

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

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

**Before:** Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaël Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Rexhep Selimi

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Confidential Annex 1"**

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**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Rodney Dixon

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagenda

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## I. INTRODUCTION<sup>1</sup>

1. The SPO failed to discharge its burden to prove beyond a reasonable doubt the charges alleged against **SELIMI** in the Amended Indictment.<sup>2</sup> **SELIMI** is entitled to an acquittal of all charges.
2. **SELIMI** was a proud member of the KLA through which he fought to free Kosovo from the yoke of oppression and discrimination of the occupying forces of the government of the FRY.
3. **SELIMI** was not a member of a JCE with the shared “common purpose to gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be opponents.”<sup>3</sup> No such criminal plan existed. The SPO has aggregated sporadic and disparate incidents of violence or allegations of wrongdoing, under the erroneous presumption they could only have been the result of a common plan or policy, formed and directed by **SELIMI** and his co-accused. This logical fallacy, entirely unsupported by the evidence, underpins and undermines the entirety of both the alleged JCE and aiding and abetting.<sup>4</sup>
4. Charges of superior responsibility are entirely unproven.<sup>5</sup> The KLA was a work-in-progress without a command structure. Public pronouncements describing attempts to organise these units into a semblance of an army were more propaganda than reality. Power predominantly remained in the hands of local

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<sup>1</sup> This Brief is filed confidentially pursuant to Rule 82(1)(b) and (3) of the Rules, as it contains information subject to protective measures. A public redacted version of this Brief will be filed in due course. Annex 1 contains a list of acronyms as well as short forms of the names, filings and other materials cited herein. Unless otherwise indicated, this brief refers to the English version of exhibits for specific citations and all references to “Transcript” and/or “T.” refer to the transcripts of the hearings in KSC-BC-2020-06.

<sup>2</sup> Indictment.

<sup>3</sup> Indictment, para.32.

<sup>4</sup> Indictment, para.54.

<sup>5</sup> Indictment, paras.55-57.

leaders or zone commanders, throughout the Indictment Period. At no point did **SELIMI** have effective control over perpetrators of any of the alleged crimes, many of which are not named or identified.

5. The unique circumstances permeating this trial cannot be ignored. The SPO chose to lead primarily a paper case, calling only a handful of witnesses to truly testify live. Many witnesses gave evidence in other international and domestic proceedings. The SPO principally tendered this evidence in lieu of direct examination, largely avoiding giving the heart of their evidence in the true sense of adversarial proceedings. While cross-examination sought to highlight some issues, this alone does not remedy the ultimate deficiency in the witnesses avoiding the crucible of testifying in a fully adversarial setting.
6. During investigations, the SPO (or previous Prosecution entities) did not ask neutral questions in the sense of seeking the truth; rather, they sought to bolster their case; significantly reducing the ability of the Panel to fully conduct their own, independent assessment of the credibility and reliability of most SPO witnesses.
7. The SPO compounded these deficiencies by dumping large swathes of evidence through the bar table, most of which no witness ever commented upon, authenticated, or placed in context.
8. This brief is submitted without having sight of the SPO's FTB. As highlighted throughout trial, the SPO's case is often opaque or inconsistent, and most Defence requests for the SPO to state its case were resisted or ignored.<sup>6</sup> The Defence bears no burden to put forward its case. It is the SPO's immutable obligation to prove the case it has alleged. The Defence can simply challenge the evidence as insufficient to prove that case, without putting forward any

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<sup>6</sup> See, e.g., W01453,06/11/2024,T.22053-22065; W04874,23/01/2025,T.24450-24452.

kind of positive case or alternative theory. Decades of jurisprudence,<sup>7</sup> rejects any suggestions to the contrary.

9. The Indictment charges **SELIMI** with ten counts, related to incidents that took place across Kosovo at multiple locations and concerning numerous alleged victims. The legal elements of those charges that the SPO must prove are set out in the Decision on the Confirmation of the Indictment.<sup>8</sup>
10. The SPO does not allege that **SELIMI** personally planned, instigated, ordered, or committed any of the underlying crimes listed in the Indictment.<sup>9</sup>
11. **SELIMI** has no connection, alleged or otherwise, to most of the crimes set out in the Indictment.<sup>10</sup> SPO evidence fails to prove **SELIMI**'s requisite knowledge of the alleged crimes, either at the time they occurred or afterwards.
12. Evidence was produced that individual KLA units maintained makeshift detention facilities where individuals were detained and killed during the Indictment period. However, many of these detentions were justified in the circumstances, while many killings took place for reasons wholly unrelated to the war itself. The SPO bears the burden of proving, for any alleged crime, the protected status of any victim in the Indictment. It must also prove that each alleged crime had a nexus to the conflict and did not result from personal motive or vendetta.
13. The SPO bears the burden of establishing that KLA members were responsible for any alleged killing, and not simply that the victim was last seen in KLA custody or territory. It cannot be assumed that because an individual was last

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<sup>7</sup> See, e.g., *Shala* AJ, para.154; citing *Butare* AJ, para.1425; *Ntawukulilyayo* AJ, para.103; *Milošević* AJ, para.231.

<sup>8</sup> F00026.

<sup>9</sup> Art.16(1)(a); F01307, para.2.

<sup>10</sup> Indictment, paras.58-176.

seen in KLA custody or where KLA soldiers were last seen in the area, that the KLA was responsible for the death.

14. **SELIMI** adopts and incorporates by reference those factual and legal assertions made in the FTB submitted by the co-accused in this trial to the extent such assertions are applicable to him and entitle him to relief.

## II. CONTROLLING EVIDENTIARY PRINCIPLES

15. Certain evidentiary principles are of particular importance given the complexity of this case and the nature of the evidence at trial.

### A. Presumption of Innocence and Reasonable Doubt

16. **SELIMI** shall be presumed innocent unless and until the SPO proves his guilt beyond a reasonable doubt,<sup>11</sup> a burden borne by the SPO<sup>12</sup> throughout the trial.<sup>13</sup>

17. While this standard does not require absolute certainty or proof beyond a shadow of doubt,<sup>14</sup> it is nonetheless a very high standard. Reasonable doubt applies to each element of each of the charged crimes, to each element of the forms of liability charged in the Indictment,<sup>15</sup> and to all facts “indispensable for entering a conviction”,<sup>16</sup> including facts from which presumptions or inferences are drawn.<sup>17</sup>

18. *Any* ambiguity or doubt arising from the evidence must be resolved in favour of the accused in accordance with the principle of *in dubio pro reo*.<sup>18</sup> Guilt must be the *only* reasonable conclusion available; if there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.<sup>19</sup> Similarly, when the SPO relies

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<sup>11</sup> Constitution, Art.31(5); Art.21(3); Rules 140,158(3). This accords with all major human rights conventions. *See, e.g.* ICCPR, Art.14(2); ECHR, Art.6(2).

<sup>12</sup> *Shala* AJ, paras.158,356; *Mustafa* TJ, para.27; *Shala* TJ, para.74; *Halilović* TJ, para.12; *Popović* TJ, para.9.

<sup>13</sup> *Boškoski* TJ, para.9.

<sup>14</sup> *Halilović* TJ, fn.24.

<sup>15</sup> *Mustafa* TJ, para.28; *Shala* TJ, para.75; *Limaj* TJ, para.10.

<sup>16</sup> *Ntagerura* AJ, para.174.

<sup>17</sup> *Halilović* AJ, paras.111-129.

<sup>18</sup> *Limaj* AJ, para.21; *Tadić* Motion, para.73 [“...any doubt should be resolved in favour of the Appellant in accordance with the principle *in dubio pro reo*]; *Naletilić* AJ, para.120 [each element of *mens rea* must be proved beyond a reasonable doubt]; *Čelebići* TJ, para.601 [“at the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved”]; *Akayesu* TJ, para.319 [“the general principles of law stipulate that, in criminal matters, the version favourable to the Accused should be selected.”].

<sup>19</sup> *Čelebići* AJ, para.458.

upon proof of the state of mind of an Accused by inference, the Panel must consider whether that inference was the *only* reasonable inference that could be made based on the evidence.<sup>20</sup>

19. Circumstantial evidence is evidence of circumstances surrounding an event from which a fact or facts can be inferred.<sup>21</sup> A finding from circumstantial evidence must also be established beyond a reasonable doubt<sup>22</sup> and must be the *only* reasonable inference that could be drawn from the evidence presented.<sup>23</sup> Where two or more reasonable inferences can be drawn from circumstantial evidence, some consistent with guilt and some with innocence, the Panel must adopt the inference consistent with innocence under the principle of *in dubio pro reo*.<sup>24</sup>

#### **B. Notice of the Charges and the SPO Case**

20. **SELIMI** has the right to be informed promptly and in detail of the case against him. The SPO cannot mould the case against the accused during trial depending on how the evidence unfolds.<sup>25</sup> The Indictment should be a “stand-alone document”, setting out the “factual allegations underpinning the charges”.<sup>26</sup> The SPO’s closing submissions cannot provide notice to the accused of the charges against them.<sup>27</sup>

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<sup>20</sup> Popović TJ, para.9; Vasiljević AJ, para.120.

<sup>21</sup> Popović TJ, para.12; Čelebići AJ, para.458.

<sup>22</sup> Čelebići AJ, para.458.

<sup>23</sup> Krajišnik TJ, para.1196; Popović TJ, para.12; Stakić AJ, para.219; Mustafa TJ, para.29; Shala TJ, para.76; Shala AJ, para.807.

<sup>24</sup> Čelebići AJ, para.458.

<sup>25</sup> Ntakirutimana AJ, para.26; Kupreškić AJ, para.92; Stanišić Decision, para.11.

<sup>26</sup> F00010, para.11; Shala AJ, para.191.

<sup>27</sup> Ntawukulilyayo AJ, para.202.

## 1. SPO's case is not clear

21. The SPO case became increasingly opaque as trial progressed. The Defence sought to file consecutive briefs<sup>28</sup> so that the SPO would state clearly its case, the specific allegations against **SELIMI**, and the evidence it is relying upon or abandoning.
22. The SPO called various witnesses who made allegations against **SELIMI** at the eleventh hour going substantially beyond their prior evidence.<sup>29</sup> New allegations like these, such as [REDACTED] or [REDACTED], arising during witness preparation or in court, prejudicially prevented the Defence from reviewing and investigating such allegations effectively.
23. [REDACTED].<sup>30</sup> The SPO did not seek the amendment of the Indictment to include this allegation after being granted leave to add [REDACTED] to its witness list,<sup>31</sup> thus providing no notice how this allegation fits into its case, a deficiency that plagued the SPO's entire approach *vis-a-vis* [REDACTED]'s testimony.<sup>32</sup>
24. The SPO substantially employed Rule 143(2)(c). Both the Constitutional Court Panel and this Panel have recognised that admission of evidence pursuant to Rule 143(2)(c) means that "competing versions of the truth" are entered into the record.<sup>33</sup> The SPO did not articulate *which* "competing version of the truth" it relies upon (and the basis for such reliance) when making applications under Rule 143(2)(c). The SPO averred that there is no legal basis requiring it to explain

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<sup>28</sup> F02911.

<sup>29</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> F01058CONFRED,para.26.

<sup>32</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>33</sup> KSC-CC-PR-2020-09/F00006,para.80; F02790,para.10.

its position at the time of a Rule 143(2)(c) tender.<sup>34</sup> The Panel expressly permitted the SPO to wait until its final brief to make such indications.<sup>35</sup>

25. Allowing the SPO to formulate its case as the evidence emerges, directly contravenes the prohibition on moulding its case based on the evidence and is thus untenable.<sup>36</sup> It makes the Defence lack clarity on what evidence the SPO is relying upon, particularly where there are inconsistent versions of evidence before this Panel on crucially important matters.
26. Specific examples of the prejudice resulting from the SPO's failure to take a clear position are set forth below.
27. W01453 gave evidence in [REDACTED] and [REDACTED] that were mutually contradictory.<sup>37</sup> The SPO asserted that his [REDACTED] statement was truthful.<sup>38</sup> The SPO resisted being pushed to clarify which version it relied upon,<sup>39</sup> when tendering the "materially different"<sup>40</sup> evidence. The SPO incomprehensibly relied on the statements both for the truth of their contents and credibility, while claiming it was premature and unfair to require the SPO to state what they say is truthful in part because "there is other evidence to be heard."<sup>41</sup> The SPO fundamentally misunderstands its role in these proceedings. Which portions of W01453's evidence it relies upon is a decision to be taken independently of any other evidence.

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<sup>34</sup> Transcript,06/11/2024,T.22060.

<sup>35</sup> F02790,para.11.

<sup>36</sup> *Ntakirutimana* AJ,para.26; *Kupreškić* AJ,para.92; *Stanišić* Decision,para.11.

<sup>37</sup> Cf. P01816.1,pp.30,40,45; P01820,pp.3928,3930,3970-3972,3974.

<sup>38</sup> [REDACTED]; [REDACTED].

<sup>39</sup> W01453,06/11/2024,T.22053-22065.

<sup>40</sup> W01453,06/11/2024,T.22056,22060.

<sup>41</sup> W01453,06/11/2024,T.22060.

28. The SPO indicated its belief that [REDACTED]<sup>42</sup> and W04410<sup>43</sup> both had a “pronounced bias in favour of the accused” through which their evidence must be viewed. The Defence remains entirely in the dark regarding the SPO’s reliance on either [REDACTED] or W04410, two key members in the history and functioning of the KLA.
29. After commencing testifying, W04745 refused to answer further questions from the SPO until he viewed a document shown during his preparation session.<sup>44</sup> W04745 denied that any of the documents shown in court were this specific document. The SPO sought leave to tender his SPO interview pursuant to a “combined reading” of “Rule 143(2)(b), (c)”;<sup>45</sup> all covering different situations, and the Defence pushed for clarity on which evidence was being tendered under which subsection.<sup>46</sup> The SPO took the position that because the witness was refusing to answer questions, he was now providing an inconsistent statement, despite the fact that the witness said he would testify after viewing the document.<sup>47</sup> The SPO’s failure to clearly state the basis of its tender places the Defence at a prejudicial disadvantage.
30. In a similar vein, the SPO repeatedly sought to impeach its own witnesses despite the witnesses giving clear answers without indicating any issues understanding the question or recalling facts. For example, during its questioning of W04752,<sup>48</sup> W04746,<sup>49</sup> and [REDACTED]<sup>50</sup> the SPO repeatedly confronted the witnesses with prior statements yet refused to specify whether the purpose of this practice was for memory refreshment under Rule 143(1) or

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<sup>42</sup> [REDACTED].

<sup>43</sup> F02355, para.4.

<sup>44</sup> W04745, 24/02/2025, T.25502 *et seq.*

<sup>45</sup> W04745, 24/02/2025, T.25529, 25547.

<sup>46</sup> W04745, 25/02/2025, T.25566-25568.

<sup>47</sup> W04745, 25/02/2025, T.25581.

<sup>48</sup> W04752, 01/07/2024, T.17344-17345, 17398.

<sup>49</sup> W04746, 11/07/2023, T.5481-5482; W04746, 12/07/2023, T.5512-5515, 5525, 5537.

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

for impeachment or whether it considered the witnesses were deliberately evasive per Rule 143(2)(b).

31. In short, this brief is submitted in the absence of a complete understanding of the SPO's case due to its obfuscation and refusal to transparently state the purpose for which it tendered a substantial amount of its evidence.

## 2. Judicial questioning

32. The SPO bear the burden of presenting charges and prosecuting those charges before the Panel.<sup>51</sup> The scope of the case is determined by the Indictment, the sole charging document in this case.
33. While the Appeals Panel held that Rule 127(3) "places no limitation on the subject matter of the Trial Panel's questions to a witness",<sup>52</sup> the Appeals Panel clarified that the Panel's questions are not limitless, requiring that the questions posed result in "no party suffer[ing] prejudice and that the rights of the Accused are respected, in accordance with Article 21 of the Law."<sup>53</sup>
34. The Rules require that the judgement must be made based solely on the evidence in the record at trial.<sup>54</sup> Throughout trial, the Panel asked questions of witnesses based on untendered documents, many of which were inadmissible based on the RPE, including statements of individuals not called as witnesses.<sup>55</sup> Many of those documents were not admitted into evidence.<sup>56</sup> When the Defence initially challenged the scope of the Panel's questioning, the Panel held it is

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<sup>51</sup> Art.35(2)(i); Rule 86; F01536,para.20; *Gucati* TJ,para.34; *Gucati* AJ,para.328; *Mustafa* TJ,para.27.

<sup>52</sup> IA028/F00011,para.32.

<sup>53</sup> IA028/F00011,para.32.

<sup>54</sup> Rule 139(1); evidence that is inadmissible—or not before the Court—cannot be considered by the Panel; *Blagojević* Decision,paras.21-22, recognizing the "duty of the Chamber to discover the truth, but only from the evidence as presented to the Chamber."

<sup>55</sup> W04679,18/11/2024,T.22338,22347-22348; W03865,30/04/2024,T.15212-15214;

W04741,24/04/2024,T.14847-14848.

<sup>56</sup> There have been limited instances where the Panel has, upon the SPO's request, admitted documents which had only been used during judicial questioning. *See*, F01963; F02293.

“required under Rule 138 to ensure that any evidence admitted is authentic” and that it would “in due course rule on the challenge to the Defence to the authenticity of the document put to the witness by the Panel.”<sup>57</sup> For documents not admitted into evidence, the Defence did not then and cannot now make submissions on their authenticity, reliability, or weight, thus preventing meaningful challenge. While the questions and answers form part of the record, the Defence is prejudiced by the fundamental inability to mount a defence against them. In line with the Appeals Panel’s requirement that judicial questions do not prejudice the Accused,<sup>58</sup> any answers given to questions from the Panel based upon documents ultimately not admitted must be treated with caution. Similarly, hypothetical questions posed by a judge (and the answers thereto) are not evidence worthy of any weight.

35. In multiple instances, the Panel posed propositions from statements to a witness and asked if the witness had any reason to “dispute” their veracity.<sup>59</sup> The answers to such questions are entitled to little weight, especially where witnesses did not have a sufficient basis to knowledgeably confirm or dispute the posed question.
36. Further, a concern raised by the Defence was Panel questions straying beyond the charges and allegations contained within the Indictment. The Panel’s oral order of 20 April 2023 took the expansive view that the Defence was on “clear notice of the relevance of [documents on the SPO’s presentation queue] and knew that such documents might be discussed with the witness.”<sup>60</sup> While placing an impossible standard upon the Defence, this position also misses the ultimate point. The fundamental question is not whether the Defence is in a

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<sup>57</sup> W04421,20/04/2023,T.3269.

<sup>58</sup> IA028/F00011,para.32.

<sup>59</sup>W04746,17/07/2023,T.5901,5907-5909; W04679,18/11/2024,T.22338-22339; W04401,04/12/2024,T.23375-23379.

<sup>60</sup> Transcript,20/04/2023,T.3266.

position to address every single document disclosed to it by the SPO, but whether the questions of the Panel and witness responses on those documents raise matters or allegations that go beyond the scope of the SPO's charging documents.

37. The relevance of judicial questioning was not always clear. Thus, the Defence was often not in a position to object as the prejudice was not apparent in that moment. The Defence makes clear it has not waived this issue and any questions from the Panel cannot be to the prejudice of the accused, in line with the Appeals Panel decision.
38. The Panel has also evinced a position that there is no issue with the judges asking leading questions to witnesses, holding that the example raised by the Defence was the result of a witness the Panel believed was evading providing an honest response.<sup>61</sup> The Panel, in rejecting the Defence arguments against leading questions, focused solely on the Panel's obligation to assess credibility. This ignores the ultimate issue of asking leading questions. Lay witnesses, often testifying through interpretation, are unlikely to challenge judges of an international tribunal, instead acting deferentially to the Panel. Answers to leading questions posed from the bench should be viewed with caution.

### **C. Weight to be afforded to the evidence**

39. In general, the threshold for admissibility of evidence is low and this Panel's approach to admission has been "inclusive". The criteria for admission, however, cannot be confused with the Panel's ultimate determination of the weight to assign to any piece of evidence.

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<sup>61</sup> F02965, para.40.

40. Final evaluations on the relevance, reliability, and weight accorded to an exhibit should be made considering all evidence.<sup>62</sup> The Panel may give no weight to evidence which it had initially deemed admissible in the context of the entire record.
41. The evidentiary weight of individual items should not be determined in isolation but in conjunction with other relevant evidence, although analysing evidence holistically<sup>63</sup> cannot cure the weakness of individual items of evidence.<sup>64</sup>
42. The burden of proof with respect to proving the relevance and probative value of a particular piece of evidence belongs to the party seeking to introduce it.<sup>65</sup> Almost two-thirds of SPO exhibits were tendered from the bar table.<sup>66</sup> Caution must be demonstrated in attributing weight to documents with little or no context provided by the SPO. In most circumstances, the Panel should attach greater weight to documents whose contents were explained by the testimony of a knowledgeable witness, rather than those introduced in isolation.<sup>67</sup>

### **1. Witness evidence**

43. In determining the credibility of *viva voce* witnesses the Panel should consider “their demeanour, conduct and character,” as well as the “probability, consistency and other features of their evidence, including the corroboration which may be forthcoming from other evidence and circumstances of the case.”<sup>68</sup> The Panel must also be conscious that credibility depends on the “knowledge of the facts upon which [witnesses] give evidence, their

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<sup>62</sup> *Boškoski* Decision, para.11.

<sup>63</sup> Rule 139(2).

<sup>64</sup> *Bemba* AJ Opinion, para.15.

<sup>65</sup> *Orić* TJ, para.23.

<sup>66</sup> The Defence estimates 2,976 SPO exhibits out of 4,523 SPO exhibits.

<sup>67</sup> *Hadžihasanović* TJ, paras.297,299.

<sup>68</sup> *Brđanin* TJ, para.25.

disinterestedness, their integrity and veracity [...]."<sup>69</sup> It is appropriate, therefore, for the Panel to evaluate "inconsistencies in the light of [an] evaluation of the overall credibility of each particular witness."<sup>70</sup>

44. The issue is not merely whether the evidence of a witness is honest or credible;<sup>71</sup> but whether the evidence is objectively reliable.<sup>72</sup> Even where a witness is honest and credible, his or her evidence can still be found to be unreliable.<sup>73</sup> Credibility (truthfulness of the witness) is not the same as the reliability of that evidence (accuracy of the testimony), and a witness can testify truthfully, but be inaccurate—and therefore unreliable—in that evidence.<sup>74</sup>
45. The SPO chose to present majority of its witnesses' evidence through witness statements, contrary to the principle of orality.<sup>75</sup> Of the 254 SPO witnesses, only 17 testified as fully *viva voce* witnesses without first tendering statements, interviews, or testimony from other proceedings.<sup>76</sup>
46. The SPO called more witnesses on paper than appeared in court, mostly over Defence objection.<sup>77</sup> This trampled the principle of orality. The SPO's complete disregard for this fundamental principle deprived the Panel of the ability to fully observe and assess the demeanour of witnesses, ultimately diminishing its

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<sup>69</sup> *Brđanin* TJ, para.25.

<sup>70</sup> *Akayesu* AJ, para.136.

<sup>71</sup> *Mustafa* TJ, para.34; citing *Kanyarukiga* AJ, para.121, and references therein; see also, *Shala* TJ, para.81.

<sup>72</sup> *Brđanin* TJ, para.25, fn.20, citing *Čelebići* AJ, paras.491,506; *Kupreškić* AJ, paras.34-40; *Kunarac* Decision, para.8; *Kunarac* TJ, paras.561-562; See also, *Sesay* TJ, para.487.

<sup>73</sup> *Lubanga* AJ, para.239.

<sup>74</sup> *Ntaganda* TJ, para.53; *Lubanga* AJ, para.239.

<sup>75</sup> See, eg. *Haradinaj* TJ, para.10, expressing a "strong preference" that evidence concerning acts and conduct of the accused, as well as evidence "central and critical" to the case, be elicited orally in court.

<sup>76</sup> See F02962. The 17 witnesses include W04745, who was only live for part of his direct testimony before the Prosecution tendered his interview pursuant to Rule 154.

<sup>77</sup> The Defence objected to approximately 84 of the 132 witnesses submitted pursuant to Rules 153 and 155.

ability to determine the credibility of the witnesses on crucial issues and deprived the Defence of a fair trial.

47. Statements or interviews are not a fair substitute for testifying in a courtroom: they lack procedural safeguards that accompany in-court testimony, such as objections by the opposing party, for example, to leading questions.<sup>78</sup> This significantly reduces the weight to be given to these statements. The SPO opted to lead its case this way. Cross-examination can only do so much to remedy these deficiencies and cannot repair the leading questions and other objectionable practices that take place outside of the courtroom.
48. A prime example of the flaw in the SPO's methodology arose in the re-examination of W04290. When pressed on why the witness did not correct statements during the preparation session, he responded "[t]o be honest, I just gave it a look at it [sic] and didn't really pay attention to small details."<sup>79</sup> Instead of acknowledging the fault in its own process by having a witness of such importance review lengthy statements rather than testify live, the SPO badgered the witness as to why he failed to correct what he termed a small mistake, implying that the witness was lacking credibility.<sup>80</sup> Proceeding in such a fashion reflects poorly the manner in which the SPO has chosen to present its case and reinforces the preference for the principle of orality. Ultimately, it calls into question the entirety of SPO witness statements tendered into evidence. How many other witnesses did little more than glance over their previous statements and fail to correct errors, whether small or large?

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<sup>78</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>79</sup> W04290,12/02/2025,T.25164.

<sup>80</sup> W04290,12/02/2025,T.25164-25165,25170-25173,25176.

49. While the Panel has taken an expansive view of what constitutes a witness statement,<sup>81</sup> it should, however, ascribe less weight to unconfirmed statements.
50. For example, during the testimony of W04745, the SPO tendered a document purportedly created by UNMIK Investigator Anna VANOZZI as a statement of W04745, despite the witness testifying that he never spoke with such a person and the document itself containing no signature of witness or any other indication that he ever saw it or approved it.<sup>82</sup> The SPO also failed to call A.VANOZZI to verify any part of the statement or the underlying interview. At its highest, it is a statement of Anna VANOZZI—not W04745—which she has not confirmed. Beyond that, the SPO admitted in its interview with W04745 that the document contained information that it knew not to be true.<sup>83</sup> At its most fundamental level, it is a document with multiple levels of hearsay on a key issue in the case. In these circumstances, the document is entitled to no weight. The same applies to [REDACTED] alleged statement.<sup>84</sup>
51. Additional factors may also impact a witness' credibility, which much be assessed on a case-by-case basis.
52. Payments to and benefits received by witnesses, including benefits relating to immigration status or asylum applications, or attempts to benefit from testifying, go directly to the Panel's assessment of a witness's credibility and must be considered when analysing their evidence,<sup>85</sup> although the existence of

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<sup>81</sup> F02130,para.15; F03340,para.19 including fn.34. The definition was then subsequently changed, see F02580,para.10; 1DW-006,23/09/2025,T.27162-27164.

<sup>82</sup> W04745,24-25/02/2025,T.25510,25518-25519,25526-25527,25575-25576.

<sup>83</sup> W04745,25/02/2025,T.25581,25583.

<sup>84</sup> See *infra*, para.815.

<sup>85</sup> [REDACTED].

such benefits on their own does not automatically render a witness not credible or unreliable.<sup>86</sup>

53. Other factors, such as a witness appearing to minimise their responsibility or deflect blame,<sup>87</sup> motives or incentives to implicate the accused,<sup>88</sup> or potentially holding a grudge against the accused<sup>89</sup> are elements that must be considered when evaluating credibility.<sup>90</sup> The Panel should show its cautious assessment of the evidence by explaining why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused.<sup>91</sup>

## 2. Statements of Accused

54. The Panel, over the objection of defence counsel,<sup>92</sup> admitted into evidence statements, interviews, and transcripts of the Accused.<sup>93</sup> The Appeals Panel rejected the Defence challenge to the Panel's decision.<sup>94</sup>
55. The Defence challenged the admission of **SELIMI**'s SPO interviews as they were conducted without properly informing him of his status as a suspect and in violation of his right to counsel and to remain silent.<sup>95</sup> The **SELIMI** Defence further challenged the admission of statements, interviews or testimony **SELIMI** gave as a witness in various prior proceedings as they failed to provide him with the necessary warnings and notifications about his rights.<sup>96</sup> These arguments apply *a fortiori* to any assessment of the weight to be attributed

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<sup>86</sup> *Karemera* Decision, para.7; *Karemera* Disclosure, para.16; *Bemba* Disclosure, para.44; *Martić* TJ, paras.36-38; *Haradinaj* Relief, paras.45-48; *Karadžić* Disclosure, paras.30-31.

<sup>87</sup> *Karadžić* TJ, fn.4524, para.5766; *Dorđević* TJ, paras.15-17.

<sup>88</sup> *Popović* TJ, fn.36; *Krajišnik* AJ, para.146.

<sup>89</sup> *Popović* AJ, para.134; *Ntaganda* TJ, para.77; *Ongwen* TJ, para.532; *Ongwen* AJ, para.528.

<sup>90</sup> For example, W04739; W03780; W01493.

<sup>91</sup> *Krajišnik* AJ, para.146; *Prlić* AJ, para.2690.

<sup>92</sup> F01473; F01474; F01475; F01476.

<sup>93</sup> F01917. The documents are exhibits P00739-P00742, P00760-P00810, and 1D00005.

<sup>94</sup> IA030/F00009.

<sup>95</sup> F01473, paras.2,5-48.

<sup>96</sup> F01473, paras.3,49-85.

**SELIMI**'s statements.<sup>97</sup> For the reasons set forth there,<sup>98</sup> these statements are entitled to no weight, but at a minimum cannot receive any weight without sufficient corroboration.

56. **SELIMI** was interviewed without the notice of the charges, benefit of counsel and without a clear understanding of the purpose of the questions being asked.<sup>99</sup> **SELIMI** was never explicitly informed during either SPO Interview of the specific allegations being investigated and was confusingly repeatedly referred to as a "witness" by SPO investigators.<sup>100</sup>
57. **SELIMI** answered the questions without notes or reference to source materials, and his answers were often inaccurate, not because of any intent to mislead or obfuscate, but because he was being asked about events 20 years prior with little context or background. **SELIMI** thus often presented a romanticised version of events seeking to paint the KLA in the best light possible, including exaggerating its organisation or strength as well as his own preeminent role within it.
58. The Panel also admitted statements, transcripts of interviews and testimony, and associated exhibits before the ICTY, Kosovo courts, and the SPRK.<sup>101</sup> In none of these interviews was **SELIMI** considered to be a suspect; therefore, he was never informed of his privilege against self-incrimination that he was entitled to as an accused.<sup>102</sup> This requires caution when deciding whether any weight can be allotted to **SELIMI**'s previous statements against him in these proceedings.<sup>103</sup>

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<sup>97</sup> See, e.g., F01917, paras.217-218.

<sup>98</sup> F01473.

<sup>99</sup> F01473, paras.2,5-48.

<sup>100</sup> [REDACTED]; P00763.1,p.2.

<sup>101</sup> [REDACTED]; [REDACTED].

<sup>102</sup> F01473, paras.3,49-85.

<sup>103</sup> IA030/F00009, para.55. See also, *Halilović* Decision, para.21.

59. In his *Zëri* interview from October 1999,<sup>104</sup> **SELIMI** was not attempting to produce an accurate historical record. The SPO did not verify the contents of the interview with the journalist, and the interviews are ultimately little more than uncorroborated hearsay. The interviews are not entitled to significant weight in any event, and no weight at all without corroboration.
60. Statements, interviews, and transcripts of **SELIMI** cannot be attributed much weight and cannot be relied upon without corroboration to determine an allegation beyond reasonable doubt.<sup>105</sup>
61. Nor can the statements of **SELIMI**'s co-accused be used against him as the sole or substantial basis for a conviction, as none of the statements were subject to cross-examination.<sup>106</sup> **SELIMI** was unable to challenge those statements and it would be prejudicial to rely on them to **SELIMI**'s detriment. Jurisprudence at international criminal tribunals has consistently prohibited the use of statements of co-accused against each other<sup>107</sup> or found that while no rule bars their admission, their use must be curtailed and cannot be used against co-accused on any critical element of the Prosecution case without sufficient corroboration.<sup>108</sup> This Panel has endorsed that limitation, indicating that it would exercise "particular caution" in deciding what weight, if any, to attach to co-accused statements.<sup>109</sup> In this regard, it must be noted that "there is a fundamental distinction between admitting evidence and according weight to it."<sup>110</sup> The Appeals Panel has held that statements of a co-accused "whom the

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<sup>104</sup> P04201-P04203.

<sup>105</sup> *Blagojević* Clarification Decision, paras.26-27.

<sup>106</sup> *Prlić* Decision, paras.28,33; *Prlić* Appeal Decision, paras.57,59-60; *Prlić* TJ, para.392.

<sup>107</sup> *Katanga* Decision, para.53; *Boškoski* Confidentiality Decision, Annex I, paras.46,48.

<sup>108</sup> *Popović* Decision, paras.48-50; *see also*, *Prlić* Appeal Decision, para.59.

<sup>109</sup> F01917, paras.218-219.

<sup>110</sup> *Popović* Decision, para.50.

Defence was not able to examine may not be used to support a conviction against the accused".<sup>111</sup>

62. The KCPC similarly prohibits statements of defendants being used against co-accused except in the specific circumstance where the testator elects to testify and the co-accused can cross-examine.<sup>112</sup>
63. In these circumstances, **SELIMI** submits that no weight should be attributed to statements of co-accused in the absence of the ability to challenge those statements.

### 3. Corroboration

64. When evidence presented against the accused comes from one source and is not otherwise corroborated, the Panel must scrutinise such evidence "with great care before accepting it as sufficient to make a finding of guilt against the Accused."<sup>113</sup> The Panel has the discretion to disregard such evidence.<sup>114</sup>
65. Witness testimony may be strengthened by the existence of corroborating evidence; however, the opposite is also true: it may be undermined by the lack of corroboration.<sup>115</sup> Furthermore, corroboration of testimony, even by many witnesses, does not automatically establish the credibility, reliability, or weight of those testimonies.<sup>116</sup> Corroboration is neither a condition nor a guarantee that such testimony is reliable.<sup>117</sup> Corroboration does not occur when evidence is

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<sup>111</sup> IA030/F00009,para.72.

<sup>112</sup> KCPC Art.128(1)(1.1), which holds that a statement shall be inadmissible if the person it is attributed to "may not be examined as a witness".

<sup>113</sup> *Krnojelac* TJ,para.71.

<sup>114</sup> *Brđanin* TJ,para.27; *Ruto* Decision,para.56.

<sup>115</sup> *Tadić* Contempt AJ,para.92.

<sup>116</sup> *Limaj* AJ,para.203; *Milošević* AJ,para.248; *Stanišić* AJ,para.103.

<sup>117</sup> *Shala* AJ,para.47; *Mustafa* AJ,para.38; *Mrkšić* AJ,para.264.

generally or partially about the same or similar matters, but instead “only occurs when two pieces of evidence independently confirm the same fact”.<sup>118</sup>

66. Evidence not subject to cross-examination, such as evidence pursuant to Rule 155, may only be relied upon if it is corroborated by other evidence adduced at trial.<sup>119</sup> A conviction may not rest solely, or in a decisive manner, on the evidence of a witness whom the accused has had no opportunity to examine.<sup>120</sup> This principle also applies “to any fact which is indispensable for a conviction”, as to do so otherwise would “run counter to the principles of fairness [ ... ] to allow a conviction based on evidence of this kind without sufficient corroboration”.<sup>121</sup>
67. Documents submitted through the bar table that have not been addressed by a witness or properly tested similarly cannot be relied upon solely or decisively as the basis for a conviction.<sup>122</sup>

#### 4. Hearsay

68. Hearsay is evidence of events occurring outside the testifying witness' own direct experience<sup>123</sup> which cannot be tested through cross-examination. Even though hearsay is, in principle, admissible at the KSC, in assessing the probative

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<sup>118</sup> *Gbagbo* AJ,para.428, “when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts.” See, *Šainović* AJ,para.946.

<sup>119</sup> *Milutinović* TJ,para.37; *Martić* TJ,para.27; cf., *Mustafa* TJ,para.43.

<sup>120</sup> *Shala* AJ,para.473, citing Rule 140(4); see also, *Dorđević* AJ,para.807; *Haraqija* AJ,para.61. Pursuant to Rule 140(4)(a), this extends to prohibiting the reliance solely or decisively on untested evidence to enter findings on individual charged criminal incidents, on the mere basis that those incidents are “not indispensable” for a conviction – i.e. where a conviction is based on multiple underlying criminal incidents. *Shala* AJ,para.482. Indeed, a contrary interpretation of this Rule potentially precludes *in limine* an appeals panel from determining whether a finding as to an accused’s criminal responsibility for a criminal incident was impermissibly based on untested evidence, due merely to the manner in which the SPO has elected to organise its indictment.” *Shala* AJ,para.483.

<sup>121</sup> *Popović* AJ,para.96; *Haraqija* AJ,para.61, citing *Prlić* Appeal Decision,para.59.

<sup>122</sup> *Karadžić* AJ,para.458; *Popović* AJ,para.1222; *Prlić* TJ,para.402.

<sup>123</sup> *Krajišnik* TJ,para.1190.

value of such evidence, "the surrounding circumstances must be considered."<sup>124</sup>

The Panel must proceed with caution when attributing weight to it.<sup>125</sup> When hearsay is offered to prove the truth of its contents, the Panel must be satisfied that the evidence is reliable for that purpose and, in doing so, may consider both the content of the evidence and the circumstances under which it arose.<sup>126</sup>

69. The weight and probative value to be afforded to hearsay evidence will usually be less than that given to the testimony of a witness who has given evidence under oath and who has been cross-examined.<sup>127</sup> Double or triple hearsay should, on this basis, be denied any significant weight.<sup>128</sup> Where the source is not identified, hearsay should not be relied upon.<sup>129</sup>
70. The SPO relies upon a substantial number of books and diaries. Many of these books purport to be interviews with one or more individuals,<sup>130</sup> by definition constituting hearsay. The same applies to newspaper articles which purport to represent interviews, including of the accused.<sup>131</sup> Rarely has a witness confirmed the accuracy or reliability of the purported statements. There is no evidence within each article that quotes were checked, or even if they were genuinely given by the purported interviewee. Often, the SPO has tendered significant portions of books, contrary to general practice.<sup>132</sup> Little weight, if

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<sup>124</sup> *Shala* AJ, para.315.

<sup>125</sup> *Prlić* AJ, para.1646.

<sup>126</sup> *Aleksovski* Decision, para.15; *Limaj* Decision, para.17; *see also, Mustafa* TJ, para.44.

<sup>127</sup> *Tadić* Contempt AJ, para.93; *Aleksovski* Decision, paras.15-16.

<sup>128</sup> *See, e.g. Tadić* Contempt AJ, paras.114-115. *See also, Haradinaj*, 06/03/2007, T.458:16-21, the Chamber urged parties to avoid "as much as possible" double or triple hearsay in an effort to promote transparency of the evidence.

<sup>129</sup> *Krajišnik* TJ, para.1190; *Prlić* TJ, para.404.

<sup>130</sup> P00188; P01859; P01149; P01745; P00649.

<sup>131</sup> P04202; P04204.

<sup>132</sup> *Perišić* Order, para.25; *Hadžić* Annex, para.6; *Milošević* Order, paras.2,7; *Prlić* Admission Decision, para.44.

any, can be attributed to the contents of such books or articles in the absence of a witness testifying about specific content.

71. Similarly, the SPO tendered a substantial number of diaries or journals,<sup>133</sup> often without identifying the author (or authors) of the documents. In the absence of any attempt to determine the author or the circumstances in which the contents of the documents were recorded, they are entitled to no weight at all.<sup>134</sup> Even where the author or authors are identified, the contents of the documents constitute hearsay and should only receive weight when corroborated by other documents or witnesses.

### 5. Documentary evidence

72. A substantial number of documents tendered into evidence by the SPO were submitted from the bar table. Contrary to established practice, the SPO failed to “carefully select” the most pertinent evidence,<sup>135</sup> choosing instead to dump large swathes of largely irrelevant, or at best tangential, documentary material into the record.<sup>136</sup>
73. The Defence urges caution in attributing weight to documents with little or no context provided by the SPO.<sup>137</sup> In most circumstances, the Panel should attach greater weight to contents of documents explained by the testimony of a

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<sup>133</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>134</sup> See, *Lima* T], para.571, finding a diary in evidence as unreliable because of the lack of information as to date/year, the apparent lack of chronology of the entries, and the testimony of a witness that they were not contemporaneous notes but were compiled after the war based on other notes; *Haradinaj* Reasons, paras.9-10, denying admission of a journal purportedly belonging to an accused as there was no evidence confirming whether it was written by the accused or the source of the information contained within, notwithstanding the fact that the journal was found at the residence of the accused.

<sup>135</sup> See, e.g. *Haradinaj* T], para.11.

<sup>136</sup> See *supra*, para.42.1172

<sup>137</sup> In this regard, it should be noted that much of the “contextualisation” in bar table filings was to assist in determining *prima facie* reliability and was not an explanation about how the documents fit into the Prosecution case theory. See, *Haradinaj* T], para.18, “the less the Trial Chamber knew about a document, the circumstances of its creation and usage, the less weight it gave to it.”

knowledgeable witness, rather than introduced in isolation.<sup>138</sup> The Panel must consider the coherence or consistency of the documentary evidence with other evidence in the case.<sup>139</sup>

74. The Defence has objected to the vast majority of these documents in their responses to bar table motions.<sup>140</sup> The Panel has largely characterised these objections as going to the weight of the evidence, rather than admissibility.<sup>141</sup> These objections remain in place and applicable, the Defence relies on those objections as if set forth herein.
75. As a general rule, the less a Panel knows about a document, the circumstances of its creation and its usage, the less weight the document should receive.<sup>142</sup> It is not for the Defence to disprove or refute each piece of evidence, especially where the SPO has done little more to establish relevance or probative value than a passing reference in a bar table motion.
76. Some categories of evidence, however, warrant further comment.
77. The SPO has tendered into evidence a substantial number of documents purportedly seized from residences associated with J.KRASNIQI and **SELIMI**. The Defence has repeatedly objected to the admission of any of these documents,<sup>143</sup> primarily relying upon the fact that a document was purportedly found at one of the residences does not relieve the SPO of its burden to prove the authenticity and reliability of that document. The fact that a document,

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<sup>138</sup> *Hadžihasanović* TJ, paras.297,299.

<sup>139</sup> *Mustafa* TJ, para.42; *Shala* TJ, para.89.

<sup>140</sup> F01387; F02725; F02521COR; F02853; F02291; F02243; F02755; F03159; F03145; F03144; F03064; F02991; F03166; F03246.

<sup>141</sup> F01596, paras.151,178; F01716, para.33; F01832, para.93; F01983, paras.37,129; F02951, para.33; F03070, para.19; F03178, paras.31,38,42; F03191COR, para.14.

<sup>142</sup> *Haradinaj* TJ, para.18; *citing, Haradinaj* Decision, para.8.

<sup>143</sup> F01387, paras.31-51; F02243, para.36; F02291, para.30; F02521COR, para.4; F03145, paras.13-14,25,38.

especially handwritten ones,<sup>144</sup> were found at one of the residences does not automatically mean it is entitled to weight or is necessarily attributable to **SELIMI** or J.KRASNIQI<sup>145</sup>—or even, for that matter, proof that they even saw the document or are aware of its contents, either at the during the Indictment period or at any moment thereafter. It must be noted that these documents were seized in 2020, over 20 years after the events in question, with no indication when these documents were obtained, from whom, or any indication how or when they were created.

78. Reports [REDACTED] were admitted<sup>146</sup> over Defence objection<sup>147</sup> with many Defence objections held to relate to weight rather than admissibility.<sup>148</sup> Those objections remain in place, and for the reasons stated therein require that no weight be attributed to the [REDACTED] reports. At the heart of the objection is the fact that what was admitted into evidence are [REDACTED], without the underlying audio recordings or even [REDACTED] from which the reliability [REDACTED] can ultimately be determined,<sup>149</sup> combined with the absence of any chain of custody for the [REDACTED] reports.<sup>150</sup> There is no way to determine whether there are mistranslations or [REDACTED] without the underlying information.<sup>151</sup> That some witnesses may have confirmed the

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<sup>144</sup> In this regard, the Defence highlights the Panel's finding that while the tendered documents bore sufficient indicia of *prima facie* probative value for purposes of admissibility, "the question of authorship and whether signatures can be attributed to particular individuals is a matter to be established at trial and which the Panel will decide at the end of the case." F01596,para.166.

<sup>145</sup> The SPO has effectively conceded this point. *See*, W04410,04/06/2024,T.16627-16628, referring to a diary seized from **SELIMI's** house, "[w]e would also say we had never said that Rexhep Selimi wrote this entry. We said it was seized from his house...[t]he evidence is not clear one way or the other who wrote this entry. It was found in Rexhep Selimi's house which we would say is itself indicia of authenticity."

<sup>146</sup> [REDACTED]; [REDACTED].

<sup>147</sup> F02755.

<sup>148</sup> F03141,para.47.

<sup>149</sup> F02755,paras.18,24-25.

<sup>150</sup> F02755,para.34.

<sup>151</sup> *See*, IA032/F00005,para.35, [REDACTED].

“general accuracy”<sup>152</sup> of [REDACTED] is likewise insufficient to demonstrate the reliability of the [REDACTED].

79. Any attribution of conduct on the basis of alleged nicknames by the SPO must prove that that individual indeed used such nickname at the time. A clear example of this is **SELIMI** never using “Guri”.<sup>153</sup> Even where there is evidence of an individual using a nickname, the SPO must establish that no other individuals could have been identified by that nickname in the context of that evidence. In particular, words attributed to “Agron”<sup>154</sup> cannot thus be imputed to **SELIMI** absent any independent evidence that the interlocutor described is indeed him, given the common nature of this name, evidence that several other individuals used that nickname,<sup>155</sup> and, for [REDACTED], the overarching reliability concerns attached thereto.<sup>156</sup>
80. Media articles that attribute statements to the Accused should not be relied upon by the Panel because the Defence is unable to confront such out of court statements and the circumstances in which the statements were typically made cast doubt on their reliability.<sup>157</sup> They were not given for the purpose of legal proceedings and were intended to serve a variety of apparent purposes – such as boosting the KLA’s morale, garnering international support, reassuring a scared and vulnerable civilian population, or self-promotion, all of which undermine their reliability.

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<sup>152</sup> F03141,para.49.

<sup>153</sup> REDACTED].

<sup>154</sup> [REDACTED]; [REDACTED]. [REDACTED].

<sup>155</sup> W04485,28/10/2024,T.21276; W04403,24/03/2025,T.25715.

<sup>156</sup> [REDACTED].

<sup>157</sup> *Karadžić* Decision.II,paras.18-19; *Karadžić* Decision.III,paras.15-16; (both citing *Karadžić* Decision.I,para.12).

## 6. Identification evidence

81. A significant distinction exists between “identification witnesses” (those to whom the accused was “previously unknown by sight” before being present at the relevant time and place) and “recognition witnesses” (those who had prior knowledge of the accused enabling them to recognize the accused at the relevant time and place).<sup>158</sup> Recognising an individual is far more reliable.<sup>159</sup> Even then, a Panel must still exercise caution because mistakes may still be made by witnesses who purport to recognise the accused.<sup>160</sup> A number of factors may impact the reliability of eyewitness testimony: the length of time and the circumstances (including where unexpected, fast-moving, shocking, and/or involved a large number of persons) in which the witness observed the person,<sup>161</sup> the time of day or the amount of light for the incident,<sup>162</sup> the distance from the accused and the level of detail the witness was able to discern from that distance,<sup>163</sup> photographic evidence that corroborates the witness’s description of the incident,<sup>164</sup> any reasons the witness had to recognize the accused and if so, the length of time between the original observation of the accused and the subsequent observation during the event,<sup>165</sup> whether the witness had only a fleeting glance or an obstructed view of the purported accused, whether the witness suffered trauma from the event, inconsistent or inaccurate testimony about the accused’s physical characteristics, or a witness’s delayed assertion of memory regarding the defendant coupled with the “clear possibility” from the circumstances that the witness had been influenced by

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<sup>158</sup> *Lukić* AJ, paras.118-119; *Popović* AJ, para.384; *Tadić* TJ, para.545; *Haradinaj* TJ, para.29; *Abd-Al-Rahman* TJ, para.212.

<sup>159</sup> *Kayishema* TJ, para.454.

<sup>160</sup> *Abd-Al-Rahman* TJ, para.212.

<sup>161</sup> *Ntaganda* TJ, para.72; *Bemba* TJ, para.242; *Abd-Al-Rahman* TJ, para.210.

<sup>162</sup> *Kayishema* TJ, para.459; *Kupreškić* AJ, para.40; *Abd-Al-Rahman* TJ, para.210.

<sup>163</sup> *Kayishema* TJ, para.459; *Ntaganda* TJ, para.72; *Bemba* TJ, para.242; *Abd-Al-Rahman* TJ, para.210.

<sup>164</sup> *Kayishema* TJ, para.460.

<sup>165</sup> *Abd-Al-Rahman* TJ, para.210.

suggestions from others.<sup>166</sup> While there is no recognized rule of evidence that traumatic circumstances necessarily render a witness's evidence unreliable,<sup>167</sup> it is the duty of the Panel to provide a reasoned opinion adequately balancing all the relevant factors.<sup>168</sup>

82. The Appeals Panel confirmed these factors are relevant to assessing reliance upon identification evidence.<sup>169</sup>

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<sup>166</sup>*Kupreškić* AJ,para.40; *Lukić* AJ,para.135; *Haradinaj* TJ,para.29, and AJ,para.156; *Limaj* AJ,para.30; *Popović* AJ,para.382; *Renzaho* AJ,para.531; *Kalimanzira* AJ,para.96; *Gatete* AJ,para.193; *Ntaganda* TJ,para.72; *Bemba* TJ,para.242.

<sup>167</sup> *Kunarac* AJ,para.324.

<sup>168</sup> *Kunarac* AJ,para.324; *Bemba* TJ,para.241; *Ntaganda* TJ,fn.158; *Abd-Al-Rahman* TJ,fn.388.

<sup>169</sup> *Shala* AJ,para.305.

### III. CREATION AND EVOLVING ORGANISATION OF THE KLA

83. The evidence before the Panel depicts the KLA as disorderly, fragmented, and erratic, not an “organised armed group” “throughout the Indictment Period”.<sup>170</sup> The entire organisation of the KLA was created from the bottom-up.<sup>171</sup> At no point did the KLA achieve the structure of a regular army.<sup>172</sup>
84. Nor does the evidence establish that “the General Staff was the body which exercised political and operational decision-making and control.”<sup>173</sup> The decentralised, horizontal, and voluntary nature of the KLA significantly reduced the ability of the GS, Zone Commanders, and Brigade Commanders to exercise any military/operational and disciplinary control over any of the individuals who allegedly committed or contributed to crimes.

#### A. Origin of KLA prevented a coherent organisation

##### 1. Origin of KLA

85. Resistance to the domineering control of the Serbian government existed long before the Indictment period, albeit in a number of disparate, uncoordinated strands.
86. Some claim the KLA traces its roots to the LPK, created in 1982.<sup>174</sup> The LPK purportedly developed a military wing in December 1993,<sup>175</sup> formally taking the name “KLA” in 1994.<sup>176</sup>

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<sup>170</sup> Indictment, paras 19, 32.

<sup>171</sup> W04403, 25/03/2025, T.25842.

<sup>172</sup> W04746, 17/07/2023, T.5814.

<sup>173</sup> F00709/A01, para. 97.

<sup>174</sup> P01874, p.074625.

<sup>175</sup> P01875, p.067710. This position was disputed by W04401, who rejected the December 1993 meeting as being related to the creation of the KLA. W04401, 28/11/2024, T.22964-22968.

<sup>176</sup> P00269\_ET.21, p.2; P01874, p.074630. W03873 believes the KLA’s creation to be dated 17 November 1994, see 25/11/2024, T.22553.

87. A number of witnesses testified to being involved in the LPK in Switzerland,<sup>177</sup> some as early as 1989.<sup>178</sup> The LPK at that point in time was involved in organising non-violent activities such as protests, petitions, and other forms of raising awareness about the injustices suffered in Kosovo.<sup>179</sup> The LPK-run newspaper *Zëri I Kosovës* was based in Switzerland from 1983,<sup>180</sup> and was not published in Kosovo until December 1999.<sup>181</sup>
88. The LPK and other political parties were similarly active in Germany in the 1990s.<sup>182</sup>
89. W04401 denied that by 1993 the LPK began advocating for armed warfare to liberate Kosovo,<sup>183</sup> rejecting the premise as inconsistent with what had been discussed at the 1993 LPK general meeting to his knowledge.<sup>184</sup> Instead, some members of the LPK began to organise what were effectively guerrilla operations against Serb police and military.<sup>185</sup> W04401 described reports at the time suggesting larger attacks as “glorifying” articles stretching the truth of what happened.<sup>186</sup>
90. Another version of the creation of the KLA finds its roots in A.JASHARI.<sup>187</sup>
91. The KLA was not initially welcome and did not receive support from throughout the Kosovo Albanian population.<sup>188</sup> W03825, speaking from outside the ranks of the KLA, saw a disconnect and lack of communication between the

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<sup>177</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>178</sup> [REDACTED].

<sup>179</sup> [REDACTED]; P02006.1,p.6; [REDACTED].

<sup>180</sup> P01874,p.074626.

<sup>181</sup> P01874,p.074631; W01453,07/11/2024,T.22272.

<sup>182</sup> [REDACTED]; [REDACTED].

<sup>183</sup> P01874,p.074629.

<sup>184</sup> W04401,28/11/2024,T.22958-22961.

<sup>185</sup> P01875,p.067709.

<sup>186</sup> W04401,28/11/2024,T.22964-22968.

<sup>187</sup> P00186,p.00226187.

<sup>188</sup> W03825,06/11/2023,T.9328.

political leadership in Prishtinë/Priština and the KLA,<sup>189</sup> going so far as to state that political parties that were spreading misinformation about the KLA.<sup>190</sup>

92. Regardless of the origins, the first public announcement of the KLA came at the funeral ceremony of Halil GECI on 28 November 1997.<sup>191</sup> A.JASHARI decided<sup>192</sup> that **SELIMI**, M.KRASNIQI, and D.HARADINAJ go on stage and that **SELIMI** to read a text that A.JASHARI had approved.<sup>193</sup>

## 2. Early proclamations about the KLA were exaggerations

93. The public proclamations of the strength and organisation of the KLA, starting before 1998 and continuing throughout the Indictment Period, was largely intended to ensure the KLA was well-perceived amongst internationals,<sup>194</sup> encourage recruitment and/or reflect an exaggerated glorification of the role and structure of the KLA rather than constitute a true reflection of the KLA's actual size and capability.
94. Communiqués were issued in the name of the KLA from 1994.<sup>195</sup> For example, Communiqué 13, dated June 1995, refers to the "Central Command"<sup>196</sup> ordering attacks,<sup>197</sup> although none of the alleged attacks carried out were proven here. When shown Communiqué 28 about events on 26 December 1996 and 9 January 1997, W04401 did not think anything in the Communiqué was verifiably true.<sup>198</sup>
95. While the KLA tended to portray itself as a well-organised army, the general impression amongst the internationals was that the KLA was exaggerating its

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<sup>189</sup> W03825,06/11/2023,T.9326.

<sup>190</sup> W03825,06/11/2023,T.9326.

<sup>191</sup> P01878; P02032,p.3; W04401,28/11/25,T.22981.

<sup>192</sup> W04290,10/02/2025,T.24931.

<sup>193</sup> P02032,p.3.

<sup>194</sup> W03724,14/11/2023,T.8029.

<sup>195</sup> P01874,p.074630.

<sup>196</sup> Not the "Central Staff" as SPO alleged. F00709/A01,fn.3.

<sup>197</sup> P00269\_ET.1.

<sup>198</sup> P00273; W04401,04/12/2025,T.23334-23335.

size and structure, at least in 1998.<sup>199</sup> The KLA also exaggerated their organisation and their ability to be effective on the ground, likely so that the internationals would take them more seriously.<sup>200</sup>

### 3. KLA began as local village defence units

96. The ranks of the KLA began to swell after A.JASHARI's killing.<sup>201</sup> From this moment, individuals started organising into independent guerrilla units.<sup>202</sup>
97. Throughout most of 1998, armed groups fighting under the banner of the KLA were largely comprised of inhabitants of a given area spontaneously banding together to defend their villages. From March to May 1998, the KLA experienced a "development curve"<sup>203</sup> and there were simply a few units operating in different places in Kosovo.<sup>204</sup> These village defence groups were often composed of family units, or individuals returning from abroad to areas they knew.<sup>205</sup> They maintained full authority in the areas where they operated, acting independently both from other similar village groups and from higher authorities, such as the fledgling GS.<sup>206</sup>
98. Every village organised itself from the bottom up to protect its civilians.<sup>207</sup> These units would choose their own commanders.<sup>208</sup> For example, Naim MALOKU and S.VESALI were appointed commanders of the village staff of Junik, who themselves were appointed by the villagers.<sup>209</sup> These were villagers were

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<sup>199</sup> W02144,28/05/2024,T.16119.

<sup>200</sup> W02144,28/05/2024,T.16119-16120.

<sup>201</sup> W03873,26/11/2024,T.22770-22771; [REDACTED].

<sup>202</sup> P02027.1,p.2068; *See also*, P02087.2,p.15; P02089,p.SPOE00067217; W04403,25/03/2025,T.25837.

<sup>203</sup> [REDACTED].

<sup>204</sup> [REDACTED].

<sup>205</sup> W04746,17/07/2023,T.5814-5815; W04741,23/04/2024,T.14698-14699; W04255,12/09/2023,T.7856-7857.

<sup>206</sup> W04278,30/09/2024,T.20469-20470.

<sup>207</sup> W04278,30/09/2024,T.20468; W04255,12/09/2023,T.7854-7860.

<sup>208</sup> P02090.4,p.3.

<sup>209</sup> W04403,25-26/03/2025,T.25842,25966.

primarily armed with their own personal weapons,<sup>210</sup> as the KLA did not have arms to provide them.

99. Village leaders had discretion whether to approve the establishment of these defence formations and to determine the parameters of their activities.<sup>211</sup> These groups operated in complete isolation from one another and carried out their activities without any vertical chain of command in place.<sup>212</sup> The level of cooperation between them was determined by the rapport between their respective leaders and not by pre-determined organigrams or orders.<sup>213</sup>
100. The KLA necessarily operated with a horizontal structure lacking any real hierarchy or cohesion. Even as these groups began to work together under the umbrella of the KLA, the KLA never achieved the equivalence of a regular army in terms of structure, lacking typical features such as ranks and a strict division of roles.<sup>214</sup>
101. In the absence of any instructions from above, there was a pervasive ambiguity as to individual roles and duties within these units.<sup>215</sup> Commanding titles were assumed by individuals at their own discretion,<sup>216</sup> and individual soldiers were free to decide the parameters of their involvement.<sup>217</sup> Even where individual duties were assigned, the KLA often did not have the organizational or material prerequisites to carry them out, and were therefore simply aspirational.<sup>218</sup>

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<sup>210</sup> W04278,30/11/2024,T.20467.

<sup>211</sup> P00476,pp.1038-1039.

<sup>212</sup> P02027.1,p.2068; P00476,pp.1029,1037; [REDACTED]; [REDACTED]; W01453,05/11/2024,T.21900[REDACTED]; P00746,p.1058.

<sup>213</sup> [REDACTED].

<sup>214</sup> W04746,17/07/2023,T.5834.

<sup>215</sup> P02006.1,pp.14-15; W04752,03/07/2024,T.17563; [REDACTED].

<sup>216</sup> [REDACTED].

<sup>217</sup> W04743,28/01/2025,T.24699; [REDACTED]; [REDACTED].

<sup>218</sup> [REDACTED].

102. The authority of individual leaders was determined by their personal standing in their community or by their rapport with fellow soldiers.<sup>219</sup> As a result, decisions were either made in a collegiate fashion,<sup>220</sup> or were issued independently without the approval or even the knowledge of the appointed commanders.<sup>221</sup>
103. These village groups also had little to no communication with other groups,<sup>222</sup> or even the GS. The groups cooperated with village subzones on occasion, but it was difficult to organise themselves at the local levels,<sup>223</sup> necessitating the establishment of a more formal organisation.<sup>224</sup>
104. However, many KLA members did not know who exactly the members of the GS were, either at the time or even after the Indictment Period, what they looked like or even what their functional duties within the KLA were because they would introduce themselves by pseudonym instead of name.<sup>225</sup> [REDACTED] stated that even in May 1998 he knew “very, very, very few people” who identified themselves as GS.<sup>226</sup>
105. The internationals in Kosovo recognised the fractured nature of the KLA. When HOLBROOKE and HILL first made contact with the KLA in June 1998, [REDACTED] impression was that the KLA was not a cohesive organization.<sup>227</sup> The KLA leadership at the time could be characterised as local warlords, each

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<sup>219</sup> W04752,03/07/2024,T.17579; [REDACTED]; [REDACTED]; W01511,04/09/2024,T.19577.

<sup>220</sup> [REDACTED]; W04651,26/08/2024,T.18944; [REDACTED].

<sup>221</sup> [REDACTED].

<sup>222</sup> W04278,30/11/2024,T.20470.

<sup>223</sup> [REDACTED].

<sup>224</sup> [REDACTED].

<sup>225</sup> [REDACTED].

<sup>226</sup> [REDACTED].

<sup>227</sup> [REDACTED].

conducting their own armed struggle against the Serb authorities.<sup>228</sup> W04147 found the KLA to be a collection of regional militias.<sup>229</sup>

#### 4. KLA was entirely voluntary

106. The KLA was an entirely voluntary organisation.<sup>230</sup> The volunteers had the discretion to join whichever local unit they wanted,<sup>231</sup> many of which were not even officially KLA at the time of their creation. People were simply volunteering to aid in the defence of their villages.<sup>232</sup>
107. Soldiers could not be sent to locations or conscripted.<sup>233</sup> Members could join the KLA by expressing their will to do so at any stage of the KLA's existence and could similarly leave or subsequently re-join it with no consequences.<sup>234</sup> Sometimes soldiers and leaders would leave without returning.<sup>235</sup>
108. There was no formal process for joining and volunteers did not have to register, fill in any forms or receive approval from anyone.<sup>236</sup> Individuals coming from abroad were often sent to Likoc/Likovac, where they were encouraged to join local units. These were not assignments, and the involvement of people in Likoc/Likovac was little more than asking where the individual was from and providing a contact of the village leader if it was known. For example, W04743 reported to Likoc/Likovac in April 1998, where he requested to be transferred to Kleçkë/Klečka because his friends were stationed there.<sup>237</sup>

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<sup>228</sup> [REDACTED]; [REDACTED].

<sup>229</sup> W04147,25/03/2024,T.13650.

<sup>230</sup> W04746,14/07/2023,T.5717; P02087.2,p.9; P02090.3,pp.17-18; W04403,24/03/2025,T.25703; W04765,13/11/2023,T.9950.

<sup>231</sup> [REDACTED].

<sup>232</sup> W04753,30/10/2023,T.9161.

<sup>233</sup> W04765,13/11/2023,T.9950; P02087.3,p.15; P02027.2,p.2175.

<sup>234</sup> W04576,22/02/2024,T.12822.

<sup>235</sup> W04278,30/09/2024,T.20513.

<sup>236</sup> P02087.2,p.2; P02090.2,p.7; W04403,25/03/2025,T.25833.

<sup>237</sup> P02006.1,p.12.

109. Former professional VJ officers were not a problem for the CS,<sup>238</sup> although there is evidence of prior approval being required before entering Kosovo,<sup>239</sup> a process which W04752 found lengthy.<sup>240</sup> W04752 formally joined the KLA only after entering Kosovo and being approved by the GS.<sup>241</sup> W04752 agreed that given his long absence from Kosovo, he had no one to vouch for him.<sup>242</sup> This applied equally to many former soldiers who lived outside Kosovo, and such a vetting process was normal in the circumstances.
110. No member of the KLA was paid for his or her service in the KLA. Support came from the soldiers' families and other Albanian families in that zone,<sup>243</sup> with families providing food, vehicles, and places to sleep.<sup>244</sup> The KLA functioned on this basis throughout its whole existence.
111. The result was that the KLA did not have any legal authority over soldiers.<sup>245</sup> Someone in a higher position could not order a soldier to do something but would have to make requests based on the willingness of soldiers.<sup>246</sup>

##### **5. Training was brief and rudimentary**

112. Very few members of the KLA, including **SELIMI**, had any prior military training or experience.<sup>247</sup> Throughout the KLA, there was a fundamental lack of knowledge as to how a regular army should be structured, trained, and

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<sup>238</sup> W04752,03/07/2024,T.17546.

<sup>239</sup> W04752,09/07/2024,T.17864.

<sup>240</sup> W04752,09/07/2024,T.17864.

<sup>241</sup> P01356,p.5931.

<sup>242</sup> W04752,09/07/2024,T.17865.

<sup>243</sup> W04753,30/10/2023,T.9161.

<sup>244</sup> W04753,30/10/2023,T.9162.

<sup>245</sup> P02087.3,p.16.

<sup>246</sup> W04403,26/03/2025,T.25917.

<sup>247</sup> P01356,p.5931; W04744,24/06/2024,T.17046; [REDACTED]; P02027.2,p.31; W01453,07/11/2024,T.22158.

operational. Most KLA soldiers did not know what their position was, nor the roles and tasks they had within the structure.<sup>248</sup>

113. Some volunteers underwent training, although due to the circumstances at the time, including the lack of an equipped training facility,<sup>249</sup> the basic training typically lasted 1-2 weeks.<sup>250</sup> Even then, this training was voluntary and on occasion, people would simply leave.<sup>251</sup> Soldiers would also be trained on contents of the GCs,<sup>252</sup> although the extent of this training, both in terms of how many soldiers received it and what topics it covered, is unclear.

## 6. Development of the OZs occurred from the ground up

114. Throughout the war, the KLA continually evolved, undergoing internal organisation and restructuring.<sup>253</sup> The organisation of the sub-zones was wholly voluntary and took place from the bottom-up.<sup>254</sup> Village units operated independent of one another<sup>255</sup> and units elected their commanders.<sup>256</sup> As the zones developed and extended territorially, they also developed their own hierarchical structure.<sup>257</sup> There was little coordination or relationship between the other OZs, and they only assisted each other in the battlefield and armed clashes, which they heard about through courier or radio.<sup>258</sup> The restructuring process that began on 26 November 1998,<sup>259</sup> dealt with in more detail below,<sup>260</sup>

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<sup>248</sup> [REDACTED].

<sup>249</sup> W04752,09/07/2024,T.17859.

<sup>250</sup> P01356,p.5931.

<sup>251</sup> W04752,09/07/2024,T.17858-17859.

<sup>252</sup> P02090.3,p.11.

<sup>253</sup> P00712,p.SPOE00209392; W04765,15/11/2023,T.10190.

<sup>254</sup> P02090.3,p.18; W04403,25/02/2025,T.25842.

<sup>255</sup> P02027.1,p.2068; [REDACTED]; W01511,03/09/2024,T.19498; [REDACTED].

<sup>256</sup> P01745,p.6D00-0773,6D00-0780; [REDACTED]; W04752,03/07/2024,T.17559; P01364; [REDACTED];

<sup>257</sup> P02090.3,p.18.

<sup>258</sup> W04765,04/12/2023,T.10386.

<sup>259</sup> W04765,13/11/2023,T.9920-9921; P00712,p.SPOE00209401.

<sup>260</sup> See *infra*, para.145.

was an attempt to not only restructure the GS, but to increase coordination and coherence between the zones.

115. From the international perspective, W02161 found that the KLA was not unified in a centrally coordinated way and tended to look different in different zones,<sup>261</sup> with a horizontal structure.<sup>262</sup> One had to go through the zone commanders to accomplish anything.<sup>263</sup>
116. The zone commanders always retained a large degree of independence from the KLA “political wing”.<sup>264</sup> In operational terms, zone commanders did what they wanted.<sup>265</sup> Zone commanders deferred to the KLA political leadership on matters such as truces, hostage releases, and setting up diplomatic meetings, but not on military or operational matters.<sup>266</sup> USKDOM believed this independence over operational matters also extended to the capture of Serbian journalists and LDK activists.<sup>267</sup> USKDOM had no evidence that the GS had anything to do with these matters.<sup>268</sup> W04147 explained that USKDOM assumed these actions were taken either independently by local KLA commanders or their superiors, such as brigade commanders or zone commanders.<sup>269</sup> W04147 added that there was no evidence that indicated the GS exercised command responsibility over detentions within the zones.<sup>270</sup>
117. It should be noted that the SPO tendered hundreds of documents through the bar table broken down by zone. The vast majority of these documents have not been commented upon by any witness or addressed in any meaningful manner

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<sup>261</sup> W02161,07/12/2023,T.10739.

<sup>262</sup> W02161,07/12/2023,T.10740-10741.

<sup>263</sup> W02161,07/12/2023,T.10740.

<sup>264</sup> W04147,27/03/2024,T.13881-13884.

<sup>265</sup> [REDACTED]; W04147,27/03/2024,T.13852.

<sup>266</sup> W04147,25/03/2024,T.13599, [REDACTED].

<sup>267</sup> W04147,27/03/2024,T.13863.

<sup>268</sup> W04147,27/03/2024,T.13863.

<sup>269</sup> W04147,27/03/2024,T.13863.

<sup>270</sup> W04147,27/03/2024,T.13865-13866.

before this Panel. In these circumstances, these documents are not entitled to significant weight.<sup>271</sup>

**B. GS could not exercise military control over the KLA during the Indictment Period**

118. The Defence acknowledges a body referred to itself as the CS<sup>272</sup> and then GS during the Indictment Period. While many use the two labels interchangeably, the CS, which preceded the GS,<sup>273</sup> was substantially different in composition, role and authority, than the GS, which was formed as part of the reorganisation efforts in November 1998. For purposes of this brief and for the sake of simplicity, the Defence primarily uses the term “GS” to encompass both bodies, but emphasises the distinction between the body operating before November 1998 and the one that existed from November 1998 onwards.
119. For the entirety of the Indictment Period, the relationship between the GS and OZs was a strained one, resulting in the GS having little or no true authority over the Zone Commanders, who often operated autonomously unless cooperation with the GS served a specific purpose.
120. The functioning of the GS itself was a work in progress and the operability varied substantially throughout the indictment period based on the composition of the GS and the circumstances of the ongoing conflict. Decision-making and communication in the GS was fluid, depending *inter alia* on the nature of the subject to be decided and the attendees of meetings.
121. The work-in-progress nature of the GS is demonstrated by the draft laws, codes, rules or regulations drafted by the GS. The GS attempted to model itself on

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<sup>271</sup> See Section II.C.5.

<sup>272</sup> **SELIMI** claimed that a KLA “Central Staff” was operative from 1994, headquartered primarily in Drenicë/Drenica as of the end of 1997, before moving to Likoc/Likovac in March 1998. P01881,p.SPOE00226856.

<sup>273</sup> W04752,01/07/2024,T.17359.

other military structures, creating titles and positions to mimic those established armies. In reality, however, those titles or positions were often in name only, with no real authority or capability of fulfilling the anticipated function of the role. Clear examples of these powerless titles were ones given to **SELIMI**, such as the Head of the Operational Directorate or Inspector-General, discussed in more detail below.

### **1. Lack of organisation in the pre-conflict period**

122. Early GS members included SYLA, HALITI, N.HASANI, A.AHMETI, and Xheladin GASHI.<sup>274</sup> Even though he was appointed as commander, SYLA was based in Albania and only in Kosovo sporadically.<sup>275</sup>
123. There is evidence that THAÇI and VESELI were abroad in 1997 but visited Kosovo on occasion and maintained contact with the GS,<sup>276</sup> although they were not in the GS at the time.<sup>277</sup>
124. In 1997, the GS was involved mainly in producing communiqués and obtaining financing and military supplies in preparation for war.<sup>278</sup>
125. Several witnesses testified to what they *inferred* were the powers of the GS in late 1997 and early 1998, although many of them were outside the country and were not properly informed of the situation at the time. For example, [REDACTED] stated that everything was organized by the GS in early 1998,<sup>279</sup> before conceding that he had no contacts with the group, had no knowledge of

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<sup>274</sup> [REDACTED]; W04401,28/11/2024,T.22969; W04401,02/12/2024,T.23081; W04401,04/12/2024,T.23334.

<sup>275</sup> W04401,04/12/2024,T.23350; W04752;10/07/2024,T.17949-17950; W04752,04/07/2024,T.17627.

<sup>276</sup> [REDACTED].

<sup>277</sup> W04401,03/12/2024,T.23291-23292. This stand in contrast to P00847,p.SITF00243001, an interview with SYLA, where he names THAÇI and VESELI as part of the initial GS.

<sup>278</sup> [REDACTED].

<sup>279</sup> [REDACTED].

what was going on in the GS,<sup>280</sup> and that his position was entirely an inference.<sup>281</sup> [REDACTED] affirmed that the controlling force in the Drenicë/Drenica area was A.JASHARI.<sup>282</sup> While W04290 believed A.JASHARI had continual contacts with the GS,<sup>283</sup> he was not aware of these contacts because he was not on the level that would make him privy to such information.<sup>284</sup>

126. Similarly, W04752 believed that the GS were in Kosovo and they were making all decisions,<sup>285</sup> but he had been outside of Kosovo for a long time and did not have connections to anyone there.<sup>286</sup>

## 2. GS had no authority between March 1998 and November 1998<sup>287</sup>

127. Even though the GS nominally existed during 1998, few commanders knew who the members of the GS were, resulting in no real “higher authority” and no coordination between the GS and OZs.<sup>288</sup> Until late 1998 zone commanders had more power in their hands than the GS.<sup>289</sup> Many witnesses affirmed they did not know anything about the GS, with some denying knowledge of its existence during the Indictment period.<sup>290</sup>
128. The “Central Staff”, which effectively operated until November 1998 despite its name being formally changed before that date, made no pretence at being the formal executive of a regular armed force. It operated as an independent organ, separate from the local staff and the zones and with little authority over either

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<sup>280</sup> [REDACTED].

<sup>281</sup> [REDACTED].

<sup>282</sup> P01745,p.6D00-0765.

<sup>283</sup> [REDACTED]; W04290,13/02/2025,T.25219.

<sup>284</sup> P02027.1,pp.2060-2061.

<sup>285</sup> [REDACTED].

<sup>286</sup> W04752,09/07/2024,T.17865.

<sup>287</sup> W04752 stated that GS was “Central Staff” at that time, *see* Transcript,01/07/2024,T.17359.

<sup>288</sup> W04752,03/07/2024,T.17565-17566.

<sup>289</sup> W04752,03/07/2024,T.17564-17565.

<sup>290</sup> [REDACTED]; W04753,30/10/2023,T.9193; W04278,30/09/2024,T.20474; P01955.1,p.23; W01511,04/09/2024,T.19586; W01511,03/09/2024,T.19509-19510; [REDACTED].

of them. W04290 went so far as to call the organisation of the GS “meaningless” as there were many unknowns about who was there and what functions they had.<sup>291</sup> From the perspective of a zone commander, the GS was nearly non-existent, poorly-staffed, and disorganised.<sup>292</sup> W04290 did not know how the GS was organized or how it functioned until becoming General Commander<sup>293</sup> at the end of February 1999.<sup>294</sup>

129. GS members did not delineate responsibilities; between March 1998 and November 1998, there remained ambiguity as to what positions were being occupied in the GS.<sup>295</sup> W04746 testified that, prior to S.SELIMI’s appointment, he did not think that the KLA had a general commander and that all commanders were regarded as equal.<sup>296</sup>
130. Contemporaneous statements suggesting a developed hierarchy and military structure were exaggerations,<sup>297</sup> including that the GS could enforce discipline. W04290 stated that the GS could do nothing if a soldier did not want to serve, as the soldiers were volunteers.<sup>298</sup> W04752 added that disciplinary matters fell solely on the commanders of the units of the zones; even after the restructuring the same system was kept in place.<sup>299</sup> Indeed, there was no procedure in place for addressing the withdrawal of soldiers from the army.<sup>300</sup> P01278, had a

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<sup>291</sup> W04290,11/02/2025,T.25057.

