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| **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 Guénaël Mettraux |
| | Judge Fergal Gaynor, Reserve Judge |
| **Registrar:** | Dr. Fidelma Donlon |
| **Filing Participant:** | Defence Counsel for Jakup Krasniqi |
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# Further Public Redacted Version of 'Krasniqi Defence Final Trial Brief with Confidential Annexes 1-3 and Confidential and *Ex-Parte* Annex 4'

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## 1. INTRODUCTION

1. A criminal conviction cannot be built on context, conjecture, or condemnation by association. It must rest on proof of personal criminal responsibility beyond reasonable doubt. The Prosecution has not met that standard in respect of Mr.Krasniqi.

2. This case fails at threshold. Despite calling 255 witnesses and the admission of approximately 11,500 exhibits,[1] the Prosecution has failed to prove its case. It has not established the alleged JCE, nor that any charged crime was committed pursuant to a common criminal plan to gain and exercise control over Kosovo by means including the unlawful mistreatment of any civilian population of opponents, to which Mr.Krasniqi was a party. It has not proved that Mr.Krasniqi personally participated in or was connected to any of the crimes alleged. On the contrary, the evidence affirms conduct wholly inconsistent with criminal intent and the mistreatment of civilians.

3. The evidence does not establish that Mr.Krasniqi was the superior of any direct perpetrator, had knowledge of the commission of crimes and/or failed to take available measures to prevent or punish crimes. Nor does it establish that he provided practical assistance, encouragement, or moral support which had a substantial effect on any alleged crime.

4. Pursuant to Rule 82(3), this filing and Annexes 1-3 have been classified as confidential, as they refer to confidential filings and materials. Annex 4 has been classified as confidential and *ex parte* as it contains sensitive information related to the [REDACTED].

[1] T.20251119, p.28342.

### 1.1. Burden of proof

5. Mr.Krasniqi is entitled to the presumption of innocence.[2] The Prosecution bears the burden of proving each allegation in the Indictment, against each Accused separately. The standard of proof is beyond reasonable doubt.[3] The Prosecution must also prove all elements of the crimes. With respect to persecution, this includes establishing Mr.Krasniqi's specific intent to discriminate on a prescribed ground. Whilst these submissions focus on the most salient aspects of the evidence, this does not imply acceptance of the remaining evidentiary record. The TP has a duty to assess the totality of the evidence, when determining whether the Prosecution has discharged its burden of proof.

6. Rule 140(3) confirms that where the Prosecution relies on circumstantial evidence, the standard is met only if the Prosecutions proposed inference is the only reasonable inference available on the evidence. If the evidence allows for other reasonable conclusion(s) to be drawn, the standard is not satisfied.

7. That principle is decisive here. There is little to no direct evidence of any common criminal purpose. The Prosecution case is built almost entirely upon inference. The TP must therefore acquit unless the existence of a common criminal plan and Mr.Krasniqi's intentional contribution to it is the only reasonable conclusion on the evidence, after every reasonable inference consistent with Mr.Krasniqi's innocence has been excluded.

[2] Kosovo Constitution, Article 31(5); Criminal Procedure Code of Kosovo, Article 3(1); Law, Article 21(3).
[3] Law, Article 21(3); Rule 140(2).

8. Any doubt arising from the evidence must be resolved in Mr.Krasniqi's favour, pursuant to the fundamental principle of *in dubio pro reo*.[4]

### 1.2. Notice

9. The Indictment is the primary accusatory instrument.[5] It must plead the material facts with sufficient specificity[6] to enable the Accused to understand the case against him, including the factual basis for the alleged mode(s) of liability.[7] The Accused should not be required to reconstruct the case by consulting documents beyond the Indictment.[8]

10. Instances of personal participation are material facts which must be pleaded. Mr.Krasniqi therefore responds only to allegations concerning his conduct as particularised in the Indictment.[9]

11. The Prosecution should know its case before trial.[10] Yet, throughout proceedings, it has been opaque about its case against Mr.Krasniqi. Neither the Indictment nor the PTB identify which acts are said to constitute his significant contribution to the JCE, or how his intent is established. Mr.Krasniqi has been left guessing; forced to piece together the factual basis of the charges. It is impermissible for the Prosecution to await the outcome of the evidence at trial and then retrospectively construct a narrative in their FTB, identifying for the first time the conduct allegedly demonstrating either a significant contribution, or an intention to contribute to the JCE.

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[4] Criminal Procedure Code of Kosovo, Article 3(2).
[5] IA012/F00015, para.55.
[6] *Idem*, para.17.
[7] *Idem*, paras.46-47.
[8] *Idem*, paras.54 -55.
[9] *Idem*, para.53.
[10] *Idem*, para.19; KSC-BC-2020-07, IA004/F00007, para.37.

12. The Prosecution was required to put Mr.Krasniqi on notice of his alleged conduct and the evidence against him at the pre-trial stage. The purpose of the PTB is to provide "a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation, with particular reference to the conduct of the suspect with respect to the alleged crimes".[11] Any significant evidence relating to Mr.Krasniqi's alleged conduct should have been identified in the Prosecution's PTB. The TP should be vigilant to ensure Mr.Krasniqi was in fact put on notice of evidence said to establish his participation, or intent to participate in the JCE and the crimes charged.

### 1.3. Credibility and assessment of evidence

#### *1.3.1. Hearsay*

13. Much of the Prosecution case is founded on hearsay. Whilst hearsay is admissible, its weight, if any, must be determined against the totality of the evidence.[12]

14. The probative value of hearsay evidence depends on the reliability and credibility of the original source. The TP must exercise caution in determining evidentiary weight, assessing it on a case-by case basis, including by reference to the reliability of the source and the Defence's ability to challenge it. [13]

15. Where the source is anonymous, unidentified or lacks detail, the evidence should not be relied upon.[14] Particular caution is required where hearsay becomes second-or-third hand.[15] Unconfronted evidence shall not be relied upon to a sole or decisive

[11] Rule 86(3)(b)
[12] F01603, para.18.
[13] *Tolimir* TJ, para.126; *Popović* TJ, para.1307; *Martinović* TJ, para.516; *Katanga* Confirmation Decision, para.141.
[14] *Ntaganda* Decision, para.453, fn.1283.
[15] *Limaj* Oral Ruling, pp.447-449.

extent in reaching a decision.[16] Extreme caution is needed whenever untested evidence, even if corroborated, would carry "significant weight" in the conviction, or whenever its admission would "handicap the defence."[17] Further, "if two items of evidence assert the same fact based on anonymous hearsay, the combined evidentiary weight remains negligible, even if there are grounds to believe that the respective anonymous sources are independent of each other."[18]

#### *1.3.2. Untested evidence*

16. Pursuant to Rule 140(4)(a), "a conviction may not be based solely or to a decisive extent on the statement of a witness whom the Defence had no opportunity to examine." [19]

17. This Rule applies to the facts constituting the elements of the crimes, the modes of liability alleged, "and to any other facts indispensable for entering a conviction".[20] Furthermore, Rule 140(4)(a) does not permit a TP to rely solely or decisively on untested evidence to enter findings on individual charged criminal incidents.[21] Where one piece of untested evidence is used to corroborate another piece of untested evidence, the TP must exercise caution to ensure findings which are indispensable for a conviction do not rest solely or decisively on untested evidence.[22]

[16] F01603, para.18.
[17] *Idem*, paras.57-59.
[18] *Gbagbo Decision*, paras.48-49.
[19] *Karadžić* AJ, para.449; *Shala* AJ, para.477.
[20] *Shala* AJ, para.478.
[21] *Idem*, paras.482–484, fn.1119; *Karadžić* AJ, paras.460-475.
[22] *Shala* AJ, para.480.

### 1.4. Assessing witness testimony

18. In determining the weight to be given to witness testimony, the TP must assess the credibility of the witness and the reliability of their testimony. Credibility relates to the truthfulness of a witness but "the fact that a witness gives evidence honestly is not in itself sufficient to establish the reliability of that evidence". Rather, "reliability relates to whether the evidence, if accepted, proves the fact to which it is directed, or whether it can be put in doubt by other evidence or surrounding circumstances".[23]

#### *1.4.1. Shortcomings in witness testimony*

19. The following issues go to the *weight* of witness testimony:

(a) Overreliance upon and reference to hearsay evidence, including second-or-third-hand hearsay,[24] and rumour;[25]

(b) Motivation to testify arising from a grudge, personal vendetta, or out of revenge;[26]

(c) The influence of suspect status on witness testimony;[27]

(d) The unfairness in relying on Mr.Krasniqi's prior ICTY testimony; and

(e) Material inconsistencies in witness' statements, including prior contradictory testimony.[28]

20. The assessment of testimony is critical because the Prosecution has relied extensively on unreliable second-best evidence, instead of calling available witnesses to give direct testimony. It also relies on witnesses who are biased against the Accused

[23] *Shala* AJ, para.253.
[24] F01595, para.22; F01700, para.46.
[25] *Infra,* paras 21-25.
[26] F02111, para.22.
[27] F02328, para.72.
[28] F02013, para.51.

and/or have previously provided statements and testimony on oath which contradicts the evidence the Prosecution now asks the TP to accept.

### *1.4.2. Overreliance on testimony involving hearsay evidence*

21. Witnesses have highlighted the dangerous role played by rumours in shaping understandings of what *might* have happened during the Indictment period. The TP must therefore separate truth from rumour and decline to rely evidence based upon rumour. Unsourced allegations are not probative, even if they have hardened into 'facts' in the minds of some witnesses.

22. For instance, regarding the disappearance of [REDACTED].[29] He could not provide any specifics beyond mere gossip. Fondaj, testifying about B.Kuqi, accepted he had "information, which I cannot perhaps demonstrate"[30] and "information that I have no proof to substantiate."[31] Such evidence cannot be relied upon. When asked about [REDACTED], W04737 said [REDACTED]."[32] Similarly, [REDACTED]."[33] Unsubstantiated rumour and hearsay are not probative and must be rejected.

23. International witnesses were aware of the unreliability of rumours in Kosovo at the time. Covey noted "information [in Kosovo] is not so much designed to inform but rather to influence."[34] Kickert emphasised "rumours going around and exchanges"[35] made finding out concrete information extremely difficult. Both Ledwidge and Mitchell noted the information they sought to verify for human rights

[29] [REDACTED].
[30] **Fondaj,** T.20240625, pp.17187-17188.
[31] *Idem,* T.20240625, p.17188.
[32] **W04737,** [REDACTED].
[33] P00090, p.U008-7579.
[34] **Hill**, T.20251112, p.27919.
[35] **Kickert,** T.20240528, p.16081.

reporting, was a product of the chaotic circumstances in which they worked[36] – and this amounted to less than would be required at a criminal trial.[37] Whilst some triangulation was applied to place the information above mere hearsay,[38] the truth was not established beyond reasonable doubt.

24. Byrnes referred to unconfirmed rumours, including those related to detentions in Dukagjini,[39] the targeting of collaborators,[40] [REDACTED],[41] and more general rumours about the KLA.[42] He did not consider such rumours to be reliable; uncorroborated and unsubstantiated information would be reported as such.[43]

25. Despite these warnings, the Prosecution has relied on second-hand testimony, while avoiding calling witnesses directly involved in relevant incidents. Where the Prosecution has elected not to present the best available evidence, the TP should be slow to find that relevant facts have been proved on the basis of second-best, indirect evidence.

26. For instance, regarding [REDACTED] investigations into the authorship of Communiqué 59, the Prosecution chose to call W04240, who had no direct involvement, rather than [REDACTED] himself. Both W04240 and [REDACTED] were on the Witness List[44] to address Communiqué 59, in which [REDACTED].[45] W04240 was not present when [REDACTED] was allegedly informed about the authorship of Communiqué 59.[46] He had a poor memory of when or how [REDACTED] discussed

[36] **Mitchell,** T.20231206, p.10695.
[37] *Idem,* p.10695; **Ledwidge,** T.20230719, pp.6145-6146.
[38] **Mitchell**, T.20231205, p.10611.
[39] **Byrnes**, T.20240328, p.14045; **Ledwidge**, T.20230719, p.6146.
[40] **Byrnes**, T.20240328, p.14046.
[41] **Byrnes**, T.20240325, pp.13581-13582.
[42] *Idem,* pp.13728-13729.
[43] **Byrnes**, T.20240328, p.14045.
[44] Witness List, pp.8,15.
[45] P00159_ET; SPO PTB, para.55.
[46] **W04240**, T.20241022, p.20932.

the document with KLA members, including the Accused.[47] W04240's testimony was rife with inaccuracies, including falsely asserting that multiple members of the KLA were "Marxist-Leninists".[48] W04240 also had personal animosity against several Accused, including Mr.Krasniqi.[49] This led him to contradict himself on key facts related to Communiqué 59, including whether he or his family contacted GS members to ask for an apology,[50] and allegations he had made about the communiqué's author.[51]

27. When asked about [REDACTED] viewpoint on Communiqué 59, W04240 stated, "those who wrote books, including my brother, should speak about things that—should say things about what they wrote."[52] He said the issue should be raised with [REDACTED] directly.[53] That would plainly have been the better course, since [REDACTED] was better placed to speak to relevant issues. Instead, the Prosecution declined to call [REDACTED].[54]

28. The Prosecution should contribute to the establishment of the truth.[55] Yet by refusing to call the direct witness to allegations like this, it has shielded its case from cross-examination, denied the Defence a fair opportunity to test the evidence, and deprived the TP of the best and most reliable evidence. The TP should make no inculpatory findings where the Prosecution has so blatantly evaded the Accused's fundamental right to confront the evidence against him.

[47] *Idem,* p.20932.
[48] *Idem,* pp.20818,20938,20841.
[49] *Idem,* p.20834.
[50] **W04240,** P01740.7, p.2; T.20241021, p.20857.
[51] **W04240,** T.20241022, pp.20859,20860,20909.
[52] *Idem,* p.20903.
[53] *Idem,* p.20933.
[54] F02808.
[55] Rule 62.

*1.4.3. Material inconsistencies in witness evidence*

29. When assessing witness credibility, the TP must consider whether material inconsistencies reduce the weight of a witnesses' evidence or reach a point whereby the witnesses' evidence is rendered entirely devoid of value.[56]

30. The TP should place no weight on W04839, admitted pursuant to Rule 155.[57] W04839 provided contradictory versions of various incidents in Kleçkë and Shalë/Sedlare including: beatings of Serbian detainees,[58] the presence of the Accused at detention sites,[59] and his own authority at these locations.[60] His evidence was rejected as unsafe by a previous Panel, which found W04839's testimony to be "substantially contradicted by other evidence,"[61] and not the product of innocent memory lapses, but instead a deliberate series of fabrications.[62] The AC in that case held that W04839 was a "manipulative liar".[63] W04839 acknowledged lying to ICTY investigators.[64] He acknowledged other lies, including falsely claiming F.Limaj wished to kill him to secure his admittance to psychiatric care.[65]

31. The Prosecution asserts W04839's evidence is central to understanding the KLA structure in Kleçkë and Shalë/Sedlare.[66] However, his unreliable evidence cannot be relied upon. Furthermore, because W04839's evidence was admitted under Rule 155, it is untested and ought not to be relied upon to substantiate allegations against the

[56] *Mustafa* AJ, paras.34,228
[57] F02013.
[58] P00975, p.SITF00009524; P00980, p.SITF00009581.
[59] P00984, p.SITF00010000; P00974, p.050973.
[60] P00980, p.SITF00009582.
[61] *Kleçkë* Re-TJ, p.129.
[62] 4D00021_ET; *Kleçkë* Re-TJ, p.130.
[63] *Kleçkë* AJ, pp.33-34.
[64] *Kleçkë* Re-TJ, p.129; P00984, p.SITF0010002.
[65] P00980, p.SITF00009585.
[66] F01804, paras.26-27.

Accused,[67] nor used to corroborate other untested evidence in relation to these locations.[68]

#### *1.4.4. Witnesses testifying for personal gain or personal animosity*

32. The TP must approach with particular caution the testimony of witnesses who testify for personal gain, or out of animosity towards the Accused. Where a witness stands to benefit through testifying, there is an obvious risk they will shape their evidence to fit what they believe investigators or prosecutors want to hear, producing a skewed and unreliable narrative. For instance, W04491 was hopelessly inconsistent and it was evident [REDACTED],[69] fundamentally altered the nature of his testimony.[70] Likewise, [REDACTED].[71] That animosity and his willingness to make false allegations render his evidence unreliable.[72]

#### *1.4.5. Suspect witnesses*

33. Numerous Prosecution witnesses were themselves allegedly involved in the charged crimes. They testified under an awareness that they too could be prosecuted. Their testimony is, therefore, tainted by an obvious incentive to minimise their own exposure and to shift responsibility to the Accused. The Panel must consider whether it is safe to rely on such evidence.

34. Jurisprudence recognises the inherent danger in relying upon the testimony of a suspect witness. A witness' incentive to distance themselves from responsibility can

[67] *Mustafa* AJ, para.478.
[68] *Mustafa* AJ, para.480.
[69] **W04491**, T.20250218, pp.25398-25399.
[70] *Idem,* pp.25422-25423.
[71] [REDACTED].
[72] *Idem,* p.18154.

influence their evidence,[73] and undermine its credibility, reliability, and probative value. Such evidence must be scrutinized for bias and self-interest,[74] and assessed in light of the circumstances under which it was given.[75] Witnesses may tailor their testimony to mitigate personal risk and to inculpate others,[76] and may have clear motives or incentives to implicate an accused.[77] Consequently, their testimony must be approached with "caution",[78] "special caution",[79] or "extreme caution",[80] and, absent corroboration, cannot sustain a finding of guilt beyond reasonable doubt.[81] These considerations apply with particular force to the Prosecution interviews of other Accused in this case.

35. For example, W04748, [REDACTED].[82] His testimony was internally inconsistent and contradicted by other evidence. His testimony must therefore be approached with extreme caution.

36. W04753, [REDACTED],[83] testified that [REDACTED];[84] [REDACTED];[85] [REDACTED];[86] [REDACTED].[87] Indeed, W04753 stated [REDACTED].[88]

[73] *Boškoski* TJ, para.423.
[74] Katanga TJ, paras.85,87
[75] *Blagojević* AJ, para.82
[76] *Kordić* AJ, para.254.
[77] *Ntagerura* TJ, para.234.
[78] *Bemba* TJ, para.229; *Brđanin* TJ, para.25.
[79] *Bemba et.al.* TJ, para.202.
[80] ICC Chambers Practice Manual, pp.63-64.
[81] *Kordić* AJ, para.274.
[82] T.20230512, pp.3717-3718
[83] T.20231030, p.9198.
[84] *Idem,* pp.9168,9198,9191.
[85] T.20231030, pp.9168,9191.
[86] *Idem,* pp.9169,9197.
[87] *Idem,* pp.9197-9199,9201.
[88] *Idem,* p.9201.

37. W04748 [REDACTED].[89] His belated explanation that [REDACTED] was incredible.[90] W04748 testified [REDACTED],[91] [REDACTED].[92] Despite claiming that [REDACTED],[93] during his Prosecution interview W04748 [REDACTED].[94] That the Prosecution presents him before this TP as a witness of truth, is striking.

38. W04748's evidence was replete with contradictions. For instance, he claimed [REDACTED][95], while simultaneously asserting [REDACTED].[96] When confronted with [REDACTED],[97] W04748 conceded [REDACTED].[98] [REDACTED].[99] Although he initially claimed [REDACTED],[100] [REDACTED].[101]

39. W04748 claimed [REDACTED].[102] However, Zyrapi, [REDACTED],[103] [REDACTED], testifying that in late May 1998, Drenoc was highly disorganized, lacked coordination with other staffs, and was characterized by widespread attempts by various individuals to assume command roles.

40. W04748 provided internally inconsistent evidence concerning the structure of the units. He asserted [REDACTED][104], [REDACTED][105], and [REDACTED][106]. P00067, however, recorded the 1st Company was commanded by Xh.Hajda, the 2nd Company

[89] T.20230510, p.3706.
[90] T.20230512, pp.3705-3707.
[91] *Idem,* p.3706.
[92] *Idem,* p.3707.
[93] T.20230511, p.3556.
[94] T.20230512, pp.3710-3714; T.20230516, pp.4008-4014.
[95] T.20230510, p.3419.
[96] *Idem,* p.3435.
[97] The Prosecution dropped [REDACTED], preventing the TP from evaluating his account.
[98] T.20230515, pp.3910-3912.
[99] T.20230517, p.4134.
[100] T.20230510, p.3433.
[101] T.20230517, p.4133.
[102] T.20230510, pp.3452, 3482-3483.
[103] T.20230515, pp.3902-3903.
[104] T.20230517, p.4141.
[105] *Ibidem.*
[106] *Idem,* p.4142.

by S.Latifi and the 3rd Company by B.Gashi. When confronted with P00067, W04748 claimed [REDACTED].[107] Even if that is true, it would reinforce that the local structure was far less organized than W04748 portrayed.

41. W04748's efforts to deflect responsibility onto the GS are evident from his evidence about its composition. He falsely alleged that [REDACTED][108] and [REDACTED][109] were GS members. They were not. Since [REDACTED] were prosecuted for war crimes in Kosovo, W04748's attempt to associate them with the GS reveals a calculated attempt to shift blame upward within the hierarchy. W04748 admitted [REDACTED],[110] [REDACTED].[111] Plainly, [REDACTED]. [112] For all these reasons, the TP should not rely on W04748 at all.

#### *1.4.6. Failure of the Prosecution to put its case to the witnesses*

42. The duty to confront a witness with the core allegations, inconsistencies, or alternative interpretations is not a procedural formality; it is a fundamental safeguard ensuring that the accused is tried on a complete and balanced evidentiary record. ICTY[113] jurisprudence emphasises the necessity for the Prosecution to confront its witnesses with the full scope of its allegations to ensure fair and adversarial proceedings. In this instance, the Prosecution failed to put its case squarely to the witnesses.

[107] *Idem*, pp.4146-4147.
[108] T.20230510, pp.3487-3488,3512.
[109] T.20230516, p.4034.
[110] T.20230512, pp.3717-3718.
[111] T.20230515, p.3928.
[112] T.20230512, pp.3717-3718.
[113] *Prlić Guidelines of Trial Conduct,* point II(d).

43. The Panel has reminded the Prosecution of its obligation to put its case to the witnesses.[114] On several occasions, it was impossible to discern whether the Prosecution was undermining the credibility of its own witness or merely attempting to elicit further evidence. For example, during Abazi's testimony, the Panel specifically told the Prosecution to state its case clearly, as the purpose of the questioning could not be ascertained.[115]

44. The Prosecution repeatedly cross-examined its own witnesses and admitted prior inconsistent statements in their entirety.[116] On such occasions, the Prosecution refused to give the Defence notice of what evidence it relied upon from witnesses whose credibility it had chosen to impugn.[117] The Prosecution frequently interrupted witnesses when they attempted to clarify or elaborate their answers, for fear the witness might go onto say something exculpatory. For example, the Prosecution refused to allow Maloku a moment to explain his responses.[118] The cumulative effect of these shortcomings undermines the reliability of the evidentiary record. Where the Prosecution fails to articulate its case theory and fails to put key questions to its witnesses, the TP should not fill the gap by inferring conclusions which the Prosecution should have explored directly.

#### *1.4.7. Cherry-picking*

45. The Prosecution is "cherry-picking"[119]—relying on isolated fragments of evidence while disregarding substantial exculpatory or contextual material,[120] which

[114] T.20230713, pp.5665-5666.
[115] T.20240429, p.15102.
[116] *E.g.*W03870; W03832.
[117] [REDACTED].
[118] T.20250324, p.25748.
[119] T.20230828, pp.6739-6740.
[120] T.20241106, p.22056.

contradicts its case.[121] Thus the Prosecution has frequently presented excerpts of witness statements and documents, including intercepts, while omitting surrounding passages or documents that exonerate the Accused or provide critical context.[122] The Prosecution presented isolated portions of lengthy [REDACTED] to Duncan, in an attempt to suggest the KLA was responsible for incidents that occurred in Kosovo during summer 1999, failing to present the sections of the very same document[123] that clearly indicated the contrary.[124] This cherry-picking has deprived the Panel of the opportunity to assess the full context underlying a witness's answer and creates a distorted and misleading narrative.

46. Some witnesses directly confronted the Prosecution about this practice, noting that they were not being shown the complete content of the documents and the Prosecution's questions were consequently biased. N.Bytyqi told the Prosecution that it was proceeding in a selective manner when presenting documents.[125]

47. The Prosecution has been consistently reminded that it bears a duty not only to pursue incriminating material but also to actively identify exculpatory and exonerating evidence.[126] The Prosecution disregarded this obligation and closed its eyes to evidence which does not fit its predetermined case theory.

[121] T.20240124, p.11743.
[122] T.20230712, p.5563.
[123] P02526.
[124] T.20250923, p.27231.
[125] T.20240605, p.16721.
[126] T.20240826, p.18987; T.20220908, p.1480; T.20230118, p.1835.

### 1.5. Shortcomings in documentary evidence

#### *1.5.1. Bloated evidentiary record*

48. The evidentiary record is unprecedented in volume. The mass tendering of documentary material has produced a "bloated trial record", so vast that it does not serve a truth-seeking function.[127] The Prosecution's excessive reliance on documentary evidence delayed the proceedings and undermined the principle of orality. The admitted record contains an extraordinary volume of exhibits of highly uneven reliability, origin, and relevance.[128] The Prosecution's strategy of maximising the quantity of admitted material, rather than ensuring its probative quality, falls short of the "high threshold of evaluation"[129] that the Panel urged, resulting in a functionally impenetrable record for the parties and, ultimately, for the Panel itself.

#### *1.5.2. Failure to put Documents to Witnesses*

49. A substantial proportion of the admitted exhibits were never put to a witness capable of authenticating or contextualising their contents. The Defence repeatedly warned the Prosecution was tendering vast bodies of material through the bar table: handwritten notes, purported intelligence documents, unsigned *procès-verbaux*, notebooks, internal reports, and entire compilations of documents—despite having called numerous witnesses who could have spoken to them, by confirming or denying authorship, identifying handwriting, or clarifying operational meaning.[130] The Prosecution's strategic choice not to tender these documents through a witness

[127] F01387,para.4; F01657, para.9.
[128] F01268, para.14; F02178, para.20; F02667, para.20.
[129] F01226/A01, para.49.
[130] F03145, para.27; F02662, para.16; F02243/A01, items 208,213-214; F03145/A01, item 21; F03145/A02, item 37; F02991/A01, items 59,243-245,248,300,314.

diminishes the weight the Panel can accord thereto; the evidence entered the record untested and unsupported by any *viva voce* foundation.

50. The Prosecution's approach is incompatible with the principle of orality and results in a record containing hundreds of documents, whose provenance is unclear and whose reliability has never been tested in court. Provenance and chain of custody cannot be established by reference to metadata on LWF, which does not amount to evidence. Multiple witnesses testified that they did not recognise documents the Prosecution *did* put to them,[131] showing it cannot be assumed the bar table documents were authentic or contemporaneous. Minimal weight can be attached to untested documents not contextualised through a witness.

#### *1.5.3. Books*

51. Books and multi-chapter works were admitted at the Prosecution's request.[132] Books are, by their nature, not evidentiary documents: they are authored narratives, often political in purpose, drawing upon hearsay, unverified anecdotes, third-party recollections, and the author's personal interpretations. Books are not created under oath; their authors' methods and sources are opaque; their accounts are frequently argumentative or speculative.

52. Chambers at international tribunals have recognised that published works cannot be relied upon for the truth of their contents, especially where they purport to describe acts and conduct of the Accused.[133] These concerns are justified. Zhitia acknowledged his book was not intended to be the final word or the best perspective

[131] [REDACTED].
[132] P01014; P01015; P00187; P01264; P04508.
[133] *Perišić Guidelines*, paras. 24-25; *Tolomir* Guidelines, para.23.

on any KLA organisation in the Llap zone[134] and was written to glorify the KLA's effort.[135] Interviews for his book were 'conversations' not a formal process.[136] Bytyci described his book as, "my experience, my memory, not as a historian but as a journalist, as a reporter."[137] He considered the book an expression of his own perspective, and would not allow others to dictate the contents.[138] Kurtaj said books about the KLA were exaggerated rather than reflections of reality,[139] and were propaganda to raise morale and inspire young generations.[140] Meeting notes from 2001 record various speakers raising concerns that post-war interviews and books–including by Mr.Krasniqi–were not accurate.[141] These accounts highlight the unreliability of these books as an evidentiary source in this trial.

#### *1.5.4. Mr.Krasniqi's ICTY testimony*

53. Mr.Krasniqi was compelled to testify at the ICTY by being summonsed. He was not offered legal advice and was not advised about his right not to incriminate himself. Whilst the AC did not overturn the admission of this testimony, it did not validate the subsequent use of the evidence by the TP,[142] noting "caution will be required when deciding what weight, if any, to give to this evidence".[143] The ECtHR has highlighted the "extreme caution" required before relying on such evidence.[144] The TP may not rely solely or to a decisive extent on evidence that the Defence was unable to confront through cross-examination. To rely on Mr.Krasniqi's testimony on certain issues

[134] **Zhitia**, T.20240826, p.18937; P01545.2_ET, p.3.
[135] **Zhitia**, T.20240826, p.18939.
[136] *Idem,* p.18975.
[137] **Bytyqi,** T.20240604, p.16617.
[138] **Bytyqi,** T.20240826, p.16698.
[139] **Kurtaj,** T.20240222, pp.12856-12857.
[140] *Idem,* p.12857.
[141] P00186_ET, pp.SPOE00226186-SPOE00226187.
[142] IA030-F0009, paras 45,48.
[143] *Idem,* para.55.
[144] *Saunders* Judgment, paras.60,67,69-70,75-76; *Lutsenko* Judgment, paras.47,50-53.

against him, where that evidence was compelled, untested in these proceedings and stands contrary to the broader evidentiary record, including the evidence of other Prosecution witnesses, would violate Mr.Krasniqi's fair trial rights.

#### *1.5.5. Mr.Krasniqi's books*

54. The TP should not rely on Mr.Krasniqi's books as evidence capable of proving any element of criminal liability beyond reasonable doubt. In addition to the general points above, the evidence showed the unreliability of the contents. Zyrapi pointed out a number of mistakes, including Mr.Krasniqi's description of his role and the non-existence of KLA directorates in July 1998.[145] He further confirmed the footnotes used to support the KLA's structure were erroneous[146] and stated the book's contents were exaggerated.[147] Bashota also described inaccuracies in "The Big Turn,"[148] in particular the timing of the establishment of KLA directorates.[149] The errors highlight the obvious dangers of attaching weight to a book as evidence in a criminal trial, rather than oral evidence.

#### *1.5.6. Documentary evidence provided by the Serbian state*

55. Evidence emanating from Serbia should be treated with extreme caution. Witnesses themselves have emphasised the prevalence of Serbian propaganda and its influence on their ability to trust information. Rubin noted that Serb propaganda often came up and was proven to be "wildly exaggerated."[150] Duncan stated that when he was in Kosovo in 1999 he was aware that Serbian propaganda was used to put the

[145] **Zyrapi**, T.20240717, pp.18402-18403;18405-18406;18461-18462.
[146] *Idem,* pp.18462-18463.
[147] *Idem,* p.18405.
[148] **Bashota**,T.20241202, p.23032.
[149] *Idem,* p.23158.
[150] **Rubin,** T.20250916, p.26729.

KLA in a negative light.[151] W04737 [REDACTED].[152] Abrahams referred to problematic Serb media, noting the importance of getting verifiable information.[153] Maloku spoke about Serbian propaganda which falsely suggested he had died.[154] S.Jelić, when shown a statement[155] she had purportedly given to the Serbian authorities, noted that the names given were incorrect and that whoever created the statement appeared to have been "improvising."[156] These many examples demonstrate that contemporaneous Serbian sources cannot be accepted at face value.

56. Particularly, [REDACTED] emanating from [REDACTED] are fundamentally unreliable for the reasons set out below.[157] Prosecution witnesses did not cure the fundamental problems with the [REDACTED] related to origin, context, handling and timing of the evidence.

57. First [REDACTED].[158] [REDACTED]. [REDACTED].

58. Secondly, [REDACTED].[159] [REDACTED].[160]

59. Third, in some instances [REDACTED].[161]

[151] **Duncan,** T.20250922, p.27130.
[152] **W04737,** T.20240917, p.19860.
[153] **Abrahams,** T.20230907, pp.7516-7517.
[154] **Maloku,** T.20250324, p.25715.
[155] P01700.
[156] **S.Jelić,** T.2024102, p.20622.
[157] F01637, para.28; F02755, paras.18-28.
[158] F02755, para.37; [REDACTED]; P01727, p.29.
[159] P01727, p.10; P01777, p.9; [REDACTED].
[160] [REDACTED].
[161] P03551, pp.111710,111731,111754-111755,111759,111762,111774.

60. Fourth, [REDACTED][162]—an unreliable method, especially as [REDACTED] distortion was severe.[163] [REDACTED][164] [REDACTED].[165]

61. Fifth, chain of custody was not established. [REDACTED].[166] [REDACTED],[167] despite the burden on the Prosecution to establish the reliability of this evidence.

62. These issues are compounded by the context. Serbia was directly involved in the conflict and has a well-documented history of manipulating evidence against the KLA—planting information, staging crime scenes, altering documents, coercing testimony, and fabricating incriminating narratives. Examples include: false-flag operations including the attack on the Panda Café,[168] misleading claims as to the bodies found in a Kleçkë furnace,[169] and [REDACTED].[170] Against this backdrop, the suggestion that [REDACTED].

63. Furthermore, [REDACTED];[171] [REDACTED];[172] [REDACTED]. [REDACTED].

64. In summary, the provenance, integrity, and authenticity of the [REDACTED] are irretrievably compromised. They are inherently suspect, impossible to verify, and potentially the product of fabrication or manipulation. They are so fundamentally flawed that they should be accorded no weight.

[162][REDACTED].
[163] P03551_ET, pp.111820,111846.
[164] [REDACTED]; [REDACTED].
[165] P03551_ET, p.111846; P02094_ET, p.111502.
[166] F02755, para. 33.
[167] [REDACTED].
[168] **Byrnes,** T.20240326, pp.13710-13712.
[169] **Kickert,** T.20240529, pp.16259-16260.
[170] 4D00092; 4D00091, pp.105714, 105717; [REDACTED].
[171] P03551_ET, pp.111799,111792.
[172] P03551_ET, p.111729, [REDACTED].

65. Where the Defence used certain passages from these documents with witnesses or in this Brief,[173] the Defence do not concede that they represent reliable evidence on which the TP can base findings of fact, especially where not tested with relevant witnesses.

#### *1.5.7. Seized documents*

66. No inference on authorship or knowledge should be drawn from documents said to have been found at Mr.Krasniqi's house during the search of his home on 4 November 2020. The Prosecution failed to call any witness to testify to the conduct of the search. Whilst the TP admitted many documents said to have been found in the search, the Rule 39(4) inventory provided only generic labels ("collections", "documents," "binder," "photos") with no itemized descriptions or identifying information prevents the Prosecution from establishing the chain of custody of any specific exhibit.[174] Accordingly, the Prosecution's failure to prove the chain of custody means that the TP should not attach substantial weight to such exhibits.

67. Even assuming *arguendo* that the documents were found in Mr.Krasniqi's home, the TP cannot infer the authenticity or authorship of documents, from the location in which they were found—more than 20 years after the conflict ended.

68. As a well-known historian and writer, Mr.Krasniqi collected diverse documents (including third-party communications).[175] That a paper copy or electronic document sat in a historian's archive in 2020 reveals nothing about when or how it came into his possession, who authored it, or whether he read it during the Indictment Period.

[173] [REDACTED].
[174] F00125/A03, p.87.
[175] *E.g.*, P00639_ET; P00638_ET; P001421_ET; P03793, P03915, P00720, 1D00048, P00663, P01269, P03742, P02727, P03838, P02078, P03922, P03923, P01101, P01435, P00618, P01017, P02566.

Nothing about their seizure, in and of itself, makes them reliable or attributable to Mr.Krasniqi.

#### *1.5.8. Unreliable workstation files*

69. A significant portion of the seized items consists of electronic files extracted from a workstation seized at Mr.Krasniqi's residence. The Defence disputes the authenticity, reliability and attribution of these files, as the Prosecution failed to establish any foundational facts linking Mr.Krasniqi to their creation, use or knowledge.

70. First, the seized workstation is a standalone computer tower that was not connected to any monitor or power source—effectively disconnected and non-functional.[176] The Prosecution has not proved that the seized tower is the same as any particular device from the Indictment period. It has not proved that the tower belongs to the machines photographed in1998–1999,[177] or to any other computer(s) referred to by witnesses.[178] It has also not established [REDACTED] found at Mr.Krasniqi's residence were used with the workstation.[179] The Prosecution has not explained or proved the circumstances in which the workstation came to be in Mr.Krasniqi's residence by November 2020.

71. Second, the Prosecution has not identified who used this workstation, when, or for what purpose. There is no evidence Mr.Krasniqi ever operated the workstation, nor how many persons accessed it between 1998 and 2020. *If* multiple unidentified

[176] [REDACTED].
[177] P01402; P01403; P01405.
[178] **Zyrapi**, T.20240710, pp.18033-18035; **Bytyqi**, T.20240606, pp.16888-16889; **Halitjaha**, T.20231204, p.10388.
[179] **S.Buja**, T.20240115, p.11033.

individuals used the machine,[180] any particular file's author or user is unascertainable. The time clock on the computer was found not to be working, meaning that the dates cannot be relied upon. Several files carry indicators, such as sender/recipient names or lack thereof, suggesting they were created by persons other than Mr.Krasniqi.[181] Some electronic documents[182] were ostensibly created during periods when Mr.Krasniqi was outside Kosovo, *i.e.* 6-24 February and 6 March-15 June 1999,[183] which defeats any inference that he was the author or a witness to their creation.

72. Third, the Prosecution provided no metadata or forensic analysis to establish when each document was created, modified, accessed, or by whom. Critical technical details—the number of user accounts on the computer, whether documents originated on this machine or were copied from elsewhere (via removable media, email), whether any document was ever printed or transmitted, whether the system clocks were accurate—were entirely neglected.[184] Adverse inferences should be drawn from the Prosecution's failure to call the IT experts involved in extracting the documents, so denying the Defence and the TP the chance to explore these issues.

73. Absent explanation, these glaring gaps mean the provenance of the files remains unproven.[185] An electronic file could have been created externally and later saved onto the workstation by someone, or it could be an incomplete draft never disseminated. The Prosecution did not exclude such possibilities, though they fundamentally alter the item's significance. In several instances, documents recovered were actually [REDACTED].[186] [REDACTED] would not have been visible to Mr.Krasniqi; and the

[180] **Zyrapi**, T.20240710, pp.18033-18035; P01830.4_ET, p.11; P01543, pp.18-19.
[181] *E.g.,* P03849; 4D00222; 4D00223; P03803**;** P01345; P01107; P03801**.**
[182] *E.g.,* P01345; P03780; P01110.
[183] *Infra,* paras 503(d),638.
[184] 4D00236.
[185] In an analogous context, the Special Tribunal for Lebanon ordered the Prosecution to call a witness who could testify to the extraction, gathering, retrieval and storage of the data**:** *Ayyash* Call Data Decision, p.36
[186] 4D00237; 4D00229.

Prosecution did not correlate when those files were created or [REDACTED] with Mr.Krasniqi's period of possession. Thus, physical custody of the hardware does not imply Mr.Krasniqi's awareness of the files it once contained.

74. The mere fact that files were found on a workstation in Mr.Krasniqi's residence does not prove his authorship or knowledge. The documents' timestamps and content often contradict any link to Mr.Krasniqi, and without chain of custody or metadata, the authenticity and reliability of these files are unestablished. Absent forensic attribution to Mr.Krasniqi, the Panel cannot infer that he typed, read, or knew of any given electronic document. The evidence shows a defunct computer containing assorted files of uncertain origin—far from proof of Mr.Krasniqi's personal involvement.

#### *1.5.9. Draft communiqués and declarations*

75. As elaborated below, draft Communiqués and Declarations have no probative value. The multiple admitted draft versions of KLA Communiqués and Declarations[187] bear no signatures, stamps, or finalised formatting, and the Prosecution has not proven who wrote them or even that they pre-date any final published versions; they could just as easily be later copies. The jurisprudence cautions against drafts with unverified authorship and no formal *indicia*; they are not equivalent to official issued documents,[188] and are of no assistance in determining the truth.[189] Notably, witnesses shown draft items similar to those extracted from the USB drive could not confirm their authenticity because they were unsigned drafts.[190] No witness was called to

[187] *See e.g.*, P00639_ET; P00638_ET; P001421_ET.
[188] *Delić*, Decision on Documentary Evidence, para.18; *Šainović* Bar Table Decision, para.6; *Katanga and Ngudjolo* Bar Table Decision, para.25.
[189] *Katanga and Ngudjolo* Bar Table Decision, para.22.
[190] **Zyrapi**, T.20240703, pp.17542-17543; T.20240708, p.17771; **S.Selimi,** T.20250210, p.2496; pp.25237-25239,25266-25267-25269, **S.Selimi,**T.20250213, p.25266.

explain the drafting process, or to confirm that these drafts were consistently disseminated or acted upon.

#### *1.5.10. Unattributable handwritten and typewritten notes*

76. Several handwritten documents and typewritten notes have been admitted into evidence, which have no identified author, date, or official markings.[191] The Prosecution has merely presumed from the fact they were seized at Mr.Krasniqi's home, that he wrote or recognised them. In fact, the handwriting varies, indicating multiple authors,[192] and no handwriting expert was called to attribute any handwritten item to Mr.Krasniqi. The Panel should not rely on such documents.

#### *1.5.11. Unattributable diaries and notebooks*

77. Likewise, diaries or notebooks seized were not shown to witnesses able to confirm who wrote them or whether their content is accurate.[193] The Prosecution instead attempted a circular form of authentication by merely cross-referencing these questionable documents with other equally dubious documents—an approach that never actually established reliability.[194] By failing to put these notes and diaries to any witness, the Prosecution denied the Defence an opportunity to test their origin. Unattributed notes or diary entries,[195] without context, cannot be deemed reliable evidence of anything.

[191] P00559_ET; P00596; P00562_ET; P00565_ET; P00578_ET; P00585_ET; P00574_ET; P00576_ET; P00601_ET; P00572_ET; 1D00047_ET.
[192] Compare *e.g.,* P04287, P03830, P00645, P03774, P03807, P03742, P03771, P03747.
[193] P03792; P03831. From the total 98 pages of P03725, the Prosecution showed one page to Zyrapi.
[194] See e.g. F03065, para.8. F03065/A03, items 4,5,12,13,17,29,55.
[195] *See, e.g.,* Annex 2, item 106.

### *1.5.12. Templates and unsigned draft reports and decrees*

78. An inordinate number of templates[196] and draft reports,[197] declarations or decrees[198] have been admitted. By their nature, blank templates or unsigned drafts carry no evidentiary weight—they do not prove that the content was ever approved or executed by anyone.[199] It cannot be presumed that because a document contains an empty signature block, such a document was endorsed by its purported author and/or implemented.[200] Indeed, Prosecution witnesses confirmed that an order or decree required a signature, stamp, and protocol number to become effective; without those and with no evidence it was contemporaneously issued, it remained a non-effective proposal.[201] This illustrates that unsigned templates or drafts prove nothing about actual events or given orders.

79. All of these shortcomings should be weighed by the TP in evaluating whether the Prosecution has discharged the burden of proof on every aspect of the case.

[196] *See, e.g.*, F03065/A01, items10,16-20,24,29; F03065/A02, items 119-130,133,138-139.
[197] *See, e.g.*, F03065/A02, items 26,27,46.
[198] *See, e.g.*, F03065/A03, items 15,17,18,29,30.
[199] *Delić* Decision on Documentary Evidence, para.18; *Šainović* Bar Table Decision, para.6; *Katanga and Ngudjolo* Bar Table Decision, para.25.
[200] *See, e.g.*, P03925, P03927, P03928, P03939.
[201] **Zyrapi**, T.20240703, pp.17542-17543; T.20240708, p.17771; **S.Selimi,**T.20250210, p.2496; pp.25237-25239, 25266-25267-25269, **S.Selimi,**T.20250213, p.25266.

## 2. THERE WAS NO JOINT CRIMINAL ENTERPRISE

80. There was never a common criminal purpose to gain and exercise control over Kosovo by means including committing crimes against opponents. No credible witness has testified to the existence of any such shared purpose; it cannot be inferred from the KLA's public statements or regulations. The KLA was established to defend the civilian population against widespread Serbian crimes. The GS sought to guide the KLA politically but never had operational control over the zones. Whilst the KLA sought Kosovan independence, it envisaged the PGoK as a unified government to move towards democratic elections. There was never a KLA policy to commit crimes against civilians—whether members of the LDK, Roma or any ethnic minority.

### 2.1. Legal issues

81. JCE—and particularly its extended form ("JCE-III")—are not modes of responsibility incorporated into the Law,[202] were not part of CIL during the Indictment Period,[203] and were not foreseeable to Mr.Krasniqi.[204] Whilst the AC ruled against the Defence on this issue,[205] the Constitutional Court has yet to address the arguments on the merits.[206]

[202] The Defence maintains that: Article 16(1)(a) of the Law does not permit JCE to be charged as a mode of responsibility, see KSC-CC-2022-13, F00001, paras.70-75.
[203] Its application cannot properly be inferred from the WWII jurisprudence, treaties or general principles of law, see KSC-CC-2022-13, F00001, paras.25-63.
[204] F00220, paras.50-54; KSC-CC-2022-13, F00001, paras.64-69.
[205] IA009/F00030.
[206] KSC-CC-2022-13, F00010, paras.53,55-56.

82. To the extent that JCE is applicable, the Prosecution must prove that:

(a) JCE members acted collectively in consort with each other in the implementation of the common purpose;[207]

(b) The common purpose amounted to or involved the commission of crimes foreseen in the Law;[208]

(c) The participants shared the intent to commit the crimes constituting the criminal purpose of the JCE ("JCE-I")[209] or any crimes committed were a natural and foreseeable consequence of the JCE and the Accused knowingly assumed the risk that they would occur (JCE-III);[210]

(d) Intent is the only reasonable inference arising from the evidence[211]

(e) The contribution made by the JCE members to the execution of the crimes was 'significant',[212] requiring that the Accused made a significant contribution to the common criminal purpose itself,[213] as distinct from any general contribution to the conflict. A non-criminal contribution that does not further the execution of a common objective involving the commission of crimes is insufficient.[214]

83. Where crimes were not perpetrated by a JCE member, they must be imputed to a JCE member, who acted in accordance with the common criminal purpose in using the principal perpetrator. This link between the principal perpetrator and a JCE member must be assessed on a case-by-case basis.[215]

[207] *Brđanin* AJ, paras.413,430.
[208] *Shala* AJ, para.776.
[209] *Shala* AJ, para.740; *Tadić* AJ, para.228; *Stanišić and Simatović* AJ, para.522; *Popović* AJ, para.1369; *Brđanin* AJ,para.365
[210] *Martić* AJ, para.83.
[211] *Brđanin* AJ, para.429.
[212] *Idem,* para.430.
[213] *Idem*, para.427, and fns.908-909.
[214] Krajišnik AJ, para.218.
[215] *Idem*, paras.413,430.

84. These requirements must be applied strictly. JCE is not an open-ended concept and does not permit convictions based on guilt by association.[216]

85. Finally, JCE-III does not apply to specific intent crimes such as persecution. Relying on STL jurisprudence,[217] the PTJ correctly held that it would be a legal anomaly to convict the Accused pursuant to JCE-III for a specific intent crime.[218] Specific intent cannot be proved by the lower foreseeability standard of JCE-III.

### 2.2. The Prosecution case is fundamentally flawed

86. The Prosecution failed to call the evidence necessary to prove its case that there was a common purpose involving GS members to gain control over Kosovo through criminal mistreatment of opponents. The evidence does not show that a common purpose involving crimes was discussed by a plurality of persons, disseminated in any way to the alleged direct perpetrators, or that crimes were reported by the direct perpetrators to the plurality of persons. Without evidence of such connections, the Prosecution cannot establish a shared purpose.

87. In any event, the alleged objective—gaining control over Kosovo[219]—is not inherently unlawful under international law. There is no general prohibition on an NSA (like the KLA) taking up arms against a State. The Prosecution must therefore prove that the alleged plurality shared the intent to use the enumerated crimes to achieve that lawful purpose. Evidence of attempts to organise the KLA or to liberate Kosovo do not, without more, demonstrate intent to commit crimes. Since the political-military objective was not in itself an international crime, criminal

[216] *Brđanin* AJ, para.428.
[217] STL Interlocutory Decision, paras.248-249.
[218] F00412, para.208.
[219] Indictment, para.32.

responsibility depends on the commission of prohibited conduct and the required intent. Worse still, the Prosecution's definition of the alleged "unlawful means"—the commission of crimes against 'opponents'—is so broad that it becomes incoherent.[220] For instance, the Prosecution includes KLA fighters[221] and Serbian combatants[222] within the alleged civilian population of "opponents". That inconsistency exposes an impermissible attempt to stretch its definition of the common purpose to include every crime alleged to have been committed by KLA members.

88. The Prosecution failed to adduce any direct evidence of the alleged common purpose. It relied upon oral evidence from two GS members and three ZCs, but they all denied it existed. Zyrapi denied any common purpose to intimidate, mistreat or commit violence against civilians, ethnic minorities or suspected collaborators or opponents.[223] Zyrapi was the Chief of the GS;[224] the alleged common purpose could not have existed without his knowledge.

89. Bashota testified that the GS did not receive information about collaborators but that ZCs, with their absolute authority, dealt with such matters.[225] ZCs agreed. S.Selimi testified that the GS was "nearly non-existent" and lacked "the capabilities, the experience or the qualifications" to support the zones.[226] ZCs were independent and had authority to act in their zones.[227] S.Buja did not receive instructions from the GS, merely communications between friends.[228] R.Mustafa confirmed that there was no common voice between the zones and the GS.[229] He never received an order from the

[220] Indictment, para.32.
[221] *E.g., B.Kuqi, W02652.*
[222] *E.g.*, SPO PTB, para.493.
[223] T.20240715, pp.18205-18206.
[224] **Zyrapi**, T.20240701, p.17344; [REDACTED].
[225] **Bashota**, T.20241128, pp.22986–22987,22098; T.20241202, pp.23096,23131.
[226] T.20250213, pp.25254,25255,25292.
[227] **S.Selimi**, T.20250213, pp.25256,25258.
[228] **S.Buja**, T.20241105, p.21884.
[229] T.20230714, p.5771.

GS to mistreat detainees or civilians and never reported detentions or mistreatment to the GS.[230]

90. The Prosecution called these witnesses and must accept their evidence as it stands. It cannot selectively embrace any inculpatory portions of their testimonies while discarding the same witnesses' exculpatory evidence. Such selective reliance amounts to an impermissible distortion of the evidence and fundamentally undermines the integrity of the process. The Prosecution could have called other surviving GS members including A.Syla, F.Limaj, A.Grabovci, R.Buja, or other surviving ZCs: R.Haradinaj, R.Rama, and A.Isufi—but chose not to. Consequently, the only insider evidence from witnesses enough to have knowledge about Mr.Krasniqi and the GS directly contradicts the alleged common purpose.

91. The Prosecution failed to establish that the alleged common purpose was discussed or agreed upon by a plurality of persons. Zyrapi thought that the issue of collaborators was not discussed in the GS until November 1998,[231] and thereafter the GS attempted to prevent crime.[232] Bashota recalled rare meetings in Spring and Summer 1998,[233] and did not recall any meetings discussing detention centres,[234] or collaborators.[235] Whilst alleged notes from GS meetings have been tendered, the Prosecution hardly attempted to authenticate and contextualise them through witness evidence and, on their face, they reflect ordinary military organisation, not the alleged common purpose.[236]

[230] **Mustafa**, T.20230718, pp.5967-5968.
[231] **Zyrapi**, P01355.5_ET, p.5.
[232] **Zyrapi**, T.20240715, p.18206; *Infra,* section 2.14.
[233] **Bashota**, T.20241202, p.23142; T.20241205, p.23467.
[234] **Bashota**, T.20241202, p.23153.
[235] *Idem*, pp.23145,23142.
[236] P00615; P03742; P03765; P03773; P03774; P03775; P03777; P00644; P00645.

92. The Prosecution has not clearly defined the alleged plurality of persons. It has failed to plead whether all GS members were allegedly members of the JCE,[237] and it remains unclear whether the Prosecution alleges that its most senior insider witnesses—Zyrapi and Bashota—were JCE members or not. The Indictment does not name anyone from the Operations Directorate as a JCE member; yet, to the extent that any reporting about detentions occurred, this was directed exclusively at Zyrapi and the operational directorate, who issued instructions in response.[238] Rather than following the evidence, the Prosecution has cynically shifted and reshaped the plurality of persons to shield its star witnesses and preserve its theory.

93. The Prosecution failed to prove that any instruction to carry out the alleged common criminal purpose was given by the alleged plurality of persons. The Prosecution built its case on Bashota and R.Mustafa's prior statements.[239] This foundation disintegrated during trial. Bashota explained that there were mistakes in the relevant prior statement and his previous statement about orders to kill collaborators was only hypothetical.[240] No specific case was put to him by the Prosecution.[241] He was not aware of any specific case where the GS decided on punitive measures against collaborators.[242] No weight should be attached to his prior statement since it was comprehensively disavowed by the witness and was not supported by any example.

94. R.Mustafa too did not confirm that the GS made decisions about detention centres. He did not remember receiving instructions on collaborators from the GS,[243]

[237] Indictment, para.35.
[238] *E.g.*,**Zyrapi**, T.20240704, pp.17639-17640; T.20240710, pp.18021-18023.
[239] SPO PTB, para.70.
[240] T.20241202, pp.23097,23099,23101,23119; T.20241204, p.23316.
[241] **Bashota**, T.20241202, pp.23102-23103.
[242] **Bashota**, T.20241128, pp.22985,22998,23102; T.20241204, pp.23316,23330; **Zyrapi**, T.20240717, p.18416; [REDACTED].
[243] T.20230712, pp.5567,5557-5558.

or being present at a meeting where collaborators were discussed.[244] Meetings between ZCs and GS did not occur until December 1998; thereafter they occurred once a month until March 1999.[245] R.Mustafa's vague recollection of a meeting, if it indeed occurred, is likely to refer to the December 1998 meeting at which Zyrapi discussed his 28 November 1998 Order.[246] R.Mustafa clarified that the only orders he recalled from the GS on this issue were 1D00029 and 1D00030.[247] These were signed by Zyrapi, and were intended to improve the behaviour of soldiers in the zones and to institute a system where anyone detained was brought to the legal sector to undergo a legal procedure.[248] The Orders tried to "stamp out negative tendencies" and prevent "improper behaviour".[249] The meeting did not cause R.Mustafa to establish a detention centre; his zone had been carrying out detentions since 2 August 1998.[250] Thus, the only evidence of GS orders to the Zones regarding detentions demonstrates an attempt to improve behaviour and is inconsistent with the alleged common purpose.

95. The evidence does not establish that the GS conveyed the alleged common purpose to the zones. S.Selimi denied receiving any regulations from the GS on detaining persons.[251] The Prosecution adduced hundreds of pages of [REDACTED],[252] none of which contains an order to detain, mistreat or kill an opponent from any of the Accused (or other alleged JCE members) to direct perpetrators. The Prosecution adduced no evidence the KLA had knowledge their satellite phones were being intercepted.[253] The absence of direct evidence of the alleged common purpose in the intercepts directly undermines the Prosecution case.

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[244] **Mustafa**, T.20230712, pp.5562,5565; T.20230717, pp.5826-5828.
[245] [REDACTED]
[246] [REDACTED].
[247] T.20230718, pp.5951-5954.
[248] **Zyrapi**, P01355.14_ET, p.23, T.20240709, pp.17848-17849.
[249] P00741_ET.3.
[250] [REDACTED].
[251] T.20250213, p.25285.
[252] [REDACTED].
[253] [REDACTED].

96. The admitted written orders are unrelated to any crime. Most relate to mundane organisational matters. The Prosecution placed particular reliance on P00168, because it is a rare example of a GS order mentioning arrests.[254] However, P00168 does not evidence the alleged common purpose; the instruction to detain those "carrying the uniform of the Serbian police" was entirely lawful since the police were combatants.[255] The Prosecution failed to prove that P00168 was sent out by the GS, received and implemented by KLA units or that any crime was actually committed because of it.[256]

97. Having failed to show that the alleged common purpose was communicated in orders, the Prosecution may claim that it was communicated through communiqués or regulations. Neither submission is credible. As developed below, the Prosecution failed to prove that the communiqués were written by alleged JCE members, that they were received and/or relied upon by KLA volunteers, or that they were connected to any alleged crime.[257] Nor has it proved that KLA regulations were distributed, implemented or were connected to any crime.[258]

98. The Prosecution has not proved that the perpetrators reported the commission of crimes to the plurality of persons. For most alleged crimes, the Prosecution failed to prove that they were reported to anyone outside the location in which they occurred.[259] There is no evidence of crimes being reported from the zones to the Accused. Zyrapi denied receiving reports about crimes,[260] and when issues with civilians were mentioned to him, he issued 1D00029 in response.[261] The Prosecution

[254] SPO PTB, para.75.
[255] **Bashota**, [REDACTED], pp.4-5.
[256] *Infra,* section 3.6.10(a).
[257] *Infra,* section 2.9.
[258] *Infra,* section 2.10.
[259] *Infra,* section 2.8.
[260] **Zyrapi**, T.20240710, p.17928.
[261] **Zyrapi,** T.20240717, p.18506; 1D00029.

failed to prove that P00067, a purported report from Drenoc, was ever received by the GS.[262] Maloku confirmed that, even after November 1998, the zones never reported arrests, detention or mistreatment to the GS.[263] Consistent with this evidence, the few written reports summarised by Zyrapi, which he claimed to have passed to Mr.Krasniqi,[264] do not refer to any crime.[265] One vague reference to "sympathising and collaboration" in an unsigned, undated, draft document, which was not clarified with Zyrapi, cannot be twisted into evidence of reporting of crimes.[266] The legal sector did not report to the GS.[267]

99. Since it failed to prove any regular reporting, the Prosecution alleged that there was a parallel system of reporting to the GS through the intelligence sector. The only written evidence of a report bypassing the zone command was P00500, which is not an intelligence report but a complaint that bypassed the ZC because he was the subject of the complaint.[268] Oral testimony regarding parallel reporting rests solely on speculative testimony from Pashtrik Zone witnesses outside the intelligence apparatus and without any first-hand knowledge of such reporting. [269] Qoqaj, who was part of the intelligence structure, denied parallel reporting.[270]

100. The Prosecution has not proved that a plurality of persons: agreed on the alleged common criminal purpose, conveyed an instruction to follow the alleged common purpose to KLA members, or received reports about crimes committed pursuant to the alleged purpose. Absent this evidence, the JCE is not established.

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[262] **Zyrapi**, P01355.3_ET, pp.8,10; T.20240709, pp.17877-17878,17882; *Infra,* paras 184-185.
[263] T.20250326, p.25949.
[264] [REDACTED].
[265] **Zyrapi,** T.20240715, p.18173.
[266] P00184_ET, p.SPOE00232119.
[267] P01955.9_ET, p.9.
[268] P00500; **Fondaj**, T.20240625, pp.17102-17103.
[269] [REDACTED]; **Fondaj,** T.20240625, pp.17098-17100; T.20240626, pp.17229-17233; [REDACTED].
[270] **Qoqaj,**T.20241118, p.22352.

### 2.3. The KLA was formed to defend civilians not to gain control over Kosovo

101. The allegation that Mr.Krasniqi and others in the KLA shared the common purpose to gain and exercise control over Kosovo through the commission of crimes is fundamentally wrong.[271] The KLA was a defensive organisation, which grew from the ground upwards in response to the urgent need to protect civilians from atrocities committed by Serbian forces.

102. The Panel has consistently prevented the Defence from leading evidence about Serbian crimes.[272] Nonetheless, the circumstances in which the KLA emerged in 1998 are directly relevant to whether any alleged criminal purpose existed. Serbian forces were systematically committing grave human rights violations against the Kosovar Albanian population.[273] The campaign of terror and extreme violence has been judicially established, including through the convictions of Serbian leaders before the ICTY.[274] The TP cannot fairly assess the KLA's aims, structure and actions without situating them in the reality of the violence that drove the population to armed resistance.

103. The Serbian oppression of Kosovo Albanians is summarised in unrebutted adjudicated facts: in 1989, Kosovo's autonomous status was abolished;[275] in 1990 the Assembly of Kosovo and Provincial Government were also abolished;[276] through the 1990s, laws and practices discriminated against Kosovo Albanians, including closing

[271] Indictment, para.32.
[272] F01226/A01; [REDACTED]; T.20251119, p.28339; [REDACTED]; [REDACTED].
[273] T.20221216, p.1725; **Williams**, T.20250918, p.27005; **Rubin**, T.20250915, p.26554.
[274] F01536, AdjF.745.
[275] *Idem*, AdjF.736.
[276] *Idem*, AdjF.738.

Albanian language schools, dismissing Albanians from jobs in the public sector and closing Albanian newspapers, radio and television stations.[277]

104. The evidence demonstrates that the common purpose which animated the KLA was liberation from the Serbian forces and the protection of the civilian population,[278] neither of which, per se, entail the commission of crimes. Internationals recognised the KLA as representing a population subjected to oppression in an apartheid-like system.[279]

105. The KLA was formed by volunteers who organised to defend themselves and their families—most of who were not professionally trained soldiers, nor supported by any established military infrastructure. Prosecution witnesses, including [REDACTED],[280] [REDACTED],[281] W03165, Tetaj,[282] Sopi[283] and Abazi[284] unanimously agreed that they joined the KLA to free themselves from years of Serbian oppression and defend their country from killings, massacres and maltreatments committed by the Serbs.

106. The growth of the KLA after the Jashari massacre[285] also evidences its defensive purpose. It is an agreed fact, supported by witness evidence, that a significant number of volunteers joined the KLA after this attack.[286] The expansion of the KLA after the

[277] F01536, AdjFs.739-741.
[278] [REDACTED]; also **Halitjaha**, T.20231113, pp.9917-9918.; [REDACTED]; [REDACTED]; also, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; **Bytyqi**, T.20240606, pp.16911-16912.
[279] 1D00262, para.13; **W.Clark**, T.20251118, p.28304.
[280] [REDACTED].
[281] [REDACTED].
[282] T.20230517, p.4240; T.20240903, p.19523.
[283] T.20241028, p.21266.
[284] T.20240429, p.15110.
[285] 1D00404, p.DHT04829; F01536/A01, AdjF.751; **Maloku**, P02090.6_ET, p.18; **D.Krasniqi**, P01667.1_ET, p.8; 1D00001, p.095081; [REDACTED]; also P04156_ET, p.SPOE40010563; P03734_ET, p.SPOE00226146.
[286] F03612/A01, [REDACTED]; **Bytyqi**, T.20240604, p.16633; **Abazi,** T.20240429**,** pp.15109,15110; [REDACTED].

notorious Serbian attacks in March 1998 further demonstrates that it was established—and grew—in response to a collective realisation that it was necessary in order to protect the rights of Kosovan civilians in the face of multi-faceted persecution and crimes that were being inflicted upon them. It was neither conceived nor established—nor operated—as a vehicle to commit crimes.

107. The spontaneous formation of defensive units is also critical to understanding the structure of the early KLA. Witnesses have repeatedly testified that KLA fighters were volunteers,[287] civilians with no military experience.[288] They organised themselves in their villages, independently, without higher structures.[289] Villagers created funds which were used to purchase weaponry.[290] Volunteers brought their own weapons,[291] and uniforms.[292] The independent organisation of these units demonstrates the absence of the alleged structure and of the alleged shared criminal purpose.

### 2.4. The KLA never had an organised structure capable of implementing a JCE

#### *2.4.1. Between March and November 1998, there was no functioning GS*

108. A fair assessment of the evidence demonstrates that between March and November 1998, the GS was simply not a functioning entity.[293] Without permanent

[287] **R.Qeriqi,** T.20240423, p.14737; **Abazi**, T.20240429, p.15110; [REDACTED]; **Sopi**, T.20241028, p.21266; [REDACTED]; [REDACTED].
[288] **Abazi**, T.20240430, p.15176; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; T.20231030, p.9161; P02784_ET, p.1; [REDACTED].
[289] **H.Mazreku**, T.20241030, p.21603; **Abazi**, T.20240429, p.15110; **Halitjaha,** T.20231113, pp.9917-9918.
[290] P02693_ET; P02460_ET.
[291] **R.Qeriqi,** T.20240423, p.14737; **Mustafa**, T.20230717, p.5816.
[292] **R.Qeriqi,** T.20240423, p.14737; **Mustafa**, T.20230717, p.5816; **Abazi**, T.20230518, pp.4280-4281; [REDACTED].
[293] **Zyrapi**, P01355.3_ET, pp.15,18.

headquarters,[294] and with its members unable to meet regularly or in full composition,[295] the GS did not exercise any command function.[296] At most, it attempted to have a co-ordination role, which was, however impaired by the inability to move between locations, the lack of communication equipment,[297] and incessant Serbian offensives in Summer 1998.[298] At that time, the KLA was composed of independent units with self-proclaimed commanders who refused any "interference" from the GS.[299]

109. The GS was not a professional staff.[300] Before Zyrapi arrived in May 1998, no GS member had any prior military experience or expertise.[301] After he entered Kosovo, Zyrapi did not even know who the other members of the GS were.[302] The GS had no fixed location; its members were always on the move.[303]

110. During this period, the GS never met in its full composition because some members, including the General Commander, were based in Albania.[304] Even within Kosovo, meetings were sporadic and attended only by a few members at a time.[305] Zyrapi and Bashota could not remember attending any GS meeting between May and July 1998, except one in Negroc in June 1998.[306] Amidst incessant Serbian attacks in July 1998, the GS could not meet at all because its members were dispersed and it was

[294] **Zyrapi,** T.20240710, p.18031; **Maloku**, P02087.2_ET, p.16; P02087.3_ET, p.5; **H.Thaçi:** P00739.5, p.8; *also*, P01069, p.8.
[295] **Zyrapi**, P01355.3_ET, p.3; P01355.5_ET, p.5; T.20240703, p.17568; T.20240710, p.17963.
[296] **Zyrapi**, T.20240709, p.17871.
[297] **Zyrapi**, T.20240716, pp.18317-18352; T.20240717, pp.18440-18441.
[298] **Byrnes**, T.20240327, pp.13849,13850 ; P00712_ET, p.SPOE00209392.
[299] **Zyrapi**, T.20240703, pp.17533,17573; [REDACTED]; [REDACTED].
[300] **Zyrapi**, P01355.3_ET, p.18.
[301] **Zyrapi**, T.20240710, pp.18042-18044.
[302] **Zyrapi**, P01355.1_ET, p.17.
[303] **Zyrapi**, P01355.7_ET, p.14; T.20240701, p.17349; T.20240710, p.18031.
[304] **Zyrapi**, T.20240710, pp.17932,17963,17964.
[305] **Zyrapi**, T.20240703, p.17568.
[306] **Zyrapi**, T.20240710, pp 17962-17963; **Bashota**, T.20241202, p.23142.

difficult to move from place to place.[307] The same occurred in August 1998.[308] Throughout the summer of 1998, it was hard, or impossible, for the GS as a whole to meet to discuss anything,[309] and there was no system for GS members to share information.[310] Zyrapi was unable to ever ask questions concerning alleged collaborators or contact anyone about this issue.[311] Bashota was also unable to recall any GS meeting when public appeals against collaboration, or the setting-up of detention centres were discussed.[312] During this period there were also no regular meetings between the GS and ZCs or local staffs.[313] The Prosecution cannot look away from its own evidence in this regard simply because it undermines the JCE case they are adamant in maintaining.

111. In September 1998, large Serbian offensives devasted KLA structures throughout Kosovo,[314] and many KLA soldiers fled to Albania.[315] Notably, the Prosecution led no evidence that there was any GS meeting at this time. Instead, Zyrapi went to Albania in September 1998, where he met frequently with A.Syla and they made decisions without any GS meetings.[316]

112. Evidence led by the Prosecution regarding GS meetings in the summer of 1998 is also scarce. Whilst it some limited evidence about a meeting in Negroc in June

[307] **Zyrapi**, P01355.3_ET, p.3; T.20240710, p.17963; **Bashota**, T.20241204, pp.23357,23379; T.20241205, pp.23466-23467.
[308] **Zyrapi**, T.20240709, pp.17870-17871.
[309] **Zyrapi**, P01355.3_ET, p.3; T.20240710, p.17963; **Bashota**, T.20241205, p.23467.
[310] **Bashota**, T.20241203, p.23193.
[311] P01355.5_ET, p.5.
[312] T.20241202, pp.23153,23155.
[313] **Zyrapi**, T.20240709, pp.17870-17871.
[314] 2D00033, pp.SPOE00304291,SPOE00304292; **Bashota**, T.20241203, p.23199; **A.Rrahmanaj**, T.20240930, p.20510; [REDACTED]; [REDACTED]; **H.Qadraku**, T.20241126, p.22698; **N.Krasniqi**, T.20250128, p.24711.
[315] **W04753**, T.20231030, p.9185; **H.Qadraku**, T.20241126, p.22699.
[316] **Zyrapi**, T.20240710, p.17932.

1998,[317] two meetings in July 1998,[318] and one meeting in August 1998,[319] the Prosecution's own witnesses contradicted such scanty evidence as was led.[320] The Prosecution's attempt to suggest that other meetings took place fails.[321] On any view, the evidence led in this case does not demonstrate that the GS functioned effectively between March and November 1998, which in turn is incompatible with the existence of the alleged common criminal purpose: there was no plurality of persons able to agree on any purpose, let alone to disseminate or implement any policy throughout the KLA.

### *2.4.2. The Zone Commanders were the only authority in the KLA*

113. In summer 1998, ZCs consolidated their role in what later became the KLA OZs. R.Mustafa, R.Haradinaj, S.Selimi, S.Buja and others were powerful individuals from well-known families in their respective areas of influence.[322] In early 1998, they were elected by local commanders in their areas, without GS involvement, which at most later formalised their existing positions.[323] Throughout the Indictment period, ZCs remained the only authority over local staff and it was the ZCs that constituted the real power in the KLA.[324] The OZs and local commanders had the power to make their own decisions.[325] There are ample examples. In July 1998, the attack on Rahovec was carried out by local KLA units without the knowledge or approval of the GS.[326] It was

[317] **Zyrapi**, T.20240710, pp.17962-17963; **Bashota**, T.20241202, p.23142.
[318] P00643_ET, p.SPOE00229213; P00189_ET.1, p.U015-8836; **Zyrapi**, P01355.7_ET, p.2.
[319] **Zyrapi**, P01355.14_ET, p.8; P00643_ET, p.SPOE00229214.
[320] *See e.g.* about the 24 July meeting: **Zyrapi**, T.20240711, p.18072.
[321] **Zyrapi**, T.20240711, pp.18072,18073.
[322] P01080, pp.075396-075397.
[323] **Bashota**, T.20241203, p.23282.
[324] **Bashota**, T.20241202, p.23131; [REDACTED]; P01080, pp.075396-075397.
[325] **Bashota**, P01870.2_ET, p.4; T.20241203, p.23282; **Mustafa**, T.20230712, p.5568; [REDACTED]; Mitchell, T.20231207, pp.10739-10742.
[326] **Zyrapi,** P01355.2_ET, pp.28,31; T.20240710, p.17921; **Bashota**, T.20241202, p.23145; T.20241203, p.23195; *Infra,* para.285.

a strategic disaster and met with an inevitable Serbian counter-attack.[327] The Rahovec attack ran counter to the GS Operational Directorate's position that the KLA was not ready to attack any town.[328] The GS was unable to control these events.[329] Likewise, in summer 1998, local units in Shala launched an unsuccessful attack on the Belacevac mine. This operation was the sole initiative of local units; it was not discussed or approved by the GS.[330] In Zyrapi's opinion, it was a mistake and served no military purpose.[331]

114. As demonstrated, the GS did not have any operational, command or disciplinary power over the KLA Zone structures.[332] According to Zyrapi, "until late 1998, it is an obvious fact that more power laid in the hands of the Zone Commanders than in the hands of the GS."[333] Crimes committed in the early period have not been linked to the GS.

#### *2.4.3. Even after the restructuring in November 1998, the GS was not a functional entity*

115. In mid-November 1998, the GS underwent a restructuring process.[334] This progressed slowly and was never fully completed.[335] GS members "did what [they] could" between November 1998 and February 1999, but due to the absence of resources and administrative support, the GS never became fully functional.[336] The

[327] **Zyrapi,** P01355.2_ET, p.33; T.20240703, p.17585; **Bashota**, T.20241203, p.23195.
[328] **Zyrapi,** P01355.2_ET, p.28; T.20240710, p.17921.
[329] **Bashota**, T.20241203, p.23195.
[330] **Zyrapi,** P01355.2_ET, pp.21-22; T.20240709, pp.17890-17891; T.20240716, p.18345.
[331] T.20240709, p.17890.
[332] [REDACTED].
[333] **Zyrapi**, T.20240703, pp.17564-17565.
[334] **Zyrapi**, P00775_ET, pp.SPOE00068079,SPOE00068082,SPOE00068084; P01355.14_ET, p.21; T.20240703, p.17539; T.20240708, p.17795; T.20240710, p.17938.
[335] **Zyrapi**, T.20240704, p.17643; **Maloku**, T.20250326, p.25945; P01080, para.1.
[336] **Zyrapi**, T.20240708, p.17795; T.20240710, p.18042.

new structure and positions created in November 1998, were only a formal attainment: those appointed were not able to exercise their responsibility because entire structures within the GS were not operational.[337] Besides Zyrapi and the members of the operational directorate, nobody else in the GS was qualified to exercise their duties in their newly-appointed positions.[338]

116. These difficulties were exacerbated by the absence of a functional headquarters. Only in mid-November 1998, a series of houses in the village of Divjakë were identified as possible GS headquarters; however, the compound consisted of one useable building.[339] The remaining buildings were not made functional until December 1998. Around 15 November 1998, Maloku and S.Veseli arrived in Divjakë and settled at the white house[340] and only after 28 November established the headquarters of the operational directorate in one of the newly renovated buildings.[341] Mr.Krasniqi was based in Divjakë only in December 1998 and January 1999. [342] By 8 December 1998, the GS in Divjakë was still lacking the most basic equipment.[343]

117. Before the end of the renovations, GS members met in other locations, such as Fshati i Ri/Novoselle.[344] The first written record of a meeting in Divjakë is dated 20 December 1998,[345] and it was only after this meeting that the GS began its work towards the implementation of a structure.[346]

[337] **Zyrapi**, T.20240708, p.17795; T.20240710, pp.17971-18031; T.20240711, pp.18074,18075.
[338] **Zyrapi**, T.20240710, p.18044.
[339] **Maloku**, T.20250324, p.25719; T.20250326, pp.25933-25934.
[340] *Ibid*.
[341] **Maloku**, T.20250326, p.25934.
[342] *Idem*, p.25935.
[343] P01398_ET; **Zyrapi**, T.20240701, p.17414.
[344] P00895_ET, p.U002-0164; **Zyrapi**, T.20240701, p.17396.
[345] P00615_ET, p.SPOE00232251; P00228_ET, p.1.
[346] **Maloku**, P02087.3_ET, p.5; P02091, paras.5,7; T.20250325, p.25854; T. 20250326, p.25935.

