsistent; disconnected from the GS and without a functional reporting structure; controlled to the extent possible by the OZ commanders.<sup>202</sup>

#### A. LPK

115. The LPK was active throughout the early 1990s.<sup>203</sup> Although some individuals were associated with both KLA and LPK, the two were separate.<sup>204</sup> They differed in purposes and modes of operation as set out below. The creation of the KLA was never discussed within any LPK forum<sup>205</sup> and the LPK's support

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<sup>202</sup> See [Ch.IV](#).

<sup>203</sup> F01534/A01, no.208-211.

<sup>204</sup> T.22075.24-22076.1.

<sup>205</sup> T.21814.23-22815.4.

was limited to political backing, fundraising, and providing resources.<sup>206</sup> The LPK did not task, or remain in contact with, the GS.<sup>207</sup>

116. The SPO's reliance<sup>208</sup> on the unreliable and uncorroborated "*Liridon Kosova*" study<sup>209</sup> to construct an ideological bridge between the LPK and the KLA is untenable. BASHOTA denied any familiarity with the document, and confirmed the LPK did not use it.<sup>210</sup> Its contents, most notably the call for unification with Albania,<sup>211</sup> is incompatible with the LPK's manifesto.<sup>212</sup> Its contents also undermines its credibility; it cites the 1995 Tetovo University inauguration, which occurred two years after its alleged drafting in 1993.<sup>213</sup> An authorless news article<sup>214</sup> purporting to contain statements from Emrush XHEMAJLI is non-authenticating: the Study's name is not even mentioned.<sup>215</sup>
117. It is not proved that **VESELI** was an LPK member. SPO witnesses who were in the LPK do not identify **VESELI** as a member or as attending its meetings.<sup>216</sup> **VESELI** was not present at the 1993 LPK consultative meeting in Kollare.<sup>217</sup> KELMENDI stated that he had not seen any definite evidence of **VESELI** being a member of the LPK General Council in Kosovo.<sup>218</sup> W04748, who is demonstrably unreliable,<sup>219</sup> is one of the few witnesses who suggests that **VESELI** was part of the LPK, while being in no position to know that, as he was

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<sup>206</sup> T.21815.19-25; T.22210.4-14.

<sup>207</sup> T.23411.10-13; T.22960.22-22960.2.

<sup>208</sup> T.23005.11-18; T.23007.1-9; T.23009.21-22; T.23011.10-18.

<sup>209</sup> P01879/P01879.1-7\_ET.

<sup>210</sup> T.23178.18-T.23179.9; T.23007.12-20; T.23011.14-18.

<sup>211</sup> P01879.1\_ET, p.0189-1163.

<sup>212</sup> 1D00203/1D00203\_ET, p.DHT04460; T.23179.20-23180.16.

<sup>213</sup> P01879.3\_ET, p.0189-1224; 4D00144/4D00144\_ET.

<sup>214</sup> P02863/P02863\_ET.

<sup>215</sup> When interviewed by the SPO, XHEMAJLI did not say he had knowledge of this document. See T.23019.10-11; T23020.11-18.

<sup>216</sup> T.22849.18-22850.2; T.23187.4-5; T.22209.2-10.

<sup>217</sup> P00012/P00012\_ET, p.057947; T.2487.13-24.

<sup>218</sup> P00845/P00845\_ET.2, p.0768945.

<sup>219</sup> See [Ch.II.C.iii.2](#).

not a member himself.<sup>220</sup> An LPK timeline allegedly written in 2002 incorrectly lists **VESELI** as member;<sup>221</sup> BASHOTA disputed its contents,<sup>222</sup> and QADRAKU agreed that it was political propaganda.<sup>223</sup> The document refers to QADRAKU being part of the LPK Councils in Kosovo, at a time when QADRAKU himself states that he was in Switzerland.<sup>224</sup>

118. Assertions by HALITI<sup>225</sup> lack corroboration, and at their highest, reflect contact between **VESELI** and LPK members, or early involvement in discussions linked to the consolidation and naming of the KLA. As QADRAKU testified, HALITI's accounts reflect post-war embellishment and propaganda.<sup>226</sup> Similarly, although BYRNES initially suggested that **VESELI** was one of the LPK leaders,<sup>227</sup> his knowledge of the LPK was limited and derived from conversations with KLA members post-July 1999.<sup>228</sup> As such it is unreliable. There is ultimately no reliable evidence **VESELI** had any knowledge of the LPK's activities, publications, or ideological positions. Consequently, any acts, declarations, or intentions attributed to the LPK cannot be imputed to **VESELI**.

## **B. KLA "Central Staff"**

119. The Prosecution seeks to merge two distinct structures: the Central Staff and the General Staff.<sup>229</sup> The SPO repeatedly refers to both structures as the "General Staff" interchangeably,<sup>230</sup> attempting to improperly impute evidence and alleged intent from one to the other. Prior to 1998, only a Central Staff

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<sup>220</sup> T.3408.9-12; T3846.15-19.

<sup>221</sup> P01874, p.074631.

<sup>222</sup> T.22959.23-22961.8.

<sup>223</sup> T.22913.17-25.

<sup>224</sup> T.22910.20-22.

<sup>225</sup> P01857/P01857\_ET, p.32; P04208/P04208\_ET, p. SPOE00053368.

<sup>226</sup> T.22760.19-22763.17.

<sup>227</sup> P01066/P01066\_AT, para.79.

<sup>228</sup> P01066/P01066\_AT, paras.46, 80.

<sup>229</sup> T.27137.5-22; P01115.8\_ET, T.3.24-T.4.24.

<sup>230</sup> F00709/A01, fn.3.

existed,<sup>231</sup> with limited activity and uncertain membership. No reliable evidence places **VESELI** within the Central Staff or shows that he had knowledge of its operations. Evidence relevant to the Central Staff is not attributable to the GS or **VESELI**.

120. The SPO's allegations that **VESELI** was a member of the Central Staff or GS prior to 1998<sup>232</sup> fail. They rely almost entirely on hearsay, mischaracterised statements and testimony from co-Accused, none of whom even mention the Central Staff.
121. The claim that **VESELI** held a GS role "*from at least 1997*" is based on his HAXHIU interview, yet the underlying extract contains no such admission.<sup>233</sup> The SPO also relies on **SELIMI**'s SPO interview, where he claims that **VESELI** was part of the GS between 1997-1999,<sup>234</sup> and a page from **KRASNIQI**'s book, where **VESELI** is not even mentioned.<sup>235</sup> Beyond this, the SPO cites two additional sources, neither of which support the SPO assertion: first, a witness hearing of **VESELI**, where he merely states that he was "*a member of the KLA Main HQ since the beginning*."<sup>236</sup> Secondly, **THAÇI**'s SPO interview,<sup>237</sup> mentioning **VESELI** as a GS member, from March 1998.
122. Reliance on **SELIMI** is especially flawed.<sup>238</sup> The SPO relies on a 1999 interview with **SELIMI** in which he claims the KLA GS existed as early as 1993, and that **VESELI** was a KLA GS member on or about 1994.<sup>239</sup> This is historically impossible as the organisation was only named the 'KLA' on 14 November

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<sup>231</sup> P01115.8\_ET, T.3.24-T.4.24; T.17882.1-5.

<sup>232</sup> F03114/A02, Prosecution BTM, 14 April 2025, p.44; and F00709/A01 para.96 and fn.296.

<sup>233</sup> P01859\_ET.2, p.SPOE00053003.

<sup>234</sup> P00763.5\_ET, T.5.25-T.6.3.

<sup>235</sup> F03114/A02, p.44, para.2; P00189\_ET.1, p.U015-8785.

<sup>236</sup> P00787, p.SITF00009125.

<sup>237</sup> P00739.4\_ET, T.14.17-25.

<sup>238</sup> See [Ch.II.C.ii](#).

<sup>239</sup> P04200/P04200\_ET, p.3.

1994.<sup>240</sup> **SELIMI** later indicated that in 1997, the KLA was going through a crisis and the “Central Staff” was not functioning properly.<sup>241</sup> Likewise SYLA’s<sup>242</sup> retrospective hearsay claim that **VESELI** was part of a “first General Staff” in 1997, is contradicted by other direct evidence.<sup>243</sup>

123. **BASHOTA**, a Central Staff member since 1994,<sup>244</sup> confirmed that **VESELI** was not on the Central Staff.<sup>245</sup> **QERIQI**’s suggestion that **VESELI** was part of the “Central Staff” was based on “what people said,” not personal knowledge.<sup>246</sup> **QADRAKU** did not know who was on the Central Staff and only remembered hearing about the structure in the newspapers.<sup>247</sup> Neither **BUJA**<sup>248</sup> nor **ZYRAPI**<sup>249</sup> knew who was on the Central Staff.

124. Contemporaneously, “Central Staff” was often wrongly used instead of “General Staff,” and was sometimes used to refer to local-level structures, or the purported central headquarters.<sup>250</sup> **BASHOTA** clarified that references to a “General Staff” before 1998 should properly be understood to mean “Central Staff.”<sup>251</sup> He described that between 1994-1997, the Central Staff’s role was mostly limited to attempts to unify scattered groups and to obtain logistical support.<sup>252</sup> By 1997, the Central Staff remained a nominal structure that lacked

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<sup>240</sup> T.22553.4-10.

<sup>241</sup> P00761.10\_ET, T.12.8-17; P00776, p.34; P00777, T.6587.21-6588.14; P00761.2\_ET, T.8.18-T.9.8.

<sup>242</sup> P00847, p.SITF00243001.

<sup>243</sup> T23388.14-23389.17; T23390.7-10; T.23427.11-23428.2; T.23348.1-11.

<sup>244</sup> T.23387.13-23388.10.

<sup>245</sup> T.23348.18-21; T.23427.11-23428.2; T.23389.2-17.

<sup>246</sup> P01115.8\_ET, T.7.7-12; T.14831.22-14832.17.

<sup>247</sup> T.22815.20-T22816.5.

<sup>248</sup> T.22214.21-22215.6; T.22257.17-20.

<sup>249</sup> T.17549.19-21.

<sup>250</sup> P01605.7, T.16.21-24; T.19673.14-25 *regarding* P00651/P00651\_ET; P00408, para. 6; T.17059.2-6.

<sup>251</sup> P01872, para.4.

<sup>252</sup> T.23386.17-23387.20.

operational capacity<sup>253</sup> and comprised no more than two disparate members in Kosovo.<sup>254</sup> The Central Staff had no authority.<sup>255</sup>

125. Neither other documents mentioning the structure,<sup>256</sup> nor alleged Central Staff communiqués,<sup>257</sup> advance the SPO's case. The reliability of one such document was questioned by TETAJ.<sup>258</sup> Even witnesses within the Central Staff were unable to identify the communiqués' authors.<sup>259</sup> If a member did not possess such knowledge, certainly someone who was not a member, such as VESELI, could not reasonably be found to be aware of the purported activities of the Central Staff.<sup>260</sup> Secrecy surrounding the Central Staff, driven by security risks,<sup>261</sup> meant that even its own members lacked full knowledge of its activities.<sup>262</sup>

### C. The KLA Pre-March 1998

126. Prior to March 1998, what would later become the KLA existed only as a patchwork of isolated family-based defence groups, lacking any coordination or unified command.<sup>263</sup> In 1996–1997 there were no more than three or four uncoordinated groups.<sup>264</sup> By the end of 1997, the entirety of the Llap OZ consisted of eighteen individuals.<sup>265</sup> MUSTAFA and his friends simply appointed themselves as local leaders,<sup>266</sup> with no instructions from above and

<sup>253</sup> P01872, para.5; T.23349.16-23350.7.

<sup>254</sup> T.23405.7-11.

<sup>255</sup> T.17565.14-17.

<sup>256</sup> P00651/P00651\_ET.

<sup>257</sup> See, e.g., P00273/P00273\_ET; P00283/P00283\_ET; P00270\_ET.5; P00269\_ET.9; P00741\_ET.1; P00274/P00274\_ET; P00277/P00277\_ET; P00152; P00153/P00153\_ET; P00154/P00154\_ET.

<sup>258</sup> 1D00184/1D00184\_ET, p.3; T.19516.16-19517.4.

<sup>259</sup> T.23488.4-11; T.23135.19-24; T.23458.18-23459.8; T.23461.22-24.

<sup>260</sup> T.23481.1-19.

<sup>261</sup> T23340.17-21.

<sup>262</sup> T.23462.24-23463.4

<sup>263</sup> T.25019.3-11.

<sup>264</sup> T.23335.22-23336.5.

<sup>265</sup> T.5715.1-3.

<sup>266</sup> T.5722.9-24; T.5714.7-14; T.18943.9-18945.19 and P00187, p.SPOE00055789.

long before the creation of the GS.<sup>267</sup> Isolation of early KLA groups was a security precaution to limit exposure to Serbian authorities.<sup>268</sup> Communication between groups was difficult and operational linkage was virtually non-existent.<sup>269</sup> ABRAHAMS characterised the pre-June 1998 KLA as “*a disorganised collection of armed villagers [...] without a clear chain of command.*”<sup>270</sup> BYRNES explained that early KLA activity resembled “minute-men,” who were not well-armed and focused on family self-defence and isolated acts of sabotage.<sup>271</sup> It was only after the attack on the JASHARI family in early March 1998 that the number of volunteers surged and efforts began to form a “frontal army.”<sup>272</sup> A KLA structure only began to take shape by the end of 1998.<sup>273</sup>

#### IV. FORMATION OF THE OPERATIONAL ZONES

127. The emergence of OZs<sup>274</sup> occurred on different timescales and at different rates. They differed in terms of when and how their structures were implemented, and components such as military police were established and functioned. These differences reflect the absence of any direction or coordination from a higher authority and were driven by lack of *inter alia*, resources; training; effective communication;<sup>275</sup> functioning reporting structures; enforcement of orders;<sup>276</sup> cooperation between OZs<sup>277</sup> and the GS’s inability to exert influence over independent OZ commanders.<sup>278</sup> Throughout the conflict, the KLA remained a

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<sup>267</sup> T.18943.9-18945.6.

<sup>268</sup> P02026\_AT/P02026\_ET, pp.12-13.

<sup>269</sup> P01816.1\_ET, T.29.14-20. See P00476\_ET, T.1029.1-20, T.1030.14-18; T.10190.10-19.

<sup>270</sup> T.7447.12-19.

<sup>271</sup> P01066\_AT/P01066, para.78.

<sup>272</sup> P01200.1\_ET, T.26.13-19.

<sup>273</sup> P01871\_AT/P01871, para.12.

<sup>274</sup> The zones were known as subzones for the initial months of the conflict.

<sup>275</sup> See e.g., T.17859.25-17860.9.

<sup>276</sup> See [Ch.IV.D-E](#).

<sup>277</sup> See [Ch.IV.G](#).

<sup>278</sup> See [Ch.IV.F](#).

volunteer army whose soldiers could, and did, leave at will,<sup>279</sup> making it impossible to maintain control or discipline.

#### A. KLA Post-March 1998

- 128.** The Serbian attacks in February and March 1998<sup>280</sup> led to an increase of recruits which local groups struggled to absorb.<sup>281</sup> Drenicë and Dukagjin were comparatively more organised since their fighters had been active earlier.<sup>282</sup> Yet, until May 1998, the KLA in Drenicë had no structure.<sup>283</sup> In Dukagjin, village guards formed in response to the attack on the HARADINAJ compound,<sup>284</sup> but did not form an OZ until late June 1998.<sup>285</sup> Groups in Pashtrik remained entirely disparate during the first months of the conflict,<sup>286</sup> and no one was in charge at the OZ level;<sup>287</sup> some evidence indicates no real zone structure was in place until after November 1998.<sup>288</sup> In Llap, MUSTAFA's group had existed since 1997.<sup>289</sup> The Nerodime OZ formed in July or August 1998 and there is little evidence the Shala OZ existed before this time either.<sup>290</sup> Karadak remained incipient as late as October 1998.<sup>291</sup>
- 129.** The emergence of nascent KLA OZ structures spread organically over five to six months in the spring/summer of 1998.<sup>292</sup> The purpose of such organisation was not criminal; it was to defend the civilian population.<sup>293</sup> Involvement by

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<sup>279</sup> T.25916.8-24.

<sup>280</sup> *See, e.g.*, F01534/A01, No.24-32, 34, 41; F01536/A01, No.751.

<sup>281</sup> P02027.2\_ET, T.2198.10-22.

<sup>282</sup> T.17552.13-15.

<sup>283</sup> T.25019.3-20; P02026\_ET, T.14; P02027.1\_ET, T.2068.1-12.

<sup>284</sup> P00473, p.U009-4689, para.6; T.19498.12-15; T.19507.3-6.

<sup>285</sup> P02089\_ET, p.SPOE00067217.

<sup>286</sup> T.17552.16-18.

<sup>287</sup> P00707.2\_ET, T.4.14-16.

<sup>288</sup> T.22704.4-7.

<sup>289</sup> T.5713.17-5714.12.

<sup>290</sup> T.17553.1-4.

<sup>291</sup> P00187\_ET, p.SPOE00055900.

<sup>292</sup> P00473, p.U009-4691, para.15.

<sup>293</sup> F01534/A01, No.260.

any soldier in these early efforts cannot be considered criminal, or indicative of any criminal intent or purpose.

## **B. Inconsistency in OZ Structure**

130. The OZs developed autonomously, with minimal guidance from a higher authority, and therefore differed significantly in terms of structure. The GS was largely unknown in the OZs in the early months of the conflict.<sup>294</sup>
131. The numbers of fighters differed between the OZs.<sup>295</sup> Brigades were formed at different rates and to different degrees across the OZs. In Dukagjin there were likely as many as eight brigades in 1999,<sup>296</sup> whereas there were only three brigades in Llap,<sup>297</sup> and three in Nerodime.<sup>298</sup> There were at most seven brigades in Pashtrik,<sup>299</sup> and two in Shala<sup>300</sup> and Karadak.<sup>301</sup> Brigades in Llap were formed sporadically throughout the second half of 1998,<sup>302</sup> while brigades in Pashtrik were only formalised after November 1998,<sup>303</sup> with positions still being formalised in March 1999.<sup>304</sup> Brigades in Dukagjin were not fully formed until 1999.<sup>305</sup> The brigades in Nerodime were never fully formed.<sup>306</sup> There is no evidence of when the brigades were formed in Karadak. Decisions to create these formations were made at OZ level; these formations reported to, and

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<sup>294</sup> T. 19510.9-15; T.19511.2-7.

<sup>295</sup> *See, e.g.*, P02090.5\_ET, T.10.23-24; T.25872.12-14; T.21931.23-24; T.24712.10-14.

<sup>296</sup> T.25751.21-25752.23; T.25754.2-5; T.25782.19-22; T.25910.21-25911.4.

<sup>297</sup> T.5499.16-17; F01534/A01, No.286.

<sup>298</sup> T.22157.10-14; T.22001.11-17; T.22002.4-8.

<sup>299</sup> F01534/A01, No.291.

<sup>300</sup> F01534/A01, No.289.

<sup>301</sup> F01534/A01, No.297.

<sup>302</sup> T.5499.19-23.

<sup>303</sup> T.9956.14-19; T.10240.14-15; T.14368.11-13.

<sup>304</sup> T.24754.7-11; T.24789.17-18.

<sup>305</sup> P01541.2\_ET, T.19.2-9; P02090.4\_ET, T.6.19-21; P02090.5\_ET, T.10.19-24; T. 25752.9-17; T.25754.2-5; T.25782.19-23; T.25910.21-25911.6.

<sup>306</sup> T.22157.23-24.

were commanded by, where possible, the OZ command. There was no meaningful chain of command to the GS.

- 132.** OZ commands used different titles and positions. Dukagjin included positions like head of “chemical and biological defence”<sup>307</sup> - a clearly aspirational title, wholly unconnected to the realities of the conflict.<sup>308</sup> Structures often remained incomplete throughout the conflict. Pashtrik had no Chief of Staff until the end of 1998.<sup>309</sup> There is no evidence that anyone ever occupied this role in Shala or Karadak. In spring 1999 OZs were still forming and making appointments,<sup>310</sup> demonstrating the extent to which KLA formations were haphazard at best and that a military-like command structure never realised.
- 133.** While every brigade *should* have had military police,<sup>311</sup> this was not reality.<sup>312</sup> Military police was discussed at a meeting in Dukagjin on 21 June 1998, but was not established at this time.<sup>313</sup> Jabllanicë/Jablanica which would later become part of the Dukagjin OZ appears to have independent formations prior to this. Pashtrik had no military police commander until January or February 1999.<sup>314</sup> In Drenicë it was never fully consolidated.<sup>315</sup> The evidence from Karadak<sup>316</sup> and Shala<sup>317</sup> is unreliable and insufficient to allow for any conclusions. The evidence surrounding military police reporting is broadly

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<sup>307</sup> 1D00185/1D00185\_ET, p.4.

<sup>308</sup> P00477\_ET, T.1076.8-10; T.19574.1-18; T.7851.5-7853.19.

<sup>309</sup> T.16980.3-7; T. 16987.25-16988.1; T.17069.16.20-17070.11.

<sup>310</sup> See, e.g., P02006.3\_ET, T.9.3-10; T.24789.17-18; T.25873.9-11; T.25911.5-6.

<sup>311</sup> P02006.4\_ET, T.21.7-10.

<sup>312</sup> P01554.3\_ET, T.18.12-14; T.19122.4; T.19891.4-7.

<sup>313</sup> T.19541.1-9.

<sup>314</sup> T.24752.21-24753.4; T.22618.5-8.

<sup>315</sup> P02026\_ET, T.51; P02027.2\_ET, T.2195.6-19; P02027.3\_ET, T.2211.13-16, T.2213.12-2214.1.

<sup>316</sup> F00709/A01, paras.255, 259. The SPO relies on P02495/P02495\_ET.1 and P02496/P02496\_ET. Neither of these have been corroborated. They lack sufficient chain of custody information, *indicia* of authenticity and probative value.

<sup>317</sup> F00709/A01, para.223. [REDACTED].

consistent in that OZ military police reported to the OZ command.<sup>318</sup> There is no reliable evidence that military police reported directly to the GS.<sup>319</sup> Low-level military police in the OZs, such as in battalions or brigades, reported to their respective commanders.<sup>320</sup>

### C. Impediments to Organisation

134. A myriad of competing factors impeded the KLA's ability to ever fully organise.

#### *i. Resources*

135. In May 1998 "*there were limitations on everything,*" including weapons, uniforms, transport, and finances.<sup>321</sup> Never did the KLA have the time or resources to develop the capacities of a unified force.<sup>322</sup> The lack of resources significantly impeded advances in organisation and efforts to impose command and control. Most KLA volunteers had no prior experience or training.<sup>323</sup> Any training was brief, much more basic than standard military training,<sup>324</sup> with most volunteers sent to the front line without any training.<sup>325</sup> It was difficult to have any functioning command structure when soldiers were not trained.<sup>326</sup>

136. Weapons were in short supply throughout the war.<sup>327</sup> Village leaders and local commanders obtained weapons themselves, without GS involvement.<sup>328</sup> Documentary evidence depicts KLA fighters in July 1998 wearing civilian

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<sup>318</sup> T.17650.19-17651.11; T.17979.14-17890.2; T.22169.5-11; T.5502.13-23; T.21698.7-13; P01554.4\_ET, T.5.5-7.

<sup>319</sup> F00709/A01, para.146.

<sup>320</sup> T.12884.5-17; T.14673.22-24.

<sup>321</sup> T.17859.25-17860.9.

<sup>322</sup> T.18518.6-8.

<sup>323</sup> T.17857.19-17858.1.

<sup>324</sup> T.20364.12; T.17046.14-15; T.17857.14-17858.23; P00730, T.4280.6-17; T.15115.12-14.

<sup>325</sup> T.5535.11-14.

<sup>326</sup> T.17046.16-19.

<sup>327</sup> T.17859.25-17860.9; T.22096.23-24; T.21267.14-20

<sup>328</sup> P00476\_ET, T.1032.20-1033.1; T.21267.5-17; T.19808.1-9.

clothes and sharing guns.<sup>329</sup>The KLA had to fight with any weapons they had, often only a rifle, against Serb tanks and heavy weapons.<sup>330</sup> After the summer offensives, where the KLA had been “completely outgunned,”<sup>331</sup> the supply of weapons from Albania became very difficult<sup>332</sup> and troops diminished.<sup>333</sup>

137. Uniforms were in short supply;<sup>334</sup> sometimes, there was only one for an entire village in summer 1998.<sup>335</sup> Soldiers went without food for days so funds could be used for medication.<sup>336</sup> The KLA never had effective, reliable or consistent communications. Radios were unreliable,<sup>337</sup> unsecure,<sup>338</sup> dependent upon electricity supply,<sup>339</sup> and ineffective over long distances.<sup>340</sup> There was only one repeater unit, from approximately March 1999.<sup>341</sup> Couriers were unreliable, unsafe, and inefficient,<sup>342</sup> often taking several days.<sup>343</sup> Satellite phones only arrived late in the conflict, were limited in number, dependent on electricity, and unsecure.<sup>344</sup>

*ii. Impact of offensives*

138. The Serb summer offensives routed the KLA and triggered a humanitarian disaster.<sup>345</sup> Almost 120,000 homes were damaged and 40% of villages faced

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<sup>329</sup> See, e.g., 2D00002.

<sup>330</sup> T.3216.14-3217.7

<sup>331</sup> T.17910.10-14.

<sup>332</sup> T.23199.24-25.

<sup>333</sup> 2D00033, p.SPOE00304292.

<sup>334</sup> T.7779.25; P01136.1\_ET.1, T.29.3-10.

<sup>335</sup> T.19569.18-19570.16.

<sup>336</sup> T.24793.3-9.

<sup>337</sup> T.6456.9-23; T.10193.13-17; T.10194.10-10195.23.

<sup>338</sup> T.10195.2; P01834.2\_ET, T.27.12-13.

<sup>339</sup> T.5523.12-16.

<sup>340</sup> P01355.2\_ET, T.25.1-2.

<sup>341</sup> T.18441.7-19. *Contra* F01534/A01, No.230.

<sup>342</sup> T.12847.8-15; T12849.10-24.

<sup>343</sup> P01355.2\_ET, T.24.24-25.9.

<sup>344</sup> T.18441.24-18442.20.

<sup>345</sup> T.16256.22-16257.13.

inadequate water supplies.<sup>346</sup> Around 250,000 people were displaced<sup>347</sup> and 80,000 people left needing food and medicine.<sup>348</sup> The KLA was reduced to almost nothing.<sup>349</sup> As the ECMM reported, the KLA “*appear[ed] to have collapsed,*” reduced to “*pockets, dispersed throughout the countryside.*”<sup>350</sup>

139. Even after November 1998, the KLA still lacked necessary resources to ever fully consolidate. BYRNES described the GS as a “work in progress,” with “*weak command and staff infrastructure, poor communications, and penetration by Serbian intelligence.*”<sup>351</sup> The NATO airstrikes exacerbated the situation, extinguishing any possibility of further development.<sup>352</sup> Areas were without electricity<sup>353</sup> and communications heavily damaged.<sup>354</sup> Amidst the fighting, KLA troops assisted civilians fleeing for safety.<sup>355</sup> The KLA never had the chance to develop the organisational capacity that would have allowed an effective command structure to take root. Its efforts were constantly impeded by war, poverty, and inexperience.

#### D. Reporting in the OZs

140. There is little evidence about how reporting within the OZs worked. For most OZs, the SPO failed to prove that regular reporting structures ever existed. This fundamentally undermines the SPO’s case on both command responsibility and knowledge insofar as it pertains to the alleged JCE. OZ reporting was at best inconsistent, irregular and unreliable.

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<sup>346</sup> 4D00061, p.SPOE00305418; T.16296.7-21.

<sup>347</sup> 2D00033, p.SPOE00304292; T.23200.20-23201.14.

<sup>348</sup> 4D00055, p.SPOE00304334; T.16257.7-13.

<sup>349</sup> T.23198.23-23200.1; T.13849.18-13850.1.

<sup>350</sup> 2D00033, p.SPOE00304291; T.13849.18-13850.1.

<sup>351</sup> P01066\_AT/P01066, p.075530, para.45.

<sup>352</sup> T.17762.15-21.

<sup>353</sup> T.18153.3-5.

<sup>354</sup> T.17762.22-17763.7.

<sup>355</sup> T.17764.6-18.

141. True to form, the evidence the SPO relies upon to prove the existence of reporting structures in the OZs comes from unauthenticated bar table documents that were never put to witnesses. Their content, and whether they were sent or received, remains unverified.
142. ZYRAPI entered Kosovo at the end of May 1998 and observed local staffs formed around villages, usually headed by a local authority figure. People did not feel the need to report to anyone else.<sup>356</sup>
143. In Dukagjin, the SPO relies primarily upon P03036 and P03115, purportedly signed as 'received' by HARADINAJ in summer 1998. These uncorroborated hearsay documents, concerning menial matters, are not self-authenticating<sup>357</sup> and were never authenticated at trial. There is no evidence any other Dukagjin reports were ever sent or received.<sup>358</sup> Several other documents purport to be reports from various staffs in Dukagjin, however there is no indication of any addressee,<sup>359</sup> and therefore cannot evidence a vertical command structure.
144. Despite calling three KLA witnesses with knowledge of operations in the Nerodime OZ,<sup>360</sup> almost no evidence on reporting was never elicited – possibly for fear that SPO exhibits would be further undermined. When shown P02958, BUJA did not recognise the document, or the signature. When asked if he could be the “Commander Sokoli” referred to therein, he responded “*[a]ctually, I do not know because back then I didn't have a pseudonym. [...] So this doesn't make sense.*”<sup>361</sup>

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<sup>356</sup> T.17871.19-17872.7.

<sup>357</sup> See [Ch.II.D.](#)

<sup>358</sup> See, e.g., P03157/P03157\_ET; P03172/P03172\_ET; P03252/P03252\_ET.

<sup>359</sup> See, e.g., P03162/P03162\_ET; P03168/P03168\_ET; P03170/P03170\_ET; P03171/P03171\_ET; P03173/P03173\_ET; P03174/P03174\_ET.

<sup>360</sup> Namely, BUJA, QERIQI, KURTAJ.

<sup>361</sup> T.22008.22-22009.20.

145. The SPO claims that bar table exhibits demonstrate the implementation of a reporting and communication system in Nerodime.<sup>362</sup> These uncorroborated hearsay items merely consist of blank, unstamped, templates; unauthenticated documents; documents of unclear authorship; and documents that provide no proof of whether they were acted upon, which at their highest indicate only inconsistency and fragmentation. Untested hearsay cannot corroborate untested hearsay.<sup>363</sup>
146. Between May and July 1998 QERIQI was supposed to report to BUJA, but reported to LIMAJ in BUJA's absence.<sup>364</sup> QERIQI did not listen to BUJA because his decisions were "idiotic" and were "harming the war."<sup>365</sup> KURTAJ assumed that the brigade commander would have reported to the OZ commander, but he had no direct knowledge.<sup>366</sup> Reporting opportunities were limited by fierce battles going on while he was Brigade Commander.<sup>367</sup>
147. Sylejman SELIMI was only asked to comment upon the contents of P00220/P01644;<sup>368</sup> he recognised his handwriting on one page but did not confirm whether the request was delivered.<sup>369</sup> SELIMI did not know about the cases described in the rest of the document,<sup>370</sup> and did not confirm whether he ever received such reports. The SPO again seeks to prove its case on reporting in Drenicë using unauthenticated bar table items,<sup>371</sup> absent any evidence they were sent or received, which were never put to witnesses from the OZ. Such

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<sup>362</sup> See, e.g., P02979/P02979\_ET; P02980/P02980\_ET; P02981/P02981\_ET; P02915/P02915\_ET; P02916/P02916\_ET; P02918/P02918\_ET; P02959/P02959\_ET.

<sup>363</sup> KSC-CA-2024-03/F00069, para.480.

<sup>364</sup> T.14763.19-20.

<sup>365</sup> T.14763.21-14764.1; P01115.4\_ET, T.11.16-12.13.

<sup>366</sup> T.12915.5-24.

<sup>367</sup> T.12916.12-22.

<sup>368</sup> P01644/P01644\_ET contains what was P00220/P00220\_ET.

<sup>369</sup> P01644/P01644\_ET, p.098618; T.25005.19-21.

<sup>370</sup> T.25008.11-25011.8.

<sup>371</sup> See, e.g., P02398/P02398\_ET; P00125/P00125\_ET; P00180/P00180\_ET; P02412/P02412\_ET; P02420/P02420\_ET.

poor-quality evidence carries no weight and allows no guilty inference – untested hearsay cannot corroborate untested hearsay.

148. In Pashtrik, prior to September 1998, the *Arti* unit did not report to anyone.<sup>372</sup> In April 1998, according to RRAHMANAJ, there was no-one to report to.<sup>373</sup> There was not even communication between villages, especially remote ones.<sup>374</sup> Upon joining the military police in mid-June 1998,<sup>375</sup> he reported to W03780 but did not know to whom W03780 reported.<sup>376</sup> W04737 explained that in 1999, battalion commanders reported to their brigades, and brigades reported to the OZ command,<sup>377</sup> however, this was virtually impossible to follow due to the NATO bombing.<sup>378</sup>
149. According to HALITJAHA, the organigram in his book was “*a reflection of how it should have been and how it should have functioned.*”<sup>379</sup> It shows reporting went from battalion to brigade, and from brigade to OZ command.<sup>380</sup> Nexhmi KRASNIQI reported to OZ Commander SINANI (but not REXHA)<sup>381</sup> and Naser KRASNIQI reported orally to Brigade Commander, Haxhi SHALA.<sup>382</sup> Communications became more difficult after the NATO bombing<sup>383</sup> as there was no electricity and no radios.<sup>384</sup> The SPO also tendered several items purportedly evidencing reporting in Pashtrik before the November 1998

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<sup>372</sup> P02079.4\_ET, T.7.24-8.15.

<sup>373</sup> P01694.1\_ET, T.9.13-10.14.

<sup>374</sup> T.20470.6-8.

<sup>375</sup> P01694.1\_ET, T.10.16-24.

<sup>376</sup> P01694.1\_ET, T.15.4-17; T.20471.7-10.

<sup>377</sup> T.19833.11-14.

<sup>378</sup> T.19833.15-24.

<sup>379</sup> T.10188.13-15.

<sup>380</sup> P00712/P00712\_ET, pp.SPOE00209330-SPOE002093301.

<sup>381</sup> [REDACTED].

<sup>382</sup> P02006.4\_ET, T.24.24-25.12.

<sup>383</sup> P01558, para.41.

<sup>384</sup> P01554.2\_ET, T.10.21-24.

restructuring.<sup>385</sup> These documents suffer the same authenticity issues as outlined above.

150. The clearest evidence of how reporting functioned is from the independent Llap OZ, whose structures had been in place since 1997, emerging prior to the GS's presence in Kosovo.<sup>386</sup> OZ staff, such as Latif GASHI, would report either to MUSTAFA, KASTRATI, or IBISHI<sup>387</sup> (who would also report to MUSTAFA).<sup>388</sup> By December 1998, brigades would report to IBISHI, if there was something of particular concern.<sup>389</sup> At the brigade level [REDACTED] SOPI confirmed he spoke frequently with MUSTAFA directly.<sup>390</sup> Significantly, Latif GASHI refused orders from both his OZ Commander and the GS and was described as "*doing what he wanted to do when he wanted to do it.*"<sup>391</sup>
151. Nazif MEHMETI would report to MUSTAFA and to the OZ command.<sup>392</sup> Brigade military police were subordinate to the brigade commander.<sup>393</sup> Shukri RAFUNA, head of the 153 Brigade's military police, reported to the brigade commander.<sup>394</sup> SOPI was not sure whether the military police kept in touch with the OZ command during 1998.<sup>395</sup>
152. There is extremely limited evidence about how reporting was conducted within Karadak OZ. The SPO has adduced a mere two documents on the

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<sup>385</sup> See P02678/P02678\_ET; P02570/P02570\_ET; P02662/P02662\_ET; P02671/P02671\_ET; P02672/P02672\_ET; P02674/P02674\_ET; P02583/P02583\_ET.

<sup>386</sup> See T.5714.7-17; T.18943.9-18944.13; P00187/P00187\_ET, p.SPOE00055789.

<sup>387</sup> T.5486.9-17; T.5488.6-12; T.5492.12-17; T.5494.9-14; T5495.12.

<sup>388</sup> T.5485.10-11; P01755.8\_ET, T.9.7-12.

<sup>389</sup> P01755.4\_ET, T.6.17-21.

<sup>390</sup> P01767.1\_ET, T.51.5-23.

<sup>391</sup> T.4795.9-12.

<sup>392</sup> T.5618.1-5.

<sup>393</sup> P01767.1\_ET, T.2074.3-14.

<sup>394</sup> P01767.1\_ET, T.2074.13-14.

<sup>395</sup> P01766.2\_ET, T.13.12-17.

subject.<sup>396</sup> These documents, from May and December 1999, cannot possibly prove the existence of any reporting structure within Karadak.

153. Finally, the *only* evidence as to how reporting functioned in the Shala OZ comes from the unreliable and uncorroborated [REDACTED],<sup>397</sup> and even that is limited.

#### E. Orders in the OZs

154. Evidence of orders within the OZs derives predominantly from untested hearsay admitted via the bar table, never proven to be authentic. They are not 'self-authenticating' and most lack basic *indicia* of authenticity.<sup>398</sup> Without evidence of whether such orders were sent, received, or enforced, they have no probative value. It is not an irresistible inference that because an order purportedly exists on paper it was distributed, received or enforced. An equally reasonable available inference is that it was not – the Panel is obliged by law to draw that alternative inference.<sup>399</sup> The absence of any evidence whatsoever regarding their authenticity (which was undermined by witness testimony),<sup>400</sup> or their enforcement,<sup>401</sup> is a fatal deficit in the SPO's case on command and control.
155. Many gaps remain in the SPO's case on the command structures within the OZs and how orders were given, if at all. Again, all the bar table documents relied on lack basic *indicia* of authenticity, contain multiple unidentified handwritings,<sup>402</sup> are unauthenticated<sup>403</sup> and uncorroborated. They are incapable

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<sup>396</sup> P01659/P01659\_ET; P02500/P02500\_ET.

<sup>397</sup> [REDACTED].

<sup>398</sup> See, e.g., P02747/P02747\_ET; P02589/P02589\_ET; P00132/P00132\_ET; P02417/P02417\_ET; P02418/P02418\_ET.

<sup>399</sup> See [Ch.II.A](#).

<sup>400</sup> T.25715.23-25716.2; T.25912.12-19; T.25991.9-15; T.25979.12-25980.13; T.5667.17-5668.6.

<sup>401</sup> P02027.1\_ET, T.2078.21-2079.6, P00708.5\_ET, T.27.13-16; T.25703.15-24.

<sup>402</sup> P02911/P02911\_ET.

<sup>403</sup> P02934/P02934\_ET; P02964/P02964\_ET.

of lawfully corroborating each other. None were shown to have been implemented; they therefore prove nothing.

156. For Karadak, the SPO adduced no testimony and just four orders all of which post-date the end of the armed conflict in June 1999.<sup>404</sup> There are two orders from Shala.<sup>405</sup> No conclusions about these OZs' organisation can be made from such an absence of evidence. Purported written orders pertaining to Drenicë relate only to May-August 1998.<sup>406</sup> In Nerodime, KURTAJ testified that he only remembered receiving one order from BUJA, which reached him after the war.<sup>407</sup> KURTAJ stressed that throughout May-June 1999 the intensity of fighting made it impossible to prepare written orders.<sup>408</sup>
157. MUSTAFA confirmed that orders in Llap were almost exclusively oral, very rarely in writing, and concerned only military tasks; never arrests or actions against civilians.<sup>409</sup> The SPO's claim that a 24 April 1999 Llap order purportedly issued by MUSTAFA<sup>410</sup> authorised the "liquidation" of those who "*will obstruct the development of KLA affairs*" fails entirely. MUSTAFA testified that this document is false –as already established by another court.<sup>411</sup> [REDACTED] had never seen the document and stressed that no OZ commander or the GS had the authority to order a killing.<sup>412</sup>
158. The SPO further alleges that 153 Brigade issued an order referring to "*special warfare against the civilian population,*" noting that this "*dirty war is being helped*

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<sup>404</sup> P01522, p.106013-106016/P01522\_ET.2; P01532/P01532\_ET; P02498/P02498\_ET; P02499/P02499\_ET.

<sup>405</sup> P02489/P02489\_ET; P02478/P02478\_ET.

<sup>406</sup> See, e.g., P00128/P00128\_ET; P00126/ P00126\_ET; P00130/P00130\_ET; None of these were copied to the GS, *contra* F01534/A01, No.227.

<sup>407</sup> P01014, p.044181/P01014\_ET.2; T.12818.11-14.

<sup>408</sup> T.12611.9-11.

<sup>409</sup> T.5535.18-24; T.5569.20-24.

<sup>410</sup> F00709/A01, para.210; P00118, pp.068266-068267.

<sup>411</sup> T.5667.17-5668.6.

<sup>412</sup> P01755.7\_ET, T.32.17-33.16, 38.2-20.

*also by some Albanians in name only.*"<sup>413</sup> SOPI neither recognised the document nor recalled ever receiving written orders from SHEHU.<sup>414</sup> Regarding orders generally, SOPI stated they came very rarely, usually by phone, and were not important. SOPI was not even sure the OZs brigades kept in contact with OZ command in 1998.<sup>415</sup>

159. Testimonial evidence overwhelmingly undermines the existence of a functional KLA command structure. At their height, witnesses accepted that orders were *generally* followed when circumstances permitted,<sup>416</sup> but when they were not, little could be done about it.<sup>417</sup>
160. Despite a trial record bloated with purported KLA documents, the SPO has failed to show that the KLA ever achieved levels of organisation sufficient to support a case of superior responsibility. Witness testimony makes clear that orders were largely a pretence at command, with which compliance was never guaranteed. Independence reigned at every level. This reality never changed materially throughout the Indictment Period.

#### **F. Independence and Power of the OZ commanders**

161. As set out below,<sup>418</sup> the GS was never in effective command and control of the KLA; where limited power did exist, that was in the OZ commanders.

##### *i. Appointment of the OZ command*

162. An adjudicated fact states that “[e]ach KLA operational zone had a zone commander, appointed by the General Staff, heading its command structure.”<sup>419</sup> The SPO alleges

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<sup>413</sup> F02178, Prosecution Llap BTM, 14 March 2024, para.13; P02141/P02141\_ET.

<sup>414</sup> P01766.1\_ET, T.35.24-37.7; P01766.2\_ET, T.4.5-5.4.

<sup>415</sup> P01766.1\_ET, T.15.18-16.19.

<sup>416</sup> P02027.1\_ET, T.2077.25-2079.5; P00708.5\_ET, T.27.13-16.

<sup>417</sup> T.25703.15-24.

<sup>418</sup> See [Ch.VI.G.iii](#).

<sup>419</sup> F01534/A01, No.223.

the GS had the power to appoint *and* dismiss OZ commanders.<sup>420</sup> Neither proposition is supported by the evidence. In reality, the GS could only try to assist with coordinating the OZs, with OZ commanders' consent.<sup>421</sup> Only once, in Dukagjin, did the GS challenge an appointment decision, under the unique circumstances where the GS was seeking to reinstate HARADINAJ, a popular local commander.<sup>422</sup>

163. The evidence from Llap, Drenicë, and Dukagjin shows that the GS issued *ex post facto* endorsements of decisions made within the OZ, by the OZ commanders' peers. Given the highly localised and clan-based nature of authority within the KLA, the GS *ex post facto* endorsements held no practical significance.<sup>423</sup> These were local matters, to which the GS retroactively gave their blessing to attempt to promote their role within the KLA and increase the appearance of legitimacy; but ultimately, they were without any real effect. For example, the GS appointed BUJA in July 1998<sup>424</sup> but his 'appointment' was merely a formalisation of the work that he had been carrying out already,<sup>425</sup> and he had neither clearly defined tasks nor territory as commander.<sup>426</sup>
164. There is no evidence on how or when Shala OZ Commander RAMA or his deputy KASUMI were appointed.<sup>427</sup> The only uncorroborated evidence on ISUFI's appointment in Karadak comes from KRASNIQI's book, which is not a reliable source, and merely states that ISUFI was promoted to Commander at

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<sup>420</sup> F00709/A01, para.176.

<sup>421</sup> T.18469.4-13.

<sup>422</sup> See paras.167-168.

<sup>423</sup> **Llap:** T.5528.2-15; T.5529.1-21; T.5722.9-24; T.157147-13; T.18943.9-18944.14; T.18979.19-18980.6; T.18981.23-18982.2; T.21135.7-10; P00187/P00187\_ET, p.SPOE00055705; **Drenicë:** P02027.2\_ET, T.2173.22-23; T.25019.12-25021.20; T.25022.12-16; **Dukagjin:** 1D00185/1D00185\_ET; P01364/P01364\_ET; 2D00026/2D00026\_ET; P00800, T.5157.19-21; P01870.1\_ET, T.16.17-23.

<sup>424</sup> P01818\_ET, T.3798.11-13.

<sup>425</sup> T.22188.9-12.

<sup>426</sup> T.22117.10-13.

<sup>427</sup> *Contra* F00709/A01, para.220.

**KRASNIQI**'s proposal in the beginning of 1999.<sup>428</sup> A proposal is not an appointment, and it remains unclear exactly when he was appointed, who appointed him, to whom **KRASNIQI** made the proposal, whether ISUFI had been acting in his capacity already, was chosen by his peers, or what the appointment actually meant in practice, given the OZ was not fully functional. Where evidence of how OZ commanders were appointed is available, it shows that they were not in any real sense 'appointed' by the GS. Accordingly, the accuracy of the adjudicated fact has been sufficiently challenged so as to rebut the presumption.

165. Unusually, Pashtrik had three OZ commanders during the conflict.
- a. Musë JASHARI was appointed around June/July 1998 and remained until November 1998.<sup>429</sup> A document dated 18 August 1998<sup>430</sup> purports to be his GS appointment; it remains unauthenticated. His role appears to have been more formal than substantive.<sup>431</sup>
  - b. Around November 1998, REXHA was appointed by the GS on ZYRAPI's recommendation.<sup>432</sup>
  - c. In March 1999, REXHA was moved to head of training at the GS<sup>433</sup> and SINANI took over as OZ Commander sometime later, remaining until the conflict's end.<sup>434</sup> The decision was made by Sylejman SELIMI against ZYRAPI's advice and without explanation.<sup>435</sup>
166. The GS's involvement in these appointments - which is atypical - appears likely to have been because it had created the vacancies by inviting the incumbents

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<sup>428</sup> P00189/P00189\_ET.1, p.U015-8876.

<sup>429</sup> T.21897.7-9; P00707.2\_ET, T.4.16-24; T.17363.25-17364.16.

<sup>430</sup> P02566/P02566\_ET.

<sup>431</sup> P00707.2\_ET, T.4.16-24.

<sup>432</sup> P01355.2\_ET, T.18.12-15.

<sup>433</sup> [REDACTED].

<sup>434</sup> P01355.2\_ET, T.18.16-19.

<sup>435</sup> P01355.2\_ET, T.18.16-19; P01355.11\_ET, T.1.12-2.8.

to the GS. The SPO asserts that REXHA's replacement, by certain members of the GS, was an example of the GS taking measures "to assert its control" over somebody whom it was alleged supported FARK.<sup>436</sup> This is inconsistent with the evidence that he was appointed initially by the Chief of Staff, ZYRAPI. The successive appointments and lack of procedural consistency in how OZ commanders were appointed simply underscores poor levels of organisation.

167. HARADINAJ was the Dukagjin OZ Commander except for a two-week period in late August/early September 1998, when he ceded authority to Tahir ZEMAJ but was reinstated following GS intervention.<sup>437</sup> This situation was unique. ZYRAPI explained that this was seen as an important moment for the GS to try to demonstrate that while the KLA had started as a grassroots organisation, the military command could not simply be changed without the involvement of the higher authority.<sup>438</sup> VESELI was not present and there is no evidence that he was involved with this Dukagjin matter. Along with ZYRAPI, he was involved in the subsequent agreement that was reached with FARK in Tirana at the end of October 1998.<sup>439</sup>

168. The situation with ZEMAJ points neither to a criminal intent to eliminate opposition by any means, nor effective command and control by the GS. This was an attempt to professionalise appointments. ZEMAJ rejected the GS's authority and left the country.<sup>440</sup> HARADINAJ continued to conduct himself independently of the GS, later playing a key role in the coup to overthrow the commander-in-chief.<sup>441</sup> In reality, the GS had little to no role to play in who the OZ commander was in any of the OZs, except in Pashtrik. There is no evidence

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<sup>436</sup> F00709/A01, para.231.

<sup>437</sup> P01594.7\_ET, T.13.4-17.7.

<sup>438</sup> T.17600.1-8.

<sup>439</sup> See [Ch.VII.A](#), para.516.

<sup>440</sup> P01594.7\_ET, T.22.5-13; P00486/P00486\_ET, p.U002-3202.

<sup>441</sup> See [Ch.VI.H](#).

that VESELI was involved appointing any of the OZ commanders. Further, while REXHA was removed as Pashtrik OZ Commander in March 1999, he was still holding himself out as such in June 1999, demonstrating once again the stark limitations of the GS's authority.

169. It is notable that in Dukagjin, BRAHIMAJ served simultaneously as a GS member and as HARADINAJ's deputy,<sup>442</sup> *i.e.*, as both HARADINAJ's superior and his subordinate – a nonsensical situation which nonetheless appears to have been readily accepted by the GS. BRAHIMAJ's position on the GS plainly gave him no command and control in Dukagjin. Further undermining the claim of GS authority, HARADINAJ subsequently reprimanded and then removed BRAHIMAJ as deputy.<sup>443</sup> The hierarchy in the KLA at that time was so flexible as to be capable of inversion. The GS did not have control. Power remained with HARADINAJ throughout.

*ii. Independence of the OZ commanders*

170. The OZ commanders were a law unto themselves. MUSTAFA testified that GS orders were treated as "recommendations" and not necessarily followed.<sup>444</sup> Almost all of the OZ commanders, according to MUSTAFA, regarded themselves as "*completely independent of the General Staff.*"<sup>445</sup> ZYRAPI admitted that neither he nor SYLA could arrest or remove an OZ commander for disobedience, confirming that coordination of the OZs depended on their voluntary consent because OZ commanders had "large authority."<sup>446</sup> BASHOTA confirmed that OZ commanders were the "absolute authorities" within their OZs.<sup>447</sup>

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<sup>442</sup> 1D00185\_ET, p.4.

<sup>443</sup> P03044/P03044\_ET.

<sup>444</sup> T.5657.1-8.

<sup>445</sup> T.5771.2-14.

<sup>446</sup> T.18469.4-19.

<sup>447</sup> T.23130.12-23131.19.

171. The international community equally observed this power dynamic. BYRNES stated that “[t]he KLA was not a homogenous organization” but one marked by “different points of view” and “internal disagreements.”<sup>448</sup> Several OZ commanders had their own money and weapons supply, which encouraged them to do “what they felt served them best.”<sup>449</sup> HARADINAJ and MUSTAFA were “problematic in terms of following the directions of the KLA General Staff”<sup>450</sup> and Sylejman SELIMI was known to act without the GS’s knowledge.<sup>451</sup> On 18 December 1998 it was observed that the GS’s attempt to create “a clear vertical military chain of command” was “far behind schedule,” facing “resistance from commanders like Ramush HARADINAJ [...] who did not want to give up their independence of action.”<sup>452</sup>
172. Likewise, REXHA sometimes did what the GS wanted and sometimes did not.<sup>453</sup> On 12-13 June 1999, REXHA led units into Prizren, in violation of explicit orders from Agim ÇEKU<sup>454</sup> and held himself as Pashtrik OZ Commander and a General, making unauthorised media appearances.<sup>455</sup> The fact that nothing was done about his insubordination shows there was no command or control. Contemporaneous documents such as a 20 January 1999 GS report, signed by ZYRAPI, also show that OZ commanders routinely failed to report to the GS.<sup>456</sup> This disregard for the alleged chain of command exposes the infirmity of the GS.

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<sup>448</sup> P01066, para.44.

<sup>449</sup> T.13610.2-14.

<sup>450</sup> P01066, para.55; T.28296.19-28297.1; T.27599.14-18.

<sup>451</sup> T.14086.18-23.

<sup>452</sup> P01069, p.075322.

<sup>453</sup> [REDACTED].

<sup>454</sup> [REDACTED].

<sup>455</sup> T.10253.16-10254.9.

<sup>456</sup> P00617/ P00617\_ET, p.SPOE00228801.

173. The 'coup,' was another clear illustration of how lacking in control the GS really was.<sup>457</sup>

iii. *Appointments within the OZs*

174. Appointments within the OZs were internal matters. ZYRAPI recalled attending a meeting in Drenicë around August 1998, where it was "agreed to transform the local staffs into brigades."<sup>458</sup> However, all appointments below the OZ command level, including brigade officers, were the exclusive domain of the OZs.<sup>459</sup> Certain Pashtrik witnesses have suggested there were instances where brigade appointments were 'approved' by members of the GS after the fact,<sup>460</sup> but this is not typical across the OZs. While there are isolated examples of the GS approving local appointments, there is no evidence that **VESELI** was involved in or aware of such decisions at any stage.<sup>461</sup>

175. The SPO alleges that the GS had the power to dismiss brigade commanders based on a single document, presented to a single witness who had never seen it before, could not confirm whether it was ever sent or received, but did confirm that it was never implemented.<sup>462</sup> This is obviously incapable of proving this proposition.

176. There is almost no evidence of GS involvement in OZ appointments. "[T]he Dukagjini operational zone did not follow really the rules"<sup>463</sup> concerning appointments; HARADINAJ would simply appoint based on proposals from the brigade.<sup>464</sup> There is one example of the GS approving an appointment after

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<sup>457</sup> See [Ch.VI.H.](#)

<sup>458</sup> T.17390.2-8.

<sup>459</sup> T.18087.3-8.

<sup>460</sup> [REDACTED].

<sup>461</sup> *Contra* F01534/A01, No.225.

<sup>462</sup> F00709/A01, para.176; P00625/P00625\_ET; T.12852.6-22.

<sup>463</sup> T.25872.20-21.

<sup>464</sup> T.25872.23-25873.1.

it was made by local staff in July 1998.<sup>465</sup> P03238 records **SELIMI** and Adem GRABOVCI as making “proposals for appointments” to the 133 Brigade in a 1999 document, signed by HARADINAJ.<sup>466</sup> Admitted via the bar table after the close of evidence, this document remains unauthenticated and entirely anomalous.

177. In other OZs, such as Llap, it was more formal.<sup>467</sup> MUSTAFA appointed the OZ staff and brigade commanders in Llap.<sup>468</sup> IBISHI was promoted to Chief of Staff in December by oral appointment of MUSTAFA; he never knew whether this was confirmed by the GS.<sup>469</sup>
178. BUJA testified that he appointed his own Nerodime OZ staff in late 1998 with no GS involvement,<sup>470</sup> contrary to the SPO’s claims.<sup>471</sup> The brigades appointed their own staff, in consultation with BUJA’s chief of staff.<sup>472</sup> Contrary to the SPO’s case,<sup>473</sup> BUJA appointed BAJRAMI as Commander of the Kačanik/Kaçanik unit, not the GS.<sup>474</sup> When KURTAJ was examined about the claim that Agim ÇEKU had appointed him Brigade Commander, it transpired he had merely had a telephone conversation with him where ÇEKU responded to the news of the commander’s death by saying the war needed to continue, which KURTAJ interpreted as meaning he should take over. There was no official appointment, and no written order.<sup>475</sup> These examples underscore that when the evidence is scrutinised, it does not support the SPO’s case.

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<sup>465</sup> F01534/A01, No.264.

<sup>466</sup> P03238/P03238\_ET.

<sup>467</sup> T.25872.20-23.

<sup>468</sup> T.21137.4-10.

<sup>469</sup> P01755.4, T.3.7-23.

<sup>470</sup> T.22160.13-22161.8. *Contra* F01534/A01, No.225.

<sup>471</sup> F00709/A01, para.245.

<sup>472</sup> T.22162.2-5.

<sup>473</sup> F00709/A01, para.242.

<sup>474</sup> P01020.3\_ET, T.3.2-5.

<sup>475</sup> T.12591.23-12593.13.

179. Sylejman SELIMI said that once he became OZ Commander, he tried to unite all the independent units into a brigade<sup>476</sup> but that, despite his efforts, he never managed to complete the military structure below the brigade level.<sup>477</sup> The evidence of ZYRAPI and SELIMI indicate that appointments within the OZ were made by the OZ Commander.<sup>478</sup>
180. The only evidence on how and when the brigades in [REDACTED] were created stems from [REDACTED], who provides an uncorroborated account that [REDACTED] were discussed and conveyed during a meeting of the GS in [REDACTED], where [REDACTED] spoke in the name of the GS on orders that had come from [REDACTED].<sup>479</sup> No safe conclusions about these alleged events can be made.
181. The only evidence on appointments within Karadak is a [REDACTED] appointing a unit chief. There is no indication of GS involvement.<sup>480</sup>
182. There is almost no evidence of their involvement in the appointment of personnel in the OZs. The OZs clearly functioned independently and made appointments locally. Given that OZ commanders exercised the only real authority, the GS had little choice but to accept appointments made, if known, to keep their favour.

*iv. General Staff presence in the OZs*

183. The SPO alleges that **VESELI** and other GS members regularly travelled to assist, receive reports from, consult with, and give orders to KLA members and units operating in locations throughout Kosovo.<sup>481</sup> This claim is not borne out

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<sup>476</sup> P02027.1\_ET, T.2076.4-9; P02027.3\_ET, T.2210.11-22.

<sup>477</sup> T.25111.1-25112.2.

<sup>478</sup> T.17497.5-22; P02026\_ET, T.51; T.24945.20-21.

<sup>479</sup> [REDACTED].

<sup>480</sup> P01522/P01522\_ET.2, p.106016.

<sup>481</sup> F00709/A01, para.127.

by the evidence which shows a notable absence of the GS, particularly of **VESELI**, in the OZs. This is significant because communication by radio or phone was difficult, particularly when fighting was ongoing.<sup>482</sup> Without physical presence, there was little hope of exerting effective command or control over the local commanders, who guarded their independence fiercely.<sup>483</sup> As TETAJ stated, speaking about the creation of the Dukagjin OZ in late June 1998:

[A]t the time we absolutely didn't know that there was a Kosovo General Staff. And even if it existed, to this day I'm still convinced that it was only fictional, because we have to have in mind that the Kosovo Liberation Army was born from the people of Kosovo, not from two or three individuals.<sup>484</sup>

184. Members of the GS located in Kosovo appear to have stayed in Drenicë in the early months, and later in Pashtrik. There is no evidence of **VESELI** attending any meetings in either OZ about their organisation and none of his interactions in these OZs suggest that **VESELI** was a prominent or well-known member of the GS, let alone capable of exercising effective command and control.<sup>485</sup>
185. There is no evidence of GS members visiting Karadak. In Llap, IBISHI recalls just two visits by members of GS, which took place in August and October 1998.<sup>486</sup> **VESELI** was not present at either. IBISHI confirmed receiving no instructions or orders during the August visit.<sup>487</sup> In October, ZYRAPI inspected positions; IBISHI asked him for advice, but he had nothing specific to provide.<sup>488</sup> At that point, IBISHI still did not know what role any of them held on the GS, except for ZYRAPI.<sup>489</sup>

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<sup>482</sup> See [Ch.VI.E](#).

<sup>483</sup> T.17564.18-17565.21.

<sup>484</sup> T.19510.9-14.

<sup>485</sup> See [Ch.VII](#).

<sup>486</sup> T.21132.24-21133.1.

<sup>487</sup> T.21139.21-25.

<sup>488</sup> P01755.7\_ET, T.15.5-14.

<sup>489</sup> P01755.7\_ET, T.15.20-16.6.

186. BUJA recalled one meeting of the GS in Nerodime in late March and April 1999 at Petrove/Petrovo, at which **VESELI** was present, though BUJA did not participate in the meeting.<sup>490</sup> While he believed there were other GS meetings in Nerodime around this time, he could provide no direct evidence about them.<sup>491</sup> KURTAJ never spoke to anyone on the GS except for Agim ÇEKU.<sup>492</sup>
187. Aside from [REDACTED], the only evidence of the GS's presence in Shala in 1998 derives from **KRASNIQI**'s book, which describes trips in August<sup>493</sup> and in October to assess the situation after the September offensive.<sup>494</sup> The trips were limited in purpose and do not evince the GS exerting authority in the OZ. The evidence further suggests that members of the GS travelled to Shala to discuss the release of eight Serbian soldiers, that the KLA captured in January 1999.<sup>495</sup> **VESELI** did not participate in any of these visits.
188. In marked contrast, [REDACTED] suggests members of the GS would visit [REDACTED] HQ "often"<sup>496</sup> and [REDACTED] and [REDACTED] visited regularly.<sup>497</sup> He describes meeting [REDACTED] and [REDACTED], sometime at the end of [REDACTED].<sup>498</sup> These hearsay assertions are wholly uncorroborated. Moreover, while [REDACTED] is vague as to the timing of having met **VESELI**, **VESELI**'s absence from Kosovo from late summer to the start of November makes this additionally improbable.<sup>499</sup>

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<sup>490</sup> T.22167.15-22168.1.

<sup>491</sup> P01823\_AT/P01823.

<sup>492</sup> T.12821.1-17.

<sup>493</sup> P00189\_ET.1, pp.U015-8859-U015-8860.

<sup>494</sup> P00189\_ET.1, pp.U015-8863-U015-8864.

<sup>495</sup> P00189\_ET.1, pp.U015-8893-U015-8894.

<sup>496</sup> [REDACTED].

<sup>497</sup> [REDACTED].

<sup>498</sup> [REDACTED].

<sup>499</sup> See [Ch.VII](#), para.530.

189. Despite Dukagjin being more active than other OZs in the summer of 1998, communication was difficult and irregular.<sup>500</sup> ZYRAPI and others visited Dukagjin in mid-July 1998 to help with organisation<sup>501</sup> and as discussed above, in September 1998 to resolve a leadership matter. **VESELI** was not a part of either visit. However, **VESELI** did travel to Dukagjin around 29 May 1998 to assess the battle situation<sup>502</sup> and around 11 or 12 June 1998, when ZYRAPI and **VESELI** visited HARADINAJ to address his concerns at having not been informed of **KRASNIQI**'s announcement as KLA spokesperson.<sup>503</sup> Neither visit shows **VESELI** as having any role in the organisation or control of the OZ.
190. Upon arriving in Kosovo in late May 1998, ZYRAPI observed a total lack of organisation and command structure in KLA units; *"there was not a structured command"* or not a *"comprehensive command and control from one single place or headquarters."*<sup>504</sup> ZYRAPI claimed that he informed **VESELI**, **THAÇI**, **BASHOTA** and others in June 1998 about their lack of organisation.<sup>505</sup> There is, however, no evidence **VESELI** took any actions as a result.
191. The evidence demonstrates minimal to negligible involvement and presence of GS members in the OZ's. On the rare occasions **VESELI** is present, it in no way supports the conclusion that he exerted any degree of authority or control. None of it amounts to proof that the GS or **VESELI** exercised control in the OZs. The OZ commanders acted independently both because they were fiercely independent, and because the GS was absent, with many of its members, including **VESELI**, focused on matters outside of Kosovo.<sup>506</sup>

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<sup>500</sup> P01356\_ET, T.5934.19-T.5935.1.

<sup>501</sup> T.18008.3-7; T.17371.5-11; T.17379.2-3; T.18005.15-22.

<sup>502</sup> P01355.1\_ET, T.25.14-26.23, T.29.4-24; T.17571.24-17572.10.

<sup>503</sup> T.17853.10-178545.13.

<sup>504</sup> P00606/P00606\_ET, p.3.

<sup>505</sup> P00606/P00606\_ET, p.3.

<sup>506</sup> See [Ch.VII.B.](#)

## G. Coordination and Cooperation Between OZs

192. The SPO makes exaggerated claims of consistent cooperation and coordination between OZs.<sup>507</sup> Cooperation was rare, sporadic, and happened independently of the GS, not at its instigation or direction. There is no evidence that intelligence structures in the OZs cooperated with intelligence in other OZs.<sup>508</sup>
193. Some OZs occasionally sought the assistance of others on matters such as weaponry,<sup>509</sup> training,<sup>510</sup> and combat.<sup>511</sup> This was irregular, unorganised and occurred on an *ad hoc* basis, in order to pool scarce resources where practically possible, mainly in response to Serb offensives. It was not organised by the GS. The KLA remained primarily a dispersed guerilla force.
194. For example, Shala soldiers helped when Llap was under Serbian attack in September 1998.<sup>512</sup> Moreover, in April 1999, the Serbian assault on Llap forced all present in the region to take part.<sup>513</sup> Similar accounts were received from Pashtrik.<sup>514</sup> There is no evidence of any input from the GS.
195. Numerous bar table documents, suffering the deficiencies typical of SPO evidence, were admitted in an attempt to show coordination between OZs.<sup>515</sup> In particular, the SPO alleges that the Dukagjin OZ cooperated and coordinated with other OZs by, *inter alia*, transferring troops and supplies.<sup>516</sup> In support of this, the SPO cites a host of documents, only some of which were ultimately

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<sup>507</sup> F00709/A01, para.193. See submissions in F02997/A01; F02248/A01; F02944/A01; F02667/A01; F01268/A06.

<sup>508</sup> T.22752.14-22753.9.

<sup>509</sup> T.5720.4-19.

<sup>510</sup> T.21019.6-21020.14; T.20343.14-21.

<sup>511</sup> T.21021.20-25; T.21239.25-21240.12.

<sup>512</sup> T.21021.11-25.

<sup>513</sup> T.21240.4-12.

<sup>514</sup> T.10387.2-7; T.10386.7-12.

<sup>515</sup> See P00145/P00145\_ET; P02419/P02419\_ET; P00135/P00135\_ET; P00129/P00129\_ET; P00122/P00122\_ET; P02400/P02400\_ET; P00121/P00121\_ET;; P03010/P03010\_ET; P03043/P03043\_ET.