<sup>292</sup> W04290,13/02/2025,T.25254.

<sup>293</sup> W04290,12/02/2025,T.25131.

<sup>294</sup> W04401,02/12/2024,T.23129.

<sup>295</sup> W04752,09/07/2024,T.17906. *Contra*, F00709/A01, para.99.

<sup>296</sup> W04746,14/07/2023,T.5710.

<sup>297</sup> W04290,10/02/2025,T.24913-24914, referring to P00851.1,p.2 and T.24909, similarly referring to a 2000 statement that there was “rigorous discipline, military order” as exaggeration and “not possible” in 1998 (P01745,p.6D00-0773).

<sup>298</sup> P02027.1,p.2081.

<sup>299</sup> W04752,03/07/2024,T.17590.

<sup>300</sup> P02027.1,p.2081.

propaganda purpose and units were not organised or unified well at that time, contrary to the impression from the video.<sup>301</sup>

131. It was not clear to [REDACTED] how the KLA operated, even years after the war ended.<sup>302</sup> In [REDACTED] June 1998,<sup>303</sup> [REDACTED] filed a report stating that while there was a visible increase in militarization and professionalization of the KLA,<sup>304</sup> the KLA command structure remained something of a mystery as although the KLA used terms such as the GS, it was more of a diffuse horizontal command and coordination structures.<sup>305</sup>
132. Due to the lack of connection between the GS and the zones,<sup>306</sup> the zone commanders had to deal with the operations, analysis, evaluation of the circumstances, and the actions to be taken.<sup>307</sup> The GS did not succeed in doing anything more than coordinating, as opposed to commanding, the activities of the KLA.<sup>308</sup> While “coordination was part and parcel of what military commanders do”,<sup>309</sup> W04752’s ability to coordinate depended on the voluntary cooperation of zone commanders.<sup>310</sup>
133. Any attempts to unify the KLA units was undermined by the Serbian offensives in the summer of 1998. W04401 confirmed that the KLA collapsed, but was not completely destroyed,<sup>311</sup> prior to the reorganisation that took place in November.

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<sup>301</sup> W04752,03/07/2024,T.17570; W04752,16/07/2024,T.18341-18342.

<sup>302</sup> [REDACTED].

<sup>303</sup> [REDACTED].

<sup>304</sup> [REDACTED]; [REDACTED].

<sup>305</sup> [REDACTED].

<sup>306</sup> W04290,13/02/2025,T.25291-25292.

<sup>307</sup> W04290,13/02/2025,T.25255.

<sup>308</sup> [REDACTED]; [REDACTED]

<sup>309</sup> W04752,17/07/2024,T.18388.

<sup>310</sup> W04752,17/07/2024,T.18468-18469.

<sup>311</sup> W04401,03/12/2024,T.23197-23199.

134. Despite ZYRAPI issuing some orders through the GS, zone commanders retained the power and could decide who the head of the GS and superior of ZYRAPI would be.<sup>312</sup> It was suggested that the GS ought to have consulted zone commanders for appointments to the GS as zone commanders had the responsibility.<sup>313</sup>
135. At times, the zone commanders sought help from each other, bypassing the GS entirely.<sup>314</sup>
136. While there is evidence of an intention to form brigades during summer 1998, there is no evidence that such structural changes were done at GS direction rather than being carried out at the local level.
137. During this period, the GS held meetings inconsistently, with various members present at different meetings, and GS members at the time were not communicating with each other on a regular basis.<sup>315</sup> It was difficult to hold regular meetings of the GS due to the circumstances.<sup>316</sup> From May 1998 through the end of 1998, GS members constantly moved around,<sup>317</sup> and only held meetings if the need arose, as there was no place for such meetings.<sup>318</sup>
138. The first GS meeting took place only in June 1998 in Negroc/Negrovce; both before and after that point, the GS were unable to perform their respective functions.<sup>319</sup> W04401 could not remember any meetings of the GS between March and May 1998, and in fact could not remember any meetings other than

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<sup>312</sup> W04290,11/02/2025,T.25061.

<sup>313</sup> W04290,11/02/2025,T.25057-25058.

<sup>314</sup> P00875.

<sup>315</sup> W04290,12/02/2025,T.25131-25132.

<sup>316</sup> W04752,03/07/2024,T.17568.

<sup>317</sup> P02027.1,p.2072. W04765 testified that the GS was in constant movement, not only geographically but also changing positions, *see* W04765,16/11/2023,T.10262.

<sup>318</sup> P02027.1,p.2072.

<sup>319</sup> W04401,02/12/2024,T.23077-23078.

Negroc/Negrovce in June 1998.<sup>320</sup> W04752 did not attend any GS meetings before 15 July 1998 or had knowledge of them,<sup>321</sup> so his evidence that Likoc/Likovac was the GS headquarters before that date<sup>322</sup> is unpersuasive.

139. The SPO sought to place importance on Likoc/Likovac<sup>323</sup> and in particular, alleges that around the beginning of the Indictment Period in Likoc/Likovac, **SELIMI** and others held discussions about the organisation of the KLA.<sup>324</sup> While Likoc/Likovac may have held localized importance to the Drenicë/Drenica region at this time this was due to its role as the Drenicë local staff HQ and location.<sup>325</sup>
140. In part, the importance placed on Likoc/Likovac is due to new KLA volunteers entering Kosovo from abroad being commonly directed there. A hilltop village,<sup>326</sup> Likoc/Likovac was strategically secure and easily accessible through pockets of KLA territory for many volunteers arriving from Albania but was no formal reporting station. Arrivals rapidly moved on to their home village. Visits by **SELIMI** to the Likoc/Likovac area, including Pluzhine/Pluzina, were not made as a representative of the GS but were instead part of his operational duties.<sup>327</sup>
141. While there has been some limited evidence of GS meetings occurring on 9 and 23 July and 16 August 1998,<sup>328</sup> there is no evidence that these meetings occurred in Likoc/Likovac.

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<sup>320</sup> W04401,02/12/2024,T.23142-23143.

<sup>321</sup> W04752,10/07/2024,T.17962-17963.

<sup>322</sup> [REDACTED].

<sup>323</sup> F00709/A01,para.269.

<sup>324</sup> F00709/A01,para.170.

<sup>325</sup> W04752,03/07/2024,T.17529.

<sup>326</sup> F00709/A01,para.269.

<sup>327</sup> W04752,09/07/2024,T.17896-17897.

<sup>328</sup> P00643,pp.SPOE00229213-SPOE00229214.

142. The remaining evidence cited by the SPO<sup>329</sup> does not establish Likoc/Likovac as the GS HQ. [REDACTED] untested evidence that Likoc/Likovac was the headquarters was admitted over Defence objections,<sup>330</sup> is internally inconsistent<sup>331</sup> and uncorroborated. **SELIMI**'s reference to the first meeting of the GS with DEMAÇI in Likoc/Likovac does not specify when that was, with **SELIMI** not remembering the date,<sup>332</sup> and admittedly "could not be exact with dates".<sup>333</sup> **SELIMI** was never asked if Likoc/Likovac was the GS HQ during his SPO interview.
143. Meetings in Likoc/Likovac between internationals and certain KLA members<sup>334</sup> including the accused,<sup>335</sup> addressed below,<sup>336</sup> demonstrate that Likoc/Likovac didn't serve as the GS HQ.
144. [REDACTED], who attended one of the meetings, distinguished the KLA from the GS,<sup>337</sup> believing KLA as more broadly trying to defend their villages whereas the GS acted with the intention of attracting foreign intervention, particularly from the US, to advance its goal of independence.<sup>338</sup>

### **3. GS had limited power from November 1998 to April 1999**

145. The KLA used the comparatively quieter period after the Serb offensives in summer 1998 to attempt to reorganise itself into a cohesive structure. From November 1998, the KLA made a concerted effort to organise itself across Kosovo through more formal reporting structures and coordination between

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<sup>329</sup> F00709/A01,fn.1109.

<sup>330</sup> [REDACTED]; [REDACTED].

<sup>331</sup> [REDACTED].

<sup>332</sup> P04202,p.6.

<sup>333</sup> [REDACTED].

<sup>334</sup> F00709/A01,para.270.

<sup>335</sup> F00709/A01,para.181.

<sup>336</sup> See Section IV.B.1.<sup>336</sup>

<sup>337</sup> [REDACTED].

<sup>338</sup> [REDACTED].

the disparate units.<sup>339</sup> The restructuring process started on 12 November 1998 and continued throughout December 1998 to February 1999, although it was never completed.<sup>340</sup> W04403 believed the new GS could only be considered officially formed after its first meeting, in December 1998.<sup>341</sup> W04752 agreed that restructuring of the GS had finished by the end of November 1998 only in relation to formal creation of the positions, however, directorates were not able to perform their functions properly due to various shortages and limitations even in January 1999 and afterwards.<sup>342</sup>

146. [REDACTED] testified that after the restructuring, a hierarchy was established running from the GS to the battalion level.<sup>343</sup> J.KRASNIQI's untested book refers to the reorganisation of the GS on 12 November 1998 and the role of various individuals within it: a Commander with two deputies, one in charge of military operations, the other for support, an Inspector-General, the Commander's office, the Chief of Staff supervising the Directorates, a reconnaissance and police battalion, a logistics platoon and Directorates labelled G-1 to G-9.<sup>344</sup> This new structure was aspirational<sup>345</sup> and did not necessarily operate as planned as it was impossible to implement the hierarchy due to the continuous changes on the ground.<sup>346</sup> People who would not carry out their tasks did not receive any consequences.<sup>347</sup>

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<sup>339</sup> [REDACTED]; 4D00011; *See also*, P03788, an organigramme of the KLA, although the document is undated and origin is not clear.

<sup>340</sup> W04752,10/07/2024,T.18042; W04290,11/02/2025,T.25112.

<sup>341</sup> P02091,para.7; W04403,25-26/03/2025,T.25854,25935.

<sup>342</sup> W04752,10/07/2024,T.17970-17972.

<sup>343</sup> [REDACTED]; [REDACTED].

<sup>344</sup> P00765\_ET.2,p.U015-8878-U015-8879.

<sup>345</sup> [REDACTED].

<sup>346</sup> [REDACTED].

<sup>347</sup> [REDACTED].

### a. Zones/Coup

147. For a short time, the KLA did become slightly more cohesive. ZYRAPI ordered zone commanders to submit reports to him, which upon receipt he then compiled an overall report.<sup>348</sup>
148. At the same time, the zone commanders conducted what was effectively a military coup,<sup>349</sup> forcing the resignation of SYLA, BASHOTA, and J.KRASNIQI. The zone commanders were not satisfied with the leadership of the GS, and W04752 acknowledged that it was the zone commanders who had the real power in the KLA and who could replace the general commander.<sup>350</sup>
149. W04290 denied that what took place was a “coup”.<sup>351</sup> W04290 accepted that he had asked the zone commanders to decide among themselves who would be the general commander, which led to the election of S.SELIMI.<sup>352</sup> During questioning by the Panel, purportedly based on W04290’s interview,<sup>353</sup> W04290 agreed with a leading question that even before S.SELIMI was designated as the choice of his fellow OZ commanders, it was agreed that the GS would approve the choice.<sup>354</sup> The question finds no basis in the statements of either W04290 or **SELIMI**, and appears to be based on a misquote of W04290’s *Zëri* interview, where he stated “Rexhep Selimi, Bislim Zyrapi, Fatmir Lima, and some others were present at the third meeting, and it was decided that the UCK commanding general should be appointed.”<sup>355</sup> The question posed to the witness, however, presented the quote as “Rexhep Selimi said that the

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<sup>348</sup> See, P00228; P01356, pp.5956-5957.

<sup>349</sup> W04401, 02/12/2024, T.23125-23126.

<sup>350</sup> W04752, 04/07/2024, T.17662-17663.

<sup>351</sup> W04290, 12/02/2025, T.25186.

<sup>352</sup> [REDACTED]; W04290, 12/02/2025, T.25183-25184.

<sup>353</sup> P01745.

<sup>354</sup> W04290, 13/02/2025, T.25228-25230.

<sup>355</sup> P01745, p.6D00-0785.

UCK...would approve who would be elected commander from this meeting,"<sup>356</sup> thus suggesting some kind of pre-approval by the GS. This proposition is not supported by the evidence.

150. Instead of disciplining or arresting the zone commanders, BASHOTA, SYLA, and J.KRASNIQI decided to resign because of the power of the zone commanders.<sup>357</sup> The zone commanders decided whether they would report to the GS or not.<sup>358</sup> W04752 agreed that zone commanders continued holding power until 1999.<sup>359</sup>

### **b. Meetings**

151. During this period, the GS met infrequently as the conflict situation at the time, with members of the GS under constant threat of elimination by the Serb forces, significantly reduced the ability to hold meetings.
152. Between January and March 1999, W04752 claimed he had meetings with the Deputy Commander and zone commanders every two weeks.<sup>360</sup> He recalled a meeting on 5 January 1999,<sup>361</sup> with **SELIMI** listed among the participants.<sup>362</sup> W04403 put the OZ commander briefings only at once a month,<sup>363</sup> beginning in December 1998.<sup>364</sup> W04290 recalled GS meetings with some zone commanders: around 6 February 1999, around 13 February 1999 (where S.SELIMI was

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<sup>356</sup> W04290,13/02/2025,T.25229.

<sup>357</sup> W04401,02/12/2025,T.23126.

<sup>358</sup> W04401,02/12/2024,T.23130.

<sup>359</sup> W04752,04/07/2024,T.17663.

<sup>360</sup> P01356,pp.5955-5956.

<sup>361</sup> P03781.2,p.SPOE00226468.

<sup>362</sup> W04752,10/07/2024,T.17970-17972.

<sup>363</sup> P02089,p.SPOE00067220; P02090.2,p.12.

<sup>364</sup> P02090.3,p.2; W04403,25/03/2025,T.25867.

appointed Head of the KLA), around 26 February 1999 only with members of the GS potentially in Berishë/Beriša,<sup>365</sup> and late March 1999 in Nerodime.<sup>366</sup>

153. Matters discussed in these meetings related to the conduct of war, including ways of advancing their war effort and gaining the support of their people and internationals.<sup>367</sup> OZ commanders then reported to their respective zone.<sup>368</sup> These meetings only started taking place following OSCE and KDOM's arrival to Kosovo.<sup>369</sup> In general, meetings were not frequent and discussed mainly priority issues.<sup>370</sup> W04746 added that between November 1998 and March 1999, most GS members stayed abroad, with the exception of J.KRASNIQI, Ramë BUJA, and the zone commanders.<sup>371</sup>
154. W04765 summarised [REDACTED],<sup>372</sup> as [REDACTED],<sup>373</sup> [REDACTED].<sup>374</sup> [REDACTED].<sup>375</sup>

### c. Decisions/Orders

155. The SPO has tendered into evidence a number of decisions and orders purportedly issued by the GS during the Indictment period. Many of these decisions and orders lack a signature, stamp, or protocol number, which were all necessary for to be effective or come into force.<sup>376</sup> To know whether an unsigned order was put into effect, the author of that order had to testify or there must be other evidence that it was subsequently signed and effective.<sup>377</sup>

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<sup>365</sup> W04290,12/02/2025,T.25123-25126.

<sup>366</sup> W04290,12/02/2025,T.25126.

<sup>367</sup> W04746,12/07/2023,T.5606.

<sup>368</sup> W04746,12/07/2023,T.5606.

<sup>369</sup> W04746,12/07/2023,T.5568.

<sup>370</sup> W04746,12/07/2023,T.5566.

<sup>371</sup> [REDACTED].

<sup>372</sup> [REDACTED].

<sup>373</sup> [REDACTED].

<sup>374</sup> [REDACTED].

<sup>375</sup> [REDACTED].

<sup>376</sup> W04752,03/07/2024,T.17542.

<sup>377</sup> W04752,03/07/2024,T.17543; W04752,17/07/2024,T.18420-18421.

Absent such testimony or evidence, the SPO cannot prove that many of the decisions and orders tendered were ever implemented, distributed, and enforced.

156. The SPO did not demonstrate a consistent and regulated process for taking decisions within the GS, and no assumptions can be drawn about the approval of such decisions by any individuals simply by virtue of their presence at such meetings.
157. The “orders” issued at the end of GS meetings<sup>378</sup> drafted by ZYRAPI<sup>379</sup> were not orders *per se* but recommendations, administrative instructions or other similar guidance.<sup>380</sup> W04746 further clarified they were not able to fully implement these recommendations<sup>381</sup> and many were not even considered for implementation.<sup>382</sup> The war ended before the GS attained the level of mutual trust and respect required for the existence of a hierarchy in which they could have made orders to Zone commanders.<sup>383</sup> Almost all OZ commanders regarded themselves as completely independent of the GS and focused their decision-making on the immediate needs and circumstances in the field as opposed to orders from the GS.<sup>384</sup>
158. It was problematic that zone commanders were able to refuse to follow the GS’s advice and that the GS was not able to issue or take any specific measures in response.<sup>385</sup> An example of this was Remi refusing to pull back his forces from the Podujevë line despite requests to do so from the GS operational

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<sup>378</sup> W04746,12/07/2023,T.5606.

<sup>379</sup> W04746,17/07/2023,T.5836-5839; W04746,14/07/2023,T.5766-5767.

<sup>380</sup> W04746,12/07/2023,T.5607.

<sup>381</sup> W04746,12/07/2023,T.5608.

<sup>382</sup> W04746,17/07/2023,T.5838.

<sup>383</sup> W04746,14/07/2023,T.5769.

<sup>384</sup> W04746,14/07/2023,T.5771-5774.

<sup>385</sup> W04752,16/07/2024,T.18344-18345.

directorate.<sup>386</sup> [REDACTED] also pressured the GS to order Remi to pull back,<sup>387</sup> but the GS was unable to control Remi, with W04147 calling this an example of the impotence of the GS.<sup>388</sup>

159. W04741 confirmed that the only time he would receive GS orders would be from the brigade command and as such could not confirm the truth of their origin.<sup>389</sup> W04741 would sometimes refuse to follow orders issued from his commanders, [REDACTED]<sup>390</sup> and LIMAJ's order to surrender to the Red Cross in Shala valley.<sup>391</sup> When questioned on W04741's ability to ignore an order purportedly from the GS, W04741 stated that due to the circumstances, the orders were not enforceable, rather that it being his refusal to follow one.<sup>392</sup>
160. Decisions taken in relation to the KLA or Zones, including appointments, assignments, or dismissals,<sup>393</sup> were based on voluntary cooperation rather than instruction.<sup>394</sup>
161. Despite the consistent evidence regarding the voluntary nature of the KLA throughout the Indictment period,<sup>395</sup> the GS attempted to issue a mobilisation order on 29 March 1999.<sup>396</sup> There is no evidence that such an order was enforceable, demonstrated by the absence of anyone acting in response to the order.

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<sup>386</sup> W04752,04/07/2024,T.17629.

<sup>387</sup> [REDACTED]; [REDACTED].

<sup>388</sup> [REDACTED]; [REDACTED].

<sup>389</sup> W04741,23/04/2024,T.14716-14717; P01115.3,pp.12-13.

<sup>390</sup> [REDACTED].

<sup>391</sup> P01115.2,pp.43-44.

<sup>392</sup> W04741,23/04/2024,T.14719-1420.

<sup>393</sup> P00633; P00634; P00637.

<sup>394</sup> F00709/A01, para.107(b).

<sup>395</sup> See Section III.A.4.

<sup>396</sup> P00114.

#### d. Regulations

162. Purported regulations were borrowed from the handbooks of official state armies but were ultimately aspirational and never implemented in reality.<sup>397</sup> References in documents issued at the zone level to the GS Internal Regulations were often generic and identified no specific provisions authorising or requiring zone level command to issue such orders.<sup>398</sup>
163. W04752 testified that he first saw a copy of the internal life of the army rules between November and December 1998, however, he had known of its existence before that.<sup>399</sup>
164. W04752 was shown P00083, the internal regulation of the KLA of the GS, and confirmed that the document was worked on and supplemented in November-December 1998 during the restructuring phase.<sup>400</sup> It was prepared based on the regulations of the western countries.<sup>401</sup> [REDACTED] stated that the functioning of the GS as required by articles 2 and 3 (describing “unified” and “continuous” GS command)<sup>402</sup> did not work that way in practice due to the specific circumstances and the situation.<sup>403</sup>
165. Draft documents, such as P00639 show only that the GS was attempting to create a military structure. While being undated and unsigned, the document is also notable for the focus on military aspects and the absence of any reference to collaborators, detentions, or related topics.

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<sup>397</sup> F00709/A01, para.110.

<sup>398</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>399</sup> W04752,01/07/2024,T.17405.

<sup>400</sup> W04752,01/07/2024,T.17405.

<sup>401</sup> P01356,pp.5945-4956.

<sup>402</sup> P00083,p.SPOE00225108.

<sup>403</sup> [REDACTED].

166. The SPO also tendered several versions of the Rules of Discipline in the KLA,<sup>404</sup> which has a date of 1998 on the front cover, but which is ultimately undated, unsigned, and without any evidence as to when, if at all, it entered into force. The inapplicability of the document is seen in Article 1's reference to a constitution, as Kosovo had only a draft constitution (the Constitution of Kaçanik<sup>405</sup>) in 1998 that was never ratified.<sup>406</sup> [REDACTED] testified that he had seen the Rules during the war, but he had not read them.<sup>407</sup>
167. The SPO similarly tendered several versions of the Provisional Rules on the Organisation of Life of the Army.<sup>408</sup> It is unclear when these "provisional" rules went into effect, although [REDACTED] believes he saw them roughly around the end of June 1998.<sup>409</sup> [REDACTED] believed that the Provisional Rules were followed,<sup>410</sup> although W04741 was not sure that he saw this document during the war<sup>411</sup> and could not explain why the provisions allegedly meant for the whole KLA refer to "Colonel Celiku" as a commander for the purpose of the oath<sup>412</sup> or disprove that it was solely for LIMAJ's OZ.<sup>413</sup> [REDACTED] believes he may have seen this document but was sure that 99 percent of soldiers never saw them.<sup>414</sup> W04576 did not see P00008 which he agreed was absolutely not followed in his brigade.<sup>415</sup> No date when P00008 was allegedly created and circulated to the zones was established. Despite its allegation that it was

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<sup>404</sup> P00162, P00165, P00508, P00640, P00892, P03666. The multiple versions tendered do not serve to authenticate or validate the documents, nor do they demonstrate that the documents were available.

<sup>405</sup> W04746,17/07/2023,T.5887-5888.

<sup>406</sup> W04746,14/07/2023,T.5745.

<sup>407</sup> [REDACTED]; [REDACTED].

<sup>408</sup> P00008; P00163; P00166; P00641.

<sup>409</sup> [REDACTED].

<sup>410</sup> [REDACTED].

<sup>411</sup> W04741,23/04/2024,T.14755-1456.

<sup>412</sup> W04741,23/04/2024,T.14748-14749.

<sup>413</sup> W04741,23/04/2024,T.14748-14749.

<sup>414</sup> [REDACTED].

<sup>415</sup> W04576,22/02/2024,T.12861-12863.

approved in a GS meeting on 4 July 1998,<sup>416</sup> there are no contemporaneous documents or witness who confirmed this. W04752 reiterated that P00008 was drafted at the end of 1998.<sup>417</sup>

#### e. Archives

168. The GS attempted to create an archive and register “protooled documents”.<sup>418</sup> There is little evidence, however, demonstrating how draft documents were comprised, reviewed, and approved, the actual distribution and implementation of documents, and the adherence to any archival system.

#### f. International perspective

169. The view of international witnesses on the ground was that the GS never succeeded in doing anything more than ‘coordinating’ as opposed to ‘commanding’ the activities of the KLA zones, and that the Llap, Shala, and Dukagjin zones were especially difficult for the GS control given the strong personalities of their commanders.<sup>419</sup> According to [REDACTED], during the second half of 1998, the GS made progress establishing itself as a coherent organization with a structure, but continued to face challenges of a weak command and staff infrastructure, poor communications, and penetration by Serbian intelligence.<sup>420</sup>
170. Even into 1999, USKDOM believed that the GS was still unable to assert authority over its independent regional military leaders.<sup>421</sup> W04147 identified a number of factors contributing to the KLA’s lack of coherent structure, including its limited or lack of secure communications equipment, the heavy pressure from Serbian security forces, the lack of a fixed and stable

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<sup>416</sup> F00709/A01,para.72.

<sup>417</sup> W04752,17/07/2024,T.18489.

<sup>418</sup> See P00647.

<sup>419</sup> [REDACTED].

<sup>420</sup> [REDACTED].

<sup>421</sup> P01074,p.075341;W04147,26/03/2024,T.13678-13679.

headquarters, and the scattered presence of KLA members.<sup>422</sup> W04147 believed the KLA would create the impression of a vertical structure when none existed.<sup>423</sup>

171. By the time of the NATO bombing, W04147 had to persuade the international community that they were a sufficiently coherent force to be able to receive military and political support.<sup>424</sup>

**C. Appointments in the name of the GS were reflecting what had been decided at lower levels**

172. Decisions on appointments, assignments or dismissals issued by the GS would simply recognise a factual reality or a decision taken previously at the local level.<sup>425</sup> While these were characterised as orders and “appointments”, they merely approved or confirmed decisions taken at the lower level.<sup>426</sup> Deputy zone commanders were recommended by the zone commanders and then appointed by the GS, while lower level officers including heads of MP and special units were appointed by the zone commanders, without the involvement of the GS.<sup>427</sup>
173. W04401 could only speculate as to what would happen if the GS did not confirm a proposed zone commander, but believed that it could lead to the change of the composition of the GS because the zone commanders held the power to invoke such changes.<sup>428</sup> W04752 effectively agreed, testifying that zone

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<sup>422</sup> W04147,27/03/2024,T.13880.

<sup>423</sup> W04147,27/03/2024,T.13832.

<sup>424</sup> W04147,27/03/2024,T.13833.

<sup>425</sup> F00709/A01,para.107(a).

<sup>426</sup> W04401,03/12/2024,T.23281-23282; W04752,02/07/2024,T.17481-17482.

<sup>427</sup> [REDACTED].

<sup>428</sup> W04401,03/12/2024,T.23281-23282.

commanders had more authority in the zone than the GS and it was difficult for the GS to conduct a replacement of a commander of an OZ.<sup>429</sup>

174. The Dukagjini Plain Operational Staff meeting minutes dated 23 June 1998, signed by HARADINAJ,<sup>430</sup> confirmed this procedure, noting that the zone commanders were elected from below and not appointed from above by the GS,<sup>431</sup> contrary to how “normal armies” operate.<sup>432</sup>
175. The election of S.SELIMI as Zone commander in the summer of 1998 was also the result of an election by persons in charge of the points or unit commanders gathered together in Pluzhine/Pluzina.<sup>433</sup> According to W04290, **SELIMI** stated the KLA HQ would approve who would be elected commander from this meeting,<sup>434</sup> clearly placing the power in the hands of the commanders at the meeting.
176. P01430 appoints brigade commanders in Dukagjin OZ on 4 February 1999.<sup>435</sup> [REDACTED] shows that one of those commanders, M.NDRECAJ, had already been appointed by HARADINAJ as 132 Brigade commander on 13 December 1998,<sup>436</sup> while 4D00070, a Posting order was signed by M.NDRECAJ dated 15 January 1999.<sup>437</sup> W04752 added that M.NDRECAJ had been in that post since June-July 1998 which made the nature of the appointment order repetitive.<sup>438</sup> A

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<sup>429</sup> W04752,16/07/2024,T.18453-18454.

<sup>430</sup> P01364; [REDACTED]

<sup>431</sup> W04752,03/07/2024,T.17560; W04752,10/07/2024,T.18008-18009.

<sup>432</sup> W01511,03/09/2024,T.19509-19510.

<sup>433</sup> P01745,p.6D00-0773.

<sup>434</sup> P01745,p.6D00-0773; W04290,11-12/02/2025,T.25021,25209.

<sup>435</sup> P01430.

<sup>436</sup> [REDACTED]; W04752,11/07/2024,T.18076.

<sup>437</sup> 4D00070; W04752,11/07/2024,T.18077.

<sup>438</sup> W04752,11/07/2024,T.18077-18078.

similar situation arose with F.MEHMETAJ, whose appointment<sup>439</sup> came well after he was already fulfilling a very similar role within the Dukagjin Zone.<sup>440</sup>

177. K.KASTRATI was appointed Deputy Commander of the Llap OZ on 18 August 1998.<sup>441</sup> W04746 testified that he appointed K.KASTRATI as Deputy Commander around June 1998, however.<sup>442</sup> W04746 explained the GS only approved this decision.<sup>443</sup> W04746 testified that even though the GS made certain appointments, it was W04746's ultimate decision who would assume a determined position.<sup>444</sup>
178. Even where the GS attempted to adopt a system for appointments, the Zone commanders would often operate autonomously.<sup>445</sup> The Dukagjin OZ, for example, followed its own rule for appointments.<sup>446</sup>
179. On other occasions, appointments would be made at the request of the individual himself.<sup>447</sup>
180. W04744 stated that the GS could demote, fire, or remove commanders,<sup>448</sup> giving the examples of Vesel MALIQI, Brigade 122 commander, who was removed and replaced by SINANI in January 1999,<sup>449</sup> and Drini, removed as Pashtrik OZ Commander in March 1999 and replaced by SINANI.<sup>450</sup> W04744 accepted, however, that he did not know who from the GS was responsible for these

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<sup>439</sup> [REDACTED].

<sup>440</sup> W01511,04/09/2024,T.19606-19607; P03102.

<sup>441</sup> P01392;W04752,01/07/2024,T.17390.

<sup>442</sup> W04746,11/07/2023,T.5481-5482.

<sup>443</sup> W04746,11/07/2023,T.5481-5482; P00693.3,p.13.

<sup>444</sup> W04746,11/07/2023,T.5485.

<sup>445</sup> W04403,25/03/2025,T.25873.

<sup>446</sup> W04403,25/03/2025,T.25872-25873.

<sup>447</sup> [REDACTED]. W04744 affirmed that ZYRAPI issued this order at W04744's request. *See* W04744,24/06/2024,T.17076-17077.

<sup>448</sup> [REDACTED].

<sup>449</sup> [REDACTED].

<sup>450</sup> [REDACTED].

changes and why SINANI replaced them.<sup>451</sup> In reality, W04744 did not know anything about how these changes took place and had no basis to attribute such authority to the GS.

181. According to W04401, brigade commanders had to be approved by the GS, although this was usually done upon the recommendation of the zone commanders.<sup>452</sup> In reality, this was once again the GS rubberstamping the decisions already taken at the lower levels,<sup>453</sup> without any true authority as demonstrated by many different members having signed orders of appointment and the power to do so did not rest in any one office or directorate.
182. Other purported GS appointments lack a signature, stamp, or other authenticating information. P02913, it is undated, unsigned, and lacks a KLA stamp. P03090 is not only unsigned, but does not even have a signature block. 1D00249, is not on KLA letterhead and contains no signature. P00635, P00636, and P00637, all orders purportedly in the name of W04752 appointing people to positions in the Pashtrik Zone, Brigade 122 or brigade level contain no signature and were not shown to W04752 when he testified.
183. These documents lack sufficient indicia of authenticity and should not be relied upon by the Panel.
184. In sum, the documents and testimonial evidence before this Panel do not demonstrate that the GS held the authority to appoint individuals to positions, but that instead, the GS merely approved the decisions that had been taken at the zone level.

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<sup>451</sup> [REDACTED].

<sup>452</sup> [REDACTED].

<sup>453</sup> W04401,03/12/2024,T.23192.

## D. Logistics and communications of the KLA were manifestly insufficient

### 1. KLA was severely lacking in logistics and financial resources

185. Throughout the Indictment Period, the KLA was severely short of supplies, uniforms, and weapons.<sup>454</sup> The financial resources of the KLA continued to be limited throughout the conflict, with maintaining troops reliant upon the determination and goodwill of KLA volunteers, rather than the promise of regular pay and equipment.
186. The formal appointment of a GS Directorate of Logistics, failed to solve the immense shortages of equipment, despite repeated requests and demands. The “direction and oversight”<sup>455</sup> allegedly performed by this Directorate was minimal at best.
187. Instead, supplies of weapons, uniforms and equipment had to be obtained directly by the Zone Commanders, Brigade Commanders or even Battalion Commanders in each zone,<sup>456</sup> although it was often the case that the volunteers provided their own weapon if possible.<sup>457</sup> Volunteers were prevented from engaging in any combat effort due to the lack of weapons,<sup>458</sup> while others were only accepted if they already owned weapons.<sup>459</sup> This led to substantial differences of resources between the zones depending on their individual success in this regard.<sup>460</sup> It also demonstrated that OZs had their independent

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<sup>454</sup> [REDACTED]; W04752,09/07/2024,T.17910-17911; W01453,07/11/2024,T.22200.

<sup>455</sup> F00709/A01,para.136.

<sup>456</sup> *See, e.g.*, W04752,15/07/2024,T.18186, that Remi indeed was securing weapons for Llap OZ during the war from Bosnia and Serbia. *See also*, [REDACTED].

<sup>457</sup> W04485,28/10/2024,T.21267–21268; [REDACTED]; W04147,27/03/2024,T.13830; [REDACTED]; W04741,23/04/2024,T.14737.

<sup>458</sup> W04741,23/04/2024,T.14787.

<sup>459</sup> W04485,28/10/2024,T.21267–21268.

<sup>460</sup> W04765,05/12/2023,T.10501.

lines of supply and fundraising over which the GS did not have control.<sup>461</sup> There was no proper chain of weapon supply determined centrally.<sup>462</sup>

188. Soldiers were housed in fellow villagers' houses or unoccupied buildings as opposed to military barracks<sup>463</sup> and mainly not equipped with uniforms.<sup>464</sup> There was no cohesion as to the uniforms worn, with soldiers wearing uniforms belonging to the armed forces of other states or improvised uniforms that they had to devise themselves or which were made by fellow villagers.<sup>465</sup> Initially, the KLA was also frequently at the mercy of the civilian population for the provision of food, vehicles and locations to be used as bases.<sup>466</sup>
189. The HCF was controlled by the LPK since its establishment in 1993,<sup>467</sup> with its main purpose to sponsor the liberation war in Kosovo.<sup>468</sup> While some documents appeared to suggest that contributions to the HCF were mandatory,<sup>469</sup> the evidence demonstrated that contributions were voluntarily.<sup>470</sup>
190. The GS publicly called for additional funds, including attempting to order BUKOSHI to release funds held by the government-in-exile.<sup>471</sup> The GS had no authority to make such an order and there is no evidence that the BUKOSHI

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<sup>461</sup> W04752,15/07/2024,T.18187.

<sup>462</sup> [REDACTED]; W04485,28/10/2024,T.21267–21268; W03165,18/05/2023,T.4281.

<sup>463</sup> Đorđević T],para.1548; W01511,03/09/2024,T.19435;[REDACTED]; [REDACTED].

<sup>464</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>465</sup> W04323,12/06/2023,T.4632; W04485,28/10/2024,T.21269; W03165,18/05/2023,T.4281; W04741,23/04/2024,T.14787.

<sup>466</sup> [REDACTED]; [REDACTED]; W04741,23/04/2024,T.14788; P01115.3,pp.6-7.

<sup>467</sup> P01874,p.074629.

<sup>468</sup>W04743,29/01/2025,T.24813.

<sup>469</sup> [REDACTED]; [REDACTED].

<sup>470</sup>W04743,28/01/2025,T.24793; [REDACTED].

<sup>471</sup> P00515\_ET.17; P00811\_ET.14.

government did anything in response to the GS pleas.<sup>472</sup> The KLA also made direct entreaties to the BUKOSHI government,<sup>473</sup> which were ignored.

191. Contrary to the SPO argument,<sup>474</sup> the evidence clearly demonstrates that the KLA was not in control of the finances or in a position to order the collection of funds, but was essentially begging for financial support.<sup>475</sup> While documents in evidence do show that donations were received from the HCF,<sup>476</sup> these funds were not remotely close to being on the level necessary to confront the Serb forces.
192. Several communiqués and media reports suggested that the HCF was answerable to the Finance Director of the KLA.<sup>477</sup> The SPO evidence does not demonstrate anything close to a functioning Directorate of Finance. Similarly, the SPO has not shown that **SELIMI** played any role in distribution of funds.<sup>478</sup> The SPO tendered one document, [REDACTED],<sup>479</sup> but failed to prove [REDACTED]. In any event, this single document does not indicate that **SELIMI** had any significant role in the Directorate of Finance or control over the finances of the KLA.

## **2. Communications were unreliable throughout the Indictment Period**

193. Through 1998, secure communications were sporadic and unreliable, within Kosovo and into Albania, both between members of the GS and between members of the GS and the zones, despite the equipment that was perceived as

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<sup>472</sup> Indeed, [REDACTED] is a media report of an RFK summary of a report from Llap Zone HQ that Bukoshi is not releasing the funds he promised despite the need for them.

<sup>473</sup> P00619.

<sup>474</sup> F00709/A01,para.139.

<sup>475</sup> P00811\_ET.14; P00811\_ET.24; P00811\_ET.28.

<sup>476</sup> P03817; P03818; P03821. It is also worth noting that these documents were admitted through the bar table over the objection of the Defence and have not been placed in context by a witness, *see* F03191COR and F03145.

<sup>477</sup> P00515\_ET.31; P00811\_ET.46.

<sup>478</sup> *Contra*, F00709/A01,para.140.

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

being available to the GS.<sup>480</sup> Within the zones, there was a persistent shortage of communications devices,<sup>481</sup> and even when basic devices were acquired, their functionality was limited by constant interruptions in the supply of electricity and by the risk of interception.<sup>482</sup> Before November 1998, the lack of communication devices made it difficult to communicate with the zone commanders unless one physically went to the zone, the commander came to the GS, or couriers were used.<sup>483</sup> Even if they would have means of communications, however, the KLA units did not know where the GS was and who comprised the GS at the time.<sup>484</sup> Motorola short range radios were also available, but only capable of covering distances between 5-10km.<sup>485</sup>

194. The evidence of when of satellite phones were first available was inconclusive. W04752 believed that satellite phones appeared within the KLA only in December 1998 and that prior to December he had not seen a satellite phone in use.<sup>486</sup> W04403 believed that every directorate of the GS had a satellite phone, including the chief of staff,<sup>487</sup> although he did not specify when he believed this to be the case. W04403 believed that the KLA first started receiving satellite phones in June 1998 but only managed to distribute them at the brigade level in November 1998.<sup>488</sup> W04741 believed that LIMAJ, as a brigade commander, would have had a satellite phone throughout.<sup>489</sup> W04744 did not, however, have a satellite phone while he was brigade commander,<sup>490</sup> and would have

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<sup>480</sup> F00709/A01,para.128.

<sup>481</sup> *Limaj* TJ,para.124; W04746,12/07/2023,T.5522.

<sup>482</sup> W04746,12/07/2023,T.5523-5524; P00693.3,p.4.

<sup>483</sup> W04752,04/07/2024,T.17631; W04752,16/07/2024,T.18315-18316; W01453,06/11/2024,T.22114-22115.

<sup>484</sup> W01453,06/11/2024,T.22116.

<sup>485</sup> W04752,16/07/2024,T.18352.

<sup>486</sup> W04752,04/07/2024,T.17632.

<sup>487</sup> W04403,24/03/2025,T.25729.

<sup>488</sup> W04403,25/03/2025,T.25846.

<sup>489</sup> P01115.3,p.14.

<sup>490</sup> [REDACTED].

communicated things to the GS through a direct meeting, by telephone, or through a courier.<sup>491</sup>

195. From November 1998 to March 1999 the GS was primarily based in Divjakë/Divljaka,<sup>492</sup> where there was a communication room, officers responsible for contacting OZs, and a communication log which categorised the different methods of communication (satellite, telephones, radios etc).<sup>493</sup> Once the GS moved to Divjakë/Divljaka, it was much easier to communicate with them as satellite phones were not required.<sup>494</sup> The evidence does not demonstrate that **SELIMI** had access to or used satellite phones with any regularity. As **SELIMI** was also not a Director of a GS Directorate, any evidence purporting to ascribe such communications equipment to such Directors, would not apply to him.

196. Evidence shows an attempt to create a communications system with codes,<sup>495</sup> although the SPO did not demonstrate the degree to which this system was in fact implemented or how widespread its use was through the KLA. The SPO led no evidence suggesting that **SELIMI** played any role in the creation or implementation of this system.<sup>496</sup> Limited attempts to introduce processes for communicating securely<sup>497</sup> simply highlighted the informal and fractured way in which communications had been organised.

197. Fighting in Kosovo also disrupted the communications systems that existed. Maintaining contact with the GS during 1999 was very rare because the Serb

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<sup>491</sup> [REDACTED].

<sup>492</sup> P01356,p.5943; W04752,01/07/2024,T.17408.

<sup>493</sup> P01356,pp.5943-5944.

<sup>494</sup> P01115.3,p.13.

<sup>495</sup> P01417; P01418; P01419; P01420; P01421; P01422; P02443; P02443\_ET.1; P02444; P03832; P03833; P03834; P03835; P03836.

<sup>496</sup> *Contra*, F00709/A01,para.131. The SPO refers to **SELIMI**'s testimony at the ICTY in support of this position, although the testimony refers only to contributing to the coding of unit names.

<sup>497</sup> F00709/A01,paras.129-131.

offensives<sup>498</sup> and the NATO bombing campaign<sup>499</sup> made it difficult. Communications within a battalion were relatively easier due to the closer proximity.<sup>500</sup>

198. Although travel through Kosovo was sometimes possible,<sup>501</sup> this varied dramatically and was heavily dependent on the situation as it shifted on the ground. Limited KLA territorial control and Serbian military operations, such as the summer 1998 offensive, often reduced contact between zone commanders and the GS.

#### **E. MC was ineffective and outside GS control, knowledge and authority**

##### **1. Inability to confront SPO's case**

199. The SPO's case on the MC relies almost exclusively upon the untested evidence of W04264 and [REDACTED]. Two other witnesses who were scheduled to give testimony about the court, [REDACTED] and [REDACTED], were dropped by the SPO.<sup>502</sup>

200. W04743 was unable to provide evidence of the specific legal framework, jurisdiction or functioning of the court. W04743's interactions with DOBRUNA were limited to the competencies of the MP, its rights and the limits on its powers.<sup>503</sup> W04743 received oral instructions from DOBRUNA but not a military penal code or written instructions at any given time<sup>504</sup> and never saw the KLA penal code referred to in 2D00042.<sup>505</sup> Simply put, DOBRUNA was the

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<sup>498</sup> W04765,16/11/2023,T.10328.

<sup>499</sup> [REDACTED].

<sup>500</sup> [REDACTED].

<sup>501</sup> F00709/A01,para.127.

<sup>502</sup> F02877,para.2; SPO email,24/01/2025,17:29.

<sup>503</sup> P02006.2,p.18.

<sup>504</sup> W04743,18/01/2025,T.24634-24635.

<sup>505</sup> W04743,28/01/2025,T.24634-4635;[REDACTED].

exclusive source of information regarding the MC that could not be replaced by other witnesses.

201. W04743 testified that ZOGAJ, had been appointed by DOBRUNA<sup>506</sup> his knowledge of the relationship between Klečkë/Klečka, DOBRUNA and the GS was extremely limited.

**2. GS undertook good faith efforts to establish a Legal Sector at the earliest reasonable opportunity**

202. The SPO allegations that the GS was not interested in having a 'proper functional military court'<sup>507</sup> are directly contradicted by the SPO's own evidence.

203. The GS undertook good faith efforts to establish and support a proper functional legal section as soon as reasonably possible. The legal sector started being established in November 1998<sup>508</sup> and DOBRUNA was appointed at the legal department,<sup>509</sup> having been previously proposed for this position by HARADINAJ and approved by the General Commander.<sup>510</sup> Indeed, already at that stage DOBRUNA was considered to have responsibility over the MC.<sup>511</sup>

204. The Decision appointing DOBRUNA as Chief of the Juridical Sector, was issued a week later on 19 November 1998.<sup>512</sup> W04264 recalled a written decision regarding the appointment, believing it was issued on 16 December 1998,<sup>513</sup>

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<sup>506</sup> [REDACTED].

<sup>507</sup> F00709/A01,para.142.

<sup>508</sup> W04752,03/07/2024,T.17539; W04752,04/07/2024,T.17643.

<sup>509</sup> W04752,01/07/2024,T.17411; W04401,03/12/2024,T.23223-23224.

<sup>510</sup> W04752,16/07/2024,T.18356-18357.

<sup>511</sup> 4D00011; [REDACTED].

<sup>512</sup> [REDACTED].

<sup>513</sup> P01955.1,p.8; P01956,p.SITF00010488.

even in the face of P01175, stating that it was the first time he'd seen the document.<sup>514</sup>

205. An Order dated 28 November 1998, signed by ZYRAPI, issued in response to complaints about lack of discipline<sup>515</sup> along with other documents from the same time, reflect the desire of the GS to establish an MC.<sup>516</sup> W04752 testified that the MC was formed by DOBRUNA sometime after this Order had been issued<sup>517</sup> for disciplinary measures<sup>518</sup> and to make the KLA look better in the eyes of internationals.<sup>519</sup> W04752 also confirmed that the legal sector had the authority to issue arrest warrants which were then to be implemented by the MP and, if needed, by the special units.<sup>520</sup>

206. The evidence therefore suggests that the GS fully supported both the Legal Sector and DOBRUNA's MC.

### **3. External circumstances prevented the effective functioning of the MC**

207. The GS, within the limits of the MC's independence, provided the necessary assistance to allow the court to function, within the limits and prevailing circumstances at the time.

208. W04752 admitted that the MC did not become fully functional;<sup>521</sup> W04264 conceded that the system in place did not have the necessary conditions to be effective.<sup>522</sup>

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<sup>514</sup> P01955.2,pp.4-5.

<sup>515</sup> W04752,04/07/2024,T.17639 referring to 1D00029 which is the same as P00884 and P0074.

<sup>516</sup> 1D00030 specifically says that those who commit criminal acts will "face immediate consequences, isolation, disarming and prosecution by the KLA military court." See also P00741.

<sup>517</sup> W04752,16/07/2024,T.18354.

<sup>518</sup> W04752,04/07/2024,T.17641.

<sup>519</sup> W04752,04/07/2024,T.17643.

<sup>520</sup> W04752,03/07/2024,T.17540.

<sup>521</sup> W04752,04/07/2024,T.17643.

<sup>522</sup> P01955.5,p.21.

209. Initially the MC was just DOBRUNA, with W04752 recalling no other lawyers allocated to the MC, or funds available.<sup>523</sup> DOBRUNA only had an assistant whose name [REDACTED] could not recall.<sup>524</sup> W04264 invited Haki KRYEZIU and A.BERISHA to assist him.<sup>525</sup> A.BERISHA served as a judge, although he was appointed a defence counsel for B.KUQI due to the lack of lawyers.<sup>526</sup> DOBRUNA, A.BERISHA and Haki KRYEZIU acted as administrators, judges and prosecutors at the same time<sup>527</sup> and as there was no investigation section or prosecution section, carried out these activities together.<sup>528</sup>
210. W04264 claimed he made requests for additional resources “[t]o all the commanders”<sup>529</sup> although clarified that to the HQ “[i]t was not possible for us to complain because it was quite tight for them as well.”<sup>530</sup> While W04264 believed that the HQ were aware of the conditions they were operating in,<sup>531</sup> and previously claimed that he made a request for additional legal staff to the GS, likely to the “Chief of the operational Headquarters” i.e. ZYRAPI,<sup>532</sup> the Defence was unable to cross-examine him on this point. No other document supported such a request. Neither ZYRAPI, nor any other member of the GS gave evidence of having and rejecting such requests from DOBRUNA. Further, W04743 testified that DOBRUNA never told him there was a lack of GS support to the court.<sup>533</sup>

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<sup>523</sup> W04752,04/07/2024,T.17644-17645.

<sup>524</sup> [REDACTED].

<sup>525</sup> P01955.2,p.6.

<sup>526</sup> P01955.3,p.3.

<sup>527</sup> P01955.4,p.2.

<sup>528</sup> P01955.5,pp.15-16.

<sup>529</sup> P01955.4,p.3.

<sup>530</sup> P01955.5,p.16.

<sup>531</sup> P01955.5,p.16.

<sup>532</sup> P01964,p.054722.

<sup>533</sup> W04743,28/01/2025,T.24715.

211. Indeed, W04264 recognised that it was his own responsibility to get more staff, and attempted, unsuccessfully, to obtain additional staff from the Pashtrik Zone Commander.<sup>534</sup>
212. In any event, the KLA mostly comprised of fighters who had no experience of military justice mechanisms with the small number of former JNA soldiers in the KLA, spread across units.<sup>535</sup>
213. Nor was there legal experience within GS members, apart from LIMAJ.<sup>536</sup>
214. A quote attributed to DOBRUNA that they have formed and fully staffed the legal department<sup>537</sup> against the backdrop of the Rambouillet negotiations, was clearly nothing more than propaganda, intended to demonstrate that the KLA was a functioning army. It cannot detract from the MC's objective shortcomings.

#### **4. MC was fully independent of the GS**

215. The MC operated independently from the GS. Decisions on investigation, charging and conviction were all taken independently by DOBRUNA, occasionally in conjunction with others.
216. W04264 could not remember if he was given any further instructions when appointed but stated that there was no need for him to do so because he was a legal professional<sup>538</sup> reflecting that no consultation or advice was necessary.
217. W04264 considered himself independent and therefore would not listen to anyone and did not want any interference with his responsibilities.<sup>539</sup> The

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<sup>534</sup> P01955.4,p.4.

<sup>535</sup> W04744,24/06/2024,T.16970; P02090.2,p.10; P02087.2,pp.11,17; P02088,p.SPOE00070683; W04403,25/03/2025,T.25842; P02090.6,p.2.

<sup>536</sup> W04752,04/07/2024,T.17648.

<sup>537</sup> P00515\_ET.29; P00811\_ET.44.

<sup>538</sup> P01955.2,p.8.

<sup>539</sup> P01955.2,p.10.

Headquarters “never interfered with the Court – with prosecution.”<sup>540</sup> W04264 never carried out any interviews with suspects in the presence of a commander or a member of the headquarters.<sup>541</sup>

218. There is no evidence that W04264 reported to the GS as a whole. W04264 only mentioned reporting to the overall KLA commander, SYLA,<sup>542</sup> spontaneously once in Divjakë/Divljaka<sup>543</sup> and later to ÇEKU.<sup>544</sup> While W04752 claimed that when SYLA was outside of Kosovo, SYLA’s deputies were responsible for overseeing the legal sector,<sup>545</sup> he did not see any written instructions to DOBRUNA or any written report from DOBRUNA.<sup>546</sup> Nor did W04752 know whether DOBRUNA kept reporting to the General Commander when S.SELIMI assumed this role.<sup>547</sup> W04290 confirmed that he never knew DOBRUNA,<sup>548</sup> and had no knowledge of who was overseeing the MC while he was overall KLA commander<sup>549</sup> suggesting that W04290 saw the court as independent of the GS. No GS member confirmed such reporting.
219. The SPO relies upon [REDACTED],<sup>550</sup> [REDACTED].<sup>551</sup> [REDACTED].<sup>552</sup> [REDACTED].<sup>553</sup>
220. [REDACTED] had no details and did not want to speculate whether this document confirmed GS control over detention or release.<sup>554</sup> While

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<sup>540</sup> P01955.5,p.20.

<sup>541</sup> P01955.5,p.25.

<sup>542</sup> P01955.2,p.11.

<sup>543</sup> P01955.2,pp.12-13.

<sup>544</sup> P01955.6,p.25.

<sup>545</sup> W04752,16/07/2024,T.18359.

<sup>546</sup> W04752,18/07/2024,T.18537-18538.

<sup>547</sup> W04752,03/07/2024,T.17540-17541.

<sup>548</sup> W04290,11/02/2025,T.25073.

<sup>549</sup> W04290,11/02/2025,T.25075.

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

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

<sup>552</sup> [REDACTED].

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

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

[REDACTED] then proceeded to speculate that, based on that document, [REDACTED] would have been expected to report to the GS,<sup>555</sup> [REDACTED] confirmed in cross-examination that he does not have any knowledge of whether [REDACTED] reported to the GS as a whole and was not part of the reporting line nor present when reports were made.<sup>556</sup>

221. [REDACTED] did not know [REDACTED], nor the existence of a detention facility in Klečkë/Klečka in [REDACTED]<sup>557</sup> or that it was a GS project.<sup>558</sup> [REDACTED] agreement therefore that on the face of the document, [REDACTED]<sup>559</sup> is unsubstantiated and irrelevant. [REDACTED]<sup>560</sup> [REDACTED]<sup>561</sup> [REDACTED].<sup>562</sup>
222. [REDACTED].<sup>563</sup> [REDACTED].<sup>564</sup>
223. [REDACTED], W04264 had not seen this document before and did not remember having received this document,<sup>565</sup> nor any list of prisoners from ZOGAJ<sup>566</sup> but recognized ZOGAJ's signature.<sup>567</sup>

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<sup>555</sup> [REDACTED].

<sup>556</sup> [REDACTED].

<sup>557</sup> [REDACTED]. Note that [REDACTED] was shown [REDACTED] which appears to be the same as P00980.

<sup>558</sup> [REDACTED].

<sup>559</sup> [REDACTED].

<sup>560</sup> [REDACTED].

<sup>561</sup> F00709/A01, para.502.

<sup>562</sup> See [REDACTED].

<sup>563</sup> [REDACTED].

<sup>564</sup> [REDACTED], referring [REDACTED] (same item admitted as [REDACTED]).

<sup>565</sup> P01955.8, p.17.

<sup>566</sup> P01964, p.054729.

<sup>567</sup> P01955.8, p.17.

**5. DOBRUNA was fully responsible for the legal framework and procedures governing the MC**

224. Indeed, DOBRUNA was the law in W04743's eyes.<sup>568</sup> Any errors, omissions or limitations in DOBRUNA's actions with regards to detainees under his authority, were therefore his responsibility alone.
225. Until January 1999, W04264 prepared "the laws of the war, the criminal code of the war, the code of the criminal procedure code of the war, then the code of the criminal execution"<sup>569</sup> covering [a]ll the possible crimes which would cause damage to the army."<sup>570</sup> The codes only covered soldiers "because we did not have any possibilities with civilians."<sup>571</sup> W04264 claimed that the codes were approved by the HQ,<sup>572</sup> but does not remember by whom although believed it would have been SYLA.<sup>573</sup>
226. W04264 claimed that these codes were adhered to strictly<sup>574</sup> and claimed they came into effect towards the end of January 1999 or beginning of February 1999.<sup>575</sup> However, no criminal code or criminal procedure code was tendered into evidence. Nor was there any evidence that GS member had any role in drafting either of these codes, apart from W04264's speculative assumption that the Commander may have approved them.
227. W04264 appeared to be very reluctant to distribute these codes to the KLA stating "[w]hy distribute it when we acted based on them as a Court?"<sup>576</sup> W04264 claimed that the zones would otherwise know what the law is because

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<sup>568</sup> W04743,28/01/2025,T.24714.

<sup>569</sup> P01955.2,p.11.

<sup>570</sup> P01955.5,p.7.

<sup>571</sup> P01955.5,p.7.

<sup>572</sup> P01963,p.054668.

<sup>573</sup> P01955.5,p.14.

<sup>574</sup> P01955.2,p.25.

<sup>575</sup> P01955.3,pp.4-5.

<sup>576</sup> P01955.2,p.26.

he distributed administrative guidelines to the prisons.<sup>577</sup> However, no Zone Commander confirmed that they had received such instructions. W04743 also confirmed that DOBRUNA never gave him a military penal code or written instructions at any given time.<sup>578</sup>

228. While W04264 claimed that the HQ was obliged to disseminate the laws of war to the zone commands<sup>579</sup> he gave no basis for this assertion, nor details of when, or indeed who within the GS he had informed this purported requirement. W04264 also explained that his duties included giving administrative guidelines and consultations to the zones, and prison directors,<sup>580</sup> thereby recognising that the responsibility lay with him rather than the GS.
229. The legal system that W04264 created also appeared to require the Zone Commanders to exercise significant responsibility and discretion, despite the absence of a clear legal framework.
230. First, W04264 explained that the MC had jurisdiction over all of Kosovo<sup>581</sup> but W04264 also admitted that he generally did not have access to the operative zones.<sup>582</sup> Therefore, while formally the Code he drafted had such jurisdiction, W04264 never appeared to travel anywhere to enforce it.
231. Second, W04264's MC system distinguished between disciplinary and criminal offences with minor offences addressed by zone commanders, without W04264's involvement due to mild punishments.<sup>583</sup> Indeed, W04264 requested "the authorities presenting [lighter] cases" to deal with them themselves, and

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<sup>577</sup> P01955.2,p.26.

<sup>578</sup> W04743,28/01/2025,T.24634-24635.

<sup>579</sup> P01955.5,p.20.

<sup>580</sup> P01955.2,p.21.

<sup>581</sup> P01955.2,p.15.

<sup>582</sup> P01955.2,p.19.

<sup>583</sup> P01955.5,p.17.

only that the serious ones be brought to the court.<sup>584</sup> W04264 claimed that disciplinary offences could not be punished with imprisonment,<sup>585</sup> but suspects could be detained depending on the allegations against them.<sup>586</sup> Any other offences had to be brought to W04264's attention.<sup>587</sup>

232. W04264's explanation that "[t]he fact itself that [Zone Commanders] notified the detainees [...] verifies that they were aware as to what was disciplinary and what was criminal"<sup>588</sup> does not clarify the issue. There was clearly ambiguity between which offences were criminal or disciplinary, especially in the absence of administrative guidelines.<sup>589</sup> Yet, when challenged on this W04264 simply claimed he forgot.<sup>590</sup> W04264 also claimed that commanders on any level had no authority to deal with cases of collaboration<sup>591</sup> but accepted the possibility that the commanders were not all informed about the need to report such cases<sup>592</sup> further demonstrating the difficulties created by DOBRUNA's system.

233. Third, W04264's MC system depended on the Zone Commanders sending cases to him having completed their investigations. W04264 claimed that investigations were supposed to be carried out by the zone command, but that he did not have a case of that nature brought to him.<sup>593</sup> W04264 claimed that he could only act with respect to criminal allegations.<sup>594</sup> This caused a particular issue in relation to collaborators.

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<sup>584</sup> P01963,p.054668.

<sup>585</sup> P01955.6,p.2.

<sup>586</sup> P01955.6,p.11.

<sup>587</sup> P01955.5,p.18.

<sup>588</sup> P01955.5,p.18.

<sup>589</sup> See Section V.D.8.f.iv.

<sup>590</sup> P01955.5,p.19.

<sup>591</sup> P01955.5,p.9.

<sup>592</sup> P01955.5,p.9.

<sup>593</sup> P01955.5,pp.16-17.

<sup>594</sup> P01955.2,p.15.

234. W04264 explained that, according to the criminal code he drafted, collaboration was punishable by death<sup>595</sup> but did not have any cases of collaborators presented to him in court for adjudication<sup>596</sup> but speculated that collaborators nonetheless must have existed in the KLA because it's impossible not to have such cases<sup>597</sup> and accepted the possibility that "the command without an allegation papers [...] may have carried out an action for which I have not heard at all."<sup>598</sup>
235. W04752 similarly confirmed that the MC had collaborators within its scope of responsibility but could not recollect any case when the legal sector dealt with suspected collaborators who were not the members of the KLA.<sup>599</sup> W04752's understanding was that the MC, was in charge of overseeing the process of investigating collaborators and providing an assessment of who amounted to collaborator.<sup>600</sup>
236. However, without Zone Commander referrals, DOBRUNA could not process the cases. This was DOBRUNA's responsibility, and that of the Zone Commanders, rather than that of the GS.

## F. GS did not oversee the MP

### 1. GS not responsible for establishing MP units, appointing personnel or receiving reports

237. The SPO's allegations regarding the formation of KLA MP units in Spring 1998<sup>601</sup> within the zones and on the GS level<sup>602</sup> are not substantiated.

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<sup>595</sup> P01955.9,p.11.

<sup>596</sup> P01955.5,p.8; P01955.9,p.11.

<sup>597</sup> P01955.9,p.12.

<sup>598</sup> P01955.5,pp.8-9.

<sup>599</sup> W04752,17/07/2024,T.18413-18414.

<sup>600</sup> W04752,03/07/2024,T.17540.

<sup>601</sup> F00709/A01,para.148.

<sup>602</sup> F00709/A01,para.174.

238. MP units were created in different zones at different times with no uniform practice, each zone following its own route identified by the local staff. There can be no implicit assumption of GS responsibility for the prior actions of local quasi-MP units whose existence, let alone membership was unknown to the GS.
239. Moreover, the evidence of SPO witnesses contradicts, rather than supports, the allegation that the GS received reports from subordinate MP.<sup>603</sup>
240. The KLA-MPD established at the end of November 1998 did not exercise an executive function. Its role was to develop and establish policies for MP, to train its personnel and to supervise its development.<sup>604</sup> W04752 testified that zone-level MP had no reporting line to the KLA-MPD and instead reported to the zone commander who in turn did not report MP matters to the KLA-MPD.<sup>605</sup> LIMAJ, head of the KLA-MPD until April 1999<sup>606</sup> was not allowed to issue substantive orders to the zone MP except for summons and instructions of an administrative nature, such as training.<sup>607</sup>
241. Decisions allegedly issued by the KLA-MPD were no more than administrative guidance and do not establish KLA-MPD's control over the zones. Documents, such as setting the tax rate for registered vehicles,<sup>608</sup> are devoid of any explanation.<sup>609</sup> Similarly, an unsigned, unstamped GS order dated 2 July 1998,<sup>610</sup> with no indication of its authorship, process of its creation or adoption—and put to no witness—carries no weight.

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<sup>603</sup> F00709/A01, para.146.

<sup>604</sup> W04752, 10/07/2024, T.17975-17976.

<sup>605</sup> W04752, 10/07/2024, T.17980.

<sup>606</sup> W04752, 10/07/2024, T.17979.

<sup>607</sup> W04752, 10/07/2024, T.17980-1781.

<sup>608</sup> P03688; P03692.

<sup>609</sup> See also P03685.

<sup>610</sup> P03674; P03675.

**a. Drenicë zone**

242. W04290 could not recall receiving a GS instruction to establish brigades and MP (that he claimed existed<sup>611</sup>) and clarified that it was the zone commander who was to decide on the MP and send his proposals to the GS.<sup>612</sup> W04290 started organising both MP and brigades one or two months after his nomination as Zone Commander.<sup>613</sup> The MP was only an idea until the end of 1998 or beginning of 1999,<sup>614</sup> with the first appointments to carry out MP at that time.<sup>615</sup>
243. W04290 denied preparing the MP programme<sup>616</sup> which the SPO claims was adopted and effective as of 20 May 1998.<sup>617</sup> W04290 assumed it launched the formation of the Drenicë MP but explicitly stated that he was not certain whether they started performing tasks in May 1998.<sup>618</sup> [REDACTED] also did not recognise the programme<sup>619</sup> and noted that the document does not state the role or the position of the signatory except for the word ‘commander’ which according to [REDACTED] was used by everyone<sup>620</sup> and reiterated “with full conscience” that the MP was only set up at the end of 1998.<sup>621</sup> Shaban SHALA, whose signature appears on this programme, was never W04290’s subordinate<sup>622</sup> thereby undermining further this document.
244. Although W04290 initially claimed that there was supposed to be reporting between zone MP and the KLA-MPD<sup>623</sup> and that LIMAJ issued an order in this

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<sup>611</sup> [REDACTED].

<sup>612</sup> W04290,13/02/2025,T.25249.

<sup>613</sup> [REDACTED].

<sup>614</sup> [REDACTED].

<sup>615</sup> [REDACTED].

<sup>616</sup> [REDACTED]; W04290,10/02/2025,T.24995.

<sup>617</sup> F00709/A01,para.185.

<sup>618</sup> W04290,10/02/2025,T.24995.

<sup>619</sup> [REDACTED].

<sup>620</sup> [REDACTED].

<sup>621</sup> [REDACTED].

<sup>622</sup> P02027.3,p.19.

<sup>623</sup> [REDACTED].

regard,<sup>624</sup> W04290 did not know when such an order was issued or how much it was “implementable on account of the circumstances of the time”.<sup>625</sup> No concrete example of such reporting was produced. Instead, W04290 confirmed that Drenicë MP and its commander S.JASHARI continuously reported to him and served under W04290’s orders whilst he was Zone Commander.<sup>626</sup>

245. P02446 does not establish such reporting either.<sup>627</sup> No witness confirmed whether such a document was sent by the KLA-MPD or received by the Drenicë Zone. The same applies to other documents on the same topic,<sup>628</sup> only one of which is addressed to the KLA-MPD.<sup>629</sup> While it provides information on Drenicë MP units<sup>630</sup> there is no other information confirming it responded to a KLA-MPD order, or seeks approval from the KLA-MPD. Only some of these documents were signed, many do not contain an addressee<sup>631</sup> and they merely contain details of “people proposed to join military police” in Drenicë OZ. They do not prove a reporting structure.

246. Similarly, P01358 was only shown to W04752, who was unable to provide any meaningful information in relation to it or confirm its content,<sup>632</sup> or signature<sup>633</sup> while noting it was irregular for the KLA-MPD to be issuing orders to platoon MP.<sup>634</sup>

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<sup>624</sup> W04290,11/02/2025,T.25102.

<sup>625</sup> W04290,11/02/2025,T.25102.

<sup>626</sup> W04290,11/02/2025,T.25101-25102.

<sup>627</sup> *Contra* F00709/A01,para.185.

<sup>628</sup> P02447; P02448; P02450; P02451 (original versions).

<sup>629</sup> P02447\_ET.2.

<sup>630</sup> P02447\_ET.2.

<sup>631</sup> P02451; P02450; P02448; P02447 (original versions) pp.U017-3349-U017-U017-3357,U017-3360-U017-3363.

<sup>632</sup> [REDACTED].

<sup>633</sup> [REDACTED].

<sup>634</sup> [REDACTED].

### b. Pashtrik Zone

247. [REDACTED].<sup>635</sup> [REDACTED].<sup>636</sup> [REDACTED].<sup>637</sup>
248. The SPO alleges that in early 1999, N.KRASNIQI reported to SINANI and HALITJAHA, while also directly reporting to LIMAJ, the KLA-MPD Commander<sup>638</sup> The SPO failed to adduce credible evidence to support the allegation of reporting to the GS.
249. W04765 corrected his assertion relied upon by the SPO that N.KRASNIQI reported to LIMAJ<sup>639</sup> and the zone command,<sup>640</sup> [REDACTED].<sup>641</sup> Instead, W04765 explicitly testified that N.KRASNIQI reported to Drini<sup>642</sup> and that he was positive that after Drini was replaced in March 1999, N.KRASNIQI continued reporting to SINANI and W04765 in SINANI's absence.<sup>643</sup> W04765 had no knowledge of how much contact N.KRASNIQI had with LIMAJ because the GS was "constantly on the move".<sup>644</sup>
250. [REDACTED].<sup>645</sup> W04744 did not mention reporting to the GS, although he did explain the brigade commander, not the GS, had the authority to select his team,<sup>646</sup> that he did not receive any orders from the KLA-MPD due to lack of authority,<sup>647</sup> and he would have reported any such order to the Chief of Staff as an interference from unauthorized persons.<sup>648</sup> W04744 confirmed that the KLA-

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<sup>635</sup> [REDACTED].

<sup>636</sup> [REDACTED].

<sup>637</sup> [REDACTED].

<sup>638</sup> F00709/A01,para.572.

<sup>639</sup> F00709/A01,para.237,including fn.976.

<sup>640</sup> [REDACTED].

<sup>641</sup> W04765,04/12/2023,T.10384.

<sup>642</sup> W04765,16/11/2023,T.10321.

<sup>643</sup> W04765,04/12/2023,T.10382-10383.

<sup>644</sup> W04765,04/12/2023,T.10382-10383.

<sup>645</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>646</sup> W04744,25/06/2024,T.17096.

<sup>647</sup> W04744,25/06/2024,T.17138.

<sup>648</sup> W04744,25/06/2024,T.17138.

MPD was not able to issue orders to MP units within the zones as that was only within the authority of brigade command.<sup>649</sup>

251. W03870 undermined the SPO's reliance on him by stating that he did not have any knowledge about the reporting line of N.KRASNIQI.<sup>650</sup>
252. The evidence of [REDACTED] and [REDACTED] is not credible regarding the Pashtrik Zone MP.
253. [REDACTED] gave contradictory and confused evidence about the Pashtrik OZ structure from [REDACTED], stating that the MP existed only at the zone level<sup>651</sup> and that the zones had no MP.<sup>652</sup> [REDACTED] failed to provide any detail about an alleged GS order that dissolved all MP in February or March 1999.<sup>653</sup> [REDACTED] stated that N.KRASNIQI was Pashtrik OZ MP Commander and reported to SINANI<sup>654</sup> but did not know when N.KRASNIQI became Pashtrik Zone MP Commander.<sup>655</sup> [REDACTED].<sup>656</sup>
254. [REDACTED] claimed that the Pashtrik OZ MP was mostly under GS control<sup>657</sup> and N.KRASNIQI [REDACTED] would report directly to LIMAJ (until SINANI's appointment).<sup>658</sup> [REDACTED], N.KRASNIQI claimed his line of reporting was to the GS.<sup>659</sup> [REDACTED]<sup>660</sup> and never saw any order issued by the KLA-MPD addressed to the Pashtrik OZ MP.<sup>661</sup>

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<sup>649</sup> W04744,25/06/2024,T.17138.

<sup>650</sup> P01830.3,p.9.

<sup>651</sup> [REDACTED].

<sup>652</sup> [REDACTED].

<sup>653</sup> [REDACTED].

<sup>654</sup> [REDACTED].

<sup>655</sup> [REDACTED].

<sup>656</sup> [REDACTED].

<sup>657</sup> [REDACTED].

<sup>658</sup> [REDACTED]; [REDACTED].

<sup>659</sup> [REDACTED].

<sup>660</sup> [REDACTED].

<sup>661</sup> [REDACTED].

255. [REDACTED] never told [REDACTED]<sup>662</sup> [REDACTED].<sup>663</sup>
256. [REDACTED],<sup>664</sup> claimed that there were no police units there after [REDACTED]<sup>665</sup> and had no knowledge of appointments in Drenoc [REDACTED] being done by the GS.<sup>666</sup>
257. [REDACTED] testified [REDACTED]<sup>667</sup> regarding the role of the GS in establishing a structure in Drenoc/Drenovac, including the MP.<sup>668</sup>
258. [REDACTED]<sup>669</sup> [REDACTED].<sup>670</sup>
259. [REDACTED].<sup>671</sup>
260. [REDACTED] P00067, which records the Commander and Deputy Commander being appointed “by order and permission of the General Staff”,<sup>672</sup> [REDACTED].<sup>673</sup> [REDACTED] corroborated nothing in the document, however, beyond repeating what was written therein.<sup>674</sup> P00067 itself refers to PAQARIZI being appointed as “security administrator” rather than MP,<sup>675</sup> [REDACTED].

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<sup>662</sup> [REDACTED].

<sup>663</sup> [REDACTED]

<sup>664</sup> [REDACTED].

<sup>665</sup> [REDACTED].

<sup>666</sup> [REDACTED]

<sup>667</sup> See *infra*, paras.516,520,521,528-531,995.

<sup>668</sup> F00709/A01,para.338.

<sup>669</sup> [REDACTED].

<sup>670</sup> [REDACTED].

<sup>671</sup> [REDACTED].

<sup>672</sup> P00067,p.SITF00437787.

<sup>673</sup> [REDACTED].

<sup>674</sup> [REDACTED].

<sup>675</sup> P00067,p.SITF00437787.

261. [REDACTED].<sup>676</sup> [REDACTED].<sup>677</sup> [REDACTED].<sup>678</sup> [REDACTED].<sup>679</sup>  
[REDACTED] is not credible on any of these points.

262. [REDACTED].<sup>680</sup> [REDACTED].<sup>681</sup>

### c. Dukagjin Zone

263. The SPO alleged that MP regulations<sup>682</sup> were adopted at a meeting attended by BRAHIMAJ.<sup>683</sup> There is no allegation that the CS or GS exercised any kind of authority or supervision over the process of creation, issuance, adoption or implementation, if at all, of these regulations. Nor is there any evidence that BRAHIMAJ was acting as a part of the GS at this alleged meeting. These regulations refer solely to the Operational Staff of the Plain of Dukagjin. [REDACTED] claimed these rules were drafted by HARADINAJ, but did not provide any evidence as to whether they were implemented.<sup>684</sup>

264. W01511 testified that as of the end of June 1998 there was no MP organisation in the Dukagjin region.<sup>685</sup> W04752 testified that he travelled with J.KRASNIQI, THAÇI, VESELI, BRAHIMAJ and SELIMI for a meeting with Dukagjin Zone command shortly after his appointment as head of the operational department around mid-July 1998 and that he could already observe MP having been established.<sup>686</sup> However, W04752 never received P01383 as it was impossible for the GS to receive such reports during that period because of the heavy

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<sup>676</sup> [REDACTED].

<sup>677</sup> [REDACTED].

<sup>678</sup> [REDACTED].

<sup>679</sup> See *infra*, para.313.

<sup>680</sup> [REDACTED].

<sup>681</sup> [REDACTED].

<sup>682</sup> [REDACTED].

<sup>683</sup> F00709/A01, para.190.

<sup>684</sup> [REDACTED].

<sup>685</sup> W01511,03/09/2024,T.19508.

<sup>686</sup> W04752,01/07/2024,T.17372,17369,17374.

fighting.<sup>687</sup> There is no evidence indicating how P01383 was prepared, whether it was received or requested by the GS. No other SPO evidence on MP reporting to the GS from the Dukagjin OZ was provided.

#### **d. Shala Zone**

265. The SPO's allegation that the GS conveyed written instructions naming the commander of the MP relies on [REDACTED] untested evidence,<sup>688</sup> which is undermined by [REDACTED] failure to explain who was appointed, when, or how<sup>689</sup> or identify any written instruction which would name said commander.<sup>690</sup>
266. [REDACTED] explicitly stated that Shala Zone MP was only set up in November-December 1998.<sup>691</sup> [REDACTED] failed to provide any basis for his assertion that this order came from the GS, identify the order or explain when, how or by who the order was issued.<sup>692</sup>

#### **e. Llap Zone**

267. The evidence does not demonstrate that Llap Zone MP was created pursuant to GS instructions. W04746 claimed that MP in Llap started working sometime in mid-1998,<sup>693</sup> although the Llap Zone had already started organising MP prior to the GS's suggestion<sup>694</sup> and the GS instruction on the creation of the Llap Zone MP only came after units had been established.<sup>695</sup> MP reported to the brigade commander at the brigade level and to the zone command at the zone level.<sup>696</sup>

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<sup>687</sup> W04752,10/07/2024,T.18006-18007.

<sup>688</sup> F00709/A01,para.223, including fn.909.

<sup>689</sup> [REDACTED].

<sup>690</sup> [REDACTED].

<sup>691</sup> [REDACTED].

<sup>692</sup> [REDACTED].

<sup>693</sup> W04746,11/07/2023,T.5503.

<sup>694</sup> W04746,17/07/2023,T.5900.

<sup>695</sup> W04746,11/07/2023,T.5504.

<sup>696</sup> W04746,11/07/2023,T.5502.

W04758 stated that formal interaction between the zone command and the GS was through Remi.<sup>697</sup>

268. [REDACTED] also stated that MP reporting within Llap Zone occurred exclusively within the zone, to the commander of the unit in which they operated, who reported to the brigade commander.<sup>698</sup>

**f. Nerodime Zone**

269. W04576, testified that a 162 Brigade MP unit reported to W04576 when he became a brigade commander in May 1999.<sup>699</sup>
270. The SPO failed to establish that LIMAJ, as KLA-MPD head, provided information directly to the Nerodime Zone police commander, including in relation to arrests.<sup>700</sup> When W04576 was confronted with his book in relation to the existence of coordination between Nerodime Zone and the GS allegedly carried out by LIMAJ, W04576 explained that his book referred to assumptions and amplifications that he did not stand by.<sup>701</sup> Neither P000872 nor P000887 are indicative of reporting between the KLA-MPD and the Nerodime Zone.
271. W04576, the only witness to comment on P00872, had not seen the document during the war and rejected it due to the lack of signature and the use of the term “obligation”, which should not be construed as an order.<sup>702</sup> W04576 confirmed that in his experience it is not part of a proper military procedure that the higher command asks the lower command to propose someone to become a member of the higher one.<sup>703</sup>

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<sup>697</sup> P01755.1,pp.20-22.