118. The GS struggled to implement the new structures. On 5 January 1999, almost two months after the restructuring, several GS directorates were still not operational, without a chief or otherwise woefully understaffed.[347] By 14 January 1999, less than three weeks before Mr.Krasniqi left for Rambouillet,[348] there were still grave deficiencies among the directorates in terms of staffing and functionality.[349]

119. After February 1999, the already dire situation worsened due to the devastating impact of the Serbian offensives and the NATO bombings, which impeded any ability of the GS to exercise authority.[350] In March 1999, Byrnes observed that the GS "reorganisation", which aimed at establishing some control over KLA formations, was "only partially successful as the Zone Commanders clearly retain considerable operational independence."[351]

120. International observers who visited the GS in March 1999 agreed that what they saw was inadequate and unfit for purpose. When Byrnes visited the GS headquarters on 2 March 1999, what he saw did not resemble a functional headquarters.[352] Until the end of the war, Byrnes never saw *any* location resembling GS headquarters.[353] Rubin too never saw anything that resembled a GS as a formal structure.[354] Rubin observed ZCs in their "hideout", but he never observed the existence of a functioning GS.[355] Rubin described the GS "headquarters" as a "hut with a bunch of couches", so that it would be "absurd" to refer to it as a GS.[356]

[347] P03781.2_ET, p.1.
[348] P01085, p.119797.
[349] P03781.2_ET, p.3; **Zyrapi**, T.20240711, p.18075.
[350] **Zyrapi**, T.20240708, p.17762; **Maloku**, P02090.3, p.8.
[351] P01080, p.075307.
[352] **Byrnes**, T.20240326, p.13776; P01080, p.075401.
[353] P01066, para.54; T.20240326, p.13776.
[354] T.20250916, p.26764; T.20250917, p.26828.
[355] T.20250916, pp.26669-26670,26772,26778; *also* T.20250917, p.26828.
[356] T.20250916, pp.26767,26669,26770.

#### *2.4.4. The Zone Commanders remained the only effective command in the KLA*

121. Despite the GS's restructuring efforts, ZCs remained the true power in the KLA. They never recognised the GS as a superior or commanding entity. In practice, they did not subordinate themselves to the GS in any meaningful manner. At most, the evidence discloses that GS had a coordination role, dependent on the consent of ZCs.[357] The relationship between the GS and ZCs was one of mutual consent to work together.[358] ZCs maintained absolute authority in the zones where they operated.[359]

122. The ZCs' view of the GS was well described by S.Selimi, Drenica ZC and later General Commander of the KLA:

> **We are talking about a GS which was nearly non-existent, was poorly staffed with very few people, disorganised**. **So every time we needed support or had a request to them as a zone, we did not know who to direct it to. We did not receive any logistical or other sort of support in terms of our operations, weapons supply. So we're talking about a GS with very few members whom you probably never met, based in a small building premises consisting of a private house with two, three rooms**. So these were part of our complaints. And probably **consisting of unprofessional, non-military people**. […]
> **I did not have support. I did not get supplies. I had no operational plan**. […] As a result, the zone commander had to deal himself with all this: The operations, the analysis, evaluation of the circumstances, and the actions to be taken. […]
> **And every commander was independent in their decisions, depending on the terrain and circumstances in their zone**.[360]

123. R.Mustafa accepted that the GS tried to impress the international community by building a *façade* of a group of people who could speak on behalf of the KLA.[361] Nevertheless, the GS never became a functional entity because the war ended before

[357] **Zyrapi**, T.20240717, p.18469.
[358] **Bashota**, T.20241202, p.23130.
[359] T.20241202, p.23131.
[360] **S.Selimi**, T.20240213, pp.25254-25256.
[361] **Mustafa**, T.20230714, p.5765.

it could operate effectively or acquire the status of a respected command authority—both essential to the existence of any functioning GS in any armed force.[362] Throughout this trial, Prosecution witnesses have underscored that the GS simply did not have the authority to issue orders to ZCs, who did not even know who the GS members were.[363] The ZCs regarded themselves as completely independent of the GS.[364]

124. In December 1998, the Operational Directorate and international representatives tried to convince R.Mustafa to withdraw his forces from the Podujeve line. The instruction was conveyed by Zyrapi to K.Kastrati,[365] the Llap Zone Deputy Commander. However, R.Mustafa refused to withdraw his troops.[366] Zyrapi explained that R.Mustafa had the right to make decisions on his own; the GS was not in a position to know better than ZC about what was happening in the zone;[367] and the GS did not have the power to take any action following a ZC's refusal to obey an instruction.[368] This was not the only instance: ZCs acted or refused to act at their own will, and there was nothing the GS could do to make them obey its instructions.[369]

125. Already in January 1999, ZCs criticised the GS and called for the replacement of the General Commander and the Deputy Commanders.[370] On 20 January 1999, ZCs attended a GS meeting where they criticised the GS organisation, called for the replacement of Mr.Krasniqi and Bashota; and demanded that some of ZCs be given a place in the GS.[371]

[362] **Mustafa**, T.20230714, p.5769; T.20230717, p.5887.
[363] **Mustafa**, T.20230714, p.5769.
[364] *Idem*, p.5771.
[365] **Zyrapi**, T.20240716, p.18343.
[366] **Zyrapi**, T.20240704, pp.17628-17629.
[367] T.20240716, p.18344.
[368] T.20240716, p.18345; T.20240717, pp.18455,18473.
[369] **Zyrapi**, T.20240704, p.17629; T.20240716, p.18344.
[370] 4D00073_ET, p.1.
[371] 4D00068_ET, p.3.

126. On 6 February 1999, as several GS members departed to attend the peace negotiations, ZCs replaced the Commander. There were two meetings that day. During the first, the ZCs opposed the presence of Bashota; the meeting was interrupted and a new meeting without Bashota was convened.[372] This is indicative of ZC's power: they were able to reject someone who, on paper, was their superior, and impose a new meeting on the remaining members of the GS.[373]

127. The second meeting was attended by ZCs, Zyrapi and R.Selimi.[374] S.Selimi remarked that their requests for the replacement of the General Commander and deputy commanders had been ignored by the GS,[375] and—despite there being no evidence that he reported to the GS—threatened that he would not report or respond to any requests until new appointments had been made.[376] Among fierce criticism of the GS, ZCs decided to [REDACTED].[377] While Drini and Remi proposed Zyrapi,[378] the other ZCs voted for S.Selimi,[379] who became the new KLA General Commander. Further record dated 13 February 1999 confirm that S.Selimi's appointment was "a done deal"[380] and that the other ZCs recognised him as the new General Commander.[381]

128. This event encapsulates the power of ZCs over the GS. This was a unilateral decision by ZCs over the opposition of the GS members present at these meetings.[382] Zyrapi agreed that "theoretical subordinates" unilaterally replaced their "theoretical

[372] **Zyrapi**, P01355.11_ET, pp.18-19
[373] **Zyrapi**, P01355.11_ET, p.18; T.20240702, p.17483; T.20240704, pp.17658-17660.
[374] P00182_ET, p.SPOE00226397.
[375] *Idem*, pp.SPOE00226402,SPOE00226403.
[376] *Idem*, pp.SPOE00226403,SPOE00226407.
[377] *Idem*, p.SPOE00226401.
[378] P00182_ET, p.SPOE00226400; **Zyrapi**, P01355.11_ET, pp.18,19, T.20240702, pp.17482-17483; T.20240704, p.17661.
[379] **Zyrapi**, P01355.11_ET, pp.18-19; T.20240704, p.17660.
[380] 1D00033, p.SPOE00226362.
[381] *Idem*, pp.SPOE00226357-SPOE00226358.
[382] **Zyrapi**, T.20240704, pp.17661,17662.

boss".[383] The only inference that can be drawn is that ZCs were the ones holding the real power in the KLA, to the point that they had the authority to replace the overall commander over the dissent of GS members.[384] Bashota corroborates Zyrapi: ZCs had absolute authority in their zone; they felt that they could choose whether to report to the GS or not.[385] If they got together, they could bring about any change at GS level, as actually occurred with A.Syla's replacement.[386] This explain why the GS could not refuse the appointment of a ZC or discipline them. ZCs were elected by their local staffs, and the GS could only purport to formalise these appointments. Anything else and, the ZCs would have revolted and brought about a "complete change" of the GS.[387]

129. Further demonstrating ZCs' power over the GS, the Albanian delegation to Rambouillet could not sign the peace agreement without the approval of ZCs,[388] who had long opposed the KLA's participation in the negotiations for fear that they would lose their power and influence.[389] GS members were under significant pressure from ZCs not to sign the agreement,[390] to the point that R.Mustafa threatened to shoot down the delegation's plane if the agreement was signed.[391] Thaçi confessed to internationals his fear that if he signed the agreement, he would be killed upon his return to Kosovo.[392]

[383] **Zyrapi**, T.20240704, p.17662.
[384] *Idem*, pp.17662-17663.
[385] T.20241202, p.23130.
[386] **Bashota**, T.20241202, p.23131.
[387] **Bashota**, T.20241203, p.23282.
[388] **Zyrapi**, T.20240704, p.17666; **Mustafa**, T.20230714, pp.5697,5763,5765; [REDACTED]; *also* **Rubin**, 1D00262, para.24; **Williams**,1D00375, paras.39,41.
[389] **Zyrapi**, T.20240704, pp.17666-17667.
[390] **Kickert**, T.20240528, p.16165; **Hill**, T.202251110, p.27704.
[391] **Mustafa**, T.20230714, pp.5704,5705,5707.
[392] **Hill,** T.20251110, pp.27702-27704; T.20251112, pp.27937-27938.

130. After March 1999, discussions between the GS and ZCs remained difficult and ZCs continued to act autonomously of the GS. Decisions continued to be taken by ZCs, not the GS.[393]

131. It is pertinent to note that after discussing these events, Zyrapi corrected his previous statement that "until late 1998, it is an obvious fact that more power laid in the hands of the zone commanders than in the hands of the GS" and agreed that more power continued to rest with ZCs well into 1999.[394]

### 2.5. The PGoK was not an illegitimate attempt to gain control over Kosovo

132. The Prosecution failed to prove that the formation of the PGoK was an attempt to gain and exercise control over Kosovo to the exclusion of 'opponents.' Instead, the PGoK reflected an agreed effort to create a united front to guide Kosovo through the post-conflict period. However, circumstances in Kosovo were chaotic during summer 1999. UNMIK was attempting to re-establish law and order.[395] The PGoK was never able to function. Though violence was prevalent,[396] the Prosecution failed to connect it to the PGoK or KLA leadership. The Defence submits it would be as absurd to attribute any chaos and violence to the PGoK, as it would be to blame it on UNMIK during this period.

#### *2.5.1. The PGoK included the LBD and was intended to include the LDK*

133. At Rambouillet, the KLA, LDK, and the LBD agreed to establish the PGoK.[397] A united political front was the best way to maintain external support, and move

[393] **Bashota**, T.20241204, pp.23375,23376,23379.
[394] T.20240704, p.17663.
[395] **Jensch**, T.20240522, p.15717.
[396] *Infra*, paras 160-164.
[397] 1D00306.

towards an independent Kosovo.[398] On 23 February 1999, Thaçi, Rugova, and Qosja agreed to form a provisional government in which they would each have "equal representation"[399] and the KLA was mandated to form the government.[400]

134. Accordingly, in April 1999, key appointments were given to the LBD–including Hajrizi as Deputy Prime-Minister.[401] Appointments including the second Deputy Prime-Minister were left open for the LDK.[402] As Hill noted, "the idea was to expand the government structure and have different groups participate, as opposed to just the LDK."[403] Mr.Krasniqi considered political harmony a priority for the PGoK, noting that "we were required to be as united as possible."[404] Far from excluding the LDK, members of the KLA encouraged the LDK to participate in the PGoK. To this end, Mr.Krasniqi met LDK members in Tirana in spring 1999.[405] Mr.Krasniqi played a constructive role at those meetings and did not say a bad word about Rugova.[406] The KLA did not exclude the LDK, rather the LDK chose not to participate in the PGoK. As Mr.Krasniqi wrote:

> The boycott made to the Provisional Government of Kosovo by the LDK, I think is the most serious blow given to the PGoK and in general to the Kosovar factor as well as to the political status of Kosovo.[407]

[398] **Rubin**, T.20250915, p.26516.
[399] 1D00426.
[400] **Hill,** T.20251110, pp.27710-27711.; **Williams,** T.20250917, p.26865; **Kickert,** T.20240528, p.16178; 1D00069; further 1D00227; **Mitchell**, T.20231207, p.10803; 1D00289.
[401] 1D00070_ET.
[402] *Ibidem.*
[403] **Hill**, T.20251110, p.27670.
[404] P00189_ET.2, p.U015-8966.
[405] **Byrnes**, T.20240326, p.13763.
[406] 4D00063_ET; *further*, **Byrnes,** P01069, para.19; **Hill**, T.20251111, p.27735; P00189_ET.2, pp.U015-8968, U015-8969.
[407] P00189_ET.2, p.U015-8966.

135. Further to UNSCR 1244, KFOR and UNMIK were established and deployed to Kosovo.[408] UNMIK established the KTC which brought together representatives of Kosovo Albanian political parties, minority communities, and international actors.[409] [REDACTED].[410] At the KTC's first meeting, "all invited attended the meeting with the exception of the LDK."[411] The LDK had refused to participate unless they were granted more seats, notwithstanding the earlier agreement for parity among the three main groups.[412] UNMIK assessed that the LDK's position was "not realistic"[413] and encouraged the LDK to participate.[414] [REDACTED].[415]

### *2.5.2. The PGoK was not a Challenge to International Authority*

136. The PGoK originated from the above agreement within the Albanian delegation at Rambouillet, encouraged by international representatives.[416] After Rambouillet, the U.S. indicated to Mr.Krasniqi that "while we could not recognise the provisional government, we would certainly want to work with it in practice".[417] The U.S. did not recognise the PGoK only because this implied recognition of Kosovo as an independent state.[418]

137. Although Strohmeyer characterised the PGoK as a direct challenge to UNMIK's authority,[419] his assumptions about the KLA were unreliable. Strohmeyer had no

[408] 1D00078, p.0361-6808.
[409] [REDACTED]; P01975, p.SPOE00246083.
[410] T.20250121, pp.24116-24117.
[411] P01229, p.SPOE00246089.
[412] [REDACTED]; P01975, p.SPOE00246086.
[413] P01975, p.SPOE00246086.
[414] 1D00240, p.DHT04952.
[415] **Strohmeyer**, T.20250121, p.24117.
[416] **Williams**, T.20250917, pp.26865,26866; **Rubin**, 1D00262, para.69.
[417] 1D00148, para.16.
[418] 1D00262, p.DHT1187, para.57.
[419] **Strohmeyer**, T.20250121, p.24138.

information about the KLA's structures before entering Kosovo.[420] He did not know who formed the PGoK, where it was formed[421] or when.[422] Strohmeyer's conclusions about the formation of PGoK were reached without knowing the background.[423] Ultimately, he conceded "no one ever claims that they had all the pieces of information available in Kosovo or prior to our deployment in Kosovo, and neither did I."[424] Internationals supported the creation of the PGoK and senior KLA figures engaged with international diplomats and mediators in political talks explicitly framed around building a unified political platform.[425]

#### *2.5.3. The Prosecution failed to prove that the PGoK was functional or contributed to the alleged common purpose*

138. In summer 1999, UNMIK faced an "unimaginable abundance of tasks,"[426] including refugee returns, infrastructure collapse, and the absence of a functioning civil administration. The dire humanitarian challenges after the years of persecution, that culminated in the conflict along with the loss of life, degradation of infrastructure, almost complete absence of services, the security and law enforcement void and severe health and medical needs—coupled with the heightened expectations of 'liberation', presented multifaceted challenges that simply cannot be underestimated.[427]

139. Returns of thousands of refugees exacerbated these difficulties, presenting urgent governance and security challenges that a nascent UN administration was not

[420] **Strohmeyer**, T.20250120, pp.23888–23889.
[421] *Idem*, p.23896.
[422] *Ibid.*
[423] *Idem*, p.23899.
[424] T.20250120, pp.23916–23917.
[425] 2D00040; **Rubin**, T.20251115, pp.26515-26516; **Williams**, T.20250917, pp.26865-26866.
[426] **Strohmeyer**, T.20250121, pp.24105,24106; 4D00102, p.DJK01131.
[427] *Infra,* para.160.

equipped to manage.[428] The broader climate also provided a tremendous challenge: witnesses confirmed that winterisation processes were needed but not adequately funded or prepared, and tens of thousands of people were facing starvation and/or freezing to death.[429] There was a near-total absence of police.[430] The PGoK could not function in this chaos.

140. Following UNSCR 1244, the PGoK had no legal authority in Kosovo. Strohmeyer stated that from UNMIK's point of view, the PGoK did not lawfully exist, and its decrees and decisions were not legally valid.[431] The PGoK was unable to exercise legal or operational authority in Kosovo, nor did it have the capacity to investigate crimes that had taken place – either during the war or afterwards.[432]

141. Despite calling Bashota and Zyrapi, who held positions in the PGoK,[433] the Prosecution did not elicit evidence on the functioning of or reporting within the PGoK. It failed to question witnesses about any PGoK meetings. It has not been established that the PGoK functioned in any meaningful way. It would be erroneous—and contrary to reality—to assume such functioning in the absence of any reliable and convincing evidence.

142. The Prosecution has failed to establish the nature of any connection between the PGoK and the KLA GS. Prosecution witnesses were clear that decision-making power rested with A.Çeku and ZCs. Çeku and ZCs were responsible for operations once Zyrapi left to join the MoD.[434] [REDACTED] considered that the GS did not have

[428] 1D00443; 1D00417; 4D00080; P00515_ET.71, p.008919.
[429] 4D00101; **Strohmeyer,** T.20250121, p.24101; **Rubin,** T.20250915, p.26559; **Byrnes,** 20240326, p.13772.
[430] **Covey,** 20250930, pp.27401-27402.
[431] T.20250122, p.24162.
[432] [REDACTED]; **Hill**, T.20251111, p.27738.
[433] Zyrapi became the Deputy Minister of Defence in the PGoK: P01356_ET, p.6057. Bashota was questioned by the TP about the role of the Accused in the PGoK, but not by the Prosecution: **Bashota**, T.20241205, p.23457.
[434] **Zyrapi**, T.20240703, p.17507.

authority over zones during this period.[435] The JIC was addressed between KFOR and Çeku, with ZCs.[436] Duncan distinguished between the political and military leadership and noted that political leaders never went into military matters.[437] There is no evidence connecting the PGoK to the alleged common purpose.

143. Contrary to the Prosecution's case, the PGoK made numerous statements condemning violence and supporting a multi-ethnic Kosovo. During a late-June 1999 speech, Thaçi spoke against "fuel[ing] the fires of a mono-ethnic life."[438] Mitchell stated that Mr.Thaçi made multiple appeals for a multi-ethnic society, and for Kosovo Serbs in particular to remain in the country,[439] including condemnations in July 1999 against those who perpetrated violence against the Serbs, on behalf of himself and the PGoK.[440] In September 1999, Mr.Krasniqi stated in his capacity as Minister for Reconstruction and Development that "a stable political environment based on democratic values is surfacing more and more on a daily basis."[441] These statements are inconsistent with the alleged common purpose.

#### *2.5.4. The Prosecution failed to connect the PGoK or the GS to post-conflict crimes*

144. The Prosecution failed to link post-conflict crimes to the PGoK or, indeed, the GS. Regarding Taslixhe and Nerodimja-e-Ulet, the Prosecution relies merely on the names of certain alleged KLA members without identifying their unit or connection to a KLA higher structure. Concerning Verban, linkage evidence only shows that a

[435] [REDACTED]; [REDACTED].
[436] [REDACTED]; **W.Clark**, 1D00430, para.31; also P04245; 1D00212.2; P04241.
[437] T.20250923, p.27300; **Covey,** T.20250930, pp.72368-72371.
[438] 1D00097.
[439] T.20231207, pp.10819-10821; *also* 1D00087; 1D00088.
[440] 1D00089.
[441] 4D00066_ET, p.2.

battalion was established there shortly before the alleged crimes.[442] Evidence that [REDACTED] must be rejected. This allegation was admitted in writing during the Victims' case[443] and the Defence could not confront it. It is inherently unreliable as the location is geographically remote from Drenica. [REDACTED].[444] [REDACTED],[445] [REDACTED],[446] and questions were asked about participation in [REDACTED] crimes.[447] The evidence points to private revenge crimes—and certainly do not support an alleged JCE.

145. The Prosecution also failed to prove that any alleged JCE member was in Gjilan or in contact with KLA Units in Gjilan when crimes were committed. The Prosecution did not call any KLA witness from the Karadak zone. The evidence regarding structure is limited to the testimony of Russell and certain documents. Neither is convincing. Russell characterised Kosovo as a Serbian "province",[448] repeatedly used Serbian toponyms[449] and thought that KFOR's intervention violated Serbia's sovereignty.[450] He labelled the KLA as "thugs"[451] and [REDACTED][452] and [REDACTED].[453] His narrative was fundamentally opposed to the KLA.

146. Although crimes in Gjilan are alleged to have occurred in late June and July 1999,[454] [REDACTED][455] and the KFOR raids which formed the basis of his knowledge

[442] SPO PTB, para.601.
[443] [REDACTED].
[444] [REDACTED]; P01840.4_ET, pp.11-15; P01840.3_ET, p.4; [REDACTED]; [REDACTED].
[445] [REDACTED].
[446] P01841.3, p.29.
[447] [REDACTED]; P00743.3, p.SPOE00198775; 1D00215_ET; [REDACTED]; P02023.3_ET, pp.13,18,19.
[448] P01509.1_ET, p.11; P01509.2_ET, pp.20,50; P01510.1_ET, p.24; P01510.2_ET, p.48; **Russell**, T.20240819, pp.18628,18650.
[449] P01509.1_ET, p.8; P01509.2_ET, pp.2,8,9; P01510.1_ET, pp.15,24,34,46; P01510.2_ET, pp.2,5,8,27; T.20240819, pp.18587,18612,18619; T.20240820, pp.18774,18713,18720,18776.
[450] T.20240819, p.18628.
[451] T.20240819, p.18645; T.20240820, p.18765.
[452] P01509.2_ET, p.20.
[453] *Ibid*.
[454] SPO PTB, paras.667-679.
[455] P01509.1_ET, p.9.

occurred in August 1999.[456] He cannot speak to the KLA structure at the time of the alleged crimes.[457] Russell had no knowledge of the GS.[458] He did not deal with anyone hierarchically above Ahmet Isufi.[459] He did not know to whom Isufi reported or from whom he received orders,[460] if indeed he did. Although he testified that "Isufi might have said that something had to be coordinated at a higher level", he had no knowledge of whether Isufi was actually co-ordinating with anybody above himself.[461]

147. Russell thought [REDACTED].[462] Russell distinguished Isufi, [REDACTED].[463] Individuals associated with Isufi could not exert control at the dormitory.[464] The "hotheads" challenged Isufi's authority,[465] talked back and pushed back on Isufi[466] so that Isufi only managed to make them follow his lead to "some extent".[467] Russell described a "bit of rebellion that was going on internally."[468] [REDACTED].[469] The witness evidence fails to connect the alleged crimes in Gjilan to Isufi or the PGoK.

148. The documentary record is equally unimpressive. The Prosecution relied on P01539 which purports to be information from the Karadak MP commander to the GS. P01539 is unsigned, undated, unstamped, has no protocol number or letterhead, and

[456] P01509.2_ET, pp.16,17,19,21; T.20240819, pp.18599,18691.
[457] T.20240819, pp.18581,18582,18616,18699; T.20240829, pp.18752,18753.
[458] T.20240820, pp.18760,18761.
[459] T.20240819, p.18616; T.20240820, pp.18760,18761.
[460] T.20240819, p.18616; P01510.2_ET, pp.14,15.
[461] T.20240820, pp.18760,18761.
[462] [REDACTED].
[463] *Idem*, p.10.
[464] [REDACTED].
[465] T.20240819, p.18612.
[466] [REDACTED].
[467] T.20240819, p.18613; P01509.1_ET, p.59.
[468] T.20240819, p.18613.
[469] P01536, p.1.

appears to have spelt the KLA's name incorrectly.[470] There is no evidence it was sent or received.

149. Similarly, the Prosecution failed to connect the alleged crime in Novo Brdo to the zone or GS. The admitted evidence is limited to the written evidence of [REDACTED],[471] which the Defence was unable to confront in Court. The only evidence [REDACTED].[472] The original document was not obtained. Russell could not reliably authenticate Isufi's signature and was not provided with signatures to compare.[473] There is no other evidence that a 1st battalion or 1st company existed in the Karadak Zone. Russell provided no detail about the nature or extent of any interaction between Kllokoqi and alleged superiors. [REDACTED]."[474] There is no evidence that the crimes alleged at Novo Brdo were committed pursuant to any KLA order, instruction or policy; or reported to anyone above Kllokoqi. The Prosecution failed to link this crime to the alleged common purpose.

150. The Prosecution also failed to link the crimes alleged in Rahovec in summer 1999 to a common purpose.[475] Although Tara, then Brigade 124 commander,[476] gave self-serving testimony, much of his Prosecution interview is consistent with surrounding evidence. After the conflict, thousands of soldiers entered the Pashtrik area.[477] Tara had not even met most of his soldiers and was not able to control everyone in Brigade 124.[478] He referred to the second battalion of Brigade 124 as [REDACTED] due to the young age of its commander and soldiers.[479]

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[470] P01539.
[471] P02874.1_ET; P02874.2_ET; P02874.3_ET.
[472] P01522.ET.2.
[473] T.20240820, pp.18749,18750.
[474] P10522 ET.2.
[475] **P.Dedić**, P00667, para.15; T.20231102, pp.9305,9263,9290; 1D00192, p.SITF00389271.
[476] P02079.4_ET, pp.13,15; P02080, para.97.
[477] P02079.13_ET, p.23; P02079.14_ET, p.16.
[478] P02079.14_ET, p.16; 4D00116, p.SPOE00304737.
[479] 4D00116, p.SPOE00304737.

151. Tara acted independently to try to help the population regardless of any orders.[480] He organised his soldiers to [REDACTED].[481] [REDACTED].[482] From 13 June 1999 until the KLA demilitarisation, he said [REDACTED].[483] Tara never informed anyone in his command about the disappearances in Rahovec; he only discussed the cases with the international forces.[484] Linkage was therefore not established.

152. The Prosecution failed to show that the crimes in Prizren occurred pursuant to instructions from the GS or PGoK. The most senior commander then present in Prizren was Drini, who entered Prizren on or around 12 June 1999, and was reportedly acting on his own and was not receiving any orders from anyone.[485] His independent action breaks any connection to higher structures.

153. The situation in Prizren was anarchic and the crimes that occurred amidst the chaos were not part of any common purpose. No-one could guarantee anyone's security.[486] There were masses of soldiers and civilian in the streets.[487] Armed civilians were breaking into shops.[488] There was shooting, looting,[489] and revenge and retaliations took place amongst the civilian population.[490] The Albanian civilian

[480] P02079.12_ET, p.16.
[481] P02079.13_ET, p.9.
[482] *Idem*, p.9.
[483] P02079.12_ET, p.15.
[484] P02080, paras.110,115; P02079.9, p.9.; **Jeftić,** T.20241002, pp.20607,20614,20615; **P.Dedić**, T.20231102, p.9290; [REDACTED], P00230, para.54; 1D00192, p.SITF00389271.
[485] 1D00053; [REDACTED]; P00506_ET, p.SPOE00225116; P01605.6, pp.13-14; [REDACTED]; **Halitjaha**, T.20231116, p.10254.
[486] T.20240228, pp.13091,13092,13120,13121; 1D00111; 4D00034; T.20240226, pp.12944,12958; P01177.1_ET, p.12; T.20240521, p.15548; T.20240228, p.13094.
[487] T.20240226, p.12958; P01097.8, p.27; T.20240521, p.15554; P01449_ET, p.SPOE00209511; [REDACTED].
[488] T.20240228, p.13120.
[489] T.20240228, p.13091; P00676_ET, p.21; [REDACTED]; T.20231116, p.10255; P00513_ET, p.2; P02563, p.SPOE00000756; T.20240318, p.13280; [REDACTED]; [REDACTED]; [REDACTED]; 4D00130_ET, p.1.
[490] P01021_ET, p.SITF00255062; [REDACTED]; T.20240228, p.13120; T.20240521, pp.15556,15607; P01191.2_ET, p.15; P02047.1_ET, p.4.; P04186, p.1; P03658_ET, p.SPOE00344961; P00949_ET, p.1;

population targeted the Serbian population, especially former members of police and military forces, even months after the end of conflict,[491] to retaliate for crimes committed against them by Serbian forces.[492]

154. Many people, including KLA members, were traumatised by Serbian atrocities.[493] Meanwhile, KLA uniforms were easily accessible, and civilians were misusing the uniforms, pretending to belong to the KLA.[494] Brigade 125 grew to over a thousand of soldiers after entering Prizren.[495] It was impossible to tell which were real KLA soldiers.[496]

155. The Prosecution failed to link the crimes alleged in summer 1999 to the PGoK or the GS. The evidence points to small-scale revenge actions, rather than an organised common purpose.

### 2.6. Crimes were committed for personal reasons including revenge

156. Local dynamics and culture must be considered when assessing the behaviour of the parties.[497] Kosovo Albanian witnesses,[498] international observers,[499] and contemporaneous international media[500] confirm the importance of the *Kanun* to

[REDACTED], P01066, paras.101,103; P00746, p.SITF40008715; P02047.1_ET, p.4; P01721.1_ET, p.23; P02062.1_ET, p.37; T.20240318, p.13278.
[491] P00677_ET; P02047.1_ET, p.4.
[492] 4D00132, p.SITF40008377; [REDACTED]; P01132.3, p.23.
[493] [REDACTED]; [REDACTED]; T.20240522, pp.15642,15651; *also* P00719_ET, p.108013.
[494] P01133, para.12; P03658, p.SPOE00344961; T.20240318, pp.13274-13275; 1D00085, para.102; P01712.1_ET, pp.13,17; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; 1D00085, para.102; T.20240521, pp.15602,15561,15613,15614; [REDACTED]; P01721.1_ET, pp.20,21.
[495] P01554.2_ET, p.18.
[496] [REDACTED]; T.20240521, pp.15561,15613,15614; T.20240522, p.15652.
[497] **Durkee**, T.20251113, p.28021.
[498] 1D00064, para.17; **W04811**, T.20240318, pp.13207,13225-13227; *also* [REDACTED]; [REDACTED]; [REDACTED]; P00252.1_ET, p.29.
[499] **Duncan,** T.20250922, pp.27020,27026,27131; **Byrnes,** T.20240327, p.13842.
[500] P00513_ET.2, p.12.

Kosovo Albanian society. Duncan described the *Kanun*, which has been observed since the 14th century,[501] as "a basis to society, a way of thinking",[502] which became stronger when society was under pressure.[503]

157. The *Kanun* permits taking revenge. The basic principles of the *Kanun* include "the freedom of each to act in accordance with his own honour, within the limits of the law, without being subject to another's command."[504] The ways of dishonouring a man pursuant to the *Kanun* included "taking his weapons."[505] Possessing a weapon was culturally significant and taking someone's weapon was a serious matter.[506] [REDACTED].[507]

158. A blood feud could extend to the friends and family of the individuals concerned and could go back generations.[508] During the conflict, old blood feuds reopened because the conditions enabled acts of personal revenge or settling scores.[509] [REDACTED].[510]

159. Some of the charged crimes were committed to settle private disputes. W04444's family was involved in a blood feud,[511] [REDACTED] and had nothing to do with the

[501] P04498_ET, p.SPOE00403555.
[502] **Duncan,** T.20250922, p.27020.
[503] *Idem*, p.27026.
[504] [REDACTED]; also **Duncan**, T.20250922, p.27026.
[505] [REDACTED].
[506] [REDACTED].
[507] P03352, p.U0031183.
[508] [REDACTED]; **Durkee,** T.20251113, pp.28020,28021.
[509] [REDACTED]; also, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; W04444, T.20231113, p.9841; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].
[510] P02517, para.50.
[511] **W04444,** T.20231113, p.9829.

KLA.[512] [REDACTED],[513] [REDACTED].[514] A.Idrizi testified that "the main if not the only reason for [his] arrest, [his] detention, and [his] mistreatment was the land dispute [him] and [his] family had with Enver Axhami and his family".[515] Such crimes were not connected to the KLA or GS; they were unauthorised acts committed to settle family scores.[516]

160. Revenge crimes were committed by Kosovar Albanians, including some KLA members, after the conflict ended in June 1999. The deliberate campaign of violence by Serbian forces drove at least 700,000 Kosovar Albanians to flee Kosovo.[517] Thousands of these refugees returned over a short period after the conflict,[518] to devastation; family members killed, homes and property destroyed.[519] There was no law enforcement capable of deterring retaliation.[520] As international observers anticipated, some of those Kosovar Albanians responded to the devastation by taking part in revenge violence.[521]

[512] *Idem*, p.9841; also P00703.2_ET, p.12.
[513] [REDACTED], P00252.1_ET, pp.15,29; P00252.2_ET, pp.3,5; P00252.3, pp.17,37; P00252.4, pp.13-15; P00253, p.074778; T.20230719, p.6238.
[514] P00252.3_ET, pp.17,37; P00252.1, p.15; *also* 4D00139, p.SITF00318635; **W04325**, T.20240130, p.12170; **W03878,** T.20240507, p.15489; P01163.2, p.20.
[515] T.20230905, p.7249.
[516] [REDACTED]; [REDACTED]; **S.Kabashi,** T.20231114, pp.10038,10056; *also* [REDACTED].
[517] F01536/A01, AdjF.746, further 758-763.
[518] 1D00096_ET; 1D00430; 1D00443, p.DHT01249; 1D00365, p.DHT05481; *also* 4D00080, p.DJK00493; P00515_ET.71, p.008919; P00234, p.SPOE00198582; **Kurtaj**, T.20240222, p.12870; **Jensch,** T.20240521, pp.15550,15554; **Fritsch,** T.20240522, pp.15641,15644; [REDACTED]; [REDACTED].
[518] 1D00446, p.DHT11725; **Halitjaha**, T.2023116, p.10255; [REDACTED]; 1D00443, p.DHT01249; 1D00365, p.DHT05481; also 4D00080, p.DJK00493; P00515_ET.71, p.008919; P00234, p.SPOE00198582; **Kurtaj**, T.20240222, p.12870; **Jensch,** T.20240521, p.15550, p.15554 lines; **Fritsch,** T.20240522, pp.15641,15644; [REDACTED]; [REDACTED].
[519] 1D00365, p.DHT05481; *also* 4D00080, p.DJK00493; P00515_ET.71, p.008919; P00234, p.SPOE00198582; [REDACTED].
[520] 1D00417, p.SITF40000639; **S.Buja**, T.20241106, p.22050; **Duncan**, T.20250922, p.27151; 4D00143.
[521] DJK00722-TR-ET; DJK00723-TR-ET; [REDACTED]; **Jensch**, 20240521, p.15551; **Fritsch**, T.20240522, p.15643; P04186; [REDACTED]; *also* [REDACTED]; [REDACTED]; **A.Rrahmanaj**, T.20240930, p.20513.

161. [REDACTED], observed many houses being burned in Prizren and explained that expulsion and burning down property are the highest forms of punishment pursuant to the Kanun.[522] The LDK leader in Gjilan told the OSCE that the Albanian population started to burn and loot Serbian houses when they returned to the area and saw the state of their own homes.[523]

162. The Prosecution has not distinguished crimes allegedly committed by KLA members from the uncontrolled outpouring of revenge.[524] KLA volunteers were aware of Serbian crimes in their local areas and victims themselves.[525] Commenting on the burning of Serbian houses in Rahovec, [REDACTED].[526] Evidence shows [REDACTED] were interrogated about crimes they were alleged to have committed during the conflict.[527] Revenge crime was not an organised policy, it was a spontaneous reaction from Kosovar Albanians within and outside the KLA.

163. Private crimes do not evidence a JCE or fall within the alleged common purpose. The perpetrators were not members of the alleged JCE, and crimes committed for personal reasons cannot be attributed to any JCE member, acting in accordance with the alleged common purpose.[528] No JCE member used others as a tool to implement a common purpose; the evidence points to private acts.

[522] P02047.1_ET, p.5.
[523] T.20231207, pp.10775,10776.
[524] **Halitjaha**, T.2023116, p.10255; [REDACTED]; [REDACTED]; **Abrahams**, T.20230907, p.7536; [REDACTED]; [REDACTED]; P04185, p.013440; 4D00082; 1D00443, p.DHT01249; P00743.2, p.SITF00001539.
[525] **Halitjaha**, T.20231116, p.10253; P02079.10_ET, p.22; P02079.10_ET, p.18; P02079.10_ET, p.19; Ibishi, T.20241031, p.21705; Dedaj, P00681, p.034137; [REDACTED].
[526] P02079.13, p.19.
[527] [REDACTED]; P01635.3, p.10; [REDACTED]; P01233, p.028984; P01234, pp.031001, 031002; [REDACTED]; 1D00215, p.DHT04450-ET; [REDACTED]; [REDACTED], 1D00215_ET; P01840.1, p.9; T.20241120, pp.22413,[REDACTED]; P01840.1, p.10; *also* P00814_ET.41, p.SPOE00055426.
[528] *Limaj* AJ, para.120; *Brđanin* AJ, para.413.

164. Further, crimes committed for purely personal reasons cannot qualify as war crimes merely because they were committed on the territory engaged in an armed conflict.[529] A nexus to the conflict is required: "*a war crime is* ***shaped by or dependent upon the environment****—the armed conflict—in which it is committed"* and "the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed." [530] Personal crimes in this case carry no decisive link to the armed conflict. The motive and intent of the perpetrators are not linked to the armed conflict, and the crimes were not committed in a manner that would have been impossible to execute outside the conflict.[531] The perpetrators were civilians and volunteers who joined the KLA and the alleged crimes were not on the instructions of any higher authority. [REDACTED] acknowledged that crimes based on a private dispute cannot be considered as war crimes and did not fall within [REDACTED] even though committed during the conflict by KLA members.[532]

### 2.7. Vital international support would have been jeopardised by the alleged common purpose

165. Alleged JCE members knew that they needed international support to achieve independence.[533] As stressed by Mr.Krasniqi at the ICTY, the international community would not have supported the KLA if it pursued a criminal common purpose.[534] The alleged common purpose ran directly contrary to the KLA's interests.

[529] *Akayesu* TJ, para.636; *also*, Heffes, p.93.
[530] *Kunarac* AJ, para.58.
[531] *Idem*, para.59; *also* [REDACTED].
[532] 4D00173, p.SPOE00162278.
[533] [REDACTED].
[534] P00795, p.3371.

166. The GS cultivated ongoing connections with international actors.[535] This continued into the summer of 1999, as the PGoK solicited support from the international community.[536]

167. Nevertheless, the KLA was not an ideologically monolithic organisation, but had internal political differences and strategic inconsistencies.[537] Internationals recognised a division between 'moderates' and 'hardliners'.[538] The moderates—including Mr.Krasniqi[539]—were in favour of negotiations and willing to undertake political work to maintain international support.[540] The hardliners were seen as provoking the Serbs and seeking to defend the territory, regardless of the political implications.[541] The Prosecution elected to prosecute the 'moderates' rather than the 'hardliners'.

168. The schism within the KLA was operationally significant.[542] Its moderate faction strengthened KLA's credibility and facilitated a constructive relationship with external actors.[543] The moderates were seen as reliable interlocutors.[544] The divide in approaches and goals, as recognised by the internationals, suggests that the KLA was not unified by a common criminal purpose.[545]

169. Any allegations that the KLA was committing crimes would have jeopardised the needed international support. Allegations had to be handled as quickly and decisively as possible.[546] It would have been counterproductive for KLA members to

[535] *E.g.*, Kickert, Hill, Rubin, Byrnes, Williams, Clark.
[536] *Infra*, section 2.5.
[537] [REDACTED], P01066, para.44.
[538] P01069, p.075317; [REDACTED], P01066, para.61.
[539] P01069, p.075327.
[540] **Rubin**, T.20250915, pp.[REDACTED]-26569; **Byrnes**, T.20240326, pp.13676-13677; P01069, p.075328.
[541] P01071, p.075309.
[542] [REDACTED], P01066, para.61.
[543] **Byrnes,** T.20240325, p.13664.
[544] **Rubin**, T.20250915, p.26571.
[545] [REDACTED], P01066, para.61: [REDACTED]
[546] **Byrnes**, T.20240326, pp.13733,13734.

ignore, endorse, or perpetuate criminal activity. Rubin put the point clearly: the US wanted to be "on the side of the angels"[547] and confirmed reports that the KLA was involved in crimes would have been a "real blow".[548] The KLA leadership was informed that U.S. support depended on not engaging in criminal activity.[549] The KLA would remind the soldiers at every opportunity about the rules of war as otherwise they would lose the necessary support of the international community.[550] The GS made genuine efforts to resolve incidents to the extent that they were able.[551]

### 2.8. The Prosecution misunderstands the 'pattern' evidence

170. The evidence that crimes were committed by members of the KLA at various times and locations does not lead to a reasonable inference that there was one common criminal purpose. Any crimes that were committed were spontaneous actions of untrained individual actors, responding to Serbian attacks or settling personal disputes.

#### *2.8.1. The Prosecution did not prove the existence of a pattern*

171. The Prosecution failed to define how each charged incident fits within what it wrongly describes as "a consistent pattern of unlawfully intimidating, mistreating, committing violence against, and removing Opponents".[552]

172. Several elements must be assessed before incidents can be attributed to a pattern. First, low quality and inconclusive evidence may prevent a given incident from being

[547] T.20250916, p.26639.
[548] T.20250915, p.26553.
[549] **Rubin**, T.20250915, p.26543; [REDACTED], P01066, para.28.
[550] [REDACTED].
[551] *Infra*, sections 3.2.5, 3.6.5.
[552] SPO PTB, paras.113,704.

considered part of a pattern.[553] Second, simply selecting one or more parameters and identifying a few instances where these parameters are present does not show the existence of an actual pattern.[554] Third, the motive or reasons behind the crimes are relevant to determine whether the alleged perpetrator acted in furtherance of any alleged policy.[555] The mere belonging to an organisation is insufficient, as it does not exclude that the perpetrators had different or personal motives to commit the crime.[556] Fourth, the Prosecution cannot cherry-pick incidents to fit its narrative: the TP must consider how the organisation interacted with a category of people throughout the Indictment period, in order to determine whether the alleged incidents constituted a pattern or were exceptions.[557] Fifth, where the proportion of actual incidents is low compared to the potential victim population, no pattern can be inferred.[558]

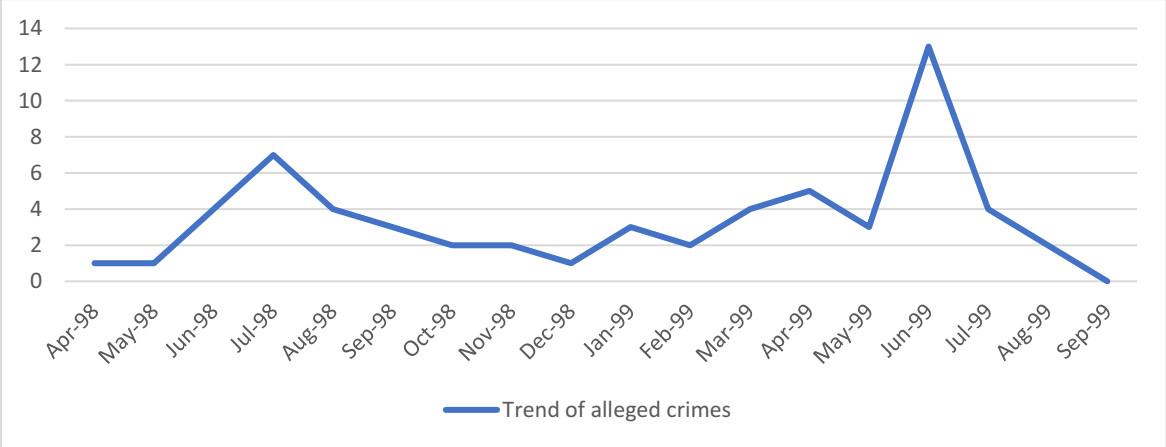
173. Within these parameters, the Prosecution failed to show that a pattern existed. Unproven allegations must be excluded. Concerning Nerodime-e-Ulet and Novo Brdo, no findings can properly be made because the Prosecution only tendered evidence in writing, denying the Defence a chance to confront it in court. For other locations, the Prosecution relies entirely on the evidence of a single witness. For instance, the only evidence [REDACTED]. However, [REDACTED][559] [REDACTED].[560] This identity evidence is unreliable. There is no evidence linking this detention to any identifiable KLA unit. Similarly, the evidence about Dobratin and Tokbashqe comes from a single witness, there is no corroboration and the alleged victim in each case has not been identified.

[553] *Gbagbo* Decision, para.1878.
[554] *Idem*, para.1887; *also Mladić* TJ, para.3109.
[555] *Gbagbo* Decision, para.1389.
[556] *Ibidem.*
[557] *Gbagbo* Decision, para.1889.
[558] *Idem*, paras.1892-1893.
[559] T.20250130, pp.24853,24855.
[560] T.20250130, p.24855.

174. For the remaining locations, if there was a common criminal policy, the expected pattern would show *consistency*, *i.e.* regular waves of crimes following some central instruction or communiqué. The Prosecution relies on two alleged GS written orders about detentions.[561] There is no evidence that crimes were committed pursuant to these documents. In the period immediately following these orders, *i.e.* in December 1998, *less* detentions occurred. Properly considered, most Indictment allegations concern sporadic detentions which occurred only once in a specific location, despite the continuous presence of KLA units in the same area. These were often triggered by an outside event, such as a Serbian attack. That is inconsistent with the alleged pattern.

175. The following graphs depict the trend of alleged criminality during the Indictment period, in terms of number of locations and number of victims:[562]

**Graph 1 – Trend of alleged criminality**
**Number of locations where crimes are alleged**




[561] P00168_ET; 1D00029_ET.
[562] See Annex 3.

**Graph 2 – Trend of alleged criminality**
**Number of alleged victims**

176. The first peak of alleged crimes and number of victims coincides with the first large Serbian offensive in June-July 1998. The KLA was then composed of small independent units, and a functioning GS clearly did not exist.[563]

177. Following the ceasefire in October 1998 and the GS restructuring in November 1998, the number of alleged crimes and victims decreased significantly. Between October 1998 and February 1999—when the KLA organisation was, relatively speaking, at its most advanced—the trend of criminality alleged by the Prosecution is at its lowest. This is the exact opposite of the expected 'pattern', had there been any veracity to the Prosecution case.

178. As Serbian offensives resumed between March and May 1999, the trend shows a slight increase in alleged criminality, with isolated incidents in response to Serbian attacks. As the Serbian forces withdrew in June 1999 and waves of refugees returned to their villages, a period of anarchy led to a new peak of criminal activity, due to personal revenge and inter-ethnic violence.

[563] *Supra,* section 2.3.

179. The only discernible *pattern* is that crimes were committed locally, in response to Serbian attacks, or in situations of chaos when individuals settled personal scores or sought revenge. As the offensives and the chaos decreased, and as the KLA structure and organisation correspondingly improved, the crimes reduced. This is wholly inconsistent with the existence of any centralised purpose to target and mistreat alleged opponents.

180. The number of alleged victims must be contextualised. The approximately 400 alleged detentions (taking the Prosecution case at its highest) should be analysed against an Indictment period of 18 months, which covers all of Kosovo and parts of Albania. The number of alleged crimes over each month of the Indictment is relatively small and inconsistent with the alleged JCE. In 1998-1999, the Serbian population of Kosovo was estimated to be around 200,000.[564] The Prosecution alleges that throughout the Indictment period, around 150 Serbs were targeted, amounting to less than 0,075% of the correspondent victim population. Moreover, during the Indictment period, the majority of the Kosovar Albanian population supported the LDK.[565] Considering that the Albanian population of Kosovo was around 1.7 million, at the very least there must have been over a million LDK supporters. The Prosecution alleges that around 60 people were targeted for affiliation with the LDK. That is a vanishingly small fraction of the potential victim population. If the JCE alleged by the Prosecution actually existed, many more crimes would have been expected.

181. The intercepts also contradict the Prosecution's case on the existence of any pattern. If there was a common criminal policy enforced and disseminated at central level, one would expect instructions and orders to target alleged opponents, followed by reports about actions taken, especially considering that KLA members did not

[564] *Đorđević TJ*, para.20.
[565] *Infra*, fn.843.

know that they were intercepted.[566] If the alleged criminal policy was disseminated through written orders, communiqués or regulations, one would expect conversations between KLA members discussing these documents.

182. None of this emerges from a holistic reading of the intercepts. No such orders or instructions exist in the intercepts. On the few occasions that the GS was informed, mostly by international actors, that a crime had been committed, the news was met with anger, irritation and disappointment, and it was made clear that no such crime was accepted or condoned by the GS.[567] This is inconsistent with the existence of the alleged criminal policy.

#### *2.8.2. March 1998-October 1998*

183. The 'pattern' evidence shows that the GS were not involved in any crimes proved in the period March–October 1998.

184. In Drenoc, the Prosecution's case on linkage rests primarily on the unreliable evidence of [REDACTED][568]—and one document.[569] As discussed elsewhere,[570] [REDACTED] was not credible and had no basis of knowledge for his assertions about the GS. As regards P00067, a report purportedly addressed to the GS, the Prosecution failed to prove that it was ever sent or received. None of the witnesses who saw this document recognised it, including Zyrapi.[571] In addition, [REDACTED],[572] [REDACTED]. Nevertheless, P00067 suggests that the GS was not aware of any crime

[566] [REDACTED].
[567] P02094_ET, pp.111630-111635; P03551_ET, p.111807; *also* [REDACTED].
[568] SPO PTB, paras.338,342,344.
[569] P00067_ET; SPO PTB, para.342.
[570] *Supra,* paras 35-41.
[571] [REDACTED]; **Zyrapi,** P01355.3_ET, pp.8,10; T.20240709, pp.17877-17878,17882; **W04753**, T.20231030, p.9174.
[572] T.20230510, p.3460.

which allegedly occurred in Drenoc between May and July 1998. It does not refer to any arrest, detention or mistreatment of the individuals listed by the Prosecution as having been detained in Drenoc in June 1998.[573] P00067 makes clear that no earlier reports had been sent to the GS before August 1998,[574] a circumstance confirmed by Zyrapi.[575]

185. P00067 describes three ambushes by Serbian forces which injured or killed KLA members on 12, 14 and 27 May 1998, mere days before the alleged arrests were carried out.[576] [REDACTED].[577] Contrary to the Prosecution's case,[578] [REDACTED].[579] This inference is further supported by the fact that the Drenoc unit was publicly announced in late April 1998,[580] and no alleged crimes occurred [REDACTED].[581]

186. In Jeshkove, in summer 1998, the Vrrin staff operated independently and never reported to anyone.[582] While the headquarters operated in Jeshkove, the Vrrin staff was composed of small units across seven different mountain villages south of Prizren.[583] These units were almost entirely isolated.[584] In July and August 1998, the Vrrin local staff faced continuous Serbian offensives and was destroyed in September 1998.[585] This already chaotic situation was exacerbated by the large influx of refugees to the Prizren area following KLA defeats in Rahovec and Malishevë in late July 1998.[586] In August 1998, the local commander in Vrrin was killed in a Serbian

[573] SPO PTB, paras.350-356.
[574] P00067_ET, p.1, para.2.
[575] T.20240709, p.17879.
[576] P00067_ET, pp.1-3.
[577] T.20230512, p.3666.
[578] SPO PTB, para.342, [REDACTED].
[579] T.20231030, p.9216.
[580] P00067_ET, para.3.
[581] T.20231030, p.9216.
[582] [REDACTED]; P01605.2_ET, pp.2-3; [REDACTED]; [REDACTED].
[583] [REDACTED].
[584] [REDACTED]; *also* 2D00027; 2D00028.
[585] [REDACTED], P01605.3_ET, p.3; [REDACTED]; [REDACTED].
[586] 4D00080; [REDACTED].

ambush.[587] Around the time of these attacks, the Prosecution alleges five people were detained in Jeshkove.[588] The timing suggests detentions were linked to the offensives not any common purpose.[589] The only witness to testify about detentions in Jeshkove [REDACTED].[590]

187. The Prosecution also alleges crimes in Budakovë in July–September 1998, with a single incident recurring in April 1999.[591] These crimes began in a period of disorganisation whilst the local units were being set up; the second battalion was established [REDACTED].[592] The Pashtrik zone was not operational until January 1999.[593] No connection between the detentions and the GS was established. The allegation that the GS ordered the detention of [REDACTED] disintegrated; [REDACTED] evidence was not admitted and [REDACTED].[594] There is no allegation that crimes were committed during October 1998—April 1999, again suggesting the absence of a consistent pattern in Budakovë.

#### *2.8.3. November 1998–May 1999*

188. Following the Holbrook agreement, the number of alleged incidents and victims decreased significantly. This indicates that no central purpose existed because the reduced frequency of Serbian offensives (at least until March 1999) and improvement in KLA organisation should have provided the best opportunity to disseminate and enforce a central policy. Any crimes which occurred during this period were local

[587] [REDACTED].
[588] SPO PTB, paras.412-417.
[589] [REDACTED].
[590] [REDACTED].
[591] SPO PTB, paras.391-394.
[592] SPO PTB paras 386,391
[593] **Halitjaha**, T.20231113, p.9957; P01812_ET, p.SPOE00229790.
[594] T.20240820, p.18838.

initiatives without GS involvement, or local reactions to the resumption of Serbian offensives.

189. For example, the Prosecution alleges that between November 1998 and April 1999, the KLA detained individuals in Llapastice[595] and Dobratin.[596] These were local detentions which occurred outside the knowledge of and with no involvement by the GS.[597] The Prosecution failed to prove that there was any connection between Latif Gashi and the GS.[598] There is even less linkage evidence regarding Zllash. Even the ZC was unaware that there was a detention centre there.[599] There was a KLA unit in Zllash from 1998,[600] but crimes were only alleged to have been committed there in April 1999—around the time of Serbian offensives in Gollak/Goljak.[601]

190. Any alleged crimes in this period are confined to the initiative of the brigades at local level, were not committed pursuant to any policy or established pattern and were not connected to the GS.

191. In early March 1999, Serbian forces launched new offensives including in Kaçanik.[602] Amidst the fighting, the Prosecution alleges that at least 13 persons were detained in Bob/Ivaje by members of Brigade 162.[603] This brigade was almost entirely isolated from the Zone command and any other KLA structure. As of late January 1999, the Nerodime Zone and Brigade 162 were underdeveloped, with issues of

[595] SPO PTB, paras.428-435.
[596] *Idem,* para.437.
[597] *Infra,* section 2.14.
[598] **Mustafa,** T.20230717, p.5894; T.20230718, pp.5936-5937.
[599] P00693.10_ET, p.2.
[600] [REDACTED].
[601] P01918.2_ET, p.11; [REDACTED]; P00187_ET, pp.SPOE00055942,SPOE00055943.
[602] **S.Buja**, T.20241107, p.22192; **Kurtaj**, T.20240222, p.12866.
[603] SPO PTB, paras.523-535.

leadership, military readiness,[604] and lack of communication equipment.[605] During his tenure as Brigade 162 commander in 1999, Kurtaj never communicated with the Zone Command.[606] S.Buja confirmed that in February and March 1999, he did not receive reports from Brigade 162.[607] Due to ongoing fighting and the difficult terrain, sometimes it would take over a month before the brigade commander could meet with the Zone.[608]

192. Between 26 February and 8 March 1999, the Serbian forces launched three consecutive offensives in Kaçanik.[609] and closed all roads going in or out of Kaçanik, which was completely isolated.[610] IDPs fled in all directions; it was complete chaos.[611] The brigade did not contact ZC, who was outside of Kosovo and did not receive any reports.[612] There was a KLA unit around Kaçanik from at least May 1998[613] until the end of the conflict. There is no evidence that it committed any crimes prior to or after March 1999, confirming that the crimes were only a local response to the Serbian attacks. [REDACTED],[614] [REDACTED] this list was not retrieved until May 1999.[615]

193. The Prosecution alleges that crimes were committed in Cahan and Kukës in Albania. Both locations were outside the regular structure of the OZs, and it is unclear if the units there reported to anyone. During Spring 1999, there was anarchy around the border because thousands of refugees were fleeing Serbian offensives.[616] Any KLA

[604] P00617_ET, pp.1,3,4.
[605] *Idem,* p.4.
[606] **Kurtaj**, T.20240220, p.12612; T.20240222, pp.12848,12875.
[607] **S.Buja,** T.20241106, pp.22048-22049.
[608] **Kurtaj**, T.20240222, pp.12840-12847,12849,12850; *also* 4D00029;4D00030.
[609] **Kurtaj**, T.20240222, p.12866.
[610] 4D00096, pp.38,40-41; **S.Buja**, T.20241107, pp.22193-22196.
[611] **S.Buja**, T.20241107, pp.22193-22196.
[612] **S.Buja,** T.20241106, pp.22048-22049.
[613] P01015_ET, p.036645; **Halitjaha,** T.20240222, pp.12811-12812; **S.Buja,** T.20241107, p.22187.
[614] SPO PTB, para.532.
[615] **Kurtaj**, T.20240221, pp.12714-12715.
[616] 1D00520; 1D00286, p.SITF00011864; 1D00132_ET, pp.120993-120994; 1D00272, p.DHT05159; 1D00459, p.DHT06681; P04062, pp.SITF00011681-SITF00011683.

organisation in the area was focussed on preparations for Operation Arrow.[617] There is no evidence that the KLA in Cahan/Kukës reported to anyone in the alleged plurality of persons or received instructions to detain from anyone.

#### *2.8.4. June-September 1999*

194. The Prosecution alleges crimes were committed in multiple locations in June 1999. Out of the 28 PTB locations remaining,[618] 11 relate to the post-conflict period. Aside from Prizren, all the post-conflict locations concern less than ten alleged victims. Five locations concern a single victim or a family.[619] The small scale of the alleged crimes in these locations, compared against the potential victim population, belies any organised common purpose. The overwhelming majority of the alleged crimes occurred in June 1999—within two weeks after the Serbian withdrawal, when central organisation was at its weakest and returns of thousands of refugees triggered a wave of revenge crimes.[620] This pattern is inconsistent with the alleged common purpose.

### 2.9. KLA public statements do not support the alleged common purpose

195. The KLA's public statements, including communiqués, do not demonstrate the existence of a common purpose to commit crimes against opponents, nor that Mr.Krasniqi was party to any such policy. Public statements were propaganda, aimed at boosting the morale of a distressed civilian population and presenting an image of cohesion to the world. There is no evidence of any connection between any public statements and the commission of crimes. The same public statements were

[617] **Zyrapi,** T.20240703, p.17509; P01355.12_ET, p.17.
[618] The Prosecution having withdrawn its allegations about Ferizaj and Vrelo.
[619] Gllanaselle, Nerodimlja e Ulet, Suhareka, Noveberdo, Tokbashqe.
[620] *Supra,* section 2.6.

considered by the ICTY, which twice concluded that they were insufficient to establish a common purpose.[621]

196. Public statements should be read holistically. In assessing their probative value and intent, the Panel must read them within their factual, temporal, and linguistic context. Isolated excerpts, selectively quoted phrases, or decontextualized remarks risk distorting the meaning originally conveyed and may lead to erroneous inferences regarding intent, knowledge, or policy.

197. First, the earlier communiqués are outside the temporal scope. The earliest communiqué was issued on or around 17 November 1994.[622] The Prosecution relies on multiple communiqués from 1997.[623] The Panel does not have jurisdiction to determine whether statements published prior to January 1998 evidence a common criminal purpose and should base no findings upon them.[624]

198. Second, the Prosecution failed to establish that the communiqués were written or published by members of the alleged JCE. Whilst different witnesses have identified N.Hasani, Xh.Gashi, J.Salihu and Xh.Fetahu[625] as potential authors of early communiqués, they are not alleged to be members of the JCE[626] and there is no evidence of them working with Mr.Krasniqi or any other alleged JCE member. There is minimal evidence about authorship of the communiqués during the Indictment period.[627] Neither Bashota or Zyrapi knew who wrote communiqués during the war.[628] Some witnesses commented that they were written outside Kosovo.[629]

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[621] *Haradinaj* TJ, paras.472,475; *Haradinaj* Re-TJ, para.635; *Limaj* TJ, para.118; *also, Limaj* AJ, para.275.
[622] P01874_ET, p.6; T.20241127, p.22858.
[623] SPO PTB, paras.23-28.
[624] Law, Article 7.
[625] P00739.5_ET, pp.7,9,10; **Bashota**, T.20241202, pp.23080,23134.
[626] Indictment, para.35
[627] *Infra,* section 3.5.3.
[628] **Bashota**, T.20241202, p.23136; **Zyrapi**, P01355.5_ET, p.7; T.20240708, p.17784.
[629] **Bashota**, T.20241128, p.23001; T.20241202, p.23136; **Rrahmanaj**, T.20240930, p.20511.

199. That communiqués were published in the name of the CS or GS is not sufficient to connect them to a common purpose. Communiqués were not discussed at GS meetings.[630] There is no evidence that, in the war circumstances, GS members had the time, resources or capability to deny public statements. Bashota testified that he was unaware of certain communiqués at the time and so could not have issued a denial.[631] There is no factual basis to support that these public statements were written or agreed by the plurality of persons.

200. Third, the communiqués are unreliable. Their primary function was propaganda.[632] They were intended to re-assure the civilian population,[633] to raise morale[634] and to create an inflated impression of organisation to internationals.[635] They exaggerated the KLA's achievements and minimised its losses.[636] There is nothing unlawful in this; Clark confirmed that using public statements to project strength "happens every day".[637] A substantial amount of information contained in communiqués was exaggerated.[638] The KLA exaggerated the number of its forces.[639] Referred to P01096, Byrnes agreed that the claims that the KLA was stronger, more organized professionally, and more enhanced as of 15 October were clearly exaggerated.[640]

[630] **Bashota**, T.20241202, pp.23136,23137,23141,23142.
[631] T.20241202, p.23137.
[632] **Bashota**, T.20241204, p.23426; [REDACTED]; **Mustafa,** T.20230712, pp.5558-5559.
[633] [REDACTED].
[634] [REDACTED]; [REDACTED].
[635] **Abrahams,** T.20230911, pp.7642,7643,7646,7647.
[636] **S.Buja**, T.20241105, p.21939,21940; [REDACTED]; [REDACTED]; P00800, pp.4967-4968.
[637] T.20251117, pp.28163-28164.
[638] [REDACTED]; [REDACTED].
[639] **Byrnes**, T.20240327, p.13832.
[640] T.20240327, p.13929.

201. The contents of the communiqués cannot be accepted at face value. The LPK gave the first communiqué number 11,[641] demonstrating that the numbering system itself was unreliable. Communiqué 28 claimed responsibility for killing Maliq Sheholli,[642] whereas his family concluded that the KLA was not involved.[643] Communiqué 40 claimed responsibility for shooting down an aeroplane,[644] although the crash was accidental[645] and the KLA did not have anti-aircraft weapons.[646] Communiqué 54 asserted that Serbian forces were forced to retreat in the battle of Kacanoll, whereas in reality the KLA was defeated[647]. *Zëri i Kosoves* published information it received without verifying whether the alleged actions had actually been carried out by the KLA.[648] Simply put, the Prosecution failed to establish that the events described in the communiqués occurred as alleged.

202. Fourth, the communiqués did not influence KLA members in the commission of crimes. The Prosecution must prove the link between public statements and the crimes.[649] Here, any nexus is lacking. Communiqués often appeared in *Zëri i Kosoves*, which was published outside Kosovo[650] and could not be carried openly in Kosovo.[651] Unless there is evidence that a particular communiqué was re-printed in a newspaper circulated in Kosovo or read on the radio, it cannot be established that that communiqué had any impact at all.[652]

[641] P01874 ET, p.6.
[642] P00273_ET.
[643] 4D00098_ET.
[644] P00269_ET.16.
[645] 4D00099.
[646] T.20241203, pp.23259-23260.
[647] P00173_ET; T.20230614, pp.4855,4856; [REDACTED]; [REDACTED].
[648] **Bashota**, T.20241203, p.23255.
[649] *Šešelj* TJ, para.333.
[650] P01874_ET, p.074631; **Bashota**, T.20241204, p.23341; **Dedaj**, T.20231108, p.9700.
[651] **S.Buja,** T.20241107, pp.22272-22273.
[652] **Byrnes**, T.20240327, p.13868.

203. When confronted with communiqués, members of the KLA frequently responded that they had not seen the document,[653] or they did not pay attention to them.[654] [REDACTED].[655] [REDACTED].[656] Kurtaj was not aware of the existence of communiqués during the war,[657] and explained that between June 1998 and June 1999, his unit was occupied with combat operations and did not have newspapers.[658] [REDACTED].[659]

204. Although the Panel repeatedly put leading questions to R.Mustafa,[660] attempting to suggest that he relied on communiqués, the evidence does not support this hypothesis. R.Mustafa was unable to identify any specific communiqué or public statement which encouraged granting amnesties or permitted the Llap zone to deal with those who obstructed the KLA.[661] He accepted that there was no nexus between the communiqués and detention in his zone.[662] Ibishi confirmed that there was no connection between Communiqués 53 and 54 and treatment of detainees in the Llap Zone in September 1998.[663] [REDACTED] did not follow or read the communiqués during the war[664] and did not know who was reading them.[665] The Llap Zone made its own autonomous decisions, independent of any public statement.[666]

[653] [REDACTED]; **Bashota**, T.20241128, p.23001; **R.Qeriqi,** P01115.7_ET, p.31.
[654] P01694.4_ET, p.26; P00653.8_ET, p.17; [REDACTED].
[655] [REDACTED], P01807, para.32.
[656] T.20230912, p.7749.
[657] T.20240222, p.12823,12824.
[658] *Idem,* p.12823.
[659] T.20240918, p.19912.
[660] T.20230717, pp.5911-5917.
[661] T.20230718, p.5954.
[662] T.20230714, p.5727.
[663] T.20241024, p.21147.
[664] P01805.7, p.16; T.20241031, p.21613.
[665] T.20241031, pp.21613-21614.
[666] *Supra,* paras 189-190; *infra,* para.321.

205. Whilst communiqués in 1997 contained warnings to collaborators and claimed responsibility for specific attacks,[667] their tone changed after June 1998.[668] The earlier communiqués are characterized by specificity; references to "collaborators" made in connection with identified or identifiable individuals. By contrast, the communiqués issued after June 1998 adopt a markedly different approach: when referring to "collaborators" they do so only in general terms without naming or identifying individuals,[669] with one exception discussed below.[670] After June 1998, the communiqués generally stopped naming individuals and giving warnings, instead stating in general terms that "measures have been taken".[671] The change in tone is inconsistent with the alleged common policy. The later communiqués lack the specificity necessary to establish attribution, influence, or causation in relation to specific crimes.

206. The Prosecution failed to link the communiqués to the plurality of persons or to any specific crime. Without these links, it has not been established that the public statements were anything more than unreliable propaganda intended to raise morale and maximise support for the KLA.

### 2.10. KLA Regulations do not support the alleged common purpose

207. The Prosecution failed to prove that KLA regulations demonstrate or support any alleged policy towards opponents.[672] Rather, KLA regulations were copied from other armed forces. They were not capable of being effectively implemented within the KLA, were inconsistently distributed and rarely applied in practice. The

[667] P00269_ET.15; P00269_ET.5; P00269_ET.6; P00269_ET.16; P00269_ET.23; P00282_ET; P00269_ET.12; P00269_ET.13; P00269_ET.25; P00153_ET; P00270_ET.1; P00276_ET; P00277_ET; P00283_ET.
[668] *See* **Duncan,** T.20250922, p.27137.
[669] **P00287**–Communiqué 48; **P00292**–Communiqué 52; **P00157**–Communiqué 53.
[670] *Infra,* para.440.
[671] E.g. P00288.
[672] SPO PTB, paras.71-74,86,109-110,115,158,190,210,705; *also* F03065/A01, pp.2-15.

Regulations, in isolation or against the totality of the evidence, fail to demonstrate any connection to the commission of any crime. The Prosecution's attempt to rely on them as a foundation for the alleged JCE collapses on scrutiny.

208. The KLA never adopted regulations for each sector of the army: this process was under development and never materialised in full.[673] Draft regulations were not developed to an acceptable level: only very basic ones were finalised.[674] At Zone level, the KLA tried to implement rules and regulations, but was unable to do so: the war ended sooner than expected, and regulations remained for the most part unavailable or not applied.[675]

#### *2.10.1. The Prosecution failed to prove when KLA Regulations were drafted*

209. The evidence relating to the timing of the drafting and approval of KLA Regulations is widely inconsistent. The Prosecution has put forward (i) [REDACTED] that "by the end of June 1998 the Provisional Regulations for the Organisation of the Army's Internal Life of the KLA […] were being distributed by the GS";[676] (ii) a passage from Jakup Krasniqi's book suggesting that these same regulations were approved at a GS meeting on 4 July 1998;[677] and (iii) unattributed meeting notes suggesting that the decision to disseminate regulations was not taken until 9 July 1998.[678] These cannot all be true.

210. In any event, the evidence of GS members shows that it was only after the restructuring at the end of 1998 that provisional regulations were edited and

[673] **Zyrapi,** T.20240710, p.17948.
[674] **Zyrapi,** T.20240717, pp.18421-18422.
[675] **Mustafa,** T.20230714, pp.5775-5777.
[676] F01534/A01, [REDACTED].
[677] P01127, p.U015-8836.
[678] P00643.

supplemented with the purpose of making them functional.[679] Zyrapi was unable to confirm that the meeting of 4 July 1998 took place, as he was not present.[680] In 2006, he stated that the "interim rules on the organisation of the internal life of the KLA" had been prepared at the end of 1998.[681] Despite some back and forth during his testimony, Zyrapi confirmed this passage twice.[682] Zyrapi was clear that even if a draft existed before the end of 1998, it was basic and incomplete;[683] it was only with the restructuring that the provisional regulations were translated and completed with the purpose of actually using them.[684]

211. Bashota had not seen *any* KLA regulations before November 1998.[685] Since GS members lacked military expertise, there was limited knowledge of military regulations at GS level.[686] It was only when Zyrapi and other career officers brought regulations into Kosovo at the end of 1998 that discussions around regulations began.[687]

#### *2.10.2. Regulations were not distributed evenly and consistently throughout the KLA*

212. Throughout the Indictment period, regulations were not distributed evenly to the OZs.

[679] **Zyrapi**, P01356, p.5945; **Bashota**, T.20241202, p.2153.
[680] **Zyrapi**, T.20240717, p.18393.
[681] **Zyrapi**, P01356, p.5945.
[682] T.20250703, p.17619; T.20240717, p.18489.
[683] T.20240717, p.18490.
[684] **Zyrapi**, T.20240717, p.18490.
[685] T.20241202, p.2153.
[686] **Bashota**, T.20241202, p.23144.
[687] *Idem*, p.23153.

213. In **Llap**, several regulations were never distributed to the Zone command or were unknown to many Zone staff. Ibishi did not recognise the Provisional Regulations even though, in his position, he would have been aware of such a document.[688] Ibishi stressed that "the reality is that we did not receive it".[689] During a visit by the GS in October 1998, various individuals in the Llap Zone raised the *lack* of military regulations.[690] Lacking any applicable regulations from the GS, the Llap Zone Command compiled its own internal regulations in December 1998.[691] This confirms that provisional regulations had not been received.

214. This evidence was corroborated. [REDACTED] testified that, in 1998, no rules and regulations had been promulgated or distributed and there was no established chain of command.[692] R.Mustafa added that the KLA disciplinary regulations were never distributed to the Llap Zone Command.[693]

215. The Prosecution tendered written documents allegedly from Llap, which appear to refer in the introduction to rules and regulations. However, the vast majority of these documents are dated before December 1998 and do not refer to any specific set of rules or regulations, but rather contain vague references such as "regulations pertinent to a war situation" without mentioning the GS,[694] or "rules and regulations issued by the Central Headquarters", without specifying which set of regulations they are purportedly applying, or any specific article or provision.[695]

[688] **Ibishi,** P01755.3_ET, pp.11-12.
[689] P01755.3_ET, p.14.
[690] P01755.3_ET, p.15.
[691] P00149; *See* **Ibishi,** P01755.8_ET, pp.12-13.
[692] [REDACTED].
[693] T.20230712, p.5537.
[694] P02168; P02169; P02070; P02171.
[695] *E.g.*,P00147; P02222.

216. Even after December 1998, when internal Llap regulations were finalised, documents were issued on the generic basis of [REDACTED] and [REDACTED], without reference to any article or provision, and without specifying whether these were Llap regulations or GS regulations.[696] Testimonial evidence confirms that the decisions contained in these documents were locally made by ZC after consulting the Zone staff.[697] Applying the burden of proof and *the in dubio pro reo* principle, these documents suggest that (i) until December 1998, the Llap Zone had no regulations to apply; and (ii) any reference to regulations was simply an attempt to make the document appear more formal, professional and "official". Absence of any specification to articles or provisions, coupled to the prosecution evidence referenced above,[698] demonstrates that no rule was applied in practice.