<sup>516</sup> F00709/A01, para.193.

adduced in a complete evidential vacuum. Just one document<sup>517</sup> was shown to a witness, who could not contextualise or authenticate it and underscored issues in the way it was written and translated.<sup>518</sup> The remainder of these documents present serious issues of authenticity and reliability. There is no evidence they were sent, received, or responded to. The same issues apply to the bar table documents purporting to show cooperation between the Drenicë OZ and other OZ's.<sup>519</sup>

## V. INTELLIGENCE IN THE OPERATIONAL ZONES

196. The SPO's case against **VESELI** is founded largely on his role as head of intelligence. However, the SPO's case on KLA intelligence is based on a demonstrably false premise. The SPO has assumed, without any supporting evidence, that **VESELI** was the *de facto* commander of a well-resourced, coordinated and organised internal intelligence service; this could not be further from the truth.
197. **VESELI** had no working relationship whatsoever with any intelligence personnel in the OZs. **VESELI**'s role was independent and outward facing. Intelligence, as it existed in the OZs, was a product of the OZs' own making. KLA in the OZs internally assigned intelligence duties to officers in the OZ – in many OZs there is no evidence of more than one or two intelligence officers at the OZ level. However, these officers were untrained; under-resourced; uncoordinated and spent most of their time in combat.<sup>520</sup> Inconsistency existed amongst the OZs regarding what they believed their functions to be and how they conducted themselves. Uniformly they reported within the OZs only. They had no dealings whatsoever with **VESELI** in his role as head of

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<sup>517</sup> P03099/P03099\_ET.

<sup>518</sup> T.25993.8-25994.10; T.26025.7-26026.11.

<sup>519</sup> See P00145/P00145\_ET; P02419/P02419\_ET; P00129/P00129\_ET; P00122/P00122\_ET; P02400/P02400\_ET.

<sup>520</sup> See [Ch.V.B, F-G](#).

intelligence; none reported to him and none ever received orders from him. There is no evidence **VESELI** ever met or even spoke to most of these officers during his time in the KLA. As outlined below, the evidence demonstrates clearly that **VESELI** never exercised superior responsibility over intelligence officers, nor was he part of a JCE to use intelligence officers as ‘tools’ to target ‘Opponents.’

**A. Inconsistent intelligence structures**

198. The SPO alleges that “[i]ntelligence services also operated in each of the zones and in Albania, and were embedded throughout zone, brigade, and battalion structures.”<sup>521</sup>
199. While in a post-war interview, **VESELI** suggests the existence of a “G2” structure with intelligence officers at every point in the hierarchy,<sup>522</sup> the contemporaneous evidence and witness testimony shows this to be a gross exaggeration, in keeping with other post-war accounts aimed at exaggerating and promoting the KLA’s legacy.<sup>523</sup>
200. What emerges from the evidence that the Panel must rely upon, is a chaotic scene of inconsistent and unorganised attempts to create a KLA intelligence function at grass-roots level. There was no functioning hierarchical intelligence structure within the KLA with clearly defined roles and reporting lines; the evidence demonstrates that the opposite was in fact the case. There is no evidence that **VESELI** was involved in the creation of intelligence structures or the appointment of personnel in any of the OZs.
201. The morass of documents and witness testimony from Pashtrik shows that no organised intelligence structure existed prior to January 1999<sup>524</sup> and efforts to

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<sup>521</sup> F00709/A01, para.159.

<sup>522</sup> P01859/P01859\_ET.2, p.SPOE00053011.

<sup>523</sup> See e.g., T.10188.10-16; T.12599.18-12600.4, T.12634.20-22.

<sup>524</sup> T.22710.11-22712.1; P01854.4\_ET, T.9.19-10.3.

make it functional from this point were largely unsuccessful.<sup>525</sup> QADRAKU's Pashtrik unit never had more than three members,<sup>526</sup> none were experienced in intelligence matters,<sup>527</sup> and QADRAKU never received any regulations to help him understand how his sector should function.<sup>528</sup> They had limited resources<sup>529</sup> and just one radio.<sup>530</sup>

202. Lower down in the OZs, groups appointed intelligence personnel at various times reflecting the highly localised nature of such appointments. The same individual is often referred to by two or more different titles making it impossible to safely conclude that they were actually intelligence, as there is no basis for preferring one account over another. Appointments did not necessarily indicate anything more than titles intended to complete the military structure.<sup>531</sup> The evidence displays considerable disorganisation in Pashtrik:
- a. Naser KRASNIQI's appointment as intelligence in the 121 Brigade in February or March 1999<sup>532</sup> was "fictional." He had no training and never had a functional structure beneath him.<sup>533</sup> There is no evidence he had a predecessor.
  - b. The 122 Brigade intelligence had no intelligence officer until around January 1999.<sup>534</sup>

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<sup>525</sup> T.22710.11-22711.24; P01854.4\_ET, T.9.19-10.3; T.18255.2-18256.7; T.19098.2-7; T.10378.13-10379.2; T.22597.23-22598.4.

<sup>526</sup> T.22712.17-22713.12; P02854/P02854\_ET, p.U000-3377; P00012/P00012\_ET, p.058022.

<sup>527</sup> P01834.1\_ET, T.13.4-13; P01834.4\_ET, T.15.1-2; T.22709.3-6; T.22307.16-19; T.22314.2-4; T.22350.15-24.

<sup>528</sup> T.22712.2-7; P01834.4\_ET, T.4.25-5.11; T.22313.24-22314.1.

<sup>529</sup> T.22313.20-23; T.22735.20-25.

<sup>530</sup> P01834.2\_ET, T.24.12.

<sup>531</sup> T.24756.5-10.

<sup>532</sup> P02006.3\_ET, T.8.21-9.7.

<sup>533</sup> T.24756.5-24757.21.

<sup>534</sup> T.17015.15-23.

- c. In what later became the 123 Brigade, a document suggests that KADOLLI was appointed to intelligence on 15 June 1998.<sup>535</sup> However, KADOLLI says that his role at this time was morale and politics.<sup>536</sup>
- d. A group in Vrrin appointed Xhevat BERISHA in June 1998; the documents make it unclear whether his role was intelligence<sup>537</sup> or information.<sup>538</sup>
- e. Evidence on the 124 Brigade is contradictory. [REDACTED].<sup>539</sup> [REDACTED].<sup>540</sup> ELSHANI's KLA certificate of membership mentions neither information nor morale.<sup>541</sup> No other evidence sheds light on whether or when the 124 Brigade had an intelligence structure.
203. The SPO alleges that MEHMETAJ was the head of Dukagjin intelligence from 23 June 1998<sup>542</sup> and the appointment was later confirmed by HARADINAJ.<sup>543</sup> MEHMETAJ was an apparently unpopular figure and there is notable confusion regarding the timing of his appointment,<sup>544</sup> his role, responsibilities, and presence in Dukagjin throughout the conflict.<sup>545</sup> TETAJ testified that:

Faton Mehmetaj was a joker all the time, because nobody exactly knew what position he had. [...] I'm sure that Ramush is not aware what he has done during the war, and I am sure that the people that are in this Court do not know what he has done during the war.<sup>546</sup>

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<sup>535</sup> P01333/P01333\_ET, p.083228.

<sup>536</sup> P00012/P00012\_ET, p.057924.

<sup>537</sup> P01605.3\_ET, T.9.19-10.1.

<sup>538</sup> 2D00014/2D00014\_ET, pp. U001-8395-U001-8396.

<sup>539</sup> [REDACTED].

<sup>540</sup> [REDACTED].

<sup>541</sup> P02776, p.SITF00438346.

<sup>542</sup> F00709/A01, para.192.

<sup>543</sup> P03102/P03102\_ET.

<sup>544</sup> T.25905.1-25906.1; T.26027.22-26028.18.

<sup>545</sup> P00470.2\_ET, T.18.5-21.

<sup>546</sup> T.19576.17-25.

204. Other than Fitnete RAMOSAJ, about whom almost nothing is known, there is no evidence that MEHMETAJ had staff.<sup>547</sup> The SPO presents several documents purporting to emanate from Dukagjin's so-called intelligence sector – but no name or signature is attached.<sup>548</sup> The SPO has failed to prove the activities of intelligence structure in Dukagjin, any link to the charged crimes, or any link to **VESELI** or the GS.
205. The sole source of evidence for intelligence in the [REDACTED] is the unreliable W04747. However, not even W04747 suggests that [REDACTED].<sup>549</sup> W04747 stated that [REDACTED]<sup>550</sup> but that [REDACTED].<sup>551</sup> W04747 claims that [REDACTED] was the intelligence officer,<sup>552</sup> [REDACTED].<sup>553</sup> [REDACTED].<sup>554</sup>
206. The only evidence on this issue for Nerodime comes from BUJA, who stated that he began receiving reports on Serbian positions from his information officer REQICA as late as February 1999.<sup>555</sup> The OZ's two brigades had no intelligence personnel before December 1998;<sup>556</sup> no further evidence about them was adduced.
207. In Llap, MUSTAFA appointed GASHI around July 1998,<sup>557</sup> who played a central role in early KLA groupings in Llap since 1997.<sup>558</sup> He had an assistant

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<sup>547</sup> T.25776.18-25777.1.

<sup>548</sup> P00903/P00903\_ET; P00904/P00904\_ET.4; P00904/P00904\_ET.6-9; P00905/P00905\_ET; P02102/P02102\_ET.

<sup>549</sup> [REDACTED].

<sup>550</sup> [REDACTED].

<sup>551</sup> [REDACTED].

<sup>552</sup> [REDACTED]

<sup>553</sup> [REDACTED].

<sup>554</sup> [REDACTED].

<sup>555</sup> T.22164.10-23.

<sup>556</sup> T.22161.17-22162.1.

<sup>557</sup> P01755.7\_ET, T.27.18-20; P00187/P00187\_ET, p.SPOE00055810; T.5487.22-5488.2.

<sup>558</sup> T.5714.4-10.

named Hyzri TALLA who died in December 1998 and was not replaced.<sup>559</sup> Both lacked expertise and capacities to actually undertake intelligence tasks.<sup>560</sup> IBISHI confirmed that there were no intelligence sub-divisions under GASHI; it was only one person.<sup>561</sup> With regard to Llap's brigades, the evidence suggests that the 151 Brigade (subsequently 152) gained an intelligence officer in late 1998.<sup>562</sup> There is no evidence for the 153 Brigade. SOPI, Deputy Brigade Commander, did not know if there was any intelligence in his brigade.<sup>563</sup> It is typical of the KLA's disorganisation that a member of the brigade's staff could find himself in a position where he simply did not know whether there was an officer in this role. There is no evidence **VESELI** ever knew, met or spoke to GASHI during his time in the KLA.

208. Sylejman SELIMI did not appoint his intelligence officer, Rasim KIQINA until around November 1998.<sup>564</sup> There is no evidence that **VESELI** was involved. The SPO alleges that there was a unit in Drenicë headed by GECI that answered directly to **VESELI** and the GS<sup>565</sup> and that GECI was later responsible for intelligence in Albania. As set out elsewhere,<sup>566</sup> the evidence regarding GECI does not permit any safe conclusions to be drawn as to his role; whether he was ever part of an intelligence; and certainly not whether he reported to **VESELI** or the GS.
209. The SPO alleges that the GS made intelligence appointments within the OZs.<sup>567</sup> There is no evidence of **VESELI**'s involvement in these appointments, or any intelligence personnel's appointments. The SPO's claims are misleadingly

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<sup>559</sup> T.21186.8-17.

<sup>560</sup> P01755.7\_ET, T.29.2-7.

<sup>561</sup> T.21193.5-15.

<sup>562</sup> T.21654.8-19.

<sup>563</sup> P01767.2\_ET, T.2163.21-23.

<sup>564</sup> T.25106.20-25.

<sup>565</sup> F00709/A01, para.183.

<sup>566</sup> See [Ch.V.I.](#)

<sup>567</sup> F00709/A01, paras.107(a), 205; 236; 245, 710.

presented. For instance, the SPO alleges that in August 1998, a GS delegation formally appointed GASHI as intelligence.<sup>568</sup> While GS members may have ‘confirmed’ appointments,<sup>569</sup> this did not include GASHI’s appointment as intelligence, which was made solely by MUSTAFA.<sup>570</sup> QADRAKU was appointed by Ekrem REXHA.<sup>571</sup> The SPO tendered an unsigned document to suggest that the GS appointed QADRAKU,<sup>572</sup> however, ZYRAPI testified that he refused to sign it because, post-restructuring, OZ and brigade appointments were matters for the OZ Commander.<sup>573</sup>

210. The SPO also alleges the existence of an intelligence group south of Prizren from June-September 1998.<sup>574</sup> Witness testimony refuted the notion that any higher authority was involved with its creation<sup>575</sup> contradicting the supposition that the mention of the “Central Headquarters”<sup>576</sup> in Vrrin documents was a reference to the GS. No safe conclusions can be drawn from this body of untested hearsay evidence, which is lacking on almost every conceivable *indicia* of authenticity and reliability. The Defence reiterates that it would be a grave injustice for the Panel to afford such documents any weight.<sup>577</sup>

## B. Intelligence Duties

211. Central to the SPO’s case is the allegation that the intelligence sector was responsible for gathering information about, and participating in, the

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<sup>568</sup> F00709/A01, para.205.

<sup>569</sup> T.21645.13-17.

<sup>570</sup> P00187/P00187\_ET, p.SPOE00055810; T.5487.22-5488.2.

<sup>571</sup> T.22704.8-15.

<sup>572</sup> P00633/P00633\_ET.

<sup>573</sup> T.18332.14-18333.8; T.18087.3-7. *Contra* F01534/A01, No.225.

<sup>574</sup> F00709/A01, paras.161, 407.

<sup>575</sup> T.9017.6-9018.23.

<sup>576</sup> P00651/P00651\_ET, p.U0006585.

<sup>577</sup> T.9072.8-9; T.9073.8; T.9074.2-14; T.9083.2-4; T.19778.16-19783.4. *See* T.19775.8-19776.4. *See further* [Ch.II.D.iii](#); [REDACTED]; [REDACTED].

mistreatment and murder of collaborators.<sup>578</sup> No reliable evidence supports the claim.

212. Gathering information about collaborators who may pose a security threat is a legitimate endeavour. Encapsulated within the role of any military intelligence is the identification of internal and external threats. The issue for the Panel is not whether information was being gathered on potential threats, but what was being done on the ground, by whom, and for what purpose. Legitimate threats extend not just to armed forces but also to civilians. There is nothing remotely unusual or inherently criminal about gathering evidence about civilians who may pose a security risk.
213. Notwithstanding the lawfulness of gathering this type of information, there is a demonstrable inconsistency within the OZs as to whether they understood this to be the responsibility of intelligence personnel. There is unanimity that reconnaissance was within the role and responsibility of intelligence personnel,<sup>579</sup> which is reflected by **VESELI**'s statement that "[t]he purpose of G2 was to obtain information about the movements of the enemy."<sup>580</sup> The same cannot be said for the identification of collaborators.
214. Drenicë and Nerodime's OZ Commanders testified that the identification of collaborators was *not* a part of their intelligence personnel's duties; their personnel were concerned solely with reconnaissance.<sup>581</sup> The lack of unanimity regarding the duties of intelligence is not surprising, considering that there was no GS leadership on intelligence matters, no top-down orders, no reporting on

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<sup>578</sup> F00709/A01, para.161.

<sup>579</sup> T.22592.15-22593.3; P01834.2\_ET, T.3.9-18; T.22164.20-23; P00707.2\_ET, T.1.16-22; T.10416.10-12; T.25108.14-22; P01355.10\_ET, T.1.23-2.9.

<sup>580</sup> P01859/P01859\_ET.2, p.SPOE00053011.

<sup>581</sup> T.22164.10-22165.2; T.25108.12-22; T.19576.7-25.

command structure and no consistent regulatory framework implemented at any point in the KLA's existence.

215. Regardless, due to the prevailing circumstances on the ground, any intelligence duties necessarily took a back seat to combat operations, which occupied most of the officers' time. As ÇOÇAJ explained:

Our primary duty was the front and the war. We were ... we were just like any other simple soldiers. We were a simple soldier. However, we had extra - if I can call them supplementary - duties dealing with the intelligence.<sup>582</sup>

216. Other witnesses corroborate this.<sup>583</sup>
217. While a number of witnesses understood that intelligence officers were *supposed* to gather information on collaborators, the lack of time, resources, and infrastructure prevented this work from being done.<sup>584</sup> Where such information was being gathered, it was obtained from other KLA members or civilians who were reporting spontaneously<sup>585</sup> – as opposed to via a network of informants or operatives. There were no such networks; there was neither the time nor resources to develop them.<sup>586</sup> In reality, information gathering was haphazard and sporadic,<sup>587</sup> and it was not exclusive to the intelligence sector.<sup>588</sup>
218. No KLA witness gave evidence that it was within the duties and responsibilities of the intelligence sector to unlawfully intimidate, arrest, detain or commit violence against alleged collaborators.<sup>589</sup> The only witness that the

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<sup>582</sup> P01834.2\_ET, T.15.9-14; T.22315.19-22316.4.

<sup>583</sup> T.22597.23-22598.4; T.25108.5-22; T.5942.12-17; T.22164.1-9; P02006.3\_ET, T.11.6-24; T.24760.1-8; T.11319.17-23; T.11321.23-11322.3.

<sup>584</sup> P01854.5\_ET, T.12.24-14.6; T.22731.1-22732.7; P01834.4\_ET, T.14.18-15.2; T.22313.20-22314.9; P01355.10\_ET, T.1.23-2.9.

<sup>585</sup> P01854.5\_ET, T.12.24-13.3; T.22594.5-22595.9; T.22598.5-10; T.22732.21-23; T.19956.8-20; T.19965.18-19966.5; T.21703.10-17; T.21726.16-21727.5; T.10379.3-10; T.10422.9-17.

<sup>586</sup> See [Ch.V.G.](#)

<sup>587</sup> T.22595.1-9.

<sup>588</sup> T.10915.7-11; T.10946.12-17; T.21170.12-21; T.10379.3-10; T.5569.13-19.

<sup>589</sup> See, e.g., T.19056.19-22.

SPO references to support this claim is [REDACTED], whose evidence is incapable of belief and cannot lawfully be relied upon in isolation for such a conclusion.<sup>590</sup>

219. The documentary evidence relied upon to argue the intelligence sector was responsible for participating in the mistreatment and murder of collaborators is profoundly lacking. P00890, relied on for the allegation that KLA rules and regulations directly sanction the killing of collaborators,<sup>591</sup> lacks *prima facie* authenticity, and is unsupported by any reliable evidence.<sup>592</sup> Similarly, P01350 appears to set out the duties for intelligence for the “Prizren Headquarters” but no evidence was adduced to demonstrate that they were ever distributed or enforced, and the two KLA witnesses who were shown the document did not recognise it.<sup>593</sup> Typical of this class of evidence, P01350’s date, authorship and chain of custody remain unknown. Again, hearsay evidence cannot corroborate hearsay evidence.
220. The provenance of purported KLA documents is not a matter of purely theoretical importance. P01394 may appear to originate from the GS because it sets out the duties of two directorates – G1 and G2.<sup>594</sup> However, ZYRAPI clarified that it originated from a group of former JNA officers who entered in November 1998, not the GS.<sup>595</sup> Assumptions about provenance based on content are not safe and must be avoided.
221. It is stressed that it is not safe to conclude that a document that the SPO presents as an intelligence document was written by an intelligence officer, or that the

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<sup>590</sup> [REDACTED]; See [REDACTED].

<sup>591</sup> F00709/A01, para.73.

<sup>592</sup> See [Ch.VI.I](#).

<sup>593</sup> T.10299.3-13; T.17007.11-22.

<sup>594</sup> P01394/P01394\_ET.

<sup>595</sup> T.17407.1-22.

information therein came from an intelligence officer.<sup>596</sup> These documents could equally have been created by civilians, regular soldiers, or village defence units. Authorship is unknown for almost all of the purported KLA documents that the SPO relies upon to show the intelligence sector's existence and functions.<sup>597</sup> If there is another conclusion which is also reasonably available from the evidence, as is clearly the case here, the standard of proof is not satisfied.

222. Many of the documents are collections of handwritten notes<sup>598</sup> which exhibit serious reliability issues.<sup>599</sup> Asked about the reference to [REDACTED] in one such document, P00651, [REDACTED] confirmed that: (i) he had never seen a KLA document assigning such duties;<sup>600</sup> (ii) [REDACTED] was never responsible for assassinating or kidnapping people, as suggested in P00074;<sup>601</sup> and (iii) [REDACTED]'s signature in P00074 – which he denied was his – was indeed “entirely different”<sup>602</sup> to the one on his [REDACTED], reinforcing the conclusion that the signature was a forgery.<sup>603</sup> [REDACTED] correctly noted that P00074 – which is highly unusual in several respects – simply cannot be properly evaluated in the absence of the true original:

[REDACTED].<sup>604</sup>

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<sup>596</sup> F00709/A01, para.161 citing P00711/P00711\_ET; P03030/P03030\_ET; P02623/P02623\_ET, P02314/P02314\_ET; P00104/P00104\_ET.

<sup>597</sup> See P00074/P00074\_ET; P01350/P01350\_ET; P00651/P00651\_ET; P00711/P00711\_ET; P00904/P00904\_ET.4, P03207/P03207\_ET; P03208/P03208\_ET; P00167/P00167\_ET.

<sup>598</sup> See P00074/P00074\_ET.1-4; P00498/P00498\_ET; P00651/P00651\_ET; P00711/P00711\_ET; P02314/P02314\_ET; P02640/P02640\_ET; P00104/P00104\_ET.

<sup>599</sup> See [Ch.II.D.](#)

<sup>600</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>601</sup> [REDACTED].

<sup>602</sup> [REDACTED].

<sup>603</sup> [REDACTED].

<sup>604</sup> [REDACTED].

223. The Panel cannot exclude the possibility that these documents were manipulated by Serbian authorities.<sup>605</sup> In addition to intentional tampering, clear issues of document integrity equally cannot be swept aside. The exhibit contains three copies of the same duties list,<sup>606</sup> a fourth copy of the list in Serbian,<sup>607</sup> and a fifth page about that list which appears to be the work product of Serbian authorities.<sup>608</sup> Whatever the item is, it is not a faithful reproduction of a KLA diary in its original condition. Pages have been added. The presence of duplicate pages and Serbian work product make that clear. Any attempt to reconstruct the original from the pages that have been provided would be guesswork. Accordingly, the item and others in its class are not reliable.<sup>609</sup>
224. The SPO took no steps to verify this document in court. Although ZYRAPI acknowledged going to Vrrin to assist the KLA there to organise,<sup>610</sup> the SPO never confronted him with any of these documents. The SPO dropped [REDACTED] from its witness list, despite him being [REDACTED] during the war, who was expected to testify about “*the authenticity and/or content of certain KLA documents*” including, amongst other things, “[REDACTED].”<sup>611</sup> Finally, it chose not to call individuals who, during their interviews, gave valid reasons to believe that items recovered by the Serbian authorities during the war – purporting to contain information attributed to them – had been forged.<sup>612</sup>
225. While the SPO’s case is based on the premise that the KLA’s rudimentary intelligence service was inherently criminal, it failed at trial to adduce any

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<sup>605</sup> F01871, Veseli Request for Admission of Items Used During the Cross Examination of W04769, 19 October 2023; F01911, Joint Defence Response to Prosecution Submissions on Admissibility of Items Following W04769’s Testimony, 8 November 2023; F03330.

<sup>606</sup> P00074, pp.U000-4853, U000-4856, U000-4857.

<sup>607</sup> P00074, p.U000-4858.

<sup>608</sup> P00074, p.U000-4844.

<sup>609</sup> See [Ch.II.D.iii.](#)

<sup>610</sup> P01355.2\_ET, T.12.17-13.9.

<sup>611</sup> F01594/A02, pp.71-72; F02693, Prosecution witness notice, 1 November 2024.

<sup>612</sup> [REDACTED]; [REDACTED].

reliable evidence to support the claim. There is no evidence from which any inferences consistent with guilt can reasonably or properly be drawn as against **VESELI**, who it has been proven had nothing to do with these structures during the conflict.

### C. Intelligence Reporting

226. The SPO makes two interrelated claims regarding intelligence reporting. Firstly, that KLA intelligence reported both within the OZs and to the GS, in particular, the Intelligence Directorate.<sup>613</sup> Secondly, that reporting bypassed OZ commanders and was done directly to **VESELI** at the Intelligence Directorate, *i.e.*, there was parallel reporting.<sup>614</sup> These claims are not borne out by the evidence.

227. While the evidence regarding intelligence structures' existence across the OZs is unbalanced in volume, it consistently shows that there was no direct reporting from the OZ intelligence to the GS or **VESELI**. Any limited intelligence reporting was from brigades to the OZ command and did not bypass the zone:

- a. In Llap, GASHI directly reported to MUSTAFA.<sup>615</sup>
- b. KIQINA reported directly to Sylejman SELIMI.<sup>616</sup> Reports were oral made either via radios, which were often dysfunctional, or in person through meetings which were rare and difficult to hold.<sup>617</sup>
- c. From early 1999, REQICA conveyed intelligence reports to BUJA on Serbian troop movements, usually orally.<sup>618</sup> Intelligence reports were

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<sup>613</sup> F00709/A01, para.160.

<sup>614</sup> F00709/A01, para.160.

<sup>615</sup> F01534/A01, No.481; T.5488.6-12; T.5893.25-5894.19; P01755.7\_ET, T.28.22-24.

<sup>616</sup> T.25107.5-7.

<sup>617</sup> T.25113.15-25114.9.

<sup>618</sup> T.22160.21-25; T.22164.10-22165.23.

generally not passed on to the GS.<sup>619</sup> Towards the end of the war, REQICA would report urgent information directly to the OZ chief of staff, then call BUJA, who would report the information to ZYRAPI.<sup>620</sup> REQICA did not circumvent the chain of command.<sup>621</sup> There is no evidence that REQICA ever reported to **VESELI**.

- d. There is no evidence that any intelligence report was ever sent from Dukagjin either directly, or through the OZ command, to the GS.<sup>622</sup>
- e. In [REDACTED], the only evidence on intelligence reporting originates from the unreliable [REDACTED], whose evidence on this issue was internally inconsistent and contradicted by other testimony. [REDACTED].<sup>623</sup> [REDACTED].<sup>624</sup> This was not corroborated by [REDACTED]. [REDACTED],<sup>625</sup> [REDACTED].<sup>626</sup>
- f. The only witness asked about intelligence reporting in Albania in spring 1999, was [REDACTED], who confirmed that **VESELI** had nothing to do with military intelligence at the KLA during this time,<sup>627</sup> as SHIK was formally and functionally entirely separate from KLA intelligence.<sup>628</sup>
- g. In Pashtrik, the SPO claims that Vrrin intelligence reported directly to the GS.<sup>629</sup> There is no evidential link between **VESELI** and this group

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<sup>619</sup> T.22165.16-18.

<sup>620</sup> T.22238.5-15.

<sup>621</sup> T.22264.6-22268.5.

<sup>622</sup> P03195/P03195\_ET.4, pp.U009-2031-U009-2033; P01592/P01592\_ET; P02102/P02102\_ET; P00903/P00903\_ET; P03208/P03208\_ET; P00904/P00904\_ET.4, p.U009-1668; P00904/P00904\_ET.6, p.U009-1670; P00904/P00904\_ET.7, pp.U009-1671-U009-1672; P00904/P00904\_ET.8, p.U009-1673; P00904/P00904\_ET.9, p.U009-1674; P03209/P03209\_ET.

<sup>623</sup> [REDACTED].

<sup>624</sup> [REDACTED].

<sup>625</sup> [REDACTED].

<sup>626</sup> [REDACTED].

<sup>627</sup> [REDACTED]; [REDACTED].

<sup>628</sup> [REDACTED].

<sup>629</sup> F00709/A01, para.407.

whatsoever. This allegation of direct reporting derives from an untested account in Zafir BERISHA's book, which states that KRYEZIU and others *"were appointed to keep in touch with the KLA General Headquarters, while Xhevat Berisha and [Zafir Berisha] were also involved in the framework of such contacts."*<sup>630</sup> While other witnesses heard that KRYEZIU was communicating with the GS,<sup>631</sup> they could not confirm it was related to intelligence.<sup>632</sup> ZYRAPI confirmed that KRYEZIU, BERISHA, and SHOSHAI came from the Prizren local staff in summer 1998 to seek his advice and assistance in reorganising the local staff,<sup>633</sup> which he provided.<sup>634</sup> This is no evidence – let alone proof to the criminal standard – of direct intelligence reporting to the GS.

**228.** The SPO also relies on P00498, which is an undated, handwritten letter from [REDACTED] to allege intelligence reports bypassed OZ and brigade commanders and were being made directly to the GS.<sup>635</sup> [REDACTED].<sup>636</sup> [REDACTED]<sup>637</sup> [REDACTED].<sup>638</sup> There is no evidence that this request for information about [REDACTED] came from any higher authority than the author of the letter himself, or that it was intended for anyone at the GS. This evidence cannot be construed as evidencing any direct intelligence reporting to the GS or VESELI.

**229.** The SPO claimed that P00500 and P00650 evidenced a parallel reporting system to the GS. Neither are even intelligence reports.<sup>639</sup> P00500 purports to be from

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<sup>630</sup> P00649/P00649\_ET.2, p.SITF00245556.

<sup>631</sup> T.19785.7-13; P00495, para.16.

<sup>632</sup> T.8996.24-8997.14; T.8807.9-8810.3; P01605.7\_ET, T.16.19-17.9; T.9063.11-9064.23.

<sup>633</sup> P01355.2\_ET, T.13.10-25; T.17901.1-22.

<sup>634</sup> P01355.2\_ET, T.12.23-24.

<sup>635</sup> F00709/A01, para.160.

<sup>636</sup> P00498/P00498\_ET.

<sup>637</sup> [REDACTED].

<sup>638</sup> [REDACTED].

<sup>639</sup> [REDACTED]; T.17101.1-11; T.19094.21-23; T.19095.7-11; T.19786.15-17.

both QADRAKU and HALITJAHA and is addressed to (a) “the Archive;” (b) “the General Staff;” and (c) “SHIK at the General Staff.” Extensive evidence was heard about SHIK’s non-existence at the time of issuance on 14 March 1999,<sup>640</sup> and QADRAKU’s confusion about the distinction between civilian and military intelligence after the war.<sup>641</sup> There is no evidence that P00500 was ever sent to, or received by, the GS, G2 or VESELI. QADRAKU testified that he was unsure whether he in fact sent the letter to the listed addressees but believed he would have given it to the OZ Commander or HALITJAHA.<sup>642</sup> ZYRAPI never received the letter.<sup>643</sup> There is no evidence that VESELI received the letter.

230. There is equally no evidence that P00650 was received by its listed recipients or anyone else.<sup>644</sup> QADRAKU believed it was “*passed on through the standard procedure*” but ultimately had no knowledge whether it was received by the General Inspector.<sup>645</sup> He never obtained a reply to either letter.<sup>646</sup> QADRAKU explained that he was concerned by the career officers’ lack of initiative, and was seeking GS assistance to help to improve organisation and work quality.<sup>647</sup> QADRAKU confirmed that he was not attempting to circumvent the chain of command and “*always thought to go through the zone and its commander.*”<sup>648</sup> He further confirmed that there was no parallel reporting from himself to the GS and that he “*always reported to the commander, and [...] never reported directly to the General Staff.*”<sup>649</sup> ÇOÇAJ corroborates this, having testified that it was not possible for QADRAKU to report directly to the GS without first receiving

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<sup>640</sup> T.18253.24-18254.5; P01834.3\_ET, T.29.24-30.4; T.22320.5-14; T.19093.7-14; T.19159.19-24; [REDACTED]; P01100, para.29; 1D00070/1D00070\_ET.

<sup>641</sup> T.22706.22-22707.7. See also [Ch.VIII](#).

<sup>642</sup> T.22723.15-22724.8.

<sup>643</sup> T.18253.12-17.

<sup>644</sup> T.22729.3-13.

<sup>645</sup> T.22728.24; T.22726.11-22.

<sup>646</sup> T.22726.23-25; T.22729.23-22730.2.

<sup>647</sup> T.22605.15-21.

<sup>648</sup> T.22726.16-22.

<sup>649</sup> T.22715.1-13; T.22810.13-22811.14.

permission, as this was not standard practice.<sup>650</sup> ÇOÇAJ said he had no reason to believe QADRAKU was reporting directly to the GS.<sup>651</sup>

231. A final document, P01860, is purportedly a statement from TARA about QADRAKU dated 16 March 1999, sent to Intelligence to the GS, the General Inspector of the KLA, and Finances of the Pashtrik OZ.<sup>652</sup> Both [REDACTED] and QADRAKU acknowledged the dispute between them referenced therein, but neither authenticated the document. [REDACTED].<sup>653</sup> The authenticity and reliability of the document was therefore fatally undermined by this evidence and otherwise remains unauthenticated hearsay.
232. Accordingly, the above documents are incapable of showing the existence of a reporting system that bypassed the Pashtrik OZ Command to go straight to either the GS, or **VESELI**.
233. Finally, evidence on intelligence reporting *within* the OZs is both limited and unreliable. There is no evidence of intelligence reporting within the Drenicë and Nerodime OZs, or Albania from April 1999. Documents from Llap<sup>654</sup> and Dukagjin<sup>655</sup> OZs were admitted, for the most part, through the bar table without chain of custody, evidence of authorship, distribution, receipt, or any testimonial evidence that could assist the trier of fact in evaluating them. Evidence pertaining to the Pashtrik OZ, at its highest, demonstrates that brigade level staff in the OZ reported to QADRAKU. There is no documented reporting to or from intelligence officers in the Pashtrik OZ except for a handful

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<sup>650</sup> T.22352.14-21.

<sup>651</sup> T.22352.22-22353.7.

<sup>652</sup> P01860/P01860\_ET.

<sup>653</sup> [REDACTED].

<sup>654</sup> See, e.g., P02190.1, P02190.2, P02190.3/P02190\_ET, P02203/P02203\_ET.

<sup>655</sup> See, e.g., P02102/P02102\_ET; P00903/P00903\_ET; P00904/P00904\_ET.4, p.U009-1668; P00904/P00904\_ET.7, pp.U009-1671-U009-1672; P00904/P00904\_ET.8, p.U009-1673; P00904/P00904\_ET.9, p.U009-1674; P03209/P03209\_ET.

of unauthenticated reports from 1999, without evidence of distribution or receipt.<sup>656</sup>

#### D. Intelligence Lists

234. The SPO alleges that “KLA members, including military police and intelligence services, compiled information about, and lists of, collaborators and other Opponents.”<sup>657</sup> The SPO cites numerous sources in support of this claim, yet it has been unable to attribute a single list to a member of any intelligence structure anywhere in Kosovo. Many are equally unattributable to the KLA. This body of evidence is gravely unreliable.<sup>658</sup>
235. The SPO relies on lists containing the names of alleged ‘collaborators’ to claim they were designated for targeting,<sup>659</sup> even when this is often obviously not the case. Notably, some individuals named were Yugoslav State Security officers; others were deceased prior to the outbreak of the conflict; and others were known associates of the very person alleged to have compiled a list.<sup>660</sup> The SPO failed to call evidence to prove that the names on the lists were considered by the purported author to be collaborators or an ‘Opponent.’<sup>661</sup>
236. The SPO tendered unauthenticated documents from the Dukagjin OZ that are signed “Intelligence Sector.”<sup>662</sup> No evidence links these documents to Dukagjin’s alleged information officer Faton MEHMETAJ. TETAJ could not

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<sup>656</sup> P01166/P01166\_ET; P02786/P02786\_ET; P02790/P02790\_ET.2, pp.U003-1755-U003-1756; P02790/P02790\_ET.3, pp.U003-1757-U003-1758; P02790/P02790\_ET.7, p.U003-1804.

<sup>657</sup> F00709/A01, para.705.

<sup>658</sup> See [Ch.II.D.](#)

<sup>659</sup> F00709/A01, para.311.

<sup>660</sup> T.9908.9-10; T.13213.1-6; T.13214.4-13217.21; T.19667.8-10; P01605.7\_ET, T.20.8-9; T.9912.16-22.

<sup>661</sup> See, e.g., P03030/P03030\_ET; P02187/P02187\_ET; P00104/P00104\_AT; P02117/P02117\_ET; P02867/P02867\_ET; P01151/P01151\_ET.1, P01151\_ET.2.

<sup>662</sup> P03195/P03195\_ET.4, pp.U009-2031-U009-2033; P01592/P01592\_ET; P02102/P02102\_ET; P00903/P00903\_ET; P03208/P03208\_ET; P03209/P03209\_ET; P00904/P00904\_ET.4, p.U009-1668; P00904/P00904\_ET.6, p.U009-1670; P00904/P00904\_ET.7, pp.U009-1671-U009-1672; P00904/P00904\_ET.8, p.U009-1673; P00904/P00904\_ET.9, p.U009-1674.

confirm that MEHMETAJ was the one compiling lists.<sup>663</sup> When one such document was put to MALOKU,<sup>664</sup> he testified that he had never seen it before and did not know who wrote it – though he noted that it lacked an official seal<sup>665</sup> indicating its inauthenticity. The absence of a seal is a defect common to all documents in this series.

237. Many documents that the SPO relies upon to try to establish a practice of list-keeping by the KLA and, in particular by the intelligence service, appear to be handwritten diaries relating to the Pashtrik OZ.<sup>666</sup> The SPO has not been able to prove authorship of these documents, nor can authorship be discerned from their contents, which are often ambiguous, disordered, and were apparently written by multiple persons.<sup>667</sup> The photocopies are poor quality, their origin is unclear and the originals are unavailable. There is no supporting testimonial evidence. No fair or safe inferences can be drawn from these materials. Untested hearsay cannot lawfully corroborate untested hearsay.
238. It is significant that the SPO produced almost no evidence of lists in most OZs, despite appearing to claim list-keeping was a universal KLA practice. Such evidence is almost wholly confined to Dukagjin, Pashtrik and Llap. List-keeping evidence relating to Drenicë comprises only two unauthenticated handwritten diaries.<sup>668</sup> The only evidence from Karadak is hearsay evidence from a KFOR witness who never actually saw a list.<sup>669</sup> Evidence from Nerodime comprises one list that is not a KLA list but rather a Serbian municipal council

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<sup>663</sup> T.19635.25-19636.6.

<sup>664</sup> P02102/P02102\_ET.

<sup>665</sup> T.25907.21-25908.10; T.25818.16.

<sup>666</sup> P00074/P00074\_ET.1-4; P00651/P00651\_ET; P02638/P02638\_ET; P02616/P02616\_ET; P01608/P01608\_ET; P02641/P02641\_ET.1, P02641\_ET.2.

<sup>667</sup> P00707.6\_ET, T.2.20-3.7; P01605.7\_ET, T.20.13-21.1; T.5934.1-5535.24; T.9908.12-20; T.9911.2-9914.1; T.10251.3-6; T.13143.7-13144.24; T.12058.14-18; P01644/P01644\_ET, p.098621; P02459/P02459\_ET.2, p.096530.

<sup>668</sup> P01644/P01644\_ET; T.25010.14; P02459/P02459\_ET.1-3.

<sup>669</sup> T.18689.24-18691.3; P01510.2\_ET, T.18.16-18.

list of persons registered for local security that had nothing to do with KLA intelligence.<sup>670</sup> There is no evidence regarding lists from Shala. As such, the Panel cannot safely conclude that there was any top down, consistent or widespread policy, or instruction to keep lists of collaborators or 'Opponents.'

239. There is no evidence that **VESELI** was involved in the creation of lists, that he ordered intelligences officers to keep them, that he ever received or distributed them, or even knew of their existence during the war. No inferences can be drawn from the limited evidence that exists that these documents, or this practice was in any manner associated with intelligence at the GS.
240. Only [REDACTED] whose hearsay evidence cannot lawfully be relied upon in isolation,<sup>671</sup> provided evidence to suggest the GS's involvement with such lists. [REDACTED] sensationally claimed that [REDACTED].<sup>672</sup> His evidence is inconsistent; while initially claiming that [REDACTED], [REDACTED] then stated that [REDACTED].<sup>673</sup> Remarkably, the SPO failed to put this allegation to any witness who should have been able to verify it if true – such as Naser KRASNIQI, QADRAKU, ÇOÇAJ, BASHOTA, or ZYRAPI. As such, it remains uncorroborated and it may reasonably be inferred from this failure that the SPO knew [REDACTED] evidence would be shown to be untrue if tested. Uncorroborated hearsay evidence cannot form the basis of any adverse inference or finding of fact.
241. [REDACTED] brought to his interview what he claimed was a list of collaborators<sup>674</sup> [REDACTED]. It is undated and bears no indicators of its

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<sup>670</sup> P01018/ P01018\_ET.

<sup>671</sup> See [REDACTED].

<sup>672</sup> [REDACTED].

<sup>673</sup> [REDACTED].

<sup>674</sup> [REDACTED].

provenance; [REDACTED]<sup>675</sup> [REDACTED],<sup>676</sup> [REDACTED]. When challenged on this discrepancy, he changed his account, saying that [REDACTED] – clearly making up his account as he went along. Indeed, while he had no actual knowledge of [REDACTED].<sup>677</sup> [REDACTED] evidence is not remotely credible and it would be entirely unreasonable and unlawful for any trier of fact to rely on such uncorroborated, disordered, nonsensical evidence.

242. The SPO has failed to establish when or by whom these lists were authored.

#### **E. Intelligence and Military Police**

243. The SPO alleges that KLA intelligence services worked closely, and cooperated, with KLA military police;<sup>678</sup> in particular, that military police and intelligence services worked together to identify and take measures against ‘Opponents.’<sup>679</sup> The SPO failed to prove that intelligence and military structures worked together to further the alleged JCE, or cooperated consistently in any other manner, or that the military police were in any way connected, or subordinate, to **VESELI**. The evidence relied upon for this claim is inherently unreliable, or contradicted and undermined by other evidence.

244. It is not unlawful or improper for military intelligence to cooperate with military police services to identify potential security threats.<sup>680</sup> Nonetheless, the KLA was not an organised, structured army capable of implementing the alleged level of cooperating in any consistent manner. As outlined above,<sup>681</sup> intelligence structures in the OZs often comprised of no more than one or two under-resourced officers, predominantly occupied with other matters such as

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<sup>675</sup> [REDACTED].

<sup>676</sup> [REDACTED].

<sup>677</sup> [REDACTED].

<sup>678</sup> F00709/A01, paras.72, 146, 161.

<sup>679</sup> F00709/A01, para.146.

<sup>680</sup> See [Ch.V.B.](#)

<sup>681</sup> See [Ch.V.G.](#)

combat and reconnaissance. Evidence of cooperation between intelligence and military police shows it was isolated and sporadic and not consistent across Kosovo. It does not advance the alleged JCE. KLA intelligence and military police in the OZs were structurally entirely separate,<sup>682</sup> and intelligence did not issue orders to the military police.<sup>683</sup> VESELI had no power to issue orders to military police, nor is there any suggestion in the evidence he ever did so.

245. The SPO relies heavily on two purported KLA Regulations P00008 and P00009 to allege consistent cooperation between intelligence and military police.<sup>684</sup> The regulations provide that the military police are supposed “to assist and cooperate with” the intelligence service in investigating various forms of crime.<sup>685</sup> As outlined in detail elsewhere,<sup>686</sup> ZYRAPI testified that “the idea” was to proceed in the manner set out in P00008, but it was not what occurred in practice.<sup>687</sup> ZYRAPI took issue with the contents of P00009, asserting that additional information had been added that was not in the version he had approved.<sup>688</sup> They are therefore clearly unreliable documents, incapable of proving the alleged cooperation. The reality is that these regulations bear no relation to the relationship between intelligence and military police formations that in fact existed across Kosovo. The SPO must prove, not that there was an intention for co-operation, but that it actually occurred – and it has failed to do so.
246. The SPO relies on three purported ‘Military Police Directorate’ press releases to allege that intelligence cooperated with military police to carry out its duties.<sup>689</sup> P00303/P00304 and P00158 assert that actions were taken by the

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<sup>682</sup> T.5893.8-12; T.22744.20-23; P01645.1\_ET, T.17.21-23.

<sup>683</sup> T.22318.4-13; T.22746.18-22747.3; T.5899.19-23; T.22233.22-22234.3; T.22270.8-22272.9; T.25122.5-9.

<sup>684</sup> F00709/A01, paras.72, 146. See P00888/P00888\_ET.

<sup>685</sup> P00008/P00008\_ET, p.U000-0461, P00008.1\_ET, p.SPOE002325602; P00009/P00009\_ET, p.1.

<sup>686</sup> See [Ch.VII](#).

<sup>687</sup> T.18490.16-18491.2.

<sup>688</sup> T.17651.18-23.

<sup>689</sup> F00709/A01, paras.19, 161; P00303.1, P00303/P00303\_ET, p.043862; P00158/P00158\_ET, p.043805; P00300/P00300\_ET; *similarly*, P00304/P00304\_ET.

Military Police Directorate upon receipt of information from the KLA Intelligence Service.<sup>690</sup> These were both issued prior to the November restructuring which led to the Military Police Directorate coming into existence, as an abundance of evidence has established.<sup>691</sup> This, and the overall unreliability of P00303/P00304, was confirmed by a ruling of the Kosovo Court of Appeals.<sup>692</sup> The only witness that was shown P00158 was DEDAJ, who immediately raised suspicions of authenticity.<sup>693</sup> The Panel cannot reasonably or fairly place weight on these documents in the face of such significant authenticity and reliability concerns.<sup>694</sup> P00300 makes no reference to intelligence in any regard and in no way supports the SPO's allegation.

247. The evidence of W04401, which is also relied upon, simply does not support the SPO's case.<sup>695</sup>
248. The SPO relies on a series of 'intelligence sector' documents purporting to emanate from Dukagjin in 1999<sup>696</sup> to allege intelligence-military police cooperation,<sup>697</sup> the unreliability of which was discussed above.<sup>698</sup> Further reliance is placed on a collection of purported Llap OZ military police hearsay documents.<sup>699</sup> There is no evidence they were ever sent or received. They are wholly unreliable and uncorroborated.<sup>700</sup> P00167<sup>701</sup> has equally not been proved

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<sup>690</sup> P00303.1, P00303/P00303\_ET, p.043862; P00158/P00158\_ET, p.043805.

<sup>691</sup> See [Ch.VI.A](#); See also T. 23224.16-23226.1.

<sup>692</sup> 2D00013\_AT/2D00013\_ET, p.DKV0133.

<sup>693</sup> T.9426.16-9428.4.

<sup>694</sup> See [Ch.VII.L](#).

<sup>695</sup> F00709/A01, para.146, fn.574 citing P01871, pp.U009-4682-U009-4683, paras.25, 27.

<sup>696</sup> P00903/P00903\_ET; P00904/P00904\_ET.4, P00904\_ET.6-9; P00905/P00905\_ET; P02102/P02102\_ET.

<sup>697</sup> F00709/A01, para.161, fn.688; para.191, fn.781.

<sup>698</sup> See para.236.

<sup>699</sup> F00709/A01, para.161, fn.668; F02178/A01. See P02247/P02247\_ET; P02265/P02265\_ET; P02328/P02328\_ET; P02308/P02308\_ET.

<sup>700</sup> See P02277/P02277\_ET; P02278/P02278\_ET; P02286/P02286\_ET; P02308/P02308\_ET.

<sup>701</sup> F00709/A01, para.161, fn.668.

reliable; when shown this document, neither MUSTAFA,<sup>702</sup> IBISHI,<sup>703</sup> nor STANKOVIC<sup>704</sup> could confirm its signature and MUSTAFA disputed its accuracy and reliability.<sup>705</sup>

249. The SPO relies upon the two most grossly unreliable witnesses ([REDACTED]<sup>706</sup> and [REDACTED]<sup>707</sup>) to suggest that intelligence cooperated with military police to further the alleged JCE.<sup>708</sup> Firstly, [REDACTED] testified that military police assisted and cooperated with the directorate of intelligence and counter-intelligence, as described in P00009.<sup>709</sup> [REDACTED] claimed that “every zone, every brigade, every company, every battalion” worked on the basis of these regulations.<sup>710</sup> This is demonstrably untrue and inconsistent with other evidence from soldiers of all levels, including IBISHI,<sup>711</sup> ZYRAPI,<sup>712</sup> and QERIQI.<sup>713</sup> Secondly, the [REDACTED] suggested, [REDACTED].<sup>714</sup> [REDACTED] also claims that [REDACTED].<sup>715</sup> However [REDACTED] is the sole witness who provides evidence that [REDACTED]<sup>716</sup> and as such cannot be relied upon.<sup>717</sup>
250. ZYRAPI described how structures *should* have ideally worked.<sup>718</sup> It should have been the case that intelligence would discover collaborators, then the legal

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<sup>702</sup> T.5903.9-14.

<sup>703</sup> T.21146.7-11.

<sup>704</sup> T.5007.12-20.

<sup>705</sup> T.5903.10-5904.9.

<sup>706</sup> See [REDACTED].

<sup>707</sup> See [REDACTED].

<sup>708</sup> F00709/A01, para.161, fn.668 [REDACTED]. F00709/A01, paras.183 and 223 [REDACTED].

<sup>709</sup> [REDACTED].

<sup>710</sup> [REDACTED].

<sup>711</sup> P01755.7\_ET, T.29.19-23.

<sup>712</sup> [REDACTED]; T.17651.2-23; T.17980.14-17981.19.

<sup>713</sup> P01115.5\_ET, T.3.16-17; T.14751.6-21.

<sup>714</sup> [REDACTED].

<sup>715</sup> [REDACTED].

<sup>716</sup> P03580.9\_ET, T.16.6-8.

<sup>717</sup> See [Ch.II.B.](#)

<sup>718</sup> P01355.10\_ET, T.8.11-9.5, T.18.4-5; T.18490.16-18491.2.

sector would start proceedings, and the military police would arrest them.<sup>719</sup> ZYRAPI was then *meant* to be informed of such arrests. However, ZYRAPI never saw any arrest warrants<sup>720</sup> and did not recall this ever occurring.<sup>721</sup> ZYRAPI's evidence, considered as a whole, was that "*the idea [was] to proceed in this manner*"<sup>722</sup> – but this did not happen in reality.<sup>723</sup>

251. W04739 stated that [REDACTED].<sup>724</sup> However, he never had any cases where [REDACTED].<sup>725</sup> While he suggested that [REDACTED],<sup>726</sup> he admitted he was not involved in such matters and provided no specific information about this – his evidence therefore amounts to no more than uncorroborated hearsay.<sup>727</sup> The evidence demonstrates, once again, that the reality on the ground in Kosovo was very different to how conventional armies functioned, or how it may have been envisaged by the KLA.
252. The evidence in no way advances any alleged JCE against 'Opponents' or suggests that military police were subordinate to intelligence. Several witnesses confirmed there was no superior-subordinate relationship between intelligence and military police. ÇOÇAJ testified that he did not know how cooperation would have worked, and stated with certainty that there was no cooperation between intelligence and military police in the Pashtrik OZ.<sup>728</sup>
253. W04764 had no knowledge of military police in Pashtrik acting under the orders of intelligence.<sup>729</sup> QADRAKU never tasked the military police to

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<sup>719</sup> P01355.10\_ET, T.9.3-5.

<sup>720</sup> P01355.5\_ET, T.17.22-24.

<sup>721</sup> P01355.10\_ET, T.11.12-14.

<sup>722</sup> T.18491.1-2 (*emphasis added*).

<sup>723</sup> See para.450.

<sup>724</sup> [REDACTED].

<sup>725</sup> [REDACTED].

<sup>726</sup> [REDACTED].

<sup>727</sup> [REDACTED].

<sup>728</sup> T.22318.4-13.

<sup>729</sup> T.19099.10-16.

investigate suspicious persons.<sup>730</sup> MUSTAFA had no knowledge of MEHMETI taking orders from GASHI<sup>731</sup> and refuted that there was any specific relationship between intelligence and military police in his OZ.<sup>732</sup> Halim BERISHA confirmed that he never worked alongside GASHI.<sup>733</sup> While BERISHA stated that XHEMAJLI as 'information' in the 153 Brigade could give orders to military police,<sup>734</sup> he confirmed that the basis for such authority was simply that he was his superior; and was entirely unrelated to his later role within the information service.<sup>735</sup>

254. The allegation that **VESELI** received reports from subordinate military police<sup>736</sup> is not proved. There is simply no evidence of (a) **VESELI** ever receiving any reports from subordinate military police services; (b) any military police officer suggesting or ordering they report to **VESELI**; or (c) any KLA member stating that the police were obliged to do so. **VESELI** never informed ZYRAPI about an arrest of a collaborator.<sup>737</sup>
255. There is no evidence that **VESELI** ever gave any orders to anyone within the military police structures. The evidence is simply in no way indicative of a centralised, consistent hierarchical approach headed by **VESELI**. The SPO case is again misconceived.

## F. Intelligence Training

256. KLA intelligence personnel or formations that existed in the OZs received little to no 'training.' Consequently, intelligence officers differed in what they

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<sup>730</sup> T.22746.18-22747.3.

<sup>731</sup> T.5899.19-23.

<sup>732</sup> T.5893.2-4.

<sup>733</sup> T.20101.10-12.

<sup>734</sup> P01645.1\_ET, T.21.11-12.

<sup>735</sup> T.20090.6-13.

<sup>736</sup> F00709/A01, para.146.

<sup>737</sup> P01355.10\_ET, T.11.12-14.

believed their tasks to be. No reliable evidence shows that **VESELI** was involved in training KLA intelligence personnel from August 1998, as alleged.<sup>738</sup> The SPO cites one uncorroborated 2009 media interview wherein **VESELI** alluded to intelligence trainings from August or September 1998.<sup>739</sup> As set out above, such post-war interviews are unreliable.<sup>740</sup> When shown this extract, ZYRAPI could not confirm its accuracy; he simply stated that he did not know what **VESELI** was doing at this time.<sup>741</sup>

257. Witness evidence contradicts the assertion that intelligence personnel in the OZs received training from **VESELI**.<sup>742</sup> There is no evidence of any consistent or ongoing training across the OZs, no evidence of OZ intelligence chiefs training personnel, and no evidence of **VESELI**'s involvement. Any intelligence 'training' that took place, at best took place on an *ad hoc* basis.
258. The only OZ for which there is any evidence of intelligence training, or lack thereof, is from Pashtrik. QADRAKU emphasised that he underwent very little training which was entirely theoretical and frequently interrupted by the situation on the ground,<sup>743</sup> prior to assuming his role as intelligence chief.<sup>744</sup> QADRAKU spent time in Albania before assuming this role under the guidance of an Albanian career officer. He did not see or meet **VESELI**.<sup>745</sup> Other witnesses corroborate the fact that intelligence officers in the OZs were "amateurs"<sup>746</sup> who received no intelligence training.<sup>747</sup> W04737 explained that

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<sup>738</sup> F00709/A01, para.156.

<sup>739</sup> P01859/P01859\_ET.2, p.SPOE00053012.

<sup>740</sup> See [Ch.II.E](#). See also T.19575.10-18; T.12856.2-12857.10; T.18400.8-11; T.18497.19-18498.10; T.22763.14-21.

<sup>741</sup> T.18279.6-25.

<sup>742</sup> F00709/A01, para.156.

<sup>743</sup> P01855, para.14; T.22708.5-22709.6

<sup>744</sup> T.22709.3-6.

<sup>745</sup> T.22708.5-22709.2; T.22709.10-18.

<sup>746</sup> P01834.4\_ET, T.14.18-15.2.

<sup>747</sup> T.24755.25-24756.13.

they had no career officers to assist in intelligence training and ultimately had to train “on the job.”<sup>748</sup>

259. VESELI himself had no intelligence experience upon assuming his role as Intelligence Directorate at the GS on 12 November 1998.<sup>749</sup> Immediately after VESELI was appointed to this position, ZYRAPI sent VESELI to Albania for training.<sup>750</sup> VESELI needed to go abroad to “*get the adequate training*” given that the intelligence sector was a new sector being created within the KLA,<sup>751</sup> and VESELI “*had no kind of formal intelligence training.*”<sup>752</sup> VESELI ultimately needed to understand how to run an intelligence service that was only just being established.<sup>753</sup>

## G. Intelligence Resources

260. The SPO claims there existed centralised, functioning, intelligence formations throughout the OZs.<sup>754</sup> However, a serious lack of resources prevented intelligence personnel, like all of the KLA,<sup>755</sup> from functioning effectively.
261. The ‘intelligence service’ did not have adequate staff, training, equipment, communications, facilities or time to develop structures. At the zone level, for Shala<sup>756</sup> and Nerodime<sup>757</sup> there is only evidence of one officer; for Llap<sup>758</sup> and Dukagjin<sup>759</sup> there is evidence of, at most, two. There were no OZ intelligence officers in Pashtrik in 1998 and at most four people for a short period in 1999.<sup>760</sup>

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<sup>748</sup> T.19957.18-19958.6.

<sup>749</sup> P01355.14\_ET, T.41.14-18; T.23212.13-16.

<sup>750</sup> T.17797.17-20; T.17800.8-13; T.23212.17-24.

<sup>751</sup> T.23212.17-24.

<sup>752</sup> T.17800.4-7.

<sup>753</sup> T.17800.8-13.

<sup>754</sup> F00709/A01, paras.156-161.

<sup>755</sup> See [Ch.IV.C.i.](#)

<sup>756</sup> [REDACTED].

<sup>757</sup> T.21933.10-12; T.22161.9-16.

<sup>758</sup> T.5901.10-16; T.5489.1-5; T.5906.9-10.

<sup>759</sup> P00470.2\_ET, T.17.25-18.6; P01593, p.U002-9305; T.19627.20-19628.3; T.25776.18-25777.1.

<sup>760</sup> P01834.2\_ET, T.2.13-14; T.22713.9-12.

These OZ level intelligence personnel were limited in their network,<sup>761</sup> usually having no subordinates or staff.<sup>762</sup> Intelligence personnel below the OZ level were also limited in number.<sup>763</sup> There can be no reasonable conclusion that such limited structures could effectively and efficiently carry out intelligence duties for an entire OZ or truly be considered to be an ‘intelligence service’ in any meaningful sense of the term.

262. Intelligence personnel received little to no intelligence training.<sup>764</sup> In some OZs, they had insufficient time to build any sort of functioning system; many starting from scratch in 1999.<sup>765</sup> REQICA had no office space to deal with intelligence tasks.<sup>766</sup> Intelligence in Pashtrik had no equipment,<sup>767</sup> save for a single radio belonging to QADRAKU.<sup>768</sup> Radio communication was extremely limited<sup>769</sup> and only for general, not intelligence, matters as it was believed (apparently correctly) that communications were being intercepted.<sup>770</sup>
263. The ‘intelligence service’ described by the SPO did not exist. It could not possibly function as alleged<sup>771</sup> for the reasons outlined above.

## H. Involvement of the Intelligence Sector in the Alleged Crimes

264. At the very heart of the SPO’s case against VESELI is the allegation that the duties of intelligence officers included abduction, detention, interrogation, mistreatment, and execution of civilians.<sup>772</sup> The SPO failed to prove this was

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<sup>761</sup> T.5489.1-2.

<sup>762</sup> T.22163.4-6.

<sup>763</sup> T.22161.17-23.

<sup>764</sup> T.22709.3-6; T.22314.2-4. See [Ch.V.F.](#)

<sup>765</sup> T.22313.12-19; T.19098.2-7; [REDACTED]; T.22710.11-22711.1.

<sup>766</sup> T.22163.16-25.

<sup>767</sup> T.22315.3-4; P01834.2\_ET, T.22.9-19.

<sup>768</sup> P01834.2\_ET, T.24.12.

<sup>769</sup> See [Ch.VI.E.](#)

<sup>770</sup> P01834.2\_ET, T.27.12-13.

<sup>771</sup> F00709/A01, para.161.

<sup>772</sup> F00709/A01, para.161.

ever the case. The evidence does not reflect that crimes were ever among the official duties of the KLA intelligence officers, either formally or informally.<sup>773</sup> Nor does the evidence reflect any encouragement by **VESELI** to commit crimes, or a policy or pattern of alleged crimes involving intelligence officers, or that he had any knowledge of any alleged crimes; conversely, out of the hundreds of crimes alleged on this Indictment, intelligence personnel are implicated in very few. Where it is suggested they are involved either, (a) the crime is not proven due to unreliability or absence of evidence; (b) the crime is outside of the JCE; (c) the officer is not said to be involved in their capacity as an intelligence officer; or (d) the crime occurred in Llap, which the evidence unequivocally establishes was never under the effective command and control of the GS or **VESELI**.

265. Evidence regarding intelligence officers' involvement in crimes alleged in the Indictment is extremely narrow and is confined to primarily to Llap and Pashtrik, with a singular uncorroborated allegation from Drenicë. There is no evidence that **VESELI** was involved in, encouraged, or even knew about, any of these alleged crimes. There is no evidence the officers allegedly involved reported to or received orders from **VESELI**, or were under his command in any way, or at any time – nor is there any evidence they were part of a functional chain of command leading to **VESELI**. Additionally, the evidence of any link to local intelligence is sometimes so tenuous or flawed so as to not be relevant or probative, or not worthy of any weight.
266. The claim that intelligence personnel were involved in crimes at Kleckë/Klecka depends entirely<sup>774</sup> on W04839's hearsay evidence, who says that Naser KRASNIQI was involved in the detention, mistreatment and murder of

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<sup>773</sup> See [Ch.V.B.](#)

<sup>774</sup> See P01134, p.SITF00010253 where [REDACTED].

detainees in March and April 1999.<sup>775</sup> He is also the sole source to allege KRASNIQI's involvement in crimes at Llapushnik/Lapušnik in 1998, prior to being appointed to intelligence.<sup>776</sup> W04839 is also the only witness who claims that [REDACTED] had anything to do with the ŠAVELIĆ brothers.<sup>777</sup> The fundamental unreliability of W04839's untested and incredible evidence is addressed in full further below.<sup>778</sup> No lawful findings can be made relying upon the sole evidence of W04839. These crimes simply have not been proven to the criminal standard.

267. The allegation that [REDACTED] in his capacity as an intelligence or information officer in [REDACTED] was involved with the arrest and detention of [REDACTED] and [REDACTED] depends solely upon one hearsay document - P01062.<sup>779</sup> P01062 seems to be two or more documents that were photocopied on top of one another onto one page. The underlying document purports to be an "arrest warrant" for [REDACTED] with the name [REDACTED] and ZKZ written on it. The document(s) on top appear to be an unsigned, handwritten statement written across two sheets. Most of what is presented as the arrest warrant is not actually visible.<sup>780</sup> While the SPO admitted P01062 through [REDACTED], he had [REDACTED].<sup>781</sup> His evidence therefore is incapable of authenticating or corroborating the document.

268. [REDACTED].<sup>782</sup> No witness authenticated P01062 – nor is it feasible that anyone could, given that most of the document is obscured from view and

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<sup>775</sup> See, e.g., P00974, pp.050975-050976, 050980-050981; P00976, pp.SITF00009663, SITF00009676; P00982, p.SITF00009932; P01113\_AT/P01113, pp.051034-051035, 051038.

<sup>776</sup> See, e.g., P00973, pp.050953-050955; P01113\_AT/P01113, p.051047.

<sup>777</sup> [REDACTED].

<sup>778</sup> See [Ch.IX.A.v.](#), paras.601-610.

<sup>779</sup> F00709/A01, para.407, fn.1652.

<sup>780</sup> Serbia declined to respond to a Defence request for the original of P01062 from the Serbian Ministry of Justice. See F03330; F03586.

<sup>781</sup> [REDACTED].

<sup>782</sup> [REDACTED].

could contain anything. Additionally, the evidence suggests that other commanders in the KLA also went by the name “[REDACTED].”<sup>783</sup> Crucially, there is no other evidence that [REDACTED] were involved in this detention. The alleged victim – [REDACTED] – equally makes no such allegation. There is no evidence that **VESELI** was ever in [REDACTED], that he received any reports from the intelligence personnel there, or that any soldiers based in [REDACTED] were under his command and control at any time.<sup>784</sup>

269. This allegation depends upon an isolated, unauthenticated hearsay document, presented in an evidential vacuum, absent any chain of custody information or any contextual or corroborative witness or other evidence; this is incapable of lawfully proving this crime occurred to the criminal standard.
270. [REDACTED] is implicated in relation to two crimes. Both involve personal matters wholly unrelated to [REDACTED]’s role in the KLA and as such cannot be found to form part of the JCE. The evidence remains unclear as to [REDACTED]’s purported role within the KLA,<sup>785</sup> yet he is dealt with here for completeness.
271. The first incident is the abduction of [REDACTED]. W04586’s evidence makes it abundantly clear that the reason for [REDACTED]’s abduction was an inter-family property dispute pre-dating the war, which culminated in [REDACTED] shooting [REDACTED].<sup>786</sup> Therefore this incident cannot be found to form any part of the alleged JCE. Nor can [REDACTED]’s alleged participation in it be found to be attributable to any KLA intelligence function, as intelligence played no role whatsoever in the incident. This was a purely

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<sup>783</sup> See, e.g., [REDACTED].

<sup>784</sup> See [Ch.V.C.](#)

<sup>785</sup> See [Ch.V.A.](#)

<sup>786</sup> [REDACTED]; [REDACTED].

personal matter, unrelated in any way to [REDACTED]'s role in the KLA or the JCE.

272. Secondly, [REDACTED] is mentioned by W03878 as being involved in his detention in [REDACTED].<sup>787</sup> According to W03878, the reason for his mistreatment by [REDACTED]'s associates was related to his prior assault of [REDACTED].<sup>788</sup> W03878 makes no reference to [REDACTED] having any role in intelligence.<sup>789</sup> This allegation therefore also has not been proven to form any part of the alleged JCE, as an equally reasonable and more probable available alternative is that the detention and mistreatment of W03878 was purely due to personal motivations, and had nothing to do with his role in intelligence, or any alleged overarching KLA policy.