<sup>698</sup> [REDACTED].

<sup>699</sup> W04576,21/02/2024,T.12650.

<sup>700</sup> F00709/A01,para.245.

<sup>701</sup> W04576,22/02/2024,T.12897-12898.

<sup>702</sup> W04576,22/02/2024,T.12899,12919.

<sup>703</sup> W04576,22/02/2024,T.12921.

272. W04576, again the only witness to comment on P00887, explicitly stated that he had not seen it and could not agree to any of its content.<sup>704</sup> He noted that the document was unsigned and he did not know from where it originated.<sup>705</sup> No evidence was provided in relation to the creation, authorship, circulation or implementation of P00887. P00887 exemplifies a non-functioning military hierarchy,<sup>706</sup> as a normal military hierarchy would involve a superior issuing orders rather than seeking clarifications.<sup>707</sup>

#### **g. Karadak Zone**

273. The SPO has put forward no specific allegation or evidence that the GS or the KLA-MPD was involved in any way or had authority over formation, appointment of the MP in Karadak Zone or its functioning.

#### **h. MP reported within the OZs until the end of the Indictment Period**

274. The SPO has produced no evidence that MP reporting, from battalion MP commander to brigade MP commander and ultimately to the zone commander,<sup>708</sup> changed after the formation of the PGoK.<sup>709</sup>

275. W04765 confirmed that with the creation of the PGoK all the zone's "tasks and duties were left" in the hands of the zones.<sup>710</sup> The KLA continued to exist after June 1999, right up until demilitarisation in late September 1999. During the period from June to September, the KLA MP within the zones continued to report to their respective zone commanders who remained the ultimate authority responsible for the functioning of the zones, including the MP.

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<sup>704</sup> W04576,22/02/2024,T.12893-12897.

<sup>705</sup> W04576,22/02/2024,T.12895.

<sup>706</sup> W04576,22/02/2024,T.12919.

<sup>707</sup> W04576,22/02/2024,T.12919.

<sup>708</sup> P00712,pp.SPOE00209330-SPOE00209331.

<sup>709</sup> P1830.1,p.16; P02320.

<sup>710</sup> W04765,16/11/2023,T.10325.

Overall, reporting within the Zones remained until the end of the Indictment Period.

276. The SPO has not presented any reliable evidence to establish that the KLA MP reported to, or took orders or instructions from **SELIMI** as MinPO, during this period.

**2. Purported KLA regulations do not establish GS authority over the MP**

277. The SPO did not prove that the rules and regulations related to MP functioning allegedly issued by the GS were sent to the zone and brigade level, whether and how they were implemented, who prepared or drafted them, or whether they were discussed or approved by the GS as a whole.

278. The SPO relies upon P00009 which bears no stamp, protocol number, signature or any explanation as to who passed them, why, and when. It fails to refer to any purported GS regulations and does not on its face contain any indication of its creation or adoption and contains vague recommendations for all MP throughout Kosovo.<sup>711</sup> No witness testified to its creation, authority or purpose or even having seen it at all during the conflict. It provides no specificity as to the MP organs alleged to be subordinate to the KLA-MPD, no interpretation as to how this subordination should be exercised except that the KLA-MPD appoints the MP commanders in sub-zones,<sup>712</sup> without specifying how this is to be carried out. Alleged MP functions listed within P00009 are vague and superficial.

279. W04752 had not seen these Rules before and did not recognize the signature on them,<sup>713</sup> and was not aware whether it was sent to any of the KLA MP units.<sup>714</sup>

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<sup>711</sup> P00009,para.1.

<sup>712</sup> P00009,para.4.

<sup>713</sup> W04752,10/07/2024,T.17980-17981.

<sup>714</sup> W04752,10/07/2024,T.17980-17981.

The “Civilian Police Sector of the Military Police Directorate” referred to therein never existed.<sup>715</sup>

280. [REDACTED] vaguely claimed to have received and seen the General Rules during the war [REDACTED].<sup>716</sup> [REDACTED] lack of credibility undermines this assertion.
281. [REDACTED] assumed that he saw the General Rules [REDACTED], but had seen “hundreds of documents and military brochures”, [REDACTED].<sup>717</sup> [REDACTED] initially stated that all the instructions came from the GS, without providing a basis for this assertion, [REDACTED].<sup>718</sup>
282. It is not clear from [REDACTED] whether the Shala Zone received any purported regulations from the GS or KLA-MPD, including P00009.<sup>719</sup> Nor is there any evidence that the Shala MP relied on any regulations received.
283. P00008 was aspirational.<sup>720</sup> W04752 stated P0008 was “translated from other documents” from “Western armies” and that the only sense in which MP bodies were “subordinated to the Military Police Directorate” was that the MP was meant to be trained and enabled by the KLA-MPD, but that “all other subordination goes to the commanders whether they are or the brigades where they are”.<sup>721</sup> [REDACTED] claimed he saw P00008 [REDACTED], [REDACTED]<sup>722</sup> [REDACTED].<sup>723</sup>

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<sup>715</sup> W04752,10/07/2024,T.17980-17981.

<sup>716</sup> [REDACTED].

<sup>717</sup> [REDACTED].

<sup>718</sup> [REDACTED].

<sup>719</sup> [REDACTED].

<sup>720</sup> W04752,17/07/2024,T.18489-18491,18495.

<sup>721</sup> W04752,17/11/2024,T.18447-18448,18489-18490.

<sup>722</sup> [REDACTED].

<sup>723</sup> See *supra*, para.167; *infra*, para.384.

3. **Purported KLA-MPD public communications do not reflect oversight for MP units**

284. Purported KLA-MPD press-releases, communiqués and statements before its creation at the end of November 1998,<sup>724</sup> do not reflect the position of the KLA-MPD or the GS. They have not been contextualised or confirmed by any witness who was in a position to know who issued them. They reflect the decentralised and chaotic functioning of the KLA at the time, where disparate groups would hold themselves out as speaking on behalf of the GS.
285. The SPO failed to call any witness with direct knowledge of how any of these releases was prepared or published. As such, the Panel can place negligible weight on them.
286. P00158 was not authenticated or otherwise verified by any witness. W03825 explicitly stated that he did not know who signed P00158 and that “an unsigned document is part of propaganda”.<sup>725</sup> Similarly, W03825 did not provide a clear response as to whether and when he heard from the media that he continued being under the investigation of the KLA.<sup>726</sup> W04147 was not in a position to comment on P00158 either.<sup>727</sup>
287. P00303 had not been seen by [REDACTED] before [REDACTED]<sup>728</sup> [REDACTED].<sup>729</sup> [REDACTED] could not exclude either that the order was issued by the Pashtrik Zone.<sup>730</sup> [REDACTED] stated that he did not know what

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<sup>724</sup> W04752,10/07/2024,T.17975-17976; W04401,03/12/2024,T.23224-23226; [REDACTED].

<sup>725</sup> W03825,06/11/2023,T.9427-9428.

<sup>726</sup> [REDACTED].

<sup>727</sup> W04147,27/03/2024,T.13967-13968.

<sup>728</sup> [REDACTED].

<sup>729</sup> [REDACTED].

<sup>730</sup> [REDACTED].

happened until November 1998 and that his evidence was based exclusively on the reading of P00303 in court.<sup>731</sup>

288. W04752 could not testify to the content or to the circumstances of the creation of P00303, and had not seen the document prior to his testimony in 2016.<sup>732</sup> W04401 similarly claimed the press release could not have been issued by the KLA-MPD.<sup>733</sup>
289. P00300 was issued over a month before the KLA-MPD came into existence.<sup>734</sup> There has been no information presented before the Panel on the creation or publishing of P00300, which contains reference to the “Investigations Directorate of the KLA Military Police”, the existence or functioning of which there has been similarly no evidence.
290. P00586, was tendered through the bar table<sup>735</sup> without a witness to contextualise or authenticate it. No evidence has been presented in relation the process of its creation or to its authorship.
291. [REDACTED]<sup>736</sup> was not shown to have been issued by the KLA-MPD. [REDACTED]<sup>737</sup> [REDACTED].<sup>738</sup> [REDACTED]. [REDACTED].<sup>739</sup> [REDACTED].<sup>740</sup> [REDACTED].<sup>741</sup> Such inconsistencies were not in any way explained by the SPO.

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<sup>731</sup> [REDACTED].

<sup>732</sup> W04752,10/07/2024,T.17977-17978.

<sup>733</sup> W04401,03/12/2024,T.23224-23226.

<sup>734</sup> W04752,10/07/2024,T.17978-17979.

<sup>735</sup> F01387/A02,p.55.

<sup>736</sup> [REDACTED].

<sup>737</sup> [REDACTED].

<sup>738</sup> [REDACTED].

<sup>739</sup> [REDACTED].

<sup>740</sup> [REDACTED].

<sup>741</sup> [REDACTED].

#### **4. No evidence the GS MP unit was involved in crimes in Indictment**

292. MP at the GS level provided security for the GS and escorted GS members during their movements in Kosovo.<sup>742</sup> Therefore, while the SPO alleges that MP at the GS level had jurisdiction throughout areas under KLA control<sup>743</sup> there is no evidence or even allegation of their involvement in crimes in the Indictment.
293. W04744 was not clear about the GS MP's nature during January-March 1998.<sup>744</sup> While W04744 stated that the members of that unit had to guard GS members and reported to the Chief of GS, he did not explain the basis of this knowledge and could only name one member of that unit.<sup>745</sup>

#### **G. Intelligence Directorate did not operate effectively**

294. The Intelligence Directorate existed mostly on paper. Although it existed in name prior to November 1998,<sup>746</sup> it did not meaningfully function before that date. Individual handwritten notes, purportedly of intelligence activities, were drafted by local staffs of their own volition and were not transmitted up to the GS.<sup>747</sup> Nor do they prove that the Intelligence Directorate was functional.
295. Any reports by the intelligence services within the zones were not transmitted directly or indirectly to the GS as part of any requirement or structure. There is nothing in evidence to show that the GS made any response or took any action to any reports received.

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<sup>742</sup> W04752,10/07/2024,T.17975.

<sup>743</sup> F00709/A01,para.148.

<sup>744</sup> [REDACTED].

<sup>745</sup> [REDACTED].

<sup>746</sup> [REDACTED].

<sup>747</sup> See, e.g., [REDACTED]; [REDACTED].

296. The Regulations that were drafted to apply to the Intelligence services were aspirational and unenforceable—as evidenced by the fact that they were undated and unsigned, without a KLA logo.<sup>748</sup>
297. In any event, the duties and tasks of the intelligence services overlapped significantly with such tasks carried out by other units. They were not responsible for investigating or interrogating suspected collaborators.<sup>749</sup>
298. SHIK, which the SPO alleges was established at the time of PGoK's creation,<sup>750</sup> had no relationship with the GS from that time onwards. Despite its alleged role in relation to the PGoK Prime Minister,<sup>751</sup> SHIK did not cooperate with the MPO.<sup>752</sup>
299. [REDACTED].<sup>753</sup> [REDACTED].<sup>754</sup> [REDACTED].<sup>755</sup> [REDACTED]

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<sup>748</sup> P00890.

<sup>749</sup> P02007.4,p.8.

<sup>750</sup> F00709/A01,para.162.

<sup>751</sup> F00709/A01,paras.162-165.

<sup>752</sup> F00709/A01,para.166.

<sup>753</sup> [REDACTED].

<sup>754</sup> [REDACTED].

<sup>755</sup> [REDACTED].

#### IV. ROLE OF SELIMI BEFORE AND DURING THE INDICTMENT PERIOD

##### A. SELIMI did not have authority over KLA members before the Indictment Period

300. The majority of SPO evidence relating to SELIMI's activities before the Indictment period derives not from evidence, but from books, public statements and interviews, which present events to fit or create a particular narrative. Such materials lack evidential reliability in a criminal trial, especially when derived from individuals who did not testify, such as SYLA<sup>756</sup> and HALITI.<sup>757</sup>

301. The Panel must exercise caution in attributing weight to such evidence.

##### 1. SELIMI was not responsible for coordinating forces outside of the Drenicë/Drenica area before the Indictment Period.

302. The SPO alleges that in May 1993, A.JASHARI and others carried out an armed attack against Serbian police officers, marking the founding of the KLA.<sup>758</sup> Yet, by the SPO's own case, the KLA did not have a name until November 1994.<sup>759</sup> SELIMI was not in contact with A.JASHARI until sometime in 1994.<sup>760</sup>

303. Allegations that SELIMI consolidated and coordinated armed actions within Kosovo<sup>761</sup> are based on general terms about SYLA maintaining contact with A.JASHARI through SELIMI,<sup>762</sup> or SELIMI's own imprecise description of his contact with A.JASHARI who "carried out a series of well-coordinated attacks".<sup>763</sup> W04290's comment concerning SELIMI's "contacts with many

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<sup>756</sup> P01875. W04401 described this as a "glorifying article", likely written after the war rather than "having accurate and truthful information in it." W04401,28/11/2024,T.22964-22968.

<sup>757</sup> P01857.

<sup>758</sup> F00709/A01,para.94 referring to P04200,p.2.

<sup>759</sup> F00709/A01,para.95.

<sup>760</sup> P04200,p.3.

<sup>761</sup> F00709/A01,para.96.

<sup>762</sup> P00847,p.SITF00243001.

<sup>763</sup> P04200,p.3.

people”, mentioning Luan HARADINAJ, D.HARADINAJ and BRAHIMAJ, is qualified by him noting the absence of armed actions during 1995 and 1996 in Dukagjin, where both were based.<sup>764</sup>

304. The SPO repeatedly raised the attacks on Serbian police stations in September 1997 as detailed in Communiqué 36,<sup>765</sup> a classic piece of non-state armed group propaganda,<sup>766</sup> seeking to convince the population that the KLA existed and could mount genuine attacks, only six months after the death of Zahir PAJAZITI and arrest of N.HASANI, which had decimated the KLA.<sup>767</sup>
305. W04290 confirmed having participated in these attacks,<sup>768</sup> and believed Communiqué 36 referred to them,<sup>769</sup> while W04401 confirmed the actions but could not confirm whether they were synchronized<sup>770</sup> or having seen them described that way in the media.<sup>771</sup>
306. No witness confirmed that **SELIMI** had organized fighters from other zones outside Drenicë, but only that he coordinated with individuals from within his local under A.JASHARI's orders. **SELIMI** told the SPO that he simply determined the area of each police station to be targeted, with the police station selected by the group involved.<sup>772</sup> This reflects W04746's evidence that prior to A.JASHARI's killing the KLA was akin to a guerilla organisation and had a highly decentralised structure.<sup>773</sup>

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<sup>764</sup> P01745,pp.6D00-0764-6D00-0765.

<sup>765</sup> P00153.

<sup>766</sup> See Section V.C.4.a.

<sup>767</sup> W04401,02/12/2024,T.23081,23156.

<sup>768</sup> W04290,10/02/2025,T.24927.

<sup>769</sup> W04290,10/02/2025,T.24928.

<sup>770</sup> W04401,28/11/2024,T.22970-22971.

<sup>771</sup> W04401,28/11/2024,T.22975.

<sup>772</sup> [REDACTED].

<sup>773</sup> W04746,14/07/2023,T.5715.

## 2. SELIMI had minimal connection to the LPK

307. The SPO presented no evidence to support the allegation that **SELIMI** played any role creating a ‘Special Sector’ to coordinate activities with the armed units in Kosovo.<sup>774</sup>
308. No witness gave live evidence about this purported special sector.<sup>775</sup> HALITI made an oblique reference to the sector having been established to manage spending on military matters<sup>776</sup> without mentioning **SELIMI**. No evidence was presented naming Special Sector members, undermining the allegation that **SELIMI** coordinated with the Special Sector to *inter alia* “create a military organisation and hierarchy.”<sup>777</sup>
309. The evidence as to **SELIMI**’s role with respect to the LPK is negligible. **SELIMI** stated in Zëri that he was he was uninvolved in any important activities within LPK structures, despite being a member.<sup>778</sup> A document purported to be a timeline of “important dates” in the LPK activity merely notes **SELIMI** having been among well-known activists who shifted from political to military work.<sup>779</sup>
310. None of these activities encompassed any involvement of **SELIMI** in of the production of any public statements or communiqués issued during this period.

## 3. SELIMI was not a formal member of the CS before June 1998

311. The SPO relies upon the SYLA’s book<sup>780</sup> for the assertion that **SELIMI**, was among the founding members of the GS,<sup>781</sup> yet he makes no reference to the basis for this assessment or the time-period to which he refers. Reference to the

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<sup>774</sup> F00709/A01,para.94.

<sup>775</sup> [REDACTED], whose evidence was relied upon in F00709/A01,fn.283, was not called.

<sup>776</sup> P01857,pp.34,36.

<sup>777</sup> F00709/A01,para.94.

<sup>778</sup> P04200,p.6.

<sup>779</sup> P01874,p.074630.

<sup>780</sup> P00847,p.SITF00243001.

<sup>781</sup> F00709/A01,para.91.

GS rather than the CS, implies the period after the reorganisation in late 1998, yet also refers to A.AHMETI who was not a member of the GS at that stage.<sup>782</sup>

An unspecified “declaration” by these alleged GS members, does not explain to what stage this relates.<sup>783</sup>

312. W04401, when examined on this passage from SYLA’s book, denied being deputy commander after January 1997.<sup>784</sup>
313. W04401 stated that in 1997, **SELIMI** was not a CS member.<sup>785</sup> While Xheladin GASHI suggested **SELIMI** needed to be co-opted to the CS after N.HASANI’s jailing and Zahir PAJAZITI’s death,<sup>786</sup> the first effort for **SELIMI** to become a CS member was in Negroc/Negrovce in June 1998.<sup>787</sup> During 1997, BASHOTA was unable to contact **SELIMI**, or to make the CS operational,<sup>788</sup> meaning **SELIMI** was never approved as a member of the CS in 1997.<sup>789</sup>
314. W04401 placed significance on this point when clarifying an earlier answer to the Panel<sup>790</sup> that **SELIMI** was not a member of the CS in 1997, as **SELIMI** was elsewhere in Kosovo to W04401, the two were out of contact<sup>791</sup> and **SELIMI** was not duly elected to the position by a forum, as required.<sup>792</sup> Irrespective of how **SELIMI** viewed himself,<sup>793</sup> the evidence shows that he was not a member of the CS in 1997.

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<sup>782</sup> P00847,p.SITF00243001.

<sup>783</sup> P00847,p.SITF00243001.

<sup>784</sup> W04401,02/12/2024,T.23079.

<sup>785</sup> W04401,03/12/2024,T.23291-23292.

<sup>786</sup> W04401,03/12/2024,T.23292.

<sup>787</sup> W04401,04-05/12/2024,T.23390-23291,23479.

<sup>788</sup> W04401,04/12/2024,T.23348-23349.

<sup>789</sup> W04401,04-05/12/2024,T.23350,23478-23480.

<sup>790</sup> W04401,04-05/12/2024,T.23404-23405,23480-23481.

<sup>791</sup> W04401,05/12/2024,T.23480-23481.

<sup>792</sup> W04401,05/12/2024,T.23480-23481. P02027.1,pp.2060-2061.

<sup>793</sup> P00777,p.6588.

315. The CS ceased functioning as far as activities inside Kosovo were concerned after January 1997, with W04401 effectively being the only member left in the country.<sup>794</sup> W04401 did not expect **SELIMI** to have any knowledge of what the activities of the CS were during 1997.<sup>795</sup>
316. W04290 stated everything was organized by the GS,<sup>796</sup> yet had no knowledge of the GS's functioning,<sup>797</sup> or A.JASHARI's contacts with the GS,<sup>798</sup> and was making assumptions.<sup>799</sup> W04290 later corrected his evidence to state that A.JASHARI did not receive orders from the GS,<sup>800</sup> but issued orders or consulted the GS.<sup>801</sup> As a subordinate member of A.JASHARI's group in Prekaz,<sup>802</sup> **SELIMI** could not therefore have been receiving orders from and simultaneously giving orders to A.JASHARI through his membership of the GS in 1997 as the SPO alleges. At most, the evidence suggests **SELIMI** acted as a liaison between A.JASHARI's group in Kosovo and the members of the GS outside of Kosovo.<sup>803</sup>
317. Other evidence relied upon by the SPO on this allegation<sup>804</sup> is not relevant to **SELIMI**.

#### 4. **SELIMI's assumed authority was based on external factors**

318. Although **SELIMI's** name was well-known within the Kosovar community,<sup>805</sup> this did not reflect **SELIMI's** real authority before the Indictment Period.

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<sup>794</sup> W04401,05/12/2024,T.23477-23478.

<sup>795</sup> W04401,05/12/2024,T.23480-23481.

<sup>796</sup> [REDACTED].

<sup>797</sup> [REDACTED].

<sup>798</sup> W04290,11/02/2025,T.25018.

<sup>799</sup> [REDACTED].

<sup>800</sup> W04290,13/02/2025,T.25225,25303.

<sup>801</sup> W04290,13/02/2025,T.25225,25303.

<sup>802</sup> P01745,pp.6D00-0765-6D00-0766; W04290,11/02/2025,T.25016.

<sup>803</sup> W04401,03/12/2024,T.23292.

<sup>804</sup> F00709/A01,para.96.

<sup>805</sup> W04401,28/11/2024,T.23021-23022; W04401,03/12/2024,T.23292.

319. By October 1996, an Indictment publicly issued by Serbian prosecutors against **SELIMI** resulted in his conviction *in absentia*.<sup>806</sup> **SELIMI** left Prishtina to live in Prekaz with A.JASHARI's group,<sup>807</sup> thus indelibly connecting **SELIMI** with A.JASHARI.
320. In November 1997, a masked-**SELIMI** spoke "at the first public appearance of the KLA during a widely attended funeral"<sup>808</sup> with D.HARADINAJ and M.KRASNIQI.<sup>809</sup>
321. However, it was not **SELIMI**'s decision to make the speech.<sup>810</sup> W04290 testified that A.JASHARI and others decided who would appear publicly on behalf of the KLA.<sup>811</sup> There is no evidence that **SELIMI** took part in making this selection.
322. The speech was written based on the instructions of the GS, with final approval coming from A.JASHARI.<sup>812</sup> In the context of circumstances prevailing at the time, it is little more than propaganda directed at recruitment and support among civil society.
323. The effect of the KLA's first appearance was widely felt<sup>813</sup> and brought **SELIMI**'s name to the attention of some who did not know of it prior to that date.<sup>814</sup> However, it exaggerated **SELIMI**'s authority within the KLA in the minds of others who were not privy to the inner workings of that movement and the roles that others like HALITI and SYLA would play from outside Kosovo.<sup>815</sup>

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<sup>806</sup> [REDACTED]; [REDACTED]; P01857,p.51.

<sup>807</sup> [REDACTED]; P00777,p.6587.

<sup>808</sup> F00709/A01,para.27.

<sup>809</sup> W02652,17/04/2023,T.2934; W04401,28/11/2024,T.22982.

<sup>810</sup> P01878.

<sup>811</sup> W04290,10/02/2025,T.24931.

<sup>812</sup> P02032,p.3.

<sup>813</sup> P01593,p.U002-9297; P01508,p.2.

<sup>814</sup> [REDACTED].

<sup>815</sup> P04200,pp.7-8; [REDACTED].

**B. SELIMI had no *de jure* or *de facto* authority over KLA members before the reorganisation**

324. The SPO's allegations regarding SELIMI's authority and control from the beginning of the Indictment Period, until he assumed the role of Inspector-General almost exclusively relate to the Drenicë OZ and is assessed in relation to that area.

**1. Meetings with internationals are not determinative of the importance of Likoc/Likovac**

325. The SPO's allegation that Likoc/Likovac hosted meetings between internationals and certain KLA members<sup>816</sup> including the accused<sup>817</sup> relates to only two meetings, one with HILL and the other with Shaun BYRNES. Neither meeting is determinative of the role or authority of Likoc/Likovac, nor that it was a GS HQ.

326. No SPO witness gave detailed evidence about the HILL meeting on 29 July 1998,<sup>818</sup> and no SPO documents accurately elaborated on its content.<sup>819</sup>

327. SELIMI told the SPO that this meeting occurred during the summer, with SELIMI accompanied by ZYRAPI, S.SELIMI and LUSHTAKU.<sup>820</sup> HILL spoke to the need for a political representative for the whole of Kosovo and a parliamentary assembly, while SELIMI informed HILL that, as a member of the GS, he would pass on the message to other members.<sup>821</sup> SELIMI told Zëri that this meeting was a turning point and a "recognition of the KLA's role as the most important factor in Kosovo, both militarily and politically,"<sup>822</sup> a statement

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<sup>816</sup> F00709/A01,para.270.

<sup>817</sup> F00709/A01,para.181.

<sup>818</sup> See, W04752,15/07/2024,T.18265-12868; [REDACTED].

<sup>819</sup> [REDACTED];P04203;P00851.1,p.2.

<sup>820</sup> [REDACTED].

<sup>821</sup> [REDACTED].

<sup>822</sup> P04203,p.2.

when read in light of 1DW-008's recollection addressed below reflects the exaggeration inherent in **SELIMI**'s public comments, especially when speaking about events he was involved in<sup>823</sup> and his desire to emphasise the role of Drenicë/Drenica in the KLA's struggle. Limited weight must be accorded to it by the Panel.

328. 1DW-008 testified that the purpose of the trip was to gain insight into who ran the KLA and whether they would join a political process.<sup>824</sup> 1DW-008 had been directed by others to make contact with the KLA in Drenicë/Drenica, in the hope that it would lead further to the GS.<sup>825</sup>
329. 1DW-008 did not recall **SELIMI** welcoming his delegation to the meeting<sup>826</sup> or anything else of what **SELIMI** said.<sup>827</sup> Questioned about an extract of a book by Blerim SHALA regarding the meeting, used over Defence objection, 1DW-008 strongly criticised its accuracy, including words attributed to himself.<sup>828</sup> The extract also purports to record certain criticisms and frustrations expressed by **SELIMI** at that meeting, something not meaningfully corroborated or confirmed by 1DW-008<sup>829</sup> who had no recollection of events as described therein."<sup>830</sup>
330. While **SELIMI**, speaking to Zëri,<sup>831</sup> considered the meeting a significant event, 1DW-008 described his disappointment at having taken great risk to set up the meeting, being told that he would meet someone from the KLA with actual

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<sup>823</sup> See Section II.C.2.

<sup>824</sup> 1DW-008,10/11/2025,T.27665-27666.

<sup>825</sup> 1DW-008,11/11/2025,T.27764.

<sup>826</sup> 1DW-008,11/11/2025,T.27770.

<sup>827</sup> 1DW-008,11/11/2025,T.27773-27774.

<sup>828</sup> 1DW-008,11/11/2025,T.27775; P04508,p.SPOE0058154.

<sup>829</sup> 1DW-008,11,11,2025,T.27773-27774.

<sup>830</sup> 1DW-008,11/11/2025,T.27777.

<sup>831</sup> See *supra*, para.329.

responsibility, only to discover that **SELIMI** could not take responsibility for any real discussion and was acting merely as a messenger for the GS.<sup>832</sup>

331. 1DW-008 left the meeting discouraged, convinced that they couldn't wait for "guys in their fatigues to go and find out who the general staff is and whether they get permission".<sup>833</sup> 1DW-008 ultimately concluded, that **SELIMI** was a local guy who represented some opinions within Drenicë/Drenica and was not, as he had previously heard, "very senior".<sup>834</sup> The inability of **SELIMI** to act independently in those moments, reveals the true limits of his authority.
332. 1DW-008 was left with the impression that the effort by the KLA to demonstrate *inter alia* normal political and military were exercises in portraying something more important than the reality, ultimately concluding that he was "not sure that we're looking for something that really exists."<sup>835</sup>
333. A separate meeting at Likoc/Likovac was described by W04147<sup>836</sup> on 18 August 1998, his first meeting with the KLA, which was attended by **SELIMI** and S.SELIMI.<sup>837</sup> Occurring six days after W04147's arrival into Kosovo, when he was trying to meet as many people as possible<sup>838</sup> to cobble together a picture of the KLA. The only information available to W04717 at the time from USKDOM was that there was a group in Drenicë/Drenica that was KLA, and no contact was yet established with any of the other zones.<sup>839</sup> Any suggestion that this was specifically a meeting with the GS is wholly erroneous.

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<sup>832</sup> 1DW-008,10/11/2025,T.27670-27671 in relation to 1D00423,p.DHT12275.

<sup>833</sup> 1DW-008,10/11/2025,T.27673.

<sup>834</sup> 1DW-008,11/11/2025,T.27781-27782.

<sup>835</sup> 1DW-008,10/11/2025,T.27673-27674.

<sup>836</sup> [REDACTED].

<sup>837</sup> [REDACTED].

<sup>838</sup> W04147,26/03/2024,T.13724.

<sup>839</sup> W04147,26/03/2024,T.13721.

334. W04147 believed that **SELIMI** was higher up the KLA ladder, but based that interpretation solely on the perceived amount that **SELIMI** spoke,<sup>840</sup> though W04147 could not remember what **SELIMI** said apart from pleasantries.<sup>841</sup> **SELIMI** did not introduce himself as overall commander, and W04147 regarded both **SELIMI**s as “senior officers of the UCK, nothing more”.<sup>842</sup>
335. Neither meeting described above shows that Likoc/Likovac carried any special significance for the GS.

## 2. **SELIMI’s authority in Likoc/Likovac was minimal**

336. Rumour and speculation accentuated by **SELIMI**’s prior connection with A.JASHARI,<sup>843</sup> formed an unrealistic impression of **SELIMI**’s authority to those outside of and within the KLA. Sweeping, unchallengeable and unsubstantiated statements by manifestly unreliable SPO witnesses, such as [REDACTED], do not provide a solid factual foundation for the Panel to make conclusions in favour of the SPO’s case.
337. **SELIMI** was moving around within Drenicë/Drenica, as well as other areas where the conflict was taking place in 1998.<sup>844</sup> The sole interview cited in the SPO PTB, asserting that **SELIMI** was “frequently” present there<sup>845</sup> was disputed in its accuracy by S.SELIMI, to whom it is attributed<sup>846</sup> simply refers to **SELIMI** being present in “our area”<sup>847</sup> which is not otherwise defined or explained by W04290. The SPO misrepresents [REDACTED] untested evidence that **SELIMI**

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<sup>840</sup> W04147,26/03/2024,T.13725.

<sup>841</sup> W04147,26/03/2024,T.13725.

<sup>842</sup> W04147,26/03/2024,T.13725.

<sup>843</sup> See Section IV.A.4.

<sup>844</sup> P00763.4,p.15.

<sup>845</sup> F00709/A01,para.272 relying on P01745,p.6D000773.

<sup>846</sup> W04290,12/02/2025,T.25258-25259.

<sup>847</sup> P01745,p.6D000773.

[REDACTED].<sup>848</sup> [REDACTED].<sup>849</sup> [REDACTED].<sup>850</sup> [REDACTED].<sup>851</sup>  
 [REDACTED].<sup>852</sup> This severely detracts from any conclusion that **SELIMI** had special authority [REDACTED], as well as calling into question the overall reliability of [REDACTED]. Even if one accepts that **SELIMI** was a “commander”, which is refuted by the Defence, this can only be understood as being one amongst a group of similarly situated persons.

338. Indeed, [REDACTED],<sup>853</sup> [REDACTED]. This fatally undermines the SPO’s assertion that **SELIMI** was “in charge of military matters in Likoc/Likovac.”

339. [REDACTED]<sup>854</sup> [REDACTED]<sup>855</sup> do not establish any significant authority on his part.

340. Other witnesses gave evidence regarding their arrival in Likoc/Likovac but none supported the SPO’s position that **SELIMI** was the principal military authority there. No written orders by **SELIMI** were ever produced and their testimony was vague, speculative and uncorroborated.

341. W04741’s evidence that he was instructed by SYLA to meet with **SELIMI**,<sup>856</sup> and deliver a letter,<sup>857</sup> the contents of which he never saw<sup>858</sup> proves little. W04741 suggested that he be deployed to Krojmir/Krajmrovce which was notified to **SELIMI**, who directed him to follow SYLA’s instruction<sup>859</sup> rather than **SELIMI**

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<sup>848</sup> [REDACTED].

<sup>849</sup> [REDACTED].

<sup>850</sup> [REDACTED]; W04290,11/02/2025,T.25091.

<sup>851</sup> [REDACTED].

<sup>852</sup> [REDACTED].

<sup>853</sup> [REDACTED].

<sup>854</sup> [REDACTED].

<sup>855</sup> [REDACTED].

<sup>856</sup> [REDACTED]; P01115.1,p.22.

<sup>857</sup> [REDACTED].

<sup>858</sup> W04741,23/04/2024,T.14696-14697.

<sup>859</sup> W04741,23/04/2024,T.14699-14670.

personally deploying him to Krojmir/Krajmrovce.<sup>860</sup> At most, **SELIMI** advised W04741 to follow SYLA's instructions, which W04741 had a hand in shaping.

342. Underlining the foundational weakness of his assumptions, W04741 accepted that had SYLA sent him to someone other than **SELIMI**, he would have assumed that they were the main person in the KLA.<sup>861</sup> W04741 had no knowledge of any prominent KLA figures in other zones and never saw **SELIMI** exercise authority, other than the weak inference he made during the brief encounter in which he handed over SYLA's letter.<sup>862</sup>
343. W04743 also arrived in Likoc/Likovac in April 1998.<sup>863</sup> W04743 did not know **SELIMI** from before<sup>864</sup> and explained that he had been told by SYLA to get in touch with "Agron" as soon as he arrived, as he would be able to give him directions.<sup>865</sup> At W04743's own request, he went to the Kleckë/Klečka area,<sup>866</sup> confirming that travelling to areas in Kosovo where there was already a family connection was consistent with what other KLA volunteers did at the time.<sup>867</sup> W04743 was not ordered to go to Kleckë/Klečka by **SELIMI**.
344. [REDACTED], recounting being given an "order" to go home to his area as a direct result of his own expressed wish to return there, yet also stating that he never witnessed **SELIMI** give any order to KLA soldiers.<sup>868</sup> [REDACTED], is also consistent with his evidence that most of the other KLA volunteers who had arrived with him "moved on to their own areas."<sup>869</sup>

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<sup>860</sup> W04741,23/04/2024,T.14701-14702.

<sup>861</sup> W04741,23/04/2024,T.14706.

<sup>862</sup> W04741,23/04/2024,T.14708.

<sup>863</sup> P02006.1,pp.10-11.

<sup>864</sup> P02006.1,pp.12-13.

<sup>865</sup> W04743,28/01/2025,T.24701.

<sup>866</sup> P02006.1,pp.11-12 referred to in F00709/A01,fn.1119.

<sup>867</sup> W04325,28/01/2025,T.24700.

<sup>868</sup> [REDACTED].

<sup>869</sup> [REDACTED].

345. Evidence is similarly unconvincing in relation to other purported orders issued by **SELIMI**. [REDACTED],<sup>870</sup> [REDACTED],<sup>871</sup> [REDACTED],<sup>872</sup> [REDACTED].
346. [REDACTED]<sup>873</sup> [REDCATED]. [REDACTED] identification of this person as **SELIMI** is doubtful, given that [REDACTED] had never met **SELIMI** and his only basis for identifying this person as **SELIMI** came from [REDACTED], who did not appear as a witness.<sup>874</sup> The reliability of [REDACTED] evidence is also questionable, [REDACTED]<sup>875</sup> [REDACTED].<sup>876</sup>
347. Other SPO witnesses emphasised that although **SELIMI** was trusted and known within the Drenicë zone, he did not have specific authority at that time. In relation to the election of the Drenicë Zone Commander in Plluzhine/Pluzina,<sup>877</sup> **SELIMI** was present, whom W04290 qualified as a representative of the UCK General HQ<sup>878</sup> **SELIMI** stated the KLA HQ would approve who would be elected commander from this meeting.<sup>879</sup> W04290 testified that **SELIMI** would pass on the proposal made by the commanders for him as the Zone Commander to the GS.<sup>880</sup> **SELIMI** thus exercised the role of messenger or liaison between the Zone Commanders and GS and wielded no personal authority.
348. W04752 testified that after arriving in Kosovo in 1998, he met BASHOTA, head of the Operational Department,<sup>881</sup> then Remi, Rrahman RAMA and **SELIMI**.<sup>882</sup>

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<sup>870</sup> [REDACTED].

<sup>871</sup> [REDACTED] referred to in F00709/A01,fn.1118.

<sup>872</sup> [REDACTED].

<sup>873</sup> [REDACTED] referred to in F00709/A01,fn.1117.

<sup>874</sup> [REDACTED].

<sup>875</sup> [REDACTED].

<sup>876</sup> [REDACTED].

<sup>877</sup> P01745,p.6D00-0773.

<sup>878</sup> P01745,p.6D00-0773.

<sup>879</sup> P01745,p.6D00-0773; W04290,11/02/2025,T.25021.

<sup>880</sup> W04290,12/02/2025,T.25209.

<sup>881</sup> [REDACTED]; W04752,01/07/2024,T.17341.

<sup>882</sup> W04752,01/07/2024,T.17341.

**SELIMI** introduced himself as with the Operational Directorate,<sup>883</sup> did not call himself “commander”, as there was no such role, and was one of two people in the Operational Directorate at that point, alongside BASHOTA.<sup>884</sup> At that time W04752 joined the Operational Directorate, BASHOTA was the head and **SELIMI** was an untitled part of the Directorate.<sup>885</sup> On re-examination, W04752 reiterated that BASHOTA was the Director of the Operational Directorate.<sup>886</sup>

### C. **SELIMI exercised limited authority as Inspector-General**

#### 1. **SELIMI was not appointed Inspector-General before November 1998**

349. The SPO alleges that **SELIMI** was appointed Inspector-General by at least July 1998,<sup>887</sup> which is predicated on the mistaken assumption that as soon as ZYRAPI became Chief of the Operational Directorate on 15 July 1998,<sup>888</sup> **SELIMI** automatically transitioned into the role of Inspector-General.

350. While **SELIMI**’s recollection of exact dates is clouded, his evidence consistently contradicts the SPO’s allegation that he was appointed Inspector-General by at least July 1998.

351. In 2005, **SELIMI** testified that he took up the task of Inspector-General in approximately August 1998.<sup>889</sup> In 2011, **SELIMI** stated that ZYRAPI took over the role of Chief of Operations in the summer of 1998.<sup>890</sup> In 2013, **SELIMI** stated that he was Chief of G3 until August 1998 and then became Inspector-General.<sup>891</sup>

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<sup>883</sup> W04752,09/07/2024,T.17896-17897.

<sup>884</sup> W04752,09/07/2024,T.17904.

<sup>885</sup> W04752,09/07/2024,T.17904-17905.

<sup>886</sup> W04752,15/07/2024,T.18272-18273.

<sup>887</sup> F00709/A01,para.102.

<sup>888</sup> W04752,01/07/2024,T.17369.

<sup>889</sup> P00778,p.6596.

<sup>890</sup> [REDACTED].

<sup>891</sup> [REDACTED].

352. However, during his SPO Interview, **SELIMI** recalled that by the end of July 1998, he was still chief of G3,<sup>892</sup> contrary to the clear evidence of W04752 on this point,<sup>893</sup> and that at the end of August or beginning of September, he was either ending his time as chief of G3 or starting his time as Inspector-General.<sup>894</sup> **SELIMI** believed he took over this role as Inspector-General in the autumn or in the last part of 1998, during the restructuring of the GS, potentially September 1998.<sup>895</sup> Finally, **SELIMI** confirmed that at the time of a purported press release of the MP Directorate of the KLA in September 1998, he was the head of the operational directorate<sup>896</sup> and was not yet the Inspector-General. Moreover, when shown J.KRASNIQI's untested book where **SELIMI**'s appointment as Inspector-General is recorded as being a result of the GS restructuring decided during the 12 November 1998 meeting,<sup>897</sup> **SELIMI** confirmed that this was correct.<sup>898</sup>
353. There is no evidence of **SELIMI**'s formal appointment as Inspector-General. No SPO witness provided evidence regarding how that decision was taken, by whom or how it was communicated. The first contemporaneous documentary evidence of **SELIMI**'s appointment comes from 1D00166 dated 2 November 1998.<sup>899</sup> No GS meeting notes discuss or record this appointment. The SPO relies instead on unsourced books or articles making vague and contradictory assertions that were discredited by SPO witnesses.
354. W04752 stated that J.KRASNIQI's book generally, as well as the specific assertions regarding the Inspector-General and the KLA-MPD,<sup>900</sup> was an

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<sup>892</sup> P00763.2,p.2.

<sup>893</sup> W04752,01/07/2024,T.17369.

<sup>894</sup> P00763.2,p.2.

<sup>895</sup> [REDACTED].

<sup>896</sup> P00763.7,pp.14-15.

<sup>897</sup> P00189\_ET.1,pp.U015-8878-U015-8880.

<sup>898</sup> P00763.6,pp.10-13.

<sup>899</sup> 1D00166.

<sup>900</sup> W04752,17/07/2024,T.18405; [REDACTED].

exaggeration, and explained that the structure as depicted did not match reality.<sup>901</sup> Similarly, W04401 testified that during the 11 June 1998 meeting in Negroc/Negrovce referred to in J.KRASNIQI's book, only J.KRASNIQI was appointed to a position KLA spokesperson,<sup>902</sup> and the appointments in the GS listed therein weren't entirely correct.<sup>903</sup>

355. W04752 testified that the Inspector-General position appeared only with the reorganisation of the GS in November,<sup>904</sup> correcting his statement to the SPO that **SELIMI** became Inspector-General in July 1998 when W04752 became head of Operational Directorate.<sup>905</sup>

356. W04752 did not see any official appointment of the Inspector-General.<sup>906</sup> W04752 testified that between July-September 1998, **SELIMI** had always been with W04752, assisting him with the local units, operations, and on the front line; neither W04752 nor **SELIMI** exercised any other tasks during that time.<sup>907</sup> This strongly implies that **SELIMI** merely fulfilled the same responsibilities he had within Operational Directorate from July onwards, at least until W04752 left for Albania in September 1998.<sup>908</sup>

357. Actions by **SELIMI** do not support his assumption of the role of Inspector-General before autumn 1998. No written orders from **SELIMI** were produced by the SPO. None of the few appointments signed by **SELIMI** were signed in his capacity as Inspector-General.<sup>909</sup>

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<sup>901</sup> W04752,17/07/2024,T.18406.

<sup>902</sup> W04401,02/12/2024,T.23030.

<sup>903</sup> W04401,02/12/2024,T.23030.

<sup>904</sup> W04752,10/07/2024,T.17934,17937-17838.

<sup>905</sup> [REDACTED].

<sup>906</sup> W04752,10/07/2024,T.17934.

<sup>907</sup> W04752,10/07/2024,T.17933-17934.

<sup>908</sup> W04752,10/07/2024,T.17934-17935.

<sup>909</sup> W04752,10/07/2024,T.17935-17936 referring to P01392 (K.KASTRATI) and P00920 (RAMABAJA). See also [REDACTED].

358. KLA members who interacted with **SELIMI** also stated that his appointment was later in 1998. According to W04746, October 1998;<sup>910</sup> W04403 confirming there was no Inspector-General before December 1998;<sup>911</sup> W04739 stated that at the earliest, **SELIMI** was Inspector-General in November 1998.<sup>912</sup>
359. SPO witnesses were consistently unclear as to when the Inspector-General was appointed. W04290 initially stated that during a meeting in summer 1998, **SELIMI** represented the GS as Inspector-General<sup>913</sup> but clarified during testimony that he was not aware of **SELIMI**'s role at the time of that meeting, learning about the title "later on"<sup>914</sup> and **SELIMI** was neither Inspector-General nor a member of the KLA GS during Summer 1998.<sup>915</sup>
360. W04744 was unaware of **SELIMI** being Inspector-General during the war<sup>916</sup> as was W04765.<sup>917</sup> During the visit of the GS to Llap OZ in August 1998, W04758 had no knowledge about **SELIMI**'s position, other than being a member of the GS and only came to understand much later that **SELIMI** was the Inspector-General, though W04758 could not say when he was appointed.<sup>918</sup>
361. W04752 was shown P01881, authored by **SELIMI**, which states that all directorates, including Inspector-General were established in May 1998.<sup>919</sup> W04752 insisted that the staff and directorates were established only in November 1998.<sup>920</sup> Given its marked inconsistency with other evidence,

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<sup>910</sup> P00693.1,pp.24-25.

<sup>911</sup> W04403,26/03/2025,T.25925.

<sup>912</sup> P01100,para.23.

<sup>913</sup> P02027.1,p.2071.

<sup>914</sup> W04290,12/02/2025,T.25206.

<sup>915</sup> W04290,12/02/2025,T.25207-25208.

<sup>916</sup> W04744,25/06/2024,T.17175.

<sup>917</sup> W04765,16/11/2023,T.10312; [REDACTED].

<sup>918</sup> W04758,31/10/2024,T.21647-21649.

<sup>919</sup> W04752,17/07/2024,T.18398; P01881.

<sup>920</sup> W04752,17/07/2024,T.18398-18399.

including the SPO's own case, the document warrants limited evidentiary weight.

362. The evidence leads to the conclusion that **SELIMI** did not substantively assume the role of Inspector-General until October or November 1998.

## 2. The role of Inspector-General was undefined within the KLA

363. The role of Inspector-General was novel to both the GS and **SELIMI**, and not part of the JNA/VJ structure.<sup>921</sup> Inspired by NATO army structure in which no KLA member had served, there was substantial confusion as to its function.
364. **SELIMI** told the SPO that upon becoming Inspector-General, he had little work, as he had handed over his duties to ZYRAPI.<sup>922</sup> **SELIMI** did not fully understand how the general-inspectorate was to be established and did not have enough assistance in this effort.<sup>923</sup>
365. W04752 accepted that the Inspector-General was his recommendation during KLA restructuring, based on NATO organigrams mostly translated by W04752 himself.<sup>924</sup> Nonetheless, W04752 "didn't know about the role of the inspector [and] was not familiar with the structure in place before that time."<sup>925</sup>
366. W04752 testified that **SELIMI** never introduced himself as Inspector-General.<sup>926</sup> [REDACTED] confirmed having no knowledge of the functions of Inspector-

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<sup>921</sup> W04752,10/07/2024,T.17937; W04765,16/11/2023,T.10304.

<sup>922</sup> [REDACTED].

<sup>923</sup> [REDACTED].

<sup>924</sup> W04752,10/07/2024,T.17937-17938. See,W04403,26/03/2025,T.25923.

<sup>925</sup> W04752,10/07/2025,T.17933.

<sup>926</sup> W04752,10/07/2024,T.17936.

General [REDACTED].<sup>927</sup> [REDACTED] never saw any document detailing **SELIMI**'s responsibilities or obligations.<sup>928</sup>

367. W04752 testified that **SELIMI** never proposed or requested to be Inspector-General,<sup>929</sup> consistent with **SELIMI**'s evidence about not knowing who had nominated him to the position.<sup>930</sup>
368. 'Inspector-General' is neither contained in the Internal Regulations of the KLA GS,<sup>931</sup> nor mentioned in the KLA Provisional Regulations,<sup>932</sup> Disciplinary Regulations<sup>933</sup> nor does any formal document regulate the function of the role.
369. W04752 did not remember in detail many of the tasks **SELIMI** undertook as Inspector-General<sup>934</sup> stating that **SELIMI** moved a lot during the summer.<sup>935</sup> There was an overlap of the functions, as he understood them to be, of the Inspector-General and those of the Operational Directorate, already being performed by **SELIMI**.<sup>936</sup>
370. **SELIMI** explained that, under the circumstances at the time, the role of the Inspector-General involved inspecting the development and formation of operational units which were in their initial phase of formation and providing them with any necessary assistance they required.<sup>937</sup> **SELIMI** also explained

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<sup>927</sup> [REDACTED].

<sup>928</sup> [REDACTED].

<sup>929</sup> W04752,10/07/2024,T.17937.

<sup>930</sup> [REDACTED].

<sup>931</sup> P00083; F00709/A01,para.105,fn.336.

<sup>932</sup> P00008; P00641.

<sup>933</sup> P00892.

<sup>934</sup> [REDACTED].

<sup>935</sup> [REDACTED].

<sup>936</sup> W04752,10/07/2024,T.17941.

<sup>937</sup> P00778,p.6596.

that he could not say that his competencies within Operational Directorate changed after taking up the Inspector-General role.<sup>938</sup>

371. **SELIMI**'s role therefore as Inspector-General was neither clear to him, nor to others with whom he interacted.

**3. Inspector-General exercised limited authority within GS decision making**

**a. SELIMI's role within GS decision-making is obscure**

372. While the GS was a collective body, the SPO's attempt to portray the GS as speaking with one voice and representative of consultation and unanimity<sup>939</sup> misrepresents the evidence. The assertions that efforts were made to involve absent members before decisions were reached<sup>940</sup> or that after decisions were reached, efforts were also made to inform absent members at the earliest opportunity<sup>941</sup> find no basis in the evidence.

373. Despite calling several members of the GS to testify, the SPO did not explore or establish how decisions were taken by the GS, including, but not limited to: lack of established procedure, quorum requirement, or relevant voting mechanisms. Instead, what the evidence reveals is that "collective leadership" reflects the reality of obstacles faced by the GS, which could hold discussions and take decisions based solely on the number of available members at any given time.

374. **SELIMI** told the SPO that the GS operated as "a collective leadership rather than the leadership of one person alone"<sup>942</sup> and that "a decision on the General Staff was a decision that was taken with everybody agreeing to that decision.

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<sup>938</sup> [REDACTED].

<sup>939</sup> F00709/A01,para.106,fn.337.

<sup>940</sup> F00709/A01,para.106,fn.338.

<sup>941</sup> F00709/A01,para.106,fn.339.

<sup>942</sup> [REDACTED]; W04401,04/12/2024,T.23368-23369.

This is what I consider a decision of the General Staff.”<sup>943</sup> However, meetings were almost never attended by all members.<sup>944</sup> Thus, in context, **SELIMI**’s statement refers to decisions reached in individual meetings being reached by only those members present. It is in this sense that most of the decisions were “collegial” decisions.<sup>945</sup>

375. When pushed by the Panel to agree with the proposition that a GS decision involved every member agreeing with that decision,<sup>946</sup> W04401 repeated that decisions were taken a majority of attending a given meeting, with those against not disputing outcomes if they were in the minority. “Collective” decision, referred to the collective of “members who were able to [attend a given meeting]”,<sup>947</sup> and not a “collective decision” of every GS member, including those not in attendance. The absence of a member of the GS did not mean that it was not a “collegial decision”,<sup>948</sup> in terms of those physically present at a meeting, and no evidence was presented to establish that the opinion of absent members was sought, or otherwise reflected in specific decisions.

376. W02144’s impression was that there was, “a larger group involved in decision-making and the decisions were taken more on a consensus, less on a hierarchical basis,”<sup>949</sup> often delaying the decision-making process.<sup>950</sup> W02144’s impressions were driven by the length of time the KLA took to make decisions rather than reflective of the GS needing to consult among themselves. W02144 was not privy to GS procedure.

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<sup>943</sup> [REDACTED].

<sup>944</sup> See Section III.B.3.b.

<sup>945</sup> [REDACTED].

<sup>946</sup> W04401,04/12/2024,T.23372-23373.

<sup>947</sup> W04401,04/12/2024,T.23369-23370.

<sup>948</sup> W04401,02/12/2024,T.23139.

<sup>949</sup> [REDACTED].

<sup>950</sup> [REDACTED].

**b. SELIMI had limited authority within the GS**

377. The desire for decision-making by consensus, cannot mask the reality that a hierarchy existed within the GS. **SELIMI's** authority, to the extent he had any, was significantly less than other members of the GS.
378. While W04752 asserted that the Inspector-General received instructions from SYLA,<sup>951</sup> he conceded that SYLA was largely absent from Kosovo from November 1998-April 1999<sup>952</sup> negating the ease of communication between the two.<sup>953</sup>
379. W04752 never saw, and did not provide any examples of, reports or orders between the two, and any record of alleged communication between the two is absent from the intercept evidence presented by the SPO.<sup>954</sup> The SPO's contention that **SELIMI**, as Inspector-General, reported directly to SYLA or to J.KRASNIQI in SYLA's absence<sup>955</sup> is wholly unsubstantiated.
380. W04752 confirmed that the Inspector-General was not on the same level as directorates. Meetings at which the Directors or Directorates were invited did not include **SELIMI**.<sup>956</sup>
381. Indicative of this fact, at a 29 December 1998 Meeting with the Directorates of the GS in Divjakë/Divljaka, not attended by **SELIMI**,<sup>957</sup> there was a "briefing by the leadership and the Command of the General Staff".<sup>958</sup> These notes recognize

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<sup>951</sup> [REDACTED]; W04752,10/07/2024,T.17949-17950.

<sup>952</sup> [REDACTED].

<sup>953</sup> W04752,10/07/2024,T.17949-17950 in reference to P01355.7,pp.23-24.

<sup>954</sup> [REDACTED]; W04752,10/07/2024,T.17950-17951.

<sup>955</sup> F00709/A01,para.103.

<sup>956</sup> See *infra*, para.1017.

<sup>957</sup> W04752,10/07/2024,T.17965.

<sup>958</sup> P01408,p.SPOE00227859.

that the “General Staff is made up of ten directorates” and “Three subordinate units operate under its realm”, with no reference to the Inspector-General.<sup>959</sup>

382. W04752 stated that **SELIMI**, due to his frequent movement, was not able to attend all GS meetings.<sup>960</sup> W04752 confirmed that it was difficult to schedule any GS meetings between mid-July 1998 until W04752 left for Albania in September 1998<sup>961</sup> and had no knowledge of whether GS meetings were held in his absence in Kosovo between September and end of November 1998.<sup>962</sup>
383. **SELIMI**'s mere presence in Kosovo at the time does not establish his attendance to these meetings during this period. No evidence demonstrates that **SELIMI** exercised a dominant or even significant voice on any issue relevant to the SPO's case.
384. Evidence suggests that **SELIMI** was in Albania<sup>963</sup> when a 4 July 1998 GS meeting occurred and the KLA of the Internal Life of the Army and of the Military Oath<sup>964</sup> were allegedly approved, as well as when the decision for the creation of the first formed units up to company level was also taken.<sup>965</sup> There is no evidence that **SELIMI** was informed about the meeting's agenda or decisions to be decided/were adopted, either before or after this meeting took place.
385. The SPO has not presented any evidence that **SELIMI** was present during the 23 July 1998 GS meeting where P00643 were approved and the fighting in Rahovec/Orahovac was discussed.<sup>966</sup> Neither W04401 nor W04752 knew which GS members were present during this meeting.<sup>967</sup> W04752 testified that at the

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<sup>959</sup> P01408,p.SPOE00227859.

<sup>960</sup> W04752,10/07/2024,T.17964-17965.

<sup>961</sup> W04752,10/07/2024,T.17963.

<sup>962</sup> W04752,10/07/2024,T.17963-17964.

<sup>963</sup> See *infra*, para.715.

<sup>964</sup> P00008; P00641; W04752,17/07/2025,T.18393.

<sup>965</sup> [REDACTED]; P01092,p.SPOE00230873; F00709/A01,para.72.

<sup>966</sup> P00643,pp.SPOE00229213-SPOE00229214.

<sup>967</sup> W04401,02/12/2024,T.23145; W04752,01/07/2024,T.17387.

time of this meeting there was fighting going on at the defence lines between Rahovec/Orahovac and Malishevë/Mališevo.<sup>968</sup> The SPO presented no evidence that **SELIMI** was present during a 16 August 1998 GS meeting, where “special war” or “FARK officers [...] represented by Tahir ZEMAJ” were allegedly mentioned.<sup>969</sup>

386. After ZYRAPI’s return to Kosovo in November 1998 and his appointment as Chief of Staff of the KLA GS, often the brevity of the time between the scheduling of a meeting and its occurrence made it difficult for **SELIMI** to attend.<sup>970</sup> Meetings proceeded without **SELIMI**, indicating **SELIMI**’s irrelevance to GS decision-making.

387. **SELIMI** also stated to the SPO that from 21 September 1998 onwards he was involved in the most severe fighting that ever happened in Kosovo<sup>971</sup> and was also taking part in the fighting in several offensives and battles.<sup>972</sup>

388. J.KRASNIQI’s book makes no mention of a specific role exercised by **SELIMI** during a visit to the Shala and Llap OZs in August 1998.<sup>973</sup> W04746 recalled that the GS delegation comprised J.KRASNIQI and ZYRAPI.<sup>974</sup> When presented with P00187, listing **SELIMI** as part of the delegation,<sup>975</sup> W04746 testified that if **SELIMI** was present, W04746 did not recall having had any discussion during this time with him.<sup>976</sup> W04746’s evidence highlights **SELIMI**’s limited *de facto*

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<sup>968</sup> W04752,17/07/2024,T.18385.

<sup>969</sup> F00709/A01,para.81; P00643,p.SPOE00229214.

<sup>970</sup> W04752,10/07/2024,T.17964-17965.

<sup>971</sup> P00763.7,p.15.

<sup>972</sup> [REDACTED].

<sup>973</sup> P00189\_ET.1,p.U015-8859.

<sup>974</sup> W04746,12/07/2023,T.5531.

<sup>975</sup> P00187,p.SPOE00055819.

<sup>976</sup> W04746,12/07/2023,T.5532-5533.

influence among GS members. There is no evidence that **SELIMI** was present during a second visit to Shala and Llap OZs in late October 1998.<sup>977</sup>

389. While W04752 confirmed being present at both meetings on 12 and 13 November 1998<sup>978</sup> and that **SELIMI** and others were there,<sup>979</sup> there is no documentary evidence to support this. 4D00011 does not list **SELIMI**'s name either as a participant or an appointee.<sup>980</sup> **SELIMI**'s name is also absent from the notes of the 13 November 1998 when Radio Free Kosova and Kosovapress were formed.<sup>981</sup>
390. W04752 stated there was a GS meeting in November 1998 where collaborators were discussed,<sup>982</sup> leading to his 16 December 1998 order related to detentions.<sup>983</sup> W04752 told the SPO that the heads of the departments, **SELIMI**, were present during this meeting.<sup>984</sup> W04752 stated at the meeting that he had consulted SYLA.<sup>985</sup> No evidence was provided that W04752 consulted **SELIMI**.
391. On 2 December 1998, an order on behalf of the GS instructed OZ Commands to issue orders to MP to carry out arrests of certain people.<sup>986</sup> W04752 was unaware of this document,<sup>987</sup> as was W04401.<sup>988</sup> The SPO has not presented any evidence of this order being discussed at any GS meeting, nor of **SELIMI** being explicitly aware of the underlying issues that led to this order being passed, nor any evidence that he specifically discussed this issue or took any position on it.

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<sup>977</sup> P00189\_ET.1,p.U015-8863.

<sup>978</sup> W04752,01/07/2024,T.17394-17395.

<sup>979</sup> W04752,01/07/2024,T.17395-17396.

<sup>980</sup> 4D00011.

<sup>981</sup> 4D00011.

<sup>982</sup> [REDACTED].

<sup>983</sup> [REDACTED]; P00741\_ET.3.

<sup>984</sup> [REDACTED].

<sup>985</sup> [REDACTED]; [REDACTED].

<sup>986</sup> [REDACTED].

<sup>987</sup> [REDACTED].

<sup>988</sup> W04401,02/12/2024,T.23058.

392. The SPO produced various handwritten notes/agenda purportedly pertaining to a GS meeting dated 29 December 1998, where B.KUQI was discussed in only one version of the meeting notes.<sup>989</sup> There is no reference to **SELIMI** in these notes and as aptly stated by W04752 in relation to a separate meeting, “if his name is not here, it means he wasn’t [there]”.<sup>990</sup>
393. Evidence relating to GS meetings between January and March 1999 also support the position that **SELIMI**’s role was limited during this period.
394. **SELIMI** is listed as a participant only in the 5 January 1999 meeting and his name is placed at the end of the record of the 21 January 1999 meeting<sup>991</sup> in handwritten notes for that period.<sup>992</sup>
395. W04752 confirmed being present during the 21 January 1999 meeting with zone commanders.<sup>993</sup> W04752 testified that the 21 January 1999 notes record some, not all the complaints expressed by the zone commanders.<sup>994</sup> With regards to **SELIMI**’s presence at this meeting, W04752 testified “I can’t recall exactly. But most certainly, yes.”<sup>995</sup>

#### **4. Inspector-General had limited competence and resources**

##### **a. Inspector-General did not encompass discipline**

396. The SPO has not presented any rule, regulation or official policy that the post of Inspector-General included the responsibility for discipline or the inspection of prisons or detention facilities.

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<sup>989</sup> P01408; P01104.

<sup>990</sup> W04752,10/07/2024,T.17965.

<sup>991</sup> P003781.2,pp.SPOE00226468,SPOE00226474.

<sup>992</sup> P003781.2.

<sup>993</sup> P03781.2,p.SPOE00226473; W04752,10/07/2024,T.17970-17974.

<sup>994</sup> W04752,10/07/2024,T.17974.

<sup>995</sup> W04752,10/07/2024,T.17974.

397. W04739 claimed that [REDACTED].<sup>996</sup> W04739's basis for this allegation was [REDACTED].<sup>997</sup> The disciplinary regulations of the KLA make no mention of the Inspector-General in the enforcement of discipline,<sup>998</sup> highlighting the lack of credibility inherent in W04739's claim. [REDACTED].<sup>999</sup>
398. W04752 claimed that one duty of the Inspector-General was to inform the commander "if there was a lack of discipline".<sup>1000</sup> W04752 stated that for a sector to be fully operational there had to be a framework of rules to lay out the tasks and responsibilities of each unit, something the KLA never managed to achieve.<sup>1001</sup> W04752 agreed, referring to the Disciplinary Regulations for the KLA,<sup>1002</sup> that **SELIMI** did not have disciplinary authority as he was not the head of a directorate, with there was no team under his supervision<sup>1003</sup> and that such a thing was only held by brigade and zone commanders as well as the general commander.<sup>1004</sup> While W04752 suggested the Inspector-General had the authority to exercise control,<sup>1005</sup> he did not substantiate this comment and it was not pursued by the SPO in re-direct examination. W04769 also accepted that the inspector-general was not listed as an authority that could issue disciplinary measures.<sup>1006</sup>
399. This absence of responsibility for discipline is reinforced by 3D00027, a concept document outlining the tasks of the Inspector-General.<sup>1007</sup> W04752 had not seen

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<sup>996</sup> [REDACTED].

<sup>997</sup> [REDACTED].

<sup>998</sup> [REDACTED].

<sup>999</sup> [REDACTED].

<sup>1000</sup> [REDACTED].

<sup>1001</sup> W04752,10/07/2024,T.17948.

<sup>1002</sup> [REDACTED].

<sup>1003</sup> W04752,10/07/2024,T.17949.

<sup>1004</sup> W04752,10/07/2024,T.17949.

<sup>1005</sup> W04752,10/07/2024,T.17949.

<sup>1006</sup> [REDACTED].

<sup>1007</sup> 3D00027.

the document prior to testimony,<sup>1008</sup> but recognised it as a translation of a document originating “from abroad” in early 1999 describing the duties and responsibilities of the “inspectorate”,<sup>1009</sup> likely produced around February 1999.<sup>1010</sup> 3D00027 refers only to operation-oriented inspections and contains no reference to the Inspector-General’s authority to arrest and/or detain people or any reference to matters related to detention.<sup>1011</sup>

400. Other evidence relating to the role of **SELIMI** during the time he was the Inspector-General in relation to discipline is limited. W04752 confirmed requesting<sup>1012</sup> P01360, a document signed by Shaban DRAGAJ, Chief of staff of 121 Brigade, addressed to the Chief of GS, dated 30 January 1999, noting *inter alia* poor discipline and extraordinary incidents within 121 Brigade, as well as his own recommendations.<sup>1013</sup> W04752 clarified that he requested only the information related to the use of brigade 121 units in fighting around Reçak/Račak, with the rest being provided by Shaban DRAGAJ on his own initiative.<sup>1014</sup>
401. W04752 asked Drini and H.SHALA, to undertake certain disciplinary measures in response to the problems outlined in P01360,<sup>1015</sup> explaining that although **SELIMI** “was also involved to facilitate the taking of the adequate measures [...] he did not have any particular or specific task in that issue”.<sup>1016</sup>
402. According to W04752, those units were then investigated by the legal department, the Inspector-General department, namely DOBRUNA and

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<sup>1008</sup> W04752,10/07/2024,T.17957.

<sup>1009</sup> W04752,10/07/2024,T.17958-17959.

<sup>1010</sup> W04752,10/07/2024,T.17959-17060.

<sup>1011</sup> W04752,10/07/2024,T.17958-17959.

<sup>1012</sup> W04752,10/07/2024,T.17953.

<sup>1013</sup> P01360,p.U000-3311[REDACTED].

<sup>1014</sup> W04752,10/07/2024,T.17953.

<sup>1015</sup> [REDACTED]; W04752,10/07/2024,T.17953-17954.

<sup>1016</sup> W04752,10/07/2024,T.17954.

**SELIMI**, as well as by the commanders.<sup>1017</sup> No further evidence of what role, if any, **SELIMI** played in any such investigation was presented by W04752.

**b. Inspector-General carried out limited inspections**

403. Evidence on inspections allegedly carried out by **SELIMI** is vague, limited and fails to demonstrate that **SELIMI** exercise any specific authority through them.
404. [REDACTED] stated that **SELIMI**'s duties were to inspect and review KLA units, which he claimed happened at least once a week, and that **SELIMI** had a right to inspect any level in the KLA hierarchy.<sup>1018</sup> However, [REDACTED] clarified that **SELIMI** did not make weekly visits<sup>1019</sup> and that during these "inspections", he was accompanied by other GS Members, [REDACTED],<sup>1020</sup> adding that all GS members would regularly visit KLA units.<sup>1021</sup> W04744, [REDACTED], did not meet **SELIMI** during his time as Pashtrik OZ chief of staff,<sup>1022</sup> and was not aware that **SELIMI** ever came to Nishor/Nišor in this period, [REDACTED].
405. [REDACTED]<sup>1023</sup> but conceded that he was not in attendance at any of these visits and had merely speculated based on the movements of unidentified troops.<sup>1024</sup>
406. [REDACTED] evidence that **SELIMI**'s tasks included control/inspection of units was based on his subjective perception of **SELIMI**'s formal title as

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<sup>1017</sup> [REDACTED].

<sup>1018</sup> [REDACTED].

<sup>1019</sup> [REDACTED].

<sup>1020</sup> [REDACTED].

<sup>1021</sup> [REDACTED].

<sup>1022</sup> W04744,25/06/2024,T.17114.

<sup>1023</sup> [REDACTED].

<sup>1024</sup> [REDACTED].

Inspector-[REDACTED]<sup>1025</sup> [REDACTED].<sup>1026</sup> [REDACTED].<sup>1027</sup> [REDACTED] stated that **SELIMI** introduced himself as Inspector-General [REDACTED].<sup>1028</sup> However, [REDACTED] did not know the structure of the inspectorate general or its organigramme and did not know anyone else in the inspectorate general other than **SELIMI**.<sup>1029</sup>

407. [REDACTED] initially stated that **SELIMI**'s tasks were inspecting battlegrounds, military service conditions, soldiers, bases, and locations,<sup>1030</sup> and that **SELIMI** would move around the areas.<sup>1031</sup> W04765 clarified that these were his own assumptions, as W04765 did not know whether **SELIMI** conducted any routine visits,<sup>1032</sup> clarifying that "spontaneous" was more apt a description as he only saw **SELIMI** once.<sup>1033</sup> W04765 confirmed **SELIMI** did not introduce himself as the inspector when they met or seek to carry out any "inspection".<sup>1034</sup>
408. Other SPO evidence also confirms that inspections of KLA soldiers were being undertaken independently at the Zone level and below, such as the battalion level,<sup>1035</sup> zone commanders<sup>1036</sup> as well as ZYRAPI, the Operational Directorate, as well as Zone Commanders and Zone Staff.<sup>1037</sup>
409. The SPO's evidence as to **SELIMI**'s role as Inspector-General and the extent to which he performed "inspections" in reality, was based on a limited number of interactions in the Pashtrik Zone and assumptions made by various witnesses

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<sup>1025</sup> [REDACTED].

<sup>1026</sup> [REDACTED].

<sup>1027</sup> *See supra*, para.404.

<sup>1028</sup> [REDACTED].

<sup>1029</sup> [REDACTED].

<sup>1030</sup> [REDACTED].

<sup>1031</sup> [REDACTED].

<sup>1032</sup> W04765,04/12/2023,T.10406.

<sup>1033</sup> W04765,05/12/2023,T.10513.

<sup>1034</sup> W04765,05/12/2023,T.10514.

<sup>1035</sup> W04765,16/11/2023,T.10306-10307.

<sup>1036</sup> W04765,16/11/2023,T.10307.

<sup>1037</sup> F00709/A01,para.86; P00617,p.SPOE00228801-SPOE00228802; [REDACTED]. *See also* P03748.

as to how things should ideally function in an army. While **SELIMI** travelled around Kosovo the SPO has failed to substantiate the extent and frequency to which this occurred, as well as any specificity about his reporting duties or reports received by him, nor how this proved his authority within the KLA.

**c. Inspector-General had no staff, subordinates or reporting**

410. Unlike directorates, the General Inspectorate only consisted of **SELIMI** and had no zone-level representatives
411. There was no office allocated to Inspector-General<sup>1038</sup> and **SELIMI** had no directorate or department under his authority.<sup>1039</sup> As described by W04765, there was no inspectorate; only a person called 'Inspector'.<sup>1040</sup>
412. W04752 initially told the SPO that **SELIMI** had staff when he became Inspector-General,<sup>1041</sup> as he was accompanied by RRACI and AGUSHI<sup>1042</sup> who had up to 15 soldiers with him,<sup>1043</sup> but clarified that the soldiers were with AGUSHI, not **SELIMI**.<sup>1044</sup> RRACI was not working within the Inspectorate General, simply travelling with and driving **SELIMI**.<sup>1045</sup> AGUSHI had no role either with the Inspector-General or the GS.<sup>1046</sup> **SELIMI** being in the company of soldiers was a reflection of his visits to the front lines, as opposed to an indication of hierarchy.<sup>1047</sup>

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<sup>1038</sup> W04752,10/07/2024,T.17941-17942;W04403,26/03/2025,T.25927-25928.

<sup>1039</sup> W04752,10/07/2024,T.17944;W04403,26/03/2025,T.25929.

<sup>1040</sup> W04765,16/11/2023,T.10308.

<sup>1041</sup> [REDACTED].

<sup>1042</sup> [REDACTED].

<sup>1043</sup> [REDACTED].

<sup>1044</sup> W04752,10/07/2024,T.17942-17943.

<sup>1045</sup> W04752,10/07/2024,T.17942.

<sup>1046</sup> W04752,10/07/2024,T.17942-17943.

<sup>1047</sup> W04752,10/07/2024,T.17943-17944.

413. W04739 claimed that [REDACTED]<sup>1048</sup> [REDACTED].<sup>1049</sup>
414. The only documents tendered by the SPO through the bar table portray an idealised version of an “inspectorate”,<sup>1050</sup> the existence of which is not supported by the evidence. Other notes refer to an undated request to bring in various staff and lower-level inspectors;<sup>1051</sup> with no evidence this was ever fulfilled.
415. There was no requirement to report to the Inspector-General as there was no line of reporting.<sup>1052</sup>
416. Despite W04403’s claim that the inspector’s duty was to supervise all activities of the units in Kosovo<sup>1053</sup> he clarified that he was unsure to what extent this was ever possible.<sup>1054</sup>
417. W04403 never reported directly to **SELIMI** as the Inspector-General<sup>1055</sup> and had no relationship with him after leaving the GS in January 1999.<sup>1056</sup>
418. Two reports from the Pashtrik zone were tendered by the SPO submitted or copied to the Inspector-General. None of these reports establish any reporting lines or clarify the authority of the Inspector-General.
419. [REDACTED].<sup>1057</sup> There is no evidence it was received by the Inspector-General. W03873 was unaware of the existence of the letter and the complaint was never raised with him by either ZKZ or **SELIMI**.<sup>1058</sup> W03873 did not have a reporting

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<sup>1048</sup> [REDACTED].

<sup>1049</sup> [REDACTED]; [REDACTED].

<sup>1050</sup> P03749.

<sup>1051</sup> [REDACTED].

<sup>1052</sup> W04765,16/11/2023,T.10308.

<sup>1053</sup> W04403,24/03/2025,T.25724; W04403,26/03/2025,T.25922-25923.

<sup>1054</sup> W04403,24/03/2025,T.25724.

<sup>1055</sup> W04403,26/03/2025,T.25927.

<sup>1056</sup> W04403,26/03/2025,T.25927.

<sup>1057</sup> [REDACTED].

<sup>1058</sup> W03873,25/11/2024,T.22614.

relationship with **SELIMI**<sup>1059</sup> and although he had heard of his role as Inspector-General, the two were not in contact.<sup>1060</sup> W03873 had no knowledge of when **SELIMI** became Inspector-General but clarified that the zones were not notified when people changed posts in the GS.<sup>1061</sup> W03873 testified that the Pashtrik OZ did not have anything documented as to the dates of appointments of each and every GS member.<sup>1062</sup>

420. W04765, who helped draft P00650\_ET.2, p.3, testified that the document was only given to ZYRAPI as chief of staff, who acted as a general manager who would cooperate with the other addressees, who were included only to make sure the report reached someone, and did not allege there was any reporting duty to the Inspector-General or indicate any other reason for his inclusion.<sup>1063</sup> W04765 reiterated that he did not know **SELIMI** was Inspector-General at this time.<sup>1064</sup>

#### **d. Inspector-General had no authority over specific units**

421. W04752 was shown P00901, a notebook on the special unit of the KLA GS, stating that “The special unit has no right to arrest anybody” which he signed.<sup>1065</sup> W04752 recalled giving such ‘instruction’ as before, the reconnaissance unit had been used by the Inspector-General **SELIMI** in a village of Pashtrik OZ.<sup>1066</sup> The reconnaissance unit had not been used for an arrest but to enforce a disciplinary measure, for which MP units should have been used instead.<sup>1067</sup>

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<sup>1059</sup> W03873,26/11/2024,T.22776.

<sup>1060</sup> W03873,27/11/2024,T.22838.

<sup>1061</sup> W03873,27/11/2024,T.22838.

<sup>1062</sup> W03873,27/11/2024,T.22838.

<sup>1063</sup> W04765,16/11/2023,T.10310-10311.

<sup>1064</sup> W04765,16/11/2023,T.10311-10312.

<sup>1065</sup> P00901,p.U0006967; W04752,02/07/2024,T.17442-17443.

<sup>1066</sup> W04752,02/07/2024,T.17443.

<sup>1067</sup> W04752,02/07/2024,T.17443.

422. The Inspector-General took this measure based on instructions given to him by the General or Deputy Commander.<sup>1068</sup> **SELIMI** did not have a special unit under him and had no right to use the reconnaissance unit,<sup>1069</sup> thus the measure was extraordinary and no other evidence of similar actions undertaken by **SELIMI** was presented.
423. The SPO produced no credible evidence that the Eye of the Eagle, reported directly to the GS<sup>1070</sup> or to **SELIMI**.
424. W03873 claimed that he and HALITJAHA created the Eye of the Eagle and did not know whether the GS was informed of it.<sup>1071</sup> Likewise, W04765 testified that Eye of the Eagle was set up locally within Pashtrik OZ according to the common plan that W04765 drafted with SINANI.<sup>1072</sup> N.KRYEZIU was appointed by SINANI as its commander and reported to SINANI, or in his absence, to W04765.<sup>1073</sup>
425. [REDACTED]<sup>1074</sup> [REDACTED],<sup>1075</sup> but probed on his basis of this claim, responded only that it was his assumption, [REDACTED].<sup>1076</sup> [REDACTED],<sup>1077</sup> but saw no proof of this, never witnessed any such orders being given, had no personal knowledge of the veracity of these claims<sup>1078</sup> (if indeed they were ever made) [REDACTED].<sup>1079</sup>

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<sup>1068</sup> W04752,16/07/2024,T.18372.