217. KLA witnesses testified about the *absence* of regulations in **Pashtrik**. Two MP members in [REDACTED] never received any written regulations or rules to follow in June 1998.[699] The GS would be expected to issue rules and regulations, but it never did.[700] [REDACTED] never received any regulations from the GS; all he saw was a portion of the [REDACTED].[701] Halitjaha stated that he never saw disciplinary regulations during the war,[702] and disputed the Prosecution's contention that they were available in Kosovo in 1998 or that they were used within the KLA as a whole.[703] H.Qadraku testified that at zone level, they were not given any written rules or regulations.[704] According to H.Qadraku and Qoqaj, during the war, there were no rules regulating intelligence functions.[705] The only witness who mentioned the

[696] P00169; P00225; P00150; P00885; P00226; P00010.
[697] **Ibishi**, T.20241024, p.21169; T.20241031, pp.21662-21663.
[698] *Infra,* para.243.
[699] [REDACTED]; [REDACTED]; T.20240930, pp.20488-20489.
[700] **Halitjaha**, T.20231205, p.10485.
[701] [REDACTED].
[702] T.20231204, p.10395.
[703] T.20231204, p.10473.
[704] T.20241127, p.22883; *also* [REDACTED].
[705] T.20241126, p.22712; T.20241118, pp.22313-22314. *See* **Bashota,** T.20241203, p.23208.

existence of regulations in Brigade 121 is R.Qeriqi, who testified that they were not implemented in practice.[706]

218. Notably, any decisions and ordinances mentioning regulations in Pashtrik were signed by Drini and only after the end of December 1998,[707] confirming that no regulations were available to the zone before then. As late as February 1999, some of these documents contain vague and unspecified wordings such as "the tactical and technical regulations in all the units, commands, and staffs of the KLA", instead of precise references to articles and provisions of specific regulations.[708]

219. In any case, it appears the regulations allegedly possessed by Drini were not known by the rest of the Zone staff or at brigade level. Three witnesses confirmed that it was precisely because of the lack of regulations provided by the GS that, around March 1999, KLA members at zone and brigade level began to put together basic regulations on their own.[709] Using documents borrowed from other militaries, Halitjaha, H.Qadraku, and Abazi compiled some basic rules which were later approved at zone level by Tahir Sinani.[710] While it was contended that a copy was sent to A.Demaci, Halitjaha was unable to confirm that Demaci ever received it.[711] Due to ongoing offensives, there was limited time to work on regulations, and the final product was just a set of basic rules.[712]

220. The evidence at brigade level supports the absence of GS Regulations. For example, [REDACTED],[713] which was a standard handbook translated from the

[706] *Infra*, paras 238-241.
[707] *E.g.*, P01369; P01412; 1D00071; P01378 etc.
[708] P01373.
[709] **Halitjaha**, T.20231204, pp.10395,10475.
[710] **H.Qadraku**, T.20241127, p.22883; **Halitjaha**, T.20231115, pp.10198-10200; T.20231204, p.10395; **Abazi**, T.20240429, p.15115.
[711] **Halitjaha**, T.20231115, pp.10199-10200.
[712] **Abazi**, T.20240430, p.15158.
[713] P01561.

[REDACTED].[714] These regulations were drafted by [REDACTED], because the soldiers had no knowledge about combat and there were no other regulations available.[715]

221. In **Drenica**, S.Selimi never received from the GS any regulations about detentions of individuals.[716] The lack of distribution of regulations to the Drenica Zone is further corroborated by [REDACTED].[717]

222. A large number of written orders,[718] requests[719] and authorisations[720] purported to be signed by the Drenica ZC do not contain any reference to Regulations issued by the GS or any others. The only document allegedly signed by S.Selimi referring to regulations is P00140,[721] which only mentions [REDACTED], without specifying any set of regulations or precise provision as the applicable legal basis. Once again, this appears to be an attempt at making the order seem "official" by representing that there was an applicable Regulation.

223. In **Nerodime**, the provisional regulations were never available.[722] In December 1998, the MP did not have regulations to refer to.[723] It was only after January 1999 that *some* regulations were provided to the Zone Command;[724] however, they were given to the head of the legal office at zone level[725] and were not distributed.[726]

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[714] [REDACTED].
[715] *Idem,* [REDACTED].
[716] **S.Selimi**, T.20250213, p.25285.
[717] P00180, p.3.
[718] *E.g.* P00127; P00125; P00128; P00130; P00132; P00138.
[719] *E.g.* P00142; P00172.
[720] *E.g.* P00122.
[721] P00146/P00140.
[722] **Halitjaha,** T.20240222, pp.12861-12863.
[723] P02914, p.1.
[724] **S.Buja**, T.20241106, pp.22014-22015; 1D0033, p.SPOE00226333.
[725] **S.Buja**, T.20241106, p.22015.
[726] **Kurtaj,** T.20240222, pp.12861-12863.

224. The Prosecution has tendered written documents which purport to originate from Brigade 161 through the bar table.[727] The Prosecution elected not to put these documents to S.Buja or any live witness. The Defence maintains that these documentary exhibits remain unauthenticated and should not be assigned any weight.[728] No order or decision was purportedly issued on the basis of regulations before March 1999, when documents began to contain vague and general mentions of "technical-tactical rules" or "rules and regulation" without any specificity as to which regulations or provisions they purported to apply.[729] The first document providing some more specificity is a handwritten, unauthenticated piece of paper dated 4 May 1999.[730]

225. In **Dukagjin**, [REDACTED] did not see any regulations provided by the GS during his time in Kosovo.[731] Maloku also testified that he had never seen the Combat Regulations during the war.[732]

226. For **Karadak**, the Prosecution failed to call any witness who could testify about the distribution and implementation of Regulations and tendered no written order or ordinance referring to Regulations.

227. Regarding **Shala**, the only relevant evidence is the untested written statement of [REDACTED] who claimed that 99% of the staff, including the soldiers and the commanders, would not have received or even seen regulations during the war.[733]

[727] F02667/A01.
[728] F02725/A01.
[729] *E.g.*, P02981; P02982; P00874.
[730] P00896.
[731] [REDACTED]; [REDACTED].
[732] T.20250326, p.25984.
[733] P03580.3, pp.33-35.

228. The evidence suggests that the distribution of regulations within the KLA was minimal before the end of 1998. Even in the later period, regulations were not distributed evenly or consistently throughout the zones. The fact that most of witnesses at all levels of the KLA had never seen KLA regulations demonstrates that the latter were not a vehicle for the dissemination of any policy at GS level.

#### *2.10.3. The Regulations could not be implemented in practice*

229. KLA regulations were taken from other armies and were not suited to be applied within the KLA. All KLA regulations, at GS and Zone level, were either taken from Albania,[734] or translated from the regulations of NATO countries[735] or the Bosnian or Croatian army.[736] They were not properly adapted and were unfit for application in the KLA. The KLA was an army of volunteers, with no state institutions, laws or legal instruments to enforce the implementation of regulations.[737] Even when available, the application of regulations in practice was purely voluntary.

#### *2.10.4. Disciplinary regulations*

230. The disciplinary regulations are a prime example.[738] In paragraph 1, the regulations claim to be based on the "Constitution",[739] which Kosovo only adopted in 2008.[740] Paragraph 2 refers to "non-commissioned officers", which did not exist in the KLA.[741] Paragraphs 3, 4 and 7 discuss ranks, which were never foreseen or

[734] **Mustafa,** T.20230712, p.5536; **Halitjaha,** T.20231115, pp.10201-10202.
[735] **Zyrapi**, T.20250703, pp.17619-17620; T.20240704, p.17651; T.20240717, pp.18443,18447,18494; **Maloku**, T.20250326, pp.25923-25925.
[736] [REDACTED]; **Mustafa**, T.20230711, p.5469; T.20230712, p.5536.
[737] **Halitjaha**, T.20231115, p.10204.
[738] P03666_ET; P00892_ET; P00715_ET; P00508_ET; P00640_ET; P00165_ET; P00162_ET.
[739] P00162_ET, paras.1,2(3).
[740] **Halitjaha**, T.20231115, p.10204.
[741] **Halitjaha**, T.20231115, pp.10202-10203; **Abazi**, T.20240430, p.15164.

implemented in the KLA.[742] Paragraph 15 refers to non-commissioned officers, reserve officers, and a system of rewards, which did not feature in the KLA.[743] Paragraphs 16 and 23 mention the "MKA/FLD", the Albanian navy and aviation, which obviously were not applicable in the KLA.[744]

231. Even paragraph 20, which lists disciplinary measures, is filled with positions and concepts inapplicable to the KLA, such as sergeants, corporals, and reductions in ranks that never existed in the KLA.[745] These regulations were copied from a document of the Albanian army and re-labelled as purported KLA "regulation".[746] These Regulations never fitted the body of the KLA or its needs and provide no evidence to support the JCE alleged by the Prosecution.

232. Even if disciplinary regulations existed in paper form, they were not applied in practice.[747] Halitjaha, Abazi, and [REDACTED] had never seen this document during the war.[748] According to Halitjaha, these regulations would have been of no use during the war, since its provisions could not find application in the KLA.[749] They were an attempt, an aspiration, which never materialised; it would be absurd to believe that these regulations could describe the realities of the KLA on the ground.[750] Abazi pithily and accurately described these regulations as "wishful thing for it to be that, but it was impossible […] to realise it in [our] specific circumstances";[751] and agreed that the document as a whole was *unrealistic*.[752]

[742] **Halitjaha**, T.20231115, p.10206; **Abazi**, T.20240430, p.15166.
[743] **Halitjaha**, T.20231115, pp.10202-10203; **Abazi**, T.20240430, pp.15164-15166.
[744] **Halitjaha**, T.20231115, p.10205; **Abazi**, T.20240430, p.15167.
[745] **Zyrapi,** T.20240709, p.17911; **S.Buja**, T.20241106, pp.22017,22018; **Bashota**, T.20241202, p.23038; **Halitjaha,** T.20231115, p.10206; **Abazi**, T.20240430, p.15166; *also* **Duncan**, T.20250922, p.27124;
[746] **Halitjaha**, T.20231115, p.10206; **Abazi**, T.20240430, p.15167.
[747] **Halitjaha,** T.20231115, p.10205; **Abazi**, T.20240430, p.15167,155168.
[748] **Halitjaha**, T.20231204, pp.10395, 10475; **Abazi**, T.20240430, p.15168; [REDACTED].
[749] T.20231115, p.10206; **Abazi**, T.20240430, p.15164.
[750] **Halitjaha,** T.20231115, p.10207.
[751] T.20240430, pp.15165-15166.
[752] **Abazi,** T.20240430, p.15167.

233. Even after the restructuring, the KLA did not manage to implement the disciplinary regulations promulgated, which would be the responsibility of the legal department (not the GS).[753] Dobruna, the head of the Legal Department, was unaware that disciplinary regulations existed.[754] R.Mustafa never received them at the Zone Command;[755] and explained that the war ended before the hierarchy described in the disciplinary regulations could be implemented.[756]

234. The Prosecution evidence does not demonstrate the implementation of disciplinary regulations in the KLA;[757] to the contrary, the evidence suggests that these regulations were not applied in practice due to the rudimentary nature of the KLA's organisation and fragmented command structure.

235. For instance, the Prosecution relies on P00625,[758] a document dated 4 February 1999, allegedly signed by Mr.Krasniqi, dismissing the commander of Brigade 162 on the basis of the disciplinary regulations. As further developed below,[759] this order was never implemented; Commander Bardhi remained the commander of Brigade 162 until he was killed in a Serbian ambush in late May 1999.[760] Further, the Prosecution relies on P00613, which is an unsigned document in the name of Zyrapi. Zyrapi did *not* recognise this document and testified that he had *never signed* anything like it during the war.[761]

[753] **Zyrapi**, T.20240701, p.17406.
[754] **Dobruna**, P01955.9_ET, p.20.
[755] **Mustafa,** T.20230712, p.5537; *also* **Ibishi**, P01755.3_ET, pp.11-12.
[756] T.20230714, p.5775.
[757] *Contra* F03065/A01, pp.7-8.
[758] F03065/A01, p.8.
[759] *Infra,* para.532.
[760] **Kurtaj**, T.20240222, p.12852.
[761] T.20240704, p.17647.

236. Further, the Prosecution relies on P01360, which purports to be a work report dated 30 January 1999 by Brigade 121's Chief of Staff S.Dragaj, and submits that it demonstrates the implementation of disciplinary regulations at brigade level,[762] because it states that "failure to carry out this order will result in action in accordance with the KLA Disciplinary Rules".[763] The Prosecution omits that in the same report, the author complains that the level of military discipline is very low, that there have been a number of extraordinary incidents "with overstepping of powers and failure to follow the military chain of command."[764] The command posts in the brigade and battalions had not been filled.[765] In light of these issues, S.Dragaj concludes with "all soldiers and commanding officers all the way up to the brigade command **should** be subject to the KLA Disciplinary Rules",[766] suggesting that as of late January 1999, disciplinary regulations were not being applied in his brigade. No reliable evidence shows that they were applied thereafter.

237. The Prosecution points to a few unauthenticated documents admitted through the bar table which mention disciplinary regulations in the introduction.[767] These are extremely limited in number—especially if read against the number of tendered documents allegedly originating from the KLA. Moreover, they can be confined to specific locations,[768] and are all, except one,[769] dated in May 1999.[770] Contrary to a widespread, consistent implementation of disciplinary regulations, these documents suggest the minimal and delayed reliance on their provisions across the KLA.

[762] F03065/A01, p.8.
[763] P01360_ET, p.2, point 8.
[764] *Idem,* p.2.
[765] *Idem,* p.2.
[766] *Idem,* p.3, point 5 (emphasis added).
[767] P00267; P01376; P00878; P00896; P00897; P00898.
[768] Most of these documents pertain to Brigade 161, in the Nerodime Zone.
[769] P01376.
[770] P00267; P00878; P00896; P00897; P00898.

### *2.10.5. Provisional Regulations of the Internal Life in the Army*

238. Similar considerations apply to the Provisional Regulations of the internal life of the army. These were translated from a model document of a western army.[771] They are replete with concepts wholly inapplicable to the KLA.[772] These regulations were incomplete, because the GS did not have time and resources to prepare a proper regulation for each section of the army.[773] In a regular army, there would be three to four regulations—amounting to hundreds of pages—for each directorate; in comparison, the Provisional Regulations were very basic documents,[774] never implemented in practice.

239. The provisional regulations were a work in progress (indeed "provisional"), and specific only to the area of operation of Brigade 121.[775] Paragraph 5 of Chapter I, section II, of the Provisional Regulations reads: "Then he reports: "General, the Infantry Company (1st or 2nd) is lined up for the oath taking ceremony. Company commander, Colonel Çeliku,"[776] a reference to F.Limaj, the commander of Brigade 121. Furthermore, they also contain the words "Commander (general), the company (brigade, battalion) troops have lined up for the raising of the flag. Chief of staff, Captain Shala",[777] referring to Haxhi Shala, the Chief of Staff of the same brigade.

[771] **Zyrapi,** T.20240717, p.18443.
[772] *Infra,* para.240.
[773] **Zyrapi,** T.20240717, p.18490.
[774] *Idem,* p.18490.
[775] **R.Qeriqi,** T.20240423, pp.14748,14749.
[776] P00008; P00008.1; P00163; P00166; P00641; P03663 *(emphasis added)*.
[777] P00008; P00008.1; P00166; P00641; P00648; P03663 *(emphasis added)*.

240. The Provisional Regulations also contain terms which were foreign to the KLA, such as general,[778] colonel,[779] major,[780] non-commissioned officers,[781] and ranks,[782] as well as to formations, such as infantry companies,[783] platoons[784] and squads,[785] which did not widely feature in the KLA.[786] The hierarchy described in these regulations is something that the KLA never achieved.[787] In R.Mustafa's words, despite its efforts, the KLA "never had the opportunity to systemise [itself] like it was written in the regulations".[788]

241. The case record is replete with examples when the internal regulations were disregarded or not implemented.[789] R.Qeriqi did not take the oath as proscribed by the internal regulations.[790] R.Qeriqi and Kurtaj provided examples of behaviour of soldiers that went against the requirements in the regulations.[791] The provisions on hygiene, the kitchen, or medical examinations seem absurd in the context of a volunteer army under constant enemy attacks, that had to rely on the civilian population for food and basic necessities.[792]

[778] P00008, p.1.
[779] *Idem*, p.3.
[780] *Idem*, pp.5-6.
[781] *Idem*, pp.3-5,8-9.
[782] *Idem*, pp.1,5-6.
[783] *Idem*, p.1.
[784] *Idem*, p.8.
[785] *Idem*, pp.8,9.
[786] **Ibishi,** T.20241024, p.21193.
[787] **Mustafa**, T.20230714, p.5775.
[788] T.20230714, p.5776.
[789] *Contra* F03065/A01, pp.3-6.
[790] [REDACTED]**,** P01114.1, p.3606; T.20240424, p.14805.
[791] **R.Qeriqi,** T.20240424, p.14806; **Kurtaj,** T.20240222, pp.12862,12863; P00008, pp.14-15.
[792] *E.g.,* P02016, p.U000-5986; **Naser Krasniqi,** T.20250129, pp.24792-24793; *also* P02094, p.111600, [REDACTED].

### *2.10.6. Military Police Regulations*

242. The Prosecution relies heavily on the MP regulations,[793] and in particular on a passage stating that the MP should be "merciless towards the enemy and all those who try to obstruct and sabotage our liberation war."[794] This passage must be read together with the rest of the regulations, which instruct MP members to (i) protect civilians;[795] (ii) not use physical force except in cases when attacked or prevented from carrying out a task;[796] (iii) be careful and behave well when intervening with families;[797] (iv) be polite with and treat all travellers equally.[798] The regulations also required all MP members to have finished at least secondary education;[799] the aim of this provision being that only the most educated and best-behaved soldiers be assigned to policing roles.[800] Far from conveying a policy against alleged opponents, these regulations set out strict obligations for MP members in order to protect the civilian population and minimise the risk of misconduct. The polemics of one sentence cannot be magnified by the Prosecution to overwhelm, take out of context or airbrush out the other provisions detailed above.

243. In addition, no credible MP member confirmed that these regulations were received at the relevant time and applied in practice. A.Rrahmanaj and [REDACTED], members of the MP in Malishevë in 1998, never saw any written regulations and never received any written rules to follow.[801] D.Krasniqi, a MP member in Lumi unit, never mentioned regulations, and explained that he never received any order in writing and

[793] P00008, pp.15-16; P00009.
[794] SPO PTB, para.72.
[795] P00009, point 1.
[796] *Idem,* point 5.
[797] P00009, point 5.
[798] *Idem,* point 8.
[799] *Idem,* point 6.
[800] **R.Qeriqi,** T.20240424, pp.14807-14808.
[801] [REDACTED], P01694.1, pp.14-17; P01694.4, pp.15-17; T.20240930, pp.20488-20489. [REDACTED].

that his role had nothing to do with arrests or potential collaborators.[802] Qoqaj never had regulations for intelligence[803] and had never seen MP regulations before 2021.[804] Naser Krasniqi, a member of the MP around Kleckë, was shown the Provisional Regulations for the Organisation of the Armies Internal Life, which contain the rules of the Military Police;[805] the KLA Military Police General Rules and Tasks;[806] and the Manual on Procedure Implementation towards the Detainees,[807] but had not seen any of them during the war.[808]

244. Ultimately, the only witness that the Prosecution relies on for the distribution of MP regulations is [REDACTED],[809] whose evidence should be afforded no weight.[810] [REDACTED] told the Prosecution that he had never seen the provisional regulations before;[811] yet, he then testified that these regulations were given to him [REDACTED].[812] Confronted in cross-examination, he was unable to reconcile this contradiction.[813] [REDACTED].”[814]. At most, therefore he can only speak about Burrel from March 1999 onwards.

245. The documentary evidence manifestly fails to meet the onerous standard of proof. Ultimately, the Prosecution relies[815] on one single unsigned document,[816] to support its contention that the regulation was implemented. This document only

[802] T.20240923, p.20155.
[803] **Qoqaj,** T.20241118, pp.22313-22314.
[804] P01834.3_ET, p.4.
[805] P00008.
[806] P00009.
[807] P00893.
[808] P02007.2_ET, p.30 to P02007.3_ET, p.4.
[809] F03065/A01, p.6.
[810] *Supra,* paras 35-41.
[811] [REDACTED].
[812] [REDACTED].
[813] [REDACTED].
[814] [REDACTED].
[815] F03065/A01, p.6.
[816] P00887.

mentions regulations at a local level and not issued by the GS,[817] and never mentions the regulations of the MP.[818] The only other document cited by the Prosecution[819] is relevant solely to the Nerodime Zone after January 1999, it has no bearing on whether the MP regulations were distributed and implemented throughout Kosovo.

### 2.11. No common purpose to commit crimes against LDK members

246. The Prosecution failed to establish that there was a common purpose to commit crimes against LDK members/supporters. The KLA and the LDK both sought independence for Kosovo. Most Kosovo Albanians—and therefore most members of the KLA—had been LDK supporters. Political disagreements between the KLA and the LDK did not amount to calls for the commission of crimes against LDK members/supporters. There is extremely limited evidence that any victim was targeted for their connection with the LDK.

#### *2.11.1. Direct Evidence of Numerous Witnesses contradicts the Prosecution Theory*

247. The Prosecution theory of a common purpose against the LDK was repeatedly controverted by its own evidence. Zyrapi was not aware of any common purpose to intimidate, mistreat, and commit violence against members of the LDK.[820] Apart from C.Desku and J.Kastrati, he was not aware of any arrests of LDK members.[821] US diplomatic cables reported Bashota stating contemporaneously that "the KLA is not

[817] P01386.
[818] P00904_ET.5.
[819] 1D00033, p.SPOE00226333.
[820] T.20240715, p.18205.
[821] **Zyrapi**, P01355.3_ET, p.36.

against the LDK".[822] Mr.Krasniqi told the ICTY: "our organisation in war was not meant to oppose LDK or Kosova, it was meant to fight the Serb occupier".[823]

248. The ZCs also rejected the Prosecution's theory. R.Mustafa, who was involved in the LDK youth forum before the war,[824] communicated with all political entities during the conflict, including LDK chairpersons, and they assisted the KLA soldiers.[825] He denied that people were detained by the KLA because of their LDK membership.[826] His account was corroborated [REDACTED].[827] S.Selimi recalled no issues between the LDK and the KLA in Drenica.[828]

249. Multiple KLA witnesses confirmed that there was no policy against the LDK. Sopi testified that in his region there were no political divisions and everybody was focused just on the war effort.[829] He strongly denied the existence of a policy to commit violence against the LDK, saying that "under no circumstances and never have I heard of any such thing".[830] Kurtaj never considered the LDK as an opponent of the KLA and had no knowledge that other people in Nerodime zone considered the LDK to be KLA opponents.[831] He was an LDK supporter and never experienced any negative reaction from anyone in the KLA.[832] From Pashtrik, H.Qadraku stated "[…] we were not against the LDK. We were only against the Serbian enemy."[833] From Suhareke, Fondaj

[822] P01068_ET, p.116698.
[823] P00794, p.3305.
[824] [REDACTED], P01470.1_ET, pp.18-20; **S.Buja**, T.20241107, p.22260; **Mustafa**, T.20230717, p.5822; T.20230714, p.5713.
[825] 4D00134_ET.
[826] **Mustafa**, T.20230714, pp.5724,5275.
[827] [REDACTED], P03368.2_ET, pp.11,14.
[828] T.20250211, p.25027.
[829] T.20241028, p.21277.
[830] **Sopi**, T.20241028, p.21277.
[831] T.20240222, p.12825.
[832] T.20240221, p.12738.
[833] P01863_ET, p.13.

confirmed that the KLA would not consider someone an opponent because of their LDK affiliation.[834]

250. Furthermore, N.Bytyqi testified that "within the ranks of the KLA, there was no hatred towards the LDK or towards Rugova or anyone else".[835] [REDACTED] told the Prosecution that there was no open war among the Albanians, because the majority of Albanians in Kosovo were part of the LDK, but when the war started, the war needed to be supported.[836] [REDACTED],[837] denied that the LDK were regarded as suspicious by KLA members in 1998 or vice versa.[838] D.Krasniqi, who was part of the MP, denied that he ever received an instruction that people who were affiliated with the LDK should be treated as potentially suspicious or stopped.[839] [REDACTED] did not understand that members of the LDK would have been considered collaborators,[840] [REDACTED] LDK membership raised no suspicions.[841] This consistent direct evidence refutes the Prosecution case.

#### *2.11.2. The Evidence establishes co-operation and interdependence between the KLA and LDK*

251. Before the KLA emerged, the LDK was "the main carrier of the people's aspirations for independence".[842] The majority of Kosovars supported the LDK.[843]

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[834] **Fondaj,** T.20240624, p.17034.
[835] **N.Bytyqi**, T.20240605, p.16795.
[836] [REDACTED], P01605.2_ET, p.25.
[837] P01941, pp.904,917.
[838] [REDACTED], P01941, p.908.
[839] P01667.2_ET, p.11.
[840] [REDACTED].
[841] *Idem*, [REDACTED].
[842] P04159_ET, p.043799; [REDACTED], P01942, pp.773,853 lines; **W04240**, P01740.1_ET, pp.7,11; T.20241023, pp.20943, 20944.
[843] P03348_ET, p.2242; [REDACTED], P01605.7_ET, p.7; **W04240**, P01740.1_ET, p.18; [REDACTED], P01327.6_ET, p.26; [REDACTED], P01195.1_ET, p.15; [REDACTED], P01136.1_ET.1, p.8; [REDACTED], P00424.3_ET, p.2; [REDACTED], P00414.1_ET, p.13; [REDACTED], P00219, para.49; **Zyrapi**, T. 20240715, p.18204; [REDACTED]; [REDACTED]; **S.Kabashi,** T.20231114, p.10039; [REDACTED].

Preceding the conflict, LDK and LPK members were consistently targeted by the Serbian police forces.[844] For instance, in May 1998, the Serbian police raided the LDK offices in Gllogoc (where Mr.Krasniqi worked).[845] Serbian attacks on LDK members and premises were consistently reported by international observers.[846] S.Buja and Bashota were interrogated by the Serbian police for participating in the LDK.[847]

252. It is too simplistic to regard the LDK as pacifist opponents of the KLA's struggle. Whilst Rugova was certainly pacifist, other LDK supporters played a significant role in organising an armed response to Serbian repression. During the spring and summer of 1998, LDK leaders were involved in setting up village defence units.[848] [REDACTED].[849] Many LDK members and supporters were directly involved in the conflict, by fighting with the KLA or providing material support.[850] LDK supporters joined the KLA, some assuming higher 'ranking' roles,[851] and some, like Ibishi,[852] returned to their activities with the LDK after the conflict.[853] Although the LDK's official stance was against the armed conflict, the reality is that the LDK and the KLA shared overlapping goals and were not opponents.[854]

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[844] **S.Buja**, P01817_ET, p.3726; **Bashota**, T.20241128, p.22955; [REDACTED], P00466, pp.SITF00180550-SITF00180551; [REDACTED], P01195.1_ET, p.16; P00841_ET, p.9; **W04517**, P00742.18_ET, p.5; [REDACTED], P00324.2_ET, pp.3-4; P00325, p.SITF00180510; P00234, p.SPOE00198576; 1D00190, p.DHT04158;
[845] P04502, p.SPOE00397701.
[846] P04035, p.13; P04017, p.R025-4298; P00743.3, pp.SPOE00198437,SPOE00198775.
[847] **S.Buja,** P01817_ET, pp.3726,3727. [REDACTED]**,** P01870.5_ET, pp.5,6.
[848] P03348_ET, p.2250; [REDACTED], P01694.7, p.4; P01695, para.38; *also*, [REDACTED], P01202.1_ET, p.7893; **Rrahmanaj,** T. 20240930, pp.20468,20469.
[849] [REDACTED]**,** P01672.1_ET, p.19.
[850] [REDACTED]**,** P01930.1_ET, p.27; *See* [REDACTED], P01830.4_ET, p.4; [REDACTED], P00333, p.114940, para.5.
[851] **Maloku**, T.20250325, p.25853; **Zyrapi,** T.20240715, p.18205; T.20240708, pp.17787,17788; **Mustafa**, T.20230717, pp.5822,5823; [REDACTED]; [REDACTED]; [REDACTED]; **Sopi,** T.20241028, p.21273; [REDACTED]; [REDACTED], P01918.4_ET, p.7; [REDACTED], P01605.7_ET, p.7; [REDACTED], P01209_ET, p.690; [REDACTED], P00961_ET, para.40.
[852] 4D00013.
[853] [REDACTED], P01355.11, pp.4,5; [REDACTED], P00388, para.10; **Maloku**, T.20250325, p.25882; **Kurtaj**, T.20240221, p.12738; **Mustafa**, T.20230717, p.5823; [REDACTED]**,** P01805.1_ET, p.7.
[854] P04492, p.SPOE00405216; 4D00116, p.SPOE00304737; *also* **W04240,** P01742_ET, p.U000-8077; [REDACTED]**,** P01672.1_ET, p.19.

253. The overwhelming majority of KLA fighters were also supporters of the LDK. Zyrapi stated that "80 percent of the KLA had belonged to the LDK",[855] and that between "late May 1998 until September 1998 the local staff and the soldiers were predominantly from the LDK".[856] Halitjaha told the Court that "the army and the LDK were not distinct" and there were a lot of good army officers and soldiers from the LDK.[857]

254. This evidence was repeatedly confirmed by witnesses from all over Kosovo. [REDACTED] joined the KLA through the LDK village leadership.[858] In Suhareke, the KLA was created by the LDK structures[859] and led by LDK supporters.[860] [REDACTED] confirmed that in late November 1998[861] the KLA in the [REDACTED] was led by LDK leaders[862] and KLA units were filled with officers or soldiers from the LDK.[863] A.Rrahmanaj testified that 90% of KLA soldiers belonged to the LDK and that the first KLA structures around Malishevë were set up by the LDK.[864] [REDACTED], said that 95% of his soldiers were LDK supporters and there were no issues related to LDK and KLA [REDACTED].[865] [REDACTED].[866] The entire LDK branch in Junik and its sub-branches, LDK chairmen from 20 villages, became commanding structures of the Junik Brigade.[867]

[855] [REDACTED], P01355.10_ET, p.30; P01355.3_ET, p.31.
[856] [REDACTED], P01355.3_ET, p.31; T. 20240708, p.17784.
[857] **Halitjaha**, T.20231204, p.10464.
[858] [REDACTED], P01830.1_ET, p.10.
[859] [REDACTED], P01327.7_ET, p.2.
[860] *Idem*, p.3; T. 20240624, p.17032; [REDACTED], P00317_ET.2, p.10; P00317_ET.1,p.11.
[861] [REDACTED].
[862] *Idem,* [REDACTED].
[863] [REDACTED], P01097.2_ET, p.4.
[864] **Rrahmanaj**, T.20240930, pp.20482,20468.
[865] [REDACTED], P01605.7_ET, p.7; [REDACTED].
[866] **W01493**, T.20240117, p.11312.
[867] **Maloku**, T.20250325, pp.25853,25854.

255. This body of evidence refutes any suggestion that there was a policy preventing LDK members joining the KLA.[868] Zyrapi denied that if someone was a member of the LDK he could be rejected for a position in the KLA.[869] D.Krasniqi testified there were many LDK supporters amongst the KLA, which "was no obstacle at all,"[870] and there was no requirement to leave the LDK in order to join the KLA.[871] [REDACTED] denied that LDK supporters could not be KLA soldiers and explained that the LDK members who joined the KLA did not leave the LDK, they just were not politically active at that time.[872] S.Kabashi testified that coming from a family which supported Rugova did not prevent him joining the KLA.[873] [REDACTED] saw no conflict between LDK supporters and the KLA units in his zone.[874] [REDACTED],[875] stated that [REDACTED] never experienced any problems because of their LDK membership.[876] [REDACTED], and [REDACTED] stated that the LDK and the KLA were not divided.[877]

256. LDK members helped the KLA with material needs. LDK political leaders from Podujeve, Pristina and Fushe Kosova served in the KLA logistics functions in Llap zone.[878] [REDACTED] LDK supporters also supported the KLA.[879] Sopi [REDACTED] confirmed that the KLA and the LDK co-operated harmoniously in their areas.[880]

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[868] **Zyrapi**, T.20240703, p.17584; **Mustafa**, T.20230717, p.5822; **Kurtaj**, T.20240221, p.12738; [REDACTED]**,** P01825.1_ET, p.12-14; **D.Krasniqi**, T.20240923, p.20169; [REDACTED], P01605.7_ET, p.7; [REDACTED], P01327.6_ET, p.26; [REDACTED]; [REDACTED]; [REDACTED]; also **Maloku,** T.20250325, pp.25852,25853; [REDACTED]**,** P01846.2_ET, p.1; [REDACTED]; [REDACTED]; **Ibishi**, T.20241024, p.21195; **Sopi,** T.20241028, p.21273.
[869] **Zyrapi**, T.20240703, p.17584.
[870] **D.Krasniqi**, T.20240930, p.20169.
[871] **D.Krasniqi**, T.20240930, p.20170.
[872] [REDACTED], P01694.1_ET, p.8.
[873] **S.Kabashi,** T.20231114, p.10039.
[874] [REDACTED].
[875] [REDACTED]**,** P01825.1_ET, p.12.
[876] *Idem,* p.14.
[877] [REDACTED]**,** P01941, p.904; [REDACTED].
[878] **Mustafa**, T.20230717, p.5823.
[879] [REDACTED].
[880] [REDACTED]**; Sopi,** T.20241028, pp.21272-21273; P01766.3_ET, p.7.

Furthermore, the LDK in Kaçanik supported the KLA "with everything they had" and LDK representatives and KLA members in Ferizaj co-ordinated "[a]lways. All the time."[881] Consistent with this evidence, [REDACTED].[882]

### *2.11.3. Political disagreements are not evidence of a policy to commit crimes*

257. The political jockeying between the KLA and the LDK,[883] was not considered *criminal* by several international observers. **Kickert** explained that what he observed was *political rivalry* between the LDK and the KLA, which went both ways, with the LDK also denying or diminishing the role of the KLA.[884] Byrnes testified that there were political disagreements between the KLA and LDK but agreed that political disagreements are in every system.[885] Williams testified that a dimension of the tense relationship was "an effort by the KLA to create political space by delegitimising the LDK, to a degree, which is perfectly natural and normal.[886]

258. Sentences critical of the LDK have been cherry-picked from longer public statements, without context. For instance, in Summer 1998, international representatives were trying to form a unified Albanian platform for negotiations.[887] Although attempts were made to involve the KLA,[888] the Serbian offensive prevented follow up meetings with the KLA and, by mid-August 1998, Hill engaged with an official LDK negotiating team.[889] Strongly worded KLA statements in the aftermath

[881] **Kurtaj**, T.20240222, p.12864, T.20240221, p.12738.
[882] P00399; *also* P01069, pp.075331-075332; P01072, p.116689; **Byrnes**, T.20240326, p.13756; T.20240325, p.13662.
[883] **Kickert**, T.20250429, p.16229.
[884] **Kickert,** T.20240529, pp.16229,16333; T.20240528, p.16157; P01209_ET, p.690; **Hill**, T.20251110, p.27684.
[885] **Byrnes,** T.20240326, p.13758
[886] **Williams**, T.20250918, p.26968.
[887] **Kickert**, T.20240429, p.16236; **Hill;** T.20251110, pp.27678-27680.
[888] P04508_ET, p.SPOE0058154; 1D00435, pp.DHT12273-DHT12274; P01227, p.U015-8842; [REDACTED]**,** P01210, para.45.
[889] **Kickert,** T.20240429, p.16259; **Hill,** T.20251110, p.27679.

must be seen in the context that the KLA had been cut out of the official negotiations and was trying to remain part of the discussions.[890] Disagreements about the membership of negotiating platforms are not unusual and are unrelated to the commission of any crimes.[891]

259. The Prosecution also relies heavily on KLA statements criticising FARK in September 1998.[892] These statements must be contextualised. Following the Oslo Agreement which sought to unite FARK and the KLA,[893] FARK entered Kosovo prior to 25 June 1998.[894] FARK was a professional army with qualified military officers.[895] Yet, on 8 September 1998, facing the Serbian offensive, FARK withdrew to Albania.[896] The psychological impact of FARK's retreat was immense. The Dukagjin zone, in particular, was devastated.[897] FARK members were sometimes given negative connotation because they were paid by the Bukoshi government but stayed outside of Kosovo during the war.[898] FARK had abandoned the civilian population and the KLA when they most needed support; public statements criticising FARK in the aftermath are unsurprising.

260. Statements critical of Rugova reflect the growing criticism from within his own party and from other parties,[899] from people sceptical of his ability to make progress in negotiations with Milošević.[900] Pristina intellectuals such as V.Surroi and R.Qosja

[890] **Hill,** T.20251111, p.27735.
[891] **Kickert**, T.20240429, pp.16377-16378.
[892] *E.g.* SPO PTB, paras.41-45.
[893] [REDACTED]; [REDACTED].
[894] F01536/A01, AdjF.771.
[895] [REDACTED].
[896] [REDACTED].
[897] **Maloku,** T.20250325, pp.25850-25851.
[898] [REDACTED].
[899] *Contra* SPO PTB, para.[REDACTED]; **W04240,** P01740.7_ET, p.10; [REDACTED], P00317_ET.2, pp.11,14; P00317_ET.1, p.12; **Dedaj**, T.20231106, p.9418; P00189_ET.5, pp.U015-9016,U015-9017; **Kickert**, T.20240529, p.16333; **Dedaj**, T.20231107, p.9518.
[900] **Hill**, T.20251110, p.27659.

shared these doubts.[901] Rugova's public standing was hurt by his decision to meet Milošević in Summer 1998.[902]

261. KLA members made public statements asking Bukoshi and the government-in-exile to give money to the KLA.[903] Williams understood these statements not as calls for the commission of crimes, but as the KLA making political space for itself by de-legitimising Bukoshi.[904] The KLA desperately needed money for weapons and supplies, whilst Bukoshi had collected a large amount of money which was not publicly accounted for.[905] Hill recalled questions about whether the money raised by the LDK was well spent.[906]

262. Aside from Bukoshi and Rugova, who were not the victims of any alleged crimes by the KLA, the public statements did not target individual members of the LDK or FARK. Whilst communiqué 59 identified [REDACTED] as a branded collaborationist,[907] this was not related to his LDK affiliation,[908] but because he shot and killed A.Rexha[909]–a KLA brigade commander.[910]

263. No public statements undermined the co-operation of the KLA and the LDK.[911] The Albanian delegation took a unified position at the Rambouillet negotiations. KLA members, including Mr.Krasniqi, sought to involve the LDK in the PGoK.[912] The KLA

[901] *Idem,* p.27659.
[902] *Idem,* p.27658; **H.Qadraku**, T.20241127, pp.22833,22834.
[903] P00579_ET, p.SPOE00232614; P00547_ET.
[904] **Williams**, T.20250918, p.26968.
[905] *Idem,* p.27006.
[906] **Hill**, T.20251110, p.27660.
[907] P00159_ET, p.043861.
[908] SPO PTB, para.55.
[909] **W04240**, T.20241022, pp.20834-20835,20865-20871.
[910] P01745_ET, p.U0039090.
[911] P01069, pp.075331-075332; **Byrnes**, T.20240326, p.13756; T.20240325, p.13662; [REDACTED]; [REDACTED], P01766.3_ET, p.7; **Kurtaj**, T.20240221, p.12738; [REDACTED], P02058.2_ET, p.6; *also* P00487_ET.8, pp.0189-2762; **Sopi,** T. 20241028, p.21273.
[912] *Supra,* section 2.5.1.

also attempted to co-operate with FARK even after FARK's withdrawal. Zyrapi and others negotiated an agreement with Bukoshi's MoD for the unification of the KLA and FARK which was signed on 2 November 1998.[913] Zyrapi confirmed that the KLA welcomed former members of FARK.[914]

#### *2.11.4. Incidents Involving the LDK/FARK are not evidence of a common purpose*

264. The limited number of occasions across the Indictment period in which a member of the LDK/FARK was detained by the KLA, is not evidence of an overarching common purpose. Rather of local issues and differences.

265. Many of the allegations arise from Malishevë and the Lumi Unit, which later became Brigade 122. The leaders of the Lumi Unit, Hysni Kilaj and Gani Krasniqi, had been senior members of the LDK branch.[915] [REDACTED].[916] On 10 July 1998, Gani Krasniqi ordered certain premises of political parties to be vacated.[917] Surprisingly, the Prosecution elected not to call Gani Krasniqi to explain his own order. It was a local decision, unrelated to the GS.[918] There is no evidence that LDK branches or sub-branches were targeted in every municipality in which the KLA was active. Gani Krasniqi's order is directed to all political parties, not targeted at the LDK. Moreover, the Malishevë LDK branch did not close but continued operating throughout the war.[919]

[913] **Zyrapi**, T.20240703, pp.17606,17609,17611; 1D00166.
[914] **Zyrapi**, T.20240708, p.17784.
[915] [REDACTED]; [REDACTED].
[916] [REDACTED]; **W03170**, T.20240604, pp.16590-16591,16593-16595.
[917] 1D00006.
[918] [REDACTED], P01355.3_ET, p.34; T.20240708, pp.17788,17789; *also* [REDACTED], P01694.2_ET, p.18.
[919] [REDACTED]; P01240.6_ET, pp.21-23; [REDACTED].

266. [REDACTED] was not detained because of his LDK membership. [REDACTED].[920] [REDACTED].[921] [REDACTED].[922] [REDACTED].[923] [REDACTED]"[924] The detention of Desku and J.Kastrati, also in the Malishevë area, is addressed below.[925]

267. In many other cases cited by the Prosecution, there is no reliable evidence that the alleged victim was targeted because they were a supporter of the LDK.[926] Since the great majority of Kosovo Albanians were LDK supporters, many more victims would necessarily have been targeted. In several cases, the absence of a policy against the LDK is indicated because detentions occurred without knowledge of senior KLA members.[927] In some cases, senior KLA members intervened to secure releases.[928]

268. As to evidence [REDACTED],[929] S.Geci was a rogue operator and there is no reliable evidence that he reported to anyone; witnesses described that S.Geci behaved as though he was above everyone.[930] W04739 stated that [REDACTED].[931] Whilst S.Geci allegedly told S.Selimi that he was KLA intelligence and acting on GS orders, S.Selimi did not believe him, even at the time.[932] No documentary evidence of his reporting exists.

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[920] [REDACTED].
[921] [REDACTED].
[922] [REDACTED]; T.20230418, p.2996-2997, p.3009, p.3011, p.3028; T.20230419, p.3119-p.3120.
[923] P01136.4, pp.6-7.
[924] [REDACTED].
[925] *Infra*, paras 484-487.
[926] [REDACTED], P01918.4, pp.4-5; [REDACTED]; [REDACTED], P00252.3_ET, p.33; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED], P02104.8_ET, p.13.
[927] [REDACTED], P03368.6_ET, pp.9-11; [REDACTED], P01942, pp.791,792; **Mustafa**, T.20230714, pp.5724,5275; [REDACTED], P01327.7_ET, p.5.
[928] **Dobruna**, P01955.6_ET, pp.9,10.
[929] [REDACTED], P01585, p.SITF00016628; P01587, p.SPOE00014596; P01586, p.SITF00016502.
[930] [REDACTED], P01153, p.SPOE00184780; [REDACTED], P01584, p.SITF00013401.
[931] **W04739**, T.20240422, p.14544.
[932] **S.Selimi,** T.20250212, p.25156; T.20250213, pp.25245,25246; *also* [REDACTED]; T.20250212, p. p.25155.

### 2.12. No common purpose to commit crimes against Serb civilians

269. The Prosecution failed to establish a common purpose to commit crimes against Serbian civilians. KLA public statements never called for crimes to be committed against civilians. KLA volunteers were not instructed to attack or detain civilians. The crimes which the Prosecution proved were individual acts which were not approved or encouraged by GS members.

270. KLA public statements consistently deprecated attacks on civilians. In March 1998, a KLA statement stressed that "the KLA will not be involved in killing the civilian population, women, children, and elderly".[933] In April 1998, PD-2, which laid out the KLA's political manifesto,[934] stated that the KLA "condemn[s] terrorism and other forms of violence against the civilian population and those held prisoner. The KLA recognises and respects the International Acts of the United Nations and the Convention relating to war."[935]

271. Later public statements carried the same message. PD-11, reiterated that the KLA "long denounced and distanced itself from all forms of terror exercised on civilians and their livelihoods and property".[936] PD-21 stated that no killing of KLA members would drive the KLA to take revenge against civilians.[937] Communiqué 62 stated that an act of kidnapping was damaging to the KLA's just and liberation struggle, reiterated that the KLA does not "condone any attacks against civilian population and its property" and that "the [KLA's] fight is against the criminal and murderous occupiers of the Belgrade *regime*".[938]

[933] P04217_ET, p.2.
[934] **Bashota**, T.29241293, p.23258; P00286_ET.
[935] P00286_ET.
[936] P00295_ET, p.2.
[937] P00571_ET, p.SPOE00231922.
[938] P00270_ET.12, p.2.

272. Statements condemning attacks on civilians were made throughout the Indictment period, including by alleged members of the JCE. Mr.Krasniqi said in an interview that "/…/ no matter whether they are Albanians, Serbs, or other people living in Kosovo. We will not deal with civilians."[939] In July 1998, S.Selimi said that "The Liberation Army does not deal with [a]bductions. All those that are held in our prisons are prisoners of war. The KLA recognizes the rules of war according to international conventions. The KLA does not deal with executions of civilians for any reason."[940] In August 1998, Demaci announced "we do not deal [with] kidnappings" and that "[i]f some groups do it on their own, *and if we have influence on them*, we always intervene and kidnapped persons are released".[941]

273. Shaban Shala stated the GS has not and would not issue an order to pursue, kill, or massacre innocent people, or loot or destroy Serbian property.[942] In September 1998, Maloku stated publicly that he and his soldiers would never take revenge on the Serbian civilian population,[943] intending to convey a message to every soldier to "never touch a Serbian civilian".[944] In February 1999, Maloku, re-iterated "[w]e don't want for the war to take on the character of a war against civilians on our side as well."[945] B.Mahmuti stated that the KLA's objectives were "destruction of the invading forces and preservation of the civilians".[946]

274. Public statements also denied responsibility for alleged crimes against civilians. In December 1998, Mr.Krasniqi stated: "[T]he Kosovo Liberation Army has not

[939] P00842_ET, p.3; further P03716_ET.
[940] P02031_ET, p.3.
[941] P00380, p.K0364867.
[942] *Ibid*.
[943] P02103_ET.2, p.U002-3137.
[944] **Maloku**, P02087.3_ET, p.4.
[945] **Maloku**, 1D00256_ET, p.126696.
[946] P04156_ET, p.3.

committed any crime against the Serbian civilian population, has not looted nor burned any house, school, religious objects nor those of Serbian culture."[947] Thaçi, publicly stated that "KLA soldiers, or officers of this army, never killed civilian people, but fought against the Serbian police and army."[948] Following killings in Gracko, Thaçi and Çeku denied KLA involvement and condemned the shootings.[949]

275. Similar points were made to internationals. Mr.Krasniqi said the GS distanced itself from terrorist tactics and that the KLA was not involved in the kidnapping and murder of the deputy mayor of Kosovo Polje or the killings of Serbian youth in Pec.[950] Byrnes confirmed that Mr.Krasniqi and Demaci condemned attacks on civilians.[951]

276. In January 1999, the OSCE reported that the KLA in Shala zone told them that "all civilians, regardless of their nationality, were free citizens as far as the KLA was concerned […] There is a special order issued by the KLA GS about this."[952] [REDACTED].[953] [REDACTED] had no knowledge of any GS document ordering the mistreatment of detainees or civilians.[954] [REDACTED].[955]

277. Prosecution witnesses confirmed the absence of a policy against civilians. Zyrapi was not aware of any common purpose to intimidate, mistreat, and commit violence against Serbian civilians.[956] Bashota stated that the KLA GS has "absolutely never done anything against the civilian population".[957] [REDACTED] testified that the KLA did

[947] P03753_ET.1.
[948] 1D00179_ET, p.DHT04073-EN.
[949] 1D00393, p.DHT05082; 1D00149, p.2.
[950] P01072, p.116683.
[951] **Byrnes**, T.20240326, p.13739.
[952] P00811_ET.61.
[953] 4D00118, p.SPOE00214505.
[954] [REDACTED], T.20230518, p.5968.
[955] **Bashota**, T.20241203, p.23250.
[956] **Zyrapi**, T.20240715, p.18205.
[957] [REDACTED], P01870.3_ET, p.13.

not deal with the civilian population of any nationality[958] and wrote that "the war [was] against the military and police forces, and not against the Serbian civilian population".[959] [REDACTED] stated, "it was neither our mission nor our vision to deal with civilians, but only to deal with the Serbian troops /…/".[960] R.Qeriqi reiterated that there was a rule not to wage war against civilians, only against uniformed men.[961]

278. [REDACTED] show that KLA leaders expressed their opposition to arrests of. For instance, Mr.Krasniqi purportedly said that two civilians should not have been abducted.[962] Byrnes confirmed that this showed dissatisfaction with those who kidnapped the civilians, adding that the zone and Brigade commanders often acted independently of the GS.[963] Further, Zyrapi and Rama expressed concern about Serbian revenge over another kidnapping and opposed such acts.[964] [REDACTED] when informed of kidnappings of civilians, Mr.Krasniqi said that it was agreed "not to make such mistakes".[965] Zyrapi explained that *no civilians were to be touched or taken in such situations*, but certain people have done such things *out of their own free will*.[966]

279. KLA volunteers were generally instructed not to attack the civilian population. The KLA received a document about the Geneva Conventions from the ICRC, which was circulated with the aim to ensure that the KLA did not deal with civilians.[967] The ICRC document would not have been distributed if the KLA had intended to commit crimes against civilians. [REDACTED] stated that all units had orders not to touch the places where the Serbian families lived.[968] He continued that "[t]he GS and the soldiers

[958] P01821_ET, p.4037.
[959] P01813_ET, p.SPOE00227465.
[960] [REDACTED].
[961] T.20240424, p.14807.
[962] P03551_ET, p.111807.
[963] P02094_ET, pp.111630,111632-111634; **Byrnes**, T.20240328, pp.14085,14086.
[964] P02094_ET, p.111630.
[965] *Idem*, p.111634.
[966] [REDACTED].
[967] P00795, p.3387; **Zyrapi**, T.20240709, pp.17908,17909.
[968] P01870.3_ET, p.13.

were not in any way allowed to commit massacres of the civilian population, whether Serbian, Albanian, Romani, Ashkali, or Bosniak".[969] [REDACTED]."[970]

280. KLA members confirmed that they were instructed not to attack civilians. [REDACTED] was told repeatedly that they should not touch Serbian families.[971] [REDACTED] testified that KLA members received an order to fight only with the Serbian police and military, not civilians.[972]

281. Shown a purported order to liquidate anyone obstructing the KLA, [REDACTED] had never seen it and confirmed that neither ZCs nor the GS had the authority to order liquidations.[973] [REDACTED] said that there were written and oral orders within [REDACTED] related to the behaviour of the soldiers towards civilians during the military operation.[974] [REDACTED] said there was an order that no unarmed person should be touched.[975] W03812 understood that "civilians must be treated in the most humane and delicate manner".[976] [REDACTED] informed soldiers about not to maltreat and abuse civilians[977] because his [REDACTED] wanted him to do so.[978] [REDACTED] stated that in [REDACTED], the soldiers were informed of the laws of war during training[979] and were "in no way" told to target civilians of any ethnicity.[980] [REDACTED] said that the soldiers were told "[w]e don't have anything to do with the civilian population, irrespective of the fact whether that person was Albanian or Serb" and that "the behaviour towards civilians must be at the highest

[969] [REDACTED], P01870.3_ET, p.14; P01870.6_ET, pp.6,7.
[970] P02902.
[971] [REDACTED].
[972] P00343, p.SPOE00090959.
[973] [REDACTED], P01755.7_ET, pp.37-40.
[974] [REDACTED], P01594.7_ET, p.8.
[975] [REDACTED], P00708.4_ET, p.12.
[976] **W03812**, P01827.1_ET, p.18.
[977] **Abazi**, P01136.1_ET.1, pp.27,28.
[978] **Abazi**, T.20240430, pp.15172-15173.
[979] [REDACTED], P01605.2_ET, p.6.
[980] [REDACTED].

standards".[981] [REDACTED] and others were all convinced that they were fighting against the Serb regime, not civilians.[982] W03878 was informed by his commander that it was not allowed to commit crimes against civilians.[983] Kurtaj continuously reminded the soldiers that the war was waged against Serbian forces but never against civilians, regardless of their nationality.[984]

282. Despite the absence of enforceable disciplinary regulations, local commanders did what they could to prevent crimes against civilians. In such cases the soldier would get an advice, a warning and the soldier's weapon could be taken away.[985] [REDACTED] said that KLA members would be punished by guard duty or expelled from the KLA for inappropriate verbal exchanges with a civilian.[986] These basic measures fall far short of a functioning disciplinary system but they demonstrate that the abuse of civilians was not a common purpose.

283. KLA members feared Serbian reprisals if Serbian civilians were touched. There is ample evidence of such reprisals.[987] [REDACTED] acknowledged that civilians suffered retaliation from the Serbs when the latter fought with the KLA.[988] In October 1998, Mr.Krasniqi stated that the KLA was prevented in fighting against the Serbian troops because the Serb forces were taking revenge on the civilian population for the losses suffered by the KLA.[989] The notorious massacre in Reçak was a Serbian reprisal following the killing of a police officer.[990]

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[981] [REDACTED], P01830.4_ET, p.5.
[982] *Ibid.;* [REDACTED], P01805.6_ET, p.6; P01805.7_ET, p.18.
[983] **W03878**, T.20240507, pp.15463,15464.
[984] **Kurtaj**, T.20240222, pp.12921,12922.
[985] **S.Selimi**, P02027.1_ET, p.2085; **Ibishi**, P01755.8_ET, pp.2,3; [REDACTED], P00708.5_ET, p.3.
[986] [REDACTED], P01136.4_ET, p.2.
[987] [REDACTED], P01767.1_ET, p.2079; [REDACTED], P01327.8_ET, p.29; [REDACTED], P01243.2_ET, p.19; [REDACTED], P01200.1_ET, p.25; P01287, p.K0508442; P01507_ET, p.2; P01292_ET, p.1; 1D00132_ET, pp.120984,120987,120995; P01101_ET, p.SPOE00228186.
[988] [REDACTED].
[989] P03713_ET, p.086830; **Bashota**, T.20241203, p.23195.
[990] **S.Buja**, P01814, pp.SITF00223944,SITF00223945. 1D00104, p.DHT03655.

284. Where the evidence shows that certain KLA members committed crimes against civilians, these were isolated acts not part of any pattern.[991] Volunteers were often young and lacked military or sometimes even general education.[992] Inevitably, some were "bad people".[993] There is no evidence that the KLA attacked Serbian targets in Serbia or a significant number of ethnically Serbian villages in Kosovo.[994]

285. The Prosecution alleges that, in the gravest single Indictment incident, 48 Serbian civilians were detained around Rahovec and that the men were killed.[995] There is no reliable evidence that any GS member was involved in these crimes. The attack on Rahovec was not discussed, approved or ordered by the GS.[996] Instead, the attack was initiated by a local member of the Arti Unit.[997] Arti commander Xh.Hajda and his deputy S.Mullabazi were not present[998] and did not approve of the attack.[999] The Arti unit did not report to anyone.[1000] Although the Prosecution relies on P01329, this document is unsigned and witnesses had never seen it before.[1001] Fondaj testified that the content of the document was wrong in parts.[1002] Zyrapi confirmed that nobody from the GS ever gave an order to A.Kuqi to attack.[1003]

[991] P00795, p.3394.
[992] [REDACTED], P01136.1_ET.1, p.28; P02628_ET, p.U001-8588; P02615_ET; [REDACTED]; *also* **Duncan**, T.20250922, p.27046.
[993] [REDACTED], P02104.8_ET, p.15; [REDACTED]
[994] **Kurtaj**, T.20240222, pp.12844-12845.
[995] SPO PTB, para.369.
[996] **Bashota**, T.20241203, p.23195; [REDACTED], P01355.2_ET, p.28; T.20240710, p.17921.
[997] P02708_ET, pp.099742,099743; P01582, p.SPOE00200530; P00796, p.3487; P02079.4_ET, p.20; P02079.6, p.17; 4D00123.
[998] P02079.4_ET, pp.17-18,21; P02708_ET, p.099742; P02090.6_ET, p.7.
[999] P02708_ET, pp.099742,099743.
[1000] [REDACTED], P02079.4_ET, p.8; **Zyrapi**, T.20240709, pp.17878,17879.
[1001] **Zyrapi**, T.20240710, p.17926; **Fondaj,** T.20240625, p.17116.
[1002] **Fondaj,** T.20240625, pp.17116,17117.
[1003] T.20240710, p.17927.

286. There is no reliable evidence that the GS were subsequently involved in the detention of civilians in Malishevë. The Prosecution only relies on previous statements of [REDACTED], admitted pursuant to Rule 143, which vaguely allege GS involvement. [REDACTED] was not credible. [REDACTED] evidently changed his account. [REDACTED], had every motivation to deflect the blame elsewhere. [REDACTED].[1004] [REDACTED].[1005] [REDACTED].[1006]

287. [REDACTED] testified that [REDACTED]; [REDACTED].[1007] [REDACTED] was inconsistent about [REDACTED].[1008] The evidence is too inconsistent to be accepted in a criminal trial. Even if the Panel accepts that [REDACTED].[1009]

288. [REDACTED] also claimed that [REDACTED].[1010] Again, [REDACTED] evidence is self-serving. It is uncorroborated. There is no clear evidence of [REDACTED]; the Pashtrik zone did not properly function until December 1998.[1011]

289. There is no evidence that the crimes were reported to GS members. Whilst [REDACTED] once claimed that [REDACTED],[1012] he testified that he [REDACTED].[1013] Zyrapi never received any information about Serb prisoners captured during the Rahovec attack and is not aware of the GS ever receiving this information.[1014] There is no evidence that P00067 reached the GS.[1015]

[1004] P01581, p.054134.
[1005] [REDACTED].
[1006] [REDACTED].
[1007] [REDACTED].
[1008] P01582, p.SPOE00200533.
[1009] [REDACTED].
[1010] P01581, p.054136.
[1011] P01812_ET, p.SPOE00229790; **Fondaj**, T.20240626, pp.17226,17227.
[1012] P01581, p.054135.
[1013] [REDACTED].
[1014] [REDACTED].
[1015] **Zyrapi**, T.20240709, pp.17881-17882; [REDACTED] P00761.9_ET, p.12.

290. Furthermore, Serbian forces armed Serb civilians.[1016] This policy caused KLA volunteers to be cautious of male Serbs of combat age. Byrnes testified where KDOM was able to ascertain that Serb civilians were held by a KLA unit, the KLA would always allege that those were armed and participated in the conflict.[1017] He added that Serbian civilians were armed by the Serbian police and KDOM was exposed to automatic weapons being fired at civilian events.[1018] There were reports of armed Serb civilians taking part in the atrocities committed against the Kosovo Albanian population.[1019] Serbian civilians in the Rahovec area in particular were armed.[1020]

291. The alleged detentions and killings of Serbian civilians in July 1998 are unique in the Indictment. The absence of similar incidents strongly suggests that there was no common purpose and that this was a purely local action.

### 2.13. No common purpose to commit crimes against Roma

292. The Prosecution failed to prove that there was a common criminal purpose to commit crimes against Roma civilians. There is no evidence of any written or oral order to attack or detain Roma civilians. No KLA policy documents or regulations justify attacks on Roma civilians. The Prosecution has not identified any relevant public statement calling for attacks on Roma civilians.

293. KLA members denied any such common purpose and condemned crimes committed against ethnic minorities.[1021] Zyrapi was not aware of any common

[1016] 4D00026; P04502, p.SPOE00497691; P04021, p.R025-4238; [REDACTED]; **Ledwidge**, T.20230718, p.6046; **D.Božanić**, T.20230817, pp.6713,6715; [REDACTED]; **P.Dedić**, T.20231102, p.9272; **Byrnes**, T.20240327, p.13934.
[1017] **Byrnes**, T.20240327, pp.13933-13934.
[1018] **Byrnes**, T.20240327, p.13934.
[1019] See, at a later date, P00743.1, p.SPOE00198307.
[1020] 4D00026.
[1021] 1D00094_ET, p.2; 1D00114, p.020799; **Covey**, T.20250930, pp.27368,27369; 1D00094_ET, p.055500.

purpose to intimidate, mistreat, and commit violence against the Roma.[1022] [REDACTED] stated that the KLA did not fight against the Albanian, Serbian, Bosnian or Roma civilian population.[1023] [REDACTED] was never given an instruction in the KLA to mistreat the Roma.[1024] When two members of the Llap zone MP looted and stole items from a Roma house, this action was "*condemned by every member of the Military Police Base in Podujevë*" and the two men were expelled from the local MP unit.[1025] [REDACTED] tried to reconcile all ethnicities in [REDACTED] and to secure freedom of movement for the Roma.[1026]

294. In February 1999, Kurti stated that the KLA was not in war with ethnic minorities.[1027] In June 1999, Mr.Krasniqi publicly assured that "the KLA will respect the rights of ethnic minorities of Kosovo in accordance with international norms".[1028] In September 1999, Thaçi distanced himself (and therefore the KLA and PGoK) from– and condemned-acts of revenge against Serbs and Roma.[1029] These statements are incompatible with the alleged common purpose.

295. International witnesses did not consider the violence against the Roma was organised by the KLA**.** Jackson stated that the Roma were targeted in Kosovo by individuals and he had no evidence that such was a KLA policy.[1030] Abrahams likewise confirmed that there was no evidence that the attacks and violence were part of a coordinated policy.[1031] Many witnesses testified that the sentiment against the Roma

[1022] **Zyrapi,** T.20240715, p.18205.
[1023] [REDACTED], P01870.6_ET, pp.6-7.
[1024] [REDACTED].
[1025] P02351_ET.
[1026] 4D00117, p.SPOE00304681; P02079.4_ET, p.33; *also* 1D00192, p.SITF00389270; P01011_ET, pp.24-25.
[1027] P00811_ET.38, p.SPOE00053850.
[1028] 4D00039_ET.
[1029] 1D00114, p.1; *also* 1D00094_ET, p.055500.
[1030] **Jackson**, P02516, pp.121588,121589.
[1031] **Abrahams**, T.20230907, pp.7444,7545.

came from Kosovar Albanian society in general, not the KLA, and manifested in revenge attacks.[1032]

296. The Prosecution alleged that crimes were committed against Roma individuals between April 1998 and July 1998, at Jabllanicë,[1033] Llapushnik[1034] and Malishevë;[1035] and between March 1999 and June 1999 at Dobratin,[1036] Kukës,[1037] and Prizren[1038].

297. The evidence does not establish that the individuals detained in 1998 were detained because of their ethnicity. For instance, the Prosecution relied on S.Kabashi's ICTY testimony to assert that two unidentified Roma men were detained in Jabllanicë around 21 May 1998.[1039] However, Kabashi did not know who brought them there, why they were brought there, nor what happened to them.[1040] His evidence about the Roma is uncorroborated. [REDACTED].[1041] The evidence on the record does not support that the Roma were targeted for their ethnicity.[1042]

298. The allegation that Roma persons were detained in Llapushnik is similarly unsustainable.[1043] It originates from witnesses whose evidence was admitted in writing and therefore cannot be the sole basis for any findings.

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[1032] **Cahn,** T.20240318, p.13262; **Covey**, T.20250930, pp.27405-27407; [REDACTED]; also P02067_ET, p.055514; P04109, p.SITF00384719; [REDACTED], P01210, para.61; 1D00175, p.DHT01473; 1D00416; **Covey**, T.20250930, pp.27405-27406; [REDACTED], P01509.2_ET, p.4; [REDACTED], P02068.5_ET, p.61; P02067_ET, p.055514.
[1033] Indictment, para.100.
[1034] *Idem,* para.102.
[1035] *Idem,* paras.103,154.
[1036] *Idem,* paras.74,159.
[1037] *Idem,* paras.119,120.
[1038] *Idem,* paras.126,128.
[1039] SPO PTB, para.290.
[1040] P00730, pp.4252,4253.
[1041] P00099.5_ET, pp.2-4.
[1042] See [REDACTED], P01200.2, pp.5,12.
[1043] SPO PTB, para.312.

299. The Prosecution alleges that in July 1998, KLA members transferred a group of detainees from Drenoc to Malishevë, amongst which was [REDACTED].[1044] The allegation is based on evidence of a single witness, [REDACTED], who was not available to be cross-examined. [REDACTED].[1045] The evidence does not prove that [REDACTED] ethnicity, if he was Roma, was related to his alleged detention.

300. The Prosecution failed to prove its allegation about the killing of a Roma civilian in Dobratin in late March 1999.[1046] The only evidence about this incident was given by [REDACTED], who did not provide details of the alleged victim. The Prosecution failed to corroborate [REDACTED].[1047] The alleged crime occurred when the Serbian forces were destroying the KLA operative zone.[1048] The alleged victim could have been targeted because of his movement through a Serbian controlled area,[1049] not his ethnicity.[1050] Further, GS members were never in Dobratin[1051] and those responsible have not been identified.[1052] [REDACTED].[1053] Evidence that [REDACTED].[1054]

301. Regarding the alleged detention of Roma at Kukës, [REDACTED] told the Prosecution that [REDACTED].[1055] There is limited direct evidence of their mistreatment: [REDACTED] did not witness any mistreatment and only offer untested hearsay.[1056] [REDACTED].[1057] This evidence suggests that the Roma were not targeted as a group.

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[1044] *Idem,* para.357.
[1045] P02907.4_ET, pp.29,38.
[1046] SPO PTB, para.437.
[1047] [REDACTED].
[1048] *Idem,* [REDACTED.
[1049] *Idem,* [REDACTED.
[1050] [REDACTED.
[1051] [REDACTED.
[1052] [REDACTED.
[1053] [REDACTED.
[1054] *Idem,* [REDACTED.
[1055] P00453, p.SITF00013130.
[1056] P02058.5_ET, p.28; P00447, p.107295.
[1057] P00674.2_ET, pp.66-68.

302. The remaining allegations concerning Roma victims all relate to post-war Prizren, where the alleged JCE members had no control over the post-conflict violence.[1058] It has not been established beyond reasonable doubt that the perpetrators were KLA members. [1059] For instance, whilst P00946 listed certain suspects as KLA members, the evidence does not confirm this. [REDACTED] had not heard that illegal activities took place at the SMD.[1060] [REDACTED],[1061] was not aware of detentions taking place there,[1062] confirming that the KLA would not condone civilian maltreatment.[1063] Shown P00946, [REDACTED].[1064]

303. Further, the evidence does not show a policy. [REDACTED].[1065] The senior man's conduct is inconsistent with an alleged common purpose.

304. The alleged detentions of Roma men at the MUP building were also unconnected to any common purpose.[1066] [REDACTED] doubted that the individuals who attacked [REDACTED] were KLA members and thought it was possible that they were civilians wearing KLA uniforms.[1067] [REDACTED] stated that the KLA did not have a problem with the Roma in Prizren.[1068] [REDACTED], had never come across KLA members before the June 1999,[1069] and testified that the alleged KLA members who came to his house were interested only in [REDACTED].[1070] [REDACTED] likewise never had

[1058] *Supra,* section 2.5.3.
[1059] [REDACTED], P01712.1_ET, pp.10-13,17; [REDACTED]; P01133, para.12; [REDACTED]; P00945.1_ET, p.9; [REDACTED], P01710.1_ET, pp.16-17; [REDACTED], P01721.1_ET, pp.20-21.
[1060] P01716.1_ET, p.11.
[1061] [REDACTED].
[1062] *Idem,* [REDACTED].
[1063] *Idem,* [REDACTED].
[1064] [REDACTED].
[1065] [REDACTED], P01710.2_ET, pp.3,4,12-15; [REDACTED], P01712.1_ET, pp.16,17.
[1066] SPO PTB, para.627.
[1067] T.20240425, p.14978.
[1068] P01132.4_ET, p.27.
[1069] P02539.1_ET, p.14.
[1070] *Idem,* pp.20,27,29.

problems with anyone before 1999 and no evidence of his detention points to his ethnicity.[1071]

305. Although the Prosecution alleges a detention of an unidentified Roma man in Tusus in June 1999,[1072] the evidence is inconclusive. Whilst three witnesses gave evidence about the presence of one or more Roma detainees at Tusus,[1073] no-one could identify the Roma men. As a result, there is no evidence identifying why they were detained or that they were targeted for their ethnicity.

### 2.14. No common plan to commit crimes against collaborators

306. The Prosecution failed to establish a common purpose to commit crimes against suspected collaborators. At its highest, the evidence demonstrates a shared understanding that temporary security detention could be used in response to perceived threats in a volatile NIAC.[1074] It does not establish a shared intent to mistreat, abuse or otherwise commit crimes against detainees. Where mistreatment occurred, it was localised, uncoordinated, and neither organised nor endorsed by the GS.[1075]

307. Accordingly, the ICTY found that attacks against suspected collaborators were not attacks on the civilian population,[1076] or were committed by rogue elements of the KLA in revenge for crimes committed by the Serbian forces against Albanians.[1077]

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[1071] P01718.1_ET, pp.8,10.
[1072] SPO PTB, para.621.
[1073] P00676_ET, p.8; P00455, p.SITF00311851; P01155.4_ET, p.16.
[1074] **Mustafa**, T.20230712, p.5557; [REDACTED]; **[**REDACTED**]**, P00708.4_ET, p.29; P02183_ET; **[**REDACTED**],** P02008, p.SPOE00073198; P02007.2, p.19.
[1075] **Zyrapi**, T.20240703, p.17533; T.20240715, p.18206; **Mustafa**, T.20230712, pp.5557,5558; **R.Qeriqi,** T.20240424, p.14845; **Halitjaha**, T.20231205, p.10490; **Abazi,** T.20240430, pp.15225,15226; [REDACTED], P01000, p.SPOE00092134; [REDACTED]; **Tara**, T.20250225, p.25639; [REDACTED].
[1076] *Limaj* TJ, para.228.
[1077] *Idem,* para.216.

#### *2.14.1. Security Detention is not unlawful in NIAC*

308. IHL does not prohibit the investigation, detention and questioning of suspected collaborators in NIAC. In fact, IHL is built on the assumption that all parties to an armed conflict, including NSAs, will detain and therefore sets limits to such detention. 'Reasons related to the armed conflict' encompasses both penal proceedings and security detentions.[1078] The ICRC repeatedly confirmed that customary and treaty law contain an inherent power to detain in NIAC;[1079] in 2005, the ICRC recognised the legality of security internments;[1080] and a subsequent expert meeting concluded that there was inherent authorisation to intern persons in NIAC.[1081] This authorisation means that a NSA cannot be penalised for interning persons including suspected collaborators under IHL, so long as the detention otherwise accords with the law.[1082]

309. It is not accepted that arbitrary detention is a crime within the KSC's jurisdiction. It is not expressly listed in the Statute. Transposing definitions of arbitrariness from human rights law into CA3,[1083] does not necessarily mean that arbitrary detention is a crime engaging individual responsibility, still less that it was recognised as a crime in 1998 and 1999.[1084] Further, CA3(1)(d) applies to criminal law detentions not security internment.[1085]

310. KSC Judgments have not held that it is unlawful for NSA to carry out *any* detentions in NIAC, focussing instead on application of essential safeguards.[1086] In assessing safeguards, the applicable standard must be realistic and context-sensitive,

[1078] GC AP II, para.4568.
[1079] ICRC Commentary GC-I, para.728; UNGA HRC Report, fn.5; Heffes, pp.162-163.
[1080] ICRC IR 2005, p.380.
[1081]ICRC IR 2009, p.863.
[1082] *Idem,* p.870.
[1083] ICRC Commentary CA3, para.756.
[1084] Arbitrary detention was not charged by the ICTY in *Limaj* or *Haradinaj*.
[1085] ICRC Commentary CA3, paras 754-755.
[1086] *E.g. Shala* TJ, para.937; *Mustafa* TJ, paras.646-650.

having regard to the organisation, control, and resources of NSA. The Panel must not apply norms that are "too burdensome, and which would turn out to be impossible to apply".[1087] NSA operate in extremely difficult conditions and cannot be expected to establish effective review procedures immediately.[1088] The minimum procedural safeguards required must therefore be attainable in practice; otherwise, there would be an inequality between the state (which could lawfully detain) and the NSA (which could not). A graduated approach, calibrated to the degree of NSA's organisation or control is therefore required.[1089]

311. Further, not every departure from an ideal procedure should render detention "arbitrary", particularly when assessing the conduct of non-state armed groups. The ICRC has expressly recognised this by requiring such entities to adopt "grounds and procedures" to prevent arbitrary internment through "rules that are considered binding by all members, which could be their laws, rules, code of conduct, general orders, or similar instruction".[1090] This standard plainly differs from the institutional requirements that international human rights law imposes on States, and from the judicial guarantees associated with criminal-law detention. In light of the seriousness of criminal responsibility and the need for precise definition of crimes, "arbitrariness" should be confined to cases of internments that are clearly illegal or abusive.

312. Though it was not a policy propagated by the GS, KLA members understood that they could detain for security reasons. For instance, R.Mustafa accepted that his zone carried out detentions on military grounds until the risk had passed.[1091] Similarly, [REDACTED] stopped persons entering territory controlled by the KLA for

[1087] GC AP II, para.4573.
[1088] ICRC Report, p.56.
[1089] Heffes, pp.127,132,241.
[1090] ICRC Report, p.55.
[1091] T.20230712, pp.5572,5573.

identification purposes.[1092] Abazi testified that unknown person attempting to enter the Budakovë battalion area had to be identified.[1093] These accounts are consistent with short-term security detentions, not with a shared intent to commit crimes. The Prosecution failed to prove that any shared purpose went beyond these lawful measures and included the criminal mistreatment of suspected collaborators. Generic references to punitive measures should not be assumed to be unlawful, when related to lawful security detentions.

#### *2.14.2. Any action against collaborators was local and unconnected to GS*

313. Prosecution witnesses testified that certain suspected collaborators transmitted information regarding KLA movements, locations, or identities to Serbian forces; warned enemy forces of impending KLA operations; or otherwise facilitated military action in circumstances of immediacy and operational relevance.[1094] Such conduct posed an imperative security threat.[1095] It is precisely this factual context-marked by infiltration, intelligence-gathering, and the absence of stable frontlines during the Indictment period-that explains why short-term security detention was perceived as necessary.

314. The evidence further demonstrates that hostility towards perceived collaborators was a pre-existing and widespread social phenomenon, rooted in years of repression,[1096] and fear of Serbian forces,[1097] who paid collaborators for information,[1098] or extracted information from civilians through kidnappings of family

[1092] P01821_ET, p.4033.
[1093] T.20240430, p.15187.
[1094] **Maloku**, P02090.4_ET, pp.15,16; **Ibishi,** P01754, p.SPOE00088349; [REDACTED]**,** P01910.2_ET, p.32.
[1095] ICRC Report, p.56.
[1096] *Supra,* section 2.3; [REDACTED]; [REDACTED]**,** P01115.9_ET, pp.22,35; [REDACTED]; [REDACTED]; [REDACTED], P00708.5_ET, p.14; **Abrahams**, T.20230911, pp.7669,7670; *also* **Mitchell**, T.20231207, pp.10774,10775; [REDACTED], P00392, para.134.
[1097] **Abazi**, T.20240430, p.15177.
[1098] **Maloku,** P02087.3_ET, p.11; **Mitchell**, T.20231207, p.10753; [REDACTED]**,** P02542, para.82.

members and blackmail.[1099] Witnesses described a climate in which accusations of collaboration were common among civilians and KLA members.[1100] Even before the KLA existed, it was a common expression that collaborators would not deserve anything but death[1101] and suspects of collaboration, including foresters, were stigmatised in the society long before the conflict emerged.[1102] [REDACTED] heard that civilians would refer to individuals as "traitors" when they did not like them.[1103] Serbian forces spread information about collaborators deliberately to create mistrust.[1104] Ibishi confirmed that suspected collaborators were in danger of being attacked by civilians.[1105] Ill-will towards collaborators was not created by the KLA, it was an endemic feature of a population struggling under oppression.