273. W03812 allegedly participated in the detention and mistreatment of W01602 on [REDACTED].<sup>790</sup> W01602's own evidence is that W03812 detained and mistreated him against the orders of his Commander.<sup>791</sup> W01602 places the blame squarely on W03812 and the other two perpetrators, stating that:

[REDACTED].<sup>792</sup>

There is equally no evidence that this incident was in any way connected to W03812's role in intelligence or the alleged JCE. W03812 never met **VESELI** or knew what his role was during the war.<sup>793</sup> This incident is entirely unconnected to **VESELI**, zone level intelligence, or anyone on the GS. Additionally, it is alleged to have occurred after **VESELI** left G2 and the KLA.

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<sup>787</sup> [REDACTED].

<sup>788</sup> [REDACTED]; [REDACTED].

<sup>789</sup> [REDACTED]; [REDACTED].

<sup>790</sup> T.4903.16-4904.8; T.4905.6-10.

<sup>791</sup> T.4904.21-23; T.4954.10-16.

<sup>792</sup> [REDACTED].

<sup>793</sup> P01827.4\_ET, T.5.22-6.6.

274. It is noted that there is evidence that W03812 was involved in the transfer of [REDACTED] prior to their murder in 1998.<sup>794</sup> W03812 claims he did so on the orders of his superiors.<sup>795</sup> His superior however denies any contemporaneous knowledge or involvement.<sup>796</sup> At the time, W03812 did not hold any intelligence-related role and it is not suggested that KLA intelligence were involved in this incident in any way. Nor is there any link between these allegations and the GS. Further, there is no evidence that **VESELI** ever learnt about this allegation later in the conflict when W03812 is said to have taken on an intelligence role, nor is there evidence W03812 was ever under **VESELI**'s command and control at any time. W03812 was not available for cross-examination on any of these issues.<sup>797</sup>
275. Finally, [REDACTED] is named by W02652 as having participated in his detention and mistreatment in [REDACTED] but, again, there is no evidence it had anything to do with his role in intelligence. [REDACTED].<sup>798</sup> Therefore, this also falls outside the JCE as it was a purely local dispute. It is recalled that **VESELI** stood down as the head of G2 on 2 April 1999 to establish SHIK.<sup>799</sup> Therefore **VESELI** was no longer head of KLA intelligence at the time of the alleged crimes above, and in relation to W02652, were said to have occurred.
276. These incidents demonstrate the fundamentally flawed and extremely tenuous nature of the links upon which the SPO seeks to rely to demonstrate any connection between the crime base and KLA intelligence. None are made out. There is no evidence that **VESELI** was even aware that any of these individuals were intelligence officers, let alone had them under his command or control at

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<sup>794</sup> P01137, para.6; P01827.3\_ET, T.10.25-11.10.

<sup>795</sup> P01827.3\_ET, T.10.25-11.10

<sup>796</sup> P00708.4\_ET, T.15.7-8.

<sup>797</sup> F02666, Decision on Admission of Witness Evidence, 21 October 2024, para.25.

<sup>798</sup> [REDACTED].

<sup>799</sup> See [Ch.VIII](#).

any time. This evidence does not support the existence of the alleged JCE in the intelligence service or the use of intelligence officers as JCE 'tools.' The SPO has simply failed to establish any connection between the crimes and intelligence, the GS, **VESELI** or even the JCE.

277. Regarding crimes allegedly committed in Llap involving GASHI, the evidence is clear that the Llap OZ functioned independently of the GS.<sup>800</sup> Throughout his time in the KLA, GASHI was under the command of MUSTAFA and MUSTAFA alone; he had no connection whatsoever with **VESELI**. Equally, MUSTAFA has no connection with **VESELI**. There is no evidence of *any* contact between GASHI or MUSTAFA and **VESELI** during the war, or that **VESELI** was ever aware of GASHI's alleged criminal conduct during the Indictment Period.<sup>801</sup> No evidence has been adduced capable of suggesting that GASHI was under the command and control of **VESELI** directly or indirectly.
278. Within Llap it was found in *Mustafa* that a group known as the BIA committed crimes at Zllash/Zlaš from 1 to 21 April 1999. An adjudicated fact from the *Mustafa* case states that the tasks of that unit included, among other things, intelligence and information gathering.<sup>802</sup> The BIA operated as an independent KLA unit, structurally and functionally separate from the 153 Brigade,<sup>803</sup> and there is no evidence that it was connected to, or cooperated in any way with other intelligence structures within or outside Llap. Like those other structures, however, there is no evidence that they reported to, or took orders from anyone outside the OZ. The sole link to brigade intelligence from Zllash/Zlaš derives from Halim BERISHA. He claims that Agron XHEMAIJLI told him to escort alleged murder victim [REDACTED] to the BIA compound in Zllash/Zlaš.

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<sup>800</sup> See [Ch.IV.F.](#)

<sup>801</sup> See [Ch.V.C.](#)

<sup>802</sup> F02498/A02, No.787.

<sup>803</sup> P01767.1\_ET, T.2059.7-10; P01645.2\_ET, T.11.6-12. See F02498/A02, No.790.

BERISHA confirmed in cross-examination that he did not know who appointed XHEMAIJLI, or where he got his tasks or orders from.<sup>804</sup> No other evidence has been adduced on this issue. There is no evidential link whatsoever between the BIA, and intelligence and **VESELI**.

279. Last of all, it is noted that [REDACTED], makes unreliable, internally inconsistent and uncorroborated hearsay allegations about Rasim KIQINA's involvement in his mistreatment and detention in [REDACTED]<sup>805</sup> prior to KIQINA's assumption of intelligence duties.<sup>806</sup> [REDACTED] did not personally identify KIQINA, claiming he was told of his identity afterwards by unnamed persons.<sup>807</sup> This hearsay identification is wholly unreliable and uncorroborated and therefore insufficient for any finding to the criminal standard that it was in fact KIQINA who was involved.<sup>808</sup> **VESELI** had no dealings with KIQINA, no involvement in his appointment, and KIQINA never reported to him.<sup>809</sup> Moreover, **VESELI** himself was not in any intelligence role in [REDACTED], nor was there a functioning GS at the time. This alleged detention clearly falls outside of both the JCE and the armed conflict and is irrelevant to **VESELI**'s case.

## I. Sabit GECI

280. The SPO alleges that:

Sabit GECI headed an intelligence unit that answered directly to **Kadri VESELI** and the General Staff. Sabit GECI had the authority to issue orders in the Drenicë Zone, including interrogating and arresting military personnel and civilians.<sup>810</sup>

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<sup>804</sup> [REDACTED].

<sup>805</sup> [REDACTED].

<sup>806</sup> See [Ch.V.A.](#)

<sup>807</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>808</sup> See [Ch.II.B.](#)

<sup>809</sup> T.25106.3-5; T.25109.15-25110.24.

<sup>810</sup> F00709/A01, para.183.

281. This allegation has not been proved to the criminal standard. The evidence adduced pertaining to GECI is materially inconsistent and unreliable and is incapable of proving GECI was part of an intelligence unit, or subordinate to **VESELI**. Within the KLA, most did not know what exactly GECI was doing and different people believed he was doing different things. There are no credible or reliable sources of evidence that GECI was intelligence, nor that he acted under **VESELI**. Many other sources suggest he was instead “secret service” or “secret police.”
282. The suggestion that GECI was intelligence derives from Sylejman SELIMI, who claimed in a 2003 UNMIK statement, that GECI was commander of an intelligence unit for the Drenicë OZ and cooperated with **VESELI**, who was his superior officer.<sup>811</sup> However, in evidence before this court, SELIMI provided material clarifications to this statement. In his preparation session, SELIMI explained that “[t]his so-called intelligence unit was active in June 1998, but Sabit Geci did not hold any post in the Drenica Operational Zone. Sabit Geci and the people with him referred to themselves either as an intelligence unit or as SHIK.”<sup>812</sup> Then in court, SELIMI confirmed that when he said GECI was commander of an intelligence unit, he was merely referring to what GECI himself claimed.<sup>813</sup> SELIMI never believed this and explained that he later came to learn that it was in fact, not true.<sup>814</sup> SELIMI did not believe **VESELI** was GECI’s superior, despite GECI claiming so, because there is “no evidence whatsoever” of the existence of such a structure at that time.<sup>815</sup> SELIMI had no evidence to prove the veracity

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<sup>811</sup> P02025\_AT/P02025, pp.SITF00031715-SITF00031718.

<sup>812</sup> P02029, para.8; T.25152.6-10.

<sup>813</sup> T.25150.12-17; T.25151.10-18; T.25152.1-4.

<sup>814</sup> T.25150.24-25151.9; T.25152.1-4.

<sup>815</sup> T.25152.6-10.

of GECI's claims, did not believe GECI to be telling the truth, and explained that SHIK was not established until 1999.<sup>816</sup>

283. Considering these clarifications, the Panel cannot reasonably rely on the 2003 statement of SELIMI to support a finding that GECI was in fact intelligence and reporting to **VESELI**, as opposed to that he simply claimed to be, or that **VESELI** knew about or had reason to know of allegations of criminality against GECI. The Panel must also consider that SELIMI had motive to lie or exaggerate in his 2003 statement to UNMIK to shift accountability for GECI's actions away from himself, as Drenicë OZ's Commander, when GECI was said to have committed the crimes under investigation by UNMIK.<sup>817</sup>
284. Likewise, while **Rexhep SELIMI** claimed that GECI operated as the GS's G2 representative in Drenicë,<sup>818</sup> and later Albania,<sup>819</sup> he conceded that he was "*not able to verify*" whether GECI was in fact G2 in Drenicë,<sup>820</sup> was unaware of the structure of G2,<sup>821</sup> and believed this was GECI's role "*based on what [GECI] has declared himself*"<sup>822</sup> and did not know what GECI's purported role was.<sup>823</sup>
285. **Rexhep SELIMI**'s account is not based on fact and, like Sylejman SELIMI, apparently stems from what GECI was holding himself out to be.<sup>824</sup> Again, **VESELI** cannot interrogate **SELIMI**'s assertions, which are more likely than not, based on rumour and GECI's own self-aggrandisement.<sup>825</sup> **SELIMI**, who himself was a GS member, only surmised that "*perhaps [GECI worked] on behalf*

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<sup>816</sup> T.24991.11-15; T.25137.14-25138.24; T.25175.11-20; T.25129.9-25130.5; T.25294.20-22.

<sup>817</sup> T.25156.1-6.

<sup>818</sup> P00763.4\_ET, T.12.15-22.

<sup>819</sup> P00763.4\_ET, T.16.12-17.1.

<sup>820</sup> P00763.4\_ET, T.12.20-21.

<sup>821</sup> P00763.4\_ET, T.13.7-8.

<sup>822</sup> P00763.4\_ET, T.16.24-17.1.

<sup>823</sup> P00763.4\_ET, T.12.10-14.

<sup>824</sup> P00763.4\_ET, T.16.24-17.1.

<sup>825</sup> P00763.4\_ET, T.12.10-14.

of the General Staff.”<sup>826</sup> His inability to confirm this further undermines the accuracy of this claim.

286. Contrary to **Rexhep SELIMI** and Sylejman SELIMI, [REDACTED] claims that GECI instead headed a ‘secret service’ in [REDACTED].<sup>827</sup> [REDACTED],<sup>828</sup> [REDACTED].<sup>829</sup> [REDACTED].<sup>830</sup> [REDACTED]<sup>831</sup> [REDACTED].<sup>832</sup> He provides no basis or evidence for this claim, which is otherwise uncorroborated. Again, the Accused were denied any opportunity to challenge these hyper-prejudicial, uncorroborated, bold claims.
287. [REDACTED] also alleges that GECI was on the GS, and commanded the military police.<sup>833</sup> [REDACTED] only assumed GECI was a GS member based on a communiqué in June or July 1998 that supposedly announced GECI’s appointment as commander of the KLA military police.<sup>834</sup> No such evidence was adduced. [REDACTED] further asserted that his knowledge of GECI’s alleged GS membership came from [REDACTED],<sup>835</sup> who was neither intelligence nor GS. This evidence is merely uncorroborated and untestable post-war hearsay from an unreliable source, [REDACTED].<sup>836</sup>
288. GECI apparently held himself out to [REDACTED] as ZKZ and “*higher in the chain than everyone else*” in Kukës in May 1999.<sup>837</sup> Notably at this time **VESELI** was no longer responsible for KLA intelligence but was head of SHIK for the

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<sup>826</sup> P00763.4\_ET, T.12.23-24.

<sup>827</sup> [REDACTED].

<sup>828</sup> [REDACTED].

<sup>829</sup> [REDACTED]; [REDACTED].

<sup>830</sup> [REDACTED]; [REDACTED].

<sup>831</sup> [REDACTED].

<sup>832</sup> [REDACTED].

<sup>833</sup> [REDACTED]; [REDACTED].

<sup>834</sup> [REDACTED]; [REDACTED].

<sup>835</sup> [REDACTED].

<sup>836</sup> See [REDACTED].

<sup>837</sup> [REDACTED].

PGOK.<sup>838</sup> [REDACTED] understanding was that *after* VESELI moved to SHIK, military intelligence at the GS was done by Mensur KASUMI and GECI.<sup>839</sup> However, this evidence is contradicted by ZYRAPI, who refers only to KASUMI as the person who took over KLA intelligence.<sup>840</sup> In any event, [REDACTED] confirmed he did not know to what extent, if any, GECI reported to VESELI, or whether KLA intelligence reported to civilian intelligence, *i.e.*, SHIK.<sup>841</sup>

289. Other evidence corroborates that GECI held himself out under various other grandiose titles. According to W04735, GECI introduced himself as “*chief of the KLA secret police.*”<sup>842</sup> W03832 stated GECI was introduced as leader of the Police “*Special Forces*” of the KLA,<sup>843</sup> and that he believed GECI was self-appointed.<sup>844</sup> W01984 described GECI as part of the security service.<sup>845</sup> P02408 is purportedly signed by GECI as “*Commander of the secret service.*”<sup>846</sup> W03832 claims that GECI introduced himself as the “*Head of the KLA Secret Service.*”<sup>847</sup>
290. [REDACTED] described GECI as head of a “*KLA Secret Police*”<sup>848</sup> however, GECI’s alleged “*secret police*” service, to his understanding, had no affiliation with, and was distinct from, VESELI’s intelligence function at GS level. [REDACTED] explained that there were three different units operating in 1999 – (a) military police headed by **Rexhep SELIMI**; (b) secret police headed by GECI, and (c) intelligence unit commanded by VESELI.<sup>849</sup>

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<sup>838</sup> See [Ch.VIII](#).

<sup>839</sup> [REDACTED]; [REDACTED].

<sup>840</sup> See [Ch.VII.A](#), para.509.

<sup>841</sup> [REDACTED]; [REDACTED].

<sup>842</sup> F01534/A01, No.568.

<sup>843</sup> [REDACTED].

<sup>844</sup> [REDACTED].

<sup>845</sup> [REDACTED].

<sup>846</sup> [REDACTED].

<sup>847</sup> [REDACTED].

<sup>848</sup> [REDACTED].

<sup>849</sup> [REDACTED].

291. ZYRAPI explained that GECI was present in Drenicë in the summer of 1998, however, was injured and therefore had no function at all.<sup>850</sup> There is also no record of GECI's presence in any purported GS meeting note, nor does any GS member allege he was present at any such meetings. There is a complete absence of evidence, documentary or other, to suggest that the GS had 'Secret Police', 'Police Special Forces,' a 'Security Service' or a 'Secret Service.' There is no direct evidence of him reporting to **VESELI** or the GS, or having any dealings with **VESELI**.
292. As **VESELI** told UNMIK, he had no relationship with [REDACTED].<sup>851</sup>
293. Looking at the totality of the evidence pertaining to GECI, what is clear is that there can be no certainty whatsoever regarding what GECI was doing during the conflict, what his role was and who he reported to, if anyone. There is no plausible or reliable basis to prefer one account over another. All that the Panel can be sure of is that GECI was a nefarious character who was out of action for most of the conflict due to serious injury,<sup>852</sup> and claimed to be at various times the head of many different KLA structures, as well as part of intelligence. His own accounts are inconsistent. The hearsay accounts about him are unreliable and can also be traced back to his own proclamations. There is no reliable independent or verifiable evidence about his role or reporting line. Ultimately the Panel can draw no safe conclusions about his role. It cannot be safely concluded he was ever part of an intelligence unit and it certainly has not been proved beyond a reasonable doubt that he answered directly to **VESELI** or the GS. To the contrary, all evidence around GECI is shrouded in serious doubt.

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<sup>850</sup> P01355.9\_ET, T.19.2-12.

<sup>851</sup> [REDACTED].

<sup>852</sup> 2D00006/2D00006\_ET.

## VI. GENERAL STAFF STRUCTURE

294. Understanding how the GS functioned is crucial to the Panel's pursuit of the truth. The Panel must look beyond political rhetoric, post-war self-aggrandisement and the SPO's misguided and baseless assertions. What the GS was and what it held itself out to be are two completely different things. A forensic analysis of the evidence demonstrates the only reasonable conclusion is that the GS was no more than a disparate group of individuals who, despite their best intentions, were unable to exercise any effective command and control over the OZs. They met rarely, in small groupings, made decisions only amongst those present, and had no functional system for internal information sharing or reporting and members often operated in complete ignorance of what others were doing. There is an absence of evidence as to what **VESELI**'s role on the GS entailed and little to no evidence as to what **VESELI** said or did throughout the Indictment Period. The limited available evidence instead shows that **VESELI** was abroad for much of this time, the details of which are set out below.<sup>853</sup>

### A. Formation of the Directorates

295. While the evidence demonstrates that the GS may have intended to organise itself into functional Directorates in the summer of 1998, this process did not materialise until the restructuring of November 1998. Any earlier references to 'Directorates' represent KLA aspirations and nominal titles that did not correspond to functional realities. Although sources describe a system of Directorates allegedly existing by May–June 1998,<sup>854</sup> these accounts are

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<sup>853</sup> See [Ch.VII.B](#), para.530.

<sup>854</sup> P00189/P00189\_ET.1, p.U015-8833; P01881/P01881\_ET, p.SPOE00226857.

unreliable<sup>855</sup> and primarily emanate from the Accused.<sup>856</sup> GS and senior KLA members consistently testified that the GS was only able to start creating functional Directorates after November 1998.<sup>857</sup>

296. ZYRAPI confirmed that many of the Directorates referred to in **KRASNIQI**'s book did not exist in the summer of 1998, stressing that had they existed, he would have been aware and would have coordinated with them.<sup>858</sup> While some directorates existed prior to November, they were not fully staffed, and lacked the resources to carry out their work.<sup>859</sup> BASHOTA testified that **KRASNIQI** was mistaken when he claimed that the GS directorates existed in June 1998.<sup>860</sup> **VESELI**'s own account of the founding of the GS intelligence service confirms that the *decision* to do so was made in June.<sup>861</sup> While they attempted to start building the KLA in June, they were unable to do so; GS directorates did not exist prior to the end of 1998.<sup>862</sup> Sylejman SELIMI also testified that the directorates started to be established in November 1998.<sup>863</sup> The only evidence that an Intelligence Directorate existed pre-November 1998 arises from unreliable post-war political statements of the Accused.<sup>864</sup>

297. As confirmed by ZYRAPI and MUSTAFA, the intelligence sector was formed in November 1998 when **VESELI** was assigned to lead it.<sup>865</sup> BASHOTA

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<sup>855</sup> T.18398.2-18399.13; T.18401.22-18403.14; T.18404.3-12; T.18405.1-18407.20; T.23029.13-23033.12; T.23225.1-23226.1. See F01474, Thaçi Response to 'Motion for admission of Accused's statements', 24 April 2023, paras.32, 45.

<sup>856</sup> P00189/P00189\_ET.1, p.U015-8833; P01881/P01881\_ET, p.SPOE00226857.

<sup>857</sup> T.17976.2-24; T.18398.2-18399.13; T.18401.22-18403.14; T.18404.3-12; T.18405.1-18407.20; T.23225.1-23226.1; T.23029.13-23033.12; T.25112.3-9; T.10373.7-16; T.10446.1-10448.1; T.5964.12-5965.9; T.21987.5-10; 2D00013\_AT/2D00013\_ET, p.DKV0132.

<sup>858</sup> T.18398.2-18399.13; T.18401.22-18403.14; T.18404.3-12; T.18405.1-18407.20.

<sup>859</sup> T.18075.7-21.

<sup>860</sup> T.23032.11-19.

<sup>861</sup> P01859/P01859\_ET.2, p.SPOE00053011.

<sup>862</sup> T23031.7-16; T.23189.15-18.

<sup>863</sup> T.25112.3-9.

<sup>864</sup> P00189/P00189\_ET.1, p.U015-8833; P01881/P01881\_ET, p.SPOE00226857; P01859/P01859\_ET.2, p.SPOE00053011. See also [Ch.II.C.ii](#).

<sup>865</sup> P01355.14\_ET, T.41.8-22; T.17800.8-13; T.17809.2-25; T.5964.12-5965.9.

confirmed **VESELI** would have been unable to fulfil the tasks of the Intelligence Directorate in June 1998<sup>866</sup> and there was no such Directorate at the beginning of November 1998.<sup>867</sup> **BYRNES** confirmed that the US-KDOM did not have information of any central functioning KLA intelligence service in November 1998;<sup>868</sup> his reference to an ‘information’ Directorate at this time meant public relations.<sup>869</sup> **HALITJAHA** testified that there was no Intelligence Directorate at the GS, until at least January 1999.<sup>870</sup>

298. The allegation that **VESELI** was a member of the KLA Political Directorate,<sup>871</sup> is based solely on the evidence of the Accused. After the war, **VESELI** claimed that he was a member of the Political Directorate<sup>872</sup> and there is one isolated reference in **KRASNIQI**’s book, which lists **THAÇI**, **KRASNIQI**, **VESELI**, and **HALITI** as responsible for a Political Directorate in June 1998.<sup>873</sup> No further references mention **VESELI**.<sup>874</sup> There is no evidence of any appointment of **VESELI** to such a role. **VESELI** is not named among those publicly announced in August 1998 as “*the political representatives of the KLA.*”<sup>875</sup> **VESELI** is not listed by **KICKERT** as among the “*6 people, nominated in August 1998*” for the “Political Directorate.”<sup>876</sup> **VESELI** is not named as associated with the Political Directorate elsewhere in the evidence. Despite **KRASNIQI**’s claim,<sup>877</sup> the preponderance of the evidence demonstrates that a Political Directorate was

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<sup>866</sup> T.23033.4-12.

<sup>867</sup> T.23225.17-22.

<sup>868</sup> T.14281.4-7.

<sup>869</sup> T.13937.7-17.

<sup>870</sup> T.10373.10-16.

<sup>871</sup> F00999/A01, para.5; F00709/A01, para.101.

<sup>872</sup> P00790, p.SITF00253817; P00787, p.SITF00009125

<sup>873</sup> P00189/P00189\_ET.1, p.U015-8833; P01138/P01138\_ET, p.SPOE00231431; P01277/P01277\_ET, p.U015-8833.

<sup>874</sup> P00189/P00189\_ET.1, pp.U015-8879, U015-8890.

<sup>875</sup> 1D00050/1D00050\_ET.

<sup>876</sup> 4D00058/4D00058\_ET, p.DJK00777.

<sup>877</sup> P00189\_ET.1, p.U015-8833; P01138\_ET, p.SPOE00231431; P01277/P01277\_ET, p.U015-8833.

not in existence in June 1998.<sup>878</sup> ZYRAPI confirmed that the extract from KRASNIQI's book was inaccurate.<sup>879</sup> BASHOTA, who was a member of the Political Directorate, confirmed that it did not exist in June 1998.<sup>880</sup> The Directorate was not effectively operating until later in the war, when there was an increasing need for KLA representation in political, diplomatic and international engagements.<sup>881</sup>

## **B. The Functioning of the GS**

299. The focus of the case against the Accused emanates from their alleged actions and responsibilities in their capacity as GS members. However, little evidence has been adduced about the functioning of the GS. No assumptions can be made about its functioning. The KLA was not a traditional army, but an emerging rebel armed group. It cannot be presumed that any purported titles or structures in any way resembled a traditional army. As is common with such groups, titles and structures are often self-imposed, fictitious, exaggerated and in no way reflective of reality.<sup>882</sup>

300. The GS was a disparate, disorganised group that seldom met, let alone as a collective that took decisions based on unanimity. It lacked any functional command or communication structure, and had no control or authority over the OZs. The SPO's case appears to be that the action of one GS member, or a sub-set thereof, can be attributed to all members. When the GS did occasionally meet, it usually comprised only those present in Kosovo; VESELI was absent for most of the meetings. There was no requirement that the meetings be quorate for decisions to be made and decisions were made by majority; unanimity was not required. There was no practice of consulting absent

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<sup>878</sup> T.18462.6-11; T.23158.2-4; [REDACTED].

<sup>879</sup> T.18462.1-18464.18.

<sup>880</sup> T.23158.2-4.

<sup>881</sup> [REDACTED]; T.13884.19-22; T.17549.6-9; T.17614.9-12; T.18375.10-13.

<sup>882</sup> T.19575.10-18; T.26782.14-26783.23.

members before, during or after meetings to ascertain their views. Most GS meetings and decision making took place in **VESELI**'s absence, and without his input or approval.<sup>883</sup> There is no evidence that **VESELI** ever approved, discussed, or even saw any GS regulation, order, decision, or communiqué, or that he ever sent a report or provided a briefing to a GS meeting.

301. **SELIMI**'s interview is the only evidence that **VESELI** was ever consulted about decisions made in his absence, or informed of decisions after the fact.<sup>884</sup> This cannot be relied upon fairly against **VESELI** as it is the untested, uncorroborated, and directly contradicted evidence of an unreliable co-Accused arising from an interview under caution.<sup>885</sup>
302. A decision made in **VESELI**'s absence, without any evidence that he was part of the decision-making process or that he approved it, cannot be attributed to him. **VESELI** cannot be held responsible for decisions over which he had no awareness or control. One implication of the KLA not being a traditional army is that no assumptions can be made about command and control by virtue of a *de jure* position. The SPO must prove *de facto* command and control.
303. Except for his support for the Rambouillet Agreement,<sup>886</sup> and the KLA-FARK agreement,<sup>887</sup> nowhere in the evidence are **VESELI**'s views, opinions, actions or intent recorded or reflected in any manner. **VESELI**'s voice is wholly absent from the evidence. There is little to no evidence of what other actions **VESELI** took and certainly no evidence regarding the motive or intent behind them. It is impossible to know **VESELI**'s opinion on any issue. It would be improper and unfair to impute any decisions of other members of the GS to **VESELI** - the

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<sup>883</sup> 2D00018.1, pp.DKV1221-1226, DKV1232-1233; T.17796.1-18; T.17797.17-20; T.17811.18-17821.5; T.23212.17-23213.6; T.10387.11-10388.7; T.17099.18-17100.25; [REDACTED]; P01080, p.075398.

<sup>884</sup> P00763.5\_ET, T.8.25-9.12.

<sup>885</sup> P00763.1\_ET, T.2.10-3.14.

<sup>886</sup> P00227/P00227\_ET.

<sup>887</sup> P00652/P00652\_ET; 1D00166/1D00166\_ET.

GS was not unitary and there is no evidence that **VESELI** shared the views of others.

### C. Internal GS Functioning

304. The picture that the SPO has tried to paint of the GS is completely removed from reality. The SPO assumes how matters functioned, but adduces no evidence in support. Fundamentally, the GS is an organisation about which the SPO knows little – yet it makes many grand but incorrect assertions regarding its functioning to try fill evidential gaps in its case.
305. The totality of the membership has not even been conclusively proved. The GS was split between those within Kosovo and those based abroad, the “tourists” as they were known by HARADINAJ.<sup>888</sup> The contingent that remained inside Kosovo functioned separately, and had little to no dealings with those who were based outside, except for less than a handful of moments in the conflict, including: the announcement of the Spokesperson; the November restructuring; Rambouillet, and the signing of the Undertaking.
306. The role of many GS members remains elusive. For example, little to no evidence has been adduced about Xhavit HALITI, Azem SYLA or Bardhyl MAHMUTI. These members of the GS have largely been ignored by the SPO because their existence does not serve its narrative. HALITI and MAHMUTI have not been said to have played any part in the alleged JCE, nor has any evidence been adduced to suggest that they shared in a criminal intent, or took any actions in furtherance of, the alleged JCE. Their existence, on the fringes, reinforces the flaws in the inferential case the SPO is trying to mount against **VESELI**. Equally little is known about **VESELI**. His actions are unknown for most of the conflict, and his dealings with the GS and soldiers are rare. Yet, the

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<sup>888</sup> T.5772.14-16.

SPO invites the Panel to draw various impermissible inferences, chief among them that because he was a member of the GS, he is culpable. This is contrary to the evidence, to logic, to law, and to fairness.

307. Similarly, very little attention has been paid by the SPO to the functioning of the other directorates, where the heads of those directorates are not the Accused. For example, no reliable evidence has been adduced to show how the Finance or Logistics Directorates functioned. Again, this shows a clear disregard on behalf of the SPO for the truth, as there has been no genuine attempt to show how the GS worked in practice – as the reality undermines its case against **VESELI**.

#### D. GS Meetings

##### *i. The evidence relating to GS meetings*

308. Serious issues arise as to the nature, quality, and source of the evidence upon which the SPO relies to prove the functioning of GS meetings.<sup>889</sup>
309. Firstly, many propositions set out in the SPO PTB rely upon unchallenged and uncorroborated statements of **VESELI**'s co-Accused. **KRASNIQI**'s book and **SELIMI**'s SPO interview, for reasons outlined above, are inherently unreliable and have been shown to be inconsistent on key issues throughout trial. Reliance on these statements against **VESELI** would be hyper-prejudicial.<sup>890</sup>
310. Secondly, the SPO has relied extensively on photocopied scraps of handwriting to suggest the occurrence of many GS meetings.<sup>891</sup> For several purported meetings,<sup>892</sup> the only evidence that exists are these. **BASHOTA** could not recall whether there was any person assigned to take official minutes in meetings,

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<sup>889</sup> F00709/A01, paras.105-107.

<sup>890</sup> See [Ch.II.C.ii](#).

<sup>891</sup> F00709/A01, para.105, fn.334.

<sup>892</sup> P03774/P03774\_ET; P03775/P03775\_ET; P03781.2/P03781.2\_ET, pp.SPOE00226472, SPOE00226475.

and refuted that such “scribbles” could be regarded as official minutes.<sup>893</sup> These notes have been admitted absent any evidence as to who wrote them or when. The SPO failed to adduce evidence supporting the alleged occurrence of these meetings, let alone their agenda or content. Such unreliable evidence is incapable, by itself, of establishing to the criminal standard that these meetings took place.

311. For most of the remaining alleged meetings, the evidential position is not vastly improved. For many, it is unknown where the meeting is said to have taken place, who the participants were, or what exactly was discussed. While there is some supporting evidence from GS members as to the conduct of certain meetings, the key or only piece of evidence relied on for most of these meetings remains these unauthenticated “scribbles,” often admitted through the bar table.<sup>894</sup> Despite the SPO case that the official minutes were archived,<sup>895</sup> it has failed to adduce any such evidence. The SPO called GS members to give evidence, yet inexplicably chose not to seek to corroborate or confirm the occurrence or context of these alleged meetings. Other evidence undermines these documents.<sup>896</sup>

*ii. The GS “met and coordinated frequently”<sup>897</sup>*

312. The SPO has failed to prove that the GS had ‘frequent,’ ongoing, regular meetings or internal coordination. **VESELI** was mostly absent from these

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<sup>893</sup> T.23218.9-21.

<sup>894</sup> See P03677/P03677\_ET, p.SPOE00232567.

<sup>895</sup> F01534/A01, No.233-234.

<sup>896</sup> See T.17582.6-22; T.23143.1-23244.4. When shown P00643/P00643\_ET, purportedly containing notes of a GS meeting on 9 July 1998, ZYRAPI and BASHOTA both testified they were unaware an individual named ‘HAZIRI’ was appointed as chief of the GS at such a meeting, nor of any such appointment, as noted in the document.

<sup>897</sup> F00709/A01, para.105.

meetings and there is no evidence of **VESELI** coordinating any activities within the GS.

313. There were large swathes of time when there were no meetings. ZYRAPI explained that in the summer of 1998 it was *“difficult to hold regular meetings”* so the GS would *“have ad hoc meetings, not with the -- all the members of the staff,”* however these were *“not frequent, rather rare”* because of the attacks on the ground.<sup>898</sup> Then, because of the impact of the Serbian offensive in summer 1998, there is little evidence of any meetings between the end of July and November 1998. After the November 1998 meeting, there is no indication that the GS met again for another six weeks.
314. There was no proper coordination or regular communication between the GS and the OZs.<sup>899</sup> BASHOTA stated that *“[t]he meetings of the General Staff [...] were few and far between. Not everybody was able to attend because of the risk posed on the ground.”*<sup>900</sup> The 12 November 1998 meeting was the first time many of the GS could get together; before that point in time there were *“huge risks moving from one part of the territory to another.”*<sup>901</sup> Due to these risks, the movements of the members of the GS were very limited and they could only convene on very significant matters. Accordingly, it was extremely difficult to meet and make collective decisions.<sup>902</sup> There was no functional system in place for the GS to share information amongst each other to let each other know what was going on.<sup>903</sup>
315. If the Panel accepts the evidence adduced to support the occurrence of GS meetings in January and February 1999, that two-month period is the only

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<sup>898</sup> T.17568.2-11.

<sup>899</sup> T.17566.11-15; T.17870.9-17871.18.

<sup>900</sup> T.23379.16-18.

<sup>901</sup> T.23191.8-19.

<sup>902</sup> T.23466.15-23.

<sup>903</sup> T.23193.8-12.

narrow timeframe where it is possible to suggest meetings were in any way 'frequent.' These meetings in January were dealing primarily with two issues: the exchange of the eight VJ soldiers – which involved the lawful detention and transfer of POWs – and Rambouillet. From the end of January to the end of February, the GS was dealing with internal chaos, culminating in the 'coup'. From March 1999 the GS again met less frequently due to the NATO offensives.

316. While there are instances of communication between GS members derived from [REDACTED], they centre primarily on events in early 1999 and only involve certain individual GS members.<sup>904</sup> Such *ad hoc* communications cannot demonstrate collective communication or coordination within the GS.

*iii. GS decision-making was "collective," "followed consultation" and "efforts were made to involve absent members in decisions."<sup>905</sup>*

317. The suggestion that decision-making was consultative, collective, and involved absentee members is central to the SPO's case, yet it has not been proven.

318. In support of the assertion that "*General Staff decision-making was collective, and followed consultation among members,*" the SPO primarily relies upon the evidence of **SELIMI**<sup>906</sup> and purported KLA regulations which do not support this assertion.<sup>907</sup> The SPO has not proven that these regulations were implemented or enforced;<sup>908</sup> they did not reflect reality.<sup>909</sup> **SELIMI's** uncorroborated, untested and unreliable account is contradicted by the evidence of GS members.

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<sup>904</sup> [REDACTED]; [REDACTED].

<sup>905</sup> F00709/A01, para.106.

<sup>906</sup> P00761.4\_AT/P00761.4\_ET; P00761.5\_AT/P00761.5\_ET; P00763.4AT/P00763.4\_ET.

<sup>907</sup> P00083/P00083\_ET.

<sup>908</sup> See [Ch.VII](#).

<sup>909</sup> T.18490.16-24.

319. BASHOTA explained that GS meetings were few and far between and it was not possible for all GS members to be present.<sup>910</sup> Decisions were taken as needed in “*the heat of the moment;*”<sup>911</sup> on an *ad hoc* basis; not collectively;<sup>912</sup> in the absence of members;<sup>913</sup> without BASHOTA or others knowing about decisions,<sup>914</sup> and with the opinions of absent members being irrelevant.<sup>915</sup> Decisions as to the content and publication of any communiqués were not collective and not taken at GS meetings.<sup>916</sup> BASHOTA’s evidence, unlike that of **SELIMI**, aligns with the reality on the ground and other evidence in the case. BASHOTA testified that:

[I]t was not very relevant for the General Staff, when somebody was missing in a certain meeting, to wait for that person to come and have the meeting on another day and make the decision, because it was a wartime and so that might happen. They might make the decision in that way.<sup>917</sup>

320. When confronted with **SELIMI**’s assertion that the leadership of the GS could be described as “collective leadership,” BASHOTA responded: “*I do not think it was like that.*”<sup>918</sup> When pushed on the issue BASHOTA responded as follows:

[...] Do you agree with Mr. Selimi’s suggestion that your leadership in the KLA General Staff was a collective leadership? Do you agree or disagree with that proposition?

A. Your Honour, I tried to explain. When we say “collective,” that’s what I tried to explain, collective for me also entails the number of people that took part in a certain meeting. Those members who were able to were the ones who met. If they were not in favour of a certain decision, the decision was taken by a majority, and those who were against a certain decision did not dispute the outcome.<sup>919</sup>

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<sup>910</sup> T.23379.16-18.

<sup>911</sup> T.23467.8-11.

<sup>912</sup> T.23368.19-23369.1; T.23466.10-14.

<sup>913</sup> T.23466.15-23.

<sup>914</sup> T.23467.5-7.

<sup>915</sup> T.23467.8-11.

<sup>916</sup> See [Ch.VI.L.](#)

<sup>917</sup> T.23368.10-14.

<sup>918</sup> T.23368.15-23369.1.

<sup>919</sup> T.23370.14-24.

The claim that “[e]fforts were made to involve absent members before decisions”<sup>920</sup> is therefore fatally undermined.

321. The SPO relies on uncorroborated, untested statements from **KRASNIQI**'s book,<sup>921</sup> a media article,<sup>922</sup> and purported minutes,<sup>923</sup> which at their highest suggest nothing more than isolated incidents of cooperation with OZs, primarily regarding one issue: the release of the eight VJ soldiers. These documents do not state that efforts to inform absent members were ever made. The SPO further relies on **KICKERT**,<sup>924</sup> whose evidence amounts to no more than a limited impression of KLA decision making, directly contradicted by **ZYRAPI** and **BASHOTA**, who had first-hand knowledge of these issues.
322. The SPO has failed to adduce reliable evidence capable of proving that absent members were involved before decisions were reached. There is no evidence, save for that of co-Accused **SELIMI**, that **VESELI** was ever consulted before a decision was made in his absence. This is insufficient for any finding of fact to the criminal standard.
323. Again, the assertion that “efforts were also made to inform absent members at the earliest opportunity [after decisions were made]”<sup>925</sup> is undermined by the evidence of GS witnesses. In seeking to prop up this claim, the SPO again relies upon **SELIMI**.<sup>926</sup> However **SELIMI** simply said that there was agreement of all the KLA leaders as to who should attend Rambouillet.<sup>927</sup> This is not probative of the SPO's proposition. Secondly, the SPO relies upon **ZYRAPI**'s statement that “the former general commander was informed and the provisional government was also

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<sup>920</sup> F00709/A01, para.106.

<sup>921</sup> P01091/P01091\_ET, pp. SPOE00231061-SPOE00231066.

<sup>922</sup> P00811/P00811\_ET.15, p.SPOE00053613.

<sup>923</sup> P01093/P01093\_ET; P03773/P03773\_ET.

<sup>924</sup> P01210/P01210\_AT, para.54.

<sup>925</sup> F00709/A01, para.106.

<sup>926</sup> P00763.5\_AT/P00763.5\_ET.

<sup>927</sup> P00763.5\_ET, T.10.16-11.21.

*informed*<sup>928</sup> that a new General Commander had been elected in the absence of the Commander and the Rambouillet delegation. ZYRAPI informing the up-until-then leadership that, unbeknownst to them, there had been a ‘coup’ by the OZ commanders does not strengthen the SPO’s case that a functioning decision-making process existed.

324. If one examines the evidence concerning the alleged meetings, from the end of January to the end of February 1999, it directly contradicts the picture that the SPO seeks to paint in its PTB of the decision-making processes, cohesion, coordination and control at the GS level. The evidence that the SPO seeks to rely on to demonstrate the well-functioning nature of the GS, in fact demonstrates a decision-making body in turmoil.
325. While the Kosovar-Albanian delegation was at Rambouillet, OZ commanders in Kosovo met twice with the GS members in Kosovo to convey their dissatisfaction with members of the GS and make changes to its leadership.<sup>929</sup> Complaints were made about GS members being abroad: “[t]he Intelligence Service (SHI) cannot look after the army from abroad;”<sup>930</sup> questions were asked of its members; the OZ commanders wished for more frequent consultations, to provide their opinions, and for a place on the GS.<sup>931</sup> These complaints culminated in a ‘coup’ and the withdrawal of the GS’s authority to sign the Rambouillet Agreement.<sup>932</sup> This caused a crisis and prevented any decision from being taken at Rambouillet.<sup>933</sup>

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<sup>928</sup> P01355.11\_ET, T.18.22-24.

<sup>929</sup> P00182/P00182\_ET, pp.SPOE00226397-SPOE00226407; 1D00033/1D00033\_ET, p.SPOE00226362; T.5855.15-18; T.5859.5-19; T.5868.13-24; T.5869.18-5870.14; T.17482.23-17483.2; T.17484.13-17485.6; T.17485.11-14; T.17485.24-17486.11; T.17661.7-12; T.22122.8-14; T.22123.14-22124.2; T.22126.18-22; T.25066.13-21.

<sup>930</sup> P00182/P00182\_ET, p.SPOE00226401.

<sup>931</sup> P03781/P03781.2\_ET, p.SPOE00226473; P03777/P03777\_ET, p.SPOE00227666; P02095/P02095\_ET, p.SPOE00226473; 4D00068/4D00068\_ET, p.SPOE00226473; T.18197.23-18199.15; T.23234.17-23235.18.

<sup>932</sup> 1D00033/1D00033\_ET, pp.SPOE00226359, SPOE00226361; 1D00024\_TR, p.2.

<sup>933</sup> F01534/A01, No.120.

326. The withdrawal of authority was reported in the media in Kosovo,<sup>934</sup> and is corroborated by the evidence of GS members<sup>935</sup> and OZ commanders<sup>936</sup> who testified that the delegation was not authorised to sign the agreement without first consulting and acquiring their approval. RUBIN,<sup>937</sup> BYRNES,<sup>938</sup> and the U.S. State Department's diplomatic correspondence,<sup>939</sup> demonstrate that the delegation could not sign without acquiring the consent of the OZ commanders. Only after this consent was acquired did the delegation sign the final agreement.<sup>940</sup>

327. It cannot possibly be suggested that the GS always made decisions as a collective, following consultation with all members.

*iv. VESELI's participation in meetings*

328. The evidence suggests that throughout the entirety of the Indictment Period, **VESELI** attended a mere handful of GS meetings. As noted below, he was abroad for much of the Indictment Period.<sup>941</sup>

329. **KRASNIQI** suggests that **VESELI** was at a meeting in Negroc/Negrovc in June 1998 when **KRASNIQI** was appointed Spokesperson.<sup>942</sup> In **BASHOTA**'s view, it was incorrect to even call this a meeting of the GS, however, attendees included some of those who later became GS members.<sup>943</sup> **KRASNIQI**'s book

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<sup>934</sup> 1D00049/1D00049\_ET.

<sup>935</sup> T.17666.2-11; T.17754.12-17; T.23163.15-21.

<sup>936</sup> T.5635.16-23; T.5708.2-10; T.5872.15-5873.1; T. 5877.22-25; T.25066.16-25067.9.

<sup>937</sup> 1D00262, paras.24-26, 51; 1D00279/1D00279\_ET, pp.SPOE00229721, SPOE00229726; T.26506.12-26508.7; T.26508.20-26509.4; T.26509.12-17; T.26512.13-26513.1; T.26513.16-25; T.26734.3-21.

<sup>938</sup> P01066\_AT/P01066, paras.65-66, 87; T.13612.13-13613.6.

<sup>939</sup> P01080, p.075397; 1D00282, pp.DHT05872-DHT05873; 1D00358, p.DHT05179.

<sup>940</sup> P00227/P00227\_ET; 1D00362.

<sup>941</sup> See [Ch.VII.B](#), para.530.

<sup>942</sup> P01277\_ET, pp.U015-8833-U015-8834.

<sup>943</sup> T.23021.20-23022.5.

cannot be seen as a complete or accurate anthology of GS meetings; his account of alleged meetings has been described as incorrect by witnesses.<sup>944</sup>

330. There is a lack of evidence of any substantial engagement by **VESELI** with the GS again until the November 1998 restructuring meeting.<sup>945</sup> The evidence suggests that the GS met over two days to discuss the FARK agreement – which **VESELI** had participated in negotiating<sup>946</sup> – and restructuring.<sup>947</sup> **VESELI**, who had just returned to Kosovo, was present at the beginning when the FARK agreement was discussed, but absent when the restructuring was discussed – *i.e.*, he was present on 12, not 13, November.<sup>948</sup> BASHOTA was unable to confirm or refute that **VESELI** was present or participated in the meeting.<sup>949</sup> **VESELI** immediately left Kosovo and was abroad until the end of January 1999.<sup>950</sup>
331. ZYRAPI suggested that **VESELI** attended a meeting with the GS at the end of January or the beginning of February 1999, when he introduced Mensur KASUMI.<sup>951</sup> ZYRAPI gave no details as to the date of this meeting, its participants, or any agenda or discussion other than KASUMI's introduction. **VESELI** travelled to Rambouillet in February 1999.<sup>952</sup>
332. Two handwritten documents refer to a meeting of the GS and the OZ commanders on 12 March 1999,<sup>953</sup> following the Rambouillet negotiations. P00644 is an unauthenticated document that describes a meeting where “*the GS*

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<sup>944</sup> T.18462.10-18464.18.

<sup>945</sup> T.17396.8-10; 4D00011/4D00011\_ET.

<sup>946</sup> P00652/P00652\_ET; 1D00166/1D00166\_ET.

<sup>947</sup> T.17395.10-17.

<sup>948</sup> T.17395.10-17396.7.

<sup>949</sup> T.23211.21-23212.3.

<sup>950</sup> T.17814.2-7; T.23212.17-25; 2D00018.1, pp.DKV1222-DKV1224; P01449\_ET, p.SPOE00209483; T.17817.3-11.

<sup>951</sup> T.17820.24-17821.5.

<sup>952</sup> T.17844.8-9.

<sup>953</sup> P00644/P00644\_ET; P00227/P00227\_ET.

*took decisions about providing information on the continuation of the talks at the Rambouillet Conference.*"<sup>954</sup> P00227 purports to contain the signatures of those in favour of signing the Rambouillet Agreement. Significantly, it also notes that *"the KLA General Staff will pronounce its final opinion about the document after consulting the ZO/ Operational Zone/ commanders."*<sup>955</sup> When shown P00227 MUSTAFA, confirmed he remembered a meeting where he met **VESELI** and the GS, and since he only met **VESELI** on one occasion with the GS, it must have been this incident.<sup>956</sup>

333. Finally, there is some evidence that **VESELI** attended a meeting of the GS in the Nerodime OZ in March or April 1999 regarding Operation Arrow.<sup>957</sup>
334. **SELIMI**'s claim that **VESELI** was at almost all the GS meetings and informed about what took place in their absence<sup>958</sup> is demonstrably false.
335. Ultimately, what **VESELI**'s very limited participation in GS meetings shows is that he did not play a central or even substantial role, in the ordinary functioning of the GS. Meetings **VESELI** is alleged to have attended in 1998 were aimed at early organisation and FARK. Meetings in 1999 related to discrete matters such as Rambouillet or PGoK. In the meetings where **VESELI** is suggested to have been present, there is no evidence that anything was discussed that could be perceived as related to any common criminal plan, nor were any steps taken in furtherance of any criminality. There is no record of anything **VESELI** said, if anything. There is no evidence that **VESELI** provided any report or expressed a view on any topic; participated in any decision

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<sup>954</sup> P00644\_ET.

<sup>955</sup> P00227\_ET.

<sup>956</sup> T.5800.5-23.

<sup>957</sup> [REDACTED]; [REDACTED]; [REDACTED]; T.22166.15-22168.1.

<sup>958</sup> P00763.5\_ET, T.8.20-9.6.

making or contributed to the formulation of any policy or created or approved any document or regulation.

336. In all his meetings and known communications with the GS, there is simply no evidence **VESELI** did anything that could be suggested as demonstrative of an intention to target alleged 'Opponents;' he took no steps in furtherance of that alleged purpose; he made no statements encouraging others to do so; and took no actions that could be perceived as using any other person as a 'tool' to do so. Further, there is no evidence arising from any of the alleged GS meetings that proves **VESELI** exercised a position of command and control over any other person within the KLA.

#### **E. Communications at the GS**

337. There is no evidence that **VESELI** played any part in establishing, or participating in, any *"effective means of communication between KLA members and units throughout Kosovo."*<sup>959</sup>
338. Communication was rudimentary and primarily carried out by radio or courier. Radios had limited capability. They were not universally available, unreliable,<sup>960</sup> regularly intercepted,<sup>961</sup> and their range extremely limited.<sup>962</sup> As a result, the KLA suffered *"serious information gaps."*<sup>963</sup> Communication by courier was neither efficient nor reliable. Due to ongoing offensives, and extremely difficult physical terrain,<sup>964</sup> communication via courier was hindered, slow, and could take one to two days.<sup>965</sup> ZYRAPI explained that it was difficult to communicate with OZ commanders in 1998 unless he

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<sup>959</sup> F00709/A01, para.126.

<sup>960</sup> T.10193.13-17; T.10194.10-10195.23; T.6456.9-13.

<sup>961</sup> P00708.2\_ET, T.10.20-11.7; P01069, p.075334.

<sup>962</sup> P01355.2\_ET, T.25.1-2; T.18352.11-14; T.18441.12-19.

<sup>963</sup> P01069, p.075334.

<sup>964</sup> T.12842.8-12843.10; T.12847.8-15.

<sup>965</sup> P01355.2\_ET, T.24.24-25.9.

physically went to the OZ or the person would come to the staff.<sup>966</sup> There is evidence that certain KLA members had access to satellite phones in 1998, however they certainly were not widespread and frequent power cuts presented difficulties.<sup>967</sup> While there is some evidence that call codes were in existence within the KLA,<sup>968</sup> they were by no means universally or consistently adopted or used. It has not been demonstrated that **VESELI** was party to even one of the many hundreds of satellite intercepts adduced into evidence. When abroad, **VESELI** was not in telephone communication with Kosovo for security reasons.<sup>969</sup> ZYRAPI correctly believed that **VESELI** did not know either the situation, or the state of units within Kosovo.<sup>970</sup>

## F. GS Reporting

339. There was no consistent, regularised or reliable reporting system in place from OZ level to the GS. While there were good faith efforts to put such a system in place, the exigencies of the conflict and disorganisation of the KLA meant this never came to fruition. The Panel can make no assumptions that when an event occurred within the OZs, the matter was reported to the GS. In the absence of evidence of reporting on any particular issue, it cannot be reasonably inferred that the GS was aware of it. Knowledge by any one GS member of an issue or event cannot be imputed to other members, as the GS had no functional internal reporting system.

### *i. Reporting from the OZs to the GS*

340. Prior to November 1998, there is only evidence of two reports ever being addressed to the GS from the OZs; the unreliable P00067<sup>971</sup> and P01383 – a

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<sup>966</sup> T.17631.19-23.

<sup>967</sup> T.18441.20-18442.20; T.22114.25-22115.4, *Contra* F01534/A01, No.231.

<sup>968</sup> T.5514.17-18.

<sup>969</sup> T.18477.12-18478.10.

<sup>970</sup> T.18368.24-18369.5.

<sup>971</sup> See [Ch.IX.A.vi.5](#), para.634

report from Dukagjin dated 28 July 1998. P01383 is equally unreliable as it is unsigned, has no chain of custody information, and there is no evidence that it was sent to, or received by, the GS. ZYRAPI could not recall receiving the report, adding that it was impossible for such reports to reach the GS during the fighting.<sup>972</sup> Additionally, ZYRAPI testified that prior to the restructuring, he was unaware of *any* reporting line between the OZ commanders and the GS.<sup>973</sup> While there was inevitably some 'communication' prior to November 1998 between GS members and the OZs, there was no 'reporting' on any regular or formal basis as the SPO suggests.<sup>974</sup> There was no more than incidental information sharing through *ad hoc* conversations. To conflate the two would be an error. There is simply no reliable evidence from which the Panel can conclude that the GS received reports from the OZs prior to November 1998, or that they were informed as to what was occurring in the OZs prior to that time. The evidence below demonstrates the contrary.<sup>975</sup>

341. The evidence adduced as to the regularity of reporting from the OZs to the GS after November 1998 lacks consistency. For example:
- a. ZYRAPI previously stated that he met the OZ commanders every fortnight from January to March 1999 to report and the deputy commander would be present.<sup>976</sup> However, he later stated that from November 1998, he only met with OZ commanders three to four times.<sup>977</sup>

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<sup>972</sup> T.18005.12-18007.2.

<sup>973</sup> P01355.4\_ET, T.14.25-15.16. *Contra* F01534/A01, No.227.

<sup>974</sup> F00709/A01, para.127.

<sup>975</sup> *Contra* F01534/A01, No.239.

<sup>976</sup> P01356\_ET, T.5955.19-5956.9.

<sup>977</sup> T.18087.14-21.

- b. MALOKU stated all OZ commanders would meet the GS once per month after November 1998.<sup>978</sup> He had no knowledge of whether the Dukagjin staff reported to the GS before December 1998.<sup>979</sup>
- c. MUSTAFA testified that between September 1998 and March 1999, he visited the GS *“two to three times over the course of two or three months”* and that he met the GS *“[w]henever it was possible.”*<sup>980</sup>
- d. BASHOTA testified that while the information *“mainly came from the zones to the chief of staff”* the movement between the OZs during the war was difficult, and therefore it was difficult to receive information in real-time to deal with certain issues.<sup>981</sup>
- e. BUJA testified that it was the duty of OZ commanders to report to the GS Chief of Staff. BUJA said that he started sending these reports, concerned combat operations and other logistical matters,<sup>982</sup> from the end of January 1999.<sup>983</sup> When shown P00228, which refers to a written statement submitted by the Nerodime OZ Commander on or about 20 December 1998, BUJA said: *“I do not recall this, but it is possible that I may have sent one.”*<sup>984</sup> He could not recall sending any written reports, or if the OZ commanders ever even had the possibility to do so.<sup>985</sup>
- f. KURTAJ did not know how or whether the OZ command reported to the GS.<sup>986</sup>

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<sup>978</sup> P02089\_ET, p.SPOE00067220.

<sup>979</sup> P02090.3\_ET, T.20.9-11.

<sup>980</sup> T.5604.5-21.

<sup>981</sup> T.23474.14-17.

<sup>982</sup> T.22200.9-16.

<sup>983</sup> T.22202.1-23.

<sup>984</sup> T.22204.10-11.

<sup>985</sup> T.22202.24-22203.5.

<sup>986</sup> T.12915.5-24.

g. TETAJ testified that he was never aware that HARADINAJ had any superior authority to which he had to report.<sup>987</sup>

342. No safe or reliable conclusions can be drawn regarding the frequency or regularity of this reporting as the evidence lacks consistency. No evidence adduced at trial, points to regularised reporting akin to a traditional army at any time.
343. ZYRAPI explained that OZ commanders did not report directly to the heads of GS directorates but to the General Commander (*i.e.*, SYLA).<sup>988</sup> However, during meetings with the OZ commanders, reports would be made directly to the Deputy Commanders – **KRASNIQI** and sometimes BASHOTA.<sup>989</sup> In terms of substance, MALOKU explained that OZ commanders did not report about arrests, detentions or mistreatments, not even in daily reports; reports pertained only to military issues.<sup>990</sup>
344. No written reports were adduced from OZ commanders, or documents referencing GS reporting sessions with the OZ commanders, between February and April 1999. However, ZYRAPI stated that he received reports during the NATO bombing dealing only with KLA positions.<sup>991</sup>
345. There are handwritten documents which indicate that meetings between some OZ commanders and some GS members occurred in late January and February 1999. However, these meetings primarily concerned the OZ commanders'

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<sup>987</sup> T.19547.24-19548.15.

<sup>988</sup> P01355.5\_ET, T.25.1-5.

<sup>989</sup> P01355.7\_ET, T.9.24-10.12.

<sup>990</sup> T.25949.6-25950.17.

<sup>991</sup> P01356\_AT/P01356\_ET, T.6007.10-25.

dissatisfaction with GS members and their desire to appoint new KLA leadership,<sup>992</sup> culminating in 'the coup.'<sup>993</sup>

346. P00615, P01424 and P00628 evidence attempts by ZYRAPI to implement a reporting system, however like all KLA best intentions it ultimately proved unsuccessful. The evidence shows that no regular reporting system ever existed.

ii. *Reporting of crimes to the GS*

347. There is an adjudicated fact that:

Commanders of zones in Kosovo were obliged to inform the General Staff of any crimes or breaches of the laws of war committed within their area of operation; the General Staff would then order appropriate action.<sup>994</sup>

In the trial from which the adjudicated fact originates, issues of GS functionality were not in issue and not challenged. This finding is not reliable and has been proven to be inaccurate and must therefore be disregarded.

348. While there may have been a theoretical obligation on OZ commanders to inform the GS of alleged crimes, there was no such reporting in practice. Nor is there evidence that there were any measures available to address the failure to report. The fact that ZYRAPI had heard rumours about people abusing the KLA uniform<sup>995</sup> does not establish a functional reporting system from the OZs on crimes, disciplinary issues, or legal breaches by KLA soldiers. The SPO has failed to demonstrate there was even knowledge at OZ command level for the vast majority of crimes alleged on the Indictment.

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<sup>992</sup> P00182/P00182\_ET, pp.SPOE00226397-SPOE00226407; 1D00033/1D00033\_ET, p.SPOE00226362; T.5867.12-5870.14; T.17482.23-17483.2; T.17484.13-17486.11; T.17661.7-12; T.22122.8-14; T.22123.14-22124.2; T.22126.18-22; T.25066.13-15.

<sup>993</sup> See [Ch.VI.H](#). See also 1D00033\_ET, pp.SPOE00226359, SPOE00226361; 1D00024\_TR, p.2.

<sup>994</sup> F01534/A01, No.237.

<sup>995</sup> See P01355.9\_ET, T.15.24-16.4.

349. ZYRAPI explained that when he visited commanders in the OZs, they reported incidents of abuse, however, crucially, “they had no knowledge of who was undertaking these actions.”<sup>996</sup> ZYRAPI explained that the KLA commanders:

[D]id not know which groups were carrying out these actions. They did not know whether these are actions of units that belonged to the KLA or they were actions of civilian groups or somebody else. For the people that they did know, they took measures [...].<sup>997</sup>

350. Nonetheless, such complaints led ZYRAPI to issue an ordinance on 28 November 1998 to try to assist in eliminating such behaviour.<sup>998</sup> As outlined elsewhere,<sup>999</sup> ZYRAPI’s response to non-specific allegations of abuses by anonymous persons, largely unconnected to the KLA, cannot constitute ‘notice of crimes’ in the legal sense. There is no evidence that ZYRAPI shared this information with others on the GS, or VESELI. Moreover, actions taken by ZYRAPI in this respect are indicative of the KLA leadership doing what it could, with very limited means, to seek to eradicate misconduct by unknown actors – it simply did not have the command and control structures in place to do so effectively, or to do more.

351. In 1999, [REDACTED] complained to ZYRAPI that people “*unknown to the zone and the commanders of the zone*”<sup>1000</sup> were operating in his area mistreating civilians. In response, ZYRAPI again acted and tried to introduce permits to try and stop such actions,<sup>1001</sup> further evidencing a lack of shared intent for such crimes and reinforcing that there were those on the GS, including ZYRAPI and VESELI, who did not wish for any crimes to be committed but wished for the KLA to fight a lawful and just war. Such evidence strongly undermines the

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<sup>996</sup> P01355.4\_ET, T.11.11-12.

<sup>997</sup> P01355.4\_ET, T.12.18-21.

<sup>998</sup> See P00741, p.071839/P00741\_ET.3; 1D00029/1D00029\_ET; P00884/P00884\_ET.

<sup>999</sup> See [Ch.IX.B.ii](#).

<sup>1000</sup> [REDACTED].

<sup>1001</sup> P01355.9\_ET, T.13.7-14.1.

suggestion that there was a JCE operating throughout the GS and including **VESELI**.

352. The fact that ZYRAPI received complaints from OZ commanders that groups of unknown people were operating in their OZs and committing abuses<sup>1002</sup> is separate and distinct from KLA soldiers *within* the OZ structures and under the OZ commands committing crimes. It was impossible to know if these persons were misusing the KLA insignia, as explained by ZYRAPI:

[W]e were not able to find out who these groups were because the KLA at the time wasn't all wearing uniforms, was all in uniform. There were civilians too, but they had insignias of the army. And it was difficult for us to identify who they were.<sup>1003</sup>

Furthermore, there were instances of Serbs dressing in KLA uniforms, which fuelled suspicions about false flag operations.<sup>1004</sup>

353. Neither OZ commanders, nor the GS, can be held responsible for crimes committed by unknown and unidentifiable actors, over whom they had no command and control, operating outside of KLA structures in wartime, simply because they may or may not have invoked the name of the KLA. Nor can it be suggested that (a) the KLA, or the GS specifically, is responsible for failing to prevent these crimes; or that (b) the sharing of concerns about these alleged crimes with ZYRAPI proves GS knowledge of abuses by KLA soldiers under the command of the OZ for which they could be held responsible under any mode of liability.
354. Notably, the detention of the eight VJ soldiers was not criminal; they were lawfully detained POWs, treated humanely, and no contrary assertion has been

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<sup>1002</sup> P01355.4\_ET, T.15.13-18.

<sup>1003</sup> P01355.9\_ET, T.15.16-20.

<sup>1004</sup> P01355.9\_ET, T.16.6-17.8.

made. ZYRAPI was informed about their detention by [REDACTED]<sup>1005</sup> and the soldiers were released.

355. When one carefully examines the [REDACTED] evidence, which due to its unreliability must be approached with caution, [REDACTED]. While they contain references to detentions, there is no suggestion that when detentions were brought to the attention of an individual GS member that they (a) believed the detention to be criminal; (b) knew or suspected the detainee was being abused; and/or (c) reported this information to other GS members. VESELI has not been proven to have ever been party to any such call and there is no evidence he was made aware of the content of any call.

*iii. Reporting on collaborators and detainees*

356. There is no reliable evidence that any reports were received by the GS on the issue of collaborators. The SPO has not adduced any reports that were sent to, and/or received by, the GS on collaborators.

357. The SPO suggests that "*Llap command reported to, and consulted with, members of the General Staff, including on detainees,*"<sup>1006</sup> relying on P00181. P00181 is a collection of unreliable handwritten notes from an unknown source and author, where there is no evidence supporting any connection between the document and the GS. MUSTAFA did not know the origin or authorship of the document,<sup>1007</sup> and could not recall GASHI informing the GS about [REDACTED].<sup>1008</sup> MUSTAFA could not recall any meeting with the GS when collaborators were discussed.<sup>1009</sup> MUSTAFA did not authorise reporting to the GS about collaborators or believe any such reporting occurred.<sup>1010</sup> IBISHI

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<sup>1005</sup> [REDACTED].

<sup>1006</sup> F00709/A01, para.420.

<sup>1007</sup> T.5626.8-15.

<sup>1008</sup> [REDACTED].

<sup>1009</sup> T.5826.11-22.

<sup>1010</sup> T.5937.24-5938.5.

confirmed that collaborators were not discussed with the GS when members visited Llap.<sup>1011</sup> Even if accepted that P00181 is a meeting note, the SPO has not shown that this information went any further than the unidentified author and meeting participants. Accordingly, no inferences can be drawn from it as to broader GS knowledge.

358. While BASHOTA suggested that OZ commanders reported to ZYRAPI<sup>1012</sup> about taking punitive measures against collaborators,<sup>1013</sup> there is no evidence this ever happened. The SPO relies on P00884,<sup>1014</sup> a KLA GS order issued 28 November 1998,<sup>1015</sup> which does not support the proposition that there was reporting about collaborators to the GS. Moreover, neither P03794 nor P03941 evidence reporting to the GS on this issue; while both exhibits, said to have been written in July and August 1999, purport to identify perceived collaborators and request GS assistance in acting against such persons, both are inherently unreliable, and remain uncorroborated and unauthenticated. There is no evidence that either document was ever sent to, or received by, members of the GS; no reasonable inference can be drawn to the contrary. They also post-date the conflict and VESELI's time in the KLA.

359. The unreliable [REDACTED] claimed that issues concerning suspected collaborators were reported to the OZ Commander who, in turn, would report to the GS, however most cases of suspected collaboration were local problems and, therefore, resolved locally.<sup>1016</sup> [REDACTED] provides no examples and his

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<sup>1011</sup> T.21157.24-21158.5.

<sup>1012</sup> T.23282.11-22.

<sup>1013</sup> P01871, para.30; P01870.3\_ET, T.9.18-23.

<sup>1014</sup> F00709/A01, para.13.

<sup>1015</sup> Also admitted as P00741, p.071839/P00741\_ET.3,1D00029/1D00029\_ET.

<sup>1016</sup> [REDACTED].

claim remains uncorroborated. [REDACTED]'s evidence is incapable of belief.<sup>1017</sup>

360. There is no evidence that **VESELI** received any reports, at any time, from any person, on the issue of collaborators.

361. While addressed elsewhere,<sup>1018</sup> it is further submitted that the mentioning of collaborators in books, media articles, and handwritten notes of unknown authorship and provenance do not evidence, nor allow for the inference that, reports about the issue were sent to the GS and cannot be relied upon to that end.

*iv. Parallel Reporting*

362. The SPO alleges that there was a parallel reporting structure to the GS in place in the Pashtrik OZ. Firstly, it is alleged that due to purported distrust between the GS and/or LPK, and the LDK and FARK "*certain commanders within the Zone reported directly to the General Staff, bypassing those affiliated with the LDK and FARK.*"<sup>1019</sup> The SPO misguidedly relies on P00500 and P00650, which are dealt with elsewhere.<sup>1020</sup> In short these documents were complaints not reports, do not demonstrate parallel reporting, and there is no evidence they were ever sent or received by the GS or **VESELI**.

363. Secondly, the SPO alleges the GS created the 123 Brigade on 15 June 1998, commanded by KUQI and that it reported directly to the GS.<sup>1021</sup> The SPO relies exclusively on the evidence of FONDAJ to support this allegation. However, FONDAJ explained that he only *assumed* Blerim KUQI was reporting to ZYRAPI, as the pair were often together between August and September 1998;

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<sup>1017</sup> See [REDACTED].