<sup>1069</sup> W04752,10/07/2024,T.17945-17947.

<sup>1070</sup> F00709/A01,para.238.

<sup>1071</sup> W03873,25/11/2024,T.22621.

<sup>1072</sup> W04765,15/11/2023,T.10180.

<sup>1073</sup> [REDACTED], referring to [REDACTED].

<sup>1074</sup> [REDACTED].

<sup>1075</sup> [REDACTED]; [REDACTED].

<sup>1076</sup> [REDACTED].

<sup>1077</sup> [REDACTED].

<sup>1078</sup> [REDACTED]; [REDACTED].

<sup>1079</sup> [REDACTED].

426. [REDACTED],<sup>1080</sup> noting that there were undisciplined soldiers who claimed to be members of units to avoid accountability.<sup>1081</sup>
427. [REDACTED], [REDACTED]<sup>1082</sup> [REDACTED].<sup>1083</sup> [REDACTED].<sup>1084</sup>
428. [REDACTED].<sup>1085</sup> [REDACTED].<sup>1086</sup> Finally, [REDACTED] confirmed that as soon as SINANI was appointed zone commander, the Eye of the Eagle unit started reporting to him.<sup>1087</sup>
429. [REDACTED]. There is no evidence of reporting to **SELIMI** and, on the contrary, substantial evidence that this unit only reported to SINANI, if anyone.

**e. Inspector-General did not instruct, inspect, supervise or direct MP units**

430. The SPO failed to establish that **SELIMI**, *inter alia* instructed, inspected, supervised and directed MP units.<sup>1088</sup>
431. P03781.2, minutes of a meeting purported to occur on 5 January 1999 merely mentions **SELIMI** among the “reporting” participants<sup>1089</sup> and does not contain any indication of what, if anything, **SELIMI** was reporting on. Moreover, the only reference to the MP states that they “should consult those in charge with the civil administration in the zones during its tax collection task”<sup>1090</sup> which, in

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<sup>1080</sup> [REDACTED]; [REDACTED].

<sup>1081</sup> [REDACTED].

<sup>1082</sup> [REDACTED].

<sup>1083</sup> [REDACTED].

<sup>1084</sup> [REDACTED].

<sup>1085</sup> [REDACTED].

<sup>1086</sup> [REDACTED].

<sup>1087</sup> [REDACTED].

<sup>1088</sup> F00709/A01,para.111(c).

<sup>1089</sup> P03781.2,p.SPOE00226468.

<sup>1090</sup> P03781.2,p.SPOE00226468.

fact, reinforces that MP was ultimately reporting to the zone command and that zone command was the decision-making authority in relation to such queries.

432. **SELIMI** was not involved in the appointment of MP commanders. Despite [REDACTED],<sup>1091</sup> [REDACTED].<sup>1092</sup> [REDACTED].<sup>1093</sup>
433. Handwritten notes, which the SPO does not assert were drafted by **SELIMI** and has not led evidence to substantiate such an assertion and which the Defence contests, relied by the SPO<sup>1094</sup> do not provide any clarity or support the allegation.<sup>1095</sup> The notes do not clarify what arrests or complications are being addressed, which regulations were received, by whom, or even who prepared or issued them.<sup>1096</sup> Even though this record was put to W01493, he could not recall a visit by the KLA GS to Nerodime Zone command at that time and did not provide any information on the relevant extract.<sup>1097</sup>
434. Further, [REDACTED], also relied upon by the SPO to support **SELIMI**'s authority over MP units<sup>1098</sup> consists of five brief lines and does not provide any clarity on the circumstances of when it was taken. No evidence has been led by the SPO on authorship.

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<sup>1091</sup> [REDACTED].

<sup>1092</sup> [REDACTED].

<sup>1093</sup> [REDACTED].

<sup>1094</sup> F00709/A01, paras.72,86,111(c),244.

<sup>1095</sup> [REDACTED].

<sup>1096</sup> [REDACTED].

<sup>1097</sup> W01493,05/11/2024,T.21959-21961.

<sup>1098</sup> [REDACTED].

**f. Other evidence relating to Inspector-General's role and authority is ambiguous and limited**

**i. Chaiman of the Delimitation Commission and other ad hoc issues**

435. The Boundary Commission chaired by **SELIMI** in early January 1999 had a specific and limited role that was neither indicative of a wider authority for **SELIMI** over the KLA, nor crucial to the functioning of the army.<sup>1099</sup>
436. All boundaries had been established by January 1999 and the Boundaries Commission had only dealt with discrete issues between individual zones.<sup>1100</sup> Being part of this Commission did not come automatically as part of **SELIMI**'s general authority; and **SELIMI** required the appointment of a commission.<sup>1101</sup>
437. The Operational Directorate and its officers drafted the maps for the divisions of the zones, with maps, according to the terrain of the OZs<sup>1102</sup> and this work ended in mid-January 1999.<sup>1103</sup> W04752 confirmed that the boundary commission in January 1999 was limited in its remit and he did not see, nor did the SPO present, any other reports of its kind.<sup>1104</sup> Despite claiming that the task of the Boundary Commission was important,<sup>1105</sup> [REDACTED] could not point to any work it carried out other than in Pashtrik.<sup>1106</sup> [REDACTED] did not give coherent reasons for the need of this Commission and did not know what, if anything, the commission did in relation to other delimitation issues.<sup>1107</sup>

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<sup>1099</sup> The Defence notes the allegation regarding the purported meeting in Likoc/Likovac in July 1998 regarding zone boundaries in F00709/A01, para.220. This is addressed in relation to the role of Likoc/Likovac.

<sup>1100</sup> W04752,10/07/2024,T.17955-17956; W04752, 01/07/2024,T.17400-17401.

<sup>1101</sup> W04752,10/07/2024,T.17955.

<sup>1102</sup> [REDACTED].

<sup>1103</sup> [REDACTED].

<sup>1104</sup> W04752,10/07/2024,T.17956-17957.

<sup>1105</sup> [REDACTED].

<sup>1106</sup> [REDACTED].

<sup>1107</sup> [REDACTED].

438. P00623 significantly overstates its importance.
439. Essentially, the issue addressed by the Boundary Commission was one discrete dispute in relation to which Brigade maintained authority over a particular unit.<sup>1108</sup> As such, the decision appointing **SELIMI** to Chair this Commission<sup>1109</sup> significantly overstates its importance. This highlights the significant dangers of the SPO relying on documentary evidence without contextualisation and explanation from witnesses who were actually involved as it has done throughout its case.
440. Similarly, in relation to the reference to the Inspector-General's involvement in the Travel-permit project,<sup>1110</sup> the SPO produced no evidence on what it entailed or what **SELIMI**'s role in it was.

ii. Handwritten notes

441. The SPO has produced no evidence, expert or otherwise, to substantiate that handwritten notes upon which it relies significantly, namely P00181,<sup>1111</sup> P00182,<sup>1112</sup> P01353<sup>1113</sup> or P01353<sup>1114</sup> were authored by **SELIMI**. The mere fact of documents being seized from **SELIMI**'s residence in 2020 is not dispositive of **SELIMI**'s authorship of these documents, his contemporaneous knowledge of the content of those documents, or even their existence at the relevant time.

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<sup>1108</sup> 1D00033,p.SPOE00226334,SPOE00226350; W01453,05/11/2024,T.21962-21964; [REDACTED]; [REDACTED].

<sup>1109</sup> P00623.

<sup>1110</sup> P03781.2,p.SPOE00226470.

<sup>1111</sup> F00709/A01,paras.111(c)(xi),212,420.

<sup>1112</sup> F00709/A01,paras.111(c)(xi).

<sup>1113</sup> F00709/A01,para.111(c)(v).

<sup>1114</sup> F00709/A01,para.111(c)(v).

442. P00181 includes different handwriting and at least three different paper types used in the collection of pages<sup>1115</sup> and despite appearing to refer to Remi,<sup>1116</sup> W04746 refused to comment on it as an “unclear piece of handwriting whose origin is unknown”.<sup>1117</sup>
443. W01453 could not offer any comment on the letters and symbols highlighted in 1D00033,<sup>1118</sup> nor recall giving a speech and a detailed report in Mollopolcë/Mullopolc as recorded therein.<sup>1119</sup> W01453 affirmed that **SELIMI** was only present during one oath ceremony in Jezerc/Jezerce as fighting ensued soon after.<sup>1120</sup>
444. Part of P00181 relied upon by the SPO<sup>1121</sup> appears to relate to a meeting of 27 October 1998 in Podujevë/Podujevo,<sup>1122</sup> yet the SPO did not establish that **SELIMI** attended this meeting. W04758 did not identify **SELIMI** as being among GS members to the Llap zone in October 1998<sup>1123</sup> or was the author of the notes.<sup>1124</sup> No other evidence confirms **SELIMI**'s presence.
445. P000182 similarly contains different handwriting, was not shown to any witnesses during trial and the SPO did not explain its relevance in relation to **SELIMI** when seeking admission.<sup>1125</sup> No conclusions as to the date, location or purpose of these notes can be drawn.

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<sup>1115</sup> P00181, *compare* SPOE00226662-SPOE00226664 with SPOE00226665 and SPOE000226666-SPOE00226674.

<sup>1116</sup> [REDACTED].

<sup>1117</sup> W04746,13-14/07/2023,T.5626,5746.

<sup>1118</sup> [REDACTED]; W01453,05/11/2024,T.21958-21959.

<sup>1119</sup> [REDACTED]; W01453,05/11/2024,T.21960-21961.

<sup>1120</sup> W01453,05/11/2024,T.21957.

<sup>1121</sup> P00181,p.SPOE00226674.

<sup>1122</sup> P00181,p.SPOE00226666.

<sup>1123</sup> [REDACTED]. [REDACTED].

<sup>1124</sup> W04758,23/10/2024,T.21052-21060. W04758 appears to have also not identified the handwriting contained in P00181.

<sup>1125</sup> F01387/A02,items.262,263. *See also*,F02620/A01,item.7.

iii. Drini

446. The Panel held that the relationship between Drini and the KLA leadership could be relevant to establishing material facts including as regards the power and authority of the KLA GS and some of its members<sup>1126</sup> but regarded evidence on Drini's murder as falling outside the charges.<sup>1127</sup>
447. The SPO's allegation that Drini was replaced as Pashtrik OZ commander in early spring 1999,<sup>1128</sup> at a meeting chaired by S.SELIMI as General Commander and led by LIMAJ and **SELIMI**,<sup>1129</sup> is undermined by a lack of consistent evidence. [REDACTED],<sup>1130</sup> [REDACTED],<sup>1131</sup> [REDACTED],<sup>1132</sup> W04744,<sup>1133</sup> and W04752<sup>1134</sup> all give different accounts on this issue.
448. Neither [REDACTED] nor W04752 ascribed **SELIMI** a specific role in Drini's removal. [REDACTED] accepted that he did not know if **SELIMI** had any reason to be involved in the replacement<sup>1135</sup> whereas W04752 recognized that he was not aware of the exact procedure that was followed.<sup>1136</sup> W04744 also accepted that he did not know who from the GS was responsible for these changes and why SINANI was appointed to replace these commanders.<sup>1137</sup>
449. Replacement of Drini had justifications. SPO witnesses testified to a variety of issues with the Pashtrik OZ command, resulting even in reports on this issue

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<sup>1126</sup> F01700,para.43.

<sup>1127</sup> F01700,para.43.

<sup>1128</sup> F00709/A01,para.231.

<sup>1129</sup> F00709/A01,para.231.

<sup>1130</sup> [REDACTED].

<sup>1131</sup> [REDACTED].

<sup>1132</sup> [REDACTED].

<sup>1133</sup> [REDACTED].

<sup>1134</sup> [REDACTED].

<sup>1135</sup> [REDACTED].

<sup>1136</sup> W04752,16/07/2024,T.18333-18334.

<sup>1137</sup> [REDACTED].

being addressed to the GS.<sup>1138</sup> SINANI's performance had previously been commended, even by ZYRAPI.<sup>1139</sup> Even after he was purportedly removed, Drini nevertheless continued issuing various orders in his capacity as Pashtrik OZ Commander unimpeded.<sup>1140</sup>

450. Drini was then promoted to the GS<sup>1141</sup> and leadership of the Military Academy,<sup>1142</sup> fitting Drini's prior experience,<sup>1143</sup> which was the highest position Drini could have in his military career<sup>1144</sup> given the vital need for training and organisation of the KLA due to the war's expected duration<sup>1145</sup> and also on Operation Arrow.<sup>1146</sup>

451. The SPO's claim of propaganda against Drini within the KLA and media for supporting FARK<sup>1147</sup> are unsubstantiated. W04752 only became aware of propaganda against Drini later on and did not know who from the GS would spread such disinformation.<sup>1148</sup> [REDACTED],<sup>1149</sup> [REDACTED].<sup>1150</sup> [REDACTED].<sup>1151</sup>

#### **D. SELIMI did not organise or oversee an "MPO police"**

452. Contrary to the SPO's allegations, no civilian police force was established in April 1999. After June 1999, KLA MP remained under the command and within the established structures of the KLA, under the control of respective zone

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<sup>1138</sup> [REDACTED]; [REDACTED]; W04765,16/11/2023,T.10241; [REDACTED]; [REDACTED]; W04752,03/07/2024,T.17496.

<sup>1139</sup> [REDACTED].

<sup>1140</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1141</sup> [REDACTED].

<sup>1142</sup> [REDACTED].

<sup>1143</sup> [REDACTED].

<sup>1144</sup> [REDACTED].

<sup>1145</sup> [REDACTED].

<sup>1146</sup> [REDACTED].

<sup>1147</sup> F00709/A01,para.231.

<sup>1148</sup> [REDACTED].

<sup>1149</sup> [REDACTED].

<sup>1150</sup> [REDACTED].

<sup>1151</sup> [REDACTED].

commanders and not under **SELIMI**. No such thing as a “KLA/MPO” police was organised and overseen by **SELIMI**.<sup>1152</sup> The SPO failed to present any orders, acts, resolutions, decrees or decisions establishing that police, or any other department, were subordinated or otherwise controlled by **SELIMI**, or any evidence of reporting to **SELIMI** in the indictment period.<sup>1153</sup>

453. The SPO likewise failed to establish the role of the MPO and MinPO within the PGoK.<sup>1154</sup>

**1. SPO failed to present key evidence in support of its case**

454. The Defence repeatedly objected both to the admission of witness evidence without cross-examination and the wholesale admission of un-contextualised documentary evidence from the bar table relating to the MPO.<sup>1155</sup>

455. In admitting untested evidence, relating to “the actions of individuals alleged to have been subordinated to **SELIMI** for a time [in the Ministry for Public Order]”, the Panel noted its expectation that the SPO “establish the continued existence and functioning of the military police during the period from June 1999 and September 1999 and its involvement in the commission of crimes [...] to the applicable standard of proof”. The Panel underlined that it “[expects] that, if the SPO pursues such a case, *it will call evidence that the Defence will be able to challenge on that point*”,<sup>1156</sup> something it failed to do.

456. The SPO called only one MPO employee, W04758, asking him very few questions concerning its function when interviewed<sup>1157</sup> and none when he appeared for testimony. The SPO thus did not attempt to challenge answers

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<sup>1152</sup> F00709/A01, paras.151-152.

<sup>1153</sup> F00709/A01, paras.150-155.

<sup>1154</sup> F00709/A01, para.152.

<sup>1155</sup> E.g. F01603, para.159; F03213, para.9; F03312, para.20; F03191COR, para.133.

<sup>1156</sup> F01603, para.159 [emphasis added].

<sup>1157</sup> P1755.9, pp.33-39; P1755.10, pp.1-8.

given by him in his interview which are unfavourable to its case against **SELIMI**. No other witness with actual knowledge of MPO structure or operation was heard by the Panel.

457. Almost all MPO exhibits were admitted through the bar table<sup>1158</sup> over Defence objections, that are still maintained.<sup>1159</sup> While the Panel took the view that “each and every exhibit or document [does not need to be] produced through a witness”,<sup>1160</sup> when hundreds of documents fall into this category this significantly reduces the weight that they should be afforded.<sup>1161</sup> Where documents are not specifically addressed, there is no concession that the SPO has proven the allegations it claims they support.

## **2. SELIMI did not assume responsibility for police in June 1999**

458. ÇEKU, not **SELIMI**, submitted P03926 to HARTZ. UNMIK was established by UNSCR 1244, adopted on 10 June 1999.<sup>1162</sup> UNMIK staff were not deployed to Kosovo until at least 12 June 1999.<sup>1163</sup> [REDACTED].<sup>1164</sup> [REDACTED]<sup>1165</sup> [REDACTED].<sup>1166</sup> P03926 is incorrectly dated and refers to 5 July 1999. Neither HARTZ nor ÇEKU were called as witnesses.

459. A 14 June 1999 “Communique”<sup>1167</sup> is unreliable. W04758 was unaware of this communique<sup>1168</sup> as was [REDACTED].<sup>1169</sup> It was neither mentioned by W02183,

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<sup>1158</sup> F03191COR, para.136(a)(iii), *admitting*: P03910; [REDACTED]; P03929-P03933; P03937-[REDACTED]; P03941; P03947; [REDACTED]; P03959-P03960; [REDACTED]; P04013.

<sup>1159</sup> F03145/A03.

<sup>1160</sup> F03213, para.9; F03312, para.20.

<sup>1161</sup> F03213, para.9; F03312, para.20.

<sup>1162</sup> 1D00078.

<sup>1163</sup> *See e.g.* P01968, paras.11,13.

<sup>1164</sup> [REDACTED].

<sup>1165</sup> *See e.g.* [REDACTED].

<sup>1166</sup> [REDACTED].

<sup>1167</sup> P00515\_ET.69/P00814\_ET.35. *See* F00709/A01, paras.151,618.

<sup>1168</sup> P01755.9, pp.34-35.

<sup>1169</sup> [REDACTED].

nor W02135, nor is it reported by any international organisation. No other communiqué was attributed to the MPO at any point. [REDACTED].<sup>1170</sup>

460. The communiqué does not state that the MPO controlled the KLA MP, irrespective of reference to a hypothetical police force and does not establish **SELIMI**'s authority over the police from June 1999.

461. P01948 was admitted as an associated exhibit to **SELIMI**'s SPO interview.<sup>1171</sup> The author was not called and the item was not shown to any other witness. The article is replete with unsourced assertions or sources identified in an overly vague manner, such as "top U.N. officials" or "police and former KLA officials",<sup>1172</sup> which prevent verification and confrontation. The article is [REDACTED].<sup>1173</sup> No other evidence was presented to verify the accuracy of the words attributed to **SELIMI**.<sup>1174</sup>

### 3. The function of the MPO and the actual authority of MinPO was not established

462. The SPO fails to establish either what, if any, authority was vested in MinPO as part of the PGoK, or the legal relationship between the MPO and any police or other bodies. The SPO failed to demonstrate acts by **SELIMI** which proved that he acted as a central controlling body for a Kosovo-wide "KLA/MPO" police, or any orders or reports to or from the MPO establishing such a role.

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<sup>1170</sup> [REDACTED].

<sup>1171</sup> Order,02/12/2024,T.23025-23027.

<sup>1172</sup> P01948.

<sup>1173</sup> [REDACTED].

<sup>1174</sup> See *supra*, para.80.

463. In April 1999, **SELIMI** was appointed MinPO of the PGoK.<sup>1175</sup> **SELIMI** did not attend the Rambouillet conference.<sup>1176</sup> [REDACTED].<sup>1177</sup> No evidence has been presented to the contrary.
464. The PGoK was established during the 78-day NATO bombing campaign of Kosovo.<sup>1178</sup> Most PGoK members left Kosovo during this period.<sup>1179</sup> No evidence was presented that between April and June 1999, the parameters of authority for the MPO and MinPO were explicitly defined by or discussed with **SELIMI**.
465. Following the KLA's entry into Prizren in mid-June 1999, [REDACTED].<sup>1180</sup> [REDACTED],<sup>1181</sup> he did not say that this would fall under **SELIMI**'s purview and this specific point was not pursued by the SPO.
466. [REDACTED].<sup>1182</sup> [REDACTED] ([REDACTED]<sup>1183</sup>) and [REDACTED].<sup>1184</sup>
467. [REDACTED].<sup>1185</sup> [REDACTED].<sup>1186</sup>
468. W04765 confirmed that the Zone structure remained intact throughout summer 1999, albeit with gradual changes as soldiers demobilised following the end of hostilities in June 1999.<sup>1187</sup> Contrary to the SPO's allegation, [REDACTED],<sup>1188</sup>

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<sup>1175</sup> 1D00070.

<sup>1176</sup> W02144,28/05/2024,T.16213.

<sup>1177</sup> [REDACTED].

<sup>1178</sup> 1D00070.

<sup>1179</sup> W04752,08/07/2024,T.17764.

<sup>1180</sup> [REDACTED].

<sup>1181</sup> [REDACTED].

<sup>1182</sup> [REDACTED].

<sup>1183</sup> [REDACTED].

<sup>1184</sup> [REDACTED].

<sup>1185</sup> [REDACTED].

<sup>1186</sup> [REDACTED].

<sup>1187</sup> W04765,16/11/2023,T.10329-10331.

<sup>1188</sup> F00709/A01,para.618,fn.2563 ; [REDACTED].

but refers to **SELIMI** [REDACTED],<sup>1189</sup> a reference to the role **SELIMI** had registering former KLA members for the KPS.<sup>1190</sup>

469. W04758 stated that there was no connection between MP and MPO at the time when the PGoK was installed and the discussions with UNMIK and OSCE to recruit new police forces began.<sup>1191</sup> W04758 didn't know where the MP took its orders from and stated that the MPs operated within the co-frame of the zones. The Ministry of Interior did not have police of its own.<sup>1192</sup>

**a. No "PU" was established in April 1999**

470. The SPO contends that concurrent with **SELIMI**'s April 1999 appointment, a "MPO police" body was established.<sup>1193</sup> This allegation is untrue.

471. P02525 is an inaccurate record of words spoken by **SELIMI** at the 2 August 1999 JIC meeting. Contrary to what is written [REDACTED].<sup>1194</sup>

472. No new police force was formed in April 1999. The Panel heard evidence from multiple witnesses at trial specifically addressing the structures of the KLA at around this specific time.<sup>1195</sup> No witness, or documentary evidence, supports the proposition that a new police force was formed. Restructuring efforts came to halt once NATO bombing began in March 1999, having a negative impact on ability to exercise command through a structure, exacerbated by damage to communication systems.<sup>1196</sup> It was difficult for the GS to oversee KLA units during the NATO bombing, let alone the newly-formed PGoK to effect any

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<sup>1189</sup> [REDACTED].

<sup>1190</sup> See *supra*, [REDACTED].

<sup>1191</sup> P1755.9, pp.37-38.

<sup>1192</sup> P01755.9, p.39.

<sup>1193</sup> F00709/A01, para.151.

<sup>1194</sup> [REDACTED].

<sup>1195</sup> E.g. [REDACTED], W04758, W04765, W04752.

<sup>1196</sup> W04752,08/07/2024,T.17762,-17765; W04408,06/09/2023,T.7450-7451; W02475,18/03/2024,T.13264; W04765,16/11/2023,T.10328.

change.<sup>1197</sup> Establishing new police from April 1999 would be impossible in those circumstances and no evidence of such efforts exists, because no such thing happened. This complete absence of substantive evidence reinforces that [REDACTED] does not accurately reflect the words spoken by **SELIMI**.

473. Minutes taken at any meeting are not a verbatim transcript. No Albanian version of [REDACTED] is admitted, despite having been made<sup>1198</sup> and no recordings of the meeting exist, thus preventing verification of the accuracy of **SELIMI**'s alleged words as recorded. **SELIMI** was not provided with a copy,<sup>1199</sup> thus could not have raised the error.

**b. Complex MPO structure and authority over police did not exist**

474. Documents purporting to delineate the MPO's structure do not substantiate the SPO's case. Numerous witnesses testified that the PGoK, established during an escalating conflict and sidelined in the post-conflict era, did not function as an effective government.<sup>1200</sup> As a corollary, the MPO was neither structured, disciplined or heavily regulated as would be expected within an established nation state, nor did it have the related supportive structures of government.

475. [REDACTED], handwritten and undated,<sup>1201</sup> states in vague and aspirational terms, that [REDACTED]. This is not probative of whether such "transformation"<sup>1202</sup> happened, much less it was ever under **SELIMI**'s control. No witness gave evidence about this document.

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<sup>1197</sup> W04752,08/07/2024,T.17765.

<sup>1198</sup> [REDACTED].

<sup>1199</sup> [REDACTED].

<sup>1200</sup> *E.g.*,1D00390,para.44; 1D00391,para.10(1); 1DW-003,16/09/2025,T.26779-26783.

<sup>1201</sup> [REDACTED]. *See* F00709/A01,para.151,*fn.*607.

<sup>1202</sup> [REDACTED].

476. P03787.1<sup>1203</sup> is incomplete,<sup>1204</sup> undated, its author unidentified and refers to an ill-defined, multi-phase project to take place over an indeterminate period,<sup>1205</sup> with no details of proposed implementation. No timelines are explained and MP are not listed under the MPO.<sup>1206</sup> No witness gave evidence about this document.
477. P03931 allegedly shows the “organisation and functionality” of the MPO<sup>1207</sup> and outlines what appears to be a highly complex structure under MinPO. Not only does no witness or documentary evidence support the existence of the organisation in P03931 but P03932 undermines the accuracy of P03931.<sup>1208</sup>
478. P03932 lists 36 employees, including minister and deputy minister, the majority of whom are either not ministry officers,<sup>1209</sup> or their job titles are unexplained.<sup>1210</sup> This document does not support the existence of anything close to the organisation depicted in P03931. W04758 is listed as an employee in P03932, yet the SPO made no attempt to clarify the discrepancy between it and P03931. W04758 stated that the MPO dealt with administrative matters,<sup>1211</sup> [REDACTED],<sup>1212</sup> which P03932 supports.
479. A similar organigram from P03787.1<sup>1213</sup> referring to “district level” police is annexed to [REDACTED],<sup>1214</sup> [REDACTED]. [REDACTED],<sup>1215</sup> and thus does not support the SPO’s case that such a structure existed. Moreover,

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<sup>1203</sup> P03787.1. *See*, [REDACTED].

<sup>1204</sup> P03787.1,pp.SPOE00228074,SPOE00228075.

<sup>1205</sup> P03787.1,p.SPOE00228063.

<sup>1206</sup>P03787.1,p.SPOE00228072.

<sup>1207</sup> [REDACTED].

<sup>1208</sup> [REDACTED]; P03932.

<sup>1209</sup> *E.g.*P03932, entries 16-18,20,28,32,36.

<sup>1210</sup> *E.g.*P03932, entries 9,11, 12,15,19,26.

<sup>1211</sup> P1755.9,p.39.*See* P03932.

<sup>1212</sup> [REDACTED].

<sup>1213</sup> P03787.1,p SPOE00228073.

<sup>1214</sup> [REDACTED].

<sup>1215</sup> [REDACTED].

[REDACTED].<sup>1216</sup> No witnesses were called by the SPO to substantiate any of the matters described in [REDACTED], or the structure depicted in the organigram. P03932 does not list any district police commanders being employed by the MPO.

480. P03939 and P03940, “Decrees” of the PGoK, are unsigned drafts referring to registration of addresses and the allocation of personal numbers respectively, with no legal effect or relevance, irrespective of the SPO’s speculation about the word “approved” written on P03940 and the unexplained significance it appears to place on the dates of each document.<sup>1217</sup> They shed minimal light on the role of the MPO and do not clarify any alleged relationship between the MPO and any police forces. The purported author of P03940 was not called as a witness and there is no indication that **SELIMI** was aware of the existence of either draft “decree”.
481. Contrary to the SPO’s submission, P03950 does not prove **SELIMI**’s authority over these police forces.<sup>1218</sup> There is no evidence about the circumstance in which P03950 was issued, that it was ever fulfilled, or that such a request was legally within MinPO’s authority, with there being no examples of similar requests on record. The listed recipient was not called as a witness by the SPO.
482. Other documents purported to be records of MPO financial transactions refute the SPO’s allegation in relation to P03950. P03932, addressed above,<sup>1219</sup> has no budget allowance for any regional police force. P03930 purporting to be an accounting ledger listing MPO transactions between 9 July and 12 November 1999<sup>1220</sup> has no record of any payment even approaching this amount being

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<sup>1216</sup> [REDACTED].

<sup>1217</sup> [REDACTED].

<sup>1218</sup> [REDACTED].

<sup>1219</sup> See *supra*, para.478.

<sup>1220</sup> [REDACTED].

made to police at any point during the indictment period, irrespective of two low-value “salary” payments in October,<sup>1221</sup> one unexplained, low-value payment in November<sup>1222</sup> and a handful of “food expenses” or similar being made to unidentified police.<sup>1223</sup> Similarly, neither P03947<sup>1224</sup> nor P03951,<sup>1225</sup> both purportedly MPO receipt books have any record of such payments being made. The unique and irregular nature of P03950 cuts against the claim that it proves **SELIMI**’s authority over police forces. The SPO did not ask W04758 about any of these documents.

### c. Reporting relationships to the MPO have not been proven

483. Given the scope of the SPO’s allegations of **SELIMI**’s authority as MinPO, it would be reasonable to expect a significant body of evidence showing routine reporting and regulation of the “KLA/MPO Police”, but there is none. Its absence reinforces the fact that these bodies were not overseen, organised or otherwise subordinate to the MPO. Uncontextualised and untested documents relied upon for this purpose, do not prove the SPO’s case.
484. The SPO has produced no evidence to support its allegation that three documents purportedly authored by “Skender KRASNIQI” were sent to MinPO.<sup>1226</sup> The SPO’s speculative submission that “a Skender KRASNIQI” was [REDACTED]<sup>1227</sup> is insufficient to prove the identity of the author.
485. No reference is made to other correspondence between the two persons. They bear no official markings and do not list the affiliation of the sender. P03953 is the only report out of three addressed “to the Minister”, and without more, it is

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<sup>1221</sup> P03930,pp.SPOE00227344,SPOE00227346.

<sup>1222</sup> P03930,p.SPOE00227348.

<sup>1223</sup> P03930,pp.SPOE00227340,SPOE00227344,SPOE00227347,SPOE00227349.

<sup>1224</sup> [REDACTED].

<sup>1225</sup> [REDACTED].

<sup>1226</sup> [REDACTED]; P03952; [REDACTED]; [REDACTED].

<sup>1227</sup> [REDACTED]; P00763.9,p.12.

not sufficient to conclude that this refers to **SELIMI**. P03953 and P03955 are also dated outside of the indictment period.

486. The SPO fails to substantiate its allegation that [REDACTED].<sup>1228</sup>
487. [REDACTED]. It was publicly known that PGoK ministers were interacting with UNMIK/KFOR. A reasonable inference to the MPO being added in copy is this author's view that his complaint might be raised with KFOR/UNMIK at a political level.
488. The fact there is no evidence of any kind of reporting relationship from the [REDACTED] to the MPO either before or after this letter, despite evidence that [REDACTED],<sup>1229</sup> testifies to the irregular nature of this document. P01539 shows no indication that anything of its kind had been previously sent and there is no evidence of any response.
489. [REDACTED],<sup>1230</sup> [REDACTED].<sup>1231</sup> [REDACTED]. There is neither evidence how [REDACTED].<sup>1232</sup> The SPO failed to call [REDACTED], or anybody with actual knowledge of hierarchies and reporting lines in Karadak.
490. [REDACTED]<sup>1233</sup> is dated outside the Indictment Period. There is no other evidence of such reports from [REDACTED]. [REDACTED].
491. [REDACTED] makes no mention of the KLA, despite its misleading description and is sent from [REDACTED]. One report in [REDACTED] does not fill an evidentiary gap of four months and prove the existence of reporting between the KLA MP and the MPO during the Indictment Period.

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<sup>1228</sup> [REDACTED].

<sup>1229</sup> [REDACTED].

<sup>1230</sup> W04868,19/08/2024,T.18603-18604.

<sup>1231</sup> W04868,19/08/2024,T.18602-18603.

<sup>1232</sup> 1DW-006,23/09/2025,T.27228-27229.

<sup>1233</sup> [REDACTED].

492. No evidence was presented concerning the [REDACTED] refers and there is no evidence clarifying why, or at whose direction or discretion [REDACTED]. Nothing in [REDACTED] proves or implies that a reporting relationship or duty existed between [REDACTED] and **SELIMI** at any time. The SPO did not call [REDACTED] as a witness.
493. Three reports purportedly sent by N.KRASNIQI from the KPC addressed to the MPO after the Indictment Period, like [REDACTED], do not retroactively prove a reporting relationship to **SELIMI**. [REDACTED].<sup>1234</sup> There is no evidence of response, any corresponding order or record of receipt.
494. P03960, also sent by N.KRASNIQI from the KPC, dated 22 November 1999<sup>1235</sup> does not prove a reporting relationship during the indictment period.
495. Requests sent to the MPO by outside bodies, do not demonstrate the MPO's authority and no witnesses were called to substantiate their content.
496. [REDACTED] does not support the allegation that the MPO was involved in the dismissal and assignment of soldiers within the Llap OZ.<sup>1236</sup> The complainant alleges being [REDACTED], yet here is no evidence of this alleged list on record, or any action taken by the MPO in relation to it. Unilateral correspondence directed to the MPO, without response or receipt, cannot be construed as conferring authority through the assertions of an author who was not called as a witness.
497. The SPO provides no evidence of any action being taken in response to [REDACTED]<sup>1237</sup> The views of this trading enterprise are irrelevant to the case.

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<sup>1234</sup> [REDACTED].

<sup>1235</sup> [REDACTED].

<sup>1236</sup> [REDACTED].

<sup>1237</sup> [REDACTED].

498. P01757<sup>1238</sup> merely notes that “MPO employees” found a person who appeared to be “placing something” next to some rubbish bins in a suspicious manner. Yet at the time, it is not unusual that people would be hyper-vigilant. There is no allegation or implication therein that “MPO employees” used any powers of arrest as opposed to simply acting as concerned members of the public. The report is not copied to the MPO and there are no other reports of “MPO employees” acting in this manner, refuting the claim that P01757 proves cooperation between the two bodies.<sup>1239</sup>
499. No evidence was presented to contextualise P03941<sup>1240</sup> and there is no evidence about whether any response was received, nor evidence of any communication having been made between the purported “Directorate for Public Peace and Order” of Podujevë/Podujevo and the MPO. The views of Forest Management Enterprise are irrelevant to the case.
500. P04013<sup>1241</sup> and [REDACTED]<sup>1242</sup> are both dated outside the Indictment Period and there is no evidence on record about any of the matters addressed in either letter, or whether these documents were received or responded to by the MPO. The views of their authors about the MPO are irrelevant to the case.

**d. Purported MPO documents do not establish SELIMI’s knowledge or approval**

501. No documents with headers purportedly related to the MPO were produced through witnesses and there is no evidence that **SELIMI** was aware of or authorised their production.

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<sup>1238</sup> [REDACTED].

<sup>1239</sup> [REDACTED]. *See also* P01755.9,p.36-39, where the SPO misleads W04758 by stating that the document identifies the employees as “officers”.

<sup>1240</sup> F03145/A03,item.31.

<sup>1241</sup> [REDACTED].

<sup>1242</sup> [REDACTED].

502. The SPO relies upon multiple documents seized from [REDACTED] by the SPRK.<sup>1243</sup> [REDACTED] was dropped as a witness by the SPO<sup>1244</sup> The SPO denied the Panel the opportunity to hear how and why these documents were produced and prevented the Defence from challenging this evidence.<sup>1245</sup>
503. [REDACTED]<sup>1246</sup> and [REDACTED]<sup>1247</sup> are crudely typewritten, with [REDACTED] containing no addressee. There is no indication these activities were authorised by the MPO and no evidence of reports being sent to the MPO by the named people in these documents. [REDACTED], appears to be irregular in nature, with no other example of orders by him with this header. In [REDACTED] ([REDACTED]<sup>1248</sup>) and [REDACTED] ([REDACTED]<sup>1249</sup>) 1999, [REDACTED] is signing [REDACTED]. [REDACTED] reasons for switching between these purported authorities is unexplained from the documents and could have been elucidated with his testimony.
504. P02846<sup>1250</sup> is an undated, handwritten list of names, while P01671 is a typewritten, similar copy of P02846 and was shown to W03885, whose name appears on the list.<sup>1251</sup> W03885 added nothing of value to the exhibit, other than recognising his name. The author and recipient of the document remain unidentified. There is no evidence this list was sent to the MPO.
505. P03937<sup>1252</sup> contains an illegible signature. No other evidence about this document was presented. There is no evidence that this document or the

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<sup>1243</sup> See Defence objections, F02991, paras.29-32.

<sup>1244</sup> SPO Email,04/09/2023.

<sup>1245</sup> See *supra*, paras.454-457.

<sup>1246</sup> [REDACTED].

<sup>1247</sup> [REDACTED].

<sup>1248</sup> [REDACTED].

<sup>1249</sup> [REDACTED].

<sup>1250</sup> [REDACTED].

<sup>1251</sup> W03885,23/09/2024,T.20142-20144.

<sup>1252</sup> [REDACTED].

circumstances in which it was made were notified to the MPO and no indication that the actions of the author were authorised by or reported to **SELIMI**.

506. [REDACTED]<sup>1253</sup> includes a copy of what is purported to be a [REDACTED]<sup>1254</sup> of a [REDACTED].<sup>1255</sup> Neither the authors of the [REDACTED] are identified. The alleged incident is not a charged crime and beyond what is stated in the report, the incident was not further investigated. There is no evidence that **SELIMI**, or the MPO gave any authorisation to any alleged regional office to issue such documents. There is no evidence this document or the circumstances in which it was made were notified to the MPO and no indication that the actions of the author were authorised by, or reported to, **SELIMI**. There are no other examples of a document of this nature in evidence. The Panel should give [REDACTED] no weight.

507. The second page of [REDACTED]<sup>1256</sup> bears the header [REDACTED], yet no witness was called by the SPO with respect to this alleged [REDACTED] and the author of the report is unidentified. There is no evidence that this report was sent to the MPO, or that the MPO authorised the report to be made.

508. [REDACTED]<sup>1257</sup> bears only one mention of the [REDACTED],<sup>1258</sup> with no indication when it was added and by whom. It contains no reference to any reports to or orders from the MPO. While the author of the diary is guessed at in the item description, there is no evidence as to who authored the document.

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<sup>1253</sup> [REDACTED].

<sup>1254</sup> [REDACTED].

<sup>1255</sup> [REDACTED].

<sup>1256</sup> [REDACTED].

<sup>1257</sup> [REDACTED].

<sup>1258</sup> [REDACTED].

4. MPO ID cards and registration documents do not establish SELIMI's authority

509. The SPO's case places considerable emphasis on the probative value of these cards and seeks to prove the existence of the alleged "KLA/MPO" police across the whole of Kosovo, and **SELIMI**'s authority over this body. No example of these cards was found at any charged crime site. The SPO has failed to show that MPO ID cards establish sufficient authority and responsibility by **SELIMI** over those who held them.
510. These cards and registration forms do not fill the gap in the SPO's case of a reporting relationship between **SELIMI** and the alleged "KLA/MPO". It is not enough for the SPO to show that MPO ID cards were held by some individuals. It must show that the effect of these cards was such that **SELIMI** had control and responsibility for the actions of these individuals and that actions were taken by **SELIMI** to direct those individuals. It has failed to do so. However, the SPO does little more than show that MPO ID cards were held by some individuals leading to the presumption that **SELIMI** therefore had authority over those individuals. This fallacy is not borne out by the evidence.
511. Examples of ID cards and registration forms were tendered through the bar table.<sup>1259</sup> Other cards were produced through witnesses [REDACTED] and W04868.<sup>1260</sup> The SPO did not call a single holder of these cards to explain the circumstances in which they were issued, their intended function and whether they reported to, or received orders from the MPO. The SPO asked no questions of W04758 regarding these ID cards.<sup>1261</sup>

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<sup>1259</sup> [REDACTED].

<sup>1260</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1261</sup> See *supra*, para.456.

512. The SPO has failed to prove that an MPO ID card, registration form or any other related document automatically established a subordinate relationship between the individual and **SELIMI**, or that he performed an oversight or organisational role in relation to them. The SPO has presented no example of orders from, or reports to **SELIMI** from any card holder.
513. Even on the face of the SPO's untested and uncontextualized documents, the evidence does not suggest that MPO ID cards were being carried universally by police in summer 1999, in particular by key persons to the SPO's case.
514. [REDACTED].<sup>1262</sup> [REDACTED],<sup>1263</sup> [REDACTED].<sup>1264</sup> [REDACTED].<sup>1265</sup>  
[REDACTED].<sup>1266</sup>
515. Moreover, the fact that KLA MP ID cards were commonly being utilised during this time means that any reference to "PU", or "MP" ID cards in international reports or elsewhere cannot be assumed to refer to MPO ID cards.<sup>1267</sup>
516. The SPO relies predominantly on W04868 and [REDACTED] to support its allegations regarding purported MPO ID cards. Neither provided convincing or credible evidence.
517. W04868 testified that he encountered examples of the MPO ID cards in Gjilan/Gnjilane.<sup>1268</sup> However, this general claim does not relate to any of the charged crimes and the SPO failed to substantiate specific illegal acts allegedly carried out by the holders of these cards.

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<sup>1262</sup> [REDACTED]

<sup>1263</sup> [REDACTED]

<sup>1264</sup> [REDACTED].

<sup>1265</sup> [REDACTED]

<sup>1266</sup> [REDACTED].

<sup>1267</sup> See Section IV.D.6-IV.D.7.

<sup>1268</sup> W04868,19/08/2024,T.18580,18581.

518. KFOR would never verify whether those cards had been officially issued.<sup>1269</sup> Multiple international reports contemporaneous to summer 1999 contain either direct or passing reference to MPO ID cards, but almost none record basic details of the circumstances in which they are encountered, including the names of the card holders.<sup>1270</sup>
519. Although W04868 claimed to have encountered these cards regularly, the only cards photographed being held by a KLA member and the only cards mentioned as having been presented at the Internaut raid were “JIC” cards<sup>1271</sup> and not MPO ID cards.
520. [REDACTED],<sup>1272</sup> [REDACTED],<sup>1273</sup> [REDACTED]<sup>1274</sup> [REDACTED]<sup>1275</sup> and [REDACTED].<sup>1276</sup>
521. [REDACTED].<sup>1277</sup>

##### 5. SELIMI was not in command of N.KRASNIQI as MinPO

522. SPO failed to prove that **SELIMI** had authority over N.KRASNIQI (and by extension, his deputy N.KRYEZIU)<sup>1278</sup> from June 1999 onwards and did not call N.KRASNIQI or N.KRYEZIU as witnesses.
523. In reference to the meeting [REDACTED].<sup>1279</sup>

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<sup>1269</sup> W04868,20/08/2024,T.18727.

<sup>1270</sup> See Section IV.D.7.

<sup>1271</sup> E.g.[REDACTED]; [REDACTED];W04868,19/08/2024,T.18605,18615; [REDACTED]; [REDACTED];[REDACTED].

<sup>1272</sup> [REDACTED].

<sup>1273</sup> [REDACTED].

<sup>1274</sup> [REDACTED].

<sup>1275</sup> [REDACTED].

<sup>1276</sup> [REDACTED].

<sup>1277</sup> [REDACTED].

<sup>1278</sup> F00709/A01,para.618.

<sup>1279</sup> [REDACTED]. See *supra*, para.465.

524. N.KRASNIQI took part in a radio interview on 21 July 1999 alongside W04765,<sup>1280</sup> where he referred to KLA MP ID cards, but not MPO cards, and to a transformation of the MP into a civilian police force at an undefined future date,<sup>1281</sup> but clearly speaks in aspirational terms and does not establish that this had already taken place. N.KRASNIQI identified himself as functioning within the KLA MP<sup>1282</sup> and makes no reference to the MPO or the PGoK. [REDACTED].<sup>1283</sup> P04085 was never raised again with W04765. [REDACTED].<sup>1284</sup> [REDACTED].<sup>1285</sup> [REDACTED].<sup>1286</sup>
525. [REDACTED],<sup>1287</sup> after the Indictment Period does not prove reporting before that date. [REDACTED],<sup>1288</sup> [REDACTED].<sup>1289</sup> It is unclear to which question this response refers.
526. In his interview, [REDACTED].<sup>1290</sup> [REDACTED]<sup>1291</sup> [REDACTED].<sup>1292</sup>
527. [REDACTED]. [REDACTED].<sup>1293</sup>
528. [REDACTED].<sup>1294</sup> [REDACTED]. [REDACTED].<sup>1295</sup>

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<sup>1280</sup> P04085; [REDACTED].

<sup>1281</sup> P04085,p.SITF00173934.

<sup>1282</sup> P04085,p.SITF00173934.

<sup>1283</sup> [REDACTED].

<sup>1284</sup> [REDACTED].

<sup>1285</sup> [REDACTED].

<sup>1286</sup> [REDACTED].

<sup>1287</sup> [REDACTED].

<sup>1288</sup> [REDACTED]. *See* [REDACTED].

<sup>1289</sup> [REDACTED].

<sup>1290</sup> [REDACTED].

<sup>1291</sup> [REDACTED].

<sup>1292</sup> *See* Section III.F.1.b.

<sup>1293</sup> *See supra*, paras.516,520,521; *infra*, para.995.

<sup>1294</sup> [REDACTED]; [REDACTED].

<sup>1295</sup> [REDACTED].

529. [REDACTED].<sup>1296</sup> [REDACTED],<sup>1297</sup> [REDACTED].<sup>1298</sup> [REDACTED].<sup>1299</sup> On the SPO's own case, it does not allege that W04739 held this position.

530. [REDACTED],<sup>1300</sup> [REDACTED]<sup>1301</sup> [REDACTED].<sup>1302</sup> [REDACTED].<sup>1303</sup>

531. [REDACTED].<sup>1304</sup> [REDACTED].<sup>1305</sup>

## 6. Alleged MPO members were not responsible for charged crimes

532. The SPO did not prove MPO members committed any of the crimes charged in the Indictment. The SPO also alleged various uncharged criminal acts carried out by individuals it claims to have been operating under the auspices of the MPO but failed to substantiate these myriad claims. This evidence should thus be given no weight in support of its case against **SELIMI**. None of these vaguely described acts can be attributed to **SELIMI**.

533. [REDACTED] made several claims to have witnessed criminal acts, which proved to be either unsubstantiated, or a false account of a conversation with another person.

534. Having initially claimed to have knowledge of "cleansing" being carried out in Prizren in summer 1999, [REDACTED] admitted that he did not personally witness any of these alleged acts,<sup>1306</sup> [REDACTED].<sup>1307</sup> However, [REDACTED] made no such allegation in his evidence, referring only to theft and lootings,<sup>1308</sup>

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<sup>1296</sup> [REDACTED].

<sup>1297</sup> [REDACTED]; [REDACTED].

<sup>1298</sup> [REDACTED].

<sup>1299</sup> [REDACTED].

<sup>1300</sup> [REDACTED].

<sup>1301</sup> [REDACTED].

<sup>1302</sup> [REDACTED].

<sup>1303</sup> [REDACTED].

<sup>1304</sup> [REDACTED].

<sup>1305</sup> [REDACTED].

<sup>1306</sup> [REDACTED].

<sup>1307</sup> [REDACTED].

<sup>1308</sup> [REDACTED].

[REDACTED].<sup>1309</sup> The SPO did not make any attempt to corroborate [REDACTED].

535. [REDACTED] confirmed that he did not witness anyone being killed [REDACTED],<sup>1310</sup> [REDACTED].<sup>1311</sup>

536. [REDACTED] admitted never hearing anybody refer to the burning of houses,<sup>1312</sup> did not hear any orders for houses to be burned down<sup>1313</sup> and never witnessed a house being burned down.<sup>1314</sup>

537. Various international reports referring to these alleged criminal acts lack specificity and substance. Almost none of these reports were produced through witnesses. Where any international report refers to individuals allegedly holding MPO ID cards, it cannot be assumed without any evidence of authenticity that such cards had been validly issued by the MPO.

538. P03938<sup>1315</sup> refers to [REDACTED] holding an MPO ID card, which is neither substantiated nor corroborated.<sup>1316</sup>

539. P04063<sup>1317</sup> carries no evidence of authorship, little foundation for the many incidents and was not shown to SPO witness.<sup>1318</sup>

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<sup>1309</sup> [REDACTED].

<sup>1310</sup> [REDACTED].

<sup>1311</sup> [REDACTED].

<sup>1312</sup> [REDACTED].

<sup>1313</sup> [REDACTED].

<sup>1314</sup> [REDACTED].

<sup>1315</sup> F01345/A03,item.28.

<sup>1316</sup> The unidentified author also refers to the words erroneously attributed to **SELIMI** in the 2 August 1999 JIC meeting. See section IV.D.3.a.

<sup>1317</sup> F03144/A01,item.53.

<sup>1318</sup> Defence witnesses were asked by the SPO about an unrelated issue.[REDACTED];1DW-009,13/11/2025,T.28062-28063.

540. P04088<sup>1319</sup> alleges the uncharged kidnapping and mistreatment by unidentified persons possessing “PU ID cards”, not MPO ID cards. unsupported by additional evidence. The report comprises untested testimonial evidence relating to unidentified perpetrators.
541. P04089\_ET.1-16,<sup>1320</sup> makes numerous vague, untestable, uncorroborated allegations against unidentified perpetrators<sup>1321</sup> of uncharged incidents.<sup>1322</sup>
542. P04094<sup>1323</sup> reports alleged uncharged, uncorroborated actions of unidentified people claiming to be police officers and threatening unidentified residents of an apartment building<sup>1324</sup> attaching a copy of an MPO ID card allegedly seized by KFOR at the scene.<sup>1325</sup> It further contains unfounded editorialisation by the author.<sup>1326</sup>
543. P04114<sup>1327</sup> alleges an MPO card was seized from someone claiming he had received it from his UCK commander [REDACTED].<sup>1328</sup> No person allegedly involved in this incident was identified, including the “UCK commander” and no copy of the MPO card was attached to the report.
544. P04118<sup>1329</sup> alleges that a person was confiscating weapons from Serbs [REDACTED].<sup>1330</sup> There is no evidence linking this person with the MPO and

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<sup>1319</sup> F03144/A01,item.80.

<sup>1320</sup> F03144/A01,item.81.

<sup>1321</sup> E.g. [REDACTED].

<sup>1322</sup> E.g. [REDACTED] ; [REDACTED] ; [REDACTED].

<sup>1323</sup> F03144/A01,item.86.

<sup>1324</sup> P04094,p.067953.

<sup>1325</sup> P04094,p.067955.

<sup>1326</sup> P04094,p.067954.

<sup>1327</sup> F03144/A01,item.107.

<sup>1328</sup> [REDACTED].

<sup>1329</sup> F03144/A01,item.111.

<sup>1330</sup> [REDACTED].

the SPO failed to substantiate the views of the unidentified author of P04118 about the role and position of [REDACTED] at this time.<sup>1331</sup>

545. P04132<sup>1332</sup> and P04133<sup>1333</sup> are both outside the Indictment Period. P04132 contains an unidentified author's unsubstantiated views and speculation on the alleged relationship between the TMK, UCK and "PU".<sup>1334</sup> P04133 further contains assumptions, speculation, anonymous sources, unsubstantiated alleged incidents and undisclosed intelligence documents and refers to the confiscation of alleged MPO documents without attaching any of the cited evidence.<sup>1335</sup>

546. Finally, P04105,<sup>1336</sup> details an uncharged, uncorroborated and unsubstantiated alleged kidnapping of an individual by [REDACTED].

547. None of these vague, unsubstantiated and irrelevant reports support the SPO's allegations of MPO responsibility for charged crimes, or SELIMI's authority over them.

## **7. International witnesses and reports relating to the MPO lacks reliability and specificity**

548. W02183, the only UNMIK witness called by the SPO was a legal advisor to the SRSG from mid-June to end of August 1999 (including two weeks out of country),<sup>1337</sup> with no experience in law enforcement,<sup>1338</sup> no knowledge of hierarchies or individual positions within the KLA prior to or post-

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<sup>1331</sup> [REDACTED].

<sup>1332</sup> F03144/A01,item.125.

<sup>1333</sup> F03144/A01,item.126.

<sup>1334</sup> P04132,p.SITF00384577.

<sup>1335</sup> P04133,p.012810.

<sup>1336</sup> F03144/A01,item.98.

<sup>1337</sup> W02183,20/01/2025,T.23890-23892; 1D00225; 1D00226.

<sup>1338</sup> W02183,21/01/2025,T.24071.

deployment,<sup>1339</sup> with no knowledge about the formation of the PGoK,<sup>1340</sup> who conceded at various times that his own assumptions regarding the topics above were made without actual knowledge.<sup>1341</sup> While W02183 referred generally to knowledge of KLA police units,<sup>1342</sup> he did not give evidence about specific hierarchies in relation to them, and had no knowledge as to who had control over them.<sup>1343</sup>

549. W02183 did not know what role **SELIMI** held in 1999.<sup>1344</sup> Although W02183 claimed to have seen **SELIMI** in a meeting alongside **THAÇI** discussing the PGoK,<sup>1345</sup> W02183 did not recognise **SELIMI** when shown a picture of him taken roughly contemporaneous to the time of this meeting.<sup>1346</sup> W02183 was not competent to give any evidence about **SELIMI**'s alleged role in police matters in summer 1999.

550. [REDACTED].<sup>1347</sup> [REDACTED].<sup>1348</sup> The Defence could not cross-examine W02135's untested evidence<sup>1349</sup> on these crucial issues.

551. No author of the "international reports" from various organisations operating in Kosovo in the post-June 1999 period was called to testify and almost none were even tendered through witnesses. Their weight is negligible.

552. Contrary to the SPO's submission,<sup>1350</sup> P03948 doesn't indicate **SELIMI**'s authority over police in Kosovo at the time and does not construe notice of

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<sup>1339</sup> W02183,20/01/2025,T.23890.

<sup>1340</sup> W02183,20/01/2025,T.23899-23903.

<sup>1341</sup> See e.g., W02183,20-21/01/2025,T.23904-23906,23917; W02183,21/01/2025,T.24056.

<sup>1342</sup> P01968,para.34.

<sup>1343</sup> P01968,para.59.

<sup>1344</sup> W02183,21/01/2025,T.24073.

<sup>1345</sup> P01968,para.25.

<sup>1346</sup> P01169; W02183,21/01/2025,T.24073-24074.

<sup>1347</sup> [REDACTED].

<sup>1348</sup> REDACTED].

<sup>1349</sup> F03012,paras.50-71.

<sup>1350</sup> F03145/A03,item.38.

crimes. Allegations of criminality were qualified and no specific mention of the MPO or police is made. SELIMI's response does not assume authority over the actions of any of those people.<sup>1351</sup>

553. P04067<sup>1352</sup> make no mention of the MPO or PGoK. Sven FREDERICKSEN is deceased and no other person involved in the production of P04067 was called as a witness.

554. The SPO asked no questions of W04576 about P04078 <sup>1353</sup> [REFACTED].<sup>1354</sup> No link between the MPO and W04576 was established.

555. While the SPO claimed that W02618 generally referred to illegal police stations, the SPO failed to substantiate [REDACTED].<sup>1355</sup>

556. [REDACTED]<sup>1356</sup> [REDACTED].<sup>1357</sup>

557. [REDACTED] alleges that 15 men marched through Prizren dressed in black and that MPO cards "appeared" in the city<sup>1358</sup> and draws unsubstantiated conclusions about the "PU".<sup>1359</sup> The author of the sitrep is unidentified and the SPO failed to produce this document through any witness.

558. P04123,<sup>1360</sup> details a meeting with F.MEHMETAJ, allegedly referring to himself as a "Chief of Public Order". No verbatim record of this meeting exists and no witness testified to it. There is no record of F.MEHMETAJ being appointed,

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<sup>1351</sup> P03948,paras.4,7.

<sup>1352</sup> F03144/A01,item.76.

<sup>1353</sup> F03144/A01,item.70.

<sup>1354</sup> P04078,para.12.

<sup>1355</sup> F03144/A01,item.71.

<sup>1356</sup> F03144/A01,item.72.

<sup>1357</sup> [REDACTED].

<sup>1358</sup> [REDACTED].

<sup>1359</sup> [REDACTED].

<sup>1360</sup> F03144/A01,item.116.

reporting to or receiving orders from **SELIMI** or the MPO, rather than HARADINAJ.<sup>1361</sup>

559. P04130<sup>1362</sup> voices unsubstantiated concerns that unidentified KPC members may be involved in criminal activity outside the Indictment Period.

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<sup>1361</sup> P04123,p.SITF00248217.

<sup>1362</sup> F03144/A01,item.123.

<sup>1362</sup> F03144/A01,item.116.

## V. JOINT CRIMINAL ENTERPRISE

560. **SELIMI** is charged with both basic (JCE I) and extended (JCE III).<sup>1363</sup> They share objective elements; to establish liability, an accused, along with at least one other person, identified with a degree of specificity;<sup>1364</sup> must have engaged in “an arrangement or understanding amounting to an agreement”<sup>1365</sup> regarding a common plan, design or purpose which amounts to or involves the commission of a crime; and participated in the execution of the common design involving the perpetration of a crime.<sup>1366</sup>
561. Objections raised against the impermissible form in which the JCE is pled in this case<sup>1367</sup> were partially rejected.<sup>1368</sup> It was held that the legal definition of the common purpose and requirement of a JCE with a criminal purpose were issues to be addressed at trial.<sup>1369</sup> These objections are maintained.
562. The Indictment charges **SELIMI** with specific intent crimes, namely persecution, torture and enforced disappearance,<sup>1370</sup> allegedly committed through JCE III in the alternative to JCE I.<sup>1371</sup> Insofar as JCE III does not require that the accused share the intent of the perpetrator of the deviatory crime but the *dolus eventualis* that merely foresees its possible occurrence,<sup>1372</sup> principal

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<sup>1363</sup> Indictment, para.32.

<sup>1364</sup> *Brđanin* AJ, para.430.

<sup>1365</sup> *Simić* TJ, para.158.

<sup>1366</sup> *Tadić* AJ, para.227.

<sup>1367</sup> F00222, paras.29-64.

<sup>1368</sup> F00413; IA012/F00015.

<sup>1369</sup> F00413, paras.62,108; IA012/F00015, para.56.

<sup>1370</sup> While the Pre-Trial Judge considered that customary international law does not require a special intent element for the crime of enforced disappearance (F00026, para.77), the Defence contests that such a requirement does not exist, and it is incumbent upon the SPO to prove that the elements of enforced disappearance do not contain such a requirement. Further, the Pre-Trial Judge expressly found that the intent requirement of enforced disappearance is a matter to be determined at trial (F00412, para.175).

<sup>1371</sup> Indictment, paras.34,177.

<sup>1372</sup> F00026, para.114.

liability under that mode of liability would be wholly incompatible with the *dolus specialis* requirements of the above crimes.

563. While some,<sup>1373</sup> though not all,<sup>1374</sup> ICTY chambers allowed for convictions for specific intent crimes under JCE III, the Pre-Trial Judge determined that such an outcome would be a “legal anomaly”.<sup>1375</sup> The STL Appeal Chamber also recognized that a situation where “a person could be convicted as a (co)perpetrator for a *dolus specialis* crime without possessing the requisite *dolus specialis*” would be illogical, and determined that such conduct can only attract, at most, accessorial liability.<sup>1376</sup> The SCSL Trial Chamber concurred with this approach and rejected the ICTY practice of allowing for such convictions.<sup>1377</sup>
564. While the SPO appeal against the Pre-Trial Judge’s decision to order the SPO to amend the Indictment excluding JCE III liability for special intent crimes was granted, that decision was reached solely on the basis of the Pre-Trial Judge’s authority to order that relief as a jurisdictional question.<sup>1378</sup> Challenges to the contours of a mode of liability were held as matters to be addressed at trial.<sup>1379</sup>
565. Therefore, finding **SELIMI** culpable as a principal perpetrator for crimes requiring a special intent that he cannot possess would erode the fundamental distinction between principals and accessories and would impermissibly conflate the incompatible *mens rea* standards of the two concepts. Hence, no conviction can be entered under JCE III for specific intent crimes.

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<sup>1373</sup> *Brđanin* Decision, paras.5-10; *Stakić* AJ, para.38.

<sup>1374</sup> *Krstić* AJ, para.134.

<sup>1375</sup> F00412, para.208.

<sup>1376</sup> *Ayyash* Decision, paras.248-249.

<sup>1377</sup> *Taylor* TJ, para.468.

<sup>1378</sup> IA009/F00030, para.235.

<sup>1379</sup> IA009/F00030, para.236.

566. The evidence does not establish beyond reasonable doubt that **SELIMI** was a key member of, participated in, or otherwise contributed to any JCE.

**A. The common purpose of the JCE must be inherently criminal**

567. JCE liability cannot stand where the objective or common purpose of the JCE is not a crime under the relevant court's jurisdiction, but where the JCE merely "contemplates crimes within the Statute as a means of achieving its objective."<sup>1380</sup> The objective of a JCE must be inherently criminal.<sup>1381</sup> Initially, cases followed this principle, alleging JCE objectives that included a crime as part of the plan itself.<sup>1382</sup> Some courts, however, have diverged from this requirement, sanctioning allegations where the objective of the JCE could either "have as its objective a crime within the Statute, or contemplate crimes within the Statute as a means of achieving its objective".<sup>1383</sup> The Indictment against **SELIMI** follows this "expanded" definition of JCE, alleging an objective that is not criminal at its core, but which merely contemplates possible criminal behaviour, and ignoring lawful means to achieve the objective.

568. JCE liability already allows for a tenuous link between the conduct of the accused and the specific crime charged. Agreeing to a plan that is not inherently criminal, but which merely contemplates criminal behaviour as a *potential* means of committing the crime runs afoul of the *Tadić* elements and central principles of criminal liability. This is wholly incompatible with JCE's core requirements as it allows each alleged JCE member to delineate how the JCE objectives will be achieved, thereby preventing shared intent to perpetrate the crimes. Under the imprecise language of the Indictment, criminal liability could arise for those achieving the objective *without* resort to criminal behaviour.

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<sup>1380</sup> See, e.g. *Brima* AJ, para.80; *Kvočka* AJ, para.46.

<sup>1381</sup> *Tadić* AJ, para.227.

<sup>1382</sup> See eg., *Brđanin* TJ, paras.340-342.

<sup>1383</sup> *Brima* AJ, para.80; *Kvočka* AJ, para.46.

Persons in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for crimes committed through the JCE.<sup>1384</sup>

569. Consequently, as the SPO must allege and prove a significant contribution by **SELIMI** which “that makes an enterprise efficient or effective”,<sup>1385</sup> this contribution must be directed and intended to contribute towards the commission of crimes rather than exercising control over Kosovo lawfully. Under the Indictment there is no such requirement.

570. While previously raised,<sup>1386</sup> it was held to relate to the legal definition of the common purpose rather than the specificity or clarity of the charges.<sup>1387</sup> Thus, these issues have not been ruled upon and are now ripe for determination by the Panel. The JCE as alleged is legally insufficient because the common plan is not inherently criminal; the charges based on JCE should be dismissed.

## **B. SPO’s case is guilt by association**

571. The JCE allegedly included the Accused as well as “other members”,<sup>1388</sup> including eight named and limitless other unnamed KLA and PGoK political and military leaders.<sup>1389</sup>

572. This is not a specific identification,<sup>1390</sup> but a catch-all paragraph encompassing hundreds, if not thousands of individuals. This allegation cannot be proved.

573. Many alleged JCE members were outside Kosovo or in different locations during 1998. Many did not know each other, only knew of some individuals by

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<sup>1384</sup> *Mladić* TJ, para.3561.

<sup>1385</sup> *Kvočka* TJ, para.309.

<sup>1386</sup> F00222, paras.38-48.

<sup>1387</sup> F00413, paras.62,108.

<sup>1388</sup> Indictment, para.32.

<sup>1389</sup> Indictment, para.35.

<sup>1390</sup> *Brđanin* AJ, para.430.

pseudonym, or did not even know that the others existed.<sup>1391</sup> It is not specified when the alleged JCE members learned of and agreed to this criminal enterprise. “Persons with a common objective are not necessarily members of a JCE. It is the interaction or cooperation among persons—their joint action—which makes these persons a group. Joint action among members of the joint criminal enterprise must be proven.”<sup>1392</sup>

574. The SPO case is essentially guilty by association, labelling the KLA itself as a criminal organisation and attributing guilt to any KLA member merely by KLA membership under the misplaced presumption that all KLA members share a mindset.
575. JCE is “not an open-ended concept that permits convictions based on guilt by association”.<sup>1393</sup> The Accused must do “far more than merely associate with criminal persons”, but must possess “the intent to commit a crime”, have “joined with others to achieve this goal”, and make “a significant contribution to the crime’s commission”.<sup>1394</sup>
576. The non-exhaustive nature of the Indictment impermissibly implies that other, unspecified individuals may also form part of the JCE even when there is no reference to them, extending to any member of the KLA, police or intelligence services, or any official, at any level, in the PGoK.
577. The SPO also argues that named and unnamed individuals were “JCE Members”, or, alternatively, “used by members of the joint criminal enterprise to carry out crimes”.<sup>1395</sup> It is unclear how **SELIMI** could have had any notice of the

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<sup>1391</sup> W04290,11/02/2025,T.25052-25053,25057; W01453,04/11/2024,T.21834; [REDACTED]; W04746,14/07/2023,T.5696.

<sup>1392</sup> *Krajisnik* TJ, para.884.

<sup>1393</sup> *Brđanin* AJ, para.428.

<sup>1394</sup> *Brđanin* AJ, para.431.

<sup>1395</sup> Indictment, para.35.

actions of these individuals, or to have shared their intent when the SPO cannot clearly state their role and purported relationship to the alleged JCE.

### C. No JCE against “Opponents”

578. There was no JCE against “Opponents” as described in the Indictment. Overwhelming evidence in relation to all Accused but especially **SELIMI** shows his purpose in taking arms against Serb forces was the independence and future prosperity of Kosovo. **SELIMI**’s involvement in such opposition circles arose through fighting alongside groups of fighters under A.JASHARI or PAQARIZI, where differing political viewpoints coexisted. This continued up to and throughout the Indictment Period [REDACTED].<sup>1396</sup>

579. **SELIMI** recognised the necessary and effective role of former JNA officers towards the liberation of Kosovo and worked closely and effectively with ZYRAPI and others.<sup>1397</sup> [REDACTED]<sup>1398</sup> [REDACTED].<sup>1399</sup> While direct, factual questions such as these cannot evidence intent.

580. [REDACTED]<sup>1400</sup> [REDACTED].<sup>1401</sup> [REDACTED].<sup>1402</sup> [REDACTED].<sup>1403</sup>

581. [REDACTED].<sup>1404</sup> No further witnesses and or evidence corroborated this allegation.

582. This is the only testimonial evidence suggesting that **SELIMI** said anything negative about the alleged “Opponents”.

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<sup>1396</sup> [REDACTED].

<sup>1397</sup> [REDACTED].

<sup>1398</sup> [REDACTED].

<sup>1399</sup> [REDACTED].

<sup>1400</sup> F02166,paras.33-36,43-45; F02408,para.18; F02207,para.8.

<sup>1401</sup> F02397,para.12.

<sup>1402</sup> F02393.

<sup>1403</sup> [REDACTED].

<sup>1404</sup> [REDACTED].

583. **SELIMI**'s statements were targeted towards Serb forces. No evidence or allegation that **SELIMI** personally made statements, either publicly or in the context of internal KLA meetings or discussions, negatively targeting Serb or Roma civilians was adduced by the SPO. There is simply no evidence that **SELIMI** thus shared such an intent towards those groups.
584. The SPO must prove that the criminal purpose of *all participants* in the common plan is not merely the same, but common to all persons acting together in the joint criminal enterprise.<sup>1405</sup> While a common plan may be inferred from events on the ground,<sup>1406</sup> the simple existence of a certain level of coordination among various alleged JCE members and the commission of crimes by some of these members may not suffice to show beyond a reasonable doubt that such cooperation was in pursuance of a common criminal purpose.<sup>1407</sup> Here, the SPO has alleged that all members of the alleged JCE shared the common purpose to "gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be opponents."<sup>1408</sup>
585. The vaguely pled JCE casts a wide net, attempting to catch any individual purportedly mistreated by any purported KLA member as part of this common objective. The SPO must prove individuals named as victims in the Indictment were, in fact, "opponents". Given the nature of the charged JCE, this is fundamental as the SPO must prove that each alleged crime formed part of the criminal purpose of the alleged JCE.<sup>1409</sup> The construction of the allegation in the Indictment means that "opponents" does not include members of the LDK, and

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<sup>1405</sup> Šešelj AJ, para.95.

<sup>1406</sup> Šainović AJ, para.611.

<sup>1407</sup> Šešelj AJ, para.117.

<sup>1408</sup> Indictment, para.32.

<sup>1409</sup> Brđanin AJ, para.410; Limaj AJ, para.110.

persons of Serb, Roma, and other ethnicities *per se*, but only those individuals that were or perceived to not be supporting the aims or means of the KLA.

**1. No definition of “collaborator” exists**

586. There was no consistent definition of “collaborators” in the KLA and that it was “easy for anyone to be labelled as such.”<sup>1410</sup> This undercuts the SPO’s theory from the outset. “Collaborators” was a term that pre-dated the conflict<sup>1411</sup> and held little meaning except to mark someone with a negative connotation. Early uses of the terms in communiqués in 1996 and 1997 refer to the killing of a “collaborator” who was alleged to be an officer of the State Intelligence Agency of Serbia, and thus directly part of the Serb apparatus,<sup>1412</sup> and operations against three collaborators: a UDB operative, a deputy commander of police, and third against a person whose role was unidentified.<sup>1413</sup>
587. The SPO alleges the use of the term to include undisputed members of the Serb forces continued into 1999. A 15 February 1999 RFK statement refers to the detention of two Serb policemen.<sup>1414</sup> The SPO argues that this document is relevant to detention of collaborators,<sup>1415</sup> an untenable position considering the document itself claims that the KLA is not responsible for their detention and that the individuals clearly fall outside even the expansive definition of opponents of the SPO. References to collaborators including members of the Serb police or intelligence show how meaningless the term really was.
588. The term was also used for regular “criminal” acts not falling within the category of those not supporting the aims or means of the KLA. An RFK press

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<sup>1410</sup> F00709/A01,para.8.

<sup>1411</sup> P00269\_ET.6; P00269\_ET.25; P00278; P00221; P00153; P00279.

<sup>1412</sup> P00269\_ET.6.

<sup>1413</sup> P00269\_ET.25; P00278. These allegations were repeated in a subsequent communiqué dated 14 August 1997, contained in P00221.

<sup>1414</sup> P00515\_ET.26.

<sup>1415</sup> F01387/A02, item.1A2.

release from 18 January 1999 referring to the arrest of several individuals for theft and alleged that individuals “in collaboration” with Serb agencies would discharge guns or set off explosions to get people to leave their homes and then would enter homes and steal items.<sup>1416</sup>

589. KLA members varied in their testimony about collaborators: to W04752, a collaborator was someone disclosing operational information about a unit,<sup>1417</sup> including civilians;<sup>1418</sup> to W04401, a collaborator was anyone not loyal to the KLA, including “those who fought with their weapons against that cause” thus including combatants;<sup>1419</sup> W04576 had no awareness of what a “collaborator” was and didn’t consider the LDK as an opponent;<sup>1420</sup> to [REDACTED] it was somebody cooperating with the Serbs and their secret services,<sup>1421</sup> a similar definition as [REDACTED];<sup>1422</sup> [REDACTED] understood collaborator to mean a spy,<sup>1423</sup> providing information to the Serbs;<sup>1424</sup> per [REDACTED], collaborators worked with the Serbian regime even after the majority of Albanian Kosovars lost their state jobs;<sup>1425</sup> to [REDACTED], collaborators included Albanians who used worked for Serbian civilian authorities, individuals who socialised with the Serbs, pacifists, and LDK members.<sup>1426</sup> [REDACTED] saw no difference between a traitor and a collaborator in Albanian.<sup>1427</sup> These definitions belonged to the witnesses alone and did not necessarily represent the view of the KLA. For example, [REDACTED] warned one individual against joining the KLA as

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<sup>1416</sup> P00515\_ET.8; P00811\_ET.20.

<sup>1417</sup> W04752,03/07/2024,T.17534; [REDACTED].

<sup>1418</sup> W04752,03/07/2024,T.17535; [REDACTED].

<sup>1419</sup> W04401,28/11/2024,T.22991,22993-22994.

<sup>1420</sup> W04576,22/02/2024,T.12825.

<sup>1421</sup> [REDACTED].

<sup>1422</sup> [REDACTED].

<sup>1423</sup> [REDACTED].

<sup>1424</sup> [REDACTED].

<sup>1425</sup> [REDACTED].

<sup>1426</sup> [REDACTED].

<sup>1427</sup> [REDACTED].

he could have been branded a collaborator due to his history,<sup>1428</sup> clarifying that these were his personal opinions and not the approach of the KLA,<sup>1429</sup> further supporting that there was no KLA-wide definition of the term.

590. Many witnesses did not include the LDK in the definition of collaborators. Exceptionally, [REDACTED] stated in his view there was no distinction between spies and those in the LDK when it came to arrests,<sup>1430</sup> an unsubstantiated view formed from how he was allegedly treated.<sup>1431</sup>

591. That there was no consistent concept of what constituted a collaborator undercuts any suggestion of an agreement.

## **2. No KLA policy against collaborators**

592. Consistent evidence of the SPO's own witnesses, particularly those of KLA commanders, was that there was no policy to detain and mistreat collaborators or other opponents.<sup>1432</sup> The SPO has not established any discussion where such a policy was agreed upon or contemplated.

593. W04403 testified that if crimes by KLA soldiers against Serbs or Albanians took place, they happened on account of previous revenges or grudges that people held against each other,<sup>1433</sup> a sentiment echoed by [REDACTED].<sup>1434</sup>

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<sup>1428</sup> [REDACTED].

<sup>1429</sup> [REDACTED].

<sup>1430</sup> [REDACTED].

<sup>1431</sup> [REDACTED].

<sup>1432</sup> W04752,03/07/2024,T.17533; W04746,12/07/2023,T.5557; [REDACTED]; W04290,13/02/2025,T.25262. W04290 did accept authorship of a communiqué issued by the Drenicë Zone HQ appealing to citizens to cease any activities that assist the enemy, including in arranging personal documentation in the Serb administration. W04290,13/02/2025,T.25261-25263; [REDACTED]. The document is devoid of any threatening language. P02087.3,p.6; W04576,22/02/2024,T.12824; [REDACTED]; [REDACTED].

<sup>1433</sup> P02087.3,p.6.

<sup>1434</sup> [REDACTED].

594. W04401 disavowed his SPO statement that the GS issued orders for any soldier who identified a collaborator to kill them.<sup>1435</sup> W04401 rejected his statement that decisions on collaborators were taken collegially and collectively,<sup>1436</sup> testifying that he was not aware of any case of the GS taking collective decisions on punitive measures against collaborators.<sup>1437</sup> Even then, W04401 testified that it was his interpretation of “collective decisions” of the GS<sup>1438</sup> that it was the responsibility of the zone commanders to take actions.<sup>1439</sup> Ultimately, W04401 was not aware of any collaborator being killed<sup>1440</sup> and his statement about GS orders was based on hypotheticals.<sup>1441</sup>
595. [REDACTED],<sup>1442</sup> [REDACTED].<sup>1443</sup> [REDACTED] did not substantiate his claim. He did not attend GS meetings and was not privy to any purported decisions.<sup>1444</sup> [REDACTED] evidence is marred by speculation, [REDACTED].<sup>1445</sup>
596. [REDACTED] claimed that zone commanders went to the HQ for instructions on collaborators,<sup>1446</sup> [REDACTED]<sup>1447</sup> and no other witness corroborated his claim. [REDACTED] confirmed further there were no meetings in GS HQ where the collaborators were even discussed.<sup>1448</sup> [REDACTED],<sup>1449</sup> [REDACTED].