315. There is no reliable evidence that there was any KLA system to mistreat collaborators. Evidence of KLA witnesses strongly rejects the existence of any KLA policy against collaborators.[1106] Some documents have been tendered suggesting that some individuals were making lists of names of people suspected of being collaborators.[1107] The authorship, provenance and purpose of these documents is not established.[1108] For instance, [REDACTED] was shown P01151 although he did not know who created this document nor when it was created.[1109] It cannot be inferred that the documents were written by local KLA rather than by villagers. W04737 said

[1099] [REDACTED], P01554.3_ET, p.23.
[1100] **R.Qeriqi,** T.20240424, p.14863; [REDACTED], P01594.2_ET, pp.8,9; [REDACTED]; [REDACTED], P00338, p.SPOE00089897; **Halitjaha**, T.20231116, p.10251; **Mitchell**, T.20231207, p.10755.
[1101] [REDACTED].
[1102] **Ibishi,** P01754_ET, p.SPOE00088349.
[1103] P01825.2_ET, p.33.
[1104] **S.Buja**, P01816.1_ET, p.11; P00107_ET, p.2; also P02635_ET, p.U000-6784.
[1105] T.20241031, p.21707; **Halitjaha**, T.20231116, p.10251.
[1106] **Zyrapi**, T.20240703, p.17533; T.20240715, p.8206; **Mustafa**, T.20230712, p.5557; [REDACTED]; [REDACTED], P01000, p.SPOE00092134; **Tara**, T.20250225, p.25639; **Maloku**, P02090.4_ET, p.16; [REDACTED], P01115.9_ET, p.39; [REDACTED].
[1107] P01151_ET.2; P00711_ET.
[1108] **Halitjaha**, T.20231204, p.10436; T.20231205, p.10506; **W03878**, T.20240507, pp.15440,15441; [REDACTED].
[1109] [REDACTED].

that [REDACTED].[1110] Halitjaha testified that, on few occasions, he received a handwritten list with names, but did not do anything about them,[1111] and once received a list from a village council which he tore up.[1112]

316. When presented with *a list of cooperators*, R.Mustafa stated that he had never seen the document before, did not know whose document it was, what it was, and said "I never asked my subordinates to compile list of collaborators or cooperators".[1113] He also confirmed that sometimes villagers themselves brought people to the KLA.[1114] D.Krasniqi denied that the KLA ever had a *list of suspicious persons*, nor were they told the names of any such persons orally.[1115] [REDACTED] had never seen any lists of suspicious persons.[1116]

317. Even when evidence suggests that such lists were created by a KLA member, there was no evidence that they were organized by the zone command or GS. For instance, Tetaj insisted that Faton Mehmetaj created lists of collaborators although this evidence was speculative because he never saw Mehmetaj in possession of or compiling a list.[1117] Tetaj claimed that he saw the lists before the subzones were created, *i.e.* May 1998, when there was no meaningful level of organisation.[1118] There is no evidence connecting Mehmetaj with the GS. Whilst Tetaj claimed that Mehmetaj said that he was close to Mr.Krasniqi, he did not trust Mehmetaj[1119] and did not know if he was telling the truth.[1120] No objective evidence connects Mr.Krasniqi to Mehmetaj.

[1110] T.20240918, p.19956.
[1111] T.20231204, pp.10412,10413.
[1112] **Halitjaha**, T.20231116, p.10251.
[1113] P00690, p.SPOE00119396.
[1114] **R.Mustafa**, T.20230712, pp.5568,5569.
[1115] P01667.2_ET, p.15.
[1116] [REDACTED], P01554.9_ET, p.8.
[1117] T.20240904, pp.19635,19636; P01594.3_ET, p.22; P01594.4_ET, p.9.
[1118] T.20240904, p.19626.
[1119] *Idem,* p.19583.
[1120] *Idem,* p.19584.

Though PD-7 announced that Mehmetaj was a political representative of the KLA in August 1998, he was removed in November 1998 and there is no evidence about the process of his appointment or dismissal or whether he actually did anything in this role.[1121]

318. These lists of collaborators did not reach the GS. [REDACTED] was not aware of any lists.[1122] Bashota said that the GS did not receive information from the zones about collaborators.[1123] In any event, the investigation of suspicious persons is not unlawful, and the Panel cannot infer that the creation of such lists necessarily supports an unlawful common purpose, rather than the lawful purpose of investigating potential threats.

319. There was no common purpose or policy applied across the KLA in relation to collaborators. [REDACTED] said that they had no instruction or regulation on how to deal with collaborators.[1124] [REDACTED] called the questioning of suspected collaborators "a measure of immaturity and lack of professionalism".[1125] [REDACTED] told the Prosecution they received no instruction on how to deal with collaborators within the KLA.[1126] [REDACTED] did not know and believed that most did not know what would be the procedure once someone was identified as Serbian collaborator.[1127] Maloku told the Prosecution about an incident where he interviewed a person whom the people suspected of collaboration with the Serbian Intelligence Service, which revealed to be true, and he let him go and advised him to leave the country.[1128] The person died after the conflict from natural causes and his son became

[1121] 1D00050_ET; P00270_ET.12.
[1122] P01355.5_ET, pp.17,18.
[1123] T.20241204, pp.23315,23316,23330.
[1124] P01834.4_ET, pp.14,15.
[1125] P01554.3_ET, p.22.
[1126] P01725.5_ET, p.10.
[1127] P01605.2_ET, p.24.
[1128] P02090.4_ET, pp.15,16.

a police officer in Kosovo after the war.[1129] Maloku did not know how the commanders in other areas treated suspects.[1130]

320. Similarly, S.Selimi stated that he did not know about the dealings with collaborators in other areas.[1131] [REDACTED] did not know what would have happened to civilians suspected of collaboration with the Serbs.[1132] [REDACTED] said there were no procedures in place to deal with suspected collaborators and that he has not seen anything about the soldiers having a right to arrest such individuals.[1133] [REDACTED] testified that [REDACTED], a topic of collaborators was never discussed.[1134] [REDACTED] confirmed that the issue of collaborators in the KLA was presented as a big issue in the media, but in reality, [REDACTED].[1135]

321. Decisions to detain and release suspected collaborators were dealt with locally. In the Llap zone, arrests were carried out at brigade level for military reasons[1136] until the risk had passed,[1137] although at times arrests occurred due to private disputes.[1138] There was no specific process for arrests.[1139] Detainees were the responsibility of Nazif Mehmeti who reported to the zone command,[1140] even though the ZC was not always informed about arrests and detentions.[1141] The Zone command had the authority to release detainees.[1142] Every step from detention to release was addressed entirely within the zone: R.Mustafa never received an order from the GS concerning the

[1129] **Maloku**, P02090.4_ET, p.16.
[1130] P02090.4_ET, p.16.
[1131] P02026_ET, p.49.
[1132] P01645.2_ET, p.12.
[1133] P01830.4_ET, p.9.
[1134] P01767.2_ET, pp.2162,2163.
[1135] P01694.4_ET, pp.25,26.
[1136] **Mustafa**, T.20230714, pp.5724,5741.
[1137] **Mustafa**, T.20230712, pp.5572-5573,5577.
[1138] *Idem,* pp.5556-5557.
[1139] *Idem,* p.5569.
[1140] **Mustafa**, T.20230713, p.5618; T.20230712, p.5573.
[1141] **Mustafa**, T.20230712, p.5573.
[1142] *Idem,* p.5578.

mistreatment of detainees or civilians[1143] and, conversely, the GS never received information from his zone concerning arrests, detentions, or mistreatments.[1144]

322. Other zones behaved differently; S.Buja never received information about people who were suspected of collaboration with the enemy[1145] and had neither the means nor the conditions to undertake investigations for people suspected of collaboration.[1146] Similarly, [REDACTED] said that all that they could do in case of suspected collaborators was to send them away from the KLA forces.[1147] Later, in 1999, there is some evidence that locations including Pashtrik,[1148] Verban,[1149] and Albania[1150] attempted to create a basic legal process. Detention locations varied from the building consistently used in Llapashticë to the *ad hoc* locations allegedly used in Budakovë.[1151] These substantial differences in the local practice of detentions demonstrate the absence of any central policy or shared purpose.

323. It is not proved that the killing of R.Hoxha and S.Binishi in Bellanicë, in October 1998, was attributable to the KLA. The perpetrators were "masked men" and did not wear KLA emblems; they were never identified and motive remains unknown.[1152] Some said Hoxha was [REDACTED], suggesting he was not the primary target.[1153] His funeral was [REDACTED]."[1154]

[1143] **Mustafa**, T.20230718, p.5968.
[1144] *Idem,* p.5967.
[1145] T.20241107, p.22226.
[1146] *Idem,* p.22234.
[1147] P00708.4_ET, p.29; also T.20231204, p.10418.
[1148] [REDACTED]; P00012_ET, p.058013.
[1149] [REDACTED], P02537_ET, p.10; P02536.1_ET, pp.20,21.
[1150] P01355.12_ET, p.13; P02053.4_ET, p.11.
[1151] Compare *e.g.* SPO PTB paras.391-394 and para.428.
[1152] [REDACTED]; 4D00002; P00090.4_ET, p.03072784; 2D00012_ET, p.SPOE00067991.
[1153] P00090.4_ET, p.03072785.
[1154] *Idem,* p.03072785.

324. The authenticity of MP communiqué no.4 is not established. The MP Directorate did not exist in October 1998.[1155] Once established, the MP reported to the ZC, not the GS MP Directorate.[1156] The document has no authorship *indicia* and bears conflicting dates.[1157] Mr.Krasniqi learned about MP communiqué no.4 and this incident after the war.[1158] Accordingly, any purported explanation during his compelled ICTY testimony is speculation and carries no weight. Commenting on this case subsequently, Mr.Krasniqi stressed that the KLA organised only against the army and the police, not against civilians, Serb or Albanian.[1159]

325. On a local level, the Llap zone took measures against woodcutters,[1160] who were suspected of collaboration because in some isolated instances they provided information to the Serb authorities,[1161] through the foresters,[1162] which subsequently led to massacres of the civilian population.[1163]

326. Similarly, there were legitimate concerns about infiltration into the KLA units.[1164] [REDACTED] stated that commanders of the companies or platoons were advised to be careful because enemy spies were infiltrating KLA areas and ranks and such individuals were sent away *but nothing else.*[1165] [REDACTED] main concern was about

[1155] **Zyrapi,** T.20240710, p.17967; T.20240717, p.18395; **Bashota,** T.20241203, p.23225; **Fondaj,** T.20240625, p.17140; [REDACTED]; P02089_ET, p.SPOE00067221.
[1156] **Zyrapi,** T.20240717, pp.18442-18443; **Maloku,** T.20250325, p.25870; T.20250324, p.25739; P02090.5, p.2; P00628.
[1157] P00090.3_ET; P00303_ET, p.043862.
[1158] P00792_ET, p.SPOE00068090.
[1159] *Idem,* p.SPOE00068090.
[1160] P02215_ET.
[1161] **Ibishi**, T.20241023, pp.21051,21052.
[1162] *Idem,* p.21052.
[1163] **Ibishi**, P01754, p.SPOE00088349.
[1164] [REDACTED], P03620.6_ET, pp.7-9; **Ibishi**, T.20241024, pp.21115,21170,21171; **Byrnes**, T.20240325, p.13638; *also* P01069, p.075335.
[1165] P00708.4_ET, p.29.

the collaborators or spies who *infiltrated* the KLA units and could cause great damage.[1166]

327. The GS had no policy to intimidate, mistreat or commit violence against suspected collaborators.[1167] The Prosecution's desperate insinuation that P02864 represented early KLA policy must be rejected. There is no evidence that P02864 is authentic. It originated from Serbian forces.[1168] Although allegedly drafted in 1993, it refers to events in 1995.[1169] The Prosecution showed P02864 only to Bashota, who had never seen it before and said its content "does not correspond with the work of the KLA and the GS" and "was not our vision".[1170] Accordingly, no weight should be given to P02864.

328. Moreover, P00168 is not evidence of an unlawful policy as it is directed against combatants.[1171] Prior to November 1998, the GS did not have the capacity to investigate alleged detentions.[1172] Its lack of capacity explains why communiqués and public statements sought to deter people from collaboration. As part of the re-structuring enabled by the October 1998 ceasefire, the GS sought to establish a legal process, whereby a new legal sector would determine whether someone was a collaborator.[1173] This was the intention of P00741_ET.3, which Zyrapi explained to the zones meant that suspicious persons should be sent to the legal sector,[1174] which would oversee any investigations.[1175] The legal sector and military court were intended "to be a proper

[1166] [REDACTED], P01355.10_ET, p.4.; [REDACTED], P03620.6_ET, pp.7-9; [REDACTED].
[1167] **Zyrapi**, T.20240715, p.18206.
[1168] T.20241128, pp.23020,23021.
[1169] T.20241203, pp.23181,23182.
[1170] **Bashota**, T.20241128, pp.23003,23005,23007.
[1171] *Infra,* section 3.6.10(a).
[1172] [REDACTED], P01355.3_ET, p.18.
[1173] [REDACTED], P01355.5_ET, p.5; T.20240703, p.17539.
[1174] P01355.5_ET, p.18.
[1175] T.20240703, p.17540.

and functional" institution, but the reality was constrained by the circumstances.[1176] The legal sector was intended to have exclusive jurisdiction over collaboration, provided that the cases were brought to it, however, commanders on *any level* had no authority in that regard.[1177] Naser Krasniqi corroborated that any other action than a hand over of the suspected collaborator to the military court would have been illegal.[1178]

329. Although, as set out below, the legal sector was never properly functional, the attempt to create a legal sector to address collaborators is clear evidence that the GS did not intend to commit crimes against suspected collaborators. If the GS had intended collaborators to be arbitrarily detained, there would have been no reason to appoint Dobruna, or to invest time and resources in attempting to set up a military court.

330. Whilst the Prosecution claims that "[n]o set definition of what was meant by a 'collaborator' was ever provided, and it was easy for anyone to be labelled as such",[1179] KLA members defined collaborators as persons who *actively* served the Serbian police and military forces. Members of the GS understood collaborators were individuals in police structures, an apparatus of the Serbian police and army.[1180] It referred to those who *were recruited* by the Serb Security Service and who served the violent Kosovo apparatus.[1181] Zyrapi said that collaborators included somebody who is part of a unit who discloses information about the unit and its capacity to act to the enemy.[1182]

[1176] **Zyrapi**, T.20240704, pp.17643-17644.
[1177] **Dobruna**, P01955.5_ET, p.9.
[1178] P02007.4_ET, p.8.
[1179] SPO PTB, para.8.
[1180] [REDACTED], P01870.6_ET, pp.8,9; P00739.6_ET, pp.10,11.
[1181] P00795, p.3438; P03709_ET, p.SPOE00232487.
[1182] P01355.5_ET, p.2.

331. [REDACTED] clarified that as "traitors" were considered those who collaborated with the Serb military and police forces *not* persons who socialised or made business with the Serbs.[1183] [REDACTED] denied that people who opposed the war effort would have been considered collaborators.[1184] D.Krasniqi stated that he considered as a collaborator a person who was working for the Serbian police, but not somebody who worked in the Serbian Municipal Administration.[1185] Ibishi confirmed that there was no instruction in regard to the civilians who continued their job in a public office.[1186] A person who had a Serbian spouse or Serbian friends was not automatically considered to be a collaborator.[1187]

332. In sum, the Prosecution has not proved that any shared purpose extended beyond the lawful detention of people who were part of the Serbian security apparatus; such individuals were combatants and posed an imperative security threat such that they could lawfully be detained. Any unlawful acts were committed at a local level, without encouragement of the GS, which took steps to prevent them and to create a review procedure.

### 2.15. Conclusion: No common purpose established

333. The Prosecution manifestly failed to establish an unlawful common purpose purportedly shared by a plurality of persons, including Mr.Krasniqi, and that the crimes alleged in the Indictment were committed pursuant to this purpose. Any crimes that are established were the result of local decisions and individual actions.

[1183] P01327.7_ET, pp.29,30.
[1184] P01605.2_ET, p.21; [REDACTED]; **Mitchell**, T.20231207, p.10756.
[1185] P01667.2_ET, p.16.
[1186] T.20241024, p.21141.
[1187] [REDACTED]; [REDACTED].

## 3. MR. KRASNIQI COMMITTED NO CRIME

### 3.1. Mr.Krasniqi's background and character

334. Mr.Krasniqi is a long-standing opponent of the Serbian regime. He earned a reputation in Kosovo as a teacher and an honourable professor.[1188] He was a known public figure and an outstanding activist.[1189] He was active in the LDK, occupying leadership positions in its Drenas branch.[1190] Advocating for a free Kosovo was his life's work; as R.Mustafa put it, Mr.Krasniqi was "one of the great political activists at the time."[1191]

335. Mr.Krasniqi was heavily persecuted by the Serbian regime for his activism.[1192] He was detained as a political prisoner from 1981—1991[1193] and subjected to terrible violence and indescribable acts that left his legs and hands always swollen.[1194]

336. Prosecution witnesses attested to his character and integrity. He was described as an "extra-ordinary man with exceptional skills," whose appointment as spokesperson was "welcomed by the civilian population".[1195] ZCs observed that "everybody respected Mr.Krasniqi"[1196] and he was "one of the most respected figures in […] Kosovo".[1197] Zhitia described him as "a person with integrity, a person who enjoys respect for all the contributions he gave."[1198]

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[1188] [REDACTED]; **S.Buja,** T.20241107, p.22171; [REDACTED].
[1189] **Bashota,** T.20240606, pp.168866-16887.
[1190] **Bashota,** T.20241203, p.23226; 4D00227, p.2; 4D00248; 4D00249; 4D00250;4D00251; [REDACTED]; **Byrnes**, T.20240326, p.13738; **Zyrapi**, T.20240710, p.17995.
[1191] **R.Mustafa**, T.20230717, p.5814.
[1192] [REDACTED]; **Byrnes,** T.26032024 pp.13737-13738.
[1193] **S.Buja,** T.20241107, p.22170.
[1194] T.20230405, p.2425.
[1195] **S.Buja,** T.20240711, p.22173.
[1196] **S.Selimi,** T.20250212, pp.25198-25199.
[1197] **Mustafa**, T.20230717, p.5814.
[1198] **Zhitia**, T.20240826, p.18972.

337. International witnesses echoed this praise. Byrnes described his "humanity and seriousness" and recalled that although "he was angry at what the Serbs had done to his people…he was basically a man of peace".[1199] He spoke of Mr.Krasniqi's integrity: "if he gave us his word that something would happen, we could walk away with full confidence that it would happen".[1200] He confirmed that Mr.Krasniqi was a moderate, not someone involved in crimes.[1201] Rubin likewise described Mr.Krasniqi as a moderate with a political outlook distinct from the military commanders.[1202]

338. In multi-party negotiations, Mr.Krasniqi was constructive and co-operated with other parties, including the LDK. Kickert described him during Rambouillet as "constructive, co-operative and positive".[1203] Williams recalled him working together with other parties at Rambouillet, including in securing the protection of minorities during the later Vienna negotiations.[1204]

339. Prosecution witnesses called as victims also spoke of their respect for Mr.Krasniqi.[1205] In contrast to their perception of other KLA members, family members who met Mr.Krasniqi were satisfied with how he received them[1206] and bore particular respect for his family.[1207] [REDACTED], who might have been expected to be hostile because he thought that Mr.Krasniqi [REDACTED], instead described their meeting as well-meaning and co-operative.[1208] [REDACTED], described Mr.Krasniqi as balanced, co-operative and a good person.[1209]

[1199] **Byrnes**, T.20240326, p.13734.
[1200] *Ibidem*.
[1201] **Byrnes**, T.20240326, pp.13745-13746; T.20240327, p.13821.
[1202] **Rubin**, T.20250915, pp.26568-26569,26584.
[1203] **Kickert**, T.20240529, p.16277; 1D00145.
[1204] **Williams**, T.20250917, pp.26889-26890.
[1205] [REDACTED]; [REDACTED].
[1206] [REDACTED].
[1207] [REDACTED].
[1208] P00383.3, pp.12-13; [REDACTED].
[1209] [REDACTED].

340. No witness testified that Mr.Krasniqi was involved in any crimes. Prosecution witnesses showed disbelief when accusations against Mr.Krasniqi were put to them. Fondaj thought it "absurd" to suggest that Mr.Krasniqi was involved in an arrest.[1210] Ledwidge said "he did not think Jakup Krasniqi was involved in any of this."[1211] Zyrapi did not witness any action taken by Mr.Krasniqi to target opponents.[1212] B.Kuqi publicly called for an apology for the undignified treatment of Mr.Krasniqi during his arrest.[1213] Sopi said that he never wanted to see Mr.Krasniqi "sat in this room here and in these circumstances".[1214] Halitjaha asked the Panel "if Jakup Krasniqi made a mistake, I am willing to take upon myself all his mistakes. I can do his sentence instead of him. Let him go home".[1215] This evidence is irreconcilable with the Prosecution's theory and reflects the genuine respect Mr. Krasniqi earned - he is not a person who was involved in any criminal conduct or plan.

### 3.2. Mr.Krasniqi did not personally participate in any crime

341. The Prosecution failed to prove that Mr.Krasniqi was even present at any detention centre when detainees were there, still less that he participated in or witnessed any mistreatment. The allegation that Mr.Krasniqi "personally participated in the treatment of Opponents on the ground, including participating in the intimidation, interrogation, mistreatment and detention of Opponents"[1216] is unfounded and must be rejected.

[1210] **Fondaj**, T.20240606, p.17247.
[1211] 4D00008.
[1212] **Zyrapi**, T.20240715, p.18206.
[1213] 4D00044; [REDACTED].
[1214] **Sopi**, T.20241028, p.21233.
[1215] **Halitjaha**, T.20231116, p.10332.
[1216] Indictment, para.40; SPO PTB, para.7.

342. The Indictment alleged that Mr.Krasniqi personally participated in three crimes: (i) that he visited the room where detainees were held in Malishevë in July 1998;[1217] (ii) [REDACTED];[1218] and (iii) that between about January and May 1999, Mr.Krasniqi was involved in "various aspects of the transfer, detention and/or release of detainees held at a detention site near Kleçkë ".[1219] The Prosecution failed to prove all three.

343. Mr.Krasniqi is not on notice of any other allegation that he significantly contributed to the alleged JCE by personally participating in any crime. No other allegation is pleaded in the Indictment or the Prosecution's PTB. Mr.Krasniqi was entitled to clear notice of the nature and cause of the accusation against him,[1220] including proper notice of his alleged acts or course of conduct.[1221] No other allegations of personal participation can be lawfully relied upon against Mr.Krasniqi.

#### *3.2.1. Mr.Krasniqi did not visit detainees in Malishevë*

344. After completing its evidence, the Prosecution withdrew the allegation "[t]hat Mr.Krasniqi was present and visited the room where detainees were being held in Malishevë/Mališevo".[1222] After that Notice, the Defence ceased investigating this allegation and did not adduce rebuttal evidence. No finding can be entered against Mr.Krasniqi on an allegation that the Prosecution does not rely upon.

345. This allegation should never have been pleaded. The only purported identifying witness, W00067, died before the Indictment issued and her account was never tested in cross-examination.[1223] The Panel recognised the need for caution in relying on

[1217] Indictment, para.44.
[1218] *Idem,* para.41.
[1219] *Idem,* para.49.
[1220] Constitution, Art.30(1); Law, Art.21(4)(a).
[1221] *Blaškić* AJ, paras.210-213; *Kordić* AJ, paras.144-147.
[1222] F03155, para.1(c).
[1223] F02283, para.12.

identification evidence.[1224] W00067's statements were internally inconsistent, lacked detail about the circumstances of any purported recognition, and appeared to rely on overhearing the name "Krasniqi".[1225] W00067 failed to identify Mr.Krasniqi in a photo line-up.[1226] The evidence cannot carry the allegation. Before this Indictment, UNMIK concluded that the identification was unlikely to be Mr.Krasniqi.[1227]

346. Across the Indictment period, this is the only allegation that Mr.Krasniqi ever saw any civilian in detention. Having withdrawn it, the Prosecution cannot credibly maintain that Mr.Krasniqi "led by example" in the mistreatment of detainees.[1228] The evidence proves he did not.

#### *3.2.2. Mr.Krasniqi's interactions with [REDACTED] were reasonable and appropriate*

347. The Prosecution alleges that Mr.Krasniqi was approached by [REDACTED].[1229] The Prosecution never precisely formulated this allegation[1230] and never identified what it alleges Mr.Krasniqi knew about the case, when it alleges that he failed to [REDACTED] or what, exactly, it alleges that he did wrong. The evidence establishes no wrongdoing; his interactions [REDACTED] were friendly, co-operative and respectful.

348. There is no evidence that Mr.Krasniqi was involved in the disappearance of [REDACTED]. Whilst [REDACTED] was mentioned in [REDACTED], there is no evidence identifying who wrote [REDACTED] or provided the information

[1224] F01603, para.91.
[1225] F02173, paras.21,23-24; P01303, p.K019-5143; [REDACTED]; **W00498,** T.20240220, p.12561.
[1226] [REDACTED].
[1227] [REDACTED].
[1228] SPO PTB, para.7.
[1229] Indictment, para.41.
[1230] SPO PTB, para.353.

underlying it. It cannot be inferred that Mr.Krasniqi must have known about this case because he was a GS member; there is no evidence that it was discussed at any GS meeting or at GS level in the summer of 1998, and the Prosecution did not ask Zyrapi or Bashota about it.

349. [REDACTED].[1231] [REDACTED].[1232] [REDACTED].[1233] [REDACTED].[1234] [REDACTED].[1235]

350. [REDACTED] did not meet Mr.Krasniqi.[1236] [REDACTED].[1237] [REDACTED].[1238] The Prosecution chose not to interview [REDACTED].[1239] [REDACTED] that Mr.Krasniqi said that he was not aware of the case, it was not talked about at the staff, he personally did not know much, the judicial authorities should become aware of the case, and he should consult a lawyer.[1240] This is consistent with what Mr.Krasniqi told [REDACTED]. [REDACTED] was satisfied with the way he was received.[1241]

351. No criminality can be inferred from these events. Mr.Krasniqi received both [REDACTED] respectfully and did not threaten them to stop pursuing the matter.[1242] The Prosecution offered no evidence that Mr.Krasniqi possessed information about [REDACTED] that he did not share, or that he held any position at the time of these meetings requiring a duty or ability to investigate. In any event, the meetings are

[1231] P00033_ET; [REDACTED].
[1232] [REDACTED].
[1233] *Idem,* [REDACTED].
[1234] *Idem,* [REDACTED].
[1235] *Idem,* [REDACTED].
[1236] [REDACTED]; [REDACTED].
[1237] P00939.5_ET, p.4; P00939.4_ET, pp.19-20; [REDACTED].
[1238] 4D00017_ET; [REDACTED].
[1239] [REDACTED].
[1240] *Idem,* [REDACTED]; 4D00017_ET.
[1241] [REDACTED].
[1242] *Contra* SPO PTB, para.353.

irrelevant to the charges since they occurred in [REDACTED], beyond the temporal scope of the Indictment and the KSC's jurisdiction.[1243]

352. The Prosecution failed to prove any meeting between Mr.Krasniqi and [REDACTED]. [REDACTED].[1244] [REDACTED] evidence was admitted in writing and does not mention [REDACTED].[1245] The Prosecution did not rely on evidence from [REDACTED]. The Prosecution relied on hearsay about the alleged meeting, rather than calling direct evidence from the individuals said to have attended. There is no written record. There is no reliable proof of when the meeting occurred or what was said. Hearsay cannot be the sole and decisive basis for a conviction. Accordingly, there is no basis for finding that the meeting occurred.

353. Even if the Panel were to accept that a meeting occurred, the evidence does not establish any crime. There is no proof that Mr.Krasniqi knew what happened [REDACTED], that any alleged meeting fell within the Indictment period, and that he had any authority or duty to investigate at the time.

#### *3.2.3. Mr.Krasniqi was not involved in the transfer, detention or release of detainees from Kleçkë*

354. The Prosecution failed to prove that in 1999 Mr.Krasniqi was involved in "various aspects" of the transfer, detention and/or release of detainees from Kleçkë. Unlike the pleading against Selimi and Veseli,[1246] the Prosecution failed to provide notice of the specifics acts or incidents attributed to Mr.Krasniqi. The PTB alternates between an assertion about B.Kuqi, involving an order to report to Divjakë and later

[1243] T.20230417, pp.2863-2866; Law, art.7.
[1244] [REDACTED]; [REDACTED].
[1245] P00464_ET, pp.SITF00306152-SITF00306153; P00465, pp.SPOE00208970-SPOE00208982; P00466, pp.SITF00180542-00180576; P00467, pp.SITF00181515-SITF00181534.
[1246] Indictment, para,49.

a decision to arrest him, and an assertion about the [REDACTED], said to involve information [REDACTED].[1247] It is unclear which paragraph is intended to reflect the Indictment allegation. Neither allegation is tenable.

#### *3.2.4. Mr.Krasniqi did not detain Kuqi*

355. The Prosecution invited witnesses to speculate, or repeat hearsay, about Blerim Kuqi's detention, even though they were not present at the moment of arrest. The most direct witness, Kuqi himself, is alive, within the jurisdiction, and could have told the TP what happened. Despite compelling other KLA witnesses,[1248] the Prosecution made no effort to secure Kuqi's testimony. [1249] That was a serious omission. The Panel also did not call him.[1250] The Panel should treat hearsay evidence with extreme caution and confine itself to what the record can safely support, which is that Kuqi was a KLA brigade commander who was arrested for desertion and tried, sentenced and released by Dobruna, as head of the legal sector.

356. Kuqi was an LDK member at the same time as Mr.Krasniqi. Zyrapi described meeting Kuqi at Mr.Krasniqi's home in Negroc and observing mutual respect.[1251] Fondaj travelled with Kuqi to Negroc and described Mr.Krasniqi's home as hospitable and supportive. [1252] Fondaj testified that it seemed absurd to think Mr.Krasniqi would have ordered Kuqi's arrest.[1253] There is no evidence that Kuqi ever blamed Mr.Krasniqi for his detention. Kuqi publicly called for an apology for the undignified treatment of

[1247] SPO PTB, paras.502,504.
[1248] **S.Buja**, T.20241104, pp.21746-21755; **S.Selimi,** T.20250210, p.24900; **Naser Krasniqi,** T.20250127, p.24588; **Dobruna,** T.20240114, pp.23695-23696; **Bashota,** T.20241128, p.22944; **H.Qadraku,** T.20241125, p.22542; [REDACTED]; [REDACTED]; [REDACTED].
[1249] Rule 62.
[1250] Rule 132.
[1251] P01327.6_ET, p.25; P01097.1_ET, p.29; **Fondaj,** T.20240624, p.17031; [REDACTED].
[1252] **Fondaj,** T.20240625, pp.17141,17146.
[1253] **Fondaj,** T.20240626, p.17247.

Mr.Krasniqi at the time of his arrest.[1254] That public stance is inconsistent with the allegation of Mr.Krasniqi's involvement in Kuqi's detention.

357. In September 1998, as commander of Brigade 123,[1255] Kuqi faced a major Serbian offensive in the Suha Reka area. [REDACTED] described repeated assaults, with burning, killings, and devastation across villages.[1256] Fondaj recalled extraordinary KLA losses, civilians driven from their homes, and units scattered and dispersed.[1257] Halitjaha described heavy civilian casualties, people massacred and houses destroyed.[1258] Amid this collapse, Kuqi left for Albania[1259] without notifying anyone.[1260] Desertion and loss of morale was a difficult issue.[1261] Kuqi caused considerable damage to the KLA by leaving during the Serbian offensive; Dobruna considered that "he was one of the causes for the brigade to be dissolved".[1262]

358. The Prosecution relied on two handwritten notes purporting to relate to a GS meeting on 29 December 1998. [REDACTED] both recorded B.Kuqi as a deserter.[1263] These notes do not identify the attendees, whether they were an agenda or whether any decision was taken. Bashota was unsure whether they were written at the time.[1264] Zyrapi recalled that the issue of desertion was discussed and that he, R. Selimi, L.Brahimaj, F.Limaj and Mr.Krasniqi were present. Zyrapi also claimed the legal sector was to issue an order for arrest and that, although "we were also present",

[1254] 4D00044_ET; [REDACTED].
[1255] P01333_ET, p.083228; P01382_ET, p.SPOE00225796; P01830.3_ET, p.1; P01827.2_ET, pp.2-3; P01605.2_ET, p.16.
[1256] [REDACTED]; P01540, p.SITF00451712.
[1257] **Fondaj,** T.20240624, p.17047.
[1258] **Halitjaha,** T.20231116, p.10238.
[1259] **Bashota,** T.20241202, p.23042; **Fondaj,** T.20240624, p.17047.
[1260] P01355.6_ET, p.28.
[1261] **Zyrapi,** T.20240715, p.18241.
[1262] **Dobruna,** P01955.7_ET, p.10; P01963, p.054682.
[1263] P01104_ET, p.SPOE00227675; P01109_ET, p.U002-2865.
[1264] **Bashota,** T.20241202, p.23042.

Mr.Krasniqi communicated with Dobruna.[1265] However, this is wholly inconsistent with Zyrapi's trial testimony which placed the decision to arrest Kuqi at a later time. The only safe finding on the documents is that Kuqi's desertion was discussed at the meeting.

359. P01105 is an order which lists Mr.Krasniqi's name in the signature box and requests that Drini, the 123 brigade commander and Kuqi report to the GS on 16 January 1999.[1266] The Prosecution did not prove that Mr.Krasniqi signed it.[1267] The document is incomplete, with blank protocol numbers and no date,[1268] and the Prosecution did not prove it was sent or received. [REDACTED] heard that [REDACTED], but he had not seen P01105 until he was shown it in Court.[1269] [REDACTED] therefore cannot confirm if this specific document was received by Drini. Although the initials on the bottom of the page indicate Adem Grabovci,[1270] the head (and only member) of the Personnel Directorate,[1271] the Prosecution did not interview Grabovci or lead evidence about the preparation of P01105. Finally, P01105 is an invitation to attend a meeting, not an arrest warrant. [1272] Nothing on this document suggests that any arrest was planned.[1273] Similar invitations exist, with no evidence that arrests followed.[1274]

[1265] P01355.6, pp.28-29.
[1266] P01105_ET.
[1267] *Infra,* paras 521,553.
[1268] P01105_ET.
[1269] [REDACTED].
[1270] **Zyrapi,** T.20240715, p.18242; P01105_ET.
[1271] P04170_ET, p.SPOE00230782.
[1272] P01327.7_ET, p.6; **Fondaj,** T.20240625, p.17194-17196. [REDACTED].
[1273] **Zyrapi,** T.20240715, p.18243.
[1274] P01428_ET; P02758_ET.

360. [REDACTED].[1275] The discussion concerned training battalion commanders and organising defensive measures for Brigade 121.[1276] [REDACTED] and Zyrapi then left to assist Haxhi Shala with the defences.[1277]

361. There is a critical gap in the evidence. Neither [REDACTED] nor Zyrapi knew what occurred after they left.[1278] There is no direct evidence about who decided to arrest Kuqi. At most, Zyrapi testified that he left Kuqi with Mr.Krasniqi, R.Selimi and Limaj, and suggested that among them Mr.Krasniqi had authority to order an arrest.[1279] No adverse inference can be drawn from the self-serving, uncorroborated testimony of this single witness.[1280] His assertion does not prove that Mr.Krasniqi had such authority, still less that he exercised it on this occasion.

362. Zyrapi also ignores alternative inferences. Kuqi could have left and been arrested elsewhere, Mr.Krasniqi could have left, another person could have entered and made a decision, or F.Limaj or R.Selimi could have ordered the arrest. It cannot be inferred that Mr.Krasniqi ordered the arrest because Zyrapi self-servingly claimed that he had the authority to order arrests. The Indictment shows that multiple detentions were ordered by different people in the KLA, without authority.

363. Zyrapi was not credible regarding Kuqi's detention and plainly changed his account.[1281] In 2013, testifying under oath, Zyrapi said that Kuqi "was arrested by the legal sector and interrogated".[1282] In 2019, whilst claiming that Mr.Krasniqi had told Dobruna to order the arrest of Kuqi, Zyrapi accepted that "we were also present

[1275] [REDACTED].
[1276] *Idem,* [REDACTED]; P00631_ET.
[1277] [REDACTED]; **Zyrapi,** T.20240715, p.18244.
[1278] [REDACTED]; **Zyrapi,** T.20240715, p.1824; T.20240717, pp.18407-18408.
[1279] **Zyrapi,** T.20240717, p.18408.
[1280] *Infra,* section 3.6.1.
[1281] *Ibidem*.
[1282] 4D00077, p.SITF00393434.

there".[1283] In 2024, for the first time, Zyrapi asserted that he was not there and did not know who ordered the arrest.[1284] In a pattern repeated throughout his testimony, Zyrapi changed his version of events to exculpate himself at the expense of Mr.Krasniqi.

364. Any attempt to draw the inference that Mr.Krasniqi ordered the arrest of Kuqi, must be weighed against the full record to determine if it is the only reasonable inference. Any doubt must be resolved in Mr.Krasniqi's favour. First, Mr.Krasniqi and Kuqi had a good personal relationship, and Fondaj described the allegation as absurd. Fondaj attended Kuqi's trial, spoke regularly with Drini and Zyrapi, yet never heard anyone say Mr.Krasniqi arrested Kuqi. [1285] Second, Zyrapi claimed Mr.Krasniqi told Dobruna to order the arrest, yet conceded Dobruna would know best who communicated with him.[1286] Dobruna did not implicate Mr.Krasniqi, stating he did not know who ordered the arrest, assuming it was Drini.[1287] Third, None of the other alleged attendees blamed Mr.Krasniqi. The Prosecution did not call Limaj. [REDACTED] interview placed Kuqi with the GS member handling legal issues, with no mention of Mr.Krasniqi's involvement.[1288] Fourth, the Panel must also consider the remainder of the documentary record as addressed below.

365. P01106 and P01174 are two electronic documents dated 16 January 1999. P01106 purports to be a report from Limaj to the KLA Military Prosecution requesting investigations into Kuqi for desertion. P01174 appears as an MP decision by Limaj ordering Kuqi's detention for three days, again for desertion. Both are said to have been found only on a workstation seized from Mr.Krasniqi's house, with no paper

[1283] P01355.6, p.29.
[1284] **Zyrapi,** T.20240702, p.17447; T.20240716, p.18326.
[1285] **Fondaj,** T.20240626, pp.17246-17247.
[1286] **Zyrapi**, T.20240715, p.18244.
[1287] P01955.7_ET, p.4; P01956, p.SITF00010491.
[1288] P00761.14_ET, p.8.

copy recovered. When shown to Zyrapi,[1289] Fondaj,[1290] and [REDACTED],[1291] none had seen them before. No expert evidence establishes when they were typed, by whom, whether they were amended, or whether they were ever printed. Nonetheless, the documents support an alternative inference that Limaj ordered Kuqi's detention.

366. The [REDACTED] do not prove Mr.Krasniqi's involvement in the arrest.[1292] [REDACTED].[1293] The Prosecution failed to authenticate this report through any witness. [REDACTED]. [REDACTED] was not interviewed to confirm [REDACTED].

367. The wording of this [REDACTED] is highly suspicious. There is no other [REDACTED] Mr.Krasniqi speaking to [REDACTED] or suggesting any direct connection between them. The first half is friendly, [REDACTED]," which shows he did not know who took Kuqi, let alone that he was responsible. Then, without any reason, the next line shifts abruptly to [REDACTED] a claim unsupported by any evidence and vanishingly unlikely in [REDACTED]. With no witness able to verify [REDACTED] and given the doubts surrounding the reliability and veracity of [REDACTED], no weight should be placed on [REDACTED].

368. In any event, [REDACTED] does no more than provide evidence that Mr.Krasniqi knew of Kuqi's detention. The words cannot be analysed like a statute, particularly since [REDACTED]. The [REDACTED] does not confirm that Mr.Krasniqi personally arrested Kuqi [REDACTED]. The date is significant. On 17 January 1999, Mr.Krasniqi was under immense strain, because it was immediately after the Reçak massacre, and in the gap between the consecutive exchange of POWs. Words spoken in the stress of [REDACTED] at that time should not be taken literally.

[1289] **Zyrapi**, T.20240710, p.17987.
[1290] **Fondaj,** T.20240626, pp.17243,17246; **Fondaj,** T.20240625, p.17200.
[1291] [REDACTED].
[1292] *Supra,* paras 56-61.
[1293] P02094_ET, pp.111595-111596.

369. Nor do the surrounding [REDACTED] shed any light on events. [REDACTED]. That is not consistent with Kuqi being arrested at the GS, [REDACTED][1294] or by [REDACTED].[1295] The Prosecution also put to Zyrapi [REDACTED].[1296] Zyrapi said [REDACTED]. Further, [REDACTED], although Suha Reka is not a zone and the Prosecution maintains it occurred in Divjakë.

370. Any inference that Mr.Krasniqi ordered the detention of Kuqi would be contrary to Mr.Krasniqi's character. Across the Indictment period, there is no other occasion in which Mr.Krasniqi is alleged to have directly ordered the detention of a named individual. On the few occasions in which he knew about detentions, Mr.Krasniqi was involved in the releases not the arrests.

371. The Prosecution failed to prove that Mr.Krasniqi ordered Kuqi's arrest. The moment of arrest is not established. The Prosecution could have filled that gap by calling Kuqi or Limaj to testify, but they did not. In the circumstances, it cannot be proved that Mr.Krasniqi was involved; it is equally likely that the detention was ordered by Limaj, R.Selimi or Dobruna.

372. On 29 January 1999, it was announced on RFK that Kuqi had been detained on the grounded suspicion of desertion.[1297] Dobruna questioned Kuqi[1298] and "held a trial in a speed-up way as it happens in the places of war".[1299] Kuqi had a defence lawyer, A.Berisha.[1300] Following the trial, Dobruna decided to execute Kuqi and no-one from

[1294] P01605.2_ET, p.17.
[1295] P02551, p.SPOE00109511.
[1296] **Zyrapi**, T.20240703, p.17517.
[1297] P00515_ET.18.
[1298] P01955.7_ET, p.4.
[1299] *Idem,* p.5.
[1300] *Idem,* pp.6-7.

the GS interfered with his decision.[1301] Dobruna consulted Zyrapi several times about the case and Zyrapi ultimately advised him to release Kuqi.[1302] Dobruna decided to release Kuqi and had the authority to do so.[1303]

373. Fondaj corroborated the trial and gave a statement for Kuqi's defence to Dobruna, in the presence of A.Berisha.[1304] The trial documents include an Indictment by General Military Prosecutor A.Sejdiu;[1305] [REDACTED];[1306] and an appeal against detention by the Defence.[1307] There is no evidence that these documents were typed contemporaneously or ever printed.[1308] No-one identified A.Sejdiu, or confirmed that a person with that name or pseudonym existed.[1309] At face value, however, the documents suggest a legal process was followed.

374. Kuqi was not mistreated. [REDACTED] visited him and did not see any sign of mistreatment, bruising or cuts, "not even a scratch".[1310] Dobruna testified that Kuqi did not complain about his treatment and was allowed to go outside to work, upon his own request.[1311]

375. Kuqi's detention was not a war crime or a CAH. It was not a war crime because he was not a protected person; he was a combatant. IHL does not exist to regulate the way in which a party to a conflict treats its own soldiers.[1312] Members of an armed

[1301] P01955.7_ET, pp.14-15; P01956, p.SITF00010491; P01963, p.054682.
[1302] 4D00078, pp.053944-053945; Fondaj thought that Zyrapi's statement would be "decisive" for Kuqi. **Fondaj,** T.20240625, p.17150.
[1303] P01955.8_ET, pp.10,12; P01963, p.054683.
[1304] **Fondaj,** T.20240625, pp.17151-17152.
[1305] P01344_ET, pp.SPOE00232264-SPOE00232265.
[1306] P01107_ET.
[1307] P03776_ET.
[1308] *Supra,* section 1.5.8.
[1309] **Fondaj,** T.20240625, p.17203.
[1310] **[**REDACTED].
[1311] P01963, p.054677.
[1312] *Sesay* TJ, paras.1451-1453.

group are not protected by the GCs against crimes committed by other members of the same group,[1313] the decisive factor being whether they owe allegiance to the party to the conflict in whose hands they find themselves.[1314] Before, during and after his detention, Kuqi was a KLA officer and his allegiance never changed.[1315] It was not a CAH because Kuqi was not part of a civilian population; he was a KLA combatant. His treatment also falls outside the scope of the alleged JCE because Kuqi was not an opponent.[1316]

376. Kuqi's detention was not unlawful. Any army must have the ability to detain soldiers and officers for desertion (and other disciplinary matters).[1317] If it is the Prosecution case that the KLA could not lawfully detain one of its own officers for a disciplinary offence, then its case on command responsibility collapses—if soldiers cannot be detained for desertion, nor could any KLA soldier be detained on suspicion of committing crimes. Kuqi's detention was not arbitrary. He was told the reason for detention, he was provided with a legal process including representation by A.Berisha, options to challenge detention and a trial. The trial was within Dobruna's control, and no alleged JCE member interfered.

377. The Prosecution cannot side-step this conclusion by alleging that Kuqi was targeted because he was LDK-affiliated. That case has not arisen from oral or documentary evidence which the Defence was able to confront at trial. The Prosecution failed to put it to either Zyrapi or Bashota that Kuqi was detained because of his LDK links. Whilst judicial questioning attempted to pursue this positive case with Fondaj, who had no knowledge of the intent of GS members,[1318] this speculative

[1313] *Ibid*.
[1314] *Prlić* AJ, paras.354-355; *Kordić* AJ, paras.329-330.
[1315] P01327.7_ET, p.8: P00707.2_ET, p.11; 4D00078, p.053945.
[1316] Indictment, para.32.
[1317] *Supra,* sections 2.14.1, 3.2.5.
[1318] **Fondaj,** T.20240625, p.17200.

theory does not fit the evidence. [REDACTED],[1319] the legal department's materials[1320] and the press statement[1321] refer exclusively to desertion. The trial attended by Fondaj was about desertion.[1322]

378. It cannot be established beyond reasonable doubt that these documents and the witness evidence of Dobruna, Zyrapi and others is a fabrication and that Kuqi was detained for another reason. The fact that not every KLA member who fled to Albania in September 1998 was prosecuted is not proof that Kuqi was prosecuted for some other reason. Kuqi was a brigade commander whose desertion dissolved the KLA in the Suhareke area. He was different from an ordinary soldier who deserts through fear. Aside from groundless speculation from Kuqi's allies[1323] and unattributable handwritten documents with no probative value,[1324] there is no actual evidence that Kuqi was detained for any other reason than desertion.

#### *3.2.5. Mr.Krasniqi was not involved in the detention, transfer or release of the Šavelić brothers*

379. Regarding the Šavelić brothers, the SPO PTB alleged that, [REDACTED].[1325] There is no evidence that Mr.Krasniqi, or anyone in either the GS or the Pashtrik zone command, ordered or was involved in the arrest and detention of the brothers. The information presented to Byrnes indicated that [REDACTED][1326] without any

[1319] P01109_ET, p.U002-2865; P01104_ET, p.SPOE00227675.
[1320] P01106_ET, p.SPOE232828; P01174_ET; P01344_ET, p.SPOE232264; P01107_ET, pp.SPOE00231948-SPOE00231950; P03776_ET.
[1321] P00515_ET.18.
[1322] **Fondaj,** T.20240625, p.17151.
[1323] P1327.7_ET, p.7; P00317_ET.1, p.26.
[1324] P01351_ET.
[1325] SPO PTB, para.[REDACTED].
[1326] **Byrnes,** T.20240328, p.14033.

instructions from the GS and that Mr.Krasniqi and Bashota did not agree with the detentions.[1327]

380. The Panel heard oral evidence about attempts to release the brothers from Bashota and Zyrapi, together with a number of [REDACTED].[1328] On this occasion, the relevant [REDACTED] were put to witnesses who allegedly [REDACTED]. Their limited contextualisation affords the [REDACTED] some weight. The first relevant [REDACTED],[1329] which shows that ZC did not order the detention and was, at least initially, unable to find out what had happened. A U.S.KDOM cable confirms the confusion by suggesting that, despite extensive communications with the KLA, the internationals were "unable to obtain hard information" as to their whereabouts or who had detained them.[1330]

381. [REDACTED]. [REDACTED]."[1331] [REDACTED].[1332] [REDACTED].[1333]

382. [REDACTED].[1334] Bashota accepted that [REDACTED].[1335] Bashota confirmed that [REDACTED].[1336]

383. [REDACTED].[1337] Bashota did not recall this [REDACTED].[1338] [REDACTED]."[1339]

[1327] **Byrnes,** T.20240403, p.14264.
[1328] **Bashota,** T.20241203, p.23250; **Zyrapi,** T.20250715, p.18238; P03551_ET, pp.111800-111810.
[1329] P03551_ET, p.111800.
[1330] P01078, p.075370.
[1331] P03551_ET, p.111801.
[1332] **Zyrapi,** T.20240715, p.18234.
[1333] *Idem,* p.18236.
[1334] P03551_ET, p.111805.
[1335] **Bashota,** T.20241202, pp.23068-23069; T.20241203, p.23243.
[1336] **Bashota,** T.20241203, p.23247,23280.
[1337] P03551_ET, p.111806.
[1338] **Bashota,** T.20241202, p.23073.
[1339] *Idem,* p.23074.

384. [REDACTED] suggests that Bashota spoke to Mr.Krasniqi[1340] and that Mr.Krasniqi repeatedly stated, "I don't know what [REDACTED]"[1341] and "I don't know what to do",[1342] suggesting that he needed to consult with "the others"[1343] and "wait until [REDACTED]"[1344] before a decision could be made. This suggests that Mr.Krasniqi was unaware of what action could be taken, and unable to take a decision. [REDACTED].[1345] Bashota confirmed that [REDACTED].[1346] Further, neither he or Mr.Krasniqi tried to [REDACTED].[1347] Byrnes considered that [REDACTED],[1348] as well as not having been told [REDACTED].[1349] Importantly, [REDACTED] Mr.Krasniqi telling Bashota [REDACTED]."[1350] Bashota confirmed that their shared position was that the civilian population should be protected at all costs.[1351]

385. As to the release, Dobruna agreed with Zyrapi that the brothers needed to be released[1352] and handed over to OSCE[1353] and Zyrapi arranged the handover to the internationals.[1354] Byrnes agreed that [REDACTED].[1355] There is no evidence that Zyrapi, Drini, or anyone else reported back to Mr.Krasniqi about the release, or the death of one of the brothers. Bashota was not informed about the release, noting, "we didn't have accurate information whether he released them or not and when."[1356]

[1340] P03551_ET, p.111807.
[1341] *Ibid*.
[1342] *Ibid*.
[1343] *Ibid*.
[1344] *Ibid*.
[1345] **Zyrapi,** T.20240715, p.18239.
[1346] **Bashota,** T.20241202, p.23075.
[1347] **Bashota,** T.20241203, p.23250.
[1348] **Byrnes,** T.20240328, p.14033.
[1349] *Ibid*.
[1350] P03551_ET, p.111807.
[1351] **Bashota,** [REDACTED].
[1352] **Dobruna,** P01963, p.054680.
[1353] **Dobruna,** P01955.7_ET, p.24; **Zyrapi,** 4D00078 p.053944.
[1354] **Dobruna,** P01955.7_ET, pp.21-22.
[1355] P03551_ET, p.111810; **Byrnes,** T.20240328, p.14036.
[1356] **Bashota,** [REDACTED].

These events occurred whilst Mr.Krasniqi and others were engaged in meetings about the Rambouillet agreement and the formation of the PGoK.[1357]

386. None of this evidence suggests that Mr.Krasniqi participated in the brothers' detention, transfer or release. They were detained by local KLA and released by decisions taken between Zyrapi and Dobruna, conveyed by Zyrapi to Drini. Mr.Krasniqi's only involvement was a conversation with Bashota in which, although they did not have full information, Mr.Krasniqi supported giving a positive answer to the internationals. Mr.Krasniqi resigned as DC-Support on 27/28 February 1999 whilst these events were unfolding. He had no power or authority to take any further steps.

387. The evidence does not support the pleaded allegation that Mr.Krasniqi informed the KVM that the KLA [REDACTED] and that they were well. The Prosecution elected not to call [REDACTED] and redacted the passages of his evidence which referred to [REDACTED].[1358] The record confirms that internationals were in contact with Bashota and Drini about this incident, not Mr.Krasniqi. Neither Ledwidge nor Young mentioned communicating with Mr.Krasniqi or other GS members on this incident. There is *no evidence* to indicate that Mr.Krasniqi gave any statement or had any further involvement. This PTB allegation must be rejected.

### 3.3. Conclusion

388. The Prosecution failed to prove that Mr.Krasniqi "led by example" in mistreating detainees.[1359] All three pleaded allegations that Mr.Krasniqi personally participated in crimes have failed. Mr.Krasniqi did not mistreat any individual, was not present when

[1357] *Supra*, paras 133-134.
[1358] F03036, paras.31,34.
[1359] SPO PTB, para.7.

any individual was mistreated and did not know of any mistreatment. This evidence is inconsistent with his involvement in any common criminal purpose.

### 3.4. No Evidence that Mr.Krasniqi had a significant KLA role before June 1998

389. Following his release from prison in 1991, Mr.Krasniqi continued his lawful political activity on behalf of the Kosovan people within the LDK in Gllogoc. He held several senior roles in the LDK, including serving at various times as Chairman of the LDK branch, the Education Council and the Financial Council, and attended LDK meetings in Pristina. He also developed contacts with individuals who later became associated with the KLA, though the evidence establishes that it was not until 1998 that Mr.Krasniqi was widely regarded as a GS member. Mr.Krasniqi was neither a founder of the KLA nor of the Central Staff (as it was originally known)[1360]. The evidence about his early interactions with the KLA is limited and inconclusive. The Prosecution failed to establish that Mr.Krasniqi held any specific role within the KLA prior to his public appointment as spokesperson on 11 June 1998. On the contrary, the only specific act attributable to Mr.Krasniqi in this period is that he was one of the authors of PD-2, which condemned violence against the civilian population.

390. Prosecution witnesses and the documentary record repeatedly confirm Mr.Krasniqi's association with the LDK.[1361] Mr.Krasniqi was elected as a member of the LDK Assembly for Gllogoc.[1362] He was also part of Financial Council and Education Council (both institutions associated with the LDK), and was Chairman of the LDK in Gllogoc municipality.[1363] Any suggestion that this work was merely a front for clandestine activities is refuted by the depth of his engagement in the LDK and his prominent role as the head of the Gllogoc Branch and the Educational Council. At

[1360] **Bashota,** T.20241205. p.23482.
[1361] [REDACTED]; **Zyrapi,** T.20240710, p.17995; T.20240708, p.17788; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]**,** P01066, para.79; 4D00227, p.2, 4D00248; 4D00249; 4D00250, 4D00251.
[1362] 4D00088, p.DJK01052-ET; 4D00231, pp.DJK01967-DJK01968; 4D00247.
[1363] [REDACTED]; P03731, p.SPOE00231814; 4D00227, p.2, 4D00248; 4D00249; 4D00250; 4D00251.

least until April 1998, he met with school directors,[1364] dealt with daily administrative matters,[1365] co-ordinated the LDK sub-branches in Gllogoc,[1366] and attended LDK meetings and assemblies in Pristina.[1367] Mr.Krasniqi did not conceal his political activity; his identity was well-known to Serbian forces and he was under constant observation, as attested by the fact that he was arrested on 3 April 1998 due to his LDK activities.[1368] His political identity during this period was firmly and openly rooted in the LDK.

391. Two Prosecution witnesses sought to suggest that Mr.Krasniqi's longstanding LDK membership was somehow not his "true face".[1369] Neither witness was credible on this point. [REDACTED] demonstrated clear personal enmity to Mr.Krasniqi, describing himself as being "angry at him or irritated",[1370] "disillusioned, disappointed and irritated"[1371] and that he doesn't "like even to speak to" Mr.Krasniqi.[1372] This hostility stemmed from [REDACTED] mis-understanding of a comment that Mr.Krasniqi made about [REDACTED].[1373] This animosity materially undermined [REDACTED] objectivity and led him to attribute statements to Mr.Krasniqi without personal knowledge or other objective corroborating evidence that Mr.Krasniqi made them.[1374] Importantly, [REDACTED] had no direct knowledge of Mr.Krasniqi's role and activities in the LDK; he was not from Gllogoc municipality and he did not know Mr.Krasniqi.[1375] His evidence is therefore incapable of supporting any reliable finding as to Mr.Krasniqi's political affiliation or role.

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[1364] 4D00249.
[1365] 4D00248; 4D00251.
[1366] 4D00250.
[1367] 4D00247.
[1368] 4D00227, p.2.
[1369] [REDACTED]; **W04240,** T.20241022, p.20883.
[1370] [REDACTED].
[1371] *Idem,* [REDACTED].
[1372] *Idem,* [REDACTED].
[1373] *Idem,* [REDACTED]. *See* P00795, pp.3397-3398.
[1374] *Idem,* [REDACTED].
[1375] *Idem,* [REDACTED].

392. W04240's evidence was likewise unreliable. His testimony was marked by confusion and speculation, and his credibility was undermined by objective contradictions. His character was illustrated by a video shown during his testimony depicted W04240 and his brothers violently disrupting an LDK meeting.[1376] He provided demonstrably false evidence when he lied to the Panel that R.Buja "suffered consequences" for speaking on behalf of the Geci brothers,[1377] a claim directly contradicted by R.Buja himself.[1378] R.Buja publicly denounced W04240's evidence as "completely false, it is a lie and slander".[1379] S.Buja, another Prosecution witness, confirmed the true source of R.Buja's injury was a shooting in April 1999.[1380] W04240 was the sole witness to assert, wrongly, that Mr.Krasniqi was an LPK member.[1381] W04240 was not from Gllogoc and had no direct knowledge of Mr.Krasniqi's political work there.[1382] His evidence therefore lacks both credibility and probative value in relation to Mr.Krasniqi's political affiliations or roles.

393. Mr.Krasniqi's LDK connection is highlighted by his role at the funeral in Likoshan in February 1998. In February and early March 1998, Serbian forces conducted attacks in Qirez/Ćirez, Likoshan/Likošane, and Prekaz, resulting in civilian deaths.[1383] At the funeral for the civilian victims, when another speaker publicly criticised Rugova, Mr.Krasniqi intervened to de-escalate tensions and to defend the LDK leadership. His intervention is best captured by [REDACTED] initial account to the Prosecution that Mr.Krasniqi stated: "I am the chairman of the LDK. I am part of

[1376] **W04240,** T.20241022, pp.20876-20877.
[1377] *Idem,* pp.20806-20807.
[1378] **W04240,** T.20241023, pp.20985-20987.
[1379] *Idem,* p.20987.
[1380] **W04240,** T.20241022, pp.20896-20897; **S.Buja,** T.20241105, pp.21998-21999.
[1381] **W04240,** T.20241022, pp.20887-20888.
[1382] *Idem,* p.20886.
[1383] F02573/A01, [REDACTED].

the LDK. Nobody can ever badmouth Rugova."[1384] Although [REDACTED] later sought to distance himself from this account during the oral testimony, his earlier statement remains probative.[1385] W04240 also accepted that Mr.Krasniqi intervened and tried to calm the situation.[1386] This episode provides clear and independent confirmation that Mr.Krasniqi remained part of the LDK leadership in Gllogoc in February 1998, a fact incompatible with the Prosecution's attempt to portray his LDK engagement as superficial or deceptive.

394. The Prosecution's case is that the KLA was formed from the LPK.[1387] Witnesses with direct knowledge of the LPK have confirmed that Mr.Krasniqi was never an LPK member.[1388] [REDACTED].[1389] Indeed, B.Mahmuti, himself a long-standing LPK member,[1390] explained in an article that Mr.Krasniqi was chosen as spokesperson of the KLA precisely because he came from the LDK not the LPK; Mr.Krasniqi's appointment demonstrated that the KLA was not affiliated to any one political party.[1391] These witnesses had more direct knowledge than W03170 or W04240 about Mr.Krasniqi's alleged membership of the LPK.

395. Consistent with his prior LDK membership, well-informed international witnesses regarded Mr.Krasniqi as a "moderate", who called for the KLA to work with the LDK on certain issues.[1392] Contemporaneous US cables identify Mr.Krasniqi, Bashota and R.Buja as part of the "moderate wing" of the KLA, who favoured a

[1384] [REDACTED]; P01243.1_ET, pp.7-10.
[1385] [REDACTED].
[1386] **W04240,** T.20241022, p.20899.
[1387] SPO PTB, paras.36,47,93-95.
[1388] **S.Buja,** T.20241107, p.22170; **Bashota,** T.20241203, p.23227.
[1389] [REDACTED]**,** P00761.7_ET, pp.3-4.
[1390] P01874, p.074631; P01857, p.6.
[1391] 4D00088, pp.DJK01051-DJK01055-ET; 4D00231, pp.DJK01967-DJK01968; **S.Buja,** T.20241107, p.22173; *also* [REDACTED]**,** P00761.6_ET, p.15.
[1392] **Byrnes,** T.20240326, pp.13745-13746,13755,13758; **Williams,** T.20250917, p.26885; **Kickert,** T.20240529, pp.16274,16277; 4D00056.

negotiated settlement and were willing to cooperate with other political forces.[1393] Senior KLA members regarded Mr.Krasniqi as a unifying figure and a balanced person because of his connections to the LDK.[1394]

396. The Prosecution led no evidence capable of proving that Mr.Krasniqi significantly contributed to any alleged JCE prior to 11 June 1998. At its highest, the evidence of Mr.Krasniqi's role in the KLA is limited to some contact with some members of what became the KLA around 1993, a single meeting with K.Veseli and Thaçi in around 1996 and Mr.Krasniqi's ICTY testimony in which he identified himself as a GS member from approximately the end of 1996. None establishes any criminality or significant contribution to the KLA.

397. Testifying at the ICTY, Mr.Krasniqi said that he had "contacts" with "men from operations" including Adem Jashari from 1991.[1395] There is no evidence about the nature, content or regularity of any such contacts.

398. In Spring 1993, Mr.Krasniqi was one of at least 14 activists who attended a meeting at Jashari's house.[1396] The notes of a post-war meeting on 18 February 2001 record that the Spring 1993 meeting "decided the establishment of a genuine political-military formation and discussed proposals for naming it".[1397] Mr.Krasniqi was not at the 2001 meeting. The 2001 notes record what some of the attendees recalled about the 1993 meeting, which took place 8 years earlier and was not minuted contemporaneously. The decision to establish "a genuine political-military formation" as expressed is vague and unclear. The 2001 notes also limit the significance of the

[1393] P01069, pp.075327-075329; P01080, p.075938; P01072, pp.116683-116684; **Rubin,** T.20250915, pp.26568-26570.
[1394] [REDACTED]**,** P01100, para.11; [REDACTED]; P00761.6_ET, p.15.
[1395] P00800, p.5023; P00794, p.3294; P00794, pp.3305-3306.
[1396] P00189_ET.1, p.U015-8800; P00794, pp.3305-3306.
[1397] P00186.

1993 meeting by recording that the name of the KLA was decided later and the idea that all actions would be carried out in the name of the Kosovo army "would be materialized in the future, at a more convenient moment, in view of the difficult circumstances of that time".[1398] At its highest, the April 1993 meeting was one of the steps towards the formation of the KLA. There is no evidence that Mr.Krasniqi made any specific contribution to the 1993 meeting. Indeed, Mr.Krasniqi's testimony was that although he regarded himself as a KLA member from 1993, his contact with armed groups was "very rare, not that frequent".[1399] He was always on the political wing, and he was not part of armed formations.[1400]

399. The Prosecution relies on a single meeting as evidence that Thaçi, K.Veseli and Mr.Krasniqi "had been consulting about political strategy since as early as 1996" and, speculatively, that they had "long-standing affiliations".[1401] The sole evidence for this allegation is that Mr.Krasniqi wrote in a book that he met H.Thaçi and K.Veseli at Ferat Shala's house around the end of 1996 and they agreed that Mr.Krasniqi "would extend [his] commitment up till then into the political aspect of affairs in an effort to expand the political network".[1402] No oral evidence was led about this meeting, no documentary or other evidence exists, and no factual finding can safely be made about it. As a published memoir, written years after the events, the book is not a signed or sworn statement and cannot be given the same weight as testimony tested by cross-examination. Absent corroboration, the passage is of limited probative value. It contains no detail about the content, duration, context or tone of the meeting. No specific role, assignments or tasks appear to have been discussed. A vague agreement that Mr.Krasniqi would 'extend [his] commitment' does not define Mr.Krasniqi's role. There is no evidence that he had any other meetings with H.Thaçi or K.Veseli in this

[1398] P00186_ET, p.SPOE00226190.
[1399] P00800, p.5023.
[1400] P00794, pp.3296,3298.
[1401] SPO PTB, para.91.
[1402] P00189.1_ET, p.U015-8806.

time period. Taken at its highest, a single meeting cannot establish a long-standing affiliation or ongoing consultation about political strategy.

400. At the ICTY, Mr.Krasniqi said that the time he became a member of the GS "might have been end of 1996 and beginning of 1997".[1403] No witness testified that Mr.Krasniqi played a significant role in the KLA prior to 1998. Bashota, who was personally involved in the early formations of the KLA and the CS, did not think that Mr.Krasniqi joined the GS in 1996 or 1997.[1404] Bashota testified that the first core members of the CS were A.Syla, Xh.Gashi, N.Hasani, Xh.Haliti, A.Ahmeti and himself,[1405] whereas Mr.Krasniqi was never a member of the CS.[1406]

401. In two separate interviews in Autumn 1999, A.Syla identified the members of the GS between 1993 and 1997 as A.Syla, Bashota, K.Veseli, Xh.Gashi, A.Ahmeti, Xh.Haliti, H.Thaçi, R.Selimi, L.Brahimaj and "another colleague".[1407] As the General Commander, A.Syla was uniquely placed to know who was on his GS at the time. There is no evidentiary basis to conclude that the unnamed "another colleague" referred to Mr.Krasniqi. There is no reason why A.Syla would not have used Mr.Krasniqi's name; Mr.Krasniqi's subsequent activity as KLA spokesperson was public and naming him would not have exposed him to any greater risk.[1408] The alternative reasonable inference is that "another colleague" referred to N.Hasani, the only person from Bashota's list of CS members who was not named by A.Syla. An evidentially grounded explanation emerged from Bashota's testimony. Bashota confirmed that the likely reason why N.Hasani's name was omitted from public accounts was that, at the time of Mr.Syla's interviews, Mr.Hasani was detained in a

[1403] P00794, p.3305; P00800, p.5022.
[1404] **Bashota,** T.20241204, pp.23416-23419.
[1405] *Idem,* p.23418.
[1406] **Bashota,** T.20241203, p.23226; T.20241204, pp.23347-23348,23391-23394; T.20241205, p.23482.
[1407] P00847, p.3; P01875, p.6.
[1408] [REDACTED].

Serbian prison and identifying him as part of the KLA leadership would likely have exposed him to further mistreatment.[1409] This explanation is corroborated by Xh.Haliti, who confirmed in a published interview that N.Hasani was in prison at the time and that for security reasons, his role in the CS was only made known later.[1410]

402. N.Hasani himself, when interviewed, confirmed the initial members of the GS as A.Syla, N.Hasani, Xh.Gashi, Bashota, Xh.Haliti and A.Ahmeti.[1411] These names correspond exactly to those provided by Bashota. When asked about GS members, Xh.Haliti endorsed the names made public in N.Hasani and A.Syla's interviews[1412] and listed people who "acted towards the consolidation of the KLA", without naming Mr.Krasniqi amongst them.[1413]

403. There is no evidence that other senior KLA members thought that Mr.Krasniqi was a GS member in 1996 and 1997. S.Selimi and S.Buja, who became ZCs of Drenica and Nerodime respectively, both identified Mr.Krasniqi's GS membership with his appointment as spokesperson.[1414] R.Selimi said that Mr.Krasniqi was a GS member in 1998 and 1999 (not 1997)[1415] and that he joined the GS in April 1998.[1416] H.Thaçi gave substantially similar evidence, listing the GS members in March 1998 before saying "and Jakup Krasniqi was incorporated", clearly distinguishing Mr.Krasniqi from the other named members because he joined the GS later.[1417]

[1409] **Bashota,** T.20241205, pp.23486-23487.
[1410] P01857, p.23.
[1411] 1D00223, p.1.
[1412] P01857, p.23.
[1413] *Idem,* p.15.
[1414] **S.Buja,** T.20241107, pp.22174-22175; **R.Selimi,** T.20250212, p.25158.
[1415] P00763.5_ET, p.6.
[1416] *Idem,* p.7.
[1417] P00763.4_ET, p.14.

404. In these circumstances, reliance on Mr.Krasniqi's ICTY testimony about the date of his alleged GS membership against him, where that evidence was compelled,[1418] untested in these proceedings and stands contrary to the broader evidentiary record, including the evidence of other Prosecution witnesses, would be inconsistent with fundamental fair trial guarantees.[1419]

405. In any event, although never fully functional, the GS did not start to improve its functionality until the end of 1998.[1420] Mr.Krasniqi's ICTY testimony also confirmed the disorganisation of the GS in the early period. He testified that "I didn't know everyone, as the others didn't know me"[1421] and clarified that within Kosovo in 1997, he only knew Bashota and A.Jashari;[1422] the GS met "quite rarely, due to security reasons" and "[s]ometimes we would not meet for months";[1423] it did not have a fixed location and members were moving around, separately from each other;[1424] no specific roles or responsibilities were identified in this early period, though Mr.Krasniqi said that he was on the "political wing" or "political level".[1425]

406. In the circumstances, that Mr.Krasniqi thought he was a GS member before 1998 whilst other senior members of the KLA did not recognise him as such, is not evidence that he lied.[1426] Rather, it confirms the total disorganisation of the Staff. There was no contemporaneous written list of GS members, nor any written appointments to the GS. The Staff met rarely and informally and even its own members did not necessarily know one another. Mr.Krasniqi believed he was a member because A.Jashari asked

[1418] *Supra,* para.53.
[1419] Law, Articles 21(4)(h),38(3), Rules, Rule 151(1), Constitution, Article 30(6).
[1420] *Supra,* section 2.4.
[1421] P00794, p.3305.
[1422] P00801, p.5026.
[1423] P00794, p.3310.
[1424] P00801, p.5029.
[1425] P00794, p.3307.
[1426] *Contra,* T.20241205, pp.23484-23485.

him to join the political wing.[1427] Others did not recognise him as a member because the Staff was dysfunctional, there were few meetings and they were unaware of that he had been asked to join.

407. It is far more important to focus on what Mr.Krasniqi actually did, than on whether he was nominally a GS member. The evidence establishes that Mr.Krasniqi worked within the LDK in Gllogoc until at least April 1998.[1428] There is no evidence that he had any specific role or responsibilities within the KLA during the same period. If he was a GS member, Mr.Krasniqi was the newest member of a Staff which did not function. There is extremely limited evidence about his activities within the KLA in this period. The Prosecution called no witness to testify about Mr.Krasniqi's activities prior to June 1998 and, in distinction to the other Accused, does not allege that Mr.Krasniqi was a founder member of the GS.[1429]

408. The only evidence of any contribution that Mr.Krasniqi made to the KLA prior to 11 June 1998, is that he was "one of the authors" of PD-2 which was published in April 1998.[1430] In his ICTY testimony, Mr.Krasniqi stated that he wrote "the largest part" of it, though his draft was revised by people outside Kosovo.[1431] PD-2 was effectively a political programme for the KLA.[1432] It states clearly that "[t]he KLA condemns terrorism and other forms of violation over the civilian population and those held captive. The KLA recognises and respects the international acts of the United Nations and the Conventions on war."[1433] Contrary to the Prosecution's theory, the clearest evidence of Mr.Krasniqi's political contribution to the KLA prior to June

[1427] P00801, p.5024.
[1428] 4D00248. *also* 4D00250; 4D00251.
[1429] SPO PTB, para.91.
[1430] P00795, pp.3431-3432; P00545.
[1431] *Idem,* pp.3431-3432.
[1432] P00545.
[1433] P00545; **Bashota:** T.20241203, pp.23257-23258.

1998 is thus that he drafted one PD expressly rejecting violations against the civilian population and affirming compliance with IHL.

### 3.5. Spokesperson: 11 June 1998 – 12 November 1998

409. On 11 June 1998, Mr.Krasniqi was appointed as the KLA spokesperson at a meeting held in Negroc.[1434] PD-3 publicised this appointment.[1435] From that point onward, Mr.Krasniqi was recognised as the KLA's spokesperson by KLA members, civilians and international actors alike. He was also a GS member. On 13 August 1998, he was also named as one of the political representatives of the KLA,[1436] reflecting Mr.Krasniqi's role in the political wing of the KLA. Mr.Krasniqi's public statements were political in nature and cannot be connected to any crime or alleged JCE. He had no operational role: he was not a military commander,[1437] he had no subordinates under his command, and he had no disciplinary authority.

#### *3.5.1. Mr.Krasniqi's Public Statements are not Evidence of Crime*

410. Mr.Krasniqi gave interviews and public statements on behalf of the GS. As spokesperson, he did not speak as an operational commander but as the public face of a movement attempting to project unity, organisation and legitimacy. Treated with the appropriate caution,[1438] Mr.Krasniqi's ICTY testimony[1439] is revealing as to his approach to his role. Mr.Krasniqi understood that he was "no longer an individual" but "represented and publicised the policy of the General Staff".[1440] Further, he was

[1434] **Bashota,** T.20241128, p.23022; T.20241205, pp.23488-23489.
[1435] P00312, p.SPOE00209432.
[1436] 1D00050, p.U000-8992.
[1437] [REDACTED].
[1438] *Supra,* para.53.
[1439] P00796; P00800; P00792_ET.
[1440] P00794, p.3358.

part of a "propaganda campaign to present the KLA as more organised than it in fact was in order to gain credibility.[1441] All his public statements should be viewed in this light.

411. Moreover, Mr.Krasniqi's experience was limited to writing academic articles, he had no previous experience of appearing before media outlets or giving interviews.[1442] Rubin, former Spokesperson for the US State Department, candidly accepted that "occasionally when you are on television you use words that you wish you hadn't used".[1443] The Prosecution cannot fairly convert such material into "admissions" through textual analysis like a witness statement; they are, at their highest, spontaneous reactions, which Mr.Krasniqi had no opportunity to review or correct .

412. Mr.Krasniqi's first public statement that was recorded by N.Bytyqi on 14 June 1998 in Kleçkë illustrates this point.[1444] The KLA sought to keep the location secret.[1445] Mr.Krasniqi arrived in Kleçkë after the preparations, including setting up a table with a computer, had been completed.[1446] Bytyqi met Mr.Krasniqi after midnight and discussed his ideas for the statement.[1447] As the first appearance of a spokesperson, it was an emotional occasion.[1448] Mr.Krasniqi's call for national liberation and unification made it clear that the KLA was "outside of any party umbrella" and called for "all professionals and specialists in the military art" to respond to his call.[1449] Following the recording, Mr.Krasniqi left Kleçkë .[1450] Bytyqi did not know where Mr.Krasniqi came from or where he went to.[1451] Mr.Krasniqi had to move constantly to different

[1441] P00800, pp.5038-5039.
[1442] P00795, p.3428.
[1443] **Rubin,** T.20250916, p.26686.
[1444] P01255.
[1445] P01264, p.SPOE00128619.
[1446] **Bytyqi,** T.20240606, p.16888.
[1447] **Bytyqi,** P01264, pp.SPOE00128621-SPOE00128622; T.20240606, p.16884.
[1448] **Bytyqi,** P01264, p.SPOE00128622.
[1449] P01255.
[1450] **Bytyqi**, T.20240606, p.16887.
[1451] *Idem,* pp.16885,16887.

places because being publicly named as spokesperson exposed him and his family to Serbian attacks.[1452] These circumstances are wholly inconsistent with the Prosecution's effort to treat public propaganda and messaging as proof of structured command, criminal policy or operational control.