<sup>1018</sup> See [Ch.IX.B.ii.](#)

<sup>1019</sup> F00709/A01, para.232.

<sup>1020</sup> See [Ch.V.C.](#)

<sup>1021</sup> F00709/A01, para.229.

he never saw KUQI formally report to ZYRAPI during this period.<sup>1022</sup> FONDAJ maintained that brigade commanders reported to Sali VESELI at the GS in October and November 1998. During this time, he did not know what Sali VESELI did with the information he received.<sup>1023</sup> Moreover, the suggestion that there was reporting to Sali VESELI in 1998 is uncorroborated by, and inconsistent with, other evidence in the case.<sup>1024</sup> Once the Pashtrik OZ was established, brigade commanders reported to the Operational Directorate of the OZ, *i.e.*, the Chief of Staff, who would in turn report to the OZ Commander, who would then report to the GS on specific issues.<sup>1025</sup>

364. Finally, the SPO suggests that military police in Pashtrik reported directly to the GS.<sup>1026</sup> [REDACTED]<sup>1027</sup> [REDACTED].<sup>1028</sup> [REDACTED];<sup>1029</sup> [REDACTED].<sup>1030</sup> The Panel has not heard from KRASNIQI, nor has the SPO adduced any written or verbal reports that he sent to LIMAJ or the GS.

365. [REDACTED].<sup>1031</sup> VESELI had no control over what was happening on the ground due to his absence from Kosovo,<sup>1032</sup> meaning [REDACTED] could not have expected there to be a reliable reporting system in place.<sup>1033</sup> [REDACTED].<sup>1034</sup> [REDACTED]<sup>1035</sup> [REDACTED].<sup>1036</sup> Consequently

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<sup>1022</sup> T.17133.12-17134.1.

<sup>1023</sup> T.17134.18-17136.5.

<sup>1024</sup> P01605.2\_ET, T.3.1-11.

<sup>1025</sup> T.17232.10-17233.2. *See also* [REDACTED].

<sup>1026</sup> F00709/A01, paras.237, 572.

<sup>1027</sup> [REDACTED]. *See also* [REDACTED].

<sup>1028</sup> [REDACTED].

<sup>1029</sup> [REDACTED].

<sup>1030</sup> [REDACTED].

<sup>1031</sup> [REDACTED].

<sup>1032</sup> [REDACTED].

<sup>1033</sup> [REDACTED].

<sup>1034</sup> [REDACTED].

<sup>1035</sup> [REDACTED].

<sup>1036</sup> *See* [Ch.V.C.](#)

his evidence in this respect is further undermined and no safe conclusions can be drawn on this issue from his evidence alone.

366. As regards the other witnesses who spoke to this issue, HALITJAHA corrected his initial suggestion that Nexhmi KRASNIQI reported directly to LIMAJ and the OZ Commander. He stated that it was incorrect to say that KRASNIQI reported to LIMAJ,<sup>1037</sup> explaining that he had intended to say that *“it should have been fair for [KRASNIQI] to report to Limaj.”*<sup>1038</sup> However, in reality, HALITJAHA did not see a report or possess information which showed KRASNIQI was in fact reporting to LIMAJ.<sup>1039</sup> KRASNIQI reported to the OZ command,<sup>1040</sup> and HALITJAHA did not know how much contact KRASNIQI had with the GS, commenting that the GS was constantly on the move which made meeting its members impossible.<sup>1041</sup>
367. QADRAKU himself stated that he never received direct tasking from the GS; all of his communication with the GS was done through the OZ Commander.<sup>1042</sup> It was his duty to report exclusively to the OZ Commander, who would then assess the necessity of reporting the information he received to the GS.<sup>1043</sup> The OZ Commander communicated directly with the head of the GS, ZYRAPI.<sup>1044</sup> QADRAKU confirmed that there was no parallel reporting between himself and the GS – he *“always reported to the commander, and [...] never reported directly to the General Staff.”*<sup>1045</sup>

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<sup>1037</sup> P00707.4\_ET, T.1.15-2.5.

<sup>1038</sup> T.10384.18-20.

<sup>1039</sup> T.10384.14-24.

<sup>1040</sup> P00712\_ET, p.SPOE00209330.

<sup>1041</sup> T.10383.2-10.

<sup>1042</sup> P01854.4\_ET, T.17.1-8.

<sup>1043</sup> T.22714.23-25.

<sup>1044</sup> P01854.4\_ET, T.20.11-21.17.

<sup>1045</sup> T.22715.1-6; T.22810.13-22811.14.

368. HALITJAHA stated that QADRAKU should have reported primarily to the OZ Commander. Only failing that, would QADRAKU use “the other route,” and report to the Chief of Staff of the KLA GS and **VESELI**.<sup>1046</sup> However, again, HALITJAHA clarified that QADRAKU did not, in fact, report to **VESELI**, as **VESELI** was not in Kosovo when QADRAKU was Chief of Intelligence. Instead, QADRAKU “*would report to the zone commander and Bislim Zyrapi.*”<sup>1047</sup> He confirmed **VESELI** did not interact with the Pashtrik OZ structures, nor did the OZ structures enquire with **VESELI** as to his whereabouts.<sup>1048</sup> QADRAKU fully corroborates HALITJAHA’s evidence on this point.<sup>1049</sup>
369. There is no evidence capable of proving to the criminal standard that there was a parallel reporting structure in place from the Pashtrik OZ to the GS. There is insufficient reliable evidence to establish there was consistent or structured parallel intelligence reporting to the GS. There is no evidence of intelligence reporting to **VESELI** ever occurring.
370. The SPO also alleges that “[t]he Drenicë Zone military police was headed by Sahit JASHARI, who reported to the Drenicë Zone commander and to the General Staff.”<sup>1050</sup> The SPO relies on the evidence of Sylejman SELIMI, who testified that LIMAJ issued an order around November 1998, mandating military police in all the OZs to report “*in a hierarchical manner*” to him. SELIMI explained that the military police continued reporting to him throughout his tenure as OZ Commander (until February 1999). While he believed the military police also reported to LIMAJ during this period, he could not confirm such reporting in fact occurred. SELIMI could not cite to a specific example of such reporting and expressed doubts whether reporting directly to LIMAJ was practically

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<sup>1046</sup> P00707.3\_ET, T.20.21-21.10.

<sup>1047</sup> P00714, para.25.

<sup>1048</sup> T.10209.2-10210.10.

<sup>1049</sup> T.22709.10-22710.10.

<sup>1050</sup> F00709/A01, para.185.

implementable.<sup>1051</sup> Items admitted through the bar table are said to be reports from Sahit JASHARI to LIMAJ; these have not be authenticated, contextualised or corroborated by any witness.<sup>1052</sup> There is no evidence these were ever actually sent or received.

371. No safe inference or conclusion can be made to the criminal standard that any parallel reporting took place.

*v. OZ Reporting to VESELI*

372. The SPO alleges that **VESELI** “took part in, coordinated, directed and received reports concerning military operations and the activities of intelligences services on the ground.”<sup>1053</sup> There is no evidence of **VESELI** ever personally receiving any report orally or in writing, directly or indirectly, from OZ staff at either OZ or brigade level, in relation to intelligence or any other matter.<sup>1054</sup> There is no evidence of any report provided by any OZ intelligence chief to **VESELI** or anyone else. There is no evidence from any of the purported GS meeting minutes, nor witness testimony about these meetings, that any OZ intelligence officer ever provided written or oral reports to either the GS or **VESELI**. There is no evidence of such reporting in the intercept evidence.

373. The SPO alleges that “*Kadri VESELI [...] regularly travelled to assist, receive reports from, consult with, and give orders to KLA members and units operating in locations throughout Kosovo.*”<sup>1055</sup> No evidence has been adduced to support the assertion that when **VESELI** was in Kosovo in the summer of 1998, or at any time, he ever received reports from OZ commanders or brigade soldiers, or that he ever gave orders to those he encountered. Many did not even know what

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<sup>1051</sup> T.25101.22-25102.24.

<sup>1052</sup> See P02447/P02447\_ET.1-3; P02448/P02448\_ET.1-4; P02449/P02449\_ET; P02450/P02450\_ET; P02451/P02451\_ET.

<sup>1053</sup> F00709/A01, para.111(b).

<sup>1054</sup> See [Ch.V.C.](#)

<sup>1055</sup> F00709/A01, para.127.

position **VESELI** held at the time.<sup>1056</sup> While he met with soldiers during the summer months, he gave no orders and had no soldier report to him, as he was not in any position of command and control; the SPO has not proved the contrary.

374. HALITJAHA claims that he saw **VESELI** in mid-June 1998 at Negroc/Negrovce but did not know what position he held.<sup>1057</sup> He does not describe anything akin to reporting to **VESELI** occurring. BYTYQI who spent time with **VESELI** in Kosovo in June 1998 does not describe ever witnessing soldiers report to him. W04737 claims that he saw **VESELI** at the KLA headquarters in Kleckë/Klecka at the end of June or July 1998 in a group of 30 people but did not know what they were talking about.<sup>1058</sup> W04737 also claims to have seen **VESELI** in August 1998 on the way to Albania. W04737 did not know **VESELI**'s real name<sup>1059</sup> and **VESELI** was perceived by the group's guide to be a spy.<sup>1060</sup> W04737 describes no reporting to **VESELI** at any time, nor orders being given by him. Finally, QERIQI claimed **VESELI** was part of a group who visited him in August 1998 in Krojmir/Krajmrovce to discuss a conflict with BUJA.<sup>1061</sup> While **VESELI** disputes attending such a meeting, QERIQI testified that the individual he believed was **VESELI** did not speak during the meeting, let alone give orders or receive information from QERIQI or anyone else.<sup>1062</sup>

375. The only evidence of **VESELI** ever receiving anything resembling a 'report' from the OZ command level was on one occasion in June 1998 in Jabllanicë/Jablanica, when he travelled with other GS members to meet the pre-existing KLA structures in Dukagjin. During this meeting, HARADINAJ

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<sup>1056</sup> See T.19683.4-7.

<sup>1057</sup> P00708.7\_ET, T.4.24-7.11, P00714, para.15.

<sup>1058</sup> T.19682.23-19683.22.

<sup>1059</sup> T.19920.8-10.

<sup>1060</sup> T.19683.23-19685.24.

<sup>1061</sup> P01115.4\_ET, T.10.7-11.15.

<sup>1062</sup> T.14867.20-21.

briefed them on the military and political situation in the region, discussed supplies, logistics, the KLA's expansion<sup>1063</sup> and criticised the work of the GS.<sup>1064</sup> This 'report' did not relate to intelligence, crimes or collaborators and there is no evidence any such report was ever repeated.

376. There is no evidence of **VESELI** receiving any intelligence or other reports while abroad for lengthy periods of time,<sup>1065</sup> or at all.
377. Equally there is no reliable evidence of direct intelligence reporting to him in his personal capacity or upon his return to Kosovo in March 1999,<sup>1066</sup> when he was moving around the Pashtrik, Drenicë, and Nerodime OZs.<sup>1067</sup> When **VESELI** met with any OZ level staff in this period, it was in relation to encouraging support for the Rambouillet Agreement. For example, it is notable that when **VESELI** met QADRAKU in this period in Nishor/Nišor in March 1999, they discussed Rambouillet, not intelligence.<sup>1068</sup> QADRAKU claims to have met **VESELI** again on 1 April 1999 in Kleckë/Klecka, when he asked (not ordered) him to check the soldiers were guarding posts;<sup>1069</sup> again no intelligence reporting took place.
378. Likewise, ÇOÇAJ met **VESELI** on 25 or 26 March 1999 in the Berisha mountains. **VESELI** asked what supplies, food, and soldiers they needed and met with the Battalion Commander;<sup>1070</sup> no reports were provided on intelligence. ÇOÇAJ also claims to have seen **VESELI** in Nishor/Nišor on 2 April 1999 when they discussed the military situation and Rambouillet, and

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<sup>1063</sup> T.17372.4-17373.8; 1D00102/1D00102\_ET, p.U002-2982.

<sup>1064</sup> P00189/P00189\_ET.1, p.U015-8855.

<sup>1065</sup> See [Ch.VII.B](#), para.530

<sup>1066</sup> See [Ch.VI.F.iv](#).

<sup>1067</sup> P00787, p.SITF00009126.

<sup>1068</sup> T.22709.10-18, T.22716.7-22719.3.

<sup>1069</sup> T.22721.15-22722.14.

<sup>1070</sup> P01834.3\_ET, T.9.1-7, T.14.13-17.10; P01835, paras 34, 42-43; T.22317.1-13.

**VESELI** asked him to check positions and observe the Serbian forces<sup>1071</sup> – again there was no intelligence reporting. **HALITJAHA** also claims to have seen **VESELI** in April 1999 in the Pashtrik OZ and escorted him to Kleckë/Klecka. They just spoke about ‘general issues’ concerning recent battles, casualties and so forth;<sup>1072</sup> no reporting took place and there were “no special topics.”<sup>1073</sup> The Panel must not conflate *ad hoc* conversations between soldiers about the war with formal military reporting.

*vi. Internal GS Reporting*

379. The SPO makes sweeping statements in relation to the state of reporting and information sharing within the GS, which are not borne out by the evidence. Again, the SPO incorrectly approaches the GS as one homogenous entity that thought, spoke and acted with one voice, with equal knowledge of the facts; this was not the case. The Panel must carefully interrogate the evidence as it pertains to each individual member of the GS. When this analysis is conducted for **VESELI**, the only conclusion available is that he was not part of any reporting structure – internal or external to the GS. Therefore, he cannot be found to have been appraised of the knowledge of other GS members simply by way of his formal membership of the organisation.
380. The SPO does not assert that **VESELI** was part of the formal reporting structure that allegedly existed at GS level.<sup>1074</sup> **VESELI** did not report to the GS. At its highest, the SPO’s evidence demonstrates that **VESELI** provided limited operational intelligence to ZYRAPI for, at most, two days at the end of January or beginning of February 1999. In interview, ZYRAPI was asked to describe the

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<sup>1071</sup> P01834.3\_ET, T.8.21-24, T.20.11-22.15; P01836/P01836\_ET, p.091267.

<sup>1072</sup> P00708.7\_ET, T.8.14-25; T.10182.4-10183.3; T.10390.2-17.

<sup>1073</sup> P00708.7\_ET, T.8.15.

<sup>1074</sup> F00709/A01, para.103.

reporting line "*when collaborators were identified.*" ZYRAPI provided the following responses:

A. [...] if there was somebody that was identified within the units, they wouldn't have waited. They would have been taken out, arrested and then been investigated.

Q. So just to ask, so would you have known or not known about it?

A. If they had arrested somebody and commenced an investigation, then they should have informed me that a soldier or an officer had been taken, arrested.

Q. And who should have informed you about that? From your reporting line, who?

A. I should have received information from Kadri Veseli, the intelligence directorate, and the legal sector. In general, they would inform the general commander, but I should have also been informed.

Q. According to the established procedure you should have been informed?

A. Yes.<sup>1075</sup>

381. The only fair reading of the above is that ZYRAPI is setting out what *should* have happened, according to procedure, not what did in fact happen in practice – no instances of such reporting have been identified. Crucially, ZYRAPI confirmed this did not happen.<sup>1076</sup> Speaking about the short period of late January/early February 1999, when **VESELI** was said to be in the Kosovo, ZYRAPI said that **VESELI** would inform him about the movements of the Serbian forces.<sup>1077</sup> He did not remember **VESELI** informing him at the time that there were collaborators within the KLA or that somebody had been arrested.<sup>1078</sup> He claimed that **VESELI** told him from an operational perspective about potential security concerns posed by collaborators outside of the KLA when ZYRAPI had to prepare operations or move from one OZ to another.<sup>1079</sup> ZYRAPI twice confirmed that **VESELI** did not tell him about the arrest of any individual collaborator.<sup>1080</sup> There is no evidence that **VESELI** ever knew of such an arrest.

<sup>1075</sup> P01355.10\_ET, T.9.24-10.14.

<sup>1076</sup> See [Ch.V.E](#), para.250. See further [Ch.VI.J](#), para.450

<sup>1077</sup> P01355.10\_ET, T.10.23-25; T.17836.7-10.

<sup>1078</sup> P01355.10\_ET, T.10.15-20.

<sup>1079</sup> P01355.10\_ET, T.11.5-18.

<sup>1080</sup> P01355.10\_ET, T.10.15-11.18; T.17855.14-17856.4.

382. **VESELI**'s passport indicates that the brief period **ZYRAPI** suggests he was in Kosovo could have been a day, possible two, at most, at the end of January/early February 1999.<sup>1081</sup> **ZYRAPI** himself clarified this issue of timing, explaining that it was only when **VESELI** was in the country that he would provide him with intelligence, and that **VESELI** was there for a short time at the end of January and not for most of February, as he was in Rambouillet.<sup>1082</sup> The end of January 1999 is the only instance of this type of intelligence information sharing ever being said to have occurred between **VESELI** and **ZYRAPI**. There is no evidence that this information, if in fact shared, was conveyed to the broader GS. Therefore, it is wholly insufficient to prove any ongoing reporting line or structure between **VESELI** and **ZYRAPI**, or the GS more broadly.
383. [REDACTED]'s assertion that **VESELI** "communicated" with Azem SYLA when in Albania<sup>1083</sup> is uncorroborated, untested and cannot be relied upon fairly or lawfully against **VESELI**. Regardless, at its highest, the evidence indicates that **VESELI** *might* have communicated with SYLA; not that **VESELI** "reported" to him in, or that these communications were related to intelligence. There is a complete absence of any written or verbal reports in evidence authored by **VESELI** to *any* GS member during the conflict.
384. There is no evidence of any reporting line existing between **VESELI** and **THAÇI** in their respective roles on the GS. The SPO improperly relies on tangential evidence of a friendship between the two to suggest they may have reported to one another or shared information, but no more.<sup>1084</sup> No conclusions

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<sup>1081</sup> See 2D00018.1, pp.DKV1223-1224, DKV1226. See also T.17816.8-17817.11; T.17818.25-17819.3. See also [Ch.VII.B](#), para.530.

<sup>1082</sup> P01357, para.19.

<sup>1083</sup> [REDACTED].

<sup>1084</sup> See P04216/P04216\_ET, pp.4, 18-19.

can be drawn from this; there is no evidence of such conduct and there can be no guilt by association.

385. **VESELI** has not been shown to be present when any alleged detentions were discussed in GS meetings, nor proven to have been informed after the fact.<sup>1085</sup> There is no evidence **VESELI** ever received a report from the GS. **BASHOTA** testified that he did not recall any reports being sent to **VESELI** after he left Kosovo in November 1998.<sup>1086</sup> While there is some evidence that information was shared amongst the KLA GS members on the ground in Kosovo,<sup>1087</sup> there is no evidence that GS members outside of Kosovo ever received reports from the GS meetings conducted in their absence.
386. In terms of internal reporting amongst the remainder of the GS, the evidence demonstrates limited, irregular and inconsistent levels of reporting. Prior to the restructuring in November of 1998, as the directorates did not exist in practice, there was no internal reporting in the GS. There is evidence that following the restructuring, there was rare and irregular reporting from the directorates to GS members present at purported meetings in Kosovo.<sup>1088</sup> While **ZYRAPI** stated that the directorates would report during GS meetings,<sup>1089</sup> if taken at face value, the GS meeting “minutes” for 1999, show reporting from the directorates was not a consistent practice.<sup>1090</sup> The GS was not organised: “*[i]t was wartime, and [its members] met very rarely then. And in most cases, not everyone attended.*”<sup>1091</sup>
387. The [REDACTED] evidence must be approached with serious caution given the genuine concerns as to its reliability, considering the evidence of W04798,

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<sup>1085</sup> See [Ch.VI.D-E](#).

<sup>1086</sup> T.23214.11-18.

<sup>1087</sup> P03781.2/P03781.2\_ET, p.SPOE00226473; P01355.7\_ET, T.9.24-10.6.

<sup>1088</sup> P01408/P01408\_ET, p.SPO00227859.

<sup>1089</sup> P01355.7\_ET, T.9.24-10.6.

<sup>1090</sup> See P01408/P01408\_ET; P01104/P01104\_ET; P01109.1/P01109\_ET.

<sup>1091</sup> T.23357.21-22.

W04808, W04809 and W04854 regarding methodology.<sup>1092</sup> However, the content of the [REDACTED] shows no more than disorganised [REDACTED] contact between KLA members – many of whom are not identified – on discrete issues. No evidence of a functional reporting system emerges. At their highest the [REDACTED] demonstrate OZ commanders would provide extremely limited updates to certain GS members, or otherwise occasionally request assistance. There is no evidence that information received by any individual GS member was then shared to all GS members on the ground in Kosovo, let alone abroad. There is certainly no evidence that any [REDACTED] relating to detainees were reported to, or discussed with, **VESELI**, or that the [REDACTED] was relayed to the GS as a collective. As noted above, there are no [REDACTED] involving **VESELI**.<sup>1093</sup>

388. There is conflicting evidence as to who the directorates were supposed to report to within the GS (if ever they did so), exemplifying the lack of any functioning or regularised organisational structure. ZYRAPI stated that they submitted their reports to the deputy commander and sometimes BASHOTA, if he was present.<sup>1094</sup> However, BASHOTA stated that directorates reported to ZYRAPI, not to the deputy commanders,<sup>1095</sup> *“depending on the nature of the work they did.”*<sup>1096</sup> There is no basis to prefer one account over the other. The only reasonable inference that can be drawn is that this confusion is demonstrative of the extent to which the GS was not well-functioning.

389. The sources used by the SPO to makes assertions as to reporting within the GS are also unreliable. For example, the SPO asserts that *“[b]y June 1998, Lahi BRAHIMAJ was head of the General Staff Finance Directorate. He reported to Sokol*

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<sup>1092</sup> See [Ch.VI.E](#).

<sup>1093</sup> See [Ch.VI.E](#), para.338

<sup>1094</sup> P01355.7\_ET, T.9.24-10.6.

<sup>1095</sup> T.23231.3-5; T.23382.7-10.

<sup>1096</sup> T.23382.11-17.

*BASHOTA and Rexhep SELIMI.*"<sup>1097</sup> Firstly, this assertion is based on the uncorroborated and untested evidence of the co-Accused **KRASNIQI**.<sup>1098</sup> Secondly, the evidence adduced demonstrates that the Finance Directorate was not functioning prior to the November restructuring and no evidence has been adduced as to any report on finances that BRAHAMAJ has ever given to the GS. Also, while *one* meeting note in January 1999 states that "*[t]he General Staff will be briefed on the outcome of this meeting,*"<sup>1099</sup> this is an isolated event and there is no evidence that such a briefing in fact took place.

### G. Orders of the GS

390. It is imperative that the Panel bears in mind that simply because a purported order exists on paper, it does not mean that the SPO has proved it was ever disseminated or enforced. No reasonable inferences can be made in the absence of such evidence because, as outlined above,<sup>1100</sup> the KLA was not a functioning, regularised army.
391. Only a handful of purported GS orders have been put to witnesses. The remainder were admitted through the bar table in the absence of any evidence as to the document's authenticity, authorship, or whether it was ever sent, received or actioned.<sup>1101</sup> Those that were put to witnesses, were not recognised or witnesses could not confirm the orders were ever received, let alone actioned or enforced.<sup>1102</sup> ZYRAPI explained that orders without a signature or stamp cannot be assumed to have been sent.<sup>1103</sup>

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<sup>1097</sup> F00709/A01, para.284.

<sup>1098</sup> P00800, T.5074.19-5075.15.

<sup>1099</sup> P00182/P00182\_ET, p.SPOE00226370.

<sup>1100</sup> See [Ch.IV](#) and [Ch.VI.B-C](#).

<sup>1101</sup> See P03679/P03679\_ET; P00620/P00620\_ET; P03676/P03676\_ET; P03687/P03687\_ET.

<sup>1102</sup> See P01355.6\_ET, T.5.21-7.23 referring to P00168/P00168\_ET. See also T.23058.19; T.23442.3-8; T.12853.1-13; P01605.7\_ET, T.4.12-21; T.5741.9-10.

<sup>1103</sup> T.17542.8-17543.13.

392. Further, the Panel should bear in mind, when considering evidence concerning alleged orders for which there is no documentary record, the evidence that soldiers believed others would invoke the name of the GS when giving instructions in circumstances where they did not believe the orders actually came from the GS.<sup>1104</sup> For any oral order said to have been given in the OZs, it cannot be excluded that the instructor was simply invoking the name of the GS to make his order “carry more weight” or “be more credible”<sup>1105</sup> or make his orders or his instructions seem more important,<sup>1106</sup> even though it may have been wholly unconnected to the GS.

*i. GS orders were issued by individual GS members*

393. Orders issued in the name of the GS were not issued with the knowledge, consent or involvement of all GS members, who could and did act independently, without any prior or subsequent internal reporting, consultation or consent. Most orders that the SPO relies on were issued by ZYRAPI. BASHOTA explained that ZYRAPI had the power to issue orders single-handedly as Chief of Staff.<sup>1107</sup>

394. ZYRAPI is not an alleged JCE member, nor has the SPO ever asserted he had or shared any criminal intent. It is impossible to see how the Panel could properly infer any criminal purpose, intent or action from his purported order, absent strong direct evidence to that effect, which does not exist. It cannot be suggested that ZYRAPI was a mere ‘Tool.’ ZYRAPI was an experienced military officer, independent-minded, and not easily influenced by others. There is no evidence to the contrary. There is no evidence ZYRAPI ever issued an order on VESELI’s behalf or with his knowledge or support.

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<sup>1104</sup> See T.14716.16-14718.13; T.14720.14-22.

<sup>1105</sup> T.14720.14-22.

<sup>1106</sup> T.14717.11-14.

<sup>1107</sup> T.23441.22-23442.1; T.23446.3-4.

395. The power, action or presumed intent behind any purported GS order cannot be imputed to any other GS member, absent additional evidence.

*ii. VESELI had no involvement in GS orders*

396. There is no evidence **VESELI** drafted, issued, sent or received any GS orders, ever saw or was consulted about any order before it was issued, or was informed of any order after the fact. It has not been proven that **VESELI** was present when any purported order was discussed. Most purported orders were issued between November 1998 and March 1999, when **VESELI** was absent from Kosovo.<sup>1108</sup> There is no evidence of him communicating with anyone on the GS in relation to such matters, or at all, during this period. The Panel cannot infer from the existence of any purported GS order that it was issued with **VESELI**'s knowledge or approval, or reflective of his intent.

397. No purported orders reflect any power or capacity on **VESELI**'s part to command or control soldiers. No GS orders were issued to any intelligence officers or concerning any intelligence matters. **BUJA**,<sup>1109</sup> **W04764**<sup>1110</sup> and **QADRAKU**<sup>1111</sup> all confirmed they never received any orders from **VESELI**.

398. The existence of purported GS orders does not prove that **VESELI** either shared the knowledge or intent required for the JCE or was in command or control of any elements of the KLA.

*iii. The SPO has failed to prove enforcement of GS orders*

399. The SPO alleges that GS orders were provided to subordinate commanders, disseminated onwards<sup>1112</sup> and that OZ commanders would communicate

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<sup>1108</sup> See [Ch.VII.B](#), para.530.f).

<sup>1109</sup> T.22166.2-4.

<sup>1110</sup> T.19101.8-9.

<sup>1111</sup> T.22709.22-22710.4.

<sup>1112</sup> F00709/A01, para.108.

orders and instructions to the brigades.<sup>1113</sup> However, the SPO has failed to prove that many of the purported orders upon which it relies were disseminated throughout Kosovo or, more importantly, that they were enforced – consistently, or at all. Moreover, there is evidence from KLA commanders that they did not view these ‘orders’ as obligatory, but more as recommendations.<sup>1114</sup> The GS could not issue orders to the OZ commanders that were enforceable, as there was no mutual trust.<sup>1115</sup> Orders were partly complied with or not at all.<sup>1116</sup>

400. Sylejman SELIMI did not recall any specific orders he was given,<sup>1117</sup> nor anyone in the GS who ever issued orders, bar ZYRAPI.<sup>1118</sup> Moreover, there were occasions when the fighting on the ground made it impossible to comply with orders.<sup>1119</sup> There is no evidence that any GS orders were received or actioned in Karadak. [REDACTED].<sup>1120</sup>

401. For these reasons the GS was simply incapable of establishing effective command and control over the OZs or individual KLA members.

*iv. The GS orders are not indicative of criminal intent or action*

402. The orders that the SPO has adduced do not evidence the pursuit of a common criminal purpose. Most are purely administrative or organisational in nature and demonstrate efforts to organise the KLA.<sup>1121</sup> While certain orders provided

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<sup>1113</sup> F00709/A01, para.127.

<sup>1114</sup> T.5767.4-7.

<sup>1115</sup> T.5769.3-16.

<sup>1116</sup> T.5776.23-5777.4. See also [Ch.IV.F.ii](#).

<sup>1117</sup> T.25060.16-17.

<sup>1118</sup> T.25060.18-21.

<sup>1119</sup> T.24955.12-14.

<sup>1120</sup> [REDACTED].

<sup>1121</sup> See P01412/ P01412\_ET, an order for “assignment to special locations and distribution of sniper rifles to KLA basic tactical units.”

instructions for the OZs to report to the GS,<sup>1122</sup> as outlined elsewhere,<sup>1123</sup> there were no reliable or consistent reporting structures in place.

403. Of all the purported GS orders adduced by the SPO, not one calls for crimes to be committed; not one calls for civilians to be harmed; not one calls for the persecution of Serbs, Roma or political rivals. None evidence any criminal intent or purpose. Their content does not support the SPO's case on JCE and command and control.

*v. Alleged orders concerning abuse of the KLA uniform*

404. Exhibit P00884<sup>1124</sup> is an alleged KLA GS Ordinance on rules of engagement signed by ZYRAPI, dated 28 November 1998, ordering the KLA *"not to exceed authority and cease abusing command position"* and for OZ commanders and military police commanders to *"immediately stamp out negative tendencies and the abuse of persons and private property."* ZYRAPI explained that he issued this order after consulting only with the General Commander about complaints he was receiving from OZ commanders and civilians.<sup>1125</sup> The order was discussed at a GS meeting in November 1998, but ZYRAPI cannot recall who was present.<sup>1126</sup> ZYRAPI believed it was the responsibility of the GS to make sure the OZ commanders carried out this order; however, confirmed they had no tools to ensure they did so.<sup>1127</sup> BASHOTA had not seen this document before;<sup>1128</sup> this demonstrates it was discussed and issued without the knowledge of certain GS members.

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<sup>1122</sup> See P00628/P00628\_ET.

<sup>1123</sup> See [Ch.VI.F](#).

<sup>1124</sup> See *alternative versions* P00741, p.071839/P00741\_ET.3; 1D00029/1D00029\_ET.

<sup>1125</sup> T.17848.19-17849.4; T.18022.15-20.

<sup>1126</sup> T.18023.5-8.

<sup>1127</sup> T.18419.15-22; T.18473.7-24.

<sup>1128</sup> T.23442.5-8.

405. This order is antithetical to the alleged JCE because it demonstrates that, upon receipt of mere rumours that certain individuals associating themselves with the KLA were abusing their uniform, the KLA Chief of Staff took immediate action to suppress this conduct. This is the opposite of what one would expect if the JCE existed. It is indicative of the fact that the GS was not a criminal entity pursuing a purely criminal purpose, that its members did not support the commission of crimes or wrongdoing by its soldiers, and that it wanted to pursue a lawful purpose, by lawful means. Its senior members wanted to ensure such conduct did not occur even if, in reality, they were powerless to stop it. It evidences that there were those on the GS who took active steps to ensure the KLA abided by the law. They did not share the intent of a common purpose to mistreat civilians, but quite the opposite. **VESELI**, like ZYRAPI, was one such GS member. There is no evidence **VESELI** used his position on the GS at any time to take any action, or make any omission, that could reasonably be construed as pursuing or encouraging a criminal enterprise.

*vi. Alleged orders to kill and detain collaborators*

406. The SPO alleges that “[t]he General Staff gave orders to kill and detain collaborators.”<sup>1129</sup>

407. Regarding orders to detain collaborators, P00168 purports to be a GS Order dated 2 December 1998, to OZ commanders to issue orders to military police to “arrest those people who, by showing loyalty to the occupier, have put on the uniform of the Serb police, thus committing the act of treason towards the Albanian people.” Firstly, the SPO has failed to prove this purported order is authentic. There is no evidence anyone in the KLA saw or heard of this order. ZYRAPI had not seen it nor received it, adding that he should have received such an order.<sup>1130</sup>

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<sup>1129</sup> F00709/A01, para.70.

<sup>1130</sup> P01355.6\_ET, T.6.3-14.

BASHOTA,<sup>1131</sup> IBISHI,<sup>1132</sup> KURTAJ<sup>1133</sup> and W04737<sup>1134</sup> had never seen this document before.

408. Secondly, the order is not unlawful; an armed group is entitled to detain legitimate security threats.<sup>1135</sup> Those who “*put on the uniform of the Serb police*”<sup>1136</sup> were combatants and clearly legitimate security threats. Further, it is lawful to arrest a person suspected of committing treason, a universally recognised criminal offence. This order is not probative of the existence of a common purpose to unlawfully target civilians – it does not call for, nor condones, such conduct. In any event, there is no evidence that **VESELI** ever knew about this order, condoned it, was consulted about it in advance or after the fact, or shared the intent to issue or enforce it. **VESELI** was not in Kosovo at this time.<sup>1137</sup>
409. W04764 was asked whether it would be the GS or the OZ level who would have the authority to order military police to arrest; he replied that it was the GS.<sup>1138</sup> When asked who from the GS would have such authority, he replied the head of G2, **VESELI**.<sup>1139</sup> These questions are clearly framed in theoretical terms (*i.e.*, “*who would*” not “*who did*”) and W04764 was not asked if he knew this to be the case in practice, or the basis for his assertion. Later, he clarified that he had no concrete information about the military police arresting people after ZKZ gathered information but stated that “*it should have been that way*”<sup>1140</sup> – confirming he was speaking theoretically. W04764 further confirmed that he had no actual knowledge of military police acting under ZKZ orders and that

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<sup>1131</sup> T.23058.19.

<sup>1132</sup> T.21164.13-20.

<sup>1133</sup> T.12853.4-13.

<sup>1134</sup> P01605.7\_ET, T.4.16-18.

<sup>1135</sup> See [Ch.X.C.ii](#).

<sup>1136</sup> P00168/P00168\_ET.

<sup>1137</sup> See para.530.

<sup>1138</sup> P01554.4\_ET, T.8.4-7.

<sup>1139</sup> P01554.4\_ET, T.8.8-12.

<sup>1140</sup> P01558, para.36.

he never received any orders from **VESELI**, who he never met during the war.<sup>1141</sup> W04764's evidence does not establish that **VESELI** or G2/ZKZ gave any orders to arrest.<sup>1142</sup>

410. Regarding alleged orders to kill, the SPO relies solely on the uncorroborated evidence of BASHOTA for the assertion that the GS gave orders to kill collaborators.<sup>1143</sup> BASHOTA's evidence does not prove this assertion, let alone to the criminal standard.
411. At the outset it should be noted that there is no evidence or suggestion that any such alleged order to kill emanated from **VESELI**, or that **VESELI** knew about, condoned, or was consulted about any such order. No other orders can be attributed to him.
412. In his ICTY statement, BASHOTA stated, "*[a]fter the order to kill the collaborator had been issued by the General Staff, it could be carried out by any soldier who identified the collaborator.*"<sup>1144</sup> However, this isolated remark, must be considered in light of his evidence as a whole and cannot be taken out of context. During his preparation session and testimony, it became abundantly clear that the reference to an order was in error: he had in fact meant to refer to communiqués. This correction casts the remark in quite a different light because communiqués were essentially propaganda tools. When clarifying this statement, BASHOTA stated that he "*knows about such orders from communiqués, but these communiqués were not themselves orders. Communiqués were political statements directed at the population so they would be prepared.*"<sup>1145</sup> This was again emphasised during Judges' questions; BASHOTA explained: "*[t]his comes from*

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<sup>1141</sup> T.19099.10-19; T.19101.8-9.

<sup>1142</sup> See [Ch.V.E.](#)

<sup>1143</sup> F00709/A01, para.70, fn.207.

<sup>1144</sup> P01871\_AT/P01871, para.43.

<sup>1145</sup> P01872, para.16.

*the reading of the communiqués [...] My reference was only to the communiqués which had issued that appeal pertaining to these categories.”*<sup>1146</sup> The questions continued:

JUDGE GAYNOR: And as a -- for the period that you were a member of the Central Staff and the General Staff, could you clarify how the General Staff would disseminate or communicate to subordinate units an order to kill a collaborator? How would that take place?

A. The question was mostly of a hypothetical nature, but I am not aware that the General Staff has issued a discrete order for a person with a name and a surname to be executed. The appeal was of a general nature. The communiqués served mostly as propaganda on behalf of the Kosovo Liberation Army, but they also served as a warning to all who could have undermined the just war of the Kosovo Liberation Army through the use of arms and through turning those weapons against the Kosovo Liberation Army.<sup>1147</sup>

BASHOTA also clearly stated that *“KLA soldiers were informed that the civilian population was not to be touched.”*<sup>1148</sup>

413. Considering BASHOTA’s evidence as a whole, it is clear he had no knowledge of the GS ever giving an actual order to kill collaborators. At its highest, BASHOTA’s evidence demonstrates that he viewed KLA communiqués as firm warnings against collaboration. While he did not specify which communiqués he was referring to, it must be reasonably inferred he was referring to those pre-May 1998, which explicitly include such language.<sup>1149</sup> These were issued before the formation of the GS and VESELI’s involvement in it. The SPO has therefore failed to prove the GS ever issued an order to kill a collaborator.
414. The SPO also relies on the evidence of [REDACTED],<sup>1150</sup> who was asked – in reference to the arrest of KUQI for desertion – what type of punishment he thought was possible. He replied that he believed it was execution by firing squad.<sup>1151</sup> When asked if he knew whether the KLA ever executed someone

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<sup>1146</sup> T.23425.17-23426.5.

<sup>1147</sup> T.23426.13-24.

<sup>1148</sup> P01872, para.16.

<sup>1149</sup> See [Ch.VI.L.ij](#), paras.478.a)-482.

<sup>1150</sup> F00709/A01, para.70, fn.208.

<sup>1151</sup> [REDACTED].

who had been before the military court, he replied that he did not know, adding that while KUQI was sentenced to death, it did not happen.<sup>1152</sup> This evidence does not assist the SPO's case on this point.

## H. The Coup

415. The 'coup,'<sup>1153</sup> when "*the hardliners moved to oust the moderators from key leadership positions,*"<sup>1154</sup> is one of the starkest examples of the absence of command and control within the KLA. It exemplifies how the OZ commanders were the "absolute authorities"<sup>1155</sup> and crystalises the extent to which the KLA was characterised by internal division, competing centres of power, and a lack of clear hierarchy in control of the KLA's political and military agenda.
416. On 6 February 1999, following growing discontent<sup>1156</sup> HARADINAJ, MUSTAFA, REXHA and Sylejman SELIMI met with ZYRAPI and SELIMI to express dissatisfaction with the GS.<sup>1157</sup> MUSTAFA complained that "*the intelligence service cannot look after the army from abroad,*" referring to VESELI's absence and the perceived weakness of the central leadership.<sup>1158</sup> VESELI and other GS members were criticised for not knowing what was happening on the ground.<sup>1159</sup> Sylejman SELIMI and HARADINAJ described KRASNIQI and BASHOTA as unfit.<sup>1160</sup> The OZ commanders convened again on 13 February 1999 and unilaterally appointed Sylejman SELIMI as the new General Commander revoking the GS' authority to negotiate in Rambouillet.<sup>1161</sup> There

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<sup>1152</sup> [REDACTED].

<sup>1153</sup> P00645/P00645\_ET, p.SPOE00227672; T.23285.6-10.

<sup>1154</sup> P01077, pp.075362-075363.

<sup>1155</sup> T.23130.12-23131.24.

<sup>1156</sup> See P03781.2/P03781.2\_ET; P01352/P01352\_ET; P03777/P03777\_ET; 4D00068/4D00068\_ET; P02095/P02095\_ET.

<sup>1157</sup> P00182/P00182\_ET, p.SPOE00226397.

<sup>1158</sup> P00182/P00182\_ET, p.SPOE00226401.

<sup>1159</sup> P00182/P00182\_ET, p.SPOE00226404; T.5785.15-18; T.5855.1-18.

<sup>1160</sup> P00182/P00182\_ET, pp.SPOE00226402-SPOE00226403; P00645/P00645\_ET, p.SPOE00227672; T.5853.21-5858.16.

<sup>1161</sup> 1D00033/1D00033\_ET, pp.SPOE00226357-SPOE00226362; T.5877.22-25; T.25066.13-22.

was nothing the GS members at Rambouillet could do to prevent, control or reverse what was happening in their absence.

## I. Rules and Regulations

417. The SPO cannot prove its case on KLA rules and regulations because the evidence adduced about them suffers from issues of authenticity and the lack of proof of distribution and enforcement. There is nothing inherently criminal for armed groups to seek to regulate themselves. It is a laudable objective, though one which the KLA never realised due to perpetual offensives, chronic under-resourcing, and Kosovar clan-power dynamics. The SPO's case on KLA regulations exemplifies how it has lost sight of the reality of the conflict, effectively condemning the entire KLA and essentially suggesting it was a criminal organisation. The Panel must not conflate ordinary attempts at organisation or regulation with the propagation, encouragement or implementation of a criminal purpose. Neither the SPO's case on JCE, nor command and control, is assisted by the existence of these documents.

*i. VESELI was not involved with KLA regulations*

418. Contrary to the SPO's claims, there is no evidence whatsoever that **VESELI**, formulated or participated in the development, approval, promotion, dissemination, and implementation of rules and regulations.<sup>1162</sup> There is no evidence **VESELI** ever even saw any internal rules or regulations or knew of their existence. There is no evidence his views were sought on their content, or of him enforcing or playing any role in their distribution or enforcement at any time. The SPO has failed to show any credible link between **VESELI** and any regulations.

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<sup>1162</sup> F00999/A01, para.51.

419. VESELI's membership of the GS cannot be conflated with him somehow being involved in the drafting or enforcement of these regulations. Such an inference is not reasonably available considering the paucity of evidence as to when, where, or by whom any of the rules and regulations were created, the disparate nature of the GS, the lack of evidence of any functioning internal communication, reporting or decision making system within the GS, VESELI's lack of attendance at GS meetings and his prolonged absence from Kosovo.

*ii. The regulations did not reflect reality*

420. The SPO relies primarily on adjudicated facts to show that rules and regulations were distributed by the GS and made available for KLA soldiers.<sup>1163</sup> As outlined above,<sup>1164</sup> the Panel should exercise serious caution before relying on adjudicated facts from ICTY trials on matters that were never litigated, challenged nor were in issue, such as the functioning of the GS.<sup>1165</sup> The evidence adduced during this trial demonstrates a lack of distribution,<sup>1166</sup> wholly undermining the SPO's case in this regard and displacing the presumptions of the adjudicated facts. It remains unproven the extent to which these rules and regulations were in fact disseminated in the OZs, and such evidence varies greatly depending on the document in question.

421. ZYRAPI described P00008 as incomplete "basic regulations," that were conceptual rather than operational, clarifying that the idea was to proceed in the manner set out in the regulations, but that was not what occurred in practice.<sup>1167</sup> While ZYRAPI accepted these regulations were distributed to the

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<sup>1163</sup> F01534/A01, No.236.

<sup>1164</sup> See [Ch.II.F.](#)

<sup>1165</sup> IT-00-39-PT, [TC Decision](#), 28 February 2003, para.15(vi).

<sup>1166</sup> T.18486.22-23; T.18487.22-18488.11; P01755.7\_ET, T.29.19-23; P01755.3\_ET, T.12.24-13.8; P01755.7\_ET, T.31.12-32.9; P01097.7\_ET, T.10.25-11.7; T.10207.9-21, T.22017.1-22018.6; P01115.5\_ET, T.3.10-15; T.22269.18-22270.7.

<sup>1167</sup> T.18490.2-18491.2. *Contra* F01534/A01, No.240.

OZs, he did not specify which OZs they were distributed to, or when. The SPO adduced no reliable evidence that they were available in all OZs.

422. According to MUSTAFA, while the Llap OZ was trying to implement these regulations he noted that “*the war found [them] still trying to consolidate without having achieved it*” and without the OZ having the opportunity to “*systemise*” itself before NATO intervened. The Llap OZ never had the opportunity to consolidate as envisaged in P00008.<sup>1168</sup> IBISHI had never seen this document prior to trial.<sup>1169</sup> Naser KRASNIQI also did not recognize P00008.<sup>1170</sup> While [REDACTED] provided testimony concerning this document,<sup>1171</sup> his evidence is fundamentally unreliable.

423. The SPO proceeds on the basis that the text of P00008 was reflective of reality, when that is demonstrably untrue. Several rules appear in the text that bear no relation to the situation on the ground.<sup>1172</sup> The SPO seeks to rely on P00008 to prove that the military police would assist and cooperate with an Intelligence Directorate,<sup>1173</sup> despite the lack of witness or other documentary evidence demonstrating that this occurred. While the rules may have a stated intention that such cooperation should exist, this was not in fact the case. The SPO has not proved to the criminal standard that whatever the intention in the written document, the military police in the OZs were in fact cooperating with intelligence.<sup>1174</sup> In fact, there has been reliable evidence called to the contrary.<sup>1175</sup>

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<sup>1168</sup> T.5775.24-5776.22.

<sup>1169</sup> P01755.3\_ET, T.12.24-13.8.

<sup>1170</sup> P02007.2\_ET, T.1.25-2.9.

<sup>1171</sup> [REDACTED].

<sup>1172</sup> C.f. (1) Ch.VII.I.3 with T.9161.21-22; T.5545.1-4; (2) Ch.VII.VIII.11. with P01178, P01283, P01025\_ET/P01025, p. 072699. See also T.12861.21-12862.23, T.14806.8-20; (3) Ch. VII.VIII.2 with P01204, para.9; (4) Ch.VI.VII.1 mentioning “*maintain[ing] his hygiene and his military uniform*” with T.4632.20-4633.1, T.6568.12-13, T.3216.1-4; (5) Ch.V.I.1 mentioning “*non-commissioned officers*” and T.18492.11-25; (6) Ch.VII.IX.2-3 and T.12863.1-13; (7) Ch.VI.VIII.1 and T.18494.8-11.

<sup>1173</sup> P00008/P00008\_ET, p.U000-0461.

<sup>1174</sup> See [Ch.V.E.](#)

<sup>1175</sup> T.19099.10-16; T.5893.2-12.

iii. *KLA rules and regulations do not evidence “the existence of a military hierarchy and a high level of organisation.”*

424. The SPO has attempted to raise the evidential value of these generic documents, often copied from foreign militaries,<sup>1176</sup> and representing unrealistic reflections of military aspirations,<sup>1177</sup> into operational rules and regulations of a highly centralised organisation. However, the evidence confirms that these documents were never implemented on the ground,<sup>1178</sup> were often unknown to KLA figures,<sup>1179</sup> or were created only after the restructuring of the KLA.<sup>1180</sup> SPO witnesses confirmed the theoretical nature of rules and regulations and their purpose as propaganda tools.<sup>1181</sup> The few witnesses who testified to their substance, did so in an inconsistent manner.<sup>1182</sup>
425. The SPO has placed undue emphasis on the mere *existence* of these regulations, while paying minimal attention to what matters – namely, evidence, or lack thereof, demonstrating awareness, implementation, enforcement or compliance with them. A regulation’s existence proves only that it was written, it does not prove the KLA was a “*highly detailed and hierarchical organisation,*”<sup>1183</sup> that the GS exercised effective control, or the existence of any common plan.<sup>1184</sup> Effective control can only be demonstrated through implementation, enforcement and compliance – none of which have been proven. Crucially, no

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<sup>1176</sup> T.18489.21-18490.1; T.17619.12-21; T.22014.24-22015.3.

<sup>1177</sup> P00008/P00008\_ET, Ch.VII.VIII.11: “*soldiers must always be clean-shaven and have short hair;*” “*Meals are inspected by a doctor or nurse and the guard officer before being served;*” Ch.VII.I.3: “*Sleeping quarters must be equipped with all the necessary furniture (in our conditions) within possibilities, but it suffices to be set up nicely and tastefully and the bedding must always be clean;*” P00890/P00890\_ET, p.U001-7061: “*cooperating with foreign armies [...] such as Turks, Germans, Italians, etc. who sympathize and support our war. Such ties are forged through embassies;*” P03595/P03595\_ET, p.U000-8731 soldiers “*must not smoke on the street.*”

<sup>1178</sup> T.18490.6-18494.11; T.5775.2-20; [REDACTED].

<sup>1179</sup> P01955.9\_ET, T.20.3-6.

<sup>1180</sup> T.18489.21-18490.1; T.17619.12-21.

<sup>1181</sup> T.5644.2-15; T.549611-18; T.21192.2-21.

<sup>1182</sup> See P01554.7\_ET, T.5.4-6.3; T.17406.11-24.

<sup>1183</sup> F03065/A01, Prosecution GS and PGoK BTM, 1 April 2025, p.6.

<sup>1184</sup> F00709/A01, para.6; F03065/A01, p.13.

evidence has been adduced that any regulation ever influenced the conduct of any perpetrator of an alleged crime, or that soldiers ever relied on them to justify criminal actions in any respect.

426. The SPO inexplicably declined to put most regulations upon which they rely to any witness. Evidence from a select few higher-ranking KLA soldiers that they had seen P00008 falls far short of establishing the dissemination or enforcement of that regulation, or any other, throughout all, or most of Kosovo. Inferences cannot be drawn from an absence of evidence.
427. For example, the SPO alleges that P03669<sup>1185</sup> demonstrates KLA hierarchy and advanced organisation.<sup>1186</sup> The only evidence on the document's origin emanates from **KRASNIQI**'s book and some handwritten notes found in his house, where he claims the GS adopted them on 23 July 1998.<sup>1187</sup> However, ZYRAPI had never seen these regulations and was not aware of a GS meeting taking place on 23 July 1998,<sup>1188</sup> which directly contradicts this claim. The fact that ZYRAPI did not recognise them is fatal to the question of their authenticity. There is no evidence beyond **KRASNIQI** that these regulations were seen, adopted or approved by the GS, nor that they were distributed to the OZs, implemented or enforced at any time. Absent such evidence, these regulations yield little to no evidential significance, as one hearsay document in isolation cannot prove a fact in issue.
428. The SPO also relies upon P03595, purported regulations emerging from a meeting in Zhilivodë/Žilivoda on 28 June 1998.<sup>1189</sup> The evidence of the unreliable [REDACTED] does not support the SPO's case in relation to this

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<sup>1185</sup> P03669/P03669\_ET. *See also* P03670/P03670\_ET; P03671/P03671\_ET.

<sup>1186</sup> F03065/A01, p.13.

<sup>1187</sup> *See* P00643/P0643\_ET, p.SPOE00229214; P01092/P01092\_ET, p.SPOE00230873; P00189/P00189\_ET.1, pp.U015-8836, U015-8882; P01015/P01015\_ET, p.036669.

<sup>1188</sup> T.18485.15-18487.23.

<sup>1189</sup> F00709/A01, para.227.

document, [REDACTED].<sup>1190</sup> There is no evidence these regulations were disseminated or enforced. The blank template preceding the draft regulations provides for GS approval, but no evidence was adduced that the GS ever saw, let alone approved, them. Absent any evidential link to the GS, the document is incapable of proving that the KLA GS exercised “*command and control over local units, as well as its authority to approve, enforce and disseminate regulatory documents,*”<sup>1191</sup> as suggested. A more plausible inference is that these regulations were drafted locally in the Shala OZ, absent the receipt of any guidance from the GS, and were never disseminated elsewhere.

429. P03673 is also relied upon, for purported powers to arrest, detain and escort persons.<sup>1192</sup> However, P03673 was tendered through the bar table in an evidential vacuum, after all witnesses had testified, absent *indicia* of authenticity, distribution, compliance or enforcement.
430. While P03667 is referenced in certain other exhibits, the document itself was never shown to any witness. MUSTAFA made clear that he did not take any purported authority from such documents,<sup>1193</sup> and if they were referenced it was likely that his staff added the reference in an effort to give the document an appearance of order and legitimacy.<sup>1194</sup> This does not amount to evidence of enforcement. Further, there is nothing to suggest that this document was known beyond Llap. The text of P03667 is innocuous and is therefore of limited, if any, evidential significance.
431. The regulations do not show that “*a military hierarchy and a high level of organisation*”<sup>1195</sup> existed beyond paper. In the absence of evidence of widespread

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<sup>1190</sup> [REDACTED].

<sup>1191</sup> F02468/A01, Prosecution Shala and Karadak BTM, 24 July 2024, No.5.

<sup>1192</sup> See further P03675/P03675\_ET; P03674/P03674\_ET.

<sup>1193</sup> T.5914.14-20.

<sup>1194</sup> T.5913.5-14; T5914.11-13.

<sup>1195</sup> F03065/A01, p.13.

awareness, implementation and enforcement of these theoretical aspirations, the Panel can only fairly conclude that the regulations reflect a good faith but ineffective effort to organise the KLA. Such a finding would be consistent with the observations of internationals who gathered intelligence on KLA formations.<sup>1196</sup>

*iv. The GS did not have “extensive formal powers, including to commend, promote and discipline or dismiss soldiers”*

432. The SPO alleges that *“pursuant to these regulations [...] the Accused, through their official positions in the General Staff, held extensive formal powers, including to commend, promote and discipline or dismiss soldiers.”*<sup>1197</sup> Again, this assertion is not supported by evidence. The evidence that the SPO has adduced as to the origin and dissemination of disciplinary regulations (P00162)<sup>1198</sup> is wholly inconsistent and incapable of evidencing that they were widely circulated or enforced. HALITJAHA testified that this aspirational document was in fact drafted by the Pashtrik OZ and that the header, “KLA General Staff,” appeared only because the document was submitted to the GS; he did not know if anyone received it.<sup>1199</sup> No evidence has been adduced by the SPO to undermine his evidence on this point.

433. These regulations were unknown to most KLA fighters and key KLA figures<sup>1200</sup> and many provisions referred to concepts that were not applicable to the KLA’s reality.<sup>1201</sup> While W04764 claims to have seen P00162, stating that it was translated from VJ regulations, he did not know who created the regulations,

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<sup>1196</sup> T.13832.8-16; T.26783.5-14.

<sup>1197</sup> F00709/A01, para.109.

<sup>1198</sup> See also P00165/P00165\_ET; P00508/P00508\_ET; P00640/P00640\_ET; P00715/P00715\_ET; P00892/P00892\_ET.

<sup>1199</sup> T.10198.14-10199.10.

<sup>1200</sup> P01955.9\_ET, T.20.3-24; P01755.3\_ET, T.12.17-23; T.22017.1-7.

<sup>1201</sup> T.10207.9-15; T.22017.25-22018.6; [REDACTED].

and merely “assumed” it was someone within the GS.<sup>1202</sup> Even the unreliable [REDACTED], cited by the SPO to support dissemination of rules,<sup>1203</sup> indicated that “[REDACTED].”<sup>1204</sup> MUSTAFA stated that the KLA attempted but failed to implement these regulations as they never had the opportunity to systemise themselves.<sup>1205</sup> ZYRAPI recalled the existence of disciplinary regulations, which they began adjusting after the restructuring. Asked whether a version of these regulations existed prior to November 1998, he said “*I don’t know. Yes, there were, but I did not see it.*”<sup>1206</sup> His lack of familiarity with such documents, as KLA Chief of Staff, wholly undermines the SPO’s contention that they emanated from the GS and were widely enforced.

434. While the SPO cites KLA orders to show brigade commands relied upon and applied the disciplinary regulations upon these regulations,<sup>1207</sup> their mere citation is insufficient to prove the substantive enforcement of these regulations, especially when: (a) such orders were not executed in practice;<sup>1208</sup> (b) their mention was purely formal and imprecise;<sup>1209</sup> and (c) the orders in question were expressly rejected by the SPO’s own witnesses for their inauthenticity.<sup>1210</sup>

435. At their highest, these references reflect organisational aspirations and isolated actions, rather than the widespread implementation of a standardised regulatory framework that can be traced to the GS. Absent credible evidence of promulgation, awareness, or consistent application, the allegation that the

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<sup>1202</sup> [REDACTED].

<sup>1203</sup> [REDACTED].

<sup>1204</sup> [REDACTED]. *See also* P01955.9\_ET, T.20.3-9; T.22017.1-7.

<sup>1205</sup> T.5775.2-20.

<sup>1206</sup> T.17406.11-24.

<sup>1207</sup> F00709/A01, para.110, fn.361.

<sup>1208</sup> *See e.g.*, T.10473.22-10473.25 *regarding* P00613/P00613\_ET; T.19029.15-19031.12 *regarding* P00878/P00878\_ET.

<sup>1209</sup> *See e.g.*, P01554.7\_ET, T.4.22-7.22 *regarding* P01622/P01622\_ET.

<sup>1210</sup> *See e.g.*, T.10473.22-10475.13 *regarding* P00613/P00613\_ET; T.10476.5-10477.13 *regarding* P01376/P01367\_ET.

regulations were relied upon and applied across the KLA's alleged chain of command remains speculative and must be rejected.

*v. The regulations do not evidence the existence of a common criminal purpose*

436. The SPO relies on a collection of unsigned, undated, and theoretical regulations,<sup>1211</sup> to support the existence of the alleged "common criminal purpose." However, the regulations do not call for, encourage, or sanction the targeting of civilians or the commission of *any* crime, nor is it implicit in their content. The purpose of the documents was both, on their face and as they were understood, aimed at organising the KLA, not the perpetuation of a common criminal plan. Fatal to the SPO case, there is no evidence from any KLA soldier that they understood any rules or regulations to be instructing, encouraging or permitting them to commit crimes against civilians, nor is such an inference reasonably available. The SPO alleges that the focus on 'Opponents' was reflected in certain internal rules and regulations adopted or issued by the GS,<sup>1212</sup> and that regulations concerned the identification and targeting of 'Opponents.'<sup>1213</sup>

437. Firstly, the use of the term 'Opponents,' as broadly defined by the SPO in its PTB,<sup>1214</sup> is inappropriate in this context. What is mentioned in certain provisions are enemy forces, obstructionists and saboteurs; these provisions are lawful. The Panel must not lose sight of this. Nowhere do the rules call for the unlawful targeting of civilians or for other unlawful conduct. A reasonable objective reader of each set of regulations would not understand them to call for crimes to be committed against civilians. The benefit of the doubt entitles the Accused to that interpretation.

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<sup>1211</sup> P00890/P00890\_ET; P03177/P03177\_ET; P03166/P03166\_ET; P02610/P02610\_ET.

<sup>1212</sup> F00999/A01, Indictment, 30 September 2022, para.39.

<sup>1213</sup> F00709/A01, para.706.

<sup>1214</sup> F00709/A01, para.2.

438. Secondly, to suggest that any of the rules ‘focus’ on ‘Opponents’ is a gross exaggeration. At most, certain regulations contain passing reference to the issue of collaborators.
439. The SPO relies on P00890 to support the allegation that KLA rules and regulations directly sanction the killing of collaborators.<sup>1215</sup> This document is an unsigned, undated and incomplete draft, containing handwritten additions; no evidence has been adduced as to its provenance. Its author is unknown. Crucially, there is no reliable evidence attributing or linking the document to the GS, or VESELI. It is not probative of his allegation.
440. Neither IBISHI, nor [REDACTED], ever saw this document during the war.<sup>1216</sup> IBISHI also took issue with other aspects of the document which call into question its authenticity, noting that he found the term “district” to be unusual, as it was terminology used in Albania, not in Kosovo. He also commented that members of the intelligence service did not have the right to undertake tasks such as the liquidation of individuals, as suggested in the text.<sup>1217</sup>
441. The only witness who claimed to have [REDACTED] during the war is the highly unreliable [REDACTED]. Even [REDACTED] conceded [REDACTED]<sup>1218</sup> [REDACTED].<sup>1219</sup> He theorised that [REDACTED].<sup>1220</sup> [REDACTED] provides no assistance beyond speculation as to the provenance or source of this document and provides no basis for his theories. The Panel cannot reasonably infer from [REDACTED] uncorroborated and unreliable theories alone that this document was [REDACTED]. It is entirely possible that

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<sup>1215</sup> F00709/A01, para.73, fn.219.

<sup>1216</sup> [REDACTED]; [REDACTED].

<sup>1217</sup> [REDACTED].

<sup>1218</sup> [REDACTED].

<sup>1219</sup> [REDACTED].

<sup>1220</sup> [REDACTED].

this document is a local draft document based on an Albanian text, which was never circulated or enforced and had nothing to do with the GS.

442. The SPO relies heavily on the fact that certain regulations appear to sanction the death penalty for collaborators. The death penalty is not and was not prohibited under customary international law. However, more importantly for the purposes of these proceedings, the only documents that make such references are those which, on their face, are OZ level creations<sup>1221</sup> – not documents attributable to the GS – or for which there is no evidence of GS approval. Therefore, it cannot be said that the GS ever condoned or encouraged such an approach or penalty.

443. Finally, the SPO relies on the language of P00008, which states the KLA should be “*merciless toward the enemy and [...] all those who try to obstruct and sabotage our liberation war.*”<sup>1222</sup> No intent to commit crimes or further a criminal plan can be inferred on the basis of this language alone, without evidence regarding what it was intended to mean, or how it was interpreted in practice. No such sentiment can be imputed to VESELI who had nothing to do with, or proven knowledge of, these regulations.

*vi. The regulations were reproductions*

444. There is substantial evidence that any KLA regulations which did exist were copied from foreign, often Albanian, preexisting documents. Accordingly, they are not KLA creations but borrowed documents, and are not automatic indicators of KLA policy. As on the SPO’s evidence, the KLA simply adopted the content of other texts into their own. For example, ZYRAPI explained that P00008 was drafted at the end of 1998 and was translated from the rules of

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<sup>1221</sup> P03595/P03595\_ET, p.U000-8732; P00890/P00890\_ET, p.U001-7059; P00889/P00889, p.U001-4905.

<sup>1222</sup> P00008/P00008\_ET, p.U000-0461; P00009/P00009\_ET, para.10.

Western armies.<sup>1223</sup> It therefore cannot be assumed that the wording is the drafting of the KLA.

445. In the absence of reliable evidence of distribution, use and enforcement, the Panel cannot safely rely upon their content as reflecting KLA policy or chosen language.

*vii. Local Regulations*

446. The SPO relies upon the existence of various other purported KLA regulations from the OZ level to support the existence of a criminal enterprise and command structure. Again, like with all other regulations, reliance is placed on the documents absent supporting evidence<sup>1224</sup> or, where there is evidence, that evidence undermines them.<sup>1225</sup> For instance, the SPO seeks to rely on a passage of P00889 which provides for a military court that “*is composed of two servicemen and one civilian;*”<sup>1226</sup> no OZ had such a court. The SPO also relies upon P00927, a page of military police regulations purportedly from Dukagjin and never seen by any witness,<sup>1227</sup> even though it was confirmed that the KLA in the area were unable to carry out investigations, contrary to point three in the document.<sup>1228</sup> There is no indication the document was disseminated or used in practice. None of the local regulations adduced by the SPO have any evidential link to the GS; there is no evidence they ever saw, let alone approved their content.
447. Other documents lacking *indicia* of authenticity and reliability were admitted via the bar table.<sup>1229</sup> It is not without significance that the SPO chose to tender

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<sup>1223</sup> T.18489.19-18491.2; T.17619.12-21.

<sup>1224</sup> P02621/P02621\_ET; P03177/P03177\_ET; P03166/P03166\_ET; P02782/P02782\_ET; P00146.1/P00146.1\_ET; P02610/P02610\_ET.

<sup>1225</sup> P02090.4\_ET, T.17.7-8; P01594.1\_ET, T.19.14-19; T.5644.2-10; T.5496.10-18; T.21192.12-21193.13.

<sup>1226</sup> P00889/P00889\_ET, p.U001-4905.

<sup>1227</sup> P02090.6\_ET, T.12.22-13.4; P01694.4\_ET, T.15.5-10.

<sup>1228</sup> P01694.4\_ET, T.17.16-24.

<sup>1229</sup> P03177/P03177\_ET; P03166/P03166\_ET; P02782/P02782\_ET; P00146.1/P00146.1\_ET; P02621/P02621\_ET; P02610/P02610\_ET.

them via the bar table, deliberately avoiding putting them to any of a plethora of KLA witnesses who could have spoken to their authenticity. Such an approach invites the inference that this was done for fear that its case would be further undermined. The Panel must exercise serious caution before affording *any* weight to these documents in such circumstances, particular considering the wide ranging inferences the SPO is inviting the Panel to draw from them, the fact the Defence has had no opportunity to challenge them, and the fact that when other regulations were shown to KLA witnesses, the SPO's case was undermined and not supported.

## J. Military Court

448. The SPO asserts on the one hand that "*the legal sector was not taken seriously,*"<sup>1230</sup> while simultaneously recognising that there were serious overriding problems of lack of resources,<sup>1231</sup> which meant the court could never fully function during the conflict. The SPO suggests that the court was under-resourced intentionally and its establishment was not a true effort, but that it was simply an exercise in paying lip service to the international community.<sup>1232</sup> This is demonstrably untrue and inconsistent with the KLA's proven attitude towards international intervention. The KLA were fully engaged and cooperative; they met with internationals when requested, participated in ceasefire talks, engaged in good faith at Rambouillet, assisted NATO, demilitarised and cooperated with UNMIK and KFOR. The KLA's efforts were genuine, but often ineffective, as they were confronted with a crippling lack of resources and qualified personnel,<sup>1233</sup> in addition to ongoing fighting.

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<sup>1230</sup> F00709/A01, para.142.

<sup>1231</sup> F00709/A01, para.143.

<sup>1232</sup> F00709/A01, para.142.