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<sup>1435</sup> [REDACTED];W04401,28/11/2024,T.22986.

<sup>1436</sup> W04401,28/11/2024,T.22985.

<sup>1437</sup> W04401,28/11/2024,T.22984-22985.

<sup>1438</sup> W04401,28/11/2024,T.22986-22987.

<sup>1439</sup> W04401,28/11/2024,T.22986-22987.

<sup>1440</sup> [REDACTED]; W04401,02/12/2024,T.23097-23098.

<sup>1441</sup> W04401,02/12/2024,T.23100-23101.

<sup>1442</sup> [REDACTED].

<sup>1443</sup> [REDACTED].

<sup>1444</sup> [REDACTED]

<sup>1445</sup> [REDACTED].

<sup>1446</sup> [REDACTED].

<sup>1447</sup> [REDACTED].

<sup>1448</sup> [REDACTED].

<sup>1449</sup> [REDACTED].

597. The SPO alleged that the GS was focused on special warfare,<sup>1450</sup> which it defined as enemy forces attempting to sow division and conflicts within the ranks of the KLA through the use of agents.<sup>1451</sup> While the KLA was aware and sought to increase awareness of this potential threat, it was not a prominent focus of the GS.
598. W04403 does not recall the GS discussing special warfare.<sup>1452</sup> W04401 did not recall discussing special warfare at a GS meeting in August 1998, despite meeting minutes listing it as a topic.<sup>1453</sup> While no official act was taken regarding special warfare, [REDACTED] believed the GS wanted to combat the use of special warfare.<sup>1454</sup> KLA Regulations, dated 29 December 1998, refer to the morale and intelligence sectors taking action against special warfare.<sup>1455</sup> This was not something that could be carried out though,<sup>1456</sup> because of the ineffectiveness of the intelligence and counterintelligence agencies of the KLA.<sup>1457</sup>
599. Awareness on the matter was through public pronouncements. These were not all done in the name of the KLA, however. For example, a *Zëri* article explains the harms of special warfare against “our war” but does not contain an author or any specific reference to the KLA or the GS.<sup>1458</sup> Others, such as interviews

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<sup>1450</sup> F00709/A01,para.80.

<sup>1451</sup> W04403,25/03/2025,T.25852-25854; W04746,13/07/2023,T.5649; [REDACTED]; W04401,02/12/2024,T.23147. *See also*, P03697, handwritten notes about the concept of special warfare, although the SPO led no evidence regarding the author or origin of the notes.

<sup>1452</sup> W04403,26/03/2025,T.25972.

<sup>1453</sup> W04401,02/12/2024,T.23147; P00643,p.SPOE00229214.

<sup>1454</sup> [REDACTED].

<sup>1455</sup> [REDACTED].

<sup>1456</sup> W04758,24/10/2024,T.21191-21192.

<sup>1457</sup> [REDACTED].

<sup>1458</sup> P00107.

with J.KRASNIQI,<sup>1459</sup> are general statements on the existence of special warfare and do not establish a policy to mistreat people.

600. W04746 acknowledged seeing written material warning against special warfare and the so-called “special war” issued within the Llap OZ level<sup>1460</sup> but stated that it was not an issue of special concern at the time.<sup>1461</sup>

### 3. No regulations and orders to detain or mistreat

601. The KLA GS did not issue regulations or orders to mistreat collaborators or other opponents. While the SPO tendered into evidence several GS documents referring to collaborators, they do not establish a policy to mistreat such persons.
602. W04752 testified that before P00741\_ET.3 was issued, there was a GS meeting where the issue of collaborators and the need to issue an order was discussed,<sup>1462</sup> although it was only for the legal sector to define a person as a collaborator.<sup>1463</sup> Based on his military experience, a counter-intelligence service existed in all armies, aimed at uncovering potential collaborators, and that while it was wrong to mistreat collaborators, there was nothing wrong with looking for them.<sup>1464</sup>
603. P00228 notes the lack of professional staff overall, but especially in Dukagjin and Nerodime zones, making only passing reference to collaborators,<sup>1465</sup> suggesting it was not a pressing issue for the KLA at that time.

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<sup>1459</sup> P03705; P03707; P03708; P03710; P03713; P03715.

<sup>1460</sup> P00108; P00109; P00164.

<sup>1461</sup> W04746,13/07/2023,T.5650-5652; [REDACTED]; P00164.

<sup>1462</sup> [REDACTED].

<sup>1463</sup> [REDACTED].

<sup>1464</sup> W04752,03/07/2024,T.17531-17532.

<sup>1465</sup> P00228. There is a question whether the English translation of P00228 is correct. W04752,17/07/2024,T.18417.

604. P00183 refers to a GS decision that the MP should arrest those showing loyalty to the occupier. The SPO led no evidence about the circumstances of its issuance, or how widespread it was received. While indicating a concern with collaborators, it does not establish the existence of an agreed plan to mistreat collaborators and also refers to Kosovar Albanians who were armed and paid by Serbian forces in Gjakovë/Đakovica to take up arms against the KLA.<sup>1466</sup>

**4. Communiqués did not reflect a common purpose against collaborators**

605. The SPO failed to establish that communiqués or other public statements were part of an agreed-upon policy targeting opponents. Communiqués do not establish shared intent of members of the GS in whose name they were purportedly issued given the absence of proof of who was responsible for drafting and publishing them. The *Haradinaj* Trial Chamber, considering the same communiqués, held they did not indicate existence of a common plan, due to the propaganda campaign (including language directed at collaborators) and the exaggerations or altered truths contained within.<sup>1467</sup>

a. Communiqués were propaganda

606. The communiqués were propaganda,<sup>1468</sup> aimed at raising the profile and impact of the KLA,<sup>1469</sup> portraying the KLA as a liberation force as opposed to a terrorist group.<sup>1470</sup> Exaggerated language about “collaborators” sought to discourage individuals from working with Serb authorities. References to “collaborators” were often unverifiable (at least the SPO led no evidence to substantiate the claims therein), or carried no additional information provided as to what made

<sup>1466</sup> W02144,29/05/2024,T.16264-16266.

<sup>1467</sup> *Haradinaj* TJ,para.635. *Limaj* TJ found that the communiqués were “partly for propaganda purposes”, but also found that there was a KLA policy, “linked to its military objectives, to target those individuals thought to be collaborating with Serbian forces.” Para.216.

<sup>1468</sup> [REDACTED]; W04401,02/12/2024,T.23081.

<sup>1469</sup> W04323,14/06/2023,T.4855-4856.

<sup>1470</sup> W04752,10/07/2024,T.18000.

those persons “collaborators”.<sup>1471</sup> To the contrary, other communiqués distanced the KLA from certain events, particularly kidnappings,<sup>1472</sup> such as the so-called “Panda case”.<sup>1473</sup>

607. Communiqués were often based on unverified and unknown sources, containing factual errors, including claiming credit for actions with no link to the KLA,<sup>1474</sup> including communiqués issued well before 1998.<sup>1475</sup> Communiqués exaggerated the KLA’s exploits or readiness<sup>1476</sup> or sought to diminish Serbian forces, like the factually inaccurate Communiqué 54 stating that Serbian forces were forced to retreat after fighting Likoc/Likovac and Prekaz in September 1998.<sup>1477</sup>
608. The SPO has not established how widely the communiqués were read. Predominantly focused outside Kosovo,<sup>1478</sup> some media publications were not available in Kosovo during the war, such as *Zëri i Kosovës*.<sup>1479</sup>
609. The Panel received little information about how the international community received the communiqués, although the United States paid little attention to

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<sup>1471</sup> P00269\_ET.5; P00269\_ET.10; P00274; P00269\_ET.12; P00276; P00292; [REDACTED]. W04758 confirmed that there were no actions taken against the collaborators in response to P00157. W04758,24/10/2024,T.21142.

<sup>1472</sup> P00270\_ET.12.

<sup>1473</sup> W04752,10/07/2024,T.18000; 4D00067.

<sup>1474</sup> See e.g. P00269\_ET.16, where the KLA took credit for taking down a Serb plane, which was in fact an accident and had no relation to the KLA. W04401,03/12/2024,T.23259-23260.

<sup>1475</sup> P00273; W04401,04/12/2024,T. 23335, where W04401 testified that he did not believe anything P00273 was verifiably true.

<sup>1476</sup> W04752,10/07/2024,T.18002; W04278,30/09/2024,T.20509.

<sup>1477</sup> W04323,14/06/2023,T.4854-4855.

<sup>1478</sup> W04401,04/12/2024,T.23429-23430; P00188,p.SPOE00053284. W04401 confirmed that it was possible that operational groups could communicate directly with someone outside the country to relay information that then appeared in the communiqués without going through anyone who was part of the CS.

<sup>1479</sup> [REDACTED].

KLA communications when authoring cables, considering them to contain little valuable information and more of a public relations exercise for the KLA.<sup>1480</sup>

610. Several KLA members never saw any communiqués during the war,<sup>1481</sup> including some directly stating that they were not aware that they were published in media outlets.<sup>1482</sup> W04744 never saw written communiqués during the war,<sup>1483</sup> although he believed that the GS was giving communiqués to commanders orally,<sup>1484</sup> something not corroborated.

b. Responsibility for drafting communiqués was not proven

611. The SPO has led no clear evidence on the process for the production, verification, approval, and publication of the communiqués. The Panel, in admitting communiqués, political declarations, and other public statements through the bar table, held that the question of authorship was to be resolved at trial.<sup>1485</sup> The SPO wholly failed to resolve this open question. No witness gave clear evidence as to how the communiqués were drafted or who took part in any discussions on their content and language. No decision was taken in relation to the communiqués “at a meeting of the GS”.<sup>1486</sup>

612. W04290 was neither personally involved in the drafting or issuance of communiqués<sup>1487</sup> nor did he know who wrote them,<sup>1488</sup> including Communiqué 59.<sup>1489</sup> Other members of the GS similarly had no knowledge.<sup>1490</sup>

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<sup>1480</sup> W04147,28/03/2024,T.14040.

<sup>1481</sup> P01115.7,p.31; W04744,24/06/2024,T.17078.

<sup>1482</sup> [REDACTED].

<sup>1483</sup> W04744,24/06/2024,T.17078.

<sup>1484</sup> [REDACTED].

<sup>1485</sup> F01596,para.19; F01832,para.24.

<sup>1486</sup> W04401,02/12/2024,T.23140-23141. *See also*, P00742.2,pp.14-15; [REDACTED].

<sup>1487</sup> W04290,11/02/2025.T.25093.

<sup>1488</sup> W04290,11/02/2025,T.25094.

<sup>1489</sup> W04290,11/02/2025,T.25094; 1D00248.

<sup>1490</sup> W04401,02/12/2024,T.23135-23136.

613. THAÇI stated that after J.KRASNIQI became spokesperson, there were less communiqués and they had “less value”.<sup>1491</sup> In the first half of 1998, THAÇI believes various people were issuing communiqués from different locations, including Jashar SALIHU and Xhemajl FETAHU.<sup>1492</sup> THAÇI claims he only saw them after they were issued.<sup>1493</sup>
614. **SELIMI** assumed that THAÇI and J.KRASNIQI drafted the communiqués, based on speculation related to their roles and not from any specific factual knowledge.<sup>1494</sup> None of the communiqués purportedly produced by the GS were signed or drafted by **SELIMI**. At no stage did the preparation or production of communiqués fall within **SELIMI**'s remit.
615. Communiqué 59, in the name of the KLA, blamed Gani GECI for *inter alia* Abedin REXHA's death.<sup>1495</sup> The SPO failed to establish who was responsible for the drafting and publication of the communiqué, although the evidence is clear that **SELIMI** played no role in either. **SELIMI** told the SPO that he spoke to THAÇI only *after* it was published, challenging the accuracy of GECI collaborating with Serbian forces.<sup>1496</sup>
616. The SPO's allegation that the communiqué was part of the KLA policy against collaborators,<sup>1497</sup> is unsupported. The communiqué is directed towards Gani GECI personally for Abedin REXHA's death. It is not probative of the alleged JCE.

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<sup>1491</sup> P00739.5,pp.7-8.

<sup>1492</sup> P00739.5,pp.7,10.

<sup>1493</sup> P00739.5,p.9.

<sup>1494</sup> P00763.3,pp.2-3,7,10.

<sup>1495</sup> P00159,p.043861.

<sup>1496</sup> [REDACTED]. W04240, who had no independent knowledge of how the communiqué was drafted and issued, testified that **SELIMI** told him a similar chronology of events. W04240,23/10/2024,T.20961.

<sup>1497</sup> F00709/A01,para.55.

c. Communiqués were not reasonably perceived as orders or instructions

617. W04401 confirmed the political directorate did not issue any communiqués that constituted orders<sup>1498</sup> and stated that the communiqués were general in nature and were meant to be a warning.<sup>1499</sup> W04401 did not know who was issuing them, stating they were not being done together with W04401 and other GS members.<sup>1500</sup> In any event, no army would issue orders through communiqués.
618. W04748 claimed KLA soldiers were attentive to every communiqué that was published,<sup>1501</sup> a clear exaggeration, not only illogical in principle but also directly contradicted by other evidence. Asked whether the GS issued anything on how collaborators should be treated, W04746 mentioned communiqués, clarifying however that he only learned about their existence after the war through the proceedings in which he was an accused.<sup>1502</sup> W04576 similarly never saw any political declarations or communiqués during the war.<sup>1503</sup>
619. The allegation that the communiqués served as some kind of guide or instruction for how to deal with collaborators, including as a mechanism through which the common plan was instituted,<sup>1504</sup> finds no place in the evidence.

5. **Structures and individuals were not used to carry out JCE**

620. The SPO allegation that the GS put structures in place to carry out the JCE<sup>1505</sup> ignores entirely the evidence that the KLA was created from the ground up and

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<sup>1498</sup> W04401,02/12/2024,T.23095.

<sup>1499</sup> W04401,02/12/2024,T.23095-23096.

<sup>1500</sup> W04401,02/12/2024,T.23141.

<sup>1501</sup> W04748,10/05/2023,T.3491.

<sup>1502</sup> W04746,12/07/2023,T.5558; P00693.5,p.6.

<sup>1503</sup> W04576,22/02/2024,T.12823.

<sup>1504</sup> F00709/A01,paras.22-26.

<sup>1505</sup> F00709/A01,paras.7,89 *et seq.*

that the GS had little influence, much less power, over the zone commanders<sup>1506</sup> who were the more powerful group in the KLA. While some zone commanders were alleged to have been JCE members, the evidence is insufficient to show they were part of a common criminal plan. The KLA was a collection of decentralised and independent units working together, with inconsistent and unclear chains of command and shifting allegiances. There is no evidence at all that the purported GS members of the JCE were able to control the members of the KLA as instruments to enforce the plan.

621. The evidence on release of detainees or amnesties does not support the SPO allegation of a high level of organisation as part of a campaign against civilians. W04401 did not remember any discussions of the GS about the detention centres.<sup>1507</sup> W04403, involved in compiling reports from OZ briefings,<sup>1508</sup> confirmed that the reports did not contain any information of arrests, detentions or mistreatment of civilians.<sup>1509</sup> W04403 claimed there was no reporting to this effect by zone commanders.<sup>1510</sup>
622. Certain documents refer to the arrest of five armed Serbs and their subsequent release.<sup>1511</sup> While two were elderly, the incident shows that Serbs were arming the civilian population.<sup>1512</sup> What the documents do not show is how the GS had command and authority over prisons, detention, or release.
623. Evidence on amnesties similarly fails to support the SPO position. For example, P00169 appears to have been taken independently by the Llap Zone. References to unspecified provisions in GS documents appear to be little more than

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<sup>1506</sup> See Section III.B.

<sup>1507</sup> W04401,02/12/2024,T.23153.

<sup>1508</sup> P02087.3,p.2; P02090.3,p.5; W04403,25-26/03/2025,T.25868,25929.

<sup>1509</sup> W04403,26/03/2025,T.25949.

<sup>1510</sup> W04403,26/03/2025,T.25949.

<sup>1511</sup> P00515\_ET.12; P00515\_ET.15; P00811\_ET.23; P00811\_ET.25.

<sup>1512</sup> P00515\_ET.15,p.007891.

attempts to make the document look official. Reference to such documents does not demonstrate *de jure* or *de facto* authority of the GS.

624. Other amnesty decisions,<sup>1513</sup> while citing GS communiqués, primarily address criminal behaviour rather than spying or collecting information.
625. While P00885 and P00225 referred to various provisions and GS political declarations, W04758 confirmed the entire process around suspected persons would be self-contained within the zonal structures.<sup>1514</sup> Zone commanders had ultimate responsibility regarding the release of detainees and granting amnesties.<sup>1515</sup> The evidence does not demonstrate that such decisions were done as part of a common criminal plan, but on the decisions of the local commanders as they saw fit.

#### **6. Lists of individuals are not entitled to weight**

626. Most of the lists relied upon by the SPO to support the alleged criminal plan are entirely unsourced, without any evidence presented as to their creation. Many contain no indication that they were created by KLA members, much less demonstrate a KLA-wide policy to detain and mistreat collaborators. They are not entitled to any weight.
627. W04765, for example, described an instance in which the Mushtisht/Mušutište village council gave him a list of 18 alleged collaborators.<sup>1516</sup> W04765 tore up the paper as the allegations were based primarily on grudges people held against each other.<sup>1517</sup>

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<sup>1513</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1514</sup> W04758,24/10/2024,T.21174-21175.

<sup>1515</sup> W04758,24/10/2024,T.21168-21169.

<sup>1516</sup> [REDACTED]; W04765,16/11/2023,T.10251; W04765, 04/12/2023,T.10413.

<sup>1517</sup> [REDACTED]; W04765,04/12/2023,T.10413-10414.

628. Several of these lists are detailed below as examples of the unreliability of the evidence. P02456 is a three-part document, partly handwritten and partly typed. The typed part makes passing reference to collaborators while the handwritten person lists names of people have drinks with Serbs. No conclusion can be made that this document lists collaborators, much less that the KLA was collecting information on collaborators, as the SPO has not even established it as KLA in origin.
629. The SPO similarly relies upon P02459, P02857, and P03589 as probative of lists created by the KLA, yet the documents are devoid of any indication who created the document. W04747 did not recognize any of the names listed in P03589<sup>1518</sup> and stated that he compiled a similar list *after* the war.<sup>1519</sup>
630. P00711 is a handwritten list of similarly unknown provenance. W0465 recognised a few names on the list,<sup>1520</sup> including that some members of the Serb police or secret service.<sup>1521</sup> W04765 believed the list was of “suspicious people”, but believed it to be something from counterintelligence<sup>1522</sup> or even from the Serbian or Yugoslav secret service based on the names and how people are noted down.<sup>1523</sup> W04765 was not aware that the document was received from Serbian authorities.<sup>1524</sup>

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<sup>1518</sup> [REDACTED].

<sup>1519</sup> [REDACTED].

<sup>1520</sup> W04765,04/12/2023,T.10417.

<sup>1521</sup> W04765,13/11/2023,T.9912.

<sup>1522</sup> [REDACTED]; W04765,04/12/2023,T.10420.

<sup>1523</sup> W04765,04/12/2023,T.10421.

<sup>1524</sup> W04765,05/12/2023,T.10505.

631. [REDACTED]<sup>1525</sup> but [REDACTED]<sup>1526</sup> and [REDACTED].<sup>1527</sup> [REDACTED],<sup>1528</sup> [REDACTED]<sup>1529</sup> further undermined his credibility on this point and directly undermined the suggestion [REDACTED].<sup>1530</sup>
632. W01511 referred to lists he saw posted on poles in villages that included politically active LDK and Democratic Christian party members referred to as “collaborators”, which he claims were done by F.MEHMETAJ.<sup>1531</sup> The lists of collaborators were related to jealousies and political rivalries within the villages,<sup>1532</sup> and not any kind of policy or plan sent out from the GS.
633. W04747’s untested evidence was that in 1998 there were blacklists and starred lists of people that posed a danger,<sup>1533</sup> provided no additional information on such lists.
634. Many of these lists were prepared solely at the local level, without any evidence that the GS or any superiors saw the lists or were notified.<sup>1534</sup> Attempts to authenticate such lists consisted mainly of asking witnesses to recognize names on them.<sup>1535</sup> A witness’ recognition of a name on a list does not dispel the plethora of authenticity defects that these lists possess.

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<sup>1525</sup> [REDACTED].

<sup>1526</sup> [REDACTED].

<sup>1527</sup> [REDACTED].

<sup>1528</sup> [REDACTED].

<sup>1529</sup> [REDACTED].

<sup>1530</sup> [REDACTED].

<sup>1531</sup>[REDACTED]; W01511,04/09/2024,T.19589-19590.

<sup>1532</sup> W01511,04/09/2024,T.19625-19626.

<sup>1533</sup> [REDACTED].

<sup>1534</sup> *See eg.*, [REDACTED].

<sup>1535</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

7. Crimes “contemplated” by the JCE were committed for personal reasons

635. Crimes ensuing solely from opportunistic acts by members of the alleged group and which fall outside the common purpose cannot incur an accused’s liability.<sup>1536</sup>
636. Often, animosities arose out of past disputes or resentments revolving around, among others, land ownership, physical altercations, jealousy and/or family blood feuds.<sup>1537</sup> KLA members often used their positions to exact revenge on neighbours against whom they harboured negative sentiments.<sup>1538</sup> Previous disagreements escalated into blood feuds swiftly,<sup>1539</sup> and individuals were branded as “collaborators” merely as a pretence to justify their apprehension.<sup>1540</sup> These instances do not demonstrate, and fall outside of, the alleged common plan in the Indictment.
637. For example, SPO witnesses related to Likoc/Likovac gave confused, contradictory evidence regarding the reasons for their detention. [REDACTED],<sup>1541</sup> resulting in physical altercations<sup>1542</sup> and local people holding

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<sup>1536</sup> *Katanga T*, para.1630; *Al-Hassan T*, para.1237.

<sup>1537</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].W04811,18/03/2024,T.13204,13228; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; P01955.8,pp.5,13; P01955.4,p.15; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; W04811,05/09/2023,T.7195,7216.

<sup>1538</sup>[REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>1539</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1540</sup> [REDACTED]; P01955.2,p.20; P01955.8,p.13; P01955.4,p.15; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>1541</sup> [REDACTED]; [REDACTED].

<sup>1542</sup> [REDACTED].

grudges [REDACTED],<sup>1543</sup> [REDACTED].<sup>1544</sup> While the SPO suggested the detention was related [REDACTED]<sup>1545</sup> [REDACTED].

638. [REDACTED].<sup>1546</sup> [REDACTED].<sup>1547</sup> [REDACTED].<sup>1548</sup>

639. [REDACTED]<sup>1549</sup> [REDACTED].<sup>1550</sup> [REDACTED]<sup>1551</sup> which was entirely unrelated to the KLA and the war.<sup>1552</sup>

640. [REDACTED]<sup>1553</sup> [REDACTED].<sup>1554</sup> [REDACTED],<sup>1555</sup> [REDACTED].<sup>1556</sup>

641. The ICTY, finding that no JCE existed in Llapushnik/Lapušnik, determined that KLA members detained individuals for reasons other than a policy to combat collaboration, referring to instances of abductions in which personal revenge of individual KLA members was the motivating factor.<sup>1557</sup> The Trial Chamber therefore could not rule out the possibility that the perpetrators of the crimes may have been driven by such motives.<sup>1558</sup>

642. “Rogue KLA elements”<sup>1559</sup> often undertook actions alleged in a clandestine manner away from the eyes of KLA officers, thus undermining the contention that a KLA-wide plan to target a civilian population materialised.<sup>1560</sup>

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<sup>1543</sup> [REDACTED].

<sup>1544</sup> [REDACTED].

<sup>1545</sup> [REDACTED].

<sup>1546</sup> [REDACTED].

<sup>1547</sup> [REDACTED].

<sup>1548</sup> [REDACTED].

<sup>1549</sup> [REDACTED].

<sup>1550</sup> [REDACTED].

<sup>1551</sup> [REDACTED]; [REDACTED].

<sup>1552</sup> W04444,13/11/2023,T.9841.

<sup>1553</sup> [REDACTED].

<sup>1554</sup> [REDACTED].

<sup>1555</sup> [REDACTED].

<sup>1556</sup> [REDACTED].

<sup>1557</sup> *Limaj* TJ,para.668.

<sup>1558</sup> *Limaj* TJ,para.668.

<sup>1559</sup> *Limaj* TJ,para.216.

<sup>1560</sup> [REDACTED].

643. For each underlying crime, the Panel must determine that the victim was targeted for their membership in a targeted civilian population and not for any other reason. Even where the fact of detention was not challenged, the admission of untested, crime-base evidence pursuant to Rules 153 or 155 prevented the Defence from ascertaining the genuine reason for the apprehension of the victims concerned.

**8. Charged crimes are not attributable to JCE members and tools**

644. The SPO bears the burden of establishing that all crimes charged as part of the JCE were committed by JCE members or tools, including for any alleged killing, that such members or tools were responsible for that death, and not simply that the victim was last seen in KLA custody or territory, without establishing circumstances of death. No assumption of such responsibility can be made. Similarly, for any alleged act of torture, cruel treatment or any other inhumane act, it must be established that the perpetrator who inflicted the bodily or psychological harm was a JCE member or tool.

645. The SPO charged the death of several victims as murders allegedly committed as part of the JCE yet failed to establish that their death occurred at the hands of any JCE members or tools.<sup>1561</sup> The SPO also charged several instances of mistreatment as part of the alleged JCE, yet the perpetrators of these alleged crimes remained unidentified either wholly or significantly.<sup>1562</sup>

646. For example, XHAFIQI was allegedly detained by the KLA<sup>1563</sup> but no SPO witness testified directly as to his arrest or saw him in detention.<sup>1564</sup> Witness claims that XHAFIQI was killed and/or abducted by the KLA were not

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<sup>1561</sup> See, for example, Indictment, Schedule B, rows 8,14,18,26,30,37.

<sup>1562</sup> See, for example, [REDACTED]; [REDACTED]; [REDACTED].

<sup>1563</sup> Indictment, para.162.

<sup>1564</sup> [REDACTED].

supported.<sup>1565</sup> Conclusions about XHAFIQI's fate based on speculation or hearsay were explicitly denied by other witnesses.<sup>1566</sup> Reports attributing XHAFIQI's arrest and killing to the KLA, did not identify any specific basis for that attribution.<sup>1567</sup> Witnesses asked to comment on such reports could not independently confirm or further specify the claims therein.<sup>1568</sup>

647. Similarly, the SPO charged six murders as part of the JCE,<sup>1569</sup> despite not establishing the circumstances of their death. Evidence suggests these individuals were last seen in [REDACTED] after being apprehended by the KLA<sup>1570</sup> with their bodies found subsequently.<sup>1571</sup> [REDACTED] claim that he was told that these individuals were liquidated<sup>1572</sup> but not by whom or under which circumstances<sup>1573</sup> doesn't demonstrate those responsible for their deaths. Neither does SPO forensic evidence.<sup>1574</sup>

648. The Indictment identifies Mirko JOVIĆ and Džemo ZULJIĆ as murder victims but simply alleges they were taken by the KLA towards the Dormitory in Gjilan/Gnjilane and their bodies were not found until several years after.<sup>1575</sup> No further basis has been provided in the PTB as to the perpetrators.<sup>1576</sup> [REDACTED] M.JOVIĆ was executed without specifying by whom,<sup>1577</sup> and had no information that this [REDACTED] was affiliated with the KLA or on what basis he volunteered that information.<sup>1578</sup> Death certificates and autopsy reports

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<sup>1565</sup> [REDACTED]; [REDACTED].

<sup>1566</sup> [REDACTED]; [REDACTED]; W03724,13/09/2023,T.7999; [REDACTED]; [REDACTED].

<sup>1567</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1568</sup> [REDACTED].

<sup>1569</sup> [REDACTED].

<sup>1570</sup> [REDACTED].

<sup>1571</sup> [REDACTED].

<sup>1572</sup> [REDACTED].

<sup>1573</sup> [REDACTED]

<sup>1574</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>1575</sup> Indictment, para.172.

<sup>1576</sup> F00709/A01, paras.675-679.

<sup>1577</sup> [REDACTED].

<sup>1578</sup> [REDACTED].

could not establish the time, place or circumstances of death, or identities of the alleged perpetrators, [REDACTED].<sup>1579</sup>

649. Therefore, the SPO's case as to such individuals rests on the impermissible inference that the alleged crimes were committed by JCE members and tools, with no reliable evidence having been brought in support of that conclusion.

## **9. Conclusion**

650. The SPO failed to demonstrate that the members of the JCE agreed upon any common criminal purpose, much less one to mistreat opponents. The JCE must fail.

### **D. SELIMI's alleged contributions to the JCE are unproven**

651. The SPO alleges a number of ways in which **SELIMI** contributed to the purported JCE,<sup>1580</sup> all which lack proof. It must be noted that the allegations contained within the Indictment are extremely vague and unconnected to any specific allegation or fact.

652. These allegations are dealt with in turn.

#### **1. SELIMI did not interrogate an Opponent [REDACTED]**

653. The SPO alleges<sup>1581</sup> [REDACTED]. [REDACTED].<sup>1582</sup>

654. The SPO relies on [REDACTED] and [REDACTED], and [REDACTED],<sup>1583</sup> for this allegation. [REDACTED].

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<sup>1579</sup> [REDACTED]; [REDACTED].

<sup>1580</sup> Indictment, para.52.

<sup>1581</sup> Indictment, [REDACTED]; F00709/A01, para.280.

<sup>1582</sup> F00709/A01, para.280.

<sup>1583</sup> [REDACTED].

655. [REDACTED].<sup>1584</sup> On several key points, [REDACTED] evidence is uncorroborated and contradicted by his own [REDACTED], other witnesses and/or documentary evidence.

**a. [REDACTED] fabricated evidence linking SELIMI to [REDACTED]**

656. [REDACTED],<sup>1585</sup> [REDACTED].<sup>1586</sup>

657. [REDACTED].<sup>1587</sup> [REDACTED].<sup>1588</sup> Every detail about this alleged [REDACTED], including whether it indeed occurred, is unverifiable. The allegation should be given no weight by the Panel.

658. However, evidence suggests that this account was fabricated, reflecting [REDACTED] lack of credibility. [REDACTED],<sup>1589</sup> [REDACTED]<sup>1590</sup> [REDACTED]<sup>1591</sup> [REDACTED].<sup>1592</sup> [REDACTED].<sup>1593</sup>

659. [REDACTED],<sup>1594</sup> [REDACTED].

660. [REDACTED].<sup>1595</sup> This explanation lacks credibility. [REDACTED].

**b. [REDACTED] was untruthful in identifying [REDACTED]**

661. [REDACTED].<sup>1596</sup> [REDACTED]<sup>1597</sup> [REDACTED].<sup>1598</sup>

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<sup>1584</sup> [REDACTED].

<sup>1585</sup> [REDACTED].

<sup>1586</sup> [REDACTED].

<sup>1587</sup> [REDACTED].

<sup>1588</sup> [REDACTED].

<sup>1589</sup> [REDACTED].

<sup>1590</sup> [REDACTED].

<sup>1591</sup> [REDACTED].

<sup>1592</sup> [REDACTED]; [REDACTED].

<sup>1593</sup> [REDACTED].

<sup>1594</sup> [REDACTED].

<sup>1595</sup> [REDACTED].

<sup>1596</sup> [REDACTED].

<sup>1597</sup> [REDACTED].

<sup>1598</sup> [REDACTED].

662. [REDACTED],<sup>1599</sup> contradicted [REDACTED] claim to have identified these people, stating that [REDACTED]<sup>1600</sup> [REDACTED].<sup>1601</sup> [REDACTED].
663. [REDACTED]<sup>1602</sup> [REDACTED]<sup>1603</sup> is contradicted by [REDACTED]<sup>1604</sup> and [REDACTED].<sup>1605</sup> [REDACTED]<sup>1606</sup> [REDACTED],<sup>1607</sup> [REDACTED].<sup>1608</sup>
664. [REDACTED],<sup>1609</sup> [REDACTED]<sup>1610</sup> [REDACTED].<sup>1611</sup>

**c. [REDACTED] alleged identification of SELIMI is unreliable**

665. [REDACTED].<sup>1612</sup>
666. [REDACTED].<sup>1613</sup> [REDACTED] allegation lacks any credibility.
667. [REDACTED].<sup>1614</sup> [REDACTED].
668. [REDACTED],<sup>1615</sup> [REDACTED].<sup>1616</sup> [REDACTED],<sup>1617</sup> contradicting his earlier claim.

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<sup>1599</sup> [REDACTED].

<sup>1600</sup> [REDACTED].

<sup>1601</sup> [REDACTED]; [REDACTED].

<sup>1602</sup> [REDACTED]; [REDACTED].

<sup>1603</sup> [REDACTED]; [REDACTED].

<sup>1604</sup> [REDACTED]; [REDACTED].

[REDACTED]; [REDACTED].

<sup>1606</sup> [REDACTED]; [REDACTED].

<sup>1607</sup> [REDACTED].

<sup>1608</sup> [REDACTED].

<sup>1609</sup> [REDACTED]; [REDACTED].

<sup>1610</sup> [REDACTED].

<sup>1611</sup> [REDACTED].

<sup>1612</sup> [REDACTED].

<sup>1613</sup> [REDACTED]; [REDACTED].

<sup>1614</sup> [REDACTED].

<sup>1615</sup> [REDACTED].

<sup>1616</sup> [REDACTED].

<sup>1617</sup> [REDACTED].

669. [REDACTED] claim to have identified **SELIMI** [REDACTED] is rife with contradictions. [REDACTED],<sup>1618</sup> [REDACTED].<sup>1619</sup> [REDACTED].<sup>1620</sup>
670. [REDACTED].<sup>1621</sup> [REDACTED],<sup>1622</sup> [REDACTED].<sup>1623</sup> [REDACTED].<sup>1624</sup>
671. [REDACTED] lack of credibility undermines his claim to have recognised **SELIMI** [REDACTED]. The only people who could corroborate whether this disputed encounter occurred, are either unidentified, deceased or did not appear as witnesses. The Panel should give his evidence no weight.

**d. Conditions at the time and [REDACTED] weaken the strength of the “identification” evidence**

672. If the Panel accepts that the disputed encounter occurred, the circumstances prevalent at the time make [REDACTED] account unreliable.
673. [REDACTED].<sup>1625</sup> [REDACTED],<sup>1626</sup> [REDACTED].<sup>1627</sup> [REDACTED]<sup>1628</sup> [REDACTED].<sup>1629</sup> [REDACTED],<sup>1630</sup> [REDACTED].
674. [REDACTED].
675. [REDACTED].<sup>1631</sup>

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<sup>1618</sup> [REDACTED].

<sup>1619</sup> [REDACTED].

<sup>1620</sup> [REDACTED]; [REDACTED].

<sup>1621</sup> [REDACTED].

<sup>1622</sup> [REDACTED] .

<sup>1623</sup> [REDACTED].

<sup>1624</sup> [REDACTED].

<sup>1625</sup> [REDACTED];[REDACTED].

<sup>1626</sup> [REDACTED].

<sup>1627</sup> [REDACTED].

<sup>1628</sup> [REDACTED].

<sup>1629</sup> [REDACTED].

<sup>1630</sup> [REDACTED].

<sup>1631</sup> [REDACTED].

**e. Alleged recognition of the jeep is unsubstantiated**

676. If the Panel accepts that the disputed encounter occurred, [REDACTED].

677. [REDACTED],<sup>1632</sup> [REDACTED]<sup>1633</sup> [REDACTED].<sup>1634</sup> [REDACTED].<sup>1635</sup>

678. [REDACTED].<sup>1636</sup> [REDACTED].<sup>1637</sup> [REDACTED].<sup>1638</sup>

**2. SELIMI was not responsible for the mistreatment of Opponents in [REDACTED]**

679. The SPO's allegation that [REDACTED] were detained and in one case severely beaten [REDACTED] and taken by THAÇI and VESELI personally in SELIMI's presence,<sup>1639</sup> was only notified to the Defence on 27 January 2023, two months before the commencement of trial.<sup>1640</sup> The Defence request to file preliminary motions against these allegations<sup>1641</sup> was denied by the Panel.<sup>1642</sup> Any ambiguity in the scope of allegations against SELIMI in this regard must not be resolved to his detriment.

**a. Limitations on scope of the allegation in relation to [REDACTED]**

**i. SELIMI not alleged to have participated in disappearance of [REDACTED]**

680. While the SPO alleges that only [REDACTED] was beaten and SELIMI is not alleged to have played any part in those acts. There is no allegation that [REDACTED] had been mistreated prior to his disappearance. Nor is it alleged

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<sup>1632</sup> [REDACTED].

<sup>1633</sup> [REDACTED].

<sup>1634</sup> [REDACTED].

<sup>1635</sup> [REDACTED].

<sup>1636</sup> [REDACTED].

<sup>1637</sup> [REDACTED].

<sup>1638</sup> [REDACTED].

<sup>1639</sup> Indictment, para. [REDACTED]; F00709/A01, para. [REDACTED].

<sup>1640</sup> [REDACTED]

<sup>1641</sup> F01281.

<sup>1642</sup> F01311.

that **SELIMI** was aware that either [REDACTED] or [REDACTED] were detained at the time they were allegedly taken to KLA HQ. Thus, the only direct allegation against **SELIMI** in this regard is that he was present and no allegation that **SELIMI** contributed in any way, either by act or omission, to either disappearance, or was otherwise aware of crimes committed by others in this regard.

681. This is reinforced by the Panel's ruling admitting evidence relevant to [REDACTED], which recalled that "two of the Accused are alleged to have directly participated, without reference to **SELIMI**."<sup>1643</sup>

682. Therefore, even if the Panel considers that **SELIMI** was present, it cannot be considered as a contribution to the JCE or as aiding and abetting.

ii. **SELIMI** only alleged to have failed to provide information [REDACTED]

683. [REDACTED].<sup>1644</sup> However, the PTB amends this allegation to add **SELIMI** and other KLA members being asked for information [REDACTED].<sup>1645</sup>

684. Based on the precise words of the Indictment and SPO PTB, this alleged failure to provide information can only relate to [REDACTED]. **SELIMI** is not alleged to have failed to provide this information as the MinPO.

iii. [REDACTED] is not an Opponent as described in the Indictment

685. The Defence contests that [REDACTED] falls within the notion of Opponents<sup>1646</sup> as described in the Indictment.<sup>1647</sup>

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<sup>1643</sup> [REDACTED].

<sup>1644</sup> Indictment, para.[REDACTED].

<sup>1645</sup> F00709/A01,para.[REDACTED].

<sup>1646</sup> Indictment,para.[REDACTED].

<sup>1647</sup> Indictment,para.32.

686. [REDACTED] willingly joined the KLA.<sup>1648</sup> Political rivalry or personal motive does not equate to being an Opponent as properly understood.<sup>1649</sup> Therefore, even if crimes were alleged to have been committed against [REDACTED], they do not fall within the scope of the allegations in the Indictment.

**b. Evidence relating to the disappearance of [REDACTED] is insufficient**

i. SPO evidence is almost exclusively hearsay

687. No witness called by the SPO could testify directly to the disappearance of [REDACTED].

688. [REDACTED], the only SPO witness who was a KLA member based in [REDACTED], learned about [REDACTED] only after the war when he heard that [REDACTED] had supposedly stayed in [REDACTED], but did not know who had met him or what he had done there.<sup>1650</sup> Neither [REDACTED], originally an SPO witness, nor [REDACTED], were called to give evidence.<sup>1651</sup>

689. Indeed, the only witnesses who testified about this allegation were [REDACTED].<sup>1652</sup>

690. Thus, the Panel has before it a dearth of information about how these alleged disappearances played out. This hole at the heart of the SPO case cannot be replaced by the subsequent investigations by [REDACTED]. Repetition of hearsay lacking credibility and reliability, and directly influenced by their own motives does not compensate for the lack of credible evidence about what actually happened to [REDACTED].

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<sup>1648</sup> [REDACTED].

<sup>1649</sup> See Section V.C.7.

<sup>1650</sup> [REDACTED].

<sup>1651</sup> F02325; [REDACTED].

<sup>1652</sup>[REDACTED];[REDACTED];[REDACTED];[REDACTED];[REDACTED].

ii. Direct evidence relating to disappearances of [REDACTED] is inconsistent and limited

*Inconsistencies relating to the disappearance of [REDACTED]*

691. [REDACTED] evidence relating to [REDACTED] suffers from substantial inaccuracies.

692. [REDACTED] testified that [REDACTED] first became concerned about [REDACTED] .[REDACTED].<sup>1653</sup> [REDACTED].<sup>1654</sup> [REDACTED] evidence that there were doubts and confusion, a fog, and that different people were saying different things<sup>1655</sup> fails to reasonably account for this wide discrepancy in the dates.

*Limitations on evidence relating to the disappearance of [REDACTED]*

693. [REDACTED] gave the only direct evidence in relation to [REDACTED] disappearance, that [REDACTED] left home [REDACTED].<sup>1656</sup> While [REDACTED] claimed that [REDACTED] went to join the KLA [REDACTED] spy,<sup>1657</sup> [REDACTED] did not accompany him to [REDACTED] and there is no evidence that [REDACTED] told [REDACTED] where he was going.

694. [REDACTED] evidence as to what [REDACTED] did after he left home [REDACTED], is entirely based on hearsay from [REDACTED], who [REDACTED]<sup>1658</sup> including that [REDACTED] went to [REDACTED] to join the KLA [REDACTED].<sup>1659</sup> [REDACTED], who did not testify, told [REDACTED]

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<sup>1653</sup> [REDACTED]; [REDACTED].

<sup>1654</sup> [REDACTED].

<sup>1655</sup> [REDACTED].

<sup>1656</sup> [REDACTED].

<sup>1657</sup> [REDACTED].

<sup>1658</sup> [REDACTED].

<sup>1659</sup> [REDACTED].

that some soldiers had said they were not in a position to accept [REDACTED], and gave other names of people involved.<sup>1660</sup>

695. [REDACTED] did not go to [REDACTED] personally but rather [REDACTED] and [REDACTED] went to [REDACTED], where they reported that they were told that [REDACTED] was there but were not allowed to see him.<sup>1661</sup>

[REDACTED] claimed to have been told by [REDACTED] that he could tell [REDACTED] that [REDACTED] anything could have happened to him.<sup>1662</sup>

696. [REDACTED] was also told by [REDACTED] that he claimed to have seen [REDACTED] in the yard at [REDACTED].<sup>1663</sup> [REDACTED] also told [REDACTED] that when he tried to see [REDACTED] again, he was told that [REDACTED] had gone to [REDACTED].<sup>1664</sup>

697. The source for all the information on [REDACTED] going to [REDACTED] and then remaining there, was therefore provided to [REDACTED] either by [REDACTED] or [REDACTED]. [REDACTED] could not directly testify to any of it [REDACTED]. [REDACTED] never mentioned [REDACTED] to [REDACTED] as one of the people present [REDACTED].<sup>1665</sup> Furthermore, [REDACTED] saw [REDACTED] two or three weeks after [REDACTED].<sup>1666</sup>

iii. Unofficial, partial and flawed investigations do not compensate for lack of credible and reliable evidence

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<sup>1660</sup> [REDACTED].

<sup>1661</sup> [REDACTED].

<sup>1662</sup> [REDACTED].

<sup>1663</sup> [REDACTED].

<sup>1664</sup> [REDACTED].

<sup>1665</sup> [REDACTED].

<sup>1666</sup> [REDACTED].

698. Despite [REDACTED] claim that [REDACTED] investigations were intended determine the truth,<sup>1667</sup> [REDACTED] was clearly seeking to obtain evidence that would be used for future prosecutions. Their investigations, [REDACTED] rather than through a methodical, trained and objective assessment of the relevant facts, were manipulated by those who had a clear interest in the outcome resulting in the acquisition of manifestly unreliable evidence leading to deeply, flawed and compromised conclusions.
699. For example, the SPO case is that [REDACTED] and [REDACTED] were taken away together and [REDACTED] stated to the SPO that evidence suggested [REDACTED] was held in [REDACTED]<sup>1668</sup> which [REDACTED] allegedly confirmed.<sup>1669</sup> Yet [REDACTED] admitted that [REDACTED] didn't contact [REDACTED].<sup>1670</sup> Nor did [REDACTED] attempt to contact [REDACTED].<sup>1671</sup> [REDACTED] also confirmed that [REDACTED] never contacted [REDACTED] when he went missing.<sup>1672</sup>
700. Similarly, evidence that pointed to the fact that either [REDACTED] or [REDACTED] had managed to join the KLA and were killed in battle, was ignored. [REDACTED] could not exclude the possibility that [REDACTED] was in fact killed by the Serbs in fighting<sup>1673</sup> and that [REDACTED] body was never located<sup>1674</sup> like many fighters who had died during the war.<sup>1675</sup> [REDACTED] accepted that 1700 bodies had been removed to Serbia and never properly

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<sup>1667</sup> [REDACTED].

<sup>1668</sup> [REDACTED]. See also [REDACTED].

<sup>1669</sup> [REDACTED].

<sup>1670</sup> [REDACTED].

<sup>1671</sup> [REDACTED].

<sup>1672</sup> [REDACTED].

<sup>1673</sup> [REDACTED]. See also [REDACTED] who confirmed that Albanians were killed in KLA-controlled zones, too where there was fighting and skirmishes, [REDACTED].

<sup>1674</sup> [REDACTED].

<sup>1675</sup> [REDACTED].

located from the war.<sup>1676</sup> [REDACTED] confirmed that evidence suggested [REDACTED] had been killed on duty.<sup>1677</sup> [REDACTED] and [REDACTED] both confirmed that [REDACTED] had died in battle.<sup>1678</sup> However, despite these indications, [REDACTED] did not question anyone from [REDACTED]<sup>1679</sup> even though [REDACTED] had been recognised [REDACTED]<sup>1680</sup> [REDACTED].<sup>1681</sup>

*Manipulation of the investigation by [REDACTED]*

701. [REDACTED] investigation was manipulated by [REDACTED]<sup>1682</sup> and [REDACTED],<sup>1683</sup> two individuals with a vested interest in directing any questions away from them. [REDACTED],<sup>1684</sup> [REDACTED].<sup>1685</sup> [REDACTED], suspected of involvement in [REDACTED] disappearance and attempting to protect himself from repercussions,<sup>1686</sup> became willing to provide information to [REDACTED] only after [REDACTED]. After provoking [REDACTED],<sup>1687</sup> [REDACTED] named VESELI and SELIMI as people to talk to; [REDACTED].<sup>1688</sup> [REDACTED] never doubted [REDACTED] statements, because he had pointed to the names that [REDACTED] wanted to hear. [REDACTED] stated that [REDACTED] he was mainly guided by the information [REDACTED][REDACTED].<sup>1689</sup>

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<sup>1676</sup> [REDACTED].

<sup>1677</sup> [REDACTED].

<sup>1678</sup> W04474,12/04/2023,T.2676-2677 [REDACTED].

<sup>1679</sup> [REDACTED].

<sup>1680</sup> [REDACTED].

<sup>1681</sup> [REDACTED].

<sup>1682</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. [REDACTED] was dropped as a witness. [REDACTED].

<sup>1683</sup> [REDACTED]; [REDACTED]; [REDACTED] [REDACTED]; [REDACTED]; [REDACTED]

<sup>1684</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>1685</sup> [REDACTED].

<sup>1686</sup> [REDACTED].

<sup>1687</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1688</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1689</sup> [REDACTED].

[REDACTED]

702. [REDACTED].<sup>1690</sup> Nor had [REDACTED].<sup>1691</sup> Nor did [REDACTED] or anyone [REDACTED] meet [REDACTED] or [REDACTED]<sup>1692</sup> whose evidence was central to **SELIMI**'s account of [REDACTED].

703. **SELIMI**, friendly and polite,<sup>1693</sup> appeared to be willing and available to meet [REDACTED]<sup>1694</sup> and showed compassion and respect.<sup>1695</sup> [REDACTED].<sup>1696</sup> [REDACTED] told **SELIMI** that [REDACTED],<sup>1697</sup> [REDACTED]<sup>1698</sup> and [REDACTED].<sup>1699</sup>

704. [REDACTED] claimed it was likely that [REDACTED] did show [REDACTED] to **SELIMI**,<sup>1700</sup> although [REDACTED],<sup>1701</sup> [REDACTED].<sup>1702</sup>

705. [REDACTED],<sup>1703</sup> [REDACTED].<sup>1704</sup> [REDACTED] sought to manipulate and pressure **SELIMI** into confirming [REDACTED] purported evidence about [REDACTED], regardless of its accuracy, by threatening to blame **SELIMI** to provoke him into identifying someone else, [REDACTED].

706. **SELIMI** showed a sense of pain towards [REDACTED]<sup>1705</sup> after [REDACTED].<sup>1706</sup>

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<sup>1690</sup> [REDACTED].

<sup>1691</sup> [REDACTED].

<sup>1692</sup> [REDACTED].

<sup>1693</sup> [REDACTED].

<sup>1694</sup> [REDACTED]; [REDACTED].

<sup>1695</sup> [REDACTED].

<sup>1696</sup> [REDACTED].

<sup>1697</sup> [REDACTED].

<sup>1698</sup> [REDACTED].

<sup>1699</sup> [REDACTED]; [REDACTED].

<sup>1700</sup> [REDACTED].

<sup>1701</sup> [REDACTED].

<sup>1702</sup> [REDACTED].

<sup>1703</sup> [REDACTED].

<sup>1704</sup> [REDACTED].

<sup>1705</sup> [REDACTED].

<sup>1706</sup> [REDACTED].

707. The [REDACTED] notes [REDACTED],<sup>1707</sup> as amended on [REDACTED],<sup>1708</sup> were compiled through an opaque process. [REDACTED].<sup>1709</sup> [REDACTED]<sup>1710</sup> [REDACTED].<sup>1711</sup> [REDACTED].
708. [REDACTED],<sup>1712</sup> [REDACTED] claimed that **SELIMI** [REDACTED]<sup>1713</sup> [REDACTED].<sup>1714</sup> [REDACTED]<sup>1715</sup> [REDACTED].<sup>1716</sup> [REDACTED] did not inform **SELIMI** [REDACTED].<sup>1717</sup>
709. Therefore, although **SELIMI** [REDACTED]. Nor does it demonstrate that **SELIMI** [REDACTED]. **SELIMI**, wanting to assist [REDACTED].
710. The Panel provisionally admitted [REDACTED] as associated exhibits to [REDACTED]<sup>1718</sup> [REDACTED].
711. None of the normal safeguards that would be applied to a suspect interview, such as the right to counsel,<sup>1719</sup> the videorecording of the interview,<sup>1720</sup> the right to receive a copy of the interview<sup>1721</sup> and clarify, supplement or amend anything he [REDACTED] said<sup>1722</sup> were followed by [REDACTED].

*Gaps, discrepancies and contents within and between the accounts of **SELIMI** and [REDACTED] undermine the reliability of the Notes*

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<sup>1707</sup> [REDACTED].

<sup>1708</sup> [REDACTED].

<sup>1709</sup> [REDACTED]; [REDACTED].

<sup>1710</sup> [REDACTED]; [REDACTED].

<sup>1711</sup> [REDACTED].

<sup>1712</sup> [REDACTED];[REDACTED].

<sup>1713</sup> [REDACTED].

<sup>1714</sup> [REDACTED].

<sup>1715</sup> [REDACTED]; [REDACTED].

<sup>1716</sup> [REDACTED]; [REDACTED].

<sup>1717</sup> [REDACTED].

<sup>1718</sup> [REDACTED].

<sup>1719</sup> Rule 43(3).

<sup>1720</sup> Rule 44(1)(a).

<sup>1721</sup> Rule 44(1)(d).

<sup>1722</sup> Rule 44(1)(c).

712. [REDACTED] cannot confirm [REDACTED] or [REDACTED] as being true, accurate or depicting the same event, neither of which has been tested in court.
713. Gaps and inconsistencies within and between [REDACTED] substantially undermines their reliability. The SPO has neither proven that these notes depict the same event, nor that the event that either does depict is actually [REDACTED].
714. First, there are no specific dates in any of the interview notes, either to the day, month or year. [REDACTED] did not contain any dates of the events described therein, with [REDACTED] not mentioned at any point.<sup>1723</sup> While [REDACTED] stated that [REDACTED] were aware that [REDACTED] was the topic of the conversation, the date when [REDACTED] was in [REDACTED],<sup>1724</sup> there is nothing recorded [REDACTED] which would confirm that.
715. [REDACTED]<sup>1725</sup> [REDACTED]. [REDACTED] did not identify anything [REDACTED] which could contradict that,<sup>1726</sup> but speculated that **SELIMI** [REDACTED].<sup>1727</sup>
716. [REDACTED]<sup>1728</sup> [REDACTED].<sup>1729</sup> The **SELIMI** described to [REDACTED] was no different, [REDACTED].<sup>1730</sup> Consequently, nothing objectively suggests that [REDACTED] must have related to [REDACTED].
717. Second, [REDACTED] nor **SELIMI** knew [REDACTED] before [REDACTED]. [REDACTED] had no prior connections with **SELIMI**.<sup>1731</sup> [REDACTED]<sup>1732</sup>

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<sup>1723</sup> [REDACTED].

<sup>1724</sup> [REDACTED].

<sup>1725</sup> [REDACTED].

<sup>1726</sup> [REDACTED].

<sup>1727</sup> [REDACTED].

<sup>1728</sup> [REDACTED].

<sup>1729</sup> [REDACTED]; [REDACTED].

<sup>1730</sup> [REDACTED].

<sup>1731</sup> [REDACTED]

<sup>1732</sup> [REDACTED]; See also, [REDACTED].

[REDACTED] had had no interactions with **SELIMI** [REDACTED].<sup>1733</sup> No other evidence suggested that **SELIMI** had any role or knowledge of [REDACTED]. [REDACTED] was not suggesting that **SELIMI** might have been a perpetrator or responsible for [REDACTED] disappearance.<sup>1734</sup>

718. [REDACTED].<sup>1735</sup> Necessarily, [REDACTED], **SELIMI** did not know that [REDACTED]<sup>1736</sup> [REDACTED]. [REDACTED].<sup>1737</sup> [REDACTED].<sup>1738</sup>

719. [REDACTED].<sup>1739</sup> [REDACTED],<sup>1740</sup> [REDACTED],<sup>1741</sup> [REDACTED].

720. [REDACTED]<sup>1742</sup> and later confirmed that he did not confirm either of the names, meaning [REDACTED], and did not state who [REDACTED].<sup>1743</sup> Therefore, his evidence cannot be relied upon to make a finding to that effect.

721. [REDACTED].<sup>1744</sup> [REDACTED].<sup>1745</sup> [REDACTED] also confirms that [REDACTED] did not refer to **SELIMI** [REDACTED].<sup>1746</sup>

722. [REDACTED],<sup>1747</sup> [REDACTED]. [REDACTED],<sup>1748</sup> this, like all the factors mentioned, undermines any confidence that both the [REDACTED] and [REDACTED] account refer to the same incident.

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<sup>1733</sup> [REDACTED].

<sup>1734</sup> [REDACTED].

<sup>1735</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1736</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1737</sup> [REDACTED]; s [REDACTED].

<sup>1738</sup> [REDACTED].

<sup>1739</sup> [REDACTED].

<sup>1740</sup> [REDACTED].

<sup>1741</sup> [REDACTED]; [REDACTED].

<sup>1742</sup> [REDACTED].

<sup>1743</sup> [REDACTED].

<sup>1744</sup> [REDACTED].

<sup>1745</sup> [REDACTED].

<sup>1746</sup> [REDACTED].

<sup>1747</sup> [REDACTED].

<sup>1748</sup> [REDACTED].

*Discrepancies within and between the accounts by [REDACTED] undermine their reliability*

723. [REDACTED],<sup>1749</sup> [REDACTED]<sup>1750</sup> [REDACTED].<sup>1751</sup> Substantial discrepancies also exist within and between these different accounts.

724. [REDACTED].<sup>1752</sup> [REDACTED].<sup>1753</sup>

725. [REDACTED].<sup>1754</sup> [REDACTED] explanation for this discrepancy<sup>1755</sup> does not reasonably explain why this aspect was missing [REDACTED].

726. [REDACTED].<sup>1756</sup> [REDACTED] .<sup>1757</sup>

727. [REDACTED].<sup>1758</sup>

728. Given these discrepancies in [REDACTED] evidence, minimal weight may be placed on them by the Panel.

*Neither the [REDACTED] is sufficient to implicate others in [REDACTED] or [REDACTED] disappearance*

729. [REDACTED] accounts of this incident are insufficiently reliable for the Panel to make a finding on them.

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<sup>1749</sup> [REDACTED]

<sup>1750</sup> [REDACTED]; [REDACTED].

<sup>1751</sup> [REDACTED].

<sup>1752</sup> [REDACTED].

<sup>1753</sup> [REDACTED]; [REDACTED].

<sup>1754</sup> [REDACTED].

<sup>1755</sup> [REDACTED].

<sup>1756</sup> [REDACTED]; [REDACTED].

<sup>1757</sup> [REDACTED].

<sup>1758</sup> [REDACTED].

730. However, even if the Panel does rely on [REDACTED] evidence, [REDACTED]<sup>1759</sup> [REDACTED].<sup>1760</sup> [REDACTED].<sup>1761</sup>

**c. SELIMI was not notified of requests for information**

731. The SPO's apparent allegation that the Accused, including **SELIMI**, were repeatedly notified of [REDACTED] and [REDACTED] disappearance and failed to investigate them is not supported by the evidence. The requests that were submitted, were either directed to the local level far away from **SELIMI** or the GS, or to other KLA members with no connection to **SELIMI** and no proof they were received by anyone. No liability can thus reasonably attach to **SELIMI**.

732. [REDACTED]<sup>1762</sup> is undermined by [REDACTED]<sup>1763</sup> [REDACTED].<sup>1764</sup>

733. [REDACTED]<sup>1765</sup> [REDACTED].<sup>1766</sup> [REDACTED].<sup>1767</sup> No evidence has been presented by the SPO to support a finding that a GS branch existed in [REDACTED] at any stage.

734. [REDACTED]<sup>1768</sup> [REDACTED].<sup>1769</sup> [REDACTED].<sup>1770</sup> [REDACTED].<sup>1771</sup> [REDACTED].<sup>1772</sup>

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<sup>1759</sup> [REDACTED].

<sup>1760</sup> [REDACTED].

<sup>1761</sup> [REDACTED].

<sup>1762</sup> [REDACTED].

<sup>1763</sup> [REDACTED].

<sup>1764</sup> [REDACTED].

<sup>1765</sup> [REDACTED].

<sup>1766</sup> [REDACTED] referring to [REDACTED].

<sup>1767</sup> [REDACTED].

<sup>1768</sup> [REDACTED].

<sup>1769</sup> [REDACTED] referring to [REDACTED].

<sup>1770</sup> [REDACTED]

<sup>1771</sup> [REDACTED].

<sup>1772</sup> [REDACTED].

735. [REDACTED]<sup>1773</sup> [REDACTED]<sup>1774</sup> [REDACTED].<sup>1775</sup> [REDACTED].<sup>1776</sup>

736. [REDACTED].<sup>1777</sup> [REDACTED].

737. [REDACTED].<sup>1778</sup> [REDACTED].<sup>1779</sup> [REDACTED].<sup>1780</sup> [REDACTED].<sup>1781</sup>

738. All [REDACTED] letters seeking information on [REDACTED] were submitted to bodies at the local level with no direct connection to **SELIMI**,<sup>1782</sup> bodies which no longer existed<sup>1783</sup> or otherwise had no direct connection to **SELIMI**,<sup>1784</sup> or where otherwise not addressed through **SELIMI**.<sup>1785</sup> No evidence on record confirms that any of these requests, if they were even notified to the individuals to whom they were addressed, were ever transferred to **SELIMI** or that he otherwise had knowledge of them.

739. Inquiries by [REDACTED] in relation to [REDACTED] were similarly focused on the local level. [REDACTED],<sup>1786</sup> and [REDACTED] also had no information on [REDACTED],<sup>1787</sup> there was no evidence that any of these individuals passed on these inquiries to the GS.

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<sup>1773</sup> [REDACTED] referring to [REDACTED].

<sup>1774</sup> [REDACTED].

<sup>1775</sup> [REDACTED].

<sup>1776</sup> [REDACTED].

<sup>1777</sup> [REDACTED].

<sup>1778</sup> [REDACTED].

<sup>1779</sup> [REDACTED].

<sup>1780</sup> [REDACTED].

<sup>1781</sup> [REDACTED].

<sup>1782</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1783</sup> See [REDACTED], not addressed to **SELIMI**; [REDACTED]; [REDACTED].

<sup>1784</sup> [REDACTED]; [REDACTED], speculated that this was also provided to **SELIMI** but without any foundation, [REDACTED].

<sup>1785</sup> [REDACTED].

<sup>1786</sup> [REDACTED].

<sup>1787</sup> [REDACTED].

740. [REDACTED],<sup>1788</sup> [REDACTED]<sup>1789</sup> or [REDACTED].<sup>1790</sup> [REDACTED].<sup>1791</sup> [REDACTED].<sup>1792</sup> Again, there is no evidence any of these inquiries were brought to **SELIMI**'s attention, either directly or indirectly.
741. [REDACTED]. [REDACTED] confirmed that [REDACTED] had no recollection of [REDACTED] mentioning **SELIMI** as being present [REDACTED].<sup>1793</sup> [REDACTED].<sup>1794</sup> [REDACTED].<sup>1795</sup> Indeed, [REDACTED] specifically confirmed [REDACTED] that [REDACTED] had not made any efforts to meet **SELIMI**.<sup>1796</sup>
742. Therefore, the SPO has produced no evidence that could support a finding that **SELIMI**, either directly or indirectly, had been specifically notified of [REDACTED].

3. **SELIMI was not present during the interrogation or detention of Opponents detained in or near [REDACTED]**<sup>1797</sup>

743. The evidence of [REDACTED] and [REDACTED] regarding their purported detentions in [REDACTED] by various individuals including **SELIMI**<sup>1798</sup> was thoroughly undermined by their evident lack of credibility. It must be wholly ignored by the Panel.

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<sup>1788</sup> [REDACTED].

<sup>1789</sup> [REDACTED].

<sup>1790</sup> [REDACTED].

<sup>1791</sup> [REDACTED].

<sup>1792</sup> [REDACTED].

<sup>1793</sup> [REDACTED];[REDACTED].

<sup>1794</sup> [REDACTED].

<sup>1795</sup> [REDACTED].

<sup>1796</sup> [REDACTED].

<sup>1797</sup> Indictment,para.[REDACTED].

<sup>1798</sup> F00709/A01,para.[REDACTED].

744. The SPO's specific allegation against **SELIMI** in [REDACTED].<sup>1799</sup> The SPO alleges that **SELIMI** was present [REDACTED]<sup>1800</sup> but not when [REDACTED] was allegedly subsequently questioned and beaten by KLA members [REDACTED].<sup>1801</sup> [REDACTED] spontaneous and false allegation of **SELIMI**'s role in this beating thus falls outside the pleaded charges.<sup>1802</sup> No allegation is made in relation to **SELIMI**'s alleged knowledge of [REDACTED] detention of which adequate notice has not been provided.

745. No concrete and credible evidence before this Panel demonstrates that **SELIMI** was aware of any other detentions, interrogations or mistreatment of individuals detained in [REDACTED]. Generic, vague and circumstantial evidence as to **SELIMI**'s prior irregular and sporadic appearances in [REDACTED], is manifestly insufficient to corroborate the SPO's allegations.

**a. SELIMI was not involved in [REDACTED] detention**

746. [REDACTED],<sup>1803</sup> [REDACTED]. The clear financial incentive for doing so, as well as the wholesale absence of any reasonable justification for failing to make such allegations previously, renders his evidence wholly unreliable.

747. [REDACTED] testified that two KLA [REDACTED] took him from his house [REDACTED],<sup>1804</sup> [REDACTED].<sup>1805</sup> [REDACTED].<sup>1806</sup> [REDACTED] was placed in a room on his own without being mistreated until that point.<sup>1807</sup>

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<sup>1799</sup> F00709/A01,para.[REDACTED]..

<sup>1800</sup> Indictment,para.[REDACTED]; F00709/A01,para.[REDACTED].

<sup>1801</sup> F00709/A01,para.[REDACTED].

<sup>1802</sup> *See supra*, para.22.

<sup>1803</sup> [REDACTED].

<sup>1804</sup> [REDACTED]; [REDACTED];[REDACTED]; [REDACTED].

<sup>1805</sup> [REDACTED].

<sup>1806</sup> [REDACTED]; [REDACTED];[REDACTED].

<sup>1807</sup> [REDACTED]; [REDACTED];[REDACTED].

748. [REDACTED].<sup>1808</sup> [REDACTED].<sup>1809</sup> [REDACTED].<sup>1810</sup> [REDACTED] claimed he was then interrogated by [REDACTED].<sup>1811</sup> [REDACTED] further stated that [REDACTED].<sup>1812</sup> This is untrue.
749. [REDACTED].<sup>1813</sup> [REDACTED].
750. [REDACTED].<sup>1814</sup> [REDACTED].<sup>1815</sup> [REDACTED].
751. [REDACTED].
752. [REDACTED].<sup>1816</sup> [REDACTED].<sup>1817</sup> [REDACTED].<sup>1818</sup> [REDACTED].<sup>1819</sup> [REDACTED].
753. [REDACTED] claimed that various individuals entered his room and kicked,<sup>1820</sup> [REDACTED].<sup>1821</sup> [REDACTED] identified various specific individuals as being responsible,<sup>1822</sup> [REDACTED].<sup>1823</sup> At no point during his extensive evidence before [REDACTED] did [REDACTED] ever state that **SELIMI** was also involved in his mistreatment.
754. [REDACTED].<sup>1824</sup> [REDACTED].<sup>1825</sup> [REDACTED].<sup>1826</sup>

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<sup>1808</sup> [REDACTED]; [REDACTED];[REDACTED].

<sup>1809</sup> [REDACTED]; [REDACTED].

<sup>1810</sup> [REDACTED]; [REDACTED].

<sup>1811</sup> [REDACTED].

<sup>1812</sup> [REDACTED].

<sup>1813</sup> [REDACTED]; [REDACTED].

<sup>1814</sup> [REDACTED]; [REDACTED].

<sup>1815</sup> [REDACTED].

<sup>1816</sup> [REDACTED]; [REDACTED];[REDACTED]; [REDACTED];[REDACTED]; [REDACTED].

<sup>1817</sup> [REDACTED].

<sup>1818</sup> [REDACTED].

<sup>1819</sup> [REDACTED].[REDACTED].[REDACTED];

<sup>1820</sup> [REDACTED]; [REDACTED].

<sup>1821</sup> [REDACTED].

<sup>1822</sup> [REDACTED];

<sup>1823</sup> [REDACTED].

<sup>1824</sup> [REDACTED].

<sup>1825</sup> [REDACTED].

<sup>1826</sup> [REDACTED].

755. This allegation by [REDACTED] is an outright lie, invented solely to target **SELIMI**. [REDACTED] had never mentioned this allegation in any of his prior statements [REDACTED]<sup>1827</sup> despite repeatedly recounting his detention in [REDACTED]. [REDACTED] claim when testifying that it was “time to say it” because he was “in front of justice”<sup>1828</sup> ignores the fact that he had been “in front of justice” many times before and had never made that allegation.
756. Nor did [REDACTED] give any clear response as to why he did not make this allegation about **SELIMI** to the SPO during his lengthy preparation session,<sup>1829</sup> when he was also in front of justice. Instead, [REDACTED] simply tried to minimize this conspicuous absence of a crucial allegation by claiming that [REDACTED] there were several omissions, that he pointed that out to the court and that he didn’t know why it hadn’t been recorded.<sup>1830</sup> Caught up by his own lies, [REDACTED] explanations for these omissions became more and more convoluted.
757. [REDACTED].<sup>1831</sup> [REDACTED].<sup>1832</sup> Further, [REDACTED]<sup>1833</sup> [REDACTED] was unable to explain this and simply continued reiterating that he did not know why the information was not recorded.<sup>1834</sup>
758. [REDACTED],<sup>1835</sup> [REDACTED].<sup>1836</sup> [REDACTED],<sup>1837</sup> [REDACTED].<sup>1838</sup>

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<sup>1827</sup> [REDACTED].

<sup>1828</sup> [REDACTED].

<sup>1829</sup> [REDACTED].

<sup>1830</sup> [REDACTED].

<sup>1831</sup> [REDACTED].

<sup>1832</sup> [REDACTED].

<sup>1833</sup> [REDACTED].

<sup>1834</sup> [REDACTED].

<sup>1835</sup> [REDACTED].

<sup>1836</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1837</sup> [REDACTED].

<sup>1838</sup> [REDACTED].

759. [REDACTED] provided to [REDACTED]<sup>1839</sup> again made no reference there to **SELIMI** at all, [REDACTED].<sup>1840</sup> [REDACTED] confirmed that he provided all information about his imprisonment [REDACTED] which were true and accurate to the best of his belief,<sup>1841</sup> and confirmed that **SELIMI** was not mentioned [REDACTED].<sup>1842</sup> [REDACTED],<sup>1843</sup> [REDACTED]<sup>1844</sup> and again confirmed that despite having an opportunity to correct his previous statements in relation to the new allegation against **SELIMI**, he failed to do so.<sup>1845</sup>
760. [REDACTED]. [REDACTED].<sup>1846</sup> [REDACTED].<sup>1847</sup>
761. [REDACTED].<sup>1848</sup>
762. [REDACTED] was presented with these different versions of his evidence [REDACTED]. [REDACTED],<sup>1849</sup> [REDACTED].<sup>1850</sup> [REDACTED],<sup>1851</sup> [REDACTED].<sup>1852</sup>
763. [REDACTED] was further confronted about his evidence-in-chief about another incident supposedly involving **SELIMI** in [REDACTED].<sup>1853</sup> [REDACTED] confirmed not having mentioned the incident in his prior evidence<sup>1854</sup> or even not witnessing the alleged incident himself.<sup>1855</sup> Again his

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<sup>1839</sup> [REDACTED].

<sup>1840</sup> [REDACTED].

<sup>1841</sup> [REDACTED]; [REDACTED].

<sup>1842</sup> [REDACTED].

<sup>1843</sup> [REDACTED].

<sup>1844</sup> [REDACTED].

<sup>1845</sup> [REDACTED].

<sup>1846</sup> [REDACTED].

<sup>1847</sup> [REDACTED].

<sup>1848</sup> [REDACTED].

<sup>1849</sup> [REDACTED].

<sup>1850</sup> [REDACTED].

<sup>1851</sup> [REDACTED].

<sup>1852</sup> [REDACTED].

<sup>1853</sup> [REDACTED].

<sup>1854</sup> [REDACTED].

<sup>1855</sup> [REDACTED].

various explanations for this omission were that he did mention it to [REDACTED] but it was not transcribed or that he forgot to mention it. In a candid moment, he accepted that he doesn't have an answer for why he never mentioned it before.<sup>1856</sup>

764. [REDACTED].<sup>1857</sup> However, this appears to be nothing more than an attempt to justify the multiple omissions and gaps in his evidence and his inability to explain the inconsistencies between them. [REDACTED] . [REDACTED],<sup>1858</sup> the extensive record of [REDACTED] evidence suggests otherwise.

765. [REDACTED] repeated invention of allegations against **SELIMI** was clearly motivated by his [REDACTED]. [REDACTED] [REDACTED]<sup>1859</sup> [REDACTED].<sup>1860</sup> [REDACTED]<sup>1861</sup>, [REDACTED].<sup>1862</sup>

766. This request epitomises [REDACTED] lack of credibility. [REDACTED] .

#### **b. SELIMI was not involved with [REDACTED] alleged detention**

767. Despite making no reference to **SELIMI**'s presence [REDACTED] [REDACTED], [REDACTED] testified regarding the purported role and involvement of **SELIMI** in his detention [REDACTED].

768. [REDACTED],<sup>1863</sup> yet did not mention specifically seeing **SELIMI** [REDACTED] [REDACTED]. Instead, he assumed that **SELIMI** ought to have known about the incidents given [REDACTED],<sup>1864</sup> a position he maintained even when

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<sup>1856</sup> [REDACTED].

<sup>1857</sup> [REDACTED].

<sup>1858</sup> [REDACTED].

<sup>1859</sup> [REDACTED].

<sup>1860</sup> [REDACTED].

<sup>1861</sup> [REDACTED].

<sup>1862</sup> [REDACTED].

<sup>1863</sup> [REDACTED].

<sup>1864</sup> [REDACTED]; [REDACTED].

confronted with the fact that [REDACTED].<sup>1865</sup> [REDACTED] belief that as he was detained [REDACTED], the “leadership” would have been aware of who was being held,<sup>1866</sup> was also merely an assumption by [REDACTED].

769. [REDACTED] changed his story and claimed that he recalled seeing **SELIMI** [REDACTED].<sup>1867</sup>

770. [REDACTED] failed to mention **SELIMI’S** alleged presence [REDACTED], but implausibly and erroneously claimed that he thought he had.<sup>1868</sup> [REDACTED] explicitly told [REDACTED]<sup>1869</sup> [REDACTED]. [REDACTED]<sup>1870</sup> [REDACTED].

771. [REDACTED].<sup>1871</sup> [REDACTED]<sup>1872</sup> [REDACTED]. [REDACTED].<sup>1873</sup>

772. However, [REDACTED] was evasive regarding the details of [REDACTED]. [REDACTED] [REDACTED].<sup>1874</sup> [REDACTED].<sup>1875</sup>

773. [REDACTED].

774. [REDACTED] confirmed he was unaware of the identities of the Accused.<sup>1876</sup> [REDACTED].<sup>1877</sup> [REDACTED].

775. [REDACTED] evidence’s is also riddled with inconsistencies.

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<sup>1865</sup> [REDACTED].

<sup>1866</sup> [REDACTED].

<sup>1867</sup> [REDACTED].

<sup>1868</sup> [REDACTED].

<sup>1869</sup> [REDACTED]; [REDACTED].

<sup>1870</sup> [REDACTED].

<sup>1871</sup> [REDACTED].

<sup>1872</sup> [REDACTED].

<sup>1873</sup> [REDACTED].

<sup>1874</sup> [REDACTED].

<sup>1875</sup> [REDACTED].

<sup>1876</sup> [REDACTED].

<sup>1877</sup> [REDACTED].

776. First, [REDACTED] accepted that his memory issues compromised his ability to recall details of his detention.<sup>1878</sup> [REDACTED].<sup>1879</sup>
777. [REDACTED]. [REDACTED] initially stated that he only saw **SELIMI** in passing [REDACTED].<sup>1880</sup> [REDACTED],<sup>1881</sup> [REDACTED] denied ever stating that [REDACTED].<sup>1882</sup> [REDACTED].<sup>1883</sup>
778. [REDACTED]<sup>1884</sup> [REDACTED]<sup>1885</sup> [REDACTED].<sup>1886</sup> [REDACTED].
779. [REDACTED] testified that this encounter with **SELIMI** occurred on [REDACTED],<sup>1887</sup> in the afternoon.<sup>1888</sup> [REDACTED].
780. [REDACTED].<sup>1889</sup> [REDACTED]<sup>1890</sup> [REDACTED].<sup>1891</sup> [REDACTED].<sup>1892</sup> [REDACTED].<sup>1893</sup>
781. Overall, [REDACTED] evidence is thus fatally compromised [REDACTED].<sup>1894</sup> None of [REDACTED] evidence relating to the purported knowledge of either **SELIMI** or other named perpetrators of his detention can thus be relied upon by the Panel.

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<sup>1878</sup> [REDACTED].

<sup>1879</sup> [REDACTED].

<sup>1880</sup> [REDACTED].

<sup>1881</sup> [REDACTED].

<sup>1882</sup> [REDACTED].

<sup>1883</sup> [REDACTED].

<sup>1884</sup> [REDACTED].

<sup>1885</sup> [REDACTED].