413. Consistently, Mr.Krasniqi's public statements re-iterated the core principles announced in PD-2: that the KLA did not target civilians and that it respected international law. Crucially, even when Mr.Krasniqi's public statements called for action, they did so only within the explicit and repeated constraint that such action must be taken **"according to the laws of war"**. [1453] For instance, on 2 July 1998, he said that the KLA "has not undertaken any attacks against the civilian population, and it does not carry out such attacks".[1454] On 2 September 1998, he was reported as saying "[w]e do not know anything of the imprisonment or seizing of any Serb citizen or journalist. The KLA did not take up arms to fight the Serbian journalists and citizens but to fight the Serbian soldiers".[1455] Further, on 17 October 1998, he was reported as saying "[t]he UCK has frequently declared, and I repeat it now, that it has not taken up weapons to fight civilians, but first to fight police and then military forces […] the UCK has never touched the Serbian civilian population, who will be treated like all other citizens in a free and democratic Kosova".[1456] These statements on their face are statements of restraint and legality; they undercut any inference that Mr.Krasniqi was publicly advocating a policy of unlawful violence.

414. Mr.Krasniqi's interviews were plainly propaganda. Their purpose was to raise morale, encourage recruitment, and to counter extensive Serbian propaganda

[1452] *Idem,* p.16885; **S.Buja**, T.20241107, pp.22175-22176.
[1453] P01096, pp.1-3.
[1454] P03716; P03753_ET.1.
[1455] P03705, p.4; P01853, pp.1-3.
[1456] P01287, p.K050-8442.

accusing the KLA of various crimes.[1457] Mr.Krasniqi countered false allegations in his interviews.[1458] Mr.Krasniqi also routinely exaggerated successes, minimised setbacks and downplayed failures[1459]—hallmarks of wartime political messaging, not factual reporting. His statements about the KLA's organisation, strength and effectiveness cannot be treated as reliable descriptions of reality.

415. On 17 September 1998, immediately after devastating Serbian offensives that forced many KLA fighters to flee to Albania,[1460] Mr.Krasniqi claimed that the KLA "engaged in successful frontal warfare" and "managed to successfully maintain its military manpower".[1461] Those assertions were demonstrably inaccurate. UNHCR reported on 18 September 1998, that a government offensive prompted the displacement of tens of thousands of refugees, which shows the inaccuracies in relation to the KLA "successful frontal warfare.[1462] They form part of a broader pattern of deliberate overstatement designed to project resilience and credibility to internationals, particularly in the context of diplomatic engagement so as to be involved in negotiations.[1463]

416. The Prosecution relies on two interviews in July 1998, during the first month in which Mr.Krasniqi was the spokesperson, in relation to the alleged policy to target purported "collaborators".[1464] Despite the centrality of these allegations to its case against Mr.Krasniqi, the Prosecution elected not to call any witness to prove the reliability of the reporting process, including the accuracy of notetaking or translation. Instead, both were tendered through the bar table, and neither was shown to any

[1457] **Kickert,** T.20240529, p.16260; **Rubin,** T.20250915, p.26581.
[1458] P03705_ET, p.4; P03707, pp.3-4.
[1459] P00800, p.5035.
[1460] 2D00033, p.SPOE00133252.
[1461] P03707_ET, p.2.
[1462] 2D00009, p.1.
[1463] P03711_ET, p.SPOE00225055.
[1464] SPO PTB, para.31; P00809; P00793, pp.U016-2174-U016-2177.

witness or otherwise verified. Instead of calling the necessary evidence to establish the accuracy, context and provenance of those articles, the Prosecution unfairly sought to shortcut its burden by relying on Mr.Krasniqi's ICTY testimony to "confirm" their content. That approach is fundamentally unfair. Considering the circumstances of that testimony,[1465] it cannot be used as a surrogate for properly tested evidence, nor deployed to cure the Prosecution's failure to prove the reliability and context of those media report through admissible means.

417. To use compelled testimony, given almost two decades earlier, in a different proceeding, to retroactively authenticate unverified media statements and reports in this case would subvert the privilege against self-incrimination and violate basic principles of fair trial and evidentiary integrity. In the absence of independent proof establishing the accuracy of these articles, they cannot be relied upon against Mr.Krasniqi.

418. The Der Spiegel report is a clear example why that caution is required. The contents are plainly inaccurate.[1466] It was published in German, and there was no evidence establishing the translation and editorial pathway from Mr.Krasniqi's words to printed text. Mr.Krasniqi later acknowledged that there was "space for some unclarity to sneak in the formulation of the answers".[1467] There is no evidence that Mr.Krasniqi is fluent in German or, if he is not, as to the translation process. Furthermore, [REDACTED].[1468] The report contains factual inaccuracies on basic matters, mistakes and exaggerations: Mr.Krasniqi reportedly said that he was "very serious" that the KLA had a plan to capture Pristina soon,[1469] whereas the KLA plainly lacked that capability; Mr.Krasniqi reportedly said that the person Gelbard met in

[1465] *Supra*, para.53.
[1466] P00809.
[1467] P03698, p.6.
[1468] P01880_ET, p.71.
[1469] P00809, p.1.

Switzerland was "not an authorized representative", which was wrong;[1470] Mr.Krasniqi was reported to call for the "unification of all Albanians in the Balkans", which he later said was a translation error;[1471] and Mr.Krasniqi reportedly claimed the KLA had anti-aircraft missiles, when it did not.[1472] Plainly, the article is not accurate and cannot be taken literally. Finally, even the Der Spiegel reporter was not identified.[1473]

419. Mr.Krasniqi supposedly said that "collaborators are warned that we will kill them if they continue to follow the wrong path".[1474] This statement must be interpreted in the context in which it was allegedly made and with regard to the circumstances prevailing at the time they were made. Even taking this language at face value, it does not prove an unlawful policy or an admission of past killings. Properly understood, it is plainly prospective and conditional propaganda, directed at deterring future cooperation with Serbian forces since the KLA lacked the capacity to police such conduct through institutional means,[1475] rather than describing completed acts.

420. Critically this statement is immediately and expressly qualified by Mr.Krasniqi's insistence that "[h]owever, as an army, we observe all international rules of warfare".[1476] At most it evidences rhetorical warning, expressly constrained by adherence to IHL. Read as a whole in its proper context, the statement negates any interpretation that unlawful violence was either admitted or endorsed. It contains no reference to any specific killing, victim or incident and cannot reasonably be construed as a confession to past crimes. Indeed, to construe isolated forward-looking remarks

[1470] P00809, p.2; P00793, p.U016-2175.
[1471] P00809, p.3; P00793, p.U016-2165.
[1472] P00795, pp.3425-3426; P00800, p.5038.
[1473] P00809, p.1.
[1474] *Idem*, p.3.
[1475] P01355.5_ET, pp.5-6; P00707.5_ET, p.6.
[1476] P00793, para.22.

as an admission of past killings would require speculation unsupported by evidence. Such an approach would impermissibly convert wartime rhetoric to criminal confession. The law cannot permit that leap. Any ambiguity in this regard must be resolved in Mr.Krasniqi's favour.

421. The Koha Ditore articles[1477] must be treated with similar caution. The Prosecution proved nothing about the mechanics of how long the interview was, whether it was audio-recorded or whether handwritten notes were typed later, whether there was an opportunity for Mr.Krasniqi to review what had been written, or whether the quoted text is really a verbatim account of what Mr.Krasniqi said. The text itself appears internally inconsistent - denying kidnapping while simultaneously referring to "those we have kidnapped". It appears that Mr.Krasniqi was asked a question about kidnapping.[1478] There is no evidence that he had any actual knowledge about KLA kidnappings. Indeed, throughout his ICTY evidence, there were many cases about which he did not know or only read about in the media.[1479] But, as an inexperienced spokesperson trying to raise the KLA's profile, he had to give an answer to the question. The article records Mr.Krasniqi say "the UCK has never dealt with civilians, or only if they have been in the service of the army and the police and have done serious harm to the people and the Albanian national cause. There have been cases in which they have been kidnapped, but in this event they have been handed over to international organisations, of course when they have been innocent".[1480]

422. The article thus begins by emphasising that Mr.Krasniqi's understanding of the position was that the KLA did not target civilians, only people in the service of the army and the police. That is not unlawful; the servants of the army and police are

[1477] P00793, pp.U016-2165-U016-2177.
[1478] P00795, pp.3398-3399.
[1479] P00800, pp.17-19.
[1480] P00795, p.3386.

combatants. It is also strikingly vague. It does not refer to any specific cases or identify any release to international organisations. Read fairly and in context, the interview is saturated with morale-building exaggeration about military success and organisational strength, confirming its lack of evidential reliability for the purposes for which the Prosecution invokes it.

423. The article then records Mr.Krasniqi stating that "the UCK recognises the Geneva Conventions and the conventions governing the conduct of war". This express affirmation of compliance with IHL is not incidental. It is central to the position Mr.Krasniqi constantly emphasised. The article then continues "[w]e do not go in for kidnapping. Even if some people have suffered, these have been more Albanian collaborators that Serbian civilians. We do not deal with civilians, and we return those whom we take as prisoners of war […] Those we have kidnapped are either announced in a list or reported to be executed, but we do not behave in a base fashion like Serbia". It is necessary to set out this passage in full, because it exposes the fundamental flaw in the Prosecution's reliance on this article. On its face, this passage is obviously internally inconsistent: it first says the KLA does "not go in for kidnapping" and then in the very next breadth refers to "those we have kidnapped". It is inherently implausible that Mr.Krasniqi would have made such mutually contradictory statements in a single continuous response. The far more common-sense explanation is that the reported text reflects errors in transcription, translation or editorial reconstruction, none of which the Prosecution clarified by calling the journalist or establishing the process by which this article was produced.

424. Moreover, key assertions attributed to Mr.Krasniqi are demonstrably false. There is no evidence that the KLA ever announced lists of people who had been captured, nor that it reported executions in any organised manner. These are not minor inaccuracies, they are claims wholly unsupported by the evidentiary record.

Their presence further undermines the article's reliability as an accurate reflection of Mr.Krasniqi's words.

425. What is consistent is Mr.Krasniqi repeatedly saying that the KLA does not target civilians and does respect international law.[1481] It contrasts the KLA's intention to behave well with the "base" behaviour of Serbia. Read in context, the reported statements about the treatment of combatants in the service of the Serbian army and police (not civilians) are part of the propaganda intended to discourage action against the KLA and the Albanian people. They do not evidence any common plan or crime.

426. It bears further emphasis that the remainder of the Koha Ditore interview is replete with propaganda designed to raise morale and raise the profile of the KLA. It records Mr.Krasniqi claiming that "within a short time we may also be physically present in Prishtina", a statement wholly detached from the KLA's actual military capabilities at the time. The interview claims that the KLA "can say that we have won in all our clashes with the occupying police and army", minimises reported internal misunderstandings as "insignificant problems", characterises the defeat at *Bardh i Madh* as a mere "tactical step" and asserts that weapons shortages were happening "less and less". None of these statements withstand factual scrutiny.

427. These obvious exaggerations underscore the essential point—this interview cannot be treated as a sober, precise or carefully calibrated policy document. It is not a witness statement, a military order or a contemporaneous operational record. It is propaganda aimed at projecting strength, resilience and inevitability at a time when the KLA was under severe military pressure. Read as a whole and in context, does not bear the evidentiary weight the Prosecution places on it.

[1481] P00795, p.3371.

428. On occasions, Mr.Krasniqi's public statements were critical of Rugova, the government-in-exile and FARK. These were political disagreements with political opponents, expressed solely within the bounds of protected political free speech. Crucially none of Mr.Krasniqi's statements called for any crimes to be committed against any individual. Mr.Krasniqi had been an LDK member, and he left that party only when he concluded that its strategy was no longer capable of resisting Serbian repression. As he reportedly publicly said "[w]e would wish to see Kosovo gain its independence with Ibrahim RUGOVA's peaceful policy, but everything that has happened shows that such a policy was mistaken."[1482] This was a critique of political effectiveness, not a denunciation of the person.

429. Whilst Mr.Krasniqi criticised the failure of Rugova's policies, his statements consistently emphasised that the KLA "was not formed to fight against the president, but against the prime enemy of our people".[1483] There is no evidence, at the time, that anyone understood these remarks as a call for violence against Rugova. On the contrary, Mr.Krasniqi sat alongside Mr.Rugova at the opening ceremony of Rambouillet,[1484] prominent LDK members understood Mr.Krasniqi to be personally respectful of Rugova, and he was even accepted by Rugova as candidate for PM of the PGoK.[1485]

430. Internationals understood criticisms of Bukoshi as being part of the KLA's efforts to assert political relevance.[1486] In relation to P04166, the context was well understood: the KLA was in desperate need of money, whereas Bukoshi had collected money through the Homeland Calling Fund, without transparent accounting of how it was

[1482] P00601, p.SPOE00231411-ET.
[1483] P00793, p.U016-2167.
[1484] 1D00205, p.DHT04806.
[1485] 4D00063, p.DJK00798-ET.
[1486] **Williams**, T.20250918, p.26968.

spent, or delivery to the KLA.[1487] Questioning the management and destination of those funds was an entirely political act. It cannot reasonably be construed as evidence of a criminal plan or hostile intent toward any individual.

431. Similarly, Mr.Krasniqi's criticisms of FARK must be contextualised. Mr.Krasniqi had called for all military professionals to join the KLA.[1488] That was always his position. In October 1998, he referred to the GS's appeal for "trained people, especially officers, to join our liberation struggle", adding that "our army will be entirely professional one day and these people will lead our army".[1489] Mr.Krasniqi's post war writings also praised the contributions of the professional officers in the KLA.[1490] FARK's withdrawal from Kosovo in September 1998, at the height of massive Serbian offensives, left KLA units and civilians exposed.[1491] Mr.Krasniqi's subsequent public statements must be understood as expressions of political frustration and dismay at the withdrawal's consequences on the civilian population and local KLA units. Such public statements did not call for crimes to be committed against FARK. Importantly, when questioned about Ahmet Krasniqi's killing, Mr.Krasniqi denied KLA involvement, stating "the UCK has not taken issue with any individual at home or abroad. Its main goal is the freedom of Kosova, and it welcomes all those who join it in its goal. Besides, to my knowledge, the UCK was not implicated in any way in these assassinations".[1492]

432. At their core, Mr.Krasniqi's public statements consistently called for unity in the fight against Serbian oppression and for Kosovo's democratic future. They cannot be misconstrued as seeking post-war dominance by the KLA or the persecution of

[1487] *Idem,* p.27006.
[1488] P01255.
[1489] P01287, p.K050-8441.
[1490] P00189, p.U015-8831.
[1491] [REDACTED].
[1492] P01287, p.K050-5448.

political opponents. Rather, Mr.Krasniqi repeatedly articulated a vision that "Kosova must first be freed, and then let us create political pluralism".[1493] He consistently called for a democratic and pluralist future.[1494] He spoke of forming a national assembly or platform with "the widest political spectrum possible",[1495] the "entire mosaic of the political parties in Kosovo"[1496] and "the entire political spectrum of Kosova".[1497] These statements affirm a commitment to pluralism, democratic competition, and inclusion and are fundamentally incompatible with the Prosecution's theory that Mr.Krasniqi was part of a criminal enterprise aimed at persecuting perceived political opponents.

#### *3.5.2. Mr.Krasniqi's involvement in the PDs was not unlawful*

433. The Prosecution relied on Mr.Krasniqi's ICTY testimony in which he boasted that he wrote 90% of the KLA's PDs.[1498] The Panel should approach that estimate with caution, not only because it is evidently an exaggeration, but also because there is no other evidence to support it. Bashota thought the PDs originated from Adem Demaci's office or from Thaçi as head of the political directorate.[1499] The Defence does not dispute that, as spokesperson and a member of the political wing, Mr.Krasniqi was involved in drafting *some* PDs. What matters, however, is content, not authorship. The PDs do not evidence any common criminal plan. On their face, they consist of political messages and calls for unity.

434. The Prosecution's attempt to characterise PD-8 as evidence of a policy against FARK collapses when read in context. PD-8 was published in mid-September 1998,[1500]

[1493] P00793, p.U016-2166.
[1494] P00601, p.SPOE00231411-ET.
[1495] P00811_ET.33, p.SPOE00053785-ET.
[1496] P01853, p.2.
[1497] P01287, p.K058-8445.
[1498] P00793, p.U016-2098.
[1499] **Bashota**, T.20241204, pp.23356-23357.
[1500] P00384.

during a major Serbian offensive across Kosovo. Large numbers of KLA fighters were deserting and fleeing to Albania;[1501] intense fighting was ongoing in the triangle Klina-Rahovec-Gjakova, including in and around the village of Sverke.[1502] On 3-4 September 1998, Serbian forces attacked villages sheltering 60,000 Albanian civilians, burning Albanian houses and occupying the school in Sverqe previously used by the KLA.[1503]

435. Against that background, PD-8, was a morale boosting document. It referred to (and exaggerated) the KLA's ongoing resistance to encourage cohesion in the face of collapse.[1504] Crucially, no individual was named in PD-8 as a collaborator. [REDACTED],[1505] however, having read PD-8 for the first time [REDACTED], he accepted that it did not [REDACTED].[1506] In fact, none of the PDs name individuals suspected of collaborating or call for sanctions against named persons.

436. The evidence of [REDACTED] further undermines the Prosecution's theory. He testified that when he met Mr.Krasniqi [REDACTED], Mr.Krasniqi did not know who he was.[1507] Their meeting was cordial, well-meaning, good-natured and co-operative,[1508] in contrast with his account of his meeting with other KLA members. On Mr.Krasniqi's advice, those present agreed to work together against Serbian forces.[1509] There is no evidence connecting Mr.Krasniqi to any further meetings, actions or documents concerning [REDACTED]. [REDACTED] confirmed that he never had any personal issues with Mr.Krasniqi.[1510] Further, [REDACTED] was not arrested or mistreated and did not know of any sanctions being taken against deserters or those

[1501] [REDACTED].
[1502] 4D00063, p.DJK00798-ET; [REDACTED].
[1503] 4D0007, pp.DJK00405-DJK00407,DJK00412; [REDACTED].
[1504] P00384, p.071775-ET; [REDACTED].
[1505] P00383.3, pp.9-10.
[1506] [REDACTED].
[1507] [REDACTED]; [REDACTED].
[1508] [REDACTED].
[1509] *Idem,* [REDACTED].
[1510] *Idem,* [REDACTED].

who handed weapons to Serbian forces.[1511] This episode is not evidence of any targeting of opponents, but rather of Mr.Krasniqi's attempts to raise morale and bring people together.

#### *3.5.3. Mr.Krasniqi was not the Author of the Communiqués*

437. The Prosecution failed to prove that Mr.Krasniqi authored any identified communiqué. In his ICTY testimony—given under compulsion—Mr.Krasniqi accepted that there were occasions "when the offensives were at their highest peak and when there were difficulties for us as members of the General Staff to assemble" that he drafted communiqués.[1512] However, the Prosecution has not identified a single specific communiqué written by him. The remainder of Mr.Krasniqi's ICTY testimony draws a clear distinction between the communiqués and the PDs. Mr.Krasniqi testified that: the communiqués were issued mainly by the operational wing;[1513] "the communiqués usually were about the operational–operations in the zones. I was responsible for the political statements";[1514] "these communiqués were issued by the operational units […] I was not the person in charge and I did not take part in compiling them […] the communiqués were mostly related to the operative wing".[1515] In the Bellanice case, Mr.Krasniqi confirmed that communiqués were not within the framework of his obligations but were in the framework of the zones.[1516]

438. This account is fully consistent with the remaining evidence. Communiqués pre-dated Mr.Krasniqi's appointment as spokesperson, having been issued as early as 1994,[1517] when there is no evidence that Mr.Krasniqi had any significant involvement

[1511] P00383.4_ET, pp.5,14.
[1512] P00800, p.5034.
[1513] P00794, pp.3319-3320.
[1514] P00795, p.3430.
[1515] P00800, pp.4948-4849.
[1516] P00792_ET, p.SPOE00068089.
[1517] P01857_ET, pp.19-20.

in the KLA. Their content is operational, not political; they describe military actions.[1518] Their language and style are also distinct from the PDs.

439. No witness identified Mr.Krasniqi as the author of any specific communiqué. Assertions by witnesses outside the GS, who failed to distinguish between communiqués and other public statements, amount to speculation and cannot ground a finding of fact.[1519] Bashota identified N.Hasani and Xh.Gashi as authors of the early communiqués[1520] and testified that later communiqués were written abroad.[1521] Bashota did not know who wrote communiqués during 1998-1999 but did not think it was a member of the GS.[1522] Zyrapi did not know whether Mr.Krasniqi had any role in issuing communiqués.[1523] Pressed repeatedly by the Prosecution on the authorship of communiqués after June 1998, H.Thaçi identified the authors as J.Salihu and Xh.Fetahu.[1524] H.Thaçi also confirmed that communiqués were mostly operational, whereas the PDs contained the KLA political objectives.[1525] He also stressed that communiqués diminished in importance after the appointment of Mr.Krasniqi.[1526] By contrast, [REDACTED] assertion in his suspect interview that communiqués were written by Mr.Krasniqi and H.Thaçi is unfounded and self-serving. [REDACTED] claimed that he never dealt with the communiqués,[1527] had no knowledge whatsoever about any of these communiqués,[1528] and never saw Mr.Krasniqi drafting a

[1518] P00269_ET.15.
[1519] [REDACTED].
[1520] **Bashota**, T.20241202, p.23134.
[1521] *Idem*, p.23136; T.20241203, p.23253; T.20241204, p.23347.
[1522] **Bashota**, T.20241204, p.23356.
[1523] **Zyrapi**, T.20240710, p.17998.
[1524] P00739.5_ET, p.10; P00739.6_ET, pp.9-10.
[1525] P00739.6_ET, p.16.
[1526] P00739.5_ET, pp.7-8.
[1527] P00761.10_ET, p.9.
[1528] P00761.11_ET p.9.

communiqué.[1529] Apparently, the only basis for his claim was that Mr.Krasniqi had a computer.[1530]

440. The Panel heard contradictory evidence about the authorship of Communiqué 59. [REDACTED] claimed that H.Thaçi wrote it.[1531] H.Thaçi denied this and claimed that he did not know who wrote it.[1532] The Prosecution elected only to call W04240 to testify about Communiqué 59, but he had no knowledge of how communiqués were drafted,[1533] and merely repeated multiple hearsay from various sources.[1534] Whilst Mr.Krasniqi reacted on Facebook to an apology by H.Thaçi regarding Communiqué 59, that reaction was written when Mr.Krasniqi was in political opposition to H.Thaçi[1535] and does not identify the author of Communiqué 59 or communiqués more generally.[1536] Not even W04240 believed that Mr.Krasniqi wrote Communiqué 59 and there is no evidence connecting him to it in any way. [1537]

441. The Prosecution relies upon versions of approximately 15 communiqués allegedly seized from Mr.Krasniqi's home as evidence of his alleged involvement in drafting communiqués.[1538] The Prosecution has not called any witness evidence to establish where or how the documents were found and no forensic or expert evidence was led to establish when electronic documents were created. Multiple reasonable inferences arise:

[1529] P00763.3_ET, p.3.
[1530] *Idem,* p.3.
[1531] P00761.7_ET, pp.22-23.
[1532] P00742.8_ET, pp.4,17.
[1533] **W04240**, T.20241123, p.20981.
[1534] **W04240**, T.20241122, p.20818.
[1535] *Idem,* pp.20837-20839.
[1536] P01751.
[1537] **W04240**, T.20241021, p.20791.
[1538] F01268, para.12; F01268/02.

(a) Mr. Krasniqi is a writer and a historian who gathered documents for research and for inclusion in his books;[1539] the mere presence of documents in his home cannot establish authorship by him.[1540] Communiqués 53, 54, 65 and 66 are reproduced in his book 'the Albanians' hour had come'.[1541] In the absence of any evidence that the versions of communiqués were created and/or came into Mr.Krasniqi's possession contemporaneously in 1998-1999, the seized documents could equally be documents collected subsequently for publication in books after the war;

(b) In relation to handwritten documents or annotations,[1542] the Prosecution failed to establish that the handwriting is Mr.Krasniqi's. No attempt to secure a handwriting expert's opinion was made. Even a visual inspection reveals material differences in handwriting across documents.[1543] Nor has the Prosecution proved whether these writings represent contemporaneous drafts prepared before publication or notes made later from already published communiqués. No witness with direct knowledge testified to seeing Mr.Krasniqi draft, revise, approve, or transmit any of the seized communiqués. The evidentiary gap is fatal to any inference of authorship.

(c) One seized document, P00594 is dated 17 February 1999, when it is undisputed that Mr.Krasniqi was in Rambouillet. There is no evidence that he travelled to Rambouillet with a computer, nor that he was in contact with anyone about communiqués from there. P00594 therefore stands as a concrete example of a document seized from Mr.Krasniqi which is highly unlikely to have been authored by him.

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[1539] [REDACTED].

[1540] P03037_ET, p.SPOE00225802; P03922_ET, pp.SPOE00228184-SPOE00228185-ET; P00621_ET, p.SPOE00225261; P00172_ET, p.SPOE00225799; P01421_ET, p.SPOE00225143.

[1541] P00178_ET, pp.SPOE00231388-SPOE00231389-ET; P00591_ET, pp.SPOE00231391-SPOE00231392-ET; P00589, p.SPOE00231390; P00177, pp.SPOE00231386-SPOE00231387-ET.

[1542] P00585, P00583, P00578.

[1543] Contrast P00578 with P00585.

(d) The seized documents themselves undermine the Prosecution's theory of single authorship. They display a range of different fonts, spacing, formatting and headings strongly suggesting that they were drafted and prepared by multiple individuals, at different times without any consistent style or format attributable to one author.[1544]

(e) Finally, even taken at their highest, the seized documents cannot establish that Mr.Krasniqi was involved in all the communiqués. At most, they relate to approximately 15 communiqués, whereas the Prosecution tendered approximately 80. The evidentiary leap required to infer broader authorship or responsibility is unsustainable.

442. Taken together, these multiple reasonable inferences have not been excluded by the Prosecution and therefore authorship cannot be established beyond reasonable doubt. The Panel is therefore required to resolve this issue in favour of Mr.Krasniqi.

443. The Prosecution also relies upon [REDACTED].[1545] This [REDACTED] cannot bear the weight placed on it for the following reasons:

(a) First, [REDACTED] was never verified by any witness. No person involved in its creation, [REDACTED] testified. Absent such verification, [REDACTED] - especially emanating from [REDACTED] - cannot be treated as reliable evidence. The Panel has repeatedly been cautioned against placing weight on untested [REDACTED], and this [REDACTED] is no exception.

(b) Second, at face value, [REDACTED] actually contradicts the allegation that Mr.Krasniqi authored or controlled the content of communiqués. Specifically, [REDACTED].[1546] A person allegedly responsible for drafting and issuing

[1544] Compare, *e.g.*, P00587, P00593, P00592.
[1545] P03551, p.111865.
[1546] P00812_ET.21.

communiqués would be expected to know the correct terminology and numbering. The misidentification strongly suggests that [REDACTED] was **not the author or controller of the communiqué**.

(c) Third, [REDACTED] purports to show [REDACTED] reading a single paragraph of text. Communiqué 76 as published is significantly longer and materially different: for instance the references to the need to "unite in the struggle for freedom", "Kosovo needs a provisional government" and "the fictitious institutions" do not appear at all in the [REDACTED].[1547] If the [REDACTED] establishes anything, it is that an unknown person added to and altered the words prior to publication, including by inserting passages referring to "fictitious institutions" which the Prosecution relied upon as evidence of the alleged criminal enterprise.

(d) Fourth, a typed document allegedly found at Mr.Krasniqi's house bears the header "communiqué no. 75", but reflects the published version, not the version said to be [REDACTED].[1548] Indeed, the text of communiqué no. 76 is largely a political statement about Rambouillet and has little in common with other communiqués.

(e) Finally, the broader context of [REDACTED] is telling. They cover a period of months from [REDACTED] and show multiple individuals, including [REDACTED].[1549] Yet across the entire body of material, only a single [REDACTED] allegedly links "Jakup" to a single "announcement". This paucity of evidence is wholly inconsistent with the Prosecution's theory that Mr.Krasniqi was the author of or routinely involved in the preparation and transmission of communiqués.

[1547] *Idem,* p.SPOE00054248.
[1548] P00595, p.SPOE00228826.
[1549] P03551_ET, p.111704; [REDACTED]. *Also,* P03551_ET, pp.111749,111654,111669,111679,111504.

444. In short, even on the Prosecution's most generous reading, [REDACTED] demonstrates that Mr.Krasniqi was **not responsible for the final content, form, or publication of communiqués**. Properly analysed, it **undermines rather than supports** the allegation of authorship and reinforces the existence of multiple reasonable inferences consistent with innocence which the Prosecution failed to exclude.

445. The only other evidence implicating Mr.Krasniqi is P00293, a translated report of Communiqué 51 which says it was "by spokesman Jakup Krasniqi by telephone".[1550] This document was not authenticated by any witness. It provides no detail of Mr.Krasniqi's involvement, noting that the place and date were not given. No Albanian original was admitted. P00292, the published version of Communiqué 51, makes no mention of Mr.Krasniqi and it cannot therefore be proved from P00293 alone that he was necessarily connected to it.

446. No weight should be placed on the evidence of other witnesses who have speculated that Mr.Krasniqi was involved in writing the communiqués without any basis of knowledge. Many witnesses, [REDACTED], did not distinguish clearly between public statements, PDs and communiqués.[1551] Those without knowledge of how the KLA operated may well have assumed that the spokesperson was involved with communiqués. The Panel should caution itself from this mistake.

#### *3.5.4. Mr.Krasniqi's meetings with Internationals about Political Issues are not evidence of crime*

447. As a KLA political representative, Mr.Krasniqi met with international representatives, though these meetings became more frequent after November 1998.

[1550] P00293.
[1551] [REDACTED]; P00383.3, p.11.

The meetings focussed on political issues such as the attempted formation of a unified Albanian negotiating platform. They are unconnected to any alleged crime or JCE.

448. In Summer 1998, the international community was trying to identify the people who could speak for the KLA in the political process.[1552] Kickert testified that, among meetings with other KLA members,[1553] he met with Mr.Krasniqi, R.Buja and F.Limaj on 30 July 1998.[1554] Mr.Krasniqi confirmed that the KLA was willing to take part in a unified Albanian platform but further consultations needed to take place because he was not a decision-maker.[1555] The Prosecution failed to establish that allegations about crimes were raised at the meeting; Kickert could not recall them being discussed.[1556]

449. There was some evidence that a KLA representative objected to one of the proposed LDK participants. It is unclear to whom the objection related: Kickert's handwritten notes identify M.Krasniqi,[1557] whereas the subsequent cable identifies N.Kelmendi.[1558] Kickert could not explain this inconsistency.[1559] He could not recall which KLA representative raised this objection,[1560] or whether the objection to Kelmendi came from another source entirely.[1561] Nor could Kickert confirm the reason for the objection;[1562] it cannot be assumed that it was related to LDK membership, because there was no challenge to other LDK members such as K.Berisha and F.Hysa.[1563] Clearly, there was no personal issue between Jakup Krasniqi and

[1552] **Kickert**, T.20240528, p.16080.
[1553] [REDACTED].
[1554] **Kickert**, T.20240529, pp.16232-16233.
[1555] *Idem,* p.16236.
[1556] *Idem,* pp.16237-16238.
[1557] 1D00142, pp.U008-1323-U008-1333.
[1558] [REDACTED], p.4.
[1559] **Kickert**, T.20240529, pp.16376-16377.
[1560] *Idem,* p.16342.
[1561] *Idem,* p.16378.
[1562] *Idem,* p.16342.
[1563] *Idem,* p.16243.

M.Krasniqi or N.Kelmendi.[1564] Objections by one party to candidates from another political party are not unusual and are not a call for crimes to be committed against that person.[1565] In the absence of any evidence, it would be ridiculous to infer that this objection was connected to the subsequent detention of Kelmendi in Qirez two months later. Kelmendi appears to have been one of many delegates from different parties who were detained at Qirez; she was not targeted personally.

450. At the time of the meeting, the Serbian offensive had begun and the KLA was retreating,[1566] and therefore Kickert was unable to meet Mr.Krasniqi for a long time.[1567] He subsequently met Mr.Krasniqi on various occasions, including during the prisoner exchange negotiations in January 1999 and at Rambouillet.[1568] As a highly experienced diplomat,[1569] Kickert's assessment was that Mr.Krasniqi was "not necessarily the person we were looking for because he was just a spokesperson".[1570] He did not think Mr.Krasniqi could make decisions for the KLA.[1571] At the time, he considered that the KLA hierarchy was reflected by numbers assigned to GS members; Mr. Krasniqi was only number 11 or 12.[1572]

451. Together with Bashota and R.Buja, Mr.Krasniqi also met with Byrnes from mid-August 1998. Byrnes' primary contact was Bashota.[1573] There is no evidence that Mr.Krasniqi had any significant contact with Byrnes in September or October 1998 and no meeting in those months was recorded in Byrnes' diary. On 3 November 1998,

[1564] 4D00063, p.DJK00798-ET; 4D00052, p.DJK00787-ET.
[1565] **Kickert**, T.20240529, pp.16377-16378.
[1566] **Kickert**, T.20240529, p.16251; 4D00054, p.SPOE00304399; 4D00055, p.SPOE00304334.
[1567] **Kickert**, T.20240529, pp.16253,16259.
[1568] [REDACTED].
[1569] *Idem*, para.1.
[1570] **Kickert**, T.20240529, p.16231.
[1571] *Idem,* p.16236.
[1572] P01217, p.1; 4D00058, p.DJK00777-ET.
[1573] **Byrnes**, T.20240403, pp.14266-14267. **Bashota**, T.20241202, p.23051.

a code cable records that US KDOM had "neither seen [Mr.Krasniqi] nor heard of his activities in some time".[1574]

452. On 6 November 1998, Hill and Byrnes met with [REDACTED][1575] to discuss Hill's proposed interim agreement.[1576] It was agreed that the KLA would revert with its comments, but consultation took the KLA three weeks and its response was too late to be included in the next version of the draft.[1577] Whilst Byrnes and Hill recalled that the KLA representatives were critical of the LDK in that meeting,[1578] these were just political disagreements.[1579] Byrnes, who was well-respected for providing accurate information,[1580] considered Mr.Krasniqi one of the moderates who called for co-operation with the LDK.[1581] He did not think of Mr.Krasniqi as someone involved in crimes.[1582]

#### *3.5.5. Mr.Krasniqi's visits to OZs concerned Politics and Organisation not Crimes*

453. In this period, Mr.Krasniqi, with other GS members, visited the Dukagjin, Llap and Shala zones. The purpose of these visits was limited and lawful: to formalise appointments which had already been made locally and to encourage better organisation. There is no evidence connecting these visits to any crime or JCE. Nor do they suggest any command authority.

[1574] P01067, p.075304; **Byrnes**, T.20240326, p.13777.
[1575] P01085, p.119783.
[1576] **Byrnes**, T.20240326, p.13781.
[1577] P01069, para.19; **Byrnes**, T.20240326, p.13782.
[1578] **Byrnes**, T.20240325, pp.13547-13548.
[1579] **Byrnes**, T.20240326, pp.13759; **Hill,** T.20251111, pp.27734-27735.
[1580] **Rubin**, T.20250915, p.26560.
[1581] **Byrnes**, T.20240326, pp.13733,13759.
[1582] **Byrnes**, T.20240327, p.13821.

454. Mr.Krasniqi and others, including Zyrapi, visited Jabllanicë in June or July 1998. The precise date is unclear: the Great Turn recorded June 1998,[1583] whereas Zyrapi placed it in July 1998.[1584] The Prosecution submission that this visit demonstrates that Mr.Krasniqi was "personally present at and had access to KLA sites, including where persons were detained, mistreated and/or killed"[1585] is legally and factually wrong. There is no evidence that Mr.Krasniqi saw any detainee or was aware that any person was detained or mistreated. It is unclear how many detainees, if any, were in Jablanica at the time of the visit, let alone whether the GS delegation came anywhere near a detention facility. In testimony which the Prosecution did not challenge, Zyrapi did not see or come across any detention facility.[1586] In light of Zyrapi's evidence, the Prosecution cannot establish—still less beyond a reasonable doubt—that Mr.Krasniqi had knowledge of any detention or mistreatment during this visit.

455. During the Jabllanicë visit, the delegation met R.Haradinaj and discussed logistics and KLA development.[1587] Afterwards, Zyrapi went with ZC and S.Veseli, the zone chief of staff,[1588] to visit the units.[1589] The visit was unrelated to the appointment of the ZC. Appointments in Dukagjin were made locally.[1590] [REDACTED],[1591] before the GS visit.[1592]

456. Mr.Krasniqi did not travel to Dukagjin in August 1998 and did not participate in any meetings about the proposed changes in the zone command.[1593] There is no reliable evidence that Mr.Krasniqi played any role in those events, and the Prosecution

[1583] P00189_ET.1, p.U015-8855.
[1584] P01355.7_ET p.2. *Also,* P00800, pp.5075-5076.
[1585] SPO PTB, para.15.
[1586] **Zyrapi**, T. 20061109,p.6239.
[1587] **Zyrapi**, T.20240701, p.17373.
[1588] 1D00185.
[1589] **Zyrapi**, T.20240701, p.17373.
[1590] **Tetaj**, T.20240904, p.19577.
[1591] 1D00185, pp.U001-5407-U001-5411-ET; 2D00026.
[1592] **Zyrapi**, T.20240710, pp.18008-18009.
[1593] **Zyrapi**, T.20240701, p.17391; T.20240703, p.17596; T.20240710, pp.18009-18010.

did not provide notice of any such allegation. Whilst Zyrapi speculated in his suspect interview that Mr.Krasniqi may have been in contact with A.Syla, he expressly confirmed that he did not know who contacted A.Syla about the change in the zone command.[1594]

457. The Prosecution has not established that Mr.Krasniqi signed any order re-appointing R.Haradinaj on A.Syla's behalf. It is inherently unlikely that he did: Mr.Krasniqi was not in Dukagjin at the time, he was only the spokesperson, and no such written order has been produced.[1595] None of the other witnesses who attended meetings ascribe any role to Mr.Krasniqi. Tetaj and [REDACTED] did not see him during the conflict at all.[1596] In his suspect interview, H.Thaçi discussed these meetings in detail and did not mention an order from A.Syla or signed by Mr.Krasniqi at all;[1597] the only order he mentioned was typed during the visit in Dukagjin and signed then and there.[1598] [REDACTED] was not sure whether Mr.Krasniqi was present but did not mention an order signed by him.[1599]

458. In or around August 1998, Zyrapi, H.Thaçi, R.Selimi, and Mr.Krasniqi visited the Llap zone.[1600] Mr.Krasniqi attended as spokesperson;[1601] that was how R.Mustafa knew him throughout the war.[1602]

459. During the visit, the GS formalised appointments which had been made locally. R.Mustafa, L.Gashi and I.Konushevci had agreed that R.Mustafa would command the

[1594] **Zyrapi**, T.20240710, pp.18010-18011.
[1595] **Zyrapi**, T.20240710, pp.18011-18012.
[1596] **Tetaj**, T.20240904, p.19582; [REDACTED].
[1597] P00739.7_ET, pp.16-18.
[1598] *Idem*, p.16.
[1599] P00761.6_ET, pp.6-11.
[1600] **R.Mustafa**, T.20230712, pp.5531-5532; **Ibishi**, P01755.1_ET, p.21.
[1601] **Ibishi**, T.20241024, pp.21198-21199.
[1602] **R.Mustafa**, T.20230717, p.5816.

Llap zone in 1997.[1603] As commander, R.Mustafa decided other appointments in the zone, including at a meeting on 18 July 1998.[1604] By the time of the visit, the members of the zone staff were already in place and carrying out their functions. The zone allowed the GS to formalise the appointments "for the sake of the co-operation".[1605] The GS played no substantive role in the appointments; Ibishi, for example, was given his appointment by Mr.Krasniqi though Mr.Krasniqi did not know him—in reality, the proposal went through R.Mustafa.[1606]

460. The meeting between R.Mustafa and the GS members considered issues such as organisation and communication.[1607] Zyrapi then went with K.Kastrati, a former military officer, to visit the units.[1608] Just as in Dukagjini, the operational visit to the military units was carried out by the experienced military officers. Mr.Krasniqi's role in discussions was entirely political.[1609]

461. Mr.Krasniqi and others visited the Llap zone again in October 1998. The meeting addressed organisational and political matters, including civil administration structures.[1610] Ibishi recalled discussing forming connections with civil society and political representatives,[1611] as well as the lack of regulations.[1612]

462. There is no reliable evidence that collaborators or detentions were discussed during either visit. Ibishi confirmed that these topics were not discussed in October 1998.[1613] The Prosecution relies on P00181 as notes from the meeting on 27 October

[1603] **R.Mustafa**, T.20230712, pp.5528-5531; T.20230714, p.5714.
[1604] **R.Mustafa**, T.20230711, pp.5481-5482; **Ibishi**, P01755.1_ET, pp.17-19.
[1605] **R.Mustafa**, T.20230711, pp.5484-5485.
[1606] **Ibishi**, P01755.1_ET, p.13; P01755.2_ET, pp.7-8.
[1607] **R.Mustafa**, T.20230712, p.5532.
[1608] P00187, p.SPOE00055820.
[1609] P00189, p.U015-8861; *see* **H.Thaçi**: P00739.8_ET, pp.1-2.
[1610] **R.Mustafa**, T.20230713, pp.5620-5622.
[1611] **Ibishi**, P01755.4_ET, pp.12-13.
[1612] **Ibishi**, P01755.7_ET, p.19; *Supra,* para.213.
[1613] **Ibishi**, P01755.7_ET, pp.20-21; T.20241024, pp.21156-21158.

1998, which however confirm the discussion covered political representation and regulations. They do not reference detentions, collaborators or opponents. Whilst the Prosecution claims that the notes reference special war, in fact on their face they say "Special war and propaganda, not present".[1614] Hence, the notes suggest that any discussion of special war simply confirmed that it was not a factor in that zone. In their suspect interviews, R.Selimi and H.Thaçi denied being aware of detentions in Llapashticë.[1615] Whilst R.Selimi was told in August 1998 that Fadil Suljević had been arrested, he confirmed that Mr.Krasniqi did not witness that conversation.[1616] The visits to the Llap zone thus do not establish Mr.Krasniqi's knowledge or involvement in detentions.

463. There are significant errors in the account of this visit in the Great Turn. First, it places Zyrapi on this visit, whereas Zyrapi was in Albania.[1617] Second, the Great Turn repeats earlier propaganda describing the battle of Kacanoll as a "good beating" for Serbian forces;[1618] in fact, this was a defeat for the KLA.[1619] In the light of these errors, no weight should be placed on the Great Turn's account of the visit, unless verified by oral testimony.

464. On both occasions, the GS delegation passed through Shala on the way to the Llap Zone. There is very limited evidence about the content of the visits to the Shala zone. The only witness relied upon by the Prosecution for the Shala zone, [REDACTED], did not attend for cross-examination. His evidence was unreliable for multiple reasons. [REDACTED] was not actually present at any meetings between GS members and the zone command.[1620] His evidence about any such meeting lacks

[1614] P00181, p.SPOE00226667.
[1615] P00763.8_ET, p.7; P00742.11_ET, pp.4-5.
[1616] P00763.6_ET, pp.21-22.
[1617] P01355.14_ET, pp.11-12; **Zyrapi,** T.20240716, p.18317; P00189_ET.1 p.U015-8863; P0187, p.42.
[1618] P00189_ET.1, p.U015-8866.
[1619] **W04323**, T.2023061414, pp.4854-4855.
[1620] P03580.11_ET, p.23.

foundation. He even posited that the GS went to Shala to relax, because it was safer there and the ZC might have perceived them as "family visits".[1621] In any event, the visits had nothing to do with appointments; [REDACTED].[1622]

465. Similarly, in Drenica, S.Selimi was elected as commander by the local units around May 1998.[1623] He regarded the subsequent approval by the GS as a formality.[1624] In Nerodime, S.Buja testified that his appointment as ZC by the GS in July 1998 simply formalised the work which he had already been doing since March 1998.[1625] Whilst Mr.Krasniqi informed S.Buja of this formal appointment,[1626] Mr.Krasniqi did not have the power to make appointments, only to communicate them.[1627] After his appointment, S.Buja recievd instructions about organisation from A.Syla or Zyrapi.[1628]

466. The evidence does not establish that Mr.Krasniqi exercised any authority over the zones. He did not make any appointments. Rather, as Zyrapi testified, ZCs derived their authority from their internal units,[1629] not from the GS and certainly not from Mr.Krasniqi. The formalisation of these appointments by the GS was a paper exercise. Moreover, the GS's efforts to improve the organisation in the zones were entirely lawful. Mr.Krasniqi's participation in these visits did not confer effective control on him, did not generate knowledge of crimes and is not evidence of contribution to any unlawful activity. There is no evidence that these visits were in any way connected to detentions or collaborators or the crimes alleged.

[1621] *Idem,* p.22.
[1622] P03580.6_ET, pp.21,30.
[1623] P02026, p.23; P02027.1, pp.2054-2071.
[1624] **S.Selimi**, T.20250211, pp.25021-25022.
[1625] **S.Buja,** T.20241107, pp.22187-22188.
[1626] *Idem,* p.22186.
[1627] *Idem,* pp.22186-22187.
[1628] *Idem,* p.22189.
[1629] **Zyrapi**, T.20240703, p.17564.

### *3.5.6. Mr.Krasniqi did not commit any crime by attending some GS meetings*

467. The Prosecution adduced remarkably little evidence of GS meetings from June—November 1998. Mr. Krasniqi's writings refer very briefly to meetings on 4 July 1998, 23 July 1998, and 16-17 August 1998,[1630] but do not address the attendees of the meetings or set out comprehensively the matters discussed. In his suspect interview, Mr.Thaçi said that the GS did not make any military-operational decisions in Spring-Summer 1998 and the OZs were completely autonomous.[1631]

468. Zyrapi claimed that he was not at the meeting on 24 July 1998, due to the fighting in Rahovec, and was not aware of regulations being adopted at that meeting.[1632] Bashota was not at any meetings in early July 1998 due to a family bereavement. He could not recall any specific details about any GS meetings in August-October 1998,[1633] though he heard about Rahovec in a meeting in July 1998[1634] and confirmed that the meetings which he attended did not discuss communiqués or detentions.[1635]

469. [REDACTED] likewise confirmed that the meetings of the GS were not regular, occurred in different places and were not fully attended.[1636] Taken together, this evidence establishes not only the fragmented nature of the GS, but also the absence of any reliable basis for inferring that crimes were planned, discussed, or sanctioned at these meetings.

470. Mr.Krasniqi wrote in the Great Turn that the GS had "assigned" him "the task of preparing" the Provisional Rules of Organising Internal Army Life and the

[1630] P01277, p.U015-8836; P01138, p.SPOE00231431; P01092.
[1631] P00739.4_ET, p.20.
[1632] **Zyrapi**, T.20240717, p.18385.
[1633] **Bashota**, T.20241202, pp.23147-23149.
[1634] *Idem,* p.23145.
[1635] *Idem,* pp.23152-23153.
[1636] P00761.5_ET, p.4.

Provisional Regulations for Intelligence Sub-Units in War.[1637] The Great Turn does not provide any further details of the drafting process. No witness corroborated Mr.Krasniqi's role in the preparation of these documents.[1638] He had no military training or experience.[1639] It is implausible that a civilian spokesperson, with no military background, drafted both Regulations. In any event, the Regulations were aspirational, ineffective and not implemented in practice.[1640] A revised translation of the latter Regulations confirms that they relate to "reconnaissance" and not "intelligence". These documents cannot therefore be used to connect Mr.Krasniqi to KLA intelligence activities or to any criminal conduct.

#### *3.5.7. Mr. Krasniqi's limited communication with the zones is not evidence of crime*

471. The Prosecution theory that Mr.Krasniqi was a central liaison figure receiving reports from operational zones collapsed once the Prosecution's own witnesses testified.

472. S.Buja's testimony was clear. He knew Mr.Krasniqi as the spokesperson—someone who dealt with the press and diplomats, but did not take operational decisions and had no operational role.[1641] For a brief period of time, Buja could pass information to Mr.Krasniqi to relay to the GS.[1642] He did not know if any other commanders were doing the same.[1643] By August 1998, he was instructed that contact with the GS had to be through Zyrapi.[1644] S.Buja's contact with Mr.Krasniqi cannot be

[1637] P01277, p.U015-8836.
[1638] **Bashota**, T.20241202, p.23144; **Zyrapi**, T.20240717, pp.18489-18490; P01356_ET p.5945.
[1639] **Bashota**, T.20241202, p.23034. **Zyrapi**, T.20240710, p.17995.
[1640] *Supra,* section 2.10.
[1641] **S.Buja**, T.20241107, pp.22176-22177.
[1642] *Idem,* pp.22176-22177.
[1643] *Idem,* p.22181.
[1644] *Idem,* p.22180.

characterised as hierarchical reporting; Buja spoke to Mr.Krasniqi as an equal and as a family friend.[1645] S.Buja communicated with Mr.Krasniqi by going to meet him in person.[1646] He could only remember three occasions when he met Mr.Krasniqi in the relevant period.[1647] Mr.Krasniqi was in danger because his identity was known, he moved between different locations and there were occasions when neither S.Buja or his brother, Rame Buja, knew where to find him.[1648] Even during the limited period when Mr.Krasniqi played any liaison role, S.Buja only received operational instructions from A.Syla or Bashota,[1649] not Mr.Krasniqi.

473. The Prosecution also relied on S.Buja's evidence as the only source for its allegation that Mr.Krasniqi had the authority to resolve disputes between commanders.[1650] As discussed below, this claim disintegrated at trial.[1651]

474. The Prosecution further alleged that S.Buja reported to Mr.Krasniqi that he had encountered a group of victims on a tractor upon their release from Llapushnik. S.Buja, however, explained that he only discussed with Mr.Krasniqi the fact that he had allowed this group to proceed towards the plain where there were Serbian forces, thereby potentially putting them at risk.[1652] S.Buja never told Mr.Krasniqi that the group had previously been detained, or reported to Mr.Krasniqi about arrests, detentions or mistreatment of any individual.[1653] Accordingly, this interaction is irrelevant to the alleged crimes.

[1645] *Idem,* p.22186.
[1646] *Idem,* p.22182.
[1647] **S.Buja**, T.20241105, pp.21894-21896,21969-21970,21898-21899,21917.
[1648] **S.Buja**, T.20241107, pp.22175-22176,22183-22184.
[1649] *Idem,* pp.22179-22180.
[1650] SPO PTB, para.111(d)(iii).
[1651] *Infra,* para.708.
[1652] **S.Buja**, T.20241107, p.22191.
[1653] *Idem,* pp.22186-22187.

475. It is untenable for the Prosecution to disregard S.Buja's testimony before the KSC and to rely instead on selective excerpts from his ICTY testimony. The Prosecution called S.Buja as a witness of truth and refused to clarify which parts of his evidence it relied upon. In any event, S.Buja's ICTY testimony was itself a significant departure from prior statements, which led the ICTY Chamber to place no weight on his testimony.[1654] It is perverse for the Prosecution to rely upon evidence previously judicially assessed as unreliable.

476. Zyrapi also corrected mistakes in his suspect interview about Mr.Krasniqi's role in this period. He confirmed that between June—November 1998, Mr.Krasniqi's only role was spokesperson,[1655] abandoning the false claim that Mr.Krasniqi had been the deputy commander from July 1998.[1656] His belated realisation that Mr.Krasniqi was not the deputy commander in this period caused Zyrapi to retract some of the assumptions made during his suspect interview. He had claimed that in summer 1998, ZCs informed the spokesperson about the success of operations.[1657] However, his testimony was that ZCs did *not* report through the spokesperson, and the conditions did not permit organized reporting in any event.[1658]

477. Whilst Zyrapi speculated in re-examination that it was "easier" for the zones to contact Mr.Krasniqi in this period because he moved less,[1659] this obviously self-serving statement is unreliable. First, it is factually wrong that Mr.Krasniqi moved less; until the GS had a fixed headquarter in December 1998, Mr.Krasniqi moved regularly because his life was in danger, with the result that ZCs did not know where he was.[1660] Second, it is evidently self-serving for Mr.Zyrapi, the operational military

[1654] 1D00204, para.581.
[1655] **Zyrapi**, T.20240710, pp.18002-18003.
[1656] P01355.7, p.1.
[1657] P01355.2, p.24.
[1658] **Zyrapi**, T.20240710, pp.18019-18020.
[1659] **Zyrapi**, T.20240715, p.18267.
[1660] **S.Buja**, T.20241107, pp.22183-22185.

officer who was in fact travelling around the zones receiving reports, to attempt to shift that responsibility to Mr.Krasniqi. Third, even if it was theoretically "easier" to contact Mr.Krasniqi than anyone else, that does not establish there were, in fact, regular communications with the zones in this period.[1661] Zyrapi had claimed that, prior to November 1998, he reported incidents which he heard about from local commanders to the general commander and Mr.Krasniqi.[1662] However, in testimony he confirmed that he discussed those complaints with A.Syla not Mr.Krasniqi.[1663]

478. There is no other evidence capable of showing that Mr.Krasniqi played a significant liaison role. Whilst the Great Turn boasted of "daily" contact with the Shala and Llap zones by satellite telephone in September 1998,[1664] the Prosecution did not call any witness to establish this. Satellite telephones had not yet even arrived.[1665] R.Mustafa accepted that he had contact with the GS when he was able to establish a connection, but did not describe the contact as "regular"[1666] or accept this passage of the Great Turn.[1667] S.Selimi explained that the connection between the GS and the zones was such a problem that the zones had to take their own decisions.[1668] Zyrapi confirmed unequivocally that neither a purported written report nor any report from the Drenoc local staff ever reached the GS.[1669] The reality is that communication between the GS and the zones was rudimentary throughout this period.

479. The Prosecution allegation that Mr.Krasniqi attended an important meeting in Malishevë in July 1998 also collapsed.[1670] A.Rrahmanaj, the sole witness relied on by

[1661] **Zyrapi**, T.20240709, pp.17870-17871.
[1662] P01355.4_ET, p.19.
[1663] **Zyrapi**, T.20240710, pp.18021-18022; T.20240704, pp.17637-17638.
[1664] P00189_ET.1, p.U015-8864.
[1665] [REDACTED].
[1666] **R.Mustafa**, T.20230712, p.5524.
[1667] *Idem*, p.5526.
[1668] **S.Selimi**, T.20250213, pp.25290-25292.
[1669] **Zyrapi**, T.20240709, pp.17878-17879;17881-17882, referring to P00067, p.SITF00437785.
[1670] SPO PTB, para.367.

the Prosecution for this allegation, confirmed that Mr.Krasniqi was not present—he did not see Mr.Krasniqi at the meeting or hear that he attended it.[1671] He saw Mr.Krasniqi only after the meeting had ended, when Mr.Krasniqi drove into Malishevë to visit someone who was unwell.[1672] That was the only time that A.Rrahmanaj saw Mr.Krasniqi during the war.[1673] Accordingly, the Prosecution's own evidence establishes that Mr.Krasniqi was not involved in organisational meetings in Malishevë during the conflict.

#### *3.5.8. Mr.Krasniqi was not connected to any Crime in this Period*

480. The Prosecution has adduced speculative evidence suggesting Mr.Krasniqi's involvement in various other incidents during this period, without giving fair notice to the Defence either in the Indictment or the PTB. Since no proper notice was given, these allegations must not be relied upon against Mr.Krasniqi.

481. The Prosecution relied on speculative hearsay evidence from [REDACTED] to suggest that in June 1998, Mr.Krasniqi had asked [REDACTED] after a video statement filmed by N.Bytyci. This evidence is wholly unreliable. Mr.Krasniqi was not present at the filming in Breshanc.[1674] [REDACTED]. The alleged conduct therefore never occurred, rendering any purported involvement by Mr.Krasniqi entirely hypothetical.

482. [REDACTED] evidence about Mr.Krasniqi is unsubstantiated and mistaken. [REDACTED] had never met Mr.Krasniqi and, beyond knowing that Mr.Krasniqi had once been [REDACTED], did not know any further details of their relationship.[1675]

[1671] **A.Rrahmanaj**, [REDACTED].
[1672] **A.Rrahmanaj**, T.20240930, pp.20501-20502.
[1673] **Rrahmanaj**, T.20240930, p.20502.
[1674] P01252.3_ET, p.3.
[1675] [REDACTED].

[REDACTED] account was given for the first time in [REDACTED], approximately [REDACTED] after the alleged events.[1676] [REDACTED] misdated the incident as occurring in [REDACTED] and claimed that [REDACTED] this incident, whereas the Prosecution alleges it occurred months earlier in June 1998.[1677] Inconsistently, [REDACTED] claimed that the source of [REDACTED] information was [REDACTED] and ultimately testified that [REDACTED].[1678]

483. This allegation is, at best, multiple layers of hearsay. Critically, [REDACTED] could not explain why [REDACTED], and [REDACTED] with direct knowledge, did not mention Mr.Krasniqi in connection with this incident.[1679] In reality, as [REDACTED] conceded, what [REDACTED] heard about the KLA and Mr.Krasniqi were only rumours which [REDACTED] did not attempt to verify.[1680] Such evidence is incapable, as a matter of law, of supporting any inference adverse to Mr.Krasniqi.

484. Mr.Krasniqi was not involved in the detention of C.Desku and J.Kastrati or the Tanjug journalists. Radošević and [REDACTED] did not see Mr.Krasniqi during their detention.[1681] W04828's admitted testimony does not mention Mr.Krasniqi. D.Krasniqi confirmed that Mr.Krasniqi was not at Dragobil when Desku and Kastrati were detained.[1682] There is no evidence linking the GS to the arrests. Zyrapi did not know who had undertaken the arrests.[1683] Bashota described them as scandalous.[1684]

485. International representatives notified the detentions to the GS, initially through Bashota. Around the time of the detentions, USKDOM had not heard from

[1676] *Idem,* [REDACTED].
[1677] *Idem,* [REDACTED].
[1678] P00316.1_ET.1, pp.12-13; [REDACTED].
[1679] [REDACTED]; [REDACTED].
[1680] [REDACTED].
[1681] **Radošević:** T.20231010, pp.8592,8604,8605; P00488.2, p.11; [REDACTED].
[1682] **D.Krasniqi**, T.20240923, p.20179.
[1683] **Zyrapi,** T.20240710, p.18013.
[1684] **Bashota,** T.20241203, p.23168.

Mr.Krasniqi "for some time".[1685] Byrnes would therefore have contacted Bashota or R.Buja.[1686] Bashota admitted that Byrnes contacted him about the case,[1687] though he already knew about it because A.Demaci had told him that they needed to be released.[1688]

486. The evidence does not prove that Mr.Krasniqi ordered the release of Desku, Kastrati or the Tanjug journalists. During the 6 November 1998 meeting with Hill and Byrnes, the primary topic discussed was Hill's proposed agreement.[1689] Whilst one of Mr.Krasniqi's unfinished drafts "in course of preparation" describes a discussion about the detentions at the meeting,[1690] this was not confirmed by any witness. Hill and Byrnes did not recall detentions being discussed.[1691] In any event, the unpublished draft does not state either who decided on the release or who ordered it. Byrnes expressly accepted that he dealt with Bashota about this issue.[1692] Bashota was present at their release.[1693] Nor was the limited discussion sufficient to put Mr.Krasniqi on notice that any crime had been committed.

487. Properly understood, Mr.Krasniqi's ICTY testimony does not connect him to the detention of Desku and Kastrati either. Instead, Mr.Krasniqi made it clear that he had not seen press releases about the case and knew "more about their release that their arrest".[1694] Nothing in his testimony defined whether his attempt to explain the case was based on information that he had at the time or information he received later.

[1685] P01067, p.075304; **Byrnes,** T.20240326, p.13778.
[1686] **Byrnes,** T.20240326, p.13778.
[1687] **Bashota,** T.20241204, pp.23358–23359.
[1688] **Bashota,** T.20241202, p.23053.
[1689] **Byrnes**, T.20240326, p.13781; **Hill**, T.20251110, pp.27692-27693.
[1690] P01091, pp.SPOE00231037,SPOE00231058.
[1691] **Hill**, T.20251110, pp.27692-27693,27915-27916; **Byrnes,** T.20240326, p.13782.
[1692] **Byrnes**, T.20240326, p.13784.
[1693] 1D00048; P00841, p.3; P01245.
[1694] P00795, pp.3396-3397.

### 3.6. Deputy Commander for support: 12 November 1998 - 27 February 1999

488. In mid-November 1998, the GS underwent a restructuring process,[1695] planned and led by Zyrapi, S.Veseli and other former professional officers.[1696] Zyrapi "did the drafting of the whole thing":[1697] he drafted the organigramme—which comprised a commander, two deputy commanders, a Chief of (General) Staff, and the directorates[1698]—on the basis of which appointments were made.[1699] On 12 November 1998, Mr.Krasniqi was appointed deputy commander for support ("DC-support"), while Bashota, previously the only Deputy Commander,[1700] was appointed Deputy Commander for operations.[1701] A.Syla remained the KLA Commander.[1702]

489. Contrary to the Prosecution's case, Mr.Krasniqi's appointment in this role was nothing more than a formality for administrative purposes: in practice, between 12 November 1998 and 27 February 1999, Mr.Krasniqi's role and responsibilities did not change—he continued his work as KLA spokesperson and his political activities in view of the peace negotiations. Despite his new title, Mr.Krasniqi did not exercise any commanding or operational role, nor did he hold any decisional or disciplinary power. As a deputy commander *for support*—not operations, Mr.Krasniqi was neither superior to any KLA member at any level, nor was he aware of, or contributed to, the commission of any crime at local level.

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[1695] **Zyrapi,** P00775, pp.SPOE00068079,SPOE00068082,SPOE00068084; P01355.14, p.21, T.20240703, p.17539; T.20240708, p.17795; T.20240710, p.17938.
[1696] **Maloku,** P02090.2, p.11; **Bashota,** T.20241203, p.23228.
[1697] **Bashota,** T.20241203, p.23229.
[1698] **Zyrapi,** T.20240710, p.17938. **Bashota,** T.20241203, p.23229; **Maloku,** 20250326, p.25945; **R.Mustafa**, T.20230707, p.5824.
[1699] **Bashota,** T.20241203, p.23210.
[1700] P00847, p.3.
[1701] 4D00011; **Zyrapi,** T.20240710, p.18004; **Bashota,** T.20241203, p.23229.
[1702] **Bashota,** T.20241128, p.22964.

490. Ultimately, the GS's efforts to restructure and implement a functional chain of command were unsuccessful: the only individuals who maintained a degree of control over local KLA units were ZCs who, however, acted independently from the GS and refused to recognise Mr.Krasniqi's role as DC-support. To the extent that the GS managed to improve its structure, the only individual with authority and decisional power was Zyrapi—the "Chief of the GS" and one of the few GS members with military experience—the same and sole individual that the Prosecution relies upon to make submission on Mr.Krasniqi's role as DC-support.[1703]

#### *3.6.1. Zyrapi lacks credibility with respect to Mr.Krasniqi's role as DC-support*

491. Zyrapi uncontestably played a key role in the KLA. As a former career officer who held the positions of GS member, member of—and later head of—the GS Operational Directorate, Chief of Staff, Chief of GS and Deputy Minister of Defence,[1704] he has relevant knowledge to the case. However, due to his seniority and his personal involvement in several charged incidents, he is also a witness of diminished credibility for the period November 1998-February 1999. More specifically, for the first time in 2019, when interviewed as a **suspect**, Zyrapi sought to defend himself by downplaying his own role and responsibilities and falsely shifting them onto Mr.Krasniqi who, being based in Divjakë at the relevant time, was the perfect scapegoat.

492. Before 2019, Zyrapi testified in several local and international trials[1705] and barely mentioned Mr.Krasniqi. For instance, across his evidence in *Šainović et al.*,[1706] *Shaban*

[1703] *E.g.* SPO PTB, [REDACTED].
[1704] **Zyrapi,** T.20240701, p.17396; T.20240703, p.17507; T.20240718, p.18550.
[1705] **Zyrapi,** T.20240710, p.17989.
[1706] P01356_ET.

*Shala et al.*,[1707] and *Belanice*,[1708] Zyrapi mentioned Mr.Krasniqi only four times. By contrast, in his 2019 interview alone, he mentioned Mr.Krasniqi no less than 33 times.

493. Before 2019, all Zyrapi had said about Mr.Krasniqi was that in November 1998 he was appointed deputy commander *for political affairs*[1709] or "in charge of political activities",[1710] and that he was the KLA spokesperson,[1711] whose role was to inform the public about the developments of the KLA.[1712]

494. In early August 2019, before the Indictment was issued, the Prosecution interviewed Zyrapi as a suspect.[1713] Zyrapi was informed by the Prosecution that there were grounds to believe that he had been involved in crimes within KSC jurisdiction[1714] and Zyrapi's counsel remarked that Zyrapi, as a suspect, was not obliged to tell the truth during the interview.[1715] By that time, it was public knowledge that other senior KLA members had been summoned for interview as suspects by the Prosecution,[1716] and Zyrapi had been named in Kosovo media as a potential indictee.[1717] Zyrapi reacted by putting forward, for the first time, many unsubstantiated allegations against Mr.Krasniqi, who had been virtually absent from his prior testimony, while simultaneously trying to minimise his own role and responsibilities.

495. Notably, the vast majority of these allegations are wholly uncorroborated. On the one hand, the Prosecution failed to call other GS members, such as A.Syla, F.Limaj,

[1707] 4D00078, 4D00077.
[1708] P00775_ET.
[1709] **Zyrapi,** P01356_ET, p.5941; P00775_ET, p.SPOE00068083.
[1710] **Zyrapi,** 4D00078, p.2, Q&A 3.
[1711] **Zyrapi,** P00775_ET, p.SPOE00068078,SPOE00068083.
[1712] *Idem,* p.SPOE00068083.
[1713] P01355.
[1714] **Zyrapi,** P01355.1, p.3.
[1715] **Zyrapi,** P01355.1, pp.4-5, 6-12.
[1716] **Zyrapi,** T.20240718, pp.18554-18555.
[1717] *Idem,* p.18552.

A.Grabovci and others, who could have provided first-hand knowledge of Mr.Krasniqi's and Zyrapi's respective roles between November 1998 and February 1999. On the other, all the senior KLA witnesses who were called by the Prosecution contradict Zyrapi's evidence. A higher analytical scrutiny is required; the Panel should not accept Zyrapi's self-serving evidence against Mr.Krasniqi, especially if not corroborated.

#### *3.6.2. Despite his new appointment, Mr.Krasniqi acted primarily as the KLA spokesperson*

496. Mr.Krasniqi's appointment as DC-Support must be evaluated in the context of a GS which, as set out above,[1718] was barely functioning. As part of a non-functional entity, and lacking any military knowledge or expertise,[1719] Mr.Krasniqi did not exercise any commanding role or authority.

497. Maloku, a member of the GS based in Divjakë until 21 January 1999,[1720] explained that Mr.Krasniqi held the position of DC-support for two months only, until selected to attend the peace negotiations.[1721] His position as DC-support was **a secondary one**:[1722] his role and duties did not change; his main task remained his work as KLA spokesperson and interactions with the media.[1723]

498. Maloku's account is corroborated by Dobruna's recollection of a conversation he had with Mr.Krasniqi in Divjakë: asked whether he was one of the main commanders,

[1718] *Supra,* section 2.4.
[1719] **Zyrapi,** T.20240710, p.17995; **Maloku,** T.20250326, p.25936; **Bashota,** T.2041203, p.23229.
[1720] **Maloku,** T.20250326, pp.25934-25935.
[1721] **Maloku,** T.20250324, p.25748; T.20250326, p.25938.
[1722] **Maloku,** T.20250324, p.25748; T.20250326, p.25939.
[1723] *Ibid.*

Mr.Krasniqi replied "no, I am not, I am just a spokesperson".[1724] Indeed, Mr.Krasniqi continued to attend events as spokesperson, such as the flag day ceremony on 28 November 1998,[1725] the new year's celebrations,[1726] and the inauguration of RFK in January 1999.[1727]

499. Despite his new formal title, Mr.Krasniqi continued to be known as spokesperson only.[1728] International news outlets[1729] and contemporaneous cables[1730] continued to refer to him only as spokesperson. Even RFK,[1731] and *Zëri i Kosovës*,[1732] in January 1999 described him as the "KLA spokesman and political representative". When Mr.Krasniqi attended KLA public events or ceremonies, he always presented himself as the spokesperson, not the DC-support.[1733]

500. Unlike his appointment as spokesperson,[1734] Mr.Krasniqi's new appointment as DC-support was not publicly announced,[1735] and therefore his new title was generally not known either within or outside the KLA.[1736] For example, members of the Pashtrik Zone Staff, including [REDACTED],[1737] H.Qadraku,[1738] Halitjaha,[1739] and its chief of staff Fondaj,[1740] testified that they had no knowledge of Mr.Krasniqi having any role other than spokesperson. The same was confirmed by brigade[1741] and battalion

[1724] **Dobruna,** P01955.9_ET, p.6.
[1725] *Infra,* para.719.
[1726] P01290_ET, p.4.
[1727] P00604.
[1728] **Zyrapi,** T.20240715, p.18197.
[1729] P00602; P04142; P04221.1.
[1730] P01069, p.9; P01074, p.4.
[1731] P00515_ET.2, p.2; P00515_ET.16.
[1732] P04165, p.15.
[1733] *E.g.* P00604.
[1734] P00312.
[1735] **Zyrapi,** T.20240715, p.18197.
[1736] **R.Mustafa**, T.20230717, pp.5816-5817.
[1737] [REDACTED].
[1738] **H.Qadraku,** T.20241125, pp.22581-22582.
[1739] **Halitjaha,** T.20231116, p.10332.
[1740] **Fondaj,** T.20240625, p.17160.
[1741] *E.g.,* [REDACTED]**,** P02080, para.141.

commanders,[1742] and KLA soldiers.[1743] The only reasonable explanation for their lack of knowledge of Mr.Krasniqi's appointment as DC-support is that Mr.Krasniqi never exercised any authority over them.

501. Likewise, Byrnes, who interacted frequently with Mr.Krasniqi at the relevant time, was not aware of his appointment as DC-support;[1744] Mr.Krasniqi always presented himself, or was referred to, as spokesperson.[1745] Kickert cooperated regularly with Mr.Krasniqi in January and February 1999[1746] and was also unaware of [REDACTED].[1747]

#### *3.6.3. Between November 1998 and February 1999, Mr.Krasniqi was engaged in political work*

502. In parallel and in conjunction with his activity as spokesperson, between November 1998 and February 1999, Mr.Krasniqi also engaged in intense and fast-paced political activities. On 13 November 1998—the day after his appointment as DC-support—Mr.Krasniqi was appointed a member of the "political group for talks", with Bashota and R.Buja to serve as a contact point for international actors in Kosovo.[1748]

503. In this role, Mr.Krasniqi's tasks included regularly contacting and meeting with internationals and preparing for the Rambouillet negotiations. This reflected the main role of the KLA GS, which was to deal with political issues, while military and

[1742] [REDACTED]; **R.Qeriqi,** T.20240424, pp.14834-14835.
[1743] *E.g.* [REDACTED], P01541.3, p.8; P01543, p.17; [REDACTED].
[1744] **Byrnes,** T.20240328, p.14004.
[1745] **Byrnes,** T.20240326, pp.14265-14266.
[1746] [REDACTED], P01221; T.20240529, pp.16283-16284; 4D00058.
[1747] **Kickert,** T.20240529, p.16286.
[1748] [REDACTED], P01066, para.21; T.20240325, p.13602.

operational matters in the field were dealt with by ZCs.[1749] Meeting with international delegations fell within Mr.Krasniqi's responsibilities as KLA spokesperson.[1750] Mr.Krasniqi attended the following meetings:

(a) On 6 November 1998, Mr.Krasniqi, H.Thaçi, F.Limaj and R.Buja met with Christopher Hill in Dragobil;[1751]

(b) On 22 December 1998, Mr.Krasniqi, H.Thaçi, and R.Buja met with Larry Rossin in Dragobil;[1752]

(c) As part of the negotiations for the release of PoWs:

i. On 9 January 1999, Mr.Krasniqi, Bashota and R.Buja met with Byrnes, Christopher Hill, David Meyer and Wolfgang Petrisch in Dragobil;[1753]

ii. On 11 January 1999, Mr.Krasniqi, Bashota and R.Buja met with Shaun Byrnes, Christopher Hill, David Meyer and Wolfgang Petrisch in the Malishevë area;[1754]

iii. On 13 January 1999, Mr.Krasniqi, Bashota and R.Buja met with Byrnes, Christopher Hill, David Meyer, Wolfgang Petrisch and William Walker in Likoc;[1755]

iv. On 23 January 1999, Mr.Krasniqi and Bashota met with Byrnes in Likoc for the release of the KLA soldiers;[1756]

(d) On 6 February 1999, Mr.Krasniqi departed for Rambouillet.[1757]

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[1749] **Byrnes,** T.20240326, p.13794.
[1750] **Byrnes,** T.20240326, p.13745.
[1751] P01085, p.119783; 4D00040; P01264, p.SPOE00128747; P01086; [REDACTED]**,** P01066, para.70; **Zyrapi,** T.20240715, pp.18194-118195.
[1752] P01264, p.SPOE00128747; P00189_ET.1, p.U015-8891.
[1753] P00842; P00189_ET.1, pp.U015-8893-U015-8894; **Byrnes,** T.20240326, p.13786.
[1754] P00189_ET.1, p.U015-8895; **Byrnes,** T.20240326, p.13786.
[1755] P00515_ET.6; P00189_ET.1, p.U015-8896; P00768_ET, p.7; **Byrnes,** T.20240326, p.13786.
[1756] P00768_ET, p.8; P00189_ET.1, pp.U015-8896-U015-8898; P00515_ET.14.
[1757] P01085, p.119797.

i. Between 6 and 25 February 1999, Mr.Krasniqi was engaged in peace negotiations in Rambouillet;[1758]

ii. On 27 February 1999, Mr.Krasniqi resigned from his position as DC-support.[1759]

504. Prosecution witnesses corroborate Mr.Krasniqi's political activity in this time-period. R.Mustafa confirmed that Mr.Krasniqi's role after his appointment as DC-support continued to be political; he was known only as the spokesperson and a political supporter of the KLA.[1760] This is reflected in Mr.Krasniqi's attendance in GS meetings: he did not participate in *all* GS meetings, but only in those when political matters were discussed.[1761] Likewise, Bashota confirmed Mr.Krasniqi attended regular meetings with international envoys,[1762] especially in the build-up to the Rambouillet conference.[1763]

505. Even Zyrapi confirmed that Mr.Krasniqi's role between November 1998 and February 1999 was focused *mostly* on political issues, aligning with Zyrapi's consistent description—before 2019—of Mr.Krasniqi as the "deputy commander for political affairs".[1764] Zyrapi explained that in the build-up to Rambouillet, there was a period of intense political activity and it was Mr.Krasniqi's responsibility to attend meetings with the internationals and keep the GS informed of these political discussions.[1765] Zyrapi confirmed that "**between November 1998 and February 1999, Jakup Krasniqi was mostly engaged in political matters, dealing with internationals, and working on a common KLA stance in view of the negotiations in Rambouillet**".[1766]

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[1758] *Idem,* pp.119797,119800.
[1759] *Infra,* para.630.
[1760] **R.Mustafa**, T.20230717, p.5818.
[1761] *Idem,* p.5825.
[1762] **Bashota,** T.20241203, p.23232.
[1763] *Ibid*.
[1764] **Zyrapi,** P01356_ET, p.5941; P00775_ET, p.SPOE00068083; 4D00078, p.053942, Q&A 3.
[1765] **Zyrapi,** T.20240715, p.18194, 18197; P01355.7_ET, p.5.
[1766] **Zyrapi,** T.20240715, p.18195-18196.