<sup>1233</sup> P01955.5\_ET, T.15.10-16.19, T.21.9-23.6. P01955.2\_ET, T.6.11-7.10; P01955.3\_ET, T.3.17-21; P02007.2\_ET, T.21.14-22.24; T.17643.4-11; T.17645.2-9; P01137, para.18; P00707.2\_ET, T.16.15-25; T.5886.6-7.

449. The military court was born from a decision at the GS level on 19 November 1998, with the appointment of DOBRUNA as “*Chief of the Juridical Section in the Cabinet of the Commander of the KLA General Staff.*”<sup>1234</sup> DOBRUNA was not a member of the GS; the legal sector was wholly independent of the GS<sup>1235</sup> and did not begin its work until 16 December 1998.<sup>1236</sup> There was no precursor to the institution and, therefore, any documents referring to a purported military court prior to 19 November 1998 are inauthentic.<sup>1237</sup> It was not until the end of January 1999 that DOBRUNA was able to find two lawyers to assist him.<sup>1238</sup> DOBRUNA did not report regularly to anyone to preserve judicial independence.<sup>1239</sup>
450. **VESELI** played no role in the establishment or limited functioning of the court. While ZYRAPI made an uncorroborated allegation that **VESELI** provided information to the legal sector,<sup>1240</sup> ZYRAPI had no direct knowledge or experience of this taking place. Further, when read in context, ZYRAPI was describing what *should* have taken place according to procedures, as opposed to what actually happened. Importantly, this allegation is directly contradicted by DOBRUNA himself, who stated that he did not discuss matters of the court with **VESELI**.<sup>1241</sup> DOBRUNA is best placed to know with whom he interacted during the war. No other witnesses, including those who worked with DOBRUNA in the legal sector, suggest **VESELI** played any role whatsoever in the provision of information to the legal sector.<sup>1242</sup>

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<sup>1234</sup> P01175/P01175\_ET.

<sup>1235</sup> P01955.2\_ET, T.10.3-13, T.14.18-25.

<sup>1236</sup> P01955.2\_ET, T.4.1-5.25.

<sup>1237</sup> See e.g., P01250/P01250\_ET.

<sup>1238</sup> P01955.2\_ET, T.5.14-20; T.6.11-18.

<sup>1239</sup> P01955.9\_ET, T.2.20-3.8; T.9.4-9.

<sup>1240</sup> P01355.10\_ET, T.5.3-7.4.

<sup>1241</sup> P01955.9\_ET, T.4.8-12; P01955.8\_ET, T.18.11-23.

<sup>1242</sup> T.24771.16-24; P01136.4\_ET, T.11.15-21. See [Ch.V.E](#), para.250.

451. The military court provides a microcosm of the reality of efforts to build the entirety of the KLA structures during the war – genuine aspiration diligently reduced to writing but failing in execution. Ultimately, the court lacked any meaningful infrastructure; there was no investigation section or prosecution section,<sup>1243</sup> and no functioning appeals system.<sup>1244</sup> It consisted three volunteers who worked and slept in a single room under severe wartime threats.<sup>1245</sup> Their ‘archive’ consisted of a single small box.<sup>1246</sup> While some codes and manuals were written,<sup>1247</sup> these documents were not widely distributed, nor implemented in practice.<sup>1248</sup> The only attempted proceeding that appears to have taken place is that of KUQI. DOBRUNA did not adjudicate any cases of collaborators.<sup>1249</sup> According to DOBRUNA, like in every army, there were collaborators in the KLA but he was not aware of them, and was of the view that due to the KLA’s nascent structure, they were not attempting to “discover” collaborators.<sup>1250</sup>

## K. KLA Discipline

452. The SPO conflates the existence of written regulations,<sup>1251</sup> rudimentary reporting lines, and aspirational disciplinary mechanisms with effective control,<sup>1252</sup> while disregarding evidence that the KLA operated under conditions of decentralisation, rapid expansion, limited training, and constant pressure due to ongoing fighting. The evidence establishes that discipline within the KLA was fragmented, *ad hoc* and largely unenforceable, and that

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<sup>1243</sup> P01955.5\_ET, T.15.17.

<sup>1244</sup> P01955.6\_ET, T.4.18-23.

<sup>1245</sup> P01955.4\_ET, T.2.4-8; P01955.5\_ET, T.15.14-16.6.

<sup>1246</sup> P01955.4\_ET, T.10.15-22.

<sup>1247</sup> See e.g., P00893; P01955.3\_ET, T.4.12-6.2.

<sup>1248</sup> P01955.2\_ET, T.25.22-26.2; P01955.5\_ET, T.5.12-18; T.24714.7-24; T.15225.10-15226.1; T.17783.18-19; T.17197.20-23; P00707.2\_ET, T.16.15-25.

<sup>1249</sup> P01955.9\_ET, T.11.22-25.

<sup>1250</sup> P01955.9\_ET, T.12.10-13.2.

<sup>1251</sup> See [Ch.VII](#).

<sup>1252</sup> F00709/A01, para.712.

neither the GS nor **VESELI** had the practical ability to impose or ensure compliance with disciplinary measures.

453. As outlined above, the evidence is wholly inconsistent with the proposition that disciplinary regulations (P00162) were widely distributed or known to most soldiers. The SPO's allegation of selective enforcement of authority is unfounded. There was no centrally enforced disciplinary system to be applied selectively. Each OZ and unit did whatever they could, dictated by the local conditions and the voluntary nature of their forces. The SPO itself recognises the existence of conditions that were fundamentally incompatible with effective enforcement of discipline such as the rapid expansion of the KLA, minimal training, and ongoing hostilities which instead reinforced the GS' inability to identify misconduct and impose discipline.<sup>1253</sup>
454. The SPO's claim that **VESELI** dealt with disciplinary matters involving OZ commanders<sup>1254</sup> relies exclusively on BASHOTA's suggestion that **VESELI** would have information about disciplinary matters related to HARADINAJ's soldiers.<sup>1255</sup> He later clarified that that he "only thought" **VESELI** "would" have had information about the disciplining of HARADINAJ's soldiers.<sup>1256</sup> BASHOTA further acknowledged that neither **VESELI** nor the GS were responsible for disciplining soldiers or overseeing it; this was HARADINAJ's responsibility alone.<sup>1257</sup> Naser KRASNIQI of the military police also confirmed that he never discussed disciplinary cases with **VESELI**.<sup>1258</sup> Therefore, this allegation against **VESELI** is simply not made out.

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<sup>1253</sup> F00709/A01, paras.697-698.

<sup>1254</sup> F00709/A01, para.111(b).

<sup>1255</sup> P01871, paras.27-28.

<sup>1256</sup> P01872, para.12.

<sup>1257</sup> T.23208.22-23209.12.

<sup>1258</sup> T.24678.12-24680.12; T.24771.7-24; T.24774.19-24775.5.

455. The evidence shows that the GS lacked the practical ability to impose or ensure discipline. ZYRAPI confirmed that neither he, nor other GS members, could sanction OZ commanders for disobedience.<sup>1259</sup> When discussing the 28 November 1998 order issued by him,<sup>1260</sup> ZYRAPI stated that if OZ commanders chose not to comply with it, there were no means to enforce it.<sup>1261</sup> There are a number of striking examples of GS decisions being ignored without consequence.<sup>1262</sup>
456. Discipline was a matter for the OZs, not the GS. The evidence demonstrates that disciplinary matters were addressed at a local level and only to the extent that local structures were able. ZYRAPI,<sup>1263</sup> SELIMI,<sup>1264</sup> Naser KRASNIQI,<sup>1265</sup> W04739,<sup>1266</sup> KURTAJ,<sup>1267</sup> QERIQI,<sup>1268</sup> RRAHMANAJ,<sup>1269</sup> IBISHI,<sup>1270</sup> DOBRUNA,<sup>1271</sup> ABAZI,<sup>1272</sup> and W04737<sup>1273</sup> all describe discipline as a local responsibility, handled by brigade commands, military police, or unit commanders, without GS involvement.
457. [REDACTED] testified that disciplinary issues were to be dealt with by the brigade's structures, such as the military police and the ZKZ, to the extent they were able to do so, adding that *"how much they could, that's another matter altogether."*<sup>1274</sup> [REDACTED] was unable to recall any specific disciplinary case

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<sup>1259</sup> T.18469.4-13.

<sup>1260</sup> 1D00029/1D00029\_ET.

<sup>1261</sup> T.18473.2-24.

<sup>1262</sup> See T.8839.4-12; P00643/P00643\_ET, p.SPOE00229213.

<sup>1263</sup> T.17645.22-17646.7; T.17590.14-25.

<sup>1264</sup> P02026\_ET, pp.44-45.

<sup>1265</sup> P02007.1\_ET, T.13.1-19, T.27.19-28.25.

<sup>1266</sup> [REDACTED].

<sup>1267</sup> T.12712.14-24.

<sup>1268</sup> T.14733.3-22.

<sup>1269</sup> T.20487.20-20488.16.

<sup>1270</sup> P01763/P01763\_ET; T.21677.22-21678.4.

<sup>1271</sup> P01955.5\_ET, T.18.1-8.

<sup>1272</sup> T.15119.4-15120.23.

<sup>1273</sup> [REDACTED].

<sup>1274</sup> [REDACTED]; [REDACTED].

being investigated or enforced in practice. His evidence at its highest reflects a theoretical allocation of responsibilities within his brigade. Equally, BUJA testified that the intelligence sectors in the OZs had no responsibility for disciplinary matters.<sup>1275</sup>

458. HALITJAHA, RRAHMANAJ, and ABAZI all testified that due to the voluntary nature of KLA fighters, commanders had little real authority, limited disciplinary measures available and no meaningful mechanisms to enforce discipline.<sup>1276</sup> W04737 described the most severe disciplinary measures as limited to temporary removal of weapons or uniforms, reassignment or suspension, and even these measures were difficult to enforce because soldiers were volunteers who often owned their own weapons and could simply refuse to comply or leave.<sup>1277</sup> Sylejman SELIMI emphasised that, given the voluntary nature of the KLA, procedures to impose disciplinary actions for non-compliance did not exist.<sup>1278</sup> SOPI further confirmed that discipline within the KLA was mainly based on 'self-discipline' at unit level, with each unit responsible for maintaining its own order.<sup>1279</sup>

459. Witnesses consistently stated that more serious allegations, such as desertion, arrest or mistreatment of civilians, were to be referred to the military court.<sup>1280</sup> However, this mechanism did not function properly during the conflict, despite genuine efforts to establish the court.<sup>1281</sup> Cases were left unresolved with the intention of trying them after the war.<sup>1282</sup> Notably, DOBRUNA said that no such cases were dealt by him,<sup>1283</sup> with the exception of KUQI's case.

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<sup>1275</sup> T.22169.1-4.

<sup>1276</sup> T.10254.7-21; T.20487.20-20488.16; [REDACTED]; T.15119.4-15120.23.

<sup>1277</sup> [REDACTED]; [REDACTED].

<sup>1278</sup> P02027.1\_ET, T.2079.7-2081.13.

<sup>1279</sup> T.21282.1-5.

<sup>1280</sup> P02006.3\_ET, T.7.11-8.16; T.17645.22-17646.20; T.17590.14-25; T.17641.1-6; [REDACTED].

<sup>1281</sup> See [Ch.VI.J](#).

<sup>1282</sup> P02007.4\_ET, T.9.21-10.3; [REDACTED].

<sup>1283</sup> P01955.5\_ET, T.17.1-16.

Some cases were indeed referred to the court by units with close geographical proximity to it, but proceedings were not brought forward due to issues such as the “lack of technical capacity.”<sup>1284</sup> Ultimately, the evidence shows that the GS lacked any real capacity to impose discipline, and that such responsibility, to the limited extent that it existed, was addressed locally on an *ad hoc* basis.

#### L. GS Communiqués

460. A core allegation in the SPO case is that the existence of the common criminal purpose is evidenced through the “[p]olicies and practices employed - including as reflected in contemporaneous communiqués and political declarations [...]”<sup>1285</sup> and that the Political Directorate, to which **VESELI** allegedly belonged, had responsibility for KLA policy.<sup>1286</sup> However, there is no evidence that **VESELI** was part of the Political Directorate,<sup>1287</sup> or that he played any role whatsoever in the formation of KLA policy. The SPO has failed to adduce *any* evidence as to (a) the existence of any consistent, articulable KLA policy; or (b) if so, how it was formed and by whom. The SPO case on this point remains purely theoretical.
461. True to form, the SPO makes generalised overarching submissions on the communiqués, without any regard to the significant changes over time in the nature and authorship of the communiqués, the structure of the KLA, and the involvement or otherwise of the LPK. The SPO wrongly appears to suggest that *all* communiqués are relevant to *all* the Accused’s intent; the communiqués are not probative of **VESELI**’s intent or knowledge.

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<sup>1284</sup> P02007.4\_ET, T.9.21-10.3; P02010\_ET, p.083014.

<sup>1285</sup> F00709/A01, para.6.

<sup>1286</sup> F00709/A01, para.18.

<sup>1287</sup> See [Ch.VI.A.](#)

462. As set out elsewhere,<sup>1288</sup> the KLA was not a criminal organisation, and not all members of the KLA are alleged to be, nor could they possibly be, members of the indicted JCE. Not all members of the KLA shared in the alleged criminal intent, nor did all members of the GS. Equally, not all KLA members or members of the GS shared in the intent or sentiment behind the communiqués. Were the Panel even able to conclude that certain communiqués could provide some support for criminal intent or common purpose (which is not accepted), that is only the beginning of the requisite analysis of this evidence.
463. To suggest that any intent found to lie behind the communiqués can be attributed to the entirety of the KLA, or the GS, would offend reason and be contrary to the evidence. Many GS members did not know, nor controlled the content, of the communiqués. Nor can it properly be said that choosing to join, or remaining a part of, the KLA amounted to sharing any intention found to be illustrated by the communiqués. Authorship and content of the communiqués changed over time, and it cannot possibly be right that upon joining the KLA one subscribed to and supported all actions and sentiment described within all communiqués ever published, whether they were written before, during or after one joined the KLA. This is true regardless of the rank of the KLA member concerned, absent evidence to the contrary.
464. The overwhelming majority of persons joined the KLA with a view to defending Kosovo from the onslaught of Serbian forces – the choice to join, and the subsequent choice to remain, cannot be equated with knowledge of or participation in a JCE, nor any shared intent with the sentiment in the communiqués. Loyalty is not criminal.<sup>1289</sup> Any sentiment found to exist in the communiqués can only properly be attributed to those who either, drafted

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<sup>1288</sup> See [Ch.VI](#); [Ch.IX.B](#).

<sup>1289</sup> IT-05-87-T, [TJ Vol III](#), para.275.

them, contributed to their creation or perpetuated the messaging contained therein. **VESELI** did none of these things.

465. There is very little evidence on the process for the issuance of communiqués pre-1998; most of it being presumption or speculation.<sup>1290</sup> While **KRASNIQI** has accepted responsibility for authoring certain communiqués from June 1998 onwards,<sup>1291</sup> there is no evidence whatsoever of discussions between him and other GS members discussing their proposed content. Notably, there is little or no evidence of the nature of any interactions between **VESELI** and **KRASNIQI** and certainly no evidence that the two men ever discussed communiqués, with **VESELI** being abroad for most of the conflict, while **KRASNIQI** remained in Kosovo.
466. There is no evidence that anyone other than the drafter of these documents was able to feed into, influence or control their content in any way. Significantly, neither **ZYRAPI**, **BASHOTA**, nor **Sylejman SELIMI** – all GS members – knew anything about how communiqués came into being, nor could they control their drafting or publication in any fashion. Most GS members did not know about, nor control the content of the communiqués – and as such cannot be found to have condoned, supported or encouraged their content or intent. **VESELI** is one such GS member.
467. In order for the communiqués to be capable of amounting to proof of intent, something additional must be proved beyond mere membership of the organisation in whose name these communiqués were issued. The SPO has failed to do so in **VESELI**'s case.

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<sup>1290</sup> See e.g., T.23458.18-23459.8; T.23461.22-24.

<sup>1291</sup> P00795, T.3430.1-10.

*i. Origin and authorship*

468. It appears the first communiqué was issued in 1994; evidence conflicts on precisely when and by whom it was published.<sup>1292</sup> The KLA was a completely different organisation in 1994 to what it was in 1998 – in composition, purpose, leadership and structure. Therefore, the Panel must be very cautious not to ascribe the intent of these previous iterations of the KLA to the KLA and GS of the Indictment Period.
469. Despite calling evidence from three GS members and BUJA, who was an editor at *Zëri i Kosovës*, the SPO has failed to adequately prove authorship for the vast majority of communiqués – in particular, pre-June 1998 – or shed any light on the process of their creation. There is no reliable evidence identifying the individuals responsible for authoring the communiqués, nor is there any reliable evidence verifying the sources of information in them. **VESELI** was not a member of the Central Staff.<sup>1293</sup>
470. What is clear is that it was possible to be on the GS and have no knowledge or involvement in the creation of the communiqués. Notably **VESELI** has never claimed to have had any knowledge as to the origin or authorship of the communiqués. Most KLA GS members knew little to nothing about how communiqués came into being:
- a. ZYRAPI did not know who wrote the communiqués.<sup>1294</sup>
  - b. Sylejman SELIMI did not know who wrote communiqués, when they were written, nor was ever personally involved in their drafting.<sup>1295</sup>

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<sup>1292</sup> P04200/P04200\_ET, pp.5, 7; P02027.1\_ET, T.2055.15-20; P00012/P00012\_ET, p.057955; P01880/P01880\_ET, p.27; P01874/P01874\_ET, p.074630; T.22209.11-14; T.22553.4-10; T.22858.2-5.

<sup>1293</sup> See [Ch.III.B.](#)

<sup>1294</sup> T.17784.2-5.

<sup>1295</sup> T.25093.8-25094.13.

- c. According to BASHOTA, Nait HASANI told him that he and Xheladin GASHI wrote communiqués, until HASANI's arrest in January 1997, though he had no personal knowledge of this.<sup>1296</sup> He assumed, but did not know, whether Xheladin GASHI or "others" abroad continued after this date,<sup>1297</sup> nor could he confirm whether the communiqués were written abroad – this was the rumour.<sup>1298</sup>

471. BUJA explained that those at *Zëri* did not know who was sending communiqués for publication<sup>1299</sup> and would publish communiqués without verifying where they came from.<sup>1300</sup> They were required to publish communiqués arriving on behalf of the Central Staff,<sup>1301</sup> but as they did not know the members of the Central Staff, they could not be sure of their origin.<sup>1302</sup> BUJA did not know whether the communiqués came from Kosovo or abroad.<sup>1303</sup>

472. The primary evidence as to authorship comes from the co-Accused, which is contradictory, further reinforces the lack of clarity in the SPO's case and remains untested:

- a. According to **THAÇI**, Jashar SALIHU and Nait HASANI were initially responsible for issuing communiqués in 1996. **THAÇI** did not know who was responsible for communiqués after HASANI's arrest, though believed BASHOTA might have had some involvement. In the spring

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<sup>1296</sup> T.23458.18-23459.8; T.23461.22-24; T.23002.22-25; T.23136.5-9.

<sup>1297</sup> T.23079.25-23081.9; T.23135.19-24.

<sup>1298</sup> T.23136.2-22.

<sup>1299</sup> T.22249.4-8.

<sup>1300</sup> T.22249.9-18.

<sup>1301</sup> T.22249.11-15.

<sup>1302</sup> T.22215.3-25.

<sup>1303</sup> T.22262.19-25.

and summer of 1998, various people issued communiqués for different purposes.<sup>1304</sup>

- b. According to **KRASNIQI**, before June 1998, communiqués were authored or approved by individuals in the “operative wing,” outside Kosovo, whose identities he did not know.<sup>1305</sup> He had no contact with them and could not verify their accuracy.<sup>1306</sup> After **KRASNIQI** was appointed spokesperson, he called communiqués into *Zëri i Kosovës*; before that, he does not know who communicated with *Zëri*.<sup>1307</sup> After 11 June 1998, he and other members of the GS responsible for communication with the public were aware of the text of communiqués.<sup>1308</sup>
- c. **SELIMI** stated that responsibility for communiqués depended on circumstances and they were issued by various sectors of the KLA structure.<sup>1309</sup> People who “dealt with” communiqués were: Nait HASANI until January 1997; BASHOTA until 1998; **KRASNIQI** and **THAÇI** from April 1998.<sup>1310</sup>

473. HRW’s ABRAHAMS added further confusion by stating that Adem DEMAÇI may have been the person issuing communiqués and declarations on behalf of the KLA.<sup>1311</sup>

474. No reliable evidence has been adduced that communiqués were the responsibility of more than one Central Staff or GS member at any one time.

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<sup>1304</sup> P00739.5\_ET, T.5.3-7.20.

<sup>1305</sup> P00800, T.4949.8-10.

<sup>1306</sup> P00800, T.5029.23-T.5031.9.

<sup>1307</sup> P00800, T.5012.10-5013.10.

<sup>1308</sup> P00800, T.5033.18-25.

<sup>1309</sup> P00775\_ET, p.SPOE00068078.

<sup>1310</sup> P00761.7\_ET, T.17.4-25; P00763.3\_ET, T.3.18-20, T.7.2-8.3.

<sup>1311</sup> T.7350.24-7351.3.

There were no specific meetings of the GS to discuss the contents of communiqués before they were issued, nor were they issued collegially.<sup>1312</sup> As outlined by BASHOTA:

A. I do not know who issued them. There was no specific decision taken at a meeting of the General Staff with respect to the issuance of communiqués. At least to the best of my recollection, I don't think there was any such decision.  
 Q. Yes. And my point is, whoever was issuing them was not issuing them collegially with you and other members of the Central Staff, later General Staff; correct?  
 A. Correct.<sup>1313</sup>

475. The evidence also demonstrates that Central Staff and GS members were not aware of the existence of certain communiqués, nor the content or events described therein.<sup>1314</sup>

476. Numerous “communiqués” were also issued by unknown actors at the OZ level,<sup>1315</sup> without any demonstrable knowledge, involvement or sanction from the GS.<sup>1316</sup> Conflicting evidence emerges in this respect from Pashtrik, where despite witnesses saying the OZ did not issue its own communiqués,<sup>1317</sup> the SPO has adduced a document that purports to be one.<sup>1318</sup>

ii. *Content and purpose of the communiqués*

477. The SPO argues that “*these public statements threatened, endorsed, legitimised, and encouraged violence and attacks against Opponents. [...] [T]hey exceeded the realms of legitimate political discourse.*”<sup>1319</sup> The SPO fundamentally misrepresents the purpose and content of the communiqués. The overwhelming majority of the evidence in the case supports the proposition that the communiqués were

<sup>1312</sup> T.23136.23-23137.2.

<sup>1313</sup> T.23141.3-10.

<sup>1314</sup> T.23001.12-23002.1; T.23335.19-21; T.23002.4-23003.3; T.22975.11-14; T.18415.12-18416.13.

<sup>1315</sup> P00515/P00515\_ET.10; P00515/P00515\_ET.11; P00812/P00812\_ET.6; P00811/P00811\_ET.40; P00108/P00108\_ET.

<sup>1316</sup> See e.g., P00133/P00133\_ET; P00115/P00115\_ET (Drenicë OZ); P00811/P00811\_ET.20; P00515/P00515\_ET.40 (Llap OZ).

<sup>1317</sup> [REDACTED].

<sup>1318</sup> P00515/P00515\_ET.10.

<sup>1319</sup> F00709/A01, para.21.

exaggerated propaganda tools. The Panel has already accepted that at least one of the purposes of the communiqués was propaganda and that some of their contents might have included exaggerated claims when it found that this fact did not render them inadmissible.<sup>1320</sup> However, it clearly renders them unreliable, of limited weight and ultimately not probative of the SPO case against **VESELI**.

478. The Panel has heard evidence from a cross-section of sources as to the nature and purpose of the communiqués. Despite their vastly different vantage points, none provided evidence in support of the SPO's theories on the nature and purpose of the communiqués:

- a. **BASHOTA** explained that that in 1996-1997, communiqués aimed to portray the KLA as a more organised and capable structure than it was; claiming responsibility for incidents was a way of asserting their presence.<sup>1321</sup> Although the communiqués suggested that the KLA would not tolerate any activity that was against the KLA struggle, the reality on the ground was materially different.<sup>1322</sup> The communiqués were supposed to boost morale, portraying the KLA as a modern and organised army that was winning the war.<sup>1323</sup> They also set out the political views of the KLA in general terms.<sup>1324</sup>
- b. **MUSTAFA** stated that communiqués should be seen as propaganda.<sup>1325</sup>
- c. **KRASNIQI** stated that the main purpose of the communiqués and press statements was to raise morale and foster recruitment they would

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<sup>1320</sup> F01832, Fifth Decision on Prosecutor's BTM, 3 October 2023, para.27.

<sup>1321</sup> T.23255.10-23256.3.

<sup>1322</sup> T.23081.18-24.

<sup>1323</sup> T.23258.18-23.

<sup>1324</sup> T.23257.7-10.

<sup>1325</sup> T.5647.5-12.

deliberately distort the truth for propaganda purposes.<sup>1326</sup> KRASNIQI described that the approach that was adopted was to “[REDACTED],” and highlighted that: “[REDACTED].”<sup>1327</sup> This strategy, and the notion of the ‘two KLAs,’ demonstrates that communiqués were designed to create an image rather than encourage criminal activity. He acknowledged that events discussed in communiqués did often take place but were distorted to make the people of Kosovo think that the KLA was a well organised army and to highlight successes.<sup>1328</sup> He stated that communiqués should be regarded as unreliable propaganda tools which often inflated accomplishments whilst downplaying setbacks and failures.<sup>1329</sup> Nothing in KRASNIQI’s evidence supports the existence of any criminal intent behind communiqués purportedly authored by him.

d. IBISHI stated that their purpose and aim was:

[T]o enable the gathering of the forces, civilian forces, to get volunteers -- and to get volunteers and to get support from abroad, enduring support, and to enable ourselves that through a military operation to get rid of the Serbian regime, to free ourselves from the Serbian regime. This was the only way out.<sup>1330</sup>

In his view, in the absence of instructions from the GS, the communiqués were a means for him to be informed on procedures, war, and operational matters, as contacts with the GS were rare.<sup>1331</sup> IBISHI’s description demonstrates that the communiqués functioned as general, non-binding, informative material.

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<sup>1326</sup> [REDACTED].

<sup>1327</sup> [REDACTED].

<sup>1328</sup> P00800, T.4967.21-4968.15, T.4978.2-24, T.4980.2-11, T.5036.1-5037.1; P00795, T.3420.20-23.

<sup>1329</sup> [REDACTED].

<sup>1330</sup> P01755.1\_ET, T. 22.4-9.

<sup>1331</sup> P01755.2\_ET, T.15.16-23.

- e. DUNCAN believed that communiqués were part of a narrative that the KLA was trying to create of a well-established organisation.<sup>1332</sup>
  - f. W04323 testified that there was a lot of propaganda in the communiqués and the information contained therein was exaggerated.<sup>1333</sup>
  - g. W04295 considered the communiqués to be false and “full of slander.”<sup>1334</sup>
  - h. RRAHMANAJ stated that *“these communiqués were prepared sitting on some comfortable sofas in some Western countries, but they do not correspond with the reality.”*<sup>1335</sup>
  - i. Sylejman SELIMI did not know the purpose behind the drafting of the communiqués.<sup>1336</sup>
  - j. ABRAHAMS accepted the communiqués may be inaccurate because those issuing them were trying to create an impression to affect either the enemy or a third party in their tactical decision-making.<sup>1337</sup>
479. No evidence has been adduced from any witness or other source which proves that the KLA soldiers understood the communiqués to be (a) condoning, encouraging or promoting the mistreatment or killing of civilians; or (b) a reflection of a KLA policy to mistreat or kill civilians.
480. In both *Haradinaj & Limaj* the ICTY found that KLA communiqués may have exaggerated or altered events and were part of the KLA “propaganda

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<sup>1332</sup> T.27136.20-27137.1.

<sup>1333</sup> T.4770.6-4771.14.

<sup>1334</sup> P01807, para.32.

<sup>1335</sup> T.20511.7-9.

<sup>1336</sup> T.25093.8-12.

<sup>1337</sup> T.7639.19-7641.8.

campaign.”<sup>1338</sup> According to the *Haradinaj* re-trial judgment, the information contained in the communiqués involving collaborators “*is often vague and leaves out details as to the time and place of the incident, the identity of the perpetrator and the identity of the victims or their civilian or military status.*”<sup>1339</sup>

481. There are also many examples of claims made within the communiqués that are demonstrably untrue.<sup>1340</sup>
482. Crucially, no communiqués issued after **KRASNIQI**’s appointment as spokesperson admit responsibility for any assassination of perceived collaborators.<sup>1341</sup> Therefore, during the entire period in which **VESELI** served on the GS, there are no such communiqués evidencing, endorsing or admitting such conduct.
483. Nonetheless, the SPO places significant reliance on the language in the older communiqués around collaborators. However, as outlined above, there is an absence of evidence as to authorship of the communiqués pre-June 1998<sup>1342</sup> and, consequently, no evidence of what the early authors may have meant by the term ‘collaborator.’ The only insight comes from **KRASNIQI**’s ICTY evidence and applies only post-June 1998. While it remains untested, the SPO has not called evidence to contradict or undermine it.
484. **KRASNIQI** explained that the term ‘collaborators,’ used in KLA communiqués, pertains specifically to individuals who were actively engaged in the hostilities – namely, those who cooperated with, or assisted the Serb

<sup>1338</sup> IT-04-84bis-T, [II](#), paras.630, 635; IT-03-66-T, [II](#), para.216.

<sup>1339</sup> IT-04-84bis-T, [II](#), para.635.

<sup>1340</sup> Communiqué 40: P00269/P00269\_ET.16; P00800, T.4978.7-4980.11; T.23260.4-11. *See also* F01387, Joint Defence Response to Prosecution BTM, 21 March 2023, para.16; Communiqué 28: P00273/P00273\_ET; P00269/P00269\_ET.9; 4D00098/4D00098\_ET; T.23253.15-23255.9; Communiqué 57: P00295/P00295\_ET, p.1; T.20510.20-20511.3.

<sup>1341</sup> *Note* P00158/P00158\_ET, p.043805, Military Police Declaration No.4, is not a KLA GS Communiqué.

<sup>1342</sup> *See* [Ch.VI.L.i](#).

forces and police, in perpetrating atrocities against Kosovar Albanian civilians. They were those who had been recruited by the Serbian Security Services, police or military, *i.e.*, not those people who were against the war<sup>1343</sup> but persons who were actively working with enemy forces.<sup>1344</sup> Someone would not be labelled a collaborator if seen speaking to a Serb or selling wood or bread to a Serb.<sup>1345</sup>

485. Therefore, the *only* evidence on the issue indicates that this language was not intended to encapsulate civilians *hors de combat* but only those who were combatants or legitimate threats. No reasonable inferences or conclusions can be drawn to the contrary in the absence of evidence. Targeting civilians was not a KLA policy.<sup>1346</sup>

*iii. Authenticity*

486. Serious authenticity issues arise with many of the purported communiqués. The SPO made no attempt to prove their accuracy or show them to witnesses for confirmation that they are what they purport to be. Almost nothing is known about how they were sent for publication or if there was even an established process. No contemporaneous records were produced to show how, when, and by whom communiqués were communicated to the press.<sup>1347</sup> Considering the absence of evidence of authorship and their propagandist nature, no safe inferences can be drawn as to the accuracy of their content, their origin or their authorship.

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<sup>1343</sup> P00800, T.5060.24-5066.18, T.5114.18-5115.24, T.5152.1-5153.13.

<sup>1344</sup> P00795, T.3437.13-19; P00800, T.5061.8-5062.9.

<sup>1345</sup> P00795, T.3438.16-24.

<sup>1346</sup> P00795, T.3444.9-16, T.3446.15-20.

<sup>1347</sup> T.22262.19-25.

*iv. Causation*

487. The law is clear that propaganda is not sufficient by itself to establish criminal liability; what is required is a (a) causal nexus; and (b) evidence of actual contribution to crimes.<sup>1348</sup> There is, therefore, a fatal flaw in the SPO's case on communiqués; it has failed to prove any causal nexus between the communiqués and the crimes on the Indictment, or any contribution to the crimes.
488. While the SPO points to the fact that communiqués were published in Albanian print media, it has failed to prove the extent to which this media was circulated or available throughout Kosovo during the Indictment Period. Considering wartime conditions, no safe assumptions can be made about this. There is no proven causal link between the alleged anti-collaborationist rhetoric in the communiqués and the indicted crimes.
489. The only evidence remotely touching on this issue arises from MUSTAFA. He explained that the KLA did not necessarily discuss the contents of communiqués – but even if they had, no attention would have been paid as they were dealing with much more urgent matters, like seeing “*people who were being burned alive*” and other realities of war.<sup>1349</sup> MUSTAFA stated that they made use of these communiqués for the purposes of reorganising in the OZs and recruiting volunteers; from his perspective, communiqués did not contain any details about how people were to be treated.<sup>1350</sup> At most, MUSTAFA said that in general they *might* have seen the communiqués as permission “to deal” with those obstructing the work of the KLA; this answer is clearly hypothetical and does not expound on the phrase ‘to deal.’ He could not recall any specific

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<sup>1348</sup> IT-03-67-T, [II](#), paras.300, 301, 343, 345.

<sup>1349</sup> T.5647.5-12.

<sup>1350</sup> T.5916.22-24.

communiqué giving them permission to do so,<sup>1351</sup> nor could he identify any action that either he or his soldiers ever took as result. He confirmed that he knew of no communiqué that implicated the GS in encouraging the issuance of an amnesty in Llap, contrary to a line of judicial questioning.<sup>1352</sup> Crucially he stated that, in his view, he did not need permission from anyone to detain people he believed were obstructing the work of the KLA.<sup>1353</sup>

490. IBISHI did not see any GS orders during the war about collaborators.<sup>1354</sup> He stated that they “acted under the discretion of Llap operational zone with the intention to prevent any negative consequences” from collaborators, such as becoming the subject of attacks.<sup>1355</sup> IBISHI testified that he understood that there was an order of sorts, to take preventative measures against Albanians serving in Serbian militias.<sup>1356</sup> He stated repeatedly that he had never seen such an order and did not know how it had come about,<sup>1357</sup> but he believed they related it to Communiqués 53 and 54 which he said “reflected the situation.”<sup>1358</sup> He suggested the communiqués could be considered “conditional orders” or “recommendations.”<sup>1359</sup> However, noting that people were allegedly detained in Bajgorë/Bajgora from about the beginning of August 1998, before the issuance of Communiqués 53 and 54, it cannot be suggested that imprisonment of persons in Llap was a result of the communiqués.<sup>1360</sup> IBISHI and MUSTAFA both confirmed that there was no nexus between Communiqué 54 and arrests in their OZ.<sup>1361</sup>

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<sup>1351</sup> T.5917.3-7; T.5955.1-24.

<sup>1352</sup> T.5954.18-21.

<sup>1353</sup> T.5956.6-9.

<sup>1354</sup> T.21159.9-12.

<sup>1355</sup> T.21709.8-19.

<sup>1356</sup> 21155.9-23.

<sup>1357</sup> T.21155.11-12, 20.

<sup>1358</sup> T.21155.9-10.

<sup>1359</sup> T.21154.4.

<sup>1360</sup> T.21161.10-18.

<sup>1361</sup> T.21176.2-17.

491. BASHOTA, when confronted with his prior ICTY statement where he had said that there was an order to kill collaborators issued by the GS,<sup>1362</sup> clarified that he was referring, not to an order but to the communiqués, which he noted were “political statements directed at the population so they would be prepared.”<sup>1363</sup> BASHOTA, moreover, did not see any GS order concerning collaborators.<sup>1364</sup> [REDACTED] was also not aware of any communiqués issued by the GS that referenced concerns about collaborators.<sup>1365</sup>

492. There is no evidence that the communiqués inspired or encouraged persons to commit crimes against civilians. It is impermissible reasoning that, on the one hand, the communiqués existed and, on the other, crimes occurred – therefore the communiqués caused the crimes. Accordingly, the communiqués do not assist the SPO in proving liability for the indicted JCE.

*v. No link between VESELI and the communiqués*

493. There is no evidence that VESELI was a member of either the LPK or the Central Staff. No evidence links him to the LPK or any political activity abroad in the early 90s, in particular LPK activity in Switzerland from 1991-1997.<sup>1366</sup> As outlined elsewhere,<sup>1367</sup> it has also not been proved that he was a member of the KLA Political Directorate or played any role in the formulation of KLA policy. Therefore, it cannot be found that any alleged policy outlined in the communiqués was authored, supported, or intended by him.

494. The two communiqués P00303 and P00158, which allegedly implicate intelligence, are dealt with elsewhere.<sup>1368</sup>

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<sup>1362</sup> P01871\_AT/P01871, para.43.

<sup>1363</sup> P01872, para.16.

<sup>1364</sup> T.23101.1-23104.11.

<sup>1365</sup> P01327.7\_ET, T.32.2-5.

<sup>1366</sup> See [Ch.III.A](#), [B](#).

<sup>1367</sup> See [Ch.VI.A](#).

<sup>1368</sup> See [Ch.V.E](#).

495. For completeness, it should be noted that the SPO, in a bar table motion dated 14 April 2025, alleged for the first time that **VESELI** was involved in the publishing of one communiqué on the basis of P04209 alone.<sup>1369</sup> P04209 is no more than an unreliable, untested and unverified purported screenshot of a Facebook post republished by another outlet. It contains an oblique reference to a communiqué that has not even been identified. This hearsay evidence cannot begin to establish any viable accusation against **VESELI** and must be disregarded in its entirety.<sup>1370</sup> The SPO did not call MAHMUTI to testify in this case. When he did testify in *Shala*, the Panel found his evidence “outright implausible” and “wholly unreliable.”<sup>1371</sup>
496. The core tenets of the SPO’s case on JCE comprise (a) early public statements of the KLA preceding the period of the charges; and (b) communiqués and political declarations of the KLA GS, public statements of KLA GS members, as well as other KLA publications, during the period of the charges – none of which can be attributed to **VESELI**.<sup>1372</sup> There is no evidence upon which the Panel could conclude that **VESELI**: (a) authored any communiqués; (b) knew who authored the communiqués; (c) fed into the content or sentiment of the communiqués; (d) provided information upon which any communiqués were based; (e) could control the content of the communiqués; (f) was present at any meeting when communiqués were discussed; (g) discussed the communiqués with any KLA or GS members; (h) shared in the intent of the unknown drafters of the communiqués; or (i) perpetuated the sentiments contained therein. Therefore, the existence of the communiqués does not advance the SPO’s case against **VESELI** and should not be taken into account as against him.

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<sup>1369</sup> F03114/A01, No.75.

<sup>1370</sup> See also F03166/A01, No.75.

<sup>1371</sup> KSC-BC-2020-04/F00847, Trial Judgment and Sentence, 16 July 2024, paras.271, 273.

<sup>1372</sup> F00026/CONF/RED3, Decision on the Confirmation of the Indictment, 26 October 2020, para.454.

## M. Special Units

497. The SPO alleges there was a special military police unit, “*managed by the intelligence service*” called Eye of the Eagle<sup>1373</sup> The existence or otherwise of the Eye of the Eagle unit does not advance the SPO’s case against **VESELI**. This was not an intelligence unit, it was not under the command of intelligence officers, it did not report to intelligence officers and at no point was it under the command and control of KLA intelligence structures or **VESELI** personally. There is no proven connection between **VESELI** and the unit. The unit was a rapid reaction force.<sup>1374</sup>
498. There is conflicting evidence as to who founded the unit. QADRAKU did not know whether the GS was informed about the unit’s creation.<sup>1375</sup> There is no evidence the GS knew about the unit. There is also conflicting evidence regarding KADOLLI’s role prior to joining the Eye of the Eagle unit,<sup>1376</sup> such that no safe finding can be made that he was intelligence. KRYEZIU was not a member of ZKZ.<sup>1377</sup> There is no indication that QADRAKU’s involvement in the unit was in any way related to his intelligence function. The SPO alleges that KRYEZIU reported to SINANI and, in his absence, HALITJAHA and that the unit also reported directly to the GS.<sup>1378</sup> However, the true nature of the unit’s reporting structure is unclear due to conflicting evidence; no safe

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<sup>1373</sup> F00709/A01, para.238.

<sup>1374</sup> T.10180.17-21; T.22621.17-22.

<sup>1375</sup> T.22621.5-13; T.22622.18-24.

<sup>1376</sup> P01333/P01333\_ET, p.083228; P00012/P00012\_ET, p.057924; 1D00164/1D00164\_ET; P00707.2\_ET, T.14.14-17.

<sup>1377</sup> P01834.2\_ET, T.20.8-9.

<sup>1378</sup> F00709/A01, para.238.

conclusions can be made one way or the other.<sup>1379</sup> The unit did not report to **VESELI**.<sup>1380</sup>

499. In terms of special units at GS level, there is evidence of a ‘special unit’ that conducted reconnaissance, participated in fighting,<sup>1381</sup> and reported only to ZYRAPI.<sup>1382</sup> W03871 explained that this unit was one of three units established within the GS that conducted “surveillance and defence.”<sup>1383</sup> Therefore, it appears that these units may have been established to fill the gaps from the absence of a functioning intelligence structure at GS level in **VESELI**’s absence from Kosovo. There is no evidence special units at GS level were involved in crimes against ‘Opponents.’ ZYRAPI explained that special units existed at the brigade, OZ and GS levels and acted as rapid response units.<sup>1384</sup>
500. The SPO alleges that military police and intelligence services – in cooperation with special units – worked together to identify and take measures against ‘Opponents,’<sup>1385</sup> and that special units assisted the police and intelligence services in “*facing the enemy’s special war and its collaborators.*”<sup>1386</sup> No evidence has been adduced which demonstrates intelligence working with special units – either to target ‘Opponents,’ or at all. The SPO relies primarily on P00228, which is incapable of proving its case.<sup>1387</sup> P00228 is a report signed by ZYRAPI which provides that “[s]pecial units and military police provide special help by

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<sup>1379</sup> T.10180.3-6; P00509/P00509\_ET; P00712/P00712\_ET, p.SPOE00209330; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>1380</sup> [REDACTED]; [REDACTED].

<sup>1381</sup> P01541.3\_ET, T.15.20-24; T.17437.18-24.

<sup>1382</sup> P01541.3\_ET, T.13.12-14; T.18845.6-20. T.17437.18-24.

<sup>1383</sup> P01541.3\_ET, T.6.14-20.

<sup>1384</sup> P01355.5\_ET, T.16.15-23.

<sup>1385</sup> F00709/A01, para.146.

<sup>1386</sup> F00709/A01, para.167.

<sup>1387</sup> P00228/P00228\_ET; P03875/P03875\_ET; P01429/P01429\_ET.

*successfully facing the enemy's special war and its extended hand.*"<sup>1388</sup> It does not mention intelligence participating in such activities.

## VII. INTELLIGENCE AT GENERAL STAFF LEVEL

501. The SPO alleges that, as Chief of KLA Intelligence, **VESELI** oversaw a centralised military Intelligence Directorate that operated as an organ of the GS, and which was complicit in the commission of crimes.<sup>1389</sup> However the SPO's characterisation of **VESELI**'s intelligence function is not supported by evidence.<sup>1390</sup> As previously set out, the SPO has always misunderstood the purpose of **VESELI**'s appointment, and conflated internal and external intelligence.<sup>1391</sup> Immediately after his appointment, **VESELI** left Kosovo at the end of November 1998 to be trained by, and work with, intelligence services of NATO Member States.<sup>1392</sup> **VESELI** did not have effective control over any operational military intelligence structure exercising internal functions within Kosovo, nor did he, in his position as Chief of Intelligence, play a role in targeting Opponents – this is supported by the evidence.

### A. Role of Intelligence at the GS

502. Little to no evidence has been adduced as to how the GS intelligence functioned. The SPO failed to adduce any evidence which explained the role, responsibilities or ambit of the intelligence function. The SPO has failed to demonstrate the nature of **VESELI**'s role or his day-to-day responsibilities. In the absence of evidence, no conclusions can be based on pure supposition. The absence of such evidence is fatal to the SPO's case not only on superior responsibility but also JCE.

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<sup>1388</sup> P00228/P00228\_ET, p.K0535460.

<sup>1389</sup> See F00709/A01, paras.156-161.

<sup>1390</sup> F01052/COR, Pre-Trial Brief on Behalf of Kadri Veseli, 25 October 2022, paras.37, 40-49.

<sup>1391</sup> F01052/COR, paras.40, 42.

<sup>1392</sup> F01052/COR, para.41.

503. The SPO PTB is riddled with specific allegations against **VESELI**<sup>1393</sup> and grand statements the SPO failed to prove. Put simply, its case, as far as it pertains to **VESELI** never got off the ground. No reliable evidence was ever adduced as to anything criminal **VESELI** said or did throughout the Indictment Period. The exceptionally limited evidence that has been adduced against him, which at its highest, amounts to no more than hearsay allegations of him being adjacent to criminality, comes from the most unreliable, uncorroborated, primarily hearsay witnesses who cannot possibly be relied upon in good faith by the Panel.
504. It is inevitable that the SPO – in the absence of evidence that **VESELI** did or intended anything criminal – will be forced to try to salvage its case with a misguided argument that simply by virtue of **VESELI**'s position on the GS, the actions and intentions of other alleged JCE members can be imputed to him. This is wrong in principle and in fact. Reasonable inferences of guilt cannot be made from an absence of evidence; such an approach is unlawful. For a finding of guilt to be sustained without direct evidence, guilt must be the *only* reasonable inference available based on the evidence. That is, it requires persuasive and reliable evidence that proves beyond reasonable doubt the circumstances from which those inferences must inescapably be drawn.
505. A core tenant of criminal justice is that there can be no guilt by association; there must be proof beyond a reasonable doubt. Membership of the GS cannot be equated with guilt. The GS was not a criminal entity; all members of the GS were not war criminals. It was possible to be a member of the GS and not have entered into a JCE. **VESELI** is the embodiment of that truth.
506. There is a true lack of evidence against **VESELI**. There are no contemporaneous records indicating his motive, intentions or beliefs. He was known only to a

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<sup>1393</sup> See F00709/A01, paras.183, 344, 351-352, 382, 505.

very limited number of KLA soldiers during the conflict who had any dealings with him. He had little to no dealing with, or oversight of, other GS members, OZ commanders or any KLA soldiers. He was not on the ground for most of the conflict and was completely removed from the day-to-day running of the GS. He issued no statements, communiqués, orders or instructions. Whenever the evidence shows him to be present, it is unknown what, if anything, he in fact ever did. The SPO has failed to establish the extent to which **VESELI** had power or influence over others in KLA, if any. **VESELI**'s role was illusive. He was at the time, and remains today, an unknown entity within the GS.

507. There is no evidence **VESELI** ever: issued any order in his role as Chief of Intelligence; made any decision on behalf of the GS; received reports from OZ commanders or *"from subordinate military police and intelligence services;"*<sup>1394</sup> appointed any intelligence staff; oversaw training;<sup>1395</sup> dealt with issues of *"treason, desertion, and collaboration;"*<sup>1396</sup> participated actively in any GS meeting; drafted any orders, decisions or regulations; "regulated" the military police or G2/ZKZ;<sup>1397</sup> had any dealings with LIMAJ or any other member of the military police; regulated or controlled any special unit.<sup>1398</sup> Despite the SPO's grand allegations, there is simply no evidence that, in his role as head of intelligence, **VESELI**'s duties included interrogations, mistreatment, or executions,<sup>1399</sup> or that he was ever otherwise involved in such acts. Nor has it been proved that **VESELI** ever provided a written or oral report to the GS, individual members of the GS, or anyone else; participated in tactical military decision making; or had a deputy or deputised any function.

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<sup>1394</sup> F00709/A01, para.146.

<sup>1395</sup> F00709/A01, para.156.

<sup>1396</sup> F00709/A01, para.146.

<sup>1397</sup> F00709/A01, para.146.

<sup>1398</sup> F00709/A01, para.146.

<sup>1399</sup> F00709/A01, para.161.

508. As argued elsewhere,<sup>1400</sup> the SPO has failed to prove with reliable evidence that intelligence cooperated with military police. There is little evidence that **VESELI** interacted with LIMAJ in any meaningful sense, let alone after the establishment of GS directorates. There is some evidence they were both present at specific group events.<sup>1401</sup> There is no evidence of any communication between **VESELI** and LIMAJ at these events, however, here is no evidence of individual meetings or communications solely between **VESELI** and LIMAJ. There is no evidence of regular interaction, cooperation, or coordination between **VESELI** and LIMAJ or between the two directorates.
509. The SPO has not proved that **VESELI** had a deputy during the conflict. No GS member ever identified anyone as deputising for **VESELI**, and no GS meeting minutes prove **VESELI** had a deputy. In the minutes of the meeting on the formation of commissions at the GS in January 1999, the position of Deputy Chief of Intelligence is left blank.<sup>1402</sup> There is no evidence of any communication between, or reports from, any individual deputising as the Chief of Intelligence and **VESELI**. ZYRAPI confirmed that neither Mensur KASUMI, nor anyone else, deputised for **VESELI** while he was abroad.<sup>1403</sup> KASUMI joined the Operations Directorate in January 1999 and was tasked by ZYRAPI with intelligence functions until **VESELI** returned from abroad.<sup>1404</sup> KASUMI was appointed as **VESELI**'s replacement when **VESELI** moved to the PGoK.<sup>1405</sup>

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<sup>1400</sup> See [Ch.V.E.](#)

<sup>1401</sup> P01264/P01264\_ET, p.SPOE00128621, SPOE00128643, SPOE00128646, SPOE00128904-SPOE00128905; T.16645.16-19; T.16678.14-17, T.16680.5-7; T.16755.10-13; 4D00011/4D00011\_ET, p.SPOE00229217; T.17395.6-17396.10; P00227/P00227\_ET; T.5798.16-25; [REDACTED]; [REDACTED]; T.24985.16-24986.19.

<sup>1402</sup> P01393/P01393\_ET, p.SPOE00226624. See also P01109/P01109\_ET, p.U002-2861; [REDACTED]; P00623/P00623\_ET.

<sup>1403</sup> T.17833.21-25; T.17836.2-6; T.17845.20-25.

<sup>1404</sup> T.17826.24-17827.15; T.17828.3-5; T.17842.18-17843.18; T.18300.9-15.

<sup>1405</sup> T.18300.18-18301.2; 1D00070/1D00070\_ET; 2D00017.

510. Despite frequent inquiries from the bench, no witness has confirmed that Ferat SHALA was **VESELI**'s deputy.<sup>1406</sup> No GS member has ever asserted that SHALA was one of their number. ZYRAPI stated that up until the end of 1998, SHALA was Commander of the Pellumbi unit based in Negroc/Negrovce. He was then transferred and promoted to a higher post, the specifics of which ZYRAPI did not know.<sup>1407</sup> ZYRAPI did not confirm, as suggested to him,<sup>1408</sup> that SHALA was involved with setting up intelligence within the KLA in early 1999, nor did he confirm that he was involved with intelligence prior to the establishment of SHIK.<sup>1409</sup>
511. While QADRAKU testified that he thought SHALA and Elmi REQICA were responsible for intelligence in their respective OZs, he emphasised that he did not know them during the war, had no dealings with them, did not know what their work consisted of, and therefore could not confirm that they were **VESELI**'s deputies.<sup>1410</sup> Sylejman SELIMI testified that it was *possible* Ferat SHALA left the Drenicë OZ and moved into the GS sometime towards the end of 1998 but did not know when exactly this would have happened, or what his role or tasks would have been.<sup>1411</sup> ÇOÇAJ confirmed that as far as he knew, **VESELI** had no deputies during the war, did not recall anyone mentioning him having a deputy<sup>1412</sup> and did not know if SHALA had been involved in intelligence during the war.
512. The sole documentary evidence relied upon by the SPO to suggest SHALA's involvement with intelligence is P02414, which is an unsigned, undated, uncorroborated, and uncontextualised handwritten list on a scrap of paper that

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<sup>1406</sup> T.25241.19-25242.21; T.18426.8-18428.3; T.22338.20-22339.5; [REDACTED]; T.14004.23-14005.1.

<sup>1407</sup> T.18426.8-16.

<sup>1408</sup> See T.18426.8-18427.25. A question for which Judge Mettraux provided no basis.

<sup>1409</sup> T.18426.8-T.18428.3.

<sup>1410</sup> T.22752.14-22753.9; T.22796.3-15.

<sup>1411</sup> T.24953.16-T.24955.8.

<sup>1412</sup> T.22322.3-T.22323.22.

purports to name the command staff members of the Drenicë OZ, with the annotation “Sh. I” next to Ferat SHALA’s name. It does not support the suggestion that SHALA was **VESELI**’s deputy or intelligence. Finally, the SPO relies on **KRASNIQI**’s book to support the claim that SHALA worked closely with **VESELI**.<sup>1413</sup> Such an uncorroborated claim is not probative of SHALA being **VESELI**’s deputy.

513. Contrary to the SPO’s allegations, **VESELI** has not been shown to have played *any role* in the formulation, dissemination, and implementation of the alleged criminal policy against ‘Opponents.’<sup>1414</sup> It has not been proved that **VESELI**, participated in collecting or sharing information about ‘Opponents,’ or that he ever ordered any KLA member to do so.<sup>1415</sup> There is no evidence **VESELI** received complaints concerning crimes by KLA members, including at detention sites.<sup>1416</sup>
514. The SPO asserts that “*although having designated roles within the General Staff, the Accused’s actual responsibilities varied depending on need at any given time, and spanned any number of political and operational matters.*”<sup>1417</sup> Yet when it comes to **VESELI** the SPO has failed to prove he had many of these alleged additional “responsibilities,” and for other responsibilities, failed to articulate or demonstrate how they are relevant to **VESELI**’s guilt on the Indictment.
515. The SPO has failed to prove that **VESELI**:<sup>1418</sup>

- a. Conducted investigations or dealt with disciplinary matters involving OZ commanders;

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<sup>1413</sup> F02248/A01, No.58 referring to P00189/P00189\_ET.1, p.U015-8829.

<sup>1414</sup> F00709/A01, para.111(b).

<sup>1415</sup> F00709/A01, paras 160-161.

<sup>1416</sup> F00709/A01, para.161.

<sup>1417</sup> F00709/A01, para.111.

<sup>1418</sup> F00709/A01, para.111(b).

- b. Intervened personally to resolve disputes between commanders on the ground,<sup>1419</sup>
- c. Played a vital liaison function between KLA members in Kosovo and those abroad, which encompassed facilitating supplies, deployments, and other communications;
- d. Participated in, coordinated, directed and received reports concerning military operations and the activities of intelligences services on the ground;
- e. Was involved in personnel matters.

516. It is right that **VESELI** *“took part in negotiations and signed agreements with representatives of other Kosovo-Albanian groups.”*<sup>1420</sup> **VESELI** played a key role in brokering the FARK agreement,<sup>1421</sup> after being selected by SYLA for this.<sup>1422</sup> This commendable and lawful action shows **VESELI**'s commitment to resolving differences in direct contradiction to the claim that he pursued control through criminal means<sup>1423</sup> and runs completely contrary to the SPO's allegation that **VESELI** ever saw or treated LDK and FARK as 'Opponents' or was as somehow simultaneously pursuing a policy of persecution against them. No evidence has been adduced to suggest his support of, and desire to fight and work alongside them, ever changed.

517. Resentment towards FARK officers existed both prior to and after the agreement, due to some members of FARK remaining in Albania away from

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<sup>1419</sup> The only evidence that **VESELI** was allegedly involved in the resolution of a dispute comes from QERIQI, who stated that **VESELI** did not say anything during the meeting. Therefore, this evidence is incapable of founding any finding in this respect. See T.14867.19-21.

<sup>1420</sup> F00709/A01, para.111(b).

<sup>1421</sup> P00652/P00652\_ET; 1D00166/1D00166\_ET; P01355.14\_ET, T.33.8-34.24; T.17798.7-11.

<sup>1422</sup> P01355.14\_ET, T.35.17-19; T.18430.6-10.

<sup>1423</sup> F00709/A01, para.2.

the danger and hardships of war<sup>1424</sup> and their retreat from Kosovo following the summer offensive.<sup>1425</sup> However, such resentments were personal.<sup>1426</sup> And while there were those that resented FARK, there were those that worked hard to unite with them under one banner. Whereas QADRAKU self-confessedly belonged to the former camp, **VESELI** and ZYRAPI led the latter. ZYRAPI confirmed by name no fewer than twenty-six former JNA officers that ultimately joined the ranks of the KLA; there were more whose names he could not recall.<sup>1427</sup>

518. The Panel has heard testimony that the antipathy from certain sectors of the KLA command towards REXHA, culminating in him being replaced as Pashtrik OZ Commander, was allegedly due to his perceived association with FARK.<sup>1428</sup> There is no evidence **VESELI** sympathised with or participated in this action. **VESELI** *“didn’t play any role in removing him. Quite on the contrary.”*<sup>1429</sup> **VESELI** and REXHA had a good relationship, with **VESELI** assisting REXHA after he sustained an injury during fighting in April 1999.<sup>1430</sup> There is no evidence that **VESELI** ever shared in any animus towards FARK.
519. **VESELI** was present at Rambouillet.<sup>1431</sup> He was not part of the formal delegation who conducted negotiations; what role he played at the talks, if any, is unknown. Likewise, he was present when the Undertaking was signed,<sup>1432</sup> but again, there is no evidence of what role he played. Presence at the margins of these events provides no support for the alleged JCE. Rambouillet

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<sup>1424</sup> See T.13857.19-13858.1; T.22608.2-22609.6.

<sup>1425</sup> F01534/A01, No.281.

<sup>1426</sup> T.22608.2-22609.6.

<sup>1427</sup> T.17784.17-17786.18.

<sup>1428</sup> See, e.g., T.18334.17-18335.18; [REDACTED].

<sup>1429</sup> [REDACTED].

<sup>1430</sup> T.8957.20-8958.16; T.8959.4-8560.1; T.9079.21-9080.16.

<sup>1431</sup> P01080, p.075398; T.13889.5-23.

<sup>1432</sup> 2D00024/2D00024\_ET/2D00024\_ET.

represented a critical step in bringing an end to the war.<sup>1433</sup> By attending the talks, **VESELI** placed himself in opposition to KLA hardliners back in Kosovo who wanted to continue the fighting “*all the way to independence.*”<sup>1434</sup> This is further evidence of **VESELI**’s moderate stance.

520. **VESELI**’s involvement in the FARK and Rambouillet Agreements demonstrate that he was willing to compromise and to work together with the other political groups in Kosovo and abroad in order to end the war and work towards a negotiated independence.

521. Similarly, the SPO suggests that **VESELI** was actively involved in, and demonstrated control over, essential political and operational activities, including in respect of units, sites, and locations where crimes occurred.<sup>1435</sup> However, the SPO has failed to adduce any evidence of his control over any such matters. There is no evidence of any incident or location where **VESELI** is shown to have exerted any effective control. This broad statement is simply unfounded when it comes to **VESELI**. Likewise, **VESELI** has not been proved to have had control over political and operational activities. There is no evidence whatsoever of any involvement in KLA operations. As outlined above, his tangential involvement in political actions does not prove that he held anything resembling ‘control.’

522. The claim that **VESELI** “*led deployments of KLA members into Kosovo, welcomed and deployed other KLA members, and visited zone commands and units on the ground*”<sup>1436</sup> is a demonstrable exaggeration and its relevance to the Indictment unclear. **VESELI** was part of a group of men who entered Kosovo in late spring 1998. There is no reliable evidence he welcomed or deployed any KLA soldiers

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<sup>1433</sup> P00811/P00811\_ET.68.

<sup>1434</sup> T.13612.13-20.

<sup>1435</sup> F00709/A01, para.111.

<sup>1436</sup> F00709/A01, para.111(b).

to Kosovo; the SPO relies only upon an uncorroborated, unauthenticated diary<sup>1437</sup> which at its height suggests that “Luli” escorted the unknown author. This is a good example of the SPO seeking to rely on extremely poor-quality evidence to support broad accusations. The Panel must be at pains when considering the SPO Final Trial Brief to interrogate footnotes used by the SPO, as its citations are often incapable of proving the propositions they are said to support, let alone to the criminal standard.

523. Finally, the SPO again exaggerates **VESELI**'s role when it comes to journalists. There is no evidence that **VESELI** “oversaw the creation of footage for propaganda purposes.”<sup>1438</sup> The suggestion he “authorised, supervised and escorted journalists”<sup>1439</sup> derives from his interactions with BYTYQI and Pal REFSDAL. While the evidence demonstrates interaction with these two individuals, there is no evidence to support any suggestion that **VESELI** played a unique role in this respect, or ‘authorised’ or ‘supervised’ them. In any event, such conduct would be irrelevant to the JCE and any command and control of KLA forces.
524. The SPO claims that the Intelligence Directorate was the “highest authority for intelligence activity and security, assisting the commands of subordinate units, organising and directing their work, and writing Special Regulations.”<sup>1440</sup> This language is taken from P00883, the issues with which are outlined elsewhere.<sup>1441</sup> The notion that “it was difficult to infiltrate the KLA under the watchful eye of our intelligence service,”<sup>1442</sup> is demonstrably untrue and simply fanciful – one only needs to look at the volume of intercepts and the effectiveness of the Serb ambushes and offensives to know this is demonstrably untrue.

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<sup>1437</sup> P01748/P01748\_ET, p.U002-3548.

<sup>1438</sup> F00709/A01, para.111(b).

<sup>1439</sup> F00709/A01, para.111(b).

<sup>1440</sup> F00709/A01, para.157.

<sup>1441</sup> See [Ch.VI.I.ii](#).

<sup>1442</sup> F00709/A01, para.157.

525. Contrary to the SPO's submissions, there is no evidence available to support its theories as to **VESELI**'s position of authority within in GS,<sup>1443</sup> let alone beyond reasonable doubt. Specifically, the SPO has failed to prove that **VESELI**:
- a. Had the authority to issue orders that were complied with, or that he ever did so;
  - b. Played a key, or any, role in the design, preparation, and commission of any crimes;
  - c. Had the authority to dismiss, demote or otherwise discipline the perpetrators of the crimes;
  - d. Had the ability to report information about the commission, or possible commission, of crimes to appropriate authorities either within the structures they themselves created or outside the KLA, or that he had any such information to report; or
  - e. Had the authority to order and initiate genuine and adequate investigations into allegations of crimes and to order arrests.

526. It is imperative, especially in the face of such grand sweeping allegations from the SPO, and the efforts to merge allegations against the Accused through generalised submissions, that the Panel carefully examine the evidence against **VESELI** individually. Such an examination will show that the evidence required for a conviction against **VESELI** is non-existent.

## **B. VESELI's External Intelligence Role**

527. The unique external role that **VESELI** came to play on the GS is unsurprising considering his personal background. **VESELI**, unlike other members of the GS

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<sup>1443</sup> F00709/A01, para.712.

had been educated and lived abroad, spoke other European languages<sup>1444</sup> and carried a European travel document.<sup>1445</sup> These assets set him apart from the rest of the GS, placing him in a unique position to be able to play an externally facing function working with internationals.

528. The Panel has heard evidence supporting the contention that **VESELI** occupied such a role. ZYRAPI sent **VESELI** to Albania for training after his appointment in November 1998.<sup>1446</sup> This restructuring was closely linked to political negotiations with the international community.<sup>1447</sup> When **VESELI** was abroad, he was the one conducting discussions with internationals at the intelligence level.<sup>1448</sup> BASHOTA explained that **VESELI** needed to “*go overseas and establish contacts with foreign services, in addition to getting training to [complete] the tasks [he] got.*”<sup>1449</sup> BASHOTA did not see **VESELI** for “*a very long time*” after his appointment.<sup>1450</sup> Further, the KLA’s adoption of NATO’s designation for its directorates (*e.g.*, G2) was the result of **VESELI**’s communication with NATO states.<sup>1451</sup>

529. BYRNES understood **VESELI** to be the man running external intelligence arrangements in Albania with the SHIK – the Albanian secret service – and the international community.<sup>1452</sup> This is corroborated by KICKERT, who confirmed that the intelligence agencies of other States inside Kosovo were liaising with **VESELI**.<sup>1453</sup> Further, YOUNG testified that in 1999, he understood that

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<sup>1444</sup> P01210/P01210\_AT, para.25.

<sup>1445</sup> See 2D00018; 2D00018.1.

<sup>1446</sup> T.17796.21-17797.20.

<sup>1447</sup> T.17628.10-20; T.17799.12-17.

<sup>1448</sup> T.17799.18-17800.3.

<sup>1449</sup> T.23213.7-13.

<sup>1450</sup> T.23212.17-25.

<sup>1451</sup> T.17800.14-19.

<sup>1452</sup> T.13896.6-14

<sup>1453</sup> T.16365.8-16366.3.

conversations were taking place outside Kosovo between the KLA, the US, the UK and Germany.<sup>1454</sup> [REDACTED],<sup>1455</sup> [REDACTED],<sup>1456</sup> [REDACTED].<sup>1457</sup>

530. As outlined above, there is very little evidence as to what **VESELI** did in his role on the GS. However, **VESELI**'s passport and related evidence acts as a roadmap of his movements:

- a. He entered Kosovo in May 1998<sup>1458</sup> and spent some time in central and western Kosovo,<sup>1459</sup> leaving around the end of July 1998, after engagement in offensives on the ground.<sup>1460</sup>
- b. He was abroad until November 1998. In this time, he was in Albania, Switzerland, Istanbul and played a role in brokering the FARK agreement at the end of October 1998.<sup>1461</sup>
- c. He returned to Kosovo briefly in November 1998 and attended day one of the GS restructuring meeting,<sup>1462</sup> but immediately left again to receive intelligence training in Albania.<sup>1463</sup>
- d. From December 1998 to January 1999, he was shown to be in Switzerland, Albania, Belgium and Slovenia.<sup>1464</sup> There is evidence he

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<sup>1454</sup> T.8088.10-24.

<sup>1455</sup> [REDACTED].

<sup>1456</sup> [REDACTED].

<sup>1457</sup> [REDACTED].

<sup>1458</sup> P01355.1\_ET, T.19.7-17; T.17794.11-14.

<sup>1459</sup> T.17571.24-17572.18; P01355.1\_ET, T.26.15-27.11; T.17853.10-17855.14; P01262/P01262\_ET; P01264/P01264\_ET, p.SPOE00128618-SPOE00128619; [REDACTED].