<sup>1886</sup> [REDACTED].

<sup>1887</sup> [REDACTED].

<sup>1888</sup> [REDACTED].

<sup>1889</sup> [REDACTED].

<sup>1890</sup> [REDACTED]; [REDACTED].

<sup>1891</sup> [REDACTED]; [REDACTED].

<sup>1892</sup> [REDACTED]..

<sup>1893</sup> [REDACTED]..

<sup>1894</sup> See *supra*, para.637.

**4. SELIMI was not aware of Serb civilians captured during the fighting at Rahovec/Orahovac in July 1998**

782. The SPO has failed to prove that **SELIMI** either knew about, approved of or directed any action to be taken against civilians arrested and detained in the Rahovec/Orahovac area in July 1998.<sup>1895</sup>

**a. The attack on Rahovec/Orahovac was not instigated on the orders of the GS**

783. While instigating factors for the attack on Rahovec/Orahovac are opaque,<sup>1896</sup> consensus is that it was instigated by the “Arti” unit located close to the town of Rahovec/Orahovac<sup>1897</sup> on 17 July 1998, acting under its own volition and without prior planning or organisation.<sup>1898</sup> Other units joined the fighting in an unplanned and uncoordinated manner.<sup>1899</sup>

784. Not only was the attack on Rahovec/Orahovac not ordered by the GS, but an operational assessment had already been made by W04752 and others including **SELIMI**,<sup>1900</sup> that the KLA was not prepared for operations in urban areas and specific warnings to this effect had been passed along to local staffs.<sup>1901</sup>

**b. SELIMI’s role was strictly limited to defensive actions on the Malishevë/Mališevo road**

785. The SPO does not define “immediate aftermath” in the context of the Rahovec/Orahovac area, given that KLA fighting began on 17 July 1998 and the Serb counterattack occurred on 19 July 1998.<sup>1902</sup> W04752 testified he met

<sup>1895</sup> Indictment, para.22; F00709/A01, paras.368-380.

<sup>1896</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>1897</sup> [REDACTED]; [REDACTED]; W04745,24/02/2025,T.25491.

<sup>1898</sup> [REDACTED]; W04401,02/12/2024,T.23145; [REDACTED].

<sup>1899</sup> P02007.6,p.3; [REDACTED]; [REDACTED].

<sup>1900</sup> W04752,10/07/2024,T.17921.

<sup>1901</sup> [REDACTED]; [REDACTED]; W04752,10/07/2024,T.17918-17921; [REDACTED];

W04744,25/06/2024,T.17104,17118. *See also*, [REDACTED]; [REDACTED].

<sup>1902</sup> [REDACTED]; W02153,18/07/2023,T.6074-6075.

**SELIMI** and others “in the middle of the night”<sup>1903</sup> outside of the town, somewhere along the road between Rahovec/Orahovac and Malishevë/Mališevo.<sup>1904</sup> When the battle had finished, KLA units were already outside the town and people were leaving towards Malishevë/Mališevo and Drenoc/Drenovac.<sup>1905</sup> No other evidence reliably establishes when **SELIMI** arrived there. W04752 stayed “close” to **SELIMI** “on the front lines” during his time in Rahovec/Orahovac,<sup>1906</sup> and no other evidence shows that **SELIMI** moved from this area.

786. The vastly more powerful<sup>1907</sup> VJ launched its counterattack against the weaker<sup>1908</sup> and poorly organised<sup>1909</sup> KLA (and Albanian civilians<sup>1910</sup>) on 19 July 1998, sweeping through the town in a matter of hours, facing virtually no resistance, on 19 July 1998<sup>1911</sup> destroying all positions held by the KLA<sup>1912</sup> including those “above” Rahovec/Orahovac.<sup>1913</sup> Displacement of civilians occurred on a massive scale,<sup>1914</sup> with some managing to flee to other towns including Malishevë/Mališevo,<sup>1915</sup> while others remained trapped in the conflict area.<sup>1916</sup>

787. When W04752 met **SELIMI**, the focus of those present was on attempting to cut that route, slow the movement of Serbian mechanised armour units,<sup>1917</sup> and deal

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<sup>1903</sup> [REDACTED].

<sup>1904</sup> W04752,10/07/2024,T.17918,17927-17928.

<sup>1905</sup> [REDACTED].

<sup>1906</sup> W04752,10/07/2024,T.17927-17928.

<sup>1907</sup> W04752,03/07/2024,T.17587; W02153,18/07/2023,T.6074-6076.

<sup>1908</sup> See e.g. [REDACTED]; W04752,10/07/2024,T.17923-17924.

<sup>1909</sup> See Section III.

<sup>1910</sup> W02153,18/07/2023,T.6076.

<sup>1911</sup> W02153,18/07/2023,T.6074-6075; [REDACTED].

<sup>1912</sup> [REDACTED].

<sup>1913</sup> [REDACTED].

<sup>1914</sup> W04752,10/07/2024,T.17923.

<sup>1915</sup> [REDACTED].

<sup>1916</sup> [REDACTED].

<sup>1917</sup> [REDACTED]; W04752,03/07/2024,T.17587.

with the exodus of the civilian population.<sup>1918</sup> ZYRAPI, **SELIMI** and BASHOTA assigned local units, as they arrived, along various points of the defensive line to cooperate with one another<sup>1919</sup> on an *ad hoc* basis, with the zone commander assuming command of the operation upon his arrival.<sup>1920</sup>

788. Reflecting the confusion at the time,<sup>1921</sup> W04752 did not know who was in charge of the operation.<sup>1922</sup> The defensive line was attacked four or five times by Serbian forces over the next few days,<sup>1923</sup> requiring two more front lines to be opened.<sup>1924</sup> The efforts were purely defensive in nature and no offensive operations were ordered.

789. W04752 and **SELIMI** interrupted their activities near Rahovec/Orahovac to travel to Llapushnik/Lapušnik and assist in the fighting taking place there around 24 or 25 July.<sup>1925</sup> **SELIMI** kept moving, ending up in Drenicë/Drenica, where offensives were ongoing,<sup>1926</sup> by at least 29 July 1998, when **SELIMI** met with HILL.<sup>1927</sup> **SELIMI** did not take part in any GS meetings throughout this period. The evidence provided by HILL from this meeting points to the fact that **SELIMI** did not carry any messages from the GS and was unable to speak on their behalf.<sup>1928</sup>

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<sup>1918</sup> [REDACTED].

<sup>1919</sup> [REDACTED].

<sup>1920</sup> W04752,10/07/2024,p.17925.

<sup>1921</sup> [REDACTED].

<sup>1922</sup> [REDACTED].

<sup>1923</sup> W04752,10/07/2024,T.17925-17926.

<sup>1924</sup> [REDACTED].

<sup>1925</sup> W04752,11/07/2024,T.18073.

<sup>1926</sup> W04752,15/07/2024,T.18265-18268; [REDACTED].

<sup>1927</sup> [REDACTED].

<sup>1928</sup> See Section IV.B.1.

**c. SELIMI did not order and had no knowledge of the abduction of civilians**

790. The Operational Directorate had no role in relation to prisoners captured during the fighting as prisoners of war, with W04752 testifying that such a matter was to be covered by the commander of the zone and the legal department.<sup>1929</sup> Neither W04752, nor any member of the Operational Directorate, including **SELIMI**, received any report regarding Serb prisoners at that stage or later.<sup>1930</sup> Such division of responsibility had been applicable throughout the whole conflict.<sup>1931</sup> **SELIMI** did not issue or approve any orders to arrest or otherwise deal with Serb civilians in Rahovec/Orahovac and its surrounding areas.

i. Documentary evidence in relation to Rahovec/Orahovac is unreliable

P01329

791. The SPO's reliance on P01329 to allege that the GS ordered the attack on Zoçishtë/Zoçište<sup>1932</sup> is erroneous and does not establish its case against **SELIMI**. All instructions given at Rahovec/Orahovac on an *ad hoc* basis by Operational Department members were purely defensive in nature and did not involve attacking civilians. Contradictory witness evidence, multiple inaccuracies contained within the document and the absence of *indicia* of authenticity of the document itself require that P01329 be given no weight.

792. P01329 is a one-page document purported to be a report in relation to the village of Zoçishtë/Zoçište. bearing the name of "Operational Commander, Agim

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<sup>1929</sup> W04752,09/07/2024,T.17890-17892.

<sup>1930</sup> W04752,10/07/2024,T.17927,17928,17931.

<sup>1931</sup> W04752,09/07/2024,T.17892.

<sup>1932</sup> F00709/A01,para.380.

KUQI”, but has no signature or any other mark to indicate that Agim KUQI read or approved its content.

793. There is no recipient listed for the purported report, no mark or stamp of receipt from the unidentified addressee and no “protocol number” recorded.<sup>1933</sup> There is no indication of the provenance of P01329 other than “ICTY/MICT” and no submissions were made or witnesses called by the SPO to clarify the matter. No evidence of a corresponding GS order was produced by the SPO. Neither Agim KUQI nor B.KUQI were called to testify.
794. W04744 is named in P01329, but his knowledge was limited to the actions of his small unit<sup>1934</sup> and he had no knowledge of any detainees.<sup>1935</sup> W04744 was unaware of P01329’s existence, disputed its accuracy<sup>1936</sup> and had no knowledge of the order to which P01329 refers<sup>1937</sup> or other any coordination or other orders between local units and ZYRAPI or the GS.<sup>1938</sup> Despite W04744’s general statements about an alleged reporting relationship between B.KUQI and ZYRAPI<sup>1939</sup> and speculative comments provided at the urging of the investigator,<sup>1940</sup> he could not give any examples of orders or reports between the two.<sup>1941</sup>
795. A description by W04752 to Zëri, of missions being given to “two sabotage units” explicitly states that the deployment of “these two groups [was] for the sole purpose of evacuation of civilians *into the town* [of Rahovec/Orahovac]”, thus far away from the town in P01329.<sup>1942</sup> No evidence has been presented to

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<sup>1933</sup> W04752,17/07/2024,T.18421.

<sup>1934</sup> W04744,25/06/2024,T.17121-17122.

<sup>1935</sup> [REDACTED]; W04744,25/06/2024,T.17122.

<sup>1936</sup> [REDACTED]; [REDACTED].

<sup>1937</sup> [REDACTED]; W04744,25/06/2024,T.17120.

<sup>1938</sup> [REDACTED]; W04744, 25/06/2024,T.17121.

<sup>1939</sup> E.g.[REDACTED].

<sup>1940</sup> [REDACTED].

<sup>1941</sup> [REDACTED].

<sup>1942</sup> [REDACTED].

show that this refers to attacks on civilians in Zoçishtë/Zočişte or any other place.

796. There is no evidence that **SELIMI** was aware of P01329.

*P00067*

797. P00067, relied upon by the SPO to support the allegation that the GS were informed in August 1998 of the attacks on the towns of Reti/Retimlje and Opertushë/Opertuša,<sup>1943</sup> should be given no weight by the Panel.

798. Despite [REDACTED] speculation that “such reports” would be sent to the GS,<sup>1944</sup> he could provide no substantive evidence in relation to P00067, having been previously unaware of its existence<sup>1945</sup> and could not identify with certainty its author.<sup>1946</sup> [REDACTED] did not know if there was any prior report to the GS,<sup>1947</sup> was not aware of any oral reports, and was not present at any alleged meetings between the GS and Drenoc staff.<sup>1948</sup>

799. P00067 contains no stamp and bears no sign or mark of receipt indicating that this report was received by any member of the GS. The SPO asserts the signature to be of X.GASHI,<sup>1949</sup> without any evidence from X.GASHI affirming this. P00067 was seized from B.ZYBERAJ’s house,<sup>1950</sup> who, despite being speculated [REDACTED] as a possible author of P00067,<sup>1951</sup> was dropped as a witness by the SPO<sup>1952</sup> and is not alleged to be a member of the GS.

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<sup>1943</sup> F00709/A01,para.383.

<sup>1944</sup> [REDACTED].

<sup>1945</sup> [REDACTED]; [REDACTED].

<sup>1946</sup> [REDACTED].

<sup>1947</sup> [REDACTED].

<sup>1948</sup> [REDACTED].

<sup>1949</sup> [REDACTED]; [REDACTED].

<sup>1950</sup> [REDACTED].

<sup>1951</sup> [REDACTED].

<sup>1952</sup> [REDACTED].

800. P00067 makes vague reference to an earlier report sent to the GS regarding Rahovec/Orahovac<sup>1953</sup> “according to [the] request” of the GS.<sup>1954</sup> No evidence about this alleged report or request from the GS has been presented by the SPO. This line is meaningless and without further context or evidence, there is no reliable inference to be made between this line in and P01329, or any reports or orders not in evidence.
801. W04752 had never seen P00067, did not recognise the signature, and had never seen any reports either before or after the events at Rahovec/Orahovac from the Rahovec local staff,<sup>1955</sup> and attested to the fact that this report was not solicited or requested by W04752 or any other members of the GS.<sup>1956</sup> [REDACTED].<sup>1957</sup>
802. Although W04744 told the Prosecution that he believed ZYRAPI and X.GASHI had a superior-subordinate relationship, when pressed on the issue, much like his speculation about B.KUQI and ZYRAPI,<sup>1958</sup> admitted this was pure speculation on his part.<sup>1959</sup> Although W04744 expressed belief that X.GASHI and the GS were in “constant communication”, this was based on his claim on having once seen X.GASHI at in the GS in November 1998.<sup>1960</sup> W04744 was asked no further questions about this alleged meeting. No evidence corroborates W04744’s claim.
803. There is no evidence that **SELIMI** received or was otherwise made aware of P00067.

P00643

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<sup>1953</sup> [REDACTED].

<sup>1954</sup> [REDACTED].

<sup>1955</sup> W04752,09/07/2024,T.17877-17878.

<sup>1956</sup> W04752,09/07/2024,T.17880-17882.

<sup>1957</sup> [REDACTED].

<sup>1958</sup> *See supra*, para.794.

<sup>1959</sup> [REDACTED].

<sup>1960</sup> [REDACTED].

804. Aside from references to ZYRAPI and Xhavit HAZIRI, no attendees are listed in P00643 for any of the listed meetings and no author of these notes has been established. W04752 could not recall the attendees<sup>1961</sup> at the 23 July meeting he is noted to have attended and was unsure where this meeting had taken place.<sup>1962</sup> There is no evidence that **SELIMI** was either present at or that he was consulted in relation to the agenda or outcomes of these meetings.<sup>1963</sup>
805. In relation to the entry of 23 July 1998, the minutes are written in broken sentences, truncated phrases and are partly illegible. However, this entry dated one day after P01329, contains no mention of prisoners and orders given or reports received about diversionary attacks.
806. The minutes also contain a mistake where they list 23 July 1998 as being the date he assumed the position of the Head of Operational Directorate, as W04752 had assumed this position in mid-July 1998.<sup>1964</sup>

#### Media reports

807. W02144 claimed that there were “widely reported allegations of detention and abductions and in the context of the ICRC access,”<sup>1965</sup> but based this on ICRC members of the ground in Malishevë/Mališevo who unsuccessfully tried to establish contact with the KLA.<sup>1966</sup> W02144’s vague reference to the Serbian press and media in relation to the allegations that Serb civilians were abducted was not substantiated.<sup>1967</sup>

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<sup>1961</sup> W04752,01/07/2024,T.17387.

<sup>1962</sup> W04752,01/07/2024,T.17387.

<sup>1963</sup> See Sections IV.A.3,IV.C.

<sup>1964</sup> W04752,01/07/2024,T.17387; W04752,03/07/2024,T.17580-17581.

<sup>1965</sup> [REDACTED].

<sup>1966</sup> W02144,29/05/2024,T.16315-16316.

<sup>1967</sup> W02144,29/05/2024,T.16318.

808. At that time of the Rahovec events, W04752 was not aware of the abduction of Serb civilians by the KLA, but heard about it from the media when the KLA issued a denial of their involvement in the abduction.<sup>1968</sup> W04752 confirmed that he heard of the alleged detentions and killings of civilians from the media, however, W04752 only heard that after the war and only in relation to the *Limaj* trial.<sup>1969</sup> **SELIMI** also told the SPO that he heard about the detentions from the media but was not able to rely upon Serb media as a source.<sup>1970</sup>

ii. Witness evidence is uncorroborated and lacks credibility

809. [REDACTED] is the exclusive source for the allegation that the “general HQ” gave an order to then remove or “take” the male prisoners who were then driven away and killed.<sup>1971</sup> [REDACTED] is neither credible, nor reliable.

810. [REDACTED].<sup>1972</sup> [REDACTED],<sup>1973</sup> [REDACTED],<sup>1974</sup> [REDACTED].<sup>1975</sup>  
[REDACTED],<sup>1976</sup> [REDACTED].<sup>1977</sup>

811. [REDACTED].<sup>1978</sup> [REDACTED].

812. [REDACTED] thus created a narrative in which he was merely following purported orders of by falsely claiming that he received an order from the GS order to transfer the male detainees,<sup>1979</sup> an order [REDACTED] to transport the detainees to [REDACTED]<sup>1980</sup> as well as being required to report to

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<sup>1968</sup> W04752,03/07/2024,T.17585.

<sup>1969</sup> [REDACTED].

<sup>1970</sup> [REDACTED].

<sup>1971</sup> [REDACTED]; [REDACTED].

<sup>1972</sup> [REDACTED]; [REDACTED];[REDACTED].

<sup>1973</sup> [REDACTED].

<sup>1974</sup> [REDACTED]; [REDACTED].

<sup>1975</sup> [REDACTED].

<sup>1976</sup> [REDACTED]; [REDACTED].

<sup>1977</sup> [REDACTED].

<sup>1978</sup> [REDACTED].

<sup>1979</sup> [REDACTED]; [REDACTED].

<sup>1980</sup> [REDACTED]; [REDACTED].

[REDACTED] on the issue.<sup>1981</sup> For this reason his evidence is wholly incapable of belief.

813. Even if the Panel considers there to be some truth to [REDACTED] evidence, its hearsay nature as well as numerous inconsistencies therein undermine any weight that can be placed on it.

814. When testifying, [REDACTED] denied directly hearing either the purported orders of the GS or [REDACTED]<sup>1982</sup> which he had previously mentioned, claiming instead that it was [REDACTED]<sup>1983</sup> who heard those purported orders and transmitted them to [REDACTED],<sup>1984</sup> making it impossible to verify his account. [REDACTED] was neither confident about ever meeting a GS member or them issuing an order<sup>1985</sup> and could similarly not recall by whom or how the alleged instruction to transfer the detainees [REDACTED] was given.<sup>1986</sup> [REDACTED] clarified that [REDACTED] had authority [REDACTED]; transmitted to [REDACTED] information that the prisoners had been beaten up;<sup>1987</sup> and also organised the bus and handed over the detainees [REDACTED],<sup>1988</sup> blaming those inconsistencies on interpretation errors.<sup>1989</sup> [REDACTED] also testified that he no longer remembered if he actually did report to [REDACTED] regarding the detainees.<sup>1990</sup>

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<sup>1981</sup> [REDACTED]; [REDACTED].

<sup>1982</sup> [REDACTED].

<sup>1983</sup> [REDACTED].

<sup>1984</sup> [REDACTED].

<sup>1985</sup> [REDACTED].

<sup>1986</sup> [REDACTED].

<sup>1987</sup> [REDACTED].

<sup>1988</sup> [REDACTED]; [REDACTED].

<sup>1989</sup> [REDACTED].

<sup>1990</sup> [REDACTED].

815. The Panel then admitted under Rule 143(2)(c), a Report claiming to reflect [REDACTED] evidence<sup>1991</sup> as a statement<sup>1992</sup> which is unsigned, unauthored, undated and amounts to an unclear extract of a purported investigative note allegedly reproducing, *inter alia*, information provided by an individual called [REDACTED].<sup>1993</sup> [REDACTED] name is not referred to and even if it was [REDACTED] who provided this information, it does not purport to be a verbatim or exhaustive record of what the witness said<sup>1994</sup> and is wholly unclear which specific parts of the report are provided by [REDACTED]. [REDACTED] testified to having no knowledge of the identity of [REDACTED].<sup>1995</sup> The SPO could not identify the author of [REDACTED] and while it speculated that [REDACTED]<sup>1996</sup> no evidence confirms this.

816. Neither [REDACTED] previous statements, in court testimony, or [REDACTED] statement, imputing any role to the GS in relation to [REDACTED] detainees, is thus entitled to any weight.

5. **SELIMI neither intimidated nor asserted dominance over units affiliated with the LDK**

817. The SPO has not proven intimidation by **SELIMI**,<sup>1997</sup> or any other alleged JCE member either in relation to ZEMAJ or other units [REDACTED].

818. **SELIMI**'s role in Prapaqan/Papraçane, Bardhaniq/Bardonić [REDACTED] at the end of August and beginning of September 1998 was minimal. **SELIMI** had neither the authority, nor will, to intimidate ZEMAJ or [REDACTED] or independently decide on their appointment or removal.

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<sup>1991</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>1992</sup> [REDACTED]; *See supra*, para.50.

<sup>1993</sup> [REDACTED]; [REDACTED].

<sup>1994</sup> [REDACTED].

<sup>1995</sup> [REDACTED].

<sup>1996</sup> [REDACTED].

<sup>1997</sup> Indictment, para.45.

**a. SELIMI did not intimidate ZEMAJ and other FARK soldiers in the Dukagjin Zone**

**i. ZEMAJ's forces attempted to take over and impose their authority on the Dukagjin Zone**

819. ZEMAJ entered Kosovo in June 1998,<sup>1998</sup> a month after<sup>1999</sup> the Oslo talks had attempted to achieve a political agreement between the KLA and FARK,<sup>2000</sup> assuming that a binding agreement had been reached and that his forces would be welcomed into Kosovo and authorised to take over command of those existing KLA forces on the ground.<sup>2001</sup>
820. [REDACTED] did not take part in the Oslo talks,<sup>2002</sup> but [REDACTED] informed him that he had met with KLA representatives and that a joint staff would be set up in Tirana.<sup>2003</sup> [REDACTED] believed there was a general agreement to unify the KLA and FARK<sup>2004</sup> although he accepted that the agreement was never finalized or implemented.<sup>2005</sup> FARK believed at the time that the Oslo agreement had resolved potential conflicts with the KLA.<sup>2006</sup>
821. Against this background, ZEMAJ entered Kosovo<sup>2007</sup> with 120-150 FARK soldiers bearing KLA insignia and carrying light weapons<sup>2008</sup> [REDACTED].<sup>2009</sup> When ZEMAJ entered Kosovo he expected the KLA units in Dukagjin would

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<sup>1998</sup> [REDACTED].

<sup>1999</sup> [REDACTED]; [REDACTED].

<sup>2000</sup> [REDACTED].

<sup>2001</sup> [REDACTED].

<sup>2002</sup> [REDACTED].

<sup>2003</sup> [REDACTED]; [REDACTED].

<sup>2004</sup> [REDACTED]; [REDACTED].

<sup>2005</sup> [REDACTED].

<sup>2006</sup> [REDACTED].

<sup>2007</sup> [REDACTED]; [REDACTED].

<sup>2008</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2009</sup> [REDACTED]; [REDACTED]; [REDACTED].

immediately fall under his command,<sup>2010</sup> and planned a three stage deployment deep into Dukagjin.<sup>2011</sup>

822. However, ZEMAJ's entry occurred a day or two after a meeting in Jabllanica/Jablanica on 23 June 1998 at which HARADINAJ was elected as Zone Commander.<sup>2012</sup> [REDACTED] believed the formation of the Dukagjin Staff was motivated by the fear of Dukagjin KLA commanders that they would lose control of the zone.<sup>2013</sup>
823. S.VESALI, Dukagjin Chief of Staff and Naim MALOKU arrived in Jasiq on 25 June 1998, allegedly on HARADINAJ's orders, to tell FARK to submit to KLA command or leave Kosovo.<sup>2014</sup> ZEMAJ was told almost immediately by S.VESALI, to return to Albania.<sup>2015</sup> ZEMAJ was surprised to be told this<sup>2016</sup> and responded that FARK would not submit to KLA command due to the terms of the extant Oslo agreement.<sup>2017</sup> ZEMAJ told the KLA representatives that he would march into Kosovo because of A.KRASNIQI's orders to do so.<sup>2018</sup>
824. [REDACTED], contradicted an allegation that HARADINAJ had threatened FARK officials,<sup>2019</sup> describing HARADINAJ as "contained and orderly",<sup>2020</sup> proposing that FARK either disperse in Kosovo and remain under KLA leadership or go back to Albania.<sup>2021</sup> ZEMAJ and HARADINAJ, unable to

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<sup>2010</sup> [REDACTED].

<sup>2011</sup> [REDACTED].

<sup>2012</sup> P01364.

<sup>2013</sup> [REDACTED].

<sup>2014</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2015</sup> [REDACTED].

<sup>2016</sup> [REDACTED].

<sup>2017</sup> [REDACTED]; [REDACTED].

<sup>2018</sup> [REDACTED]; [REDACTED].

<sup>2019</sup> [REDACTED].

<sup>2020</sup> [REDACTED].

<sup>2021</sup> [REDACTED].

resolve opposing views about the validity of the Oslo agreement,<sup>2022</sup> concluded the meeting.<sup>2023</sup>

825. On 27 June 1998, at a meeting between FARK and S.VESSELL, Dukagjin OZ Chief of Staff,<sup>2024</sup> [REDACTED] that they would complete the second phase of their deployment and take action against any attempts at its obstruction.<sup>2025</sup> On 10 July 1998, implementing the third phase of their deployment, FARK relocated from Isnij/Istinić to Prapaqan/Papraćane.<sup>2026</sup> In response, a group of around 15 armed KLA soldiers approached FARK barracks.<sup>2027</sup> HARADINAJ gave [REDACTED] ZEMAJ an ultimatum to leave the barracks, which they agreed to in order to avoid a confrontation with the KLA.<sup>2028</sup> ZEMAJ's unilateral actions, at a time he was fully informed of the fundamental disagreements over command, were the sole cause of this animosity in Dukagjin.

826. It was not that the KLA did not want to lose power,<sup>2029</sup> but those already within the Dukagjin Zone did not envisage being unilaterally usurped by ZEMAJ's forces.

827. ZEMAJ's forces rejected any KLA authority, entered Kosovo by order of Defence Minister, A.KRASNIQI<sup>2030</sup> and reported to him throughout the time ZEMAJ remained in Kosovo.<sup>2031</sup> ZEMAJ's forces wholly undermined HARADINAJ's election as the Dukagjin zone commander and the integrity of the Dukagjin OZ KLA forces, causing serious resentment from local KLA

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<sup>2022</sup> [REDACTED]; [REDACTED].

<sup>2023</sup> [REDACTED].

<sup>2024</sup> [REDACTED].

<sup>2025</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2026</sup> [REDACTED]; [REDACTED].

<sup>2027</sup> [REDACTED].

<sup>2028</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>2029</sup> [REDACTED].

<sup>2030</sup> [REDACTED].

<sup>2031</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];

W01511,03/09/2024,T.19522.

members resulting in a substantial risk for the KLA both in Dukagjin and across Kosovo.

ii. SELIMI had minimal authority over forces in the Dukagjin Zone

828. The evidence relating to **SELIMI**'s attendance on 23 June 1998 on meeting at which HARADINAJ was elected as the Zone Commander is unclear but does not substantiate the position that he exercised authority therein.
829. The only time W01511 saw **SELIMI** was at this meeting, where he was introduced without reference to function or title,<sup>2032</sup> only learning later that **SELIMI** was a GS member.<sup>2033</sup> W04597, present at the meeting,<sup>2034</sup> could not recall for certain if **SELIMI** suggested BRAHIMAJ as Dukagjin zone commander,<sup>2035</sup> while W01511 claimed that **SELIMI** did make that suggestion.<sup>2036</sup> Whether **SELIMI** did make this suggestion is not clearly established.
830. While reviewing alleged minutes of this meeting, W01511 did not remember who "Agron" referred to,<sup>2037</sup> nor was [REDACTED] aware of it pertaining to **SELIMI**.<sup>2038</sup>
831. The various meeting minutes of this meeting, listed 'Agron' as an observer<sup>2039</sup> but unable to give any instructions regarding the proposal of BRAHIMAJ as the Zone Commander.<sup>2040</sup> P01602 records Agroni stated that Maxhup was a representative of the CS in Dukagjin Plain, that it could have been a secret<sup>2041</sup>

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<sup>2032</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2033</sup> [REDACTED].

<sup>2034</sup> [REDACTED].

<sup>2035</sup> [REDACTED].

<sup>2036</sup> [REDACTED].

<sup>2037</sup> [REDACTED].

<sup>2038</sup> [REDACTED].

<sup>2039</sup> [REDACTED]; [REDACTED].

<sup>2040</sup> [REDACTED]; P01364; P01602; [REDACTED]; [REDACTED].

<sup>2041</sup> P01602,p.3.

which prompted Smajl to complain that the CS was not giving them necessary instructions and was not present.<sup>2042</sup> Agron suggested to the participants to compose the projects they were envisaging and within two days the GS would provide them with an answer.<sup>2043</sup>

832. The SPO has not established that “Agron” refers to **SELIMI**. Nonetheless, if such a suggestion was made by **SELIMI**, who W04597 claimed stated this on behalf of the GS,<sup>2044</sup> it was ignored, given that HARADINAJ was ultimately selected as zone commander,<sup>2045</sup> The minimal authority held by **SELIMI** at this meeting is exemplified by this very rejection.

iii. SELIMI’s actions during meetings with ZEMAJ and his forces were limited and reasonable

833. The SPO’s contention that the GS contempt for ZEMAJ is reflected in the handwritten notes of a GS meeting on 16 August 1998<sup>2046</sup> is undermined by W04401’s evidence that ZEMAJ was never discussed during GS meetings.<sup>2047</sup> W04752 was present during this meeting but did not confirm what was discussed.<sup>2048</sup> No witness confirmed **SELIMI** attended that meeting.

*First Meeting – Prapaqan/Papraçane on 20 August 1998*

834. A meeting on 20 August 1998 in Prapaqan/Papraçane between Dukagjin units<sup>2049</sup> was presided by ZEMAJ with HARADINAJ present,<sup>2050</sup> but with no GS

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<sup>2042</sup> P01602,p.3.

<sup>2043</sup> P01602,p.3.

<sup>2044</sup> [REDACTED].

<sup>2045</sup> [REDACTED]; [REDACTED]; W01511,03/09/2024,T.19509-19510.

<sup>2046</sup> P00643,p.SPOE00229214.

<sup>2047</sup> W04401,02/12/2024,T.23146-23147.

<sup>2048</sup> W04752,01/07/2024,T.17389-17390.

<sup>2049</sup> [REDACTED].

<sup>2050</sup> [REDACTED]; [REDACTED]; [REDACTED].

representatives,<sup>2051</sup> where it was decided that ZEMAJ would become Zone Commander and HARADINAJ would be his deputy.<sup>2052</sup> During the meeting, harsh criticism was directed at HARADINAJ, who accepted<sup>2053</sup> that his forces failed in combat.<sup>2054</sup> Such criticism undermined HARADINAJ's authority and girded ZEMAJ's.

835. The Supreme Staff officially appointed ZEMAJ as commander, HARADINAJ as deputy-commander [REDACTED].<sup>2055</sup>

836. Once ZEMAJ sent around an announcement to all the local headquarters and the GS about his appointment, asking the GS to respond within 24 hours.<sup>2056</sup> After three days without that response, ZEMAJ informed the local staffs.<sup>2057</sup> The GS then decided to conduct a meeting on the matter.<sup>2058</sup>

837. The meetings on 20 and 21 August 1998 in Prapaqan/Papraçane demonstrate that ZEMAJ effectively carried out a coup, one that HARADINAJ was given little choice but to accept, thereby implementing ZEMAJ's objective since his entry into Kosovo in June 1998 to consolidate power over the local forces under his singular authority.<sup>2059</sup>

### *Second Meeting – End of August*

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<sup>2051</sup> [REDACTED].

<sup>2052</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>2053</sup> [REDACTED].

<sup>2054</sup> [REDACTED].

<sup>2055</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2056</sup> [REDACTED].

<sup>2057</sup> [REDACTED].

<sup>2058</sup> [REDACTED].

<sup>2059</sup> The Defence notes that **SELIMI** told the SPO that HARADINAJ handed over his position willingly and was happy for ZEMAJ to become the commander, because he had come with a unit of former Albanian army officers and a decision on his appointment by the BUKOSHI government as a zone commander. [REDACTED]. While **SELIMI** may have believed that to be true, the evidence dictates that ZEMAJ's takeover was much more deliberate and orchestrated than was believed at the time.

838. Around the end of August, the KLA GS arrived in Prapaqan/Papraçane<sup>2060</sup> with THAÇI, **SELIMI**, and ZYRAPI present.<sup>2061</sup> ZEMAJ chaired the meeting, HARADINAJ and W04597 also in attendance<sup>2062</sup> There is no evidence ZEMAJ and **SELIMI** met prior to this. During the meeting, GS members expressed their dissatisfaction with the agreement reached between HARADINAJ and ZEMAJ on 20 August and sought to reverse it.<sup>2063</sup> The GS members expressed their discontent that the decision was shared and made public prior to GS approval,<sup>2064</sup> annulled the decision to make ZEMAJ commander<sup>2065</sup> and reinstated HARADINAJ as commander.<sup>2066</sup>
839. [REDACTED] claimed that **SELIMI** opened the meeting,<sup>2067</sup> saying that the KLA GS concluded HARADINAJ should be the Dukagjin Zone Commander<sup>2068</sup> and that FARK could not make command changes without GS permission.<sup>2069</sup> FARK stood by the agreement made with HARADINAJ, giving the KLA two days to consider the situation.<sup>2070</sup> [REDACTED] claimed that **SELIMI** gave FARK an ultimatum to revert the change within six days.<sup>2071</sup> However, W01511 did not even remember **SELIMI** being present,<sup>2072</sup> becoming more sure in his preparation session,<sup>2073</sup> yet during questioning by the Panel, W01511 stated that he was still not certain that **SELIMI** was present.<sup>2074</sup> W04597 made no reference

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<sup>2060</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>2061</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>2062</sup> [REDACTED].

<sup>2063</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>2064</sup> [REDACTED].

<sup>2065</sup> [REDACTED].

<sup>2066</sup> [REDACTED].

<sup>2067</sup> [REDACTED];

<sup>2068</sup> [REDACTED]; [REDACTED].

<sup>2069</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2070</sup> [REDACTED].

<sup>2071</sup> [REDACTED].

<sup>2072</sup> [REDACTED].

<sup>2073</sup> [REDACTED].

<sup>2074</sup> W01511,04/09/2024,T.19592.

to anything that **SELIMI** said at the meeting but specifically recalled that **HARADINAJ** didn't speak at all.<sup>2075</sup>

840. The evidence does not support that **SELIMI** played a prominent role during this meeting. The fact that neither W01511 nor W04597 referred to anything that **SELIMI** said at the meeting is in stark contrast with the evidence that **ZYRAPI**, for example, was at the forefront of the conversations.<sup>2076</sup> It also contradicts [REDACTED] uncorroborated claim that **SELIMI** spoke first and had delivered an ultimatum to **FARK**; a detail which it is reasonable to expect anybody present to recall.
841. In a separate matter that is disputed by the Defence, W04836 claimed that **GS** members insisted that he remove the portrait of **RUGOVA**<sup>2077</sup> which W04836 refused, claiming he answered to **RUGOVA**<sup>2078</sup> and that **GS** members also insisted they did not recognise the government-in-exile.<sup>2079</sup> **ZEMAJ** was alone when this allegedly occurred.<sup>2080</sup>
842. [REDACTED] repeats this allegation but is merely repeating what he was told by **ZEMAJ**.<sup>2081</sup> Similarly, while W01511 recounted being told about the alleged incident,<sup>2082</sup> he also was not present when it allegedly occurred.
843. W04836's untested evidence is the only basis for this allegation. Given W04836's evident bias against the **GS**, the Panel should place no weight on this part of his evidence.

### *Third Meeting – Bardhaniq/Bardonić*

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<sup>2075</sup> [REDACTED].

<sup>2076</sup> [REDACTED].

<sup>2077</sup> [REDACTED].

<sup>2078</sup> [REDACTED].

<sup>2079</sup> [REDACTED]; [REDACTED].

<sup>2080</sup> [REDACTED].

<sup>2081</sup> [REDACTED].

<sup>2082</sup> [REDACTED].

844. **SELIMI**'s role at the meeting in Bardhaniq/Bardonić, either in person or relating to the phonecall with A.KRASNIQI, was minimal.
845. Three days after first meeting with the GS, W04836 was invited to Bardhaniq/Bardonić village to continue talks <sup>2083</sup> demonstrating that no final decision had been taken or could be implemented at the first meeting. W04836 alleged that **SELIMI**, had signed a decree reversing ZEMAJ and HARADINAJ's new positions.<sup>2084</sup> W04836 insisted however that he would only follow orders issued by the Supreme Staff commander.<sup>2085</sup> The SPO has not produced this alleged decree and no evidence corroborates W04836's claim.
846. ZEMAJ did not accept the changed decision appointing HARADINAJ as commander and himself as deputy.<sup>2086</sup>
847. [REDACTED].<sup>2087</sup> **SELIMI** introduced himself as General-Inspector of the KLA<sup>2088</sup> and stated that FARK operative forces had to go under the command of the GS.<sup>2089</sup>
848. Contrary to this, W04752 stated that while **SELIMI** has passed on to him that ZEMAJ had taken over command of the Zone,<sup>2090</sup> W04752 read out the statement of the Main Staff regarding the reversal of roles.<sup>2091</sup> ZEMAJ was proposed by W04752 as the deputy commander position by the delegation.<sup>2092</sup> At most, W04752 attested that such an order was signed by J.KRASNIQI on

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<sup>2083</sup> [REDACTED].

<sup>2084</sup> [REDACTED]; [REDACTED];[REDACTED].

<sup>2085</sup> [REDACTED]; [REDACTED].

<sup>2086</sup> [REDACTED]; [REDACTED].

<sup>2087</sup> [REDACTED].

<sup>2088</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2089</sup> [REDACTED]; [REDACTED].

<sup>2090</sup> [REDACTED]; W04752,01/07/2024,T.17391.

<sup>2091</sup> W04752,03/07/2024,T.17600-17601.

<sup>2092</sup> W04752,03/07/2024,T.17596-17597.

behalf of SYLA and merely given to ZEMAJ by **SELIMI**,<sup>2093</sup> thus making **SELIMI** only a messenger and contradicting ZEMAJ's evidence as to **SELIMI**'s alleged role.

849. **SELIMI**'s role in this second meeting was thus extremely limited. While [REDACTED] alleged that **SELIMI** again stated that FARK operative forces had to go under the command of the GS,<sup>2094</sup> even if true this was hardly controversial and merely reflected the fact that the KLA was attempting to establish some form of organisation. No witness gave evidence that **SELIMI** stated anything else of note, especially anything that could constitute either a threat or some form of intimidation.
850. W04836 also alleged that at this meeting, a phonecall between A.KRASNIQI and THAÇI, occurred, which took place in his and **SELIMI**'s presence.<sup>2095</sup> W04836 further alleged that THAÇI swore at A.KRASNIQI over the phone<sup>2096</sup> and also threatened him.<sup>2097</sup> That **SELIMI** played a part in this phonecall is not supported by the evidence.
851. [REDACTED] claimed that during the meeting, ZEMAJ left the table to call A.KRASNIQI via satellite phone.<sup>2098</sup> THAÇI joined him.<sup>2099</sup> ZEMAJ briefed A.KRASNIQI on the meeting.<sup>2100</sup> [REDACTED] told the SPO that only THAÇI joined the conversation with A.KRASNIQI and that all other KLA members remained seated at the table.<sup>2101</sup> However, [REDACTED] and testified that **SELIMI** did in fact participate in the phone call with A.KRASNIQI.<sup>2102</sup>

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<sup>2093</sup> [REDACTED].

<sup>2094</sup> [REDACTED].

<sup>2095</sup> [REDACTED]; [REDACTED].

<sup>2096</sup> [REDACTED].

<sup>2097</sup> [REDACTED]; [REDACTED].

<sup>2098</sup> [REDACTED]; [REDACTED].

<sup>2099</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2100</sup> [REDACTED].

<sup>2101</sup> [REDACTED].

<sup>2102</sup> [REDACTED]; [REDACTED].

[REDACTED] heard parts of the conversation but was only informed of the rest [REDACTED] and [REDACTED].<sup>2103</sup>

852. W01511 asserted that only THAÇI and ZEMAJ stepped aside to call A.KRANSIQI and that HARADINAJ did not go with them.<sup>2104</sup> W01511 testified that he did not know whether THAÇI and ZEMAJ spoke to A.KRASNIQI or to the GS and he did not know the content of the conversation.<sup>2105</sup>
853. W04752 recalled the phone call with A.KRASNIQI, ZEMAJ and THAÇI and explained that he also spoke to A.KRASNIQI during this phone call. A.KRASNIQI told W04752 not to get involved with his officers and W04752 responded that ZEMAJ was now an officer of the KLA and therefore he was under the orders of the Dukagjin OZ and the GS, and was to remain in that position until this issue was resolved.<sup>2106</sup> W04752 did not mention **SELIMI** being involved in the phone call or otherwise aware of it.
854. W04240 claimed to have been told by W04836 after the war that both THAÇI and **SELIMI** had made threats during the call.<sup>2107</sup> W04240 was neither present at the phonecall, nor received a contemporaneous account of it. No other evidence supports this allegation.
855. The consistent evidence is that **SELIMI** had no active role in the phonecall to A.KRASNIQI. While [REDACTED] evidence was inconsistent and confused and [REDACTED] and is contradicted by other witnesses. Moreover, as [REDACTED], he cannot testify directly to which parts **SELIMI** was present, and specifically whether he was present when any alleged threats were made.

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<sup>2103</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2104</sup> [REDACTED].

<sup>2105</sup> W01511,03/09/2024,T.19457.

<sup>2106</sup> [REDACTED]; W04752,03/07/2024,T.17600-17601.

<sup>2107</sup> P01740.2,p.11.

856. **SELIMI** told the SPO that he didn't make the call, and while he relayed that A.KRASNIQI said [REDACTED]<sup>2108</sup> it is not clear whether **SELIMI** was present for the call, heard all of it, or was otherwise merely repeating what he was subsequently told about it.

iv. **SELIMI's limited authority in appointing individuals in the Dukagjin Zone**

857. **SELIMI** is alleged to have distributed various orders re-appointing Dukagjin OZ command staff during the meeting on 2 September,<sup>2109</sup> there is no allegation, or evidence, that **SELIMI** drafted or decided upon such appointments. The limited examples of [REDACTED] and F.MEHMETAJ do not demonstrate any specific authority of **SELIMI** who merely confirmed decisions already taken by the GS regarding individuals proposed by HARADINAJ.

858. [REDACTED] alleged that **SELIMI** prepared documents for ZEMAJ and [REDACTED] and explained to them that they would have to become part of the KLA staff and would adopt new roles.<sup>2110</sup>[REDACTED].<sup>2111</sup> [REDACTED] claimed that documents provided to ZEMAJ and [REDACTED] had been signed by **SELIMI** and had a KLA emblem at the top.<sup>2112</sup> ZEMAJ refused to accept the document and tore it up,<sup>2113</sup> replying that they reported to A.KRASNIQI.<sup>2114</sup> [REDACTED] hypothesized that ZEMAJ saw this as an attempt to bring the FARK back under KLA control.<sup>2115</sup>

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<sup>2108</sup> [REDACTED].

<sup>2109</sup> F00709/A01,para.198.

<sup>2110</sup> [REDACTED]; [REDACTED].

<sup>2111</sup> Contained in [REDACTED]; [REDACTED];[REDACTED].

<sup>2112</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2113</sup> [REDACTED].

<sup>2114</sup> [REDACTED].

<sup>2115</sup> [REDACTED]; [REDACTED].

859. By contrast, W01511 testified that he received an envelope at that time which contained a decision by the GS in relation to his new appointment,<sup>2116</sup> which was signed by the commander of the GS but contained no name.<sup>2117</sup> W01511 did not specify who signed his appointment.
860. The Decision appointing F.MEHMETAJ signed by **SELIMI**<sup>2118</sup> was also relied upon by the SPO.<sup>2119</sup> F.MEHMETAJ was not called as a witness and no other evidence was referred to by the SPO in support of this document. W01511 had never seen the document and was not aware that F.MEHMETAJ had been thus appointed.<sup>2120</sup> While W01511 claimed it was consistent with what he understood F.MEHMETAJ to be doing in the summer of 1998,<sup>2121</sup> F.MEHMETAJ played several roles.<sup>2122</sup> However, W01511 could not understand Dukagjin OZ still being referred to as a sub-zone in September 1998 and that the Decision was not compliant with what the situation was on the ground.<sup>2123</sup> W01511 believed this document written “for the sake of it but not reflecting the reality” and that the document had “no value whatsoever”.<sup>2124</sup> Moreover, the earlier proposal submitted to the Government-in-exile prepared by ZEMAJ already listed F.MEHMETAJ as Assistant Commander for Information.<sup>2125</sup> The appointment letter by **SELIMI** at most therefore simply formalised a pre-existing decision that was agreed by ZEMAJ.
861. The documents purporting to appoint F.MEHMETAJ and [REDACTED] are similar in format, with much of the information filled in by hand. Both

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<sup>2116</sup> [REDACTED]; W01511,03/09/2024,T.19457.

<sup>2117</sup> [REDACTED]; W01511,03/09/2024,T.19457.

<sup>2118</sup> [REDACTED].

<sup>2119</sup> F00709/A01,para.198.

<sup>2120</sup> W01511,04/09/2024,T.19605-19606.

<sup>2121</sup> W01511,04/09/2024,T.19605-19606.

<sup>2122</sup> W01511,04/09/2024,T.19605-19606.

<sup>2123</sup> W01511,04/09/2024,T.19606-19607.

<sup>2124</sup> W01511,04/09/2024,T.19606-19607.

<sup>2125</sup> [REDACTED].

documents were signed in 'Prishtina' by **SELIMI**, simply as a representative of the GS, without any indication on their face that **SELIMI** had any role in making that decision. Neither included **SELIMI**'s name in the signature block. As such, these documents do not reflect **SELIMI**'s individual authority to take such decisions. This is also consistent with [REDACTED] view of **SELIMI**, whom he derided as having "practically no knowledge of military activities or organisations."<sup>2126</sup>

862. Moreover, ZEMAJ's decision to rip up his purported appointment letter demonstrates that ZEMAJ did not consider himself to be bound by it. It was only by [REDACTED] consent that the appointment by **SELIMI** was approved. It was not clear whether he accepted this appointment.

**b. SELIMI did not intimidate [REDACTED]**

i. SELIMI had minimal involvement in meeting [REDACTED] or other KLA members

863. [REDACTED] evidence does not demonstrate that **SELIMI** attempted to intimidate him [REDACTED]. [REDACTED],<sup>2127</sup> [REDACTED].

864. [REDACTED].<sup>2128</sup> **SELIMI** used to pass through [REDACTED] as it was in the roads connecting [REDACTED].<sup>2129</sup>

865. [REDACTED] did not know **SELIMI**'s role in 1998 and 1999.<sup>2130</sup> [REDACTED] understood **SELIMI** to be an important person within the KLA he did not know whether **SELIMI** had any authority.<sup>2131</sup> [REDACTED] conceded that his only basis for understanding **SELIMI**'s importance was his association with

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<sup>2126</sup> [REDACTED].

<sup>2127</sup> [REDACTED].

<sup>2128</sup> [REDACTED]; [REDACTED].

<sup>2129</sup> [REDACTED].

<sup>2130</sup> [REDACTED].

<sup>2131</sup> [REDACTED].

others.<sup>2132</sup> [REDACTED] never knew what **SELIMI**'s official position was in the KLA [REDACTED],<sup>2133</sup> [REDACTED].<sup>2134</sup>

866. [REDACTED] described [REDACTED] meetings between [REDACTED] and the GS members, only one of which was attended by **SELIMI**,<sup>2135</sup> who was a deputy along with ZYRAPI and BRAHIMAJ.<sup>2136</sup>

867. The meeting with the GS took place on [REDACTED]<sup>2137</sup> which **SELIMI**, THAÇI and ZYRAPI attended<sup>2138</sup> [REDACTED].<sup>2139</sup> [REDACTED].<sup>2140</sup> [REDACTED].<sup>2141</sup>

868. [REDACTED].<sup>2142</sup> However, [REDACTED] did not have independent recollection of what **SELIMI** said and that **SELIMI** did not say anything that particularly struck him.<sup>2143</sup> [REDACTED] did not recall **SELIMI** at all during his first mention of this [REDACTED], explaining that was there was nothing of relevance concerning **SELIMI** in that meeting.<sup>2144</sup>

869. [REDACTED] lack of a specific independent memory of what **SELIMI** allegedly said at that meeting does not establish that **SELIMI** intimidated [REDACTED], or that he played any prominent role in the meeting.

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<sup>2132</sup> [REDACTED].

<sup>2133</sup> [REDACTED].

<sup>2134</sup> [REDACTED].

<sup>2135</sup> [REDACTED].

<sup>2136</sup> [REDACTED].

<sup>2137</sup> [REDACTED]; [REDACTED].

<sup>2138</sup> [REDACTED]; [REDACTED].

<sup>2139</sup> [REDACTED].

<sup>2140</sup> [REDACTED].

<sup>2141</sup> [REDACTED].

<sup>2142</sup> [REDACTED].

<sup>2143</sup> [REDACTED].

<sup>2144</sup> [REDACTED].

ii. Letter summarising meeting does not accurately reflect its content

870. [REDACTED] sent a signed letter to [REDACTED]<sup>2145</sup> which pertained to that meeting<sup>2146</sup> to report how the meeting went.

871. [REDACTED].<sup>2147</sup> [REDACTED].<sup>2148</sup>

872. [REDACTED].<sup>2149</sup> [REDACTED].

873. [REDACTED].<sup>2150</sup> [REDACTED].<sup>2151</sup> Consequently, [REDACTED] agreed that his knowledge of what **SELIMI** allegedly said during the meeting was [REDACTED] not his own recollection,<sup>2152</sup> and only reflects the meeting in general terms.<sup>2153</sup> Neither **SELIMI**, nor any other KLA participants were shown it before it was sent to verify whether it accurately recorded what they had said.<sup>2154</sup>

874. [REDACTED]<sup>2155</sup> [REDACTED]<sup>2156</sup> [REDACTED].<sup>2157</sup> As such, [REDACTED].<sup>2158</sup> The letter should be given no weight.

iii. No consequences from the [REDACTED] meeting

875. In [REDACTED] view, their meetings were only debates and there were no consequences because of their disagreements.<sup>2159</sup> There were no differences with

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<sup>2145</sup> [REDACTED].

<sup>2146</sup> [REDACTED].

<sup>2147</sup> [REDACTED].

<sup>2148</sup> [REDACTED].

<sup>2149</sup> [REDACTED]; [REDACTED].

<sup>2150</sup> [REDACTED].

<sup>2151</sup> [REDACTED]; [REDACTED].

<sup>2152</sup> [REDACTED].

<sup>2153</sup> [REDACTED].

<sup>2154</sup> [REDACTED].

<sup>2155</sup> [REDACTED].

<sup>2156</sup> [REDACTED].

<sup>2157</sup> [REDACTED].

<sup>2158</sup> [REDACTED].

<sup>2159</sup> [REDACTED]; [REDACTED].

respect to the KLA and their fight against enemy forces.<sup>2160</sup> [REDACTED].<sup>2161</sup>  
[REDACTED].<sup>2162</sup>

876. [REDACTED].<sup>2163</sup> [REDACTED],<sup>2164</sup> [REDACTED].<sup>2165</sup> [REDACTED].<sup>2166</sup>  
[REDACTED].<sup>2167</sup>

877. [REDACTED].

878. [REDACTED].<sup>2168</sup> [REDACTED]. [REDACTED].<sup>2169</sup> [REDACTED].<sup>2170</sup>  
[REDACTED].<sup>2171</sup> [REDACTED].<sup>2172</sup> [REDACTED].<sup>2173</sup> [REDACTED].<sup>2174</sup>

879. W04448's evidence in relation to **SELIMI** in this regard is similarly lacking in credibility. W04448 gave evidence that he went to Volljakë/Volujak and then to Jabllanica/Jablanica but he doesn't know when he saw AGUSHI.<sup>2175</sup> W04448 then claimed to have a conversation in Jabllanica/Jablanica at that time with **SELIMI** about his black uniform in the front yard of the base, which **SELIMI** recognized as belonging to the Black Tigers.<sup>2176</sup> W04448 claimed to know **SELIMI** as Ten and believed he had seen him before from Drenicë/Drenica to Jabllanica/Jablanica.<sup>2177</sup>

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<sup>2160</sup> [REDACTED].

<sup>2161</sup> [REDACTED].

<sup>2162</sup> [REDACTED].

<sup>2163</sup> [REDACTED].

<sup>2164</sup> [REDACTED].

<sup>2165</sup> [REDACTED].

<sup>2166</sup> [REDACTED].

<sup>2167</sup> [REDACTED]; [REDACTED].

<sup>2168</sup> [REDACTED].

<sup>2169</sup> [REDACTED].

<sup>2170</sup> [REDACTED].

<sup>2171</sup> [REDACTED]; [REDACTED].

<sup>2172</sup> [REDACTED].

<sup>2173</sup> [REDACTED].

<sup>2174</sup> [REDACTED].

<sup>2175</sup> W04448,14/11/2023, [REDACTED].

<sup>2176</sup> W04448,14/11/2023,T.10017.

<sup>2177</sup> W04448,14/11/2023,T.10017.

880. This innocuous and forgettable conversation, if it did indeed occur, is probative of no allegation in the Indictment or SPO PTB. All it appears to suggest is that **SELIMI** and AGUSHI happened to be in Jabllanica/Jablanica at an unspecified date. **SELIMI** was not alleged, let alone proven, to have any interactions with AGUSHI [REDACTED].

881. [REDACTED].<sup>2178</sup> [REDACTED],<sup>2179</sup> [REDACTED]<sup>2180</sup> [REDACTED].<sup>2181</sup> Moreover, there is no evidence that **SELIMI** received the document or was otherwise made aware of it.

**6. SELIMI was not involved in the arrest, detention and intimidation of parliamentary delegation in Qirez/Ćirez**

882. The SPO has failed to prove the allegation that **SELIMI** participated in and led the arrest, detention, and intimidation of members of a parliamentary delegation in Qirez/Ćirez and Baicë/Banjica.<sup>2182</sup>

**a. The evidence lacks credibility**

i. W03825

883. W03825 disputed the accuracy of his own 2014 statement,<sup>2183</sup> which was admitted pursuant to Rule 143(2).<sup>2184</sup> Irrespective of which version of his evidence is considered, W03825 is an inherently unreliable witness given to untruths, whose evidence is uncorroborated and contradictory to the other witnesses and should be disregarded in its entirety. For example:

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<sup>2178</sup> [REDACTED].

<sup>2179</sup> [REDACTED].

<sup>2180</sup> [REDACTED].

<sup>2181</sup> [REDACTED].

<sup>2182</sup> Indictment, para 46; F00709/A01, para.112.

<sup>2183</sup> E.g. W03825, 06/11/2023, T.9348-9350, 9389; W03825, 08/11/2023, T.9598, 9679, 9601; [REDACTED].

<sup>2184</sup> W03825, 07/11/2023, T.9509-9510.

- (i) W03825 claimed to have verbally challenged and insulted the KLA while in Qirez/Ćirez, in the presence of all other witnesses,<sup>2185</sup> [REDACTED].
- (ii) W03825 claimed to have verbally challenged “Guri” in Baicë/Banjica and compared the KLA to Serbs [REDACTED] and [REDACTED],<sup>2186</sup> [REDACTED].
- (iii) W03825 repeatedly referred to himself as “leader” of the delegates,<sup>2187</sup> [REDACTED]<sup>2188</sup> [REDACTED].<sup>2189</sup>
- (iv) [REDACTED] suggest a different version of events than W03825 regarding his alleged interaction with DESKU.<sup>2190</sup>
- (v) W03825 claimed that while travelling in a car to Krojmir/Krajmrovce,<sup>2191</sup> S.GECI stopped to execute Agim KRASNIQI [REDACTED],<sup>2192</sup> whereby W03825 stood in the line of fire, offering to sacrifice himself instead.<sup>2193</sup> As per W03825, S.GECI told Agim KRASNIQI to “go and thank the leader of your group because he is a real leader who [...] saved your life”.<sup>2194</sup> [REDACTED].<sup>2195</sup>

ii. [REDACTED]

884. [REDACTED].<sup>2196</sup> [REDACTED]<sup>2197</sup> [REDACTED].<sup>2198</sup> [REDACTED].

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<sup>2185</sup> W03825,07/11/2023,T.9555; P00680,p.034257.

<sup>2186</sup> P00680.1,p.034258.

<sup>2187</sup> P00680.1,pp.034238,034243,034264,034266; W03825,06/11/2023,T.9331.

<sup>2188</sup> [REDACTED].

<sup>2189</sup> [REDACTED], [REDACTED].

<sup>2190</sup> See Section V.D.6.f.

<sup>2191</sup> P00680.1,p.034266.

<sup>2192</sup> P00680.1,p.034266.

<sup>2193</sup> P00680.1,p.034266.

<sup>2194</sup> P00680,p.034266.

<sup>2195</sup> [REDACTED]; [REDACTED].

<sup>2196</sup> [REDACTED].

<sup>2197</sup> [REDACTED].

<sup>2198</sup> [REDACTED].

885. [REDACTED] made no genuine attempt to answer to *both* the SPO and the Defence.<sup>2199</sup> It is not realistic, or fair, to interpret [REDACTED] “testimony” as a genuine opportunity for **SELIMI** to examine, or have examined on his behalf, a witness [REDACTED].<sup>2200</sup> [REDACTED] statement is uncorroborated and contradictory to other witness evidence. The Panel should give it no weight.

iii. [REDACTED] and [REDACTED]

886. Neither [REDACTED] make any reference to **SELIMI**, or anybody fitting his description being involved in events either at Qirez/Ćirez or Baicë/Banjica and their accounts contradict the evidence of both W03825 and [REDACTED].

b. **W03825 [REDACTED] identification of SELIMI is unreliable**

i. W03825

887. W03825 did not know what **SELIMI** looked like at the time of the incident, claiming to have “later [...] found out” that **SELIMI** was amongst the group,<sup>2201</sup> without substantiating this further. W03825 allegedly “knew [**SELIMI**] from a distance after the war, but [...] never had any contacts with him”.<sup>2202</sup> W03825 mentioned no distinctive feature of **SELIMI** to make a positive recognition more likely than not. The passage of time between the incident and the post-conflict period<sup>2203</sup> casts doubt on the accuracy of such visual recognition.

888. W03825’s contemporaneous identification of “**SELIMI**” rests almost entirely on an interaction he claimed to have with a man who identified himself as “Guri” and who W03825 inexplicably concluded was **SELIMI** on this basis.<sup>2204</sup> “Guri”

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<sup>2199</sup> [REDACTED].

<sup>2200</sup> Art.21(4)(f).

<sup>2201</sup> P00680,pp.034243,034256; W03825,08/11/2023,T.9635-9637.

<sup>2202</sup> W03825,08/11/2023,T.9635,9637.

<sup>2203</sup> W03825,08/11/2023,T.9637.

<sup>2204</sup> P00680,p.034258. *See also* W03825,08/11/2023,T.9644, “Nor did I say that Guri was Rexhep Selimi. What I said is I don't know who Guri was and to this day I do not know who that person is.”

was not a pseudonym used by **SELIMI**, nor does it bear any resemblance to the pseudonyms attributed to **SELIMI** by the SPO.<sup>2205</sup> W03825 agreed that he may have misattributed that nickname to **SELIMI**.<sup>2206</sup> Nobody told W03825 that “Guri” was a pseudonym used by **SELIMI** and “Guri” never referred to himself as **SELIMI**,<sup>2207</sup> thus the connection between the two people is entirely of W03825’s own construction. W03825 affirmed that whenever he uses the name “**SELIMI**” in his evidence, he is referring to this person called “Guri”.<sup>2208</sup>

889. W03825 made a vague, uncorroborated claim in testimony not in his statement that there “may be rumours” that “Guri” was **SELIMI** without any substantiation of where and when these “rumours” originated.<sup>2209</sup> This should be disregarded.<sup>2210</sup>

ii. [REDACTED]

890. [REDACTED].<sup>2211</sup> [REDACTED].<sup>2212</sup>

891. [REDACTED].<sup>2213</sup> [REDACTED].<sup>2214</sup>.

892. [REDACTED].<sup>2215</sup> [REDACTED].<sup>2216</sup>

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<sup>2205</sup> W03825,08/11/2023,T.9644; *See also* Indictment; F00709/A01.

<sup>2206</sup> W03825,08/11/2023,T.9645-9650.

<sup>2207</sup> W03825,08/11/2023,T.9643.

<sup>2208</sup> W03825,08/11/2023,T.9658. This pseudonym is used throughout this section to reflect W03825’s testimony.

<sup>2209</sup> W03825,08/11/2023,T.9636-9637.

<sup>2210</sup> [REDACTED] claimed to have learned **SELIMI**’s name only around the time of the Rambouillet conference, thus not corroborating that **SELIMI**’s name was mentioned in either Qirez/Ćirez or Baicë/Banjica, [REDACTED].

<sup>2211</sup> [REDACTED].

<sup>2212</sup> [REDACTED].*See*,1D00070.

<sup>2213</sup> [REDACTED].

<sup>2214</sup> W03827,13/09/2023,T.7944.

<sup>2215</sup> [REDACTED]

<sup>2216</sup> [REDACTED]

**c. SELIMI [REDACTED]**

893. [REDACTED]<sup>2217</sup> [REDACTED],<sup>2218</sup> [REDACTED].<sup>2219</sup> [REDACTED].
894. W03825 does not specify in his statement who collected the IDs, but later testified repeatedly that it was done by S.GECI.<sup>2220</sup> Even if one accepts W03825's claim that "**SELIMI**"<sup>2221</sup> was present in the LDK office,<sup>2222</sup> which the Defence does not, by not attributing the collection of IDs to this person, [REDACTED]. W03825 also does not corroborate [REDACTED] claim that "**SELIMI**" returned ID cards, in any version of his evidence.
895. The SPO asserts that [REDACTED] supports the allegation that **SELIMI** collected the IDs,<sup>2223</sup> [REDACTED].
896. [REDACTED]<sup>2224</sup> [REDACTED],<sup>2225</sup> [REDACTED],<sup>2226</sup> [REDACTED].<sup>2227</sup> [REDACTED]<sup>2228</sup> [REDACTED],<sup>2229</sup> [REDACTED]<sup>2230</sup> and contradicting [REDACTED].
897. [REDACTED], the SPO abandoned pursuing **SELIMI**'s alleged involvement<sup>2231</sup> and failed to pursue the matter with W03825.<sup>2232</sup> [REDACTED], the SPO's case is unfairly ambiguous.

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<sup>2217</sup> F00709/A01,para.460.

<sup>2218</sup> [REDACTED]

<sup>2219</sup> [REDACTED]. *see* [REDACTED].

<sup>2220</sup> W03825,06-07/11/2023,T.9343,9550.

<sup>2221</sup> *See* Section V.D.6.a.i.

<sup>2222</sup> P00680,pp.034242-034243.

<sup>2223</sup> F00709/A01,para.460,fn.1838, citing [REDACTED].

<sup>2224</sup> [REDACTED];[REDACTED].

<sup>2225</sup> [REDACTED].

<sup>2226</sup> [REDACTED].

<sup>2227</sup> [REDACTED].

<sup>2228</sup> [REDACTED].

<sup>2229</sup> [REDACTED], referring to [REDACTED]. *See above*

<sup>2230</sup> [REDACTED]

<sup>2231</sup> [REDACTED].

<sup>2232</sup> W03825,06/11/2023,T.9343.

**d. SELIMI did not interact with the delegation in Baicë/Banjica**

**i. Allegation related to a classroom interaction is false**

898. The SPO has failed to establish the allegation that in Baicë/Banjica, **SELIMI** asked the delegation “why, as professors and intellectuals, they had all gone there”<sup>2233</sup> based solely on the evidence of W03825.<sup>2234</sup>

899. In his 2014 version, W03825 asserts that this statement was made in a classroom, while Guri was seated at the teacher’s desk holding the delegates’ ID cards. W03825 claimed to have insulted Guri and the KLA in response, by comparing their actions to the Serbs.<sup>2235</sup> In his testimony, W03825 claimed the IDs were politely returned with an apology<sup>2236</sup> and that this occurred in the corridor, not the classroom.<sup>2237</sup> [REDACTED].

900. [REDACTED],<sup>2238</sup> [REDACTED]. [REDACTED].

901. [REDACTED],<sup>2239</sup> [REDACTED]. [REDACTED].

**ii. SELIMI was not involved in the mistreatment of the delegation**

902. In his 2014 statement, (recanted in his court testimony<sup>2240</sup>) W03825 claimed initially that “Guri” was among the masked men mistreating him,<sup>2241</sup> but when pressed on the matter in the same interview, W03825 walked this back, stating that he was unsure whether “Guri” “left the room and put a mask on and came back, I cannot be certain”.<sup>2242</sup> This allegation is base speculation, [REDACTED].

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<sup>2233</sup> F00709/A01,para.465.

<sup>2234</sup> P00680,pp.034258–034259.

<sup>2235</sup> P00680,p.034258.

<sup>2236</sup> W03825,06/11/2023,T.9360-9362.

<sup>2237</sup> W03825,06/11/2023,T.9364.

<sup>2238</sup> [REDACTED].

<sup>2239</sup> [REDACTED].

<sup>2240</sup> W03825,06-07/11/2023,T.9373,9570; 1D00064,para.25.

<sup>2241</sup> P00680,pp.034258-034259.

<sup>2242</sup> P00680,pp.034258;034260.

903. In a [REDACTED]statement (recanted in his preparation session<sup>2243</sup>), W03825 claimed that “Guri” would periodically open the door to the room and look inside.<sup>2244</sup> This claim is neither repeated in his 2014 statement, [REDACTED].

iii. **SELIMI was not involved in interviewing the delegation**

904. [REDACTED]<sup>2245</sup> [REDACTED].<sup>2246</sup> [REDACTED].<sup>2247</sup>

905. [REDACTED], W03825 stated nothing about a tape-recorded interviews and refers to written statements/CVs,<sup>2248</sup> [REDACTED].<sup>2249</sup>

906. [REDACTED].<sup>2250</sup> [REDACTED]<sup>2251</sup> [REDACTED].<sup>2252</sup>

e. **SELIMI did not return ID cards to delegation**

907. The SPO carefully frames its allegation as to the returning of the IDs in vague terms ([SELIMI returned] identification cards [...] before [the delegates] were released),<sup>2253</sup> [REDACTED].

908. [REDACTED].<sup>2254</sup> In 2014, W03825 also recalled being brought to a third location on 22 September 1998 but mentions nothing about IDs being returned by any KLA member,<sup>2255</sup> having claimed that they were already returned in Baicë/Banjica two days earlier.<sup>2256</sup> W03825 even expressed confusion in 2014 as

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<sup>2243</sup> 1D00064,para.17.

<sup>2244</sup> [REDACTED].

<sup>2245</sup> [REDACTED].

<sup>2246</sup> [REDACTED].

<sup>2247</sup> [REDACTED].

<sup>2248</sup> P00680,p.034262.

<sup>2249</sup> [REDACTED].

<sup>2250</sup> [REDACTED].

<sup>2251</sup> [REDACTED], *contra* [REDACTED].

<sup>2252</sup> *Contra* [REDACTED].

<sup>2253</sup> F00709/A01,para.465.

<sup>2254</sup> [REDACTED].

<sup>2255</sup> P00680,p.034265.

<sup>2256</sup> *See* Section V.D.6.a.i.

to why the delegation was brought to that location, “because they just put us into a room and left us there”.<sup>2257</sup>

909. [REDACTED].<sup>2258</sup>

**f. SELIMI [REDACTED]**

910. The SPO’s allegation, that **SELIMI** told Gjergj DEDAJ, Mehdi BARDHI and Agim KRASNIQI that they were still under investigation<sup>2259</sup> [REDACTED].<sup>2260</sup>

911. Whether in his 2014 statement or his testimony, W03825 consistently<sup>2261</sup> makes no claim that “Guri” threatened him, [REDACTED]<sup>2262</sup> [REDACTED].<sup>2263</sup>

912. [REDACTED].<sup>2264</sup>

913. [REDACTED].

i. W03825’s account of his conversation with DESKU is unreliable

914. W03825 claimed in his 2014 statement that DESKU came to the classroom in Baicë/Banjica where the delegation was being held to speak only with W03825,<sup>2265</sup> [REDACTED].<sup>2266</sup> W03825 claimed (again<sup>2267</sup>) to offer to sacrifice himself [REDACTED] before DESKU departed the room, leaving the delegates anxious to hear what had been discussed.<sup>2268</sup> The accounts of his fellow delegates do not support his claim.

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<sup>2257</sup> P00680,p.034265.

<sup>2258</sup> [REDACTED].

<sup>2259</sup> F00709/A01,para.466.

<sup>2260</sup> [REDACTED].

<sup>2261</sup> W03825,08/11/2023,T.9700.

<sup>2262</sup> W03825,06/11/2023,T.[REDACTED]; W03825,08/11/2023,T.[REDACTED].

<sup>2263</sup> P00680,p.034465 [emphasis added].

<sup>2264</sup> [REDACTED].

<sup>2265</sup> P00680,p.034263.

<sup>2266</sup> P00680,pp.[REDACTED].

<sup>2267</sup> See *supra*, para.833(v).

<sup>2268</sup> P00680,pp.[REDACTED].

915. [REDACTED].<sup>2269</sup> [REDACTED].

916. [REDACTED].<sup>2270</sup> [REDACTED].

917. [REDACTED],<sup>2271</sup> [REDACTED],<sup>2272</sup> [REDACTED].<sup>2273</sup> His account should be given no weight by the Panel.

918. [REDACTED]. The SPO has made no case on the issue and DESKU is since deceased,<sup>2274</sup> frustrating the production of any evidence as to whether he said those words and even if he did, from whom did he receive that information. There is no evidence for the Panel to make firm conclusions, least of all to **SELIMI's** culpability, based on this unreliable account of words allegedly spoken by person now deceased.

ii. P00158 does not prove allegation that **SELIMI** [REDACTED]

919. P00158 neither demonstrates a connection between **SELIMI** and this Directorate, nor verifies the evidence of [REDACTED] W03825 [REDACTED].

920. P00158, has no record of authorship and no witness was called to testify to its production. The KLA-MPD did not exist in September 1998.<sup>2275</sup>

921. As outlined in detail above,<sup>2276</sup> [REDACTED]. W03825's account of his alleged conversation with DESKU is [REDACTED], fundamentally unreliable.<sup>2277</sup> Every piece of evidence relating to **SELIMI's** involvement in this allegation is untrustworthy and P00158 must be viewed in that context.

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<sup>2269</sup> [REDACTED].

<sup>2270</sup> [REDACTED].

<sup>2271</sup> [REDACTED].

<sup>2272</sup> W03825,08/11/2023,T.9668.

<sup>2273</sup> W03825,06/11/2023,T.9422-9424; W03825,08/11/2023,T.9668,9670-9671.

<sup>2274</sup> W03825,08/11/2023,T.9670.

<sup>2275</sup> See Section IV.D.

<sup>2276</sup> See Sections **Error! Reference source not found.** and **Error! Reference source not found.**.

<sup>2277</sup> See Sections V.D.6.a.i and V.D.6.b.i.

922. That the names of the people in P00158 matches the names in two entirely different stories told by W03825 [REDACTED].

**7. SELIMI was not involved in mistreating [REDACTED]**

923. The SPO's allegation that [REDACTED],<sup>2278</sup> based exclusively on [REDACTED] lacks all credibility [REDACTED]. [REDACTED] untested evidence does not corroborate this allegation and suffers from severe and repeated question marks over his own credibility.

924. This allegation against **SELIMI** is limited to "contributing to the common purpose of the alleged JCE"<sup>2279</sup> and **SELIMI** is "not charged with having directly committed any of the charged crimes."<sup>2280</sup> As such, even if proven, no liability can attach to **SELIMI** for having physically perpetrated the offence.

**a. [REDACTED]**

925. [REDACTED] is not an Opponent within the alleged JCE. [REDACTED].

926. [REDACTED] was an LDK supporter when he joined,<sup>2281</sup> like many members of the KLA.<sup>2282</sup> [REDACTED].<sup>2283</sup>

927. [REDACTED] was arrested in [REDACTED] [REDACTED].<sup>2284</sup> [REDACTED].<sup>2285</sup>

928. [REDACTED].<sup>2286</sup> [REDACTED].<sup>2287</sup>

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<sup>2278</sup> [REDACTED].

<sup>2279</sup> F01307,para.2.

<sup>2280</sup> F01307,para 2.

<sup>2281</sup> [REDACTED].

<sup>2282</sup> [REDACTED].

<sup>2283</sup> [REDACTED].

<sup>2284</sup> [REDACTED].

<sup>2285</sup> [REDACTED].

<sup>2286</sup> [REDACTED].

<sup>2287</sup> [REDACTED]; [REDACTED].

929. [REDACTED].<sup>2288</sup> [REDACTED].<sup>2289</sup>

930. [REDACTED],<sup>2290</sup> [REDACTED].<sup>2291</sup>

931. [REDACTED],<sup>2292</sup> [REDACTED],<sup>2293</sup> [REDACTED],<sup>2294</sup> [REDACTED].<sup>2295</sup>  
[REDACTED].<sup>2296</sup> [REDACTED].<sup>2297</sup>

932. [REDACTED].<sup>2298</sup> Moreover, [REDACTED].<sup>2299</sup> [REDACTED].<sup>2300</sup>

933. [REDACTED]. Moreover, any action by an individual against him, cannot reasonably constitute assistance, encouragement and/or moral support, which had a substantial effect on the perpetration of the crimes charged in this indictment.<sup>2301</sup>

**b. No weight can be accorded to [REDACTED] evidence**

934. [REDACTED] alleged identification of **SELIMI** is based, in part, on a nonsensical story [REDACTED].

935. [REDACTED].<sup>2302</sup> [REDACTED],<sup>2303</sup> [REDACTED],<sup>2304</sup> [REDACTED],<sup>2305</sup>  
demonstrating a flagrant disregard for his obligation to tell the truth.

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<sup>2288</sup> [REDACTED].

<sup>2289</sup> [REDACTED]; [REDACTED].

<sup>2290</sup> [REDACTED]; [REDACTED].

<sup>2291</sup> [REDACTED].

<sup>2292</sup> [REDACTED].

<sup>2293</sup> [REDACTED]; [REDACTED].

<sup>2294</sup> [REDACTED].

<sup>2295</sup> [REDACTED].

<sup>2296</sup> [REDACTED].

<sup>2297</sup> [REDACTED].

<sup>2298</sup> [REDACTED].

<sup>2299</sup> [REDACTED].

<sup>2300</sup> [REDACTED].

<sup>2301</sup> Indictment, para.54.

<sup>2302</sup> [REDACTED].

<sup>2303</sup> [REDACTED].

<sup>2304</sup> [REDACTED].

<sup>2305</sup> [REDACTED].

936. Second, [REDACTED] evidence in relation to **SELIMI's** identity, his alleged importance, and other key elements, depends almost entirely upon the hearsay of [REDACTED],<sup>2306</sup> [REDACTED], preventing the Defence from testing their evidence.<sup>2307</sup>
937. [REDACTED]: [REDACTED],<sup>2308</sup> [REDACTED].<sup>2309</sup>
938. [REDACTED]. [REDACTED],<sup>2310</sup> [REDACTED],<sup>2311</sup> [REDACTED].<sup>2312</sup>  
[REDACTED].<sup>2313</sup> [REDACTED],<sup>2314</sup> [REDACTED].<sup>2315</sup>
939. [REDACTED].<sup>2316</sup> [REDACTED],<sup>2317</sup> [REDACTED].<sup>2318</sup> [REDACTED],<sup>2319</sup>  
[REDACTED].<sup>2320</sup> [REDACTED].<sup>2321</sup>
940. [REDACTED] clear agenda, built from years of resentment and anger permeates and undermines his evidence in its totality.