506. In fact, GS meetings in January and February 1999 revolved around the two main political issues which Mr.Krasniqi was engaged with: the exchange of PoWs in January 1999 and the peace negotiations in February 1999. Specifically:

(a) On 12 January 1999, the entire GS meeting concerned the outcome of the meeting of the previous day with the internationals about the release of the VJ soldiers;[1767]

(b) On 13 January 1999, the first point of the agenda was "[r]eport on the 13 January meeting in Likoc with international representatives on the exchange of prisoners of war";[1768]

(c) On 17 January 1999, one point of the agenda concerned the political aftermath VJ soldiers' release;[1769]

(d) On 25 January 1999, the first point of the agenda concerned the release of the KLA soldiers as part of the agreement;[1770]

(e) On 28 January 1999, the first two points of the agenda concerned: (i) the outcome of the meeting with Christopher Hill and Wolfgang Petrisch; and (ii) the appointment of the KLA political group to participate in the talks, as well as the KLA GS stance on the legislative and executive institutions, one of the issues to discuss at Rambouillet;[1771]

(f) On 1 February 1999, the first point of the agenda was "Discussions on the "possible Rambouillet meeting";[1772]

(g) On 4 February 1999, the entire meeting was dedicated to the main points of negotiations to be addressed in Rambouillet.[1773]

[1767] P03781.2_ET, p.SPOE00226469.
[1768] P03781.2_ET, p.SPOE00226470; *also* 4D00068_ET, p.2.
[1769] P03781.2_ET, p.SPOE00226472.
[1770] *Idem,* p.SPOE00226475.
[1771] *Idem,* p.SPOE00226476.
[1772] *Idem,* p.SPOE00226477.
[1773] *Idem,* p.SPOE00226478.

507. Mr.Krasniqi attended seven political meetings in less than one month, exemplifying the overwhelming scale of his political engagement in January 1999 and corroborating Zyrapi's evidence on this point: together with Bashota and R.Buja, Mr.Krasniqi represented the GS during meetings with internationals; however, after every meeting, Mr.Krasniqi reported back to the GS so that others could discuss and make decisions.

#### *3.6.4. The release of the VJ soldiers—January 1999*

508. Mr.Krasniqi's role is further illustrated by the negotiations for release of eight captured VJ soldiers in January 1999, who were treated as PoW[1774] by the KLA. At this time, the VJ were already holding KLA soldiers and negotiations with the OSCE were taking place to secure their release.[1775] The capture of the VJ soldiers meant that an exchange could be discussed. Three meetings took place between the internationals and GS members,[1776] respectively on 9,[1777] 11,[1778] and 13 January 1999.[1779] The meetings were tense.[1780] The internationals knew that the KLA were preparing to be part of a unified Albanian delegation for Rambouillet, and wanted to be taken seriously as legitimate political actors.[1781] However, the KLA were also emphatic about a simultaneous transfer of prisoners—a proposition rejected by the Serbs.[1782]

509. Such circumstances put immense pressure on Mr.Krasniqi and other GS members: "for ten days I was under the heaviest psychological, moral and intellectual

[1774] P00189_ET, p.U015-8894.
[1775] *Idem,* p.U015-8893.
[1776] [REDACTED], P01066, para.130.
[1777] **Byrnes,** T.20240326, p.13786.
[1778] *Idem,* p.13786.
[1779] *Idem,* p.13786.
[1780] *Idem,* p.13788; **Kickert,** T.20240529, p.16268.
[1781] [REDACTED], P01210, para.39.
[1782] **Byrnes,** T.20240326, p.13788; **Bashota,** T.20241202, pp.23062–23063.

pressure ever."[1783] The GS was also under extreme pressure from ZCs *not* to release the VJ soldiers.[1784] For example, the Drenica and Dukagjin zones implored the KLA not to capitulate to international pressure.[1785] [REDACTED][1786] that the release had been agreed upon.

510. Throughout the negotiations, it was clear to the internationals that Mr.Krasniqi could not take any decisions unilaterally. Hill described his surprise that the KLA Spokesperson was dealing with the negotiations in the first place.[1787] Kickert understood that a high level political or military collective body had to approve decisions by consensus, which caused delays to decision-making processes.[1788] Hill did not think that Mr.Krasniqi could make such a big decision to release the VJ, as he "was not that big of a deal."[1789] Internationals confirmed that Mr.Krasniqi kept having to leave the negotiations[1790] to speak to someone on the telephone, and it did not appear to them that he was the decisionmaker.[1791] Hill still does not know who ordered the release.[1792]

511. Although Mr.Krasniqi stated in his book[1793] that he ordered R.Rama to release the VJ soldiers, witnesses could not confirm that this occurred. Byrnes did not see Mr.Krasniqi giving the order to R.Rama and would not have understood the Albanian conversation had he heard it. He could not ascertain whether the words were phrased as a request or an order.[1794] A distinction must be drawn between collective decision-

[1783] P00189_ET, p.U015-8896.
[1784] **Bashota,** T.20241202, p.23062.
[1785] **Byrnes,** T.20240326, pp.13787-13788.
[1786] P02094, p.111548.
[1787] **Hill,** T.20251111, p.27798.
[1788] [REDACTED], P01210, para.54; T.20240528, p.16083.
[1789] **Hill,** T.20251111, p.27744; T.20251112, p.27910.
[1790] **Hill,** T.20251111, p.27806.
[1791] **Byrnes,** T.20240326, p.13792; [REDACTED], P01210, para.54; T.20240528, p.16083.
[1792] **Hill,** T.20251111, p.27744.
[1793] P00189_ET, p.U015-8898.
[1794] **Byrnes,** T.20240326, p.13793.

making to release the VJ, and coordinating logistics for the release itself, which took place before national media. Moreover, [REDACTED] indicate that Rahman Rama and Zyrapi may have communicated regarding the [REDACTED] and that it was Zyrapi who decided on the information to give the internationals.[1795]

#### *3.6.5. The release of the elderly Serbs—January 1999*

512. While in Likoc for the release of the KLA soldiers as part of the exchange agreement, [REDACTED].[1796] [REDACTED] surrounding the incident reveal Mr.Krasniqi expressing concern and disappointment upon hearing the news, both due to the risk of Serbian retaliation,[1797] and because it gave the Serbs an excuse to not release the KLA soldiers.[1798] Mr.Krasniqi described the kidnapping as "very bad".[1799] Clearly he did not condone it. This was also [REDACTED] impression: the GS had not ordered the elderly Serbs to be taken, but upon finding out that this had occurred, they did what they could to secure their release.[1800]

513. Byrnes testified that on the day of the release, he inferred from a discussion between Lushtaku and Mr.Krasniqi that the latter had ordered the release and Lushtaku was not happy therewith.[1801] In a similar vein, Zyrapi attempted to push responsibility for the release onto Mr.Krasniqi: [REDACTED].[1802] However, several considerations refute these claims.

[1795] [REDACTED]; P02094, p.111533.
[1796] P01066, para.138.
[1797] [REDACTED]; [REDACTED]; P02094, pp.111634-111635.
[1798] P02094, pp.111634-111635; [REDACTED].
[1799] P02094, p.111635.
[1800] [REDACTED].
[1801] [REDACTED], P01066, para.138; T.20240325, p.13562.
[1802] [REDACTED].

514. Firstly, Byrnes' evidence is inconclusive: he did not understand Albanian. He could only **guess** the nature of the conversation between Krasniqi and Lushtaku but could not confirm what was actually said.[1803]

515. Secondly, [REDACTED] surrounding this incident suggest that that the instructions to release had already been issued by Zyrapi, the day previously. Zyrapi accepted that [REDACTED].[1804] [REDACTED].[1805] Mr.Krasniqi was contacted to retrieve [REDACTED], not because of issues of authority.

516. Crucially, when contact with Drenica was finally established, [REDACTED] record Zyrapi, not Mr.Krasniqi, unequivocally instructing S.Selimi to release the Serbs.[1806] There is not [REDACTED] purporting a conversation between Mr.Krasniqi and the Drenica Zone about the release. Later [REDACTED] suggest that Mr.Krasniqi did not have any further conversations about this issue.[1807] An alternative reasonable inference is that when Mr.Krasniqi arrived in Likoc for the release of the PoWs, Lushtaku complained about Zyrapi's order, which led to the heated discussion overheard by Byrnes.

517. In short, whilst Mr.Krasniqi was informed of this incident due to its political implications for the PoW exchange, it was Zyrapi, in his operational role, who ordered this release. Taken together, the evidence does not establish that Mr.Krasniqi issued instructions concerning the detention or release of the peasants though it clearly demonstrates that he disapproved of their detention.

#### *3.6.6. Mr.Krasniqi's only role as DC-Support was of an administrative nature*

[1803] **Byrnes,** T.20240325, p.13562.
[1804] P02094, p.111632.
[1805] *Ibidem*.
[1806] P02094, p.11636.
[1807] *Idem,* p.111645.

518. As Mr.Krasniqi continued to perform his political and spokesperson role between November 1998 and February 1999, the only additional responsibility which he undertook as DC-support was administrative, largely because he was more frequently available in Divjakë.

519. When the GS settled in Divjakë in early December 1998, there was no administration system whatsoever.[1808] Due to the absence of a permanent headquarters, continuous Serbian offensives, and lack of equipment, the GS had never managed to set up a functioning administration system or issue and disseminate written documents.[1809] As part of the KLA's restructuring, however, the need arose to formalise the newly-created internal structure, in order to convey an image of the KLA as an organised army to the internationals.[1810]

520. Maloku explained that it was precisely for this reason that the position of DC-support was created: to give the impression that the KLA—a volunteer army—was being transformed into a regular army, which was used to gain international support.[1811] This was the only reason why this position was created and given to Mr.Krasniqi: to **formalise in writing the decision or proposals made by the Chief of Staff**.[1812]

### *3.6.7. The documents allegedly signed by Mr.Krasniqi are not probative of any authority*

[1808] **Zyrapi,** T.20240710, p.18031.
[1809] *E.g.* **Zyrapi,** T.20240709, p.17880; T.20240711, p.18072.
[1810] **Maloku,** T.20250326, pp.25939,25941. *Also,* **Rubin,** T.20250916, pp.26782- 26783.
[1811] *Ibid.*
[1812] **Maloku,** T.20250326, p.25943.

521. The Prosecution tendered several documents which it submits were signed by Mr.Krasniqi as DC-support between 19 November 1998 and 4 February 1999, but it failed to prove that they were actually signed by Mr.Krasniqi. Some of these documents were tendered thorough the bar table, and the Prosecution failed to put them to any witness for authentication.[1813] Most of the remaining documents were tendered through Zyrapi,[1814] whose "authentication" falls short of any satisfactory standard to determine authorship: he had not seen Mr.Krasniqi sign any of these documents; he saw them for the first time at the KSC.[1815] Further, Zyrapi, who is not a handwriting expert,[1816] claimed to be familiar with Mr.Krasniqi's signature;[1817] however, during his 2019 interview, he was shown a document allegedly signed by Mr.Krasniqi and failed to recognise the signature on the document.[1818] Moreover, during cross-examination he admitted that the signatures on some of these documents are different from one another.[1819] The other two witnesses through whom some of these documents were tendered, [REDACTED] and Kurtaj, were unable to confirm that the signature on the document was Mr.Krasniqi's.[1820] Therefore, the evidence is insufficient to conclude that Mr.Krasniqi actually signed *any* of the documents purportedly bearing his name.

522. In any case, should the Panel find that these documents were signed by Mr.Krasniqi, they are evidence that his role as DC-support was limited to formalising existing situations or putting in writing decisions made by others for administrative purposes.

[1813] P01175, P00687, P00688, P00168, P003680, P00623, P03681, P03678, P03682, P03689, P00625, P00626, P00619, P02758, P03824, P03783, P03913.
[1814] P01398, P01399, P01424, P01410, P01414; P01428, P01400, P01411, P01415, P01430, P01436.
[1815] **Zyrapi,** T.20240710, pp.18039-18040.
[1816] *Idem,* p.18039.
[1817] *Idem,* p.18040.
[1818] **Zyrapi,** P01355.6, p.6.
[1819] **Zyrapi,** T.20240710, pp.18041-18042.
[1820] [REDACTED]; **Kurtaj,** T.20240221, pp.12680-12681. *Also* T.20240222, p.12853.

523. Moreover, the Prosecution consistently failed to present evidence concerning the distribution, receipt and implementation of these documents. In this regard, P00647 is of no avail: the register is an attempt to keep track of GS documents, but it does not record or in any way suggest that any given document was ever sent, received or implemented. Other evidence suggests that the KLA lacked any functional administration system for the distribution of documents. For example, Halitjaha testified that the formalisation of his appointment was given to him months after he took over his role and almost by chance: one day he ran into Mr.Krasniqi in Divjakë, who told him that there was a document for him which had been laying around for a while.[1821]

### *3.6.8. November 1998 documents (P00687; P00688; P01016; P01175)*

524. On 19 November 1998, Mr.Krasniqi allegedly signed four documents.[1822] These documents fall short of any military standard, were not signed as "deputy commander" and contain inaccurate information. Moreover, while there is some evidence that they were received by the Dukagjini Zone,[1823] other Zones did not receive them, and they were either never implemented in practice, or were just a formalisation of someone else's decision.

525. P00687 and P00688 are not proper military documents. Part of P00687's header is blank and P00688 has no protocol number, rendering them without effect.[1824] There is no reference to regulations or any legal basis underpinning the documents. At the bottom, the documents read "Pristina, 19.11.1998", despite the GS not being based in Pristina at the time.[1825] There are no initials of the person who drafted or typed them.

[1821] **Halitjaha,** T.20231116, pp.10339-10340.
[1822] P00687; P00688; P01016; P01175.
[1823] *See* P01396.
[1824] **Zyrapi,** T.20240703, p.17542; T.20240717, p.18421. *Also,* **Fondaj,** T.20240626, pp.17239-17240.
[1825] **Zyrapi,** T.20240711, p.18084.

The signature block only contains a signature, but no specification of the signee or his/her title. Notably, these documents are not signed as "deputy commander". All these shortcomings raise serious doubts as to their validity or ability to serve any military purpose.

(a) P00687, P00688

526. P00687 and P00688 refer to journalists and observers. P00687 was shown only to R.Mustafa, who could not recall receiving this document during the war.[1826] Contrary to what the document says, R.Mustafa testified that the GS never selected any person to handle contacts and interactions with international observers.[1827] It was R.Mustafa himself who appointed four individuals for this purpose.[1828] Further, P00687 states that interviews with journalists should be given only with the permission of the GS;[1829] while admitted evidence shows that members of the KLA at various levels frequently gave independent statements and interviews to news outlets.[1830]

527. Similarly, and contrary to Zyrapi's claims, R.Mustafa clarified that F.Humolli, the individual apparently assigned in P00688 to deal with observers in Llap, was "the person who was least engaged in this issue".[1831] Further, despite P00688 being addressed to the international observers, Young had never seen it before.[1832] In sum, these documents were either not distributed or not implemented. In any case, they would reflect Mr.Krasniqi's role as spokesperson[1833] and have no relation to the charges.

[1826] **R.Mustafa**, T.20230711, p.5475.
[1827] P00687, para. 2.
[1828] **R.Mustafa**, T.20230711, pp.5475-5476.
[1829] P00687, para.1.
[1830] *See e.g.* P04165; P00115_ET, P00515_ET.19, P00515_ET.37. *Also* P02094_ET, p.111603; P03551_ET, pp.111718, 111809, 111847.
[1831] **R.Mustafa**, T.20230711, p.5477.
[1832] **Young,** T.20230913, p.7995.
[1833] **R.Mustafa**, T.20230711, p.5474.

(b) P01016

528. P01016 is a decision announcing a change in terminology from "Operational Subzones" to "Operational Zones", which is not relevant to the charges. This change in terminology was agreed at the GS restructuring meeting of 12 November 1998.[1834] P01016 simply formalises that GS decision.

(c) P01175

529. P01175 is a decision formalising the appointment of Dobruna as Chief of the Juridical Sector of the KLA GS. Contrary to the Prosecution's theory,[1835] P01175 is just a formalisation of a decision made by A.Syla without Mr.Krasniqi's involvement.

530. In particular, the [REDACTED],[1836] contains [REDACTED], three days before Mr.Krasniqi's appointment as DC-support, saying:

> [REDACTED].[1837]

531. When Mr.Krasniqi was just the KLA spokesperson, someone in the GS had already requested Dobruna's appointment to the GS. Indeed, Dobruna and Mr.Krasniqi were appointed to their respective roles at the same time, which is incompatible with any involvement of Mr.Krasniqi in Dobruna's appointment.[1838] Zyrapi also testified both at the ICTY[1839] and at the KSC[1840] that Dobruna was

[1834] **Zyrapi,** T.20240701, pp.17399-17400.
[1835] SPO PTB, paras 111(d),141.
[1836] P02099_ET.
[1837] P03190, p.41.
[1838] 4D00011.
[1839] **Zyrapi,** P01356, p.6060.
[1840] **Zyrapi,** T.20240704, p.17642; T.20240711, p.18084; T.20240716, pp.18356-18357.

appointed by A.Syla, following a proposal by R.Haradinaj, and confirmed that P01175 was just a formalisation of the General Commander's decision.[1841]

#### *3.6.9. Other documents concerning appointments*

(a) P00625

532. P00625 is an order dated 6 January 1999 dismissing Commander Bardhi from his position as Brigade 162 commander. The document is allegedly signed by "deputy commander" Mr.Krasniqi to formalise a request [REDACTED].[1842] The Prosecution failed to put P00625 to [REDACTED]. Kurtaj, who was Commander Bardhi's deputy,[1843] testified that P00625 was never received at Brigade 162 and was never implemented, since Commander Bardhi remained Brigade 162 commander until he was killed in a Serbian ambush on 14 May 1999.[1844]

(b) P01411

533. P01411 is an ordinance dated 22 January 1999 transferring Maloku from the GS Operational Directorate to the Dukagjini Zone. During a meeting with the GS on 20 January 1999, R.Haradinaj requested that Maloku be transferred back to Dukagjini to assist with organisation, since Maloku was well-known in the area.[1845] Later that day, in the presence of R.Haradinaj, Mr.Krasniqi informed Maloku about the request. Maloku and R.Haradinaj discussed the tasks to perform in Dukagjini and Maloku agreed to be transferred.[1846] The discussion was entirely between R.Haradinaj and

[1841] **Zyrapi,** T.20240711, p.18084.
[1842] P01109, p.U002-2860.
[1843] **Kurtaj,** T.20240201, p.12504.
[1844] **Kurtaj,** T.20240222, p.12852.
[1845] **Maloku,** P02090.2, p.12; T.20250324, p.25746; **Zyrapi,** T.20240702, p.17449; T.20240711, pp.18082-18083. *Also,* P02095, p.SPOE00226474.
[1846] **Maloku,** P02091, para.21; T.20250326, p.25946.

Maloku—Mr.Krasniqi was not involved. Zyrapi, as Maloku's superior in the Operational Directorate, also agreed.[1847]

534. The next day, Mr.Krasniqi handed Maloku the written ordinance formalising his transfer,[1848] drafted by A.Grabovci, the head of the personnel directorate.[1849] Mr.Krasniqi did not give Maloku any instructions other than to assist in Dukagjini.[1850] After returning to Dukagjini, Maloku had no connection to the GS, and did not report back to it.[1851] Both Maloku and Zyrapi agreed that P01411 was just a formalisation of a decision agreed upon between R.Haradinaj, Maloku and Zyrapi, which was entirely premised—and dependent—on Maloku's consent.[1852]

(c) P01430

535. P01430 is a document dated 4 February 1999 allegedly appointing Daut Haradinaj and Maliq Ndrecaj as commanders of Brigades 131 and 132 respectively. The Prosecution adduced no evidence that this document was ever sent or received; in any case this document is only a formalisation of a long-existing situation.

536. First, P01430 was tendered through Zyrapi who was unable to remember this document or these appointments.[1853] The Prosecution failed to put P01430 to any other witness. Second, Maliq Ndrecaj had been acting as brigade commander since June or July 1998,[1854] and had also formally been appointed in this position by R.Haradinaj on

[1847] **Zyrapi,** T.20240711, p.18083.
[1848] **Maloku,** P02091, para.21; T.20250326, p.25947.
[1849] P01411 – *see* A.G. in the bottom-left corner.
[1850] **Maloku,** P02090.5, p.10.
[1851] *Idem,* p.9.
[1852] **Maloku,** P02090.5, p.1; T.20250325, pp.25844-25855; T.20250326, p.25947; **Zyrapi,** T.20240711, p.18083.
[1853] **Zyrapi,** T.20240702, pp.17481-174852.
[1854] **Zyrapi,** T.20240711, p.18077; 4D00070; P03196.

13 December 1998.[1855] Similarly, Daut Haradinaj had been active in Gllogjan since June/July 1998,[1856] and by December 1998—months before P01430—he had already been appointed as Brigade 131 Commander.[1857]

537. Zyrapi explained that P01430 was a document "of a repetitive nature",[1858] as part of a wider project whereby "documents were rewritten on the brigade commanders that had already been in place."[1859]

#### *3.6.10. Documents about general conduct*

(a) P00168/P00183

538. P00168 is a document dated 2 December 1998, instructing ZCs "to issue orders to the Military Police to arrest those who, by showing loyalty to the occupier, have put on the uniform of the Serb police, thus committing an act of treason towards the Albanian people."[1860] The Prosecution failed to prove that this document was signed by Mr.Krasniqi, considered valid, distributed, implemented, or was in any way related to civilians or alleged "opponents".

539. First, the document lacks minimum military requirements. The signature block only reads "GS of the KLA" and lacks the name of the signee and his/her title, thereby rendering it invalid.[1861]

[1855] 4D00069; **Zyrapi,** T.20240711, p.18076.
[1856] P03095; P03062; P03027.
[1857] P02098, p.25 PDF; P03196; P03197.
[1858] **Zyrapi,** T.20240711, p.18078.
[1859] *Idem,* p.18080.
[1860] P00183 is a copy of P00168.
[1861] **Kurtaj,** T.20240222, p.12853.

540. Second, the Prosecution put P00168 to five of its own witnesses, including two members of the GS,[1862] a member of the Llap Zone,[1863] a brigade deputy commander,[1864] and a battalion commander.[1865] Strikingly, none of them had ever seen or been made aware of it during the war.[1866] In this context, the mere existence of two identical copies of this document is wholly insufficient to establish distribution. Whilst P00168 contains a handwritten note saying "Llapi",[1867] the Prosecution failed to put this document to R.Mustafa, and Ibishi testified that he had never seen it reach the Llap Zone headquarters.[1868]

541. Third, the Prosecution failed to prove that P00168 was implemented. There is no evidence of any systematic wave of arrests of local police members in Kosovo in the weeks following P00168. Evidence of arrests of local police members months after December 1998 would prove nothing because the Prosecution failed to prove any connection between P00168 and any such arrests, which would in any case concern combatants taking part in hostilities, against whom the local KLA was entitled to act.

542. Contrary to Prosecution submissions,[1869] the wording "those people who, by showing loyalty to the occupier, have put on the uniform of the Serb police.." refers to members of the so-called "local police",[1870] which were police units composed of both Serbs and Albanians which were set up, armed, and involved in combat operations against the KLA by the Serbian police and paramilitary units.

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[1862] Bashota, Zyrapi.
[1863] Ibishi.
[1864] Kurtaj.
[1865] [REDACTED].
[1866] **Kurtaj,** T.20240222, p.12853; [REDACTED]**:** P01605.7, pp.4-6; [REDACTED]**,** P01355.6_ET, p.6; **Ibishi,** T.20241024, p.21164; **Bashota,** T.20241202, p.23058.
[1867] P00168.
[1868] **Ibishi,** T.20242024, p.21164.
[1869] SPO PTB, para.75. *Also,* F03464, para.5.
[1870] Referred to also as "local security".

543. When shown P00168, [REDACTED],[1871] Bashota,[1872] Ibishi[1873] and [REDACTED][1874] confirmed that the document was intended for members of the local police and referred only to individuals "who have joined the Serbian police".

544. During Bashota's testimony, the Prosecution attempted to create a link between P00168 and a cable[1875] describing a discussion between Bashota and Byrnes regarding Hill's proposal to create a local police with KLA and LDK members.[1876] Bashota (i) clarified that Hill's proposal was never implemented; (ii) excluded that P00168 was connected to Hill's proposal; and (iii) insisted that P00168 refers solely to local police "who wore the uniform of Serbia and operated against the Kosovo Liberation Army, so they formed part of the chain of command of the Serbian army and police."[1877]

545. Hill was unable to recall any aspect of his plan relating to the local police, and could not remember any talk with the KLA about this topic.[1878] He did, however, stress that the KLA's main concern was avoiding a situation whereby a part of the population would be reporting to the newly-created structures, and another part would be reporting to Serbian police and administration.[1879] In any case, Hill's proposed plan never came into effect because it was superseded by Rambouillet and then by UNMIK's administration.[1880] Zyrapi similarly confirmed that at the time P00168 was issued, [REDACTED].[1881] What the Prosecution described as a "manifest

[1871] [REDACTED], P01605.7_ET, pp.4-5.
[1872] **Bashota,** T.20241202, pp.23058-23060.
[1873] **Ibishi,** T.20241024, pp.21164-21165.
[1874] [REDACTED]**,** P01355.6_ET, pp.7-8.
[1875] P01068, pp.116696-116698.
[1876] **Bashota,** T.20241202, pp.23055-23060.
[1877] *Idem,* pp.23058-23060.
[1878] **Hill,** T.20251111, pp.27736-27737.
[1879] **Hill,** T.20251111, p.27737.
[1880] *Idem,* p.27738.
[1881] **Zyrapi,** P01355.6, p.7.

connection"[1882] is nothing more than a Prosecution assumption refuted by its own witnesses.

546. P00168 refers solely to combatants who took active parts in hostilities. Local police (also known as "local security" or "security coordinators") were established in July/August 1998,[1883] and by September 1998 were active in over 70 villages in Kosovo.[1884] By February 1999, they operated in Gjakova, Pec, Prizren, Mitrovica, Decani, Klina, Kaçanik and Lipjan, and units were being set up in Pristina, Vucitrn, Gora, Istok and Zvecan.[1885] In early December 1998, when P00168 was issued, new local police units had just been established in Mitrovica.[1886]

547. Local police units were made up of Albanians, Serbs, and other ethnic minorities.[1887] They were equipped with Serbian police uniforms[1888] and weapons,[1889] including pistols, ammunition, batons, and handcuffs,[1890] and were part of the Serbian Police's chain of command.[1891] Local police units carried out operations against the KLA in areas which were difficult to penetrate by the Serbian police; they arrested suspected KLA members and transferred them to the closest MUP police station.[1892]

[1882] F03464, para.5.
[1883] 4D00100, p.DJK01035-ET; 4D00081, p.DJK00989-ET. *Also,* **Kickert,** T.20240529, pp.16263-16265; [REDACTED], 4D00140, para.17.
[1884] 1D00141; **Kickert,** T.20240529, p.16265.
[1885] 4D00081, p.DJK00989-ET; 4D00100, p.DJK01035-ET. *Also,* 1D00141, bottom of page 1.
[1886] 4D00081, p.DJK00989-ET.
[1887] [REDACTED]**,** P01605.7, pp.4-6; [REDACTED]; **Bashota,** T.20241202, pp.23058-23060; **Kurtaj,** T.20240222, p.12853; **Kickert,** T.20240529, pp.16263-16267; 4D00081, p.2; [REDACTED], 4D00140, paras 11,17; 4D00056.
[1888] [REDACTED]**,** P01605.7, pp.4-6; **Ibishi,** T.20241024, p.21165; **Bashota,** T.20241202, p.23058,23060; **Kickert,** T.20240529, p.16264-16265; [REDACTED]: 4D00140, para.5; 4D00100, p.DJK01035-ET; 4D00081, pp.DJK00990-ET-DJK00991-ET.
[1889] [REDACTED]: 4D00140, para.6; 4D00100, p.DJK01035-ET; 4D00081, p.DJK00991-ET.
[1890] 4D00100, p.DJK01035-ET; 4D00081, p.DJK00991-ET.
[1891] [REDACTED]**,** P01605.7, pp.4-5; [REDACTED]; **Ibishi,** T.20241024, p.21164; **Bashota,** T.20241202, pp.23058-23060; **Kurtaj,** T.20240222, pp.12854-12855; 4D00100, pp.DJK01026-ET, DJK01030-ET, DJK01035-ET; 4D00081, p.DJK00989-ET.
[1892] [REDACTED], 4D00140, paras 9-10; 4D00100, p.DJK01035-ET; 4D00081, p.DJK00989-ET.

Those arrested were beaten, tortured, or mistreated.[1893] Albanian civilians suspected to be associated with the KLA were killed in cold blood.[1894] P00168's language must only be read as referring to combatants taking part in hostilities.

(b) P01414

548. P01414 is a document dated 11 January 1999 forbidding the use of masks. When Zyrapi visited the Zones, the Pashtrik, Shala and Drenica ZCs raised concerns about unknown individuals operating outside of their respective zones and wearing masks.[1895] The issue was also raised by ZCs during a meeting with the GS, when P01414 was issued,[1896] with the responsibility for implementation laying with ZCs.[1897] Accordingly, P01414 is a formalisation of a GS decision following discussions between Zyrapi and ZCs, as also suggested by the signature block only reading "GS".

549. P01414 was an attempt to stop negative tendencies of individuals who *claimed* to be members of the KLA and wore masks to do things they were not authorised to do—especially against civilians or civilian property.[1898] The GS disagreed with any behaviour which would have led the KLA to be portrayed as a terrorist organisation,[1899] consistent with its need to be recognised as a legitimate army.[1900] However, Zyrapi did not know to what extent this order was implemented, considering that not all orders "were fully implemented by the Zone

[1893] [REDACTED], 4D00140, paras 10,14,18; 4D00056; **Ibishi,** T.20241024, p.21165; **Kurtaj,**T.20240222, pp.12855.
[1894] [REDACTED], 4D00140, paras.7,19; 4D00056.
[1895] **Zyrapi,** T.20240716, pp.18328-18320.
[1896] **Zyrapi,** T.20240717, p.18509.
[1897] *See* P01414.
[1898] **Zyrapi,** T.20240717, p.18511.
[1899] *Idem,* p.18512.
[1900] *Supra,* section 2.7.

Commanders".[1901] Indeed, other evidence on the record suggests that rogue elements within local KLA units continued to wear masks after January 1999.[1902]

550. The Prosecution claims that "special units" were "exempt from the GS's prohibition for KLA members to wear masks".[1903] This unfounded allegation is only based on hearsay recorded in P04043, an OSCE document reporting that a liaison conferred with an unidentified "KLA Regional Cdr", who allegedly stated that "a very strong message came from their HQ (message not seen), forbidding the use of "masks" by KLA personnel—with the exception of "Special Forces" on "Special Operations"." Notably, there is no information identifying this "KLA Regional Cdr", nor is there any corroboration about this purported exemption. P01414 was not shown to any witness. It makes no reference to any exemption for "special forces" or "special operations". P04043 lacks any probative value and should be given no weight.

#### *3.6.11. Summons, invitations, and other administrative documents (P00616, P01428, P02758, P01105)*

551. P00616 and P01428 are documents inviting ZCs to a meeting on 20 January 1999 and asking them to prepare a comprehensive policy analysis of the war.[1904] Since the restructuring, this was only the second meeting with ZCs.[1905]

552. Three points stand out. First, [REDACTED].[1906] Indeed, in January and February 1999, ZCs were often unable to reach the GS due to the situation on the ground.[1907] Second, P00616 shows that in January 1999, the GS still had extremely limited

[1901] **Zyrapi,** T.20240716, p.18329.
[1902] *E.g.*, P01129, paras.18,23; P01108, pp.3,4,6,7,9.
[1903] SPO PTB, para.167.
[1904] P00616.
[1905] **Maloku,** P02090.3, p.2; T.20250325, p.25867.
[1906] P00895_ET, p.U002-0193.
[1907] P03551_ET, p.111698. [REDACTED].

knowledge of what was happening in the Zones, having to ask ZCs, for the first time, to provide information about several issues. These inquiries were not Mr.Krasniqi's initiative but rather the result of discussions in a GS meeting on 29 December 1998.[1908] Third, ZCs were asked to provide a "conclusion with your opinion on what more is to be done and how",[1909] demonstrating that the GS was essentially asking ZCs for guidance on how to improve the KLA, not the other way around.

553. P02758 and P01105 are two ordinances inviting individuals to report to the GS. P01105 is discussed elsewhere.[1910] P02758 invited E.Hoti, A.Kreyziu, N.Shala and R.Bega to report to the GS on 21 January 1999. Despite submitting that this document is connected to [REDACTED],[1911] the Prosecution did not put P02758 to any of its witnesses, let alone to any of the individuals mentioned. There is no evidence that any of them reported to Divjakë, or that any disciplinary consequences followed for non-compliance. The Prosecution adduced nothing beyond the bare existence of the document itself. P02758 has minimal probative value and should be given no weight.

554. Likewise, P01410 and P00626 are documents concerning the establishment of RFK. They bear no relevance to the charges of this case and have minimal probative value.

#### *3.6.12. Documents about logistics and finance*

555. The Prosecution also relies on a series of documents allegedly signed by Mr.Krasniqi to submit that the GS received funds from the Homeland Calling Fund,

[1908] P01109, p.U002-2865. *Also,* **Zyrapi,** T.20240715, pp.18241-18242.
[1909] P00616.
[1910] *Supra,* para.359.
[1911] F02944/A01, item 215.

provided and authorised disbursement of funds in the zones, and ordered the collection of taxes.[1912] These submissions ignore reality.

556. The KLA was an army of volunteers, and nobody received salaries; however, to buy weapons and other necessities, the KLA set up the Homeland Calling Fund in Tirana,[1913] which gathered voluntary contributions, mostly from Albanians living in the diaspora.[1914] The KLA was financed entirely by voluntary contributions.[1915] In addition, the KLA had logistics bases in Albania, under the command of Xh.Gashi ("Plaku").[1916] The GS never established its own logistics directorate because all KLA logistics were outside Kosovo.[1917] Idriz Hyseni, who operated under Zyrapi's orders,[1918] dealt only with the GS's internal logistics.[1919] Similarly, the so-called finance directorate was ineffective. It was a one-man directorate headed by L.Brahimaj, who was outside Kosovo in December 1998 and January 1999;[1920] by 5 January 1999, no other director had been appointed,[1921] and there were still similar issues on 14 January 1999.[1922]

557. Since logistics were handled outside of Kosovo, the GS in Divjakë had very little money at its disposal, which came from small donations from civilians inside Kosovo.[1923]

[1912] SPO PTB, paras.139-140.
[1913] **Zyrapi,** T.20240715, pp.18182-18183.
[1914] *Idem,* p.18182.
[1915] *Idem,* p.18182.
[1916] **Zyrapi,** T.20240703, p.17501; T.20240715, p.18183; P01355.11_ET, p.25; P01355.12_ET, pp.3,24.
[1917] **Zyrapi,** P01355.7_ET, p.13; T.20240715, p.18183.
[1918] **Zyrapi,** P01355.10_ET, p.15.
[1919] **Zyrapi,** P01355.6_ET, p.26; T.20240715, p.18183.
[1920] **Zyrapi,** P01355.14_ET, p.17; T.20240715, p.18190.
[1921] 4D00068, p.1.
[1922] *Idem,* p.2.
[1923] **Zyrapi,** T.20240715, pp.18183-18184.

558. The ZCs either sent requests for funds and logistics directly to the Homeland Calling Fund or set up parallel supply systems. R.Haradinaj sent people to Albania to retrieve supplies without asking anyone, and eventually set up his own parallel mechanism for logistics.[1924] R.Mustafa smuggled weapons from Albania, Bosnia and Serbia directly into the Llap Zone,[1925] and was financed by the diaspora and businessmen in Pristina.[1926] [REDACTED] show that various fundraising organisations in Germany transferred money directly to [REDACTED].[1927] In R.Mustafa's words: "it was rather me providing logistical support to the GS than the GS to me".[1928] S.Selimi likewise never received any supply or support from the GS.[1929] In late December 1998, the brigades in Pashtrik relied entirely on the local civilian population for logistical support.[1930]

559. The documents allegedly signed by Mr.Krasniqi must be read in the context that the GS in Divjakë had no role in—or control over—the procurement of funds and supplies in the zones.[1931]

(a) Templates for funds and logistics (P03680; P03689, P01400)

560. The Prosecution tendered three almost identical documents titled "requests for allocating the financial means to purchase necessary goods and items". Each document bears the signature of the requesting officer (either I.Hyseni or S.Veseli) and

[1924] 4D00074; *Also,* **Zyrapi,** T.20240715, pp.18184-18185.
[1925] **R.Mustafa**, T.20230713, p.5633; T.20230714, p.5718.
[1926] **R.Mustafa**, T.20230713, p.5634; T.20230714, pp.5718-5719.
[1927] P02094_ET, pp.111511,111562,111575-111576.
[1928] **R.Mustafa**, T.20230714, p.5719; T.20230717, p.5882.
[1929] **S.Selimi,** T.20250213, pp.25254-25255,25291.
[1930] [REDACTED]**,** P01097.2_ET, pp.5-6.
[1931] **Zyrapi,** T.20240715, p.18187.

the supplier and a countersignature which the Prosecution submits is Mr.Krasniqi's. None of these individuals was interviewed by the Prosecution. Instead, Zyrapi testified that (i) P01400 is incomplete, as there is no designation of whether the funds are actually allocated or not;[1932] (ii) considering the signature block, it is possible that Mr.Krasniqi signed these documents because L.Brahimi was absent, not because "he had the authority to do so";[1933] (iii) the sums of money listed are trivial compared to the financial needs of the army;[1934] and (iv) these sums of money and supplies were only for the internal needs of the GS in Divjakë.[1935]

561. Notably, 4D00075 is another almost identical document which was signed by someone other than Mr.Krasniqi, suggesting that these trivial documents were signed by whoever was available in Divjakë for purely administrative purposes.[1936] This is corroborated by [REDACTED].[1937] [REDACTED].[1938]

(b) Other documents relating to finances and logistics

562. P01398 and P01415 are two documents addressed to Brigade 121 and the Pashtrik Zone respectively, *i.e.* the brigade and zone closest to Divjakë which could readily provide logistical assistance. These two documents show the extent of the dysfunction at the GS. On 8 December 1998, the GS still lacked chairs and desks, which had to be requested from Brigade 121.[1939] Over a month later, the GS had to beg logistical support from the zones, corroborating R.Mustafa's assertion that the Zones provided

[1932] **Zyrapi,** T.20240715, pp.18191-18192.
[1933] *Idem,* p.18192.
[1934] *Idem,* p.18192.
[1935] *Idem,* p.18192.
[1936] *Idem,* p.18193.
[1937] P02094_ET, p.111598.
[1938] [REDACTED].
[1939] **Zyrapi,** T.20240701, p.17414.

logistical support to the GS, rather than the other way around.[1940] There is no evidence that either request was ever enforced.

(c) Documents relating to taxation

563. The Prosecution tendered two documents relating to a purported tax on Kosovo Albanians employed abroad[1941] and vehicles bearing Serbian licence plates.[1942] The imposition of taxes during the war remained an aspiration, as the KLA lacked the necessary administrative network and resources. The Prosecution failed to prove that these documents were ever implemented.

564. The distribution of P03681 and P03682—and in fact the issue of taxation in general—was confined to the area of Brigade 121, which included Divjakë and the surrounding villages.[1943] There is no evidence that these documents were distributed or implemented in any other area of the Pashtrik Zone, let alone elsewhere in Kosovo.

565. In December 1998, Dr.F.Selimi of Brigade 121 informed the GS about the healthcare situation in the villages around Divjakë.[1944] Dr. Selimi noted that "[t[he equipment and material is supplied mainly by humanitarian sources and voluntary donors. The funding this service gets from the Army fund is small"[1945] and therefore suggested "an introduction of a tax system for the services of different activities".[1946]

[1940] **R.Mustafa**, T.20230714, p.5719; T.20230717, p.5882.
[1941] P03681.
[1942] P03682.
[1943] **Zyrapi,** T.20240701, pp.17414-17415.
[1944] P01126.
[1945] *Ibid*.
[1946] *Ibid*.

566. [REDACTED], shortly after this request, the issue was discussed during a GS meeting.[1947] Two days later, P03681 and P03682 were prepared. Notably, the Prosecution discussed taxation only with R.Qeriqi and Naser Krasniqi, both members of Brigade 121. Naser Krasniqi explained that (i) the vast majority of people supported the KLA voluntarily;[1948] (ii) cashing in finances from those who had not contributed before was done only in a very limited number of cases, no more than 40 times;[1949] (iii) it is possible that this was not happening anywhere else outside Naser Krasniqi's brigade;[1950] (iv) in any case, people could donate as much as they wanted and they would be marked as having paid;[1951] (v) the average donation from these individuals was 100 DMs each, much lower than the amount stipulated in P03686; and (vi) all the amounts collected were used for armaments, medications, clothes, shoes, wood, fuel and other needs for the soldiers, and there were still occasions when the soldiers had no food for multiple consecutive days because the money was needed for medication.[1952]

567. Similarly, in R.Qeriqi's battalion, over 80% of the contributions were given voluntarily;[1953] he was aware of only one instance when a contribution was enforced on a citizen, and even in that case, this person had already contributed of his own will.[1954] Even in Brigade 121, implementation was limited, if it materialised at all: contributions remained voluntary for the most part. There is no evidence that P03681 and P03682 were received and/or implemented anywhere else.

[1947] P01104, p.SPOE00227676.
[1948] **Naser Krasniqi,** T.20250129, p.24793.
[1949] *Ibid*.
[1950] *Ibid*.
[1951] P02016, p.U000-5985; **Naser Krasniqi,** T.20250129, p.24791.
[1952] P02016, p.U000-5986; **Naser Krasniqi,** T.20250129, pp.24792-24793.
[1953] P01116_ET.5.
[1954] [REDACTED], P01119, p.8; P01115.5_ET, p.5; P01116_ET.5.

568. On paper, the creation of a taxation system was the responsibility of the "Public Relations and Civil Administration Directorate", headed by R.Buja.[1955] For this reason, P03681 and P03682 were initially drafted in R.Buja's name.[1956] Possibly due to his temporary absence, however, the same exact ordinances were also drafted with only "GS" in the signature block,[1957] so that whoever was available in Divjakë could sign the documents. If Mr.Krasniqi signed P03681 and P03682—which the Prosecution has not proved—it is only because he was the GS member who, for security reasons, was most present in Divjakë.[1958] This kind of assistance would be consistent with Mr.Krasniqi's administrative role in this period. There is no evidence that Mr.Krasniqi was involved in any other way in the collection of taxes.

569. P03681 and P03682 must also be read in light of the KLA's inability to enforce any fiscal system during the conflict. The creation of a unified taxation system remained aspirational. The KLA was funded solely through voluntary contributions.[1959] On 12 January 1999, the GS invited Albanian citizens to contribute voluntarily and **made public its intention to transform this invitation into a permanent obligation only after 1 March 1999.**[1960] However, by the end of February `1999, the local directorates of the PRCAD were still widely ineffective.[1961] With the developments in Rambouillet, taxation never became reality: the first attempt to set up a nation-wide fiscal system occurred in mid-late July 1999, when the PGoK issued the first law on taxation.[1962] However, this law was never implemented, because taxation fell within the competences of UNMIK.[1963] In any case, any conduct relating

[1955] P03667; 4D00068, p.SPOE00226468.
[1956] P03683; P03684.
[1957] *See* the signature blocks of P03681 and P03682.
[1958] **Zyrapi,** T.20240715, p.18172.
[1959] **Zyrapi,** T.20240715, p.18182.
[1960] P04166_ET.
[1961] P00811_ET.49.
[1962] P03934.
[1963] **Covey,** T.20251002, pp.27622. *Also,* P04120, sections 12,18.

to taxation attributed to Mr.Krasniqi would be entirely lawful and would have no connection with the charges in this case.

#### *3.6.13. Other documents*

(a) P01424

570. P01424 is an ordinance dated 3 January 1999 requesting the Zones to send their telephone numbers to the GS. The document was drafted by S.Veseli, a member of the Operational Directorate, consistent with other evidence that it was the latter which maintained contacts with the zones.[1964] P01424 has minimal relevance to the charges; it does show, however, that in January 1999—almost two months after the restructuring—communication with the zones remained rudimentary, to the point that the GS did not have the phone numbers to contact the Zones.

(b) P00623

571. P00623 is a document establishing a commission to define boundaries between the OZs. In 2019, Zyrapi explained that the delineation of boundaries fell within his own responsibilities and that he began working on this issue in November/December 1998 "with [his] people", meaning the operational directorate.[1965] This project was completed in January 1999.[1966] Zyrapi excluded that this was done by a "council".[1967] In 2024, Zyrapi changed his account and claimed that the commission was created in January 1999; however, he clarified that by that time, he, as Chief of Staff,[1968] had

[1964] *Infra,* section 3.6.18.
[1965] **Zyrapi,** P01355.14_ET, p.16. *Also,* T.20240717, p.18514.
[1966] **Zyrapi,** P01355.14_ET, p.16.
[1967] *Idem,* p.16.
[1968] **Zyrapi,** T.20240717, pp.18514-18515.

already delineated the Zones' borders.[1969] Maloku stressed that establishing the Zones' boundaries was the Chief of Staff's responsibility, and that the zones would report back to him if any changes of the boundaries occurred.[1970]

572. It was Zyrapi who selected the members of the commission.[1971] P00623 was drafted by S.Veseli, Zyrapi's deputy, who was also nominated as a commission member.[1972] After a discussion at a GS meeting,[1973] Zyrapi gave the document to Mr.Krasniqi to sign.[1974] Mr.Krasniqi had to ask Zyrapi to explain who the commission's members would be, as he had no information about—or involvement in—this project.[1975] Afterwards, Zyrapi worked alongside F.Limaj and R.Selimi – two commission members—in setting up the border lines of Brigade 121.[1976] Fundamentally, this is another instance in which Mr.Kransiqi, in order to provide administrative support, formalised something that the Chief of Staff had already decided.

#### *3.6.14. Mr.Krasniqi had no operational role or responsibility*

573. In an effort to hide his own responsibilities, for the first time in 2019 and 2024, Zyrapi sought to impute an operational and commanding role to Mr.Krasniqi.[1977] This assertion was refuted by every other Prosecution witness, revealing the real agenda behind Zyrapi's KSC testimony.

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[1969] **Zyrapi,** T.20240701, pp.17400-17401; T.20240710, pp.17955-17956.
[1970] **Maloku,** P02090.5, p.8.
[1971] **Zyrapi,** T.20240717, p.18516.
[1972] *Idem,* p.18515.
[1973] P01109, p.7.
[1974] **Zyrapi,** T.20240717, p.18516.
[1975] *Idem,* pp.18516-18517.
[1976] **Zyrapi,** P00775_ET, p.SPOE00068084.
[1977] *E.g.* **Zyrapi,** P01355.6_ET, p.31; P01355.7_ET, pp.3-7,9; T.20240701, p.17416; T.20240702, pp.17421,17435,17447,17449,17476; [REDACTED]; T.20240716, p.18324; T.20240717, pp.18408,18410,18516.

574. Importantly, the KLA was a volunteer army created from the bottom up, with no institutional apparatus to refer to.[1978] It did not operate like a regular army.[1979] For this reason, with the restructuring, individuals were assigned *formal* positions which, were not always exercised in practice.[1980] The Panel must be slow to accept any purported position on paper as evidence of individual responsibilities; rather, the Panel should focus on each individual's *substantive* tasks, roles and responsibilities within the GS and the KLA.

575. Contrary to Zyrapi's assertions, there was a hard split in the GS between the former career officers, who had extensive military knowledge and experience, and the rest of the GS, being lay people. As logic dictates, the former were the ones who—subject to the limited functionality of the GS—exercised an operational, decisional and commanding role, while the latter only provided support.

576. Maloku, the second highest-ranking officer in the GS, described this split in the following terms:

> **[T]here were only three officers [Maloku, S.Veseli and Zyrapi] that had professional capacity and knowledge**, and they are the ones who knew how to organise the KLA [GS] and how to assign responsibility to the directorates. **The rest of the KLA [GS] members had no military knowledge or training**".[1981]

577. In the GS, the only individuals with military knowledge and expertise were members of the operational directorate who had been selected by Zyrapi,[1982] while all the remaining members, including the Commander and the two deputy commanders,

[1978] **Maloku,** T.20250325, pp.25842,25871.
[1979] **Fondaj,** T.20240626, p.17249.
[1980] **Zyrapi,** T.20240710, p.17971. *Also,* **Fondaj,** T.20240626, pp.17248-17249.
[1981] **Maloku,** T.20250326, p.25936. *Also* P02091, para.12.
[1982] **Zyrapi,** T.20240711, p.18058.

were lay people with no prior training or experience in military matters,[1983] who were not qualified to hold any post in a regular army.[1984]

578. This split was reflected in the configuration of the GS headquarters in Divjakë. One building was occupied by Zyrapi, S.Veseli, Maloku and S.Syla.[1985] These were all military experts who managed operations and communications, received reports and monitored events in the field.[1986]A separate building, the white house, instead hosted Mr.Krasniqi, R.Buja, A.Grabovci, and others: none of these individuals had any prior military knowledge or background.[1987]

### *3.6.15. Zyrapi, not Mr.Krasniqi, was the Chief of the GS*

579. In NATO structures—upon which the restructuring was based[1988]—there is a difference between the "Chief of Staff", who runs the headquarters and has an administrative role, and the "Chief of GS", which is a command position concerned with strategic military matters.[1989] In all armies, the Chief of GS is the highest-ranking officer.[1990] After November 1998, Zyrapi held both positions, in addition to his role as head of the Operational Directorate.[1991]

580. In 2019, Zyrapi sought to downplay his own role by claiming that Mr.Krasniqi, as the "first deputy commander",[1992] took on all of the authority and functions of the

[1983] **Maloku,** T.20250326, p.25936; **Zyrapi,** T.20240710, pp.18043-18044; **Bashota,** T.20241203, pp.23228-23229.
[1984] **Zyrapi,** T.20240710, p.18044.
[1985] **Maloku,** P02090.5, pp.4-5; P02091, para.15; T.20250325, pp.25780-25781; **Zyrapi,** T.20240710, pp.18032-18033.
[1986] **Maloku,** P02090.5, p.2; T.20250325, p.25870.
[1987] **Zyrapi,** T.20240710, p.18032; **Maloku,** P02091, para.15.
[1988] **Zyrapi,** T.20240710, pp.17938-17939.
[1989] **Duncan,** T.20250923, p.27313.
[1990] **Maloku,** T.20250326, p.26022.
[1991] *See* **Zyrapi,** P01356, pp.5941-5942.
[1992] **Zyrapi,** P01355.6_ET, p.31; P01355.7_ET, pp.5-7; T.20240717, p.18410.

commander whenever A.Syla was absent from Kosovo,[1993] including the approval of "actions and operations".[1994] Contrary to this false, uncorroborated assertion, there is overwhelming evidence that it was Zyrapi, not Mr.Krasniqi, who held the post of "Chief of the KLA GS" and exercised all decisional power and authority in Kosovo whenever A.Syla was absent.

581. In 2016, Zyrapi himself stated: "in November of 1998, I was appointed as Chief of GS of the KLA",[1995] adding that it was his responsibility to order and approve combat operations,[1996] and "manage and lead the GS".[1997] In 2018, he confirmed again that he was the "Chief of the KLA GS",[1998] while Mr.Krasniqi was only a spokesperson and a deputy commander *for political affairs.*[1999]

582. During direct examination and part of Thaçi's cross-examination, Zyrapi continued to describe himself as "Chief of the GS".[2000] It was only when the Defence put to Zyrapi that "Chief of the GS" is a command position, that he began to backtrack: first by denying he ever had hat role, claiming instead that his title was "chief of staff of the GS"[2001] and then, after being confronted with written documents, by claiming that "Chief of the GS" is usually a commanding position but not in the KLA, because there was also a Commander.[2002]

583. This deplorable attempt to evade his responsibilities is further exposed by other admitted evidence. First, during the war Zyrapi himself signed and distributed at least

[1993] **Zyrapi,** P01355.7_ET, pp.3-4.
[1994] **Zyrapi,** T.20240717, p.18411.
[1995] **Zyrapi,** P01356_ET, p.5932.
[1996] **Zyrapi,** P01356_ET, p.5957-5958. *Also,* T.20240703, pp.17617-17618.
[1997] **Zyrapi,** P01356_ET, p.6268.
[1998] **Zyrapi,** P00775_ET, p.SPOE00068081. *Also,* p.SPOE00068083.
[1999] **Zyrapi,** P00775_ET, p.SPOE00068083.
[2000] **Zyrapi,** T.20240703, p.17537.
[2001] *Idem,* p.17616.
[2002] *Idem,* p.17617.

six orders to the OZs as "Chief of KLA GS".[2003] As an experienced military officer,[2004] it is simply not credible that Zyrapi did not know the meaning and implications behind this title, especially within a structural framework he designed himself.

584. Second, KLA members signed documents addressed to Zyrapi as "Chief of GS".[2005] These include [REDACTED][2006] and S.Dragaj,[2007] who were both career officers with a close personal connection to Zyrapi,[2008] and thus were well aware of Zyrapi's title and authority.

585. Third, several witnesses corroborate Zyrapi's role as "Chief of GS". Bashota,[2009] Maloku,[2010] and R.Mustafa[2011] repeatedly described Zyrapi as the "Chief of the HQ" and the "Chief of the GS". Maloku also confirmed that the position of "Chief of the GS" is above that of "Chief of Staff" and is a command position.[2012] Zyrapi's title was also confirmed by former career officers such as [REDACTED], who had known Zyrapi since the 1980s,[2013] [REDACTED][2014] and [REDACTED].[2015] [REDACTED], who was appointed by Zyrapi,[2016] stressed that there was only one Chief of GS and that was Zyrapi.[2017] [REDACTED], who had strong ties to Zyrapi, stated that Zyrapi was the "Chief of the GS for the whole of Kosovo" and always introduced himself with this

[2003] P00624, P00628, P00630, P00631, P01365, P01618.
[2004] **Zyrapi,** T.20240703, p.17532; T.20240710, p.180223.
[2005] *E.g.,* P01432; P01360.
[2006] P01432. *Also,* [REDACTED].
[2007] P01360. *Also,* **Zyrapi,** P01355.9_ET, p.8.
[2008] **Zyrapi,** T.20240703, p.17545; T.20240708, p.17807.
[2009] [REDACTED], P01870.2_ET, p.4; P01872, para.18.
[2010] **Maloku,** P02088, p.2; P02090.5_ET, p.1.
[2011] **R.Mustafa**, T.20230714, p.5700.
[2012] **Maloku,** T.20250326, p.26023.
[2013] [REDACTED].
[2014] [REDACTED], P01097.11_ET, p.5; *also,* 4D00045_ET; [REDACTED].
[2015] [REDACTED], P01854.4, p.21.
[2016] [REDACTED], P01543_ET, pp.8-9.
[2017] *Idem,* p.18.

title,[2018] a circumstance corroborated by [REDACTED].[2019] Strikingly, none of the above-mentioned witnesses ever mentioned Mr.Krasniqi being in charge of the GS in Kosovo.

586. Fourth, long before the Indictment, Mr.Krasniqi described Zyrapi in his books as the "Chief of the GS".[2020] Even the Prosecution acknowledged in their opening statements that Zyrapi held this role.[2021]

587. Finally, the minutes of a meeting between the GS and the heads of the directorates in late December 1998 confirm Zyrapi's role.[2022] The first point of the agenda was: "[b]riefing by the leadership and Command of the GS". Shortly below, the notes specify that "the meeting was chaired by Mr. B.Zyrapi, who spoke about the leadership and command structure".[2023] Even in contemporaneous documents, Zyrapi was regarded as someone who embodied the GS leadership.

588. In summary, there is no evidence corroborating Zyrapi's false claim that it was Mr.Krasniqi who commanded the GS and the KLA in A.Syla's absence. This is supported by logic: with the Commander outside the country, it must be the military experts who lead the army; any contention that the KLA was led by Mr.Krasniqi, a lay person with no military knowledge or skill, whose formal title was either not known or not recognised in the KLA, is nothing short of absurd.

### *3.6.16. Zyrapi, not Mr.Krasniqi, was in charge of the GS directorates*

[2018] [REDACTED], P01327.3, pp.3,5; P01327.1, p.27; P01327.4_ET, p.10; P01327.9, p.25.
[2019] **M.Kololli,** P01830.1_ET, pp.22-23.
[2020] P01173_ET, pp.6,13; P00189_ET.2, p.9.
[2021] T.20230403, p.2221.
[2022] P01408.
[2023] *Ibidem*.

589. During his 2019 suspect interview, Zyrapi claimed that the GS directorates reported directly to the deputy commanders, and to Mr.Krasniqi in particular,[2024] an allegation enthusiastically adopted by the Prosecution.[2025] However, the evidence shows that it was Zyrapi alone who was in charge of the directorates, further exposing Zyrapi's agenda.

590. At the ICTY, Zyrapi himself stated that his function was to "**manage and lead the GS and the directorates within the GS**".[2026] At the KSC, he explained that he administered, prepared, gave tasks and facilitated the work of the GS directorates, which were subordinate to him.[2027] Zyrapi even prepared regulations for all directorates.[2028] As an officer with professional military experience, he received reports on the directorates' level of readiness and functionality, so that he could intervene when necessary.[2029]

591. Written evidence supports this account: in late December 1998, Zyrapi convened a meeting with the heads of the directorates,[2030] chaired it, and issues instructions on each directorate's role and tasks.[2031] Neither Mr.Krasniqi nor Bashota attended this meeting.[2032] Bashota confirmed that the directorates reported to Zyrapi, not to the deputy commanders.[2033] Similarly, Maloku stressed that himself, S.Veseli and Zyrapi were the only officers in the GS who had the professional capacity and knowledge to assign responsibilities to the directorates.[2034]

[2024] **Zyrapi,** P01355.7, pp.9-10.
[2025] SPO PTB, para.104.
[2026] **Zyrapi,** P01356_ET, p.6268. *Also,* T.20240703, p.17618.
[2027] **Zyrapi,** T.20240703, p.17618; T.20240704, p.17628.
[2028] **Zyrapi,** T.20240704, p.17652.
[2029] **Zyrapi,** T.20240711, p.18067.
[2030] P00621.
[2031] P01408; **Zyrapi,** T.20240711, p.18070; **Bashota,** T.20241203, pp.23230-23231.
[2032] P01408; **Zyrapi,** T.20240711, p.18070; **Bashota,** T.20241203, p.23230.
[2033] **Bashota,** T.20241203, pp.23229-23231.
[2034] **Maloku,** T.20250326, p.25936. *Also* P02091, para.12.

592. The Prosecution contentions that "there were reporting lines between the deputy commanders and the directorates" and that "both Lahi Brahimaj and Fatmir Limaj reported to and took orders from Jakup Krasniqi",[2035] are baseless**.** The Prosecution's PTB cited no evidence for its claim that there were "reporting lines" between the deputies and the directorates;[2036] likewise, the Prosecution presented no evidence at trial that L.Brahimaj or F.Limaj ever reported to Mr.Krasniqi.

593. Concerning "taking orders", the Prosecution only cited three documents concerning taxation,[2037] of which only one is signed by F.Limaj.[2038] That all the Prosecution is able to cite in support of this contention is a single document by the MP directorate concerning taxation highlights the paucity of evidence linking Mr.Krasniqi to the directorates. In light of the above submissions about F03682 and taxation in general, the Prosecution failed to prove its contentions.

594. At most, the evidence suggests that Mr.Krasniqi was present at GS meetings when the non-functionality of the directorates was discussed.[2039] Zyrapi, as the Chief of the GS and a military expert, was the one who instructed, oversaw, and managed the GS directorates.

#### *3.6.17. Zyrapi, not Mr.Krasniqi, oversaw the work of the legal department*

595. For the first time in these proceedings, Zyrapi claimed that the two deputy commanders, and Mr.Krasniqi in particular, oversaw the work of the legal

[2035] SPO PTB, para.104.
[2036] *Ibidem*.
[2037] SPO PTB, fn.329, citing P03682, P03687, P01358.
[2038] *Supra,* paras 563-569.
[2039] P03781.2_ET, p.1; P03781.2_ET, p.2; *Also,* **Zyrapi,** T.20240711, pp.18066-18067.

department.[2040] This false claim is directly contradicted by the evidence of Dobruna, who stated clearly that no one in the KLA interfered with or directed his work, and there was no regular reporting line from Dobruna to anyone in the GS, including Mr.Krasniqi.[2041] Zyrapi admitted that he was not aware of any instruction issued by Mr.Krasniqi to Dobruna, nor any report from Dobruna to Mr.Krasniqi.[2042]

596. Dobruna made it clear to everyone in Divjakë, including Mr.Krasniqi, that he was a "person of the law" and did not want anyone meddling in his responsibilities.[2043] As an independent authority within his sphere, Dobruna did not attend GS meetings[2044] or report in any other way to the GS.[2045] Dobruna's account was substantially confirmed by Bashota.[2046]

597. Mr. Krasniqi did not supervise, direct, or involve himself in Dobruna's activities. At most, Dobruna had casual, social interactions with Mr. Krasniqi, as they were both former political prisoners.[2047] In Dobruna's words, "**[Mr.Krasniqi] was a former political colleague, not [someone] above me hierarchically**."[2048] Dobruna's discussions with Mr.Krasniqi were sporadic and informal, typically about the general situation and never about specific cases.[2049] There was no need for Mr.Krasniqi to involve himself in the details of legal work, since that was Dobruna's professional domain.[2050]

[2040] **Zyrapi,** T.20240716, p.18359.
[2041] **Dobruna,** P01955.2, p.10; P01955.9_ET, p.9; P01963, p.054683.
[2042] **Zyrapi,** T.20240718, p.18538.
[2043] **Dobruna,** P01955.2, p.10; P01963, pp.054676,054683.
[2044] **Dobruna,** P01955.9_ET, p.2.
[2045] *Idem,* pp.3,9; P01355.5_ET, pp.13-14.
[2046] **Bashota,** T.20241203, pp.23223-23224.
[2047] **Dobruna,** [REDACTED].
[2048] *Ibid*; P00707.9, p.6; T.20250114, p.23712.
[2049] **Dobruna,** P01955.9_ET, pp.6-7.
[2050] **Dobruna,** P01955.2_ET, pp.7-8; P01956, p.SITF00010488; P01963, p.054668.

598. There is no evidence that Mr.Krasniqi ever demanded information about cases or tried to influence Dobruna's decisions. There is no evidence of Mr.Krasniqi issuing any instructions—written or oral—to Dobruna regarding the military court or legal department, nor of Dobruna ever submitting any report to Mr.Krasniqi about his work. Zyrapi did not dispute Dobruna's account and conceded that Dobruna would know best about this issue.[2051]

599. Indeed, the only member of the GS who was somewhat involved in legal department cases was Zyrapi himself. Zyrapi and Dobruna—both present in Divjakë from December 1998 to April 1999—worked closely together whenever legal issues arose, consulting one another frequently.[2052] Dobruna turned to Zyrapi for help—whether to request additional staff, seek advice on a case, or coordinate actions.[2053] Zyrapi provided Dobruna with advice about cases and assisted him with personnel and logistical support.[2054]

600. It was Zyrapi who informed Dobruna about the Šavelić brothers case.[2055] Zyrapi and Dobruna discussed the case extensively and agreed that the two brothers should be handed over to the OSCE, which Dobruna then arranged and carried out.[2056] Similarly, when Dobruna was informed that seven individuals had been stopped in Kravesari, Dobruna and Zyrapi went there together.[2057] Before releasing them; Dobruna notified Zyrapi who agreed with the decision.[2058] Dobruna consulted Zyrapi

[2051] **Zyrapi,** T.20240718, pp.18538-18539.
[2052] **Dobruna,** P01964, p.054711; P01955.6_ET, p.27; P01963, p.054698; **Zyrapi,** P01355.6_ET, p.30.
[2053] **Dobruna** P01955.5_ET, p.16; P01955.2_ET, p.14; **Zyrapi,** P01355.6_ET, p.30.
[2054] **Dobruna,** P01964, p.054722; P01955.2_ET, p.14; **Zyrapi,** P01355.6, p.30.
[2055] **Dobruna**, P01955.2_ET, p.24; 4D00078, p.053994.
[2056] **Dobruna,** P01955.8_ET, p.5; P01955.7_ET, p.18; P01963, p.054680; P01956, p.SITF00010491; **Zyrapi,** P01355.8_ET, p.6; 4D00078, p.053994; P03551_ET, p.111810.
[2057] **Dobruna,** P01955.2_ET, p.19.
[2058] **Dobruna**, P01955.5_ET, p.25; P01964, p.054710.

because the latter had the authority to release detainees and because, as Chief of the GS, his advice was "authoritative".[2059]

601. Once again, Zyrapi clearly sought to shift responsibility to Mr.Krasniqi in order to cover his own involvement with the legal department.

#### *3.6.18. Zyrapi, not Mr.Krasniqi, maintained contacts with, made appointments for, received reports from and issued orders to the Zones and the Brigades*

602. Contrary to Prosecution submissions,[2060] and Zyrapi's allegations,[2061] between November 1998 and March 1999, it was Zyrapi, who maintained contacts with the OZs and the brigades, made appointments in their ranks, requested and received operational and intelligence reports from them and issued orders to them without consulting anyone else in the GS. This was the natural continuation of Zyrapi's activity between May and September 1998 when he toured Kosovo to assist local commanders with organisation.[2062]

603. Zyrapi signed several written orders and ordinances addressed to the OZs,[2063] or the brigades,[2064] about different issues, including ceasing improper behaviours towards civilians,[2065] the KLA's salute,[2066] operational and military matters,[2067] the

[2059] **Dobruna**, P01955.8_ET, p.13; P01955.4_ET, p.6.
[2060] SPO PTB, paras 103,111(d).
[2061] **Zyrapi,** T.20240702, p.17435; T.20240716, p.18324; T.20240717, p.18444.
[2062] **Maloku,** P02090.3, p.9; **Bashota,** T.20241203, p.23190; **S.Buja,** T.20241107, p.22181; **Zyrapi,** T.20240710, p.18004.
[2063] 1D00029, P00638, 1D00030, P01017, P00624, P00622, P00886, P00630, P00631, P01340.
[2064] P00611, P00627, P00629, P00632.
[2065] 1D00029, 1D00030.
[2066] P00638.
[2067] P01017, P00622.

distribution of weapons,[2068] the treatment of journalists,[2069] Kosova Press and Radio Kosova e lire,[2070] reporting to the GS,[2071] appointments and training,[2072] and logistics.[2073]

604. Notably, before issuing an order "not to exceed authority and cease abusing command position",[2074] Zyrapi discussed it directly with A.Syla.[2075] Zyrapi then convened a meeting with ZCs to discuss any related issues. In the absence of A.Syla, it was Zyrapi, not Mr.Krasniqi or Bashota, who met with ZCs to instruct them on how to act towards civilians.[2076]

605. Most importantly, however, **all** KLA insider witnesses identified Zyrapi as the GS member who issued orders, made appointments, and requested reports from the OZs; **none** ever referred to Mr.Krasniqi in this role.

606. According to Maloku, it was the Chief of Staff who had the authority to issue orders to ZCs,[2077] and approve proposals by ZCs for the appointment of brigade commanders.[2078] It was Zyrapi and the Operational Directorate—and not the GS as a whole—who maintained contact with the OZs and received reports via phone.[2079] All information which reached Divjakë, including intelligence information about the movement of Serbian forces,[2080] was received in the "map room" in Zyrapi's building.[2081] Whenever Zyrapi was not in Divjakë, Maloku was in charge of the phone:

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[2068] P00624, P00622, P00632.
[2069] P00611.
[2070] P00627.
[2071] P00886.
[2072] P00630, P00631, P01618, P01340.
[2073] P00629.
[2074] 1D00029.
[2075] **Zyrapi,** T.20240704, p.17638; T.20240710, p.18022.
[2076] **Maloku,** T.20250326, p.26014; **Bashota,** T.20241205, pp.23442-23443,23445-23446,23455.
[2077] **Maloku,** T.20250326, p.26014.
[2078] **Maloku,** T.20250325, p.25872.
[2079] *Idem,* p.25870; T.20250324, p.25739.
[2080] **Maloku,** P02090.5, p.2; T.20250325, p.25870.
[2081] *Ibid.*

he tried to resolve all requests directly on the phone, and whenever he was not able to, he waited for the Zyrapi to return and forwarded the requests to him.[2082] Mr.Krasniqi had nothing to do with this.[2083]

607. Maloku's testimony is corroborated by P00628, a written order issued by Zyrapi as Chief of the GS instructing the OZs to send operational reports via phone to the GS. Information had to be sent, on a sequential basis, to the following numbers: first, the number of the "Chief of the KLA GS"; if no contact could be established, the number of the Operational Directorate; only if no other person could be reached, the phone number of the white house.[2084] The reporting was addressed to Zyrapi and the operational directorate; the third number, which was used by whoever was present in the white house,[2085] only served as a last resort, to receive a message and forward it to Zyrapi upon his return to Divjakë.[2086]

608. For example, [REDACTED]; [REDACTED].[2087]

609. This is particularly relevant regarding Zyrapi's unsupported allegation that intelligence reports were given orally to the deputy commander in Kosovo.[2088] First, the Prosecution failed to provide notice of this allegation against Mr.Krasniqi. Second, the Prosecution failed to call Ferat Shala or Mensur Kasumi; as such, there is no evidence about how, if at all, any intelligence structure at GS level operated. Third, there is no corroboration for Zyrapi's assertion, nor did the Prosecution produce any intelligence report addressed to Mr.Krasniqi. Fourth, Zyrapi's evidence is directly

[2082] **Maloku,** T.20250326, p.25937.
[2083] **Maloku,** T.20250324, p.25739, when Maloku referred to "the director of information", a role he mistakenly attributed to Mr.Krasniqi throughout his evidence. *See* T.20250324, p.25724; T.20250326, pp.25939-25940,[REDACTED].
[2084] **Zyrapi,** T.20240702, p.17468; T.20240715, p.18179.
[2085] **Zyrapi,** T.20240715, p.18178. *E.g.,* P03551_ET, pp.111836,111748,111806,111820.
[2086] **Zyrapi,** T.20240715, p.18179.
[2087] P03551_ET, p.111792. *Also,* [REDACTED].
[2088] **Zyrapi,** T.20240702, p.17435; T.20240716, p.18324.

contradicted by other Prosecution witnesses: for example, S.Buja testified that if there was any intelligence information to relay, only Zyrapi would have been notified, and nobody else in the GS.[2089]

610. Even taken at their highest, [REDACTED] do not show that Mr.Krasniqi received intelligence reports, let alone counter-intelligence information. Rather, the vast majority of [REDACTED][2090] purportedly involving Mr.Krasniqi relate to contact with internationals,[2091] discussions around the VJ negotiations and Rambouillet,[2092] public statements and contact with the press,[2093] or casual conversations unrelated to the charges.

611. The few instances when Mr.Krasniqi appears to receive some limited information from the ground, it is always very vague information given in passing about fighting breaking out:[2094] either preceding a discussion on political issues,[2095] or with Mr.Krasniqi noting the message so it can be passed on to Zyrapi or A.Syla.[2096] If anything, these [REDACTED] show that Mr.Krasniqi found out about major events, like the Reçak massacre, from the press rather than the field.[2097] On the contrary, the [REDACTED] are replete with examples of Zyrapi receiving information from or issuing instructions to various local commanders about operations, weapons and movements of the Serbian forces.[2098]

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[2089] **S.Buja,** T.20241107, p.22238.
[2090] [REDACTED] concerning Kuqi, the Savelic brothers and the elderly Serbs are discussed elsewhere. *See supra,* sections 3.2.5, 3.6.5, paras 366-369.
[2091] P02094_ET, pp.111611,111661; P03551_ET, pp.111692,111693,111708,111799,111832,111833,111858, 111860,111861.
[2092] P02094_ET, pp.111548,111558-111559,111635; P03551_ET, pp.111698,111710,111712,111861,111862,111863.
[2093] P02094_ET, pp.111567,111574,111577,111591,111598-111599,111680,111681; P03551_ET, pp.111714,111749-111750,111772,111798,111865.
[2094] *E.g.* P03551_ET, pp.111691,111791.
[2095] *Idem,* p.111691.
[2096] *Idem,* pp.111608,111618.
[2097] P02094_ET, pp.111574-111575.
[2098] *E.g.*, P02094_ET, pp.111552,111585; P03551_ET, p.111759,111763,111775,111778.

612. Moreover, Bashota testified that although they happened rarely, it was Zyrapi who had meetings with ZCs at the GS. In fact, communication with—and issuing orders to—the OZs were an exclusive power of Zyrapi as Chief of Staff.[2099] Zyrapi had full authority to issue orders single-handedly, without consulting with anyone within the GS.[2100] Bashota could not remember any order by Zyrapi being discussed in GS meetings.[2101] This contrasts starkly with the documents allegedly signed by Mr.Krasniqi which, as noted above, formalised GS decisions.[2102] It is clear that Zyrapi had the authority to independently issue orders and make decisions, while Mr.Krasniqi only offered administrative support to formalise GS decisions made collectively.

613. S.Selimi stated that Zyrapi was the only GS member who ever issued orders to the OZs.[2103] Zyrapi also held meetings with ZCs concerning training courses and the organisation of KLA units.[2104] Similarly, R.Mustafa testified that all requests and recommendations he received during the war were given by Zyrapi,[2105] who initiated and chaired the monthly meetings with ZCs after the restructuring. Indeed, regular meetings began only after Zyrapi became the Chief of Staff.[2106] Finally, S.Buja was told in August 1998 that all contacts with the GS had to go through Zyrapi.[2107] After he became Commander of the Nerodime Zone, S.Buja only received instructions from A.Syla or Zyrapi,[2108] not Mr.Krasniqi.