<sup>1460</sup> [REDACTED].

<sup>1461</sup> 2D00018.1, pp.DKV1221, 1232-1233; 2D00018, p.DKV0814; [REDACTED]; 1D00166/1D00166\_ET; T.17813.12-16.

<sup>1462</sup> T.17608.7-10; T.18475.19-18476.13; T.17395.10-17396.13.

<sup>1463</sup> T.17814.2-7; T.23211.21-23212.25; T.22700.19-22701.6; 2D00018.1, p.DKV1233.

<sup>1464</sup> 2D00018.1, p.DKV1222-1224, DKV1233.

returned very briefly to Kosovo at the end of January or early February 1999, although the timing of this single account is uncertain.<sup>1465</sup>

- e. He travelled to Rambouillet as an “advisor” in February 1999.<sup>1466</sup>
- f. He was in Slovenia from 16-20 February 1999,<sup>1467</sup> returning to Kosovo in early to mid-March 1999, after the first round of the Rambouillet negotiations.<sup>1468</sup>
- g. On 2 April 1999 he was appointed as head of SHIK, at which point he ceased to be head of KLA military intelligence.<sup>1469</sup>
- h. On 21 June 1999 he was present in Kosovo for the signing of the Undertaking.<sup>1470</sup>

531. Again, the SPO has failed to prove that **VESELI** has demonstrated any criminal intent or exerted effective command and control over the KLA in his unique, absentee and external role.

## VIII. SHIK

532. The SPO proceeds on the basis that SHIK was established with the intention of pursuing a criminal purpose, which is demonstrably false. SHIK was not a criminal organisation but a good faith effort to establish institutions as part of a new Kosovar state. This is the only reasonably available inference that can be drawn on the evidence. The SPO failed to properly identify, let alone prove to the criminal standard, any unlawful actions it says SHIK took against anyone. No crimes on the indictment were committed by SHIK members and the SPO

<sup>1465</sup> T.17820.16–17828.5. See also [Ch.IV.D.iv](#), para.331.

<sup>1466</sup> 2D00018.1, p.DKV1226; P01859\_ET, p.SPOE00053006.

<sup>1467</sup> 2D00018.1, p.DKV1222.

<sup>1468</sup> [REDACTED]; P01264/P01264\_ET, p.SPOE00128889; P00227/P00227\_ET.

<sup>1469</sup> 1D00070\_ET; [REDACTED]; P00789\_AT/P00789, p.SITF00398184; [REDACTED].

<sup>1470</sup> 2D00024/2D00024\_AT/2D00024\_ET; T.16833.17–16834.21.

failed to identify any specific acts or omissions by alleged SHIK members or **VESELI** which are said to have formed part of, or materially contributed towards, the JCE.

533. In Kosovo and in Albania, the term SHIK was synonymous with intelligence, because the Albanian intelligence service was known as SHIK. The term existed in common parlance in Kosovo before April 1999 and was understood colloquially to mean intelligence.<sup>1471</sup> Where references to SHIK appear in documents attributed to the KLA,<sup>1472</sup> these are references to intelligence more broadly, not SHIK, the PGoK agency. For example, when writing P00500, QADRAKU used the acronyms SHIK and ZKZ/G2 interchangeably.<sup>1473</sup> Only after the war did he learn SHIK was a civilian service distinct from ZKZ/G2.<sup>1474</sup> People often confused SHIK with ZKZ.<sup>1475</sup> ZYRAPI, ÇOÇAJ, W04764 and [REDACTED] all confirmed that SHIK was distinct from ZKZ/G2 and did not exist when P00500 was drafted.<sup>1476</sup> Their evidence likewise applies to P00650. This is how **VESELI**'s prior statements colloquially referencing SHIK to the media pre-April 1999 need to be understood. In any formal statements to authorities **VESELI** confirmed that SHIK was established in April 1999.<sup>1477</sup> The use of the colloquial term 'SHIK' is not probative of either SHIK existing pre-April 1999 or KLA intelligence and SHIK being one and the same entity. Any such inference would distort the evidence and fundamentally misunderstand Albanian linguistics and culture.

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<sup>1471</sup> T.9965.23-9966.10; T.9967.19-9968.3; T.10372.11-23; T.25252.14-19; P01855, para.12; T.22705.7-24; T.22706.22-22707.1.

<sup>1472</sup> See, e.g., P00500/P00500\_ET; P00650/P00650\_ET.2.

<sup>1473</sup> T.22725.14-18, T.22726.3-10.

<sup>1474</sup> P01854.5\_ET, T.9.24-11.13; P01855, para.12; T.22705.17-22706.3, T.22706.7-21.

<sup>1475</sup> T.9961.9-22.

<sup>1476</sup> T.18253.22-18254.3; P01834.3\_ET, T.29.24-30.4; P01834.4\_ET, T.2.3-24; T.22320.5-14; T.19093.8-13; T.19159.19-24; [REDACTED]; [REDACTED].

<sup>1477</sup> P00790, p.SITF00253817; P00789, p.SITF00398184; P00786, p.SITF00398142.

534. The SPO failed to prove that “SHIK [...] closely associated and cooperated with the KLA/MPO Police and other KLA/PGoK intelligence services” or that they “reported and provided information to SHIK.”<sup>1478</sup> SHIK was entirely distinct from these other organisations. There is no evidence **VESELI** received any reports from such bodies. The SPO relies exclusively on [REDACTED] for this proposition, who is neither credible, nor reliable.<sup>1479</sup> Uncorroborated hearsay documents admitted via the bar table are not capable of independently or cumulatively proving this assertion. None of these documents were authored by SHIK members; they do not evidence a reporting chain to SHIK, nor the sharing of any information with SHIK that would be relevant in any way to knowledge, intent or action for the purposes of the Indictment. There is no evidence demonstrating that SHIK worked with or alongside these bodies in any substantive way, and there is no evidence that SHIK committed any crimes with, or using, these bodies.
535. SHIK was not established for a criminal purpose. The Rambouillet agreement, signed by all key political parties in Kosovo and mediated by the international community, paved the way for the PGoK’s establishment, with SHIK as one of its organs.<sup>1480</sup> There is no evidence that the work done by SHIK was unlawful, nor that **VESELI** in his role as head of SHIK entered into any criminal agreement to commit crimes or utilise SHIK to do so. SHIK was the subject of much rumour after the war; the SPO has fallen into the trap of perpetuating that rumour, instead of proving its case. The SPO failed to prove that any SHIK member interrogated, targeted, or mistreated any ‘Opponent.’ Nor has it proved any complicity by SHIK in such acts, or that **VESELI** ordered, oversaw, or tolerated any such actions. The SPO can point to no act, omission or statement made by **VESELI** during his time with SHIK which would indicate

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<sup>1478</sup> F00709/A01, para.162.

<sup>1479</sup> See [REDACTED].

<sup>1480</sup> P00789, pp.SITF00398198-SITF00398198.

he had any intent to commit crimes against Opponents or knew of any such alleged crimes.

536. There is nothing inherently criminal in a civilian intelligence agency gathering information on, or working with, potential collaborators or threats to the nation. One of the “segments” within SHIK was to deal with collaborators because “*it was a national interest of this country to know and present that nothing bad happens in Kosovo.*”<sup>1481</sup> SHIK dealt with “*segments which [were] anti-Kosovan*” most of which “*came from Serbia*” and cooperated “*on a voluntary basis*” with those engaged with Serbian Secret Services.<sup>1482</sup> During VESELI’s time in SHIK, he worked with “*10s and 100s*” of those with anti-Kosovar influence.<sup>1483</sup> When asked about “*liquidation*” of collaborators, VESELI stated, “*I don’t think there was a case for taking revenge on them as they were no part of repressive authorities of Serbia.*”<sup>1484</sup>
537. Although certain individuals purportedly involved in KLA intelligence were later recruited to SHIK, this was a logical step for a newly established service seeking personnel with some pre-existing, albeit limited, intelligence experience. Further, nearly all the provisional state structures established through the PGoK were linked somehow to the KLA. The relevance of this connection to the allegations on the Indictment has never been articulated.
538. Some very poor-quality evidence was adduced of crimes allegedly committed after the Indictment Period, where there are some tenuous suggestions that SHIK was somehow involved.<sup>1485</sup> The witnesses from whom these allegations emanate were shown to be wholly unreliable, the allegations based on rumour

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<sup>1481</sup> P00789, pp.SITF00398194-SITF00398195, p. SITF00398198.

<sup>1482</sup> P00789, pp.SITF00398194-SITF00398195.

<sup>1483</sup> P00789, p.SITF00398195.

<sup>1484</sup> P00789, p.SITF00398212.

<sup>1485</sup> E.g., [REDACTED].

and speculation. The crimes were not proven to the criminal standard, nor the perpetrators identified. There is no proven connection whatsoever to **VESELI**. This evidence can have no bearing on the key issues in this case and must be ignored.

539. [REDACTED].<sup>1486</sup> [REDACTED].<sup>1487</sup> [REDACTED].

540. The SPO incorrectly assumes that SHIK was functional during the Indictment Period. SHIK, like the entirety of the PGoK, was not recognised by the international community,<sup>1488</sup> and was under-resourced.<sup>1489</sup> No evidence was adduced to demonstrate how SHIK, a civilian institution, was governed or functioned in practice. The only evidence that SHIK had an internal reporting structure purportedly leading to **VESELI** on the issue of collaborators originates from [REDACTED].<sup>1490</sup> [REDACTED] makes numerous outlandish and incredible claims which are inherently incredible, uncorroborated and entirely without merit or foundation [REDACTED]<sup>1491</sup> It is impossible in such circumstances to lawfully find these allegations proven.

541. The three purported lists of collaborators<sup>1492</sup> [REDACTED] provided to the SPO are inherently unreliable. They are said to have been created after the war. [REDACTED] did not know who authored two of the lists.<sup>1493</sup> He claimed to have participated in drafting one<sup>1494</sup> [REDACTED]. Untested hearsay cannot

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<sup>1486</sup> [REDACTED].

<sup>1487</sup> [REDACTED].

<sup>1488</sup> T.23903.8-12.

<sup>1489</sup> P00789, p.SITF00398208.

<sup>1490</sup> See [REDACTED].

<sup>1491</sup> [REDACTED].

<sup>1492</sup> See P03600/P03600\_ET; P03601/P03601\_ET; P03602/P03602\_ET.

<sup>1493</sup> [REDACTED].

<sup>1494</sup> [REDACTED].

corroborate untested hearsay<sup>1495</sup> – this means the hearsay evidence of [REDACTED] cannot be corroborated by the hearsay documents he provided.

542. Finally, Serbian authorities pressured [REDACTED] to lie, including about SHIK's involvement in crimes.<sup>1496</sup> No reasonable tribunal could place any weight upon this evidence.

## IX. INDIVIDUAL CRIMINAL RESPONSIBILITY

### A. Direct Participation

543. **VESELI** is said to have been involved in, or present for, fewer than a handful of crimes on the Indictment. The SPO failed to adduce any evidence capable of supporting a lawful or reasonable finding that **VESELI** was in any way directly involved in criminality.

- a. The allegation **VESELI** was present at a meeting in which Ukë BYTYQI expressed support for the KLA and/or knew about the alleged mistreatment of Abdyl RAMA is not supported by the evidence.
- b. The sensationalist suggestion **VESELI** had the capacity to give orders to execute in Drenoc/Drenovac has no basis in evidence and has been undermined by the SPO's own evidence.
- c. The allegation **VESELI** ordered the arrest of [REDACTED] stems from an inherently unreliable witness whose account was contradicted by other evidence.
- d. The allegation **VESELI** was involved in the disappearance of [REDACTED] derives from no more than speculation and rumour involving a prime suspect in the case – [REDACTED].

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<sup>1495</sup> KSC-CA-2024-03/F00069, para.480, fn. 1111-1112 *citing* IT-05-88-A, [AJ](#), para.1226.

<sup>1496</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

- e. The suggestion **VESELI** was present for the transfer of W03875 derives from the unsubstantiated and unreliable identification from an uncorroborated, inconsistent source with a demonstrable history of lies and psychotic delusion.
- f. While **VESELI** was in the vicinity of Rahovec/Orahovac in the aftermath of the attack, there is no evidence that he ever knew of, or was involved in any way in any attack against Serb civilians.

i. *Ukë BYTYCI*

544. The SPO alleges that (i) Abdyl RAMA was abducted and beaten by **THAÇI**; and (ii) that **THAÇI** and **VESELI** arranged for a meeting with Ukë BYTYCI, at which he made a statement in support of the KLA.<sup>1497</sup>
545. Regarding the latter, Nuhi BYTYQI filmed Ukë's statement. BYTYQI explained in his book that "*[Ukë BYTYCI] had pressure from the Democratic League to not join the KLA. He was willing to answer and to join but he didn't want it to get into the public too much. [...] I convinced him, and he agreed.*"<sup>1498</sup> At one point during filming, Ukë stated he was not resigning from the LDK and the meeting became "tense;" BYTYQI insisted on a break.<sup>1499</sup> BYTYQI confirmed Ukë joined the KLA of his own "free will"<sup>1500</sup> and that "*there were no threats at all.*"<sup>1501</sup>
546. While BYTYQI's book is unclear about **VESELI**'s whereabouts at the time of the meeting, it reads he "*noticed THACI's and VESELI's willingness to have Ukë in the KLA, but they were asking him to be clearer on his own position on the KLA*"<sup>1502</sup> and "*Hashim THACI, Kadri VESELI and Ukë BYTYCI, too, left pleased, and they*

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<sup>1497</sup> F00709/A01, para.230.

<sup>1498</sup> P01264/P01264\_ET, p.SPOE00128634.

<sup>1499</sup> P01264/P01264\_ET, p.SPOE00128634.

<sup>1500</sup> P01252.3\_ET, T.8.13-16.

<sup>1501</sup> P01252.3\_ET, T.9.20-21.

<sup>1502</sup> P01264/P01264\_ET, p.SPOE00128634.

*shook hands in a sign of willingness to cooperate for the sake of the liberation war.”<sup>1503</sup>*

However, BYTYQI confirmed that **VESELI** was not present during the meeting itself:

[REDACTED].<sup>1504</sup>

547. There is no evidence that **VESELI** was present when, or knew that, RAMA was allegedly abducted or beaten. There is no evidence **VESELI** saw or interacted with RAMA at any time or made any arrangements to meet him. The allegations concerning RAMA rely upon [REDACTED] evidence, who clarified that [REDACTED] never heard of **VESELI** being present; [REDACTED] had not heard of **VESELI** at the time.<sup>1505</sup> [REDACTED] provides an unreliable, unsubstantiated, double hearsay account that RAMA was beaten during the filming of Ukë’s statement.<sup>1506</sup> This hearsay is the sole and decisive evidence for this allegation, therefore, it cannot lawfully be found proven. Regardless, it is wholly undermined by an eyewitness to events, BYTYQI.

548. The height of the evidence against **VESELI** is that he assisted in making arrangements for Ukë’s voluntary statement. This does not demonstrate animosity to or persecution of LDK and does not show, as alleged, *“the General Staff taking measures [...] to enforce the General Staff’s repeated calls for LDK members to support the KLA.”<sup>1507</sup>*

ii. *Drenoc/Drenovac*

549. The SPO alleges that *“THAÇI and VESELI were capable of giving orders to Drenoc/Drenovac soldiers, and the General Staff could give permission for orders to execute or disappear someone from the Drenoc/Drenovac area.”<sup>1508</sup>* The evidence

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<sup>1503</sup> P01264/P01264\_ET, p.SPOE00128635.

<sup>1504</sup> [REDACTED].

<sup>1505</sup> [REDACTED].

<sup>1506</sup> [REDACTED].

<sup>1507</sup> F00709/A01, para.230.

<sup>1508</sup> F00709/A01, para.344.

demonstrates that neither **VESELI** nor the GS had a genuine presence or authority in Drenoc/Drenovac between May and July 1998, or at all.

550. The Panel should not lose sight of the fact that the crimes allegedly committed in Drenoc/Drenovac during the summer of 1998 did not involve the GS in any way. Local Drenoc/Drenovac fighters arrested persons thought to be assisting the Serbian forces, who had ambushed and killed their local KLA leaders on 27 May 1998.<sup>1509</sup> There is no connection at all between these local arrests, the resulting alleged crimes, and the GS or **VESELI**.

551. [REDACTED].<sup>1510</sup> [REDACTED].<sup>1511</sup>

552. There is no reliable evidence that **VESELI** visited Drenoc/Drenovac in June and July 1998.<sup>1512</sup> [REDACTED].<sup>1513</sup> [REDACTED].<sup>1514</sup> [REDACTED].<sup>1515</sup> This extremely weak hearsay identification does not begin to meet the criminal standard. Similarly, the evidence relating to [REDACTED]<sup>1516</sup> – fails to prove **VESELI** visited Drenoc/Drenovac in June 1998.<sup>1517</sup> While it is suggested in **KRASNIQI**'s book that **VESELI** had early contacts with Mensur ZYBERAJ,<sup>1518</sup> this is uncorroborated, unspecific, untested, and lacking in any probative value.<sup>1519</sup>

553. The only reliable evidence of **VESELI**'s presence in Drenoc/Drenovac derives from ZYRAPI, who placed **VESELI** in Drenoc/Drenovac for one, possibly two, days at the end of May 1998. ZYRAPI arrived in Drenoc/Drenovac alongside

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<sup>1509</sup> T.9172.17-9173.4.

<sup>1510</sup> [REDACTED].

<sup>1511</sup> [REDACTED].

<sup>1512</sup> F00709/A01, para.342.

<sup>1513</sup> [REDACTED].

<sup>1514</sup> [REDACTED].

<sup>1515</sup> [REDACTED].

<sup>1516</sup> See [REDACTED].

<sup>1517</sup> See, e.g., [REDACTED].

<sup>1518</sup> P00189/P00189\_ET.1, p.U015-8853.

<sup>1519</sup> See [Ch.II.E](#).

VESELI and others on 29 May 1998. VESELI left almost immediately for Dečan/Dečani, returning two days later to collect ZYRAPI and travel to Likoc/Likovac.<sup>1520</sup> VESELI was never in Drenoc/Drenovac after this visit. The evidence of ZYRAPI and BYTYQI places VESELI elsewhere in early and mid-June 1998.<sup>1521</sup>

554. The SPO relies on P00067, P00663 and two witnesses to allege the GS helped organise the KLA command in Drenoc/Drenovac<sup>1522</sup> – none support the SPO's case.
- a. P00067 suggests that the GS appointed Xhemë GASHI and Mahir HASANI as Commanders in Drenoc/Drenovac.<sup>1523</sup> However, as explained elsewhere, P00067 is wholly unreliable.<sup>1524</sup> There is no evidence that the information contained therein was ever sent to, or received by the GS,<sup>1525</sup> and no safe inference can be made to that effect.
  - b. P00663 is an "authorisation" which suggests that "*Mahir HASANI from Peja/Peć was placed at the disposal of the Drenoc/Drenovac base under the command of "Gjermani", by the order of "Bis" and "Maxhupi."*"<sup>1526</sup> However, the document is noticeably incomplete and remains unauthenticated.
  - c. [REDACTED] claimed that "*all the commanders and the deputies of the brigades were appointed by the General Staff. They were not self-appointed.*"<sup>1527</sup>

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<sup>1520</sup> P01355.1\_ET, T.25.14-26.22.

<sup>1521</sup> T.17853.10-20; T.17854.1-18; T.17855.6-11; T.16645.6-9, 16-19.

<sup>1522</sup> F00709/A01, paras.338, 343.

<sup>1523</sup> P00067/P00067\_ET, p.SITF00437787.

<sup>1524</sup> See [Ch.IX.A.vi](#).

<sup>1525</sup> See [Ch.IX.A.vi](#).

<sup>1526</sup> P00663/P00663\_ET.

<sup>1527</sup> [REDACTED]. See also [REDACTED].

[REDACTED] evidence on this, and other issues, is inaccurate and unreliable.<sup>1528</sup>

- d. ZYRAPI suggested that he helped resolve a lack of cooperation between local units in the Drenoc area in June 1998.<sup>1529</sup> This is not indicative of the GS exercising command and control over Drenoc at the time; ZYRAPI was not then a member of the GS.<sup>1530</sup> ZYRAPI explained that a command structure already existed in Drenoc/Drenovac when he arrived in late May 1998,<sup>1531</sup> which was not connected to the GS.<sup>1532</sup> Moreover, the GS did not assign HASANI and GASHI to command positions in the village; they chose to remain in Drenoc/Drenovac.<sup>1533</sup>

555. The SPO failed to prove that the GS, or **VESELI** personally, received reports from Drenoc/Drenovac or issued orders to the Drenoc/Drenovac Staff. **VESELI** never had control or authority in Drenoc/Drenovac, was not present for and did not encourage any crimes.

*iii. [REDACTED]*

556. The SPO alleges that an order to arrest [REDACTED] on [REDACTED] was delivered by the GS, including **THAÇI** and **VESELI**, [REDACTED].<sup>1534</sup> No evidence was adduced that **VESELI** gave such an order. The allegation that the GS gave such an order was not proved as it relies solely on the uncorroborated and directly contradicted account of one unreliable witness. This was entirely a local matter which had nothing to do with the GS.

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<sup>1528</sup> See [REDACTED].

<sup>1529</sup> P01355.2\_ET, T.2.20-6.5; P01357, para.11.

<sup>1530</sup> T.17369.23-17370.18.

<sup>1531</sup> T.17874.25-17875.3; T.18258.9-12.

<sup>1532</sup> T.17574.16-17575.1.

<sup>1533</sup> P01355.1\_ET, T.30.1-14; T.17340.11-19; T.17570.13-17571.23.

<sup>1534</sup> [REDACTED].

557. [REDACTED], from whom this allegation emanates, claimed he was present at the time of [REDACTED]'s arrest.<sup>1535</sup> [REDACTED],<sup>1536</sup> [REDACTED]. [REDACTED]'s account is uncorroborated, undermined by other evidence and materially inconsistent.
558. [REDACTED] initially stated that Bedrush GASHI, the arresting officer, said *"you are under arrest upon the orders of the General Staff,"*<sup>1537</sup> and that [REDACTED] was told by low ranking military policemen that the arrest was ordered by the GS.<sup>1538</sup> However, [REDACTED] also stated GASHI said, *"[y]ou are being arrested in the name of the people"*<sup>1539</sup> and that [REDACTED] was told about the GS's order only when he visited Drenoc/Drenovac to query the reasons for the arrest when *"the Drenoc headquarters told us, in order to avoid their own responsibility certainly, they said that he had been arrested [...] on the orders of the General Staff."*<sup>1540</sup> [REDACTED] confirmed that no one in the GS ordered the arrest of [REDACTED], as the order had come from PAQARIZI.<sup>1541</sup> A clearly available alternative inference is that the KLA in Drenoc/Drenovac (who were convicted of arrests and detentions during this period)<sup>1542</sup> were solely and independently responsible for the arrest and were seeking to shift blame to others.
559. [REDACTED] also suggests that [REDACTED] told him<sup>1543</sup> that Sabit GECI, as a GS member, ordered the arrest.<sup>1544</sup> [REDACTED] never saw evidence that

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<sup>1535</sup> [REDACTED].

<sup>1536</sup> See [REDACTED].

<sup>1537</sup> [REDACTED].

<sup>1538</sup> [REDACTED].

<sup>1539</sup> [REDACTED].

<sup>1540</sup> [REDACTED].

<sup>1541</sup> [REDACTED].

<sup>1542</sup> 1D0001\_AT/1D00001, pp.095035-095037.

<sup>1543</sup> [REDACTED].

<sup>1544</sup> [REDACTED].

Sabit GECI ordered arrests.<sup>1545</sup> Despite [REDACTED]'s theories,<sup>1546</sup> GECI was never a GS member.<sup>1547</sup>

560. [REDACTED]'s allegation is directly contradicted by W04753, a KLA soldier who directly participated in [REDACTED]'s arrest, who confirmed that the arrest was ordered at local level.<sup>1548</sup> W04753 described [REDACTED] as a compulsive liar and an unreliable person.<sup>1549</sup> W04753 explained that Xhemajl GASHI, PAQARIZI and Selimi KRASNIQI would give orders to Bedrush GASHI, who would have transmitted such orders to W04753.<sup>1550</sup> W04753 knew of no connection between the Drenoc staff and the GS or any other higher centralised structure,<sup>1551</sup> nor did he hear of the GS issuing orders authorising any detentions in Drenoc/Drenovac.<sup>1552</sup> As outlined above,<sup>1553</sup> Drenoc *"was not connected to the [General] staff."*<sup>1554</sup>

*iv.* [REDACTED]

561. The SPO alleges that the KLA detained [REDACTED] and [REDACTED] in [REDACTED]<sup>1555</sup> [REDACTED].<sup>1556</sup> According to the SPO, repeated inquiries of GS members and other KLA members by the families of [REDACTED] and [REDACTED], in the years following their disappearance, were unsuccessful and dissuaded by threats.<sup>1557</sup>

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<sup>1545</sup> [REDACTED].

<sup>1546</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>1547</sup> See [Ch.V.I.](#)

<sup>1548</sup> P00653.3\_ET, T.4.8.

<sup>1549</sup> [REDACTED]; [REDACTED].

<sup>1550</sup> P00654, para.4.

<sup>1551</sup> P00653.1\_ET, T.17.17-23.

<sup>1552</sup> P00653.8\_ET, T.17.14-20.

<sup>1553</sup> See [Ch.IX.A.ii.](#)

<sup>1554</sup> P01355.1\_ET, T.33.8-15; T.17574.16-17575.1.

<sup>1555</sup> F00709/A01, para.352.

<sup>1556</sup> F00709/A01, para.352.

<sup>1557</sup> F00709/A01, para.353.

1. Nature and strength of the evidence

562. The allegation that **VESELI** had any direct involvement in the abduction of [REDACTED] and [REDACTED] does not get off the ground.
563. The law is clear: a conviction cannot lawfully be founded on hearsay alone.<sup>1558</sup> It is immaterial how many witnesses the SPO called to testify that they were told, or that they believed, **VESELI** was present at or involved in the abductions. The entire case against **VESELI** for this accusation is hearsay. Untested hearsay, however voluminous, cannot found a safe conviction, nor can it corroborate other hearsay. No corroborating evidence was adduced to support the proposition that **VESELI** took [REDACTED] and [REDACTED] away from [REDACTED], or that he was present when the events allegedly took place. Nor did the SPO establish that murder was the cause of death for either [REDACTED]. The evidence is legally insufficient to support a conviction.
564. What the SPO has succeeded in demonstrating is that there were rumours that **VESELI**, [REDACTED] were responsible for the disappearance of [REDACTED] and [REDACTED]. However, it has done no more than call witnesses to repeat this rumour. Rumour is irrelevant. Rumours do not amount to reliable circumstantial evidence, nor are they probative of matters in issue.
565. The rumour at issue originates from two hearsay sources who lack credibility, both of whom were implicated in the alleged murder of [REDACTED] and strongly incentivised to deflect blame from themselves. [REDACTED].<sup>1559</sup> The rumour was then apparently confirmed (but later retracted) by a second source, [REDACTED] – another KLA member implicated in the crime in the alternative

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<sup>1558</sup> See [Ch.II.B.](#)

<sup>1559</sup> [REDACTED].

to **VESELI**. Extraordinarily, reliance appears to be placed on [REDACTED], a notorious liar,<sup>1560</sup> perpetuating this same rumour.<sup>1561</sup>

566. The SPO failed to prove to the criminal standard **VESELI** was even in [REDACTED] at the relevant time, let alone that he had any involvement with [REDACTED] or [REDACTED]. Notably **VESELI** had no motive to target either individual; [REDACTED]<sup>1562</sup> [REDACTED]. There is no evidence that **VESELI** had any dealings or contact with either [REDACTED] or [REDACTED] at any time.

567. Furthermore, various reasonable alternative explanations for how and why [REDACTED] and [REDACTED] disappeared exist, which are consistent with **VESELI**'s innocence. He is entitled to the benefit of those inferences. Accordingly, the standard of proof beyond reasonable doubt is not satisfied.<sup>1563</sup>

## 2. Murder

568. [REDACTED] and [REDACTED] are listed as murder victims,<sup>1564</sup> yet there is no evidence that they were the victims of homicide. Only [REDACTED] skull was ever recovered.<sup>1565</sup> The autopsy results were inconclusive: the time, place and manner of death remain undetermined.<sup>1566</sup> [REDACTED] remains were never found. Homicide cannot properly be regarded as an irresistible inference, having regard to the lack of direct or reliable evidence about their last known movements and the inherently unreliable nature of the rumours concerning their fate. It cannot be found beyond reasonable doubt that either [REDACTED]

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<sup>1560</sup> See [REDACTED].

<sup>1561</sup> [REDACTED].

<sup>1562</sup> See [REDACTED].

<sup>1563</sup> See IT-96-21-A, [AJ](#), para.458; IT-95-5/18-T, [TJ Vol I](#), paras.10, 14; ICTR-99-46-A, [AJ](#), para.306; KSC-BC-2020-07/F00611/RED/1, para.37.

<sup>1564</sup> [REDACTED]

<sup>1565</sup> [REDACTED]. See also [REDACTED]

<sup>1566</sup> [REDACTED].

died by murder, particularly considering the alternative available inferences outlined below.

### 3. The hearsay evidence

569. There is no direct evidence on how and when [REDACTED] and [REDACTED] left Drenoc/Drenovac, how [REDACTED] died, or [REDACTED] fate. The SPO relies upon the hearsay accounts of [REDACTED] family members, coupled with other retellings of rumour. [REDACTED]. Their evidence is no more than accounts of what other unreliable persons told them happened to [REDACTED] at Drenoc/Drenovac. Both W04474 and W04489 changed their accounts on critical points either on the stand or immediately prior to testimony. The family's accounts are also inconsistent with one another, further undermining their probative value. This evidence cannot form the basis of a conviction against **VESELI**.

570. In the immediate aftermath of [REDACTED] disappearance, [REDACTED] was informed that [REDACTED] was alive and with the GS,<sup>1567</sup> and that [REDACTED] was "at the right place."<sup>1568</sup> There were "doubts," "confusion" and "reservations" over what happened to [REDACTED]. None of the information [REDACTED] received during this period suggested anything bad had happened.<sup>1569</sup>

571. [REDACTED]<sup>1570</sup> – [REDACTED].<sup>1571</sup> [REDACTED].<sup>1572</sup>

572. [REDACTED]:

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<sup>1567</sup> [REDACTED].

<sup>1568</sup> [REDACTED].

<sup>1569</sup> [REDACTED].

<sup>1570</sup> [REDACTED].

<sup>1571</sup> [REDACTED].

<sup>1572</sup> [REDACTED].

[REDACTED].<sup>1573</sup>

573. [REDACTED].<sup>1574</sup>

574. **VESELI**'s name enters the narrative at this critical juncture solely because one of [REDACTED] relatives – years afterwards – suggested him as a possible culprit, [REDACTED].<sup>1575</sup> [REDACTED].<sup>1576</sup> [REDACTED].<sup>1577</sup>

575. [REDACTED].<sup>1578</sup> [REDACTED].<sup>1579</sup> [REDACTED].<sup>1580</sup>

576. [REDACTED].<sup>1581</sup>

577. [REDACTED].<sup>1582</sup> [REDACTED].<sup>1583</sup> [REDACTED].<sup>1584</sup> [REDACTED].<sup>1585</sup>

578. On the SPO's case, the individuals who allegedly implicate **VESELI** in this incident are, therefore, those with vested interests in perpetuating untruths about what occurred to shift blame and attention away from themselves. The [REDACTED] family's belief or otherwise in the veracity of these hearsay accounts does not advance the SPO's case whatsoever.

579. W04489's hearsay account – which suggests **VESELI** was involved in [REDACTED] disappearance – arose for the first time during her testimony.

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<sup>1573</sup> [REDACTED].

<sup>1574</sup> [REDACTED].

<sup>1575</sup> [REDACTED].

<sup>1576</sup> [REDACTED].

<sup>1577</sup> [REDACTED].

<sup>1578</sup> [REDACTED].

<sup>1579</sup> [REDACTED].

<sup>1580</sup> [REDACTED].

<sup>1581</sup> *See* [REDACTED].

<sup>1582</sup> [REDACTED].

<sup>1583</sup> [REDACTED].

<sup>1584</sup> [REDACTED].

<sup>1585</sup> [REDACTED].

[REDACTED]<sup>1586</sup> [REDACTED].<sup>1587</sup> {REDACTED}.<sup>1588</sup> [REDACTED],<sup>1589</sup>  
[REDACTED].<sup>1590</sup>

580. Likewise, W04760 stated that he was told at a meeting after the war by the same source –[REDACTED]– that **VESELI** was involved in [REDACTED] disappearance.<sup>1591</sup> W04710 gave an entirely different account of what was said at this meeting,<sup>1592</sup> that did not involve [REDACTED] implicating **VESELI**, thereby entirely undermining W04760’s account. [REDACTED].

581. W04760 claimed that other persons told [REDACTED] that **VESELI** was involved in the disappearance. Such rumour is incapable of forming the basis of any lawful conviction. Further, for almost every account W04760 claimed to have been given, that account is either denied or undermined by others.

a. [REDACTED].<sup>1593</sup> [REDACTED]<sup>1594</sup> – [REDACTED].<sup>1595</sup> [REDACTED].<sup>1596</sup>

b. [REDACTED].<sup>1597</sup> [REDACTED].<sup>1598</sup> [REDACTED].<sup>1599</sup>

c. [REDACTED].<sup>1600</sup>

582. Like with W04474 and W04489, the entirety of W04760’s evidence is simply hearsay. The fact that W04474, W04489, and W04760 all claim to have heard

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<sup>1586</sup> [REDACTED].

<sup>1587</sup> [REDACTED].

<sup>1588</sup> [REDACTED].

<sup>1589</sup> [REDACTED].

<sup>1590</sup> [REDACTED].

<sup>1591</sup> [REDACTED].

<sup>1592</sup> [REDACTED].

<sup>1593</sup> [REDACTED].

<sup>1594</sup> [REDACTED]; [REDACTED].

<sup>1595</sup> [REDACTED].

<sup>1596</sup> [REDACTED].

<sup>1597</sup> [REDACTED].

<sup>1598</sup> [REDACTED]; [REDACTED].

<sup>1599</sup> [REDACTED]; [REDACTED].

<sup>1600</sup> [REDACTED].

iterations of the same rumour, does not mean they corroborate each other. This is particularly true here, where most of the hearsay accounts can be traced to a single, demonstrably unreliable source – [REDACTED].<sup>1601</sup>

583. Notably, nobody from the [REDACTED] family has sought to perpetuate rumours of **VESELI**'s involvement in this disappearance. Neither W04566, nor W04783, ever attributed blame to **VESELI** for the disappearance of [REDACTED]. [REDACTED].

584. Untested documentary hearsay (letters, notebooks or books) is equally incapable of corroborating an oral hearsay account – the only way a hearsay statement can be tested is via the maker of the statement. [REDACTED].<sup>1602</sup>

585. Two unauthenticated authorless handwritten notebooks which mention [REDACTED] and [REDACTED] – P00074 and P00075 – provide, at relevant parts that: [REDACTED].<sup>1603</sup> P00011, another unauthenticated notebook, [REDACTED].<sup>1604</sup> These documents provide no assistance whatsoever for the case that **VESELI** was in any way involved in what happened to either [REDACTED]. At their highest, they are relevant only to the issue of whether the [REDACTED] were detained.

586. On [REDACTED], [REDACTED] accused [REDACTED] and **VESELI** of having killed [REDACTED] and [REDACTED].<sup>1605</sup> Repeating the allegation during [REDACTED] SPO interview, explaining that [REDACTED] source of knowledge was [REDACTED].<sup>1606</sup> This amounts to no more than rumour and speculation and should be wholly disregarded as bearing no evidential value.

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<sup>1601</sup> [REDACTED].

<sup>1602</sup> [REDACTED].

<sup>1603</sup> [REDACTED].

<sup>1604</sup> [REDACTED].

<sup>1605</sup> [REDACTED].

<sup>1606</sup> [REDACTED].

4. Communication with VESELI

587. [REDACTED].<sup>1607</sup> [REDACTED].<sup>1608</sup> [REDACTED]<sup>1609</sup> and [REDACTED].<sup>1610</sup>  
[REDACTED].<sup>1611</sup>

5. VESELI was not in [REDACTED]

588. **VESELI** was not in [REDACTED] when [REDACTED] disappeared.

589. [REDACTED].<sup>1612</sup>[REDACTED].<sup>1613</sup> [REDACTED].<sup>1614</sup>

590. [REDACTED]<sup>1615</sup> [REDACTED].<sup>1616</sup>

591. This evidence therefore indicates that between [REDACTED], **VESELI** was attending to matters elsewhere in Kosovo [REDACTED].

592. [REDACTED].<sup>1617</sup> [REDACTED].<sup>1618</sup> [REDACTED].<sup>1619</sup> [REDACTED].<sup>1620</sup>

593. The evidence from ZYRAPI and BYTYQI placing **VESELI** outside [REDACTED] is direct, credible and reliable – in sharp contrast to the untested, uncorroborated hearsay evidence emanating from [REDACTED]. The witnesses who place **VESELI** elsewhere, have no reason or motive to fabricate such evidence, or even reason to appreciate the significance of their evidence.

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<sup>1607</sup> [REDACTED].

<sup>1608</sup> [REDACTED].

<sup>1609</sup> [REDACTED].

<sup>1610</sup> [REDACTED].

<sup>1611</sup> [REDACTED].

<sup>1612</sup> [REDACTED].

<sup>1613</sup> [REDACTED].

<sup>1614</sup> [REDACTED].

<sup>1615</sup> [REDACTED].

<sup>1616</sup> [REDACTED].

<sup>1617</sup> *See, e.g.*, [REDACTED].

<sup>1618</sup> [REDACTED].

<sup>1619</sup> [REDACTED].

<sup>1620</sup> [REDACTED].

## 6. Alternative reasonable inferences

594. The disappearances of [REDACTED] and [REDACTED] are shrouded in rumour, speculation and uncertainty, compounded by numerous competing inferences as to what may have happened. Where even one such reasonable alternative exists, the Accused is entitled to the benefit of that inference. Even if a potential inference was available consistent with guilt (which there is not), the Panel must not prefer that inference over an alternative reasonably open under the facts.<sup>1621</sup> Here, there are at least four alternative inferences reasonably open to the Panel that have not been disproven. The existence of these alternative inferences precludes a guilty finding.

(a) [REDACTED]

595. [REDACTED].<sup>1622</sup> [REDACTED].<sup>1623</sup> [REDACTED].<sup>1624</sup> [REDACTED].<sup>1625</sup>  
[REDACTED].<sup>1626</sup> [REDACTED].<sup>1627</sup> [REDACTED].<sup>1628</sup>

596. It is equally plausible that [REDACTED] and [REDACTED] were targeted in [REDACTED] by [REDACTED] in revenge for [REDACTED].

(b) [REDACTED]

597. [REDACTED].<sup>1629</sup> [REDACTED],<sup>1630</sup> [REDACTED].<sup>1631</sup>

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<sup>1621</sup> IT-96-21-A, [A](#), para.458; IT-04-84-T, [T](#), para.161.

<sup>1622</sup> [REDACTED].

<sup>1623</sup> [REDACTED].

<sup>1624</sup> [REDACTED].

<sup>1625</sup> [REDACTED].

<sup>1626</sup> [REDACTED].

<sup>1627</sup> [REDACTED].

<sup>1628</sup> [REDACTED].

<sup>1629</sup> [REDACTED].

<sup>1630</sup> [REDACTED].

<sup>1631</sup> [REDACTED].

(c) [REDACTED]

598. [REDACTED].<sup>1632</sup> [REDACTED].<sup>1633</sup> [REDACTED]<sup>1634</sup> [REDACTED].<sup>1635</sup>

*v.* W03875

599. The SPO alleges that on 3 March 1999, KLA members arrested W03875, a uniformed Serbian soldier, at a checkpoint in Mihaliq/Mijalic, and that he was detained, mistreated, and moved between locations.<sup>1636</sup> The SPO contends that on or about 21 March 1999, **VESELI** and others, transferred W03875 to Klečkë/Klečka.<sup>1637</sup>

600. The allegation that **VESELI** directly participated in the transfer and release of W03875 rests solely on evidence from, or produced by W04839.<sup>1638</sup> Even [REDACTED] in concocting his numerous lies did not claim that **VESELI** was involved in this matter in any way.<sup>1639</sup> This was the first time W04839 claimed he ever saw **VESELI**,<sup>1640</sup> and no detail or basis was provided for this purported identification; his identification is not credible, reliable, or corroborated.<sup>1641</sup>

601. W04839 is not reliable; his evidence is littered with obvious inconsistencies and demonstrable untruths; he has a proven history of lying to tribunals and investigators; and has a history of serious psychiatric issues.

602. In terms of W04839's litany of lies, it is impossible to parse out whether these untruths arose from memory issues, delusion, or were simply intentional lies. His myriad of lies cannot be explained away, or excused in totality, by claims

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<sup>1632</sup> See [REDACTED].

<sup>1633</sup> [REDACTED].

<sup>1634</sup> [REDACTED].

<sup>1635</sup> [REDACTED].

<sup>1636</sup> F00709/A01, para.505; P00970, pp.SPOE00078776-SPOE00078777.

<sup>1637</sup> F00709/A01, para.505.

<sup>1638</sup> F00709/A01, para.505, fn.2021.

<sup>1639</sup> [REDACTED].

<sup>1640</sup> P01113\_AT/P01113, p.051039.

<sup>1641</sup> See [Ch.II.B.](#)

of witness intimidation – a reason given for his accepted lies to EULEX in 2010.<sup>1642</sup> For the purposes of assessing his reliability, the reason for any individual lie is not material, as ultimately there is no reasonable alternative conclusion available in the circumstances of such consistent and demonstrable lies to authorities other than that W04839 is wholly unreliable. Some examples are outlined below.

603. Firstly, W04839 admitted lying to ICTY investigators,<sup>1643</sup> evidencing a disregard for his oath before the court. He provided two contradictory accounts about the killing of two detainees. In 2009 he claimed that they were killed by [REDACTED] in 2010 he stated he killed them himself.<sup>1644</sup> [REDACTED].<sup>1645</sup> When EULEX asked him about ‘Petrit Ujmiri’, W04839 said that he was introduced to ‘Ujmiri’ 2-3 times and described him as a young man of 30-35 years old.<sup>1646</sup> ‘Petrit Ujmiri’ is DOBRUNA.<sup>1647</sup> W04839 has described DOBRUNA, who was in his late 50s at the time, as being “*like a father*” to him.<sup>1648</sup> Therefore his description of ‘Ujmiri’ is not only incorrect but fundamentally irreconcilable with his evidence in relation to DOBRUNA.
604. Thirdly, W04839 claimed he read the ICTY statements of LIMAJ and MUSLIU, to be prepared in case he was called to testify in the Hague.<sup>1649</sup> This was untrue; neither gave statements.<sup>1650</sup> Fourthly, while W04839 asserts he was the director of Klečë/Klečka prison; other witnesses gave contrary evidence.<sup>1651</sup>

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<sup>1642</sup> P00976\_AT/P00976, p.SITF00009656.

<sup>1643</sup> See P00984, pp.SITF00010018-SITF00010019, SITF00010023; P00976\_AT/P00976, p.SITF00009656; 4D00021/4D00021\_ET, p.DJK00160\_ET.

<sup>1644</sup> [REDACTED].

<sup>1645</sup> [REDACTED].

<sup>1646</sup> P00984, p.SITF00010030.

<sup>1647</sup> P01955.4\_ET, T.12.5; P00980\_AT/P00980, p.SITF00009582.

<sup>1648</sup> P00984, p.SITF00010030.

<sup>1649</sup> P00984, p.SITF00010025.

<sup>1650</sup> P00984, p.SITF00010025.

<sup>1651</sup> T.6404.15-6405.3.

605. W04839 showed demonstrable hostility towards LIMAJ, which motivated him to lie. He believed that everything that went wrong in his life was because of LIMAJ.<sup>1652</sup> [REDACTED].<sup>1653</sup>
606. W04839 accepted the unreliability of his evidence. In a letter to EULEX, W04839 wrote *“all my statements that are in front of you are worthless.”*<sup>1654</sup> The Panel has already observed that the material discrepancies in his evidence *“[a]re quite numerous and pertain to important aspects of the witness’s evidence. They also suggest that the witness must perforce have given false, sworn, evidence on at least some of these occasions.”*<sup>1655</sup>
607. W04839 was admitted to psychiatric hospital in [REDACTED].<sup>1656</sup>
- [REDACTED].<sup>1657</sup>
608. [REDACTED].<sup>1658</sup> This psychiatric history, particularly symptoms of memory loss and delusion, undermine his credibility. W04839 clearly continued to suffer from delusion in 2011, around the time he gave statements to EULEX,<sup>1659</sup> believing EULEX may assassinate him.<sup>1660</sup> In a 2011 letter, W04839 wrote, *“Mr. Prosecutor, investigators, you did not only commit crimes but you committed [a] psychological massacre against me [...].”*<sup>1661</sup>
609. W04839 was a witness in the Klečĕ/Klečka case, where Naser KRASNIQI was a defendant. KRASNIQI testified that the Court found that W04839 lied:<sup>1662</sup>

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<sup>1652</sup> P00984, p.SITF00010016.

<sup>1653</sup> [REDACTED].

<sup>1654</sup> 4D00021/4D00021\_ET, p.DJK00160.

<sup>1655</sup> F02013, Decision on Prosecution Rule 155 Motion, 15 December 2023, para.51.

<sup>1656</sup> [REDACTED].

<sup>1657</sup> [REDACTED]

<sup>1658</sup> [REDACTED].

<sup>1659</sup> P00982; P00983; P00984; P00985.

<sup>1660</sup> 4D00021/4D00021\_ET, p.DJK00161.

<sup>1661</sup> 4D00021/4D00021\_ET, p.1. W04839 was determined by German authorities to have committed suicide.

<sup>1662</sup> P02007.4\_ET, T.19.22-20.1; T.24775.20-24776.4.

[...] His evidence was full of lies. On his own admission he has lied to investigators in the past. [T]he evidence [W04839] gave is not only inconsistent but is substantially contradicted by other evidence. The inconsistencies and contradictions found by the court are not discrepancies that might be the product of an honest but imperfect recollection, observation or reconstruction of the events about which he gave evidence. [...] Having considered all of the evidence in this case, the Court finds that W03875 is not a credible witness and that in consequence it would be unsafe to rely upon his evidence.<sup>1663</sup>

610. While the Panel is not bound by this, it is significant and persuasive that another court not only did not rely on W04839's evidence but went so far as to make the unusually stark findings set out above that he lied to the Court. That court, unlike this one, was best placed to assess credibility, as unlike this Panel they had the benefit of seeing W04839 testify live and be subject to challenge.
611. W04839's assertion that **VESELI** was involved in W03875's transfer and release is uncorroborated. No KLA members based in, or in proximity to Kleçkë/Klečka, nor the alleged prisoners, suggest any involvement of **VESELI**.
612. W03875 does not mention **VESELI** anywhere in his evidence, nor allege he was subjected to a handover as described by W04839.<sup>1664</sup> W03877 spoke to W03875 about the circumstances of his arrest and he never mentioned **VESELI** or "Luli" or any man matching his description.<sup>1665</sup> Naser KRASNIQI was frequently present at the alleged Kleçkë/Klečka detention site. Naser KRASNIQI never witnessed **VESELI** bring anyone to the facility,<sup>1666</sup> and as far as he was aware, **VESELI** was not involved in any decision to detain or release persons in Kleçkë/Klečka.<sup>1667</sup> DOBRUNA was also unaware of any instance where **VESELI** was involved in the release of prisoners.<sup>1668</sup>

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<sup>1663</sup> See also T.24778.1-24779.13.

<sup>1664</sup> See P00970\_AT/P00970; P00971\_AT/P00971.

<sup>1665</sup> P01134\_AT/P01134, pp.SITF00010254-SITF00010256.

<sup>1666</sup> T.24782.3-8.

<sup>1667</sup> T.24771.7-24.

<sup>1668</sup> P01955.8\_ET, T.18.1-15.

613. The fact that other witnesses place W04839 physically in Kleçkë/Klečka at the time cannot corroborate specific *allegations* W04839 makes against **VESELI**. It is not disputed that W04839 was present in Kleçkë/Klečka; what requires corroboration is **VESELI**'s involvement in the transfer and release of W03875.
614. W04839's "Duty Report,"<sup>1669</sup> created *ex post facto*,<sup>1670</sup> is not corroborative evidence, as it is not independent of W04839, but a product of his own creation. It is inherently unreliable by virtue of it being created by W04839, and the reliability of its contents is further undermined by factual inaccuracies. W03878 testified that he was detained for three days, not for six weeks as reflected in the report.<sup>1671</sup> Naser KRASNIQI testified that the date when Habib SHALA was brought to Kleçkë/Klečka is wrong.<sup>1672</sup> W04839 himself suggests that some dates are missing because he could not remember some details.<sup>1673</sup> DOBRUNA never saw the Report and expressed surprise at the mention of "Luli HQ" as he had not known **VESELI** to be involved in prisoner release, questioning "*how was it possible for [VESELI] to even go there?*"<sup>1674</sup> Contrary to W04839's claims, DOBRUNA was also not informed of any mistreatment of prisoners in Kleçkë/Klečka.<sup>1675</sup>
615. W04839's diary does not mention **VESELI**.<sup>1676</sup> Beside W03875's name in the diary, "Ftyra" is written - the nickname of Naser SHALA. W04839 initially stated that he wrote this to remember that SHALA (not **VESELI**) was the one who *brought in* these prisoners.<sup>1677</sup> Only later did he change his account and

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<sup>1669</sup> P00980\_AT/P00980, pp.SITF00009589-SITF00009590.

<sup>1670</sup> P00980\_AT/P00980, p.SITF00009579-SITF00009580.

<sup>1671</sup> T.15443.24-15444.8.

<sup>1672</sup> T.24780.1-20.

<sup>1673</sup> P00980\_AT/P00980, p.SITF00009579-SITF00009580.

<sup>1674</sup> P01955.8\_ET, T.18.11-23.

<sup>1675</sup> P01963\_AT/P01963, p.054701.

<sup>1676</sup> P01113/P01113\_AT, p.051052(0096-09-EWC2/012).

<sup>1677</sup> P01113\_AT/P01113, p.051052; P00974, p.050976.

claim that he meant to say that prisoners were received, not brought, by SHALA.<sup>1678</sup>

616. The Panel is prohibited from relying on the hearsay of W04839 as it is the sole and decisive evidence against the **VESELI** for this allegation.

*vi. Rahovec/Orahovac*

617. The SPO alleges that between 17 and 27 July 1998 at least forty-eight civilians were detained by the KLA in Malishevë/Mališevo<sup>1679</sup> and that in the aftermath of the Rahovec/Orahovac battle, **VESELI** and other GS members, coordinated the activities of KLA units and ordered the attack on Zoçishtës/Zočişte.<sup>1680</sup>

618. According to the SPO, the crimes committed in Rahovec/Orahovac were widely reported, common knowledge in the area, and that international actors addressed the issue with KLA representatives;<sup>1681</sup> and on 23 July 1998, while detainees were still being held in Malishevë/Mališevo, **THAÇI** and **VESELI** held a meeting with the representatives of the Austrian Embassy in Malishevë/Mališevo.<sup>1682</sup>

619. There is no evidence that **VESELI** shared in the intent of these crimes, or assisted, condoned or encouraged their commission. There is no evidence **VESELI** knew or ought to have known about the crimes in advance or after they occurred or failed to prevent, investigate or punish the crimes. It has not been proven when, if at all, **VESELI** learned about these unforeseeable crimes. While there is evidence that **VESELI** was in the vicinity after the attack, it demonstrates that he was involved with defensive actions. The SPO has failed to prove that the GS ordered any offensive actions in the vicinity. Crucially, the

<sup>1678</sup> P00976\_AT/P00976, p.SITF00009677.

<sup>1679</sup> F00709/A01, para.369.

<sup>1680</sup> F00709/A01, para.381.

<sup>1681</sup> F00709/A01, para.383.

<sup>1682</sup> F00709/A01, para.382.

GS was **not** in effective command and control of the KLA throughout the Indictment Period, and as such was unable to prevent, investigate or punish crimes.

1. The attack on Rahovec/Orahovac was not foreseeable

620. VESELI and the GS were unaware of this spontaneous attack in advance and were not involved in its planning or execution. The attack was not reasonably foreseeable.<sup>1683</sup> Prior to Rahovec/Orahovac, the KLA had never launched such a bold assault, nor had the KLA been accused of crimes of the scale and nature of those alleged at Rahovec/Orahovac. It was an outlier in the conflict, the likes of which never occurred again.
621. ZYRAPI confirmed that there were no discussions at the GS about a possible attack on Rahovec/Orahovac.<sup>1684</sup> While the Operational Directorate had been in theoretical discussions prior to the attack<sup>1685</sup> about operations on towns, this was decided against, as the KLA was drastically underprepared.<sup>1686</sup> Other GS members, and the local Rahovec/Orahovac and Drenoc/Drenovac staffs informed ZYRAPI, that the attack “*did not come from the General Staff*” and was “*an initiative by the local staffs themselves;*”<sup>1687</sup> this was confirmed by BASHOTA.<sup>1688</sup>
622. [REDACTED] also explained the attack was not planned<sup>1689</sup> and that he was “completely shocked” when he learnt of it.<sup>1690</sup> He was not aware of any cooperation between the OZ and the GS regarding the attack.<sup>1691</sup> [REDACTED]

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<sup>1683</sup> See paras.621-622.

<sup>1684</sup> P01355.2\_ET, T.28.10-14; T.17918.22-17919.1.

<sup>1685</sup> T.17919.6-21; T.17920.23-17921.9.

<sup>1686</sup> 1D00102/1D00102\_ET, p.U002-2982; T.17920.18-22.

<sup>1687</sup> P01355.2\_ET, T.31.13-23; T.31.24-32.2.

<sup>1688</sup> T.23144.21-23145.13; T.23194.22-23195.9. See also P01694.3\_ET, T.16.3-20.

<sup>1689</sup> [REDACTED].

<sup>1690</sup> [REDACTED].

<sup>1691</sup> [REDACTED].

did not know who ordered the soldiers into the town,<sup>1692</sup> but observed that had either the GS or the Arti unit planned it, the Arti unit Commanders would not have been absent at the time.<sup>1693</sup>

## 2. Subsequent attacks

623. The allegation that the GS ordered subsequent attacks around Rahovec/Orahovac arises from unchallenged, unreliable multiple hearsay. The SPO relies on P01329 to suggest that the GS ordered subsequent attacks on Zoçishtës/Zočište and Hoçë e Madhe/Velika Hoča. P01329 is a purported order from local KLA Commander, Agim KUQI. P01329 states: *“Blerim KUCI by order of the KLA general staff, gave an order for the villages of Zaqisht and Hoqë, inhabited by Serbs, to be attacked.”*
624. P01329 contains insufficient *indicia* of authenticity, and its authenticity was not established through any witness. The uncorroborated multiple hearsay claims contained therein are fundamentally undermined by the evidence. ZYRAPI testified that the GS did not give an order to attack Zoçishtës/Zočište and would have known had such an order been given.<sup>1694</sup>
625. Haxhi MAZREKU claims that on 17 July 1998 he was with his fellow Commander KABASHI, when a soldier told MAZREKU to take his soldiers and attack the Serbian civilians because *“there [was] an order from high up.”*<sup>1695</sup> In evidence before another court, MAZREKU described this order differently as, *“an order from Drenica.”*<sup>1696</sup> MAZREKU did not know where this order came from<sup>1697</sup> and refused to follow it.<sup>1698</sup> KABASHI did not explain who the people

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<sup>1692</sup> [REDACTED].

<sup>1693</sup> [REDACTED]; [REDACTED].

<sup>1694</sup> T.17926.15-17927.9. P01355.2\_ET, T.37.10-17. *See also* T.17120.15-22.

<sup>1695</sup> P01805.2\_ET, T.39.21-22.

<sup>1696</sup> P01806, p.SITF00028074.

<sup>1697</sup> T.21598.11-13; T.21605.10-19.

<sup>1698</sup> P01806, p.SITF00028074.

“from high up” were and did not say that the order derived from the GS.<sup>1699</sup> This uncorroborated allegation is too vague and uncertain to demonstrate any KLA order to attack Opterushë/Opteruša, let alone conclusively prove the existence of an order emanating from the GS to do so.

626. The ambiguous hearsay extract from Ilaz KADOLLI’s book, which reads, “[t]he General Staff requested the 123rd Brigade to ind /?assist at/ + qishte/? Zoqishte-Zoqishta/ and Opterusha”<sup>1700</sup> at its highest suggests “assistance” was requested, but no more.

### 3. Alleged GS order of execution

627. [REDACTED] claims [REDACTED] told him after the war that the GS ordered the transfer to Malishevë/Mališevo of detainees captured during the Rahovec/Orahovac battle and their execution.<sup>1701</sup> This is no more than rumour. [REDACTED],<sup>1702</sup> [REDACTED] is a wholly unreliable witness, whose hearsay claim is the sole and decisive evidence of this allegation and as such cannot lawfully be relied upon by the Panel.<sup>1703</sup>

### 4. VESELI’s role on the ground

628. There is no evidence that VESELI played any role in the commission or coordination of crimes.
629. When the fighting erupted in Rahovec/Orahovac, ZYRAPI and BRAHIMAJ left Dukagjin and travelled “close to Orahovac,” where ZYRAPI says he met “Luli, Hashim and many others.”<sup>1704</sup> Local staff members sought the GS’s assistance<sup>1705</sup>

<sup>1699</sup> T.21598.11-13; T.21605.10-19.

<sup>1700</sup> P00012/P00012\_ET, p.058008.

<sup>1701</sup> [REDACTED].

<sup>1702</sup> See [REDACTED].

<sup>1703</sup> See [REDACTED].

<sup>1704</sup> 1D00102/1D00102\_ET, pp.U002-2982-U002-2983.

<sup>1705</sup> T.17922.18-25.

and those present assisted in setting up defensive lines against Serb forces.<sup>1706</sup>

According to ZYRAPI, soldiers were deployed to evacuate civilians from the town and later used to form a second defensive line to prevent Serbian forces from entering Malishevë/Mališevo.<sup>1707</sup>

630. ZYRAPI did not identify **VESELI** as being amongst the GS members who were present when these decisions were made but merely accepted the possibility.<sup>1708</sup>

631. Serbian forces began a second offensive “*from the direction of Lapusnik and Blace/Bllace*” and ZYRAPI stated that consequently, “*Luli and I went from the Main Staff and deployed some forces to assist in Lapusnik.*”<sup>1709</sup>

632. The evidence demonstrates, at its highest, that any activities **VESELI** was involved in coordinating were purely defensive combat activities aimed at repelling the Serbian counterattack, protecting the civilian population, and were wholly distinct from, and unrelated to, the crimes committed.

##### 5. VESELI’s knowledge of crimes at Rahovec/Orahovac

633. The SPO failed to establish **VESELI** knew or had reason to know that the KLA were committing crimes against civilians.

634. Firstly, the SPO suggests that P00067, ostensibly a 15 August 1998 report from the Drenoc/Drenovac staff to the GS, demonstrates that they were notified afterwards about the abduction of twenty-two Serbs.<sup>1710</sup> However this unreliable exhibit is incapable of establishing this. The author and source of the hearsay report is not known. There is no information about where, when, how, or from whom, the document was retrieved; no chain of custody,<sup>1711</sup> no

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<sup>1706</sup> T.17924.13-25.

<sup>1707</sup> 1D00102/1D00102\_ET, pp.U002-2983-U002-2984.

<sup>1708</sup> P01355.2\_ET, T.31.6-12; P01355.7\_ET, T.27.1-8.

<sup>1709</sup> 1D00102/1D00102\_ET, p.U002-2983; T.18266.1-13.

<sup>1710</sup> F00709/A01, para.383.

<sup>1711</sup> See [REDACTED].

evidence that the report was ever sent or received by anyone on the GS and no evidence it was seen or relayed to **VESELI**. There is no evidence from which such inferences could reasonably be drawn. The evidence, in fact, points to the contrary. ZYRAPI confirmed he never saw the report before, never received it during the war and did not recognise the Commander's signature who signed the report.<sup>1712</sup> ZYRAPI did not receive *any* reports from local KLA staffs after the Rahovec/Orahovac battle,<sup>1713</sup> and the "Rahovec local staff" did not correspond with *"the time and with the way events unfolded at the time."*<sup>1714</sup> The GS did not solicit the report.<sup>1715</sup>

635. Secondly, the SPO alleges that these alleged crimes against civilians were widely reported, and common knowledge in the area. Despite being in the vicinity, ZYRAPI was not aware that civilians had been abducted at the time. It was not until August 1998 that he learned this through the media. Notably, from August 1998, **VESELI** was outside Kosovo where he remained for most of the conflict.<sup>1716</sup>
636. The claim that events were "widely reported" is simply not substantiated. Little to no evidence was adduced of relevant media reporting. At its highest, the evidence shows possible proximity to and rumours of the crimes, which cannot prove knowledge.<sup>1717</sup> While the SPO adduced an August 1998 New York Times article<sup>1718</sup> and an Associate Press report,<sup>1719</sup> there is no evidence this international media was available in Kosovo at the time. Virtually no contemporaneous Serbian or Kosovar news reporting from the time were

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<sup>1712</sup> P01355.3\_ET, T.7.13-11.9.

<sup>1713</sup> T.17877.11-17879.2. *See also* T.17882.1-10.

<sup>1714</sup> T.17880.14-16.

<sup>1715</sup> T.17881.1-4.

<sup>1716</sup> 2D00018.1, pp.DKV1221-DKV1224, DKV1226, DKV1232-DKV1233.

<sup>1717</sup> IT-01-47-T, [TJ](#), paras.1223, 1850, 1984; IT-03-66-A, [AJ](#), para.218.

<sup>1718</sup> P04153.

<sup>1719</sup> P01579; P01580.

adduced. [REDACTED],<sup>1720</sup> considering the chaos caused by the spring offensive, and the GS's disjointed and disparate nature, this is insufficient to prove that the GS as a whole, or constituent members, were put on sufficient – or any – notice of the alleged crimes. The SPO has not proven that **VESELI**, was ever made aware of the crimes at the time, or learnt about them at a later date, and if so, when.

637. Despite the suggestion of its existence, no evidence of a GS denial statement has been adduced concerning Rahovec/Orahovac. It is unclear when, by whom, and in what form any purported denial is said to have taken place. There is no basis to suggest the whole GS had knowledge of the crimes, or specifically that **VESELI** knew of this denial or played any part in it.

638. Thirdly, relying on Christopher COBB-SMITH's and Robert Douglas YOUNG's evidence, the SPO alleges international actors brought the crimes to KLA representatives' attention.<sup>1721</sup> While, according to YOUNG, it was "obviously the KLA" who abducted Serbs in Rahovec/Orahovac,<sup>1722</sup> this is mere opinion, and there is no evidence he ever discussed the issue with the GS members. When COBB-SMITH met with Sabahajdin CENA in January 1999,<sup>1723</sup> no GS members were present and there is no evidence this meeting was reported upwards. CENA allegedly told COBB-SMITH that the KLA was carrying out an internal investigation into the matter, handed over a list of missing Albanians and provided the KVM with the location where three Serb civilians had been buried;<sup>1724</sup> this evidence remains uncorroborated. Any knowledge by CENA of these crimes is insufficient to impute knowledge to the GS in the

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<sup>1720</sup> [REDACTED].

<sup>1721</sup> F00709/A01, para.383.

<sup>1722</sup> P00392\_AT/P00392, para.34.

<sup>1723</sup> P02689/P02689\_ET.

<sup>1724</sup> P02549, p.SPOE00109474.

absence of supporting evidence, in circumstances where no functioning reporting structure has been established. There is no evidence it was so relayed.

639. YOUNG, who also arrived in November 1998, received an ICRC briefing on abductions in Kosovo.<sup>1725</sup> While there is evidence that YOUNG met with CENA, there is no evidence that YOUNG ever discussed crimes with GS members. Further, there is no evidence any discussions with YOUNG were reported to the GS by the KLA soldiers. Also present in Kosovo, Francis LEDWIDGE, could only repeat rumours about the KLA leadership's alleged knowledge of what happened Rahovec/Orahovac.<sup>1726</sup> Despite suggesting the KLA was unwilling to cooperate on the missing Rahovec/Orahovac civilians,<sup>1727</sup> LEDWIDGE never actually met with any of the KLA leadership to discuss the issue. This claim arises merely from hearsay received from colleagues.<sup>1728</sup> LEDWIDGE never confronted any GS member with these rumours and had no first-hand knowledge of their attitude to events. Further, his purported identification of **KRASNIQI** at the detention facility in Malishevë/Mališevo was demonstrably and fundamentally flawed and, as he in essence conceded himself, was wholly unreliable.<sup>1729</sup> Further, when ABRAHAMS met with **THAÇI** and LIMAJ in October 1998, he did not discuss with them his report relating to KLA crimes against Serbian civilians at Rahovec/Orahovac.<sup>1730</sup>

640. The only evidence that Rahovec/Orahovac crimes were discussed with KLA senior leadership is OSCE staff raising it with DEMAÇI in December 1998.<sup>1731</sup> According to [REDACTED], DEMAÇI *"had no real power or influence within the*

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<sup>1725</sup> P00392\_AT/P00392, para.34.

<sup>1726</sup> P00232\_AT/P00232, pp.13-16; P00230\_AT/P00230, paras.15, 23, 35; P00233, para.26.

<sup>1727</sup> P00231\_AT/P00231, para.11; P00230\_AT/P00230, para.3; P00233, para.25; T.6030.16-21; T.6061.22-25; T.6133.2-3; T.6148.3-8.

<sup>1728</sup> P00233, para.25.

<sup>1729</sup> T.6172.1-6174.22; 4D00008, p.114335.

<sup>1730</sup> P00380; T.7586.22-7587.21.

<sup>1731</sup> P02902.