**c. [REDACTED] identification of SELIMI is unreliable**

**i. [REDACTED] identification of SELIMI is fabricated**

941. [REDACTED] claim that he identified **SELIMI** as being involved [REDACTED] is wholly fabricated, solely designed to falsely implicate **SELIMI** including

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<sup>2306</sup> [REDACTED].

<sup>2307</sup> [REDACTED].

<sup>2308</sup> [REDACTED].

<sup>2309</sup> [REDACTED]; *See supra*, para.22.

<sup>2310</sup> [REDACTED].

<sup>2311</sup> [REDACTED].

<sup>2312</sup> [REDACTED].

<sup>2313</sup> [REDACTED].

<sup>2314</sup> [REDACTED].

<sup>2315</sup> [REDACTED].

<sup>2316</sup> [REDACTED].

<sup>2317</sup> [REDACTED].

<sup>2318</sup> [REDACTED].

<sup>2319</sup> [REDACTED].

<sup>2320</sup> [REDACTED].

<sup>2321</sup> [REDACTED].

creating a fantastical story about meeting **SELIMI** [REDACTED]. [REDACTED] entire interaction with **SELIMI** does not withstand scrutiny.

942. [REDACTED].<sup>2322</sup> [REDACTED].<sup>2323</sup> [REDACTED].<sup>2324</sup>

943. [REDACTED].<sup>2325</sup> [REDACTED]<sup>2326</sup> [REDACTED]. [REDACTED].<sup>2327</sup> even though he never saw an order from **SELIMI**, nor even knew the position of **SELIMI** at that time.<sup>2328</sup> [REDACTED].

944. [REDACTED].

945. [REDACTED].<sup>2329</sup> [REDACTED].<sup>2330</sup> [REDACTED].<sup>2331</sup>

946. [REDACTED] claimed, in relation to **SELIMI**, [REDACTED].<sup>2332</sup> This fantastical detail, is wholly inconsistent with any evidence on **SELIMI**. [REDACTED].

947. [REDACTED].<sup>2333</sup> [REDACTED].<sup>2334</sup> [REDACTED].<sup>2335</sup> [REDACTED].<sup>2336</sup> [REDACTED]<sup>2337</sup> [REDACTED].<sup>2338</sup>

948. [REDACTED].<sup>2339</sup> [REDACTED].<sup>2340</sup> [REDACTED].<sup>2341</sup>

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<sup>2322</sup> [REDACTED].

<sup>2323</sup> [REDACTED].

<sup>2324</sup> [REDACTED].

<sup>2325</sup> [REDACTED].

<sup>2326</sup> [REDACTED].

<sup>2327</sup> [REDACTED].

<sup>2328</sup> [REDACTED].

<sup>2329</sup> [REDACTED].

<sup>2330</sup> [REDACTED].

<sup>2331</sup> [REDACTED].

<sup>2332</sup> [REDACTED].

<sup>2333</sup> [REDACTED].

<sup>2334</sup> [REDACTED].

<sup>2335</sup> [REDACTED].

<sup>2336</sup> [REDACTED].

<sup>2337</sup> [REDACTED].

<sup>2338</sup> [REDACTED].

<sup>2339</sup> [REDACTED].

<sup>2340</sup> [REDACTED].

<sup>2341</sup> [REDACTED].

949. [REDACTED] evidence is far too convenient to be capable of belief.  
[REDACTED].
950. [REDACTED]. [REDACTED].<sup>2342</sup>
951. [REDACTED]<sup>2343</sup> [REDACTED].<sup>2344</sup> [REDACTED] claimed he could not remember the date.<sup>2345</sup> [REDACTED].<sup>2346</sup>
952. [REDACTED] despite [REDACTED] claiming that there were people alive who could corroborate his evidence,<sup>2347</sup> none has been tendered or called by the SPO to do so.
953. The same concerns apply to the alleged identification of **SELIMI** when [REDACTED]. The description of this interaction provided by the witness is simply incapable of reasonable belief, for many reasons.
954. [REDACTED],<sup>2348</sup> [REDACTED].<sup>2349</sup> [REDACTED].
955. [REDACTED].
956. [REDACTED].<sup>2350</sup> [REDACTED].
957. [REDACTED].
958. [REDACTED].

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<sup>2342</sup> [REDACTED].

<sup>2343</sup> [REDACTED].

<sup>2344</sup> [REDACTED].

<sup>2345</sup> [REDACTED].

<sup>2346</sup> [REDACTED].

<sup>2347</sup> [REDACTED].

<sup>2348</sup> [REDACTED].

<sup>2349</sup> [REDACTED].

<sup>2350</sup> [REDACTED].

ii. [REDACTED] identification is undermined by the circumstances of his alleged encounter

959. The circumstances around both identifications of **SELIMI** [REDACTED] cause significant doubt as to their accuracy that the individual.
960. [REDACTED]. [REDACTED] claimed to have seen '**SELIMI**' [REDACTED],<sup>2351</sup> [REDACTED].<sup>2352</sup> [REDACTED],<sup>2353</sup> [REDACTED]. [REDACTED].<sup>2354</sup>
961. [REDACTED].<sup>2355</sup> This generic identification, absent any other detail, demonstrates that [REDACTED] purported identification is based on one unspecific and meaningless factor which fails to distinguish **SELIMI** from many other people.
962. [REDACTED].<sup>2356</sup> [REDACTED]. [REDACTED].<sup>2357</sup> [REDACTED].<sup>2358</sup> [REDACTED]. [REDACTED].<sup>2359</sup>
963. [REDACTED].
964. As [REDACTED] identification of **SELIMI** [REDACTED] was unreliable, there is no factual basis to make a finding that [REDACTED] recognised **SELIMI** [REDACTED] as the same person.
965. However, [REDACTED] later identification of **SELIMI** [REDACTED], is also so riddled with inconsistencies and undermined by environmental factors, that no credible and reliable identification can be found.

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<sup>2351</sup> [REDACTED].

<sup>2352</sup> [REDACTED].

<sup>2353</sup> [REDACTED].

<sup>2354</sup> [REDACTED].

<sup>2355</sup> [REDACTED].

<sup>2356</sup> [REDACTED].

<sup>2357</sup> [REDACTED].

<sup>2358</sup> [REDACTED].

<sup>2359</sup> [REDACTED].

966. First, [REDACTED] evidence varied as to whether he claimed to have seen **SELIMI** [REDACTED]. [REDACTED].<sup>2360</sup> [REDACTED].
967. [REDACTED].<sup>2361</sup> [REDACTED].<sup>2362</sup> [REDACTED].<sup>2363</sup> [REDACTED].
968. [REDACTED].<sup>2364</sup> Although [REDACTED] initially claiming he saw ‘**SELIMI**’ [REDACTED], [REDACTED].<sup>2365</sup> [REDACTED] description of how this actually happened is also entirely nonsensical. [REDACTED].<sup>2366</sup> [REDACTED]. [REDACTED].<sup>2367</sup> [REDACTED].<sup>2368</sup> These inconsistencies over the most central part of his evidence are telling.
969. [REDACTED].<sup>2369</sup> [REDACTED].<sup>2370</sup> [REDACTED]<sup>2371</sup>. [REDACTED] would necessarily have impaired [REDACTED] capacity to make an accurate identification during his detention.

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<sup>2360</sup> [REDACTED].

<sup>2361</sup> [REDACTED].

<sup>2362</sup> [REDACTED].

<sup>2363</sup> [REDACTED].

<sup>2364</sup> [REDACTED].

<sup>2365</sup> [REDACTED].

<sup>2366</sup> [REDACTED].

<sup>2367</sup> [REDACTED].

<sup>2368</sup> [REDACTED].

<sup>2369</sup> [REDACTED].

<sup>2370</sup> [REDACTED].

<sup>2371</sup> [REDACTED].

970. [REDACTED]. [REDACTED].<sup>2372</sup> [REDACTED].<sup>2373</sup> [REDACTED].<sup>2374</sup>  
 [REDACTED].<sup>2375</sup> [REDACTED].<sup>2376</sup> [REDACTED].<sup>2377</sup> [REDACTED].<sup>2378</sup>  
 [REDACTED].<sup>2379</sup> [REDACTED].<sup>2380</sup> [REDACTED].<sup>2381</sup>

971. [REDACTED]. [REDACTED].<sup>2382</sup> [REDACTED].<sup>2383</sup> These are specific and significant titles, and it lacks credibility that one would not be able to recall what was used in such a memorable event.

972. Seventh, there were no specific or distinctive features in [REDACTED] identification of **SELIMI** that would support [REDACTED] identification. [REDACTED] describes **SELIMI** in very generic and cursory terms, [REDACTED].<sup>2384</sup> [REDACTED].<sup>2385</sup>

973. [REDACTED], [REDACTED].<sup>2386</sup> [REDACTED].

974. Therefore, the Panel cannot be satisfied to the required standard of [REDACTED] identification.<sup>2387</sup>

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<sup>2372</sup> [REDACTED].

<sup>2373</sup> [REDACTED].

<sup>2374</sup> [REDACTED].

<sup>2375</sup> [REDACTED].

<sup>2376</sup> [REDACTED].

<sup>2377</sup> [REDACTED].

<sup>2378</sup> [REDACTED].

<sup>2379</sup> [REDACTED].

<sup>2380</sup> [REDACTED].

<sup>2381</sup> [REDACTED].

<sup>2382</sup> [REDACTED].

<sup>2383</sup> [REDACTED].

<sup>2384</sup> [REDACTED].

<sup>2385</sup> [REDACTED].

<sup>2386</sup> [REDACTED]; [REDACTED].

<sup>2387</sup> *See* Section II.C.6.

**d. No evidence sufficiently corroborates [REDACTED] account**

975. [REDACTED].<sup>2388</sup> [REDACTED].<sup>2389</sup> [REDACTED].<sup>2390</sup>

976. [REDACTED]. Despite claiming to know who **SELIMI** was and claiming that he saw **SELIMI** [REDACTED], but without providing any specifics as to when and where,<sup>2391</sup> [REDACTED] does not corroborate [REDACTED] allegation.

977. [REDACTED].

**8. SELIMI had no knowledge of or involvement in investigations and detentions in Kleçkë/Klečka**

978. The SPO's evidence relating to various indirect allegations against **SELIMI** in relation to XHAFIQI, B.KUQI and [REDACTED] in Kleçkë/Klečka and allegedly interfering in an investigation in relation to Pjetërshticë/Petraštica fails to demonstrate that **SELIMI** was involved or aware of these detentions, or that his conduct was inappropriate, or otherwise contributed to the alleged JCE.

**a. SELIMI and GS had no authority over Kleçkë/Klečka detention facility**

979. The allegation that the GS operated a detention facility in the outskirts of Kleçkë/Klečka<sup>2392</sup> is based on unverified assumptions, untested evidence and ignores the clear incentive of these witnesses to shift responsibility away from themselves. The SPO has not produced evidence that **SELIMI** had authority over the MC or Kleçkë/Klečka prison. No finding can thus be made by the Panel of such control by the GS or **SELIMI**.

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<sup>2388</sup> [REDACTED].

<sup>2389</sup> [REDACTED].

<sup>2390</sup> [REDACTED].

<sup>2391</sup> [REDACTED].

<sup>2392</sup> F00709/A01, paras.488-489.

980. W04264 assumed<sup>2393</sup> that the authority to open a prison was with the Headquarters on SYLA's proposal<sup>2394</sup> meaning SYLA.<sup>2395</sup> No specific evidence of his authority was provided by W04264. While W04264 found the prison in Kleçkë/Klečka in existence already in late 1998, he did not research its establishment to see if it was established by the HQ or not.<sup>2396</sup>
981. W04264's further description of authority by the main HQ over the Kleçkë/Klečka prison<sup>2397</sup> was because it was close to the GS headquarters.<sup>2398</sup>
982. W04264 also claimed that the prison was staffed by "the HQ from the military formations", and that he supposed the HQ sent the guards there because they established the court.<sup>2399</sup> No evidence underpinning this untested assertion was provided.
983. W04743 refers to a detention facility in Kleçkë/Klečka<sup>2400</sup> but does not actually allege that the GS operated this facility, instead telling the SPO that "there were two to three houses that were used by general headquarters",<sup>2401</sup> which evidently refers to the GS HQ in Divjakë/Divljaka. While W04743 speculated that it was possible for the unit providing security to the GS to also operate in the prison, he did not know the connection between this unit and the detention staff,<sup>2402</sup> and did not provide any concrete examples of such operation.
984. The evidence does not demonstrate that the Kleçkë/Klečka detention facility was created, supervised or controlled by the GS but instead demonstrates it was

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<sup>2393</sup> P01955.3,p.10.

<sup>2394</sup> P01955.3,pp.9-10; P01955.6,p.15.

<sup>2395</sup> P01955.3,p.10.

<sup>2396</sup> P01963,p.054692; P01964,p.054721.

<sup>2397</sup> P01955.6,pp.14-15.

<sup>2398</sup> P01955.6,p.15.

<sup>2399</sup> P01963,p.054693.

<sup>2400</sup> F00709/A01,para.488,fn.1920.

<sup>2401</sup> P02007.3,p.18.

<sup>2402</sup> P02007.3,p.11.

either under DOBRUNA's independent authority as MC President or Brigade 121.

985. W04743 attested that the detention site in Klečkë/Klečka was "under the jurisdiction of the Department of Legal Issues"<sup>2403</sup> or MC.<sup>2404</sup> W04743 averred that DOBRUNA personally clarified "the management of the detention centre himself."<sup>2405</sup>
986. W04264 initially confirmed that he visited the prison regularly, sometimes twice a week, sometimes once a month.<sup>2406</sup> but reduced this to five times in total.<sup>2407</sup> W04264 also claimed that he never talked to the detainees, as he "only went to check the situation there",<sup>2408</sup> denied entering the prison cells, except for the case of two Serbs that were handed over went inside their cell.<sup>2409</sup> Yet he also claimed that none of the prisoners complained to him about their treatment, except for one prisoner who asked W04264 to be able to perform some work.<sup>2410</sup> W04839 attested that DOBRUNA would check on the conditions of detention in Klečkë/Klečka.<sup>2411</sup>
987. ZOGAJ was DOBRUNA's subordinate and DOBRUNA had "a direct line" with ZOGAJ regarding the management of the prison.<sup>2412</sup> W04264 accepted that it was possible that ZOGAJ reported to him<sup>2413</sup> based on extensive contact.<sup>2414</sup> While W04264 also denied that ZOGAJ reported to him,<sup>2415</sup> W04264 accepted

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<sup>2403</sup> P02007.3,p.5.

<sup>2404</sup> [REDACTED].

<sup>2405</sup> P02007.3,p.6.

<sup>2406</sup> P01956,p.SITF00010489.

<sup>2407</sup> P01955.6,p.23; [REDACTED].

<sup>2408</sup> P01963,p.054700.

<sup>2409</sup> P01955.7,p.3.

<sup>2410</sup> P01956,p.SITF00010490; P01963,p.054677.

<sup>2411</sup> [REDACTED].

<sup>2412</sup> P01963,p.054673.

<sup>2413</sup> P01964,p.054731.

<sup>2414</sup> P01955.5,p.7.

<sup>2415</sup> P01955.6,p.19.

that ZOGAJ's complaint addressed to the MC<sup>2416</sup> shows that he was mistaken.<sup>2417</sup> W04739 also confirmed that ZOGAJ's boss was DOBRUNA<sup>2418</sup> while W04743 attested that ZOGAJ had been appointed by DOBRUNA.<sup>2419</sup> W04264 gave administrative guidelines to ZOGAJ,<sup>2420</sup> including a manual detailing the procedure towards detainees.<sup>2421</sup>

988. Other evidence suggests that Kleçkë/Klečka prison fell under Brigade 121. Kleçkë/Klečka was the HQ of Brigade 121.<sup>2422</sup> W04264 believed that ZOGAJ should have been an MP member as prison director,<sup>2423</sup> and W04839 also appeared to confirm that he was a Brigade 121 MP.<sup>2424</sup> W04264 met H.SHALA Brigade 121 Commander in Kleçkë/Klečka.<sup>2425</sup> W04839 also confirmed that Naser KRASNIQI could have been in charge of Kleçkë/Klečka [REDACTED].<sup>2426</sup> However, W04743 categorically denied that the prison belonged, was established or otherwise managed by Brigade 121,<sup>2427</sup> that the Brigade 121 MP did not provide security for the Kleçkë/Klečka prison,<sup>2428</sup> and that ZOGAJ was never Brigade 121 MP throughout the period that he was in charge<sup>2429</sup> and did not report to H. SHALA.<sup>2430</sup>

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<sup>2416</sup> [REDACTED].

<sup>2417</sup> P01955.6,p.28.

<sup>2418</sup> [REDACTED].

<sup>2419</sup> [REDACTED].

<sup>2420</sup> P01955.2,p.10; P01955.5,pp.5-6.

<sup>2421</sup> [REDACTED].

<sup>2422</sup> [REDACTED].

<sup>2423</sup> P01955.6,p.19.

<sup>2424</sup> [REDACTED].

<sup>2425</sup> P01955.6,p.17.

<sup>2426</sup> [REDACTED].

<sup>2427</sup> P02007.3,p.23.

<sup>2428</sup> P02007.3,p.21.

<sup>2429</sup> P02007.3,pp.19-20.

<sup>2430</sup> P02007.3,p.25.

989. W04264 attested that the prison facilities were the responsibility and under MP control<sup>2431</sup> insisting that “[n]o Court, no court has any control over prison.”<sup>2432</sup> W04264 subsequently asserted that only individuals who were convicted by the court fell under his jurisdiction, but it was possible that there were other individuals in prison whose cases did not reach the court who were under MP jurisdiction<sup>2433</sup> and that there were cases of individuals being detained yet not brought before him because the fighting disrupted the work of the court.<sup>2434</sup>
990. No clear reporting lines therefore are demonstrated between ZOGAJ, Brigade 121 and DOBRUNA. However, no evidence suggests that the GS exercised any direct authority over the prison.
991. W04264’s evidence that LIMAJ released certain people who were detained and claimed that “LIMAJ was the only one who had such power, as he was the head of Military Police”<sup>2435</sup> against a GS member who is not a named accused, is largely irrelevant to the SPO’s allegation of GS control over detainees and cases referred to the legal sector.<sup>2436</sup> W03897 was not called as a witness, whereas W04752’s admitted evidence, does not support the SPO’s assertion.
992. W04752 speculates on the theoretical authority of the Commander or Deputy Commander to detain or release when he was outside the country,<sup>2437</sup> and claims that one of the Deputy Commanders of the GS had the authority to release the Serb brothers to the internationals.<sup>2438</sup> No allegation is made that **SELIMI** had that authority.

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<sup>2431</sup> P01955.2,p.24; P01956,p.SITF00010489.

<sup>2432</sup> P01955.3,p.7

<sup>2433</sup> P01963,p.054675.

<sup>2434</sup> P01963,p.054675.

<sup>2435</sup> P01956,p.SITF00010490.

<sup>2436</sup> F00709/A01,para.145.

<sup>2437</sup> P01355.3,p.35.

<sup>2438</sup> P01355.8,p.6.

993. W04264 claimed that ZYRAPI had the authority to order the release of prisoners.<sup>2439</sup> While the SPO tendered a verdict signed by ZYRAPI on Shyqeri MORINA,<sup>2440</sup> W04752 testified that he hadn't seen the document before and that he did not have power to review appeals of the military court.<sup>2441</sup>
994. [REDACTED]<sup>2442</sup> [REDACTED].<sup>2443</sup> [REDACTED]<sup>2444</sup> [REDACTED].<sup>2445</sup>
995. [REDACTED] claimed that every suspected person detained that was not released within a day or within hours was detained on GS orders,<sup>2446</sup> [REDACTED],<sup>2447</sup> [REDACTED].<sup>2448</sup> However, [REDACTED].<sup>2449</sup> [REDACTED]."<sup>2450</sup> [REDACTED].

**b. SELIMI was not aware of detentions in Kleçkë/Klečka**

996. There is no evidence that **SELIMI** ever visited the prison in Kleçkë/Klečka, as opposed to DOBRUNA's office there, nor otherwise interacted or had any relationship with those detained in that detention facility.
997. W04264 met **SELIMI** twice in Jabllanica/Jablanica<sup>2451</sup> unrelated to the MC as they appeared to relate to crossing a bridge in the dark to avoid detection by Serb forces.<sup>2452</sup> [REDACTED].<sup>2453</sup> One further meeting with LIMAJ and **SELIMI** is addressed elsewhere.<sup>2454</sup> No GS meeting notes discuss particular detainees

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<sup>2439</sup> P01955.8,p.13.

<sup>2440</sup> P00613.

<sup>2441</sup> W04752,04/07/2024,T.17647.

<sup>2442</sup> [REDACTED]; [REDACTED].

<sup>2443</sup> P01955.9,p.16. *See* Section V.D.7.a.

<sup>2444</sup> [REDACTED].

<sup>2445</sup> [REDACTED].

<sup>2446</sup> [REDACTED].

<sup>2447</sup> [REDACTED].

<sup>2448</sup> [REDACTED].

<sup>2449</sup> [REDACTED].

<sup>2450</sup> [REDACTED].

<sup>2451</sup> P01955.9,p.8.

<sup>2452</sup> P01955.9,p.8.

<sup>2453</sup> [REDACTED].

<sup>2454</sup> *See* Section V.D.8.c.

after they have allegedly been detained in Klečkë/Klečka nor do W04264 or [REDACTED] provide any other concrete evidence of **SELIMI** being aware of detainees in Klečkë/Klečka.

998. **SELIMI** had no knowledge about [REDACTED] and [REDACTED],<sup>2455</sup> [REDACTED] and [REDACTED],<sup>2456</sup> or [REDACTED],<sup>2457</sup> allegedly held in Klečkë/Klečka. While the SPO claims “the General Staff was aware of their detention”<sup>2458</sup> this cannot generally be imputed to all GS members absent specific and concrete evidence relating to **SELIMI** directly.
999. W04264’s claims in relation to [REDACTED] detention in Klečkë/Klečka<sup>2459</sup> notified by ZYRAPI<sup>2460</sup> impute no knowledge to **SELIMI**. W04264’s untested speculation that ZYRAPI would have surely notified other GS members<sup>2461</sup> is wholly unsubstantiated. Except for ZYRAPI, W04264 did not speak to anyone in the GS about it<sup>2462</sup> and did not provide the SPO with any direct information that he was aware of such discussions. Only ZYRAPI is alleged to have been therefore aware of these detentions. W04264’s suggestion that ZYRAPI would have spoken to other members of the GS about this case is thus pure supposition.
1000. [REDACTED] suggests that some Klečkë/Klečka detainees were detained separately and hidden from DOBRUNA and the GS. The SPO’s own case in relation to these allegations suggests they were all undertaken by members of Brigade 121, outside GS knowledge and authority. [REDACTED],<sup>2463</sup>

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<sup>2455</sup> F00709/A01,para.501.

<sup>2456</sup> F00709/A01,para.504.

<sup>2457</sup> F00709/A01,para.505.

<sup>2458</sup> [REDACTED]

<sup>2459</sup> P01955.7,p.18.

<sup>2460</sup> P01955.7,p.24.

<sup>2461</sup> P01955.7,p.24.

<sup>2462</sup> P01955.7,p.27.

<sup>2463</sup> [REDACTED]; [REDACTED].

[REDACTED].<sup>2464</sup> [REDACTED].<sup>2465</sup> [REDACTED].<sup>2466</sup> [REDACTED].<sup>2467</sup>  
 [REDACTED].<sup>2468</sup> This hiding of such detainees from the GS relates equally to other Serb detainees in Klečë/Klečka, namely Veljko MARKOVIĆ and Nebojsa DJURIČIĆ<sup>2469</sup> and Bojan CVETKOVIĆ, Žarko FILIPOVIĆ, Dragoljub TANASKOVIĆ, Zivota TODOROVIĆ and Dragan VUCETIĆ<sup>2470</sup> as well as XHAFIQI,<sup>2471</sup> and Arben.<sup>2472</sup>

1001. W04264 recalled AJETI,<sup>2473</sup> but did not know who ordered AJETI's arrest.<sup>2474</sup> Although W04264 claimed he advised the officials that they must have evidence and that they must release AJETI since they do not have any evidence,<sup>2475</sup> W04264 does not know what action was taken after he gave his advice<sup>2476</sup> and did not receive the case at the MC.<sup>2477</sup> There is no evidence that W04264 informed the GS of any of this information.

1002. In this regard, neither the alleged re-created duty report listing prisoners in Klečë/Klečka<sup>2478</sup> nor [REDACTED]<sup>2479</sup> refer to any of these individuals. Nor do any [REDACTED]<sup>2480</sup> relate to named murder victims in the SPO PTB. Therefore, there would be no information available to the GS, or **SELIMI** specifically of the detention or investigation of these individuals or their fate.

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<sup>2464</sup> [REDACTED].

<sup>2465</sup> [REDACTED].

<sup>2466</sup> [REDACTED].

<sup>2467</sup> [REDACTED].

<sup>2468</sup> [REDACTED].

<sup>2469</sup> F00709/A01,para.514.

<sup>2470</sup> F00709/A01,para.517.

<sup>2471</sup> F00709/A01,para.515.

<sup>2472</sup> F00709/A01,para.516.

<sup>2473</sup> P01955.8,p.3.

<sup>2474</sup> P01955.8,p.6.

<sup>2475</sup> P01955.8,p.4.

<sup>2476</sup> P01955.8,p.5.

<sup>2477</sup> P01955.8,pp.8-9.

<sup>2478</sup> [REDACTED].

<sup>2479</sup> [REDACTED]; [REDACTED].

<sup>2480</sup> [REDACTED]; [REDACTED].

1003. The only individuals whose were allegedly detained in Kleçkë/Klečka according to the SPO<sup>2481</sup> and who W04743 gave evidence about were [REDACTED].
1004. N.HASANI, committed burglaries while wearing a KLA uniform in houses at the village of Shtime/Štimlje and wounded a civilian in the process.<sup>2482</sup> W04743 prepared and signed a report in this case,<sup>2483</sup> which was submitted to the military prosecutor and signed by W04743.<sup>2484</sup> There is no evidence or allegation of any knowledge of this case by the GS.
1005. DOBRUNA ordered Sabit SHALA's arrest,<sup>2485</sup> who was then sent to Kleçkë/Klečka.<sup>2486</sup> W04743 did not investigate Habib SHALA nor did he know of any allegations against him which would justify his arrest.<sup>2487</sup>
1006. Neither of these Brigade 121 MP case files provide information that either N.HASANI or Sabit SHALA were unlawfully or arbitrarily detained or mistreated. Nor do they demonstrate any involvement or knowledge of their detentions by **SELIMI**.
1007. As such, neither DOBRUNA directly, nor the documentation produced by ZOGAJ would have placed any members of the GS on notice of any of the individuals allegedly mistreated and killed in Kleçkë/Klečka.

### c. SPO has not linked SELIMI to B.KUQI's detention

1008. Although **SELIMI** is alleged to have been present at the initial meeting with B.KUQI, there is no specific SPO allegation that **SELIMI** questioned B.KUQI or

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<sup>2481</sup> F00709/A01,para.492.

<sup>2482</sup> W04743,28/01/2025,T.24651; P00263,pp.082939-082940. As a KLA member, the Defence contests that [REDACTED] was an Opponent and therefore fell within the alleged JCE.

<sup>2483</sup> [REDACTED].

<sup>2484</sup> W04743,28/01/2025,T.24652.

<sup>2485</sup> W04743,28-29/01/2025,T.24639,24766; 2D00020.

<sup>2486</sup> W04743,28/01/2025,T.24640.

<sup>2487</sup> W04743,28/01/2025,T.24644.

decided that B.KUQI “should be arrested and imprisoned.”<sup>2488</sup> The phrase “GS members” in relation to both of these allegations cannot therefore properly be understood to include **SELIMI**, in the absence of a specific reference to him.

- i. **SELIMI** was not involved in the decision to arrest and detain B.KUQI

*SELIMI was not responsible for ordering B.KUQI for a consultation*

1009. [REDACTED] untested evidence makes no reference to B.KUQI having been summoned, [REDACTED].<sup>2489</sup> [REDACTED].

1010. W04744 testified that he could not remember the details of the meeting at the GS where B.KUQI participated,<sup>2490</sup> nor was present when he was arrested.<sup>2491</sup>

1011. [REDACTED].<sup>2492</sup> [REDACTED].<sup>2493</sup> [REDACTED].<sup>2494</sup>

1012. W04752 was present when B.KUQI reported to the GS along with Drini and Nexhmedin KASTRATI.<sup>2495</sup> Drini went with W04752 to the operational directorate office Nexhmedin KASTRATI went to discuss some matters with Brigade 121 and B.KUQI was left in the command with J.KRASNIQI, **SELIMI** and LIMAJ.<sup>2496</sup>

1013. P01105 purportedly ordered Drini and B.KUQI to report to the GS on 16 January 1999.<sup>2497</sup> W04744 had not seen this ordinance before,<sup>2498</sup> and Drini had told him

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<sup>2488</sup> F00709/A01,para.502.

<sup>2489</sup> [REDACTED].

<sup>2490</sup> W04744,25/06/2024,T.17194.

<sup>2491</sup> W04744,25/06/2024,T.17147.

<sup>2492</sup> [REDACTED].

<sup>2493</sup> [REDACTED].

<sup>2494</sup> [REDACTED].

<sup>2495</sup> W04752,02/07/2024,T.17446.

<sup>2496</sup> W04752,02/07/2024,T.17446-17447.

<sup>2497</sup> [REDACTED].

<sup>2498</sup> W04744,25/06/2024,T.17193-17194.

they were ‘invited’ and not ‘ordered’ to go to the GS.<sup>2499</sup> **SELIMI** did not sign the document. W04744 noted that the document was a bit “preposterous” as it is called an “ordinance” and also mentioned that the reporting to the GS was obligatory,<sup>2500</sup> and noted that there was no protocol number<sup>2501</sup> or date on the document.<sup>2502</sup> While W04752 recognised the GS stamp and signature of J.KRASNIQI,<sup>2503</sup> [REDACTED],<sup>2504</sup> neither were asked to confirm whether they had seen the document at the time.

1014. Evidence of SPO witnesses evidence thus merely confirms that B.KUQI and Drini were invited to a meeting with ZYRAPI, J.KRASNIQI and **SELIMI** to discuss setting up the borders of brigades and zone borders consistent with **SELIMI’s** role in the Border Commission<sup>2505</sup> and his role in execution of that task<sup>2506</sup> with the Work Report signed by **SELIMI** dated 17 January 1999.<sup>2507</sup> In no way is this evidence probative of **SELIMI’s** knowledge or agreement with any other reason why B.KUQI was invited to attend.

1015. There is no evidence from the face of the document that B.KUQI was required to attend the meeting because of allegations of desertion. Moreover, the date of the consultation is 16 January 1999, whereas the SPO allegation in relation to this meeting relates to December 1998.<sup>2508</sup>

1016. Purported Meeting Notes of the GS list the issue of B.KUQI being a deserter as an agenda item,<sup>2509</sup> but W04752 confirmed that there was no decision taken at

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<sup>2499</sup> W04744,25/06/2024,T.17194.

<sup>2500</sup> W04744,25/06/2024,T.17194.

<sup>2501</sup> W04744,25/06/2024,T.17195.

<sup>2502</sup> W04744,26/06/2024,T.17239.

<sup>2503</sup> W04752,02/07/2024,T.17446.

<sup>2504</sup> [REDACTED].

<sup>2505</sup> P00623.

<sup>2506</sup> P01108.

<sup>2507</sup> P02924.

<sup>2508</sup> F00709/A01,para.502.

<sup>2509</sup> P01104; P00623; P01408.

that GS meeting about B.KUQI,<sup>2510</sup> clarifying his prior evidence to the SPO that the GS had decided that B.KUQI was to be arrested at that meeting.<sup>2511</sup>

1017. However, W04752 also confirmed that **SELIMI**, as the Inspector-General, was not a Director of Directorate at that stage and therefore was not required to attend the meeting of the Heads of Directorates of the GS of the KLA, as issued by W04752 on 28 December 1998.<sup>2512</sup> W04752 also confirmed that **SELIMI** was not listed as a participant at the meeting on 29 December 1998 and didn't attend it.<sup>2513</sup> When re-examined on these meetings W04752 couldn't recall whether the latter two handwritten notes<sup>2514</sup> were from a meeting of the Directors of Directorates or a meeting of the overall GS, but considered that they were probably from a GS meeting, because a meeting of directorates would have included the heads of the directorates.<sup>2515</sup>

1018. Therefore, while W04752 had originally placed **SELIMI** as present during meetings where B.KUQI was discussed by the GS,<sup>2516</sup> his testimony was far less certain. The notes record nothing being said by **SELIMI** if he was present.

1019. W04401 confirmed that at the meeting on 29 December it was said that B.KUQI left Kosovo without reporting to anyone, without giving any explanation to anyone or reporting on his departure from Kosovo,<sup>2517</sup> and confirmed that it was his signature in the lower left-hand corner.<sup>2518</sup> However, W04401 could not be sure that the document was contemporaneous, suggesting that it could be taken

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<sup>2510</sup> W04752,10/07/2024,T.17969-17970.

<sup>2511</sup> [REDACTED].

<sup>2512</sup> P00621; W04752,10/07/2024,T.17966.

<sup>2513</sup> W04752,10/07/2024,T.17965; P01408.

<sup>2514</sup> P01109; P01104.

<sup>2515</sup> W04752,15/07/2024,T.18292-18293; P01104; P01109.

<sup>2516</sup> [REDACTED].

<sup>2517</sup> W04401,02/12/2024,T.23042.

<sup>2518</sup> [REDACTED]; W04401,02/12/2024,T.23042.

from some other document and written later.<sup>2519</sup> Nor was W04401 asked whether **SELIMI** was present at the meeting which these notes described.

*SELIMI had no role in questioning and interrogating B.KUQI*

1020. No SPO witness was present during the alleged interrogation of B.KUQI<sup>2520</sup> and the remaining SPO does not support a finding that **SELIMI** was involved in any interrogation of B.KUQI.

1021. [REDACTED],<sup>2521</sup> [REDACTED],<sup>2522</sup> [REDACTED],<sup>2523</sup>

1022. W04264 interrogated B.KUQI some 2-3 times.<sup>2524</sup> W04264 confirmed that B.KUQI was also questioned by LIMAJ outside W04264's presence,<sup>2525</sup> and accepted the possibility that H.SHALA also interrogated B.KUQI.<sup>2526</sup> However, this appeared to take place after his detention and not during the initial meeting.

*SELIMI was not responsible for the arrest and detention of B.KUQI*

1023. The SPO case is predicated upon the assumption that GS members in whose company B.KUQI remained after the meeting were so responsible for his arrest and detention rather than credible proof to that effect.

1024. W04744 did not know who ordered B.KUQI's arrest and was not present when B.KUQI was arrested.<sup>2527</sup>

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<sup>2519</sup> W04401,02/12/2024,T.23042.

<sup>2520</sup> [REDACTED].

<sup>2521</sup> [REDACTED].

<sup>2522</sup> [REDACTED].

<sup>2523</sup> [REDACTED].

<sup>2524</sup> P01955.7,p.6.

<sup>2525</sup> P01955.7,p.8.

<sup>2526</sup> P01955.7,p.8.

<sup>2527</sup> W04744,25/06/2024,T.17147.

1025. W04752 confirmed that he left the office whilst Drini, J.KRASNIQI, **SELIMI** and LIMAJ remained inside with B.KUQI,<sup>2528</sup> and *after* that meeting the decision to detain B.KUQI was issued.<sup>2529</sup> W04752 also confirmed his prior testimony that B.KUQI was arrested and interrogated by the legal sector,<sup>2530</sup> and W04752 had never heard a specific order from **SELIMI** or any evidence that **SELIMI** was specifically involved in the decision to detain B.KUQI.<sup>2531</sup>
1026. While W04752 stated that neither **SELIMI** as Inspector-General nor LIMAJ as the Head of the KLA-MPD had the authority to order the arrest of B.KUQI,<sup>2532</sup> this was nothing more than an irrelevant hypothetical scenario.
1027. [REDACTED] was not present when B.KUQI was arrested,<sup>2533</sup> [REDACTED].<sup>2534</sup> [REDACTED],<sup>2535</sup> no specific basis was provided for this claim.
1028. W04744 assumed that B.KUQI was detained in Kleçkë/Klečka,<sup>2536</sup> but didn't have direct evidence of his detention and could not confirm whether B.KUQI was held in Kleçkë/Klečka,<sup>2537</sup> did not know the circumstances of the detention<sup>2538</sup> and never asked B.KUQI about his detention.<sup>2539</sup> While W04744 speculated that *if* there was an improvised prison in Kleçkë/Klečka, as suggested to him by the Panel, it would have been under the authority of the

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<sup>2528</sup> W04752,16/07/2024,T.18325-18326.

<sup>2529</sup> W04752,02/07/2024,T.17447.

<sup>2530</sup> 4D00077,p.SITF00393434; W04752,15/07/2024,T.18243.

<sup>2531</sup> W04752,10/07/2024,T.17987-17988.

<sup>2532</sup> W04752,17/07/2024,T.18408.

<sup>2533</sup> [REDACTED].

<sup>2534</sup> [REDACTED].

<sup>2535</sup> [REDACTED].

<sup>2536</sup> [REDACTED]

<sup>2537</sup> W04744,25/06/2024,T.17207.

<sup>2538</sup> W04744,25/06/2024,T.17207.

<sup>2539</sup> [REDACTED]; W04744,25/06/2024,T.17147.

GS not the Pashtrik OZ,<sup>2540</sup> no basis for this assertion in response to a hypothetical question was provided.

1029. [REDACTED],<sup>2541</sup> [REDACTED].<sup>2542</sup> [REDACTED],<sup>2543</sup> but provided no further information on which MP unit this related to.

1030. W04264 did not know who issued the arrest order for B.KUQI, but supposed it was Drini,<sup>2544</sup> [REDACTED].<sup>2545</sup> W04264 ordered that B.KUQI be taken to Kleçkë/Klečka.<sup>2546</sup>

1031. [REDACTED].<sup>2547</sup> [REDACTED].<sup>2548</sup> [REDACTED].<sup>2549</sup> Neither [REDACTED] nor W04264 were subject to cross-examination on these allegations.

1032. The only other evidence which purports to relate to the order to arrest B.KUQI therefore comes from two unsigned, unstamped, pro-forma documents that were seized from J.KRASNIQI.<sup>2550</sup>

1033. [REDACTED] had not seen P01174 [REDACTED].<sup>2551</sup>

1034. W04744 claimed upon seeing this document that he knew the MP had detained B.KUQI,<sup>2552</sup> but provided no basis for this assertion, given that he was not present when B.KUQI was arrested.

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<sup>2540</sup> W04744,25/06/2024,T.17207-17208.

<sup>2541</sup> [REDACTED].

<sup>2542</sup> [REDACTED].

<sup>2543</sup> [REDACTED].

<sup>2544</sup> P01955.7,p.4.

<sup>2545</sup> [REDACTED].

<sup>2546</sup> P01956,p.SITF00010491.

<sup>2547</sup> [REDACTED].

<sup>2548</sup> [REDACTED].

<sup>2549</sup> [REDACTED].

<sup>2550</sup> [REDACTED]; [REDACTED].

<sup>2551</sup> [REDACTED], referring to [REDACTED].

<sup>2552</sup> W04744,25/06/2024,T.17200.

1035. [REDACTED] is similarly unconvincing. W04744 was not aware that the KLA had a military criminal code,<sup>2553</sup> and noted that there were irregularities in the document such as title “law graduate” before LIMAJ’s name and parts of the document that are extremely unclear.<sup>2554</sup> W04744 noted that whoever issued this document exceeded their competence as MP director,<sup>2555</sup> as the MP ought to act based on the order of a Prosecutor and not on their behalf,<sup>2556</sup> but also noted that the document was not signed by LIMAJ.<sup>2557</sup>

1036. [REDACTED],<sup>2558</sup> [REDACTED].

1037. [REDACTED] is similarly unauthenticated and irrelevant.

1038. P01345 mentions W04744’s statement as supporting the lack of basis for detention.<sup>2559</sup> While W04744 recalled that he gave evidence before DOBRUNA,<sup>2560</sup> no evidence was provided as to who prepared the appeal, when it was filed or to who. Nor was the reference to the “Military Court College” at the top was not explained by any witness.

1039. None of these three documents can therefore be relied upon by the Panel.

1040. However, even if the Panel does rely on these documents there is no evidence suggesting that **SELIMI** was in any way involved in the ordering or implementation of these actions. **SELIMI** had no formal or informal authority over the MP at either the GS level and no awareness of, or involvement in this decision.

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<sup>2553</sup> W04744,25/06/2024,T.17197.

<sup>2554</sup> W04744,25/06/2024,T.17198; [REDACTED].

<sup>2555</sup> W04744,25/06/2024,T.17198.

<sup>2556</sup> W04744,25/06/2024,T.17199.

<sup>2557</sup> W04744,26/06/2024,T.17221.

<sup>2558</sup> [REDACTED].

<sup>2559</sup> P01345,p.SPOE00231842.

<sup>2560</sup> W04744,24/06/2024,T.16984.

*SELIMI had no role, knowledge, or authority of B.KUQI's 'trial'*

1041. After B.KUQI confirmed to W04264 that he left his brigade after the brigade was dissolved, and went to Albania where he joined FARK,<sup>2561</sup> W04264 did not see the need to call any additional witnesses because B.KUQI admitted he had deserted.<sup>2562</sup> W04264 held “a trial in a speed-up way” and concluded that B.KUQI should be executed in order to deter further desertions, which was a major issue at the time.<sup>2563</sup>

1042. [REDACTED],<sup>2564</sup> [REDACTED].<sup>2565</sup> However, W04264 claimed that B.KUQI was surely provided with all requisite fair trial rights<sup>2566</sup> and was appointed a defence counsel.<sup>2567</sup>

1043. While W04744 claimed [REDACTED],<sup>2568</sup> [REDACTED].<sup>2569</sup> Indeed, W04744 [REDACTED],<sup>2570</sup> [REDACTED].

1044. [REDACTED].<sup>2571</sup>

1045. No witness authenticated the indictment that charged B.KUQI with arbitrary desertion of duty.<sup>2572</sup> W04744 testified that he had never seen this document before his preparation session,<sup>2573</sup> but confirmed that this was the issue B.KUQI

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<sup>2561</sup> P01955.7,p.4.

<sup>2562</sup> P01955.7,p.10.

<sup>2563</sup> P01955.7,p.5.

<sup>2564</sup> [REDACTED].

<sup>2565</sup> [REDACTED].

<sup>2566</sup> P01955.7,p.12.

<sup>2567</sup> P01955.7,p.6; P01955.3,p.3.

<sup>2568</sup> [REDACTED].

<sup>2569</sup> [REDACTED].

<sup>2570</sup> [REDACTED].

<sup>2571</sup> [REDACTED].

<sup>2572</sup> P01344,p.SPOE232264.

<sup>2573</sup> W04744,24/06/2024,T.16983.

was being accused of,<sup>2574</sup> that he was not familiar with the Prosecutor,<sup>2575</sup> and did not receive a subpoena to testify, contrary to P01344.<sup>2576</sup>

*SELIMI had no role or knowledge of B.KUQI's sentence, commutation or appeal*

1046. DOBRUNA was fully responsible for the investigation, trial, conviction and sentence of B.KUQI. There is no evidence or even allegation that **SELIMI** played any role in this.

1047. W04264 stated that he was responsible for the decision imposing a sentence of execution on B.KUQI,<sup>2577</sup> and remained steadfast in this decision to execute B.KUQI<sup>2578</sup> without any interference from the GS at any point.<sup>2579</sup> Nobody from the KLA objected to DOBRUNA's decision as they never interfered in legal matters, and W04264 would not have listened to them even if they intended to interfere.<sup>2580</sup> However, Albanians in the diaspora insisted that DOBRUNA not carry out B.KUQI's execution.<sup>2581</sup>

1048. [REDACTED].<sup>2582</sup> W04752 had no reason to dispute W04264's evidence that the Court was the authority which both convicted and released B.KUQI.<sup>2583</sup> While [REDACTED],<sup>2584</sup> [REDACTED].<sup>2585</sup>

1049. Finally, while W04264's untested evidence was that during or right after the NATO bombing he had a meeting with international investigators where he handed over the file regarding the B.KUQI case, and that present in this meeting

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<sup>2574</sup> W04744,24/06/2024,T.16983.

<sup>2575</sup> W04744,25/06/2024,T.17150.

<sup>2576</sup> W04744,25/06/2024,T.17151.

<sup>2577</sup> P01955.2,p.16.

<sup>2578</sup> P01955.4,p.20.

<sup>2579</sup> P01955.7,pp.14-15.

<sup>2580</sup> P01963,p.054683.

<sup>2581</sup> P01955.4,pp.19-20.

<sup>2582</sup> [REDACTED].

<sup>2583</sup> W04752,18/07/2024,T.18545.

<sup>2584</sup> [REDACTED].

<sup>2585</sup> [REDACTED].

were **SELIMI**, LIMAJ and a journalist,<sup>2586</sup> he does not know why **SELIMI** and LIMAJ were present in the meeting, and he cannot remember which organization the internationals belonged to.<sup>2587</sup> This evidence is therefore irrelevant to any assessment regarding **SELIMI**'s role in relation to B.KUQI.

ii. B.KUQI was not an Opponent but was justifiably detained as a deserter

1050. [REDACTED].<sup>2588</sup> W04752 explained that B.KUQI left for Albania because he “felt some sort of fear and pressure from the population—that the population had withdrawn or had moved away from certain regions, including Pagarushe [...] and went to Albania to get more professional fighters, officers”.<sup>2589</sup>

1051. [REDACTED].<sup>2590</sup> [REDACTED].<sup>2591</sup> While W04744 claimed that two days before B.KUQI's departure, he and W04744 had unsuccessfully tried to contact ZYRAPI,<sup>2592</sup> W04744 affirmed that ZYRAPI accused B.KUQI of abandoning the brigade.<sup>2593</sup>

1052. The punishment for desertion or espionage was execution.<sup>2594</sup> B.KUQI's case was very effective in deterring potential desertions,<sup>2595</sup> and W04264 expressed his frustration that he never received thanks for applying the norms of the Code of the Criminal Execution.<sup>2596</sup>

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<sup>2586</sup> P01956,p.SITF00010492; P01955.7,p.14.

<sup>2587</sup> P01955.7,p.14.

<sup>2588</sup> [REDACTED].

<sup>2589</sup> P01355.6,pp.29-30.

<sup>2590</sup> [REDACTED].

<sup>2591</sup>[REDACTED].

<sup>2592</sup> [REDACTED]; W04744,24/06/2024,T.17067.

<sup>2593</sup> W04744,24/06/2024,T.17067.

<sup>2594</sup> P01955.9,pp.10-11.

<sup>2595</sup> P01955.4,p.21.

<sup>2596</sup> P01955.7,p.11.

1053. W04752 confirmed that “desertion in every army is a serious offence and it’s severely punished.”<sup>2597</sup> [REDACTED].<sup>2598</sup>
1054. Therefore, B.KUQI was interrogated, detained and prosecuted for the offence of desertion from the KLA, a well-known offence that potentially caused severe harm to the KLA. This was not a fabricated allegation to target B.KUQI because of his LDK membership but based on facts that were not reasonably in dispute. [REDACTED],<sup>2599</sup> and [REDACTED],<sup>2600</sup> [REDACTED]<sup>2601</sup> or otherwise provide any support for his assertion.
1055. Similarly, [REDACTED]<sup>2602</sup> does not undermine the legitimacy of the criminal process taken against B.KUQI. Selectivity of prosecution does not constitute a reason to render a prosecution arbitrary.
1056. As a KLA deserter, B.KUQI does not therefore fall within the category of Opponents as set out in the Indictment.

**d. SELIMI was not involved in XHAFIQI’s detention**

i. GS was not responsible for XHAFIQI’s detention

1057. The SPO did not prove the allegation linking XHAFIQI to the GS.<sup>2603</sup>
1058. In Tërpezë/Trpeza, W04734 met with various KLA individuals, and wrote down in his notebook that he was told that XHAFIQI was under “higher formation control”,<sup>2604</sup> although not who told him this.<sup>2605</sup> When W03724 was

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<sup>2597</sup> W04752,10/07/2024,T.17984.

<sup>2598</sup> [REDACTED].

<sup>2599</sup> [REDACTED].

<sup>2600</sup> [REDACTED].

<sup>2601</sup> [REDACTED].

<sup>2602</sup> [REDACTED].

<sup>2603</sup> F00709/A01,para.507.

<sup>2604</sup> W03724,14/09/2023,T.8043; P00392,p.085962; P00402,p.SPOE00116969;[REDACTED].

<sup>2605</sup> W03724,14/09/2023,T.8044.

shown P00409 in court,<sup>2606</sup> he admitted that “higher formation” is relative to the person who told him that information, who W03724 did not know<sup>2607</sup> and does not mean the GS.<sup>2608</sup>

1059. Subsequently, in Tërpezë/Trpeza, W03724 asked the KLA officer for XHAFIQI to be released, and if not, to have access to him, which was refused.<sup>2609</sup> The KLA officer responded that the XHAFIQI was out of the responsibility of the zone commander and was under GS authority.<sup>2610</sup> [REDACTED]<sup>2611</sup> [REDACTED]<sup>2612</sup> led W03724 to believe that the KLA officer was representing himself as speaking on behalf of the GS.<sup>2613</sup> However, W03724 had no indication that the KLA officer had recently been in contact with the GS.<sup>2614</sup>

1060. W03724 continued looking for XHAFIQI.<sup>2615</sup> [REDACTED].<sup>2616</sup> However, W03724 could not recall whether this information was received from [REDACTED].<sup>2617</sup> No other evidence was provided by W03724 as to who within the KLA High Command this comment was related. [REDACTED],<sup>2618</sup> also does not explain how [REDACTED], nor how this linked XHAFIQI to the GS.

1061. Furthermore, W03724’s overall knowledge of the KLA’s structure was extremely limited. W03724 does not know when the KLA was established, did not engage with the GS, and did not consider it practicable to do so.<sup>2619</sup> Indeed,

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<sup>2606</sup> P00409.

<sup>2607</sup> W03724,14/09/2023,T.8045.

<sup>2608</sup> W03724,14/09/2023,T.8046.

<sup>2609</sup> W03724,14/09/2023,T.8169.

<sup>2610</sup> W03724,14/09/2023,T.8000; P00407,[REDACTED].

<sup>2611</sup>[REDACTED]; [REDACTED].

<sup>2612</sup> [REDACTED]; [REDACTED].

<sup>2613</sup> W03724,14/09/2023,T.8172; P00408,para.17.

<sup>2614</sup> W03724,14/09/2023,T.8172.

<sup>2615</sup> [REDACTED].

<sup>2616</sup> [REDACTED].

<sup>2617</sup> [REDACTED].

<sup>2618</sup> [REDACTED].

<sup>2619</sup> P00392,para.122; W03724,13/09/2023,T.8019-8020.

much of W03724's knowledge of the KLA was limited to his area of responsibility during the time that he was physically present in Kosovo. W03724 did not travel to any other KLA zones outside that of his responsibility, was not aware of the zone commands<sup>2620</sup> and had limited knowledge of brigade structures.<sup>2621</sup> Any assertions by W03724 regarding GS involvement with XHAFIQI cannot be given substantial weight.

1062. OSCE KVM monitors spoke with Drini regarding XHAFIQI's disappearance<sup>2622</sup> but Drini told the OSCE that he had no knowledge about this case.<sup>2623</sup> [REDACTED]<sup>2624</sup> [REDACTED]<sup>2625</sup> This appeared to be a justification for [REDACTED].

1063. [REDACTED]<sup>2626</sup> [REDACTED].<sup>2627</sup> [REDACTED]<sup>2628</sup> [REDACTED]<sup>2629</sup> [REDACTED],<sup>2630</sup> [REDACTED].<sup>2631</sup>

ii. Reference to "representative of Ten" doesn't implicate SELIMI

1064. W03724 candidly admits the limits of his own reference to a "representative of ten" when searching for XHAFIQI,<sup>2632</sup> Ultimately, W03724 is unclear both as to what "ten" is, as well as who the purported representative was. Nevertheless, apart from being in Tërpezë/Trpeza, the representative has no demonstrated link to XHAFIQI.

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<sup>2620</sup> W03724,13/09/2023,T.8013.

<sup>2621</sup> P00392,para.19; W03724,13/09/2023,T.8019-8020.

<sup>2622</sup> [REDACTED]; [REDACTED].

<sup>2623</sup> [REDACTED].

<sup>2624</sup> [REDACTED];[REDACTED].

<sup>2625</sup> [REDACTED].

<sup>2626</sup> [REDACTED]; [REDACTED].

<sup>2627</sup> [REDACTED].

<sup>2628</sup> [REDACTED].

<sup>2629</sup> [REDACTED]; [REDACTED].

<sup>2630</sup> [REDACTED]; [REDACTED].

<sup>2631</sup> [REDACTED].

<sup>2632</sup> F00709/A01,para.507.

1065. W03724 followed S.HOXHA's car to Tërpezë/Trpeza<sup>2633</sup> where he met with various KLA individuals.<sup>2634</sup> In his original ICTY statement W03274 described that he met "one gentleman wearing civilian clothes and spectacles as a high-level representative of "Ten", 'a purported "KLA intelligence' cell' that someone identified to him.<sup>2635</sup>
1066. W03724's colleague, who was not called as a witness by the SPO, allegedly recognised the individual. The basis for this person's knowledge, is unknown. W03724 later confirmed that he [REDACTED]<sup>2636</sup> and admitted that he may have been mistaken in linking 'Ten' to Tërpezë/Trpeza and instead may have met him in Reti or elsewhere.<sup>2637</sup>
1067. The KLA representative that W03724 spoke to in Reti identified himself as the chief of information in that local KLA cell or organisation.<sup>2638</sup> W03724 was not able to link anything to him.<sup>2639</sup> W03724 did not have the chance to discuss the accuracy of his interpretation or follow up with his colleague to be able to verify the basis of his knowledge or what exactly he meant at the time, as that day was the last time W03724 worked with his colleague for any extended period time.<sup>2640</sup> W03724 did not know what Ten is or was, only that he remembers that it was used, but was "little more than speculation by [W03724] at the time".<sup>2641</sup>
1068. The basis of information about XHAFIQI was the KLA, without W03724 specifying who within the KLA provided it.<sup>2642</sup> W03724's evidence is thus not

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<sup>2633</sup> [REDACTED]; W03724,14/09/2023,T.8042-8043.

<sup>2634</sup> W03724,14/09/2023,T.8034-8035; P00392,p.085961,para.76; P00407,p.067047.

<sup>2635</sup> [REDACTED].

<sup>2636</sup>[REDACTED].

<sup>2637</sup> W03724,14/09/2023,T.8040.

<sup>2638</sup> W03724,14/09/2023,T.8036.

<sup>2639</sup> W03724,14/09/2023,T.8040.

<sup>2640</sup> W03724,14/09/2023,T.8040.

<sup>2641</sup> W03724,14/09/2023,T.8039; [REDACTED].

<sup>2642</sup> [REDACTED].

that information about XHAFIQI came from the alleged representative of ten, who was only one of several KLA personnel that W03724 met on that occasion.

iii. W03724's identification of LIMAJ is unreliable

1069. The SPO alleges that the OSCE also inquired with LIMAJ about XHAFIQI's fate, who confirmed that XHAFIQI was under GS control.<sup>2643</sup>
1070. W03724 told the SPO about a second meeting in Tërpezë/Trpeza which took place at [REDACTED]<sup>2644</sup> W03724 met with a KLA officer who was identified to him as "CELIK"<sup>2645</sup> who did not introduce himself by name or alias.<sup>2646</sup> W03724 did not know who the person was and had not seen him before.<sup>2647</sup> The meeting with this individual was through an interpreter.<sup>2648</sup>
1071. Afterwards, W03724 was told by his colleagues that this KLA officer was LIMAJ.<sup>2649</sup> W03724 did not know his colleague's basis of knowledge for this assertion.<sup>2650</sup> Nor did W03724 explain the identity of this colleague. W03724 did not see "CELIK" again.<sup>2651</sup> W03724 heard the nickname "CELIK" before the meeting took place, which is reflected in his personal notes.<sup>2652</sup> W03724 did not make any notes of this meeting, aside from the word "CELIK" that is crossed through in his notebook.<sup>2653</sup>
1072. No weight can therefore be given to W03724's purported identification.

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<sup>2643</sup> F00709/A01,para.508.

<sup>2644</sup> [REDACTED].

<sup>2645</sup> [REDACTED].

<sup>2646</sup> W03724,14/09/2023,T.8047.

<sup>2647</sup> W03724,14/09/2023,T.8047.

<sup>2648</sup> W03724,14/09/2023,T.8047.

<sup>2649</sup> W03724,14/09/2023,T.8047; [REDACTED].

<sup>2650</sup> W03724,14/09/2023,T.8048.

<sup>2651</sup> W03724,14/09/2023,T.8048-8049.

<sup>2652</sup> [REDACTED].

<sup>2653</sup> [REDACTED]; W03724,14/09/2023,T.8054-8055; P00402,p.SPOE00116971.

iv. [REDACTED]'s identification of "SELIMI" is unreliable

1073. [REDACTED]'s uncorroborated evidence relating to [REDACTED] , is wholly unreliable. The SPO dropped [REDACTED] as a witness<sup>2654</sup> [REDACTED] . No other witness has given evidence about this purported argument.

1074. [REDACTED].<sup>2655</sup> [REDACTED]<sup>2656</sup> [REDACTED]<sup>2657</sup>

1075. [REDACTED]<sup>2658</sup> [REDACTED]<sup>2659</sup> [REDACTED]<sup>2660</sup> [REDACTED].

1076. [REDACTED]<sup>2661</sup> [REDACTED] .<sup>2662</sup>

1077. [REDACTED].<sup>2663</sup>[REDACTED]<sup>2664</sup>[REDACTED].<sup>2665</sup>

[REDACTED],<sup>2666</sup>[REDACTED]<sup>2667</sup> [REDACTED].<sup>2668</sup> [REDACTED].

1078. [REDACTED]<sup>2669</sup> [REDACTED]<sup>2670</sup> [REDACTED]<sup>2671</sup> [REDACTED].<sup>2672</sup>  
 [REDACTED].<sup>2673</sup> [REDACTED]<sup>2674</sup> [REDACTED]<sup>2675</sup> [REDACTED]<sup>2676</sup>.  
 [REDACTED].

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<sup>2654</sup> F02325,[REDACTED].

<sup>2655</sup> [REDACTED]; [REDACTED].

<sup>2656</sup> [REDACTED].

<sup>2657</sup> [REDACTED].

<sup>2658</sup> [REDACTED].

<sup>2659</sup> [REDACTED

<sup>2660</sup> [REDACTED]

<sup>2661</sup> [REDACTED]; REDACTED].

<sup>2662</sup> [REDACTED].

<sup>2663</sup> [REDACTED]; [REDACTED]; [REDACTED]

<sup>2664</sup> [REDACTED].

<sup>2665</sup> [REDACTED].

<sup>2666</sup> [REDACTED].

<sup>2667</sup> [REDACTED].

<sup>2668</sup> [REDACTED].

<sup>2669</sup> [REDACTED].

<sup>2670</sup> [REDACTED].

<sup>2671</sup> [REDACTED].

<sup>2672</sup> [REDACTED].

<sup>2673</sup> [REDACTED].

<sup>2674</sup> [REDACTED].

<sup>2675</sup> [REDACTED].

<sup>2676</sup> [REDACTED].

1079. [REDACTED].<sup>2677</sup> [REDACTED]. [REDACTED]; [REDACTED].<sup>2678</sup>  
[REDACTED]<sup>2679</sup> [REDACTED]. [REDACTED]<sup>2680</sup> [REDACTED].

1080. [REDACTED]<sup>2681</sup>[REDACTED].<sup>2682</sup>

v. Evidence relating to XHAFIQI's fate is unreliable

1081. The SPO alleges that XHAFIQI was taken to Klečkë/Klečka prison, detained, mistreated [REDACTED]."<sup>2683</sup> [REDACTED].<sup>2684</sup> The SPO only relies upon [REDACTED] for this allegation<sup>2685</sup> who the Defence was unable to cross-examine. No weight can be given to his evidence. To the extent that any reliance is placed on this evidence, [REDACTED].<sup>2686</sup> [REDACTED].

e. **SELIMI did not order the killing of "Islam from Duga village"**

1082. The SPO's allegation relating to an alleged order from **SELIMI** to kill a person called [REDACTED], is predicated exclusively on W04839's untested evidence which was excluded by the Panel.<sup>2687</sup>

1083. [REDACTED] also records an entry for [REDACTED], with the remarks column reading "Tenth"<sup>2688</sup> which W04839 claimed was the nickname of **SELIMI**.<sup>2689</sup> W04839 further explains that this prisoner is the same one that [REDACTED] . When confronted with the fact that he had previously mentioned [REDACTED], W04839 further noted that he did not remember correctly

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<sup>2677</sup> [REDACTED].

<sup>2678</sup> [REDACTED].

<sup>2679</sup> [REDACTED].

<sup>2680</sup> [REDACTED].

<sup>2681</sup> [REDACTED].

<sup>2682</sup> See Section II.C.6.

<sup>2683</sup> F00709/A01,paras.506,515.

<sup>2684</sup> Indictment,[REDACTED].

<sup>2685</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2686</sup> [REDACTED].

<sup>2687</sup> F02013,para.56.

<sup>2688</sup> [REDACTED].

<sup>2689</sup> [REDACTED].

[REDACTED], but the note is accurate and he is from the village of [REDACTED].<sup>2690</sup>

1084. W04264 did not know what the reference to “[REDACTED] in this same document refers to.<sup>2691</sup>

1085. [REDACTED] is later referred to being [REDACTED],<sup>2692</sup> which is inconsistent with [REDACTED] which lists him as being [REDACTED]. A further interview also mentions his presence but without further explanation.<sup>2693</sup> A final document mentions that Arsim HAZIRI, MP “handed over / [REDACTED] / - suspected person - to the PU office.<sup>2694</sup> No further witnesses or documents appear to refer to him.

1086. **SELIMI** had no knowledge of [REDACTED]. W04839’s untested evidence and errors made with regards to [REDACTED], as well as the lack of any further information regarding this individual wholly undermines the SPO’s case on this issue.

**f. SELIMI did not interfere in an investigation in Pjetërshticë/Petraštica**

**i. Allegations in relation to the MP in Pjetërshticë/Petraštica fall outside the JCE**

1087. W04743 attested that his unit took measures against the functioning of a prison in Pjetërshticë/Petraštica.<sup>2695</sup> Four MP from Shalë/Sedlare from W04743’s brigade, were invited to come to DOBRUNA’s office<sup>2696</sup> due to complaints from

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<sup>2690</sup> [REDACTED].

<sup>2691</sup> P01955.8,p.18.

<sup>2692</sup> [REDACTED].

<sup>2693</sup> [REDACTED].

<sup>2694</sup> P02019,p.SPOE00226489.

<sup>2695</sup> P02007.3,pp.22-23.

<sup>2696</sup> P02007.4,pp.11-12.

different citizens that they held people in that compound for one to three hours and beat them up.<sup>2697</sup>

1088. This alleged direction by **SELIMI** to release the Pjetërshticë/Petraštica MP exclusively relates to the specific allegation of maintaining control over which cases were referred to the legal sector. There is no allegation that **SELIMI's** actions were in specific furtherance of the JCE, that the alleged offences by the four MP were crimes under the Law or that their unnamed and unidentified alleged victims were Opponents as set out in the Indictment.

ii. **SELIMI's involvement in the case was exceptional and limited**

1089. W04743 testified he summoned, disarmed, and detained the four MP members in Kleçkë/Klečka<sup>2698</sup> and asked [REDACTED] to place them in a holding cell.<sup>2699</sup>

1090. W04743 went to speak to DOBRUNA in the interim, but he was not present in Kleçkë/Klečka.<sup>2700</sup> W04743 then stated that **SELIMI** came instead.<sup>2701</sup> W04743 did not know why **SELIMI** came and suspected he would have been there as an authority from the GS<sup>2702</sup> but did not explain the basis for this suspicion. While W04743 later claimed that **SELIMI** went to see him, not the other way around,<sup>2703</sup> he also clarified that that **SELIMI** did not go with the sole purpose of seeing him but also intended to meet others, and that their meeting was not only attended by them two but by more people.<sup>2704</sup>

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<sup>2697</sup> P02007.4,pp.16-17; W04743,28/01/2025,T.24671-24672.

<sup>2698</sup> W04743,28/01/2025,T.24671-24672.

<sup>2699</sup> P02007.4,p.12.

<sup>2700</sup> P02007.4,p.12.

<sup>2701</sup> P02007.4,p.13.

<sup>2702</sup> P02007.4,pp.13-14.

<sup>2703</sup> W04743,29/01/2025,T.24805.

<sup>2704</sup> W04743,29/01/2025,T.24805.

1091. The evidence does not thus confirm that **SELIMI** sought to intervene in the case. W04743 sought out DOBRUNA, and **SELIMI** simply spoke to W04743 in DOBRUNA's absence.
1092. W04743 believed that **SELIMI** knew the four individuals<sup>2705</sup> but provided no explanation or justification for this assertion. No other documentary evidence otherwise supports it. Instead, **SELIMI** considered his role simply to ensure that the investigation was conducted fairly and effectively.
1093. Initially, W04743 testified that the meeting he had with **SELIMI** and the suspects was a "confrontation".<sup>2706</sup> but later clarified that it was not properly a confrontation but a 'meeting'.<sup>2707</sup>
1094. **SELIMI** enquired with W04743 and with O.HOXHA about the facts on which these four individuals were stopped and disarmed.<sup>2708</sup> W04743 presented **SELIMI** with a case file containing the relevant information, and **SELIMI** looked at some of the statements superficially and then proposed to take the case file with him and return it after a week.<sup>2709</sup>
1095. W04743 claimed that **SELIMI** considered W04743 and O.HOXHA were being subjective at that time.<sup>2710</sup> because **SELIMI** questioned the basis of their detention, even though W04743 submitted all the paperwork in front of him, leading him to believe **SELIMI** doubted the objectivity of his judgment.<sup>2711</sup>
1096. Certain evidence suggests [REDACTED] prompted the suspects' arrest rather than the allegations of mistreatment against the four military policemen.<sup>2712</sup>

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<sup>2705</sup> P02007.4,p.13.

<sup>2706</sup> W04743,28/01/2025,T.24672.

<sup>2707</sup> W04743,29/01/2025,T.24740.

<sup>2708</sup> P02007.4,p.13.

<sup>2709</sup> P02007.4,p.14.

<sup>2710</sup> P02007.4,p.13.

<sup>2711</sup> W04743,29/01/2025,T.24731-24732.

<sup>2712</sup> [REDACTED].

While W04743 did not believe these events were related,<sup>2713</sup> did not recall **SELIMI** mentioning anything to that effect<sup>2714</sup> he did not provide evidence to exclude that possibility.

1097. **SELIMI's** doubts as to W04743's objectivity would be a legitimate reason to verify the progress of the investigation. A resulting request to see whether the MP could be provisionally released pending **SELIMI's** review of the evidence collected is thus entirely logical and explains why W04743 stated that he thought **SELIMI** might have been doing the right thing.<sup>2715</sup> **SELIMI** would have needed time to properly review the file to assess whether the investigation was carried out properly. While W04743 stated that those case materials were never returned to him<sup>2716</sup> W04743 never met **SELIMI** subsequently to discuss the case<sup>2717</sup> and so was never able to determine what steps **SELIMI** had taken. W04743 also could not exclude that the case file may have been eventually passed on to DOBRUNA.<sup>2718</sup>

1098. W04743 also confirmed that there was no written decision on release, that it was an oral one, and he did not contest it.<sup>2719</sup> However, W04743 does not remember if he eventually also informed DOBRUNA the release and **SELIMI's** intervention<sup>2720</sup> which is consistent therefore with W04743 not considering **SELIMI's** request as particularly strange or inappropriate.

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<sup>2713</sup> W04743,29/01/2025,T.24734.

<sup>2714</sup> W04743,29/01/2025,T.24807-24808.

<sup>2715</sup> W04743,29/01/2025,T.24742,24810.

<sup>2716</sup> P02007.4,p.15.

<sup>2717</sup> W04743,29/01/2025,T.24743.

<sup>2718</sup> W04743,29/01/2025,T.24744.

<sup>2719</sup> W04743,29/01/2025,T.24741.

<sup>2720</sup> P02007.4,p.17.

iii. SELIMI did not have any knowledge of other detainees in Kleçkë/Klečka

1099. W04743 did not recall the exact date that that he met **SELIMI** and only recalled they met the same day of the detainees' release.<sup>2721</sup> W04743 added that their encounter was for **SELIMI** to meet with the detainees and ascertain why they were detained.<sup>2722</sup> P02019 refers to the meeting occurring in Divjakë/Divljaka, rather than Kleçkë/Klečka.

1100. Wherever and whenever the meeting occurred, the SPO has not alleged or proven that **SELIMI** saw any detainees in Kleçkë/Klečka prison at the time or that any were otherwise visible to **SELIMI** at that time. DOBRUNA's office in Kleçkë/Klečka and the prison were in the same building, but they had separate entrances and were not linked together.<sup>2723</sup>

iv. Disciplinary proceedings were appropriate and continued after SELIMI's meeting with W04743

1101. **SELIMI's** alleged intervention did not prevent further investigations against these four MP.

1102. After the meeting with **SELIMI**, the four individuals received their weapons and they were free to go.<sup>2724</sup> However, W04743 confirmed that they were dismissed,<sup>2725</sup> transferred to different points as ordinary soldiers and the case became a disciplinary one.<sup>2726</sup> W04743 contacted H.SHALA and the latter indeed dismissed them as MP officers and transferred them to different units

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<sup>2721</sup> W04743,29/01/2025,T.24729.

<sup>2722</sup> W04743,29/01/2025,T.24730.

<sup>2723</sup> P02007.3,pp.16-17.

<sup>2724</sup> P02007.4,p.14.

<sup>2725</sup> W04743,28/01/2025,T.24673-24675.

<sup>2726</sup> W04743,29/01/2025,T.24745.

within the brigade.<sup>2727</sup> Their release had therefore not prevented investigations and sanctions being imposed against the four MP, outside of **SELIMI**'s control.

1103. Disciplinary sanctions were more appropriate for the allegations. P02019 records a discussion of MP not reporting to higher bodies and acting independently<sup>2728</sup> which constitutes a disciplinary, rather than criminal, matter and contradicts W04743's claim that he did not discuss issues of discipline relating to these same four MPs with **SELIMI**.<sup>2729</sup>

1104. Further, the line between disciplinary and criminal cases was opaque. W04743 did not receive the criminal codes from DOBRUNA<sup>2730</sup> and so did not have a specific basis to differentiate between the two. Indeed, there were cases, such as Driton GASHI, where W04743 considered the case to be criminal, but DOBRUNA classified it as disciplinary.<sup>2731</sup>

1105. W04743 confirmed the case was only closed to him, at the brigade level, but does not know if it was processed further.<sup>2732</sup> P02010, including documents dated 2 and 6 May 1999 which occurred after the meeting with **SELIMI**, strongly suggests that the investigation continued after their release.<sup>2733</sup> Although W04743 was not aware of further investigations<sup>2734</sup> W04743 could not explain how one of the documents was signed by O.HOXHA, who was from his brigade.<sup>2735</sup>

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<sup>2727</sup> P02007.4,p.16.

<sup>2728</sup> W04743,29/01/2025,T.24735.

<sup>2729</sup> W04743,29/01/2025,T.24735.

<sup>2730</sup> W04743,28/01/2025,T.24634-24635.

<sup>2731</sup> [REDACTED]; P02007.2,pp.13-14.

<sup>2732</sup> W04743,29/01/2025,T.24743.

<sup>2733</sup> W04743,29/01/2025,T.24747-24748; P02010.

<sup>2734</sup> W04743,29/01/2025,T.24747-24748.

<sup>2735</sup> W04743,29/01/2025,T.24747-24748.

1106. Therefore, while the allegations were initially treated as criminal offences<sup>2736</sup> W04743 confirmed that these individuals' release did not prevent disciplinary measures to be taken against them.<sup>2737</sup> DOBRUNA also told W04743 that cases would be transferred to regular courts once the war was over.<sup>2738</sup> Consequently, the purported decision by **SELIMI** to release the four MPs did not have a substantial impact upon them.

### E. Conclusion on JCE

1107. The evidence at trial demonstrated that the KLA was a nascent force, opposed to Serb rule and created from the ground up, focused on organising village defence groups, arming itself and protective the local population, and eventually, working together to create some strength in numbers in order to repel Serb forces and entice the support of the international community.

1108. The SPO did not tender a shred of evidence of meetings or other planning activity of the members of the alleged JCE which indicated a common plan, purpose, or intent with the goal of securing independence by any other methods than political or military means.

1109. The Defence does not dispute that individuals may have been detained, mistreated, and killed during the Indictment period. Nor does the Defence dispute that some of these actions were taken by individuals who were part of the KLA. What the evidence has not demonstrated, however, is that any of those actions were done pursuant to a common plan agreed upon by the accused in this case, and specifically **SELIMI**.

1110. In the absence of any direct proof, the SPO can only be relying upon the circumstantial inference that individual crimes alleged in the Indictment must

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<sup>2736</sup> W04743,28/01/2025,T.24672.

<sup>2737</sup> W04743,29/01/2025,T.24749.

<sup>2738</sup> W04743,29/01/2025,T.24744.

have been committed pursuant to a criminal agreement made between the accused and others. An inference such as this, resting entirely on circumstantial evidence, is only permissible in a criminal trial if there is no other reasonable inference available on the whole of the evidence.

1111. The SPO has failed to establish the alleged JCE.

## VI. AIDING AND ABETTING

1113. The charges that **SELIMI** aided and abetted the underlying crimes are based on the same allegations underpinning the alleged JCE liability.<sup>2739</sup>
1114. Aiding and abetting requires proof that the accused, either through an act or omission,<sup>2740</sup> provided assistance, encouragement or moral support to a principal perpetrator of a crime under the Law.<sup>2741</sup> The material elements of the crime committed by the principal perpetrator must be established<sup>2742</sup> and although there is no causal link required between the act or omission of the accused and the crime, it must be shown to have had a “substantial effect” on the commission of that crime,<sup>2743</sup> determined by a fact-based inquiry.<sup>2744</sup>
1115. To show that an accused provided substantial assistance to a crime through tacit approval or encouragement, such encouragement or moral support can only form substantial contribution to a crime when the principal perpetrators were aware of it,<sup>2745</sup> or understood it to be encouragement or approval of a crime about to be committed.<sup>2746</sup>
1116. The *mens rea* for aiding and abetting requires that (i) it is intentional; (ii) that the aider and abettor had the “double intent” to further his own contribution and to further the intentional completion of the crime by the perpetrator; (iii) that the aider and abettor accepted the criminal result of his conduct whereby the consequence of his contribution is that the commission of the crime is more likely than not; and (iv) that the accused is aware of the type and essential

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<sup>2739</sup> Indictment, paras.32-54; see Section V.

<sup>2740</sup> *Blaškić* AJ, para.47.

<sup>2741</sup> *Nahimana* AJ, para.482.

<sup>2742</sup> *Kupreškić* AJ, para.254.

<sup>2743</sup> *Blagojević* TJ, para.726.

<sup>2744</sup> *Blagojević* AJ, para.134.

<sup>2745</sup> *Brđanin* AJ, para.277.

<sup>2746</sup> *Orić* TJ, para.283.

elements of the crime to be committed,<sup>2747</sup> including the perpetrator's state of mind and any relevant specific intent.<sup>2748</sup>

1117. The charges lack the requisite detail regarding **SELIMI's** specific conduct and the means through which he had a substantial effect on each crime charged, nor that he had the intent to do so.

1118. For the reasons stated above regarding the allegations of personal participation by **SELIMI** in the alleged JCE, the SPO failed to prove that **SELIMI** aiding and abetted any of the charged crimes.