[2099] **Bashota,** T.20241205, pp.23446,23455.
[2100] *Idem,* p.23446.
[2101] **Bashota,** T.20241205, pp.23445-23446.
[2102] *Supra,* paras.520,522,524,528,529,531,532,534,535,548,572.
[2103] **S.Selimi,** T.20250211, p.25060.
[2104] *Idem,* p.25061.
[2105] **R.Mustafa**, T.20230718, p.5956.
[2106] **R.Mustafa**, T.20230714, pp.5700-5701; *also* T.20230714, p.5738.
[2107] **S.Buja,** T.20241107, p.22180.
[2108] *Idem,* p.22189.

614. The ZCs respected Zyrapi: as an experienced military officer, he was the only one in the GS who could assist them in their war efforts.[2109] Zyrapi was the only GS member who ZCs considered as a suitable replacement for A.Syla in February 1999.[2110] In contrast, ZCs never recognised Mr.Krasniqi's appointment as DC-support.[2111]

615. Among the OZ's staff, Fondaj explained that the reporting line upwards - which concerned only the movement of Serbian forces and the situation in the brigade[2112]— only went to Zyrapi and the Operational Directorate.[2113] Fondaj himself had meetings with S.Veseli and Zyrapi for this purpose.[2114] On the contrary, **Fondaj never reported to Mr.Krasniqi because he was outside the reporting line**.[2115] As concerning orders and instructions, these always came from Zyrapi,[2116] who also had the authority to make appointments in the KLA.[2117] In fact, Zyrapi appointed [REDACTED][2118] and H.Qadraku as head of G2 in the Pashtrik Zone.[2119] Zyrapi also assisted with the creation of the brigades in the Pashtrik Zone[2120] and was in charge of all military activities.[2121]

616. At brigade level, [REDACTED] testified that the Chief of Staff had the authority to issue direct orders to the brigade, either in writing or verbally. [REDACTED] himself received a direct order from Zyrapi[2122] and confirmed that all reporting from

[2109] **Mustafa,** T.20230714, pp.5720-5721.
[2110] P00182, p.SPOE00226400; **R.Mustafa**, T.20230713, p.5639; T.20230714, pp.5780-5781.
[2111] *Infra,* section 3.6.19.
[2112] **Fondaj,** T.20240625, pp.17158-17159.
[2113] *Idem,* pp.17157-17158.
[2114] **Fondaj,** T.20240626, p.17228; T.20240625, p.17158.
[2115] **Fondaj,** T.20240625, p.17158.
[2116] **Fondaj,** T.20240626, p.17232**.** *Also,* P01340.
[2117] **Fondaj,** T.20240625, pp.17188-17189.
[2118] [REDACTED].
[2119] [REDACTED]**,** P01854.5, p.11; T.20241126, p.22703.
[2120] [REDACTED]**,** P01097.1, p.27.
[2121] [REDACTED].
[2122] [REDACTED].

the Pashtrik Zone Command upwards went to Zyrapi.[2123] Likewise, Zyrapi appointed M.Kololli[2124] and [REDACTED][2125] as Brigade Commanders and gave them instructions. During the war, M.Kololli[2126] and [REDACTED][2127] consulted with, sent requests to, reported to, and received instructions from Zyrapi only.[2128] Conversely, [REDACTED] was clear that despite having come to Divjakë on occasion to meet Zyrapi, he never dealt with Mr.Krasniqi. He did not know Mr.Krasniqi's role in the GS[2129] and never received instructions from him.[2130] Asked about whether he ever reported to Mr.Krasniqi, he replied "**absolutely not**".[2131] What is more, Mr.Krasniqi could not have given [REDACTED] any instructions relating to his area; [REDACTED] would "know better" and would have refused to follow any instruction issued by Mr.Krasniqi.[2132] [REDACTED] had to report only to Zyrapi; he did not trust anyone else in the GS.[2133]

617. Halitjaha likewise testified that he reported to Zyrapi and that "it was not [his] duty" to report to Mr.Krasniqi.[2134] On one occasion in January 1999, he went to Divjakë to hand a written report to Zyrapi and instead ran into Mr.Krasniqi; yet, he did not give the report to him, but rather to a technician in Zyrapi's room.[2135]

618. This overwhelming amount of evidence demonstrates the only individual who was regarded as the Chief of the GS, with the authority to issue orders or instructions,

[2123] [REDACTED], P01554.6, p.18; [REDACTED].
[2124] **M.Kololli,** P01830.1, p.22; P01830.2, pp.17,19.
[2125] [REDACTED], P01540, p.SITF00451716; P01543_ET, p.10; [REDACTED]; [REDACTED].
[2126] **M.Kololli,** P01830.2, p.20.
[2127] [REDACTED], P01541.3, p.20; P01543, p.30; [REDACTED]; [REDACTED].
[2128] [REDACTED].
[2129] [REDACTED], P01543, p.17.
[2130] [REDACTED].
[2131] [REDACTED], P01543, p.13.
[2132] [REDACTED], P01543, p.17.
[2133] *Idem,* pp.17-18.
[2134] **Halitjaha,** T.20231116, p.10343.
[2135] *Idem,* p.10343.

make appointments and receive reports, was Zyrapi. Notably, the evidence of all other KLA witnesses disproves Zyrapi's self-serving attempts to downplay his own role and shift responsibility on to Mr.Krasniqi.

619. A separate analysis is needed for two written reports issued by the operational directorate following two meetings with ZCs on 20 December 1998 and 20 January 1999 respectively,[2136] and then forwarded to the two deputy commanders, including Mr.Krasniqi.[2137] Importantly, these were the only two meetings which occurred in Divjakë with ZCs in December 1998 or January 1999.[2138]

620. Contrary to Prosecution submissions,[2139] P00228 and P00617 are merely summaries of discussions between Zyrapi and ZCs: they highlight lack of proper command, weapons, armaments, communication equipment, and personnel, and other issues.[2140]

621. As confirmed by Zyrapi and Maloku, these documents do not contain any reference to collaborators or other categories of alleged opponents.[2141] Quite the opposite, if any issue concerning arrests or detentions was brought to the attention of the operational directorate, it was removed from the summary notes forwarded to the deputy commanders. Specifically, 1D00033 is a set of notes concerning a visit by R.Selimi and S.Veseli to the Nerodime Zone in January 1999.[2142] The notes record a number of organisational issues raised by S.Buja, including "complications concerning arrests with or without the ZO commander order. This issue was

[2136] **Maloku,** P02090.3, p.2-3; T.20250325, p.25867.
[2137] P00228; P00617.
[2138] **Maloku,** T.20250325, p.25867.
[2139] SPO PTB, para.85.
[2140] **Zyrapi,** T.20240711, p.18094. *Also,* P02090.3, pp.6-7; T.20250326, p.25948.
[2141] **Zyrapi,** T.20240715, p.18173; **Maloku,** T.20250326, p.25949.
[2142] **S.Buja,** T.20241105, p.21955.

addressed after receiving the relevant MP regulations".[2143] Only ten days later, S.Veseli drafted P00617, which, *inter alia*, summarises the issues raised by S.Buja during the visit without mentioning any complications concerning arrests. Clearly, S.Veseli dealt with this issue directly on the spot, without consulting anyone else, and then excluded it from P00617.

622. In any case, P00228 and P00617 do not amount to *substantial reporting*: they were given to the deputy commanders so they could keep a copy in the archive and make it available to the General Commander upon his return to Kosovo,[2144] or forward a copy to the chief of logistics in Albania.[2145] Any issue raised by ZCs, even if mentioned in P00228 and P00617 was addressed directly by Zyrapi, without any involvement of the deputy commanders. For example, P01017 is an order to the OZs signed by Zyrapi which reflects almost identically the language and issues summarised in P00228:

> **P00228:**
>
> OZ Commanders should do more in training officers commanding with the basic tactical units and higher levels, taking into consideration the above-mentioned commands' training for leading tactical activities in combat in different situations; manoeuvring, firing, in organising firing against armoured vehicles, as well as other actions.[2146]
>
> **P01017:**
>
> All the ZO commanders, the bodies of the commands and the subordinate units should immediately undertake actions to make the units capable of using individual and collective armament, maximally exploiting the tactical-technical capacities for the organization of the firepower system, particularly against armoured /vehicles/, against the infantry, against the artillery, and in anti-aircraft defence.[2147]

[2143] 1D00033, p.SPOE00226333.
[2144] **Zyrapi,** T.20240715, pp.18170-18171.
[2145] **Maloku,** P02090.3, p.6; T.20250326, p.25948.
[2146] P00228, p.2, at point c).
[2147] P01017, p.1, no.3.

623. In addition to these two reports, the Prosecution also tendered P00184, which is an undated, unsigned and incomplete draft with the name of Zyrapi in the signature block. The Prosecution did not produce a printed or a signed copy. The document bears no date, signature, protocol number, or initials of the drafter. Unlike P00228 and P00617, the document is not addressed to the deputy commanders. In these circumstances, this document has minimal probative value and should be given no weight.

### *3.6.19. The ZCs never recognised Mr.Krasniqi as DC-Support*

624. The ultimate demonstration that Mr.Krasniqi lacked any authority, disciplinary power or decisional capacity is the fact that ZCs—who, in the Prosecution's case theory, sit immediately below the GS in the KLA's chain of command[2148] – consistently refused to recognise Mr.Krasniqi's appointment as DC-support

625. On 14 and 15 January 1999 respectively, the OZs were requested to provide the GS with an analysis of the war"[2149] and were invited to a meeting in Divjakë on 20 January 1999. These were the first documents addressed to the OZs with a signature block reading "Deputy Commander—Jakup Krasniqi".[2150] In response, on 19 January 1999 R.Haradinaj prepared a report in which he demanded "to know the criteria used in the appointment of Jakup Krasniqi as Deputy Commander" and asked that "the Commander and the Deputy Commander be appointed from one of the following names: Rexhep SELIMI, Sami LUSHTAKU, Hashim THAÇI, Sylejman SELIMI".[2151]

[2148] Indictment, para.19; SPO PTB, paras 128,174,176,178.
[2149] P00616.
[2150] *Ibid*.
[2151] 4D00073.

626. The issue of Mr.Krasniqi's appointment was discussed at the meeting on 20 January 1999; contemporaneous meeting notes recorded "there is criticism on the organisation of GS", "the issue of deputy commander Jakup Krasniqi should be explained" and "some of the zone commanders should have a place in the GS".[2152]

627. On 6 February 1999, whilst Mr.Krasniqi and the Albanian delegation was in Rambouillet, R.Selimi and Zyrapi met with four ZCs, namely R.Haradinaj, R.Mustafa, Drini and S.Selimi.[2153] Handwritten notes, which were substantially confirmed by witnesses who attended the meeting,[2154] record that R.Haradinaj again challenged Mr.Krasniqi's appointment.[2155] S.Selimi stated that "Jakup Krasniqi, too, with all the respect he commands, is not the right man for the post of Deputy Commander"[2156] and threatened not to report to the GS unless these appointments were changed.[2157]

628. KLA insiders confirmed—ZCs were dissatisfied with Mr.Krasniqi's appointment and refused to recognise his authority as DC-support. According to S.Selimi, Mr.Krasniqi was not an appropriate person to hold this title because he had no military experience and no operational or commanding functions.[2158] R.Mustafa testified that he has "never known or recognised Jakup Krasniqi or spoken to him as deputy commander" and that this was what all ZCs thought at the time.[2159] Bashota, who was also targeted by ZCs, was aware of these criticisms at the time and confirmed that the ZCs never accepted his and Mr.Krasniqi's appointments.[2160] Likewise, Zyrapi

[2152] 4D00068.
[2153] P00182, p.SPOE00226397.
[2154] **Zyrapi,** T.20240702, p.17485; T.20240715, pp.18200-18202; **Mustafa**, T.20230717, pp.5833-5834; *Also* T.20230714, pp.5780-5781.
[2155] P00182, p.SPOE00226398.
[2156] *Idem,* pp.SPOE00226398, SPOE00226403.
[2157] *Idem,* pp.SPOE00226404, SPOE00226407.
[2158] **S.Selimi,** T.20250213, p.25303.
[2159] **R.Mustafa**, T.20230717, p.5833-5834.
[2160] **Bashota,** T.20241203, p.23237.

admitted that ZCs were dissatisfied with Mr.Krasniqi's appointment and agreed that they never recognised him in this role.[2161]

629. Accordingly, the only reasonable conclusion is that i) ZCs were unaware of Mr.Krasniqi's appointment until mid-January 1999; ii) when they were informed, they immediately contested and refused to recognise this appointment; and iii) they only ever recognised Mr.Krasniqi as a spokesperson and a political representative of the KLA.

### 3.7. Spokesperson of the PGoK and Minister of Reconstruction and Development: Post-28 February 1999

630. As a result of the ZCs coup,[2162] A.Syla, Bashota and Mr.Krasniqi all resigned during General Staff meetings on 27 and 28 February 1999. Bashota explained that they acceded to the coup because they did not want to create an internal conflict within the KLA.[2163] Whilst Mr.Krasniqi wrote in the Great Turn that he offered his resignation but "they did not approve this",[2164] all of the other evidence makes it clear that Mr.Krasniqi did not act as DC-Support after 27 February 1999. Handwritten notes from the meeting on 27 February 1999 record Mr.Krasniqi saying unequivocally "I resign from the post the deputy commander and Sokol should do the same for the sake of this."[2165] Bashota, who attended the meeting, was clear that Mr. Krasniqi did not continue to exercise a role as DC-support.[2166] Zyrapi, who was also at the meeting, testified that Mr.Krasniqi resigned and subsequently left Kosovo.[2167] Zyrapi confirmed

[2161] **Zyrapi,** T.20240715, pp.18198-18199,18201-18202. *Also,* T.20240702, p.17485.
[2162] *Supra,* paras 126-128.
[2163] **Bashota,** T.20241202, p.23126; T.20241203, p.23286.
[2164] P00189_ET, p.U015-8926.
[2165] P01431, p.SPOE00227863.
[2166] **Bashota,** T.20241203, p.23239.
[2167] **Zyrapi,** T.20240702, pp.17487-17488; T.20240715, p.18202; T.20240715, p.18503.

this by stating that when he was in Albania in Spring 1999, Mr.Krasniqi was no longer DC-support.[2168] Similarly, he confirmed that Mr.Krasniqi had nothing to do with the replacement of Commander Drini as Pashtrik ZC because he was no longer DC-support.[2169]

631. At those same meetings in late February 1999, the GS named Hashim Thaçi the Prime Minister of the PGoK. The KLA, LDK and LBD had agreed at Rambouillet to form the PGoK and that the Prime Minister would come from the KLA.[2170] Mr.Krasniqi had been regarded as the likely candidate, because he was the most co-operative with the other members of the Albanian delegation, including the LDK.[2171] Nonetheless, the majority of the GS voted for Mr.Thaçi.[2172]

632. This vote is telling. First, Mr.Krasniqi himself voted for Mr.Thaçi;[2173] he had the opportunity to seek power and chose not to. Second, only R.Buja and A.Syla voted for Mr.Krasniqi,[2174] revealing his true standing within the GS. Far from being the 'Commander in Kosovo',[2175] when electing a leader, GS members overlooked and by-passed Mr.Krasniqi, just as they had in Autumn 1998 when negotiating the GS composition with FARK.[2176] He left the February meetings as the KLA Spokesperson, as he had been since June 1998.

633. Mr.Krasniqi's resignation as DC-Support is also confirmed by the documentary record. There is no evidence of any written order with Mr.Krasniqi's name in the

[2168] **Zyrapi,** P01355.12, p.13.
[2169] **Zyrapi,** T.20240717, p.18503.
[2170] 1D00069_ET, p.SPOE00225650.
[2171] 4D00035, p.DJK00742, para.4; 1D00145_ET, p.3; **Kickert,** T.20240529, p.16277; 4D00063_ET.
[2172] P00645_ET, p.SPOE00227673.
[2173] *Ibid*.
[2174] *Ibid*.
[2175] *Supra,* section 3.6.15.
[2176] 1D00166_ET, p.DHT03876; **Zyrapi,** T.20240710, pp.18024-18025.

signature block as DC-Support after his resignation. On 30 March 1999, the first document purportedly bearing Mr.Krasniqi's signature after his resignation, he is described only as Spokesperson.[2177] Once Mr.Krasniqi left Kosovo, he did not attend GS meetings,[2178] nor is there evidence that he was updated on any meetings.

634. [REDACTED][2179] also confirm Mr.Krasniqi's lack of involvement during this period. From 13 March to September 1999 – a period of six months - he is minimally featured [REDACTED]. On 18 March 1999, [REDACTED] purport to summarise a conversation with Zyrapi which appears more a social exchange than a meaningful briefing.[2180] [REDACTED] allegedly features Mr.Krasniqi simply saying [REDACTED].[2181] It is unclear how Mr.Krasniqi was identified, [REDACTED], the person alleged to be Mr.Krasniqi [REDACTED], and no witness testified about this [REDACTED]. [REDACTED].[2182]

635. Taking these [REDACTED] at their highest, they do not establish meaningful ongoing contact between Mr.Krasniqi and other KLA members. The absence of further [REDACTED] is revealing - the Prosecution [REDACTED] involving Mr.Krasniqi throughout the Indictment Period;[2183] [REDACTED].[2184] The evidence is thus consistent with the testimony of Zyrapi and Bashota that Mr.Krasniqi left the role of DC-Support on 27 February 1999.

[2177] 4D00076_ET.
[2178] P00644_ET.
[2179] *Supra,* paras 56-61.
[2180] P02094_ET, p.111495.
[2181] P03554_ET, p.095896.
[2182] P01729_ET, p.095918.
[2183] 4D00090, p.5010361.
[2184] P02094_ET, pp.111603,111653,111662,111546,111547,111654; P03551_ET, pp.111724,111823,111887; P03576_ET,p.095964; P03554_ET, pp.095895-095896; P01737_ET.

### *3.7.1. Political Representative*

636. The KLA delegates had to return to Kosovo after Rambouillet, to persuade the ZC and others to accept the negotiated agreement.[2185] This became Mr.Krasniqi's primary focus.[2186] His actions in so doing are unconnected to any crime and saved many lives.[2187] Mr.Krasniqi attended a meeting on 5 March 1999 with European diplomats, S.Selimi, R.Selimi and F.Limaj. [REDACTED] introduced Mr.Krasniqi as "from the political directory."[2188] Mr.Krasniqi spoke initially about the agreement and then the discussion was led by others, [REDACTED].[2189] On or around 8 March 1999, Mr.Krasniqi told US officials that the KLA would sign the agreement.[2190]

637. Uncontroverted evidence confirms that Mr.Krasniqi left Kosovo to attend the Paris negotiations on 13 March 1999.[2191] He could not return to Kosovo, since a Serbian arrest warrant prevented official travel back into Kosovo.[2192]

638. Mr.Krasniqi travelled to Western Europe from around 9 April 1999 to around 20 April 1999. On 9 April 1999, [REDACTED].[2193] On 12 April 1999, Mr.Krasniqi met Madeleine Albright in Brussels at the request of H.Thaçi.[2194] During the meeting, Mr.Krasniqi made three requests: first, for humanitarian aid, second, for ground troops or arms for the KLA, to "defend and protect the Kosovar people", and, third, diplomatic recognition of the PGoK.[2195] As spokesperson, Mr.Krasniqi also wrote

[2185] P01066, para.87; **Williams,** 1D00375, para.39**;** 4D00035, pp.DJK00741-DJK00742.
[2186] **Bashota**, T.20241203, p.23238.
[2187] **Rubin**, T.20250915, p.26571.
[2188] P01221_ET, p.1.
[2189] P01221_ET, pp.1-17.
[2190] P01084, p.074582
[2191] **Bashota,** T.20241203, p.23237; 4D00047, p.019631; P01264, pp.SPOE00128811-SPOE00128812.
[2192] 4D00047, p.019631.
[2193] 4D00059, pp.1-2.
[2194] 1D00148, pp.DHT01535-DHT01536, para.3.
[2195] *Idem,* p.DHT01537, para.7.

letters making similar requests for aid.[2196] Rubin agreed that there was nothing untoward in these requests: "if we were in his shoes we would have said the same thing".[2197]

639. On 14 April 1999, as Spokesperson of the PGoK, Mr.Krasniqi visited the French Ministry of Foreign Affairs.[2198] On 17 April 1999, Mr.Krasniqi telephoned Byrnes from Switzerland, confirming that he was travelling to Rome and then to Tirana, arriving on 20 April 1999.[2199] These meetings reflect efforts to build on the success of Rambouillet and Paris, in Mr.Krasniqi's role as Spokesperson. They are unrelated to any crime.

#### *3.7.2. Spokesperson in Albania*

640. Apart from this visit to Western Europe, Mr.Krasniqi was in Albania until his return to Kosovo in mid-June.[2200] The Prosecution called minimal evidence about Mr.Krasniqi's role during this period and failed to establish that he had any role in the MoD or GS.

641. In Albania, Mr.Krasniqi liaised with the LDK and FARK to find ways to work together. Byrnes testified that he met Mr.Krasniqi and, separately, with LDK members in Tirana in May 1999.[2201] Byrnes confirmed that Mr.Krasniqi met with LDK members in Tirana.[2202] Milazim Krasniqi was present at those meetings and confirmed that Mr.Krasniqi was constructive and did not say a bad word about Rugova.[2203]

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[2196] 4D00076_ET, p.SPOE00228799; P03783_ET, p.SPOE00228800.
[2197] **Rubin**, T.20250915, p.26584.
[2198] P00515_ET.50.
[2199] 4D00036, p.2, para. 3.
[2200] P00515_ET.56, p.008701; P00520, p.019764; P01264_ET, pp.SPOE00128833,SPOE00128845,SPOE00128897.
[2201] **Byrnes**, T.20240326, p.13763.
[2202] *Idem,* p.13763; P01089_ET.2, p.U015-8968.
[2203] 4D00063_ET, p.DJK00798-ET.

642. Mr.Krasniqi issued public statements after Ibrahim Rugova met Milošević in Belgrade. At that time, Serbian forces had embarked on a brutal series of unlawful attacks on Albanian civilians which drove 800,000 civilians (40% of the population) to flee Kosovo.[2204] It is unsurprising that Rugova was criticised for being photographed with Milošević at the same as Milošević was inflicting this terrible suffering on the Kosovo Albanian people.

643. The Prosecution relies upon P04223 as evidence that Mr.Krasniqi called Rugova a traitor but failed to put it to any witness. Most of the recording is a reporter's summary and not Mr.Krasniqi's exact words. Read in context, Mr.Krasniqi's reported comment was nuanced, saying conditionally that "if he has done this conscientiously, he has committed a very evil act" and that Rugova could have "been forced and under circumstances that made it humanly impossible to oppose".[2205] Mr.Krasniqi took a similar approach in meetings with international representatives, saying that Rugova's "statements were made under pressure; his wish to leave the country was prevented by Serbia".[2206] In the circumstances, those statements were moderate and reasonable.

644. The Prosecution also relied on an interview with Mr.Krasniqi - tendered through the bar table without contextualisation from any witness—in which Mr.Krasniqi is said to have described institutions outside the KLA as "fictitious".[2207] Although this interview is dated 19 May 1999, the cited response related to a question about the March 1998 elections, which Mr.Krasniqi (and others) consistently opposed. There is no evidence that any functioning institution formed after those elections that would render the adjective "fictitious" inappropriate. In any event this interview is well

[2204] F01534/A01, AdjF.132-134; F01536/A01, AdjF.758-763.
[2205] P04223_ET, p.1.
[2206] 4D00059_ET, p.1; 1D00148, p.DHT01540.
[2207] P00515_ET.58, p.008718.

within the boundaries of acceptable political discourse and disagreement; there is nothing in the article which could be linked to any crime or policy against the LDK.

645. Other public statements by Mr.Krasniqi in the same period reflect his co-operation with the LDK. On 8 April 1999, in Tirana, Mr.Krasniqi said that there were five places for the LDK in the PGoK and that the intention was to work towards free elections.[2208] He personally sent a telegram offering sincere condolences on the death of F.Agani.[2209]

646. A limited number of other public statements attributed to Mr.Krasniqi in this period have been tendered. A typed statement dated 4 June 1999 bearing Mr.Krasniqi's name includes that the PGoK and KLA have chosen "peace and freedom, for the economic and social prosperity of Kosovo, and all its citizens equally, for the democracy and Europeanisation of Kosovo".[2210] On 10 June 1999, Mr.Krasniqi said the KLA would "respect the rights of ethnic minorities" including Serbian civilians.[2211] Mr. Byrnes confirmed that these sentiments are consistent with Mr.Krasniqi's approach in private meetings between them.[2212] None of these public statements is remotely connected to any crime or any alleged criminal enterprise.

647. The Prosecution failed to prove that Mr.Krasniqi authorised PGoK personnel to travel internationally.[2213] The only evidence tendered in support of this allegation is P03913 which was admitted through the bar table and was not shown to any witness. It has no stamp or protocol number. The purported signature was not identified by any witness. There is no evidence that P03913 was sent, received or had any effect

[2208] 4D00038, p.019673.
[2209] 4D00037_ET, p.SPOE00227570.
[2210] 4D00012_ET, p.2.
[2211] 4D00039_ET.
[2212] **Byrnes**, T.20240327, p.13821.
[2213] SPO PTB, para.111(d)(vi).

whatsoever. There is no evidence that N.Topella had any role in the KLA or PGoK. No witness has testified that Mr.Krasniqi had authority to issue travel permits in this period.

648. Similarly, the Prosecution failed to prove that Mr.Krasniqi had any meaningful connection to the MoD of the PGoK. The Prosecution chose not to call A.Syla, the Minister of Defence, F. Limaj, Deputy Minister of Defence, or anyone who worked in the KLA office in Tirana, including Xh.Haliti, R.Lladrovci or H.Selimi.

649. Whilst N.Bytyqi listed Mr.Krasniqi as one of the leaders of the MoD,[2214] Bytyqi was not a KLA member. Zyrapi, who was an Assistant Minister in the MoD,[2215] confirmed that Mr.Krasniqi had no role therein.[2216] Further, it is implausible that Mr.Krasniqi, who had just been removed from the role of DC-Support because he lacked military experience, would go on to play any significant role in the MoD.

650. The Prosecution relies on two letters purportedly signed by Mr.Krasniqi in May 1999 "on behalf of the Ministry of Defence".[2217] Even if they were signed by Mr.Krasniqi, which the Prosecution has not proved, he would not have signed "on behalf" of the MoD if he had any role within the Ministry. If P01436 was actually sent to or received by the Albanian Government, it was ineffective; the weapons referred to did not reach the KLA until after the war was over.[2218] P03920 was tendered through the bar table and not shown to any witness. There is no evidence that it was sent, received or had any effect. Neither document contributed to any crime. They relate instead to legitimate attempts to further the conflict with Serbian forces.

[2214] P01264_ET, p.SPOE00128838.
[2215] **Zyrapi**, T.20240708, p.17766.
[2216] **Zyrapi**, T.20240715, p.18204.
[2217] P03920_ET, p.SPOE00228983; P01436_ET, p.SPOE00227562.
[2218] **Zyrapi**, T.20240703, p.17515.

651. That witnesses saw Mr.Krasniqi in KLA offices in Tirana proves nothing;[2219] it is unsurprising that a Spokesperson would visit the office. No witness offered any detail on what Mr.Krasniqi was doing there.

652. Mr.Krasniqi had no role in Operation Arrow. [REDACTED] testified that the choice of who participated therein was made by the GS *inside* Kosovo—therefore excluding Mr.Krasniqi.[2220] The reporting line went to Çeku, as Chief of Staff, and then to A.Syla, as Minister of Defence,[2221] whilst the operation was planned by [REDACTED].[2222] [REDACTED] did not mention Mr.Krasniqi in connection with Operation Arrow.

653. [REDACTED].[2223] Although no document was produced [REDACTED] was evasive about its contents,[2224] Mr.Krasniqi did visit R.Berisha in Northern Albania. R.Berisha was a [REDACTED].[2225] Mr.Krasniqi described their meeting as "very cordial and fraternal […] very warm and candid".[2226] The purpose of the meeting was to unite R.Berisha's unit with nearby KLA forces so that they could participate in the battle of Koshare.[2227] Mr.Krasniqi's willingness to reach out to members of FARK undermines the allegation that he was part of any criminal policy to persecute/detain members of the FARK as opponents.

654. The Prosecution failed to establish that Mr.Krasniqi was present at the detention centre in Kukës. The only witness who the Defence could confront about this allegation was Zyrapi, who only said that he heard that Mr.Krasniqi had come to

[2219] [REDACTED]; **R.Qeriqi,** T.20240424,p.14818.
[2220] *Idem,* [REDACTED].
[2221] *Idem,* [REDACTED].
[2222] [REDACTED].
[2223] P00911.19_ET, pp.9-10.
[2224] [REDACTED]; P00911.17_ET, p.13.
[2225] [REDACTED].
[2226] P00189_ET.2, p.U015-8950.
[2227] *Idem,* p.U015-8946-U015-8950.

Kukës but did not know which place he had visited.[2228] This hearsay from an unidentified source fails to identify when Mr.Krasniqi is alleged to have visited Kukës, what he is alleged to have done there or, importantly, where in Kukës he went. Visiting the general area does not establish that Mr.Krasniqi was ever in the metal factory where the detentions took place.

655. In admitting the written evidence of W01448 and W04733, [REDACTED], the Panel considered that the Defence would be able to cross-examine other witnesses about his alleged presence at the metal factory.[2229] The Prosecution failed to call these witnesses. The situation has therefore fundamentally changed. It is now clear that no safe and fair conclusion can be drawn from the written evidence. Identification evidence in traumatising circumstances should be treated with extreme caution.[2230] W01448's identification in one statement that [REDACTED] is highly unreliable, since it lacks any detail[2231] and in three subsequent statements [REDACTED] confirmed that [REDACTED] did not see Mr.Krasniqi at Kukës.[2232]

656. As for W04733, he claimed to have seen Mr.Krasniqi at Kukës twice and that Mr.Krasniqi [REDACTED]. The Panel deemed the latter allegation unreliable and highly prejudicial and denied it admission.[2233] Its unreliability taints the remainder of W04733's identification evidence, which was admitted. In any event, W04733's identification of Mr.Krasniqi is unreliable: at the time of the alleged identification, W04733 had been [REDACTED], and was [REDACTED];[2234] W04733's account to the Prosecution that he saw Mr.Krasniqi is vague as to his description of Mr.Krasniqi, how

[2228] P01355.12_ET, p.11.
[2229] F01603, para.103.
[2230] *Kupreškić* AJ, paras 34-41; *Bemba TJ*, para.241.
[2231] P00431, p.SITF00013860
[2232] P00437, p.SITF00013762; P00434, p.SITF00013887; P00439, p.SITF00016150.
[2233] F01603, para.107.
[2234] P00449.2_ET, p.U003-2287; P00447,p.107260; P00443, p.SPOE00185340; P00444, pp.SITF00018742-SITF00018743.

he was recognised, how long he was there or what he was doing. W04380's and W04734's evidence about Mr.Krasniqi was not admitted.[2235]

657. The Prosecution has established nothing more than that from March – mid-June 1999, Mr.Krasniqi performed the role of Spokesperson from outside Kosovo. There is nothing unlawful in his public statements or meetings with internationals and members of the LDK. To the contrary, his constructive behaviour is further evidence that Mr.Krasniqi was not part of any alleged policy to target opponents. Nor is there any reliable evidence that he significantly contributed to the MoD or GS in this period.

### 3.8. June–September 1999: Minister for Reconstruction

658. Upon returning to Kosovo, Mr.Krasniqi was involved in the negotiation of the demilitarisation agreement signed on 20 June 1999. Thereafter, the evidence barely mentions him. Most of the senior international witnesses present in Kosovo simply do not mention Mr.Krasniqi at all. As the Minister for Reconstruction and Development in the PGoK, which was barely functional, Mr.Krasniqi had no connection to the KLA or to any alleged crimes.

659. Mr.Krasniqi's participation in the negotiation of the demilitarization agreement does not establish any commanding role. Duncan, a senior international official, gave clear and credible evidence founded on his participation in every stage of the negotiation.[2236] Duncan first met Çeku in Tirana on 14 June 1999 and Çeku said that 'I need to have my zone commanders with me. Otherwise, we can't do this'.[2237] Clearly, Çeku needed the ZCs, not Mr.Krasniqi.

[2235] F02937, paras 62,92.
[2236] **Duncan,** T.20250922, pp.27039-27040.
[2237] *Idem,* p.27050.

660. Subsequently, Duncan and General Reith met with Çeku, Mr.Krasniqi and many others in Divjakë.[2238] Duncan identified Mr.Krasniqi as part of the political wing, which "kept trying to put in language which would give implicit recognition to the provisional government".[2239] Duncan considered that the political wing and military wing were part of the same "architecture" but it was "not a hierarchical architecture […] it's not a pyramid. It's like a network".[2240] He distinguished between the military commanders who were dressed in combat gear and "smelt of combat" and the political wing who were in civilian clothes.[2241] Mr.Krasniqi was plainly in civilian clothes.[2242]

661. As for the interventions attributed to Mr.Krasniqi and the political wing, seeking approval for the PGoK was simply a continuation of the position taken by the cohesive Kosovo delegation at Rambouillet[2243] and by Mr.Krasniqi with Madeleine Albright.[2244] There is nothing unlawful in it. Further, the suggestion that the undertaking should refer to the KLA by name rather than to "Albanian armed groups" was a proper correction to "sloppy drafting".[2245]

662. After the negotiations on 17 June 1999, Mr.Krasniqi, and many others, attended dinner with the KFOR representatives. The dinner was not a formal part of negotiations.[2246] There was no interpretation.[2247] Mr.Krasniqi does not speak English and, hence, cannot have participated meaningfully in conversations over dinner.

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[2238] P01264_ET, p.SPOE00128905; 1D00287; **Duncan,** T.20250922, pp.27058-27059; 1D00287.
[2239] **Duncan,** T.20250922, pp.27059-27061
[2240] *Idem,* p.27148.
[2241] **Duncan,** T.20250922, p.27059.
[2242] 1D00287.
[2243] 1D00281, p.DHT05854.
[2244] 1D00268, p.DHT05135.
[2245] **Duncan,** T.20250922, p.27158.
[2246] *Idem,* p.27062.
[2247] **Duncan,** T.20250923, p.27169.

663. During the next phase of negotiations on 19 June 1999, Duncan asked for a separate meeting with Çeku, Thaçi, Rubin and General Reith. Initially, Duncan did not place Mr.Krasniqi in that meeting but later said that he believed that Mr.Krasniqi was there.[2248] Duncan described Çeku, Thaçi and Mr.Krasniqi as "key players" only because they had spoken the most in the negotiation.[2249] His expectation was that Çeku would then speak to the military commanders and Thaçi and Mr.Krasniqi would speak to the political wing. Duncan observed this happening; he saw Çeku explaining the position to ZCs, who were his subordinates.[2250]

664. The undertaking was subsequently signed by Thaçi at a ceremony with General Jackson. Mr.Krasniqi was one of many people present at the ceremony.[2251]

665. There is nothing in Mr.Krasniqi's participation in these negotiations which establishes any significant contribution to a JCE or any authority. Duncan's evidence was that Mr.Krasniqi was part of the political wing, which did not have control over the military wing. Even within the military wing, Çeku needed agreement from the ZCs. International witnesses have been clear that Thaçi did not have authority over the ZC; Mr.Krasniqi's connection to the ZCs was even more tenuous.

666. The Prosecution also led one video, of uncertain date, which appears to show an early post-conflict visit by Mr.Krasniqi to R.Mustafa and others in Pristina.[2252] Mr.Krasniqi is dressed in civilian clothes, clearly distinguishing him from the military. There is nothing unlawful in the video. Nor can any hierarchical relationship be deduced from it. The Prosecution elected not to show this video to R.Mustafa who

[2248] **Duncan,** T.20250922, p.27067; T.20250923, pp.27269-27271.
[2249] **Duncan,** T.20250923, pp.27181-27182.
[2250] *Idem,* p.27324.
[2251] *Idem,* p.27189.
[2252] P01772.

could have commented on the existence of any hierarchical relationship at this point in time.

667. In Summer 1999, Mr.Krasniqi was appointed Minister for Reconstruction and Development in the PGoK.[2253] The evidence suggests that Mr.Krasniqi was appointed to that position through the LBD,[2254] since the Ministry for Reconstruction and Development was allocated to the LBD.[2255] Internationals had long noted Mr.Krasniqi's connection to the LBD.[2256] Whilst not knowing the appointment process, Kickert confirmed that he would not be surprised if Mr.Krasniqi was appointed by the LBD.[2257] The Prosecution has led no evidence whatsoever to suggest that Mr.Krasniqi was appointed through the KLA; the preponderance of the evidence therefore suggests that this was an LBD appointment.

668. It cannot be doubted that Kosovo was in dire need of reconstruction. More than 100,000 homes were damaged and 40% of villages had inadequate amounts or quality of water.[2258] Three quarters of Peja had been set on fire and every Albanian house seemed to be destroyed.[2259] Other documents record that 64% of houses across Kosovo were severely damaged or destroyed and 40% of water sources contaminated.[2260] There were outages in basic services such as electricity.[2261] At the same time, hundreds of thousands of refugees were returning.[2262] It was a race against time to provide temporary shelter so that people could survive Winter.[2263]

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[2253] P01224, p.SITF00172950; **N.Bytyci**, T.20240606, p.16894; **Kickert,** T.20240529, p.16292.
[2254] **Halitjaha,** T.20231116, p.10334.
[2255] 1D00070_ET, p.SPOE00054541; 4D00060, p.019662.
[2256] 4D00058_ET, p.DJK00777-ET, para.1; P01069, p.075329.
[2257] **Kickert,** T.20240529, p.16293.
[2258] 4D00061, p.SPOE00305418, para.6.
[2259] 1D00228, p.DHT04940.
[2260] 1D00226, fn.6; **Strohmeyer,** T.20250121, p.24098.
[2261] 4D00062, pp.SPOE00305422-SPOE00305423; **Kickert,** T.20240529, p.16298.
[2262] **Kickert,** T.20240528, p.16185; [REDACTED]; **Strohmeyer,** T.20250121, p.24097; **Duncan,** T.20250922, pp.27097-27098; **Durkee,** T.20251113, p.28025.
[2263] **Kickert,** T.20240529, p.16296; 4D00101, pp.SPOE00214815-00214816.

669. There was an unimaginable abundance of tasks which required immediate attention including road building, public utilities and education.[2264] Plainly, even allowing for the very limited functionality of the PGoK, there was much work to do in reconstruction—none of which, as the Presiding Judge observed, has anything to do with the charges in the Indictment.[2265]

670. The Prosecution has led little-to-no evidence about Mr.Krasniqi's role in this period. After his initial involvement in the negotiation of the demilitarisation agreement, senior international witnesses either did not mention Mr.Krasniqi at all or gave no specific information about him. General Jackson, the commander of KFOR, did not mention Mr.Krasniqi [REDACTED].[2266] Russell, US KFOR in Gjilan, had no dealings with Mr.Krasniqi.[2267] Covey, the principal Deputy to the SRSG, did not mention Mr.Krasniqi. Strohmeyer, UNMIK legal adviser, said that [REDACTED]."[2268] Rubin had no contact with Mr.Krasniqi apart from during the Rambouillet negotiations and in the April 1999 meeting in Brussels.[2269] Clark and Durkee both confirmed having no contact with Mr.Krasniqi during this period.[2270] The likely explanation is that these witnesses do not speak about Mr.Krasniqi because he was not a significant figure at the time. There are few public statements by Mr.Krasniqi in this period, because, as Prime Minister of the PGoK, Thaçi was able to speak to the media directly.[2271]

[2264] 4D00102, p.DJK01130; **Strohmeyer,** T.20250121, pp.24105-24106.
[2265] **Strohmeyer,** T.20250121, p.24109.
[2266] **Jackson,** [REDACTED].
[2267] **Russell,** T.20240819, p.18760.
[2268] **Strohmeyer,** T.20250121, p.24117.
[2269] **Rubin,** T.20250916, p.26638.
[2270] **Clark,** T.20251117, p.28181; **Durkee,** T.20251113, p.28080.
[2271] P00813_ET.13, p.SPOE00054966; P00813_ET.19, p.SPOE00055067; P00814_ET.20, p.SPOE00055435; P00813_ET.24, p.SPOE00055116.

671. Mr.Krasniqi and other Albanian leaders attended a meeting with UNMIK on 30 June 1999 in which UNMIK proposed the creation of the KTC.[2272] [REDACTED].[2273] It did not discuss specific crimes [REDACTED].[2274] The Kosovo Albanians were asked to put out a joint statement condemning the violence, and did so a couple of days later.[2275] The first meeting of the KTC took place on 16 July 1999 and was not attended by Mr.Krasniqi.[2276] Mr.Krasniqi did not attend other meetings of the KTC.

672. Through the Bar Table, the Prosecution tendered various handwritten notes which are said to relate to the PGoK.[2277] No witness was called to testify about the internal meetings of the PGoK, therefore the Defence have not had the opportunity to challenge or contextualise these documents. There is no evidence as to whether they were written contemporaneously or later, who authored them, or for what purpose. It is unclear whether they are agendas, speaking notes prepared in advance, or summaries produced afterwards. The only safe finding is that they are entirely unrelated to any alleged criminality; the notes concern legitimate concerns of reconstruction—such as factories and the construction industry.[2278]

673. In September 1999, Mr.Krasniqi visited Washington as part of a PGoK delegation.[2279] Mr.Krasniqi did not return with the delegation, remaining in Washington for a donor conference on 20 September 1999,[2280] at which he spoke as Minister for Reconstruction.[2281]

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[2272] P01975, pp.SPOE00246083-SPOE00246084.
[2273] **Strohmeyer,** T.20250121, p.24113.
[2274] *Idem,* p.24114.
[2275] *Idem,* p.24115; 1D00475.
[2276] P01229, p.SPOE00246089; [REDACTED].
[2277] P03910_ET.
[2278] P03910_ET, pp.SPOE00229446-SPOE00229453.
[2279] **Bashota,** T.20240606, pp.16893-16895.
[2280] *Idem,* pp.16893-16895.
[2281] 4D00066_ET, p.DJK00811-TR.

674. After his political involvement in the demilitarisation agreement, the Prosecution failed to show that Mr.Krasniqi had any connection to the KLA. Demilitarisation issues were addressed by [REDACTED].[2282] There is no evidence that Mr.Krasniqi attended JIC meetings. There is no evidence that GS meetings continued to take place or, if they did, that Mr.Krasniqi played any role in them.

[2282] P04245, p.SPOE00215101-SPOE00215104.

## 4. MR. KRASNIQI IS NOT CRIMINALLY RESPONSIBLE PURSUANT TO A JCE

675. The Prosecution failed to prove that Mr.Krasniqi is criminally responsible pursuant to a JCE. The evidence does not establish that he was a member of the alleged JCE, that he significantly contributed to the commission of crimes or that he had the requisite intent. Nor does it establish that crimes were foreseeable to him.

### 4.1. Mr.Krasniqi was not part of the alleged JCE

676. Mr.Krasniqi was not a member of any alleged common purpose to control Kosovo by means including the commission of crimes against opponents. Involvement in any such common purpose would run directly contrary to the extensive evidence of his good character.[2283] There is no evidence that he consulted with any named JCE member about the commission of crimes.

677. Internationals identified Mr.Krasniqi a 'moderate' within the KLA, differentiating him from the 'radicals'.[2284] Mr.Krasniqi is a different generation from other Accused or named JCE members. He was never an LPK member, instead holding significant positions within the LDK. He was not a founding member of the GS and played no defined role in the KLA until appointed as spokesperson in June 1998.[2285] Indeed, he was chosen as spokesperson precisely because he was outside the group, to demonstrate that the KLA was not affiliated to any one party.[2286] Despite his achievements as political representative, he was ultimately sidelined by the GS.[2287]

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[2283] *Supra,* section 3.1; *infra,* section 10.1.6.
[2284] **Byrnes**, T.20240326, pp.13733,13759; P01069, paras.10-11; P01080, para.4.
[2285] *Supra,* paras 396-408.
[2286] 4D00088, pp.DJK01051-DJK01055-ET; 4D00231, pp.DJK01967-DJK01968; **S.Buja**, T.20241107, p.22173.
[2287] *Supra,* paras 630,632.

### 4.2. Mr. Krasniqi did not significantly contribute to any crimes

678. The evidence does not prove that Mr.Krasniqi significantly contributed to any crime. Jurisprudence requires "at least a significant contribution to the crimes for which the accused is found responsible".[2288] This is consistent with basic principles of individual responsibility. Since the alleged common criminal purpose – gaining control over Kosovo - is non-criminal, a person who merely contributed to the lawful purpose without contributing to any crime, cannot be held criminally responsible.[2289]

679. Further, the contribution must cross the threshold of being "significant". Some contributions, compared with the scale of the common purpose, will not be sufficient. For instance, in *Gotovina*, Cermak's misleading re-assurances to the international community were "not of a magnitude and nature to constitute contributions to the JCE" and his denial and concealment of the crimes at one location were insufficient to significantly contribute thereto.[2290] Similarly, in *Kvočka*, in the case of an opportunistic visitor to a detention camp, the AC required a substantial contribution to the overall effect of the camp.[2291]

680. The Prosecution failed to provide proper notice of which conduct of Mr.Krasniqi it alleges significantly contributed to the commission of crimes. The Indictment is vague and does not identify any specific acts and conduct of Mr.Krasniqi.[2292] The Prosecution's PTB includes various allegations about Mr.Krasniqi but fails to connect them to Indictment allegations[2293] or to identify which PTB allegations it asserts were significant contribution to the commission of crimes. The Defence respond below to the pleaded Indictment allegations.

[2288] *Ndahimana* AJ, para.198; *Stanišić and Župljanin* AJ, para.110; *Brđanin* AJ, para.430.
[2289] Barthe, p.228.
[2290] *Gotovina* TJ, para.2548.
[2291] *Kvočka* AJ, para.599.
[2292] Indictment, para.53.
[2293] SPO PTB, para.111(d).

681. Mr.Krasniqi did not significantly contribute to crimes by formulating, developing, approving, promoting, disseminating or implementing plans, policies and practices in form of communiqués, public statements, internal rules and regulations, structures, and information-gathering and reporting mechanisms.

(a) Mr.Krasniqi's public statements did not significantly contribute to crimes. As explained above, they called for unity, raised morale and consistently referenced IHL or deprecated crimes against civilians.[2294] The Prosecution did not prove that Mr.Krasniqi wrote any specific communiqué. Further, the Prosecution failed to connect the public statements to any specific crime;

(b) The Prosecution failed to prove that Mr.Krasniqi drafted KLA regulations.[2295] Read in context, the regulations were not unlawful and did not encourage crime. In any event, there is no evidence that they were widely distributed, implemented or contributed to any crime;[2296]

(c) Mr.Krasniqi's involvement in structuring the KLA, if any, was not significant. Zyrapi formulated, developed and implemented re-structuring. Mr.Krasniqi cannot incur criminal responsibility simply for being part of a structure, when that structure was designed for the lawful purpose of liberating Kosovo;

(d) The Prosecution failed to show that Mr.Krasniqi had any role in information-gathering or reporting mechanisms. There is no reliable evidence that intelligence reported to Mr.Krasniqi, and the few written reports that Zyrapi prepared were entirely unrelated to any crime. There is no evidence of other written reports to Mr.Krasniqi. Conversations [REDACTED] do not relate to crimes.[2297]

[2294] *Supra,* para.425.
[2295] *Supra,* para.470.
[2296] *Supra,* section 2.10.
[2297] *Supra,* paras 181-182.

682. Mr. Krasniqi did not participate in, facilitate, condone, encourage or aid in the crimes. The allegations that Mr.Krasniqi participated in crimes have collapsed.[2298] The Prosecution failed to identify how he purportedly facilitated, condoned, encouraged or aided crimes. He did not. In fact, evidence shows that he condemned crimes.[2299]

683. Mr.Krasniqi did not fail to take adequate steps to prevent and investigate crimes or punish the perpetrators. As set out below, Mr.Krasniqi did not know that crimes had been committed. Even if he had known, he never had the power, authority or realistic possibility to prevent, investigate or punish crimes.[2300]

684. Mr.Krasniqi did not disseminate information intended to promote the common purpose and engender fear, distrust and hatred of Opponents. His public statements were not intended to engender fear, distrust and hatred of opponents. They were propaganda intended to promote unity and project strength, whilst protecting the civilian population.[2301] The *nexus* to crimes is not established; Mr.Krasniqi's public statements never called for crimes to be committed against any identified individual. The Prosecution has not proved that he disseminated any specific communiqué.[2302]

685. Mr.Krasniqi did not provide false information to the international community. Byrnes, the only witness on whom the Prosecution relied,[2303] subverted this allegation. Byrnes testified that he trusted Mr.Krasniqi[2304] [REDACTED].[2305] Byrnes accepted that [REDACTED].[2306] The Prosecution failed to show that Mr.Krasniqi knew that any statements he made were false. His statements that the KLA complied with

[2298] *Supra,* section 3.2.
[2299] *E.g., supra,* para.275,431,691.
[2300] *Infra,* sections 5.2, 5.3.
[2301] *Supra,* paras 202,206.
[2302] *Supra,* section 3.5.3.
[2303] SPO PTB, fn.1095.
[2304] **Byrnes,** T.20240327, p.13821.
[2305] P01088, para.38.
[2306] **Byrnes,** T.20240403, p.14264.

international law represented his genuine belief and desire that the KLA comply.[2307] Similarly, [REDACTED].[2308] Any information which Mr. Krasniqi provided to the international community did not contribute to the commission of crimes.

686. Mr.Krasniqi did not appoint or promote JCE members and tools, including those with a history of alleged involvement in crimes.

(a) KLA appointments were substantively made locally. ZCs were elected by their local zone. Appointments within the zone command were either local elections or made by ZCs. The only GS involvement was to formalise some of those appointments, though formalisation made no practical difference since the individuals concerned were already carrying out their roles. Though evidence suggests that Mr.Krasniqi conveyed certain appointments, the Prosecution has not established that he was the decision-maker on them;[2309]

(b) Mr.Krasniqi did not appoint or promote anyone that he knew was involved in crimes. There is no evidence that he knew about crimes in the Llap zone prior his involvement in formalising appointments in August 1998.

(c) In any event, appointments are a normal feature of any military. There is no evidence connecting any appointments to the commission of any crime.

687. Mr.Krasniqi did not facilitate political, logistical, military and financial support to JCE members and tools committing crimes. This allegation is so vague that the Defence cannot respond with precision.

(a) Mr.Krasniqi did not provide military support to anyone, lacking the military knowledge or experience required to do so. He was part of the political wing.

[2307] *Supra,* paras 413,425.
[2308] **Bashota,** T.20241202, pp.23073,23075, shown P03551_ET, p.111806; T.20241203, p.23250.
[2309] *Supra,* paras 529-537.

Military support, if any, was the exclusive province of the operations directorate and Zyrapi;

(b) As a political representative, Mr.Krasniqi engaged with international representatives and attended certain negotiations,[2310] but there is no evidence that this legitimate activity provided political support to JCE members or tools committing crimes;

(c) Mr.Krasniqi did not facilitate logistical/financial support to JCE members or tools. In the short time that he was DC-Support, Mr.Krasniqi was connected to a small number of orders related to logistics or finances. The amounts or items involved were insignificant and largely related to GS internal logistics.[2311] They were not provided to persons committing crimes;

(d) There is no evidence that any of Mr.Krasniqi's activities significantly contributed to any crimes.

688. Mr.Krasniqi did not co-ordinate and liaise between JCE members and tools in furtherance of the common purpose. Attempts to do so were lawful steps taken for Kosovo's liberation. In any event, they were not significant. S.Buja testified that he could relay information through Mr.Krasniqi until August 1998, when communication was only through Zyrapi.[2312] R.Mustafa contacted the GS when he was able to establish connection, though communication was difficult.[2313] No or limited evidence was led about Mr.Krasniqi's alleged co-ordination with other zones. The Prosecution failed to establish that any such co-ordination was significant, was in furtherance of the common purpose, or contributed to any crime.

[2310] *Supra,* section 3.6.3.
[2311] *Supra,* section 3.6.12.
[2312] *Supra,* paras 465,472,613.
[2313] **R.Mustafa**, T.20230712, pp.5523-5527.

### 4.3. Mr.Krasniqi did not intend crimes to be committed

689. The Prosecution failed to prove that Mr.Krasniqi intended the charged crimes. The overwhelming evidence of Mr.Krasniqi's good character refutes the allegation that he intended crimes. Byrnes did not think that Mr.Krasniqi was involved in crimes.[2314] Fondaj considered it "absurd" that Mr.Krasniqi would be involved in a crime.[2315] No witness has testified that Mr.Krasniqi intended to kill, torture or detain civilians. In *Limaj*, Mr.Krasniqi expressly rejected any intent to harm civilians,[2316] and the *Haradinaj* TC treated his evidence on the KLA's adherence to IHL as corroborative of that position.[2317]

690. The public statements attributed to Mr.Krasniqi do not evidence criminal intent. Mr.Krasniqi repeatedly called for compliance with international law, explained that the KLA was not formed to attack civilians, and condemned crimes.[2318] There is no evidence that contrary to these public statements, Mr.Krasniqi harboured a secret intention to kill, torture or detain. Instead, Byrnes assessed that his statements were consistent with what Mr.Krasniqi said in private.[2319]

691. [REDACTED] demonstrate Mr.Krasniqi's lack of intent. [REDACTED].[2320] [REDACTED], Mr.Krasniqi said "they shouldn't have abducted them in the first place".[2321] Mr.Krasniqi did not know [REDACTED]. His words are likely to reflect his true intentions, which were clearly to oppose the detention of civilians.

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[2314] **Byrnes**, T.20240327, p.13821.
[2315] **Fondaj**, T.20240606, p.17247.
[2316] P00800, pp.5066-5067; P00795, pp.3387-3388.
[2317] *Haradinaj* TJ, para.69.
[2318] *Supra,* paras 413,425.
[2319] **Byrnes,** T.20240326, pp.13669-13770.
[2320] P02094, pp.111634-111635.
[2321] P03551, p.111807.

692. Mr.Krasniqi's interaction with alleged victims also refutes his alleged intent. [REDACTED] had a normal conversation with him. [REDACTED] was satisfied with how Mr.Krasniqi received him. [REDACTED] described his meeting with Mr.Krasniqi as cordial, well-meaning, good-natured and co-operative.[2322] In personal meetings, Mr.Krasniqi never displayed hostile intent.

693. Moreover, contrary to the allegation that Mr.Krasniqi intended crimes against the LDK, the evidence repeatedly showed him co-operating with the LDK.[2323] Kickert noted contemporaneously that non-KLA members of the Rambouillet delegation considered that Mr.Krasniqi was constructive, cooperative, and positive.[2324] Mr.Krasniqi would not have been endorsed by Rugova as PM of the PGoK, had anyone perceived that he intended crimes against the LDK.[2325]

694. The Prosecution cannot attempt to infer intent from alleged knowledge of crimes and continuation in roles. As set out below, Mr.Krasniqi did not have knowledge of any crimes. Accordingly, no such inference can arise. Further, his continuation in various roles does not reflect acceptance of crimes, but his genuine desire to liberate Kosovo for the benefit of all its citizens.

695. Finally, steps allegedly taken by Mr.Krasniqi also show the absence of any intent to commit crime. Prohibiting masks and formalising the appointment of Dobruna were steps which on their face attempted to avoid criminality.

[2322] [REDACTED].
[2323] **Byrnes**, T.20240326, p.13763; P01069, para.19; **Hill**, T.20251111, p.27735; P00189_ET.2, pp.U015-8968-U015-8969; 4D00063_ET.
[2324] **Kickert,** T.20240529, p.16277.
[2325] 4D00035, p.DJK00742, para.4; 4D00063_ET, p.DJK00798

### 4.4. The Crimes were not foreseeable to Mr.Krasniqi

696. The Prosecution failed to establish that any crimes committed were foreseeable to Mr.Krasniqi, as a natural and foreseeable consequence of the JCE, and that Mr.Krasniqi knowingly assumed a risk that they would occur. Whether crimes were a natural and foreseeable consequence of the JCE must be assessed in relation to the knowledge of a particular accused. As noted by the AC in Kvočka, "what is a natural and foreseeable to one person participating in a systemic joint criminal enterprise, might not be natural and foreseeable to another, depending on the information available to them".[2326]

697. The Prosecution failed to plead the factors which it alleges made the commission of crimes foreseeable to Mr.Krasniqi This is significant because Mr.Krasniqi should not be convicted of allegations which have not been properly plead and in relation to which he is not on notice.[2327] It is also indicative of the lack of evidence to support this contention, which the Prosecution have not proven during the trial.

698. The Prosecution has not proven that it is the only reasonable inference that through Mr.Krasniqi's knowledge and his level of involvement in the alleged JCE he could foresee that crimes might be perpetrated.[2328] The Prosecution has not proven that the possibility that a crime would be committed was sufficiently substantial to be foreseeable to Mr.Krasniqi.[2329] Mr.Krasniqi did not have control over any detention sites. He did not know about conditions of detention or mistreatment or receive reports or complaints about mistreatment. Foreseeability and acceptance cannot be

[2326] *Kvočka* AJ, para.86.
[2327] *Supra,* section 1.2.
[2328] *Karemera and Ngirumpatse* AJ, para.629.
[2329] *Karadžić* JCE Decision, para.18.

inferred from the mere occurrence of abuses, without impermissibly substituting hindsight for proof of *mens rea*.

## 5. MR. KRASNIQI HAS NO COMMAND RESPONSIBILITY

### 5.1. No superior responsibility for any crime

699. The Prosecution must prove (a) the existence of a superior-subordinate relationship between Mr.Krasniqi and the perpetrators; (b) that Mr.Krasniqi knew or had reason to know that the crimes were about to or had been committed; and (c) that Mr.Krasniqi failed to take necessary and reasonable measures to prevent the crimes or punish their perpetrators.[2330] The evidence establishes none of these elements. Mr.Krasniqi did not have effective control over any proven perpetrator. He did not know of any charged crime and was not on notice of a real risk of such crimes being committed. He did not fail to take necessary and reasonable measures that were open to him to prevent or punish crimes.

### 5.2. Mr. Krasniqi did not have effective control

700. Superior responsibility requires proof that, by virtue of his *de jure* or *de facto* position, the accused exercised **effective control** over the perpetrators.[2331] Effective control means the material ability to prevent or punish criminal conduct.[2332] General influence, political stature or moral authority—even if substantial—is insufficient.[2333] Likewise, mere possession of a formal title or a role involving coordination does not, without more, establish a superior-subordinate relationship.[2334] The theoretical authority to issue orders does not automatically demonstrate effective control,[2335] being only one indicator among others, which must be assessed against the reality of

[2330] *Čelebići* TJ, para.346; *Aleksovski* TJ, para.69.
[2331] *Blaškić* TJ, para.300; *Čelebići* TJ, para.378.
[2332] *Halilović* AJ, para.59.
[2333] *Blaškić* TJ, para.300; *Čelebići* TJ, para.378.
[2334] *Halilović TJ,* paras.748-749,752.
[2335] *Blaškić AJ, para.69.*

whether compliance could actually be enforced.[2336] The capacity to sign orders is probative only where signature reflects decision-making authority and is not purely formal or aimed at implementing decisions taken by others.[2337]

701. The decisive question is whether the accused could give operational and disciplinary orders and ensure compliance with them. In assessing this, relevant indicators include the ability to direct combat operations, the existence of different exclusive authority over relevant forces, and the capacity to discipline subordinates.[2338] These indicators are a matter of evidence.[2339]

702. The Prosecution failed to establish that Mr.Krasniqi had effective control. The evidence depicts a **decentralised volunteer force** with a fragmented chain of command. Real authority lay with autonomous ZCs,[2340] who exercised primary control over personnel,[2341] operations[2342] and discipline.[2343] ZCs acted independently[2344] and disregarded purported GS instructions.[2345] Political figures, including Mr.Krasniqi, did not exercise operational command.[2346]

703. Any allegation that the GS had collective responsibility is unsustainable. The TP must assess what authority each accused actually exercised.[2347] Mr.Krasniqi's functions were **political**, not operational, and he did not have the material ability to

[2336] *Halilović* AJ, paras.204,207–208; *Hadžihasanović* AJ, paras.197–199.
[2337] *Orić* TJ, para.312.
[2338] *Hadžihasanović* TJ, paras.82-83.
[2339] *Blaškić* AJ, para.485.
[2340] P00739.4_ET, p.20; **R.Mustafa**, T.20230714, p.5771.
[2341] **Zyrapi**, T.20240710, pp.18008,18009.
[2342] P00739.4_ET, p.20.
[2343] P00149. *See* **Ibishi**, P01755.8_ET, pp.12-13; P01871, para.30.
[2344] P00739.4_ET, p.20.
[2345] **Zyrapi**, T.20240710, pp.18019,18020.
[2346] **S.Buja**, T.20241107, pp.22176,22177.
[2347] *Orić* TJ, para.313.

prevent or punish crimes.[2348] He had no subordinates taking orders from him and no apparatus to impose discipline. The Prosecution identified no instance in which he directed a combat operation or enforced compliance with his or GS orders.

704. The ICC AC acquitted *Bemba* because, although a commander with formal authority, he operated remotely and lacked effective control in practice.[2349] Mr.Krasniqi's position was materially weaker. Unlike Bemba, he **never commanded troops in the field**, and did not possess a functioning chain of command, investigative capacity, or disciplinary apparatus. Since superior responsibility could not be sustained even for a commander with formal authority whose material capacity was overestimated,[2350] it follows *a fortiori* that no such responsibility can arise where the accused never possessed effective control in the first place.

### 5.3. Absence of effective control across all relevant periods

#### *5.3.1. Before 11 June 1998*

705. The Prosecution failed to establish that Mr.Krasniqi held any defined role within the KLA prior to his appointment as spokesperson on 11 June 1998.[2351] Even if the Panel accepts that Mr.Krasniqi was associated with an early "GS", this body was so disorganised that even its members did not know one another's identities,[2352] let alone control direct perpetrators in the field. At the time, the KLA was a loose volunteer force with no formal ranks or functioning command chain. The GS exerted no

[2348] *Supra,* paras 362-363.
[2349] *Bemba* AJ, para.171.
[2350] *Bemba* AJ, paras.167,169,171-173,189,191-193.
[2351] *Supra,* section 3.4.
[2352] 1D00436_ET, p.690.

operational or disciplinary authority over local units. Mr.Krasniqi's role was not capable of giving rise to effective control.[2353]

#### *5.3.2. 11 June – 12 November 1998*

706. Mr.Krasniqi's roles as spokesperson, political representative (from August 1998), and GS member, did not give him effective control over any subordinate. Spokesperson is not a command position. Consistent with his lack of military expertise, Mr.Krasniqi had no operational role, commanded no units, and had no disciplinary powers.[2354] Operational decisions were made by ZCs and, to a limited extent, by Zyrapi and the operations department.[2355] No KLA member took orders from Mr.Krasniqi during this period.

707. The zones understood that Mr.Krasniqi had no operational role.[2356] When GS members visited zones including Dukagjini, Llap, or Shala in 1998, they merely *formalised* leadership arrangements that had already been decided locally.[2357] ZCs were selected locally; any subsequent GS endorsement was ceremonial rather than a genuine appointment power. Mr.Krasniqi did not appoint any ZC,[2358] nor could he remove or discipline them. The KLA's decentralised structure meant real authority rested with local commanders not the GS.[2359]

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[2353] *Supra*, section 3.4.
[2354] *Supra*, sections 3.5.5, 3.5.7, 3.5.8.
[2355] *Supra*, section 2.4.2.
[2356] **S.Buja**, T.20241107, pp.22176-22177,22186,22187,22189; **R.Mustafa**, T.20230717, pp.5816,5818; **Zyrapi**, T.20240710, pp.18019,18020; **Maloku**, P02090.5, p.10; **Fondaj,** T.20240625, p.17158; [REDACTED]; P01543, p.17.
[2357] T.20241024, pp.21138, 21197-21198; T.20250211, p.25021; T.20240826, pp.18979-18980; T.20240716, p.18357.
[2358] *Supra*, paras 465-466.
[2359] T.20240703, p.17564.

708. Mr.Krasniqi's lack of disciplinary power was illustrated by S.Buja**,** who testified that *"nothing was done" about a propaganda campaign against him* because no mechanism existed through which Mr.Krasniqi could sanction such behaviour.[2360]

#### *5.3.3. 12 November 1998 – 27 February 1999*

709. On 12 November 1998, Mr.Krasniqi was appointed as DC-Support. This formal title did *not* translate into Mr.Krasniqi exercising effective control in practice. The KLA remained an irregular volunteer force without a normal military apparatus. The GS's role remained largely political, and real military control resided with the ZCs.[2361]

710. The evidence shows that Mr.Krasniqi did not have effective control. First, most KLA members were unaware that Mr.Krasniqi was DC-Support.[2362] This negates effective control because putative subordinates did not know his position. For example, [REDACTED] "never dealt with" Mr.Krasniqi and would have disregarded instructions from him.[2363]

711. Second, ZCs did not accept Mr.Krasniqi as a superior: on 19 January 1999, R.Haradinaj challenged his appointment and urged the GS to replace him; on 6 February 1999, ZCs said he was "not the right man", warning they would cease reporting to the GS unless he was removed. [2364] Clearly, Mr.Krasniqi did not have effective control over ZCs.

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[2360] T.20241105, p.21922.
[2361] **Byrnes,** T.20240326, p.13794.
[2362] *E.g.,* T.20240625, p.17160; [REDACTED]; T.20241125, p.22582; T.20231116, p.10332; [REDACTED], P01066, paras.21,46; T.20240424, pp.14834-14835; T.20240325, p.13602; [REDACTED], P02080, para.141; [REDACTED]; [REDACTED], P01541.3, p.8; P01543, p.17; [REDACTED].
[2363] P01543, pp.13,17,18; [REDACTED].
[2364] P02098, p.U001-5662; 4D00073; P00182, pp.SPOE00226397-SPOE00226398,SPOE00226403-SPOE00226404,SPOE00226407.

712. Third, Mr.Krasniqi could not compel compliance with orders. For instance, P00625, purportedly dismissing Commander Bardhi, had no practical effect. Further, Maloku testified that Mr.Krasniqi could not transfer him without his consent.[2365]

713. Fourth, any authority attributed to Mr.Krasniqi actually derived from GS collectively. The Prosecution presented no evidence that Mr.Krasniqi ever possessed an individual capacity to control perpetrators, beyond what the GS collectively allowed.[2366]

714. Any disciplinary power was held exclusively by others, primarily ZCs. Within the GS, Zyrapi was the *de facto* head in Kosovo, with authority to issue orders, make appointments, and receive reports.[2367] Whilst operational reports drafted by S.Veseli and signed by Zyrapi,[2368] were addressed to deputy commanders, including Mr.Krasniqi, this was merely for filing or onward transmission to the General Commander.[2369]

715. P01424, dated 3 January 1999 and asking zones to provide telephone numbers so the GS could establish minimal lines of contact, does not place Mr.Krasniqi in any operational chain of command. It was a routine administrative request, drafted by S.Veseli.[2370] Even if the TP accepts that Mr.Krasniqi signed P01424, that simply shows he signed a document drafted by the Operational Directorate, without proof he knew or discussed its contents prior to signing it, or instructed its issuance. It does not demonstrate authority over ZCs, who shortly afterwards denounced his appointment and threatened to cut communications.[2371]

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[2365] **Zyrapi**, T.20240702, p.17449; **Maloku**, T.20250326, p.25946.
[2366] *E.g., supra,* para.510.
[2367] **Zyrapi**, P01356_ET, p.6268; *also* T.20240703, p.17618.
[2368] P00228 and P00617.
[2369] **Zyrapi**, T.20240715, pp.18170-18171.
[2370] *Supra,* para.570.
[2371] *Supra,* section 3.6.19.

716. The Prosecution failed to show that Mr.Krasniqi had disciplinary authority. The disciplinary regulations do not assist; paragraph 23 does not expressly refer to DC-Support but does refer to ranks that did not exist in the KLA, including "the Corps (DK, MKA, PLD, aviation)".[2372] It was a borrowed framework which could not be applied in the KLA, not an operative disciplinary regime. In any event, it is unclear when they were prepared and there is no evidence of distribution or consistent implementation.[2373]

717. The disciplinary regulations were not consistently referred to in orders connected to Mr.Krasniqi; P02758, P00616 and P01428 do not refer to them at all. Whilst P00625 does refer to the disciplinary regulations, it does not cite paragraph 23 and was not implemented. The absence of further orders linked to Mr.Krasniqi referring to the disciplinary regulations shows that he was not involved in such issues. Further, the Prosecution failed to prove that Mr.Krasniqi ordered B.Kuqi's detention.[2374]

718. The Prosecution also failed to prove that Mr.Krasniqi had the authority to release detainees. The Tanjug journalists and C.Desku and J.Kastrati were detained before his 12 November 1998 appointment. Whilst Byrnes and Hill raised the detention with Mr.Krasniqi and others, they did not recall the conversation in sufficient detail to show he ordered their release, as opposed to relaying a collective decision or decision made by others.[2375] The VJ soldiers were also released following a collective decision. Hill knew Mr.Krasniqi could not order the release alone; he wasn't that big a deal.[2376] Byrnes understood local commanders were not bound to comply with GS

[2372] P00640, p.SPOE00231496.
[2373] *Supra,* paras 229-230,238.
[2374] *Supra,* section 3.2.4.
[2375] P02094, p.111630; *supra,* paras 484-487.
[2376] **Hill,** T.20251111, p.27744.

instructions.[2377] Regarding the uncharged detention of five elderly Serbs in January 1999, Mr.Krasniqi did not order the release; Zyrapi ordered S.Selimi to release the detainees.[2378]

719. Mr.Krasniqi's presence at Flag Day on 28 November 1998 does not suggest authority.[2379] The event was a staged gathering aimed at morale and solidarity with families of fallen KLA members,[2380] with brief speeches and patriotic songs.[2381] Mr.Krasniqi was introduced as a "General representative of the KLA", not as DC-Support.[2382] Properly assessed, it demonstrates public messaging, not effective control.

#### *5.3.4. Documents purportedly signed by Mr.Krasniqi do not prove his effective control*

720. The Prosecution's reliance on documents said to bear Mr.Krasniqi's signature does not prove effective control. His signature was not proved. The Prosecution failed to prove that they were disseminated or received. P00647 is merely a GS log of intended outgoing paperwork, not proof that any document was dispatched, received, or acted upon. Further, they do not show effective control because they were not implemented, they reflect decisions made by others or they do not relate to operational matters.

721. Many orders were not received or implemented. P00687, concerning contacts with journalists and internationals, was not received by R.Mustafa, who managed

[2377] **Byrnes**, T.20240325, pp.13610,[REDACTED].
[2378] *Supra,* para.516.
[2379] SPO PTB, para.84.
[2380] **Bytyci,** T.20240606, p.16890; T.20240605, pp.16729,16730; P01124, p.3; **R.Qeriqi,** T.20240424, pp.14811-14813; P01288, p.1.
[2381] **R.Qeriqi,** P01115.2, pp.21,22; T.20240424, p.14814.
[2382] **R.Qeriqi,** T.20240423, p.14684; P01124, p.1; P01288, p.1.

contacts with observers within his zone.[2383] There was no other evidence of receipt or compliance. Similarly, P00688 was not implemented in Llap, because the liaison named for the Llap zone was not actually the person who engaged with observers.[2384] Either P00688 was not received or disregarded. P00625—the only disciplinary order linked to Mr.Krasniqi—was ineffective; despite this dismissal, Commander Bardhi remained in post.[2385] Inability effectively to dismiss a brigade commander proves the absence of effective control.

722. P00168 and its duplicate P00183, purported to direct the arrest of individuals said to have joined Serbian local police. However, multiple KLA witnesses confirmed that they never saw or heard of this order during the war. The mere existence of two copies does not establish dissemination. The evidence that P00168 was not received undermines any allegation of effective control.[2386]

723. P02758 purported to summon E.Hoti, A.Kryeziu, N.Shala, and R.Bega, to report to the GS in Divjakë. The Prosecution led no evidence that any of them complied, or that any sanction followed non-compliance.[2387] Likewise, invitations P00616 and P01428 requested ZCs to attend a GS meeting in January 1999 and to prepare reports on the war effort. Although not all ZCs attended, there is no evidence of any sanction for non-attendance. The absence of any sanction for non-compliance shows the lack of effective control.[2388]

724. P01410 also demonstrates Mr.Krasniqi's lack of effective control, since one week after it was issued, Zyrapi issued P00626—an urgent operational instruction covering

[2383] *Supra,* paras 524-526.
[2384] *Supra,* para.527.
[2385] *Supra,* para.532.
[2386] *Supra,* paras 538-547.
[2387] *Supra,* para.553.
[2388] *Ibidem*.

the same topic as P01410. If Mr.Krasniqi's purported signature had carried enforceable authority, this repetition by Zyrapi would have been unnecessary.

725. Multiple orders were not an exercise of control but merely reduced to writing decisions made by others. For instance:

(a) P01016 merely recorded a change in terminology from Operational Sub-Zones to Operational Zones, reflecting a GS collective restructuring decision. It created no enforceable obligation and reflects no authority unique to Mr.Krasniqi.[2389]

(b) P01175, which formalised Dobruna's appointment, does not show Mr.Krasniqi wielded appointment power. The assignment was discussed before Mr.Krasniqi became DC-Support. A.Syla made the appointment decision after a proposal by R. Haradinaj. P01175 merely formalised Syla's prior decision.[2390]

(c) P01411, transferring Maloku to the Dukagjini Zone, resulted from discussions between Maloku, Haradinaj and Zyrapi. Maloku testified that Mr.Krasniqi could not transfer him without his consent.[2391] Thus, Mr.Krasniqi lacked authority to transfer even a single officer.[2392]

(d) P01430, names Daut Haradinaj and Maliq Ndrecaj as brigade commanders. Both were already operating as commanders well before February 1999. P01430 did not create these posts or confer authority.[2393]

(e) P00623 created a commission to define KLA operational zone boundaries, after a discussion at a GS meeting.[2394] Importantly, by the time of P00623, the work was already being done by Zyrapi and the Operations Directorate.[2395] When

[2389] *Supra,* para.528.
[2390] *Supra,* paras 529-531.
[2391] **Maloku**, P02091, para.21; T.20250326, p.25946.
[2392] *Supra,* paras 533-534.
[2393] *Supra,* paras 535-537.
[2394] P01109, p.7.
[2395] **Zyrapi,** P01355.14, p.16. *Also,* T.20240717, p.18514.