*KLA*,<sup>1732</sup> was never able to give her proper answers and referred her to other people for information.<sup>1733</sup> There is no evidence that *DEMAÇI* ever reported these conversations to *VESELI*, or anyone else on the GS.

641. Finally, the SPO suggests that allegations of civilian abductions were addressed during a meeting in Malishevë/Mališevo on 23 July 1998 between *VESELI*, *THAÇI* and representatives of the Austrian Embassy.<sup>1734</sup> Firstly, *KICKERT* was inconsistent about the date this meeting took place,<sup>1735</sup> thus rendering his evidence on the meeting's date unreliable. Regardless of the date, this meeting did not put *VESELI* or *THAÇI* on notice of alleged abductions and crimes committed at Rahovec/Orahovac. The Geneva Conventions were raised generally<sup>1736</sup> but no specific allegations were put to *VESELI* or *THAÇI* at this meeting. As no allegations were discussed with any specificity, this was insufficient to trigger any obligation to investigate, should the GS have had the power or means to do so at the time.
642. P00643 suggests that a GS meeting also occurred on 23 July 1998. P00643 is purportedly a handwritten note of this meeting, however no evidence was adduced of its author or provenance. According to the meeting note, "*the Rahovec case was discussed.*" The note reads in part:

The defensive point fell on group of saboteurs /illegible/ /missing...rizi/ was not able to hold it wit[h] a 12 mm /missing/ at the command level were the soldiers of "CELIKU" /?unit/.

In both places, namely Rahovec and H. Madhe, the instructions from the KLA GS/ General Staff/ were to not initiate an attack. The instructions of the GS /?were not/ considered and when entered GS was /?forced/ to take protective measures.

The role of the responsible persons has been withdrawn /illegible/ GS has decided to

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<sup>1732</sup> [REDACTED].

<sup>1733</sup> [REDACTED].

<sup>1734</sup> F00709/A01, para.382.

<sup>1735</sup> P01209\_ET, T.669.13-21, T.727.18-22, T.749.6-17; P01210\_AT/P01210, para.20; P01226, para.5; T.16211.22-16212.20.

<sup>1736</sup> P01210/P01210\_AT, para.26.

investigate these cases, but /illegible/ has prevented the work.<sup>1737</sup>

643. In context, the reference to ‘investigation’ clearly appears to relate to the decision to attack Rahovec/Orahovac itself. No abductions, detention, killings or other crimes are mentioned. There is no witness evidence regarding the detail or content of this discussion at this alleged meeting. There is no evidence the GS were aware at this stage of the alleged crimes.<sup>1738</sup>

644. There is no evidence **VESELI** was present at this meeting when these discussions took place or was informed about it after the fact.

#### 6. The GS failure to punish for Rahovec/Orahovac

645. ZYRAPI was unaware of any GS efforts at the time, nor subsequently, to investigate whether civilians were taken by the KLA at Rahovec/Orahovac. ZYRAPI explained that, although he could not speak for others, he personally did not have the capacity to carry out an investigation. He acknowledged that “*there are others and they should have carried out investigations*” but he did not know the extent to which GS members *could* have investigated the allegations at the time.<sup>1739</sup> ZYRAPI observed that the KLA was not organised enough at the time to carry out an investigation.<sup>1740</sup>

646. The KLA GS had no effective command and control at the time and therefore were unable to effectively investigate or punish events at Rahovec/Orahovac.<sup>1741</sup> The issue of failure to punish is dealt with further below.<sup>1742</sup>

647. The evidence adduced above does not advance the case against **VESELI**.

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<sup>1737</sup> P00643/P00643\_ET, p.SPOE00229213.

<sup>1738</sup> P01355.3\_ET, T.13.19-14.7.

<sup>1739</sup> P01355.3\_ET, T.17.10-17.

<sup>1740</sup> P01355.3\_ET, T.19.1-6.

<sup>1741</sup> See [Ch.IX.C.i.](#)

<sup>1742</sup> See [Ch.IX.C.iii.](#)

## B. Joint Criminal Enterprise (“JCE”)

648. VESELI is accused of entering and furthering a JCE to gain and exercise control over all of Kosovo by criminal means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be ‘Opponents.’<sup>1743</sup> The purpose of the alleged JCE (*i.e.*, to gain and exercise control over all of Kosovo), is not criminal, as there is no rule in international law prohibiting such an aim.<sup>1744</sup> What is alleged to be the criminal aspect of the agreement is the **means by which** that alleged goal was to be achieved. It is insufficient for the SPO to prove that VESELI shared in a common plan to exercise control over Kosovo. It must prove to the criminal standard that VESELI entered into an agreement to do so by the specific criminal means enumerated in the Indictment. The SPO has failed to do so.

649. Under scrutiny, the central allegation against VESELI collapses. The SPO has not proved each of the mental, objective and conduct elements of the alleged JCE. Instead, it has sought to mask these shortcomings by portraying legitimate military and defensive actions as unlawful. It is not a crime to have joined, developed and fought in the KLA. The Panel must exercise caution not to conflate the lawful goal of the KLA with the alleged common criminal purpose, as the SPO has regularly done.

### *i. Jurisdiction over JCE III*

650. It would be unlawful to apply JCE III in this case as it cannot be derived from customary international law (“CIL”) at the time of the allegations.<sup>1745</sup> Even if CIL included JCE III, it would not have been sufficiently foreseeable to the

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<sup>1743</sup> F00999/A01, para.32.

<sup>1744</sup> SCSL-2004-15-AR72(E)/SCSL-2004-16-AR72(E), [AC Decision](#), 13 March 2004, para.20, referring to MN. Shaw, *International Law*, CUP (2003), p.1040.

<sup>1745</sup> F00223, Preliminary motion of the Defence of Kadri Veseli to Challenge the Jurisdiction of the KSC, 15 March 2021, paras.98-105.

Accused and, therefore, cannot be relied upon without violating Article 33 of the Kosovo Constitution<sup>1746</sup> and Article 7 ECHR.<sup>1747</sup>

651. JCE III did not exist in CIL:

- a. The fact that JCE is not included in Article 16 of the KSC Law weighs heavily in favour of the conclusion that it was never intended to apply at the KSC.
- b. Jurisprudence invoked by the STL in endorsing JCE III under CIL<sup>1748</sup> does not assist as those cases do not align with JCE III.<sup>1749</sup>
- c. The doctrine of JCE III applied by the KSC<sup>1750</sup> arises from *Tadic*,<sup>1751</sup> which has been widely criticised.<sup>1752</sup>
- d. The ECCC held that *Tadic* wrongly concluded JCE III had a basis in CIL as: (i) the international legal instruments relied on did not recognise JCE III; (ii) the international cases relied upon were not based on JCE III; and (iii) domestic cases from post-war Italy were not relevant.<sup>1753</sup>

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<sup>1746</sup> [Constitution of the Republic of Kosovo](#), 2020, Article.33.

<sup>1747</sup> [European Convention on Human Rights](#), 1950, Article.7.

<sup>1748</sup> STL-11-01/I, [AC Decision](#), 16 February 2011, fn.355.

<sup>1749</sup> See 002/19-09-2007/ECCC/TC, [TC Decision](#), 12 September 2011, paras.34-35.

<sup>1750</sup> F00412, Decision on Motions Challenging the Jurisdiction, 22 July 2021, paras.186-190; IA009/F00030, Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction", 23 December 2021, paras.173-196.

<sup>1751</sup> IT-94-1-A, [AJ](#), paras.207-220.

<sup>1752</sup> Guénaél Mettraux, *International Crimes and the Ad Hoc Tribunals*, OUP (2006); Marco Sassòli and Laura M. Olson, "[The Judgment of the ICTY Appeals Chamber on the Merits in the Tadic Case](#)", IRRC (2000); Kai Ambos, "[Joint Criminal Enterprise and Command Responsibility](#)", JICJ (2007).

<sup>1753</sup> 002/19-09-2007-ECCC/OCIJ (PTC38), [PTC Decision](#), 20 May 2010, para.78-82.

- e. JCE III has no basis in general principles of domestic law,<sup>1754</sup> as there exists “*considerable divergence of approach between various national jurisdictions.*”<sup>1755</sup>

652. JCE III was not sufficiently foreseeable:

- a. The Accused could not know from the wording of the relevant provision, and if need be, with the assistance of the courts’ interpretation and with informed legal advice, what acts and omissions would make them criminally liable under JCE III.<sup>1756</sup>
- b. The jurisprudence relied upon was inaccessible and there is no evidence of its publication, translation, legal education or practice in Kosovo or Serbia.<sup>1757</sup>
- c. It was not until the ICTY’s *Tadić* Decision in July 1999, that JCE was confirmed to be a form of liability under CIL.
- d. *Furundžija*<sup>1758</sup> used JCE and co-perpetration interchangeably and was delivered many months after the start of the Indictment Period during an ongoing conflict.

653. Foreseeability did not arise from domestic law as Article 26 of the SFRY Code differs from JCE III both in *actus reus* and *mens rea*. It does assist to read Article 26 alongside other provisions.<sup>1759</sup>

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<sup>1754</sup> IT-94-1-A, [AJ](#), para.225.

<sup>1755</sup> 002/19-09-2007/ECCC/TC, [TC Decision](#), 12 September 2011, para.37.

<sup>1756</sup> F00412, fn.418 citing [S.W. v. the United Kingdom](#), para.35; [Cantoni v. France](#), para.29; [Vasiliauskas v. Lithuania](#), para.154.

<sup>1757</sup> See [Korbely v. Hungary](#), para.75.

<sup>1758</sup> IT-95-17/1-T, [TJ](#), paras.210-216, 249.

<sup>1759</sup> IA009/F00030, para.222.

ii. *Intent*

654. The SPO argues that the Accused's statements and deliberate and longstanding participation in the formulation, dissemination, enforcement, and implementation of the common criminal plan demonstrates that they shared in its purpose, intended to commit the charged crimes, and knew that they were being committed.<sup>1760</sup> In the SPO's PTB, there is no attempt to meaningfully distinguish **VESELI** from his co-Accused or identify evidence specific to him capable of proving the requisite intent.
655. Under JCE I liability *"the perpetrator must share the intent with the other participants to carry out the crimes forming part of the common purpose, including any special intent."*<sup>1761</sup> Proof is required that *"the JCE participants, including the Accused, had a common state of mind, namely the state of mind that the statutory crime(s) forming part of the objective should be carried out."*<sup>1762</sup> It must be proven that **VESELI** both intended the commission of the alleged crimes and intended to participate in a common plan aimed at their commission. In this case, that includes but is not limited to murderous intent. The SPO incorrectly articulates the intent required to found a conviction for JCE I in the PTB. The SPO must prove beyond doubt not just intent to achieve the common purpose, but intent to do so by criminal means.
656. **VESELI** has made no statements capable of demonstrating any criminal intent, during the Indictment Period, or at all. Throughout his KLA membership, **VESELI** did not issue any orders, make any written or oral statements, nor appear in the media. The only statements attributable to **VESELI** in evidence were made post-war and consist of interviews given as a KLA veteran or

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<sup>1760</sup> F00709/A01, para.11.

<sup>1761</sup> KSC-BC-2020-04/F00847/RED, para.1002.

<sup>1762</sup> IT-00-39-A, [AL](#) para.707.

politician, or evidence in criminal proceedings.<sup>1763</sup> Nothing **VESELI** said indicates intent or agreement to criminally exercise control over Kosovo or torture or murder civilians.

657. The SPO alleges that the ‘Opponents’ policy and concept of ‘special warfare’ were expressed, *inter alia*, through communiqués, political declarations and statements authored, approved, and controlled by the GS and PGoK leadership.<sup>1764</sup> The Panel cannot impute the statements of others to **VESELI**. As outlined above,<sup>1765</sup> the GS did not speak or act with one voice. There was no shared criminal intent – organisational or personal. There was no system in place for absent GS members to feed into the decision-making process, nor was there a procedure to inform them of decisions after the fact. There is no evidence **VESELI** was consulted about any public statement made, or communiqués, issued by any KLA member in advance or after the fact. No statements of GS members can be attributed to **VESELI**, as there is no evidence they were made with his consent, connivance or approval. Further, absent evidence that **VESELI** belonged to any functioning chain of command, statements by intelligence personnel, JCE members, or alleged tools cannot be fairly attributed to him. No one can fairly be said to have acted or spoken as his agent or upon his authority.

658. As set out above,<sup>1766</sup> **VESELI** played no role in the formulation or dissemination of communiqués or political declarations. There is no evidence he ever saw, fed into, approved, discussed, controlled or ever knew about these documents during the Indictment Period. There is no evidence he shared the intent of the

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<sup>1763</sup> See e.g., P00787; P00788/P00788\_ET; P00789/P00789\_ET; P00790/P00790\_ET; P01859/P01859\_ET.2.

<sup>1764</sup> F00709/A01, para.18.

<sup>1765</sup> See [Ch.VI.A-D.](#)

<sup>1766</sup> See [Ch.VI.L.](#)

drafter and, considering the evidence as outlined above, no reasonable inference can be drawn that he did.

659. The assertion that such documents were prepared based on information received from the KLA's intelligence services, has not been proved.<sup>1767</sup> The SPO's sources for this allegation cannot satisfy the criminal standard. The SPO never identified who it suggests may be responsible for creating these documents and has not proved that intelligence personnel did in fact provide information for these publications – the authenticity and reliability of which is seriously in doubt. There is no evidence **VESELI** personally provided such information, was made aware of such information, ordered such information to be provided, or was in command and control of anyone who did.
660. Likewise, the SPO's case that the Political Directorate had responsibility for KLA policy,<sup>1768</sup> which it alleges is demonstrative of **VESELI's** intent, falls flat as the SPO failed to show **VESELI** was a member of this Directorate.<sup>1769</sup> There is no evidence of **VESELI** playing any role in the formulation or implementation of KLA policy at any time.
661. Just as there is nothing **VESELI** said capable of proving criminal intent, there is nothing **VESELI** did that is indicative of the requisite criminal intent.<sup>1770</sup> Contrary to the SPO's hyper-generalised allegations, throughout the course of trial, it failed to prove that **VESELI** participated in the formulation, dissemination, enforcement, and implementation of a plan to harm civilians.
662. As noted above, the alleged common purpose is not criminal. Acts in furtherance of gaining and exercising control over all of Kosovo are not

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<sup>1767</sup> See [Ch.V.C.](#)

<sup>1768</sup> F00709/A01, para.18.

<sup>1769</sup> See [Ch.VI.A](#), para.298.

<sup>1770</sup> See [Ch.IX.B.v.3.](#)

necessarily acts in furtherance of the JCE. To be probative of the JCE the SPO must prove that **VESELI** acted with the intention of furthering the alleged common purpose by criminal means. While his actions were in support of the KLA and its aims, no evidence demonstrates his intent to commit crimes.

663. **VESELI** must be given separate consideration from the co-Accused, other KLA members and the GS as a whole. There cannot be guilt by association. As *Milutinović* made clear, it remains possible to be at the highest levels of an organisational structure and adjacent to criminality but not be party to it.<sup>1771</sup> Proximity to criminality is insufficient. The SPO consistently, lazily and improperly merges its cases as against all the Accused and the GS or KLA as a whole – making many similar, if not the same, allegations against all Accused when it comes to the alleged JCE.<sup>1772</sup> The Panel is obliged to look past these broad, generalised assertions to the specific evidence against **VESELI**. When properly analysed, **VESELI** did not say or do anything from which it can be reasonably inferred that he had the requisite criminal intent required for JCE I. The SPO has failed to prove to the criminal standard that **VESELI** directly participated in any crimes. Absent such proof, **VESELI** is legally entitled to the presumption that his intention throughout the conflict, and in his role on the GS, was a lawful one.
664. **VESELI**'s proven actions during the Indictment Period are wholly consistent with his true intent: Kosovo's liberation from Serbian forces. His role in the FARK agreement and presence at Rambouillet demonstrate that he sought to do so by cooperative and diplomatic means.<sup>1773</sup> His absence from Kosovo and from participation in either the GS's day-to-day functioning or the nascent intelligence structures, coupled with his lack of authority over any KLA

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<sup>1771</sup> IT-05-87-T, [TJ Vol III](#), paras.271-276.

<sup>1772</sup> See [Ch.IX.B.v.1.](#)

<sup>1773</sup> See [Ch.VII.A.](#)

soldiers, underlines the complete absence of intent that such structures be used to commit crimes. Where an Accused's actions are equally consistent with an innocent alternative explanation – as they are here – they are entitled to the benefit of that inference.<sup>1774</sup>

iii. *Knowledge*

665. To prove intent, the SPO relies heavily on alleged knowledge of crimes. Firstly, even if the SPO proved **VESELI**'s knowledge of crimes being committed, this would be insufficient to show that he shared in any intent to commit them. Whether knowledge of the commission of past crimes demonstrates *mens rea* will depend on the circumstances of the particular case.<sup>1775</sup> Knowledge is only relevant to intent when combined with other persuasive evidence. For example, in *Krajišnik*, the Trial Chamber found the information that the accused received was an important element for determining his responsibility because knowledge combined with continuing participation could be conclusive of intent.<sup>1776</sup> In contrast, in *Milutinović*, where the accused was informed about the commission of crimes, but was also informed either that crimes were being addressed, or that the information was not reliable, notice of crimes did *not* give rise to intent.<sup>1777</sup>

666. Knowledge of one Accused, GS or JCE member cannot properly be imputed to **VESELI**. The SPO improperly places an emphasis on "*the circumstances in which the policy against Opponents was being implemented.*"<sup>1778</sup> However, **VESELI**'s knowledge or otherwise of these circumstances are not relevant to showing that he shared a criminal intent to commit crimes. The SPO has not proven these alleged circumstances to be true, for example **VESELI** clearly did not have

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<sup>1774</sup> See [Ch.II.A.](#)

<sup>1775</sup> IT-05-87-A, [AJ](#), para.1470.

<sup>1776</sup> IT-00-39-T, [TJ](#), para.890.

<sup>1777</sup> IT-05-87-T, [TJ Vol III](#), para.276.

<sup>1778</sup> F00709/A01, para.12.

access to “communications and reporting structures, which enabled regular communication with the zones and subordinate units, including those that were committing the crimes.”<sup>1779</sup>

667. Further, the SPO has failed to prove that the GS’ failure to define the term ‘collaborator’ was criminally motivated. There is no evidence that the GS or **VESELI** ever believed the term ‘collaborator’ was widely understood to mean civilians who did not pose a legitimate security threat – and the evidence does not support this. Even if the term’s meaning was unclear, knowledge or suspicion of this does not show criminal intent – unless the SPO proves that **VESELI** exploited it for criminal purposes, which it has not. For the lack of a clear definition of collaborator to be relevant to **VESELI**’s foreseeability, he would need to have, first, understood the term’s usage in KLA documents to be a call to target civilians unlawfully, and second, intended for this to occur. The SPO has failed to prove **VESELI** had either this understanding or intent. In relation to the lack of any formal or institutionalised process to identify collaborators, as set out above, efforts were made throughout the conflict to establish a military court, with a view to establishing processes to do so. However, given the exigencies of the conflict, this never fully came to fruition.<sup>1780</sup>

668. The SPO also claims that **VESELI** and other GS members were informed of crimes against ‘Opponents’ from multiple sources, including through subordinate commands, the media and internationals in Kosovo.<sup>1781</sup> However, there is no evidence **VESELI** was ever informed of crimes by subordinates. While it is regularly mentioned, no evidence has ever been adduced as to the extent of the availability or circulation of Albanian (or other) language print or

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<sup>1779</sup> F00709/A01, para.12; See [Ch.VI.E-F](#).

<sup>1780</sup> See [Ch.VI.J](#).

<sup>1781</sup> F00709/A01, para.13.

television media at the time in Kosovo or abroad, in a pre-internet era. Without such evidence, no reliable conclusions can be drawn about VESELI's media access or coverage of the alleged crimes during the Indictment Period. The SPO has failed to adduce proof that the crimes on the Indictment were covered by media sources available at the time to VESELI, neither where he was during the conflict, nor in a language he understood. There is no evidence that the KLA had access to imported copies of Wall Street Journal articles published in English in the USA from their mountain hideaways or elsewhere during the war.<sup>1782</sup>

669. The only meeting with internationals that VESELI is alleged to have participated in, said to be relevant to notice, is a meeting with KICKERT in July 1998. While the date of the relevant meeting is disputed, at its highest KICKERT'S evidence is that in the meeting was convened "*to explore whether KLA structures, higher KLA structures were willing to engage in a political process.*"<sup>1783</sup> KICKERT mentioned the Geneva Convention obligations because there had been allegations, mostly in the Serb press, about the KLA taking prisoners.<sup>1784</sup> Specific allegations of KLA criminality were not raised.<sup>1785</sup> Generic Serbian media allegations mentioned during this conversation cannot amount to notice of crimes. The Serbian State and media notoriously published false accusations against the KLA; such reporting is insufficient to provide notice.<sup>1786</sup>

*iv. Foreseeability*

670. JCE III differs from JCE I only in terms of *mens rea*. A person is liable under JCE III not only for crimes that were intended but also for those that were a natural

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<sup>1782</sup> See also P01069, p.075334.

<sup>1783</sup> T.16131.3-5.

<sup>1784</sup> P01210\_AT/P01210, para.26.

<sup>1785</sup> P01210\_AT/P01210, para.27; T.16317.15-20.

<sup>1786</sup> T.6175.17-22; T.26541.10-12.

and foreseeable consequence of the common purpose.<sup>1787</sup> Thus, liability attaches if: (i) an accused intentionally entered into the alleged common criminal purpose with the intention for it be achieved by the enumerated criminal means, as per JCE I (ii) the commission of crimes outside of the common purpose was a natural and foreseeable consequence of the JCE's execution; and (iii) the accused willingly took that risk.<sup>1788</sup>

671. JCE III requires that the possibility of a crime being committed is "*sufficiently substantial as to be foreseeable to an accused.*"<sup>1789</sup> What is natural and foreseeable is subjective, insofar as what is foreseeable to one person participating in a JCE, might not be natural and foreseeable to another, depending on the information available to them.<sup>1790</sup> Implausibly remote scenarios are not sufficient.<sup>1791</sup> It is not a negligence standard.<sup>1792</sup>
672. The SPO pleads that **all** crimes alleged in the Indictment were – if not intended – foreseeable to **VESELI**.<sup>1793</sup> Neither the nature of the crimes, the circumstances in which they allegedly occurred, nor **VESELI**'s role support this conclusion.
673. The crimes themselves are unconnected. The only common thread is that many involve crimes against civilians. In numerous instances, individuals have already been prosecuted for these crimes on indictments that charged only local level or – at the highest – zone level commanders.<sup>1794</sup> Higher level members of the KLA were not prosecuted. The evidence from those cases, which now forms part of the record, demonstrates that it was not legally feasible to lay responsibility for those crimes – often committed for personal motives entirely

<sup>1787</sup> IT-97-24-A, [AJ](#), para.65; IT-99-36-A, [AJ](#), para.411; IT-94-1-A, [AJ](#), para.204.

<sup>1788</sup> IT-97-24-A, [AJ](#), para.65; IT-99-36-A, [AJ](#), para.411; IT-94-1-A, [AJ](#), para.204.

<sup>1789</sup> IT-95-5/18-AR72.4, [AC Decision](#), 25 June 2009, para.18.

<sup>1790</sup> IT-98-30/1-A, [AJ](#), para.86.

<sup>1791</sup> IT-95-5/18-AR72.4, [AC Decision](#), 25 June 2009, para.18.

<sup>1792</sup> IT-94-1-A, [AJ](#), para.220; IT-97-24-A, [AJ](#), paras.99–103.

<sup>1793</sup> F00999/A01, para.34.

<sup>1794</sup> See *Prosecutor v. Dema et al.*, P. No. 215/04, TJ; T.25013.13-25014.8.

unconnected to the armed conflict – at the feet of anyone on the GS because there was no evidential link to the GS or other higher officers, other than those who were prosecuted previously.

674. The SPO invites the Trial Panel to draw a guilty inference against **VESELI** for taking up a role in the GS, knowing that recruits were often untrained and lacked military experience which the SPO argues made it foreseeable to **VESELI** that crimes would be committed.<sup>1795</sup> There was no reason for **VESELI** to believe that the lack of experience of KLA volunteers would make it more likely that crimes would be committed. The SPO has shown no causal link between the fact that volunteers were untrained and the crimes. It has not proved that the lack of training in any way impacted on the nature or rate of crimes that occurred in Kosovo. Accordingly, knowledge of soldiers being untrained is entirely irrelevant.
675. In February 1998, the Serbian armed forces began their crackdown on the KLA and the civilian population who supported them.<sup>1796</sup> Villagers organised themselves into local guards and volunteers flooded in from the diaspora.<sup>1797</sup> Attempts by those on the GS to organise volunteers into a force that could fight back against the Milosevic regime were not criminal but grounded in the right to self-defence and self-determination. Local commanders, former JNA officers, and GS members did their utmost under extremely difficult circumstances to prepare this volunteer army to face their adversary.<sup>1798</sup> The KLA as an organisation was not unlawful; loyalty to the KLA was not criminal.<sup>1799</sup> The SPO speculates that these conditions made the commission of crimes against

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<sup>1795</sup> F00709/A01, para.12.

<sup>1796</sup> F01534/A01, No.24, 30, 32, 34.

<sup>1797</sup> F01536/A01, No.766, 767.

<sup>1798</sup> See [Ch.IV.C.](#)

<sup>1799</sup> IT-05-87-T, [TJ Vol III](#), para.275.

civilians and fellow Kosovars foreseeable but has provided no evidence to prove that theory.

676. In order to secure a conviction for JCE, the SPO not only needs to prove that there was a risk that the crimes would be committed but that already having entered into the alleged criminal purpose, the Accused went on to willingly take that risk.
677. **VESELI**'s specific role within the KLA meant that he was mostly abroad and not in contact with those inside Kosovo. It is not an accused's *de jure* role, but rather his *de facto* role which is significant to his ability to foresee the commission of crimes.<sup>1800</sup> **VESELI** was ostensibly responsible for the GS's intelligence function from November 1998 – however he left the country immediately afterwards, never had a deputy within Kosovo, never gave any orders, never received reports from intelligence or other units on the ground, participated in virtually no GS meetings, and was rarely present in the OZ's outside of Pashtrik.<sup>1801</sup> There is sparse evidence of his whereabouts during the summer months and none that could conceivably place him on notice regarding the foreseeability of crimes. It is noted that the events of Rahovec/Orahovec were themselves unique and unforeseeable, and nothing like this ever occurred again throughout the remainder of the conflict.
678. The evidence shows that many crimes were personally motivated, and as such could not possibly have been foreseeable to the Accused.<sup>1802</sup> Accordingly, the SPO has failed to demonstrate that any of the crimes were foreseeable to

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<sup>1800</sup> IT-05-87-T, [II Vol III](#), para.275.

<sup>1801</sup> See [Ch.VII.B](#), para.530.

<sup>1802</sup> See, e.g., T.15371.9-20; T.20478.2-5; T.10754.20-10755.23; [REDACTED]; T.28144.8; T.13898.14-13899.1; T.12123.18-20; T.9379.2-3; T.4946.6-4947.2.

VESELI or that he knowingly assumed the risk of such crimes being committed.

*v. Objective elements*

1. Plurality of Persons

679. The indicted JCE is unreasonably and impracticably broad, such that it possibly encapsulates all KLA soldiers either as members or tools, and all crimes ever committed in Kosovo throughout the conflict and beyond. The reasoning behind the JCE's scope was never explained or justified. This is the widest possible JCE imaginable. The SPO has misused the notion of tools to include any and every perpetrator and crime, regardless the location, motive or type of crime, into the JCE. That is not what the law of JCE intends and is not a basis upon which to found any lawful conviction under this mode of liability.
680. The named members of the JCE comprise SYLA, BRAHIMAJ, LIMAJ, Sylejman SELIMI, MUSTAFA, BUJA, GASHI and GECI.<sup>1803</sup> This list arbitrarily comprises three GS members, three OZ commanders, the head of Llap OZ intelligence and GECI – a law unto himself. The SPO never explained its apparently random selection of JCE members, nor explained how or why only **part** of the GS and OZs are said to be party to this common plan – bizarrely calling three as witnesses of truth and failing to put their case to them. To date the SPO has never articulated the aspects of their evidence upon which it relies.<sup>1804</sup>
681. Instead of formulating the JCE based on a careful analysis of the evidence, the SPO decided to target perceived low-hanging fruit and focus the JCE on those KLA members who largely were subject to prior prosecutions for war

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<sup>1803</sup> F00999/A01, para.35.

<sup>1804</sup> See [Ch.II.C.iv.](#)

crimes.<sup>1805</sup> This at a superficial level may have made the SPO's life easier, as the evidence concerning those persons had already been gathered, the witnesses identified and facts found by other tribunals. However, the SPO overlooked a critical flaw in this approach – the lack of any reliable evidential connection between **VESELI**, these men and their alleged actions.

682. There is also a dishonesty in the way the SPO has approached prior proceedings. Many prior proceedings concerning Kosovo, either at UNMIK or the ICTY, were prosecuted on a *local* JCE basis.<sup>1806</sup> Seeking to scoop up the entire evidential matrix of those cases and relitigate them in this trial under the guise of a different but allegedly simultaneous JCE is wrong in principle and fact. Many convictions were founded on the existence of local JCEs. Many acquittals were based on the absence of a local JCE. The JCE as alleged in this case did not exist; this case remains an attempt to override everything that has gone before and rewrite history with a fanciful overarching JCE alleged to have existed throughout the conflict that no law enforcement body ever noticed before. It is also an express attempt to relitigate the guilt or innocence of others whose proceedings have lawfully concluded and as such teeters on the edge of *autrefois* and risks undermining prior proceedings.

683. **VESELI**'s complete absence from the country and from the witness testimony and documents in those cases and the present, cannot have escaped the attention of the SPO as a fatal barrier to his conviction. However instead of being guided by the evidence, which shows no connection between **VESELI** and the JCE, the SPO has sought to fill the evidential hole against **VESELI** by naming GASHI and GECI as JCE members. It can safely be assumed that

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<sup>1805</sup> See T.11168.20-24; T.25013.13-25014.8; T.5471.20-21; T.5545.25-5546.3; T.5558.4; T.5962.18-19; T.12080.9-17; T.12132.1-11; T.5061.11-18; T.5083.10-13; [REDACTED]; T.23792.19-23793.14; T.25157.18-25158.3; also IT-03-66-T, [TJ](#); IT-04-84-T, [TJ](#).

<sup>1806</sup> See *Prosecutor v. Gashi et al.*, C. No.425/2001, [TJ](#); *Prosecutor v. Krasniqi et al.*, Ap.-Kz No. 371/2008, TJ; *Prosecutor v. Dema et al.*, P. No.215/04, TJ; *Prosecutor v. Krasniqi et al.*, P. No.184/15, [TJ](#).

GASHI and GECI, the only named JCE members not in command roles, were only named in a misguided attempt to wrongly connect **VESELI** to the alleged JCE, as both men were previously prosecuted for war crimes and both are alleged to have an intelligence connection or role. However, the evidence has proven that GASHI and GECI had no connection to the GS or **VESELI**.<sup>1807</sup> The only evidence connecting GECI and **VESELI** stems from the wholly unreliable [REDACTED], the untested evidence of **SELIMI**, and Sylejman SELIMI whose evidence cannot be considered probative of the matter considering the caveats he provided to his account in evidence.<sup>1808</sup> There is no evidence whatsoever of any connection between GASHI and **VESELI**. The Panel should look unfavourably on the SPO's improper attempts to create non-existent connections and make determinations based on the evidence alone.

684. Little evidence has been adduced about the roles of SYLA, BRAHIMAJ and LIMAJ within the GS, or their connection or lack thereof, to **VESELI**. There is insufficient evidence that **VESELI** ever had any meaningful dealings with them during the conflict. As outlined above, at its highest, they came together at milestone events during which there is no evidence whatsoever of any discussions relating to crimes.<sup>1809</sup>

685. In another unsuccessful attempt to plug evidential holes in the case against **VESELI**, the SPO relies on **THAÇI** and **VESELI**'s personal relationship. Despite inferences that the SPO would have the Panel draw regarding **VESELI** and **THAÇI**'s "particularly close" relationship, the underlying evidence lacks

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<sup>1807</sup> See [Ch.V.E, H](#) and [I](#).

<sup>1808</sup> See [Ch.V.I](#).

<sup>1809</sup> See P01264/P01264\_ET, p.SPOE00128621; T.16645.16-19; 4D00011/4D00011\_ET; T.17395.23-17396.7; P00227/P00227\_ET.

specificity<sup>1810</sup> amounting to vague assumptions without any solid foundation.<sup>1811</sup>

686. The suggestion that **VESELI** and **THAÇI** acted together and that **THAÇI** shared information with **VESELI** comes only from the unreliable and untested evidence of a co-Accused and is not supported by other evidence.<sup>1812</sup> It cannot ground any finding against **VESELI**. Regardless, a personal relationship is not evidence of intent or participation in a JCE; no reasonable inferences can be drawn from it.
687. The SPO's suggestion that the Accused enjoyed a high level of prestige among KLA commanders and soldiers<sup>1813</sup> is not made out when it comes to **VESELI**. To the contrary, the evidence shows that KLA members did not know who **VESELI** was, including his real name or position, throughout most of the conflict.<sup>1814</sup>
688. The evidence of **VESELI**'s dealings, or lack thereof, with **SELIMI** and **KRASNIQI** is negligible. Both were based in Kosovo throughout the conflict, whereas **VESELI** was absent. **VESELI**'s interactions with them were limited to isolated GS meetings.<sup>1815</sup>
689. The GS was not a criminal enterprise, nor was the KLA; equally membership of either was not criminal.

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<sup>1810</sup> See P00787, p.SITF00009125.

<sup>1811</sup> P00763.5\_ET, T.1.14-22, T.8.17-9.12; P00761.7\_ET, T.10.25-11.15.

<sup>1812</sup> P00763.5\_ET, T.8.25-9.12. See also [Ch.II.C.ii](#).

<sup>1813</sup> F00709/A01, para.92.

<sup>1814</sup> See P01827.4\_ET, T.5.22-6.6; T.19919.3-9; T.15229.19-15230.3.

<sup>1815</sup> P01264\_ET, p.SPOE00128621; T.16645.16-19; 4D00011/4D00011\_ET; T.17395.23-17396.7; P00227/P00227\_ET.

## 2. Criminal Purpose

690. The SPO has failed to prove the existence of an overarching common criminal purpose within the KLA.
691. The crimes on the Indictment were not committed according to the alleged common criminal purpose, or at the instigation of the JCE members through tools on the ground, but in a random and un-orchestrated manner by individuals associated with the KLA or purporting to be KLA – often as part of narrow localised common enterprises or for personal motives completely unconnected to the KLA or the war. Considering the disparate nature of the crimes and the lack of any functioning command and control within the KLA, the crimes cannot be found to form part of a common identifiable pattern. As in all wars, crimes were committed. That does not mean, nor has it been shown, that they were committed pursuant to a grand overarching JCE. No direct evidence supports the existence of an agreement. There is no evidence of anyone discussing such an agreement or recruitment into the agreement.
692. The SPO has not stated how the Panel should differentiate those who joined the KLA and shared in the lawful intent to secure control of Kosovo from Serbian forces, versus those who shared that same intent but also an additional criminal intent of doing so by criminal means. The SPO's failure to state its case, explain the cherry picking of JCE members, or justify the arbitrary division of the KLA into criminal and non-criminal at both GS and OZ command level, strikes at the case's core and exposes fatal defects in the alleged JCE. The SPO presents no more than the bare assertion that certain GS or KLA members shared the common purpose; no valid evidential or logical basis has been provided justifying their case against **VESELI**, as compared to other GS members not in the alleged JCE. The case against him therefore fails.

(a) 'Opponents'

693. The SPO alleges that VESELI pursued a common criminal purpose involving crimes against 'Opponents,' defined as those:

(a) collaborating or associating with FRY forces or officials of state institutions or (b) otherwise not supporting the aims or means of the KLA and later the PGoK, including persons associated with the Democratic League of Kosovo ('LDK') and persons of Serb, Roma, and other ethnicities (collectively, 'Opponents').<sup>1816</sup>

694. The SPO uses the term 'Opponents' throughout its PTB, as opposed to the constituent parts of the group, and that practice continued through trial. This approach is problematic for several reasons.

695. The SPO regularly uses the term 'Opponents' when the evidence or incident in question only concerns one of the component parts of the group. This leads to confusion as to which group of 'Opponents' is at issue and often creates a false impression that evidence is more incriminating than it is. For example, the SPO alleges that "*regulatory directions for dealing with Opponents were also given.*"<sup>1817</sup> However, there is no evidence that 'regulatory directions' ever concerned civilians; they only concerned collaborators, one constituent part of the group. Nor do they reflect a discriminatory bias based on ethnicity.

696. By repeatedly using the term 'Opponent' when the evidence or allegation only in fact concerns collaborators, which is often the case, the SPO blurs the nature of the evidence. In doing so, the SPO deflects attention away from the fact that many steps the KLA took to deal with collaborators were *per se* lawful and in pursuit of neutralising legitimate security risks. By repeatedly referencing KLA actions against 'Opponents,' the SPO conflates KLA lawful intentions and actions aimed at protecting itself from legitimate security threats, and the criminal targeting of civilians.

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<sup>1816</sup> F00709/A01, para.2.

<sup>1817</sup> F00709/A01, para.74.

697. The blanket use of the term ‘Opponents’ also appears to be constantly deployed to cover up serious deficiencies in the SPO’s case. There was no KLA policy to target civilians, be they Serb, Roma, and “other ethnicities.” An analysis of any KLA rules, regulations, public statements or communiqués does not disclose any such policy against civilians.<sup>1818</sup> Neither the frequency nor the circumstances attendant to the alleged crimes against these different categories of civilians evidences a KLA policy against any civilian group at any time.
698. The SPO made no attempt to define which victims were targeted due to their “other ethnicity” nor provide proof of any KLA policy against them. This is simply an example of the SPO carelessly broadening allegations to make the JCE objectionably wide so that it is possible to cover every possible crime attributable to a KLA soldier during the war. The SPO makes assertions such as, “[f]rom the outset, the aggressive and public targeting of perceived collaborators, traitors, and other Opponents considered to be undermining the KLA or its liberation war, was a central focus for the KLA leadership;”<sup>1819</sup> however it has not been shown that that this was the case with civilians, of any ethnicity.

*i. LDK*

699. The SPO has not proven that there was any KLA policy against persons associated with the LDK.<sup>1820</sup> The evidence illustrates that any animosity towards those associated with the LDK was individualised, and in no way indicative of a broader policy in furtherance of a JCE. While political tensions and rivalry existed,<sup>1821</sup> such are commonplace. There was simply no common criminal plan by the KLA to target those associated with the LDK.<sup>1822</sup> The evidence demonstrates that in fact the opposite was true – that the KLA

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<sup>1818</sup> See [Ch.VI.I](#) and [L.](#)

<sup>1819</sup> F00709/A01, para.5.

<sup>1820</sup> F00709/A01, para.2.

<sup>1821</sup> T.16333.9.

<sup>1822</sup> T.3156.11-21; T.22759.25-22760.4. See also T.16552.18-24; T.17788.20-17789.9.

welcomed LDK members and they joined the KLA in large numbers; many high-ranking KLA members were LDK.<sup>1823</sup> ZYRAPI explained that 80% of the KLA had belonged to the LDK<sup>1824</sup> and witnesses testified to positive relations between the KLA and LDK.<sup>1825</sup>

700. The SPO alleges a policy concerning ‘Opponents,’ including the LDK, was expressed through communiqués,<sup>1826</sup> by references to the ‘pacifist movement.’<sup>1827</sup> Communiqués were a tool of exaggerated wartime propaganda and are unreliable as evidence against VESELI.<sup>1828</sup> Absent corroboration, fleeting references to the ‘pacifist movement’ are not indicative of criminal intent nor of any widespread targeted plan of persecution against the LDK.

701. The evidence does not show that persons were targeted *because* they were LDK.<sup>1829</sup> The SPO has attempted to frame singular incidents concerning individuals associated with the LDK under a guise of an overarching common plan of persecution against political opponents. This is particularly true of the incident concerning thirteen parliamentary delegation members in Qirez/Ćirez in September 1998. This singular incident is in no way indicative of a larger common plan to target the LDK or other political parties and must be viewed in isolation. While personal animosities may have motivated individual actors, a thorough analysis of the evidence reveals that there was no common KLA or GS plan or policy against the LDK. The Panel must be cautious in analysing such evidence.

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<sup>1823</sup> T.7812.9-7814.9; T.7833.22-7834.2; T.20792.12-16; T.23226.22-25.; T.17784.6-17786.21; P01355.10\_ET, T.30.8; T.17787.20-17788.6; T.16332.14-25.

<sup>1824</sup> P01355.10\_ET, T.30.3-4.

<sup>1825</sup> T.25852.24-25853.3; P01355.10\_ET, T.30.6-7; T.19867.3-10.

<sup>1826</sup> F00709/A01, para.18.

<sup>1827</sup> F00709/A01, paras.28, 43, 69.

<sup>1828</sup> See [Ch.VII.L](#).

<sup>1829</sup> See T.7084.8-7085.19; T.7244.22-25; T.25431.17-24; [REDACTED]; [REDACTED]; T.3156.11-21.

702. There is no evidence VESELI held any animosity towards the LDK; the opposite is in fact true.<sup>1830</sup> There equally is no evidence he ever knew about or supported others in any anti-LDK sentiment within the GS or the KLA.

*ii. Serb and Roma civilians*

703. The SPO has not proved that there was a KLA policy against Serbian civilians. Events at Rahovec<sup>1831</sup> were an aberration; the attack was not planned, foreseeable or attributable to the anyone other than the direct perpetrators. Such events were never repeated. The spate of revenge attacks in June 1999 after the returning influx of thousands of refugees, accompanied across the borders by foreign criminal factions,<sup>1832</sup> were random, spontaneous and not directed or attributable to anyone within the KLA hierarchy. Other crimes against Serbian civilians on the Indictment are insufficient in scale or number to support the proposition there was in existence a broader KLA policy emanating from the GS to target Serb civilians. No KLA public statement or communiqué supports such a proposition, nor are there any orders or regulations calling for the targeting of Serbian – or any other – civilians. The KLA's adversary was the Serbian armed forces, not the civilian population.

704. A close examination of the evidence and of the allegations surrounding victims of Serb ethnicity demonstrates that many were not victimised pursuant to a policy to target Serbs based on their ethnicity. For example, XHAFIQI<sup>1833</sup> and [REDACTED]<sup>1834</sup> were members of the MUP, which was a part of the Serbian armed forces. DOBRIČIĆ, a cameraman for the state-owned Tanjug outlet, was detained because he was reasonably believed to be a spy for the Milosevic

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<sup>1830</sup> See [Ch.VII.A](#), paras.516-517

<sup>1831</sup> See [Ch.IX.A.vi](#).

<sup>1832</sup> T.11957.11-16; T.18627.3-15; T.20600.13-18; T.13284.23-24.

<sup>1833</sup> T.8150.5-8156.8.

<sup>1834</sup> [REDACTED].

regime<sup>1835</sup> and as such presented a legitimate security threat. Other alleged Serbian victims on the Indictment were reservists serving in the police,<sup>1836</sup> members of the territorial defence,<sup>1837</sup> or had served with the VJ during the spring 1999 offensive.<sup>1838</sup> The presence of such individuals amongst the victim class in substantial numbers fundamentally undermines the SPO's claim that there was a KLA policy against Serbian civilians.

705. Equally there was no policy to target Roma civilians. The number of Roma alleged to be victims of crime by persons associated with the KLA is indisputably few. There are just fifteen explicitly alleged Roma victims throughout the whole Indictment Period,<sup>1839</sup> several of whom are inadequately identified and the evidence surrounding their cases weak.<sup>1840</sup> This alone significantly undermines the claim that any such a policy existed. There are no incidents on the Indictment in which Roma communities were targeted *en masse*. At most a handful of individuals were detained in Prizren right after the war. Again, revenge attacks in Prizren 1999 and the violence that occurred at the time cannot rightly be described as pursuant to any KLA policy.

706. In some cases it is clear that individuals were targeted because of links, real or perceived, to the Serbian regime.<sup>1841</sup> In a number of cases – involving both ethnic Serbs and Romas – it is not clear from the evidence why the person was detained.<sup>1842</sup> It would be impermissible to conclude, simply by virtue of the fact that they were Serbian or Roma, that any of these individuals were detained because of their ethnicity – *i.e.*, on a persecutory basis and not on a lawful basis.

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<sup>1835</sup> P00972\_ET, p.083814; T.8483.17-25.

<sup>1836</sup> P01453.1\_ET, T.22.18-20.

<sup>1837</sup> P00456, p. SITF00034178.

<sup>1838</sup> T.13092.17-13093.16; T.23507.7-23508.6.

<sup>1839</sup> [REDACTED].

<sup>1840</sup> See P00732, T.4252.18-4253.12.

<sup>1841</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1842</sup> [REDACTED]; [REDACTED].

The burden remains on the SPO to prove to the criminal standard that they were targeted not only because of their ethnicity but pursuant to a KLA policy to target them on that basis, which has not been proved. Evidence is also uncertain as regards ethnicity of alleged detainees.<sup>1843</sup>

707. Moreover, there is no evidence that **VESELI** ever said anything or committed any act that would give rise to even a suspicion that he discriminated or harboured resentment against civilian members of ethnic minorities in Kosovo or supported such sentiments.

*iii. Special Warfare*

708. The SPO alleges that the KLA, in communiqués, speeches and internal materials,<sup>1844</sup> cast ‘Opponents’ as waging ‘special warfare’ against them.<sup>1845</sup> However, the SPO failed to develop its case on the alleged appropriation of the term to further the JCE.
709. There is a ‘Special Warfare’ brochure, which neither MUSTAFA nor HALITJAHA recognised, believing it to be borrowed propaganda material not a KLA document.<sup>1846</sup> Unauthenticated, handwritten notes about special warfare, admitted from the bar table late in trial, discuss how to wage special war, but not how to combat it.<sup>1847</sup> Almost none of the documents contain any call for action. One communiqué refers to combatting special warfare “*in accordance to with the laws in wartime circumstances*”<sup>1848</sup> which is *prima facie* not criminal. Another refers – obliquely – to “*showing no mercy*”<sup>1849</sup> which in the absence of any contextualising evidence must be assumed to be pure

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<sup>1843</sup> P00732, T.4252.18-4253.12.

<sup>1844</sup> F01387/A04, No.2M; F00709/A01, paras. 44, 46, 57, 63, 80, 83–84. F03065/A01, No.35.

<sup>1845</sup> F03114/A01, No.90, F03114/A02, p.25; F00709/A01, paras.83–85.

<sup>1846</sup> P00164/P00164\_ET; T.5652.21; T.10359.13–10360.25.

<sup>1847</sup> F00709/A01, para.212; P03697/P03697\_ET.

<sup>1848</sup> P00173/P00173\_ET.

<sup>1849</sup> P00812/P00812\_ET.8.

propaganda. Other alleged KLA documents reference it merely in passing, not stating who was waging 'special warfare' or what actions to take to combat it.<sup>1850</sup>

710. While the use of special warfare by Serbia is widely recognised,<sup>1851</sup> even by witnesses in this case,<sup>1852</sup> there is no evidence of any policy (lawful or unlawful) aimed at countering it. Crucially, the SPO failed to establish that there was widespread knowledge or recognition of the way the SPO claims the term was being used. There is no evidence whatsoever that **VESELI** was aware that the term was being used in the manner claimed by the SPO. It's existence or otherwise is irrelevant to this case.

### 3. Contribution

711. In the Indictment, the SPO lists ways in which it asserts **VESELI** contributed to achieving the common purpose, which are dealt with in turn below:

*(a) Formulating and/or participating in the development, approval, promotion, dissemination, and implementation of plans, policies, and practices in furtherance of the common purpose.*

712. The Panel must differentiate criminal pursuits and purposes from those inherent to the building of an armed resistance. The development of KLA structures was not inherently criminal. Likewise, efforts to develop information-gathering and reporting mechanisms within the KLA were not criminal; they were a lawful and necessary part of the resistance. In any event, the evidence shows that **VESELI** did not in fact play a meaningful role in such alleged developments.

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<sup>1850</sup> P00228/P00228\_ET, p.3; P01429/P01429\_ET, p.U009-1987.

<sup>1851</sup> Wayne A. Larsen, "[Serbian Information Operations During Operational Allied Force](#)," Air Command and Staff College, Maxwell Airforce base, Alabama (2000), p.14; Herbert A. Friedman, "[PSYOPS in Kosovo Conflict](#)," University of Leeds.

<sup>1852</sup> [REDACTED]; [REDACTED]; [REDACTED]; T.23147.1-14; T.19875.2-7; T.19912.21-19913.9.

713. **VESELI** had no connection to the drafting or implementation of any rules and regulations, including those purporting to be intelligence regulations.<sup>1853</sup>

714. The SPO in its PTB lists the ways it asserts **VESELI** was actively involved in, and demonstrated control over, essential political and operational activities.<sup>1854</sup> The SPO has however failed to prove any furtherance of a JCE. As set out above,<sup>1855</sup> the conduct alleged is either not made out, or not probative of the JCE. For example, several allegations concern actions clearly directed towards non-criminal ends, such as the participation in negotiations and agreements. Others, such as the suggestion **VESELI** was involved in ‘investigations’ have simply not been proved.

*(b) Disseminating and/or facilitating the dissemination of information intended to promote the common purpose and engender fear, distrust, and hatred of ‘Opponents’, including through communiqués, public statements, and other media.*

715. As set out,<sup>1856</sup> there is no evidence **VESELI** made any public statements throughout the conflict or during his time in SHIK. The documents the SPO suggests promote the common purpose are primarily KLA communiqués and rules and regulations. As set out in detail above,<sup>1857</sup> there is no evidence connecting **VESELI** in any way to the creation or dissemination of such documents. Moreover, **VESELI**’s membership of the GS alone is insufficient to find he played any role in this respect, or that he condoned or supported the contents of such documents.<sup>1858</sup> The SPO places heavy emphasis on the content of the communiqués during 1997<sup>1859</sup> but has failed to prove to the criminal

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<sup>1853</sup> See [Ch.VI.I](#).

<sup>1854</sup> F00709/A01, para.111(b).

<sup>1855</sup> See [Ch.VII](#) and [VIII](#).

<sup>1856</sup> See [Ch.VII](#) and [VIII](#).

<sup>1857</sup> See [Ch.VI.L.v](#).

<sup>1858</sup> See [Ch.VI.D](#).

<sup>1859</sup> F00709/A01, para.18.

standard that **VESELI** was on the Central Staff in 1997.<sup>1860</sup> Accordingly, he is in no way connected to these documents or the statements made therein.

716. **VESELI** played no role in public relations within the KLA, nor did he play any internal policy role. The SPO has not proved he was part of the Political Directorate.<sup>1861</sup> He did not promote any criminal purpose during his time in the KLA either internally or externally; there is no evidence to the contrary. The only interaction **VESELI** had with the media was when he was in Kosovo in the presence of journalists – namely **BYTYQI** and **REFSDAL**.<sup>1862</sup> The height of the evidence of **VESELI**'s involvement with these men is that he escorted them whilst in Kosovo, keeping them safe. There is no suggestion, nor could there be, that anything either journalist published was in furtherance of the common purpose. **BYTYQI** filming the announcement of **KRASNIQI** as spokesperson was simply the KLA attempting to engage with the population at home and abroad. Again, fighting the liberation war and joining the KLA was not criminal, nor was publicising its struggle against Serb oppression. There is no evidence suggesting **VESELI** said or did anything in **REFSDAL**'s presence, which was in any manner aimed at furthering KLA crimes. **VESELI**'s interactions with these two journalists are wholly consistent with a desire to protect them in the field and portray the KLA's lawful liberation struggle in the media. Where this inference exists, **VESELI** is entitled to it.

*(c) Participating in, facilitating, condoning, encouraging and/or otherwise aiding in the crimes in furtherance of the common purpose*

717. The very few unfounded allegations of **VESELI**'s direct participation are addressed in full elsewhere in this brief.<sup>1863</sup> For present purposes, it must be

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<sup>1860</sup> See [Ch.III.B.](#)

<sup>1861</sup> See [Ch.VI.A.](#) para.298.

<sup>1862</sup> P01449/P01449\_ET/P01449\_AT; P01264/P01264\_ET.

<sup>1863</sup> See [Ch.IX.A.](#)

underscored that there is no direct evidence of **VESELI** committing crimes. The only evidence pertaining to his presence when two alleged victims were last seen is purely hearsay.<sup>1864</sup> The evidence pertaining to his having ordered an arrest in Drenoc/Drenovac is internally inconsistent hearsay and contradicted by the evidence of one of the arresting parties.<sup>1865</sup> Finally, there is a singular allegation regarding **VESELI**'s involvement in a detention at Klečkë/Klečka – which does not reveal any crime and derives from a highly unreliable and unavailable witness.<sup>1866</sup> Even if this uncorroborated, untested evidence were accepted (which it is not), at its height it shows only that **VESELI** brought a member of the Serbian armed forces (*i.e.*, a combatant) to a detention site and no more. There is no basis to find that **VESELI** committed a crime or that he was aware of other detainees being held there. There is no suggestion **VESELI** was in any way involved in any mistreatment at any time.

718. Alleged crimes relating to the Bardh i Madh/Belaćevac mine in June 1998 have never been proved and the KLA have not been shown to be responsible. The only witness who testified to these events was W01129, who was not present during alleged abductions and whose account was based on hearsay.<sup>1867</sup> Therefore, **VESELI**'s presence around Bardh i Madh/Belaćevac<sup>1868</sup> is of no relevance to intent or knowledge of crimes.

719. There is no evidence **VESELI** was in the vicinity of most of the crime sites on the Indictment. Nonetheless, the SPO relies on **VESELI**'s general presence at a small number of locations – Rahovec/Orahovac,<sup>1869</sup> Klečkë/Klečka,<sup>1870</sup> and

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<sup>1864</sup> See [Ch.IX.A.iv.](#)

<sup>1865</sup> See [Ch.IX.A.iii.](#)

<sup>1866</sup> See [Ch.IX.A.v.](#)

<sup>1867</sup> See, *e.g.* T.20028.15-20029.11.

<sup>1868</sup> P01264/P01264\_ET, p.SPOE00128630.

<sup>1869</sup> F00709/A01, para.17.

<sup>1870</sup> F00709/A01, para.112.

Drenoc/Drenovac<sup>1871</sup> – as evidence of his contribution. These allegations are addressed elsewhere in the brief.<sup>1872</sup> In sum:

- a. The SPO failed to demonstrate that **VESELI** could have foreseen or prevented the crimes that occurred in Rahovec/Orahovac or that he played any role whatsoever in their commission.<sup>1873</sup>
- b. Aside from W04839, the only other witness that places **VESELI** at Klečkë/Klečka is FONDAJ, in April 1999.<sup>1874</sup> Nothing in his evidence supports the proposition that **VESELI** was aware anyone was being detained in Klečkë/Klečka at this time.
- c. The only reliable evidence of **VESELI**'s presence in Drenoc/Drenovac derives from ZYRAPI, who places **VESELI** there for one, possibly two days at the end of May 1998.<sup>1875</sup> No evidence suggests he was aware that any person was being held in detention. As one witness confirmed, there was a “wall of silence” surrounding what was happening in the building where people were detained.<sup>1876</sup> There is no evidence **VESELI** was ever in that building.

720. None of this evidence of presence close to or in the vicinity of alleged detention sites permits an inference that he knew about, participated in, facilitated, condoned, or encouraged crimes, and does not advance the alleged JCE.

721. **VESELI**'s role in intelligence cannot be construed as a contribution to the alleged common criminal purpose. The SPO failed to adduce any evidence about the role, responsibilities or ambit of the intelligence function at GS level.

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<sup>1871</sup> F00709/A01, para.112.

<sup>1872</sup> See [Ch.IX.A.](#)

<sup>1873</sup> See [Ch.IX.A.vi.](#)

<sup>1874</sup> P01327.9\_ET, T.4.22-5.20.

<sup>1875</sup> P01355.1\_ET, T.26.15-22; T.17572.15-18.

<sup>1876</sup> T.4550.18-4551.3.

The Panel cannot conclude that simply by virtue of **VESELI**'s position on the GS, the actions and intentions of others can be imputed to him; nor can it make reasonable inferences of guilt from an absence of evidence. The evidence adduced reveals no actual contribution of GS intelligence in the alleged crimes.

722. The need to protect the KLA and the civilian population from threats to their security is obvious and the objective is lawful; the issue is the means. No reliable testimonial or documentary evidence supports the claim that intelligence was duty-bound to mistreat or murder 'collaborators' or other 'Opponents' as alleged by the SPO.<sup>1877</sup> Additionally, notwithstanding the lawfulness of gathering information about collaborators or other individuals who present a security risk, there is a demonstrable inconsistency between the OZs over whether this was the responsibility of intelligence officers, which reflected the lack of centralised control.<sup>1878</sup>
723. There is no evidence **VESELI** participated in, facilitated, encouraged and/or aided intelligence (or other) officers to commit crimes or of **VESELI**'s knowledge that such crimes were being committed. In the very small number of incidents where it is suggested that intelligence personnel were involved in crimes, either the crime is not proven, is outside the scope of the alleged JCE, or the officer's intelligence role is unconnected to the allegation. Certain crimes occurred in the Llap OZ, which the evidence unequivocally establishes was never under the effective command and control of the GS or **VESELI**.<sup>1879</sup> **VESELI** was neither aware of these crimes nor is there evidence establishing any link between him and the perpetrators, including any involvement in their appointment.<sup>1880</sup> Cooperation between intelligence and military police, which

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<sup>1877</sup> F00709/A01, para.161.

<sup>1878</sup> See [Ch.V.B.](#)

<sup>1879</sup> See [Ch.V.H.](#)

<sup>1880</sup> See [CH.V.A.](#)

was far more limited than suggested by the SPO, did not advance the alleged JCE.<sup>1881</sup> There is no evidence of a working relationship between **VESELI** and **LIMAJ**, other than their mutual attendance at certain meetings where nothing criminal was discussed.<sup>1882</sup> While **ZYRAPI** testified that there should have been cooperation between intelligence, military police and the legal sector to deal with collaborators, he never saw any arrest warrants<sup>1883</sup> and did not recall this ever occurring.<sup>1884</sup>

724. Involvement in the provision of training cannot be cast as a contribution, unless volunteers were being trained to commit crimes. There is no evidence to support such claims. Efforts to develop the KLA as a force were not criminal nor indicative of criminal intent. However, the evidence does not even prove **VESELI** was involved in training. The only evidence of **VESELI**'s involvement with training<sup>1885</sup> derives from a post-war interview wherein **VESELI** alludes to intelligence trainings from August or September 1998.<sup>1886</sup> This interview, provided for public consumption, is one of several uncorroborated and unreliable post-war publications, whose author or editor the Defence had no opportunity to cross-examine. **VESELI** himself left Kosovo to acquire intelligence training in November 1998,<sup>1887</sup> but little to no intelligence training took place amongst the intelligence formations in the OZs and **VESELI** was not involved.<sup>1888</sup> Finally, the SPO seeks to suggest that the deployment of volunteers without training gives rise to criminal liability, while at the same time claiming

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<sup>1881</sup> F00709/A01, para.146; See [Ch.V.E.](#)

<sup>1882</sup> See [Ch.VII.A](#), para.508.

<sup>1883</sup> P01355.5\_ET, T.17.22-24.

<sup>1884</sup> P01355.10\_ET, T.11.12-14.

<sup>1885</sup> F00709/A01, para.156.

<sup>1886</sup> P01859/P01859\_ET.2, p.SPOE00053012.

<sup>1887</sup> T.17797.17-20; T.23212.17-24.

<sup>1888</sup> See [Ch.V.F.](#)

that the provision of training is linked to **VESELI**'s contribution to the alleged JCE. The SPO cannot have it both ways.

725. The SPO also wrongly proceeds on the basis that SHIK was established with the intention of pursuing a criminal purpose; this was not the case. Domestic civilian intelligence agencies gather information on, and from, informants and collaborators in the course of protecting national security. This is by design and lawful. It is recalled that **VESELI** has confirmed that one of the "segments" within SHIK was to deal with collaborators<sup>1889</sup> but when asked about "liquidation" of collaborators, he stated, "*I don't think there was a case for taking revenge on them.*"<sup>1890</sup> From all the evidence that has been adduced before the Panel, the only reasonably available inference is that the establishment of SHIK was a good faith effort to assist in establishing the structures necessary for the proper functioning of an independent Kosovo.

726. The SPO asserts that SHIK advanced the alleged common criminal purpose by taking actions against 'Opponents,' either directly, or through its purported partner organisations, ZKZ/G2, KLA/MPO police and SHIU.<sup>1891</sup> However, SHIK was entirely distinct from these other organisations and the SPO has failed to properly identify, let alone prove to the criminal standard, any unlawful actions it says SHIK took against anyone, 'Opponents' or otherwise. The SPO has moreover failed to identify any specific acts or omissions by alleged SHIK members which are said to have formed part of, or materially contributed towards to, the JCE as indicted.

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<sup>1889</sup> P00789, pp.SITF00398194-SITF00398195.

<sup>1890</sup> P00789, p.SITF00398212.

<sup>1891</sup> F00709/A01, paras.162, 165.

*(d) Appointing, promoting, and/or approving the appointment and promotion of JCE Members and Tools, including persons with a history of alleged involvement in serious crimes*

727. The SPO has failed to show that **VESELI** played any role in any appointments, including in the intelligence sector, *ex post facto* or otherwise. The GS did not exercise control over appointments and promotions within the OZs.<sup>1892</sup> All appointments below the OZ command level lay with the OZs.<sup>1893</sup> Exceptions to this were atypical. Moreover, where the GS endorsed the appointment of OZ commands after the fact, this had no practical effect; the authority of the OZ commanders and their staff derived from local, clan-based networks of support, which the GS could not hope to displace. When members of the GS visited the OZs, **VESELI** was rarely among them and played no role in any appointments.<sup>1894</sup>

*(e) Providing, arranging, and/or facilitating political, logistical, military, and/or financial support.*

728. The SPO conflates logistical support for the legitimate, non-criminal objectives of the KLA with an intentional criminal contribution to the alleged JCE. The Panel must reject this approach.

729. The GS acted as the public or political face of the KLA and negotiated on its behalf on the international stage; both are lawful and legitimate actions. From his tangential involvement in political actions, it certainly has not been proved that **VESELI** furthered any crimes or criminal purpose.

730. While **VESELI** was present at Rambouillet,<sup>1895</sup> he was not part of the formal delegation who conducted negotiations and his role, if any, is unknown.

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<sup>1892</sup> See [Ch.IV.F.iii.](#)

<sup>1893</sup> See T.18087.3-8.

<sup>1894</sup> See [Ch.IV.F.iii.](#); [Ch.V.A.](#)

<sup>1895</sup> P01080, p.075398; T.13889.5-23.

Likewise, he was present when the Undertaking was signed,<sup>1896</sup> but there is no evidence of what role, if any, he played at the talks.

731. By associating himself with Rambouillet, **VESELI** placed himself in opposition to KLA hardliners in Kosovo, who remained committed to nothing less than independence.<sup>1897</sup> His involvement can only have signalled that **VESELI** was a moderate, willing work together with the other political groups in Kosovo to end the war and work towards a negotiated independence. The evidence indicates that the KLA delegation negotiated in good faith. It would be absurd to regard such participation as a criminal contribution.
732. There is no evidence that **VESELI** provided any logistical support to further the alleged JCE. While he helped a group of men including ZYRAPI to cross into Kosovo in May 1998,<sup>1898</sup> this has no connection to the alleged common criminal purpose. There is also no reliable evidence **VESELI** welcomed or deployed any KLA soldiers to Kosovo.<sup>1899</sup>
733. Evidence of **VESELI**'s alleged provision of military support is limited to participation in combat against Serbian armed forces which was not criminal and did not further the alleged JCE in any way.
734. There is no evidence **VESELI** was involved in the provision of any financial support to OZs or units. No evidence has been presented at all to suggest that any GS financial support could be linked to alleged commission of crimes or in any way facilitated the commission of crimes. The OZs were financially

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<sup>1896</sup> 2D00024/2D00024\_ET/2D00024\_AT.

<sup>1897</sup> T.13612.13-20.

<sup>1898</sup> P01355.1\_ET, T.24.1-4.

<sup>1899</sup> See [Ch.VII](#).

independent of the GS, one of several key circumstances which undermined its ability to exert control.<sup>1900</sup>

(f) *Coordinating and liaising between JCE Members and Tools in furtherance of the common purpose*

735. The SPO has failed to show any act or utterance by **VESELI** during his interactions with other alleged JCE members or tools furthered the alleged common purpose. What little evidence there is regarding **VESELI**'s interactions with other members of the KLA in no way contributed to the alleged common purpose.

736. The SPO alleges that **VESELI**'s "*longstanding affiliations and relationships of trust*" with other alleged JCE members pre-dating the Indictment are relevant to his contribution to the criminal purpose.<sup>1901</sup> Even if the evidence supported these claims, which it does not, they are not suggestive of criminal intent or conduct. To illustrate:

- a. It is alleged that **VESELI** was among those who consulted on different naming options for the KLA, along with **HALITI**, **SYLA**, **THAÇI**, and **SELIMI**.<sup>1902</sup> This allegation stems from an interview with **HALITI** which is uncorroborated.<sup>1903</sup>
- b. It is alleged that **THAÇI**, **VESELI** and **KRASNIQI** had been "*consulting about political strategy*" since as early as 1996.<sup>1904</sup> This draws on a singular excerpt from **KRASNIQI**'s book, which has not been put to any witness, and states that they agreed **KRASNIQI** would try to expand the political

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<sup>1900</sup> See [Ch.IV.F.ii](#), para.171.

<sup>1901</sup> F00709/A01, para.91.

<sup>1902</sup> F00709/A01, para.95.

<sup>1903</sup> See [Ch.III.A](#).

<sup>1904</sup> F00709/A01, para.91.

network.<sup>1905</sup> On its face, “consulting about” does not equate to formulating or determining the policy of the organisation. While it has been suggested VESELI was “operating underground” in 1996,<sup>1906</sup> there is no indication what these ‘operations’ involved or in what capacity he was ‘operating.’ No inferences about VESELI’s degree of involvement or contribution to the KLA’s early political strategy can be drawn from this non-specific and untested proposition.