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<sup>2747</sup> *Orić TJ*, para.288.

<sup>2748</sup> *Blagojević AJ*, para.127.

## VII. SUPERIOR RESPONSIBILITY

1119. Neither the Indictment nor the PTB spell out the SPO's allegations of superior responsibility beyond generic references to **SELIMI** being a "senior member" of the KLA/PGoK and having authority over the "entire KLA/PGoK structures."<sup>2749</sup>

1120. Three elements are necessary to prove criminal liability as a superior under Article 16(1)(c), all of which fail here.

### A. SELIMI did not have effective control over perpetrators of crimes

1121. A superior-subordinate relationship where the superior exercised "effective control"<sup>2750</sup> over identifiable<sup>2751</sup> subordinates culpable in the commission of the underlying crimes<sup>2752</sup> is characterised by a hierarchical relationship,<sup>2753</sup> which can exist as a result of the *de jure* or *de facto* authority of the superior over the subordinate person(s) responsible for the underlying crime.<sup>2754</sup> The SPO alleges here only *de facto* authority, although the perpetrator of the underlying offence must still be shown to be a subordinate of the person of higher rank and under his direct/indirect control.<sup>2755</sup>

1122. Effective control is determined by the "ability to maintain or enforce compliance of others with certain rules and orders" and whether "the responsible superior [had] means to prevent the relevant crimes from being committed or to take efficient measures for having them sanctioned."<sup>2756</sup> The accused must have a personal relationship of subordination *vis-à-vis* the

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<sup>2749</sup> F00709/A01,para.710.

<sup>2750</sup> Čelebići AJ,paras.196-197.

<sup>2751</sup> Blagojević AJ,para.287; Orić AJ,para.35.

<sup>2752</sup> Orić AJ,para.35.

<sup>2753</sup> Čelebići AJ,para.303.

<sup>2754</sup> Čelebići AJ,para.193.

<sup>2755</sup> Indictment,para.55; Čelebići TJ,para.354; Čelebići AJ,para.193.

<sup>2756</sup> Orić TJ,para.311.

perpetrators of the crimes and that both parties acknowledged this relationship.<sup>2757</sup> “Substantial influence” does not suffice to establish superior responsibility.<sup>2758</sup>

1123. Where control over other individuals is shared by a group of individuals, the SPO must demonstrate that **SELIMI**, in his personal capacity and/or in his role as a member of that group, was personally able to exercise effective control over the perpetrators up to the required standard.<sup>2759</sup> Pleading the accused’s responsibility simply by reference to their membership in the GS/PGoK<sup>2760</sup> demonstrates the SPO’s failure to individualize the authority owned by each accused.

1124. Care must be taken not to give too much emphasis to the *position* of an individual rather than the degree of *responsibility* for the crime in question.<sup>2761</sup> In this regard, the superior must be aware of his own position of authority, specifically, that he has effective control over the subordinates who committed or are about to commit the relevant crimes.<sup>2762</sup>

1125. Superior responsibility does not extend to acts committed by the subordinate perpetrators prior to the superior’s assumption of command.<sup>2763</sup>

1126. **SELIMI** had no effective control over any individuals who were alleged to have committed crimes at any stage in the Indictment Period.

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<sup>2757</sup> See G.Mettraux,2009,p.139, see also,p.162,fn.114, “‘effective control’ could not be said to exist where an accused’s ability to control certain persons depends on the good will or agreement of third parties.”

<sup>2758</sup> Čelebići AJ,para.266.

<sup>2759</sup> Brđanin TJ,para.277.

<sup>2760</sup> Indictment,para.36; F00709/A01,paras.1,422,488,500,508.

<sup>2761</sup> See, G.Mettraux,2009,p.16.

<sup>2762</sup> Orić TJ,para.316.

<sup>2763</sup> Hadžihasanović Decision,para.51; Orić TJ,para.335; Hadžihasanović TJ,para.198; Perišić AJ,para.110.

1127. Horizontal structures, the voluntary nature of KLA participation, and independence of KLA units prevented such control. Laws, rules or regulations purporting to grant the GS such effective control, were aspirational, unenforceable, and unknown to those expected to exercise such authority, as well as those over whom authority was sought to be exercised.<sup>2764</sup>
1128. Until assuming the role of Inspector-General, **SELIMI** had no authority to issue orders, verbal or written, to any soldier or commander, at any level.<sup>2765</sup> There is no evidence of anyone reporting to **SELIMI** during this period. **SELIMI**'s instructions or advice were not regarded as orders and the individuals concerned did not feel obliged to carry them out.<sup>2766</sup> **SELIMI**'s requests were also routinely ignored.<sup>2767</sup>
1129. As Inspector-General, **SELIMI** had no authority or control over other Directorates in the GS, including the KLA-MPD. He was not a Director of a Directorate, thus was not required to report to the GS or attend certain GS meetings. **SELIMI** had no facilities, office, or staff, and had no formal or informal authority over KLA soldiers. The only evidence of **SELIMI** potentially having staff members is a document recording the passage of "soldiers of (10)" at a checkpoint,<sup>2768</sup> yet no witness could confirm this reference corresponded to soldiers under the command of **SELIMI** without resorting to speculation, and these "soldiers" were not identified with any degree of specificity. Other witnesses claimed that **SELIMI** had a staff or was accompanied by certain

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<sup>2764</sup> See Section III.B.

<sup>2765</sup> See Section IV.B.

<sup>2766</sup> W04743,28/01/2025,T.24701; [REDACTED].

<sup>2767</sup> See *supra*, para.752 (on [REDACTED]), para.832 (on the request by an individual identified as "Agron" to appoint BRAHIMA] as zone commander being rejected); [REDACTED].

<sup>2768</sup> [REDACTED].

individuals during inspections yet could not identify these persons or provide support for the proposition that they were under **SELIMI's** command.<sup>2769</sup>

1130. As MinPO, **SELIMI** had no effective control over subordinates considering the structure of the MPO and the role of UNMIK and KFOR in relation to the PGoK.<sup>2770</sup>

**B. SELIMI did not know or have reason to know subordinates had committed crimes**

1131. Proof that a superior knew, or had reason to know, that their subordinates committed or were about to commit the underlying crimes must be shown through direct or circumstantial evidence of actual knowledge (which cannot be presumed)<sup>2771</sup> of the risk these crimes would be committed or their actual commission; or constructive knowledge by having “in his possession information of a nature, which at least, would put him on notice of the risk of such offences by indicating the need for additional investigation to ascertain whether such crimes were committed or were about to be committed by his subordinates”.<sup>2772</sup> This information must nevertheless be sufficiently specific to demand further clarification.<sup>2773</sup>

1132. An accused's position of authority cannot lead to an automatic presumption, beyond a reasonable doubt, that he or she knew or had reason to know of the crimes for which a conviction is sought.<sup>2774</sup>

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<sup>2769</sup> [REDACTED]; [REDACTED]; W04765,16/11/2023,T.10309.

<sup>2770</sup> See Section IV.D.

<sup>2771</sup> *Hadžihasanović* TJ, para.94.

<sup>2772</sup> *Čelebići* TJ, para.383.

<sup>2773</sup> *Orić* TJ, paras.321-323.

<sup>2774</sup> *Kajelijeli* TJ, para.776. See also, G.Mettraux,2009,p.11, criticising the *Strugar* Trial Chamber's holding that it was “quite improbable” that the accused was not receiving reports as “effectively dilute[ing] by stealth through evidential inferences...the standard relevant to establishing the accused's liability.”

1133. The standard for knowledge on the part of the superior is not that he “should have known” about the risk of, or the actual commission of, the underlying crimes. Thus, failure to acquire such information, (or indeed any act which may be regarded as, or inferred as, criminal negligence) may not form the basis of liability under superior responsibility.<sup>2775</sup>
1134. Furthermore, it must be proven that the superior had knowledge of the crimes that were about to be, or had been, committed by his subordinates specifically,<sup>2776</sup> as knowledge of the crime and knowledge of the criminal conduct of someone else are two distinct matters.<sup>2777</sup>
1135. The standard of proof necessary to establish the knowledge of *de facto* superiors is higher, as the presumption is *de jure* superiors operate within organised structures, with reporting and monitoring systems, as well as highly disciplined and formalised chains of command.<sup>2778</sup>
1136. The evidence presented by the SPO wholly failed to meet this higher standard that **SELIMI** had any direct and personal knowledge of crimes alleged in the Indictment.
1137. The SPO’s assertion that abuses against civilians were being reported to the GS by subordinate commands<sup>2779</sup> relies exclusively on W04752’s evidence which does not confirm **SELIMI**’s specific knowledge of these abuses. There is no evidence that Zone, Brigade or Battalion commanders otherwise informed **SELIMI** of crimes being committed within their areas.

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<sup>2775</sup> Hadžihasanović TJ, paras.95-96.

<sup>2776</sup> Orić AJ, para.59.

<sup>2777</sup> Prlić TJ, para.252.

<sup>2778</sup> Prlić TJ, para.247; Galić TJ, para.701.

<sup>2779</sup> F00709/A01, para.13.

1138. W04752 told the SPO that, between August until November 1998,<sup>2780</sup> during his visits and talks with the zone commanders prior to issuing 1D00029, he received complaints that unknown people would enter their OZs and stop and arrest people or move them from one zone to another.<sup>2781</sup> W04752 did not claim to relay any of these concerns at least until November 1998,<sup>2782</sup> when W04752 contended that **SELIMI** was present at a meeting of the GS prior to the issuance of 1D00029 where it was discussed that legal procedure now needed to be followed regarding collaborators.<sup>2783</sup>

1139. **SELIMI** stated that 1D00029 wasn't within his competence as Inspector-General.<sup>2784</sup> **SELIMI** was not aware of this order when it was issued and had no knowledge of any abuse against persons or private property by KLA soldiers at that time.<sup>2785</sup> 1D00029 was not discussed at a GS meeting, to **SELIMI's** recollection.<sup>2786</sup> While **SELIMI** understood the situation to which the order referred and that incidents could have happened,<sup>2787</sup> **SELIMI** had no specific knowledge of such incidents,<sup>2788</sup> especially in the Llap Zone 80-100 kilometres away from the GS.<sup>2789</sup> **SELIMI** also recalled that on 28 November 1998 he was involved in the offensive in Drenicë/Drenica<sup>2790</sup> and did not recall discussing the issue in a GS meeting where he was present.<sup>2791</sup>

1140. The SPO presented no documentary evidence of this meeting having taken place. No notes purported to record GS meetings mention detention sites or

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<sup>2780</sup> [REDACTED].

<sup>2781</sup> [REDACTED].

<sup>2782</sup> [REDACTED].

<sup>2783</sup> [REDACTED]. *See supra*, para.102.

<sup>2784</sup> [REDACTED].

<sup>2785</sup> [REDACTED].

<sup>2786</sup> [REDACTED].

<sup>2787</sup> [REDACTED].

<sup>2788</sup> [REDACTED].

<sup>2789</sup> [REDACTED]. See also P00884, [REDACTED].

<sup>2790</sup> [REDACTED].P00761.12,p.20.

<sup>2791</sup> [REDACTED].

detainees. Even W04752's description of the meeting does not refer to abuse of civilians or illegal detentions but merely the prospective need for legal procedure to be followed.

1141. ZYRAPI as chief of staff was able to issue this order without meeting or consulting anyone else,<sup>2792</sup> an authority confirmed by W04401<sup>2793</sup> although W04752 did consult with SYLA.<sup>2794</sup>

1142. In relation to allegations of disappearances and killings by the KLA in summer 1998, **SELIMI** stated that he had no knowledge and nobody shared this information directly or indirectly<sup>2795</sup> and that a purported list of individuals abducted people was not provided to him.<sup>2796</sup>

1143. There is no credible evidence that **SELIMI** was notified in meetings with internationals of crimes by his alleged subordinates.<sup>2797</sup>

1144. No other documentary evidence, including notes of GS meetings or intercepts, refer to **SELIMI** being provided with sufficiently specific information that would put him on notice of such crimes. Knowledge of crimes acquired by one JCE member cannot be assumed to have been shared with others, absent proof, especially where many such members were unknown to each other.<sup>2798</sup> Media reports related only to Rahovec/Orahovac.<sup>2799</sup>

1145. The SPO failed to establish that **SELIMI** was aware of detention centres as set out in the Indictment. **SELIMI**'s knowledge cannot be presumed.

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<sup>2792</sup> [REDACTED].

<sup>2793</sup> W04401,05/12/2024,T.23442.

<sup>2794</sup> [REDACTED].

<sup>2795</sup> P00763.8,p.24.

<sup>2796</sup> P00763.8,p.25.

<sup>2797</sup> The SPO dropped [REDACTED] who allegedly made this allegation. See F00709/A01,para.14.

<sup>2798</sup> See *supra*, paras.104,573.

<sup>2799</sup> See Section V.D.4.

1146. Before [REDACTED], **SELIMI** was unaware of any detention facilities<sup>2800</sup> but confirmed being “more or less aware” of individuals being detained by the KLA for a couple of hours but no exact knowledge of where these sites were.<sup>2801</sup> The SPO makes very few specific allegations of **SELIMI**’s presence at alleged detention facilities. The SPO does not allege **SELIMI**’s presence at detention sites in Llapushnik/Lapušnik,<sup>2802</sup> Budakovë/Budakovo and Semetishtë/Semetište,<sup>2803</sup> Jeshkovë/Ješkovo,<sup>2804</sup> Bare and Bajgorë/Bajgora,<sup>2805</sup> Dobratin/Dobrotin,<sup>2806</sup> Zllash/Zlaš,<sup>2807</sup> Shalë/Sedlare,<sup>2808</sup> Bob, Ivaje/Ivaja, Biçec/Biçevac, and Varosh/Varoš Selo,<sup>2809</sup> Cahan,<sup>2810</sup> Kukës,<sup>2811</sup> Bubël/Bublje and Kostërc/Kostrc,<sup>2812</sup> [REDACTED],<sup>2813</sup> Taslixhe/Taslidže,<sup>2814</sup> Vërban/Vrban,<sup>2815</sup> Nerodimja e Ulët/Donje Nerodimlje,<sup>2816</sup> Gjilan/Gnjilane,<sup>2817</sup> Novebërdë/Novo Brdo,<sup>2818</sup> or Tokbashqe.<sup>2819</sup>

1147. Apart from three specific allegations,<sup>2820</sup> the only other allegation of **SELIMI**’s presence relates to Jabllanica/Jablanica<sup>2821</sup> where **SELIMI** is alleged to have

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<sup>2800</sup> [REDACTED].

<sup>2801</sup> [REDACTED]; P00763.9,p.1.

<sup>2802</sup> F00709/A01,paras.310-337.

<sup>2803</sup> F00709/A01,paras.384-402.

<sup>2804</sup> F00709/A01,paras.412-417.

<sup>2805</sup> F00709/A01,paras.418-420.

<sup>2806</sup> F00709/A01,paras.436-437.

<sup>2807</sup> F00709/A01,paras.438-457.

<sup>2808</sup> F00709/A01,paras.469-478.

<sup>2809</sup> F00709/A01,paras.519-535.

<sup>2810</sup> F00709/A01,paras.536-548.

<sup>2811</sup> F00709/A01,paras.558-569.

<sup>2812</sup> F00709/A01,paras.574-582.

<sup>2813</sup> F00709/A01,[REDACTED].

<sup>2814</sup> F00709/A01,paras.594-600.

<sup>2815</sup> F00709/A01,paras.602-613.

<sup>2816</sup> F00709/A01,paras.660-664.

<sup>2817</sup> F00709/A01,paras.667-679.

<sup>2818</sup> F00709/A01,paras.688-693.

<sup>2819</sup> F00709/A01,paras.694-695.

<sup>2820</sup> [REDACTED], [REDACTED], and [REDACTED].

<sup>2821</sup> F00709/A01,para.16(c).

stayed at BRAHIMAJ's house serving as the HQ.<sup>2822</sup> While [REDACTED] stated that **SELIMI** was present in a meeting in Dukagjin in July 1998<sup>2823</sup> there is no evidence that detention sites were discussed.<sup>2824</sup> W04448 claimed he met **SELIMI** at the Jabllanica HQ at an unspecified time,<sup>2825</sup> yet the alleged detention site was at the Jabllanica/Jablanica barracks, 1.5 kilometers away from the HQ.<sup>2826</sup> Anyone visiting BRAHIMAJ's house would not have known what was happening within the barracks as these were separate locations.<sup>2827</sup> Even at the barracks there was no separation between prisoners and soldiers<sup>2828</sup> and it would be difficult to distinguish between them.<sup>2829</sup> Despite alleging in the PTB that the crimes against detainees at the barracks were committed openly and were common knowledge,<sup>2830</sup> the SPO led no evidence on this point.

1148. The SPO's allegation that **SELIMI** "consulted about collaborators with zone commanders, including in relation to detention<sup>2831</sup> is not supported and based largely on uncorroborated and untested evidence of THAÇI<sup>2832</sup> that **SELIMI** personally intervened to have [REDACTED].<sup>2833</sup> Witnesses addressing [REDACTED].<sup>2834</sup> [REDACTED]'s account to the SPO<sup>2835</sup> and [REDACTED]<sup>2836</sup> were generally that [REDACTED].<sup>2837</sup> [REDACTED].<sup>2838</sup> Neither account corroborates THAÇI's statement. W04752 claimed to attend the meeting in

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<sup>2822</sup> F00709/A01,para.286.

<sup>2823</sup> [REDACTED].

<sup>2824</sup> [REDACTED].

<sup>2825</sup> W04448,14/11/2023,T.10017.

<sup>2826</sup> W04448,14/11/2023,T.10081.

<sup>2827</sup> W04448,14/11/2023,T.10081.

<sup>2828</sup> W04448,14/11/2023,T.10040.

<sup>2829</sup> W04448,14/11/2023,T.10079.

<sup>2830</sup> F00709/A01,para.289.

<sup>2831</sup> F00709/A01, para.111(c)(xi).

<sup>2832</sup> See *supra* para.61.

<sup>2833</sup> [REDACTED].

<sup>2834</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2835</sup> [REDACTED].

<sup>2836</sup> [REDACTED].

<sup>2837</sup> [REDACTED]; [REDACTED].

<sup>2838</sup> [REDACTED].

which **SELIMI** allegedly discussed [REDACTED],<sup>2839</sup> but the SPO failed to raise the issue while examining [REDACTED] on his visits to the zone in [REDACTED].<sup>2840</sup>

1149. [REDACTED].<sup>2841</sup> When told by [REDACTED] that they had [REDACTED] and asked what to do,<sup>2842</sup> [REDACTED] was not aware that [REDACTED].<sup>2843</sup> [REDACTED].<sup>2844</sup> [REDACTED]'s evidence on this issue<sup>2845</sup> does not undermine this account.

1150. There is also no other evidence that **SELIMI** was aware that any individual detained were under the authority of his subordinates. Knowledge of detention centres per se does not also demonstrate knowledge of crimes committed at these detention centres without knowledge of illegality of detention or of crimes committed there.

1151. As MinPO, **SELIMI**'s role and authority within the PGoK, was never clearly defined within a legal framework, and contrary to the SPO's allegations, other than the few staff employed in the MPO, had no subordinates, with W04758 confirming that the MPO had no connection to the KLA MP and no police of its own.<sup>2846</sup> Commensurate with the dysfunctional nature of the PGoK, the MPO did not operate as a structured regulated ministry<sup>2847</sup> with the full and normal supportive structures of government. The SPO did not establish which ministerial powers were vested in **SELIMI**, let alone that he could effectively enforce them.<sup>2848</sup> The SPO also failed to produce evidence of reporting to,

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<sup>2839</sup> [REDACTED].

<sup>2840</sup> [REDACTED].

<sup>2841</sup> [REDACTED].

<sup>2842</sup> [REDACTED].

<sup>2843</sup> [REDACTED].

<sup>2844</sup> [REDACTED].

<sup>2845</sup> [REDACTED].

<sup>2846</sup> See *supra*, para.469.

<sup>2847</sup> See Section IV.D.3.b; 1D00390,para.44; 1DW-003,16/09/2025,T.26779-26783.

<sup>2848</sup> *Boškoski TJ*,para.514.

directives issued by or acts carried out by MinPO establishing his effective authority over those it alleges to have be his subordinates.

1152. SPO allegations of efforts by relatives of alleged victims to inform **SEMI** of crimes, were not proven to have reached **SELIMI** at the time.<sup>2849</sup>

1153. The SPO failed to prove that **SELIMI** received any information putting him on notice of imminent criminal behaviour or offences requiring additional investigation, including any alleged crimes against Opponents during the Indictment Period.

**C. No reasonable and necessary measures SELIMI was able or required to take**

1154. The third element relates to two “duties” imposed upon a superior to take necessary and reasonable measures to prevent future crimes and to punish past crimes.<sup>2850</sup> “Necessary measures” are those required to discharge the obligation to prevent or punish, in the circumstances prevailing at the time, while “reasonable” measures are those which the commander was in a position to take in the circumstances prevailing at the time.<sup>2851</sup>

1155. The appropriate measures to be taken may vary from case to case depending upon the particular circumstances.<sup>2852</sup> The kind and extent of measures to be taken ultimately depends on the degree of effective control over the conduct of subordinates at that time, and further, since a superior is duty bound only to undertake what appears appropriate under the given conditions, he is not obliged to do the impossible.<sup>2853</sup>

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<sup>2849</sup> [REDACTED];[REDACTED]. See Section V.D.2.c.

<sup>2850</sup> *Dorđević* TJ,para.1888; *Delić* TJ,para.69; *Hadžihasanović* AJ,para.259; *Blaškić* AJ,para.83; *Čelebići* TJ,paras.333-334.

<sup>2851</sup> *Blaškić* TJ,para.333.

<sup>2852</sup> *Orić* TJ,para.329.

<sup>2853</sup> *Orić* TJ,para.329.

1156. Thus, the accused must not only have a legal duty which he culpably failed to perform, but he must have also had the material ability to adopt or implement the measures which it is said he should have adopted in the circumstances.<sup>2854</sup>

1157. The SPO presented no evidence that **SELIMI** had the authority or capacity to take measures to prevent crimes which were about to be committed by any individuals who the SPO alleges were under his control. Nor did the SPO establish that he had the authority or capacity to take measures to punish any alleged perpetrators after the events. **SELIMI** did not have the authority or capacity to order or initiate genuine or adequate investigations. Nor was he able to report information about crimes to appropriate authorities. The military court did not function throughout the war, and to the extent it did, it lacked clear procedure. There was no conclusive evidence on how any additional mechanisms, such as disciplinary structures at the zone level, worked in practice.

1158. The SPO presented no evidence that **SELIMI** had the authority to directly discipline, dismiss, or demote soldiers allegedly responsible for such crimes. Neither was it demonstrated that he had the authority to issue the orders that were necessary and reasonable in the circumstances to prevent any crimes either as a staff officer in the KLA or as MinPO.

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<sup>2854</sup> See, G.Mettraux,2009,p.51.

## VIII. CONTEXTUAL ELEMENTS – WAR CRIMES

1159. The SPO alleges that an armed conflict existed in Kosovo from at least March 1998 through September 1999.<sup>2855</sup> The Parties agreed that NIAC existed in Kosovo between 30 November 1998 and 9 June 1999, and the Panel took note of that agreement.<sup>2856</sup> The joint Defence Rule 130 motion argued there is no evidence proving that an armed conflict existed before the end of May 1998 and after 20 June 1999.<sup>2857</sup> The Panel declined to address the merits of the motion.<sup>2858</sup> The Defence adopts the arguments in its motion, and in light of the difference in standards between Rule 130 and Rule 158, supplements those arguments. This section also addresses several arguments raised by the SPO in its response.<sup>2859</sup>

1160. The SPO failed to prove the existence of a protracted armed conflict<sup>2860</sup> until 30 November 1998 on the one hand, and after 9 June 1999 on the other.

### A. SPO failed to prove armed conflict began before 30 November 1998

1161. Liability for war crimes also requires that the perpetrator was aware of the factual circumstances that gave rise to the existence of an armed conflict, since “for a conduct to entail criminal liability, it must be possible for an individual to determine *ex ante*, based on the facts available to him, that the conduct is criminal.”<sup>2861</sup> This *mens rea* standard has been interpreted to require that the perpetrator is aware of the factors supporting the existence of the constitutive

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<sup>2855</sup> Indictment, paras.16,18.

<sup>2856</sup> F03612, para.12; F03612/A01, No.JD1.

<sup>2857</sup> F03256.

<sup>2858</sup> Rule 130 Decision, 16/07/2025, T.26190-26195.

<sup>2859</sup> F03314.

<sup>2860</sup> Article 14(2) of the Law requires proof of a “protracted armed *conflict*” as opposed to the ICTY standard of “protracted armed *violence*”, which establishes an elevated standard. *Bemba* Decision, para.235; *Tadić* IA.Decision, para.70. *See also*, A/CONF.183/13(VOL.II), p.347, para.42.

<sup>2861</sup> *Naletilić* AJ, para.114.

elements of an armed conflict.<sup>2862</sup> As the drafters of the KSC law intended to elevate the relevant threshold, the *mens rea* standard cannot be satisfied simply by the perpetrator's awareness of individual battles crossing the threshold into "protracted armed violence", but that they are sufficiently concerted and intense.

**1. Intensity requirement has not been fulfilled until 30 November 1998**

1162. Factors relevant to assessing intensity<sup>2863</sup> include, (i) the seriousness of attacks and whether there has been an increase in armed clashes; (ii) the spread of clashes over territory and over a period of time; (iii) whether the conflict has attracted the attention of the Security Council; (iv) the types of weapons used; (v) the extent of destruction and the number of casualties; and (vi) the quantity of troops and units deployed.<sup>2864</sup>

1163. The evidence presents an unequivocal picture of the first half of 1998 being characterized by geographically isolated, one-sided attacks by the Serb forces and sporadic violence by the KLA that resulted in a limited number of casualties. Several ICTY chambers determined that a NIAC only existed in Kosovo as of the end of May 1998.<sup>2865</sup> The jurisprudence of several domestic courts,<sup>2866</sup> including the Supreme Court of Kosovo,<sup>2867</sup> arrived at similar

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<sup>2862</sup> *Ntaganda* TJ, para.733; Judgment 09/748011-12, p.40.

<sup>2863</sup> *Lubanga* Decision, paras.231-32; *Bemba* Decision, para.225.

<sup>2864</sup> *Boškoski* TJ, para.77; *Dorđević* TJ, para.1523.

<sup>2865</sup> *Dorđević* TJ, para.1536; *Milutinović* TJ, para.820; *Limaj* TJ, para.171. The *Haradinaj* Trial Chamber conclusion that the conflict met the intensity requirement by 22 April 1998 was based solely on events in Dukagjin, resulting in the Trial Chamber engaging FG in a localised analysis of the intensity of the hostilities relative to the geographical scope of the indictment. *Haradinaj* TJ, paras.93-99. Other ICTY Trial Chambers considered the clashes in Dukagjin as part of their assessment of the start date of the conflict, but were not persuaded that they demonstrated that the intensity requirement has been fulfilled as of that date when included with other parts of Kosovo. *Dorđević* TJ, paras.1532,1536; *Limaj* TJ, para.140.

<sup>2866</sup> *G.Gashi* TJ; *I.Gashi* TJ; *Kabashi* TJ; *Demaj* TJ; *Kolašinać* TJ.

<sup>2867</sup> *Kolašinać* SC.J.

conclusions. This does not relieve the SPO of the burden to prove that an armed conflict existed between end of May 1998 and November 1998.

1164. The SPO dismissed those determinations as being “based on the facts adduced in that case, and the analysis of those facts was, in turn, informed by the issues presented in that case and are limited in that way to those cases”,<sup>2868</sup> yet the evidence led is incapable of invalidating them.

1165. After the one-sided attack on Prekaz<sup>2869</sup> that caught the individuals inside the Jashari compound vastly outnumbered and unprepared,<sup>2870</sup> the SPO reliance on communiqués to establish that “numerous armed confrontations” erupted<sup>2871</sup> is oblivious to the wealth of evidence led on the aggrandizing and propagandist purpose of such communiqués<sup>2872</sup> and unsupported by direct and specific evidence on even one such military action.<sup>2873</sup>

1166. Subsequent clashes frequently involved fewer than a handful of casualties<sup>2874</sup> and demonstrated an asymmetry of resources and military power.<sup>2875</sup> KLA participation was mostly limited to ambushes,<sup>2876</sup> while Serb forces engaged in shelling or ground attacks against specific villages or areas without the KLA’s intervention.<sup>2877</sup>

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<sup>2868</sup> Trial Preparation Conference, T.1857.

<sup>2869</sup> W04290,10/02/2025,T.24937; P00380.1,p.070913.

<sup>2870</sup> P01264,p.SPOE00128584.

<sup>2871</sup> F03314,paras.22-24, referring to P00284 and P00285.

<sup>2872</sup> *Haradinaj* TJ,para.88. See Section V.C.4.a.

<sup>2873</sup> *Limaj* TJ,paras.137,171, similarly considered and rejected this theory.

<sup>2874</sup> P04259,p.1D00-0479; P04023,p.00649677; P04264,p.2; P01804,pp.099497,099503,099505,099507; [REDACTED]; P04282,pp.1-2; P04263,p.2; [REDACTED]; P04268,p.2; P04270,pp.2-3; *Limaj* TJ, paras.136-151; *Haradinaj* TJ,para.98.

<sup>2875</sup> [REDACTED]; [REDACTED]; [REDACTED]; P04268,p.2; P04269,p.2.

<sup>2876</sup> *Haradinaj* TJ,para.87.

<sup>2877</sup> [REDACTED]; [REDACTED]; P01747,p.098259.

## 2. Organisation requirement has not been fulfilled until 30 November 1998

1167. The existence of a NIAC requires that the armed group involved “has a structure, a chain of command and a set of rules as well as the outward symbols of authority,” and that its members do not act on their own but conform “to the standards prevailing in the group” and are “subject to the authority of the head of the group.”<sup>2878</sup> Factors indicating the existence of a requisite level of organisation are the presence of a command structure, the group’s ability to carry out operations in an organized manner, the level of logistics, the level of discipline and the group’s ability to speak with one voice.<sup>2879</sup>
1168. With respect to the presence of a command structure, the CS/GS of the KLA did not hold the authority to assign tasks to individuals in the organization and to appoint and give directions to commanders and did not receive regular reports concerning developments in the war zones from the constituent units.<sup>2880</sup>
1169. With respect to the individual zones, the ICTY determined that, in the first months of 1998, the “level of organisation and development in each zone was fluid and developing and not all zones had the same level of organisation and development.”<sup>2881</sup> Indeed, by May 1998, only one operational sub-zone was formally in existence,<sup>2882</sup> and, as explained above,<sup>2883</sup> the KLA’s level of organization at that time was, by any measure, inadequate.
1170. Unsurprisingly, this paradigm of disorder and incoherence resulted in several internal schisms and tensions within the KLA, wayward behaviour and actions

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<sup>2878</sup> *Tadić AJ*, para.120.

<sup>2879</sup> *Boškoski TJ*, paras.199-203.

<sup>2880</sup> See Section III.B.

<sup>2881</sup> *Limaj TJ*, para.95.

<sup>2882</sup> *Dorđević TJ*, para.1548.

<sup>2883</sup> See Section III.A.3.

that were described as “anarchical”.<sup>2884</sup> There was equally a paucity of disciplinary mechanisms.<sup>2885</sup>

1171. The KLA’s ability to speak with one voice was also severely compromised until the reorganisation of the GS in the autumn of 1998.<sup>2886</sup>

1172. Therefore, the organisation of the KLA in the first half of 1998 consisted of “incoherent, disorganised” and “very much decentralized and disintegrated”<sup>2887</sup> units struggling with poor equipment and weaponry with nothing akin to a clear chain of command. The evidence led to prove the contrary, such as vast swathes of unauthenticated documents showing names of certain soldiers and their units without any indication of their commanding lines,<sup>2888</sup> voluminous books whose authors themselves accepted the aggrandizing purpose behind their work and the inadequacy of their sources,<sup>2889</sup> or purported diaries with no identification of authorship and replete with hearsay information<sup>2890</sup> do not invalidate that conclusion.

## **B. SPO failed to prove armed conflict continued after the 9th of June 1999**

1173. A NIAC ends when a peaceful settlement has been achieved.<sup>2891</sup> . Under any theory defining a “peaceful settlement”,<sup>2892</sup> the conflict in Kosovo ended with the signing of the MTA on the 9<sup>th</sup> of June 1999.

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<sup>2884</sup> P00067,p.SITF00437790; [REDACTED]; [REDACTED]; [REDACTED].

<sup>2885</sup> *See supra*, para.130.

<sup>2886</sup> *Limaj TJ*,para.129.

<sup>2887</sup> [REDACTED].

<sup>2888</sup> P02386; P02387; P02390; P02393; P02472; P02477.

<sup>2889</sup> W04651,26/08/2024,T.18919,18939-18940,18959; P01545.2,pp.21-22.

<sup>2890</sup> P01747; [REDACTED].

<sup>2891</sup> *Tadić IA*.Decision,para.70.

<sup>2892</sup> A NIAC concludes when (i) at least one of the constituent elements necessary for the existence of an armed conflict cease to exist; (ii) military operations have come to a general close; (iii) there is no reasonable risk of resumption of hostilities; or (iv) the formerly-warring parties have agreed upon a conflict-terminating instrument. D.A.Lewis,2017.

1174. On 9 June 1999, KFOR and the governments of FRY and the Republic of Serbia concluded the MTA, with the purpose of establishing a durable cessation of hostilities.<sup>2893</sup> It provides that within eleven days of its entry into force, all FRY forces will have completed their withdrawal from Kosovo.<sup>2894</sup>
1175. On 10 June 1999, the Security Council adopted Resolution 1244, demanding the FRY to “put an immediate and verifiable end to violence and repression in Kosovo” and to commence a phased withdrawal from Kosovo of its personnel,<sup>2895</sup> and the KLA to end immediately all offensive actions.<sup>2896</sup> On the same day, the PGoK proclaimed a unilateral ceasefire subject to the cessation of military actions by the Serb forces.<sup>2897</sup> The demands of the Security Council were respected in full, and the prospect of “renewed hostilities” never materialized.
1176. The envisaged withdrawal of the Serb forces was completed on 20 June 1999,<sup>2898</sup> after eleven days of mass movements of the Serbian forces and their equipment<sup>2899</sup> but no significant military confrontations.<sup>2900</sup> Violent incidents described during that period were unilateral, spontaneous, uncoordinated,<sup>2901</sup> and of minimal duration,<sup>2902</sup> without any response from the opposing side.<sup>2903</sup>
1177. Several witnesses confirmed that the signing of the MTA corresponded with the cessation of hostilities.<sup>2904</sup> Indeed, as explained by UNMIK’s former legal

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<sup>2893</sup> P04064,p.6D09-0141.

<sup>2894</sup> P04064,p.6D00-0142.

<sup>2895</sup> 1D00078,p.0361-6805.

<sup>2896</sup> 1D00078,p.0361-6807.

<sup>2897</sup> P00525,p.020411.

<sup>2898</sup> Adj.Facts,No.139; P02563,p.SPOE00000756.

<sup>2899</sup> P00515\_ET.67; P00515\_ET.70,p.008916; P00515\_ET.71,p.008918

<sup>2900</sup> W02183,21/01/2025,T.24048; W01453,06/11/2024,T.22135-22137; W03881,22/05/2024,T.15640.

<sup>2901</sup> P00515\_ET.68,p.008909; 1DW-007,17/11/2025,T.28130.

<sup>2902</sup> P00515\_ET.68,p.008904; W02540,21/05/2024,T.15546-15548.

<sup>2903</sup> P01968,para.14; P00515\_ET.67,pp.008891,008896; P00515\_ET.68,p.008907; P00515\_ET.70,p.008915; P00814\_ET.30,p.SPOE00055603-SPOE00055604.

<sup>2904</sup> W01453,06/11/2024,T.22132-22137; W04765,16/11/2023,T.10329-10331; [REDACTED];

W04403,25/03/2025,T.25873-25874; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];

adviser<sup>2905</sup> and by UNMIK's deputy SRSG,<sup>2906</sup> the task of UNMIK as a civilian reconstruction mission was conditional on the armed conflict having concluded.

1178. The SG attributed the tense security situation in Kosovo in the aftermath of the withdrawal process not to hostile acts between the formerly warring parties, but rather to "the absence of law and order institutions and agencies."<sup>2907</sup> The SG identified instances of "[c]riminal gangs competing for control of scarce resources" and domestic crimes as the main security concerns.<sup>2908</sup> The report also identifies the return of over half a million refugees, significant efforts in the area of demining, plans for the organization of democratic elections and several reconstruction policies designed.<sup>2909</sup> At no point does the report make any reference to clashes between the previously warring parties.

1179. 1DW-004, involved in the preparation of SG's periodic reports,<sup>2910</sup> was not aware of any armed clashes, combat casualties on either side, cities or towns besieged, roads blockaded, heavy weapons fired in combat, civilians displaced, or Security Council statements or resolutions expressing concerns about an ongoing armed conflict in Kosovo after the 20<sup>th</sup> of June 1999.<sup>2911</sup> The lack of any armed violence in the intervening period is also confirmed by other international witnesses who were deployed into Kosovo at the relevant time and were specifically tasked with monitoring developments in the security situation.<sup>2912</sup>

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W04408,07/09/2023,T.7551-7552; W04765,05/12/2023,T.10574; [REDACTED];

W02183,20/01/2025,T.23917-23919; [REDACTED]; [REDACTED].

<sup>2905</sup> W02183,20/01/2025,T.23920.

<sup>2906</sup> 1DW-004,30/09/2025,T.27357-27358.

<sup>2907</sup> P02563,p.SPOE00000756.

<sup>2908</sup> P02563,p.SPOE00000756.

<sup>2909</sup> P02563,pp.SPOE00000761,SPOE00000771,SPOE00000774.

<sup>2910</sup> 1DW-004,30/09/2025,T.27387.

<sup>2911</sup> 1DW-004,30/09/2025,T.27359.

<sup>2912</sup> 1DW-009,13/11/2025,T.28084; 1DW-006,23/09/2025,T.27255.

1180. Additionally, on 21 June 1999, THAÇI and W02153 signed the Undertaking of Demilitarisation and Transformation by the KLA (“Undertaking”), providing for a demilitarisation of the KLA within 90 days of signing. The KLA completed its full demilitarisation by the deadline, with a considerable number of weapons having been handed in within 30 days of signing.<sup>2913</sup> No conflict can exist with one party disarmed and demilitarized, and the opposite party having withdrawn from the territory.
1181. It is therefore unsurprising that numerous organizations, including the FRY government itself,<sup>2914</sup> UNMIK,<sup>2915</sup> ICTY Trial Chambers,<sup>2916</sup> the domestic courts in Kosovo, including the Supreme Court,<sup>2917</sup> the SPRK<sup>2918</sup> and the Kosovo Parliament<sup>2919</sup> all concluded that the conflict in Kosovo ended in June 1999.
1182. Nevertheless, the SPO submitted that several factors, addressed below, demonstrate the real risk of resumption of broader hostilities, relying on the “No-Reasonable-Risk-of-Resumption Theory”.<sup>2920</sup>
1183. The “No-Reasonable-Risk-of-Resumption Theory” derives, in part, from the ICRC 2016 Commentary on Common Article 3. In expressing its support for that theory, the ICRC highlighted that, in its view, “it is preferable not to be too hasty and thereby risk a ‘revolving door’ classification of a conflict which might lead to legal uncertainty and confusion.”<sup>2921</sup> As a humanitarian actor, the ICRC was justified in its counsel against potentially premature determinations as to the conclusion of an armed conflict, since such determinations risk depriving

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<sup>2913</sup> [REDACTED]; [REDACTED].

<sup>2914</sup> 1D00429.

<sup>2915</sup> 1D00254; 1D00255.

<sup>2916</sup> *Milutinović* TJ,para.1217; *Dorđević* TJ,paras.1579-1580; *Haradinaj* TJ.II,fn.2039.

<sup>2917</sup> *Kolašinać* SC.J,p.21; *Gashi* SC.J,pp.10-11; *NK* TJ,para.27; *FG* TJ,p.8; *Radivojević* TJ,p.14.

<sup>2918</sup> [REDACTED]

<sup>2919</sup> 1D00106,Art.3(1).

<sup>2920</sup> F03314,para.58; D.A.Lewis,2017.

<sup>2921</sup> ICRC Commentary,para.570.

entire populations of their protected status. Those considerations are however far less pervasive for a tribunal such as the KSC that is seized with a case covering events that occurred several years prior. Unlike the ICRC or other humanitarian actors monitoring conflicts in real-time, the Trial Panel is not required to carry out a contemporaneous assessment of an ongoing conflict, but instead possesses the benefit of hindsight as to whether the MTA brought about a lasting cessation of hostilities.

1184. The “No-Reasonable-Risk-of-Resumption Theory” also poses serious concerns regarding the principle of legality. As outlined above, liability for war crimes requires that the perpetrator is aware of the factual circumstances that establish the existence of a NIAC. Hence, extending an accused’s liability past the point when those elements ceased to exist based on hypotheses that the hostilities may or may not resume would run counter to the requirement that an accused must be able to determine, based on the facts available to them, that their conduct is criminal.

1185. These considerations demonstrate the unsuitability of this theory for the purposes of international criminal proceedings. Notwithstanding that, the ICRC commentary lists several factors that indicate that a situation has sufficiently stabilized such that the armed conflict has concluded.<sup>2922</sup> As outlined below, the evidence unequivocally demonstrates that, even by reference to these factors, the SPO’s contention that there was a real risk of resumption is misplaced.

1186. The SPO claims that the terms of the Undertaking indicated an understanding by KFOR and the KLA of “the reality, or at a minimum the real risk, of continued hostilities.”<sup>2923</sup> It is simply illogical that a party faced with the alleged

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<sup>2922</sup> ICRC Commentary, para.495.

<sup>2923</sup> F03314, para.62.

reality of continued hostilities would agree to hand over all their weapons and to vacate all their fighting positions. The SPO further underlined that the KLA merely agreeing to a “phased” demilitarisation further indicated that the hostilities were at risk of resuming, yet this argument simply ignores the reality that the momentous effort required by the Undertaking could not be completed overnight.

1187. The SPO further claimed that the statements of the formerly warring parties indicate a real risk of resumption of hostilities.<sup>2924</sup> However, there is no evidence that any of these statements were followed up with any military action or that any logistical efforts were undertaken that would enable such action. Further, such threats were issued as part of disinformation campaigns<sup>2925</sup> that were subsequently debunked by the military personnel in charge,<sup>2926</sup> or originated from media speculation.<sup>2927</sup>

1188. The SPO further argued that the parties retained the means for waging war<sup>2928</sup> yet failed to provide any support for the suggestion that this prevents an armed conflict from concluding. If that was the case, it would have been impermissible for the ICTY to find that the Bosnian war ended with the signing of the Dayton Agreement<sup>2929</sup> because the VJ, VRS, ABiH or the HVO did not fully dissolve after its signing, or that the conflict in Croatia ended in September 1995,<sup>2930</sup> even though an agreement for the demilitarization of the affected regions was not

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<sup>2924</sup> F03314, paras. 65-67.

<sup>2925</sup> [REDACTED].

<sup>2926</sup> [REDACTED].

<sup>2927</sup> [REDACTED].

<sup>2928</sup> F03314, paras. 68-70.

<sup>2929</sup> *Karadžić* TJ, para. 5601.

<sup>2930</sup> *Gotovina* TJ, para. 1697.

concluded until three months after,<sup>2931</sup> and was not fully implemented until the year after.<sup>2932</sup>

1189. Further, the instances identified by the SPO did not convince several witnesses that the demilitarisation did not proceed as planned, stating that the KLA largely complied with its obligations under the Undertaking.<sup>2933</sup> Individual instances of non-compliance in the form of weapon stockpiling or the Serb forces maintaining a small number of soldiers inside Kosovo that were not put to use in any military offensives in no way amount to a resumption of hostilities.

1190. The SPO also alleges that the occurrence of “hostile and provocative acts” risked reigniting the conflict<sup>2934</sup> yet relies on incidents where the identity of the parties engaged in such acts is unknown<sup>2935</sup> or the violence described is attributable to the civilian population rather than the formerly warring parties.<sup>2936</sup> Other evidence further attributes the tensions identified by the SPO to individual Serb “hard-liners” receiving material support and directions from the Milosevic regime.<sup>2937</sup> The evidence also demonstrates that the alleged tensions identified by the SPO stabilized shortly thereafter.<sup>2938</sup>

1191. Moreover, several witnesses assessed that isolated hostile acts did not engender a risk that such acts would develop into a resumption of hostilities. Alleged concerns that the Serb forces would re-enter Kosovo have been described by SACEUR as mere eventualities that KFOR, as part of their mandate, had to be prepared for and have plans in place in case of their occurrence.<sup>2939</sup> However,

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<sup>2931</sup> Erdut Agreement.

<sup>2932</sup> S/1996/472, para.3.

<sup>2933</sup> [REDACTED]; [REDACTED]; W03881,22/05/2024,T.15657-15659,15706; [REDACTED].

<sup>2934</sup> F03314, para.76.

<sup>2935</sup> F03314, [REDACTED]

<sup>2936</sup> [REDACTED]; [REDACTED].

<sup>2937</sup> P04496,p.SPOE00397810.

<sup>2938</sup> [REDACTED]; [REDACTED].

<sup>2939</sup> 1DW-007,17-18/11/2025,T.28121-28122,28204-28205.

that is not synonymous with KFOR appreciating a likelihood of that eventuality occurring,<sup>2940</sup> and SACEUR repeatedly confirmed that he saw no such realistic likelihood.<sup>2941</sup> COMKFOR also assessed the prospect as “extremely unlikely” as it would have been nonsensical for Serb forces to surrender their established military advantage by withdrawing, only to have to regain it by fighting their way back in.<sup>2942</sup> Further, SACEUR’s political advisor testified that some of the instances identified by the SPO as provocative acts were instead acts of violence by Serbian paramilitary forces directed at the Serb civilian population<sup>2943</sup> and not clashes between the formerly warring parties.

1192. The SPO claimed that the KLA and the FRY forces did not reach a peace agreement and therefore no peaceful settlement was achieved.<sup>2944</sup> However, taken to its logical conclusion, the SPO’s contention entails that the conflict is still waging on today, as no formal peace agreement was ever concluded.<sup>2945</sup> The PGoK’s proclamation of a unilateral ceasefire on the day that Resolution 1244 was adopted<sup>2946</sup> unequivocally demonstrates the KLA’s intent to abide by and aid in the realization of the MTA’s stated goal of ensuring long-lasting peace.

1193. Therefore, after the signing of the MTA on 9 June 1999, both constitutive elements dropped below the applicable threshold for the existence of an armed conflict. One party was engaged in a continuous effort, overseen by KFOR, to lay down all weapons, dissolve its existent military structures and withdraw from previously-controlled bases, while the other party fully withdrew from the war theatre, leaving only a handful of personnel inside not engaging with the opposing side. The MTA, in combination with the Undertaking,

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<sup>2940</sup> F03314,para.73.

<sup>2941</sup> 1D00430,para.27; 1DW-007,17/11/2025,T.28121-28122.

<sup>2942</sup> P02516,p.121595; 1D00214,p.SPOE00212681.

<sup>2943</sup> 1DW-007,13/11/2025,T.28084.

<sup>2944</sup> F00709/A01,para.698.

<sup>2945</sup> See also,1DW-007,18/11/2025,T.28203.

<sup>2946</sup> P00525.

demonstrates the unequivocal intent of all formerly warring parties to end the hostilities, and the fact that their adoption was followed by a cessation of all military operations further reinforces that shared intent.

### C. SPO failed to prove that all charged victims were protected persons

1194. The SPO bears the burden of proving that all alleged victims of the war crimes charged in the Indictment were protected persons.<sup>2947</sup> However, the evidence demonstrates that several individuals identified as victims of war crimes did not benefit from the protection of Common Article 3.

1195. The SPO alleges that war crimes were committed against several members of the KLA's own ranks, such as [REDACTED], [REDACTED], [REDACTED] and [REDACTED].<sup>2948</sup> As KLA members, they were directly participating in hostilities at the time of the alleged crimes and were exercising a continuous combat function in that regard, thus falling outside the purview of Common Article 3.<sup>2949</sup>

1196. While Article 14(1)(c) acknowledges that the war crimes listed therein can be committed against members of the armed forces placed *hors de combat*, there are only three distinct scenarios through which an individual can be placed *hors de combat*, namely if (i) they are in the power of an adverse party; (ii) they clearly express an intention to surrender; or (iii) they have been rendered unconscious or are otherwise incapacitated by wounds or sickness.<sup>2950</sup> Regarding the first scenario, it is clear from analogous IHL provisions that the meaning of "adverse party" refers to the enemy party of the warring party to which the individual

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<sup>2947</sup> *Blaškić* AJ, para.111; *Strugar* AJ, para.178; *Kordić* AJ, paras.48,53.

<sup>2948</sup> While this section concerns alleged crimes against KLA fighters, it is not conceded that all other victims are entitled to civilian status.

<sup>2949</sup> *Sesay* TJ, paras.1451-1453.

<sup>2950</sup> Art.41(2) AP I; ICRC Commentary, Rule 47.

belongs, and not to a party that the individual concerned may regard as adverse or hostile in the particular circumstances of their case.<sup>2951</sup>

1197. While the ICC Appeal Chamber confirmed that victims of certain serious violations of Common Article 3 need not be protected persons, that determination was reached in light of the specific crimes contemplated in that case not being defined by reference to the victim's protected status in the Rome Statute.<sup>2952</sup> In contrast, the chapeau of Article 14(1)(c) of the Law requires that all victims charged under that Article be protected persons. The Appeal Chamber also determined that IHL "does not contain a general rule that categorically excludes members of an armed group from protection against crimes committed by members of the same armed group", yet that determination is prefaced by its finding that Common Article 3 provides for unqualified protection irrespective of a person's affiliation only if such persons were taking no active part in hostilities.<sup>2953</sup> As IHL does not recognize fighters in the hands of their own party as *hors de combat*, the Appeal Chamber's finding does not support the extension of protected status to the alleged victims in the present case.

#### **D. SPO failed to demonstrate nexus of the crimes charged to armed conflict**

1198. The SPO is required to prove that all charged war crimes bear a nexus to the armed conflict.<sup>2954</sup> In determining whether such nexus exists, regard must be had to "the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the

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<sup>2951</sup> See Arts.41(3),44 AP I. The reference to individuals in the power of an adverse party are in sharp contrast to other provision in AP I which establish a universal scope of protection, such as Article 10 referring to "to the protection of the 'wounded, sick, and shipwrecked, to whichever Party they belong", demonstrating the different scope of personal application that the drafters intended for these provisions.

<sup>2952</sup> *Ntaganda* Decision,para.51.

<sup>2953</sup> *Ntaganda* Decision,para.60.

<sup>2954</sup> *Strugar* TJ,para.215; *Halilović* TJ,para.29.

fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties."<sup>2955</sup> The conflict must have played a substantial part in the perpetrator's ability to commit the offence, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.<sup>2956</sup>

1199. As outlined above, an overwhelming number of incidents also charged as war crimes were committed out of, or at least influenced by, personal animosities between the alleged perpetrators and the victims.<sup>2957</sup> These alleged crimes cannot serve the ultimate goal of the military campaign, and the SPO did not establish that existence of the conflict played any part in the perpetrator's decision or purpose to commit the alleged crimes.

1200. Further, several incidents charged as war crimes were alleged to have been committed against KLA fighters,<sup>2958</sup> and no nexus between these incidents and the armed conflict exists as the victim is not a "non-combatant".

1201. Finally, several incidents charged as war crimes allegedly occurred before November 1998 and after the 9<sup>th</sup> of June 1999.<sup>2959</sup> While an armed conflict need not occur contemporaneously with the alleged crimes if such crimes are closely related to that conflict, "[i]t is illogical to say that there is such a nexus unless it is proved that the [perpetrator] has been aware of the factual circumstances concerning the nature of the hostilities."<sup>2960</sup> As the SPO failed to prove the existence of the factual circumstances giving rise to the armed conflict during

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<sup>2955</sup> *Kunarac* AJ, para.59.

<sup>2956</sup> *Bagosora* TJ, para.2231.

<sup>2957</sup> See Section V.C.7.

<sup>2958</sup> See Sections V.D.2.a.iii and V.D.8.c.ii.

<sup>2959</sup> Indictment, paras. 62-70,75-76,84-95,99-106,121-135,139-140,142-156,168-174.

<sup>2960</sup> *Naletilić* AJ, para.118.

the contested periods as argued above,<sup>2961</sup> it follows that the alleged perpetrators could not have been aware of such circumstances. As such, there can be no nexus between the acts of alleged perpetrators and the armed conflict when the former could not ascertain that a protracted armed conflict was waging before November 1998 and continued after June 1999. The SPO did not present any specific evidence as to the *mens rea* of these alleged perpetrators to invalidate this conclusion.

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<sup>2961</sup> See Sections VIII.A and VIII.B.

## IX. CONTEXTUAL ELEMENTS—CRIMES AGAINST HUMANITY

1202. The Prosecution failed to prove beyond reasonable doubt that any of the acts alleged in the Indictment met the threshold requirements to be a CAH.
1203. The alleged underlying crimes in the Indictment were not part of a widespread or systematic attack directed against a civilian population, namely the Opponents, as required by Article 13. These sporadic alleged underlying crimes were neither coordinated, organised, nor followed a consistent pattern. Neither has the SPO proven the *mens rea* requirement for CAH.
1204. The chapeau elements of CAH are not satisfied by the targeting of a limited and randomly selected group of individuals, or of a select group of civilians, such as political opponents.<sup>2962</sup> The requirement that an attack must be “directed against any civilian population” attaches to a collective, as opposed to individual civilians.<sup>2963</sup> Instances of individual civilians being targeted because of their individual attributes as opposed to their membership of a targeted population cannot be used to demonstrate the existence of a widespread or systematic attack.<sup>2964</sup> For that reason, acts carried out as retaliation or for political purposes do not amount to an attack on the civilian population itself.<sup>2965</sup>
1205. The evidence reveals that an overwhelming number of incidents presented by the SPO as constitutive of or otherwise connected to a widespread or systematic attack against the civilian population were committed out of, or at least influenced by, personal animosities between the alleged perpetrators and the victims.<sup>2966</sup> These instances of persons being targeted on account of their personal characteristics and past quarrels with the alleged perpetrators as

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<sup>2962</sup> *Limaj* TJ, para.187; *Kunarac* AJ, para.90; *Milosević* TJ, para.924; *Katanga* TJ, para.1105.

<sup>2963</sup> *Ongwen* TJ, para.2675.

<sup>2964</sup> *Kordić* TJ, para.178; *Haradinaj* TJ, para.114.

<sup>2965</sup> G.Mettraux, 2020, p.247.

<sup>2966</sup> See Section V.C.7.

opposed to their membership in a targeted civilian population cannot demonstrate the existence of a widespread or systematic attack against such population.

1206. For these reasons, the ICTY Trial Chambers in *Limaj* and *Haradinaj* determined that the *chapeau* elements of crimes against humanity had not been established.<sup>2967</sup>

1207. Additionally, even assuming *in arguendo* that a widespread and systematic attack against the civilian population occurred, acts committed out of purely personal reasons establish a presumption that the perpetrator was not aware that their acts were part of that attack.<sup>2968</sup> The SPO must establish that the principal perpetrators of the offences charged or their immediate superiors possessed the requisite *mens rea*,<sup>2969</sup> thus it was incumbent upon it to lead specific evidence demonstrating that, even if the acts they are alleged to have perpetrated were committed for purely personal reasons, these individuals were otherwise aware that an attack against the civilian population was ongoing and that their actions formed part of that attack.<sup>2970</sup> By failing to call numerous principal perpetrators as witnesses or to elicit evidence from other witnesses as to their state of mind, and in several cases even failing to establish the identity of the purported principal perpetrators, the SPO did not rebut the presumption outlined above.

1208. The SPO nonetheless claimed that the “KLA/PGoK leadership made public statements and issued or approved regulations, directions, orders, and threats against Opponents, while also directing, condoning, and encouraging their

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<sup>2967</sup> *Limaj* TJ, para.227; *Haradinaj* TJ, para.122.

<sup>2968</sup> *Kunarac* AJ, para.103.

<sup>2969</sup> *Šainović* AJ, para.275.

<sup>2970</sup> *Tadić* AJ, paras.248-251.

mistreatment and execution.”<sup>2971</sup> Its reliance on a series of communiqués and public statements in support of that position ignores the propagandist purpose they serve, the obscurity surrounding the process through which they were produced, the lack of involvement of numerous KLA leaders in their drafting or approval, with several such individuals not even being aware of their existence or contents,<sup>2972</sup> and the evidence demonstrating that the assertions therein were untrue or exaggerated.<sup>2973</sup>

1209. Further, many communiqués predate the Indictment period and relate to purported actions taken against individuals allegedly affiliated with Serb military structures in respect of whom the SPO led no evidence to demonstrate their civilian status.<sup>2974</sup> Significantly, the actions reported relate to individuals being singled out on account of their personal characteristics and the ICTY Trial Chamber in *Limaj* concluded that the actions and admonitions contained therein demonstrated that these persons “were targeted as individuals rather than as members of a larger targeted population.”<sup>2975</sup> The SPO presented no additional evidence to demonstrate the contrary. Additionally, the SPO conveniently ignores several communiqués and public statements by the KLA/PGoK leadership explicitly denying the existence of a KLA-wide policy targeting the civilian population and urging against any attacks on such population.<sup>2976</sup> Finally, the material cited by the SPO relates to incidents involving a handful of individuals in total, thus falling markedly below the threshold of magnitude required for the existence of a widespread or systematic attack.

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<sup>2971</sup> F00709/A01,para.705.

<sup>2972</sup> See Section V.C.4.

<sup>2973</sup> W04401,03-04/12/2024,T.23254-23255,23335; 4D00098.

<sup>2974</sup> P00273; P00274; P00269\_ET.8; P00269\_ET.5.

<sup>2975</sup> *Limaj* TJ,para.217.

<sup>2976</sup> P00270\_ET.12; P00515\_ET.69.

1210. The purported lists of collaborators referenced by the SPO<sup>2977</sup> further confirm the conclusions above. While the Defence reiterates its submissions that such lists are entitled to no weight,<sup>2978</sup> they also include individuals listed for discrete reasons, including allegations of [REDACTED].<sup>2979</sup> Many lists do not indicate whether any action was taken against these individuals, and the SPO led no additional evidence establishing how many such individuals were targeted. It also cannot be reasonably excluded that such individuals were directly participating in hostilities as the described conduct may amount to involvement in hostile acts, activities or conduct, and transmission of military information for the immediate use of the opposing belligerent party.<sup>2980</sup> It was incumbent upon the SPO to lead contextualizing evidence demonstrating that these individuals fall under the definition of civilians, and absent such evidence, the SPO's intimation that these lists demonstrate a widespread or systematic attack against the civilian population is premised on an impermissible factual leap.

1211. In contrast, as recounted above,<sup>2981</sup> several lists relied upon by the SPO simply name individuals without any further specificity and often contain no indication why the lists in question were compiled.<sup>2982</sup> Citing these lists in support of the contextual elements of CAH, the SPO is inviting the Panel to make numerous impermissible inferences without sufficient evidence related to the status of those named and whether or why they were targeted

1212. Moreover, the Panel heard extensive evidence on the civilian population engaging in vindictive acts, which, as outlined above,<sup>2983</sup> constituted the most serious threat to public order and security in the post-war period. The Panel has

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<sup>2977</sup> F00709/A01,para.705.

<sup>2978</sup> See Section V.C.6.

<sup>2979</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2980</sup> *Strugar A*,para.177.

<sup>2981</sup> See Section V.C.6.

<sup>2982</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>2983</sup> See *supra*, para.1199.

also heard evidence on individuals committing crimes under the guise of the KLA, even though they possessed no formal connection with the KLA.<sup>2984</sup> Notwithstanding this, the SPO submitted documents purporting to record uncharged violent acts committed by unidentified perpetrators, or which attribute actions to the KLA without specifying the basis for doing so, and proffered that they are relevant to the contextual elements of CAH.<sup>2985</sup> Further, as argued above,<sup>2986</sup> the SPO failed to prove that all crimes charged as crimes against humanity were committed by individuals affiliated with the KLA. This attempt to aggregate the actions of unknown individuals with those of the KLA with a view to establish that the KLA directed a widespread or systematic attack against the civilian population hinges on an implausible inference.

1213. Finally, as argued above, several individuals that the SPO charges as victims of crimes against humanity were KLA fighters as opposed to protected persons.<sup>2987</sup> For the purposes of CAH, an individual is a civilian to the extent that they fulfil the definition of civilians in Article 50 of AP I,<sup>2988</sup> which excludes members of the armed forces and of organized resistance groups.<sup>2989</sup> Consequently, the specific situation of the victim at the time the alleged crimes were committed, and whether the victim was *hors de combat* or not, is not determinative of an individual's civilian status.<sup>2990</sup> Accordingly, such individuals, whether they are *hors de combat* or not, cannot be victims of CAH, neither can the crime allegedly committed against them be used to demonstrate the existence of a widespread and systematic attack on the civilian population.

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<sup>2984</sup> [REDACTED]; [REDACTED].

<sup>2985</sup> [REDACTED]; P03929; [REDACTED]; P04060; [REDACTED]; P04106; P04109.

<sup>2986</sup> See *supra*, para.1205.

<sup>2987</sup> See Section V.C.8.

<sup>2988</sup> *Blaškić* AJ,para.110.

<sup>2989</sup> *Blaškić* AJ,para.113; *Martić* AJ,para.302.

<sup>2990</sup> *Blaškić* AJ,para.114; *Galić* AJ,para.144; *Mrkšić* AJ,para.35.

## X. VICTIMS

1214. The Defence does not dispute that individuals suffered harm during the Kosovo conflict. However, the harm depicted reflects the widespread suffering inherent in an armed conflict marked by displacement, violence, and instability but not harm traceable to specific conduct, decisions, or authority allegedly involving **SELIMI**.

1215. VC expert evidence is incapable of establishing a causal nexus between the crimes charged and the harm alleged. The experts repeatedly and expressly disclaimed the ability to determine whether any psychological symptoms were caused by the alleged crimes, by detention-related acts, or by any conduct attributable to the Accused.<sup>2991</sup> Where expert witnesses acknowledge that causation cannot be determined, and where the methodology employed precludes attribution of harm to specific acts or actors, the evidence is legally incapable of supporting findings of causation beyond reasonable doubt.

1216. The Defence will address the VC impact statement and any potential issues related to reparations at a later stage, where appropriate.

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<sup>2991</sup> F03356, para.13; VE-01, 16/07/2025, T.26284.

## XI. SENTENCING

1217. **SELIMI** is not guilty of all charges. Throughout the proceedings, the Defence has consistently contested the factual allegations, the legal characterisation of the alleged conduct, and all modes of liability advanced by the SPO.

1218. Any submissions on sentencing are made strictly in the alternative. It is neither possible nor appropriate to individualise alleged criminal conduct, express remorse, or apologise for crimes that **SELIMI** has consistently denied committing and for which no finding has yet been made.

### A. Applicable sentencing principles

1219. The purposes of sentencing are deterrence, retribution and rehabilitation.<sup>2992</sup> Individual and general deterrence aim to dissuade the convicted person on the one hand and other potential perpetrators on the other from (re-)offending.<sup>2993</sup> However, the crimes alleged in this case have been committed in a highly specific factual scenario that occurred almost three decades ago. There is no real possibility that the circumstances which enabled the charged conduct will re-occur. Thus, there is no possibility of **SELIMI** replicating the charged conduct in the future or of other individuals engaging in the same type of conduct in the same circumstances. Deterrence cannot thus be considered a factor enhancing **SELIMI's** punishment, and international tribunals have emphasized that no undue prominence should be given to deterrence in assessing sentence.<sup>2994</sup>

1220. Retribution as a purpose for punishment cannot serve to fulfil a desire for revenge and is only warranted insofar as the sentence is proportionate to the

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<sup>2992</sup> *Gucati TJ*, para.938.

<sup>2993</sup> *Gucati TJ*, para.938.

<sup>2994</sup> *Bralo SJ*, para.22; *Tadić JSA*, para.48.

seriousness of the crimes committed and the degree of participation of the accused.<sup>2995</sup>

1221. While rehabilitation was sometimes found to have a limited role<sup>2996</sup> certain chambers have considered the accused's potential for rehabilitation as a factor warranting a reduced sentence,<sup>2997</sup> and accepted that such potential can be improved by the trial process itself.<sup>2998</sup>

1222. In determining the appropriate sentence, the relevant factors are: (i) primarily, the gravity and consequences of the crime ; (ii) personal contribution to the crime; (iii) the individual circumstances; and (iv) mitigating and aggravating circumstances related to those factors, if any.<sup>2999</sup> An accused's good character, family circumstances and absence of convictions are relevant both to establishing his individual circumstances and as mitigating circumstances.<sup>3000</sup> Time spent in detention before and during trial is equally a relevant consideration to an individual's personal circumstances.<sup>3001</sup> Factors relevant to the assessment of gravity cannot be double-counted as separate aggravating circumstances and *vice versa*, nor can the elements of a charged offence or mode of liability be considered as aggravating circumstances.<sup>3002</sup> Further, aggravating circumstances must relate solely to the crimes under which a conviction has been entered, such that uncharged or unproven crimes cannot be used to elevate the contemplated sentence.<sup>3003</sup>

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<sup>2995</sup> *Rutaganda* AJ,para.591; *Abd-Al-Rahman* TJ,para.67.

<sup>2996</sup> *Gucati* TJ,para.939.

<sup>2997</sup> *Hadžihasanović* AJ,para.325; *Kordić* AJ,para.1091.

<sup>2998</sup> *Blagojević* TJ,para.824.

<sup>2999</sup> *Gucati* TJ,para.950; *Mustafa* AJ,para.451.

<sup>3000</sup> *Bisengimana* TJ,paras.143,165; *Nzabirinda* SJ,para.92; *Muvunyi* TJ,para.543.

<sup>3001</sup> *Čelebići* TJ,para.1238.

<sup>3002</sup> *Gucati* TJ,para.954.

<sup>3003</sup> *Ntaganda* SJ,para.18.

1223. In terms of personal contribution to the crime, convictions under command responsibility and aiding and abetting entitle the accused to a more lenient sentence compared to individual responsibility.<sup>3004</sup> Sentencing determinations must ensure that there is a “distinction between JCE members who make overwhelmingly large contributions and JCE members whose contributions, though significant, are not as great.”<sup>3005</sup> **SELIMI’s** potential sentence must be rooted exclusively in his own acts and omissions and not to ascribe responsibility for the acts and omissions of other JCE members.

### **B. Mitigating factors**

1224. The Panel must balance aggravating factors, which must be proved beyond reasonable doubt, and mitigating factors, which must be proved on the balance of probabilities.<sup>3006</sup> Rule 163(1)(a) provides a non-exhaustive list of applicable mitigating circumstances. Other international tribunals have also recognized the security context in which the crimes were committed,<sup>3007</sup> the conditions of detention,<sup>3008</sup> good conduct in detention,<sup>3009</sup> the lack of theoretical and practical military training<sup>3010</sup> and expressions of sympathy or compassion that need not be accompanied by the accused’s admission of participation.<sup>3011</sup>

1225. Time spent in detention prior to conviction constitutes a form of punishment already endured and may reduce the need for further punitive measures. The length of **SELIMI’s** substantial pre-trial detention must be weighed in mitigation, not simply deducted from any eventual sentence to ensure that the

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<sup>3004</sup> *Hadžihasanović* TJ, para.2076; *Vasiljević* AJ, para.182.

<sup>3005</sup> *Brdanin* AJ, para.432; *Martić* AJ, para.84.

<sup>3006</sup> *Gucati* TJ, para.955.

<sup>3007</sup> *Yekatom* TJ, paras.4438-4439.

<sup>3008</sup> *Yekatom* TJ, para.4436.

<sup>3009</sup> *Nzabirinda* SJ, para.92.

<sup>3010</sup> *Hadžihasanović* AJ, para.333.

<sup>3011</sup> *Strugar* AJ, para.366.

sentence imposed remains fair, proportionate, and consistent with established international practice.

1226. **SELIMI's** prolonged detention has had a significant and enduring impact on his immediate family. **SELIMI** shares an incredibly strong connection with his children, having never missed a day of speaking to them throughout their lives before he was detained.<sup>3012</sup> Incarceration of any Accused results in hardship for his family which must be considered as a mitigating factor.<sup>3013</sup> The Covid-19 measures limiting his visitation rights, recognised as a mitigating factor,<sup>3014</sup> alongside the stringent contact restrictions imposed for over two years,<sup>3015</sup> further exacerbated that hardship. This underscores the cumulative nature of the punishment already endured by **SELIMI**. These circumstances are relevant to ensuring that any sentence imposed remains proportionate and reflects the humanitarian consequences that have already flowed from **SELIMI's** extended deprivation of liberty.

1227. **SELIMI** voluntarily participated, without any admission of guilt, in an interview with the SPO over five full days and has cooperated with other judicial proceedings. The Defence objections to the admission of those records and to their subsequent use has no bearing on **SELIMI's** cooperation constituting a mitigating circumstance.<sup>3016</sup> **SELIMI** further voluntarily surrendered for arrest in these proceedings<sup>3017</sup> and cooperated with the SPO in the context of the search and seizure operation on his house. **SELIMI's** willingness to engage with the investigative process is a relevant mitigating circumstance.

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<sup>3012</sup> F02785,para.24.

<sup>3013</sup> *Haradinaj* TJ,para.495.

<sup>3014</sup> *Yekatom* TJ,para.4436.

<sup>3015</sup> F01977.

<sup>3016</sup> *Al-Hassan* SJ,para.123.

<sup>3017</sup> F00179,para.32.

1228. Throughout the proceedings, **SELIMI** has demonstrated respectful, compliant, and dignified conduct before the KSC. At no stage has there been any finding of interference with witnesses, obstruction of justice, or abuse of process. No charges of witness intimidation were filed against **SELIMI**, nor such evidence tendered by the SPO. **SELIMI**'s consistent compliance with court orders, respectful engagement throughout the proceedings, and the absence of any established interference with witnesses constitute relevant mitigating circumstances that should be reflected in sentence.
1229. Moreover, **SELIMI** conducted himself with respect and empathy toward the witnesses and victims who appeared before the Panel. While challenging evidence which sought to implicate him directly, through Counsel, **SELIMI** did not seek to negate or minimise the suffering described by victims. Upon **SELIMI**'s instruction, the Defence did not challenge the victims on the harm they suffered and consistently assured them that their victimhood is not disputed.<sup>3018</sup>
1230. Finally, concerning the context of the crimes charged, all such crimes were committed in the context of a widespread campaign of terror aimed at modifying the ethnic balance in Kosovo orchestrated by the leadership of the FRY and Serbia,<sup>3019</sup> which culminated in the use of excessive and indiscriminate force against the Kosovo-Albanian civilian population.<sup>3020</sup> **SELIMI** was himself a victim of this persecutory campaign.<sup>3021</sup> The KLA emerged as a self-defence group aimed at defending against these abuses and violence, which has been recognized as a mitigating factor.<sup>3022</sup> **SELIMI** possessed no military training at the time of the charged crimes, having not completed his military service, which

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<sup>3018</sup> [REDACTED]; [REDACTED]; W01140,28/02/2024,T.13089.

<sup>3019</sup> *Dorđević* TJ,para.2007.

<sup>3020</sup> *Milutinović* TJ,para.920.

<sup>3021</sup> Transcript,04/04/2023,T.2375-2377.

<sup>3022</sup> *Yekatom* TJ,paras.4438-4439.

was also recognised as a mitigating circumstance in the context of superior responsibility.<sup>3023</sup>

1231. While fully maintaining his innocence, should the Panel determine that a sentence is to be imposed, it must be restrained and proportionate, and grounded exclusively in factors properly attributable to **SELIMI** and firmly established on the evidentiary record. Punishment must reflect only the scope of **SELIMI**'s proven individual criminal responsibility in the absence of direct perpetration and the limited nature of any participation established and with full effect to the significant mitigating circumstances identified above.

### C. Cumulative convictions

1232. The Indictment pleads the modes of liability charged therein in the alternative.<sup>3024</sup> Therefore, any conviction under JCE renders impermissible a conviction under aiding and abetting or superior responsibility being entered on the same facts, and a conviction under aiding and abetting renders impermissible a conviction under superior responsibility on the same facts.<sup>3025</sup>

1233. Regarding the individual crimes charged, where two offences protect the same values or social interests, cumulative convictions for both offences are impermissible.<sup>3026</sup> The Panel may only enter cumulative convictions insofar as the crimes proven contain a materially distinct element between them.<sup>3027</sup> Consequently, the Panel cannot enter, *inter alia*, cumulative convictions on the war crimes of torture or cruel treatment,<sup>3028</sup> or on the crimes against humanity of torture and other inhumane acts based on the same conduct.<sup>3029</sup> Similarly, the

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<sup>3023</sup> *Hadžihasanović* AJ, para.333.

<sup>3024</sup> Transcript, 15/02/2023, T.1956.

<sup>3025</sup> *Nahimana* AJ, para.487; *Renzaho* AJ, para.567.

<sup>3026</sup> *Shala* TJ, para.961; *Kupreškić* TJ, para.692.

<sup>3027</sup> *Čelebići* AJ, paras.412-413.

<sup>3028</sup> *Shala* TJ, para.964; *Mustafa* TJ, para.667.

<sup>3029</sup> *Martić* TJ, para.477; *Ongwen* TJ, para.2990.

SPO charged the individual crimes against humanity in the Indictment as also constitutive of a “wider campaign of persecution”<sup>3030</sup> without identifying individual crimes against humanity that are not subsumed under the charge of persecution. Therefore, the Trial Panel cannot enter a conviction of persecution alongside another conviction for crimes against humanity corresponding to the underlying persecutory act.<sup>3031</sup>

1234. Further, a bar to multiple convictions could also arise in situations where the same conduct fulfils the elements of two offences even if these offences have different legal elements, for instance if one offence is fully consumed by the other or is subsidiary to it, or the two offences protect the same legal interest.<sup>3032</sup> In that regard, the offences of murder and enforced disappearance, while they contain materially distinct elements, nonetheless protect the same interest, namely the right to life and security of the victim. Cumulative convictions for these two crimes would thus be impermissible.

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<sup>3030</sup> Indictment, para.59.

<sup>3031</sup> *Krstić* TJ, paras.682-686; *Vasiljević* AJ, para.146; *Krstić* AJ, para.231; *Krnojelac* TJ, para.503.

<sup>3032</sup> *Bemba et al.* AJ, para.751; *Ongwen* TJ, para.2796; *Kupreškić* TJ, para.692.

## XII. CONCLUSION AND RELIEF

1235. The SPO's case against **SELIMI** is predicated upon the existence of an JCE going to the very heart of the KLA General Staff, alleging a mosaic of crimes at disparate locations throughout Kosovo over an eighteen-month period. Two full years was given by the Panel to the SPO to substantiate this and other baseless allegations. However, despite the vast number of SPO witnesses called and exhibits tendered, no coherent and credible proof of such a common criminal plan has finally been adduced. This evidence does not exist because there was no such plan.

1236. Shoehorning **SELIMI's** alleged actions and positions during that period through the prism of JCE liability, not only seeks to undermine KLA's legitimate struggle for liberation but calls into question the very basis of this form of liability.

1237. For the foregoing reasons, **Rexhep SELIMI** is entitled to a full acquittal on all charges.<sup>3033</sup>

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<sup>3033</sup> This brief was prepared by Counsel together with Furtuna Sheremeti, Nataliia Ryzhenko, Riva Gjeçaj, Cristian Vale, Flondra Blakçori, Hera Hamiti, Valeria Martínez García, Emma Procacci and Blendi Sheremeti, all of whom have contributed substantially to its preparation.



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GEOFFREY ROBERTS

Lead Counsel for Rexhep Selimi



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ERIC TULLY

Co-counsel for Rexhep Selimi



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CHAD MAIR

Co-counsel for Rexhep Selimi

/signed/

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RUDINA JASINI

Co-counsel for Rexhep Selimi