Zyrapi brought it for signature, Mr.Krasniqi had to ask who the members were,[2396] showing he had not authored it.[2397]

726. Other orders do not support effective control because they are administrative or civil matters unconnected to military operations or discipline. This is illustrated by P03681 and P03682, which purported to introduce contribution mechanisms targeting Kosovars abroad and owners of vehicles with Serbian licence plates. First, evidence about these orders was localised to brigade 121, which was based around Divjakë. Dr.Selimi of brigade 121 had requested funds from taxation for healthcare.[2398] The only evidence of implementation also came from brigade 121, and then it was occasional and did not correspond with the amounts stipulated in the orders.[2399] There is no evidence it was implemented at all anywhere else. Second, the orders followed discussion during a GS PRCAD. Possibly due to his temporary absence, however, the same exact ordinances were also drafted with only "GS" in the signature block,[2400] so that whoever was available in Divjakë could sign the documents. If Mr.Krasniqi signed P03681 and P03682 it was merely a signature of convenience to keep routine administration moving.[2401]

727. The routine finance request forms P03680, P03689 and P01400 reinforce the point. They are basic requests for small supplies for the GS's own functioning. They should have been signed by the Finance Directorate head. Any alleged signature attributed to Mr.Krasniqi is consistent with administrative facilitation when the competent officer was unavailable. 4D00075, an identical form signed by another officer, confirms

[2396] **Zyrapi,** T.20240717, pp.18516-18517.
[2397] *Supra,* paras 571-572.
[2398] P01126.
[2399] *Supra,* paras 563-569.
[2400] *See* the signature blocks of P03681 and P03682.
[2401] **Zyrapi,** T.20240715, p.18172.

the interchangeable administrative nature of these signatures. This is bureaucratic processing, not command authority.[2402]

728. P01398 and P01415 are GS requests to local structures seeking material support to sustain headquarters operations. These documents reflect dependence, not control. Any notion that signing supply requests and internal expense forms equals effective control is unsustainable. If anything, these documents confirm that local units and zones were self-reliant and that the GS needed their help rather than directing the supply chain.[2403] Taxes, logistics and finances do not demonstrate effective authority because, without more, they are not capable of showing material ability to prevent or punish crimes.[2404]

729. Taken together, even if Mr.Krasniqi's signature are established, these documents are not sufficient to show effective control. They show a small body of orders, largely formalising decisions made by others. The evidence that many of them were never received or implemented proves that Mr.Krasniqi did not have effective control.

#### *5.3.5. After 28 February 1999*

730. After resigning on 28 February 1999, Mr.Krasniqi was no longer DC-Support. He left Kosovo on 13 March 1999 and returned in mid-June 1999. He continued as KLA spokesperson and, from April 1999, was appointed spokesperson and later Minister for Reconstruction and Development in the PGoK. These were purely political roles with no command authority over any KLA members. From March–September 1999, Mr.Krasniqi carried out some political tasks—meeting foreign officials, requesting

[2402] *Supra,* para.561.
[2403] *Supra,* paras 556-559.
[2404] *Perišić* TJ, paras.1753,1773,1777.

humanitarian aid and support for Kosovo—unconnected to effective control.[2405] There is no evidence that he attended GS meetings or signed any orders after his resignation.

731. Political figures like Mr.Krasniqi did **not** control KLA units. Internationals considered that the political and military wings were *"not a hierarchical architecture" and that* military commanders answered only to Çeku and among themselves.[2406]

732. The Prosecution failed to prove any meaningful connection between Mr.Krasniqi and the PGoK MoD. Neither the travel permit,[2407] the letters of May 1999,[2408] nor the 4 June 1999 public statement[2409] show that he exercised effective control. The travel permit bears no stamp; its signature is unauthenticated, and there is no evidence it was sent, received or implemented, or that the individual named in the permit held any relevant position.

733. The May 1999 letters were similarly untested and, if sent, were ineffective. P01436 concerned weapons that arrived only after the war. There is no evidence P03920 was sent, received or had any effect. These letters reflect legitimate wartime efforts,[2410] and show advocacy and logistics, not command authority.

734. The evidence does not show Mr.Krasniqi ever had the material ability to control any alleged perpetrators. Even during his brief tenure as DC-Support, his functions remained administrative and political, without operational command over units or disciplinary power over KLA members.

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[2405] *Supra,* paras 638-639.
[2406] **Duncan**, T.20250922, p.27148; T.20250923, p.27324.
[2407] P03913.
[2408] P01436; P03920.
[2409] 4D00012.
[2410] 4D00076_ET, p.SPOE00228799; P03783_ET, p.SPOE00228800.

### 5.4. Mr.Krasniqi did not know of any specific crimes

735. The Prosecution failed to prove that Mr.Krasniqi had actual knowledge of particular crimes, or possessed concrete information that put him on notice of a real risk of such offences, with a clear *nexus* between that information and the crimes charged.[2411] Superior responsibility is not strict liability.[2412] Knowledge must be established by evidence; it is not enough to rely on general awareness of wartime conditions or the abstract possibility of abuse.[2413]

736. Throughout the Indictment period, the KLA's communication network was rudimentary and unreliable. There was no structured system for field units to report their activities, let alone misconduct, to the GS. Mr.Krasniqi was not part of any operational line and no KLA intelligence operative or other source ever conveyed to him information indicating that crimes were being committed in the field.[2414] Where, as here, a superior operated in an informal, decentralised structure with no regular reporting or monitoring system, the threshold for proving knowledge is higher.[2415]

737. The Prosecution failed to identify concrete information that actually reached Mr.Krasniqi or was so manifest that he must have known. Vague rumours or general awareness do not meet the standard. For instance, after fighting in Rahovec in July 1998, there were later *rumours* that some captured Serb civilians may have been killed. But there is no evidence that Mr.Krasniqi knew specifically who was detained, where they were held, or that any of them were harmed.[2416] In a fragmented insurgent movement, the mere assertion that crimes were "widely discussed" cannot establish that Mr.Krasniqi actually knew or had reason to know of those crimes.

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[2411] *Stakić* TJ, para.460; *Blaškić* AJ, para.62.
[2412] *Čelebići* TJ, para.383.
[2413] *Bagilishema* AJ, paras.28,33,42.
[2414] *Supra,* paras 476-478,640,648,652,657.
[2415] *Halilović* TJ, para.66, *Orić* TJ, para.320.
[2416] *E.g., supra,* paras 654-656; *infra,* para.739.

738. There is no evidence that Mr.Krasniqi was informed of any specific crime as it was occurring or that he personally witnessed any crime. The Prosecution withdrew its allegation that Mr.Krasniqi was present at Malishevë police station in July 1998. Mr.Krasniqi's occasional presence in the same region as an alleged detention site cannot sustain an inference that he knew crimes were being committed there. For instance, assuming *arguendo*, that Mr.Krasniqi briefly visited the Kukës metal factory in 1999, there is no evidence he knew there were detainees or witnessed abuse.[2417] Proximity alone does not prove knowledge.

739. Equally, whilst Mr.Krasniqi was in Kleçkë on occasions in summer 1998,[2418] the Prosecution has not proved that Mr.Krasniqi was in Kleçkë when the alleged crimes occurred in early-1999.[2419] Though Divjakë and Kleçkë are proximate, this alone is insufficient to prove that he was aware that crimes occurred at Kleçkë. Dobruna, as head of the legal sector, was consulted on matters relevant to Kleçkë .[2420] However, he maintained his independence from the GS and Mr.Krasniqi.[2421] Although Dobruna asserted he may have been told by Mr.Krasniqi about the existence of prisons in Kleçkë, he was unable to recall details of the discussion,[2422] [REDACTED],[2423] and was unable to testify—preventing the Defence from testing the reliability of his evidence. The Prosecution thus failed to prove Mr.Krasniqi's knowledge of crimes in Kleçkë.

740. The Prosecution has not shown that any KLA member reported crimes to Mr.Krasniqi. Multiple witnesses indicated the opposite, that ZCs did not report such matters to the GS.[2424] Since ZCs did not consider Mr.Krasniqi their superior, it is

[2417] *Supra,* para.654.
[2418] **N.Krasniqi,** P02006.1, p.20; [REDACTED], P01227, p.U015-8842; P01218.
[2419] SPO PTB, para.491.
[2420] P02006.3, p.13.
[2421] *Supra,* section 3.6.17.
[2422] P01957, para.25.
[2423] Oral Order, "Order admitting the evidence of W04264 pursuant to Rule 155", 14 January 2025
[2424] **Mustafa**, T.20230713, p.5658; T.20230714, pp.5719-5720,5789; T.20230718, p.5967.

unlikely they sent him reports of misconduct. No KLA insider or intercept alerted him to any crime. Hundreds of pages of intercepts were admitted, but, aside from the incidents discussed below, they do not show that crimes were reported to Mr.Krasniqi.[2425] There is no evidence that during the conflict any NGO reports or letters were addressed to or received by Mr.Krasniqi.

741. International representatives reported a small number of cases to KLA members including Mr.Krasniqi, but the evidence does not prove knowledge of crimes. Internationals raised the detention of the Tanjug journalists and C.Desku and J.Kastrati with Mr.Krasniqi,[2426] and [REDACTED] suggest Bashota asked Mr.Krasniqi what to tell internationals about the Šavelić brothers. There is no evidence on either occasion that Mr.Krasniqi knew anything more than the fact that these individuals were detained. He did not know that their detention was arbitrary. There is no evidence that he knew of any mistreatment.

742. No finding can be made about Mr.Krasniqi's knowledge of the detention of 5 elderly Serbs in February 1999, as this is not an Indictment crime and the Prosecution failed to give notice of it. In any event, there is no evidence that Mr.Krasniqi knew that a crime had been committed.

743. Mr.Krasniqi's public statements do not prove knowledge of crimes. As KLA spokesperson, he engaged in political messaging aimed at projecting cohesion, boosting morale, and shaping international perception.[2427] These statements were not factually accurate and do not show awareness of specific crimes. Mr.Krasniqi avoided mentioning specific cases or individuals. As spokesperson, he had to project strength,

[2425] *Supra,* paras 610-611.
[2426] *Supra,* paras 484-487.
[2427] P00794, p.3358; P00800, pp.5035,5038,5039; **N.Bytyqi**, T.20240606, p.1688; P00809, p.1; P00384, p.071775-ET; [REDACTED].

which included appearing to have knowledge even when he did not.[2428] The Panel should not treat rhetoric as proof of concrete knowledge, or substitute impression for evidence.

744. The Prosecution thus failed to prove that Mr.Krasniqi had actual knowledge, or reason to know, of the charged crimes. It has not shown he possessed specific, credible information that would have put him on notice of a real risk of crimes.

### 5.5. Mr.Krasniqi did not fail to prevent or punish crimes

745. The Prosecution has not proved that Mr.Krasniqi failed to take necessary and reasonable measures to prevent the commission of the charged crimes by JCE Members and Tools under his effective control and/or to punish the perpetrators thereof.[2429] Where there was no functioning mechanism to enforce compliance with humanitarian law, and events unfolded in chaotic conditions, effective control is not established.[2430] The duty to take necessary and reasonable measures extends only to measures that were feasible in the circumstances and within the superior's real authority and material capacity.[2431] The Panel must demonstrate what a commander should have done *in concreto*.[2432] Mr.Krasniqi had no operational authority, disciplinary leverage, or access to a functioning investigative or judicial apparatus. He cannot be faulted for failing to do what he had no capacity to do.[2433] A commander is not required to do the impossible.[2434]

[2428] **Clark**, T.20251117, p.28164.
[2429] Indictment, para.55.
[2430] Mettraux 2009, pp.168-70.
[2431] *Popović* AJ, para.1929; *Hadžihasanović* AJ, para.33.
[2432] *Bemba* AJ, para.170.
[2433] *Idem*, para.167.
[2434] *Krnojelac* TJ, para.95; *Čelebići* TJ, para.395.

746. There must also be a causal relationship between the superior's omission and the perpetrators' impunity so that, had he taken the necessary and reasonable measures, the crimes would likely have been prevented.[2435] The Prosecution failed to establish any such causal *nexus*.

747. Command responsibility also requires a temporal overlap between the period of effective control and the commission of crime.[2436] Outside 12 November 1998 to 28 February 1999, Mr.Krasniqi was spokesperson and political representative, roles that manifestly lack any material ability to prevent or punish crimes. Even if *arguendo* the TP concludes that he had any disciplinary power as DC-Support, Mr.Krasniqi cannot be held responsible for failing to punish crimes which occurred before his appointment in November 1998.

748. Further, after the Kumanovo Agreement, UNMIK and KFOR assumed police and judicial authority whilst the KLA disarmed. Responsibility for law enforcement shifted to international forces. Mr.Krasniqi held no authority in the demobilised KLA. He had no mandate or capacity to investigate or punish post-war offences, which fell to UNMIK and KFOR.

#### *5.5.1. No functional military justice system*

749. Mr.Krasniqi could not prevent or punish crimes through the KLA's military justice structure, which was dysfunctional and embryonic due to wartime conditions. The GS made good-faith attempts in late 1998 to establish a legal sector and a military court.[2437] Dobruna was appointed Chief of the Juridical Sector and arrived in Divjakë around 16 December 1998.[2438] He was tasked with developing procedures for

[2435] Mettraux 2009, chapter 4, pp.82, 87, 89.
[2436] *Bemba* Decision, paras.418-419; Mettraux 2009, p.192.
[2437] T.20240704, p.17644.
[2438] P01964, pp.054717,054719; P01955.2_ET, p.4.

discipline and serious crimes such as collaboration.[2439] But incessant Serbian offensives, displacement, constant movement of units, and the lack of infrastructure and personnel made a functioning court impossible.[2440]

750. Essential prerequisites for a functioning court such as basic facilities, reliable communications, trained staff and a clear legal framework were missing.[2441] Naser Krasniqi, who worked closely with Dobruna, explained that whenever fighting flared up—which was frequently—any legal proceedings had to be abandoned.[2442] There was no distinct division into a prosecutor's office, judicial chamber, or investigative branch, and no formal trials could be held.[2443]

751. Formal investigative procedures were not observed, though Dobruna maintained some case files and made rudimentary records of interviews with suspects.[2444] Within the legal department, Dobruna was only assisted by two junior recruits,[2445] neither man was a professional judge, prosecutor, investigator, or defence counsel and despite appeals to identify anyone qualified, none were forthcoming.[2446]

752. Further, they had a small room, where they also slept, and no equipment, transportation or reliable communications.[2447] Any proceedings were *ad hoc*—Dobruna and his assistants improvised roles—one acting as notional prosecutor, another as defence—in the rare instances a hearing was attempted.[2448] The KLA lacked a legal

[2439] T.20240703, pp.1753917540; T.20240716, p.18354; T.20241203, p.23223; P01355.5, pp.3-5.
[2440] T.20240704, pp.17643-17644; P00707.2, p.16; T.20231205, pp.10487-10489.
[2441] T.20240704, pp.17645,17647-17648; P01955.2_ET, pp.5-7,14; P01955.4_ET, pp.2-4; P01963, pp.054676,054692; P01955.2_ET, p.10; T.20240430, pp.15137-15140.
[2442] T.20250128, pp.24722-24723.
[2443] P01955.5_ET, pp.15-16,22-23.
[2444] P01955.4_ET, p.8.
[2445] [REDACTED].
[2446] P01955.2_ET, pp.6-7; P01955.4_ET, pp.2-4.
[2447] P01955.2_ET, pp.2,21; P01955.5_ET, pp.15,25; P01955.4_ET, pp.1-2.
[2448] P01956, pp.SITF00010488-SITF00010489; P01955.3_ET, pp.3-4; [REDACTED]; P01955.5_ET, pp.15-16; P01955.9_ET, pp.21-22; P01356, p.5954. T.20250128, pp.24639,24643,24719,24819.

framework until Dobruna drafted a rudimentary Military Criminal Code and Code of Procedure around the end of January 1999, and even then it is unclear if those rules were ever disseminated in the field.[2449] W04603 described the military court as a "one-man operation".[2450] Naser Krasniqi observed that "Dobruna was the law".[2451] The sector depended on Dobruna's personal efforts rather than a structured institution. whenever he was absent, its already limited activity appears to have fallen idle.[2452]

753. Established fewer than seven months before the conflict ended, the system never became fully operational until the end of the war.[2453] It was not commonly known within the KLA that there was a court[2454] and there was no consistent process to refer cases to the legal sector.[2455] Abazi described the court as a "wishful opinion".[2456] W04603 was told by Dobruna "we don't have the conditions for trial and for the execution of the punishment; therefore, we will try these cases in the regular courts after the war."[2457] Command responsibility cannot be retro-fitted onto Mr.Krasniqi from these aspirational structures. He could not have referred crimes for investigation during the conflict, not only because he had no knowledge of crimes but also because there was no functioning system to which they could be referred.

754. Nonetheless, the creation of a military court was not merely a façade to impress internationals.[2458] It was a genuine effort to impose accountability on KLA members.

[2449] P01955.2_ET, pp.4-5,25-26; P01956, p.SITF00010488; P01963, p.054667; P01955.3_ET, p.4; P01955.3_ET, p.4; T.20240708, p.17783; P01355.14, pp.6-7; P01955.9_ET, pp.18-20; T.20240708, p.17783; P01355.14, pp.6-7.
[2450] P02007.2_ET, p.22.
[2451] T.20250128, pp.24714,24715-24717.
[2452] T.20250129, p.24742.
[2453] T.20240704, pp.17643-17644; P01963, pp.054667-054668.
[2454] T.20231205, p.10489.
[2455] T.20250128, p.24721.
[2456] T.20240430, p.15161; *also* T.20240704, pp.17647-17648.
[2457] P02007.4_ET, p.10.
[2458] SPO PTB, paras.141-142.

The court's jurisdiction was intended to cover disciplinary and serious offences.[2459] P00741_ET.3 shows the intention that suspicious persons be sent to the legal sector,[2460] which would oversee investigations.[2461] These efforts failed due to practical war-time constraints, not bad faith. The law must be applied in a manner that reflects the reality of non-state armed groups. The KLA's attempt to create a legal system is mitigating, not aggravating. Punishing groups for attempting unsuccessfully to create a lawful disciplinary system would discourage future attempts to follow the law.

755. Mr.Krasniqi had no authority over Dobruna's legal department. Dobruna was appointed by and answered directly to A.Syla,[2462] hence P01175 placed him in "the Cabinet of the Commander". He operated independently, without interference from the GS.[2463] The Prosecution wrongly characterised the legal sector as disciplinary instruments under GS control.[2464] Dobruna told Mr.Krasniqi and others that he would not take orders from anyone.[2465] There was no reporting line from Dobruna to Mr.Krasniqi – Dobruna did not report regularly to anyone.[2466] Zyrapi confirmed that he never witnessed Mr.Krasniqi giving Dobruna any directive, nor Dobruna providing any report to Mr.Krasniqi.[2467] The Military Court was a standalone project run by Dobruna himself.[2468] Bashota testified that the GS never discussed Dobruna's work in his presence.[2469] Dobruna's independence demonstrates that Mr.Krasniqi was not in control of disciplinary matters.

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[2459] T.20240704, pp.17641,17643-17644; P01955.9_ET, pp.16-17; P01955.2_ET, pp.15-16; P02087.3, p.1; P02087.4, p.12.
[2460] P01355.5 p.18.
[2461] **Zyrapi**, T.20240703, p.17540; T.20240704, p.17641; *also* P01355.4_ET, p.2; P01755.8_ET, pp.1-2; T.20240703, pp.17538,17639-17640; P01355.5, p.13.
[2462] P01355.5, pp.13,14; P01955.9_ET, p.3.
[2463] P01955.5_ET, p.20; P01963, pp.054676,054683; P01955.2_ET, p.10; P01955.9_ET, p.2.
[2464] SPO PTB, paras.103,145.
[2465] P01955.2_ET, p.10; P01963, p.054683.
[2466] P01955.2_ET, p.10; P01963, p.054683; P01955.9_ET, p.9; T.20240716, p.18359; T.20240718, pp18538-18539; P01955.2, p.11.
[2467] T.20240718, p.18537.
[2468] T.20241203, pp.23223-23224.
[2469] **Bashota,** T.20241203, pp.23223023224.

756. The timeline further dispels any suggestion of oversight. Mr.Krasniqi left Kosovo on 6 February 1999, remained abroad for most of February 1999, left Kosovo again on 13 March 1999 and did not return until mid-June 1999. During the very period when the legislation was being drafted and the court was attempting to function, Mr.Krasniqi was not in Kosovo and had no ability to monitor whatever nascent legal proceedings were underway.

757. In practice, Zyrapi worked closely with Dobruna and they consulted often.[2470] Dobruna turned to Zyrapi for staff, legal advice, and co-ordination, and Zyrapi provided guidance and practical assistance.[2471] Cases such as Kuqi[2472] and the Šavelić brothers[2473] were addressed through their joint efforts. The evidence does not show that it was Mr.Krasniqi's role to refer cases to Dobruna.

758. The Prosecution failed to establish the existence of functional and operative judicial and disciplinary mechanism capable of preventing or punishing the charged crimes. The Defence could not cross-examine Dobruna. The Prosecution elected not to call [REDACTED], the witnesses best placed to explain how the court operated. Having failed to call them, the Prosecution cannot invite the TP to speculate that this system could have prevented or punished crimes. The evidence available, though largely untested in cross-examination, suggests that it could not. All the above circumstances confirm that Mr.Krasniqi lacked the material ability to prevent or punish the commission of crime.

[2470] **Dobruna**, P01964, p.054711; P01955.6_ET, p.27; P01963, p.054698; **Zyrapi,** P01355.6, p.30.
[2471] **Dobruna,** P01955.5_ET, p.16; P01955.2_ET, p.14; P01964, p.054722; P01955.2_ET, p.14; **Zyrapi,** P01355.6, p.30.
[2472] **Zyrapi,** T.20240715, p.18247; 4D00078, p.053994; P01355.6_ET, p.29. **Dobruna**, P01956, p.SITF00010491; 4D00078, p.053994.
[2473] **Dobruna**, P01955.2_ET, p.24; P01955.8_ET, p.5; P01955.7_ET, p.18; P01963, p.054680; P01956, p.SITF00010491; **Zyrapi,** P01355.8_ET, p.6; 4D00078, p.053994; P03551_ET, p.111810.

*5.5.2. Measures purportedly available were impossible to implement*

759. The Prosecution failed to connect the generic omissions it alleges with any feasible measures within Mr.Krasniqi's purported power to or show the requisite causal *nexus*.[2474] As mentioned above, the KLA had no functioning judicial or disciplinary system to receive reports or conduct investigations. There was no "appropriate authority" to which Mr.Krasniqi could report crimes. The KLA operated in territories contested by Serbian forces, were constantly on the move, and there were no civilian authorities willing or able to assume jurisdiction. Disciplinary measures could only be enforced by ZCs, who did not recognise or implement orders from Mr.Krasniqi.[2475]

760. There was no mechanism for promulgating regulations, nor resources to implement them. Comprehensive dissemination of rules across scattered units was not feasible. As the KLA was constantly outnumbered, attacked, on the move and chronically under-resourced, it was impossible to implement formal compliance systems or to organise centralised IHL trainings beyond sporadic local initiatives.[2476] Zyrapi accepted that, in 1999, responsibility for such training lay exclusively with him and the military court, not Mr.Krasniqi.[2477]

761. Even if a theoretical power to discipline existed, the Prosecution have not shown that any attempted exercise of that power would have prevented the specific crimes charged, given lack of knowledge and reporting. There is no evidence that complaints reached Mr.Krasniqi. He cannot be faulted for the absence of an army-wide disciplinary and compliance regime that was, in truth, beyond the KLA's capacity at the time.

[2474] Indictment, para.55 (a)-(e); *Bemba* AJ, para.170.
[2475] *Supra*, section 3.6.19.
[2476] P00383.1_ET, p.20; P00707.2_ET, p.15; P00187_ET, p.SPOE00055800.
[2477] P01356_ET, pp.5954-5955.

762. Nevertheless, within the limits of their capabilities, GS's directives and the legal sector were attempts to curb crimes. On 6 January 1999, Mr.Krasniqi is alleged to have signed a dismissal order at the request of the local commander.[2478] This dismissal was never implemented. The Brigade never actually received the order, and Commander Bardhi remained in command until his death in May 1999.[2479] On 11 January 1999, Mr.Krasniqi is alleged to have signed an order prohibiting KLA members from wearing masks,[2480] aimed at preventing anonymous individuals from committing crimes under the guise of KLA affiliation. Implementation was a matter for the ZCs and Zyrapi did not know to what extent this order was implemented.[2481] Further, Mr.Krasniqi formalised the appointment of Dobruna, showing he took the administrative step within his competence to support the creation of the legal sector—a measure intended to create a functioning legal system. These examples show that Mr.Krasniqi did take steps to prevent crimes. He did not do more because he did not have disciplinary authority, he did not know about crimes and there were no other measures that he could have taken.

### 5.6. Conclusion

763. The record admits of only one conclusion: Mr.Krasniqi did not have effective control over those who committed crimes; he did not have contemporaneous knowledge of their commission; and there were no additional measures available to him to address potential crimes. Command responsibility cannot be retroactively inferred from belated, aspirational structures which were not functional at the material time. ICL does not demand the impossible, nor does it impose strict liability for the failure to achieve outcomes beyond an accused's capacity. The structural and

[2478] P01109_ET, p.U002-2860.
[2479] **Kurtaj**, T.20240201, p.12504; T.20240222, p.12852.
[2480] P01414_ET.
[2481] **Zyrapi**, T.20240716, p.18329.

operational limitations he encountered, rather than criminal omission or acquiescence, are the reason Mr.Krasniqi's efforts did not succeed. The Prosecution has not met its burden to prove that Mr.Krasniqi is criminally responsible as a commander.

## 6. MR. KRASNIQI DID NOT AID OR ABET ANY CRIME

764. The Prosecution alleges that Mr.Krasniqi assisted, encouraged, or provided moral support that had a substantial effect on the commission of crimes, through the same conduct it alleges as significant contributions to the JCE.

765. The Prosecution's case is fundamentally flawed. It failed to: identify which charged crimes Mr.Krasniqi allegedly assisted; identify any concrete act by him that materially assisted a perpetrator commit a crime; prove any culpable omission grounded in a pre-existing legal duty; prove that any decision or statement by him had a substantial effect on any crime; and failed to prove the required knowledge.

766. Aiding and abetting requires practical assistance, encouragement, or moral support that has a substantial effect on the perpetration of a crime.[2482] Substantial effect is not assumed from mere presence at a location.[2483] It requires a fact-based inquiry into whether the crime would probably not have occurred in the same way without the alleged assistance.[2484]

767. *Ex post* assistance can only amount to aiding and abetting where the Prosecution proves an agreement, formed before the crime, that the Accused would provide that assistance.[2485] Without prior agreement, later conduct cannot facilitate a crime already complete.[2486]

768. Regarding alleged omission, the Prosecution must prove a specific legal duty to act that existed before the events, the material ability to discharge that duty, and that

[2482] *Tadić* AJ, para.229(iii); *Limaj* TJ, para.516.
[2483] *Tadić* TJ, para.689; *Mrkšić* TJ para.671.
[2484] *Tadić* TJ, para.688; *Blagojević* AJ, para.134.
[2485] *Furundžija* TJ, para.229; *Mbarushimana* Decision, paras.286-287.
[2486] *Blagojević* TJ, para.731; *Aleksovski* TJ, para.62.

the crime would have been substantially less likely if the duty had been performed (causation).[2487] High office, general influence, or public prominence are insufficient.[2488]

769. *Mens rea* requires knowledge that the conduct assisted the principal offender in the commission of the crime, including knowledge of the essential elements of that crime.[2489] For persecution, knowledge of the discriminatory intent is required.[2490] Where the Prosecution relies on moral support through public speech, it must prove words directed to assist or encourage a concrete crime, which had a substantial effect on the crime.[2491]

### 6.1. The Prosecution failed to provide proper notice

770. The Prosecution never particularised which specific crime(s) it alleges Mr.Krasniqi aided and abetted, nor how his conduct was linked to the commission of that crime. The Prosecution failed to identify any concrete act or omission of Mr.Krasniqi and tie it to a particular crime, either in the Indictment or during trial. It thereby failed to give proper notice of the material facts and acts alleged against Mr.Krasniqi.[2492]

771. The Prosecution cannot invoke the same alleged acts and omissions it relied on as significant contribution to an alleged JCE and treat them as proof of aiding and abetting.[2493] The tests are different. A significant contribution to a common purpose is different from substantial assistance to a specific crime.[2494] Aiding and abetting

[2487] *Mrkšić* AJ, paras.49,82,97; *Blaškić* AJ, para.47.
[2488] *Aleksovski* TJ, para.65; *Krnojelac* TJ, para.89.
[2489] *Tadić* TJ, para.688; *Blaškić* AJ, paras.45,50; *Aleksovski* AJ, para.162.
[2490] *Krnojelac* AJ, para.52.
[2491] *Perišić* AJ, para.26; *Furundžija* TJ, paras.199,249; *Kordić* TJ, paras.270-272; *Šešelj* TJ, paras.282-285,294,295,300,328,3223-3227,3660-3662,3805-3807.
[2492] *Blaškić* AJ, paras.210,213; *Kordić* AJ, paras.144,147.
[2493] *Kvočka* AJ, para.91.
[2494] *Vasiljević* AJ, para.102.

requires a fact-driven showing that Mr.Krasniqi's conduct materially facilitated a particular crime, including that he knew his conduct would assist the essential elements of that crime.[2495]

772. The Prosecution had to plead and prove aiding and abetting as a separate mode of liability, crime by crime, and conduct by conduct. It did not. The TP cannot fill the evidentiary gaps in the Prosecution case, by drawing connections which the Prosecution neither pleaded nor put to its witnesses.

### 6.2. The Prosecution failed to prove the *actus reus*

773. The evidence does not show that Mr.Krasniqi took any action that assisted, encouraged, or lent moral support to the commission of a charged crime. The Prosecution may point to his presence, his meetings, and his statements,[2496] but it failed to prove that any of these enabled perpetrators, strengthened their resolve to commit a crime or changed what occurred on the ground. There is no proof of substantial contribution to any crime.

774. Proximity without proof of intent and effect does not constitute practical assistance.[2497] The assertion that Mr.Krasniqi visited Shala and Llap zones[2498] and attended meetings in Likoc,[2499] is not probative without evidence of when he was present, where within those broad areas, whether any crime was occurring at the time, or that he had contemporaneous knowledge of it.

[2495] *Blagojević* AJ, para.134.
[2496] *Supra,* sections 2.9, 3.5.1.
[2497] SPO PTB, paras.286,360,483,486,[REDACTED],557; *Mrkšić* TJ, para.671; *Tadić* TJ para.689.
[2498] SPO PTB, para.16(d).
[2499] SPO PTB, para.270.

775. The allegation that Mr.Krasniqi visited the Kukës metal factory does not prove assistance. The identification evidence is unreliable and does not establish any link between Mr.Krasniqi and the perpetration of a crime, still less a substantial effect.[2500] At its highest, the evidence describes a brief visit.

776. The Prosecution also formally withdrew its allegation that Mr.Krasniqi visited detainees at the Malishevë police station in July 1998.

777. If the Prosecution alleges on an *ex post facto* contribution,[2501] it fails on *actus reus*: as no evidence was adduced of any prior agreement with principal perpetrators that Mr.Krasniqi would assist after the crimes.

778. The Prosecution failed to prove any culpable omission. It did not identify any pre-existing legal duty. It did not prove that Mr.Krasniqi had the material ability and concrete means to discharge such a duty in relation to the alleged perpetrators or alleged detention sites. It did not prove a causal *nexus* showing that, had he acted, the charged crimes would have been substantially less likely to occur.

779. Any allegation that Mr.Krasniqi's public statements aided and abetted crimes by providing moral support or encouragement, is wrong in law. Political criticism is insufficient. The law requires speech that actively encourages a specific criminal act and substantially contributes to its commission. The record contains no such evidence. The Prosecution has not identified any statement by Mr.Krasniqi that was directed to assist the commission of a specific crime, that reached perpetrators, or that influenced their conduct.[2502]

[2500] *Supra,* para.654.
[2501] SPO PTB, paras.13,260-263,266,712-713.
[2502] *Supra,* paras 637-639.

780. The TP cannot infer criminal causation from rhetoric alone nor can denunciations of opponents be assumed to translate into crimes against them. That is conjecture, not proof beyond reasonable doubt. For example, Mr.Krasniqi criticised Rugova's strategy as "mistaken",[2503] yet he emphasised that the KLA was not formed to fight the president but to fight the prime enemy, meaning the Serbian regime.[2504] There is no indication that anyone took this rhetoric as a call to harm Rugova or any political rival.[2505] The Prosecution also wrongly attempts to recast his public statements, speeches and interviews as moral support for crimes.[2506]

### *6.3.* The Prosecution failed to prove *mens rea*

781. The Prosecution failed to prove that Mr.Krasniqi possessed the requisite knowledge and intent. No evidence was adduced to prove that Mr.Krasniqi knew his conduct would assist the commission of any specific crime, or that he accepted it would facilitate the essential elements of such a crime. Inference from Mr.Krasniqi's profile and proximity does not prove knowledge of specific crimes. The Prosecution also failed to prove knowledge of the principal perpetrators' state of mind. For persecution, it proved no evidence that Mr.Krasniqi knew any discriminatory intent.

782. The evidence supports the opposite conclusion. Mr.Krasniqi held no operational command over direct perpetrators or alleged detention sites. He stood outside reporting lines that could have placed him on notice of unlawful acts and received no reports of criminal conduct. On the limited occasions when international representatives raised alleged detentions, those inquiries arose only after the arrests occurred and provided Mr.Krasniqi with **no** concrete information that any crime had

[2503] P00601, p.SPOE00231311.
[2504] P00793, p.U0162167.
[2505] 4D00063_ET.
[2506] SPO PTB, paras 18-69.

been committed.[2507] At most, he was confronted with unverified allegations, insufficient to establish contemporaneous knowledge of crimes, or that any act or omission by him facilitated their commission.

### 6.4. The Prosecution failed to establish aiding and abetting

783. The Prosecution failed to particularise which charged crimes Mr.Krasniqi allegedly assisted, identify any concrete act or culpable omission, or prove substantial effect on any specific crime. *Mens rea* is equally absent. There is no evidence that he knew his conduct would facilitate the essential elements of a specific crime or that he had any special intent. Aiding and abetting should be rejected as a mode of responsibility.

[2507] *Supra,* paras 609-623.

## 7. THE PERIOD OF THE ARMED CONFLICT

784. The Prosecution failed to establish the existence of a NIAC between the KLA and Serbian forces prior to the end of May 1998 or after 20 June 1999. Mr.Krasniqi cannot be liable for war crimes in Indictment Counts 3, 5, 7 and 9 during these periods.

### 7.1. Applicable law

785. A NIAC exists in the territory of a state when there is protracted armed conflict between organs of authority and organised armed groups or between such groups.[2508] The term "protracted armed violence" reflects: (i) the intensity of the conflict and (ii) the organisation of the parties to the conflict.[2509] These criteria are closely related and distinguish an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities.[2510] This interpretation of "protracted" as referring to intensity rather than duration has been widely accepted at the ICTY, ICTR and ICC.

#### *7.1.1. Protracted armed violence: Intensity*

786. Whether a conflict has reached the threshold of "protracted armed violence" is a factual matter determined on a case-by-case basis.[2511] The factors relevant to assessing the intensity of a NIAC are well-established.[2512]

[2508] Article 14(2) of the Law.
[2509] *Tadić* TJ, para.562, *Tadić* Jurisdiction Decision, para.70.
[2510] *Ibid*.
[2511] *Boškoski* TJ, para.175; *Mrkšić* TJ, para.407.
[2512] *Boškoski* TJ, para. 177; *Boškoski* AJ, para.21; *Lubanga* TJ, paras.537–538.

#### *7.1.2. Organisation of parties to the conflict*

787. "Organised armed groups" must be sufficiently organized to carry out "protracted armed violence"[2513] though not necessarily equivalent to State forces.[2514] The *Boškoski* TC identified five organisational criteria, each with various indicators: (1) the existence of a command structure, pursuant to which the leadership has capacity to exert authority over its members, (2) the existence of military (operational) capacity, (3) the existence of logistical capacity, (4) the existence of an internal disciplinary system and the ability to implement IHL, and (5) the ability of the group to speak with one voice.[2515]

#### *7.1.3. End of the conflict*

788. Jurisprudence and academic commentaries support determining the end of a NIAC by assessing whether the "protracted armed violence test" continues to be met. A NIAC has ended when "the intensity of the hostilities or the organisation of the non-State actor [has] factually eroded to such an extent that the threshold is no longer met".[2516]

789. In *Tadić* the AC stated that IHL "extends beyond the cessation of hostilities until […] in the case of internal conflicts, a peaceful settlement is achieved" and explained that "until that moment" IHL applies in "the whole territory under the control of a party, whether or not actual combat takes place there". In referring to the achievement of a peaceful settlement, the AC was not prescribing a separate test for assessing the end point of a NIAC, rather, the achievement of a peaceful settlement necessarily

[2513] *Bemba* TJ, para.134.
[2514] *Boškoski* TJ, paras.195,197.
[2515] *Idem,* paras.194–203, with the indicators in respect of the five criteria from paras.199.
[2516] *See,* Milanovic, p.180; Derejko, p.359; Bartels, p.303.

means that the threshold criteria of intensity of the conflict and organisation of the parties is no longer met. Thus, the AC noted that, "no general conclusion of peace has brought military operations in the region to a close. Those hostilities exceeded the intensity requirements applicable to both international and internal armed conflicts".[2517]

790. This approach has been applied at the ICC. In *Al Hassan*, the TC assessed the end of the NIAC with reference to the "protracted armed conflict" test and applied the intensity and organisation criteria to the conflict.[2518] The TC did not apply a separate test of whether there had been a "general close of military operations" with "no reasonable risk of resumption of hostilities".[2519] Whilst in *Gotovina* a TC rejected a defence submission that the conflict in that case ended because of a drastically decreased level of intensity and / or level of organisation of one of its participants, that case concerned an IAC.[2520]

791. Since different threshold criteria apply to assessing the existence of an IAC as compared to a NIAC, the approach to determining the end of an IAC is not the same as for a NIAC.[2521] Furthermore, references by other TC's to the end of a NIAC being marked by the achievement of peaceful settlement is neither persuasive nor determinative when such TCs did not engage in any analysis of determining the end of the conflict on the facts.[2522]

792. The Prosecution submitted that an armed conflict "continues until there is a peaceful settlement as demonstrated by the lasting cessation of armed confrontations

[2517] *Tadić* Jurisdiction Decision, para.70
[2518] *Al Hassan* TJ, paras.1252-1269.
[2519] *Idem.*, para.1268.
[2520] *Gotovina* TJ, paras.1694,1697.
[2521] *E.g., Milanovic* in relation to an IAC: pp.170-175, and a NIAC: pp.178-181.
[2522] *E.g. Haradinaj* TJ, para.100.

without a real risk of resumption".[2523] This submission is not supported by the jurisprudence. As explained above, the achievement of a peaceful settlement is not a separate pre-condition for the end of a NIAC. Moreover, there is no accepted definition of a "peaceful settlement"; which, notably, was not defined by in *Tadić*.

793. Furthermore, even the ICRC has not adopted the elevated standard advocated by the Prosecution. Rather, the ICRC suggests a NIAC could be brought to an end either (a) when one of the parties ceases to exist, including because of demobilisation, or (b) where there is a lasting cessation of armed confrontations without a real risk of resumption, which could be evidenced by various *indicia*, including the effective implementation of a peace agreement, or the implementation of disarmament.[2524] The Prosecution's submission, is silent about what "real risk" means, which creates the danger of an expansive test leading to significant legal overreach.[2525]

### 7.2. No armed conflict before the end of May 1998

794. The Prosecution has not proved that (i) the KLA had reached the level of organisation, and (ii) the conflict was of such "intensity", to reach the threshold for a NIAC by March 1998.[2526] The KLA's organization is addressed above.[2527] The "intensity" threshold is addressed briefly below.

[2523] F03314, paras.12,57.
[2524] ICRC OP, pp.18-19.
[2525] *E.g.*, Derejko, pp.6-7.
[2526] Indictment, paras.16,18,20.
[2527] *Supra,* section 2.4.

795. The TP is invited to find—consistent with ICTY TCs—that armed violence in Kosovo increased significantly only from June 1998 onwards,[2528] and the end of May 1998 was the start of the NIAC.[2529]

796. The UNSC regarded events in Kosovo in early 1998 as "violence and terrorism" not armed conflict,[2530] with IHL having no application until September 1998.[2531] The Prosecution has not proved that international bodies (including ICRC), or regional bodies considered there was a NIAC by March. There is no evidence of any international efforts to broker or enforce ceasefire agreements during spring 1998.

797. The "intensity" threshold for a NIAC was not met by March 1998. First, during this time, Serb operations, or armed clashes, were confined over time and territory. Temporally, clashes were limited in duration and did not result in extended confrontations. Geographically, they were restricted to specific areas and did not result in a uniform intensification of hostilities in adjacent areas.[2532] Second, Serb law operations or attacks were met with minimal opposition until the summer of 1998.[2533] Third, there was a stark asymmetry regarding military equipment and armaments available to Serb forces compared with the KLA. There is a paucity of evidence to indicate the KLA used heavy weapons or machinery during the spring of 1998. The Prosecution evidence is often either silent or imprecise in relation to the weaponry used, the number and type of military personnel and the extent of any destruction.[2534]

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[2528] *Đorđević* TJ paras.1533,1534; *Limaj* TJ, paras.149-157; *Milutinović* TJ, paras.798-801,920.
[2529] *Đorđević* TJ, para.1536; *Limaj* TJ, para.171; *Milutinović* TJ, para.820.
[2530] P04014, p.K035-6952.
[2531] P00750, p.K035-6956.
[2532] *E.g.*: Prekaz (5-7 March), the Haradinaj compound in Gllogjan (24 March), the ambush on Pristina/Peja Road (26 April), Gjergjicë (8 May) Ratkoc (12 May).
[2533] *E.g.*, the attack on the Jashari compound was a one-sided operation, in which the Jashari family barricaded themselves inside their compound. See P04023, p.00649672.
[2534] *E.g.*, the Prosecution evidence of the ambush on the Pristina/Peja Road contains no reference to the type of weapons used or the extent of destruction. In the Serb attack on Gjergjicë sources indicate that the KLA resisted with little more than small arms: P02027.2_ET, p.2147, whereas the Serb forces

Fourth, the clashes evidenced by the Prosecution before and during spring 1998 were characterised by minimal casualties, compared to armed clashes after September 1998.[2535]

### 7.3. No armed conflict after 20 June 1999

798. The conflict ended by 20 June 1999. To hold otherwise, would fly in the face of conclusions by the UNSC, UNMIK, international observers, the ICTY, the Kosovan Parliament, the Kosovan Special Prosecutor and Kosovan courts that the conflict had ended by 20 June 1999. The evidence is consistent with this end date. Certainly, there is insufficient evidence that the conflict continued "through September 1999". [2536]

#### *7.3.1. It is widely accepted that the conflict had ended by 20 June 1999*

799. It is widely accepted that the conflict had ended by 20 June 1999. For example:

(a) On 10 June 1999 UNSC Resolution 1244, mandated the deployment of an international civil and security presence in Kosovo to deter **renewed** hostilities.

(b) UNMIK Regulations 2000/66 and 2006/50 defined the armed conflict as ending on 20 June 1999.[2537] The Special Representative of the Secretary-General ("SRSG") for UNMIK, referenced the armed conflict being over in a report written on 12 July 1999.[2538]

attacked with military resources including heavy weaponry, vehicles and tanks: P01092_ET, pp.SPOE00230868-SPOE00230869.

[2535] *E.g.*, clashes around Ratkoc on 12/05/1998 resulted in three civilian deaths (P02816_ET, p.SITF00437804; P00068_ET, p.1), one KLA death ([REDACTED]) with uncorroborated evidence of seven enemy fatalities (P02816_ET, p.SITF00437803).

[2536] *Contra*, SPO PTB, paras.698-699; Indictment, para.16

[2537] 1D00254;1D00255.

[2538] 1D00209, para.88.

(c) ICTY Judges repeatedly concluded the armed conflict had ended by 20 June 1999.[2539]

(d) Judges of the Supreme Court of Kosovo found the conflict had ended in June 1999.[2540]

(e) The Special Prosecutor's Office of Kosovo formulated charges of war crimes on the basis that "the war officially ended on 11 June 1999."[2541]

(f) The Kosovo Parliament defined the armed conflict as ending on 20 June 1999.[2542]

800. This unanimity existed before the Prosecution framed the Indictment. Nothing in the evidence necessitates a different finding.

#### *7.3.2. The Prosecution's position is not supported by the evidence*

801. The PTJ's finding (that the NIAC continued until 16 September 1999)[2543] and the Prosecution's position rely on a small body of evidence, much of which was not admitted.

802. In particular, the evidence underlying the PTJ's finding that "[i]n the course of June 1999, Serbian forces prepared the retreat and began redeploying some of their units outside of Kosovo" was not admitted.[2544] Likewise, none of the evidence cited in support of the finding that "Serbian forces" were found to be violating their agreements "on some occasions during the summer of 1999" was admitted.[2545]

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[2539] *Milutinović* TJ, para.1217; *Đorđević* TJ, paras.1579-1580; *Haradinaj* Re-TJ, fn.2039.
[2540] *E.g., Kolašinać* Decision, p.21.
[2541] *E.g.* 1D00193, p.SITF00314848,SITF00314852.
[2542] 1D00106, Article 3(1).
[2543] Confirmation Decision, paras.86,136,137.
[2544] *Idem,* para.134, fn.296, citing: "IT-05-87.1 P01369.E, pp.149 (03081497) ([REDACTED]),151-154 (03081499-03081502)".
[2545] Confirmation Decision, para.134, fn.297, citing 076097-076099, p.2 (076098); 076092-076096, p.076092; SITF00194759-00194762, para.7; SITF00194783-00194786, para.10.
[2545] SPO PTB, para.699. *Also* Confirmation Decision, paras.134-135.

803. The Prosecution relied on two propositions to support their claim that the NIAC extended into September. First, that following the withdrawal of the FRY forces on 20 June 1999, "both the KLA and FRY forces continued hostile and provocative acts through at least September 1999". Putting aside evidence not admitted, the only remaining evidence cited in the PTB involved [REDACTED].

804. Whilst Gen.Jackson and Strohmeyer referred to incidents of violence in Kosovo after 20 June 1999, this does not support the Prosecution's submission. To the contrary, Strohmeyer stated "once the JNA and Serb police were gone, there was no other structured organisation in Kosovo aside from the KLA", and he places the JNA leaving Pristina "a few days" after UNMIK's arrival.[2546] [REDACTED] evidence[2547] says nothing whatsoever about hostile acts by the "FRY forces" and concerns June - July 1999 not August/September. [REDACTED].[2548]

805. The three [REDACTED] were never put to witnesses in court.[2549] They were provided by [REDACTED], but their provenance, authorship, and reliability are unknown. They read like Serbian post-conflict propaganda. For example, the sole source of [REDACTED].[2550]

806. The Prosecution's second proposition is that "until at least September 1999, the redeployment of FRY forces and the resumption of hostilities in Kosovo was a real concern among the parties to the conflict." However, [REDACTED] are the **only evidence** relied on in support of this proposition in the PTB. The evidence does not demonstrate that the redeployment of FRY forces was a "real concern" to the KLA, nor that the resumption of hostilities was a "real concern" to the parties to the conflict.

[2546] P01968, paras.15,58; *also* T.20250121, pp.24131-24133.
[2547] P02517, paras.26,42,43,56.
[2548] 1D00213, p.SPOE00000095, para.5(a).
[2549] F03144/A01,Items 67,70,73,84,119.
[2550] SPO PTB, para.699, fn.2979, [REDACTED].

No KLA or FRY witnesses testified to this effect. International witnesses considered the possibility of a Serb re-invasion of Kosovo as "not zero" but "quite a remote possibility."[2551]

807. There is also no evidence that KFOR was concerned about a resumption of the NIAC between FRY and the KLA. Any theoretical concern expressed by KFOR was related to the possibility of KFOR having to engage in fighting with FRY forces in a resumption of the IAC with NATO countries.

#### *7.3.3. The armed conflict had ended by 20 June 1999*

808. By 20 June 1999 the intensity of any armed conflict had eroded so that the threshold was no longer met. The MTA was signed on 9 June 1999 between KFOR and the FRY, providing for an immediate ceasefire and complete withdrawal of FRY forces from Kosovo by 20 June 1999.[2552] Although a ceasefire or agreement may not be sufficient on its own to determine the end of an armed conflict, it is manifestly relevant to this assessment,[2553] since the view of the warring parties and of those entering Kosovo following the ceasefire was that the hostilities ended with the signing of this agreement.[2554]

809. The MTA triggered the following events: (i) the withdrawal of Serbian forces by 20 June 1999; (ii) the deployment of an international security presence (KFOR) and an international civil presence (UNMIK); and (iii) the demobilisation and demilitarisation of the KLA. This sequence was described by Gen.Jackson as "almost

[2551] P02516, p.121595; 1D00214, p.SPOE00212681.
[2552] P02527, Article II(2), Article II(2)(e).
[2553] *Boškoski* TJ, para.176 ICRC Commentary-GC-I, para.490; *also*, *Milanovic*, pp.180-181.
[2554] **KLA perspective**, *see* T.20241106, pp.22132-22137; T.20231116, pp.10329-10331; T.20250211, p.25080; [REDACTED]; T.20250325, pp.25873-25874; P00911.19_ET, p.13; P01097.7_ET, p.27. **FRY perspective**, *see* [REDACTED]; P01840.1_ET, pp.9-11; [REDACTED]. **International observers**, *see* T.20230907, pp.7551-7552; T.20231205, p.10574; P00743.4, p.076687; T.20250120, pp.23917-23919; [REDACTED].

choreography" with some of the steps being politically driven "at the international level".[2555] There was no scope for an armed conflict between "the KLA" and "the Serbian forces" to resume after 20 June 1999. In reality, it did not.

#### *7.3.4. The withdrawal of Serbian forces*

810. It is an AdjF that [REDACTED]."[2556] A UNSC Report dated 12 July 1999, stated that the Serbian withdrawal "was completed by 20 June 1999".[2557]

811. Contemporaneous documents bear this out.[2558] An OSCE Activity Report for 16-17 June 1999 reports that COMKFOR, (Gen.Jackson), "stated that he was satisfied with the way in which the withdrawal of MUP and VJ forces from Zone 1 had proceeded; that substantial withdrawal from Zone 2 had already occurred, prior to the 18 June deadline; and that he expected the withdrawal to continue on schedule".[2559]

812. This is supported by witness testimony. International observers confirmed the FRY forces withdrew. Strohmeyer testified that at the time of UNMIK's arrival, the JNA was still present in Prishtinë and left the city a few days later.[2560] Jensch, a member of German KFOR, testified that "for a few days" there were still former Yugoslav Army forces present,[2561] and on his first day he was caught in a shootout between the Yugoslav army and the KLA when he was evacuating three Serbian posts. He did not witness any shooting apart from on his first day.[2562] Russell, a member of American

[2555] P02516, pp.121576,121577.
[2556] F01534/A01, [REDACTED].
[2557] P02563, p.SPOE00000756, para.4. *Emphasis added.*
[2558] P00814_ET.28, pp.SPOE00055581,SPOE00055584; P00814_ET.30, pp.SPOE00055603,SPOE00055606,SPOE00055607. P01738_ET, p.095935. P00814_ET.28, pp.SPOE00055587, SPOE00055592. P00515_ET.67, pp.008891-008892.
[2559] P01982, p.SITF00011415; P01981, p.SITF00011412.
[2560] T.20250121, p.24131, referring to P01968, para.15.
[2561] *Idem*, p.15548.
[2562] *Idem*, pp.15545-15548.

KFOR, confirmed that the Serbs withdrew from Gjilan around 12-14 June, and he did not see any organised Serbian military in the area after the VJ left on 20 June.[2563] KLA members also confirmed this withdrawal.[2564] Duncan, the political adviser to General Clark, testified that the cessation of hostilities was achieved "with the final evacuation of the Serb troops and paramilitaries on 21 June"[2565] and after that there was civil disturbance.[2566]

813. Unsurprisingly, hostilities between the KLA and Serbian forces did not continue after the Serbian withdrawal on 20 June 1999. The *Boškoski* factors which indicate the existence of an armed conflict were no longer present. This was demonstrated by the testimony of S.Buja that after 10 June 1999: (i) "there weren't any attacks" on Kosovan towns, (ii) the parties to the conflict were not "blocking" supply routes, (iii) he could not recall "any clashes" between the KLA and Serbian forces, (iv) no heavy weapons or heavy vehicles were being used in conflict because "they were taken under control by KFOR", (v) he did not recall either the KLA or Serbian forces firing from heavy weapons, and (vi) he was not aware of any civilian casualties, or of civilians being forced to flee from combat zones because "they did not have to flee. But if they wanted to move, of course they could move around".[2567] Any incidents of violence allegedly carried out by purported "Serb paramilitaries" or by former VJ soldiers do not extend the NIAC, because they cannot meet the required intensity or organisation thresholds.

814. Thus by 20 June 1999 one of the warring parties had withdrawn from the territory. This ended the NIAC. It also removed any possibility that the hostilities between "the KLA" and "the Serbian forces" could resume.

[2563] T.20240819, pp.18609,18695,18696.
[2564] P01605.6_ET, p.16; **Maloku**, T.20250325, p.25874; **S.Buja**, T.20241106, p.22135.
[2565] T.20250923, p.27255.
[2566] *Idem,* p.27255.
[2567] T.20241106, pp.22135-22137.

#### *7.3.5. The entry of the Internationals*

815. The entry of UNMIK and KFOR reinforces 20 June 1999 as the end of the conflict. The entry of their personnel was contingent on the end of the armed conflict and their mandate, pursuant to UNSCR 1244, was incompatible with one.

816. UNMIK was not created to be deployed into an ongoing armed conflict. UNSCR 1244 authorised KFOR to take measures necessary to maintain the peace, while UNMIK was authorised to take measures to restore civilian order and government. This situation "no longer required an application of rules of armed conflict, but of civilian control."[2568] Resolution 1244 makes no reference to an ongoing conflict, nor "parties to the conflict", nor calls for steps to be taken for it to end.[2569]

817. UNMIK has always been considered a post-conflict mission. UN documents consistently recognise the armed conflict as having ended by "20 June 1999", and refer to UNMIK in post-conflict terms, as having been created to "help the people in Kosovo to rebuild their lives and heal the wounds of conflict".[2570] Strohmeyer expressly linked UNMIK's deployment to the end of the conflict; testifying that "[o]therwise, we wouldn't have gone there".[2571]

#### *7.3.6. Demobilisation of the KLA*

818. The Prosecution position is also undermined by the KLA's demobilisation. A NIAC ends when the organisation of the non-State actor has factually eroded so that the threshold is no longer met. On 21 June 1999, an "Undertaking of Demilitarisation and Transformation by the UCK" was signed by Thaçi and COMKFOR. The

[2568] Burger, p.138; Greenwood, pp.56-60.
[2569] 1D00078, para.9(a).
[2570] P02563, paras.117,123.
[2571] T.20250120, p.23920.

Undertaking provided for "a ceasefire by the UCK, their disengagement from the zones of conflict, subsequent demilitarisation and reintegration into civil society, in accordance with the terms of the UNSCR 1244", with COMKFOR supervising implementation.[2572]

819. [REDACTED].[2573] [REDACTED].[2574] [REDACTED]."[2575] S.Buja testified that this document was implemented by the KLA.[2576]

820. [REDACTED].[2577] [REDACTED]."[2578]

821. Further Fritsch, who served as part of the German KFOR contingent in Kosovo from 14 June to 3 August 1999 testified that the KLA was disarmed by the end of June,[2579] and that demilitarisation took place without major problems.[2580]

### 7.4. Conclusion

822. The FRY agreed to a cessation of hostilities with KFOR on 9 June 1999 and left Kosovo by 20 June 1999, a process which was supervised by international civilian administration. The hostilities between the FRY and the KLA never re-ignited inside Kosovo. There is no evidence that any acts of violence after 20 June 1999 were committed by, or against, Serbian forces who met the organisational requirement of party to an armed conflict. The Prosecution's contention that the NIAC continued through September 1999 is a failed attempt to rewrite history.

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[2572] P01444, para.1.
[2573] 1D00211.
[2574] T.20250120, pp.23978-23981; 1D00211, p.SPOE00000734. **S.Buja,** T.20241106, p.22140.
[2575] P01987, para.3(a).
[2576] T.20241106, pp.22138-22140.
[2577] 1D00212, para.9; T.20250120, pp.23979-23981.
[2578] 1D00213, pp.SPOE00000095,SPOE00000096; T.20250120, pp.23981-23982.
[2579] T.20240522, p.15706.
[2580] *Idem*, pp.15657-15659; P01191.4_ET, pp.8-13; P01194_ET, p.071229

## 8. THE CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY ARE NOT MET

823. The Prosecution has not proved the contextual elements to support convictions for CAH. It has not proved that there was a widespread or systematic attack on a civilian population, that Mr.Krasniqi had knowledge of any such attack, nor that his acts formed part of such an attack.

824. The KLA—a non-state actor with comparatively limited resources, personnel and organisation[2581]—was not engaged in a widespread or systematic attack directed against a civilian population. This is not to suggest that crimes were not widespread. Rather, the point is that the KLA did not engage in a course of conduct – and certainly did not have a policy—whereby the civilian population were the "primary object" of an attack.[2582]

825. The ICTY rejected allegations that the KLA committed CAH. In *Limaj,* the TC concluded there was no widespread or systematic attack directed against a civilian population.[2583] Rather, the evidence demonstrated the existence of a *"course of conduct"* indicating there was a *"military attack"* in Kosovo.[2584] The Chamber specifically rejected the contentions that there had been an attack *"directed against"* the civilian population and that the civilian population had been the *"primary object of attack"*.[2585]

826. The *Limaj* TC found *"there was at most a "systematic" attempt by the KLA to target Kosovo Albanian individuals believed to be, or suspected of, collaborating with the Serbian*

[2581] *Limaj* TJ, paras.191,194,195 observing that "the existence of an attack is most clearly evidenced when a course of conduct is launched on the basis of massive state action".
[2582] *Kunarac* AJ, para.91.
[2583] *Limaj* TJ, para.228.
[2584] *Idem*, para.204.
[2585] *Idem,* para.205.

*authorities but no attempt to target a civilian population as such"*.[2586] The Chamber found *"the KLA had a policy of targeting only those who were believed to have, or suspected of having links with the Serbian regime"*, noting that, *"whether these perceived or suspected collaborators were correctly identified or not, they were targeted as individuals rather than as members of a larger targeted population"*.[2587]

827. Like the defence in this case, the TC in *Limaj* recognised crimes had been committed.[2588] However, the TC concluded that the *"means and methods used by the KLA"* demonstrated that *"the individuals who were abducted and detained were singled out as individuals because of their suspected or known connection with, or acts of collaboration with, Serbian authorities – and not because they were members of a general population against which an attack was directed by the KLA"*.[2589]

828. For the same reasons articulated in *Limaj* and *Haradinaj,* the evidence, although voluminous, only provides more examples of victims being "*singled out primarily for reasons pertaining to them individually such as their real or perceived connection with the Serbian authorities"*,[2590] and does not establish that a widespread or systematic attack was conducted by the KLA directed against any civilian population of Kosovo.

829. Crimes committed for revenge or individual reasons are not CAH.[2591] Further, the Prosecution's reliance upon evidence in relation to crimes committed against

[2586] *Limaj* TJ, paras.211,215,216.
[2587] *Idem,* para.217.
[2588] Notably, *infra.,* para.217, the Chamber found that crimes were committed *"by local elements of the KLA, who were acting independently of any central KLA control because at the relevant time, the KLA had only limited capacity to exert effective control"* and at para. 216, that "*in the guise of giving effect to this policy, a number of Kosovo Albanian civilians may have been abducted for other reasons, such as personal revenge of individual KLA members and other motives"* and refers to *"rogue elements of the KLA".*
[2589] *Ibid.,* para.227; further, *Haradinaj* TJ, para.122.
[2590] *Supra,* section 2.6.
[2591] *Ibidem.*

detained Serbian combatants (including persons *hors de combat*),[2592] detained KLA members and collaborators, undermines their position that a civilian population was the primary object of an attack. Such evidence can serve as evidence of individual crimes, but it cannot be relied upon to establish the chapeaux requirement concerning the existence of an attack against a "civilian population"; conversely it shows that persons without civilian status were targeted. Only evidence of crimes committed against civilians can establish the chapeau elements of CAH.[2593]

830. The TP must therefore acquit Mr.Krasniqi of CAH.

[2592] Members of armed forces are not considered civilians merely because they were not engaged in combat at the time of their arrest: *e.g., Blaškić* AJ, para.116*; Taylor* TJ, para.510.
[2593] Mettraux 2003, at 5.3.4.2.2.1 and 5.3.4.4.1.

## 9. CONCLUSION

831. For the reasons set out above, the Defence submits that the TP should acquit Mr.Krasniqi on all counts in the Indictment.

## 10. SENTENCING

832. As a preliminary matter, the Defence underscores the fundamental anomaly of being required to file sentencing submissions before any finding of guilt has been made. Sentencing is, by definition, a distinct and subsequent phase of proceedings that presupposes a conviction. Requiring the Defence to argue sentence at this stage forces an artificial exercise and risks creating the false impression that Mr.Krasniqi accepts the premise of guilt. He does not. These submissions are made strictly as a procedural necessity, and solely in the alternative in the event of a conviction. Nothing in this submission—expressly or by implication—should be construed as any admission of guilt or responsibility. Mr.Krasniqi continues to maintain his innocence in full.

833. Despite the Prosecution's manifest failure to discharge its burden of proof and the overwhelming deficiencies in its case, if—contrary to the Defence's primary submissions—the TP is nonetheless minded to convict, substantial and compelling mitigating factors must be accorded decisive weight in sentencing.

834. Sentencing is governed by Articles 40-44 and Rules 162-166. Pursuant to Article 42 and Rule 163(1), the TP is required to determine sentence by considering the gravity of the crimes and the individual circumstances of the convicted person, including any mitigating circumstances.

835. The TP enjoys broad discretion in determining an appropriate sentence, provided that discretion is exercised within the applicable legal framework. Sentencing must be individualised and proportionate reflecting (i) the gravity and consequences of the crimes, (ii) Mr.Krasniqi's personal contribution to the crimes as established by the TP's findings, (iii) his individual circumstances, and (iv) any

mitigating or aggravating circumstances.[2594] Each element must be assessed separately, based strictly on the evidence and the specific findings against him.

836. A central sentencing consideration is the convicted person's personal contribution. The TP must assess the accused's role and position, the means by which the crimes were carried out, and the degree of intent established, rather than attribution of responsibility by association, status, or position alone.

837. The TP must also consider Mr.Krasniqi's individual circumstances including age, health, family responsibilities, education, prior convictions, and overall character.[2595]

838. Mitigating circumstances must relate directly to the convicted person, but need not be directly linked to the crimes and are not confined to the scope of the charge.[2596] They may arise from conduct or factors preceding or subsequent to the alleged crimes, including co-operation with the Prosecution, behaviour towards witnesses,[2597] genuine expressions of remorse, or from personal characteristics, including age, family circumstances, health, and character. Mitigating circumstances must be established on a balance of probabilities.[2598]

839. While mitigating circumstances do not diminish the gravity of the crimes as such, they are directly relevant to the determination of sentence and may justify a meaningful reduction in the punishment imposed.[2599] Where the TP finds Mr.Krasniqi's role to be limited, this must be reflected in sentencing, alongside proper

[2594] *Mustafa* AJ, paras.453,458; *Shala* AJ, paras.871; *Shala* TJ para.1072; *Seromba* AJ, para.228.
[2595] F02330/A01.
[2596] *Mustafa* TJ, para.792; Shala TJ, para.1081.
[2597] *Stakić* TJ, para.922.
[2598] *Shala* TJ, para.1081.
[2599] *Brđanin* TJ, para.1117, *Stakić* TJ, para.920, *Limaj* TJ para.729.

consideration of his personal circumstances and his demonstrated contribution to peace efforts.

840. No aggravating factors have been established. Aggravating circumstances must relate either to the crimes or to the convicted person and must be established beyond reasonable doubt. The absence of mitigating circumstances cannot itself constitute an aggravating factor. Nor may an element of a crime or a mode of liability be treated again as an aggravating circumstance, as this would amount to impermissible double counting and undermine the principle of proportionality. [2600]

841. In this case, the evidence does not demonstrate that Mr.Krasniqi abused a position of authority, acted with particular cruelty, or was motivated by discriminatory intent. To the extent that the Prosecution relies on the seriousness of harm, the number of victims, or the broader context of the conflict, such considerations are inherent in the crimes and have already been considered in the assessment of gravity. Sentencing must remain strictly individualised, and Mr.Krasniqi cannot be punished for the conduct of others or for the overall criminality of the conflict beyond the limited acts for which he has been personally found responsible.[2601] There are no aggravating factors concerning Mr.Krasniqi.

### 10.1. Mitigating factors regarding Mr.Krasniqi

#### *10.1.1. Personal circumstances*

842. Advanced age and [REDACTED] are relevant mitigating factors at sentencing**.** Custodial sentence is more onerous for an elderly accused and may consume a

[2600] *Mustafa* TJ, para.793; *Shala* TJ, para.1081; *Limaj* AJ, para.143.
[2601] *Šainović* AJ, para.1837.

significant portion of their life remaining after release.[2602] Mr.Krasniqi is 75 years old and [REDACTED] during detention.[2603] Continued imprisonment therefore carries an increased punitive impact for him.

#### *10.1.2. Prior imprisonment on political grounds*

843. Mr.Krasniqi previously endured 10 years of imprisonment under Serbian authorities as a political prisoner, not as a result of criminal conduct. He was subjected to torture and inhumane and degrading treatment.[2604] This history reflects victimisation, not criminal propensity. Mr.Krasniqi comes before the TP not as a repeat offender, but as someone who has already suffered severe deprivations of liberty and hardship. This bears directly on proportionality and must weigh strongly in mitigation when determining whether any further custodial sentence is necessary or just.

#### *10.1.3. Family situation*

844. Mr.Krasniqi is married and has four children. Following his detention, [REDACTED]; his absence from home has rendered it difficult for him to fully support his family.[2605] Additionally, as a result of his detention, he was unable to attend the weddings of his children. He became a grandfather and has not been able to spend time with his grandchildren. Any imposed sentence will likely be served outside of Kosovo, severely limiting family contact and visits. These factors are relevant to Mr.Krasniqi's personal circumstances and must be weighed in mitigation.[2606]

[2602] *Plavšić* Sentencing Judgement, paras.105-106; *Krnojelac* TJ, para.533.
[2603] T.20230413, p.2763; F03086/A01, F03086/A02; F02330.
[2604] T.20230405, p.2425.
[2605] *See* Annex 4.
[2606] *Kunarac* AJ, paras.362,408.

*10.1.4. Conduct during the Indictment period*

845. Mr.Krasniqi was an academic and professor by profession with no military training, whether theoretical or practical. He did not participate in military operations or operational decision-making. The absence of military training and operational experience is a relevant mitigating factor, as it bears directly on the accused's capacity, intent, and degree of responsibility in relation to crimes committed.[2607]

846. Prosecution evidence shows that during the Indictment period, Mr.Krasniqi repeatedly called for compliance with IHL in relation to KLA activities.[2608] His role was administrative and political, not operational. There is no evidence that he directly committed, ordered, or otherwise made a direct or significant contribution to the crimes charged.

847. Even Zyrapi, despite adopting a posture that sought to shift responsibility away from himself, confirmed that Mr.Krasniqi took no action to target opponents.[2609] His appointment as DC-support was of limited nature and duration, from the end of November 1998 up to February 1999, of which, he was outside Kosovo for two weeks in Rambouillet, which is relevant as a mitigating factor.[2610] In the absence of findings of direct perpetration, operational control, or the abuse of authority, his responsibility must be assessed on the basis of his actual conduct and limited role.[2611]

848. As recognised by the ICTY Trial and Appeals Chambers "the determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime."

[2607] *Hadžihasanović* AJ, paras.332-333.
[2608] *Kristić* AJ, para.272: written orders to treat Muslims humanely, was considered a mitigating factor.
[2609] **W04751**, T.20240715, p.18206.
[2610] *Kristić* AJ, para.272.
[2611] *Idem,* para.273.

Where participation is limited, this must be reflected both in the assessment of gravity and in the sentence imposed. Here, the TP must ensure the sentence reflects Mr.Krasniqi's limited participation, not the seriousness of the crimes in the abstract or his position alone. In this respect, the ICTY AC recognised that disparities between participants who make overwhelmingly large contributions to criminal conduct and those whose contributions, though significant, are more limited may be adequately addressed at the sentencing stage. Where an accused's role is demonstrably lesser in scope and nature, restraint in sentencing is required to ensure individualized and proportionate sentencing.[2612]

849. The evidence further establishes that Mr.Krasniqi played a constructive role in efforts aimed at political dialogue and peaceful resolution of the conflict, including participation in peace-related initiatives and negotiations.[2613] International witnesses consistently regarded him as a pragmatic and cooperative interlocutor. Kickert confirmed that during the Rambouillet negotiations Mr.Krasniqi was viewed as "constructive, co-operative and positive."[2614] Williams likewise recalled Mr.Krasniqi working collaboratively with other parties at Rambouillet, and later playing a positive role in securing the protection of minorities during the Vienna final status negotiations.[2615] This consistent engagement to further peace is a significant mitigating factor, demonstrating an orientation toward de-escalation, reconciliation, and lawful political process.[2616] Mr.Krasniqi consistently advocated for political pluralism and (post-war) free elections.[2617]

[2612] *Kupreškić* TJ, para.852, endorsed in *Aleksovski* AJ, para.182; *also Blaškić* AJ, para.683.
[2613] **Zyrapi**, T.20240715, pp.18195-18196.
[2613] T.20251111, p.27740.
[2614] **Kickert**, T.20240529, p.16277; 1D00145.
[2615] **Williams**, T.20250917, pp.26889-26890.
[2616] *Babić* Sentencing AJ, para.61.
[2617] 4D00039_ET; P00601_ET, p.SPOE00231311; 4D00038, p.019673.

850. Mr.Krasniqi's role in the prisoner exchange negotiation is a further significant mitigating factor. As reflected in contemporaneous documents, discussions during this period focused on engagement with internationals to secure and implement the exchange of PoWs. Hill described these negotiations as the first—and only—prisoner exchange discussions between the KLA and Serbian authorities, and a highly sensitive and unprecedented initiative. While Mr.Krasniqi advocated for a reciprocal exchange, Hill confirmed that the Serbian soldiers were ultimately released first in accordance with the proposal advanced by the US side.[2618] This demonstrates that Mr.Krasniqi participated in a process aimed at humanitarian outcomes and de-escalation and acted constructively within an internationally mediated framework rather than pursuing violence or escalation.[2619]

#### *10.1.5. Post-Indictment behaviour*

851. Mr.Krasniqi's conduct while in detention has been exemplary. Post-offence conduct, including behaviour in detention and during trial, may constitute a mitigating factor where it reflects positively on the accused's character, respect for the judicial process, and rehabilitation prospects. His conduct, in custody and in all monitored external contacts, has been consistently responsible and incident-free. There is no evidence that Mr.Krasniqi, or anyone connected to him, has interfered with any Prosecution witness. This record demonstrates that the objectives of individual deterrence and rehabilitation have already been substantially met.

852. Mr.Krasniqi has also demonstrated humanity and consideration for witnesses which is relevant in mitigation.[2620] He instructed counsel not to cross-examine

[2618] T.20251111, p.27741.
[2619] P03551_ET, p.111807; [REDACTED].
[2620] [REDACTED]; *Stakić* TJ para.922: The fact that the accused directed his counsel not to cross-examine a witness out of consideration for that witness's "suffering and fragile mental state" was considered by the Chamber to constitute a mitigating factor.

[REDACTED] due to the witness's unstable mental condition. Furthermore, although [REDACTED] was a crucial witness, given his mental state, all defence teams agreed to admit his evidence in writing. This was not a procedural necessity, but a principled choice grounded in concern for the witness's well-being.

#### *10.1.6. Character and reputation*

853. The evidence shows Mr.Krasniqi as a lifelong civilian activist and respected public figure in Kosovo. R.Mustafa described him as **"**one of the great political activists at the time. He was creating and building trust in my generation and others. And he was persistent in obtaining a free Kosovo".[2621]

854. His integrity and standing are confirmed even by Prosecution witnesses. Buja described him as an "extra-ordinary man with exceptional skills," and explained that his appointment as spokesperson was "welcomed by the civilian population**."**[2622] S.Selimi confirmed that "everybody respected Mr.Krasniqi,"[2623] and Zhitia described him as "a person with integrity."[2624] [REDACTED] saw Mr.Krasniqi as a balanced, co-operative and a good person.[2625] International witnesses reached the same conclusion: Byrnes recalled Mr.Krasniqi's "humanity and seriousness" and described him as "basically a man of peace."[2626] Rubin likewise described him as a moderate, distinct from military commanders.[2627] Notably, even victim-witnesses described him as "well-meaning, good-natured and co-operative"[2628] and agreed that Mr.Krasniqi has been a well-respected man of integrity.[2629]

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[2621] T.20230717, p.5814.
[2622] T.20241107, p.22173.
[2623] **S.Selimi**, T.20250212, pp.25198-25199.
[2624] **Zhitia**, T.20240826, p.18972; *also* [REDACTED]; **R.Mustafa**, T.20230713, p.5629
[2625] [REDACTED].
[2626] T.20240226, p.13734.
[2627] T.20250915, pp.26568-26569,26584.
[2628] P00383.3, pp.12,13; [REDACTED].
[2629] [REDACTED].

855. Most importantly, no witness testified that Mr.Krasniqi was perceived as involved in crimes or any criminal plan**.** On the contrary, allegations were met with disbelief. Fondaj called it "absurd" to suggest he ordered an arrest,[2630] and Ledwidge stated plainly that he "did not think Jakup Krasniqi was involved in any of this**."**[2631] Kuqi, allegedly a direct victim of Mr.Krasniqi, publicly called for an apology for the undignified treatment of Mr.Krasniqi during his arrest. Halitjaha went further still, stating: "If Jakup Krasniqi made a mistake, I am willing to take upon myself all his mistakes. I can do his sentence instead of him. Let him go home."[2632]

### 10.2. Conclusion

856. This evidence is not merely anecdotal. It bears directly on moral culpability, character, and the necessity of punishment, and it warrants substantial mitigating weight.

857. In the particular circumstances of this case, any further deprivation of liberty would be disproportionate to Mr.Krasniqi's actual conduct and personal culpability. The Defence submits that a sentence equivalent to time already served would adequately reflect the gravity of the offences as found, Mr.Krasniqi's limited culpability and the substantial mitigating factors identified above, while fulfilling the objectives of punishment, deterrence, and rehabilitation.

858. In the alternative, the Defence submits that the objectives of sentencing would be fully satisfied by a substantially reduced custodial sentence. The Defence further respectfully requests that the TP include an appropriate recommendation to the enforcement authorities to consider the humanitarian considerations outlined above,

[2630] T.20240626, p.17247.
[2631] 4D00008.
[2632] **Halitjaha**, T.20231116, p.10332.

and that Mr.Krasniqi be considered eligible for early release at the earliest legally permissible stage.

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