- c. It is alleged that VESELI was a member of the GS from 1995 but, as addressed elsewhere, the GS did not even exist until 1998<sup>1907</sup> and it has not been established that VESELI was ever a member of the Central Staff<sup>1908</sup> or the LPK.<sup>1909</sup>

737. These allegations, even taken at their highest, are not evidence of VESELI’s membership of, or contribution to, the alleged JCE. Membership of the KLA is not inherently criminal and does not render an individual party to a criminal conspiracy. VESELI was outside Kosovo for a significant portion of the Indictment Period.<sup>1910</sup> He left around the end of July 1998, returning only for a brief period in November 1998, before leaving again and returning shortly before the start of the NATO bombing. When abroad, VESELI was not in telephone communication with Kosovo for security reasons.<sup>1911</sup> As noted above, he did not receive reports, nor was he consulted on decisions in his absence.<sup>1912</sup> His lack of presence prevented him from being involved with those in Kosovo.

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<sup>1905</sup> P00189/P00189\_ET.1, p.U015-8806.

<sup>1906</sup> P00189/P00189\_ET.1, p.U015-8806.

<sup>1907</sup> See [Ch.III.B](#), para.124.

<sup>1908</sup> See [Ch.III.B](#), para.123.

<sup>1909</sup> See [Ch.III.A](#).

<sup>1910</sup> See [Ch.VII.B](#), para.530

<sup>1911</sup> See [Ch.VI.E](#).

<sup>1912</sup> See [Ch.VI.F.v](#). and [D.viii](#).

738. There is no evidence **VESELI** had a working relationship with either **KRASNIQI** or **SELIMI** during the Indictment Period.<sup>1913</sup> As noted above, **VESELI** and **THAÇI**'s "particularly close" relationship has not been proved, and no inferences can be drawn from it in any event.
739. With respect to **VESELI**'s *de jure* role on the GS, the evidence shows that **VESELI** attended very few GS meetings, and for the few he did attend, there is virtually no evidence of anything he said or did in his capacity as a member of the GS.<sup>1914</sup>
740. His presence at those meetings does not reflect contribution to the JCE; indeed, he played no notable role at all. Meetings **VESELI** is alleged to have attended in 1998 were organisational in nature.<sup>1915</sup> Meetings in 1999 related to discrete matters such as Rambouillet, PGoK matters<sup>1916</sup> or the introduction of **KASUMI**.<sup>1917</sup> There is no evidence that anything was discussed at these meetings which could be perceived as relating to any alleged common criminal plan, or any crime.
741. Aside from his presence on the margins of Rambouillet, the signing of the KLA-FARK agreement, and presence at the Undertaking, there is no other evidence of his conduct, views, opinions, or intent as a member of the GS. All these actions are consistent with an intent to end the armed conflict swiftly and move forward towards a free and independent Kosovo. They are not consistent with, or corroborative of, an intent to exert control over Kosovo through criminal means.

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<sup>1913</sup> See [Ch.IX.B.v.1.](#)

<sup>1914</sup> See [Ch.VI.Di.iv.](#)

<sup>1915</sup> 4D00011/4D00011\_ET.

<sup>1916</sup> P00227/P00227\_ET; P02028, p.SITF00009433.

<sup>1917</sup> T.17821.4-5; T.17844.6-10; T.18254.9-14.

(g) *Encouragement*

742. The SPO alleges **VESELI** provided practical assistance, encouragement, and/or moral support, which had a substantial effect on the perpetration of the crimes charged on this Indictment and was “*aware of the probability that these crimes would be committed and that their acts or omissions would contribute to their commission.*”<sup>1918</sup> This is not the correct legal test for encouragement under JCE I. In *Kvočka et al.*, the Chamber held that an accused is liable, as a participant, where **his acts or omissions “substantially assisted or significantly effected”** the furtherance of the JCE’s goals, provided he knew such conduct facilitated the crimes committed through the enterprise.<sup>1919</sup> The question is one of actual knowledge and intent – not awareness and probability. Therefore, while a person may participate in a JCE by assisting or encouraging the principal offender in committing the agreed crime, it must be proved that they did so with the shared intent of the JCE. Likewise, while one can encourage a JCE by acting in furtherance of a particular system in which the crime is committed by reason of the accused’s position of authority or function, and with knowledge of the nature of that system and intent to further it,<sup>1920</sup> this again must be done with knowing intent to further the JCE.
743. For the reasons outlined above, the SPO has failed to prove that **VESELI** shared any intent to commit crimes.<sup>1921</sup> Therefore, any steps he took in furtherance of the development of the KLA as an organisation, which could be interpreted as having the dual impact of furthering the alleged JCE, do not render him liable on the basis of encouragement. **VESELI** has not been shown to have ever knowingly encouraged crimes to be committed or shared in any intent to do so. Any of **VESELI**’s actions in assisting the development of rudimentary KLA

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<sup>1918</sup> F00999/A01, para.54.

<sup>1919</sup> IT-98-30/1-T, [II](#), para.312.

<sup>1920</sup> IT-97-24-T, [II](#), para.435.

<sup>1921</sup> See [Ch.IX.B.ii](#).

structures, building relationships abroad, and presence at negotiations were lawful and aimed at building a force that could withstand the Serbian onslaught, prevent the massacre of Kosovan civilians, and end the conflict.

(h) *Failures and Denials*

744. In *Milutinović et al.*, the Trial Chamber, examined omissions such as failure to raise issues in meetings and general loyalty. Of central relevance to this case, the Chamber found these omissions insufficient for conviction, holding that omissions must be combined with a duty to act and authority over the physical perpetrators in question.<sup>1922</sup> An oath of office alone, absent significant *de jure* and *de facto* powers, was insufficient.<sup>1923</sup> Since *Milutinović* lacked authority over the forces committing the crimes, his omissions were not significant contributions to the JCE and could not ground liability.<sup>1924</sup>
745. **VESELI**, owing to the absence of *de facto* powers, did not have duty to act or authority over the physical perpetrators in this case. Any perceived failure to raise issues of crimes in meetings is misplaced as the SPO has failed to prove his knowledge of any specific crimes. In any event, such an omission alone would be insufficient for liability to arise. **VESELI**'s general loyalty to the KLA equally cannot amount to a criminal omission.
746. The SPO alleges that through their knowing failures and denials, the Accused embraced a climate of impunity within the KLA and appointed, promoted, and approved the appointment and promotion of persons with a known history of alleged involvement in serious crimes, including the Accused themselves.<sup>1925</sup> It is also suggested that while embracing persons with a criminal past, the Accused failed to take any meaningful measures to prevent further crimes or

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<sup>1922</sup> IT-05-87-T, [TJ Vol III](#), paras.273-275.

<sup>1923</sup> IT-05-87-T, [TJ Vol III](#), para.275.

<sup>1924</sup> IT-05-87-T, [TJ Vol III](#), para.275.

<sup>1925</sup> F00709/A01, para.260.

punish the perpetrators.<sup>1926</sup> Notably, the SPO does not make any personal allegation against **VESELI** in this respect.

747. The SPO points to the failure to discipline soldiers for crimes and suggests that the Accused denied the occurrence of crimes. Firstly, **VESELI** did not have the power to discipline soldiers, nor was it his responsibility; he commanded no soldiers and had no subordinates within a functioning chain of command. Secondly, the SPO has not proved that **VESELI** was made aware of the crimes. For failures to be relevant, they must be knowing. As set out elsewhere, there is no evidence **VESELI** was aware of allegations that KLA intelligence (or others) were committing crimes, nor has the SPO proved to the criminal standard that KLA intelligence officers ever did commit crimes.<sup>1927</sup> As outlined below, there was no failure to prevent in the legal sense.
748. Finally, there is no evidence **VESELI** ever personally denied the occurrence of crimes – the words and actions of others cannot fairly be attributed to him.
749. **VESELI** did not create a climate of impunity, or any climate for that matter. His absence from Kosovo and from regular GS functioning meant it was not possible for him to influence the climate within the KLA's structures, nor is there evidence demonstrating he did so.
750. **VESELI** made no appointments or promotions while in the KLA. As set out above,<sup>1928</sup> SHIK was formed as the conflict with Serbia was still ongoing and was not functional during the Indictment Period. There is no evidence **VESELI** ever met or knew GASHI while he was in Llap or was ever informed about his alleged involvement in crimes during the Indictment Period. Absent any evidence he knew of the allegations later made against GASHI at the time

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<sup>1926</sup> F00709/A01, para.261.

<sup>1927</sup> See [Ch.V.H.](#)

<sup>1928</sup> See [Ch.VIII.](#)

during the Indictment Period, **VESELI** is entitled to the inference that he did not. There is no suggestion **VESELI** ever hired or promoted any person accused of crimes.

### C. Superior Responsibility

751. Although there was no functioning KLA command structures, the SPO has charged **VESELI** with superior responsibility. Its case on superior responsibility as pleaded is vague and became no clearer during trial. It remains based upon the bare, generalised and underdeveloped assertions in the PTB. The allegations evidence a cavalier attitude to the charges, with alternative modes of liability seemingly being included as an afterthought, not as a result of a diligent examination of the evidence.

752. To secure a conviction under superior responsibility, the SPO must prove, beyond reasonable doubt: effective control, knowledge, and failure to act. It has failed to prove *any* of these elements against **VESELI**. The case against **VESELI** is uniquely weak, considering his prolonged absences from Kosovo, his lack of participation in the functioning of the GS, his lack of any identifiable direct subordinates, and the isolated and external facing nature of his intelligence role, about which almost no evidence was adduced.

#### *i. 'Effective control'*

753. The SPO must prove beyond reasonable doubt that **VESELI** had 'effective control' over identifiable subordinates<sup>1929</sup> who perpetrated the alleged crimes, as part of a superior-subordinate relationship. Establishing 'effective control' is difficult particularly in the context of uprisings or internal conflicts in which parties might be less organised as "*proof of 'effective control' on the part of the*

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<sup>1929</sup> IT-99-36-T, [II](#), para.281; IT-05-87/1-T, [II](#), para.1883.

*leaders of such outfits might present serious evidential challenges for the prosecuting authorities.”*<sup>1930</sup>

754. The SPO must precisely identify the subordinates who directly perpetrated the underlying crimes for the Panel to assess whether the Accused had effective control over them.<sup>1931</sup> In this case, the SPO has failed to specify either the alleged perpetrators, or their crimes. The implied assertion that all perpetrators of all crimes were somehow **VESELI**'s direct subordinates is untenable and defective for want of specificity.

755. The ability to exercise effective control will “*almost invariably not be satisfied*” unless a subordinate relationship existed.<sup>1932</sup> The test requires the superior to have: (a) the ability to maintain and enforce the compliance of the subordinate with rules and orders; and (b) the means to prevent the relevant crimes from being committed or to take efficient measures for having them sanctioned.<sup>1933</sup>

As set out by the Panel in *Delalić*:

While the Trial Chamber must at all times be alive to the realities of any given situation and be prepared to pierce such veils of formalism that may shield those individuals carrying the greatest responsibility for heinous acts, great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote.<sup>1934</sup>

756. The Panel must satisfy itself that all acts upon which the SPO seeks to rely to establish effective control are an “*unequivocal exercise of superior authority.*”<sup>1935</sup> The ICC in *Bemba* set out several factors which form a useful backbone for such analysis.<sup>1936</sup> None support the case against **VESELI**.

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<sup>1930</sup> SCSL-04-16-T, [TJ](#), para.787; Guénaël Mettraux, *The Law of Command Responsibility*, OUP (2009), p.167.

<sup>1931</sup> IT-02-60-A, [AJ](#), para.287; IT-03-68-A, [AJ](#), para.35.

<sup>1932</sup> IT-01-48-A, [AJ](#), para.59.

<sup>1933</sup> IT-03-68-T, [TJ](#), para.311; IT-04-81-A, [AJ](#), para.87; IT-95-14/1-A, [AJ](#), para.76.

<sup>1934</sup> IT-96-21-T, [TJ](#), para.377.

<sup>1935</sup> IT-96-21-T, [TJ](#), para.669.

<sup>1936</sup> IT-04-81-T, [TJ](#), para.148; ICC-01/05-01/08, [PTC Decision](#), 15 June 2009, para.417.

1. Procedure used for the appointment of an Accused

757. The SPO adduced no evidence of how **VESELI** was appointed either to the GS or SHIK.

2. Official position, ability to issue orders, and whether these are in fact followed

758. *"It is hard to conceive of a case where a defendant could be said to have had effective control over the perpetrator if he was not able to issue orders to them."*<sup>1937</sup>

759. 'Effective control' denotes an interpersonal relationship between the superior and one or more subordinates.<sup>1938</sup> Evidence that the superior had influence over the subordinate is insufficient to incur liability, even if that influence is substantial.<sup>1939</sup> A *de jure* appointment to a position of military command or authority over the relevant forces is insufficient.<sup>1940</sup> The less developed the structure of the warring parties, *"the more important it becomes to focus on the nature of the superior's authority rather than his or her formal designation."*<sup>1941</sup> **VESELI** had a *de jure* position on the GS but with no authority within it or over any subordinates, let alone alleged perpetrators.

760. Where control over the perpetrators is allegedly exercised by a group (*e.g.*, the GS/ PGoK) of which the Accused was a member, it must be established that the Accused himself, in his personal capacity and/or in his role as a member of that group, was personally able to exercise effective control over the perpetrators.<sup>1942</sup> Overall command of a unit or a group does not equate to effective control over each of its members, let alone over the members who allegedly committed the

<sup>1937</sup> Mettraux (n 1930) p.175 referencing *Prosecutor v. Šefik Alić*, X-KR-06/294, [Verdict](#), pp.46-47.

<sup>1938</sup> Mettraux (n 1930) p.160.

<sup>1939</sup> IT-96-21-A, [AJ](#), para.266; IT-01-47-T, [TJ](#), para.80.

<sup>1940</sup> ICC-01/05-01/08, [TJ](#), para.189; IT-96-21-A, [AJ](#), para.197; IT-03-68-A, [AJ](#) para.91.

<sup>1941</sup> SCSL-04-16-T, [TJ](#), para.787.

<sup>1942</sup> IT-99-36-T, [TJ](#), para.277 referencing ICTR-95-1A-A, [AJ](#), para.51; ICTR-96-13-T, [TJ](#), 27 January 2000, para.135; ICTR-99-52-A, [AJ](#), para.788; SCSL-04-16-T, [TJ](#), para.786; Mettraux (n 1930) pp.161-162.

crimes.<sup>1943</sup> Membership of a collegiate body cannot compensate for the need to establish effective control by the Accused over the perpetrators.<sup>1944</sup> The SPO must prove beyond reasonable doubt that **VESELI** was personally able to exercise effective control over the perpetrators. His membership of the GS or the PGoK does not prove subordination of, or effective control over, any or all alleged perpetrators. **VESELI** exercised no control over perpetrators in his role on the GS; there is no evidence **VESELI** ever issued any order or of any order being issued by the Intelligence Directorate.<sup>1945</sup>

761. To be relevant to ‘effective control,’ an order must be binding. Recommendations or non-binding instructions are irrelevant; where the recipient of the ‘order’ maintains his ability to disregard it, the ‘order’ is not evidence of effective control. An order must be shown to have been obeyed or complied with by those to whom it was directed, *i.e.*, the perpetrators.<sup>1946</sup> As outlined above, GS orders were not binding and were seen by many as simply suggestions.<sup>1947</sup> Considering the jurisprudence on this point and the facts of this case, the orders of individual GS members cannot be imputed to **VESELI**.
762. Finally, the SPO has failed to adduce any reliable evidence of any orders **VESELI** gave during his time in SHIK. The only evidence in relation to the functioning of SHIK comes from the discredited, unreliable, inconsistent and uncorroborated evidence of [REDACTED]<sup>1948</sup> [REDACTED].

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<sup>1943</sup> SCSL-04-14-T, [TJ](#), 2 August 2007, para.819; SCSL-04-16-T, [TJ](#), paras.1655, 1872-1875; Mettraux (n 1930) pp.159-160.

<sup>1944</sup> IT-99-36-T, [TJ](#), para.277; SCSL-04-16-T, [TJ](#), paras.786, 1657; Mettraux (n 1930) p.162.

<sup>1945</sup> See [Ch.VII.A](#), para.507.

<sup>1946</sup> IT-01-47-A, [AJ](#), paras.200, 209, 213, 214; Mettraux (n 1930) p.178.

<sup>1947</sup> See [Ch.VI.G](#).

<sup>1948</sup> [REDACTED].

3. Power to order combat action and re-subordinate units

763. **VESELI** did not personally have the power at any time to order combat actions or re-subordinate units.<sup>1949</sup>

4. Availability of material and human resources

764. **VESELI** personally had no deputy, team, subordinates, or other resources in the KLA. More broadly The intelligence 'sector' was merely a scattering of locally appointed intelligence officers with no connection to **VESELI** or one another who spent most of their time in, or preparing for, combat.

765. No evidence has been adduced of SHIK's material resources. The only evidence as to its human resources comes from [REDACTED], upon whom the Panel cannot rely.

5. Authority to apply disciplinary measures

766. **VESELI** had no power or authority to apply disciplinary measures and there is no evidence he ever did so.

6. Authority to promote, demote or remove soldiers and the capacity to intimidate subordinates into compliance

767. **VESELI** had no power or authority to promote, demote or remove any KLA soldiers, nor is there any evidence he ever did so.

768. There is no evidence that **VESELI** could intimidate subordinates into compliance; crucially, he had no direct subordinates. Further, the evidence demonstrates that most who met **VESELI** during the war did not know who he was at the time.<sup>1950</sup> There is some evidence that on two occasions when in Kosovo **VESELI** requested, without any intimidation, local soldiers to check

<sup>1949</sup> T.18445.10-17; T.17631.3-11; T.17617.22-17617.24.

<sup>1950</sup> T.19920.8-10; P00708.7\_ET, T.4.24-7.11; P00714, para.15; P01113, p.051039; T.3480.23-3481.3; T.3512.16-3513.5; P01827.4\_ET, T.5.22-6.6; T.19919.3-9; T.15229.19-15230.3.

guard points.<sup>1951</sup> There is no indication in the evidence that any KLA soldier ever felt intimidated by **VESELI**.

7. The existence of a different exclusive authority over the forces in question

769. The preponderance of the evidence in this case demonstrates that the true power and authority lay with the OZ commanders.<sup>1952</sup> They had earned the respect of their peers on the frontline and had demonstrable capacity to disobey, disregard and overthrow the GS.<sup>1953</sup>

8. Disregard or non-compliance with orders or instructions of the Accused

770. There are no examples of non-compliance because **VESELI** gave no orders and there is no evidence **VESELI** knew of, participated in, endorsed, consented to, connived in, or intended for any GS orders to be made; they therefore cannot be imputed to him. There are numerous examples, not only of GS orders being disobeyed but also of KLA commanders explaining in terms that they did not view purported GS orders as binding.<sup>1954</sup>

9. A weak or malfunctioning chain of command

771. **VESELI** was not part of any chain of command – weak, malfunctioning or otherwise. There is no reliable evidence that **VESELI** ever personally issued any orders to intelligence or other soldiers or that orders were ever issued by the Intelligence Directorate.

772. There is no evidence that any intelligence officers ever reported directly to **VESELI**, that he reported onwards to the GS, or worked with any intelligence personnel at any time during conflict. OZ intelligence personnel operated independently and (when possible) reported to OZ command only; there was

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<sup>1951</sup> T.22721.15-22722.14; P01834.3\_ET, T.20.12-22.

<sup>1952</sup> See [Ch.IV.F.](#)

<sup>1953</sup> See [Ch.IV.F.ii.](#)

<sup>1954</sup> See [Ch.IV.F.](#)

no parallel reporting to **VESELI** or the GS.<sup>1955</sup> **VESELI** acted primarily alone and often abroad. There is no evidence that an OZ commander ever made an intelligence report to **VESELI** or the GS. It has not been proved that **VESELI** had *de facto* authority over OZ or brigade intelligence (or other) officers. There is no evidence **VESELI** had authority or control over other GS directorates or members. As outlined in detail above,<sup>1956</sup> there was no broader functioning chain of command between the GS, local staffs, OZs, brigades, or other units. Any laws, rules or regulations which purport to grant the GS or its members such effective control were aspirational, unenforceable, and often unknown to those who were supposed to exercise such authority.

773. It is also relevant that **VESELI** had no investigatory powers or ability to order and execute the arrest of perpetrators. He did not exercise power over vulnerable persons; control finances; distribute weapons; recruit or train any KLA members. There is no reliable evidence that he had the power to release prisoners, and no evidence that he could command military operations, stop crimes or shield perpetrators from investigation.
774. Of twelve factors identified from the jurisprudence as militating *against* a finding of effective control,<sup>1957</sup> all are present in **VESELI**'s case:
- a. Disregard or non-compliance with orders by perpetrators;
  - b. General unruliness of troops;
  - c. Orders to perpetrators coming from sources other than the Accused;
  - d. Absence of legal authority of the accused over the perpetrators;

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<sup>1955</sup> See [Ch.VI.F.iv.](#)

<sup>1956</sup> See [Ch.VI.F-G.](#)

<sup>1957</sup> Mettraux (n 1930) pp.168-169.

- e. Lack of a functioning structure in place to enforce compliance with humanitarian law;
- f. Under-developed or malfunctioning nature of the relevant military, civilian or paramilitary chain of command;
- g. Surrounding chaotic circumstances;
- h. Existence of a disjointed chain of command (*i.e.*, zone or local commanders acting of their accord outside of any hierarchical chain of command headed by the GS/VESELI);
- i. Interference with the normal functioning of the chain of command;
- j. Independent power to decide and to act on the part of the perpetrators;
- k. Absence of reporting to the accused by alleged subordinates; and
- l. Power-struggles or tensions within the relevant chain of command.

775. No finding of 'effective control' can be made in VESELI's case; superior responsibility in his case falls at the first hurdle. However, for completeness, the remaining factors are dealt with below – they are likewise not met.

*ii. Knew or had reason to know*

776. Command responsibility "*is not a form of strict liability.*" A superior may only be held liable for the acts of his subordinates if it is shown he "*knew or had reason to know*" about them.<sup>1958</sup> The information relevant to establishing *mens rea* must be shown to have been available to the accused prior to or at the time of his alleged failure to act adequately.<sup>1959</sup> The accused must be shown to have known,

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<sup>1958</sup> IT-96-21-A, [AJ](#), para.239.

<sup>1959</sup> US Department of Defence, [Report to Congress on the Conduct of the Persian Gulf War – Appendix on the Role of the Law of War](#), 10 April 1992, p.626; IT-95-14/1-A, [AJ](#), para.76; Mettraux (n 1930) p.198.

or had reason to know, of all material elements that characterise the offence, which his subordinates committed and with which he is charged.<sup>1960</sup> The information possessed must be “*sufficiently alarming to justify further inquiry.*”<sup>1961</sup> Rumours do not satisfy the *mens rea* of command responsibility.<sup>1962</sup> It is not sufficient to show that the information is ‘out there’ and available.<sup>1963</sup>

777. Constructive knowledge requires that the evidence must have been available to him. Actual knowledge cannot be presumed<sup>1964</sup> or be inferred from the accused’s position. The acquisition of certain facts cannot be inferred from proof that other proximate people might have possessed that information.<sup>1965</sup> The threshold required to prove knowledge of a superior may be higher for those exercising more informal authority than those operating within a well-defined and structured chain of command.<sup>1966</sup> The Panel must consider **VESELI**’s individual knowledge and his specific situation at the time in question.<sup>1967</sup> It cannot rely on the GS as a ‘collective.’
778. Despite these legal requirements, the SPO failed to distinguish the Accused, making the generic claim that the Accused *as a collective* were informed of crimes from multiple sources, including, reports from subordinate commands, public notice through large-scale demonstrations, media reporting, and communications from civil leaders as well as governmental, international, and non-governmental organisations.<sup>1968</sup> It further alleges that the GS closely

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<sup>1960</sup> IT-97-25-A, [AJ](#), para.155; IT-98-34-A, [AJ](#), para.114; IT-01-47-A, [AJ](#), para.295; Mettraux (n 1930) p.200.

<sup>1961</sup> IT-01-47-A, [AJ](#), para.28.

<sup>1962</sup> IT-01-47-T, [TJ](#), para.1223.

<sup>1963</sup> IT-96-21-A, [AJ](#), para.226; IT-95-14-A, [AJ](#), para.406; Mettraux (n 1930) p.217.

<sup>1964</sup> IT-01-47-A, [TJ](#), para.94.

<sup>1965</sup> IT-96-21-A, [AJ](#), para.226; Mettraux (n 1930) pp. 217-218.

<sup>1966</sup> IT-03-68-T, [TJ](#), para.320.

<sup>1967</sup> IT-96-21-A, [AJ](#), paras.195-198.

<sup>1968</sup> F00709/A01, paras.13-15.

monitored Albanian and international media, publicly denied the alleged crimes and denounced international criticism of the KLA as unfounded.<sup>1969</sup>

779. In terms of **VESELI**'s knowledge, the evidence demonstrates:

- a. **VESELI** received no reports from subordinate commands.
- b. SITREPs the SPO cites do not identify any instance in which **VESELI** (or the GS) was notified of the demonstrations referenced, nor do they record contact with senior KLA leadership. The reports speak to what the missions observed and assessed, not to what **VESELI** (or the GS) knew.
- c. There is little to no evidence about the extent or availability of Albanian media reporting to the GS during the Indictment Period, proof such media covered the alleged crimes, nor **VESELI** ever having monitored media.
- d. There is no evidence **VESELI** was ever informed of alleged crimes by anyone outside the KLA or received reports from KLA members following meetings with external actors. The only relevant meeting **VESELI** is said to have had is with KICKERT; specific allegations were not raised.<sup>1970</sup>
- e. **VESELI** never made any public statements.

780. The SPO also suggests that the Accused as a collective knew or had reason to know that crimes were about to be committed or had been committed for four

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<sup>1969</sup> F00709/A01, paras.13, 266, 713.

<sup>1970</sup> P01210\_AT/P01210, para.27; T.16317.15-16318.16.

decidedly vague reasons,<sup>1971</sup> dealt with below by reference to **VESELI** individually.

1. VESELI's involvement in the preparation, design, and/or execution of such crimes

781. This merely reiterates the alleged JCE; it is flawed and circular. There is no evidence **VESELI** played any role in the preparation design, or execution of the crimes charged.<sup>1972</sup>

2. VESELI's personal observation of evidence of the commission of such crimes

782. The SPO failed to articulate what evidence, and of what crimes, **VESELI** personally observed, despite its duty to do so. Regardless, there remains no evidence capable of proving this to the criminal standard.<sup>1973</sup>

3. VESELI's receipt of information about the commission of such crimes

783. The SPO failed to prove **VESELI** received sufficient information about the commission of such crimes to satisfy the requisite *mens rea*. General knowledge or rumour of crimes is insufficient.<sup>1974</sup> Proximity to criminality does not equate to knowledge, even if the crime is notorious.<sup>1975</sup>

4. VESELI's presence at locations where crimes were committed

784. Merely having visited a village in which crimes were at some point committed does not prove knowledge. There is no evidence **VESELI** was aware of, informed of, or witnessed crimes being committed at the locations he visited or

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<sup>1971</sup> F00999/A01, para.56

<sup>1972</sup> See [Ch.IX.A-B](#).

<sup>1973</sup> See [Ch.IX.A.ii](#), [v](#), [vi](#).

<sup>1974</sup> IT-01-47-T, [II](#), para.1223.

<sup>1975</sup> IT-03-66-A, [A1](#), para.218; IT-01-47-T, [II](#), paras.1850, 1984.

that he should have known crimes were committed by virtue of his presence there.

5. Other relevant factors

785. **VESELI**'s absence for most of the conflict is centrally relevant to his knowledge. There is no evidence that, whilst abroad, he communicated with anyone in Kosovo, or was part of any reporting structure or information channel within the KLA. There is no evidence he obtained media coverage of alleged crimes when abroad. To infer knowledge from this lack of evidence would be baseless and grossly unfair.
786. The SPO's reliance on reports in outlets such as the New York Times,<sup>1976</sup> The Times,<sup>1977</sup> BBC<sup>1978</sup> and UPI<sup>1979</sup> is completely misplaced in the absence of any evidence that **VESELI** (or even the KLA) had access to such publications, or to NGO reports, *e.g.*, P00377. There is no evidence that **VESELI** even spoke English at the time. There is no evidence that:
- a. Any such international publications were available in Kosovo at the time, or that the Accused ever saw them.
  - b. **VESELI** had access to Albanian newspapers or radio, or that these outlets covered the alleged crimes on the Indictment.
  - c. That Albanian or Serbian radio covered the alleged crimes.
  - d. That when abroad, **VESELI** had access to any news about alleged KLA crimes in Kosovo.

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<sup>1976</sup> P04148; P04153.

<sup>1977</sup> P01275; P01276.

<sup>1978</sup> P04220.

<sup>1979</sup> P04171.

787. Further, the SPO fails to acknowledge the pervasiveness of Serbian misinformation. Were all such media reports to be taken at face value, this would result in the perverse finding that reporting of the Panda Café incident put **VESELI** on notice of KLA crimes – when this attack was in fact orchestrated by Serbia.<sup>1980</sup>
788. The following additional factors also militate against the suggestion the **VESELI** had knowledge of the crimes;<sup>1981</sup>
- a. There is no evidence that most Indictment allegations were ever reported in the media.
  - b. The alleged crimes pertain predominantly to small numbers of persons in remote disparate locations, under the control of local commanders.
  - c. There is no evidence any crimes were reported from the OZs to **VESELI**.
  - d. Many crimes on the Indictment were committed for personal reasons rendering them not foreseeable or preventable.<sup>1982</sup>
  - e. Except for alleged crimes in the remote and disconnected Llap OZ, there are few alleged crimes that involve participation of OZ commanders.<sup>1983</sup>
  - f. For many crimes, the perpetrator remains unknown.
  - g. At most a handful of individuals were involved in the commission of each alleged crime.

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<sup>1980</sup> P00306/P00306\_ET; P01071, p.1.

<sup>1981</sup> IT-96-21-T, [II](#), para.386; IT-05-87/1-T, [II\(Vol I\)](#), para.1885; IT-95-14-T, [II](#), para.307; IT-01-42-T, [II](#), para.368; IT-95-13/1-T, [II](#), para.563.

<sup>1982</sup> 3D00034, p.SITF00371319; P02037.1\_ET, T.20.15-23; T.25413.23-25414.4; P00252.1\_ET, T.28.4-9; P02058.1\_ET, p.21-24; P01163.1\_ET, T.29.11-14; P01163.3\_ET, T.9-13; T.10246; P00206, p.SITF00368623.

<sup>1983</sup> T.25203.8-15.

h. Many alleged perpetrators were either low level KLA soldiers, or simply those associated with or believed to be part of, the KLA.

789. The one and only alleged crime said to have been reported directly to **VESELI** was the disappearance of [REDACTED]. However, this is incapable of amounting to the knowledge required for command responsibility. When this report was made in [REDACTED], **VESELI** was head of SHIK. The alleged crime being reported was said to be a KLA crime – an organisation which no longer existed. Knowledge is only relevant if received at a time when the recipient is in a superior-subordinate relationship with the alleged perpetrator and therefore is duty-bound to investigate and punish. **VESELI** had no such duty in [REDACTED], which is why **VESELI** advised the family to inform UNMIK, who had exclusive jurisdiction.

790. The SPO makes much of the events of Rahovec/Orahovac in relation to the notice requirement – this issue has been dealt with comprehensively above.<sup>1984</sup>

791. Finally, the SPO refers to discussions of prisoner swaps at Rambouillet.<sup>1985</sup> Detaining POWs is not criminal. The detention of the eight VJs in January was not a crime, nor is it suggested it was. Knowledge of the lawful detention and transfer of POWs does not indicate knowledge of war crimes against civilians.

*iii. Failure to take necessary and reasonable measures.*<sup>1986</sup>

792. It is insufficient to show an accused knowingly failed to fulfil his obligations *vis-a-vis* his subordinates. An accused must have consciously failed to discharge his duties as a superior “*either by deliberately failing to perform them or by culpably or wilfully disregarding them.*”<sup>1987</sup>

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<sup>1984</sup> See [Ch.IX.A.vi](#).

<sup>1985</sup> F00709/A01, para.13.

<sup>1986</sup> IT-01-47-AR72, [AC Decision](#), 16 July 2003, paras.18, 31; IT-01-48-A, [AJ](#), para.59.

<sup>1987</sup> ICTR-95-1A-A, [AJ](#), para.35.

793. The Panel is obliged to consider this issue with reference to the realities of the conflict, KLA structures as they existed at the time, resources and lack of any functioning state or other infrastructure.<sup>1988</sup> What measures are appropriate depends on the circumstances of each case, including the degree of effective control over the conduct of subordinates at that time. A superior is not obliged to do the impossible.<sup>1989</sup> The SPO must prove that the commander did not take specific and concrete measures that were available to him or her and which a reasonably diligent commander in comparable circumstances would have taken.<sup>1990</sup> To attract criminal responsibility, the failure to prevent or punish must be of sufficient gravity – *i.e.*, a “gross breach” with grave consequences.<sup>1991</sup>
794. In *Bemba*, the Appeals Chamber reiterated that “a commander cannot be blamed for not having done something he or she had no power to do” and correctly found that an assessment of whether a commander took all “necessary and reasonable measures” will require consideration of what measures were at his or her disposal in the circumstances as they existed at the time.<sup>1992</sup> The SPO must establish that the superior did not take specific and concrete measures which were available to him and which a reasonably diligent commander in a comparable situation would have taken. The burden is not on the Defence to establish that measures taken by the superior were sufficient.<sup>1993</sup>

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<sup>1988</sup> ICC-01/05-01/08A, [AJ](#), para.168, 170. *See also* IT-03-68-T, [TJ](#), para.330; IT-95-5/18-T, [TJ](#), para.588; IT-96-21-T, [TJ](#), para.394; IT-97-25-T, [TJ](#), para.94-95; IT-01-48-T, [TJ](#), paras.73-74. IT-95-14-T, [TJ](#), para.333. For evidence of State Practice, *see* Inspector General of the Australian Defence Force, [Afghanistan Inquiry Report](#) (2020), p.31, para.28.

<sup>1989</sup> IT-03-68-T, [TJ](#), para.329.

<sup>1990</sup> ICC-01/05-01/08A, [AJ](#), para.170.

<sup>1991</sup> ICTR-95-1A-A, [AJ](#), para.36.

<sup>1992</sup> ICC-01/05-01/08A, [AJ](#), paras.1, 167-168. *See also* IT-03-68-T, [TJ](#), para.329; IT-96-21-T, [TJ](#), para.395; IT-97-25-T, [TJ](#), para.95; IT-01-42-T, [TJ](#), para.374; IT-01-48-T, [TJ](#), paras.73-74; IT-95-14/1-T, [TJ](#), para.81; IT-95-5/18-T, [TJ Vol I](#), para.587; IT-05-88-A, [AJ](#), paras.1928-1929.

<sup>1993</sup> ICC-01/05-01/08A, [AJ](#), para.170.

795. **VESELI** was not required to do the impossible; only what was necessary and reasonable in the prevailing circumstances.

796. While the SPO argues that the following acts and omissions demonstrate **VESELI**'s failure to take necessary and reasonable measures, their case on each point is flawed and fails to grapple with the realities on the ground.<sup>1994</sup>

1. Failure to initiate investigations into or take other measures to address allegations

797. This claim wrongly assumes that **VESELI** personally had the authority, means or power to initiate investigations or arrests.<sup>1995</sup> To initiate investigations, **VESELI** would also need to have had knowledge of alleged crimes, which he did not. There were no specific or concrete measures available to **VESELI** that a reasonably diligent commander in a comparable situation would have taken. Neither the GS nor the KLA more broadly ever had the resources or structures in place to initiate or conduct investigations.<sup>1996</sup>

2. Failure to report information about crimes to "appropriate authorities"

798. Firstly, the SPO failed to prove **VESELI** was ever in receipt of information about crimes that should have been reported. Secondly, the SPO fails to articulate to whom **VESELI** should have reported. It is vaguely suggested that the Accused could have reported crimes to unidentified authorities internally in their own structures or externally but failed to do so.<sup>1997</sup> There were no functioning law enforcement or judicial mechanisms in the KLA to whom **VESELI** could report at the relevant time.

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<sup>1994</sup> F00999/A01, para.57.

<sup>1995</sup> F00709/A01, para.712e.

<sup>1996</sup> See [Ch.VI.J.](#)

<sup>1997</sup> F00709/A01, para.712d.

799. For most of the Indictment Period, there were no functioning or accessible State authorities. From June 1999, UNMIK was responsible for law enforcement generally, with initial assistance from KFOR – to the exclusion of the KLA – and the ICTY held primary authority over alleged crimes in the armed conflict. Any information **VESELI** learnt after the war about alleged KLA crimes, falls outside the relevant period as he was no longer part of the organisation.

3. Failure to discipline, dismiss, or demote those involved in crimes and/or who failed to prevent or punish the commission of crimes.

800. **VESELI** had no subordinate officers; he was part of no chain of command.<sup>1998</sup> He had no power to discipline, dismiss, or demote any intelligence (or any other) officers at OZ level who were under the command of the OZ commanders. **VESELI** had no power or practical ability to require the OZ commanders to take such steps, nor discipline the commanders themselves.

801. There is also a suggestion that the Accused promoted persons with a known history of alleged involvement in serious crimes.<sup>1999</sup> However, there is no evidence **VESELI** was involved or aware of any appointment or promotion, or of any of these persons having a criminal history. A general awareness of criminal propensities among some subordinates does not suffice to constitute knowledge or notice.<sup>2000</sup>

802. The SPO's claim that "*police and other investigative units*" were "*instrumentalised by the Accused to perpetrate their common criminal purpose*" rather than used for prevention or punishment of crimes<sup>2001</sup> is another inappropriate and unfounded reiteration of the JCE. **VESELI** had no control over the military

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<sup>1998</sup> See [Ch.V.A.](#)

<sup>1999</sup> F00709/A01, para.260.

<sup>2000</sup> IT-01-47-T, [II](#), paras.115-117.

<sup>2001</sup> F00709/A01, para.713.

police, nor any proven awareness of their activities in the OZs. He had no authority to order them to act to prevent or investigate crimes.<sup>2002</sup>

803. The SPO's reliance on ZYRAPI's orders of 28 November and December 1998,<sup>2003</sup> is another example of the SPO's 'damned if they do, damned if they don't' approach. ZYRAPI utilised the very limited influence he had to issue persuasive but not binding orders to dissuade abusive behaviour. Such was the extent of ZYRAPI's power over the OZs.

804. **VESELI** did not fail to punish soldiers – he had no ability or duty to do so. Firstly, **VESELI** had no soldiers under his own command. Secondly, it was not **VESELI**'s responsibility to punish soldiers under the command of others, nor could he have done so. Thirdly, the KLA did not have a functioning prosecutorial body or court system to try people for crimes. Fourthly, the GS did not have the power or ability to discipline local soldiers. The SPO points to the fact that KLA members were punished for minor misconduct such as missing drills or drinking alcohol and watching TV.<sup>2004</sup> However, crucially, these measures were taken by *local* commanders, reinforcing the Defence submission that discipline was the OZs exclusive ambit.

4. **VESELI failed to issue the orders that were necessary and reasonable in the circumstances to prohibit or put a stop to the commission of crimes**

805. There is no evidence **VESELI** issued any orders during the Indictment Period.<sup>2005</sup> There was no one to whom **VESELI** could issue orders – nor would they have been considered binding. This was not a specific or concrete measure available to **VESELI** that a reasonably diligent commander in a comparable

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<sup>2002</sup> See [Ch.V.E.](#)

<sup>2003</sup> 1D00029/1D00029\_ET; P00228/P00228\_ET.

<sup>2004</sup> F00709/A01, paras.261-262.

<sup>2005</sup> See [Ch.VII.A](#), para.507.

situation would have taken. Persons are not obliged to issue orders into the ether in circumstances where they form no part of a chain of command.

5. Failure to take other adequate measures, including ensuring adequate training and establishing necessary regulations and procedures.<sup>2006</sup>

806. The SPO cannot simultaneously assert that the presence of training, regulations and procedures is evidence of the execution of a JCE, and also that the lack of such regulations and training is evidence of command responsibility. These conflicting submissions lack integrity and are untenable.

807. Moreover, one cannot fail in a duty that one does not hold, and it was not **VESELI**'s duty nor role to train others or adopt regulations and procedures. Those within the KLA tasked with such efforts made good faith attempts, however, the reality of the situation prevented widespread uniform training or enforcement regulations during the Indictment Period.<sup>2007</sup>

808. The SPO suggests that the Accused issued "*denials, deflection and token measures*" to appease international interlocutors.<sup>2008</sup> However, **VESELI** made no such statement, nor is there evidence he was consulted on, consented to, or party to, any such statement.

*iv. Causation*

809. While the KSC does not require a causal relationship between the superior's failure to prevent and the commission of crimes,<sup>2009</sup> it may nonetheless be relevant. Notably, the SPO cannot point to any causal relationship between **VESELI**'s purported failure and the commission of any crimes on the Indictment.

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<sup>2006</sup> F00999/A01, pp.18-19, para.57.

<sup>2007</sup> See [Ch.IV.C.](#)

<sup>2008</sup> F00709/A01, para.713.

<sup>2009</sup> F00026/CONF/RED3, para.118.

#### D. Aiding and Abetting

810. The SPO's approach to aiding and abetting, like its approach to superior responsibility, is vague, ill-conceived and reads like an afterthought as opposed to a prosecution based on a diligent consideration of the evidence. To secure a conviction for aiding and abetting the SPO must prove that (a) **VESELI** provided practical assistance, encouragement or moral support to a principal offender, (b) which substantially contributed to the perpetration of that crime<sup>2010</sup> and that (c) **VESELI** knew or was aware that his acts or omissions assisted, encouraged or lent moral support to the commission of a crime by the principal offender.<sup>2011</sup>
811. The SPO alleges that **VESELI** assisted the crimes charged in an identical manner to his alleged participation in the JCE.<sup>2012</sup> Each of these individual contributions – which the SPO has failed to prove – and the defects in the case, have been dealt with above.<sup>2013</sup> The SPO has failed to articulate how **VESELI** encouraged or provided moral support to perpetrators; there is no evidence of such conduct. **VESELI** operated for most of the conflict abroad and on the fringes, issued no statements or orders, and had little to no contact with the alleged perpetrators. **VESELI**'s role on the GS was specific, narrow and one in which he exerted no practical influence on others within the KLA. The actions he is proven to have taken during the conflict did not have the impact of assisting perpetrators, as those acts were primarily directed at building an intelligence service from abroad.<sup>2014</sup>
812. It is equally crucial when considering this mode of liability that the Panel does not conflate **VESELI**'s actions aimed at assisting the KLA's development with

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<sup>2010</sup> F00026/CONF/RED3, para.116; IT-96-21-T, [TJ](#), para.327; ICTR-99-52-A, [AJ](#), para.482.

<sup>2011</sup> F00026/CONF/RED3, para.117; IT-98-32-A, [AJ](#), para.102; IT-95-14-A, [AJ](#), para.49.

<sup>2012</sup> F00999/A01, paras.51, 54.

<sup>2013</sup> See [Ch.IX.B.v.3.](#)

<sup>2014</sup> See [Ch.VII.B.](#)

any alleged criminality. The SPO must prove **VESELI** knew or was aware that his actions would assist in the perpetration of crimes, and that he was aware of the essential elements of those crimes, including the principals' state of mind.<sup>2015</sup> Intent and efforts to build rudimentary KLA structures at the start of the conflict to assist and defend the Albanian population was not criminal. Likewise, working, training and advocating abroad on behalf of the GS and the KLA was not criminal.

813. The SPO has made no attempt to articulate how **VESELI**'s acts meet the high threshold of "substantial contribution" to the commission of the alleged crimes. **VESELI** was so removed from the alleged crime base and the day-to-day functioning of the GS that his acts or omissions made no real contribution to the conduct of any alleged perpetrators, let alone a substantial one. His acts did not facilitate or encourage the commission of the crimes. His acts have not been shown to have impacted the alleged perpetrators whatsoever. Of the very few persons who met **VESELI** during the conflict, most did not know who he was.<sup>2016</sup> The crimes that are alleged to have transpired would have occurred unaltered even if **VESELI** was never a member of the KLA.

## X. APPLICABLE LAW

### A. Equal Protection

814. During the Indictment Period, Kosovo was a part of the FRY, and the Constitution<sup>2017</sup> and Criminal Code of the SFRY<sup>2018</sup> were applicable in Kosovo. The CCS has held that Serbian courts may try international crimes committed in Kosovo only under the domestic law in force in 1998–1999<sup>2019</sup> which

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<sup>2015</sup> IT-95-14/1-A, [AJ](#), paras.162, 164; IT-95-14-A, [AJ](#), para.50; IT-99-36-A, [AJ](#), para.484; ICTR-99-52-A, [AJ](#), para.482; IT-03-68-A, [AJ](#), para.43.

<sup>2016</sup> See [Ch.IX.B.V.1](#), para.687.

<sup>2017</sup> [Constitution of the Socialist Federal Republic of Yugoslavia](#), 1974.

<sup>2018</sup> [Criminal Code of the Socialist Federal Republic of Yugoslavia](#), 1976.

<sup>2019</sup> See IA009/F00010/A02, p.32 containing Defence translation of CCS, [Decision Už 11470/2017](#).

prohibited it from asserting jurisdiction over command responsibility for crimes against humanity.<sup>2020</sup> This ruling extends to all crimes that were not a part of the SFRY Code of 1976. As a then-citizen of the FRY, VESELI must be entitled to the same protections.<sup>2021</sup>

815. If the KSC allows retrospective application of offences derived from international criminal law by way of this Indictment, this would amount to discrimination vis-à-vis his Serbian counterparts and constitute a violation of the ECHR (Articles 7 and 14), ICCPR (Articles 15 and 26) and the Kosovo Constitution (Articles 24 and 31(1)).<sup>2022</sup> Human rights obligations undertaken by SFRY also continued to apply.<sup>2023</sup>

## **B. Crimes Against Humanity**

816. The Defence maintains that crimes against humanity were not a part of the relevant statutory law during the Indictment Period, violating the constitutional protections of duality and non-discrimination.<sup>2024</sup> Regardless, the SPO has failed to prove the requisite elements of the crime.

### *i. Contextual elements*

817. The SPO has failed to prove the contextual elements of crimes against humanity.

818. A crime against humanity is defined as any of the acts enumerated in Article 13(1) of the Law, when committed as part of a widespread or systematic attack

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<sup>2020</sup> See IA009/F00010/A02, p.32 containing Defence translation of CCS, [Decision Už 11470/2017](#).

<sup>2021</sup> The Defence maintains its objections to the direct application of CIL as set out in: F00223, paras.40-56; F00311, paras.16-35; F00342; IA009/F00010; KSC-CC-2022-14/F00001.

<sup>2022</sup> See IA009/F00010/A02, pp.32-33 containing Defence translation of CCS, [Decision Už 11470/2017](#).

<sup>2023</sup> CCPR/C/21/Rev.1/Add.8/Rev.1, [General Comment No.26](#), 1997, para.4.

<sup>2024</sup> See [Ch.X.A.](#)

directed against any civilian population, with the perpetrator's knowledge that their conduct forms part of such attack.<sup>2025</sup>

819. There was no KLA attack against any civilian population.<sup>2026</sup>

820. To the extent maltreatment was directed towards certain people, the evidence shows it was because of their perceived acts, rather than any inherent characteristics, this effectively precludes a finding that they were targeted as members of a civilian population as such.<sup>2027</sup>

821. Crimes were neither widespread nor systematic.<sup>2028</sup>

822. The SPO vaguely alleges that the KLA committed crimes against "hundreds" of civilians.<sup>2029</sup> Much of the supporting evidence was not admitted; the remainder is largely unspecific, anecdotal, unverified hearsay material.<sup>2030</sup> It does not permit any conclusions to the criminal standard.

823. Alleged crimes were small in scale with alleged victims and perpetrators often knowing each other personally.<sup>2031</sup> Some were wholly opportunistic.<sup>2032</sup> Many were held in private houses.<sup>2033</sup> While occasionally detainees were transferred from one location to another nearby<sup>2034</sup> for instance to evade fighting in the area,<sup>2035</sup> this falls far short of proving there was any system.

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<sup>2025</sup> IT-94-1-T, [II](#), para.716.

<sup>2026</sup> F00026/CONF/RED3, para.52; IT-94-1-T, [II](#), para.644.

<sup>2027</sup> See [Ch.IX.B.v.2.\(a\)](#).

<sup>2028</sup> F00026/CONF/RED3, para.54; IT-96-23 & IT-96-23/1-A, [AI](#), paras.94-95; IT-96-23-T & IT-96-23/1-T, [II](#), para.429; IT-94-1-T, [II](#), para.648.

<sup>2029</sup> F00709/A01, para.703.

<sup>2030</sup> F00709/A01, para.703, fn.2986. See P00380.1, P04023, P04059, P01984.

<sup>2031</sup> [REDACTED]; [REDACTED]; [REDACTED]; T.15446.1-16; T.15473.10-17.

<sup>2032</sup> P01140.1\_ET, T.53.1245-1252.

<sup>2033</sup> T.4576.16-25; T.4905.4-5; T. 8632.21-23; T.5208.23-24

<sup>2034</sup> T.15442.5-21.

<sup>2035</sup> T.7263.24-7264.16.

824. As set out elsewhere, targeting civilians was not a KLA policy.<sup>2036</sup>

825. In sum, the SPO has not succeeded in demonstrating that there was at any time a widespread or systematic attack against the civilian population committed by the KLA or policy to target civilians.

*ii. Enforced disappearance*

826. The KSC does not have jurisdiction over the crime of enforced disappearance.<sup>2037</sup> In brief, the Defence asserts that:

- a. To be lawfully prosecuted, the crime needs to exist under applicable statutory law and CIL at the time of the allegations; it existed under neither.
- b. Regarding CIL status, prior to 1998, only two 'international' legal instruments addressing enforced disappearances existed. One was non-binding;<sup>2038</sup> the other regional.<sup>2039</sup>
- c. As of 2005, few states had criminalised it and a universally recognised definition was lacking.<sup>2040</sup> Crucially, a key area of dispute was responsibility of non-state actors.<sup>2041</sup>

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<sup>2036</sup> See [Ch.VI.F, G, L](#).

<sup>2037</sup> F00223, paras.131-162; IA009/F00010, paras.110-115; KSC-BC-CC-2022-14/F00001, paras.85-88.

<sup>2038</sup> United Nations, [Declaration on the Protection of All Persons from Enforced Disappearance](#), A/RES/47/133, 12 December 1992.

<sup>2039</sup> Organization of American States, [Inter-American Convention on Forced Disappearance of Persons](#), 9 June 1994.

<sup>2040</sup> CoE Parliamentary Assembly, [Report on Enforced Disappearance](#), Doc. 10679, 2005, paras.42, 45.

<sup>2041</sup> CoE Report (n 2040) para.45.

d. Its incorporation into the ICC Statute after the events charged in the Indictment was not a codification of CIL but a contribution to its development.<sup>2042</sup>

827. The Pre-Trial Judge's definition<sup>2043</sup> provides no guidance as to what constitutes a "political organisation." It has been noted, the definition of "political organisation" cannot be applied to criminalise the impossible: "*the offence can only refer to organizations that can grant such an access [to the administration of justice].*"<sup>2044</sup> This will inevitably be narrower than the definition required for crimes against humanity, requiring a "state-like" organisation.<sup>2045</sup> The KLA was at no time a "state-like" organisation. Its organisational structure was never complete;<sup>2046</sup> still in June 1999 its GS headquarters comprised a "hut with a bunch of couches."<sup>2047</sup> The PGoK, notwithstanding any aspirations was never recognised by the international community.<sup>2048</sup> The crime is wholly inapposite to the circumstances of this case.

*iii. Persecution and torture*

828. JCE III liability must not be applied to crimes that require *dolus specialis* such as persecution and torture.<sup>2049</sup>

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<sup>2042</sup> Antonio Cassese, *International Criminal Law*, 2<sup>d</sup> Ed p.113, cited in Nikolas Kyrkiakou [The International Convention For The Protection Of All Persons From Enforced Disappearance And Its Contributions To International Human Rights Law, With Specific Reference To Extraordinary Rendition](#), Melbourne Journal of Int'l Law, fn.97.

<sup>2043</sup> F00026/CONF/RED3, paras.72-73.

<sup>2044</sup> Kai Ambos, [Treatise on International Criminal Law](#), OUP, 2022, p.111.

<sup>2045</sup> Ambos (n 2044) p.111.

<sup>2046</sup> T.18518.6-11.

<sup>2047</sup> T.26767.10-15.

<sup>2048</sup> T.26618.18-23; T.27670.17-20; T.27774.3-4; 1D00390, para.44.

<sup>2049</sup> F00412, para.208.

## C. War Crimes

829. The SPO has failed to prove the contextual elements required to secure a conviction for war crimes. The KSC does not have jurisdiction over the crime of arbitrary detention.

### *i. Contextual elements*

830. For war crimes outside the 'agreed' period,<sup>2050</sup> the SPO must prove beyond reasonable doubt "*the existence of an armed conflict of certain intensity in the territory of a state between organs of authority and organised armed groups or between such groups.*"<sup>2051</sup> The Defence maintains its position that the SPO has not established any armed conflict existed prior to the end of May 1998 or after 20 June 1999.<sup>2052</sup> Prior to May 1998,<sup>2053</sup> the most notable incidents of armed violence were the attacks on the JASHARI and HARADINAJ compounds.<sup>2054</sup> No other incidents resulted in close to as many casualties.<sup>2055</sup> KLA groupings remained ununified through to the end of May.<sup>2056</sup> The GS was not formed until some point in the summer months; KRASNIQI became KLA spokesperson on 10/11 June 1998.<sup>2057</sup> No regulatory or disciplinary system was in place.<sup>2058</sup>

831. The risk of resumption after 20 June 1998 was clearly eliminated by the Military Technical Agreement;<sup>2059</sup> KLA ceasefire;<sup>2060</sup> KFOR deployment;<sup>2061</sup> Serbian

<sup>2050</sup> See F03612/A01, No.JD1. It is an agreed fact that non-international armed conflict existed from 30 November 1998 to 9 June 1999.

<sup>2051</sup> F00026/RED, para.84. See IT-04-82-A, [AJ](#), paras.22-24; ICC-01/04-02/06, [TJ](#), paras.703-704, 716; ICC-01/05-01/08, [TJ](#), para.137; ICC-01/04-01/06 [TJ](#), para.538; ICC-01/04-01/07, [TJ](#), paras.1186-1187.

<sup>2052</sup> See F03256, Joint Defence Motion Pursuant to Rule 130, 12 June 2025, paras.54-163.

<sup>2053</sup> F03256, paras.49-110.

<sup>2054</sup> P00380.1, p.070913.

<sup>2055</sup> See, e.g., P00380.1, p.070913; P04259, p.1D00-0479; P04023, p.00649680.

<sup>2056</sup> See [Ch.IV.A.](#)

<sup>2057</sup> P00546/P00546\_ET.

<sup>2058</sup> See [Ch.VI.K.](#)

<sup>2059</sup> P02527, p.2.

<sup>2060</sup> P00525.

<sup>2061</sup> P02515/P00515\_AT, para.22.

withdrawal;<sup>2062</sup> and the Undertaking.<sup>2063</sup> Further there is no evidence KFOR ever believed there was a risk of resumption.<sup>2064</sup>

ii. *Arbitrary detention*

832. The KSC does not have jurisdiction over the crime of arbitrary detention.<sup>2065</sup>

- a. To be lawfully prosecuted, the crime needs to exist under applicable statutory law and CIL at the time of the allegations; it existed under neither.
- b. SFRY Criminal Code Article 142 contemplates arrest in the context of IACs.
- c. Article 14(1)(c) of the Law contains an exhaustive, non-illustrative, list of crimes.
- d. Arbitrary detention was not a serious violation of Common Article 3 at the time of the allegations.
- e. The ICRC's 2005 study does not provide a basis for the establishment of arbitrary detention as crime in NIAC under CIL.<sup>2066</sup>

833. Should the Panel find it has jurisdiction over the crime, the Defence submits that the following must be considered:

- a. Grounds justifying detention may arise out of a criminal prohibition or reasonable grounds to believe that security concerns make it absolutely necessary.<sup>2067</sup>

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<sup>2062</sup> F01330/A01, No.139; *See also* P02563, p.SPOE00000756, para.4; T.27266.18-27267.19; T.27999.1-16.

<sup>2063</sup> P01444\_AT/P01444, para.4.

<sup>2064</sup> 1D00214, p.SPOE00212681; T.28204.10-12; T.28199.19-23.

<sup>2065</sup> F00223, paras.131-150; IA009/F00010, paras.88-109; KSC-CC-2022-14/F00001, paras.71-88.

<sup>2066</sup> Jean-Marie Henckaerts, "[Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict](#)" (IRRC) (2005) 87 (857)

<sup>2067</sup> F00026/CONF/RED3, para.94.

- b. There are still no common legal standards when it comes to regulating detention on security grounds in NIACs.<sup>2068</sup>
- c. Those detaining are entitled to reasonable time to inquire into the existence of the original suspicion that the detainee poses a security risk.<sup>2069</sup> It is for the SPO to demonstrate to the criminal standard that such grounds did not exist.<sup>2070</sup>
- d. Parties to a conflict possess broad discretion to determine which activities are harmful to the external or internal security of a State.<sup>2071</sup>
- e. Direct participation in hostilities may go beyond combat activities to include, for instance, the transmission of military information for immediate use by the opposing party, or acting as an agent, lookout or observer on behalf of military forces.<sup>2072</sup>
- f. Where collaboration is suspected, which poses a serious security risk rendering detention absolutely necessary, it is not arbitrary.
- g. The Panel must examine with respect to each detainee whether they were reasonably believed to represent a real threat to present or future security.<sup>2073</sup>

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<sup>2068</sup> ICRC, GC III, [2020 Commentary, Common Article 3](#), para.756.

<sup>2069</sup> KSC-CA-2024-03/F00069, para.727.

<sup>2070</sup> KSC-CA-2024-03/F00069, para.730.

<sup>2071</sup> IT-04-74-T, [II](#), para.134.

<sup>2072</sup> IT-01-42-A, [AJ](#), para. 177 as cited in Shane Darcy, [To Serve the Enemy: Informers, Collaborators, and the Laws of Armed Conflict](#), (OUP 2019), p.109.

<sup>2073</sup> KSC-CA-2024-03/F00069, para.730.

h. Conditions of confinement must be assessed in light of the circumstances at the time<sup>2074</sup> and treatment of detainees must be assessed with regard to the conditions of the civilian population.<sup>2075</sup>

834. The KLA operated in a poor, underdeveloped, and rural part of the SFRY. The KLA was not developed,<sup>2076</sup> had no state or similar structures, and its legal sector was never fully functional.<sup>2077</sup> The alleged obligation of due process must be seen against this specific backdrop and tailored accordingly. The ICRC have acknowledged the reality in which “*the great majority of [non-state armed groups] would not be able to provide habeas corpus, as required by human rights law, in practice.*”<sup>2078</sup> The KLA simply did not have the resources necessary to adjudicated cases. The KLA cannot have been required to do the impossible.

835. Arbitrary detention is not a strict liability offence. It is also crime that can be committed by simple omission *i.e.*, the failure to provide adequate conditions or due process.<sup>2079</sup> Crimes of omission are incredibly rare in the criminal calendar due to the general reluctance to criminalise persons’ failure to do something, as opposed to criminalising menacing acts. It cannot be right in law to punish someone for failing to do something it was simply impossible to do.

836. It is centrally relevant to the Accused’s own knowledge and intent that the reasons for detention are carefully examined. Knowledge that persons were being detained for lawful reasons does not, without more, give rise to knowledge that a person has – despite their initial lawful detention – been subjected to unlawful treatment or deprived of certain procedural guarantees,

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<sup>2074</sup> IT-04-74-T, [II](#), para.118.

<sup>2075</sup> IT-95-14/1-T, [II](#), paras.173, 182 (*see paras 213-214*). *See also* IT-96-21-T, [II](#), paras.1099, 1100.

<sup>2076</sup> *See* [Ch.IV.A.](#)

<sup>2077</sup> *See* [Ch.VI.J.](#)

<sup>2078</sup> ICRC, “[Internment in Armed Conflict: Basic Rules and Challenges](#),” (Opinion Paper, November 2014), fn.42.

<sup>2079</sup> F00709/A01, paras.274, 291, 346, 444, 470-471.

potentially rendering it arbitrary, or foreseeability that this might happen again.

## XI. SENTENCING

837. VESELI is not guilty of any of the crimes alleged in the Indictment. However, in the event of any conviction, several compelling mitigating factors – and the absence of aggravating factors – must result in the imposition of the lowest possible permissible sentence.

### A. Applicable Law

838. In relation to war crimes, the Panel must consider the domestic sentencing ranges contained in Article 44(2) of the Law.<sup>2080</sup> The Panel is required to consider the more lenient sentence contained in Articles 38 and 142 of the 1976 SFRY Criminal Code, as amended by UNMIK Regulation 1999/24, and interpreted by the Kosovo Constitutional Court.<sup>2081</sup> Judgments in other cases before the KSC demonstrate adherence to this sentencing range.<sup>2082</sup>

839. Regarding crimes against humanity, Article 117(1) of the 2003 Provisional Criminal Code of Kosovo, in conjunction with Article 37(2), prescribes the sentencing range<sup>2083</sup> that provides the most lenient applicable range, as compared to the 2012 and 2019 Kosovo Criminal Codes.<sup>2084</sup> Pursuant to Article 44(2)(b) and the *lex mitior* principle, the 2003 Code must be used by the Panel, in line with KSC jurisprudence.<sup>2085</sup>

<sup>2080</sup> KSC-CC-2024-27/F00011, para.115. See KSC-CA-2024-03/F00069, para.884.

<sup>2081</sup> See KSC-CA-2023-02/F00038, para.473, fn.1282, referring to Kosovo Constitutional Court Judgment of 31 March 2022, paras.48, 50; Kosovo Supreme Court Judgement of 20 March 2023, p.8. See KSC-CA-2024-03/F00069, para.895.

<sup>2082</sup> See KSC-CA-2024-03/F00069, paras.935, 938 (sentence of 16 and 18 years (concurrent) for the war crimes of torture and murder reduced to 13 years).

<sup>2083</sup> [Provisional Criminal Code](#) (UNMIK/REG/2003/25), Articles 37(2), 117(1).

<sup>2084</sup> See [Kosovo Criminal Code 2012](#), Article 149(1); [Kosovo Criminal Code 2019](#), Article 143(1).

<sup>2085</sup> KSC-SC-2024-02/F00018, Decision on Salih Mustafa's Request for Protection of Legality, 29 July 2024, paras.101-102.

## B. Mitigating and Aggravating Circumstances

840. The Panel need only be convinced of mitigating factors on a balance of probabilities,<sup>2086</sup> while the SPO bears the burden of proving aggravating circumstances beyond a reasonable doubt.<sup>2087</sup>

### *i. Mitigating features*

841. Several factors show **VESELI**'s lack of contribution to the charged crimes:

- a. There is no evidence **VESELI** directly or indirectly inflicted violence.<sup>2088</sup>
- b. **VESELI** neither possessed nor exercised any authority within the KLA.<sup>2089</sup>
- c. **VESELI** was absent from Kosovo for much of the conflict.<sup>2090</sup>
- d. **VESELI** sought to bring Kosovar Albanians together, establish cooperation with other states and formulate a lasting and practical solution to Kosovo's relationship with Serbia.<sup>2091</sup>

842. The following personal mitigating factors exist:

- a. **VESELI** has no previous convictions.
- b. **VESELI** is a man of positive good character.
- c. **VESELI** is a husband and father of four children who will suffer significant hardship as a result of any sentence passed.

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<sup>2086</sup> KSC-BC-2020-04/F00847/RED, para.1081; STL-11-01/S/TC, [Sentencing TJ](#), para.200; IT-95-17-A, [Sentencing AJ](#), para.8; ICC-01/05-01/13, [Sentencing TJ](#), para.24.

<sup>2087</sup> KSC-BC-2020-07/F00611/RED, Trial Judgment, 18 May 2022, para.955, citing IT-96-21-A, [AJ](#), para.763; STL-11-01/S/TC, [Sentencing TJ](#), para.181.

<sup>2088</sup> See [Ch.IX](#).

<sup>2089</sup> See [Ch.VI.B](#), [Ch.VII](#).

<sup>2090</sup> See [Ch.VII.B](#), para.530.

<sup>2091</sup> See [Ch.VII](#).

- d. VESELI consistently served the public good in Kosovo after the war.
- e. VESELI voluntarily surrendered himself to the Court.<sup>2092</sup>
- f. VESELI was not identified by international actors as a radical; he was a moderate and constructive voice within the KLA and played a key role in brokering the FARK agreement.

ii. *Aggravating features*

843. The SPO has failed to prove beyond a reasonable doubt the existence of *any* aggravating circumstances.<sup>2093</sup>

## XII. CLASSIFICATION

844. This brief is filed confidentially pursuant to Rule 82(3) of the Rules as it contains confidential information.

## XIII. CONCLUSION

845. The case against VESELI is a circumstantial one, which requires the exclusion of all reasonable inferences other than guilt that are open on the evidence. The Prosecution has failed to discharge this burden on all counts and modes of liability. Consequently, VESELI must be acquitted.

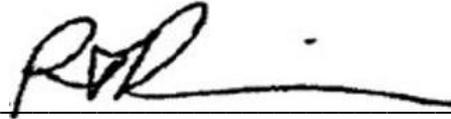
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<sup>2092</sup> T.72.24-73.5.

<sup>2093</sup> KSC-BC-2020-07/F00611/RED, para.955, *citing* IT-96-21-A, [AJ](#), para.763; STL-11-01/S/TC, [Sentencing TL](#) para.181.

Respectfully submitted on Monday, 19 January 2026, at The Hague



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